

REQUEST FOR PROPOSAL (RFP) for Construction Management (CM) and Inspection Services for the Orinda Water Treatment Plant Disinfection and Chemical Systems Safety Improvements Project

ADDENDA

Prospective bidders are responsible for reviewing any published addenda regarding this bid at ebmud.com/business-center/

CONTACT

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RESPONSE DUE

September 23, 2021
4:00 p.m. PST

SUBMIT ELECTRONICALLY TO

EBMUD Construction Division
constructionstrong@ebmud.com

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EAST BAY MUNICIPAL UTILITY DISTRICT

RFP

for

Construction Management (CM) and Inspection Services for the Orinda Water Treatment Plant
Disinfection and Chemical Systems Safety Improvements Project (Orinda WTP DCSSIP)

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EXHIBIT A – RFP RESPONSE PACKET

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EXHIBIT C – SAMPLE CONSULTING AND PROFESSIONAL SERVICES AGREEMENT

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I. STATEMENT OF WORK

A. SCOPE

It is the intent of these specifications, terms, and conditions to retain the services of up to two (2) qualified Proposers (referred to in this document as Proposer and Consultant) to provide construction management (CM) and inspection services for the Orinda Water Treatment Plant Disinfection and Chemical Systems Safety Improvements Project (Orinda WTP DCSSIP or Project).

East Bay Municipal Utility District (District) intends to award up to two (2) 5-year contracts to the Proposers who best meet the District's requirements.

Scope of CM and inspection services includes, but is not limited to those positions described herein.

All work to be performed under this RFP is a "public work" as defined by section 1720 of the California Labor Code.

B. PROJECT DESCRIPTION

The District is demolishing and upgrading existing facilities in addition to constructing new facilities at the Orinda Water Treatment Plant (Orinda WTP) in the city of Orinda, California. The Orinda WTP is located north of Highway 24 and is bounded by Camino Pablo on the southwest and San Pablo Creek on the northeast. The primary goal of the project is to construct and commission a new 200 million gallons per day (mgd) ultraviolet (UV) disinfection facility and chlorine contact basin (CCB). The engineer of record is a design consultant. These facilities will enhance the Orinda WTP's disinfection capabilities.

The UV and CCB facilities will be constructed below ground on the site of an existing maintenance building which will be demolished. The excavation for these facilities will be shored using a secant pile shoring system, and its deepest point will be approximately 60 feet below existing grade.

Filtered water will flow to the UV Facility via a new 108-inch pipe to be installed via an open-face trenchless pipe jacking method. Similarly, disinfected water will flow from the CCB to the existing Claremont Tunnel via a new 108-inch pipe installed using the same method. An additional 48-inch pipe, which will also be installed using the same method, will feed water from the CCB to Los Altos Pumping Plant No. 2 (LAPP2).

The Project includes four major water piping tie-ins:

- 48-inch tie-in to Effluent 1
- 72-inch tie-in to Effluent 2
- 48-inch tie-in to LAPP2
- 108-inch tie-in to Claremont Tunnel

The Project also includes numerous electrical, communications, chemical, and utility relocations and tie-ins.

A new two-story Maintenance and UV Electrical Building (MAUVE) will be constructed above the UV Facility to house the UV system electrical equipment and various District maintenance shops and related facilities. The Project also includes construction of a Grounds Maintenance Building and parking area for District staff at the opposite end of the site from the MAUVE.

The Project includes procurement and installation of two prefabricated power buildings that include medium voltage transformers, medium voltage switchgear, medium voltage motor control centers, cast coil transformers, low voltage switchgear, redundant 48VDC battery systems, standby power low voltage switchgear with step up transformer, protection and automation controls, panelboards, transfer switches, dry type transformers, and lighting and air conditioning. The Project also includes a new standby generator, fuel tank, and piping.

The Project includes an expanded fiber distribution system for both new and existing facilities, as well as new control panels, workstations, instrumentation, CCTV system, access control equipment, and fire alarm systems for the new facilities.

The Project also includes improvements to the chemical storage and feed systems, including demolition and replacement of chemical feed systems for primary coagulant, coagulant polymer, sodium hypochlorite, ammonia, sodium bisulfite, caustic soda, and fluoride, including bulk tanks, pumps, and chemical piping from truck unloading to chemical injection, as well as temporary chemical feed and storage system for plant operation during construction of these improvements.

Raw water conveyance system improvements are also part of the Project, including replacement of three weir gates at the Briones Diversion Works (one 7' x 7' gate, two 6' x 7' gates), installation of new ultrasonic flowmeters at the Orinda WTP north and south raw water channels, and inspection, repair, and expansion of siphons located at the Orinda WTP south spillway to San Pablo Creek.

Bid documents for the project are expected to be available on the District website on or around September 1, 2021 (<https://construction-bids.ebmud.com/>).

The treatment plant will be in operation during construction. Partial shutdowns of the plant will be allowed, and two complete plant shutdown periods will also be permitted to make tie-ins to existing infrastructure. The anticipated duration of the construction project is 65 months.

C. SPECIFIC REQUIREMENTS

The selected Proposers will provide CM services to support the Project.

Selected Proposers may also be called upon to provide other CM-related services during the term of the Professional Services Agreement ("Agreement").

EBMUD will allocate work by issuing Task Orders to a selected Proposer. The scope of work and schedule will be determined by EBMUD when CM services are needed. Upon agreement with the Proposer on the scope of work, budget, and schedule, a task order will be issued with a task order start date (also known as a Notice to Proceed (NTP) date) and a task order end date.

The need for CM services will fluctuate according to the work being performed by the construction contractor on the project. Work shifts and schedules will vary according to workload and assignments. EBMUD does not guarantee the amount of labor required nor the time of the needed labor.

EBMUD will provide office space as needed for Proposer staff assigned to report to the Project site including standard District furniture, restroom facilities, and utilities. Network access to EBMUD's business network and internet will be provided for Project use only in accordance with District policies. If Responder requires network access to its company business network, additional networking equipment and installation shall be at no additional cost to the District.

The District anticipates awarding up to two (2) Agreements to highest-ranked Proposer. Each Agreement will be for a term not to exceed five (5) years and the combined value of the Agreements

will have a not-to-exceed amount of \$10 million, inclusive of reimbursable costs. EBMUD reserves the right to commence, close, reduce, or extend Proposer services at any time in response to changing needs.

1. Description of Roles and Responsibilities

The Consultant will provide fully qualified and experienced CM and Inspection personnel (listed below) to manage and inspect construction aspects of the Project on an as-needed basis.

The general roles and responsibilities of the potential CM and inspection positions are described below. EBMUD reserves the right to add or delete these positions and amend the descriptions of the roles and responsibilities. EBMUD will discuss the changes, if any, with the selected Consultants. The roles and responsibilities of the specific CM and inspection positions will be stipulated in each task order. The responsibilities for each position will be aligned with the following descriptions as well as with the responsibilities included in the EBMUD Construction Division Project Procedures Manual.

- a. Quality Assurance Officer (QAO) – The QAO develops, plans, executes, and manages the District’s construction quality assurance program for the project. The quality assurance program is a system of procedures that define planned and systematic activities executed in the course of a job to fulfill the project’s quality requirements. Develops project-specific quality assurance program, manages quality assurance material testing, reviews technical submittals for conformance with the contract documents, reads and interprets technical specifications, recommends to District’s Project Manager issuance of Deficiency Notices for non-conformances, and monitors the construction contractor’s execution of their quality control plan. Attends as the District’s primary representative the Contractor’s QC preparatory, initial, and follow-up phase meetings for each definable feature of work. Reviews and approves Contractor quality control, Construction Quality Assurance Inspectors, and District quality assurance daily field reports. Reports to the District’s Project Manager.
- b. Structural Concrete Resident Engineer (SC-RE) – The SC-RE will monitor and enforce Contract requirements related to the structural concrete portion of the project. Desirable qualifications for the SC-RE include experience on recent projects with ACI 350 structures, ACI 207 mass concrete placement, building code compliance, temperature monitoring, complex reinforcing, watertight concrete structures, and engineered formwork/shoring/reshoring. The SC-RE will work closely with the QAO and structural Quality Assurance Inspector.
- c. Environmental Compliance Coordinator (ECC) – The ECC develops, plans, executes, and manages the District’s environmental compliance program for the project in accordance with the District’s Mitigation Monitoring and Reporting Program (MMRP), contract documents, and applicable Federal, State, and Local laws and regulations including the construction contractor’s compliance with the NPDES general construction permit. The ECC schedules, coordinates, and supervises Environmental Compliance Monitors in the areas of wildlife biology, SWPPP, cultural resources, air quality, and noise. The ECC works with the contractor to resolve issues and recommends issuance of Deficiency Notices on environmental matters where applicable. The ECC reviews and approves ECM daily reports and reviews technical submittals related to environmental matters. The ECC manages quality assurance testing laboratory efforts related to

environmental issues such as waste characterization for hazardous materials, soil sampling, and water quality sampling.

- d. Environmental Compliance Monitors (ECM) – Conducts site surveys, performs periodic inspections, collects samples, and reports to the Environmental Compliance Coordinator any non-conformances in the contractor’s compliance in areas needed to comply with the District’s MMRP obligations, and Federal, State, and local laws and regulations related to environmental matters.
- e. Construction Quality Assurance Inspectors – Oversees construction contractor Quality Control (QC) and performs Quality Assurance (QA) inspection and construction progress documentation for the following disciplines and sub-specialties. Construction Inspectors must provide a current certificate of the California/Occupational Safety and Health Administration (Cal/OSHA) 10-Hour Safety Training prior to Consultant receiving NTP on a given task order. Reports to Quality Assurance Officer.
 - Deep excavation inspection including secant pile walls with tie-back bracing/unbracing.
 - Trenchless inspection including grouting, tunnel face bracing and support, and jack and bore.
 - Structural inspection including mass/structural concrete, reinforcing steel, embeds, formwork, shoring/reshoring and bracing, and code compliance. Desirable qualifications include experience on recent projects with ACI 350 structures, ACI 207 mass concrete placement, building code compliance, temperature monitoring, complex reinforcing, watertight concrete structures, and engineered formwork/shoring/reshoring.
 - Building systems inspection including architectural, roof systems, building facades and finishes, elevators, fire alarm and sprinkler systems, heating, cooling, and ventilation systems (HVAC), building management control systems (BMCS), and code compliance.
 - Civil yard inspection including trenching and shoring, support of existing facilities, bedding and laying pipe, field welding and bolting of pipe, large diameter valves and gates, and site restoration including grading, paving, and landscaping.
 - Mechanical inspection including field welding and bolting of pipe, linings and coatings, valves and gates, chemical and water service pumps, tanks, and startup/testing of mechanical equipment.
 - Electrical inspection including low and medium voltage systems, switchgear, motor controls, power automation and control (PAC) systems, protection schemes, engine generators, and integration with existing electrical equipment.
 - Instrumentation and controls inspection including installation, testing, troubleshooting, and system integration of industrial control systems.
 - Coating inspection including surface preparation, cleanliness, environmental conditions, proportioning, mixing, application, curing conditions, and safety. Desirable qualifications include recent experience with high performance coatings and NACE Level 3 certification.
- f. Construction Scheduler – Provides scheduling support during construction including, but not limited to: review of the construction contractor’s baseline and cost and resource-loaded

summary schedules; preparation and/or review of time impact analyses (TIA) for change orders and schedule claims analysis; review of construction contractor's monthly progress schedule updates; preparation of schedule updates and Application for Payment requests; analysis and monitoring of cost and schedule trends; and preparation of independent assessments for progress and forecast at completion of schedule and cost.

- g. Construction Estimator – Provides cost estimating support for the review and assessment of change requests, value engineering proposals, and claims analysis with experience in the technical areas of the Project such as electrical and underground construction. Prepares independent cost estimates using electronic bidding software of large change orders in accordance with the Association for the Advancement of Cost Estimating (AACE) procedures.
- h. Dispute Advisor – Reviews contractor monthly/quarterly report submissions to the Dispute Resolution Board (DRB) and prepares monthly/quarterly report submissions to the DRB as needed. Attends quarterly DRB meetings. Advises on good faith negotiations. Obtains and coordinates services of outside subject matter experts. Prepares dispute referrals to the DRB. Prepares pre-hearing submittals to the DRB. Presents District positions during DRB hearings. Reviews and advises on DRB reports. This position cannot be filled by an attorney.

2. Description of Services

Provide CM, inspection, and related services to support the Project. The primary role of the selected Consultants will be to provide CM-related services as described below:

a. Construction Quality Assurance

Develop and implement a construction quality assurance program which includes all quality assurance testing and that assures that the construction contractor's quality control program will achieve the desired project results described in the contract documents in conjunction with the SC-RE and design consultant.

b. Structural Concrete Oversight

Provide specialized oversight of the construction contractor's structural concrete installation program including mass concrete temperature monitoring.

c. Environmental Compliance and Monitoring

Provide environmental compliance monitoring services including, but not limited to, biological surveys including for birds, bats, and rare plants, oversight of NPDES SWPP program by construction contractor, oversight and enforcement of environmental sampling and laboratory, enforcement and documentation of construction contractor compliance with MMRPs, and monitoring tree health on the project.

d. Construction Inspection

Provide inspection services to assure compliance with the quality and functional requirements of the specifications including, but not limited to, general, warranty, and special inspections.

Conduct periodic surveillance and inspection of the work, monitor the construction contractor's quality control processes, and coordinate field sampling and testing for verification of quality assurance results as needed.

Prepare quality assurance daily inspection reports and other quality records, including deficiency notices, using the District's online Construction Management Information System.

Assist the QAO, SC-RE, and design consultant in planning for and coordinating all QA inspection activities, compiling all daily inspection records, reviewing field construction-related submittals, inspecting all material and equipment arriving on site, monitoring resolution of all quality issues, and leading the Ready for Service and Final Completion inspections. Anticipated QA inspection needs may include, but are not limited to, the following disciplines: civil/structural/architectural, mechanical, electrical/I&C, geotechnical, welding, coating/corrosion, and hazardous materials.

Provide inspection services for electrical power and control systems and equipment, medium and low-voltage switchgear, motor control, duct banks, LED lighting, solar panels, instrumentation, control, and SCADA systems.

e. Quality Assurance Materials Testing

Provide sampling, management and coordination of special laboratory testing of select, suitable samples to assure compliance with quality and functional requirements of the specifications. Materials testing services must be located within 50 miles of Orinda, CA. Sampling may be of construction materials such as concrete, reinforcing steel, steel pipe, stainless steel, water, and soils, and also environmental samples such as water, soils, and hazardous waste characterization. Coordinate with the District material testing and analytical testing laboratories for soil, water, and concrete testing when there is sufficient capacity at those laboratories to meet project needs.

f. Project Controls

Provide project controls services including, but not limited to, construction scheduling, cost control, cost estimating, critical path method scheduling using Primavera P6, and project controls-related support.

3. Proposer / Subconsultant Minimum Qualifications (MQs)

Proposers and subconsultant proposers must meet the following MQs for a Proposer to be eligible to submit a Proposal in response to the RFP. Proposals must clearly demonstrate compliance with the specified MQs. EBMUD may reject Proposals that do not clearly demonstrate Proposers' compliance with the MQs without further consideration. EBMUD reserves the right to request clarification from Proposers prior to rejecting a Proposal for failure to demonstrate compliance.

a. Prime Proposer Qualifications

To qualify as a Prime Proposer for this RFP, a Proposer must demonstrate relevant expertise to successfully perform its roles and responsibilities in the scope of services described in this RFP.

A Prime Proposer that intends to be listed as a subconsultant on another competing proposal must fully disclose this information to the impacted parties.

To qualify as a Prime Proposer for this RFP, a Proposer must possess the following MQs:

- A minimum of seven (7) years in business providing CM and inspection services for water and/or wastewater treatment plant construction projects.

- Clearly demonstrated experience in a lead role providing CM and inspection services within the last 10 years for at least one (1) water or wastewater treatment plant construction project valued at \$50 million or more.
- Demonstrated ability to provide adequate staffing of professional and technical personnel to perform the scope of services in the manner required by EBMUD.
- Demonstrated experience in managing multiple tasks, and associated staff to ensure the provision of quality services.

b. Subconsultant Qualifications

To qualify as a Subconsultant who will provide technical services described in this RFP, the Subconsultant(s) must possess the following:

- A minimum of five (5) years of professional experience in the technical/business field(s) required under the scope of services for which the Subconsultant is being proposed (e.g., resident engineering, change management, construction inspection, project controls, etc). If the firm has less than five (5) years in business, the firm's Principal, meaning an owner, partner, or principal officer of the firm who is responsible for making significant administrative and business decisions on behalf of the firm, shall have at least 10 years of experience in the technical/business field(s) required under the scope of services for which the Subconsultant is being proposed.

Non-technical Subconsultants are not required to meet the above Subconsultant qualifications.

4. Key Team Member Minimum Qualifications

The following positions are considered Key Team Member positions. The District reserves the right to verify information regarding the experience of the proposed team members using the provided references or by any other means. Proposers are required to indicate the specific position for each Team Member and to demonstrate conformance to the minimum qualifications described below as related to each position. Proposers must submit only one (1) primary candidate for each position listed in this section. Proposers may submit additional backup candidates, for reference to substantiate Proposer's ability to provide adequate staffing capacity, in an appendix to the proposal, but these candidates must be boldly identified as backup candidates. Candidate scoring will be limited to the primary candidate. It is acceptable to submit a candidate for multiple Quality Assurance Inspector positions if the candidate meets the MQs of each position and it is the Proposer's responsibility to clearly identify this is the case.

a. Quality Assurance Officer (QAO):

- The QAO shall possess a current license as a civil, structural, mechanical, or electrical engineer in the State of California and/or a be a Certified Construction Manager (CCM) as certified by the Construction Management Association of America.
- Minimum 10 years in construction quality management for a CM firm, public agency, or general contractor.
- Demonstrated experience overseeing a construction quality assurance or quality control program within the last 15 years for at least one completed water or wastewater treatment construction projects valued at \$50m or more.

- At least three (3) years of recent experience using CM software systems.
 - Candidates who have US Army Corps of Engineers Construction Quality Management Certification is desirable at the time of proposal submission and required prior to executing a contract with the District.
- b. Structural Concrete Resident Engineer (SC-RE):
- SC-RE shall possess a current license as a civil and/or structural engineer in the State of California.
 - Minimum 10 years of field experience overseeing the construction of large-scale, complex reinforced concrete structures such as dams, water/wastewater basins, highway bridges, or high rise building foundations.
 - Demonstrated experience overseeing reinforced concrete construction within the last 15 years for at least two (2) verifiable construction projects with a reinforced concrete scope valued at \$10 million or more. At least one reference project must have had mass concrete constructed in accordance with ACI 207.
 - At least three (3) years of recent experience using CM software systems.
 - Candidates who can meet the MQs of these roles are desirable:
 - SC-RE and QAO or SC-RE and Structural Inspector.
- c. Construction Scheduler:
- At least 10 years of experience in scheduling water or wastewater treatment construction projects.
 - Demonstrated experience providing construction scheduling services within the last 15 years for at least two (2) verifiable water or wastewater treatment construction projects each valued at \$50 million or more.
 - A baccalaureate degree in Engineering, Construction Management, Business Administration, or relevant discipline from an accredited institution. Five years of additional construction scheduling industry experience may substitute for this degree.
 - Full competency with the latest version of Primavera Project Planner; certification as a Primavera P6 Professional is desirable.
- d. Quality Assurance Inspectors:
- At least five (5) years of experience in construction inspection of water utility infrastructure construction projects, of which two (2) years are in construction inspection of wastewater or water treatment facilities, OR at least three (3) years of recent, relevant field inspection experience on projects similar to wastewater or water treatment facilities.
 - Demonstrated knowledge of quality control / quality assurance construction inspection means and methods; knowledge of current construction inspection techniques; and knowledge of safe working practices and regulations in relation to different types and phases of construction.

- Cal/OSHA 10-hour safety training certification for industrial construction (confined spaces, lockout/tagout, etc.) prior to task order NTP.
- At least three (3) years of experience using CM software systems.
- Certification in the appropriate category needed to perform construction inspection according to the best industry practice, specifically:
 - Civil Yard, Structural, Deep Excavation, and Trenchless Inspectors – nationally and construction industry recognized technical certification.
 - Mechanical Inspector – nationally and construction industry recognized technical certification including but not limited to Certified Commissioning Professional (CCP) certification.
 - Electrical and I&C Inspectors – nationally and construction industry recognized technical certification including but not limited to International Code Council Commercial Electrical Certification, general electrician certification from the State of California DIR, Journeyman certification in a local industry recognized electrician trade union.
 - Coating Inspector – National Association of Corrosion Engineers (NACE) Level III certification.
 - Building Systems – International Code Council (ICC) or equivalent certifications in the appropriate categories.
- The Electrical and I&C Inspectors shall possess, at a minimum, an NFPA 70E training completion certificate to safely perform their job duties.
- Candidates who can meet the MQs of these roles are desirable:
 - Deep Excavation and Trenchless Inspector
 - Structural and Building Systems Inspector
 - Electrical and I&C Inspector or Mechanical and I&C Inspector
 - Mechanical, Electrical, and I&C Inspector
- A professional engineering license and/or baccalaureate degree in a relevant engineering discipline from an accredited institution may substitute for certification.
- Experience requirement in the first bullet of this list will not be waived regardless of certification, license, or education.

5. Non-Key Team Members

The following positions are considered Non-Key Team Member positions. The Selection Panel will review Non-Key Team Member positions for compliance with the requirements outlined below as part of the scoring process for the written evaluation. Proposers must submit only one candidate for each position listed in this section for evaluation purposes.

a. Construction Estimator:

- At least 10 years of experience in cost estimating for water or wastewater treatment construction projects.

- Demonstrated experience providing cost estimating services within the last 15 years for at least two (2) verifiable water or wastewater treatment construction projects each valued at \$50 million or more.
 - Ability to prepare cost estimates in CSI format, based on quantity takeoffs and unit costs.
 - A baccalaureate degree in Engineering, Construction Management, Business Administration, or relevant discipline from an accredited institution. Five years of additional construction estimating industry experience may substitute for this degree.
 - Certification with the American Society of Professional Estimators or the American Association of Cost Engineers International, or equivalent, is desirable.
- b. Environmental Compliance Coordinator
- Minimum five (5) years of experience in construction environmental compliance in the State of California.
 - Demonstrated experience overseeing an environmental compliance program within the last 15 years for at least two (2) verifiable infrastructure construction projects valued at \$50m or more with responsible charge of environmental compliance monitors.
 - A baccalaureate degree in Biology, Chemistry, Civil, Environmental Engineering, Environmental Science or in a relevant scientific or engineering discipline from an accredited institution.
 - At least three (3) years of recent experience using CM software systems.
- c. Environmental Compliance Monitors
- Minimum two (2) years of experience in construction environmental compliance.
 - A baccalaureate degree in the appropriate field related to the subject matter that will be monitored during construction.
- d. Dispute Advisor
- Minimum ten (10) years of experience in dispute resolution on construction projects.
 - Demonstrated experience preparing and presenting complex dispute resolution documentation within the last 15 years for at least two (2) verifiable infrastructure construction projects valued at \$50m or more.
 - A baccalaureate degree in Engineering, Construction Management, Business Administration, or relevant discipline from an accredited institution. Five years of additional dispute resolution experience may substitute for this degree.
 - At least three (3) years of recent experience using CM software systems.

II. CALENDAR OF EVENTS

EVENT	DATE/LOCATION	
RFP Issued	September 1, 2021	
Pre-Proposal Meeting	September 8, 2021 @ 10:00 a.m.	MS Teams On-Line Meeting
Addendum (if necessary)	September 10, 2021	
Response Due	September 23, 2021 by 4:00 p.m.	
Anticipated Contract Start Date	January 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.

A. PRE-PROPOSAL MEETING

Pre-Proposal meeting will be held to:

1. Allow the District to discuss the scope of the as-needed services
2. Provide Proposers an opportunity to learn about the District’s Contract Equity Program (CEP).
3. Provide an opportunity for Proposers to ask specific questions about the project and request RFP clarifications.
4. Provide the District with an opportunity to receive feedback regarding the project and RFP.
5. Prospective consultants interested in attending the on-line pre-proposal meeting shall e-mail the EBMUD Construction Division at constructionstrong@ebmud.com with the names of attendees and their respective e-mail addresses no later than Tuesday, September 7, 2021 at 10:00 a.m. with the following information:
 - a. Attendee names, e-mail addresses, and phone numbers.
 - b. Company/Consultant name.

All questions deemed to be pertinent by the District will be addressed in Addenda following the Pre-Proposal conference.

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(s) 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(s) with the lowest overall costs.
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 with the services described in this procurement. The Selection Committee will select Proposer(s) in accordance with the evaluation criteria set forth in this RFP. The evaluation of the RFP responses shall be within the sole judgment and discretion of the Selection Committee.

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

RFP responses will be evaluated and scored according to the Evaluation Criteria below. The scores for all Evaluation Criteria will then be added to arrive at a weighted score for

each RFP response. An RFP response with a high weighted total will be ranked higher than one with a lesser-weighted total.

The Evaluation Criteria are as follows:

	Evaluation Criteria	Points
A.	Proposer Qualifications	10
B.	Key Team Member Qualifications	35
C.	Non-Key Team Member Qualifications	5
D.	Effective Overhead and Profit Rate (EOPR) Evaluation	10
E.	Oral Presentation and Interview	30
F.	Contract Equity Program (CEP): As described in the guidelines contained in Exhibit A-Contract Equity Program, and Proposer Information and Acceptance. Points will be given for local businesses, small businesses, and diversity of subconsultants/team members for up to a total of 10 points.	10
	Total Points	100

The highest scoring Proposers for the sum of Evaluation Criteria A through D will be invited to attend an Oral Presentation and Interview. Proposers not invited to attend an Oral Presentation and Interview will not be considered further for award of an agreement related to this RFP. Interviews are tentatively scheduled for **October 7-8, 2021**. Candidates for the following positions are expected to attend in-person or remotely as noted.

Candidate	Interview Location	
	In-person	Remotely
Quality Assurance Officer	X	
Structural Concrete Resident Engineer	X	
Construction Scheduler	X	
Structural Inspector	X	X
Deep Excavation Inspector	X	X
Trenchless Inspector	X	X

The Selection Committee will be instructed to attribute more points to Team Members with demonstrated attributes identified as “desirable” during the Written Proposal Evaluation.

EBMUD will score Proposers based on their proposed Effective Overhead and Profit Rate (EOPR) for this Project.

EBMUD may reject and exclude the data provided in the Overhead and Profit Schedule (OPS) from the score tabulation if EBMUD determines it to be inconsistent with any of the information provided in the Proposal. For example, classification of team members presented in the Team Organizational Chart or Work Approach must be consistent with classification of team members listed in the OPS.

A Proposer will receive up to ten (10) points for the Overhead and Profit based on the following table:

Effective Overhead and Profit Rate (EOPR)	Point(s)
≤ 2.50	10
2.51 – 2.52	9
2.53 – 2.54	8
2.55 – 2.56	7
2.57 – 2.58	6
2.59 – 2.60	5
2.61 – 2.62	4
2.63 – 2.64	3
2.65 – 2.66	2
2.67 – 2.68	1
2.69 – 2.70	0.5
> 2.70 *	0

EBMUD will tabulate the combined written proposal and oral presentation scores and then rank Proposers, starting with the Proposer receiving the highest total score, then continuing with the Proposer receiving the second highest total score, and so on. The two (2) Proposers with the highest total scores will be identified as the highest-ranked Proposers eligible to proceed with the award of the Agreements.

C. PRICING

1. Prices quoted shall be firm for the first 12-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.
5. Prevailing Wages:

All Proposers proposing on a public works project and all Subconsultants of any tier shall be registered with the State Department of Industrial Relations pursuant to Section 1725.5 of the Labor Code.

The Proposer shall post a copy of the general prevailing rate of per diem wages at the jobsite pursuant to Section 1773.2 of the Labor Code of the State of California.

Pursuant to the provisions of Division 2, Part 7, Chapter 1, Article 2, and any amendments thereof of the Labor Code of the State of California, the Proposer and any Subconsultant shall pay not less than the specified prevailing rate of wages to all workers employed in the execution of the contract.

The Proposer shall, as a penalty to the State or the District, forfeit Twenty-Five (\$25.00) Dollars for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing rates for any work or craft in which such worker is employed under the contract by the Proposer or by any Subconsultant. The difference between such stipulated prevailing wage rates and the amount paid to such worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Proposer. The Proposer shall comply with the provisions of Section 1776 of the Labor Code of the State of California. For all classes of work not specified herein, the minimum wage shall be that specified for general laborer.

The specified wage rates are minimum rates only and the District will not consider and shall not be liable for any claims for additional compensation made by the Proposer because of payment by Proposer of any wage rate in excess of the general prevailing rates. All disputes in regard to the payment of wages in excess of those specified herein shall be adjusted by the Proposer at its own expense.

The holidays upon which such rates shall be paid shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification, or type of worker employed on the project.

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 Proposers 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) working days 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 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 of the proposal, the name of the Proposer protesting, and include a name, telephone number, email address and physical address of the protester. If a firm is representing the protester, they shall include their contact information in addition to that of the protesting firm.

Protests must be mailed, or hand delivered, to the Manager of Purchasing, Mailstop 102, East Bay Municipal Utility District, 375 Eleventh Street, Oakland, CA 94607 or P.O. Box 24055, Oakland, California 94623, or e-mailed to kelly.smith@ebmud.com. E-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.

In the event that the protest is denied, the protester may appeal the determination to the Director of Engineering and Construction, Olujimi O. Yolo. The appeal must be submitted to the Director of Engineering and Construction no later than five working days 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 Director of Engineering and Construction 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 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 Proposer 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 Proposer 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 person is to be contacted only for the purposes specified below:

FOR INFORMATION ON THE CONTRACT EQUITY PROGRAM:

Contract Equity Office

Attn: Beverly Johnson

PHONE: (510) 287-0114

B. SUBMITTAL OF RFP RESPONSE

1. Late responses will not be accepted.
2. RFP responses shall be submitted to the e-mail address listed below and must be received by the due date specified in the Calendar of Events. Any RFP response received after that time or date will not be reviewed. Upon successful submission, proposers will receive an automated reply from the e-mail address listed below confirming receipt of the e-mail. This automatic reply, along with the proposer's original sent e-mail file and its metadata showing when the send attempt was made and confirming that the RFP response was attached, shall be considered the official evidence of submission for the purpose of establishing the timeliness and actual receipt of RFP responses.

If the response is e-mailed and not received by the District, the proposer bears the burden of proof to submit evidence (e.g., original e-mail file and associated delivery report, notice of undeliverable message from District server, etc.) that the response was sent in a timely manner so that it would have been received by the District within the RFP response period if not for factors entirely outside of the proposer's control. The District's e-mail has an attachment size limitation of 10 megabytes. Attachments larger than 10 MB must be split and sent in multiple e-mails.

RFP responses are to be e-mailed to the following address:

EBMUD Construction Division

External Communications Clearinghouse

constructionstrong@ebmud.com

Proposer's name and the RFP title must appear in the subject line of the e-mail.

3. Proposers are to submit one (1) electronic copy in PDF format of the RFP response (Exhibit A – RFP Response Packet, including Contract Equity Program forms and all

additional documentation stated in the “Required Documentation and Submittals” section of Exhibit A). The electronic copy must also include the Fee Schedule spreadsheet showing calculation of the Effective Overhead & Profit Rate (EOPR) in Excel format. Selected proposer(s) must submit one (1) hard copy including original ink signatures to the District upon receipt of the Notice of Intent to Award. No contract will be awarded until the hard copy with original ink signatures is received by the District.

4. All costs required for the preparation and submission of an RFP response shall be borne by the Proposer.
5. 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.
6. 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.
7. 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.
8. It is understood that the District reserves the right to reject any or all RFP responses.

C. RESPONSE FORMAT

1. **Proposers shall not modify any part of Exhibits A, B, C, D, or E, or qualify their RFP responses. Proposers shall not submit to the District a re-typed or otherwise re-created version of these documents or any other District-provided document.**
2. RFP responses, in whole or in part, are NOT to be marked confidential or proprietary. The District may refuse to consider any RFP response or part thereof so marked. RFP responses submitted in response to this RFP may be subject to public disclosure. The District shall not be liable in any way for disclosure of any such records.
3. The proposal must include the following:
 - a. Contact Information and Commitments

- Provide contact information, identifying the Prime Proposer.
- Proposer must agree to the following commitments:
 - Proposer has the ability and qualifications to perform the work described in this RFP.
 - Proposer has read and agrees to fully comply with the terms and conditions of the Professional Services Agreement (see Exhibit C).
 - Proposer agrees to fully comply with all applicable laws.
- b. Executive Summary
 - Includes a brief overview of the proposal's principal elements.
 - Demonstrates an understanding of the project objectives.
 - Describes the approach for carrying out the scope of services.
- c. Proposer Qualifications
 - Proposer must provide a description and background summary of the Prime Proposer firm and Subconsultants. Summary shall include corporate qualifications, commitment, strength, and technical capabilities to fulfill all services specified and required to successfully accomplish the work.
 - Proposer must clearly demonstrate that the Prime Proposer and all Subconsultants meet all the minimum qualifications requirements outlined in Section 3 of the RFP.
- d. Team Member Qualifications
 - Proposer must identify the staff who will serve as the Team Members as specified in Section 4 of the RFP and must provide their roles/responsibilities and company affiliations. Proposer must also provide Team Members' background and experience in order to demonstrate a strong ability to successfully perform the work. Proposer must clearly demonstrate that all Team Members meet all the requirements as outlined in Section 4. Proposer must include résumés (two-page limit) for each Team Member. EBMUD will evaluate Key Team Members' MQs for responsiveness. The Selection Panel will evaluate all Team Members (Key and Non-Key) for their ability and experience to successfully fulfill their Project roles and complete the scope of services.
 - Please note: Proposer must provide evidence of relevant project experience as specified within Section 4 of the RFP. This evidence of required project experience may be listed within the Team Members' résumés or within the Team Members qualifications' section in the Proposal.
- e. Team Organizational Chart
 - Attach an Organizational Chart that illustrates the team structure and provides the name, title/role, and firm name for each team member.

f. Reference Projects

The Prime must provide a description of the two (2) most recent, relevant construction projects previously managed by the Prime Proposer. The reference projects must be of the type and scope as set forth in Section 3. For the two (2) projects, the following must be validated:

- Clearly demonstrated experience in a lead role providing CM services within the last 10 years for at least one (1) water or wastewater treatment project valued at \$50 million or more.
- Proposer may not selectively pick reference projects. Rather, Proposer must submit project descriptions for the most recent projects that are relevant to the services requested in this RFP. EBMUD may find a Proposer non-responsive and/or reduce the points awarded depending on the degree of deficiency for failure to submit the most recent, relevant projects.

The project descriptions shall include:

- Project name.
- Project scope summary.
- Dates when the project was performed.
- Project costs (Proposer CM consulting fee and total project construction cost).
- Proposer's role and responsibilities in the project.
- Proposer's performance on delivering the project on schedule and on budget.
- Proposer staff members who worked on the project.
- Client name, reference, and contact information.

Proposers may list more than two (2) reference projects that meet these criteria if applicable. Proposer may list projects where it served in a subconsultant capacity.

EBMUD will not be responsible for non-responsive references or references with incorrect contact information. A reference is non-responsive if the Proposer's information cannot be verified by a reference within seven (7) calendar days of first contact attempt by EBMUD staff. EBMUD will contact references to verify project work. Non-responsive references may result in a Proposer being found non-responsive to the Request for Proposals.

g. Work Approach

- Proposer must describe the overall work approach that its team proposes to use to successfully provide CM services for EBMUD on the Project. Specifically address the following:
 - Overall approach to meeting goals and objectives of this RFP.
 - Approach to managing communication and coordination with EBMUD Project Manager and project team, including effective oversight of all task orders and associated task order work.

- Approach to providing CM and inspection services and managing the allocation of staffing resources to deliver the work in a responsive and cost-effective manner.
- Top three (3) issues and constraints that could be anticipated during the execution of the services to be provided in this Agreement, and recommended approach(es) to resolving these issues and constraints, based on previous experience with similar Projects and scopes of work.

h. Overhead and Profit Schedule (OPS)

- Compensation under this contract will be provided as: 1) labor related costs by hourly billing rates for hours worked, and 2) separately billed direct reimbursable expenses, also known as Other Direct Costs (ODCs).
- Proposer must use the OPS Template, provided as an Excel file in Exhibit E, to prepare its OPS. The OPS must include the base hourly rate and each firm's overhead and profit rate (OPR, or "multiplier") for each staff member for the Prime Proposer and all Subconsultants expected to perform CM services. Staff members include the primary candidate Key and Non-Key Team Members submitted for proposal evaluation. Proposer(s) may list only one overhead and profit rate for each firm. The base hourly rate is the employee's earned income hourly rate, which shall not include health benefits, retirement benefits, profit sharing, sick leave, or vacation. The following estimated participation levels shall be used for each of the Key and Non-Key Team Members in column G of Exhibit E:
 - Quality Assurance Officer – 19%
 - Structural Inspector – 8%
 - Structural
 - Concrete Resident Engineer – 8%
 - Civil Yard Inspector – 7%
 - Deep Excavation Inspector – 7%
 - Electrical Inspector – 7%
 - Environmental Compliance Monitors – 7%
 - Trenchless Inspector – 7%
 - Environmental Coordinator – 5%
 - Estimator – 5%
 - Scheduler – 5%
 - Building Systems Inspector – 3%
 - Coating Inspector – 3%
 - Dispute Advisor – 3%
 - I&C Inspector – 3%

- Mechanical Inspector – 3%
 - Proposer shall note that EBMUD will confirm whether the OPS formulas used to calculate the billing rates – base hourly rates multiplied by the firms’ OPRs – have been altered to comply with the maximum billing rates. **If any Excel formula included in the OPS is altered, then EBMUD reserves the right to reject any proposal as non-responsive.**
- i. Applicable Rates
- For fair comparison purposes, all billing rates must reflect 2021 billing rates. The selected Proposers will only be allowed to escalate their 2021 billing rates based on the annual percentage change of the Consumer Price Index for the San Francisco Bay Area for Urban Wage Earners and Clerical Workers. Billing rates will be fixed until the 1-year anniversary of the executed Agreements and then may be adjusted annually thereafter.
 - Based on the information provided in the OPS, an Effective Overhead and Profit Rate (EOPR) will be determined by summing the contributions to the EOPR. These contributions are calculated by multiplying the firms’ OPRs by the firms’ estimated percentage of work. **The EOPR shall not exceed 2.70. The maximum billing rate is \$240/hour.** No exceptions will be made to the EOPR or maximum billing rate for part-time or offsite staff.
 - Any Proposer that does not completely fill out the OPS provided in this RFP and/or that exceeds the maximum allowed EOPR will not receive any points for the OPS portion of the proposal evaluation. Furthermore, it is within sole discretion of EBMUD to reject any proposal that does not comply with the OPS requirements.
 - **Proposer(s) must include all costs to manage and administer the services under the Agreement in each firm’s OPR, or “multiplier.”** Only individuals who are assigned to the project in the proposal or who have been approved by the EBMUD Engineering Manager of Construction to be added to the Agreement, and are performing tasks directly related to the Agreement, will be allowed to charge their time on the approved task orders.

j. Individual Contractor

An Individual Contractor for purposes of the OPS is an individual staff team member proposed by Proposer who is compensated by Proposer under an hourly contract pay rate instead of an hourly base payroll labor rate. An Individual Contractor must be listed as a separate line item in the OPS. The Individual Contractor’s name, entity, and hourly pay rate shall be listed, and the hourly pay rate extended to a billing rate with a 1.00 Overhead and Profit Rate pass-through. The Individual Contractor’s hourly pay rate must be verifiable by an executed written contract with the Proposer. Markup on an Individual Contractor is limited to 5% of the Individual Contractor’s proposed billed cost. The Proposer’s markup for an Individual Contractor must be captured in the individual task order developed to provide CM services.

Provision of Individual Contractors for proposed services under the Agreement shall not exceed 10% of the total Agreement amount. If Proposer's Individual Contractor is later replaced or substituted after the parties execute the Contract, the billing rate of any new Individual Contractor must not exceed the billing rate proposed in the OPS for the position. If the Individual Contractor is replaced or substituted with a Prime or Subconsultant employee at an hourly payroll rate, the firm Overhead and Profit Rate applied to the replacement individual's hourly payroll rate must not exceed the Proposal EOPR.

k. Rates and Markups

The Proposer's billing rates and EOPR provided in the OPS will not be negotiable during the Agreement award process and the duration of the Agreement. The EOPR will apply to the billing rate of all subconsultant firms not listed in the OPS. If a new subconsultant firm is added during the duration of the Agreement, the new individual firm Overhead and Profit Rate can be no more than the Proposal Effective Overhead and Profit Rate. The EOPR will also apply to all amendments to the Agreement.

EBMUD will require Proposers to provide certified payroll records documenting the actual salaries of all individuals who will be added to the Project (i.e., individuals not listed in the OPS). The Proposer should note that EBMUD will only approve project staff substitutions when that change in personnel is requested by EBMUD and/or beyond the control of the Proposer. EBMUD requires Proposers to provide individuals listed in the OPS, and for whom résumés and qualifications have been submitted as part of the proposal, to perform CM services.

The Proposer shall note that the subconsultant administration markup is limited to five percent (5%) *of the subconsultants' actual labor costs*. The Proposer shall include the 5% markup on Subconsultant labor costs as a separate line item in each individual task order for which the Subconsultant is performing work. The Agreement will prohibit markups on ODCs or materials for either the Proposer or its Subconsultants.

Hourly billing rates shall be the actual hourly base salary rate of each employee utilized for the work multiplied by the firm's proposed overhead rate (including salary burden and fringe benefits) and proposed profit rate. Each firm's proposed OPR, or "multiplier," shall apply to all proposed staff and substituted, new, or added staff for the duration of the contract and shall include all miscellaneous and incidental costs of work other than those as specifically defined below as direct reimbursable expenses.

l. Other Direct Costs

Direct reimbursable expenses, also known as ODCs, include actual direct costs (with no markup) of expenses directly incurred in performing the work. **All ODCs are subject to pre-approval in writing by the EBMUD Engineering Manager of Construction.**

The following items will be eligible for reimbursement as ODCs:

- Task-specific out-of-town travel as requested by EBMUD (“out-of-town” shall mean outside the nine Bay Area counties: San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, and Solano; as well as San Joaquin, Amador, and Calaveras counties). Out-of-town travel must be non-routine.
- Rental vehicle: traveler must select the most economical vendor and type of vehicle available and acquire any commercial rate or government discount available when the vehicle is rented.
- Personal vehicle use: Proposer will be paid per mile as established by the United States Internal Revenue Service and only for that portion of travel that is outside the counties listed above and non-routine. Should the travel begin or end on a normal workday, the Proposer shall subtract commuting mileage from total mileage to calculate reimbursable mileage. The Proposer shall submit to EBMUD an approved mileage log and expense report with its monthly invoices.
- Project vehicle rental/lease cost, gasoline, tolls, and parking. The project vehicle must be requested and pre-authorized by EBMUD Engineering Manager of Construction. EBMUD will only reimburse the business portion of the vehicle use. A vehicle mileage log and an expense report are required for consideration of reimbursement on a monthly basis. Since auto insurance is already part of the contract, no additional insurance will be reimbursed.
- Specialty printing (“specialty” as used herein shall mean large volume printing and color printing and requires prior written approval from EBMUD project staff, and documentation of the written approval from the EBMUD must be included with the invoice).
- Special services used solely for the benefit of designated projects and not performed by the Proposer or by the Subconsultants, such as electrical testing, hazardous materials testing, laboratory testing, training, deliveries, drilling services, and telephone and network installations and maintenance. All such services must receive prior written approval from EBMUD Engineering Manager of Construction, and documentation of the written approval from EBMUD must be included with the invoice.
- Task-related permit fees.
- Task-specific, non-standard safety equipment and expedited courier services when approved by EBMUD Engineering Manager of Construction.

Only costs or expenses listed above will be eligible for reimbursement; Proposer should include any other costs or expenses in the EOPR if compensation for those costs or expenses is sought. They include, but are not limited to, the following:

- All other travel expenses such as parking, bridge tolls, public transit, vehicle mileage within the nine Bay Area counties: San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, and Solano, as well as San Joaquin, Amador, and Calaveras counties, and travel from selected Proposer’s home office to EBMUD facilities not pre-approved by EBMUD.

- Non-routine travel from Proposer's home office to EBMUD facilities.
- Proposer staff relocation costs.
- Any labor charges or pass-throughs including, but not limited to, administrative and clerical staff time.
- Telephone calls and faxes originating in the firm's home office, standard computer use charges, computer hardware or software, communication devices, and electronic equipment.
- All meals, including refreshments and working lunches with EBMUD staff.
- Equipment to be used by EBMUD staff.
- Ergonomic office equipment.
- Standard Personal Protective Equipment including hard hats, safety boots, gloves, safety goggles/glasses, and reflective vests.
- Postage and courier services that are not requested by EBMUD staff.



EXHIBIT A RFP RESPONSE PACKET

RFP for Construction Management (CM) and Inspection Services for the Orinda WTP DCSSIP

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

From: _____
(Official Name of Proposer)

RFP RESPONSE PACKET GUIDELINES

- **AS DESCRIBED IN SECTION IV- RFP RESPONSE SUBMITTAL INSTRUCTIONS AND INFORMATION, PROPOSERS ARE TO SUBMIT ONE (1) ELECTRONIC COPY IN PDF FORMAT CONTAINING THE FOLLOWING, IN THEIR ENTIRETY:**
 - EXHIBIT A – RFP RESPONSE PACKET
 - INCLUDING ALL REQUIRED DOCUMENTATION AS DESCRIBED IN “EXHIBIT A- REQUIRED DOCUMENTATION AND SUBMITTALS”
 - EXHIBIT D - IRAN CONTRACTING ACT CERTIFICATION
 - EXHIBIT E - OVERHEAD AND PROFIT SCHEDULE
- **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
- Limited Liability Partnership
- Limited Liability Corporation
- Other: _____
- Joint Venture
- Partnership
- Non-Profit / Church

Jurisdiction of Organization Structure: _____

Date of Organization Structure: _____

Federal Tax Identification Number: _____

Department of Industrial Relations (DIR) Registration Number: _____

Primary Contact Information:

Name / Title: _____

Telephone Number: _____ Fax Number: _____

E-mail Address: _____

Street Address Line 1: _____

City: _____ State: _____ Zip Code: _____

SIGNATURE: _____

Name and Title of Signer (printed): _____

Dated this _____ day of _____ 20_____



REQUIRED DOCUMENTATION AND SUBMITTALS

All of the specific documentation listed below is required to be submitted with the Exhibit A – RFP Response Packet. Proposers shall submit all documentation, in the order listed below, and clearly label each section of the RFP response with the appropriate title (i.e., Table of Contents, Letter of Transmittal, Key Personnel, etc.).

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. **Detailed Proposal:** Refer to Section IV – C – 3 of the Request for Proposals for the requirements of the Detailed Proposal.
3. **Sustainability Statement:** Proposers 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 business practices of your firm.
4. **References:**
 - (a) Proposers must use the form in the “References” section of this Exhibit A – RFP Response Packet to provide references.
 - (b) References should have similar scope, volume, and requirements to those outlined in these specifications, terms, and conditions.
 - Proposers must verify the contact information for all references provided is current and valid.
 - Proposers are required to notify all references that the District may be contacting them to obtain a reference.
 - (c) The District will contact 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.
5. **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.**

6. **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.



REFERENCES

RFP for Construction Management (CM) and Inspection Services for the Orinda WTP DCSSIP

Proposer Name: _____

Proposer must provide a minimum of 2 references.

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

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

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

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

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



EXCEPTIONS, CLARIFICATIONS, AMENDMENTS

RFP for Construction Management (CM) and Inspection Services for the Orinda WTP DCSSIP

Proposer Name: _____

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

The District is under no obligation to accept any exceptions and such exceptions may be a basis for RFP response disqualification.

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

*Print additional pages as necessary



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 Consultants and their subconsultants 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.

Consultant and its subconsultants 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 consultants and subconsultants 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 Consultants 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 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 proposal 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, CONSULTANT shall, at its sole cost and expense, maintain insurance in conformance with the requirements set forth below.
- B. CONSULTANT 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 CONSULTANT (Agent) or by the Insurance Broker for the CONSULTANT. CONSULTANT 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 CONSULTANT shall not commence Services until such insurance has been accepted by the DISTRICT.
- C. CONSULTANT shall carry and maintain the minimum insurance requirements as defined in this Agreement. CONSULTANT shall require any subconsultant 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 subconsultant.
- D. Acceptance of verification of Insurance by the DISTRICT shall not relieve CONSULTANT of any of the insurance requirements, nor decrease liability of CONSULTANT.
- 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, CONSULTANT 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. CONSULTANT 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 CONSULTANT'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, CONSULTANT 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. CONSULTANT agrees to provide immediate Notice to the DISTRICT of any loss or claim against CONSULTANT 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. CONSULTANT 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 CONSULTANT'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 CONSULTANT, should CONSULTANT 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 CONSULTANT'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. CONSULTANT'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 CONSULTANT, subconsultant, and/or subconsultant'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 CONSULTANT is self-employed, a sole proprietorship or a partnership, with no employees, CONSULTANT is still required to carry Workers' Compensation Insurance.
- E. If CONSULTANT is self-insured with respect to Workers' Compensation coverage, CONSULTANT 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 CONSULTANT 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. CONSULTANT 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 CONSULTANT's failure to provide waiver of subrogation from the insurance carrier.

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

As the CONSULTANT's insurance broker/agent, I hereby verify that I have reviewed and confirmed that the CONSULTANT 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. CONSULTANT’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 CONSULTANT.
- 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 CONSULTANT and/or subconsultant 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 Subconsultant on CONSULTANT ’s behalf.
- I. Contractual liability coverage shall be included and shall not limit, by any modification or endorsement, coverage for liabilities assumed by CONSULTANT 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 CONSULTANT 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. CONSULTANT 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 CONSULTANT’s failure to provide the waiver of subrogation from its insurance carrier(s).

K. "Independent CONSULTANT'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 CONSULTANT, 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 CONSULTANT'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 CONSULTANT'S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the CONSULTANT 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

CONSULTANT'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 CONSULTANT.

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 CONSULTANT 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 CONSULTANT'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 CONSULTANT's and/or Subconsultant'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 CONSULTANT'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 CONSULTANT, 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 CONSULTANT'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 CONSULTANT’S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the CONSULTANT 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. CONSULTANT'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 CONSULTANT.

C. Minimum Requirements: Professional Liability Insurance with minimum limits as follows:

Each Claim or Occurrence Limit:	\$2,000,000
Aggregate Limit:	\$2,000,000

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, CONSULTANT 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 CONSULTANT'S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the CONSULTANT 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. CONSULTANT'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 CONSULTANT.
- C. Minimum Requirements: It is expressly understood by the parties that CONSULTANT'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 Subconsultant on CONSULTANT's behalf.
 5. Contractual liability coverage shall be included and shall not limit, by any modification or endorsement, coverage for liabilities assumed by CONSULTANT under this Agreement as an "insured contract."
 6. "Independent CONSULTANT'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 CONSULTANT, 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 CONSULTANT'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. CONSULTANT 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 CONSULTANT shall defend and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier(s).

D. CONSULTANT 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 CONSULTANT'S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the CONSULTANT 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
SAMPLE CONSULTING AND
PROFESSIONAL SERVICES
AGREEMENT**

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

Construction Management and Inspection Services

Orinda Water Treatment Plant Disinfection and Chemical Systems Safety Improvements Project

THIS Agreement is made and entered into this _____ day of _____, 202_, by and between **EAST BAY MUNICIPAL UTILITY DISTRICT**, a public entity, hereinafter called "DISTRICT," and (***CONSULTANT'S FULL LEGAL NAME, BOLD, ALL CAPS followed by type of entity [corporation, etc.]***), hereinafter called "CONSULTANT."

WITNESSETH

WHEREAS, DISTRICT requires consulting services for ***Construction Management and Inspection Services***; and

WHEREAS, CONSULTANT has submitted a proposal to provide ***Construction Management and Inspection Services*** for the construction phase of ***the Orinda Water Treatment Plant Disinfection and Chemical Systems Safety Improvements*** 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

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

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. 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 Engineering, Construction Management, and Inspection professions. 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 \$_____. Compensation for services shall be in accordance with the Fee Schedule 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 materials testing 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.
- 3.2 DISTRICT may at its option issue a Notice to Proceed for some or all of the Services described in Exhibit A. Compensation for Services shall be in accordance with the Fee Schedule 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.

ARTICLE 5 - PROJECT MANAGERS

- 5.1 DISTRICT designates Tim Karlstrand as its Project Manager, who shall be responsible for administering and interpreting the terms and conditions of this Agreement, for matters relating to CONSULTANT's performance under this Agreement, and for liaison and coordination between DISTRICT and CONSULTANT. CONSULTANT may be requested to assist in such coordinating activities as necessary as part of the services. In the event DISTRICT wishes to make a change in the DISTRICT's representative, DISTRICT will notify CONSULTANT of the change in writing.
- 5.2 CONSULTANT designates **(Consultant Project Manager's name)** as its Project Manager, who shall have immediate responsibility for the performance of the work and for all matters relating to performance under this Agreement. Any change in CONSULTANT designated personnel or subconsultant shall be subject to approval by the DISTRICT Project Manager.

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.

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

ARTICLE 7 - INDEMNIFICATION AND INSURANCE

7.1 Indemnification

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

Where applicable by law, the duty to indemnify, including the cost to defend is limited in accordance with California Civil Code § 2782.8.

- 7.2 CONSULTANT shall perform part of the work at sites where the DISTRICT's facilities are to be constructed, and which may contain unknown working conditions and contaminated materials. CONSULTANT shall be solely responsible for the health and safety of CONSULTANT's employees. CONSULTANT shall designate in writing to DISTRICT the field employee who is responsible for the health and safety of its employees. The responsible employee shall have experience and knowledge of all Federal, State and local health and safety regulation requirements. All CONSULTANT personnel on construction sites shall have received all OSHA required health and safety training.
- 7.3 In the event that any hazardous materials are encountered during the services provided by CONSULTANT or the work undertaken by construction contractors, DISTRICT shall sign any and all manifests relating to the generation, treatment, disposal or storage of all wastes associated with the work. Additionally, nothing contained in this Agreement shall be construed or interpreted as requiring CONSULTANT to assume the status of a generator, storer, treater, transporter, or disposal facility as those terms appear within the Resource Conservation and Recovery Act, 42 USCA, Section 6901, et seq. (RCRA), or within any state statute of similar effect governing the generation, storage, treatment, transportation, or disposal of wastes.
- 7.4 It is agreed and understood by CONSULTANT and DISTRICT that the design services have been completed by the District or a design firm hired by the District and therefore, CONSULTANT did not undertake any design activity or have design responsibility of the facilities to be constructed prior to execution of this Agreement.

7.5 Insurance Requirements

Insurance Requirements are as stated in Exhibit D, Insurance Requirements.

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 Engineering and Construction Department

P.O. Box 24055

Oakland, CA 94623-1055

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

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

ARTICLE 9 - MISCELLANEOUS

- 9.1 This Agreement represents the entire understanding of DISTRICT and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by amendment in writing signed by each party.
- 9.2 This Agreement is to be binding on the successors and assigns of the parties hereto. The services called for herein are deemed unique and CONSULTANT shall not assign, transfer or otherwise substitute its interest in this Agreement or any of its obligations hereunder without the prior written consent of DISTRICT.
- 9.3 Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid or beyond the authority of either

party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement can be interpreted to give effect to the intentions of the parties.

- 9.4 Multiple copies of this Agreement may be executed by the parties and the parties agree that the Agreement on file at the DISTRICT is the version of the Agreement that shall take precedence should any differences exist among counterparts of the Agreement.
- 9.5 This Agreement and all matters relating to it shall be governed by the laws of the State of California.
- 9.6 The District's waiver of the performance of any covenant, condition, obligation, representation, warranty or promise in this agreement shall not invalidate this Agreement or be deemed a waiver of any other covenant, condition, obligation, representation, warranty or promise. The District's waiver of the time for performing any act or condition hereunder does not constitute a waiver of the act or condition itself.
- 9.7 There shall be no discrimination in the performance of this contract, against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, gender including gender identity or expression, age, marital or domestic partnership status, mental disability, physical disability (including HIV and AIDS), medical condition (including genetic characteristics or cancer), veteran or military status, family or medical leave status, genetic information, or sexual orientation. CONSULTANT shall not establish or permit any such practice(s) of discrimination with reference to the contract or any part. CONSULTANTS determined to be in violation of this section shall be deemed to be in material breach of this Agreement.

Consultant shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin in the performance of this contract. Moreover, these regulations require that covered prime consultants and subconsultants 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 subconsultant contracts.

- 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.

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

EAST BAY MUNICIPAL UTILITY DISTRICT

By: _____
Olujimi O. Yoloye,
Director of Engineering and Construction

Date _____

Approved As To Form

By: _____
for the Office of the General Counsel

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

By: _____
(Name),
(Title)

Date _____

Rev. 8/18/2020

EXHIBIT A

East Bay Municipal Utility District Construction Management and Inspection Services Orinda Water Treatment Plant Disinfection and Chemical Systems Safety Improvements Project

SCOPE OF SERVICES

1. CONSULTANT SERVICES

CONSULTANT shall provide the following services:

a) Project Manager

- Identify and schedule where the services of the CONSULTANT's and subconsultants' staff are needed.
- Monitor and manage CONSULTANT's and subconsultants' expenditures, schedule, and progress to ensure services are completed within budget and in a timely and professional manner.
- Provide quality assurance/quality control (QA/QC) of CONSULTANT and subconsultants' services.
- Costs associated with this position shall be included in the CONSULTANT's overhead and profit rate and costs associated with this position will not be billed to the District separately.
- Ensures CONSULTANT staff maintain project records, correspondence, and filing systems using the District system. Document control/record management will utilize the District systems and shall not be duplicated in the CONSULTANT's own systems.

b) Quality Assurance Officer (QAO)

- Works in the District field office during the planning and construction of the project.
- Develops, plans, executes, and manages the District's construction quality assurance program for the project. The quality assurance program is a system of procedures that define planned and systematic activities executed in the course of a job to fulfill the project's quality requirements.
- Manages quality assurance material testing, reviews technical submittals for conformance with the contract documents, reads and interprets technical

specifications, recommends to District's Project Manager issuance of deficiency notices for non-conformances, and monitors the construction contractor's execution of their quality control plan.

- Attends as the District's primary representative the Contractor's QC preparatory, initial, and follow-up phase meetings for each definable feature of work.
- Reviews and approves contractor quality control, Construction Quality Assurance Inspectors, and District quality assurance daily field reports.
- Reports to the District's Project Manager.

c) Structural Concrete Resident Engineer (SC-RE)

- Works in the District field office during the planning and installation of the structural concrete portions of the project.
- Responds to contractor correspondence, trouble-shoots, and resolve field problems
- Oversees the construction inspection field staff efforts to ensure quality construction, safety standards, on schedule and with minimum practicable impact to District operations.
- Responds to situations requiring immediate action and informing the District of potential liability and recommend a course of action.
- Monitors and enforces contract requirements related to the structural concrete portion of the project.

d) Construction Inspection

- Works in the District field office.
- Qualifications and Training
 - All Construction Inspection staff shall be experienced in the work they are assigned to and shall have all necessary training and equipment. In particular, all required safety training shall be current.
- Safety
 - If during the course of inspection of the work, an unsafe condition is observed, the Construction Inspector shall orally report his observation to the contractor and note it in writing in the daily report. If corrective action by the contractor has not occurred, written notification shall be issued and the District Project Manager shall be notified immediately. All Cal/OSHA visits shall be noted including any citations issued and required actions.
 - If an imminent danger exists the Construction Inspector shall immediately order the workers away from the area, immediately notify the contractor and the

District Project Manager, and monitor the situation until the danger is under control or has been corrected.

- Quality Control/Quality Assurance (QC/QA) Inspection
 - Provides oversight of the construction contractor's QC program (company program, project specific plan, specific work plans, reporting, etc.) to assure that the construction contractor is complying with their QC program and the specifications.
 - Provides inspection services to assure compliance with the quality and functional requirements of the specifications including, but not limited to, general, warranty, and special inspections.
 - Conducts surveillance and inspection of the work, monitor the construction contractor's quality processes, and coordinate field sampling and testing for verification of quality results as needed.
 - Prepares daily inspection reports and other quality records, including deficiency notices. Document control/record management will utilize the District document control/records management systems and shall not be duplicated in the Consultant's own systems.
 - Provides the contractor with notice (oral with written follow up, or written as appropriate) of observed nonconforming work and requirements to correct same.
 - Assists the QAO and SC-RE in planning for and coordinating all QA inspection activities, compiling all daily inspection records, reviewing field construction-related submittals, inspecting all material and equipment arriving on site based on approved submittals, monitoring resolution of all quality issues, and leading the Ready for Service and Contract Completion inspections.
 - Daily inspection reports are to include the following information: weather, location of work onsite, work accomplished, quantities, workforce, hours worked, equipment used/idle, potential delaying events, significant events, third party activity, meetings, directions, visitors, and signature.
 - QA inspection needs may include, but are not limited to, the following disciplines: civil/structural/architectural, mechanical, electrical/I&C, geotechnical, welding, coating/corrosion, hazardous materials, etc.
- Materials Testing
 - Provides management and coordination of special laboratory testing on select, suitable samples to assure compliance with quality and functional requirements of the specifications. Materials testing services must be located within 60 miles of any specified District work areas, which include the following counties: Alameda County, Contra Costa County, San Joaquin County, Amador County and Calaveras County. Proposers may propose

more than one firm to provide materials testing services to the various work areas.

- Provides all code and authority having jurisdiction required special inspections and material testing, except for analytical testing, and certain materials testing which will be performed by District’s laboratories. See table below for District and CONSULTANT responsibility for special inspections and material testing. CONSULTANT is responsible for material sampling for specified testing. District is responsible for material testing as noted in the table below except in those cases where the District laboratory does not perform the specified testing or has insufficient capacity.

Test or Special Inspection	Primary Responsibility	Description
Materials Acceptance	District	Laboratory testing of soil and rock-quarry products to determine if proposed materials conform to project specifications.
Field Compaction	District	Determination of the relative compaction of soil and rock backfills in the field using nuclear moisture/density gauge.
Concrete Compression	District	Compression testing to determine the strength of cylinders molded on-site during the placement of concrete.
Analytical Testing	District	Testing of materials (solids, liquids, etc.) for hazardous or other materials such as metals, asbestos, and biological contaminants.
Special Inspection as required by California Building Code and/or Authority Having Jurisdiction	CONSULTANT	Continuous and/or periodic inspection of cast-in-place concrete, steel and welding, essential architectural, mechanical, and electrical, sprayed fire resistant materials, roofing, and other construction.

e) Environmental Compliance Coordinator (ECC)

- Develops, plans, executes, and manages the District’s environmental compliance program for the project in accordance with the District’s Mitigation Monitoring and Reporting Program (MMRP), contract documents, and applicable Federal, State, and Local laws and regulations

including the construction contractor's compliance with the NPDES general construction permit.

- Schedules, coordinates, and supervises Environmental Compliance Monitors in the areas of wildlife biology, SWPPP, cultural resources, air quality, and noise.
- Works with the contractor to resolved issues and recommends issuance of Deficiency Notices on environmental matters where applicable to the District Project Manager.
- Reviews and approves ECM daily reports and reviews technical submittals related to environmental matters.
- Manages quality assurance testing laboratory efforts related to environmental issues such as waste characterization for hazardous materials, soil sampling, and water quality sampling.

f) Environmental Compliance Monitors (ECM)

- Conducts site surveys, performs periodic inspections, collects samples, and reports to the Environmental Compliance Coordinator any non-conformances in the contractor's compliance in areas needed to comply with the District's MMRP obligations, and Federal, State, and local laws and regulations related to environmental matters.

g) Construction Scheduler

- Provides scheduling support during construction including, but not limited to: review of the construction contractor's baseline and cost and resource-loaded summary schedules; preparation and/or review of time impact analyses (TIA) for change orders and schedule claims analysis; review of construction contractor's monthly progress schedule updates; preparation of schedule updates and Application for Payment requests; analysis and monitoring of cost and schedule trends; and preparation of independent assessments for progress and forecast at completion of schedule and cost.

h) Construction Estimator

- Provides cost estimating support for the review and assessment of change requests, value engineering proposals, and claims analysis with experience in the technical areas of the Project such as electrical and underground construction. Prepares independent cost estimates using electronic bidding software of large change orders in accordance with the Association for the Advancement of Cost Estimating (AACE) procedures.

i) Dispute Advisor

- Reviews contractor monthly/quarterly report submissions to the Dispute Resolution Board (DRB) and prepares monthly/quarterly report submissions to the DRB as needed.
- Attends quarterly DRB meetings.
- Advises on good faith negotiations.
- Obtains and coordinates services of outside subject matter experts. Prepares dispute referrals to the DRB.
- Prepares pre-hearing submittals to the DRB.
- Presents District positions during DRB hearings.
- Reviews and advises on DRB reports.
- This position cannot be filled by an attorney.

2. Task Orders. Performance of the service under this Agreement will be executed according to a task order process, and Consultant is required to provide adequate quality control processes and deliverables in conformance with the technical requirements of the task order. The District's Project Manager will initially identify tasks and request the Consultant to propose a project scope, sub tasks, staffing plan, subconsultant utilization, schedule, deliverables, budget and costs to complete the task in accordance with Exhibit B. All costs associated with the development of the scope of work for each task order shall be borne by Consultant. A final task order will be negotiated between the District's Project Manager and the Consultant and then submitted to the EBMUD Construction Division Manager for approval. However, as provided in the RFP, the budget, if applicable, identified for tasks is an estimate, and the District reserves the right to modify the applicable budget allocated to any task as more specific information concerning the task order scope becomes available.

The Consultant is hereby notified that work cannot commence until the Consultant receives a written Notice to Proceed from the District's Project Manager. *Any work performed without a Notice to Proceed will be at the Consultant's own commercial risk.* The calculations of costs and methods of compensation for all task orders under this Agreement shall be in accordance with Exhibit B.

5. Standard of Care for Professionals. Consultant acknowledges and agrees that Consultant shall perform its services under this Agreement in accordance with the professional standard of care applicable to professionals providing similar services for projects of similar type, size and complexity in the San Francisco Bay Area.

EXHIBIT B

East Bay Municipal Utility District Construction Management and Inspection Services Orinda Water Treatment Plant Disinfection and Chemical Systems Safety Improvements Project

COMPENSATION

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

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

2.1 Direct Labor

Direct labor costs shall be the total number of hours worked on the job by each employee times the hourly rate for the employee's labor. Hours worked shall be rounded-up to the nearest quarter-hour (0.25) increment. Labor rates shall be based on a normal 8-hour day, 40-hour week.

2.2 Indirect Costs

DISTRICT shall pay CONSULTANT an Effective Overhead and Profit Rate (EOPR) equal to **(insert overhead rate)** percent of labor costs incurred by CONSULTANT as further detailed in Section 2.7 "Billing and Payment." CONSULTANT acknowledges and agrees that this overhead compensation is in lieu of itemized payments for indirect and overhead expenses which includes, but is not limited to:

- Clerical, word processing and/or accounting work.
- Vehicle usage and mileage between CONSULTANT's office and DISTRICT offices or work locations within DISTRICT service area. For work outside of the DISTRICT's services area, DISTRICT approval to charge for vehicle usage and mileage and other travel expenses must be obtained prior to the expenses being incurred.

- Parking (DISTRICT does NOT provide parking to CONSULTANT in the DISTRICT Administration Building, located at 375 11th Street, Oakland, California. CONSULTANT shall be responsible for parking elsewhere).
- Postage, or for certified or registered mail. Extraordinary postage, overnight delivery, or messenger delivery charges must be approved in advance.
- Routine copying costs for in-house copying.
- Local telephone charges, including cellular phone, modem and telecopier/FAX charges.
- Office space lease.
- Office supplies.
- Computer equipment.
- Computer usage charges.
- Books, publications, and periodicals.
- Insurance.
- Miscellaneous hand tools or equipment rental.
- Safety training, seminars, or continuing education.
- Utilities.
- Local meals, transportation, or other travel charges.
- Inadequately described or miscellaneous expenses.

The above items are illustrative, rather than exhaustive.

2.3 Subconsultant Services

Subconsultant services shall be billed at cost (plus a 5 percent markup).

2.4. Other Direct Costs

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

- 2.4.1. Automobile expenses at 56 cents per mile when CONSULTANT is required to travel outside of San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, Solano, San Joaquin, Amador, and Calaveras Counties. Mileage will NOT be reimbursed for rental car expenses, where the rental agreement specifies unlimited mileage.
- 2.4.2. DISTRICT will pay for necessary and reasonable travel expenses provided the travel is approved in advance by DISTRICT Project Manager, and providing that:
 - Each expense is separately identified (air fare, hotel, rental car) with an amount and date incurred. Confirming documents may be requested.

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

2.6 Budget Amounts

Maximum Cost Ceiling: \$ _____

Costs payable by the District under this contract are subject to the Maximum Cost Ceiling shown above, comprising Direct Labor, Indirect Costs, Subconsultant Services and Other Direct Costs.

2.7 Billing and Payment

CONSULTANT shall invoice DISTRICT monthly for the actual costs incurred for work performed during the previous month. Actual costs shall include Direct Labor, Indirect Costs, Subconsultant Services, and Other Direct Costs as specified herein. Actual costs shall be invoiced by task as described in Exhibit A. Invoices shall set forth a description of the actual costs incurred and the services performed, the date the services were performed, and the amount of time spent rounded to the nearest quarterly hour increment (.25) on each date services were performed and by whom. Supporting documentation for the invoice shall be organized to clearly identify the task charged and shall be supported by such copies of invoices, payroll records, and other documents as may be required by DISTRICT to authenticate invoiced costs. Copies of all invoices from any subconsultant(s) and outside service(s) shall be attached. Where CONSULTANT is required by law to pay prevailing wage rates, supporting documentation for such work shall be in accordance with guidelines set forth below and shall include certified payroll reports. DISTRICT shall pay CONSULTANT within thirty (30) days, upon receipt of a proper CONSULTANT invoice, provided that all invoices are accompanied by sufficient cost documentation, and DISTRICT Form P-47 (Subcontractor Payment Report - CEP Participation), to allow the determination of the reasonableness and accuracy of said invoice.

The Maximum Cost Ceiling is in effect for the entire Scope of Services. If the authorized Maximum Cost Ceiling is reached, CONSULTANT shall complete the agreed-upon work for the authorized Maximum Cost Ceiling. In no event shall the

Maximum Cost Ceiling be increased unless there is a written amendment of this Agreement.

As part of Consultant's proposal dated [date], Consultant submitted proposed billing rates, attached hereto as Exhibit B-1, Fee Schedule, for the requested tasks identified in Exhibit A, Scope of Services which are incorporated herein by this reference.

2.7.1. Billing Rates. Consultant's billing rates and each and every staff classification as stated in Exhibit B-1 Fee Schedule will be the billing rates for the listed individuals. Billing rates will be fixed for the first year of the contract and may be adjusted annually thereafter. The first adjustment may be made no earlier than the first anniversary of the effective start date as indicated in the original Notice of Contract Award letter. The amount of the adjustment is limited to a maximum of the CPI annual percentage change increase (San Francisco Bay Area for Urban Wage Earners and Clerical Workers) for the previous calendar year. No increase, including the annual CPI adjustment, is allowed to billing rates exceeding \$240 per hour, unless District's Project Manager and Engineering Manager of Construction authorize an increase to the rate in writing.

2.7.2. Personnel Changes. Any proposed changes to project personnel or staff classification as listed in Exhibit B-1 must be approved in advance of any work commencing on the project and in writing by the District's Project Manager. These personnel changes may include but are not limited to:

- Proposed addition of new project personnel to perform requested services that are within the scope of the Agreement.
- Proposed change of staff classification for existing personnel.
- Proposed replacement or substitution of any employee listed in Exhibit B-1 due to termination, promotion, or reclassification.

All proposed personnel must meet all qualification requirements established by the Agreement.

2.7.3. Effective Overhead and Profit Rate. The Effective Overhead and Profit Rate (EOPR) for this agreement is [insert accepted EOPR that is no greater than 2.70]. The EOPR or Individual Firm Overhead and Profit Rate will apply to the billing rate of all individuals not listed in Exhibit B-1. The EOPR will also apply to all amendments to the Agreement. If a new subconsultant is added during the duration of the Agreement, the new individual firm multiplier can be no more than the EOPR.

2.7.4. **Other Direct Costs (ODC).** Direct reimbursable expenses (ODCs – Other Direct Costs) shall include actual direct costs (with no markup) of expenses directly incurred in performing the work. All ODCs are subject to pre-approval in writing by the District’s Project Manager. The following items will be eligible for reimbursement as ODCs:

- Out-of-town travel (“out-of-town” shall mean outside the following counties: San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, Solano, San Joaquin, Amador, and Calaveras);
- Out-of-town meal, travel and lodging expenses for project-related business trips, including, but not limited to:
 - i) Rental vehicle: traveler must select the most economical contractor and type of vehicle available and acquire any commercial rate or government discount available when the vehicle is rented.
 - ii) Personal vehicle use: Consultant will be paid per mile as established by the United State Internal Revenue Service and only for that portion of travel that is outside San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, Solano, San Joaquin, Amador, and Calaveras counties and non-routine. Should the travel begin or end on a normal workday, the Consultant shall subtract commuting mileage from total mileage to calculate reimbursable mileage. The Consultant shall submit to the District an approved mileage log with its monthly invoices.
 - iii) Meal and lodging expenses shall be reasonable and actual but limited to Federal government per diem rates.
- Specialty printing (“specialty” as used herein shall mean large volume printing and color printing and requires prior written approval by District project staff and documentation of the written approval by the District must be included with the invoice).
- Specialty computer hardware and software (only with prior written approval by District project staff and documentation of the written approval by the District must be included with the invoice – all hardware and software will be the property of the District).
- Courier services that are project related and originated from the project site offices.
- Permit fees.
- Expedited courier services when requested by District staff; and
- Safety equipment.

Anything not listed above is not eligible for reimbursement. They include, but are not limited to:

- All other travel expenses such as parking, bridge tolls, public transit, vehicle mileage within San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, Solano, San Joaquin, Amador, and Calaveras counties, travel from Consultant's home office to District facilities.
- Consultant personnel relocation costs.
- Any home or regional office labor charges or pass-throughs, including but not limited to, administrative and clerical personnel time.
- Personnel relocation and temporary assignment expenses.
- Entertainment expenses.
- Cell phones.
- Home office expenses.
- Telephone calls and faxes originating in the firm's home office, standard computer use charges, computer hardware or software computer hardware or software (other than the specialty hardware or software mentioned above), communication devices, and electronic equipment.
- Meal expenses which are not related to project-related business trips, including refreshments and working lunches with District staff.
- Equipment to be used by District staff.
- Postage and courier services which are not requested by District staff.

2.7.5. Subconsultant mark-up and documentation. Second-tier and pass-through subconsulting is prohibited. Additional subconsultants may be added to the consultant team after obtaining pre-authorization by the District Project Manager, or the District Engineering Manager of Construction.

2.7.6. Subconsultant Fees:

- Subject to the restrictions in this Section 2.7.6.
- Shall be subject to written pre-approval by the Consultant's liaison with the District.
- Subconsultant administration markup is limited to five percent (5%) of subconsultant's actual labor costs.

2.7.7. Invoice Requirements. As part of its contracting obligations, the Consultant is required to utilize the District's approved invoicing and time-keeping systems, as specified by the District project team, for the purposes for which they are intended. Consultant shall not bill the District to use these systems. Consultant shall not charge District to send appropriate personnel to user training.

Consultant shall follow the invoicing and supporting documentation instructions as prescribed by the District.

Invoice Supporting Documentation:

All labor hours must be substantiated by timesheet summaries extracted from the Consultant's accounting system. Each timesheet summary shall include the staff person's name, company, dates of the days worked, and the number of hours worked each day. Timesheets must be approved by a District representative on a weekly basis.

Mileage ODCs must be accompanied by mileage logs providing the beginning and ending mileage to substantiate the variable portal-to-portal distance and local driving required while performing the work. All other ODCs must be substantiated with copies of original receipts including a brief description for each receipt memorializing the purpose.

2.8 Budget Status Reports

For the duration of this Agreement, the CONSULTANT shall provide DISTRICT with monthly budget status reports that include, in tabular or graphical format, for each report period: (1) the original cumulative projected cash flows for the duration of the project (prepared at the start of the project), (2) the actual cash flows for the work completed to date, (3) the current projected cash flows to complete the project, and (4) the earned value (the amount of work actually completed to date compared to the budget expended). Current projected cash flows shall be based on all CONSULTANT and subconsultant time sheets up to a date within 3 weeks of the date of the budget status report. CONSULTANT report shall include a narrative of the services completed during the invoice period, any significant variances between earned value and actual cash flows for completing services, measures taken or proposed to prevent or minimize the variances, and the timetable for implementation of such measures.

2.9 Prevailing Wages and Other Requirements for Construction Inspection, and Construction Related Work During Design and Preconstruction Phases of Construction.

2.9.1 All Consultants and Subconsultants of any tier bidding on, or offering to perform work on a public works project shall first be registered with the State Department of Industrial Relations (DIR) pursuant to Section 1725.5 of the Labor Code. No bid will be accepted, nor any contract entered into without proof of the Consultant and Subconsultant's current registration with the DIR (LC § 1771.1).

- 2.9.2 All public works projects awarded after January 1, 2015, are subject to compliance monitoring and enforcement by the DIR (LC § 1771.4) and all Consultants are required post job site notices, “as prescribed by regulation” (LC § 1771.4).
- 2.9.3 Pursuant to Section 1773 of the Labor Code, the District has obtained from the Director of Industrial Relations of the State of California, the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime work in the locality in which the Work is to be performed, for each craft, classification, or type of worker needed to execute the contract. A copy of the prevailing wage rates is on file with the District and available for inspection by any interested party at www.dir.ca.gov.
- 2.9.4 The Consultant shall post a copy of the general prevailing rate of per diem wages at the jobsite pursuant to Section 1773.2 of the Labor Code.
- 2.9.5 Pursuant to Section 1774 of the Labor Code, the Consultant and any of its Subconsultants shall not pay less than the specified prevailing rate of wages to all workers employed in the execution of the contract.
- 2.9.6 The Consultant shall, as a penalty to the State or the District, forfeit not more than the maximum set forth in Section 1775 of the Labor Code for each calendar day, or portion thereof, for each worker paid less than the prevailing rates for the work or craft in which the worker is employed under the contract by the Consultant or by any Subconsultant under him. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which such worker was paid less than the stipulated prevailing wage rate shall be paid to such worker by the Consultant.
- 2.9.7 General prevailing wage determinations have expiration dates with either a single asterisk or a double asterisk. Pursuant to California Code of Regulations, Title 8, Section 16204, the single asterisk means that the general prevailing wage determination shall be in effect for the specified contract duration. The double asterisk means that the predetermined wage modification shall be paid after the expiration date. No adjustment in the Contract Sum will be made for the Consultant’s payment of these predetermined wage modifications.
- 2.9.8 The Consultant and each Subconsultant shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the Work. The payroll records shall be certified and shall be available for inspection in accordance with the provisions of Section 1776 of the Labor Code. Certified payroll records shall

be on the forms provided by the DIR or contain the same information required on the Department's form

- 2.9.9 For public works projects awarded on or after April 1, 2015, or that are still ongoing after April 1, 2016, no matter when awarded, each Consultant and Subconsultant shall furnish the certified payroll related records as more specifically described above and in Labor Code section 1776 directly to the Labor Commissioner (see LC § 1771.4). These records shall be provided to the Labor Commissioner at least monthly or more frequently if required by the terms of the Contract. For exception on projects covered by collective bargaining agreements like a PLA, please see Labor Code section 1771.4.
- 2.9.10 In the event of noncompliance with the requirements of Section 1776 of the Labor Code, the Consultant shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Consultant must comply with said Section. Should noncompliance still be evident after such 10-day period, the Consultant shall, as a penalty to the State or the District, forfeit the amount set forth in Section 1776 of the Labor Code for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.
- 2.9.11 Pursuant to the provisions of Sections 1810, et seq. of the Labor Code the time of service of any worker employed upon the work shall be limited and restricted to eight hours during any one calendar day, and forty hours during any one calendar week, unless work performed by employees of the Consultant in excess of eight hours per day, and forty hours during any one calendar week, shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one and one half times the basic rate of pay.
- 2.9.12 The Consultant shall, as a penalty to the State or the District, forfeit the amount set forth in Section 1813 of the Labor Code for each worker employed by the Consultant or by any Subconsultant for each calendar day during which such worker is required or permitted to work more than eight hours in any calendar day and forty hours in any one calendar week in violation of the provisions of Labor Code, Sections 1810, et seq.
- 2.9.13 The Consultant and every subconsultant shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by him in connection with the Work; the record shall be kept open at all reasonable hours to the inspection of the District and to the Division of Labor Standards Enforcement of the State of California.

- 2.9.14 In the performance of a public works contract, the Consultant and any Subconsultant shall comply with the provisions concerning the employment of apprentices in Section 1777.5 of the Labor Code and any amendments thereof. In the event the Consultant or any Subconsultant willfully fails to comply with this requirement the Consultant or Subconsultant shall be subject to the penalties for noncompliance in Labor Code section 1777.7.
- 2.9.15 The Consultant and every Subconsultant shall post at the workplace and comply with all required wage related workplace postings. Copies of the required postings may be downloaded or ordered electronically from the Department of Industrial Relations website at <http://www.dir.ca.gov/wpnodb.html>.

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

EXHIBIT B-1

EXHIBIT C

**East Bay Municipal Utility District
As-Needed Construction Management (CM) and Inspection Services**

CEP COMPLIANCE

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

* Does not include consultant's markup.

** Based on a Maximum Cost Ceiling amount of \$_____.

EXHIBIT D
INSURANCE REQUIREMENTS

I. 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, CONSULTANT shall, at its sole cost and expense, maintain insurance in conformance with the requirements set forth below.

B. CONSULTANT 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 D to the DISTRICT. The Exhibit D may be signed by an officer of the CONSULTANT (Agent) or by the Insurance Broker for the CONSULTANT. CONSULTANT shall update Exhibit D throughout the specified term of the insurance required by this Agreement by resubmitting the completed Exhibit D prior to the expiration date of any of the required insurance. The updated Exhibit D 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 CONSULTANT shall not commence Services until such insurance has been accepted by the DISTRICT.

C. CONSULTANT shall carry and maintain the minimum insurance requirements as defined in this Agreement. CONSULTANT shall require any subconsultant 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 subconsultant.

D. Acceptance of verification of Insurance by the DISTRICT shall not relieve CONSULTANT of any of the insurance requirements, nor decrease liability of CONSULTANT.

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, CONSULTANT 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. CONSULTANT 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 CONSULTANT's insurance broker or agent update, sign and return Exhibit D 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, CONSULTANT 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. CONSULTANT agrees to provide immediate Notice to the DISTRICT of any loss or claim against CONSULTANT 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. CONSULTANT 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 CONSULTANT'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 CONSULTANT, should CONSULTANT 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 CONSULTANT's insurance broker or agent update, sign and return this Exhibit D

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. CONSULTANT'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 CONSULTANT, subconsultant, and/or subconsultant'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 CONSULTANT is self-employed, a sole proprietorship or a partnership, with no employees, CONSULTANT must carry Workers' Compensation Insurance, and CONSULTANT must return the completed Verification of Workers' Compensation and Employer's Liability Insurance Coverage form.

E. If CONSULTANT is self-insured with respect to Workers' Compensation coverage, CONSULTANT 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 CONSULTANT 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. CONSULTANT 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 CONSULTANT's failure to provide waiver of subrogation from the insurance carrier.

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

As the CONSULTANT's insurance broker/agent, I hereby verify that I have reviewed and confirmed that the CONSULTANT 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. CONSULTANT’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 CONSULTANT.

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 CONSULTANT and/or subconsultant 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 Subconsultant on CONSULTANT’s behalf.

I. Contractual liability coverage shall be included and shall not limit, by any modification or endorsement, coverage for liabilities assumed by CONSULTANT 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 CONSULTANT 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. CONSULTANT 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

CONSULTANT's failure to provide the waiver of subrogation from its insurance carrier(s).

K. "Independent CONSULTANT'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 CONSULTANT, 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 CONSULTANT'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 CONSULTANT'S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the CONSULTANT 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

CONSULTANT'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.

H. 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.

I. 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

J. 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").

K. If CONSULTANT 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.

L. If CONSULTANT'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 CONSULTANT's and/or Subconsultant'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 CONSULTANT'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.

M. 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 CONSULTANT, in any way related to Services performed under this Agreement.

N. A severability of interest provision must apply for all the Additional Insureds, ensuring that CONSULTANT'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 CONSULTANT'S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the CONSULTANT 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

D. CONSULTANT'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.

E. 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.

F. Minimum Requirements: Professional Liability Insurance with minimum limits as follows:

Each Claim or Occurrence Limit: \$2,000,000

Aggregate Limit: \$2,000,000

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, CONSULTANT 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 CONSULTANT'S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the CONSULTANT 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: _____

VII. Excess and/or Umbrella Liability Insurance Coverage

A. CONSULTANT'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 CONSULTANT.

C. Minimum Requirements: It is expressly understood by the parties that CONSULTANT'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 Subconsultants on CONSULTANT's behalf.
5. Contractual liability coverage shall be included and shall not limit, by any modification or endorsement, coverage for liabilities assumed by CONSULTANT under this Agreement as an "insured contract."
6. "Independent CONSULTANT'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 CONSULTANT, 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 CONSULTANT'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. CONSULTANT 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 CONSULTANT shall defend and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier(s).

D. CONSULTANT 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 CONSULTANT'S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the CONSULTANT 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 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
OVERHEAD AND PROFIT SCHEDULE