

East Bay Municipal Utility District



**Request for Proposal (RFP)
for
Professional Auditing Services
For Fiscal Years 2019, 2020 and 2021
With an option for two, 2-year extensions**

**Response due
by
4:00pm
on
JANUARY 8, 2019
at
EBMUD, Purchasing Division,
375 Eleventh St., First Floor, Oakland, CA 94607**

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

ATTENTION

Pre-bid Meeting

Date: Thursday, December 6, 2018

Time: 11:00 a.m.

Location: East Bay Municipal Utility District
Board Room
Second Floor
375 Eleventh Street
Oakland, CA 94607

Reservation: Please contact Theresa Won
theresa.won@ebmud.com

(510) 287-0209

or

David P Siu

david.siu@ebmud.com

(510) 287-0698

(Please RSVP by December 4, 2018)

East Bay Municipal Utility District
RFP for
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1.0 GENERAL

The East Bay Municipal Utility District (EBMUD) intends to enter into an agreement with a qualified accounting firm (Certified Public Accountant) to provide auditing services to conduct annual audits of EBMUD for the three fiscal years from July 1, 2018 to June 30, 2021. The contract may be extended for two additional two-year periods from July 1, 2021 to June 30, 2023 and from July 1, 2023 to June 30, 2025.

2.0 OVERVIEW

2.1 Background

EBMUD is required by the Municipal Utility District Act of 1921 (MUD Act) to have an outside Certified Public Accounting (CPA) firm perform an annual audit of the financial statements of EBMUD. EBMUD also has Joint Power Agreements with other agencies to provide accounting and audited financial statements.

2.2 Current Business Environment

EBMUD is a publicly owned utility formed in 1923 under the MUD Act to provide water services to parts of Alameda and Contra Costa counties. The MUD Act was amended in 1941 to enable formation of special districts. In 1944, voters in six East Bay cities elected to form EBMUD's Special District No. 1 to treat wastewater released in the San Francisco Bay. Wastewater treatment for those cities began in 1951 and was expanded 20 years later to include Kensington, El Cerrito, and a part of Richmond.

EBMUD's water system collects, transmits, treats, and distributes high-quality water to approximately 60 percent of the developed area within Alameda and Contra Costa counties of California. The water is supplied to approximately 1.4 million of industrial, commercial, residential, and public users in a 332-square-mile service area extending from Crockett in the north, southward to San Lorenzo (encompassing Oakland, Berkeley, and Alameda), eastward from San Francisco Bay to Walnut Creek, and east through the San Ramon Valley.

The Wastewater system intercepts and treats wastewater from residences and industries. It serves approximately 685,000 customers in an 88-square-mile area of Alameda and Contra Costa counties along the Bay's east shore, extending from Richmond in the north to San Leandro in the south.

For more information, please visit EBMUD's web site at <http://www.ebmud.com>.

2.3 Accounting Structure

The accounts of EBMUD are organized on the basis of various groups of funds, each of which is considered to be a separate accounting entity. The operations of each fund or account group are accounted for by providing a separate set of self-balancing accounts which comprises its assets, liabilities, fund balance, revenues, and expenditures. The various funds are grouped by type in the combined financial statements based on the California Public Utilities Commission Uniform System of Accounts and presented in a format in accordance with Governmental Accounting Standards Board regulations. EBMUD has received the Certificate of Achievement for Excellence in Financial Reporting since 2005 for the combined Water, Wastewater, and Employees Retirement System CAFR. EBMUD utilizes the following funds as of June 30, 2018:

- Proprietary Funds - Enterprise
 - Water System
 - Wastewater System

- Fiduciary Fund
 - Employees' Retirement System

- Other Funds
 - BACWA - Bay Area Clean Water Agencies
 - DERWA - Dublin/San Ramon East Bay MUD Recycle Water Authority
 - FRWA – Freeport Regional Water Authority
 - UMRWA – Upper Mokelumne Regional Water Authority (year end is September 30)
 - Federal Grants and Loans (Single Audit)

2.4 Budget and Encumbrances

EBMUD adopts a budget for the enterprise funds. EBMUD also uses encumbrances (open purchase orders) for budget control. Budget comparisons and encumbrances are not included in EBMUD's financial reports.

2.5 Data Processing Systems

- Financial Information System (FIS) EBMUD uses the Oracle PeopleSoft 8.4 software for general ledger, project costing, miscellaneous accounts receivable, asset, and miscellaneous cash receipts. A number of legacy applications - time and labor, paving order, equipment usage, inventory, purchasing, and accounts payable interface data into to the FIS on a daily basis. Numerous custom reports have been developed in SQR, Cold Fusion, JasperReports, and Crystal reports. In addition, Query, PL/SQL Developer, and SQL are used for ad hoc reporting in Oracle PeopleSoft. EBMUD is in the process of selecting a new FIS.

- Human Resource Information System (HRIS) EBMUD uses Oracle PeopleSoft 8.8 software for payroll, human resource, training, and benefits management. A custom interface was developed and maintained for distribution of labor data from payroll and time/labor to FIS.

- Materials Management Information System (MMIS) is an integrated purchasing, inventory, purchase card, and accounts payable system. This legacy system updates PeopleSoft daily through a single interface. The system was developed and is currently maintained by an independent consultant. The system is written and generated in BUILDER, a 4th generation language, using the application generator CorVision from Attunity, Inc. The system runs on an HP Alpha DS-15 server.
- Customer Information System (CIS) handles billing of water and sewage charges for EBMUD and sewage charges for six other agencies. In September 2011, all the data in the legacy CIS was migrated into the new Customer Watch CIS. This system was developed and maintained by in-house staff. This system updates PeopleSoft daily by a single interface.
- TRACKER handles the investment transactions for EBMUD and other funds.
- Bond transactions are managed by an outside agent and information is entered into FIS manually.
- Retirement investments are managed by outside financial institutions. Financial information is entered manually into the Financial Information System. Retirement payroll uses the Oracle PeopleSoft HRIS software.

3.0 RESPONSIBILITIES OF THE ACCOUNTING FIRM AND EBMUD

The responsibilities of the selected accounting firm are outlined below:

3.1 Scope of Work

The services included under the resulting agreement will include annual financial and compliance audits including all Federal, State, and local grants and loans. The examination and reports thereon must be carried out in examination with generally accepted auditing standards, the AICPA Audit and Accounting Guide for audits of state and local governmental units, Government Auditing standards issued by the Comptroller General of the United States (Yellow Book), and the Single Audit Act.

The objectives of the auditing services will be to:

- Provide an auditor's opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles;
- Provide the required statements and reports regarding grants, and loans in accordance with the Single Audit Act and OMB Circular A133;

- Comment on the system of internal control, and comment generally regarding improvements which can be made in EBMUD's financial information system from observations made during the course of the auditor's independent financial review;
- Comment on the nature and impact of any noted instances of non-compliance with applicable state and federal laws and regulations;
- Ensure all audited financial reports are presented in a form which is readable, understandable, useful as an internal management tool, and accurately communicates EBMUD's financial position to readers with non-financial backgrounds.

3.2 Reports Defined

- Combined financial report and management report for the primary government composed of EBMUD's Water System, Wastewater System, and Employees' Retirement System Trust Fund.
- Combined financial report for the Employees' Pension and Health Benefit System.
- EBMUD's financial report for the single audit of grants and loans as required under the Single Audit Act.
- Financial report and management report for the Bay Area Clean Water Agencies (BACWA). A joint powers agency where EBMUD handles the processing of financial transactions.
- Financial report and management report for the Freeport Regional Water Authority (FRWA). A joint powers agency where EBMUD handles the processing of financial transactions.
- Financial report and management report for the Dublin San Ramon Services District -East Bay MUD Recycled Water Authority (DERWA). A joint powers agency where EBMUD handles the processing of financial transactions.
- Financial report and management report for the Upper Mokelumne River Watershed Authority (UMRWA). A joint powers agency where EBMUD handles the processing of financial transactions.
- Joint Power Authorities' financial report for the single audit of grants and loans as required under the Single Audit Act.
- Letter of Responses to CAFR opinion and comments.

3.3 The Deliverables

- The EBMUD financial statements and footnotes to the financial statements (financials) will be prepared, typed, and presented by the accounting firm. A draft of the financials will be available for EBMUD review by the last Friday of August following the end of the fiscal year. A final signed-off report will be delivered to the Accounting Division by the first Thursday of September following the end of the fiscal year. Fifteen bound copies and one PDF copy are to be delivered to the Accounting Division by mid-September following the end of the fiscal year.
- The Report to Management will be prepared, typed, and presented by the accounting firm. A draft of the financials will be available for EBMUD review by the last Friday of August following the end of the fiscal year. A final signed-off report will be delivered to the Accounting Division by the first Thursday of September following the end of the fiscal year. Fifteen bound copies and one PDF copy are to be delivered to the Accounting Division by mid-September following the end of the fiscal year.
- The EBMUD Retirement System financial statements and footnotes to the financial statements (financials) will be prepared, typed, and presented by the accounting firm. A draft of the financials will be available for EBMUD review by the last Friday of August following the end of the fiscal year. A final signed-off report will be delivered to the Accounting Division by the first Thursday of September following the end of the fiscal year. Fifteen bound copies and one PDF copy are to be delivered to the Accounting Division by mid-September following the end of the fiscal year.
- The BACWA financial report and management report will be prepared, typed, and presented by the accounting firm. Ten bound copies and one PDF copy are to be delivered to the Accounting Division by mid-September following the end of the fiscal year.
- The FRWA financial report and management report will be prepared, typed, and presented by the accounting firm. Ten bound copies and one PDF copy are to be delivered to the Accounting Division by mid-September following the end of the fiscal year.
- The UMRWA financial report and management report will be prepared, typed, and presented by the accounting firm. Ten bound copies and one PDF copy are to be delivered to the Accounting Division by the last business day of December following the end of the fiscal year.
- The DERWA financial report and management report will be prepared, typed, and presented by the accounting firm. Ten bound copies and one PDF copy are to be delivered to the Accounting Division by the mid-September following the end of the fiscal year.
- EBMUD's and Joint Powers Authorities' Single Audit report will be prepared, typed, and presented by the accounting firm. Ten bound copies and one PDF copy are to be delivered to the Accounting Division 30 business days prior to the statutory reporting deadline.

- Audit work will be required on all debt issues, to review accounting treatment and determine compliance with the bond covenants. Special compliance and financial reports may be required for future bond issues.

Copies of the past five years EBMUD audited comprehensive annual financial reports (starting from FY2013) can be viewed and downloaded from EBMUD's web site at:
<http://www.ebmud.com/about-ebmud/financial-information/financial-reports>.

3.4 Management Report

For each of the three fiscal years ending June 30, 2019 through 2021 and for the two, 2-year extension periods for fiscal years of 2022 and 2023, and 2024 and 2025, if the agreement is extended, the accounting firm shall submit a management report of its comments and recommendations concerning EBMUD's financial systems based upon observations made during the course of the auditor's examination of EBMUD's financial statements, records, internal controls, systems, and internal procedures.

3.5 Debt Issues

Audit work will be required on all debt issues, including FY 2019-2021 and future years, to review accounting treatment and determine compliance with the bond covenants. Special compliance and financial reports may be required for future bond issues. EBMUD may restructure or refund debt in fiscal year 2019 to fund capital projects.

3.6 Standards of Professional Qualifications

All audit personnel assigned to work on this contract must meet the prerequisite educational background required by the State of California to sit for the Uniform CPA Examination and be full-time permanent employees of the accounting firm.

3.7 Facilities and Equipment

Except as provided below, the accounting firm shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing the audit services. EBMUD shall furnish physical facilities such as desks, a conference space, access to the Internet, as may be reasonably necessary for auditor's use while auditing EBMUD employees and reviewing records and information in possession of EBMUD. The location, quantity, quality, and time of the furnishings of said physical facilities would be at the sole discretion of EBMUD. In no event shall EBMUD be obligated to furnish any facility which may involve incurring any direct expense, including but not limiting the generality of this exclusion to long-distance telephone or other communication charges, vehicles, and reproduction facilities.

3.8 Responsibilities of EBMUD to the Selected Accounting Firm

At the time final audit field work commences, EBMUD will provide draft Combined Water and Wastewater, Employees' Retirement System Trust Fund, and Joint Powers Agencies financial statement report (MD&A, Financial Statements, Footnotes, and supplemental information) based on the format agreed to at the end of the interim audit.

EBMUD will provide a working trial balance for each of its funds at interim and final audit.

EBMUD will provide supporting schedules and work papers.

EBMUD will provide a draft CAFR for audit review and acceptance by November 30.

3.9 Joint Venture with Sub-Auditor

Firms are encouraged to joint venture with other firms to strengthen their chances of meeting EBMUD's Contract Equity objectives. The prime accounting firm will be responsible for all work of and payment to the sub-consultant. All reports will be published under the name of the prime consultant and sub-consultant and be signed by prime and sub-consultants.

4.0 CALENDAR OF EVENTS

Listed below are the major events planned to occur during the selection process in order to determine a consultant. (Note that the schedule is subject to change.)

EVENT	SCHEDULED DATE
RFP Issue Date	November 21, 2018
RFP Pre-Bid Meeting* (RSVP by 12/04/18)	December 6, 2018
Consultant RFP Response Deadline	January 8, 2019
Invitational Letter Mailing	January 22, 2019
Panel Interview	January 29, 2019
Consultant Selection Notification	February 5, 2019
EBMUD Board approval	March 26, 2019

*** Pre-bid Meeting will be held at 11am in the 2nd floor Board Room at 375 11th Street, Oakland, California.**

5.0 EBMUD PROCEDURES, TERMS, AND CONDITIONS

5.1 RFP Acceptance and Award

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.”

The Selection Committee will recommend the highest ranked Accounting Firms to an oral presentation and interview. The oral interview will be performed by the Director of Finance, Controller, Treasurer, and Manager of Internal Audit.

The Oral Interview Panel will recommend award to the Accounting Firm/Proposer who, in its opinion, has submitted the RFP response that best serves the overall interests of the District. Award may not necessarily be made to the Proposer with the lowest overall cost.

The District has the right to decline to award this contract or any part of it for any reason.

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.

Award of contract The District reserves the right to reject any or all proposals, to accept one part of a proposal and reject the other, unless the bidder stipulates to the contrary, and to waive minor technical defects and administrative errors, as the interest of the District may require. Award will be made or proposals rejected by the District as soon as possible after bids have been opened.

5.2 Evaluation Criteria/Selection Committee

All proposals will be evaluated by a Selection Committee. The Selection Committee may be composed of District staff and other parties that have expertise or experience in this type of procurement. The Selection Committee will select qualified proposers in accordance with the evaluation criteria set forth in this RFP and develop a short list of proposers to be invited to the oral presentation. The evaluation of the RFP responses shall be within the sole judgment and discretion of the Selection Committee.

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

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

- The number and qualifications of local office staff to be used in the audit.
- The level of expertise and experience of local personnel in performing government and utility audits.
- A well-defined audit plan as set forth in the bid.
- The education and training of personnel as it relates to governmental/utility accounting and auditing.
- The proposed schedule for completion of the required audit functions within the specified deadlines.
- The willingness of the bidder to accept the contract terms described in this RFP.
- Demonstration of consultant's good faith efforts to meet the Contracting Objectives of EBMUD's Contract Equity Program. Proposer shall be eligible for SBE or DVBE preference points if they are a certified small business entity as described in the guidelines contained in Exhibit A-Contract Equity Program and they check the appropriate box, requesting preference, A-Proposer Information and Acceptance. Qualified DVBEs and/or SBEs will receive additional points to their total score.
- The extent to which the audit plan has addressed making the final audit documents readable, understandable, useful as an internal management tool, and accurately communicating the EBMUD's financial position to readers with non-financial backgrounds.
- Experience with similar organizations/agencies.
- Willingness to perform in an informal advisory capacity to EBMUD.
- Pricing.
- Compliance with EBMUD's insurance requirements.
- Participation in and results from the AICPA Peer Review Program or comparable quality control programs.

5.3 Deadline Date

The RFP evaluation process will begin for only those consultants who submit bids by Tuesday, January 8, 2019, 4:00 p.m. PST to PURCHASING, 375 11th Street, First Floor, Oakland, CA.

5.4 Final Selection

EBMUD makes a recommendation as to the selection of the consultant. This recommendation will be reviewed by the General Manager and if accepted furthered to the Board of Directors. The Board of Directors will make the final selection decision and authorize a contract with funding.

5.5 Notification

Accounting Firms who submit bids by the deadline will be notified of the results of the selection process. The recommended consultant will be notified by the end of March 26, 2019. EBMUD's Board of Directors does the final award of contracts. The anticipated award date is March 26, 2019. These dates may vary depending on EBMUD needs.

5.6 Effective Bid Date

When submitting the RFP, the accounting firm will state in writing that all furnished information, including proposed staffing and rates, will remain valid and applicable for 180 days from the date that the bids are due.

5.7 Pricing

Prices quoted shall be firm for the contract awarded pursuant to this RFP.

All prices quoted shall be in United States dollars.

Price quotes shall include any and all payment incentives available to the District.

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.

5.8 Protest

Protests must be in writing and must be received no later than seven (7) business days after the District issues the Notice of Intent to Award, which is sent to all entities who submitted a proposal. The District will reject the protest as untimely if it is received after this specified time frame. Protests will be accepted from proposers or potential proposers only.

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

Bid protests must contain a detailed and complete written statement describing the reason(s) for protest. The protest must include the name and/or number of the bid, the name of the firm protesting, and include a name, telephone number, email address, and physical address of the

protester. If a firm is representing the protester, they shall include their contact information in addition to that of the protesting firm.

Protests must be mailed or hand delivered to the Manager of Purchasing, East Bay Municipal Utility District, 375 Eleventh Street, Oakland, CA 94607. Facsimile and electronic mail protests must be followed by a mailed or hand delivered identical copy of the protest and must arrive within the seven day time limit. Any bid protest filed with any other District office shall be forwarded immediately to the Manager of Purchasing.

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

Such an appeal must be made in writing and must include all grounds for the appeal and copies of the original protest and the District's response. The bid protester must also send the Accounting Division a copy of all materials sent to the Director of Finance. The Director of Finance 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.

5.9 Invoicing

EBMUD shall pay the accounting firm for service rendered pursuant to agreement. The determination of the amount of work performed by the accounting firm and the amount of the partial payment to be made by EBMUD shall be within the sole discretion of the Finance Director of EBMUD.

Invoices shall contain, at a minimum, invoice number, remit to address, and itemized services description.

Payment will be made within thirty (30) days following receipt of a correct invoice and upon complete satisfactory receipt of performance of services.

EBMUD will notify the Accounting Firm of any invoice adjustments required.

EBMUD will pay the Accounting Firm in an amount not to exceed the negotiated amount(s) which will be referenced in the agreement signed by both parties.

5.10 Statement of Information Confidentiality

EBMUD shall make available to the consultant such materials from its files as may be required to perform the services under this agreement. These materials and information remain the property of EBMUD while in the consultant's possession and must be treated as confidential information. This material may not be released or disclosed without the written permission of EBMUD.

5.11 Indemnification

Accounting firm expressly agrees to defend, indemnify, and hold harmless EBMUD and its Directors, officers, agents, and employees from and against any and all loss, liability, expense, claims, suits, and damages, including attorneys' fees, arising out of or pertaining or relating to the ACCOUNTING FIRMS, its associates', employees', sub-accounting firms', or other agents' negligence, recklessness, or willful misconduct, in the operation and/or performance under this Agreement.

5.12 Marketing Reference

The successful consultant must not make any reference to East Bay Municipal Utility District (EBMUD) in any literature, promotional material, brochures or sales presentations without the express prior written consent of EBMUD. ACCOUNTING FIRM 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 the ACCOUNTING FIRM during the term of this engagement without EBMUD's prior written consent.

6.0 RFP RESPONSE SUBMITTAL INSTRUCTIONS AND INFORMATION

6.1 Deadline

Response Deadline: January 8, 2019 by 4:00 p.m. PST at EBMUD.

Late and/or unsealed responses will not be accepted.

RFP responses submitted via electronic transmissions will not be accepted. Electronic transmissions include faxed RFP responses or those sent by electronic mail ("e-mail").

RFP responses will be received only at the address shown below, must be SEALED, and must be received at the District Purchasing Division by 4:00 p.m. on the due date specified in the Calendar of Events. Any RFP response received after that time or date, or at a place other than the stated address cannot be considered and will be returned to the Proposer unopened. All RFP responses must be received and time stamped at the stated address by the time designated. The Purchasing Division's timestamp shall be considered the official timepiece for the purpose of establishing the actual receipt of RFP responses.

RFP responses are to be addressed/delivered as follows:

Mailed:

Manager of Purchasing
East Bay Municipal Utility District
Professional Auditing Services For Fiscal Years 2019, 2020 and 2021
EBMUD–Purchasing Division
P.O. Box 24055
Oakland, CA 94623-1055

Hand Delivered or delivered by courier or package delivery service:

Manager of Purchasing
East Bay Municipal Utility District
Professional Auditing Services For Fiscal Years 2019, 2020 and 2021
EBMUD–Purchasing Division
375 Eleventh Street, First Floor
Oakland, CA 94607-4240

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

Please submit five printed copies of the bids. Each copy must have all supporting materials and documentation.

All costs required for the preparation and submission of an RFP shall be borne by the Accounting Firms.

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.

It is understood that the District reserves the right to reject any or all RFP responses.

The RFP response shall remain open to acceptance and is irrevocable for a period of five business days, unless otherwise specified in the RFP documents.

6.2 Pre-Bid Meeting

Accounting firms will have a chance to ask questions about this Request for Proposal (RFP) and meet staff at the Pre-bid meeting on December 6, 2018. After the meeting, all questions and answers will be sent to all interested consultants. Prior to the meeting, questions can be emailed to Theresa Won at theresa.won@ebmud.com or David Siu at david.siu@ebmud.com. After December 11, 2018, we will not answer any questions about the RFP.

For additional information about the Contract Equity (CE) Program or forms, please contact Contract Equity Office at (510) 287-0114.

6.3 Response Format

Proposers shall not modify any part of Exhibits A, B, C, or qualify their RFP responses. Proposers shall not submit to EBMUD a re-typed or otherwise re-created version of these documents or any other EBMUD-provided document.

RFP responses, in whole or in part, are NOT to be marked confidential or proprietary. EBMUD 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. EBMUD shall not be liable in any way for disclosure of any such records.

6.4 Contract and Negotiation Disclaimer

EBMUD reserves the right to accept or reject any or all bids and proposals, to take exception to these RFP specifications, and/or to waive any formalities or irregularities in any RFPs submitted if that is determined to be in the best interest of EBMUD.

EBMUD specifically reserves the right to negotiate a contract with the selected consultant. The accounting firm's response to this RFP will be included, by reference, in the final contract. The accounting firm will absorb all costs incurred in the preparation and presentation of the bid.

EXHIBIT A
RFP RESPONSE PACKET
RFP For
Professional Auditing Services
For Fiscal Years 2019, 2020 and 2021
With an option for two, 2-year extensions

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

From: _____

(Official Name of Proposer)

RFP RESPONSE PACKET GUIDELINES

- **AS DESCRIBED IN SECTION 6 - RFP RESPONSE SUBMITTAL INSTRUCTIONS AND INFORMATION, PROPOSERS ARE TO SUBMIT FIVE (5) ORIGINAL HARDCOPY RFP RESPONSE WITH ORIGINAL INK SIGNATURES CONTAINING THE FOLLOWING, IN THEIR ENTIRETY:**
 - **EXHIBIT A – RFP RESPONSE PACKET**
 - **INCLUDING ALL REQUIRED DOCUMENTATION AS DESCRIBED IN “EXHIBIT A- REQUIRED DOCUMENTATION AND SUBMITTALS”**
 - **EXHIBIT B – FEE SCHEDULE FOR PROFESSIONAL AUDIT SERVICES**
- **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.**
- **PROPOSERS SHALL NOT MODIFY DISTRICT LANGUAGE IN ANY PART OF THIS RFP OR ITS EXHIBITS, NOR SHALL THEY QUALIFY THEIR RFP RESPONSE.**

PROPOSER INFORMATION AND ACCEPTANCE

1. The undersigned declares that all RFP documents, including, without limitation, the RFP, Addenda, and Exhibits, have been read and that the terms, conditions, certifications, and requirements are agreed to.
2. The undersigned is authorized to offer, and agrees to furnish, the articles and services specified in accordance with the RFP documents.
3. The undersigned acknowledges acceptance of all addenda related to this RFP. List Addenda for this RFP on the line below:

Addendum #	Date

4. The undersigned hereby certifies to the District that all representations, certifications, and statements made by the Proposer, as set forth in this RFP Response Packet and attachments, are true and correct and are made under penalty of perjury pursuant to the laws of California.
5. The undersigned acknowledges that the Proposer is, and will be, in good standing in the State of California, with all the necessary licenses, permits, certifications, approvals, and authorizations necessary to perform all obligations in connection with this RFP and associated RFP documents.
6. It is the responsibility of each Proposer to be familiar with all of the specifications, terms, and conditions and, if applicable, the site condition. By the submission of an RFP response, the Proposer certifies that if awarded a contract it will make no claim against the District based upon ignorance of conditions or misunderstanding of the specifications.
7. Patent indemnity: General or Professional Service Providers who do business with the District shall hold the District, its Directors, officers, agents, and employees harmless from liability of any nature or kind, including cost and expenses, for infringement or use of any patent, copyright or other proprietary right, secret process, patented or unpatented invention, article, or appliance furnished or used in connection with the contract or purchase order.
8. Insurance certificates are not required at the time of submission. However, by signing Exhibit A – RFP Response Packet, the Proposer agrees to meet the minimum insurance requirements stated in the RFP. This documentation must be provided to the District prior to execution of an agreement by the District, and shall include an insurance certificate which meets the minimum insurance requirements, as stated in the RFP.
9. The undersigned acknowledges that RFP responses, in whole or in part, are NOT to be marked confidential or proprietary. The District may refuse to consider any RFP response or part thereof so

marked. RFP responses submitted in response to this RFP may be subject to public disclosure. The District shall not be liable in any way for disclosure of any such records.

10. The undersigned Proposer hereby submits this RFP response and binds itself to the District. The RFP, subsequent Addenda, Proposers Response Packet, and any attachments, shall be used to form the basis of a Contract, which once executed shall take precedence.

11. The undersigned acknowledges **ONE** of the following (please check only one box)*:

- Proposer is not an SBE nor a DVBE and is ineligible for any Proposal preference; **OR**
- Proposer is an SBE or DVBE as described in the Contract Equity Program (CEP) and Equal Employment Opportunity (EEO) Guidelines, and has completed the CEP and EEO forms at the hyperlink contained in the CEP and EEO section of this Exhibit A.

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

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

Street Address Line 1: _____

Street Address Line 2: _____

City: _____ State: _____ Zip Code: _____

Webpage: _____

Type of Entity / Organizational Structure (check one):

- Corporation
- 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. Introduction/Letter of Transmittal: RFP response shall include a description of the Proposer's capabilities and approach in providing its services to the District, and provide a brief synopsis of the highlights of the RFP response and overall benefits to the District. This synopsis should not exceed three (3) pages in length and should be easily understood.
2. Key Personnel:

RFP response shall include a complete list of all key personnel associated with the RFP. This list must include all key personnel who will provide services. For each person on the list, the following information shall be included:
 - The person's relationship with the Proposer, including job title and years of employment with the Proposer;
 - The role that the person will play in connection with the RFP;
 - The person's telephone number, fax number, and e-mail address;
 - The person's educational background; and
 - The person's relevant qualification, experience, certifications, and/or merits
3. A statement indicating the number of employees (by level) located within the local office which will handle the audit. Said statement must indicate the number of people that will be assigned to each of the set of reports.
4. An indication of the level of expertise of the local office personnel in providing comparable services to government and utility clients as demonstrated by listing the names of the government/utility organizations, type(s) of service performed and year(s) of engagement for services of this nature.
5. A description of your audit organization's participation in AICPA-sponsored or comparable quality control programs.
6. A statement indicating whether the bidder has received a positive peer review within the past three years
7. Description of the Proposed Services: RFP response shall include a description of the terms and conditions of services to be provided during the contract term including response times. The Proposer may include the description: (1) specify how the services in the RFP response will meet or exceed the requirements of the District; (2) explain any special resources or approaches that make the services of the Proposer particularly advantageous to the District; and (3) identify any limitations or restrictions of the Proposer in providing the services that the District should be aware of in evaluating its RFP response to this RFP.

The accounting firm should include information regarding its ability to provide information on auditing governmental utility agency. The accounting firm may also include additional information as necessary that would be relevant to EBMUD's proposal evaluation process.

8. 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.

THE DISTRICT IS UNDER NO OBLIGATION TO ACCEPT ANY EXCEPTIONS, AND SUCH EXCEPTIONS MAY BE A BASIS FOR RFP RESPONSE DISQUALIFICATION.

9. A recap of the experience in government/utility audits, for each senior and higher level person who would be assigned to the EBMUD audit, including:
 - Name of individual
 - Years on each job
 - Their position on each audit
10. A description of the relevant governmental/utility and educational work experience of each individual assigned to the audit. This must include:
 - Governmental/utility seminars attended.
 - Courses attended within the past three years
 - Whether the individual received continuing professional education in governmental/utility accounting and auditing in the past two years, as required by the State of California Auditor's Office.
11. A separate listing of current and prior audit clients similar in size, nature and scope to EBMUD, indicating the following:
 - The type(s) of service performed and the number of years served for each.
 - The names, addresses and phone numbers of personnel who may be contacted by the selection committee as references.

The local office must have performed all services for such clients.

12. A tentative schedule of completing the audit within deadlines specified in the RFP, including phasing of interim work over the course of the fiscal year.
13. Percentage of time and number of hours that a senior supervising auditor will be on-site.

14. Information provided in Certificates of Insurance.
15. A written statement outlining in detail how the accounting firm proposes to perform the services required, including the proposed use of sub-contract auditing firms.
16. A list of any specific exceptions to any terms, conditions and/or requirements contained in the RFP. Exceptions should be noted on the face of the bid.
17. The signature of an authorized representative must appear on the cover of the bid.
18. Proposed fee schedule for auditing services listed in a Fee Schedule Table for consulting fee(See Exhibit B example)
19. Exceptions, Clarifications, Amendments:
 - 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.
 - **THE DISTRICT IS UNDER NO OBLIGATION TO ACCEPT ANY EXCEPTIONS, AND SUCH EXCEPTIONS MAY BE A BASIS FOR RFP RESPONSE DISQUALIFICATION.**

20. Contract Equity Program.

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.

21. Others.

- Cost shall be submitted on this Proposal Form as is. The prices quoted shall not include Sales Tax or Use Tax; said tax, wherever applicable, will be paid by the District to the General or Professional Service Provider, if licensed to collect, or otherwise directly to the State.
- No alterations or changes of any kind to the Proposal Form(s) are permitted. RFP responses that do not comply may be subject to rejection in total. The cost quoted below shall be the cost the District will pay for the term of any contract that is a result of this RFP process.

- All supporting materials and documentation submitted with the bid will become the property of EBMUD unless otherwise requested by the accounting firm at the time of submission.
- Quantities listed herein are annual estimates based on past usage and are not to be construed as a commitment. No minimum or maximum is guaranteed or implied.

CONTRACT EQUITY PROGRAM & EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

All Contractors shall include the nondiscrimination provisions above in all subcontracts. Please include the required completed forms with your proposal. Non-compliance with the Guidelines may deem a proposal non-responsive, and therefore, ineligible for contract award. Your firm is responsible for:

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

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

[Contract Equity Program Guidelines and Forms](#)

The CEP guidelines and forms can also be downloaded from the District website at the following link: <http://ebmud.com/business-center/contract-equity-program/>

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

Exhibit B
Fee Schedule Table
For
Professional Auditing Services
For Fiscal Years 2019, 2020 and 2021
With an option for two, 2-year extensions

Pricing shall be submitted on this Proposal Form as is. The prices quoted shall not include Sales Tax or Use Tax; said tax, wherever applicable, will be paid by the District to the General or Professional Service Provider, if licensed to collect, or otherwise directly to the State. No alterations or changes of any kind to the Proposal Form(s) are permitted. RFP responses that do not comply may be subject to rejection in total. The pricing quoted below shall be the cost the District will pay for the term of any contract that is a result of this RFP process.

Description	FIXED FEE						
	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Combined financial report and management report for the primary government composed of East Bay MUD, Water, Wastewater, and Employees' Retirement Systems							
Combined financial report for the Employees' Pension and Health Benefit System							
EBMUD's financial report for the single audit of grants and loans as required under the Single Audit Act							
Financial report and management report for the Bay Area Clean Water Agencies (BACWA)							
Financial report and management report for the Freeport Regional Water Authority (FRWA)							
Financial report and management report for the Dublin San Ramon Services District - EBMUD Recycled Water Authority (DERWA)							

Financial report and management report for the Upper Mokelumne Regional Water Authority (UMRWA)							
Joint Power Authorities' financial report for the single audit of grants and loans as required under the Single Audit Act.							
CAFR Opinion and Review							
Other Services	Include hourly billing rates for all staff levels on separate page						

Grant Total Fixed Fee FY 2019-2025 \$ _____

Consulting fee rate per hour:

	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Partner							
Quality Assurance Director							
Manage/Director							
Supervisor							
Senior Associate							
Associate							
Administrative Staff							

Exhibit C

INSURANCE REQUIREMENTS

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

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

The following are the minimum insurance limits, required on this RFP:

INSURANCE

A. Insurance Requirements

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

B. Workers Compensation Insurance

GENERAL OR PROFESSIONAL SERVICE PROVIDER shall take out and maintain during the life of the Agreement Workers Compensation Insurance for all of its employees on the project. In lieu of evidence of Workers Compensation Insurance, the District will accept a Self-Insured Certificate from the State of

California. GENERAL OR PROFESSIONAL SERVICE PROVIDER shall require any subcontractor to provide it with evidence of Workers Compensation Insurance.

C. Professional Liability Insurance (Errors and Omissions)

GENERAL OR PROFESSIONAL SERVICE PROVIDER shall maintain during the life of the agreement professional liability insurance with a minimum of \$2,000,000/Occurrence. A three year tail is required if coverage on a claims-made basis. A deductible may be acceptable upon approval by the District. The policy will provide 30 days advance written notice to the District for cancellation or reduction in coverage. The Consultant shall require any subcontractor to provide evidence of the same professional liability insurance coverage.

D. Commercial General Liability Insurance

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

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

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

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

1. The District, its Directors, officers, and employees are Additional Insureds in the policy(ies) as to the work being performed under the contract.
2. The coverage is *Primary and non-contributory* to any other applicable insurance carried by the District.
3. The policy(ies) covers *contractual liability*.
4. The policy(ies) is written on an *occurrence* basis.

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

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

Exhibit D
Sample Consulting and Professional Services Agreement

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

**CONSULTING AND PROFESSIONAL
SERVICES AGREEMENT FOR
EAST BAY MUNICIPAL UTILITY DISTRICT
(Project Title)**

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

WITNESSETH

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

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

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

IF OVER \$80,000:

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

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

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

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

ARTICLE 1 - SCOPE OF WORK

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

extensions of this project, at its own risk. CONSULTANT and its subconsultants may retain and use copies of such documents, with written approval of DISTRICT.

- 1.6 CONSULTANT is an independent contractor and not an employee of DISTRICT. CONSULTANT expressly warrants that it will not represent that it is an employee or servant of DISTRICT.
- 1.7 CONSULTANT is retained to render professional services only and all payments made are compensation solely for such services as it may render and recommendations it may make in carrying out the work.
- 1.8 It is further understood and agreed by the parties hereto that CONSULTANT in the performance of its obligations hereunder is subject to the control or direction of DISTRICT as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by the CONSULTANT for accomplishing the results.
- 1.9 If, in the performance of this agreement, any third persons are employed by CONSULTANT, such person shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONSULTANT, and DISTRICT shall have no right or authority over such persons or the terms of such employment.
- 1.10 It is further understood and agreed that as an independent contractor and not an employee of DISTRICT, neither the CONSULTANT nor CONSULTANT's assigned personnel shall have any entitlement as a DISTRICT employee, right to act on behalf of DISTRICT in any capacity whatsoever as agent, nor to bind DISTRICT to any obligation whatsoever. CONSULTANT shall not be covered by DISTRICT's worker's compensation insurance; nor shall CONSULTANT be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life or other insurance programs, or entitled to other fringe benefits payable by DISTRICT to employees of DISTRICT.

ARTICLE 2 - COMPENSATION

- 2.1 For the Scope of Services described in Exhibit A, DISTRICT agrees to pay CONSULTANT actual costs incurred, subject to a Maximum Cost Ceiling of **\$(dollars)**, plus a Professional Fee (prorata dollar profit). The Professional Fee shall be subject to a Professional Fee Ceiling of **\$(dollars)**. Total compensation under the Agreement shall not exceed a Maximum Agreement Ceiling of **\$(dollars)**. Compensation for services shall be in accordance with the method and amounts described in Exhibit B, attached hereto and incorporated herein. CONSULTANT acknowledges that construction work on public

works projects requires DIR registration and is subject to prevailing wage rates and includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work. CONSULTANT certifies that the proposed cost and pricing data used herein reflect the payment of prevailing wage rates where applicable and are complete, current, and accurate.

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

ARTICLE 3 - NOTICE TO PROCEED

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

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

- 3.2 DISTRICT may at its option issue a Notice to Proceed for some or all of the Optional Services tasks described in Exhibit A.

ARTICLE 4 - TERMINATION

- 4.1 This Agreement may be terminated by DISTRICT immediately for cause or upon 10 days written notice, without cause, during the performance of the work.
- 4.2 If this Agreement is terminated CONSULTANT shall be entitled to compensation for services satisfactorily performed to the effective date of termination; provided however, that DISTRICT may condition payment of such compensation upon CONSULTANT's delivery to DISTRICT of any and all documents, photographs, computer software, videotapes, and other materials provided to CONSULTANT or prepared by CONSULTANT for DISTRICT in connection with this Agreement. Payment by DISTRICT for the services satisfactorily performed to the effective date of termination, shall be the sole and exclusive remedy to which CONSULTANT is entitled in the event of termination of the Agreement and CONSULTANT shall be entitled to no other compensation or damages and expressly waives same. Termination under this Article 4 shall not relieve CONSULTANT of any warranty obligations or the obligations under Articles 1.4 and 7.1.

(Optional)

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

ARTICLE 5 - PROJECT MANAGERS

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

ARTICLE 6 - CONTRACT EQUITY PROGRAM COMPLIANCE

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

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

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

ARTICLE 7 - INDEMNIFICATION AND INSURANCE

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

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

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

7.1 Indemnification

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

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

7.1 Indemnification

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

7.2 *(For construction management support Agreements only)*

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.

7.3 *(For construction management support Agreements only)*

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

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

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

7.5 Insurance Requirements

CONSULTANT shall take out and maintain during the life of the Agreement all the insurance required in this ARTICLE, and shall submit certificates for review and approval by DISTRICT. The Notice to Proceed shall not be issued, and CONSULTANT shall not commence work until such insurance has been approved by DISTRICT. The certificates shall be on forms provided by DISTRICT. (*see*

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

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

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

[Certificate of Pollution Liability Insurance 8-23-11.doc](#)

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

7.6 Workers Compensation Insurance

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

7.7 Commercial General Liability Insurance

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

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

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

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

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

1. The DISTRICT, its Directors, Officers, and Employees are Additional Insureds in the policy(ies) as to the work being performed under this Agreement.
2. The coverage is Primary and non-contributory to any other insurance carried by DISTRICT.
3. The policy(ies) cover(s) contractual liability.
4. The policy(ies) is/are written on an occurrence basis.
5. The policy(ies) cover(s) District's Property in Consultant's care, custody and control.
6. The policy(ies) cover(s) personal injury (libel, slander, and wrongful entry and eviction) liability.
7. The policy(ies) cover(s) explosion, collapse and underground hazards.
8. The policy(ies) cover(s) products and completed operations.
9. The policy(ies) cover(s) use of owned, non-owned and hired automobiles.
10. The policy(ies) and/or a separate pollution liability policy(ies) shall cover pollution liability for claims related to the release or the threatened release of

pollutants into the environment arising out of or resulting from Consultant's performance under this agreement.

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

7.8 Professional Liability Insurance

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

ARTICLE 8 - NOTICES

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

(consulting firm's name)

(address)

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

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

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

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

P.O. Box 24055

Oakland, CA 94623-1055

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

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

ARTICLE 9 - MISCELLANEOUS

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

Consultant shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals

based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin in the performance of this contract. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

CONSULTANT shall include the nondiscrimination provisions above in all subcontracts.

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

ARTICLE 10 - TERM

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

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

EAST BAY MUNICIPAL UTILITY DISTRICT

By: _____
(Name),
(Title)

Date _____

Approved As To Form

By: _____
for the Office of the General Counsel

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

By: _____
(Name),
(Title)

Date _____

EXHIBIT A

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

SCOPE OF SERVICES

I. CONSULTANT SERVICES

CONSULTANT shall provide the following:

Contracted Services

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

Optional Services

(State each task with associated task number)

II. PROJECT SCHEDULE

(List schedule milestones and completion dates)

EXHIBIT B

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

CEP COMPLIANCE

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

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

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