



## EAST BAY MUNICIPAL UTILITY DISTRICT

### REQUEST FOR STATEMENT OF QUALIFICATIONS (RSQ) EEO INVESTIGATIONS, RELATED SERVICES, AND MEDIATIONS CONSULTANT ROSTER

#### RSQ PROCESS

The East Bay Municipal Utility District requests a Statement of Qualifications (SOQ) from firms interested in competing for placement on the EEO Investigations, Related Services, and Mediations Consultant Roster (EEO CR). Consultant selection for the roster will be completed utilizing the following process:

- The Qualifications Summary forms, SOQ and other related documents will be evaluated by a panel of District personnel based on criteria outlined in Sections 3 and 4.
- Firms that meet the requirements for the specified criteria will be placed on the roster in their specialized discipline(s).
- **FIRMS CURRENTLY ON THE ROSTER ALSO NEED TO SUBMIT A NEW SOQ.**
- Final consultant selection from the roster will be made by the District as services are required on a contract-by-contract basis.

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#### STATEMENT OF QUALIFICATIONS' LENGTH

Each firm will submit their SOQ in pdf format. The submittal shall be limited to the following number of pages:

- Transmittal Letter 1 Page  
(Stating as a minimum the location of the local office)
- Consulting Firm Information/Specialty Areas 2 Pages  
Discipline Selection
- Specialty Discipline Forms 9 Pages Maximum  
(Firm Experience/Key Personnel)
- Supplemental Qualification Information 9 Pages Maximum  
Applicable Experience (Firm and Key Personnel)  
Ability to Respond & Project Approach  
Contract Equity Program
- Contract Equity Program Form (P-25) NA
- Resumes (maximum two pages per person) NA

**Email** your electronic submission to [ccarlson@ebmud.com](mailto:ccarlson@ebmud.com) Attn: Courtney Carlson

All technical questions should be submitted in writing via the same email address.

## SECTION 1

### PROJECT INFORMATION

#### 1.1 BACKGROUND

The District is an Equal Employment Opportunity (EEO) employer and the investigation of EEO complaints is a state and federal requirement. Firms selected from the roster will provide professional services for a specific scope of work or support District staff in a number of EEO investigations, EEO-related services, mediations, and related specialties. Consultants may be used to either: (a) work independently on a specific project; or (b) supplement an in-house staff effort, in accordance with the District's Contract Equity Program & Equal Employment Opportunity Guidelines and procedures.

The District will use the roster in selection of consultants for contracts that do not exceed \$250,000. However, in **very limited** circumstances, District staff may receive a waiver to use a firm not on the roster from the Department Director.

#### 1.2 GOALS

The District goal for implementing the EEO CR approach is to shorten case lead time, decrease investigation costs. New additions to EEO CR will be effective immediately and will be active for at least two years with possible annual service and contract performance reviews and updates.

#### 1.3 EEO INVESTIGATIONS, RELATED SERVICES, AND MEDIATIONS CONSULTANT ROSTER (EEO CR)

##### 1.3.1 Qualifications Evaluation

The ability to meet the minimum qualification requirements will be judged solely on the information submitted in the Qualifications Summary Forms, Supplemental Qualification Information, and Resumes. The adequacy of response to the requested information will be evaluated by the District. A firm will not be included in the EEO CR if it fails to provide information in the required listed areas or demonstrate the required minimum qualification.

##### 1.3.2. Creation of the Roster

The roster will be created by listing those firms that best meet the qualifications in each of the specialized disciplines. Only those firms submitting in response to this RSQ will have the opportunity to be added to the current roster. The District will review the consultants' qualifications and select firms to include on the roster using the criteria described in this RSQ.

Within the life of the roster, new consulting firms may only be considered for addition to the roster during an advertised solicitation period.

### 1.3.3 Specialty Disciplines

Firms, teams, and joint ventures may ask to be included on any of the following specialty discipline rosters. The firm should be able to provide the specialty discipline in-house. The specialized disciplines for which the District requests consultants to submit are:

1. a. EEO Investigations and Consultation/Support/Training  
b. Coordination/Responses to EEOC/California Civil Rights Department (CRD – previously known as the DFEH)/External Agencies
2. EEO Care Services: Mediation, Facilitated Dialogues, Management Guidance, etc.

Additional specialty disciplines and associated firms may be added at any time during the term of the roster; for example, when these firms have successfully completed a solicitation process (RSQ/RFP/interview) in response to a waiver being granted.

### 1.3.4 Process for Selection from the Roster

The District's Diversity and Inclusion Office (DIO) is **responsible for selecting from the roster the best-qualified firm to be considered for each contract**. This selection will be based on the consultant's SOQ, including supplemental information on file at the time.

A tentative selection will be made based on the consultant who demonstrates the best ability to perform the scope of work in a timely and efficient manner. The DIO will select vendors based on their anticipated needs on a case-by-case basis and execute agreements in accordance with the guidelines set forth in this RSQ. **No contract, however, will be executed between the roster consultant and the District until the firm is selected and approved for a specific project and a contract is properly executed by both parties.** Contracts over \$80,000 will be approval will be by the Board of Directors.

**The District's standard professional services agreement must be used.** A sample of the Standard Professional Services Agreement is provided in Section 6.

### 1.3.5 Other Considerations

In addition to meeting the criteria specified elsewhere in this document, consultants wishing to be placed on the District's consultant roster must comply with the following:

1. **Only consultants selected from this RSQ/SOQ process will be placed on the roster. Additions to the roster may only be made as described in Sections 1.3.2 and 1.3.3 of this RSQ.**
2. The roster will remain active for at least two (2) years from the date it is established. Consultants are required to provide the resources requested by the District at any time during the life of the roster. **Should the consultant be unable to provide requested services when asked on more than two occasions within a two (2) year period, the District reserves the right to remove that firm from the roster.**
3. Consultants placed on the roster will be required to keep their SOQ including supplemental information up-to-date. While the roster is active, if any circumstances arise that affects the firm's ability or alter their qualifications to provide the services in

the specialized areas, the consultant shall notify the Manager of Diversity and Inclusion, Janella Sambour-Wallace, or the EEO CR Contract Technical Support Assistant, Courtney Carlson, within fourteen (14) calendar days at 510-287-0710 or by email at Courtney.carlson@ebmud.com

4. Consultants on the roster must comply with District standard insurance requirements (Automobile, General Liability, Professional Liability, Worker's Compensation, and Cyber Liability). The District's standard insurance minimum requirements are summarized as follows:

**Automobile**

\$2,000,000/Occurrence, Bodily Injury, Property Damage

**General Liability**

\$2,000,000/Occurrence, Bodily Injury, Property Damage

**Professional Liability (Errors and Omissions)**

\$2,000,000 Liability Coverage

**Worker's Compensation (Including Employer's Liability Insurance)**

\$1,000,000/Occurrence, Bodily Injury, Disease

**Cyber Liability Insurance**

\$2,000,000 Liability Coverage

More details can be found in Exhibit D (pages 30 – 39 of this document).

However, for a specific contract, higher insurance requirements may be required.

5. When consultants are hired to support District's DIO team, the District will perform the project management and coordinate and direct the work of the selected consultants. A project may require one or more disciplines to be contracted out to consultants, each representing their specialized area. In this case, the roster consultants will not be required to perform overall project management, but will need to cooperate and interact with District DIO staff and other roster consultants. The roster consultants will be required to ensure that their work is performed to the required quality, approved budget, and schedule; and will be responsible for the deliverables that they produce.

## SECTION 2

### PRELIMINARY SCOPE OF CONSULTANT WORK

#### SCOPE OF WORK

##### **Subspeciality 1a: EEO Investigations and Consultation/Support/Training and Subspeciality 1b: Coordination/Responses to EEOC/California Civil Rights Department (CRD – previously known as the DFEH)/External Agencies**

The scopes for the individual projects will vary and will be defined by the District's Contract/Project Manager when the firm is selected from the roster. A general description of the typical duties and responsibilities in each of the specialized areas is provided below and may or may not represent the actual tasks requested by the District. Investigation cost estimates must also be provided.

CONSULTANT shall provide the following:

CONSULTANT is being retained to conduct an impartial investigation of or provide support for an internal DIO complaint or an externally filed CRD (previously known as DFEH) and/or EEOC and/or other external agency complaint. CONSULTANT may also be requested to provide training to EBMUD employees and consultation and/or support to the DIO. CONSULTANT will stay within this scope unless specifically authorized by DISTRICT to modify or expand the scope. CONSULTANT shall interview witnesses, collect, and review pertinent information and records, and report to DISTRICT on that information. CONSULTANT will provide DISTRICT a report of the factual determination on each claim. The report will provide the bases for the factual findings which the DISTRICT will review for adequacy of evidentiary support. CONSULTANT will issue a final report which addresses DISTRICT questions on evidence and/or other questions related to the factual record. CONSULTANT may be required to draft for the DISTRICT an advisory memo on policy determinations in a format consistent with the District's standards for determination letters. This advisory memo will summarize whether the factual determinations, as set forth in CONSULTANT's final report, support a finding that the District's DIO policies and procedures have been violated with respect to each claim. This advisory memo is for advisory purposes only and the DISTRICT will have sole and exclusive discretion on making the final policy determinations for each claim to ensure consistency with District's past practices and interpretation and application of its own policies and procedures. With respect to the investigation report or the advisory memo on the policy determinations, CONSULTANT's findings and conclusions shall not be pre-determined and shall be solely based on the evidence gathered from its investigation. CONSULTANT will reach their findings based on their impartial and professional evaluation of the evidence.

Optional: This provision applies only if the firm provides legal services. This Agreement creates an attorney/client relationship between DISTRICT and CONSULTANT. As an attorney, CONSULTANT will use their employment law and investigation expertise to conduct impartial fact-finding. It is understood that in this engagement CONSULTANT will not render legal advice as to what action to take as a result of the findings of the investigation. Rather,

DISTRICT’S regular employment counsel is solely responsible for providing DISTRICT with legal advice relating to this matter including: whether the investigation is privileged or non-privileged, steps to take to preserve evidence uncovered during the investigation, the scope of issues to be investigated, the consequences of revealing the report to third parties, the legal implications of the factual findings and actions DISTRICT should take based on the results of the investigation, how to advise employees regarding keeping the investigation confidential and any other matters other than the investigation itself. The investigation is subject to the attorney-client privilege unless and until DISTRICT waives such privilege or a court determines that some or all of the investigation is not subject to the privilege.

In addition, CONSULTANT’s responsibilities include but are not limited to:

- Review and be familiar with all EBMUD EEO policies/procedures, including Policy 6.06 “Equal Employment Opportunity (EEO),” Policy 6.07 “Prevention of Workplace Harassment,” Procedure 227 “Equal Employment Opportunity (EEO) Discrimination, Harassment and Retaliation Complaints, Investigations and Appeals” and EEO Advisement of Rights and Responsibilities
- Provide an estimate of timeline, hours, and cost to perform the investigation
- Consult with Diversity and Inclusion Officer and/or designated DIO staff as necessary over scope and direction of investigation
- Provide status updates on the progress of the investigation, as requested by the Diversity and Inclusion Officer and/or designated DIO staff
- Maintain strict confidentiality
- Review documentation
- Conduct all necessary investigative interviews, including the intake interview
- Record interview (if agreed to by employee) and provide written interview notes of investigation interviews
- Conclude investigation and prepare report of factual findings to the Diversity and Inclusion Officer within agreed-to deadline(s)
- Comply with the Investigative Consumer Reporting Agencies Act (ICRAA) as amended by AB 655, AB 1068, and AB 2868 when investigations of wrongdoing of existing employees are performed by a third party, and with California Private Investigator Act, if/as appropriate
- In the event of litigation, CONSULTANT must provide documents to the DIO relating to the investigation upon request and/or may have to appear at a specified place and time for a deposition, arbitration, or other court proceeding.
- Provide EEO training (including required EEO compliance training) to EBMUD employees and/or parties as identified by the DIO
- Consult with the DIO on EEO case matters and related services
- In the course of an EEO investigation, if CONSULTANT identifies systemic bias/racism or similar issues, CONSULTANT may be requested to investigate such matters and provide recommendations to address such issues. In that case, CONSULTANT may need to coordinate with designated District staff outside of the DIO, per the DIO’s direction.

**Subspecialty 2: EEO Care Services: Mediation, Facilitated Dialogues, Management Guidance, etc.**

CONSULTANT shall provide the following:

CONSULTANT is being retained to conduct mediations, facilitated dialogues, assist with management concerns, and related matters as it pertains to the DIO and/or EEO concerns/cases.

CONSULTANT may be tasked with developing an EEO-care plan, which may include repairing/restoring relationships between parties, on a case-by-case basis. CONSULTANT will stay within this scope unless specifically authorized by DISTRICT to modify or expand the scope. CONSULTANT shall meet with parties designated by the DIO to discuss voluntary participation in an EEO care process, to conduct mediations/facilitated dialogue, etc.

CONSULTANT may have to review documentation and must maintain strict confidentiality.

CONSULTANT will consult with Diversity and Inclusion Officer and/or designated DIO staff as necessary over scope and direction of EEO care approach and will provide status updates on the progress of the EEO care plan, as requested by the Diversity and Inclusion Officer and/or designated DIO staff.

## SECTION 3

### STATEMENT OF QUALIFICATIONS

#### QUALIFICATIONS SUMMARY FORM

To be considered for placement on the roster, your firm must complete the Qualification Summary Forms pages 1 – 9 along with a description of services. The qualifications summary must provide information to demonstrate that the firm(s) and the person(s) proposed for this specialty area meet the minimum qualifications. References, including names and current telephone numbers of individuals who can verify time, budget, and quality of referenced work, must be provided for all qualifying investigation, external agency response, and/or mediation experience.

#### MINIMUM QUALIFICATIONS

##### 1. The Firm

The consulting firm must provide information, which demonstrates its experience as a consultant or subconsultant on projects within its chosen specialized discipline(s). If the consultant has experience being on a roster for another public agency that experience should be described. Specifically, the District requires that the consultant describe two examples of work product deliverables (e.g., investigation report, responses to the CRD (previously known as DFEH) and/or EEOC, etc.) relating to the discipline for which the consultant is applying. Please indicate if and how the referenced work products were used and give client contact information:

- Provide two (2) examples of providing EEO Investigations, EEO-related services, EEO compliance training, and/or legal analysis. Please redact all identifying information.
  - Please include examples of any counseling and recommendations you have made to managers for an employee who has violated EEO policies.
- If applying to be included on the External Agency Response Roster, provide one (1) example of a response you drafted on behalf of a client. Please redact all identifying information.
- If applying to be included on the EEO Care Services (such as mediation) Roster, provide two (2) examples of providing a mediation or facilitated dialogue based on EEO and/or Diversity, Equity, and Inclusion (DEI) topics/cases. At least one example must be between a manager and their direct report.
- Examples must be within the last **five years**.
- Consultant may or may not have been the lead firm.

If the firm is on the roster of a similar agency (city or utility), provide the agency's name, contact person, phone number and email address (if available.)



## 2. Key Personnel

The consulting firm must provide the key personnel qualifications and experience (primarily technical), resumes for each person listed for the specialized discipline in which the firm is submitting, and include client references for each individual. The personnel assigned must meet the minimum requirements outlined below:

- Key personnel, including an applicant who is an individual consultant, must have at least five years of experience in their respective discipline.
- Key personnel, in their respective disciplines, shall possess all permits, licenses, and professional credentials necessary to perform services as specified under this RSQ.
- Additionally, key personnel must have demonstrated their capabilities on at least three projects within the last 2 years.

The consulting firm must clearly indicate the specialized discipline(s) for which the key personnel are being proposed.

The consultant must designate at least one SOQ Manager/Key Personnel who will be the primary client contact for the firm using the Key Personnel form (Qualification Summary Form page 9). Up to six (6) names may be included on the Key Personnel form. The Project Manager may be one of or the sole key personnel.

## SECTION 4

### SUPPLEMENTARY QUALIFICATIONS INFORMATION

#### CONTENTS

The section shall be organized and written to demonstrate capabilities and experiences of the firm and its key personnel as a roster consultant. Your written responses shall address, as a minimum, each of the following topics.

As a public agency, the District is subject to the California Public Records Act and cannot guarantee confidentiality. Public contracts are public records under District policy and the Public Records Act. If proprietary information or confidentiality clauses included in the statement of qualifications or part of it becomes part of the final contract, then the information **will no longer be confidential**.

#### **Firm's Experience**

Describe the following:

- Being a roster consultant in the specified areas of expertise.
- Being a consultant for EBMUD

#### **Key Personnel's Experience**

Describe the following:

- Acting as an investigator in workplace investigations related to Equal Employment Opportunity (EEO)
- Conducting EEO-compliance trainings
- Ability to prepare responses to externally filed CRD (previously known as DFEH) and/or EEOC and/or other external agency charges of EEO discrimination, harassment and/or retaliation allegations
- Conducting workplace mediations, facilitated dialogues, etc. that result in the restoration of a productive work environment
- Ability to efficiently deliver quality reports that are objective, thorough, and timely.

#### **Ability to Respond**

Describe how your firm will be responsive to the District's requests for services given that you may be provided short notice or receive high-priority requests.

#### **Project Approach**

As stated previously, the District will use the Roster when services are needed to either augment a DIO team or to provide investigation, mediation, or other EEO-related services. Consultants must be able to provide a timely turnaround, especially for urgent requests.

### **Contract Equity Program**

The District adopted the Contract Equity (CE) Program establishing contract objectives of 25% white men, 25% ethnic minorities (men & women) and 6% white women. The CE Program also includes small business incentives that allow contracts less than or equal to \$80,000 to be set-aside and allow special consideration for small businesses on all contract awards. The District encourages local business participation and allows special consideration for local businesses on all contract awards.

### **SOQ EVALUATION**

The District will convene a roster selection panel to evaluate consultant SOQs. The following criteria will be used to evaluate consultant SOQs:

#### **Experience**

- Ability to meet the minimum technical requirements described in Section 3 and included on the Qualifications Summary Form.
- Demonstrate the ability to ensure efficient completion of quality work in a timely manner, especially for urgent requests.
- Demonstrate the capability of providing well-coordinated, objective, and thorough reports requiring minimal revisions.
- Demonstration that key personnel will be appropriately available and can communicate and work effectively with others.

#### **Approach to Work**

- State understanding of the process using the roster.

#### **Contract Equity Program**

- Demonstrate the consultant's ability to contribute to the fulfillment of the contracting objectives on each specific project.
- Complete and submit with SOQ the District Form P-025 – Employment Data and Certification (enclosed with this RSQ package.)

## SECTION 5

### INTERVIEW/SELECTION

#### INTERVIEW

No interviews are scheduled for the selection of EEO CR discipline consultants. However, selection of consultants from the roster may be interviewed prior to selection for specific projects.

#### CONSULTANT SELECTION FOR ROSTER

A District panel will evaluate the consultants' qualifications and supplemental information as a part of its roster selection procedure. The panel will select the consultants for the roster in each specialized area. Consultants will be formally notified of the panel's selections to the roster.

#### CONSULTANT SELECTION FOR A PROJECT

Consultant selection for a specific project following placement on the roster will be recommended by District staff.

District staff must use the EEO CR for professional services contracts less than or equal to \$250,000 in the listed three (3) specialty disciplines listed in Section 1.3.3. Therefore, District staff must review all applicable Statements of Qualifications from firms on the Roster.

The District Contract/Project Manager needs to receive only one (1) letter proposal for contracts less than or equal to \$25,000.

The District's Contract/Project Manager must contact enough firms to receive at least two (2) letter proposals for contracts that exceed \$25,000 and are less than or equal to \$80,000. (The District goal is to award at least 50% of contract awards less than or equal to \$80,000 to small businesses.)

For contracts that exceed \$80,000, at least 3 (letter) proposals must be received. Generally, for contracts that exceed \$80,000, **only one contract is allowed within a twelve-month period** per consultant for each EEO CR specialty.

When the number of proposals is less than stipulated and the project time to start is not of the essence as determined by the Division Manager, additional outreach shall be made to several firms. If no additional proposals are presented and the one(s) received are deemed responsive and qualified, the Division Manager can approve the award.

The District's Contract/Project Manager may hold panel interviews as part of the selection process. However, panel interviews are recommended for contract awards that exceed \$250,000.

The Contract/Project Manager selects consultant and negotiates a contract. All contract awards will comply with applicable District contract award guidelines. Currently, the Board of Directors approves agreements that exceed \$80,000 and the General Manager must approve

agreements between \$30,000 and \$80,000. Visit <http://www.ebmud.com/business/professional-and-general-services-proposals> for a copy of the Standard Consulting Agreement for Contracts Greater than \$80,000.

SECTION 6

SAMPLE STANDARD PROFESSIONAL SERVICES AGREEMENT

CONSULTING AND PROFESSIONAL  
SERVICES AGREEMENT FOR  
EAST BAY MUNICIPAL UTILITY DISTRICT

*EEO Investigation Services, EEO Care Services, etc. for East Bay Municipal Utility District*

THIS AGREEMENT is entered into this \_\_ day of *Month*, 2022, by and between the **EAST BAY MUNICIPAL UTILITY DISTRICT**, a public entity, herein called "DISTRICT" " and [Consultant's Name and entity type], herein called "CONSULTANT".

WITNESSETH

Whereas, DISTRICT requires consulting services to assist EBMUD's Diversity and Inclusion Office with **EEO Investigations and Consultation/Support/Training, Coordination/Responses to EEOC/CRD (previously known as DFEH)/External Agencies, and/or EEO Care Services: Mediation, Facilitated Dialogues, Management Guidance;** and such services are authorized by Purchase Order No. \_\_\_\_\_; and

WHEREAS, CONSULTANT represents that it has the experience, qualifications, staff, and expertise to perform said services in a professional and competent manner;

NOW, THEREFORE, it is mutually agreed by DISTRICT and CONSULTANT as follows:

1. Scope of Services. CONSULTANT agrees to furnish services as set forth in the Scope of Services attached hereto as Exhibit "A" and incorporated herein. The work to be performed pursuant to this Agreement shall be completed as outlined in the project schedule.
2. Compensation. DISTRICT agrees to pay CONSULTANT for services under this Agreement according to the rates in attached Exhibit "B" and incorporated herein, provided that total costs shall not exceed the Agreement Ceiling of **\$(dollars)**.
3. Commencement of Work. This Agreement shall become effective upon execution of the second signature. CONSULTANT shall commence work upon receipt of an email from Jennella Sambour-Wallace, Manager of Diversity and Inclusion, authorizing CONSULTANT to commence work. No work shall commence until Ms. Sambour-Wallace has sent such email.

4. Billing and Payment. CONSULTANT shall invoice DISTRICT monthly for services rendered, setting forth a description of the costs incurred, the services performed, the date the services were performed, the amount of time spent on each date services were performed and by whom. CONSULTANT shall also provide any information which will assist DISTRICT in performing any audit of the invoices. DISTRICT will pay CONSULTANT within thirty (30) days after receipt of a proper CONSULTANT invoice. CONSULTANT agrees to use every appropriate method to contain its fees and costs under this Agreement.

5. Termination. This Agreement may be terminated by DISTRICT immediately for cause or upon 10 days written notice, without cause, during the performance of the work.

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, data, designs, drawings, report, manuals, photographs, computer software, videotapes, and other materials provided to or prepared by CONSULTANT 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 and CONSULTANT shall be entitled to no other compensation or damages including, but not limited to, loss of anticipated profits, and expressly waives the same.

6. Release of Information. 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 as further provided for in Exhibit C attached hereto and incorporated herein. The covenants contained in this paragraph shall survive the termination of this Agreement for whatever cause.

7. Ownership of Materials Prepared. 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.

8. Designation of Consulting Personnel. CONSULTANT agrees that all services under this Agreement shall be performed under the direction of [**Contract Manager**]. Any change of personnel by CONSULTANT shall have DISTRICT approval. DISTRICT contact throughout the period of this Agreement shall be [**Contract Manager**].

9. Independent Contractor and Professional Responsibility of Consultant.

a. 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. CONSULTANT is an independent consultant and not an employee of DISTRICT. CONSULTANT expressly warrants that it will not represent that it is an employee or servant of DISTRICT. CONSULTANT represents that it has all necessary licenses to perform the work and shall maintain them during the term of this Agreement. Acceptance by DISTRICT of the work performed under this Agreement does not operate as a release of CONSULTANT from its professional responsibility for the work performed.

b. 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.

c. 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.

d. 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.

10. 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.



11. Insurance Requirements.

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

12. Time of the Essence. CONSULTANT agrees to diligently perform the services to be provided under this Agreement in accordance with the schedule specified herein. In the performance of this Agreement, time is of the essence.

13. Notice. Any notice or communication given under this Agreement shall be effective when deposited postage prepaid with the United States Postal Service and addressed to the contracting parties as follows:

EBMUD  
P. O. Box 24055  
Oakland, CA 94623  
Attn: *Contact Name*

[Consultant Name]  
Address  
Attn:

Either party may change the address to which notice or communication is sent by providing advance written notice to the other party.

14. Entire Agreement and Governing Law. This Agreement shall be governed by the laws of the State of California and constitutes the entire Agreement of the parties, superseding all prior agreements written or oral and superseding the reverse side of the purchase order, between them on the subject.

15. No Assignment or Modifications. This Agreement is to be binding on the successors and assigns of the parties hereto. The services called for herein are deemed unique and except as provided herein CONSULTANT shall not assign, transfer, subcontract, or otherwise substitute its interest in this Agreement or any of its obligations herein without the written consent of DISTRICT. This Agreement may be modified only by a written amendment signed by the parties.

16. No Waiver. 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.

17. No Discrimination. 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, or any other protected category provided for by federal and state anti-discrimination statutes. 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.

18. Conflict of Interest. 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.
19. Term. Unless terminated pursuant to Article 5 herein, this Agreement shall expire when all tasks have been completed and final payment has been made by DISTRICT.
20. Digital Signatures. The Parties agree that this Agreement may be executed using digital signatures.

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 \_\_\_\_\_

*Note: Exhibit A – Scope of Services is on pages 5-7 of this document.*

## **EXHIBIT B**

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

*EEO Investigation Services, EEO Care Services, etc. for East Bay Municipal Utility District*

### **COMPENSATION**

#### **A. Hourly Rates**

Consultant Name	\$RATE/hour
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These hourly rates include salary, overhead and profit. Unless expressly agreed in writing prior to expenses being incurred, the DISTRICT will not reimburse the CONSULTANT for the following types of costs and expenses, which shall be considered part of the CONSULTANT's overhead included in the hourly billing rates:

- 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 or overnight 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.

In the event any person involved in this matter pursues further remedies against DISTRICT, DISTRICT will pay fees at the current hourly rate of the CONSULTANT attorney involved for any time spent as a witness in deposition, court, administrative, or other proceedings, irrespective of who may call us as a witness, including preparation time. However, such fees shall not apply to any action or proceeding that claims negligence, malpractice, errors or omissions, or willful misconduct on the part of the CONSULTANT attorney.

**EXHIBIT C**  
**East Bay Municipal Utility District**  
**DATA SECURITY REQUIREMENTS**

**1. DEFINITIONS**

- 1.1. “Authorized Employees” means Consultant’s employees who have a need to know or otherwise access Protected Information to enable Consultant to perform its obligations under this Agreement.
- 1.2. “Authorized Persons” means Authorized Employees and Consultant’s agents and Consultants who have a need to know or otherwise access Protected Information to enable Consultant to perform its obligations under this Agreement.
- 1.3. “Customer Information” means the name, address, phone number, account number and water usage data of any water or wastewater customer of the District.
- 1.4. “Days” shall mean calendar days.
- 1.5. “District Information” means all data to be handled by Consultant pursuant to the Services, including but not limited to Customer Information, Employee Information, Facilities Information and Personal Information.
- 1.6. “Employee Information” means an employee identification number, personnel records, and any Personal Information of a District employee.
- 1.7. “Facilities Information” means any data or records that could reveal details of critical District infrastructure or operations, including, but not limited to, reports, maps, drawings, databases, models, GIS information, and plans and schematics containing detailed information about the District’s water and wastewater infrastructure that, if released, could compromise the safety, integrity, and operations of the public water and wastewater system. Examples include the locations of security systems and security devices, services, pipelines, interceptors, aqueducts, valves, pressure zones, or details about major facilities (i.e., wet weather processing, treatment plants, pumping plants, and storage structures).
- 1.8. “Force Majeure” means any act of God, war, earthquake, fire, flood, storm, civil disobedience, court order, labor dispute, or other cause beyond a Party’s reasonable control Any acts of domestic or foreign hacking or cyberwarfare are specifically excluded from this definition of Force Majeure and do not excuse Consultant from performance.
- 1.9. “Highly-Sensitive Personal Information” means an individual’s:
  - 1.9.1. Government-issued identification numbers (including Social Security number, partial Social Security number, driver’s license number, or state-issued identification number);
  - 1.9.2. Financial account numbers, credit card numbers, debit card numbers, or credit

report information, with or without any required security codes, access codes, personal identification numbers, or passwords that would permit access to an individual's financial accounts; or

1.9.3. Biometric, genetic, health, medical, or medical insurance data.

1.10. "Personal Information" means information provided to Consultant by or at the direction of the District, information which is created or obtained by Consultant on behalf of the District, or information to which access was provided to Consultant by or at the direction of the District, in the course of Consultant's performance under this Agreement, that is:

1.10.1. Information that identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, email addresses, and other unique identifiers);

1.10.2. Information that can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, user identification and account access credentials or passwords, financial account numbers, credit or debit card numbers, credit report information, medical insurance data, answers to security questions, and other personal identifiers); and

1.10.3. All Highly-Sensitive Personal Information.

1.11. "Protected Information" means the following:

1.11.1. Customer Information.

1.11.2. Employee Information.

1.11.3. Facilities Information.

1.11.4. Personal Information.

1.12. "Security Breach" means any act or omission that gives rise to the reasonable belief of a material compromise to the security, confidentiality, or integrity of Protected Information or the physical, technical, administrative, or organizational safeguards put in place by Consultant or any Authorized Persons, or by the District should Consultant have access to the District's systems in the performance of the Services, that relate to the protection of the security, confidentiality, or integrity of Protected Information. Without limiting the foregoing, a material compromise shall include any unauthorized access to or disclosure or acquisition of Protected Information.

## **2. SECURITY OF PROTECTED INFORMATION**

2.1. Standard of Care.

2.1.1. Consultant acknowledges and agrees that, in the course of providing the Services, Consultant may create, receive, or have access to Protected

Information. Consultant shall comply with the terms and conditions set forth in this Agreement in its creation, collection, receipt, transmission, storage, disposal, use, and disclosure of Protected Information and be responsible for any unauthorized creation, collection, receipt, transmission, access, storage, disposal, use, or disclosure of Protected Information under its control or in its possession by all Authorized Persons. Protected Information is deemed to be the property of the District and is not the property of Consultant.

- 2.1.2. In recognition of the foregoing, Consultant agrees and covenants that it shall:
  - a. Keep and maintain all Protected Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use, or disclosure;
  - b. Not create, collect, receive, access, or use Protected Information in violation of law, including state, federal, and international law;
  - c. Use and disclose Protected Information solely and exclusively for the purposes for which the Protected Information, or access to it, is provided by the District to Consultant pursuant to the terms and conditions of this Agreement, and not use, sell, rent, transfer, distribute, or otherwise disclose or make available Protected Information for Consultant's own purposes or for the benefit of anyone other than the District; and
  - d. Not, directly or indirectly, disclose Protected Information to any person other than Authorized Persons.
- 2.2. Information Security.
  - 2.2.1. Consultant represents and warrants that its creation, collection, receipt, access, use, storage, disposal, and disclosure of Protected Information does and will comply with all applicable federal, state and international privacy and data protection laws, as well as all other applicable regulations and directives. Consultant will remain aware at all times of changes to all applicable federal, state and international privacy and data protection laws and promptly implement all procedures and practices as may be necessary to remain in compliance with the laws, in each case, at Consultant's sole cost and expense.
  - 2.2.2. Consultant shall implement and maintain a written information security program including appropriate policies, procedures, and risk assessments to safeguard data security and privacy that are reviewed by Consultant at least annually.
  - 2.2.3. Without limiting Consultant's obligations under Paragraph 2.2.1, Consultant shall implement administrative, physical, and technical safeguards to protect Protected Information from unauthorized access, acquisition, or disclosure, destruction, alteration, accidental loss, misuse, or damage that are no less rigorous than accepted industry best practices, the International Organization for Standardization's standards: ISO/IEC 27001 – Information Security Management Systems – Requirements and ISO/IEC 27002 – Code of Practice



for International Security Management, the National Institute of Standards and Technology (NIST) Cybersecurity Framework or Center for Internet Security, Critical Security Controls (CSC-20), and shall ensure that all such safeguards, including the manner in which Protected Information is created, collected, accessed, received, used, stored, processed, disposed of, and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement.

- 2.2.4. At a minimum, Consultant's safeguards for the protection of Protected Information shall include: (i) limiting access of Personal Information to Authorized Persons; (ii) securing, both physically and technologically, business facilities, data centers, paper files, servers, backup systems, and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (iii) implementing network, application, database, and platform security; (iv) securing information transmission, storage, and disposal; (v) implementing authentication and access controls within media, applications, operating systems, and equipment; (vi) encrypting Highly-Sensitive Personal Information stored on any media; (vii) encrypting Highly-Sensitive Personal Information transmitted over public or wireless networks; (viii) strictly segregating Protected Information from information of Consultant or its other customers so that Protected Information is not commingled with any other types of information; (ix) conducting risk assessments, penetration testing, and vulnerability scans and promptly implementing, at Consultant's sole cost and expense, a corrective action plan to correct any issues that are reported as a result of the testing; (x) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law; and (xi) providing appropriate privacy and information security training to Consultant's employees.
  - 2.2.5. During the term of each Authorized Person's employment or retention through subcontract by Consultant, Consultant shall at all times cause such Authorized Persons to abide strictly by Consultant's obligations under this Agreement. Consultant further agrees that it shall maintain a disciplinary process to address any unauthorized access, use, or disclosure of Protected Information by any of Consultant's officers, partners, principals, employees, agents, or Consultants.
  - 2.2.6. Within 15 days of making any material changes to Consultant's security program or administrative, physical, or technical safeguards to protect Protected Information from unauthorized access, disclosure, or use under Paragraphs 2.2.2 and 2.2.3 of this Agreement, Consultant shall notify the District of the change in writing.
- 2.3. Security Breach Procedures.
- 2.3.1. Consultant shall:

- a. Upon execution of this agreement, provide the District with the name and contact information for an employee of Consultant who shall serve as the District's primary security contact and shall be available to assist the District twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a Security Breach;
  - b. Notify the District of a suspected Security Breach as soon as practicable, but no later than twenty-four (24) hours after Consultant becomes aware of it; and
  - c. Notify the District of any suspected Security Breaches by reporting via email to [itsecurity@ebmud.com](mailto:itsecurity@ebmud.com). Once a suspected Security Breach has been confirmed, written notice should be provided to the District within twenty-four (24) hours of confirmation that a breach occurred.
- 2.3.2. Immediately following Consultant's notification to the District of a Security Breach, the parties shall coordinate with each other to investigate the Security Breach. Consultant agrees to fully cooperate with the District in the District's handling of the matter, including, without limitation: (i) assisting with any investigation; (ii) providing the District with physical access to the facilities and operations affected; (iii) facilitating interviews with Consultant's employees, agents and others involved in the matter; and (iv) making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law, regulation, industry standards, or as otherwise required by the District.
- 2.3.3. Consultant shall, at its own expense, use best efforts to immediately contain and remedy any Security Breach and prevent any further Security Breach, including, but not limited to taking any and all action necessary to comply with applicable data security and privacy rights, laws, regulations, and standards. Consultant shall reimburse the District for all actual costs incurred by the District in responding to, and mitigating damages caused by, any Security Breach, including all costs of notice and/or remediation.
- 2.3.4. Consultant agrees that it shall not inform any third party of any Security Breach involving Protected Information without first obtaining the District's prior written consent, other than to inform a complaining District customer that the matter has been forwarded to the District. Further, Consultant agrees that the District shall have the sole right to determine: (i) whether notice of the Security Breach is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies, or others as required by law or regulation, or otherwise in the District's discretion; and (ii) the contents of such notice, whether any type of remediation may be offered to affected persons, and the nature and extent of any such remediation.
- 2.3.5. Consultant agrees to maintain and preserve all documents, records, and other data related to any Security Breach.
- 2.3.6. Consultant agrees to reasonably cooperate with the District in any litigation, investigation, or other action deemed necessary by the District to protect its

rights relating to the use, disclosure, protection, and maintenance of the Protected Information.

2.4. Oversight of Security Compliance.

Upon the District's written request, to confirm compliance with this Agreement, as well as any applicable laws and industry standards, Consultant shall promptly and accurately complete a written information security questionnaire provided by the District, or a third party on the District's behalf, regarding Consultant's business practices and information technology environment in relation to all Protected Information being handled and/or services being provided by Consultant to the District pursuant to this Agreement. Consultant shall fully cooperate with such inquiries.

2.5. Return or Destruction of Protected Information.

At any time during the term of this Agreement at the District's written request or upon the termination or expiration of this Agreement for any reason, at the District's direction Consultant shall, and shall instruct all Authorized Persons to, promptly return to the District all copies, whether in written, electronic, or other form or media, of Protected Information in its possession or the possession of such Authorized Persons, or securely dispose of all such copies, and certify in writing to the District that such Protected Information has been returned to the District or disposed of securely. Consultant shall comply with all directions provided by the District with respect to the return or disposal of Protected Information.

2.6. Consultant acknowledges that any breach of its covenants or obligations set forth in Paragraph 2 may cause the District irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the District is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance, and any other relief that may be available from any court, in addition to any other remedy to which the District may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

### **3. BREACH OF AGREEMENT**

3.1. The following shall be considered a material breach of this Agreement:

3.1.1. Consultant's failure to comply with any of the security requirements of Paragraph 2.

### **4. INDEMNIFICATION**

4.1. Security Breach Indemnification. Consultant expressly agrees to defend, indemnify, and hold harmless the District and its Directors, officers, agents and employees from and against any and all loss, liability, expense, claims, suits, and damages, including attorneys' fees, arising out of or pertaining or relating to Consultant's, its associates', employees', subconsultants', or other agents' failure to comply with any of the

Security provisions of Paragraph 2 of this Agreement.

## **5. WARRANTIES AND REMEDIES**

- 5.1. Consultant warrants that the Services:
  - 5.1.1. Will conform to and perform in accordance with the requirements of this Agreement, including the Security provisions of Paragraph 2;
  - 5.1.2. Will be performed in a professional and workmanlike manner in accordance with industry standards and practices for similar services, using personnel with the requisite skill, experience, and qualifications, devoting adequate resources to meet its obligations under this Agreement;
  - 5.1.3. Will be provided free from harmful or malicious code;
  - 5.1.4. Will be provided in compliance with all applicable laws; and
  - 5.1.5. Will not infringe, misappropriate, or otherwise violate any Intellectual Property Right or other right of any third party.
- 5.2. In the event of any Security Breach or if the Services fail to comply with the warranties as stated in Paragraph 6, in addition to any equitable remedies provided in Paragraph 6, the District shall be entitled to any resulting direct and indirect damages. However, in no event shall Consultant's liability exceed the aggregate fees and reimbursable expenses under this Agreement, including amounts already paid and amounts that have accrued but not yet been paid.
- 5.3. The limitations on liability in Paragraph 6.2 shall not apply to:
  - 5.3.1. Losses resulting from Consultant's failure to comply with its obligations under Paragraph 2
  - 5.3.2. Losses resulting from any claim that the Services infringe, misappropriate, or otherwise violate any Intellectual Property Right or other right of any third party.
  - 5.3.3. Consultant's indemnification obligations under Paragraph 5;
  - 5.3.4. Losses resulting from Consultant's unauthorized or intentional suspension, termination, or disabling of the Services in breach of this Agreement;
  - 5.3.5. Losses resulting from Consultant's gross negligence or more culpable conduct, including any willful misconduct or intentional wrongful acts;
  - 5.3.6. Losses resulting from death, bodily injury, or damage to real or tangible personal property arising out of or relating to Consultant's negligent or more culpable acts or omissions; or
  - 5.3.7. Losses resulting from Consultant's violation of any law.

**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 subcontractor to carry and maintain the minimum insurance required in this Agreement to the extent they apply to the scope of the services to be performed by subcontractor.

D. Acceptance of verification of Insurance by the DISTRICT shall not relieve 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, subcontractor, and/or subcontractor's employees under the U.S. Longshore and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage is required for such injuries or claims.

D. If CONSULTANT is self-employed, a sole proprietorship or a partnership, with no employees, and is exempt from carrying Workers' Compensation Insurance, CONSULTANT must return the completed Verification of Insurance confirming that CONSULTANT has no employees and is exempt from the State of California Workers' Compensation requirements.

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**

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

**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 subcontractor under this Agreement.

F. Insurance policies and Additional Insured Endorsement(s) Coverage shall be included for all premises and operations in any way related to this Agreement.

G. There will be no exclusion for explosions, collapse, or underground liability (XCU).



H. Insurance policies and Additional Insured Endorsement(s) shall not exclude liability and damages to work arising out of, pertaining to, or in any way relating to services performed by Subcontractor on 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 Subcontractor's performance under this Agreement, then Auto Liability Insurance policies must be endorsed to include Transportation Pollution Liability insurance. Alternatively, coverage may be provided under the 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: \_\_\_\_\_**

**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 Subcontractor 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:** \_\_\_\_\_

**Cyber Liability Insurance Coverage**

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

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 CONTRACTOR.

F. Minimum Requirements: Cyber 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, CONTRACTOR must purchase an extended period of coverage for a minimum of three (3) years after completion of the Services.

E. Coverage shall include, but not be limited to the following:

1. Liability arising from the theft, dissemination and/or use of confidential information, including but not limited to, personally identifiable information (PII), protected health information (PHI), security codes, access codes, passwords, or personal identification numbers (PINS).
2. Notification costs, credit monitoring and other expert services, regulatory fines and penalties, and defense costs.
3. Network security liability arising from the unauthorized use of, access to, or tampering with computer systems.
4. Liability arising from the introduction of a computer virus into, or otherwise causing damage to vendor (first party) or customer's (third party) computer, computer system, network or similarly related property and the data, software, and programs thereon.

**Verification of Cyber Liability Insurance Coverage**

**As the CONTRACTOR'S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the CONTRACTOR carries Cyber 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: \_\_\_\_\_**



QUALIFICATION SUMMARY FORMS

FIRM INFORMATION			
<b>Company Name</b>			
<b>Address</b>			
<b>City, State, Zip Code</b>			
<b>Company Email/Website</b>			
<b>Small Business<sup>1</sup></b>		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>Contact Person</b>			
<b>Phone Number</b>			
<b>E-Mail Address</b>		<b>Fax Number</b>	
<b>Roster Experience with Another Agency</b>		<input type="checkbox"/> Yes <input type="checkbox"/> No	
<i>If yes, which agency/organization(s)</i>			

**Specialty Discipline(s) you are applying for:**

- EEO Investigations
  - Consultation
  - Support
  - Training
- Coordination/Responses to EEOC/CRD (previously known as DFEH)/External Agencies
- EEO Care Services
  - Mediations
  - Facilitated Dialogues
  - Management Guidance

<sup>1</sup>“Small Business”, as defined by the State, is an independently owned and operated business which is not dominant in its field of operation and which, together with affiliates, has 100 or fewer employees and average annual gross receipts of fifteen million dollars (\$15,000,000) or less over the previous three years or is a manufacturer with 100 or fewer employees.



**Can your firm provide the following standard level of insurance (per Exhibit D, pages 30 – 39)?**

**Automobile**

\$2,000,000/Occurrence, Bodily Injury, Property Damage  Yes  No

**General Liability**

\$2,000,000/Occurrence, Bodily Injury, Property Damage  Yes  No

**Professional Liability (Errors and Omissions)**

\$2,000,000 Liability Coverage  Yes  No

**Worker's Compensation**

\$1,000,000/Occurrence, Bodily Injury, Disease  Yes  No

**Cyber Liability Insurance**

\$2,000,000 Liability Coverage  Yes  No













**QUALIFICATION SUMMARY FORMS**

<b>KEY PERSONNEL IDENTIFICATION</b>				
<b>DISCIPLINE</b>				
<b>Role</b>	<b>Name and Title</b>	<b>Specialty Discipline Expertise</b>	<b>Years of Experience</b>	<b>Certification/License # (if applicable)</b>
<b>Project Manager</b>				
<b>Key Personnel #1</b>				
<b>Key Personnel #2</b>				
<b>Key Personnel #3</b>				
<b>Key Personnel #4</b>				
<b>Key Personnel #5</b>				



**QUALIFICATION SUMMARY FORMS**

PROJECT MANAGER/KEY PERSONNEL	
Submit one page for Project Manager and one page for each Key Personnel as listed on your Key Personnel Identification Form (Qualification Summary Form page 8)	
<b>Name of Person:</b>	
<b>Indicate if</b>	<input type="checkbox"/> Project Mgr. <input type="checkbox"/> Key Personnel
<b>Will any current or known future assignments limit availability to the District?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>If yes, please explain</b>	
Client* Information	
<b>Company Name</b>	
<b>Contact Person</b>	
<b>Contact Phone Number</b>	
<b>Contact Email Address</b>	
<i>*Client could also be experience gained working at a former company/public agency</i>	
<b>Description of Services:</b>	

**Copy this page as needed.**