

**CONSULTING AND PROFESSIONAL
SERVICES AGREEMENT FOR
EAST BAY MUNICIPAL UTILITY DISTRICT
Insurance Brokerage and Risk Management Services**

THIS Agreement is made and entered into this **1st day of January 2019**, by and between **EAST BAY MUNICIPAL UTILITY DISTRICT**, a public entity, hereinafter called "DISTRICT," and (***BROKER'S FULL LEGAL NAME, BOLD, ALL CAPS followed by type of entity [corporation, etc.]***), hereinafter called "BROKER."

WITNESSETH

WHEREAS, DISTRICT requires consulting services for insurance brokerage, advisory, marketing, and risk management services; and

WHEREAS, BROKER has submitted a proposal to provide consulting services for commercial insurance brokerage, advisory, marketing and risk management services. BROKER represents that it has the experience, licenses, qualifications, staff expertise required to perform said services in a professional and competent manner; and

WHEREAS, DISTRICT Board of Directors has authorized the contract by Motion Number **[enter number]**;

ARTICLE 1 - SCOPE OF WORK

- 1.1 BROKER 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 BROKER'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 BROKER provided that DISTRICT's Project Manager notifies BROKER of modified completion dates by letter. BROKER 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 BROKER has the professional skills necessary to perform the work agreed to be performed under this Agreement and that DISTRICT relies upon the professional skills of BROKER to do and perform BROKER's work in a skillful and professional manner, and BROKER thus agrees to so perform the work. BROKER represents that it has all the necessary licenses to perform the work and shall maintain them during the term of this Agreement. BROKER agrees that the work performed under this Agreement shall follow practices usual and customary to the insurance brokerage and risk management services profession and that BROKER is 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 BROKER from such professional responsibility for the work performed.

- 1.4 BROKER 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. BROKER 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 BROKER 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 BROKER 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. BROKER and its subconsultants may retain and use copies of such documents, with written approval of DISTRICT.
- 1.6 BROKER is an independent contractor and not an employee of DISTRICT. BROKER expressly warrants that it will not represent that it is an employee or servant of DISTRICT.
- 1.7 BROKER 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 BROKER 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 BROKER for accomplishing the results.
- 1.9 If, in the performance of this Agreement, any third persons are employed by BROKER, such person shall be entirely and exclusively under the direction, supervision, and control of BROKER. 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 BROKER, 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 BROKER nor BROKER'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. BROKER shall not be covered by DISTRICT's worker's compensation insurance; nor

shall BROKER 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, Section I “BASIC BROKERAGE SERVICES,” DISTRICT agrees to pay BROKER an annual fee as defined in EXHIBIT B of this Agreement.
- 2.2 For the Scope of Services described in EXHIBIT A, Section II “SUPPLEMENTAL SERVICES,” DISTRICT agrees to pay BROKER an annual fee as defined in EXHIBIT B of this Agreement.

ARTICLE 3 - NOTICE TO PROCEED

- 3.1 This Agreement shall become effective upon execution of the second signature. BROKER 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 EXHIBIT B – COMPENSATION. No work shall commence until the Notice to Proceed is issued.
- 3.2 DISTRICT may at its option issue a Notice to Proceed for some or any or all of the Optional Services tasks described in Exhibit A. Compensation for Optional Services shall be in accordance with the method and amounts described in Exhibit B.

ARTICLE 4 - TERMINATION

- 4.1 This Agreement may be terminated by DISTRICT immediately for cause or upon ten (10) days written notice, without cause, during the performance of the work.
- 4.2 If this Agreement is terminated BROKER 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 BROKER's delivery to DISTRICT of any and all documents, photographs, computer software, videotapes, and other materials provided to BROKER or prepared by BROKER 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 BROKER is entitled in the event of termination of the Agreement and BROKER shall be entitled to no other compensation or damages and expressly waives same. Termination under this Article 4 shall not relieve BROKER of any warranty obligations or the obligations under Articles 1.4 and 7.1.

- 4.3 This Agreement may be terminated by BROKER upon ten (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 BROKER.
- 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 (*Karen K. Curry, Risk Manager or Vladimir Bessarabov, Workers' Compensation & Risk Specialist*) as its Project Managers, who shall be responsible for administering and interpreting the terms and conditions of this Agreement, for matters relating to BROKER's performance under this Agreement, and for liaison and coordination between DISTRICT and BROKER. BROKER 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 BROKER of the change in writing.
- 5.2 BROKER designates (***BROKER 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 BROKER designated personnel or subconsultant shall be subject to approval by the DISTRICT Project Manager.

ARTICLE 6 - CONTRACT EQUITY PROGRAM COMPLIANCE

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

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

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

ARTICLE 7 - INDEMNIFICATION AND INSURANCE

7.1 Indemnification

BROKER expressly agrees to defend, indemnify, and hold harmless DISTRICT and its directors, board, and committee members, officers, officials, employees, agents, and volunteers from and against any and all loss, liability, expense, claims, suits, and damages, including attorneys' fees, arising out of or resulting from BROKER'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 Insurance Requirements

Refer to EXHIBIT D

ARTICLE 8 - NOTICES

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

(consulting firm's name)

(address)

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

Any notice which BROKER 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:

Karen K. Curry, Risk & Division Manager

P.O. Box 24055

Mailstop 409

Oakland, CA 94623-1055

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 BROKER 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 BROKER 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. BROKER shall not establish or permit any such practice(s) of discrimination with reference to the contract or any part. BROKERS determined to be in violation of this section shall be deemed to be in material breach of this Agreement.

BROKER 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.

BROKER shall include the nondiscrimination provisions above in all subcontracts.

9.8 BROKER affirms that it does not have any financial interest or conflict of interest that would prevent BROKER 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: _____
Karen K. Curry, Risk Manager

Date _____

Approved As To Form

By: _____
Office of the General Counsel

Date _____

[ENTER CONSULTING FIRM'S NAME, ALL CAPS & BOLD]

By: _____
[Enter Name and Title] EXHIBIT A

Date _____

**East Bay Municipal Utility District
Insurance Brokerage and Risk Management Services**

SCOPE OF SERVICES

I. BASIC BROKERAGE SERVICES

BROKER shall provide the services in Section I and all direct and indirect costs associated with these services shall be included in the BROKER's annual fees:

1. Obtain property, casualty, workers' compensation, crime, boiler & machinery, and other insurance and technical services, as required by DISTRICT by marketing and negotiating terms, conditions and premiums with various insurance company underwriters, and providing appropriate alternatives and financial analysis of recommended insurance carriers. Submit quotes and BROKER recommendations for insurance renewals in the form prescribed by the DISTRICT no less than three weeks prior to the expiration date of each policy.
2. BROKER will assist DISTRICT with various risk management services to include, but not be limited to, risk and loss analysis, risk financing alternatives, marketing strategy, and determining appropriate self-insured retention levels, annual review and advisement of DISTRICT's standard insurance and indemnification language, routinely review and advise on appropriate insurance and indemnification requirements for DISTRICT contracts.
3. BROKER will update and trend DISTRICT property values for marketing of property insurance each year, if requested, for submission to the underwriters for annual property renewals.
4. BROKER will assist the DISTRICT in gathering data for underwriters for the DISTRICT's annual insurance renewals.
5. BROKER will provide supplemental and advisory claim consultation services on settlements, reserves, and claims to insurance companies as necessary, as requested by DISTRICT.
6. BROKER will arrange strategy meetings with Risk Manager in advance of marketing each line of insurance. In advance of meeting, review current policies, propose changes and improvements in coverage with the Risk Manager prior to marketing and renewals.
7. Notify excess insurance carriers as required by insurance policy to include claims with potential to exceed excess layers and/or specific injuries/illness as required by the policy.

8. BROKER shall draft memos for each line of insurance summarizing proposed insurance for renewals for the General Manager's approval and shall provide an annual memo summarizing the DISTRICT's insurance program for the Board of Directors.
9. Provide general liability and workers' compensation claims auditing services, as needed.
10. BROKER shall submit to the DISTRICT an invoice for all DISTRICT approved premiums for insurance policies negotiated between BROKER and underwriters within 30 days of receipt from the underwriter. DISTRICT shall process payments for premiums within 30 days of receipt of the invoice from the BROKER.
11. Provide invoices for insurance renewals and copies of audited policies within 30 days of renewal.
12. BROKER shall provide reports, draft memos and letters, as needed.

II. **SUPPLEMENTAL SERVICES:** All services listed in Section II are excluded from annual fees and shall be paid through excess commissions or fees. Compensation for supplemental services shall be paid at a reasonable market value based on the type of service provided and/or obtained. All services and rates must be pre-approved by the DISTRICT's Risk Manager.

If specifically requested by the DISTRICT's Risk Manager or delegate, BROKER shall provide services including, but not limited to:

1. Specialty fire protection engineering inspection services.
2. Specialty liability loss control services.
3. Specialty broker and/or risk management related services not listed in Section I and/or not directly available through BROKER.
4. Actuarial services.
5. Other brokerage or risk management-related services.

EXHIBIT B

East Bay Municipal Utility District Insurance Brokerage and Risk Management Services

COMPENSATION

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

1. DISTRICT agrees to pay BROKER an annual fee of [enter amount(s)] for each of the first three calendar years beginning January 1, 2019 through December 31, 2021.

The annual BROKER fees shall be paid out of the commissions and fees paid to the BROKER for placing insurance and/or other insurance services on behalf of the DISTRICT and shall not exceed the annual fee described in this AGREEMENT.

2. DISTRICT may renew this AGREEMENT for one or two, two-year terms following the end of the base contract period through December 31, 2021, at the DISTRICT's sole discretion. Should the DISTRICT elect to exercise the renewal options, the terms and conditions set forth in this AGREEMENT shall remain in effect unless changed by written amendment. Any agreement to increase the annual fees during the optional renewal period shall not exceed [enter amount] for each of calendar years 2022 and 2023 and [enter amount] for each of calendar years 2024 and 2025.
3. BROKER and/or its subsidiaries agree to disclose any and all commissions and/or fees of any kind earned by the Brokerage firm, BROKER, its subconsultants, or agents in association with this AGREEMENT from insurance companies and/or any party.
4. In the unlikely event that the commissions and fees earned by the BROKER during the term of this AGREEMENT, or any renewal period thereof, are inadequate to pay the BROKER's annual fee, BROKER shall submit an invoice to the DISTRICT no later than 30 days following the end of term for the difference due BROKER. DISTRICT shall pay such invoice as is due BROKER within 45 days of receipt of BROKER's proper invoice.
5. BROKER shall keep an accounting of all commissions and/or fees earned from insurance companies or service providers for placing DISTRICT's insurance coverage and shall provide DISTRICT with a copy of the accounting quarterly. Annual fees are earned and shall be paid to BROKER as follows:
 - a. 25% to be paid by 04/01/12 and each successive year,
 - b. 50% to be paid by 08/01/12 and each successive year,
 - c. 25% to be paid by 12/31/12 and each successive year.
6. If commissions and/or fees earned by BROKER exceed the annual fee, the commissions and/or fees earned in excess shall be held in an account by the BROKER and applied

toward expenses for DISTRICT Risk Management Services as requested and approved by the Risk Manager. BROKER shall refund the excess commissions within 30 days of any of the following events: 1) a written request by the DISTRICT's Risk Manager; or 2) termination of the AGREEMENT.

EXHIBIT C

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

CEP COMPLIANCE

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

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

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

EXHIBIT D
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, BROKER shall, at its sole cost and expense, maintain insurance in conformance with the requirements set forth in this RFP and in the final Agreement.
- B. BROKER shall submit the verification below for the DISTRICT's review and acceptance verifying compliance with all insurance requirements in this RFP and the final Agreement. The Notice to Proceed shall not be issued, and BROKER shall not commence Services until such insurance has been accepted by the DISTRICT.
- C. BROKER shall carry and maintain the minimum insurance requirements as defined in this RFP and the final Agreement. BROKER shall require any subcontractor to carry and maintain the minimum insurance required in this RFP and the final Agreement to the extent they apply to the scope of the services to be performed by subcontractor.
- D. Acceptance of the verification of Insurance by the DISTRICT shall not relieve BROKER of any of the insurance requirements, nor decrease liability of BROKER.
- E. The insurance required hereunder may be obtained by a combination of primary, excess and/or umbrella insurance, and coverage shall be at least as broad as the requirements listed in this RFP and the final Agreement.
- F. Any deductibles, self-insurance, or self-insured retentions (SIRs) applicable to required insurance coverage must be declared to and accepted by the DISTRICT.
- G. At the option and request of the DISTRICT, BROKER 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 additional insured (DISTRICT) at its sole and absolute discretion.
- I. Unless otherwise reviewed and 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- VII.
- J. BROKER shall defend the DISTRICT and pay any damages as a result of failure to provide the waivers of subrogation from the insurance carriers.
- 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 the final Agreement, and before the beginning of any Services related to the

final Agreement.

- L. Insurance must be maintained verification of compliance with the Insurance requirements must be provided to the DISTRICT annually throughout the term of the final Agreement and for at least three (3) years after expiration of the final Agreement for all claims-made policies.
- 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, BROKER 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. BROKER agrees to provide immediate Notice to the DISTRICT of any loss or claim against BROKER arising out of, pertaining to, or in any way relating to Services performed under the final 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. BROKER agrees, upon request by the DISTRICT, to provide complete, certified copies of any policies and endorsements within 10 calendar days of such request (copies of policies may be redacted to eliminate premium details.)
- Q. It is BROKER's responsibility to ensure its compliance with all of the insurance requirements in the final Agreement. Any actual or alleged failure on the part of the DISTRICT to obtain proof of insurance required under the final 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.
- R. 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 BROKER, should BROKER breach its obligations to maintain the required coverage and limits set forth in the final 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.

II. Workers Compensation and Employer's Liability

- A. Workers' Compensation insurance including Employer's Liability insurance with minimum limits as follows:

Coverage A. Statutory Benefits

Coverage B. Employer's Liability of not less than:

- i. Bodily Injury by accident: \$1,000,000 each accident
- ii. Bodily Injury by disease: \$1,000,000 each employee
- iii. Bodily Injury by disease: \$1,000,000 policy limit

- B. BROKER'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 BROKER is self-employed, a sole proprietorship or a partnership, with no employees, and is exempt from carrying Workers' Compensation Insurance, BROKER must provide written confirmation with annual verifications that BROKER has no employees and is exempt from the State of California Workers' Compensation requirements.
- D. If BROKER is self-insured with respect to Workers' Compensation coverage, BROKER 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."
- E. Waiver of Subrogation: Workers' Compensation policies, including any applicable excess and umbrella insurance, must contain a waiver of subrogation endorsement providing that BROKER 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. BROKER 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 BROKER's failure to provide the waiver of subrogation from the insurance carrier.

III. Commercial General Liability Insurance (CGL) Coverage

- A. BROKER'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 the final 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 BROKER.

- C. Minimum Requirements. CGL insurance with minimum per occurrence and aggregate limits as follows:
 - i. Bodily Injury and Property Damage \$5M per occur & aggregate
 - ii. Personal Injury/Advertising Injury \$5M per occur & aggregate
 - iii. Products/Completed Operations \$5M per occur & aggregate
- D. Coverage must be on an occurrence basis.
- E. 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 by BROKER and/or subcontractor under the final 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. 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 BROKER’s behalf.
- H. Contractual liability coverage shall be included and shall not limit, by any modification or endorsement, coverage for liabilities assumed by BROKER under this Agreement as an “insured contract.”
- I. Waiver of Subrogation: The policy shall be endorsed to include a Waiver of Subrogation ensuring that the BROKER 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. BROKER 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 BROKER’s failure to provide the waiver of subrogation from its insurance carrier(s).
- J. “Independent BROKER’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 the final Agreement.
- K. 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/or 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 BROKER, in any way related to Services performed under the final Agreement.

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

IV. Business Auto Liability Insurance Coverage

- A. BROKER'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 the final Agreement shall be the greater of (1) the minimum coverage and limits specified in the final 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 the final Agreement are sufficient to cover the obligations of the BROKER.
- C. Minimum Requirements. Auto insurance with minimum coverage and limits as follows:
 - i. Each Occurrence Limit (per accident) and in the Aggregate: \$5M
 - ii. Bodily Injury and Property Damage: \$5M
- D. Coverage must include either "owned, non-owned, and hired" autos or "any" automobile
- E. To the fullest extent permitted by law, the DISTRICT, its directors, board members, 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/or 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 BROKER, in any way related to Services performed under the final Agreement.
- F. A severability of interest provision must apply for all the Additional Insureds, ensuring that BROKER'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.

V. Professional Liability Insurance Coverage (errors and omissions)

- A. BROKER'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 the final Agreement shall be the greater of (1) the minimum coverage and limits specified in the final 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 BROKER.
- C. Professional Liability Insurance Minimum Requirements as follows:
- i. Each Claim or Occurrence Limit: \$10M
 - ii. Aggregate Limit: \$10M
- D. If Coverage is written on a claims-made form, the following shall apply:
- i. The retroactive date must be shown, and must be before the date of the Agreement or the beginning of the Services.
 - ii. Insurance must be maintained and verification of compliance with the insurance requirements must be provided annually for a minimum of three (3) years after completion of the Services.
 - iii. 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 final Agreement, BROKER 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 the final Agreement.
- F. Coverage shall be included for all premises and operations in any way related to this Agreement.

**Verification of Insurance for the Insurance Brokerage and
Risk Management Services Agreement
Effective January 1, 2019**

By signing below, I hereby certify that I have the authority to verify that the Brokerage Firm's insurance is in compliance with the requirements in this Insurance Brokerage and Risk Management Services Agreement:

Name of Brokerage Firm

Print Name

Print Title

Signature

Date