

REQUEST FOR PROPOSAL (RFP) for **THIRD PARTY ADMINISTRATION SERVICES FOR PROPERTY DAMAGE CLAIMS**

ADDENDA

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

CONTACT

Kim Damico, Risk Management Analyst
(510) 287-0413
kim.damico@ebmud.com

RESPONSE DUE

January 13, 2023, by 4:00 PM
12:00 p.m. PST

SUBMIT ELECTRONICALLY TO*

Kim Damico, EBMUD
kim.damico@ebmud.com

**Hardcopy proposals will not be accepted*

EAST BAY MUNICIPAL UTILITY DISTRICT

RFP for

Third Party Administration Services for Property Damage Claims

TABLE OF CONTENTS

STATEMENT OF WORK	3
A. SCOPE.....	3
B. PROPOSER QUALIFICATIONS	3
C. BACKGROUND	3
D. SPECIFIC REQUIREMENTS	5
E. REPORTS	12
CALENDAR OF EVENTS	13
A. OPTIONAL PRE-PROPOSAL CONFERENCE	13
B. ORAL PRESENTATIONS	13
DISTRICT PROCEDURES, TERMS, AND CONDITIONS	14
A. RFP ACCEPTANCE AND AWARD.....	14
B. EVALUATION CRITERIA/SELECTION COMMITTEE	14
C. PRICING.....	15
D. NOTICE OF INTENT TO AWARD AND PROTESTS.....	16
E. INVOICING	17
RFP RESPONSE SUBMITTAL INSTRUCTIONS AND INFORMATION	17
A. DISTRICT CONTACTS	17
B. SUBMITTAL OF RFP RESPONSE	18
C. RESPONSE FORMAT	19

ATTACHMENTS

EXHIBIT A - RFP RESPONSE PACKET

EXHIBIT B - CONSULTING AND PROFESSIONAL SERVICES AGREEMENT

EXHIBIT C - IRAN CONTRACTING ACT CERTIFICATION

EXHIBIT D - SAMPLE REPORTS

STATEMENT OF WORK

A. SCOPE

It is the intent of this Request for Proposal to solicit proposals from firms qualified to provide third party administration (TPA) services for property damage claims for East Bay Municipal Utility District.

East Bay Municipal Utility District (District) intends to award a three (3) year contract commencing March 1, 2023, with two (2) options to renew for successive two (2) year terms to the Proposer who best meets the District's requirements.

B. PROPOSER QUALIFICATIONS

The District is looking for a TPA partnership that will deliver objective and measurable results that will reduce the cost and duration of property damage claims, provide property damage claims processing in a timely and professional manner, and maintain strong communications with the claimant and the District.

Interested and qualified TPAs who have demonstrated ability to administer self-insured property damage claims successfully are invited to submit proposals, provided the following minimum requirements are met:

1. Proposer Minimum Qualifications

- a. Proposer shall have been regularly engaged in the business of providing third party self-insured administration services under the for at least five (5) years.
- b. Proposer shall possess all permits, licenses, and professional credentials necessary to perform services as specified under this RFP.
- c. The claims examiner assigned to the District's claims must be located within 60 miles of District's headquarters (Oakland, 94607).
- d. Proposer shall provide an on-line claim reporting system, allowing 24/7 real-time access and on-demand reporting capabilities. The ability to provide daily download of all claims data including payments in a predetermined format to update the District's Risk Management computer system is desirable.

C. BACKGROUND

The District supplies water and provides wastewater treatment for parts of Alameda and Contra Costa counties in California. The District is a California special district formed

under the Municipal Utility District Act with a seven-member publicly elected Board of Directors.

Residents voted in 1923 to organize the East Bay Municipal Utility District in response to an uncertain local water supply and periodic water shortages. Pardee Dam was completed in 1929 which was the highest in the world at the time. The first water deliveries were made using the Mokelumne aqueduct that same year. The water traveled 90 miles from the Sierra Mountains to the East Bay to serve a population of 460,000.

Today, the EBMUD water service area now includes 20 cities and 15 unincorporated East Bay communities and serves 1.4 million customers. It is a 332-square mile area, which is larger than New York City, extending from Crockett in the north to San Lorenzo in the south, and eastward from San Francisco Bay through the Oakland-Berkeley hills to Walnut Creek and south through the San Ramon Valley.

In 1944, voters in six of the East Bay cities served by EBMUD elected to create a wastewater treatment facility to treat waste and raw sewage that was being released directly into San Francisco Bay. Wastewater treatment began in 1951 at the plant constructed in Oakland near the entrance of the San Francisco-Oakland Bay Bridge. The wastewater service area is 88-square miles along the east shore of the bay extending from Richmond in the north to Oakland in the south. In addition to treating wastewater, laboratory services operate 365 days a year to continually monitor water quality for drinking water and treated water from the wastewater plant that is discharged to the San Francisco Bay.

Sustainability and resilience are essential principles that guide our actions in meeting the needs of our customers. Sustainability incorporates environmental, social, and economic objectives into our decision-making and work practices to meet the needs of today without compromising the ability to meet the needs of future generations. Resilience enables the District to recover from and adapt to unforeseen events.

The Board of Directors is committed to developing policy through an open, public process, guided by the District's Mission Statement. Policies are then implemented under the direction of the General Manager who is appointed by and reports directly to the Board of Directors. Day to day operations are managed by the senior management team and carried out by approximately 2,000 dedicated employees.

District employees perform functions in the areas of engineering, construction, water treatment, conservation, and wastewater treatment. Represented employees are represented by American Federation of State, County and Municipal Employees (AFSCME) Local 2019, AFSCME Local 444, International Federation of Professional and Technical Engineers Local 21, and International Union of Operating Engineers Local 39.

The District is self-insured for many of its risk exposures and has been self-insured for its property damage claims program since 1974.

The District is committed to reducing the frequency of losses and minimizing claims costs, while providing property damage claims process, evaluation of the property damage claim and promptly paying claims to the claimants.

The average number of claims per year reported for the three-year period beginning FY 2019 (July 1, 2019) and ending FY 2022 (June 30, 2022) is 259 claims.

District's Risk Management staff handles approximately fifty percent of all claims in-house (mostly Bodily Injury, Auto Liability, Subrogation and Minor Property Damage). The District will provide claim information, including claim number, opened/closed dates and financial data to TPA for recordkeeping.

The District intends to transfer approximately 20-30 existing Property Damage claims to the new administrator. There are currently 147 open claims (as of 9/30/2022).

The District's Property Damage Claim Program falls under the auspices of the Risk Management Division of the Finance Department. The District's Risk Management Analyst reports directly to the Manager of Risk Management.

D. SPECIFIC REQUIREMENTS

1. ADMINISTRATOR CREDENTIALS

- a. A proven TPA with a stable staff and long-term clients will best serve the District. Particular emphasis will be placed upon the history of the TPA and also its track record of compliance with audits and obligations. **Please provide a summary of all staff changes within the local office over the previous two years to include the number of new employees and the number of employees who have left your employment per year over the same period.**
- b. References are requested as part of the proposal format. Five references are requested. Having a Public Utility as a reference is desirable but not required. Include client name and address along with a contact and phone number. Comment as to the number of years of service and briefly describe the services provided. Expect that the references will be contacted.
- c. Provide a list of all clients that have transferred their account to a new TPA within the last 24 months.
- d. Provide a list of all civil and/or criminal judgments, settlements or penalties including pending litigation regarding claims administration

services or breach of contract. If this section does not apply, provide an affidavit stating there are no judgments.

2. GENERAL CLAIM ADMINISTRATION REQUIREMENTS AND STANDARDS

The requirements and services sought are complete administrative claims services for the District. At a minimum, the TPA will provide all services listed below. During the term of the contract, the TPA shall represent, and act on behalf of, the District in matters pertaining to the administration of all property damage claims assigned by DISTRICT, investigation and settlement of such claims (including those in litigation), incurred during the term of this agreement as well as assumed claims with dates of loss predating the contract.

- a. Triage, takeover and manage all property damage claims with minimum interruption of services and ongoing provision of benefits.
- b. Review and process all property damage claims to a final conclusion in accordance with this contract, and the provisions of this Request for Proposals.
- c. In consultation with the District, develop claims handling standards for the property damage claims program.
- d. District and TPA shall jointly develop the Client Services Instructions and once approved by the DISTRICT in writing such instructions shall become part of Exhibit A of the Consulting and Professional Services Agreement: SCOPE OF SERVICES. The approved Client Services Instructions may only be modified with written approval of both parties. Within one (1) business day of receipt of a claim assignment the TPA adjuster will attempt contact with all known claimants and begin a thorough investigation to determine liability and place a value on the damages incurred. If attempts to contact claimant are unsuccessful by the third day, the TPA adjuster will send a letter of introduction, asking the claimant to contact the TPA adjuster, with a copy to the District.
- e. Within one (1) business day of receipt of assignment, the TPA adjuster will create a computer-generated claim file using the claim number assigned. The file shall include all investigative data, stated reserves, payments, reserve revisions and settlements or rejections or determination leading to resolution of the claim. The basis for any and all recommendations leading to resolution shall be documented in the file.
- f. The TPA adjuster is to maintain an electronic diary on each claim not to exceed 30 day intervals.

- g. Upon approval of the Risk Management Analyst, the TPA adjuster may make assignments to other specialized service firms when it is necessary to provide expert consultation on claims. Costs for such claims shall be allocated to individual claim file and invoiced through the Claims Trust Fund as set forth in Section I, Part D, Paragraph Two, Trust Fund Account Management.
- h. The TPA adjuster shall coordinate with the Risk Management Analyst in appointing qualified defense counsel when legal advice and/or action are required for property damage claims. The associated legal costs shall be charged to the individual claim file. The Risk Management Analyst will outline the work to be done by counsel, and the timeframe in which the work is to be performed.
- i. The TPA shall, at the request of the Risk Management Analyst, enter into blanket contracts with service vendors and defense counsel.
- j. The TPA adjuster shall discuss any proposed settlement with the Risk Management Analyst prior to discussing with claimant. All settlements must be authorized by the Risk Management Analyst.
- k. Reports will be required for each claim assigned to the TPA adjuster (Sample reports are attached, Exhibit D).
- l. Within three (3) business days of receipt of claim assignment, the TPA adjuster will send letter of acknowledgement to the claimant identifying the adjuster assigned to the claim.
- m. Within 30 days of the initial assignment, the TPA adjuster will provide a comprehensive liability report indicating the facts, liability analysis, evaluation of damages, reserve recommendations, settlement or rejection recommendations, and plan of action required
- n. Every 30 days the TPA adjuster will provide a written status report for each claim until the claim is closed unless otherwise directed by the Risk Management Analyst.
- o. The TPA will provide a computerized monthly summary of all open claims assigned by the Risk Management Analyst. Summary shall include adjuster assigned and updated reserves and payments as well as claim status. Format will be compatible to export into Microsoft Excel.
- p. The TPA will provide a computerized daily .csv download of claim financial data including payment all claim payments and reserves.

- q. The TPA will provide a computerized daily download of all Claim Notes.
- r. The TPA will provide, upon request, computerized loss reports and summaries including, but not limited to:
 - (1) Quarterly loss summaries
 - (2) Annual loss report
 - (3) Special reports that do not require custom programming
 - (4) Loss reports for annual actuarial studies and insurance renewals

CONSULTANT will notify all excess insurance carriers, the DISTRICT, and the DISTRICT'S Broker of Record, Attn: John Chino, Area Senior Vice President, Arthur J. Gallagher Risk Management Services, 18201 Von Karman #200, Irvine, CA 92612., if any claims involve any of the following:

- Fatality
- Severe burns
- Quadriplegia
- Paraplegia
- Amputation of an extremity
- Loss of sight or hearing
- Brain damage
- Back injuries with surgery indicated
- Disability
- Disfigurement
- Loss of work time of six months or greater
- Reserves at 50% of DISTRICT'S self-insured retention limit

3. CONTROL OF WORK

The District's Risk Management Analyst or a designated representative will provide direction to the TPA and shall assign all property damage claims for administration.

4. DISTRICT/CONSULTANT COORDINATION

Immediately following the award of the contract, the District and the TPA shall establish the arrangements necessary to coordinate transfer of any open claim files and assignment of new claims actions and other actions to be managed by the TPA. The TPA will be responsible for notification to all claimants with open files of changes in administration and transfer of computer data from the prior administrator. The above assignments must be completed prior to the start of the contract period. Any cost associated with the new administrator's errors or

delays in the transfer in claims administration will be the responsibility of the new administrator.

5. FILE DOCUMENTATION

- a. Establish and document a case strategy and management plan on all cases within five (5) working days of receipt of the first report. Review, modify, and update the plan at each diary.
- b. Document the basis for all initial reserves, reserve revisions, and payments within the claim file.
- c. Evaluate and adjust reserves for accuracy and adequacy each time the case is handled or reviewed based on all relevant information.
- d. Document all communications in the claim files to include telephone, electronic, and meetings held within one business day.
- e. Make claim files available for inspection by District's representative, upon request.
- f. Document all supervisory claim reviews within the claim file.

6. PERSONNEL

Provide designated sufficiently skilled claims personnel and administrative support team to support the District's self-insured Property Claims program.

- a. Assign at least one full-time dedicated Senior Property Damage Claims Adjuster to handle complex Property Damage Claims.
 - i. Outline specific experience requirements (Prop Damage Experience, Public Entity Experience, Knowledge and Understanding of Gov't Code Claims and Immunities, Understanding of Concepts of Inverse Condemnation, etc.)
 - ii. Outline Field Visits requirements
 - iii. Outline meetings with claimants, direct phone and email contact with claimants, etc.
 - iv. Typical caseload will typically not exceed 70 claims.
- b. In addition to property damage technical skills, the assigned staff must possess effective analytical, verbal and written communication skills.

- c. The Senior Property Damage Claims Adjuster will be employed, managed, and assigned by the TPA to work out of the District's Oakland offices two days a week and at TPA office and/or remotely three days a week.
- d. The District is considering an alternative staffing model involving a *designated* Sr. Property Claims Examiner who may be assigned other claims and clients not to exceed 50% of the case load (35 claims) and/or 20 hours of week.
 - (1) Under this proposal, the Senior Property Damage Claims Adjuster will be employed, managed, and assigned by the TPA to work out of the District's Oakland offices one day a week and at TPA office and/or remotely four days a week.
 - (2) All Proposals should include a fee structure with dedicated Sr. Property Claims Examiner and with designated Sr. Property Claims Examiner who may be assigned other claims and clients not to exceed 50% of the case load (35 claims) and/or 20 hours of week.

7. COMMUNICATION

- a. Provide services during standard District business hours Monday through Friday from 7:30 a.m. to 4:30 p.m.
- b. Respond to all requests and inquiries made by the District or claimant(s) in a timely and cooperative manner.
- c. Meet with District staff on a routine or as needed basis (no less than quarterly) to discuss specific claims or general topics relevant to the property damage claims program.
- d. Return all telephone and electronic communication within twenty-four (24) hours.

8. CONTRACT PERFORMANCE PERIOD

- a. The term of the contract awarded under this proposal shall be for the three-year period beginning March 1, 2023, and ending February 28, 2026, with provisions for two consecutive optional two-year extensions, to be exercised at the sole discretion of the District.
- b. Should this Agreement be extended beyond the third year, the cost ceiling shall remain the same as year three unless there is a written amendment to this Agreement. In no event shall the price increase exceed the Cost of

Living Adjustments (COLA) based on the San Francisco/Oakland/San Jose Region Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) in effect at the time of negotiations and shall cover the two-year period under consideration. Price decreases can be submitted at any time during the term of this Agreement. Notice of proposed increase must be submitted by January 1 of preceding year.

- c. The TPA shall agree to provide a 120-day written cancellation provision to the District
- d. Upon termination of the contract, and subject to the District's option, the TPA agrees to (a) surrender all open and closed claims, files, and records (including computer data), or (b) handle the remaining open claims on a runoff basis.

9. TRUST FUND ACCOUNT MANAGEMENT AND PAYMENT PROCESSING

- a. The District will establish a trust account from which all claims costs/expenses and settlements are made and into which the District will deposit an agreed amount of money.
- b. The District will select the bank, including the number of signers on the account.
- c. Normally, the trust account will be replenished by the District on a monthly basis.
- d. The District will provide a check request report for all claims handled by TPA and the Risk Management staff.
- e. TPA will review, authorize and process payments for allocated expenses and claims settlements from the trust account, in accordance with the provisions set forth in this Request for Proposals.
- f. Obtain pre-authorization from the Risk Management Analyst or Designee for:
 - (1) Settlement of any and all claims.
 - (2) Legal payments in excess of \$10,000.
 - (3) An additional special deposit will be requested immediately by the TPA for all payments in excess of \$25,000.
- g. The TPA's Trust account manager will be required to notify the District if the fund drops below an agreed upon fund balance (typically \$50,000).

- h. Provide the necessary data to reconcile the account as specified by the District's Accounting Department, to include, but not limited to the following:
 - (1) Internal controls approved by the District
 - (2) Documented policy and procedures on computer system including how voids/cancels are handled, numbered check stock, subrogation of recovery deposits, and security procedures
 - (3) Duplicate payments
 - (4) Exception reports.

- i. Provide the following to the District:
 - (1) Copies of checks issued and invoices, upon request
 - (2) A monthly check register with each request for replenishment of the trust fund account
 - (3) Copy of all monthly bank statements.
 - (4) A list of the TPA employees, titles, and signature authority (dollar amounts)
 - (5) District access to all trust fund account information.

E. REPORTS

At a minimum, the TPA will provide all reports listed below.

- a. Provide reports to the District as described in Section I, Part D, Paragraph Two.

- b. Provide claims loss reports to the District to help quantify the loss experience, upon request in a format compatible with Microsoft Excel. For example, reports including a detailed analysis of individual claims, an overall analysis of claims, loss reports for indemnity, and expense (litigation, investigation, etc.) costs by Department and by Union Local. Provide reports indicating claims status, i.e., open, closed, and litigated cases per reporting year. In addition, provide reports showing analysis of claims costs by nature and cause, to help identify claims cost exposure.

- c. Comply with all excess insurance and/or renewal reporting requirements in accordance with the individual excess policies. This includes, but is not limited to, all losses that may involve excess insurance exposure (precautionary reports, periodic status reports).

CALENDAR OF EVENTS

EVENT	DATE/LOCATION
RFP Issued	December 6, 2022
Optional Pre-Proposal Conference Meeting	December 19, 2022, at 9:30 AM via Microsoft Teams Click here to join the meeting
Addendum	December 26, 2022
Response Due	January 13, 2023, by 4:00 PM
Selection of Finalists	January 20, 2023
Oral Presentations	Week of January 23 – January 27, 2023
Decision Announced	January 31, 2023
Anticipated Contract Start Date	March 1, 2023

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

Proposers are responsible for reviewing <https://www.ebmud.com/business-center/requests-proposal-rfps/> for any published addenda. Hard copies of addenda will not be mailed out.

A. **OPTIONAL PRE-PROPOSAL CONFERENCE**

A pre-proposal conference will be held to:

1. Allow the District to discuss the scope of the project.
2. Provide an opportunity for Proposers to ask specific questions to the Risk Management Analyst and Contract Equity Program Administrator about the proposal and to request RFP clarifications.
3. This one-hour meeting will be held on December 19, 2022, at 9:30 a.m. via Microsoft Teams.
4. All questions deemed to be pertinent by the District will be addressed in Addenda following the site pre-proposal conference meeting and will be provided to all participants in the selection process whether or not in attendance.

B. **ORAL PRESENTATIONS**

Selected TPA’s may be required to participate in an oral presentation process. The presenters for the TPA should include, but are not limited to the claims manager, supervisor, and examiner(s), if available. The TPA’s selected to make a presentation to the District as part of the final selection process will be advised of their scheduled date/time. Allow the District to discuss the scope of the project.

DISTRICT PROCEDURES, TERMS, AND CONDITIONS

A. RFP ACCEPTANCE AND AWARD

1. RFP responses will be evaluated by the Selection Committee and will be scored and ranked in accordance with the RFP section entitled “Evaluation Criteria/Selection Committee.”
2. The Selection Committee will recommend award to the Proposer who, in its opinion, has submitted the RFP response that best serves the overall interests of the District. Award may not necessarily be made to the Proposer with the lowest overall cost.
3. The District reserves the right to award to a single or to multiple General or Professional Service Providers, dependent upon what is in the best interest of the District.
4. The District has the right to decline to award this contract or any part of it for any reason.
5. Any specifications, terms, or conditions issued by the District, or those included in the Proposer’s submission, in relation to this RFP, may be incorporated into any purchase order or contract that may be awarded as a result of this RFP.
6. Award of contract. The District reserves the right to reject any or all proposals, to accept one part of a proposal and reject the other, unless the proposer stipulates to the contrary, and to waive minor technical defects and administrative errors, as the interest of the District may require. Award will be made, or proposals rejected by the District as soon as possible after proposals have been opened.

B. EVALUATION CRITERIA/SELECTION COMMITTEE

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

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

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

The Evaluation Criteria are as follows:

	Evaluation Criteria RFP responses will be evaluated against the RFP specifications.
A.	Corporate Capability & Credentials & References (See Exhibit A for references)
B.	Cost
C.	General Requirements
D.	Information Management & Reporting
E.	Personnel
F.	Trust Account Management & Payment Processing
G.	Quality Control
H.	Contract Equity Program: As described in the guidelines contained in Exhibit A-Contract Equity Program, PROPOSER will be given up to a total of 10% of overall evaluation points for Contract Equity Program compliance.
I.	Oral Presentation & Interview (for selected finalists)

C. PRICING

1. Prices quoted shall be firm for the first thirty-six months of any contract that may be awarded pursuant to this RFP.
2. Cost or fees for services not included in this section must be specifically itemized. All services not itemized separately are considered part of the Proposer’s fixed price for the duration of the contract. Please see Exhibit A.

The proposal must include taking over administration of all existing claims, as well as for newly incurred claims, and related services. Any service fees not included in the fixed price fee must be specifically itemized. It will be determined that all services requested under the statement of work are included in the fixed price fee, unless so itemized separately.

3. Provide two separate proposals for administration fees, one including the dedicated Sr. Property Claims Examiner and the other including designated Sr. Property Claims Examiner who may be assigned other claims and clients not to exceed 50% of the case load (35 claims) and/or 20 hours of week.

4. All prices quoted shall be in United States dollars.
5. Price quotes shall include any and all payment incentives available to the District.

D. NOTICE OF INTENT TO AWARD AND PROTESTS

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

Negotiations for a Consulting Services Agreement with a “not to exceed” contract price (for time and expenses) will be scheduled shortly after the Notice of Intent to Award. If an Agreement cannot be achieved, the District will proceed to negotiate with the next highest ranked Proposer.

Protests must be in writing and must be received no later than seven (7) workdays after the District issues the Notice of Intent to Award. The District will reject the protest as untimely if it is received after this specified time frame. Protests will be accepted from proposers or potential proposers only.

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

Proposal protests must contain a detailed and complete written statement describing the reason(s) for protest. The protest must include the name and/or number of the proposal, the name of the firm protesting, and include a name, telephone number, email address and physical address of the protester. If a firm is representing the protester, they shall include their contact information in addition to that of the protesting firm.

Protests must be mailed, hand delivered, or emailed to the Manager of Purchasing, Mailstop 102, East Bay Municipal Utility District, 375 Eleventh Street, Oakland, CA 94607 or P.O. Box 24055, Oakland, California 94623. Facsimile and electronic mail protests must be followed by a mailed or hand delivered identical copy of the protest and must arrive within the seven workday time limit. Any proposal protest filed with any other District office shall be forwarded immediately to the Manager of Purchasing.

In the event that the protest is denied, the protester can appeal the determination to the requesting organization’s Department Director. The appeal must be submitted to the Department Director no later than five workdays from the date which the protest

determination was transmitted by the District, to the protesting party. The appeal shall focus on the points raised in the original protest, and no new points shall be raised in the appeal.

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

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

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

E. INVOICING

1. Following the Districts acceptance of the complete and satisfactory performance of claims administration services, the District will render payment within thirty (30) days of receipt of a correct invoice.
2. The District will notify the General or Professional Service Provider of any invoice adjustments required.
3. Invoices shall contain, at a minimum, District purchase order number, invoice number, remit to address, and itemized services description.
4. The District will pay Professional Service Provider in an amount not to exceed the negotiated amount(s) which will be referenced in the agreement signed by both parties.

RFP RESPONSE SUBMITTAL INSTRUCTIONS AND INFORMATION

A. DISTRICT CONTACTS

All contact during the competitive process is to be through the contact listed on the first page of this RFP. The following persons are to be contacted only for the purposes specified below:

FOR INFORMATION REGARDING RFP:

Attn: Kim Damico, Risk Management Analyst
EBMUD- Risk Management Division, Finance Department
E-Mail: kim.damico@ebmud.com
PHONE: (510) 287-0413

FOR INFORMATION ON THE CONTRACT EQUITY PROGRAM:

Attn: Contract Equity Office
E-Mail: contract.equity@ebmud.com
PHONE: (510) 287-0114

AFTER AWARD:

Attn: Kim Damico, Risk Management Analyst
EBMUD- Risk Management Division, Finance Department
E-Mail: kim.damico@ebmud.com
PHONE: (510) 287-0413

B. SUBMITTAL OF RFP RESPONSE

1. At this time, no hardcopy proposals will be accepted. Upload your RFP response in pdf format and prior to the bid due date/time RFP submittals, in their entirety, shall be emailed to kim.damico@ebmud.com. The District's email has limitations on attachment size. Make sure your response is less than 25 megabytes. If the file exceeds the limit, you will need to send multiple emails. Proposers are solely responsible for ensuring timely delivery of the proposals. The District shall not be responsible for any issues related to transfer of files through email. You may call at (510) 287-0413 to check receipt of the proposal.
2. All costs required for the preparation and submission of an RFP response shall be borne by the Proposer.
3. California Government Code Section 4552: In submitting an RFP response to a public purchasing body, the Proposer offers and agrees that if the RFP response is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Proposer for sale to the purchasing body pursuant to the RFP response. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the Proposer.
4. Proposer expressly acknowledges that it is aware that if a false claim is knowingly submitted (as the terms "claim" and "knowingly" are defined in the California

False Claims Act, Cal. Gov. Code, §12650 et seq.), the District will be entitled to civil remedies set forth in the California False Claim Act.

5. The RFP response shall remain open to acceptance and is irrevocable for a period of one hundred eighty (180) days, unless otherwise specified in the RFP documents.
6. It is understood that the District reserves the right to reject any or all RFP responses.

C. RESPONSE FORMAT

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



EXHIBIT A

RFP RESPONSE PACKET

RFP for Third Party Administration Services for Property Damage Claims

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

From: _____
(Official Name of Proposer)

RFP RESPONSE PACKET GUIDELINES

- **SUBMITTAL SHALL CONTAIN THE FOLLOWING:**
 - EXHIBIT A – RFP RESPONSE PACKET
 - INCLUDING ALL REQUIRED DOCUMENTATION AS DESCRIBED IN “EXHIBIT A-REQUIRED DOCUMENTATION AND SUBMITTALS”
 - EXHIBIT C – IRAN CONTRACTING ACT CERTIFICATION

- **PROPOSERS THAT DO NOT COMPLY WITH THE REQUIREMENTS, AND/OR SUBMIT AN INCOMPLETE RFP RESPONSE MAY BE SUBJECT TO DISQUALIFICATION AND THEIR RFP RESPONSE REJECTED IN WHOLE.**

- **IF PROPOSERS ARE MAKING ANY CLARIFICATIONS AND/OR AMENDMENTS, OR TAKING EXCEPTION TO ANY PART OF THIS RFP, THESE MUST BE SUBMITTED IN THE EXCEPTIONS, CLARIFICATIONS, AND AMENDMENTS SECTION OF THIS EXHIBIT A – RFP RESPONSE PACKET. THE DISTRICT, AT ITS SOLE DISCRETION, MAY ACCEPT AMENDMENTS/EXCEPTIONS, OR MAY DEEM THEM TO BE UNACCEPTABLE, THEREBY RENDERING THE RFP RESPONSE DISQUALIFIED.**

- **PROPOSORS SHALL NOT MODIFY DISTRICT LANGUAGE IN ANY PART OF THIS RFP OR ITS EXHIBITS, NOR SHALL THEY QUALIFY THEIR RFP RESPONSE BY INSERTING THEIR OWN LANGUAGE OR FALSE CLAIMS IN THEIR RESPONSE. ANY EXCEPTIONS AND CLARIFICATIONS MUST BE PLACED IN THE “EXCEPTIONS/ CLARIFICATIONS” PAGE, NOT BURIED IN THE PROPOSAL ITSELF.”.**



PROPOSER INFORMATION AND ACCEPTANCE

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

Addendum #	Date

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

This documentation must be provided to the District prior to execution of an agreement by the District and shall include an insurance certificate which meets the minimum insurance requirements, as stated in the RFP.

- 9. The undersigned acknowledges that RFP responses, in whole or in part, are NOT to be marked confidential or proprietary. The District may refuse to consider any RFP response or part thereof so marked. RFP responses submitted in response to this RFP may be subject to public disclosure. The District shall not be liable in any way for disclosure of any such records.
- 10. The undersigned Proposer hereby submits this RFP response and binds itself to the District. The RFP, subsequent Addenda, Proposers Response Packet, and any attachments, shall be used to form the basis of a Contract, which once executed shall take precedence.

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

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

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

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

Street Address Line 1: _____

Street Address Line 2: _____

City: _____ State: _____ Zip Code: _____

Webpage: _____

Type of Entity / Organizational Structure (check one):

- Corporation Joint Venture
- Limited Liability Partnership Partnership
- Limited Liability Corporation Non-Profit / Church
- Other: _____

Jurisdiction of Organization Structure: _____

Date of Organization Structure: _____

Federal Tax Identification Number: _____

Department of Industrial Relations (DIR) Registration Number: _____

Primary Contact Information:

Name / Title: _____

Telephone Number: _____ Fax Number: _____

E-mail Address: _____

Street Address Line 1: _____

City: _____ State: _____ Zip Code: _____

SIGNATURE: _____

Name and Title of Signer (printed): _____

Dated this _____ day of _____ 20_____



COST PROPOSAL FORM

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

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

In accordance with the Proposal Agreement, the Proposer agrees to furnish, as requested by the District, labor and other services in this Request Proposal, in accordance with the pricing schedule described below:

Compensation Rate COST PROPOSAL *Including dedicated Sr. Property Claims Examiner*

- The term of this contract shall be for three years.
The Cost Proposal shall be a firm fixed price for each of the three years listed below. Cost or fees for services not included in this section must be specifically itemized. All services not itemized separately are considered part of the Proposer’s fixed price for the duration of the contract.

Please indicate the fee for: Year 1 \$ _____

Year 2 \$ _____

Year 3 \$ _____

Total of years 1 through 3 \$ _____

Itemized costs or fees not included in the total:

- The proposed fee must include administration of run off claims from the previous administrator



Compensation Rate COST PROPOSAL *Including designated Sr. Property Claims Examiner who may be assigned other claims and clients not to exceed 50% of the case load (35 claims) and/or 20 hours of week*

1. The term of this contract shall be for three years.
The Cost Proposal shall be a firm fixed price for each of the three years listed below. Cost or fees for services not included in this section must be specifically itemized. All services not itemized separately are considered part of the Proposer's fix price for the duration of the contract.

Please indicate the fee for: Year 1 \$ _____

Year 2 \$ _____

Year 3 \$ _____

Total of years 1 through 3 \$ _____

Itemized costs or fees not included in the total:

2. The proposed fee must include administration of run off claims from the previous administrator.



REQUIRED DOCUMENTATION AND SUBMITTALS

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

1. **Letter of Transmittal:** RFP response shall include a description of the Proposer’s capabilities and approach in providing its services to the District and provide a brief synopsis of the highlights of the RFP response and overall benefits to the District. This synopsis should not exceed three (3) pages in length and should be easily understood.

2. **Corporate Capability & Administrator’s Credentials & References:**
 - a. Provide a description of your organization – how long you have been in the business of handling property damage claims.
 - b. Attach your firm’s most recent financial statement.
 - c. Advise whether you have had any major changes (i.e., relocation of acquisition of another company) for your firm in the previous 12 months. In addition, please advise whether you are planning any major changes (e.g., relocation of firm or consolidation) for your firm in the next 12 months.
 - d. Describe any financial and/or ownership relationship with any other company that may pose a conflict of interest and provide a conflict of interest statement and/or confidential agreement.
 - e. References are requested as part of the proposal format. Five references are requested. Having a Public Utility as a reference is desirable but not required. Include client name and address along with a contact and phone number. Comment as to the number of years of service and briefly describe the services provided.
References MUST demonstrate successful claims handling of the manner of the same quality and manner as that which is described in the RFP.
 - (1) Proposers must use the templates in the “References” section of this Exhibit A – RFP Response Packet to provide references.
 - (2) References should have similar scope, volume, and requirements to those outlined in these specifications, terms, and conditions.
 - (3) Proposers must verify the contact information for all references provided is current and valid.
 - (4) Proposers are strongly encouraged to notify all references that the District may be contacting them to obtain a reference.
 - (5) The District may contact some or all of the references provided in order to determine Proposer’s performance record on work similar to that described in this RFP. The District reserves the right to contact references other than those provided

in the RFP response and to use the information gained from them in the evaluation process. Expect that the references will be contacted.

- f. **Provide a list of all clients that have transferred their account to a new TPA within the last 24 months. Include prior clients' contact name, address and phone number.**

3. **Cost Proposal:** The term of this contract shall be for three years. The Cost Proposal shall be a firm fixed price for each of the three years. Cost or fees for services not included in this section must be specifically itemized. All services not itemized separately are considered part of the Proposer's fix price for the duration of the contract.

- a. Proposers must use the Cost Proposal Form in section of this Exhibit A – RFP Response Packet to provide costs.

4. **General Requirements**

- a. Comment on your firm's ability to meet the requirements outlined in Section I, Part D, Paragraph Two, General Claim Administration and Standards. Submit a copy of your firm's Standard Operating Procedures and/or standards of performance. At a minimum, procedures must show your policies for setting reserves, reviewing and documenting files, litigation management, and administrator and client communications.
- b. Emphasize services within the contract in the areas of communication with employees, supervisors, experts, attorneys, and the District's property damage claims; customer services; and the utilization of aggressive and thorough claims management techniques.
- c. A customized Client Services Instructions that includes claim handling best practices and any specific service requirements of the District will be required. Provide a sample special handling instruction agreement. Describe how the special handling instructions would be communicated to the claims team assigned to the District.

5. **Key Personnel**

- a. RFP response shall include a complete list of all key personnel associated with the RFP. This list must include all key personnel who will provide services to District staff and all key personnel who will provide maintenance and support services. For each person on the list, the following information shall be included:
 - (1) The person's relationship with the Proposer, including job title and years of employment with the Proposer;
 - (2) The role that the person will play in connection with the RFP;
 - (3) The person's telephone number, fax number, and e-mail address;
 - (4) The person's educational background; and
 - (5) The person's relevant experience, certifications, and/or merits

- b. An Organization Chart and Resumes of key position staff must accompany your proposal. Include in your discussion of the organization brief descriptions of each function and the limits of authority.
- c. State whether you intend to hire new claims personnel to handle the District's account.
- d. **Please provide a summary of all staff changes within the local office over the previous two years to include the number of new employees and the number of employees who have left your employment per year over the same period.**

6. **Information Management & Reporting**

- a. State what system you will use for claims file management. Give a complete description of the system's capabilities; list the data elements that your system will track.
- b. Indicate whether you can provide the Standard, Custom and Ad hoc reports outlined in Section I, Part E, Reporting of this RFP and provide samples.
- c. Costs for conversion of the data from the Systema Software (SIMS Claims) system to the alternative claim file management system, of providing the District with 24/7 online access to the system for up to 10 users, and the costs for monthly downloading of data from the system to the District's own system must be assumed by the TPA and should be reflected in the annual fee proposal.
- d. State whether you have experience making the conversion from the Systema Software (SIMS Claims) system to your current system for other clients. If so, please describe your experience with the conversion.

Data conversion must include a complete conversion of existing case history in detail, including any and all notes.

7. **Trust Fund Account Management And Payment Processing**

- a. Confirm your firm's ability to adhere to the District's property damage claims trust fund account management process, as described in Section I, Part D, Paragraph Two, Trust Fund Account Management.
- b. In your proposal, state the location where checks will be issued (City, State) and method used for issuing payments. Please describe your proposal for coordinating with the District's salary continuation benefits. Describe the payment system thoroughly and give details and samples of check registers, reporting methods, and internal audit procedures.

8. **Quality Control**

Submit copies of your firm’s internal audit and quality control procedures. Give particular note to quality control in the following areas:

- a. Setting reserves
- b. Internal audits and file reviews
- c. Customer Service/Customer Satisfaction
- d. Supervisor review of claims actions
- e. Payment processing
- f. Claim file/data base reconciliation.

9. **CEP Participation**

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

10. **Sustainability Statement**

CONSULTANTS shall submit a statement regarding any sustainable, environmental or socially responsible initiatives or practices that they or their suppliers engage in. This information can be in relation to the specific services or work products solicited via this RFP, or in relation to the manufacture, delivery, or business practices of your firm.

11. **Exceptions, Clarifications, Amendments:**

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

REFERENCES

RFP For Third Party Administration Services for Property Damage Claims

Proposer Name: _____

Proposer must provide a minimum of five (5) references.

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

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

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

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

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



EXCEPTIONS, CLARIFICATIONS, AMENDMENTS

RFP For Third Party Administration Services for Property Damage Claims

Proposer Name: _____

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

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

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

*Print additional pages as necessary



CONTRACT EQUITY PROGRAM & EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

All Contractors shall include the nondiscrimination provisions above in all subcontracts.

Please include the required completed forms with your proposal. Non-compliance with the Guidelines may deem a proposal non-responsive, and therefore, ineligible for contract award. Your firm is responsible for:

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

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

[Contract Equity Guidelines and Forms](#)

The CEP guidelines and forms can also be downloaded from the District website at the following link:

<http://ebmud.com/business-center/contract-equity-program/>

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



EXHIBIT B

PROFESSIONAL SERVICES AGREEMENT

CONSULTING AND PROFESSIONAL SERVICES AGREEMENT FOR EAST BAY MUNICIPAL UTILITY DISTRICT THIRD PARTY ADMINISTRATOR SERVICES for PROPERTY DAMAGE CLAIMS

THIS Agreement is made and entered into this _____ day of *(month)*, 2023, by and between **EAST BAY MUNICIPAL UTILITY DISTRICT**, a public entity, hereinafter called "DISTRICT," and ***(CONSULTANT'S FULL LEGAL NAME, BOLD, ALL CAPS followed by type of entity [corporation, etc.])***, hereinafter called "CONSULTANT" or Third Party Administrator (TPA).

WITNESSETH

WHEREAS, DISTRICT requires consulting services for Third Party Administration for Property Damage Claims and

WHEREAS, DISTRICT has elected to self-insure its Property Damage Claims risks as permitted by the State of California and contract for claims administration services effective January 1, 2023; and

WHEREAS, CONSULTANT has submitted a proposal to provide consulting services for Third Party Administration for Property Damage Claims and CONSULTANT represents that it has the experience, licenses, qualifications, staff expertise and where necessary the required Department of Industrial Relations (DIR) registration to perform said services in a professional and competent manner; and

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

ARTICLE 1 - SCOPE OF WORK

- 1.1 CONSULTANT agrees to furnish services set forth in Exhibit A, Scope of Services, attached hereto and incorporated herein. The services authorized under this Agreement shall also include all reports, manuals, plans, and specifications as set forth in Exhibit A.
- 1.2 CONSULTANT's work products shall be completed and submitted in accordance with DISTRICT's standards specified, and according to the schedule listed, in Exhibit A. The completion dates specified herein may be modified by mutual agreement between DISTRICT and CONSULTANT provided that DISTRICT's Project Manager notifies CONSULTANT of modified completion dates by letter. CONSULTANT agrees to diligently perform the services to be provided under this Agreement. In the performance of this Agreement, time is of the essence.

- 1.3 It is understood and agreed that CONSULTANT has the professional skills necessary to perform the work agreed to be performed under this Agreement, that DISTRICT relies upon the professional skills of CONSULTANT to do and perform CONSULTANT's work in a skillful and professional manner, and CONSULTANT thus agrees to so perform the work. CONSULTANT represents that it has all the necessary licenses to perform the work and shall maintain them during the term of this Agreement. CONSULTANT agrees that the work performed under this Agreement shall follow practices usual and customary to the State of California, Self-Insured Property Damage Claims profession and that CONSULTANT is the engineer in responsible charge of the work for all activities performed under this Agreement. Acceptance by DISTRICT of the work performed under this Agreement does not operate as a release of CONSULTANT from such professional responsibility for the work performed.
- 1.4 CONSULTANT agrees to maintain in confidence and not disclose to any person or entity, without DISTRICT's prior written consent, any trade secret or confidential information, knowledge or data relating to the products, process, or operation of DISTRICT. CONSULTANT further agrees to maintain in confidence and not to disclose to any person or entity, any data, information, technology, or material developed or obtained by CONSULTANT during the term of this Agreement. The covenants contained in this paragraph shall survive the termination of this Agreement for whatever cause.
- 1.5 The originals of all computations, drawings, designs, graphics, studies, reports, manuals, photographs, videotapes, data, computer files, and other documents prepared or caused to be prepared by CONSULTANT or its subcontractors 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 subcontractors may retain and use copies of such documents, with written approval of DISTRICT.
- All computer systems or software created and utilized by CONSULTANT in the performance of activities under this Agreement shall belong to and remain property of CONSULTANT.
 - All Claim Files are the property of DISTRICT and shall be returned to DISTRICT at the end of the contract in a format readily converted and integrated into DISTRICT'S and/or DISTRICT consultant's electronic claims management system.
 - CONSULTANT shall make all claim files available to DISTRICT upon demand in paper and/or electronic format at the choice of the DISTRICT.
 - CONSULTANT shall coordinate with DISTRICT to allow electronic access to CONSULTANT'S claim files for up to ten (10) users.
- 1.6 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.
- 1.7 CONSULTANT is retained to render professional services only and all payments made are compensation solely for such services as it may render and recommendations it may make in carrying out the work.
- 1.8 It is further understood and agreed by the parties hereto that CONSULTANT in the performance of its obligations hereunder is subject to the control or direction of DISTRICT as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and

performed, and not the means, methods, or sequence used by the CONSULTANT for accomplishing the results.

- 1.9 If, in the performance of this agreement, any third persons are employed by CONSULTANT, such person shall be entirely and exclusively under the direction, supervision, and control of CONSULTANT. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONSULTANT, and DISTRICT shall have no right or authority over such persons or the terms of such employment.
- 1.10 It is further understood and agreed that as an independent CONSULTANT 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.
- 1.11 DISTRICT shall cooperate in all aspects of reporting, investigating, communicating, providing recorded materials, and any other areas pertinent to CONSULTANT'S obligations under this agreement.
- 1.12 DISTRICT shall at all times provide funds adequate for the payment of claims losses through the management of the Property Damage Claims Trust Fund.
- 1.13 DISTRICT shall at all times provide funds adequate for the payment of claims losses through the management of the Property Damage Claims Trust Fund.
- DISTRICT and CONSULTANT agree to the use of a Claims Trust Fund set up by CONSULTANT upon the following terms:
 - DISTRICT shall fund \$300,000 Claims Trust Fund and replenish it monthly or, as needed, pursuant to terms and conditions below.
 - CONSULTANT shall use the Claims Trust Fund to pay claims and claims expenses.
 - CONSULTANT shall invoice the amount expended monthly with a listing of all checks issued and the amounts at which time DISTRICT shall replenish the Claims Trust Fund to its original balance of \$300,000 within seven business days of date invoice received.
 - CONSULTANT shall notify DISTRICT immediately if the Trust Fund balance falls below \$50,000.
 - CONSULTANT shall request approval for all payments above \$5,000.

- CONSULTANT’S invoice shall include a check register in EXCEL which provides check number, date of issue, claim number, and payee as well as check amount for all checks issued within the monthly cycle.

ARTICLE 2 - COMPENSATION

- 2.1 For the Scope of Services described in Exhibit A, DISTRICT agrees to pay CONSULTANT actual costs incurred, subject to a Maximum Cost Ceiling of **\$(dollars)**. Compensation for services shall be in accordance with the method and amounts described in Exhibit B, attached hereto and incorporated herein.
- 2.2 In case of changes affecting project scope resulting from new findings, unanticipated conditions, or other conflicts or discrepancies, CONSULTANT shall promptly notify DISTRICT of the identified changes and advise DISTRICT of the recommended solution. Work shall not be performed on such changes without prior written authorization of DISTRICT.

ARTICLE 3 - NOTICE TO PROCEED

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

ARTICLE 4 - TERMINATION

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

ARTICLE 5 - PROJECT MANAGERS

- 5.1 DISTRICT designates Kim Damico as its Project Manager, who shall be responsible for administering and interpreting the terms and conditions of this Agreement, for matters relating to CONSULTANT's

performance under this Agreement, and for liaison and coordination between DISTRICT and CONSULTANT. CONSULTANT may be requested to assist in such coordinating activities as necessary as part of the services. In the event DISTRICT wishes to make a change in the DISTRICT's representative, DISTRICT will notify CONSULTANT of the change in writing.

5.2 CONSULTANT designates **(Consultant Project Manager's name)** as its Project Manager, who shall have immediate responsibility for the performance of the work and for all matters relating to performance under this Agreement. Any change in CONSULTANT designated personnel or subcontractor shall be subject to approval by the DISTRICT Project Manager.

ARTICLE 6 - CONTRACT EQUITY PROGRAM COMPLIANCE

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

ARTICLE 7 - INDEMNIFICATION AND INSURANCE

7.1 Indemnification

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

7.2 Insurance Requirements

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

7.3 Data Security Requirements

Data Security Requirements are as stated in Exhibit E, Data Security Requirements.

ARTICLE 8 - NOTICES

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

(consulting firm's name)

(address)

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

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

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

Kim Damico, Risk Management Analyst
P.O. Box 24055, MS 409
Oakland, CA 94623-1055

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

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

ARTICLE 9 - MISCELLANEOUS

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

cancer), veteran or military status, family or medical leave status, genetic information, or sexual orientation. CONSULTANT shall not establish or permit any such practice(s) of discrimination with reference to the contract or any part. CONSULTANTS determined to be in violation of this section shall be deemed to be in material breach of this Agreement.

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

CONSULTANT shall include the nondiscrimination provisions above in all subcontracts.

- 9.8 CONSULTANT affirms that it does not have any financial interest or conflict of interest that would prevent CONSULTANT from providing unbiased, impartial service to the DISTRICT under this Agreement.
- 9.9 Digital Signatures. The Parties agree that this Agreement may be executed using digital signatures.
- 9.10 Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same Agreement.

ARTICLE 10 - ELECTRONIC CLAIM FILES, STORAGE, AND TRANSFER OF FILES

- 10.1 CONSULTANT shall record and maintain an electronic file of all industrial injuries reported. Files may be maintained electronically, in hard copy, or in other media, at CONSULTANT's discretion. Such files shall be made available to District or its designated representative for inspection upon request for no additional fee within five (5) business days.
- 10.2 CONSULTANT shall store all scanned documents separate from other Client's in a manner and places that ensures the confidentiality and security of the files. If CONSULTANT decides to destroy or otherwise dispose of any documents that it has received from District or from third parties in relation to DISTRICT's files, or that it has generated in relation to DISTRICT's files, CONSULTANT will give prior written notice to DISTRICT and DISTRICT can request that the documents be transferred to it at no cost rather than be disposed of by CONSULTANT. If DISTRICT does not advise CONSULTANT within 60 days of receiving such notice, CONSULTANT can destroy or otherwise dispose of the documents, with the exception of documents relating to any litigated file, and will have no further obligation or liability to DISTRICT in relation thereto.
- 10.3 Consultant will provide DISTRICT's files to DISTRICT, or an entity designated by DISTRICT, within 30 business days of the agreed upon transfer date of the files to the new CONSULTANT. The electronic files will be in the TIF, CSV, DOC and/or PDF electronic format used by CONSULTANT to provide the services to DISTRICT under this Agreement.

- 10.4 DISTRICT may request that the files be provided in a different format or that the hardcopies of the files be provided to it, provided that DISTRICT pays CONSULTANT for all costs associated with such request, as follows:
- a. If the DISTRICT requests to convert electronic files into a format that is not TIF or PDF compatible, the DISTRICT and the CONSULTANT would mutually agree to do so at the prevailing cost of such services at the time of the conversion, subject to a maximum cost of \$5,000.
 - b. If the DISTRICT requests to convert paperless files into hard files the CONSULTANT agrees to provide the conversion at a cost of \$25 per hour, subject to a maximum cost of \$5,000 for all files plus any shipping costs that may be incurred.
- 10.5 Notwithstanding the foregoing, CONSULTANT will not be obligated to provide the files to DISTRICT or an entity designated by DISTRICT, unless DISTRICT has paid CONSULTANT for all amounts owed pursuant to the Agreement. DISTRICT agrees to comply, and to require any recipient of the files designated by it to comply, with all applicable laws and regulations relating to the storage, transmission, use and confidentiality of the files.
- 10.6 CONSULTANT may keep a copy of DISTRICT's files with written approval by the District if it deems it necessary to comply with or defend itself in relation to any obligation or rights that it has under this Agreement, applicable laws or regulations. CONSULTANT shall provide a detailed list of all records kept.

ARTICLE 11 - 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. or in any event, no later than June 30, 2025. The terms of this Agreement may be amended only in writing signed by both parties.

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

EAST BAY MUNICIPAL UTILITY DISTRICT

By: _____
Vladimir Bessarabov
Manager of Risk Management

Date _____

Approved As To Form

By: _____
for the Office of the General Counsel

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

By: _____
(Name),
(Title)

Date _____

Rev. 6/2/2021

EXHIBIT A TO CONSULTING AND PROFESSIONAL SERVICES AGREEMENT

**East Bay Municipal Utility District
Third Party Administrator Services for Property Damage Claims**

SCOPE OF SERVICES

EXHIBIT B TO CONSULTING AND PROFESSIONAL SERVICES AGREEMENT

**East Bay Municipal Utility District
Third Party Administrator Services for Property Damage Claims**

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.

EXHIBIT C TO CONSULTING AND PROFESSIONAL SERVICES AGREEMENT

**East Bay Municipal Utility District
Third Party Administrator Services for Property Damage Claims**

CEP COMPLIANCE

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

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

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



EXHIBIT D TO CONSULTING AND PROFESSIONAL SERVICES AGREEMENT

East Bay Municipal Utility District Third Party Administrator Services Property Damage Claims

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.

INSURANCE VERIFICATION DOCUMENTS

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

- A. Workers' Compensation insurance including Employer's Liability insurance with minimum limits as follows:
- Coverage A. Statutory Benefits Limits
 - Coverage B. Employer's Liability of not less than:
 - Bodily Injury by accident: \$1,000,000 each accident
 - Bodily Injury by disease: \$1,000,000 each employee
 - Bodily Injury by disease: \$1,000,000 policy limit
- B. CONSULTANT's insurance shall be primary, and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.
- C. If there is an onsite exposure of injury to CONSULTANT, 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: _____

VI. Cyber Liability Insurance Coverage

- A. CONTRACTOR's insurance shall be primary and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.
- B. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policies or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the CONTRACTOR.
- C. Minimum Requirements: 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 CONSULTANT’S insurance broker/agent, I hereby verify that I have reviewed and confirmed that the CONSULTANT 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: _____

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 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: _____

EXHIBIT E TO CONSULTING AND PROFESSIONAL SERVICES AGREEMENT

East Bay Municipal Utility District Third Party Administrator Services for Property Damage Claims

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:

- 2.1.2.1. Keep and maintain all Protected Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use, or disclosure;
- 2.1.2.2. Not create, collect, receive, access, or use Protected Information in violation of law, including state, federal, and international law;
- 2.1.2.3. 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
- 2.1.2.4. 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:

- 2.3.1.1. 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;

2.3.1.2. 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

2.3.1.3. Notify the District of any suspected Security Breaches by reporting via email to 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.

3.1.2. The failure of the Services to comply with the scope of services set forth in Exhibit A.

3.1.3. CONSULTANT's failure to comply with any warranty provision of Paragraph 6.

3.1.4. CONSULTANT's failure to provide the District with a written plan to cure a security breach as specified in Paragraph 2.3, or the District's reasonable refusal to accept CONSULTANT's plan for curing its breach; or CONSULTANT does not fully carry out an accepted plan to cure.

3.1.5. CONSULTANT's abandonment of the Services. Abandonment is conclusively presumed when the District requests a written plan to cure a breach and CONSULTANT does not submit the plan within five (5) business days of the District's request.

3.1.6. CONSULTANT's insolvency or filing for relief under the bankruptcy laws of the United States.

3.1.7. CONSULTANT's general assignment of this Agreement for the benefit of its creditors or failure to pay its debts as the same become due.

3.1.8. Appointment of a receiver to take charge of CONSULTANT's property.

3.1.9. CONSULTANT's disregard of legal requirements of agencies having jurisdiction over the Services, CONSULTANT, or the District.

3.1.10. CONSULTANT's breach of any other material obligation under this Agreement.

3.2. If the nature of any of the breaches identified in 3.1.1 is such that the breach may be cured, the breach shall not be considered a material breach if, after written notice from the District, the District is presented with a satisfactory plan to cure the breach within five (5) days and the breach is cured within thirty (30) days, except that any failures related to CONSULTANT's information security obligations under this Agreement shall be cured within five (5) days.

3.3. Upon any material breach of this Agreement, the District shall have the following remedies, at its option:

3.3.1. The District may terminate the Agreement immediately in writing for cause under Paragraph 3.1.

3.3.2. The District may provide notice in writing to CONSULTANT of its intent to terminate this Agreement for cause, with the notice providing an effective termination date. The time between the date of the notice and the effective date of termination shall be the "Notice Period."

3.3.3. During any Notice Period:

3.3.3.1. CONSULTANT shall continue to retain the District Information, or solely such specific databases or other collections or articles of District Information as the District may allow;

3.3.3.2. CONSULTANT shall continue to provide the Services as though this Agreement was still in force;

3.3.3.3. The District shall pay in full all undisputed compensation due CONSULTANT as of the notice date and shall pay monthly compensation to CONSULTANT for retention of the Services, in accordance with the Agreement;

3.3.3.4. CONSULTANT will fully cooperate with the District so as to enable the District to transition the District Information and the Services to a District platform or a platform provided by a third party.

3.3.4. The District shall have the right, through written notice to CONSULTANT, to extend the Notice Period or terminate the Agreement earlier than the Notice Period.

3.4. The remedies in Paragraph 2 shall not be deemed to be exclusive but shall be in addition to all other remedies available in this Agreement or at law or in equity.

4. INSURANCE

4.1. Consultant shall take out and maintain during the life of this Agreement all the insurance required in Exhibit D.

5. INDEMNIFICATION

5.1. 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', subcontractors', or other agents' failure to comply with any of the Security provisions of Paragraph 2 of this Agreement.

6. WARRANTIES AND REMEDIES

6.1. Consultant warrants that the Services:

6.1.1. Will conform to and perform in accordance with the requirements of this Agreement, including the Security provisions of Paragraph 2;

6.1.2. 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;

6.1.3. Will be provided free from harmful or malicious code;

6.1.4. Will be provided in compliance with all applicable laws; and

6.1.5. Will not infringe, misappropriate, or otherwise violate any Intellectual Property Right or other right of any third party.

6.2. 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, the District shall be entitled to any resulting direct and indirect damages.



EXHIBIT C IRAN CONTRACTING ACT CERTIFICATION

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

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

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

CERTIFICATION FOR PARAGRAPH 1:

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

Firm: _____

By: _____ Date: _____
(Signature of Bidder)

Title: _____

Signed at: _____ County, State of: _____

OR

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

EXHIBIT D

Sample Reports

Attorney-Client Privileged Communication

Claim Status Report - 11/23/22
Previous Report - 11/1/22
Next Report - 11/30/22

Claimant:
Claim Number:
Adjuster:
City of Incident:

Date of Loss: 8/6/322
Date Claim Received: 10/4/22
Date Claim Rejected: N/A
Statute of Limitations: 8/6/24

Claimant Allegations:

The Claimant alleges landscaping and retaining wall damage due to main break.

Liability Investigation/Determination:

Liability appears to be adverse to the District. There are two GWO's #1650177 and GWO #1650241, associated with this location.

Damages Claimed:

The Claimant submitted a claim seeking \$17,934.28 for landscaping repairs.

Current Status/Investigation:

Consider a site visit. Square footage. Appears District will need to complete road work prior to Claimant being able to address retaining wall.

10/19/22- Called Claimant - confirmed no work completed on street. There was no sidewalk. Concerns over up to what line will the District pave too, then Claimant to address front retaining wall. The Claimant spoke with District staff who stated delay with City of Berkeley in going forward (permits?). He mentioned cracking in house but states he does not know if related and may seek expert advised. He lives in hilly area.

Called Paving Supervisor - he recalls job. Initial PVO completed but may be more given second break. District planned to construct berm to mitigate any further break, but City would not allow. Sent claim form and work orders for Darryl to review. He may go up to the area, this would be another order.

11/17/22 site visit.

POA:

Action Item	Due Date	Completed	Individual
1. Consider site	11/30/22		DEY

Settlement Request/Additional Comments:

Closing Summary/Comments:

Tentative Settlement Authority: Kim A. Damico Date

Final Settlement Authority: Vladimir Bessarabov Date

**Closing Report –
Date of Previous Report –
Next Report –**

Claimant: **Date of Loss: January 26, 2021**
Claim Number: **Date Claim Received: N/A**
Adjuster: **Date Claim Rejected: N/A**
City of Incident: **Statute of Limitations: 6 mos. /1 yr**
Date Claim Inspected: January 26, 2021

Claimant Allegations:

The Claimant alleges water entered his building from a District water source.

Liability Investigation/Determination:

Liability is adverse to the District. GWO 1634660 was opened on January 26, 2021 to repair an eight inch steel main break with an estimated water flow of 400 GPM occurring at or near , in front of the Claimant's property.

Damages Claimed:

No claim form received. The statute for personal property expires on July 26, 2021. The statute for real property expires on January 26, 2022.

On January 26, 2021, Faragon was dispatched to the Claimant's property to complete water restoration. An invoice totaling \$9,596.43 for Faragon's services was received and paid by the District on April 2, 2021.

Current Status/Investigation:

No claim form received to date. At this time, I will close my file. If a Claim form is received in the future, I will reopen file and evaluate accordingly.

POA:

Action Item	Due Date	Completed	Individual
1. Prepare for closure			R Harris

Claim Status Report –
Date of Previous Report –
Next Report – N/A
Claimant:
Claim Number:
Adjuster:
City of Incident:
Date Claim Inspected:

SETTLEMENT AUTHORITY REQUEST

Date of Loss:
Date Claim Received:
Date Claim Rejected:
Statute of Limitations:

Claimant Allegations:

The Claimant alleges water entered her property from a District water source.

Liability Investigation/Determination:

Liability is adverse to the District. GWO 1632999 was opened on November 29, 2020 to repair a six inch cast iron main break with an estimated water flow of 10 GPM occurring at or near, uphill from the Claimant's property located at .

Damages Claimed:

On January 1, 2021, the Claimant, a tenant of the property, submitted a Claim form requesting reimbursement totaling \$1,869.39 alleging damage to clothing and furniture in the garage. The Claimant also is requesting reimbursement for an increase in their electric bill. Included in the Claimant's submission were pictures of the affected property as well as a snip-it of the Claimant's electric bill.

Current Status/Investigation:

On January 8, 2021, after conducting an initial review of the Claimant's submission, a request was made to provide cost to repair the water stains on the legs of the Claimant's ottoman. Additionally, I requested the estimated cost to clean the clothing items affected by the water intrusion. Lastly, the Claimant was asked to provide their complete utility bills showing the increased electricity; along with previous bills which would provide a baseline of their normal usage. Subsequent emails from the Claimant on January 12th, 14th and 30th provided the necessary information to continue the evaluation of the loss.

The District recommended evaluation to clean the affected clothing items (\$158.00), repair the water damage to the ottoman (\$350) and the increase of the electricity bill (\$161.04) is all based on the subsequent information provided by the Claimant. A tentative agreement to settle the loss has been agreed by both parties, pending District approval. No additional amounts are being claimed at this time.

ITEM	AMOUNT CLAIMED	DISTRICT RECOMMENDATION
Clothing items	1,099.50	158.00
Ottoman	576.89	350.00
Utility increase	193.00	161.04
Total	\$1,869.39	\$669.04

POA:

Action Item	Due Date	Completed	Individual
1. Secure settlement authority			

Settlement Request/Additional Comments:

To RM - I request settlement authority of **\$669.04** for property damage claim based upon the facts of the loss and extent of the damages.

Tentative Authority:

Kim Damico Date

Final Settlement Authority:

Vladimir Bessarabov Date

**EAST BAY MUNICIPAL UTILITY DISTRICT
ATTORNEY-CLIENT PRIVILEGED
COMMUNICATION**

DATE:

MEMO TO: Claims Settlement Committee

FROM: Kim Damico, Risk Management Analyst

SUBJECT: Request for Settlement Authority
Claimant:
District File Number:
Date of Loss:

II. RECOMMENDATION FOR SETTLEMENT AUTHORITY:

Risk Management requests authorization for settlement authority in the amount of \$30,067.26. The Claimants have tentatively accepted the offer to settle the claim pending approval by the District's Claims Settlement Committee.

Pursuant to Policy 4.17 "Risk Management", the Claims Settlement Committee (consisting of General Counsel, Director of Finance and Risk Manager) has authority to approve settlements with values over \$20k and up to \$50k.

III. LIABILITY INVESTIGATION/DETERMINATION:

On June 5, 2022, GWO 1648519 was opened for repairs to a 12 inch cast iron main break in front of, uphill from the Claimant's property, with an estimated 200 gallons per minute. District water flowed onto and into the lower level of the Claimants' home.

IV. CURRENT STATUS/INVESTIGATION:

On June 14, 2022, the Claimants submitted a claim seeking an amount to be determined for personal and real property damage.

The Claimants' property is a two-story family home in a residential area. The lower level of the home is an Airbnb. The District offered immediate restoration services. The Claimants declined, stating they will retain a company. Water affected the flooring and baseboards in the front room, two bathrooms and two bedrooms. Additionally, sheetrock was affected some in the same areas of the home.

On July 11, 2022, the Claimants submitted an itemization of damages seeking \$58,427.09. The Risk Management Third Party Administrator (TPA), Sr. Property Adjuster, reviewed the documents submitted with the claim. Upon evaluation of the costs for damages related to the water intrusion a tentative offer was made to the Claimants in the amount of \$28,407.42. The Claimants countered at \$49,606.71. At issue was the loss of use for rental of the Airbnb.

Upon several conversations with the Claimants, understanding their concerns, the Risk Management

Liability Claims Supervisor (LCS) increased the tentative offer to the Claimant's in the amount of \$30,067.26. The Claimants accepted the tentative offer.

ITEMIZATION OF DAMAGES:

	Claimants' Demand	District Offer
Flood Mitigation	\$11,080.00	\$ 9,227.32
Flooring	\$10,788.89	\$ 7,442.60
Drywall Repairs	\$14,000.00	\$ 7,031.50
Inspections (Mold and Foundation)	\$ 2,050.00	\$ 975.00
Landscaping	\$ 750.00	\$ 750.00
Airbnb	<u>\$19,758.20</u>	<u>\$ 4,640.84</u>
	\$58,427.09	\$30,067.26

ALTERNATIVES:

We recommend settlement of the claim short of litigation. If rejected by the Claims Settlement Committee, the alternative is to try this matter in court. This alternative is not recommended since the District has liability exposure and the tentative settlement amount is a reasonable compromise. If pursued in litigation, the Claimants may be awarded an amount greater, as well as attorney and expert fees, and pre-judgment interest. Settlement in the amount of **\$30,067.26** is a cost-effective resolution of this claim.

Claims Settlement Committee:

 Vladimir Bessarabov Date
 Risk Manager

 Sophia D. Skoda Date
 Director of Finance

 Derek T. McDonald Date
 General Counsel