



*Serving Our Community Since 1902*

500 Laurel Street, Menlo Park, California 94025-3486 (650) 321-0384 (650) 321-4265 FAX

# REQUEST FOR PROPOSAL

## Professional Financial Audit Services

Proposals Due By: 4:00 pm

April 20, 2022

# **West Bay Sanitary District**

## *Request for Proposal Financial Audit Services*

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# ***West Bay Sanitary District***

## ***Request for Proposal Financial Audit Services***

### **I. INTRODUCTION**

#### **A. General Information**

The West Bay Sanitary District (District) is requesting proposals from qualified firms of certified public accountants to audit its financial statements for the fiscal years ending June 30, 2022, 2023, and 2024, with the option to extend for an additional two years. These audits are to be performed in accordance with generally accepted auditing standards.

There is no expressed or implied obligation for the District to reimburse responding firms for any expenses incurred in preparing proposals in response to this request.

To be considered, a copy of proposal must be received by 4:00 p.m. on April 20, 2022. The District reserves the right to reject any or all proposals submitted.

During the evaluation process, the District reserves the right, where it may serve the District's best interest, to request additional information or clarifications from proposals, or to allow corrections of errors or omissions. At the discretion of the District, firms submitting proposals may be requested to make oral presentations as part of the evaluation process.

The District reserves the right to retain all proposals submitted regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for proposal, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the District and the firm selected.

### **II. NATURE OF SERVICES REQUIRED**

#### **A. Scope of Work to be Performed**

1. The District desires the auditor to express an opinion on the fair presentation of its general-purpose financial statements in conformity with generally accepted accounting principles.
2. The auditor shall provide professional advice and guidance on implementation of applicable GASB regulations in effect at the time of issuing the statements and implications of future regulations.
3. If necessary, the auditor shall also perform a single audit in accordance with the new Uniform Guidance for federal grants.
4. Provide the District advice and guidance to convert to a Comprehensive Annual Financial Report (CAFR) in the future.

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### **B. Auditing Standards to be Followed**

To meet the requirements of this request for proposal, the audit shall be performed in accordance with: generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants; the standards applicable to audits contained in Auditing Standards issued by the Controller General of the United States; and the State Controller's Minimum Audit Requirements for California Special Districts.

### **C. Reports to be Issued**

1. Following the completion of the audit of the fiscal year's financial statements, the auditor shall issue a report on the fair presentation of the financial statements in conformity with generally accepted accounting principles.
2. The auditor shall communicate in a letter to District Board of Directors any reportable conditions found during the audit. A reportable condition shall be defined as a significant deficiency in the design or operation of the internal control structure which could adversely affect the organization's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements.
3. Irregularities and illegal acts. Auditors shall be required to make an immediate written report of all irregularities and illegal acts or indications of illegal acts of which they become aware to the following parties:

Sergio Ramirez, District Manager

Fran Dehn, President Board of Directors

4. Reporting to the Finance [Audit] Committee. Auditors agree to inform the District's Finance Committee of any and all of the following:
  - a. The auditor's responsibility under generally accepted auditing standards
  - b. Significant accounting policies
  - c. Management judgments and accounting estimates
  - d. Significant audit adjustments
  - e. Other information in documents containing audited financial statements
  - f. Disagreements with management
  - g. Management consultation with other accountants
  - h. Major issues discussed with management prior to retention
  - i. Difficulties encountered in performing
5. Reporting to the Board of Directors. Auditors agree to provide a summary report to the District's Board of Directors all information provided to the Finance Committee, along with standard financial reporting and any additional information requested by the Committee.

### **D. Working Paper Retention and Access to Working Papers**

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All working papers and reports must be retained, at the auditor's expense, for a minimum of five (5) years, unless the firm is notified in writing by the District of the need to extend the retention period. In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

### III. DESCRIPTION OF THE DISTRICT

#### A. Contact Persons

The auditor's principal contact with the District will be Debra Fisher, Finance Manager at [dfisher@westbaysanitary.org](mailto:dfisher@westbaysanitary.org) or (650) 321-0384.

#### B. Background Information

The District is a special district, providing wastewater collection and conveyance services to the City of Menlo Park, Atherton, and Portola Valley, and areas of East Palo Alto, Woodside and unincorporated San Mateo and Santa Clara counties. The District was established in 1902 and operates pursuant to the California Health and Safety Code, Division 6 – Sanitary District Act of 1923. The District conveys raw wastewater, via the Menlo Park Pump Station and force main, to Silicon Valley Clean Water (SVCW), a joint powers authority, for treatment and discharge to the San Francisco Bay. The District is located in Menlo Park in Sam Mateo County, California. The District currently has thirty regular full time employees, and serves a population of approximately 20,000 homes and businesses. Its Board of Directors consists of five members elected at large from the communities served to four year terms.

The District's general operating budget for fiscal year 2021/22 is approximately \$24 million. The District has separate Funds for Capital, Solid Waste, and Recycled Water. Recycled Water includes a public/private partnership with Sharon Heights Golf & Country Club (SHGCC) operating the Sharon Heights Recycled Water Facility (SHRWF). The District is in planning phases for another recycled water facility at the Bayfront site.

More detailed information on the District and its finances can be found on our website at [westbaysanitary.org](http://westbaysanitary.org).

#### C. Fund Structure

The District uses the Proprietary Fund Accounting method for both the general, sewer services, solid waste, and recycled water funds and utilize full accrual accounting method.

#### D. Budgetary Basis of Accounting

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The District prepares annual fiscal year budgets from July 1<sup>st</sup> to June 30<sup>th</sup> for the Board's adoption. Capital is include in the District's Master Plan and annually approved through the budget process.

E. Availability of Prior Audit Reports and Working Papers

Interested proposers who wish to review prior years' audit work papers should contact:

Sheldon Chavan  
Chavan & Associates LLP  
1475 Saratoga Ave, Suite 180  
San Jose, CA 95129

The most recent financial audits and approved budgets are available on the District website at <https://westbaysanitary.org/about-us/budget-and-finance-2/>. The District will use its best efforts to make prior working papers available to proposers to aid their response to this request for proposal.

IV. ASSISTANCE TO BE PROVIDED TO THE AUDITOR AND REPORT PREPARATION

A. Finance Department and Clerical Assistance

The finance department staff and responsible management personnel will be available during the audit to assist the firm by providing information, documentation and explanations. The preparation of confirmations will be the responsibility of the District.

B. Statements and Schedules to be Prepared by the District Staff

District staff will prepare the necessary statements and schedules for the auditors by the dates indicated:

<u>Statements or Schedules</u>	<u>Date</u>
Preliminary Trial Balance	August 31, 2022
Statement of Net Position	September 15, 2022
Statement of Revenues, Expenses, and Changes in Net Position	September 15, 2022
Other Schedules	October 31, 2022

C. Statements and Schedules to be Prepared by the Audit Staff

Auditors will provide reports and information to the District by the following dates, with corresponding dates in subsequent years. These dates may be modified if concerted by both the District and auditors. The final audit must be reported to the Board of Directors and approved by December 31<sup>st</sup> each year.

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Field Audit	September 15, 2022
Financial Statements (All)	October 14, 2022
Completed Audit Report Draft	October 31, 2022
Final Audit Report	November 15, 2022
Report to Finance Committee	November 30, 2022
Report to Board of Directors	December 14, 2022

### **D. Report Preparation**

Report preparation, editing, and printing shall be the responsibility of the auditor. The District will review and provide final editing and insure that audit report corresponds to the District's internal records.

## **V. TIME REQUIREMENTS**

### **A. Proposal Calendar**

The following is a list of key dates up to and including the date proposals are due to be submitted:

Request for proposal issued	March 15, 2022
Due date for proposals	April 20, 2022
Review of proposals	April 21 – 25, 2022
Telephone conference or interview	April 21 – 25, 2022
Recommendation by staff to Board	May 4, 2022

### **B. Notification and Contract Dates**

Selected firm notified	May 5, 2022
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### **C. Date Audit May Commence**

The District will provide a preliminary trial balance by August 31, 2022. All financial statements, schedules, and records will be prepared by September 15, 2022. If the selected audit firm provides a document portal, the audit may commence as early as July 1, 2022 and District staff will begin providing necessary documentation.

### **D. Schedule for the 2022/23 Fiscal Year Audit (A similar time schedule will be developed for audits of future fiscal years).**

Each of the following should be completed by the auditor no later than the dates indicated.

#### **1. Interim Work**

The auditor shall provide the District a list of schedules and files needed for the interim audit no later than two weeks prior to audit date.



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2. Detailed Audit Plan

The auditor shall provide the District by August 25, 2022 both a detailed audit plan (including dates), and a list of all schedules to be prepared by the District for the final audit.

3. Fieldwork

The auditor shall complete all fieldwork by September 15, 2022.

4. Draft Reports

The auditor shall have drafts of the audit report(s) and recommendations to management available for review by October 31, 2022.

5. Signed Auditor's Opinion

The signed auditor's opinion and completed audit report(s) should be delivered no later than November 15, 2022.

E. Schedule for Entrance Conferences, Progress Reporting and End-of-Field-Work Conferences (A similar time schedule will be developed for audits of future fiscal years).

Tentative dates as follows:

Week of:

*Preliminary conference*

July 4, 2022

The purpose of this meeting is to discuss the interim work to be performed. This meeting will also be used to establish the contact person for the audit and other needs of the auditors.

*Progress conference*

July 18, 2022

The purpose of this meeting is to summarize the results of the preliminary review, to identify the key internal controls or other matters to be tested, and to discuss the year-end work to be performed.

*Entrance conference*

September 15, 2022

The purpose of this meeting is to commence year-end audit work

*End-of-field-work conference*

September 15, 2022

The purpose of this meeting is to summarize the results of the field work and to review significant findings, if any

F. Final Report Due

The auditors will provide a digital copy of the audit draft to the District Finance Manager for review. During that period, the auditor should be available for any

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meetings that may be necessary to discuss the audit reports. Once all issues for discussion are resolved, the final signed auditor's opinion shall be delivered to within five working days. It is anticipated that this process will be completed and the final report delivered by November 15, 2022.

A partner of the audit firm who has a clear understanding of the audit and experience in presenting audit reports to public officials, is expected to make a brief presentation summarizing the team's findings to the District Finance Committee and the Board of Directors at the District's November or December Board of Directors meeting.

### VI. PROPOSAL REQUIREMENTS

#### A. General Requirements

1. Inquiries concerning this request for proposals and the subject of the request for proposals should be made to Debra Fisher at [dfisher@westbaysanitary.org](mailto:dfisher@westbaysanitary.org).
2. Submission of Technical Proposal. An original and/or digital copy of the Technical Proposal must be received **by 4:00 pm on Wednesday, April 20, 2022** for a proposal to be considered. The requirements of the technical proposal are described below.
3. Submission of Cost Proposal. An original of the Cost Proposal must be received **by 4:00 pm on Wednesday, April 20, 2022 under a separate cover in a sealed envelope** to be considered. The requirements of the cost proposal are described below.

#### B. Format for Technical Proposal

The format of the Technical Proposal shall be as follows:

1. *Title Page*  
Show the RFP subject, name of the audit firm, local address, telephone number, name and title of contact person, and date of submission.
2. *Table of Contents*  
Include a clear and complete identification of the materials submitted by section and page number. Cross-referencing to section and page number in the RFP is recommended.
3. *Transmittal Letter*  
Include a general introduction and briefly state the proposer's understanding of the audit services to be performed; a positive commitment to perform the service within the time period specified; the name(s) of the person(s) authorized to represent the proposer, title, address, and telephone number.
4. *Detailed Proposal*  
The detailed proposal should include all the required content set out in Section C and D below.

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### Contents of Technical Proposal

The purpose of the Technical Proposal is to demonstrate the qualifications, competence and capacity of the firms seeking to undertake an independent audit of the District in conformity with the requirements of this Request for Proposal. As such, the substance of proposals will carry more weight than their form or manner of presentation. The Technical Proposal should demonstrate the qualifications of the firm and of the particular staff to be assigned to this audit. It should also specify an audit approach that will meet the Request for Proposal requirements.

**THERE SHOULD BE NO DOLLAR UNITS OR TOTAL COSTS INCLUDED IN THE TECHNICAL PROPOSAL DOCUMENT (Except when stating the cost of contracts for listed references).**

The Technical Proposal should address all the points outlined in the RFP (excluding any cost information which should only be included in the sealed cost proposal). The proposal should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of the request for proposal. While additional data may be presented, the areas detailed below must be included. They represent the criteria against which the proposal will be evaluated.

1. *License to Practice in California.*

An affirmative statement should be included that the firm and all assigned key professional staff are properly licensed to practice in California.

2. *Independence*

The firm should provide an affirmative statement that it is independent of the District as defined by generally accepted auditing standards set forth by the U.S. General Accounting Office's *Government Auditing Standards*.

3. *Insurance*

The audit firm shall procure and maintain, for the duration of the agreement, workers' compensation, employer's liability, commercial general liability, and automobile liability insurance against claims for injuries to persons or damages to property which may arise out of or in connection with the performance of the work by the firm, its employees, and its representatives.

Refer to Appendix B, Insurance Requirements for Consultants for the scope and limits of coverage.

4. *Firm Qualifications and Experience*

The proposer should state the size of the firm, the size of the firm's governmental audit staff, the location of the office from which the work on this audit is to be performed, the number and job title of the professional staff that will participate in the audit on a full-time basis as well as the number and job title of the staff that will participate on a part-time basis.

If the proposer is a joint venture or consortium, the qualifications of each firm comprising the joint venture or consortium should be separately identified and the firm that is to serve as the principal auditor should be noted, if applicable.

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If the proposer will be subcontracting any portion of the audit to another individual or firm, the proposal must include a list of all subcontractors to be used. No substitutions of subcontractors may be made without prior written consent of the District.

- a. The proposer is also required to submit a copy of the report on its most recent external quality control (peer) review, with a statement whether that quality control review included a review of specific government audits (required by *Government Audit Standards (1994)*).
- b. The proposer shall also provide information on the results of any federal or state desk reviews or field reviews of its audits during the past three (3) years. In addition, the proposer shall provide information on the circumstances and status of any negative actions taken or pending against the firm during the past three (3) years with state regulatory bodies or professional organizations.

### ***5. Partner, Supervisory and Staff Qualifications and Experience***

- a. Identify the principal supervisory and management staff, including audit partners, managers, and other supervisors and specialists, who would be assigned to the audit and indicate whether each person is licensed to practice as a certified public accountant in California. Also, provide information on the government auditing experience of each person, including information on relevant continuing professional education for the past three (3) years and membership in professional organizations relevant to the performance of this audit.
- b. Provide as much information as possible regarding the number, qualifications, experience and training, including relevant continuing professional education, of the specific staff to be assigned to this audit. **Indicate how the quality of staff will be assured over the term of the agreement.**
- c. Principal supervisory and management staff, including audit partners, managers, other supervisors and specialists may be changed during the course of the agreement, however, the District reserves the right to approve or reject replacements. Other audit personnel may be changed at the discretion of the proposer provided that replacements have substantially the same or better qualifications or experience.

### ***6. Similar Scope of Work with Other Government Entities***

For the firm's office that will be assigned responsibility for the audit, list the most significant work (maximum 3) performed in the last three years that are similar to the scope of work described in this request for proposal. These should be ranked on the basis of total staff hours. Indicate the scope of work, date, audit partners, total hours, and the name and telephone number of the principal client contact. Also please indicate whether the audit was part of a Comprehensive Annual Financial Report (CAFR).

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Please provide a list of not less than three client references for which services similar to those outlined in this RFP are currently being provided. For each reference listed, provide the name of the organization, approximate gross cost of the contract, dates for which the service(s) are being provided, type of service(s) being provided and the name, address and telephone number of the responsible person within the reference's organization. The District reserves the right to contact any or all of the listed references regarding the audit services performed by the proposer.

### **7. *Specific Audit Approach***

The proposal should set forth a work plan, including an explanation of the audit methodology to be followed to perform the services required in this request for proposal. In developing the work plan, reference should be made to such sources of information as the District's budget and related materials, organizational charts, manuals and programs, and financial and other management information systems.

Proposers will be required to provide the following information on their audit approach:

- a. Proposed segmentation of the audit;
- b. Level of staff and number of hours to be assigned to each proposed segment of the audit;
- c. Sample size and the extent to which statistical sampling is to be used in the audit;
- d. Extent of use of Electronic Data Processing (EDP) software in the audit;
- e. Type and extent of analytical procedures to be used in the audit;
- f. Approach to be taken in determining laws and regulations that will be subject to audit test work;
- g. Approach to be taken to gain and document an understanding of the District's internal control structure;
- h. Approach to be taken in drawing audit samples for purposes of tests of compliance;
- i. Method of determining if a conflict of interest exists in work performed on behalf of the District.

### **8. *Identification of Anticipated Potential Audit Problems***

The proposer should identify and describe any anticipated potential audit problems, the firm's approach to resolving these problems, and any special assistance that will be requested from the District.

## **C. Contents of Cost Proposal**

### **1. *Total All-Inclusive Maximum Price***

The sealed dollar cost bid should contain all pricing information relative to performing the audit as described in the request for proposal. The total all-inclusive maximum price to be bid should include all direct and indirect costs, including all out-of-pocket expenses.

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The District will not be responsible for expenses incurred in preparing and submitting the technical proposal or the sealed dollar cost bid. Such costs should not be included in the proposal.

The first page of the sealed dollar cost bid should include the following information:

- a. Name of firm.
- b. Certification that the person signing the proposal is authorized to represent the firm, empowered to submit the bid, and authorized to sign a contract with the District.
- c. Total all-inclusive maximum price for the first three year of the audit plus the optional two (2) additional years (5-year total proposal).
- d. Any additional cost per year if the District moves to providing a CAFR.

2. ***Rates by Partner, Supervisory and Staff***

The cost proposal should include detailed information regarding the estimated number of hours to be dedicated to the District's audit, delineated by staffing level and billing rate, and including all additional expenses to support the total all-inclusive maximum price. Billing rates listed in these schedules will be used if any additional work is requested outside the scope of this proposal. A cost proposal should be presented for each of the years (FY 2021-22, FY2022-23, FY2023-24 and optional years FY 2024-25 and FY 2025-26).

3. ***Manner of Payment***

Progress payments will be made on the basis of actual audit work completed during the course of the audit and out-of-pocket expenses incurred in accordance with the firm's proposal. Interim billing shall cover a period of not less than a calendar month. Details of staff hours with billing rates will be required to be included on each invoice. Payment will be made based upon actual costs not to exceed the maximum outlined in the proposal. Ten percent (10%) will be withheld pending delivery and approval of the firm's final reports.

## **VII. EVALUATION PROCEDURES**

A. **Review Committee**

Proposals submitted will be reviewed by:

Sergio Ramirez, District Manager  
Debra Fisher, Finance Manager

B. **Evaluation Criteria**

Proposals will be evaluated on the following:

1. **Mandatory Elements**

- a. The audit firm is independent and licensed to practice in California
- b. The firm has no conflict of interest with the District
- c. The firm follows the instructions set forth in the RFP

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- d. The firm submits a copy of its last external quality (peer) review report and the firm has a record of quality audit work.
- 2. Technical Quality
  - a. Experience with comparable government audits
  - b. Qualifications of staff assigned to the audit
  - c. Audit approach and work plan
  - d. Client reviews of the firm's competency and professionalism
  - e. Telephone Interview or Oral Presentation
  - f. Proposed Fees
- C. Selection of Firm  
The District will select a firm based upon the recommendation of the Review Committee. It is anticipated that a firm will be selected by April 25, 2022 with Board approval on May 4, 2022. Following notification of the firm selected, it is expected a contract will be executed between both parties no later than May 8, 2022.
- D. Right to Reject Proposals  
Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for proposal unless clearly and specifically noted in the proposal submitted, and confirmed in the contract between the District and the firm selected.

WBSD reserves the right without prejudice to reject any or all proposals.

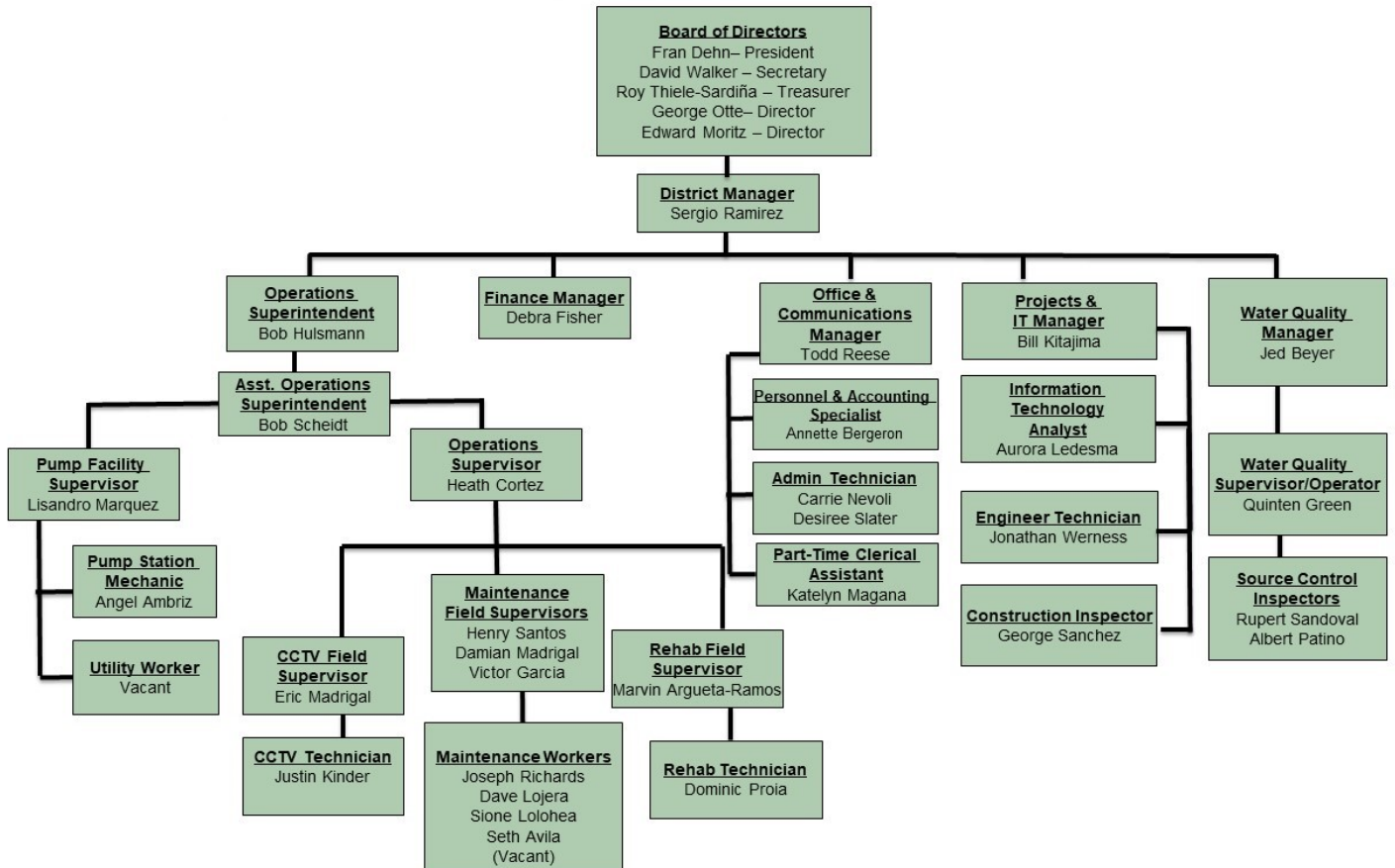
### **VIII. APPENDICES**

- D. District Organizational Chart
- E. Insurance Requirement for Consultants
- F. Standard Contract for Consultation and Professional Services

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### Appendix A Organization Chart 2022





**West Bay Sanitary District**  
*Request for Proposal*  
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**Appendix B**  
**Insurance Requirement for Consultants**

CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors.

**MINIMUM SCOPE OF INSURANCE**

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 05 09 or 25 04 05 09) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, covering hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers’ Compensation:** as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions):** Insurance appropriate to the Contractor’s profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. *(If applicable – see footnote next page)*

If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or higher limits maintained by the contractor.

**Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

***Additional Insured Status***

The District, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used).

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**Appendix B**  
**Insurance Requirement for Consultants**

***Primary Coverage***

For any claims related to this contract, the **Contractor's insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 04 13 as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

***Umbrella or Excess Policy***

The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

***Notice of Cancellation***

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the District.

***Waiver of Subrogation***

Contractor hereby grants to District a waiver of any right to subrogation which any insurer of said Contractor may acquire against the District by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.

***Self-Insured Retentions***

Self-insured retentions must be declared to and approved by the District. The District may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the District. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds \$25,000 unless approved in writing by the District. Any and all deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. The District may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named. The policy must also

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provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. The District reserves the right to obtain a copy of any policies and endorsements for verification.

**Acceptability of Insurers**

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the District.

**Claims Made Policies (note – should be applicable only to professional liability, see below)**

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work.**
3. If coverage is canceled or non-renewed, and not replaced **with another claims-made policy form with a Retroactive Date prior to** the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of **five (5) years** after completion of work.

**Verification of Coverage**

Contractor shall furnish the District with original certificates and amendatory endorsements, or copies of the applicable policy language effecting coverage required by this clause **and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements.** All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the District before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**Special Risks or Circumstances**

District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form number CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general

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aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), or if CONSULTANT has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Professional Liability** (Errors and Omissions) Insurance appropriate to the CONSULTANT's profession, with limit no less than **\$1,000,000** per occurrence or claim, \$2,000,000 aggregate.

If the CONSULTANT maintains higher limits than the minimum shown above, the District requires and shall be entitled to coverage for the higher limits maintained by the CONSULTANT.

**Other Insurance Provisions**

**The insurance policies are to contain, or be endorsed to contain, the following provisions:**

***Additional Insured Status***

**West Bay Sanitary District (District), its officers, officials, employees, outside professionals and volunteers are to be covered as insureds** on the auto policy with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONSULTANT; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONSULTANT including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONSULTANT's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).

***Primary Coverage***

For any claims related to this contract, the **CONSULTANT's insurance coverage shall be primary** insurance as respects the District, its officers, officials, employees, outside professionals and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, outside professionals or volunteers shall be in excess of the CONSULTANT's insurance and shall not contribute with it.

***Notice of Cancellation***

Each insurance policy required above shall state that **coverage shall not be canceled except after thirty (30) days' prior written notice.**

***Waiver of Subrogation***

CONSULTANT hereby grants to the District a waiver of any right to subrogation which any insurer of said CONSULTANT may acquire against the District by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the District has received a waiver of subrogation endorsement from the insurer.

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**Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be approved by the District. The District may require the CONSULTANT to provide proof of ability to pay losses and related investigations, claims administration, and defense expenses within the retention.

**Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII or comparable, unless otherwise acceptable to the District.

**Claims Made Policies**

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided *for at least five (5) years after completion of the contract of work.*
3. If coverage is cancelled or non-renewed, and not *replaced with another claims-made policy form with a Retroactive Date* prior to the contract effective date, the CONSULTANT must purchase "extended reporting" coverage for a minimum of *five (5) years* after completion of contract work.

**Verification of Coverage**

CONSULTANT shall furnish the District with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the District before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONSULTANT's obligation to provide them. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**Subcontractors**

CONSULTANT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

**Special Risks or Circumstances**

The District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

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#### **AGREEMENT FOR CONSULTATION AND PROFESSIONAL SERVICES Financial Audit Services**

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between the **WEST BAY SANITARY DISTRICT** (hereinafter referred to as "District"), and \_\_\_\_\_, whose address is, \_\_\_\_\_ hereinafter referred to as "Consultant");

#### **WITNESSETH:**

IN CONSIDERATION of the mutual covenants and conditions herein contained, the parties do hereby agree as follows:

#### General

DISTRICT engages CONSULTANT to furnish the services hereinafter mentioned upon the covenants and conditions of this Agreement, at the compensation herein stipulated, and CONSULTANT accepts said engagement upon said terms.

#### Duties of Consultant; Services to be Performed by Consultant

CONSULTANT shall perform such duties and services as are listed in agreement, and is hereby referred to and made a part hereof by reference. Said services shall be completed according to the time schedule contained in the agreement.

#### Services or Materials to be Performed or Furnished by District

DISTRICT shall assist CONSULTANT in connection with this Agreement as necessary in accordance with generally accepted accounting practices (GAAP) and generally accepted auditing standards.

#### Payment by District: Time and Manner of Payment

DISTRICT shall pay CONSULTANT, for all services to be rendered and all materials to be furnished under this Agreement, the amount specifically set forth and in the manner specifically set forth on agreement, based on the submitted cost proposal, which will be attached as **Exhibit A**. CONSULTANT agrees to accept said sum as full compensation for all services due under this Agreement. Notwithstanding any other language in the Agreement or any exhibits, CONSULTANT agrees that it will perform all tasks for a sum;

**Not to Exceed;** \_\_\_\_\_, (**\$** \_\_\_\_\_ **U.S. Dollars**).

This is an Agreement for financial auditing services as defined in **Exhibit B**, Consultant Services (Scope of Work), and CONSULTANT has accurately determined the price of those tasks.

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#### Authorization To Perform Services

The CONSULTANT is not authorized to perform any services, or incur any costs whatsoever under the terms of this Agreement until receipt of written authorization from the DISTRICT.

#### Additional Work

CONSULTANT shall not be entitled to extra compensation for services or materials not otherwise required under this Agreement.

#### Professional Skill

CONSULTANT represents that it is skilled in the professional calling necessary to perform the work agreed to be done by it under this Agreement. CONSULTANT represents and warrants to DISTRICT that it has all licenses, permits, qualifications that are legally required for CONSULTANT to practice its profession and that CONSULTANT shall, at its sole cost and expense, keep all such licenses, permits, and approvals which are legally required for CONSULTANT to practice its profession in effect. DISTRICT relies upon the skill of CONSULTANT to do and perform its work in a skillful manner, and CONSULTANT agrees to thus perform its work, and the acceptance of its work by DISTRICT shall not operate as a release of CONSULTANT from said Agreement. For purposes of this Agreement, "skillful manner" shall mean the standard of care prevailing in the industry in the San Francisco Bay Area during the term of this Agreement.

#### Equal Employment Opportunity

CONSULTANT shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex of such person as provided in Section 12940 of the Government Code.

#### Compliance with Laws

CONSULTANT shall comply with all federal, state and District laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement. Any suit or action by either party shall be brought in the Superior Court for the County of San Mateo, California. The laws of the State of California shall govern this Agreement.

#### Independent Contractor; Not An Agent

CONSULTANT, at all times during the term of this Agreement is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of DISTRICT. Notwithstanding any other DISTRICT, state or federal policy, rule, regulation, law, or ordinance to the contrary, CONSULTANT and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by DISTRICT, including but not limited to eligibility to enroll in the California Public Employees

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Retirement System (PERS) as an employee of DISTRICT and entitlement to any contribution to be paid by DISTRICT for employer contributions and/or employee contributions for PERS benefits.

Except as DISTRICT may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of DISTRICT in any capacity whatsoever as an agent or pursuant to this Agreement to bind DISTRICT to any obligation whatsoever.

#### Time

CONSULTANT shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT'S obligations pursuant to this Agreement.

#### Indemnity

CONSULTANT agrees to indemnify and save harmless and defend with counsel acceptable to DISTRICT, the DISTRICT, its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, suits, actions, costs, expenses, claims, causes of action and damages (including costs of defense) arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance to the extent caused, in whole or in part, by recklessness, the willful misconduct or negligent acts or omissions of CONSULTANT, its officers, employees, agents, consultants, subcontractors or any officer, agent or employee thereof but excluding liabilities due to the active negligence of the DISTRICT. By execution of this Agreement, CONSULTANT acknowledges and agrees that CONSULTANT has read and understands the provisions hereof and that this paragraph is a material element of consideration. DISTRICT and CONSULTANT agree that this Agreement is consistent with Section 2782.8 of the Civil Code.

#### Insurance: Public Liability, Workers' Compensation, Errors and Omissions

CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its officers, subcontractors, agents, representatives, or employees.

CONSULTANT shall be required to meet all District Insurance Requirements. See **Appendix A** for District Insurance Requirements.

#### Consultant Professional Team

CONSULTANT shall provide and maintain the professional team to perform and furnish the materials in connection with this Agreement whose names and capacities are set forth on **Exhibit C**. In the event that any member of said team shall leave the employ of CONSULTANT or be transferred to another office of CONSULTANT, CONSULTANT shall so advise DISTRICT and replace that member with a new member who is competent to perform the required work and who shall be satisfactory to DISTRICT. Such other agents or employee contractors or subcontractors not listed on **Exhibit C** as may be required to



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perform any portion of this Agreement shall be competent and shall be suitably experienced in the function which they perform.

#### Notices

Unless otherwise provided herein, all notices required hereunder shall be given by certified mail, postage prepaid, and addressed to the party at the address indicated in the opening paragraph of this Agreement provided, however, that in lieu thereof, notice may be given by personal delivery to the party at said address.

#### Title to Documents

All original calculations, photographs, maps, drawings, plans, design notes and other material or documents developed or used in connection with the performance of this Agreement shall be the property of DISTRICT provided, however, that CONSULTANT may provide DISTRICT with legible photo static copies thereof in lieu of the originals upon approval by DISTRICT representative. All such material and documents shall remain confidential and may not be divulged, published or shared by CONSULTANT without the prior written consent of DISTRICT. Any plans and specifications shall bear the name of the CONSULTANT together with his certificate number, if any. If CONSULTANT'S working papers or product includes computer generated statistical material, CONSULTANT shall provide the material including the data base upon which it is based to DISTRICT in a mutually agreed upon computer machine-readable format and media.

#### Assignment

Neither party shall assign or sublet any portion of this Agreement without the written consent of the other party in writing.

#### Termination

Without limitation to such rights or remedies as DISTRICT shall otherwise have by law, DISTRICT shall also have the right to terminate this Agreement for any reason upon seven (7) days' written notice to CONSULTANT. This Agreement may also be terminated by either party upon seven (7) days' written notice should the other party fail substantially to perform in accordance with this agreement through no fault of the other or if the project is stopped by conditions beyond the control of the DISTRICT.

In addition to terminating this Agreement if CONSULTANT materially breaches any of the terms of this Agreement, DISTRICT'S remedies shall include, but not be limited to:

- Retain any work product prepared by CONSULTANT pursuant to this Agreement;
- Retain a different consultant to complete the work described in agreement not finished by CONSULTANT; and/or
- This description of DISTRICT's remedies does not otherwise limit DISTRICT's remedies at law or equity.

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###### Consultant Nondisclosure

CONSULTANT will not directly or indirectly use (other than for the DISTRICT), publish, or otherwise disclose at any time (except as CONSULTANT'S duties may require), either during or subsequent to the performance of consulting services, any of DISTRICT's confidential information (whether or not conceived, originated, discovered, or developed in whole or in part by CONSULTANT) as defined below.

"Confidential information" means information or material that is not generally available to or used by others or the utility or value of which is not generally known or recognized as standard practice whether or not the underlying details are in the public domain, including without limitation:

- a. Information or material that relates to DISTRICT'S inventions, technological developments, "know how", purchasing, accounting, merchandising or licensing;
- b. Trade secrets;
- c. Software in various stages of development (source code, object code, documentation, diagrams, flow charts), designs, drawings, specifications, models, data and customer information; and
- d. Any information of the type described above that DISTRICT obtained from another party and that the DISTRICT treats as proprietary or designates as confidential, or is obligated to do so by virtue of a third-party agreement, whether or not owned or developed by the DISTRICT.

The obligations of confidentiality imposed herein will not apply to confidential information that:

- a. Is or has been generally available to the public by any means, through no fault of CONSULTANT and without breach of these provisions.
- b. Is or has been lawfully disclosed to CONSULTANT by a third party without an obligation of confidentiality being imposed upon CONSULTANT.
- c. Has been disclosed without restriction by the DISTRICT or by a third party owner of confidential information.
- d. Was required to be disclosed pursuant to law.

CONSULTANT agree to deliver to DISTRICT promptly on request, or on the date of termination of CONSULTANT'S services, all documents, software, including any copies, and other materials in CONSULTANT'S possession pertaining to the business of DISTRICT and originating with the DISTRICT that came into CONSULTANT'S possession.

The disclosure of confidential information shall not be construed as granting either a license under any patent, patent application or any right of ownership in said confidential information.

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CONSULTANT acknowledges and agrees that in the event of a breach or threatened breach of any provisions of this Agreement, the DISTRICT shall have no adequate remedy at law and shall therefore be entitled to enforce any such provision by temporary or permanent injunctive or mandatory relief obtained in any court without the necessity of proving damages, posting any bond or other security, and without prejudice or diminution of any other rights or remedies which may be available at law or in equity.

#### No-Waiver; Construction

Failure on the part of either party to enforce any provisions of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provisions or any other provision. The singular number shall include the plural, and any gender referenced shall include the masculine, feminine, and neuter gender whenever the context of this Agreement permits.

#### Mediation

Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be shared equally by the parties. If a mediated settlement is reached, neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs.

#### Attorney's Fees

If a party brings any action, including an action for declaratory relief, to enforce or interpret the provisions of this Agreement, the prevailing party is entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. Such fees may be set by the court in the same action or in a separate action brought for that purpose.

#### Survival

All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between DISTRICT and CONSULTANT survive the termination of this Agreement.

#### Conflict of Interest

CONSULTANT may serve other clients, providing that activities in the service of other clients do not place CONSULTANT in a "conflict of interest" as that term is defined in the Political Reform Act codified at California Government Code § 81000 *et seq.* or Section 1090 *et seq.* of the Government Code.

#### Severability

If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall

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remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

Entire Agreement: Amendment

This contract supersedes any and all other agreements, whether oral or in writing, between the parties with respect to the subject of this contract. Except as to those documents specifically incorporated by reference into this contract, this contract contains all of the covenants and agreements between the parties with respect to the subject of this contract, and each party acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any party except the covenants and agreements embodied in this contract. No agreement, statement, or promise not contained in this contract shall be valid or binding on the parties with respect to the subject of this contract. No modifications hereof shall be effective unless such modification is in writing signed by all parties to this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

West Bay Sanitary District

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Print Name Title

\_\_\_\_\_

**CONSULTANT/SERVICE NAME**

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Print Name Title

**Attachments:**

- Exhibit A: Cost Proposal
- Exhibit B: Scope of Work
- Exhibit C: Professional Team assigned to District