

East Bay Municipal Utility District



Request for Proposal

Private Sewer Lateral Web Based Application Development

Replies for this RFP will be received until 3:00PM, Friday, March 12, 2010

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1. Introduction

1.1 Background

The East Bay Municipal Utility District (EBMUD or the District) is a publicly-owned utility formed under the Municipal Utility District Act passed by the California Legislature in 1921. Voters in portions of Alameda and Contra Costa Counties elect seven members to a Board of Directors who govern the District. The District provides water and/or wastewater services for 1.2 million residents in 20 cities and 15 unincorporated communities in the two counties.

1.2 Purpose of this Request

EBMUD is soliciting replies to this Request for Proposal (RFP) to develop a web based application to support the implementation of the District's Private Sewer Lateral (PSL) program. The PSL program is being implemented by the District to reduce the inflow and infiltration of groundwater into the sanitary sewer system during high precipitation storm events. The program will require homeowners to have their sewer lateral pass an inspection when designated triggering events occur, such as change of ownership, change of water service, or major remodel. If the lateral initially passes the inspection, a certificate of compliance is issued. If repair and/or replacement is necessary to pass inspection, the certificate will be issued once the inspection is passed. Temporary certificates may also be issued without initially passing the inspection if certain requirements are met. Inspection appointments will be scheduled by the property owners through a web interface. The application that will be developed will support this program.

- PSL Application Features:
 - o Issue Certificates of Compliance
 - Process PSL Inspection Requests
 - Store and Retrieve Key PSL Inspection Data
 - Support Management of Inspection Staff
 - Support Temporary Certificates of Compliance
 - Support Auditing Certificates of Compliance
 - o Manage PSL Incentive Grant Program Participation
 - o Reporting Features
 - Regulatory Reporting
 - Data Analysis

- PSL Application Modules:

- o PSL Guidelines and Information Portal
- o Property Owner Inspection and Certificate of Compliance Issuance
- o Temporary Certificate of Compliance
- o Incentive Grant Program
- o EBMUD Manage Inspection Appointments
- o Handheld Unit Inspection Form
- o Data Aggregation and Reporting

1.3 Programming Environment

All applications shall be developed using either Java or Ruby on Rails web based programming languages coupled with an Oracle RDBMS for data storage. Proposals may include pricing for just one of the environments, or may include a separate price for building the application with each technology.

1.4 Scope of Services Requested

The vendor is expected to review all the requirements listed and background information provided in this RFP, design and configure suitable solutions that will meet all the functional and technical requirements and verify satisfactory test results. A build versus buy analysis and implementation may also be part or all of the proposed application as long as the final product meets all of the listed requirements. In addition to a price for developing the system an additional yearly price for ongoing support shall be provided.

The vendor is expected to work on-site.

1.5 Ownership of Code

All code developed as part of this project is owned by EBMUD. The District's standard contracts include a clause that indicates the District owns all work products; so all work, whether performed by District forces or outside contractors is owned by the District.

2. Submittal of Replies

Replies should be received by: John Gregory, Information Services Supervisor, East Bay Municipal Utility District, 375 Eleventh Street, Oakland,

CA 94607-4240 no later than 3:00PM on Friday, March 12, 2010. Replies are to be sent by either mail or e-mail.

ALL MAILED RESPONSES SHALL BE ADDRESSED AS FOLLOWS:

"Reply for RFP # ITPC-001 – Private Sewer Lateral Web Based Application Development", Information Systems Department, Attn: John Gregory, Information Services Supervisor, MS-302, East Bay Municipal Utility District, P.O. Box 24055, Oakland, CA 94623. The envelope shall also have stated thereon the name and address of the submitting firm. Postmarks will not be accepted.

ALL E-MAILED RESPONSES SHALL BE ADDRESSED AS FOLLOWS:

Subject " Reply for RFP # ITPC-001 – Private Sewer Lateral Web Based Application Development" and sent to jgregory@ebmud.com. If you do not receive a confirmation of an e-mailed response within one business day, you must assume that your submission was not received. It is your responsibility to confirm receipt of your submission.

FAXED RESPONSES SHALL NOT BE CONSIDERED.

RESPONSES WILL NOT BE ACCEPTED THEREAFTER: All proposals received after said date and time will not be considered.

2.1 Questions on RFP

Questions concerning responses to the RFP may be made by e-mail to John Gregory at jgregory@ebmud.com before March 12, 2010. John Gregory will respond via e-mail to all respondents' questions. If you do not receive a confirmation of an e-mailed question within one business day, you must assume that your submission was not received. It is your responsibility to confirm receipt of your question. Please reference RFP # ITPC-001 in the e-mail subject line.

All questions and answers will be posted, as they are received, on the EBMUD website at <http://ebmud.com/business-opportunities/professional-and-general-services/>.

Questions regarding minority business enterprises should be directed to Beverly Johnson, Contract Equity Program, at (510) 287-0114.

3. Schedule and Selection Process

3.1 Major Events and Schedule

The major events within the selection process for determining the contract programming services vendor are outlined below. An approximate schedule of these events is as follows:

<u>Event</u>	<u>Schedule</u>
1. Send an email notification to potential vendors indicating that an RFP detailing our requirements is available on the EBMUD web site.	March 1, 2010
2. Receive vendor responses	March 1, 2010 – March 12, 2010
3. Meet with vendors if necessary, interviews, make reference calls as necessary	March 13, 2010 – April 2, 2010
4. Negotiate agreement with vendor	April 2, 2010 – April 9, 2010
5. Present to Board of Directors for Approval	April 13, 2010

The contract period is expected to be from April 14, 2010 through January 31, 2010.

3.2 Basis of Selection

Selection of a vendor will be based on a combination of the vendor's ability to provide the types of services requested, previous performance as a services provider to other companies, stability of the company, and cost. Determination of the capabilities will be made from the answers provided to our vendor questions listed in Section 5 and follow up interviews with finalists.

Section 5 will outline the content the District wishes to see and other critical information regarding the response.

3.3 Protests to Bid Award

Protests must be in writing and received by the District no later than 7 working days after receipt of the District's Notification of Selection. The protest document must contain a detailed and complete statement as to the basis of the protest and must include the name, address, and telephone number of the protestor or its authorized representative. Protests submitted by facsimile transmission or electronic mail are appreciated as they allow staff to review concerns in a timely manner. These communications must be confirmed via mail, however, or they will not be considered.

Upon receipt of the protest, the District will send the protestor an acknowledgement of receipt. The protest will go directly to the Finance Department Director, who will promptly investigate the circumstances. The District will also transmit copies of the protest document and any attached documentation to all other interested parties possibly affected by the outcome of the protest. The Finance Department Director's decision on the protest will be final.

If a protest is mailed, the protestor shall allow sufficient time for postal transit to ensure that the protest is received by the District within the specified time limits. It is further suggested that all mailed correspondence be sent via certified mail, return receipt requested. The District may dismiss the protest if the protestor fails to submit the protest within the specified time.

4. Requested Vendor Skills Set

- 1) The vendor shall have the knowledge, skills and abilities required to program applications running on an Oracle database.
- 2) The vendor shall have the knowledge, skills and abilities required to program web based applications using either Java or Ruby on Rails programming languages and environments.

5. Information Requested in Replies

- 1) Please provide an introductory statement stating your company's general qualifications to do the proposed work for the District.
- 2) How many years has the company been in business, and how many years has the company been providing web based software solutions?
- 3) Please provide information on the total number of permanent, full time employees in your company.
- 4) Please provide the names of the specific staff members who will work on the project and list their experience and qualifications. You will be expected to bring these staff in the event you are interviewed.
- 5) Please provide the estimated total cost of all requested services. Please be thorough. For example include any base costs associated with the services, retainer fees, hourly fees, and travel costs.
- 6) Please provide any other cost that has not been identified elsewhere.
- 7) Please provide details of similar work projects you have done in the past.
- 8) Please provide three (3) reference customers with contact information. References that have had a relationship of two or more years with your company and that are similar to EBMUD are desirable.

- 9) Please provide an example of a standard contract with your company.
- 10) Please indicate any issues your company may have with the District's standard contracting language (see Appendix D)
- 11) Please provide an e-mail address that we can use for any future correspondence.
- 12) Please provide a list of District employees, if any, who can reasonably be identified as having a financial interest in your firm or your subcontractor(s)' firm(s.) "Financial interest," as defined in the California Political Reform Act, Government Code section 87103, includes, for example, an investment of \$2,000 or more, income of \$500 or more, or a gift of \$250 or more, including those of a spouse or dependent child. Bidders may use a separate sheet to report such information or may include it on the enclosed Form P020, "Bidder's References and Statement of Experience."

6. Additional Documentation

The successful vendor will be required to submit the following documentation:

- 1) Indemnification and Insurance documentation. See Appendix B.
- 2) Contract Equity Forms. See Appendix C.

A sample contract is included in Appendix D.

APPENDIX A. REQUIREMENTS

The requirements document for the EBMUD Private Sewer Lateral Application is in an attached electronic file by the name of 'Private Sewer Lateral Requirements.pdf'. This file shall be included with this RFP.

<Insert PSL Application requirement document here>

**APPENDIX B. INDEMNIFICATION AND INSURANCE
REQUIREMENTS**

A. INDEMNIFICATION

The Contractor expressly agrees to indemnify, defend and hold the District, its Directors, officers, and employees free and harmless from and against any and all loss, liability, expense, claims, costs, suits, and damages including attorneys' fees, arising out of Contractor's operation or performance under this agreement.

B. INSURANCE REQUIREMENTS

The Contractor shall take out and maintain during the life of the agreement all the insurance required in this section and shall submit certificates to the District. The notice to proceed shall not be issued, and the Contractor shall not commence work until such insurance has been approved by the District. **The certificates shall be on forms provided by the District.** Acceptance of the certificates shall not relieve the Contractor of any of the insurance requirements, nor decrease the liability of the Contractor. The District reserves the right to require the Contractor to provide insurance policies for review by the District.

C. WORKERS' COMPENSATION INSURANCE

The contractor shall take out and maintain during the life of the agreement Workers' Compensation Insurance for all of its employees on the project. In lieu of evidence of Workers' Compensation Insurance, the District will accept a Self-Insured Certificate from the State of California.

D. PUBLIC LIABILITY INSURANCE

The Contractor shall take out and maintain during the life of the agreement automobile and general liability insurance that provides protection from claims which may arise from operations or performance under this agreement. A self-insured retention may be acceptable upon review and approval of the Contractor's financial status, by the District. The Contractor shall require any subcontractor to provide evidence of liability insurance coverages.

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

\$1,000,000/Occurrence, Bodily Injury, Property Damage – Automobile
\$1,000,000/Occurrence, Bodily Injury, Property Damage – General Liability

The following coverages or endorsements are included in the policy.

- (1) The District, its Directors, officers, and employees are **additional insureds** in the policy as to the work being performed under this agreement.
- (2) The coverage is **primary** to any other insurance carried by the District.
- (3) The policy covers **contractual liability** for the assumption of liability of others.
- (4) The policy is written on an **occurrence** basis.
- (5) The policy covers **broad form** property damage liability.
- (6) The policy covers use of **non-owned** automobiles.
- (7) The policy covers **personal injury** (libel, slander, and trespass) liability.
- (8) The policy covers **products and completed operations**.
- (9) The policy shall not be canceled nor materially altered unless **30 days' written notice** is given to the District.

E. Professional Liability Insurance

CONTRACTOR shall take out and maintain during the life of the Agreement, professional liability insurance (Errors and Omissions) with a minimum of \$1,000,000 of liability coverage. The policy will provide 30 days' written notice to DISTRICT for cancellation or reduction in coverage.

**APPENDIX C. CONTRACT EQUITY PROGRAM AND
EQUAL EMPLOYMENT OPPORTUNITY GUIDELINES**

<Insert Contract Equity Guidelines and foms here>

APPENDIX D. SAMPLE CONTRACT

**CONSULTING AGREEMENT
FOR
EAST BAY MUNICIPAL UTILITY DISTRICT**

(Project Title)

THIS Agreement is made and entered into this _____ day of ***(month)***, 200***(insert year)***, by and between **EAST BAY MUNICIPAL UTILITY DISTRICT**, a public entity, hereinafter called "DISTRICT," and ***(CONSULTANT'S FULL LEGAL NAME, BOLD, ALL CAPS followed by type of entity [corporation, etc.])***, hereinafter called "CONSULTANT."

WITNESSETH

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

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

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

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

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

ARTICLE 1 - SCOPE OF WORK

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

provided that DISTRICT's Project Manager notifies CONSULTANT of modified completion dates by letter. CONSULTANT agrees to diligently perform the services to be provided under this Agreement. In the performance of this Agreement, time is of the essence.

- 1.3 It is understood and agreed that CONSULTANT has the professional skills necessary to perform the work agreed to be performed under this Agreement, that DISTRICT relies upon the professional skills of CONSULTANT to do and perform CONSULTANT's work in a skillful and professional manner, and CONSULTANT thus agrees to so perform the work. CONSULTANT represents that it has all the necessary licenses to perform the work and shall maintain them during the term of this Agreement. CONSULTANT agrees that the work performed under this Agreement shall follow practices usual and customary to the **(state type - for example "engineering")** profession and that CONSULTANT is the engineer in responsible charge of the work for all activities performed under this Agreement. Acceptance by DISTRICT of the work performed under this Agreement does not operate as a release of CONSULTANT from such professional responsibility for the work performed.
- 1.4 CONSULTANT agrees to maintain in confidence and not disclose to any person or entity, without DISTRICT's prior written consent, any trade secret or confidential information, knowledge or data relating to the products, process, or operation of DISTRICT. CONSULTANT further agrees to maintain in confidence and not to disclose to any person or entity, any data, information, technology, or material developed or obtained by CONSULTANT during the term of this Agreement. The covenants contained in this paragraph shall survive the termination of this Agreement for whatever cause.
- 1.5 The originals of all computations, drawings, designs, graphics, studies, reports, manuals, photographs, videotapes, data, computer files, and other documents prepared or caused to be prepared by CONSULTANT or its subconsultants in connection with these services shall be delivered to and shall become the exclusive property of DISTRICT. DISTRICT is licensed to utilize these documents for DISTRICT applications on other projects or extensions of this project, at its own risk. CONSULTANT and its subconsultants may retain and use copies of such documents, with written approval of DISTRICT.
- 1.6 CONSULTANT is an independent contractor and not an employee of DISTRICT. CONSULTANT expressly warrants that it will not represent that it is an employee or servant of DISTRICT.

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

ARTICLE 2 - COMPENSATION

- 2.1 For the Scope of Services described in Exhibit A, DISTRICT agrees to pay CONSULTANT actual costs incurred, subject to a Maximum Cost Ceiling of **\$(dollars)**, plus a Professional Fee (prorata dollar profit). The Professional Fee shall be subject to a Professional Fee Ceiling of **\$(dollars)**. Total compensation under the Agreement shall not exceed a Maximum Agreement Ceiling of **\$(dollars)**. Compensation for services shall be in accordance with the method and amounts described in Exhibit B, attached hereto and incorporated herein. CONSULTANT acknowledges that construction work on public works projects is subject to prevailing wage rates and includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work. CONSULTANT certifies that the

proposed cost and pricing data used herein reflect the payment of prevailing wage rates where applicable and are complete, current, and accurate.

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

ARTICLE 3 - NOTICE TO PROCEED

- 3.1 This Agreement shall become effective upon execution of the second signature. CONSULTANT shall commence work upon receipt of DISTRICT's Notice to Proceed, which shall be in the form of a letter signed by DISTRICT's Project Manager. DISTRICT's Notice to Proceed will authorize the Contracted Services described in Exhibit A with ceiling prices described in ARTICLE 2 - COMPENSATION. No work shall commence until the Notice to Proceed is issued.
- 3.2 DISTRICT may at its option issue a Notice to Proceed for some or all of the Optional Services tasks described in Exhibit A. Compensation for Optional Services shall be in accordance with the method and amounts described in Exhibit B.

ARTICLE 4 - TERMINATION

- 4.1 This Agreement may be terminated by DISTRICT immediately for cause or upon 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.

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

ARTICLE 5 - PROJECT MANAGERS

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

ARTICLE 6 - CONTRACT EQUITY PROGRAM COMPLIANCE

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

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

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

ARTICLE 7 - INDEMNIFICATION AND INSURANCE

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 pertaining or relating to CONSULTANT's, its associates', employees', subconsultants', or other agents' negligence, recklessness, or willful misconduct, in the operation and/or performance under this Agreement.

7.5 Insurance Requirements

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

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

7.6 Workers Compensation Insurance

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

7.7 Commercial General Liability Insurance

CONSULTANT shall take out and maintain during the life of the Agreement Automobile and General Liability Insurance that provides

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

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

\$1,000,000/Occurrence, Bodily Injury, Property Damage – Automobile.

\$1,000,000/Occurrence, Bodily Injury, Property Damage - General Liability.

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

1. DISTRICT and its Directors, officers, and employees are additional insureds in the policy(ies) as to the work being performed under this Agreement;
2. The coverage is primary and non-contributory to any other insurance carried by DISTRICT;
3. The policy(ies) cover(s) contractual liability for the assumption of liability through the indemnity in this Agreement;
4. The policy(ies) is(are) written on an occurrence basis;
5. The policy(ies) cover(s) broad form property damage liability;
6. The policy(ies) cover(s) personal injury (libel, slander, and trespass) liability;
7. The policy(ies) cover(s) products and completed operations.
8. The policy(ies) cover(s) use of non-owned automobiles and equipment.
9. The policy(ies) shall not be canceled nor materially altered unless 30 days' written notice is given to DISTRICT.

7.8 Professional Liability Insurance

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

ARTICLE 8 - NOTICES

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

(consulting firm's name)

(address)

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

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

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

Manager of Information Systems
P.O. Box 24055
Oakland, CA 94623-1055

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

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

ARTICLE 9 - MISCELLANEOUS

- 9.1 This Agreement represents the entire understanding of DISTRICT and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by amendment in writing signed by each party.
- 9.2 This Agreement is to be binding on the successors and assigns of the parties hereto. The services called for herein are deemed unique and CONSULTANT shall not assign, transfer or otherwise substitute its

interest in this Agreement or any of its obligations hereunder without the prior written consent of DISTRICT.

- 9.3 Should any part of this Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement can be interpreted to give effect to the intentions of the parties.
- 9.4 Multiple copies of this Agreement may be executed by the parties and the parties agree that the Agreement on file at the DISTRICT is the version of the Agreement that shall take precedence should any differences exist among counterparts of the Agreement.
- 9.5 This Agreement and all matters relating to it shall be governed by the laws of the State of California.
- 9.6 The District's waiver of the performance of any covenant, condition, obligation, representation, warranty or promise in this agreement shall not invalidate this Agreement or be deemed a waiver of any other covenant, condition, obligation, representation, warranty or promise. The District's waiver of the time for performing any act or condition hereunder does not constitute a waiver of the act or condition itself.
- 9.7 There shall be no discrimination against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, gender, age, marital status, disability, or sexual orientation in the performance of this contract. CONSULTANT shall not establish or permit any such practice(s) of discrimination with reference to the contract or any part thereof. CONSULTANTS determined to be in violation of this section shall be deemed to be in material breach of this Agreement.
- 9.8 CONSULTANT affirms that it does not have any financial interest or conflict of interest that would prevent CONSULTANT from providing unbiased, impartial service to the DISTRICT under this Agreement.

ARTICLE 10 - TERMS

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 _____. ***(insert date 1 year from contract date)*** 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: _____
(Name),
(Manager of Information Systems)

Date _____

Approved As To Form

By: _____
for the Office of the General Counsel

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

By: _____
(Name),
(Title)

Date _____

EXHIBIT A

East Bay Municipal Utility District
(Project Title)

SCOPE OF SERVICES

I. CONSULTANT SERVICES

CONSULTANT shall provide the following:

Contracted Services

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

Optional Services

(State each task with associated task number)

II. PROJECT SCHEDULE

(List schedule milestones and completion dates)

EXHIBIT B

East Bay Municipal Utility District (Project Title)

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.

1. DISTRICT shall pay CONSULTANT only the actual costs incurred, subject to the agreed cost ceiling. CONSULTANT certifies that the cost and pricing information used herein are complete, current and accurate. CONSULTANT acknowledges that it will expend public funds and hereby agrees to use every appropriate method to contain its fees and minimize costs under this Agreement.
2. Compensation for CONSULTANT services authorized shall be on a cost reimbursement basis and include Direct Labor, Indirect Costs, Subconsultant Services, Other Direct Costs, and a Professional Fee. Costs to be paid comprise the following:

2.1 Direct Labor

Direct labor costs shall be the total number of hours worked on the job by each employee times the actual hourly rate for such employee's labor. Hours worked shall be rounded-up to the nearest quarter-hour (0.25) increment. Labor costs for principals shall be based upon the actual hourly rate of pay for those individuals. Labor rates shall be based on a normal 8-hour day, 40-hour week. DISTRICT will pay all personnel at their regular rate including any work performed on overtime or on holidays or weekends.

2.2 Indirect Costs

DISTRICT shall pay CONSULTANT an overhead expense equal to **(insert overhead rate)** percent of labor costs incurred by CONSULTANT. CONSULTANT acknowledges and agrees that this overhead compensation is in lieu of itemized payments for indirect and overhead expenses which includes, but is not limited to:

- Clerical, word processing and/or accounting work.
- Vehicle usage and mileage between CONSULTANT's office and DISTRICT service area.

- Parking (DISTRICT does NOT provide parking to CONSULTANT in the DISTRICT Administration Building, located at 375 11th Street, Oakland, California. CONSULTANT shall be responsible for parking elsewhere).
- Postage, or for certified or registered mail. Extraordinary postage, overnight delivery, or messenger delivery charges must be approved in advance.
- Routine copying costs for in-house copying.
- Local telephone charges, including cellular phone, modem and telecopier/FAX charges.
- Office space lease.
- Office supplies.
- Computer equipment.
- Computer usage charges.
- Books, publications and periodicals.
- Insurance.
- Miscellaneous hand tools or equipment rental.
- Safety training, seminars or continuing education.
- Utilities.
- Meals, transportation or other charges.
- Inadequately described or miscellaneous expenses.

The above items are illustrative, rather than exhaustive.

2.3 Subconsultant Services

Subconsultant services shall be billed at cost (plus a **(insert rate)** percent markup).

2.4. Other Direct Costs

Other Direct Costs shall be approved by DISTRICT in advance in writing, and shall be billed at cost, without markup. These costs include, but are not limited to the following:

1. Automobile expenses at **(insert rate)** cents per mile when CONSULTANT is required to travel outside of the DISTRICT's service area. Mileage will NOT be reimbursed for rental car expenses, where the rental agreement specifies unlimited mileage.
2. DISTRICT will pay for necessary and reasonable travel expenses provided the travel is approved in advance by DISTRICT Project Manager, and providing that:

- Each expense is separately identified (air fare, hotel, rental car) with an amount and date incurred. Confirming documents may be requested.
- Charged mileage for vehicle mileage shall not exceed the current allowable Internal Revenue Service rate.
- Air travel is coach or economy rate for refundable tickets. Business and first class rates will not be reimbursed.
- Lodging accommodations are moderately priced.
- Meal charges are reasonable. (Reimbursement for meals will only be made in conjunction with out-of-town travel.)
- Taxis or shuttles are used rather than rental cars whenever cost effective.
- Rental cars are intermediate or compact class only.

2.5 Professional Fee

As a portion of the total compensation to be paid to CONSULTANT, DISTRICT shall pay the Professional Fee, subject to the agreed Professional Fee Ceiling of **\$(dollars)** as specified in Exhibit B-1, as profit for services rendered by CONSULTANT covered by this Agreement. CONSULTANT shall earn the Professional Fee based on a **(insert rate)** percent markup of CONSULTANT's Direct Labor and Indirect Costs billed and approved.

2.6 Budget Amounts

	Contracted Services	Optional Services	Maximum Services*
Cost Ceiling	\$(dollars)	\$(dollars)	\$(dollars)
Professional Fee Ceiling	(dollars)	(dollars)	(dollars)
Agreement Ceiling	(dollars)	(dollars)	(dollars)

*** (Maximum Services is the sum of Contracted and Optional Services. If your scope has no Optional Services, delete the Contracted and Optional Services columns.)**

The Cost Ceiling shown above is based upon the cost estimate and labor hours attached hereto as Exhibit B-1 and Exhibit B-2. Costs described above, comprising Direct Labor, Indirect Costs, Subconsultant Services, Other Direct Costs, and Professional Fee, shall be payable up to the Agreement Ceiling as specified herein.

2.7 Billing and Payment

CONSULTANT shall invoice DISTRICT monthly for the actual costs incurred and a prorated Professional Fee for work performed during the previous month. Actual costs shall include Direct Labor, Indirect Costs, Subconsultant Services, and Other Direct Costs as specified herein. Actual costs shall be invoiced by task as described in Exhibit A. Invoices shall set forth a description of the actual costs incurred and the services performed, the date the services were performed and the amount of time spent rounded to the nearest quarterly hour increment (.25) on each date services were performed and by whom. Supporting documentation for the invoice shall be organized to clearly identify the task charged and shall be supported by such copies of invoices, payroll records, and other documents as may be required by DISTRICT to authenticate invoiced costs. Copies of all invoices from any subconsultant(s) and outside service(s) shall be attached.

A ceiling price is in effect for the entire Scope of Services. If the authorized Agreement Ceiling, including the authorized Professional Fee Ceiling, is reached, CONSULTANT shall complete the agreed-upon work for the authorized Agreement Ceiling. Labor hours may be reallocated within the tasks without renegotiation of the Agreement with written approval from the DISTRICT Project Manager in such a manner so as not to exceed the Agreement ceiling price. In no event shall the Cost Ceiling of the Agreement or the Professional Fee Ceiling be increased unless there is a written amendment of this Agreement.

2.8 Budget Status Reports

For the duration of this Agreement, the CONSULTANT shall provide DISTRICT with (***"bi-weekly" or "monthly" depending on duration of project***) budget status reports that include, in tabular or graphical format, for each report period: (1) the original cumulative projected cash flows for the duration of the project (prepared at the start of the project), (2) the actual cash flows for the work completed to date, (3) the current projected cash flows to complete the project, and (4) the earned value (the amount of work actually completed to date compared to the budget expended). Current projected cash flows shall be based on all CONSULTANT and subconsultant time sheets up to a date within 3 weeks of the date of the budget status report.

(Note: this table is prepared by the consultant. The following is provided to show format.)

EXHIBIT B-1

East Bay Municipal Utility District (Project Title)

COST DISTRIBUTION

	Consultant						Subconsultants					
	Direct Labor						Sub. #1			Sub. #2		
	Project Manager	Project Engineer	Drafting	Indirect	Costs	ODCs*	Project Eng.	Assist. Eng.	Total	Project Eng.	Assist. Eng.	Professional Total
Salary Rate (\$/hr.)	(****)	(****)	(****)	Total	Costs	ODCs*	(****)	(****)	Cost	(****)	(****)	Cost
Services												
I. Contracted Services												
Task 1.1:												
Task 1.2:												
Task 2.1:												
Task 2.2:												
Subtotal I.							(***)	(***)	(***)	(***)	(***)	(***)
II. Optional Services												
Task 3:												
Task 4:												
Subtotal II.							(***)	(***)	(***)	(***)	(***)	(***)
TOTAL Agreement (Total of Subtotals I. & II.)												

* ODCs = Other Direct Costs.

** Professional Fee on consultant Direct Labor& Indirect Costs only. Should not include prime consultant markup on subconsultants.

*** Amount includes prime consultant markup on subconsultant.

**** ***Insert salary rate.***

Sample

[illegible]

East Bay Municipal Utility District
(Project Title)

[illegible]Services(*)

Task 1.1:
Task 1.2:
Task 2.1:
Task 2.2:
Subtotal

Task 3:
Task 4:
Subtotal

TOTAL

(* Include both consultant and subconsultant hours. Also, include the percent time commitment for key personnel if a critical issue for success of the project.)

Sample

EXHIBIT C

East Bay Municipal Utility District (Project Title)

CEP COMPLIANCE

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

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

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

APPENDIX E. WORKING PROTOTYPE

All the code for the non-functional prototype that has been developed has been compressed and archived in an electronic file by the name of 'PSL Prototype Code.zip'. This file shall be included with this RFP.