

EAST BAY MUNICIPAL UTILITY DISTRICT

REQUEST FOR QUOTATION (RFQ) No. 1609 for Two Scoop Trucks

For complete information regarding this project, see RFQ posted at <http://www.ebmud.com/business-opportunities> or contact the EBMUD representative listed below. Thank you for your interest!

Contact Person: Kelley Smith
Phone Number: (510) 287-0355
E-mail Address: ksmith@ebmud.com

Please note that prospective bidders are responsible for reviewing <http://ebmud.com/business>, during the RFQ process, for any published addenda regarding this RFQ.

RESPONSE DUE
by
1:30 p.m.
on
November 18, 2015
at
EBMUD, Purchasing Division
375 Eleventh St., First Floor
Oakland, CA 94607



375 Eleventh Street, Oakland, CA 94607
Website: ebmud.com

EAST BAY MUNICIPAL UTILITY DISTRICT

RFQ No. 1609

for

TWO SCOOP TRUCKS

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I. STATEMENT OF WORK**A. SCOPE**

It is the intent of these specifications, terms, and conditions to describe a completed Scoop Truck. Provide assembled on a Peterbilt 320 Cab-Over Truck chassis (or Approved Equal) a PB Loader truck mounted loader Model L-250-CT and a Duraclass model SL-316 dump body. East Bay Municipal Utility District (District) intends to award a contract to the lowest cost bidder(s) whose response meets the District's requirements.

B. BIDDER QUALIFICATIONS**1. Bidder Minimum Qualifications**

- a. Bidder, bidder's principal, or bidder's staff shall have been regularly engaged in the business of providing scoop trucks for at least five (5) years.
- b. Bidder shall be a certified or authorized manufacturer, dealer, or provider.
- c. Bidder shall possess all permits, licenses, and professional credentials necessary to supply product and perform services as specified under this RFQ.

C. SPECIFIC REQUIREMENTS

1. All products shall be in new and unused condition and shall be of the most current and up to date model.
2. Peterbilt 320 Cab-Over Truck Chassis
 - 2.1. Frame:
 - 2.1.1. 120,000 psi heat treated steel
 - 2.1.2. 10.75" X 3.5" X .375" rails
 - 2.1.3. Minimum RBM: 2,136,000 per rail
 - 2.1.4. All accessible frame components will be fastened with Huck bobtail fasteners.
 - 2.1.5. Frame will be custom-punched for the application. Additional holes are not acceptable.

2.1.6. Exterior of frame must be completely clear back of cab on both sides other than specified battery box and diesel fuel tank.

2.2. Suspension and Axles:

2.2.1. Front Axle: Dana Spicer D2000F; 20,000 pound capacity with 5" drop and 69" wide track beam width.

2.2.2. Front Suspension: Taper-leaf springs, 20,000 pound capacity. Zerk fittings shall be provided on spring brackets, tie rod ends, kingpins and ball joints. Heavy-duty iron spring brackets front and rear.

2.2.3. Telescopic shock absorbers

2.2.4. Rear Axle: Dana S23-170 axle 23,000 pound capacity, single reduction with 11mm housing and 17.7" ring gear.

2.2.5. Rear Axle Ratio: 6.14 axle ratio, or as required to achieve top speed of 62 miles per hour while maintaining optimal acceleration.

2.2.6. Rear Hubs: PHP-10 hub piloted aluminum hubs, CR oil seals with Emgard FE 75W-90 synthetic lube.

2.2.7. Axle Housing Plugs: Magnetic fill and drain plugs

2.2.8. Rear Suspension: Reyco 102CC heavy duty multi leaf spring for construction applications with 23,000 pound capacity.

2.3. Power Steering and Components:

2.3.1. Sheppard SD110 power steering gear

2.3.2. Back of cab mounted power steering reservoir for easy access and filling

2.3.3. 16" steering wheel with adjustable tilt and telescopic steering column.

2.4. Wheels: 10 hole hub-piloted type, Steel Disc(front & rear)

2.5. Tires:

2.5.1. Front: 315/80R22.5 20 ply Bridgestone, Goodyear or Michelin all position rib tread for high scrub application.

2.5.2. Rear: 11R22.5 14 ply Bridgestone, Goodyear or Michelin traction style drive tread.

2.6. Brakes: Bendix ES foundation brakes with non-asbestos brake linings and wire braided air lines to all wheels.

2.6.1. Front Drum: 16-1/2" X 5"

2.6.2. Rear Drum: 16-1/2" X 8.625"

2.6.3. Slack Adjusters: Dana/Haldex self-adjusting

2.6.4. Parking Brake: MGM TR 3036 spring parking brakes

2.6.5. ABS System: Bendix ABS-6 four channel anti-lock system (4S4M) with SBM valve

2.6.6. Air Compressor: 18.7 cfm air compressor with teflon lined stainless steel braided discharge line

2.6.7. Air Dryer: Bendix AD-IS EP extended purge air dryer with heater

2.6.8. Air Reservoirs: Painted steel air reservoir with sufficient air storage capacity to safely operate an air brake system.

2.6.9. Drain Valves: Berg pull cord drain valves on all air tanks.

2.7. Back Up Alarm: Must have an externally audible alarm that is automatically triggered to sound whenever the vehicle is placed into reverse gear.

3. Engine and Component Systems

3.1. Engine: Paccar PX9/Cummins ISL9 rated at 370 HP @ 2,000 RPM, 1,250 lb-ft torque @ 1,400 RPM. Engine must meet 2014 MY EPA/CARB emission standards with SCR exhaust system. Must be certified for and have exterior sticker for California idle compliance with a programmable idle shutdown timer.

3.2. Engine Compression Brake: Cummins C-Brake engine compression brake with dual level dash mounted controls.

3.3. Automatic Warning and Engine shutdown protection: Automatic system to provide safety shutdowns for high and low oil pressure, high oil temperature, coolant temperature, intake manifold temperature.

3.4. Engine Oil Drain Plug: Magnetic engine oil drain plug that is located in an easily removable position for safe and tidy service.

4. Fuel System

4.1. Tank: One (1) 50 gallon 23" diameter aluminum tank mounted on RH frame rail as far aft as possible.

4.1.1. Top of fuel tank to be mounted 5" below top of frame

4.1.2. Tank will include paddle handle filler cap with threadless filler neck

4.1.3. Heavy-duty fuel tank brackets and stainless steel straps

4.2. Fuel Filters: System will include spin-on primary (water separator) and secondary fuel filters.

4.3. Primary filter will be frame mounted with water in fuel sensor. These spin on filters are to be mounted in a way that the serviceability of the filter is easy.

4.4. Fuel Lines: Wire braided fuel lines for increased durability and reduced potential for leaks.

4.5. Fuel: The engine and all subsystems must be certified by the manufacture to work with B20 BioDiesel.

5. Intake System

5.1. Intake Filter: Donaldson FVG16-0619 dual element/dual stage air cleaner assembly mounted horizontally back of cab. Must be mounted in a way to allow a service technician to easily inspect and service the filters.

6. Exhaust System

6.1. DPF Filter System: Provide a single transverse mounted diesel particulate filter (DPF) and selective catalyst reduction (SCR) system across frame rails back of cab. The DPF/SCR assembly will be fully shielded on all sides with metal guards. No wraps of any kind will be accepted. The DPF system will terminate into a 5" diameter 24" tall chrome plated vertical tailpipe with curved tip top. The system should be constructed of Stainless steel flex exhaust tubing & clamps. The DPF filter must be bolted not welded allowing for easy removal of the DPF filter for routine service. Regeneration will be automatically controlled during normal operation and there will also be a dash mounted switch to initiate a parked regeneration if desired.

6.2. DEF Fluid Tank: One (1) 6-gallon composite Diesel Exhaust Fluid tank mounted on LH fender of cab with no intrusion into body load space.

7. Cooling System

7.1. Radiator: Heavy duty aluminum core radiator

7.2. Cooling Fan: Coolant sensing, air-actuated, 2-speed on/off fan clutch with manual dash override switch.

7.3. Fan and Shroud: Corrosion resistant composite fan with full fan shroud.

7.4. Hoses: All coolant hoses will be silicone type.

7.5. All clamps will be stainless steel, compatible with silicone hose.

7.6. All clamps on hose two inches (2") or larger will be constant-torque type.

7.7. Shut Off Valves: Heater hose shut-off valves.

7.8. Low Coolant Light: System will include a low coolant sensor and light/alarm visible to driver.

8. Drivetrain

8.1. Transmission: Allison 3000 RDS-P automatic transmission with six (6) forward speed utilizing close-ratio gears and Allison's load based shift schedule (LBSS).
277 PTO Hot Shift

8.1.1. Transmission Cooler: Oil to coolant heat exchanger

8.1.2. Oil Monitors: Oil level sensor with in-cab level indicator, oil & filter life monitor and clutch maintenance monitor.

8.1.3. Operation: Pushbutton shift control

9. Electrical System

9.1. Body connections: Lighting and Power connections will terminate in a box to be located behind the cab. All wiring will be run in enclosed looms or conduit, will be color-coded and/or numbered every four inches; and will terminate in sealed, weatherproof connections

9.2. Batteries: Three (3) premium group 31 maintenance free batteries, with threaded stud type terminals, 2,100 CCA

9.3. Battery Cut Off: Kissling battery cutoff switch mounted on the front of the battery box with lockout provisions.

9.4. Battery Box: Fully enclosed aluminum battery box mounted on left hand frame rail back of cab with rubber pad under batteries. Mount box with top of box 8" below top of frame rail. This box must allow for easy access to the batteries and all connections to allow for easy removal, service and inspection of the batteries.

9.5. Alternator: 130 amp brushless

9.6. Engine Starter Motor: 12 volt planetary drive type

10. Lighting

10.1. OEM Lighting: Chassis shall have all required DOT lighting for this type of vehicle including headlamps, marker, clearance, stop, tail, reverse and turn signals. Provide all amber and red lights in LED if available from chassis manufacture. Also where available these lights should be recessed for protection.

10.2. Daytime running lights

10.3. Clearance lights: Seven (7) LED cab mounted marker/clearance lights, 5 on roof with light guards and 1 each side forward of doors.

10.4. Additional Lighting: Two 6" oval LED stop/tail/turn lights shall be located in the upper corner posts of the body

10.5. Rear Tail Light Guards: Rear lights must be protected from falling debris while dumping with an expanded metal screen guard.

11. Cab

11.1. Cab Construction:

- 53" BBC cab , 96" wide, steel frame with aluminum exterior panels
- One piece fiberglass roof
- Bulkhead-style doors open to 90°, with extruded aluminum door frames, full-length stainless steel piano-type door hinges, dual door stops and view window in RH door o Rain gutters over doors
- 65° cab tilt with air assisted heavy duty hydraulic cab jack
- Dual rear cab fenders and 4.5" rubber fender extensions

11.2. Cab Exterior:

- Steel channel painted bumper including two front tow eyes with pins
- Cab entry grab handles on each side of cab. Grab handles must be arranged as to aid in providing 3 points of body contact with the vehicle while entering and exiting the vehicle.
- Door mounted stainless steel rearview mirrors in single housing. All surfaces are to be heated and motorized with dash mounted control switch.
- Front wheel mud flaps to reduce road spray
- 15" air horn mounted LH under cab (1) standard electric horn.
- Electric windshield wipers with intermittent wiper function
- Bolt-on lower cab entry steps for easy replacement
- Back of cab service module for easy access to cab tilt pump, oil dipstick and fill, coolant check and fill & transmission check and fill
- (2) Horizontal grab handles under front windows for access to windshield for cleaning

11.3. Cab Interior:

- Fully lined and insulated vocational cab interior trim with no exposed sheet metal
- ABS gray headliner and rear cab panel
- Gray vinyl engine tunnel cover with scuff pad
- Contoured door panels with power controls for windows
- Header and over door storage compartments
- National low back air ride seats with heavy duty black vinyl covering
- Engine tunnel mounted control console
- Integrated arm rests on both doors
- Full width retractable interior sun shade

- 12 volt accessory power outlet on dash
- AM/FM/CD stereo radio with weather band

11.4. Seat Belts: Retractable three-point seatbelts with red safety webbing if offered by the manufacturer.

11.5. Climate Control: Factory fresh air heater/air conditioner/defroster. Roof mounted air conditioning is not acceptable due to overhead loading system.

11.6. Cab Glass:

- Two (2) piece flat glass windshield with field serviceable rubber seal.
- All windows will be tinted safety glass.
- Electric lift windows in both doors, with driver and passenger accessible controls. A control for the passenger window will be provided on driver side as well.
- Fixed rear window, approximately 18" X 54".
- Rear cab corner windows in B pillars
- View window in lower right hand door

11.7. Instrumentation: Removable instrument panel with speedometer message center. Gauges shall all be individual – no gauge “clusters” and include all of the following:

- Engine tachometer
- Electric speedometer with trip odometer and hour meter
- Engine oil temperature
- Engine coolant temperature
- Transmission temperature
- Voltmeter
- (1 each) Primary and secondary air pressures
- Fuel level gauge
- Diesel exhaust fluid gauge with integrated low level warning light

- Warning lights and audible alarm for low engine oil pressure, high coolant temperature and low air pressure.
- Warning indicator lights for high beam lights, parking brake and turn signals
- Separate switches for head lights, marker lights, hazard lights and dimmer control
- Dash mounted DPF switch to either disable system or initiate stationary regeneration
- Self-cancelling turn signal switch with heavy duty flasher

12. Paint

12.1. Cab, Body, Loader Components and Dump Bed to be painted with DuPont Imron Elite two-stage (base coat/clear coat), Fleet white L0006EB.

12.2. Frame, chassis and bumper to be painted black, DuPont N0001EA. The under body, frame and mounted equipment to be painted black with PPG Pitthane ultra gloss acrylic urethane enamel.

13. Warranty

13.1. Truck Chassis

13.1.1. Basic vehicle coverage: 12 months or 100,000 miles

13.1.2. Frame side rails, cross-members, gussets and A-braces: 60 months

13.2. Cab structure: 36 months

13.3. Cab corrosion: 60 months

13.4. Front and rear axles, steering gear: 36 months

13.5. Engine: Complete coverage, including turbo and injectors: 60 months or 150,000 miles

13.6. Emission systems: 60 months or 100,000 miles

13.7. Allison Transmission: Complete coverage: 60 months, unlimited miles PB Loader, Model L-250-CT Over-The-Cab-Loader

14. Loader Arms

14.1. General:

Loader arms shall be over-the-cab type with a clam bucket with tilt. Loader side arms shall be 111" in length designed to position the bucket at the front end of the truck for filling, and to empty into the dump body. The entire movement of the side arms shall be in full control of the operator to stop and hold in any position of the operating cycle. Cab doors shall be accessible at all times with the arms down or in the travel position.

14.2. Safety Interlocks:

- The following interlocks shall be provided to protect personnel and equipment.
- Cab doors shall be provided with safety devices to prevent operation of loader while doors are open.
- Dump body shall be provided with a safety device, which will prevent the dump body from being raised when the loader bucket is in the stowed position.

14.3. Loader Arms:

Loaders arms shall be internally reinforced, box type girders, 10 inches tapered to not less than 4 inches X 2 inches. Arms shall operate on an arc from a loading position on the ground, to an unloading position over the dump body. The Loader arm shall rest on a spring cushioned stop. Loader arms shall have not less than 4 inches clearance between the wheel lugs and loader arms. The material shall be not less than 7ga hi-tensile steel, 100,000 pounds per square inch yield point, and rated for not less than 10,000 pounds lifting capacity without exceeding 1/2 the limit of elasticity. Armrests shall be spring cushioned with two springs per side. Arms shall be bolt on for ease of removal. Each arm must be connected to a solid, not less than 4-inch diameter, shaft of Chro-molly steel. Shaft shall be mounted in 4 alloy bearings with a grease reservoir for lubrication. Loader arm ram eyes shall have alloy bushings. Angled steps

14.4. Loader Control Levers:

Loader arm controls to be cable levers. All controls shall be permanently labeled and properly identified as to function and direction of operation with easily read nameplates.

14.5. Loader Bucket: Loader bucket shall be clam type with a net capacity of not less than 1½ cubic yard struck with tilt. Clam functions shall be powered by two double acting hydraulic cylinders. Clam shall have a channel strong back to provide additional strength. Tilt functions shall be powered by two double acting hydraulic cylinders. Heavy duty steel cylinder and hose fitting guard for clam/ tilt cylinder. Inside width shall be not less than 92 inches. Loader bucket shall be constructed of not less than 10-gage, high tensile abrasion resistant steel, and 90,000 pounds per square inch yield point.

14.6. Loader Bucket Sides: The sides of the bucket shall have no projections that will interfere with loading operations close to the curbs. The back and bottom of the bucket shall be one piece, formed and curved, with the top edge rolled back. Shall have reinforced backing channel mid way up and bottom corner angle. Shall have five 3" x ½" bottom steel runners, two on outside and three equally space between. The sides of the bucket shall be welded with continuous welding bead where attached to the bottom and backsides. The plow steel blade shall be attached to the bottom edge and sides of the bucket.

14.7. Scraper blade: Bolt-on type, constructed of Kenco tungsten carbide impregnated steel. Covers full width of the bucket.

14.8. Wear plates: Bucket shall be provided with wear plated constructed of Kenco tungsten carbide impregnated steel. Ten (10) carbide wear blocks, (5) per side shall be installed on the side of loader bucket. Blocks shall be ½ inch by 3 inches square and welded in two rows on the each steel runner. One row located and the rear of the bucket the other in between the blade and rear. Three (3) wear plates shall be installed on each loader side arm, opposite the point where side arm will contact the curb. Two (2) plates shall be installed on each side of the bucket, where the loader arms bolt-on, to prevent abrasive damage to the cap screws when coming in contact with the curb.

14.9. Mounting: Bucket shall be suspended from the loader arms and shall lay flat on the ground through the full length of the wear plates when bucket is in the loading position.

14.10. Loader lift Mechanism: Loader shall have a lift capacity of 5000 lbs. The mechanical leverage lift mechanism shall consist of two 8" bore cylinders with more than 19" stroke, attached to a fulcrum and compound linkage system. The lift mechanism shall be supported in a reinforced box with open top and bottom. The lift system and loader shaft shall mount on top of the truck frame to achieve the geometry for tilt chassis functions.

14.11. Hydraulic System: Hydraulic fittings shall be SAE. All components including hydraulic lines, hoses, and fittings, shall have manufacturers rated working pressures of 3000psi.

14.12. Pressure Relief System: Hydraulic system shall have a relief valve to limit system hydraulic pressure to the safe working level.

14.13. Hydraulic Pump: Loader arms and bucket, and body hoist shall be powered by a direct mounted P50 hydraulic gear pump powered by the truck engine through an automatic transmission mounted hot shift Power-Take-Off (PTO).

14.14. Hydraulic Reservoir: A hydraulic tank of 30 gallon capacity shall be furnished and installed. Tank shall have a sight gauge with oil level and temperature indicator. Tank fill shall be provided with a strainer screen, magnetic drain plug, return filter and filler cap.

14.15. Auto Lube System: The unit shall have an auto lube system installed to provide lubrication to the front loader and dump body. The auto lube system (Ref. Midwest lube, Intertube XGS) shall be pneumatically driven and have a solid state controller with manual override feature. The auto lube system shall be a low pressure system and shall automatically supply grease to all common lube points on the front loader and body including bucket, clamshell, lift mechanism, hoist lube points. All lubrication injectors shall be properly calibrated for parts being lubricated. The lubrication reservoir shall be visible to permit a visual check of the lubrication level. All lubrication lines shall be secured to the chassis frame or the platform structure using metallic type clamps. Loose lines that can cause tripping hazards or be subject to entanglement are not permitted. All lubrication delivery lines shall be reinforced, abrasion resistant, flexible lines. All grease points on the bucket sides shall be guarded.

14.16. Cab Shield: A two piece steel canopy shall be constructed of not less than 10-gage steel for the protection of cab, windshield, and occupants. Side extension shall be provided to cover the mirrors. The front cab shield frame shall be attached to a free standing bulkhead bolted to the chassis frame. Top of cab shield shall be hinged and provided with a manual hydraulic pump system to raise the cab shield to permit cab tilting. The rear shield shall be attached to the dump body and a rubber seal strip to cover the gap between the two.

15. Heavy Duty Municipal Dump Body & Hoist Package

Heavy Duty Municipal Dump Body & Hoist Package The dump body shall be a Duraclass SL-316 12' Dump Body 6/8.5 YARDS W/ 1821PL Hoist. The complete body, hoist, and cylinder package must be supplied by a single manufacturer and be a proven standard production model.

15.1. Dimensions:

- Body Length 12'
- Body Width 84"
- Body Capacity 6/8 cubic yards
- Side Height 30"
- End Height 44"

15.2. Material:

- Sides 10 Gauge High Tensile
- Side braces 10 Gauge High Tensile
- Tailgate 10 Gauge High Tensile
- Front Head 10 Gauge High Tensile
- Floor 3/16" High Tensile
- Understructure 8 Gauge High Tensile
- Rear Apron 8 Gauge High Tensile
- Rear Corner Post 10 Gauge High Tensile

15.3. Sides:

- Side panel constructed of 10 ga. high tensile steel, all exposed bends to be 1" radius
- Top rail to be box section 4-5/8" wide x 8-3/8" tall center bend to fold back at 20 degrees at top and bottom to bend back at 35 degrees from horizontal.
- Folding ladder forward of rear axle on one side
- Cat walk on sides of bed.

15.4. Tailgate:

- Hydraulic High Lift Tailgate
- Air Locks

- LED Legal lights
- Three(3) sliding door batch gates
- 12" Asphalt apron
- Backup Alarm
- Four(4) Whelen 700 flashers w/ expanded metal guards for two(2) rear lights.
- Folding access ladder
- Air actuated mudflap assembly
- ½ inch reinforced Hitch plate w/ D-rings mounted to rear of chassis frame with brace. Premier #2200 pintle hitch, mount glad hands and 7-wired trailer connector.

16. F.O.B destination:

Fleet Maintenance Bldg
1199 – 21st Street
Oakland, CA 94607

D. FAILURE TO MEET SPECIFICATIONS

In the event any shipment or shipments of a Contractor's product do not meet the specification or delivery requirements, the District may reject the shipment or shipments and, at its option, may purchase this material from any supplier on the open market who can meet the District's specification requirements or the District may demand immediate replacement by Contractor of the non-conforming product. Any costs over and above the original contract price will be charged back to the Contractor. In addition, Contractor shall bear the costs of removal and disposition for any delivery which fails to conform to the specifications.

E. INSPECTION

The District will inspect material after its arrival at the delivery point. If the rejection rate of a sample of components is 10% or higher, all components will be rejected. Contractor is solely responsible for ensuring the material arrives at the District's ship-to location free of defects and manufactured in strict conformance with the specifications.

The District reserves the right-of-access to the Contractor's facility to verify conformance to this specification at the District's expense.

II. CALENDAR OF EVENTS

EVENT	DATE/LOCATION
RFQ Issued	October 29, 2015
Response Due	November 18, 2015 by 1:30 p.m.

Note: All dates are subject to change.

Bidders are responsible for reviewing <http://ebmud.com/business> for any published addenda. Hard copies of addenda will not be mailed out.

III. DISTRICT PROCEDURES, TERMS, AND CONDITIONS

A. RFQ ACCEPTANCE AND AWARD

1. RFQ responses will be evaluated to determine that they are responsive, responsible, and that they meet the specifications as stated in this RFQ.
2. The District reserves the right to award to a single or to multiple Contractors, dependent upon what provides the lowest overall cost to the District.
3. The District has the right to decline to award this contract or any part of it for any reason.
4. Any specifications, terms or conditions, issued by the District, or those included in the bidder's submission, in relation to this RFQ, may be incorporated into any PO or contract that may be awarded as a result of this RFQ.
5. Award of contract. The right is reserved to reject any or all proposals, to accept one part of a proposal and reject the other, unless the bidder stipulates to the contrary, and to waive technical defects, as the interest of the District may require. Award will be made or proposals rejected by the District as soon as possible after bids have been opened.

B. BRAND NAMES, APPROVED EQUIVALENTS, DEVIATIONS, AND EXCEPTIONS

Any references to manufacturers, trade names, brand names, and/or catalog numbers are intended to be descriptive, but not restrictive, unless otherwise stated, and are intended to indicate the quality level desired. Bidders may offer an equivalent product that meets or exceeds the specifications.

The District reserves the right to be the sole judge of what shall be considered equal and/or acceptable, and may require the bidder to provide additional information and/or

samples. If the bidder does not specify otherwise, it is understood that the brand and/or product referenced in this RFQ will be supplied.

Taking exception to the RFQ, or failure on the part of the bidder to comply with all requirements and conditions of this RFQ, may subject the RFQ response to rejection. If no deviations are shown, the bidder will be required to furnish the material exactly as specified. The burden of proof of compliance with the specifications will be the responsibility of the bidder.

This RFQ is subject to acceptance only on the terms and conditions stated in this RFQ. Any additional or different terms and conditions proposed by the bidder are hereby rejected, and shall be of no force or effect unless expressly assented to in writing by the District.

RFQ responses based on equivalent products must use Exhibit A "Exceptions, Clarification and Amendments" to:

- a. Clearly describe the alternate offered and indicate specifically how it differs from the product specified in this RFQ
- b. Include complete descriptive literature and/or specifications as proof that the proposed alternate will be equal to or better than the product named in this RFQ

C. PRICING

1. All prices are to be F.O.B. destination. Any freight/delivery charges are to be included.
2. All prices quoted shall be in United States dollars.
3. Price quotes shall include any and all payment incentives available to the District.
4. Bidders are advised that in the evaluation of cost, if applicable, it will be assumed that the unit price quoted is correct in the case of a discrepancy between the unit price and extended price.

D. PROTESTS

Protests must be in writing and must be received no later than seven (7) business days after either of the following: posting of the RFQ results on the District's website (www.ebmud.com), or notification of selection/non-selection, whichever is sooner. The District will reject the protest as untimely if it is received after this specified time frame. Protests will be accepted from bidders or potential bidders only.

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

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

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

The bid protester can appeal the determination to the requesting organization's Department Director. The appeal must be submitted to the Department Director no later than five working days from the date of receipt of the requesting organization's determination on the protest.

Such an appeal must be made in writing and must include all grounds for the appeal and copies of the original protest and the District's response. The bid protester must also send the Purchasing Division a copy of all materials sent to the Department Director. The Department Director will make a determination of the appeal and respond to the protester by certified mail in a timely manner. If the appeal is denied, the letter will include the date, time, and location of the Board of Directors meeting at which staff will make a recommendation for award and inform the protester it may request to address the Board of Directors at that meeting.

The District may transmit copies of the protest and any attached documentation to all other parties who may be affected by the outcome of the protest. The decision of the

District as to the validity of any protest is final. This District's final decision will be transmitted to all affected parties in a timely manner.

E. METHOD OF ORDERING

1. POs and payments for products and/or services will be issued only in the name of Contractor.
2. Any and all change orders shall be in writing and agreed upon, in advance, by Contractor and the District.

F. TERM / TERMINATION / RENEWAL

1. The term of the contract, which may be awarded pursuant to this RFQ, will be one (1) year.
2. This Agreement may be terminated for convenience by the District provided the Contractor is given written notice of not less than 30 calendar days. Upon such termination, the District shall pay the Contractor the amount owing for the products ordered and satisfactorily received by the District. This shall be the sole and exclusive remedy to which the Contractor is properly entitled in the event of termination by the District.
3. This Agreement may be terminated for cause at any time, provided that the District notifies Contractor of impending action.

G. WARRANTY

1. Bidder expressly warrants that all goods and services to be furnished pursuant to any contract awarded it arising from the Bid will conform to the descriptions and specifications contained herein and in supplier catalogs, product brochures and other representations, depictions or models, and will be free from defects, of merchantable quality, good material, and workmanship. Bidder expressly warrants that all goods and services to be furnished pursuant to such award will be fit and sufficient for the purpose(s) intended. This warranty shall survive any inspections, delivery, acceptance, payment, or contract termination for any reason, by the District. Bidder warrants that all work and services furnished hereunder shall be guaranteed for a period of three (3) years from the date of acceptance by the District.

H. INVOICING

1. Payment will be made within thirty (30) days following receipt of a correct invoice and upon complete satisfactory receipt of product and/or performance of services.
2. The District shall notify Contractor of any invoice adjustments required.
3. Invoices shall contain, at a minimum, District PO number, invoice number, remit to address, and itemized products and/or services description.
4. The District will pay Contractor in an amount not to exceed the total amount quoted in the RFQ response.

IV. RFQ RESPONSE SUBMITTAL INSTRUCTIONS AND INFORMATION**A. DISTRICT CONTACTS**

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

CONTRACT EQUITY PROGRAM:

Attn: Contract Equity Office

PHONE: (510) 287-0114

AFTER AWARD:

Attn: Steve Pietrobono, Manager of Fleet

E-Mail: spietrobono@ebmud.com

PHONE: (510) 287-0850

B. SUBMITTAL OF RFQ RESPONSE

1. Late and/or unsealed responses will not be accepted.
2. RFQ responses submitted via electronic transmissions will not be accepted. Electronic transmissions include faxed RFQ responses or those sent by electronic mail ("e-mail").
3. RFQ responses will be received only at the address shown below, must be SEALED, and must be received at the District Purchasing Division by 1:30 p.m. on the due date specified in the Calendar of Events. Any RFQ response received after that time or date, or at a place other than the stated address cannot be considered and will be returned to the bidder unopened.

All RFQ responses must be received and time stamped at the stated address by the time designated. The Purchasing Division's timestamp shall be considered the official timepiece for the purpose of establishing the actual receipt of RFQ responses.

4. RFQ responses are to be addressed/delivered as follows:

Mailed:

Andrew Akelman, Manager of Purchasing
East Bay Municipal Utility District
Two Scoop Trucks
RFQ No. 1609
EBMUD–Purchasing Division
P.O. Box 24055
Oakland, CA 94623

Hand Delivered or delivered by courier or package delivery service:

Andrew Akelman, Manager of Purchasing
East Bay Municipal Utility District
Two Scoop Trucks
RFQ No. 1609
EBMUD–Purchasing Division
375 Eleventh Street, First Floor
Oakland, CA 94607

Bidder's name, return address, and the RFQ number and title must also appear on the mailing package.

5. Bidders are to submit one (1) original hardcopy RFQ response (Exhibit A – RFQ Response Packet, including Contract Equity Program forms and all additional documentation stated in the “Required Documentation and Submittals” section of Exhibit A), all with original ink signatures.
6. All costs required for the preparation and submission of an RFQ response shall be borne by the bidder.
7. California Government Code Section 4552: In submitting an RFQ response to a public purchasing body, the bidder offers and agrees that if the RFQ response is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing

body pursuant to the RFQ response. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.

8. Bidder expressly acknowledges that it is aware that if a false claim is knowingly submitted (as the terms “claim” and “knowingly” are defined in the California False Claims Act, Cal. Gov. Code, §12650 et seq.), the District will be entitled to civil remedies set forth in the California False Claim Act.
9. The RFQ response shall remain open to acceptance and is irrevocable for a period of one hundred eighty (180) days, unless otherwise specified in the RFQ documents.
10. It is understood that the District reserves the right to reject any or all RFQ responses.

C. RESPONSE FORMAT

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



EXHIBIT A

RFQ RESPONSE PACKET

RFQ No. 1609 – TWO SCOOP TRUCKS

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

From: _____
(Official Name of Bidder)

RFQ RESPONSE PACKET GUIDELINES

- **AS DESCRIBED IN SECTION IV- RFQ RESPONSE SUBMITTAL INSTRUCTIONS AND INFORMATION, BIDDERS ARE TO SUBMIT ONE (1) ORIGINAL HARDCOPY RFQ RESPONSE WITH ORIGINAL INK SIGNATURES, CONTAINING THE FOLLOWING, IN THEIR ENTIRETY:**
 - **EXHIBIT A – RFQ RESPONSE PACKET, INCLUDING CONTRACT EQUITY PROGRAM FORMS AND ALL ADDITIONAL REQUIRED DOCUMENTATION AS DESCRIBED IN EXHIBIT A - “REQUIRED DOCUMENTATION AND SUBMITTALS”**
- **ALL PRICES AND NOTATIONS MUST BE PRINTED IN INK OR TYPEWRITTEN; NO ERASURES ARE PERMITTED; ERRORS MAY BE CROSSED OUT AND CORRECTIONS PRINTED IN INK OR TYPEWRITTEN ADJACENT, AND MUST BE INITIALED IN INK BY PERSON SIGNING THE RFQ RESPONSE.**
- **BIDDERS THAT DO NOT COMPLY WITH THE REQUIREMENTS, AND/OR SUBMIT AN INCOMPLETE RFQ RESPONSE MAY BE SUBJECT TO DISQUALIFICATION AND THEIR RFQ RESPONSE REJECTED IN TOTAL.**
- **IF BIDDERS ARE MAKING ANY CLARIFICATIONS AND/OR AMENDMENTS, OR TAKING EXCEPTION TO ANY PART OF THIS RFQ, THESE MUST BE SUBMITTED IN THE EXCEPTIONS, CLARIFICATIONS, AND AMENDMENTS SECTION OF THIS EXHIBIT A – RFQ RESPONSE PACKET. THE DISTRICT, AT ITS SOLE DISCRETION, MAY ACCEPT AMENDMENTS/EXCEPTIONS, OR MAY DEEM THEM TO BE UNACCEPTABLE, THEREBY RENDERING THE RFQ RESPONSE DISQUALIFIED.**



BIDDER INFORMATION AND ACCEPTANCE

1. The undersigned declares that all RFQ documents, including, without limitation, the RFQ, Addenda, and Exhibits, have been read and that the terms, conditions, certifications, and requirements are agreed to.
2. The undersigned is authorized to offer, and agrees to furnish, the articles and services specified in accordance with the RFQ documents of RFQ No. 1609.
3. The undersigned acknowledges acceptance of all addenda related to this RFQ. List Addenda for this RFQ on the lines below:

Addendum #	Date

4. The undersigned hereby certifies to the District that all representations, certifications, and statements made by the bidder, as set forth in this RFQ Response Packet and attachments, are true and correct and are made under penalty of perjury pursuant to the laws of California.
5. The undersigned acknowledges that the bidder is, and will be, in good standing in the State of California, with all the necessary licenses, permits, certifications, approvals, and authorizations necessary to perform all obligations in connection with this RFQ and associated RFQ documents.
6. It is the responsibility of each bidder to be familiar with all of the specifications, terms, and conditions and, if applicable, the site condition. By the submission of an RFQ response, the bidder certifies that if awarded a contract it will make no claim against the District based upon ignorance of conditions or misunderstanding of the specifications.
7. Patent indemnity: Contractors who do business with the District shall hold the District, its Directors, officers, agents, and employees, harmless from liability of any nature or kind, including cost and expenses, for infringement or use of any patent, copyright, or other proprietary right, secret process, patented or unpatented invention, article, or appliance furnished or used in connection with the contract or purchase order.

8. Insurance certificates are not required at the time of submission. However, by signing Exhibit A – RFQ Response Packet, the bidder agrees to meet the minimum insurance requirements stated in the RFQ. This documentation must be provided to the District prior to execution of an agreement by the District, and shall include an insurance certificate which meets the minimum insurance requirements, as stated in the RFQ.
9. The undersigned bidder hereby submits this RFQ response and binds itself on award to the District under this RFQ to execute in accordance with such award a contract and to furnish the bond or bonds and insurance required by the RFQ. The RFQ, subsequent Addenda, bidder's Response Packet, and any attachments, shall constitute the Contract, and all provisions thereof are hereby accepted.
10. The undersigned acknowledges **ONE** of the following (please check only one box)*:

- ☐ Bidder is not an SBE and is ineligible for any bid preference; **OR**
- ☐ Bidder is an SBE or DVBE as described in the Contract Equity Program (CEP) and Equal Employment Opportunity (EEO) Guidelines, is requesting a 5% bid preference, and has completed the Contract Equity Program and Equal Employment Opportunity forms at the hyperlink contained in the Contract Equity Program and Equal Opportunity section of this Exhibit A.

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

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

Street Address Line 1: _____

Street Address Line 2: _____

City: _____ State: _____ Zip Code: _____

Webpage: _____

Type of Entity / Organizational Structure (check one):

- | | |
|--|--|
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Joint Venture |
| <input type="checkbox"/> Limited Liability Partnership | <input type="checkbox"/> Partnership |
| <input type="checkbox"/> Limited Liability Corporation | <input type="checkbox"/> Non-Profit / Church |
| <input type="checkbox"/> Other: _____ | |

Jurisdiction of Organization Structure: _____

Date of Organization Structure: _____

Federal Tax Identification Number: _____

Primary Contact Information:

Name / Title: _____

Telephone Number: _____ Fax Number: _____

E-mail Address: _____

Street Address Line 1: _____

City: _____ State: _____ Zip Code: _____

SIGNATURE: _____

Name and Title of Signer (printed): _____

Dated this _____ day of _____ 20_____



BID FORM(S)

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

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

Quantities listed herein are estimates based on past usage and are not to be construed as a commitment. No minimum or maximum is guaranteed or implied.

Description	Unit of Measure	Estimated Quantity	Unit Cost	Extended Cost
Scoop Truck (as described in RFQ 1609)	Each	2	\$	\$
TOTAL COST				\$



REQUIRED DOCUMENTATION AND SUBMITTALS

All of the specific documentation listed below is required to be submitted with the Exhibit A – RFQ Response Packet. Bidders shall submit all documentation, in the order listed below, and clearly label each section of the RFQ response with the appropriate title.

1. **Description of the Proposed Equipment** RFQ response shall include a description of the proposed equipment, as it will be finally configured during the term of the contract. The description shall specify how the proposed equipment will meet or exceed the requirements of the District and shall explain any advantages that this proposed equipment would have over other possible equipment. The description shall include any disadvantages or limitations that the District should be aware of in evaluating the RFQ response. Finally, the description shall describe all product warranties provided by bidder.
2. **References:**
 - (a) Bidders must use the templates in the “References” section of this Exhibit A – RFQ Response Packet to provide references.
 - (b) References should have similar scope, volume, and requirements to those outlined in these specifications, terms, and conditions.
 - Bidders must verify the contact information for all references provided is current and valid.
 - Bidders are strongly encouraged to notify all references that the District may be contacting them to obtain a reference.
 - (c) The District may contact some or all of the references provided in order to determine Bidder’s performance record on work similar to that described in this RFQ. The District reserves the right to contact references other than those provided in the RFQ response.
3. **Exceptions, Clarifications, Amendments:**
 - (a) The RFQ response shall include a separate section calling out all clarifications, exceptions, and amendments, if any, to the RFQ and associated RFQ documents, which shall be submitted with Bidder’s RFQ response using the template in the “Exceptions, Clarifications, Amendments” section of this Exhibit A – RFQ Response Packet.
 - (b) **THE DISTRICT IS UNDER NO OBLIGATION TO ACCEPT ANY EXCEPTIONS, AND SUCH EXCEPTIONS MAY BE A BASIS FOR RFQ RESPONSE DISQUALIFICATION.**
4. **Contract Equity Program:**
 - (a) Every bidder must fill out, sign, and submit the appropriate sections of the Contract Equity Program and Equal Employment Opportunity documents located at the hyperlink

contained in the last page of this Exhibit A. **Special attention should be given to completing Form P-25, "Contractor Employment Data and Certification"; and Form P-46, "Designation of Subcontractors."** Any bidder needing assistance in completing these forms should contact the District's Contract Equity Office at (510) 287-0114 prior to submitting an RFQ response.



REFERENCES

RFQ No. 1609- TWO SCOOP TRUCKS

Bidder Name: _____

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

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

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

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

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

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



EXCEPTIONS, CLARIFICATIONS, AMENDMENTS

RFQ No. 1609- TWO SCOOP TRUCKS

Bidder Name: _____

List below requests for clarifications, exceptions, and amendments, if any, to the RFQ and associated RFQ Documents, and submit with bidder's RFQ response. **The District is under no obligation to accept any exceptions and such exceptions may be a basis for RFQ response disqualification.**

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

*Print additional pages as necessary



CONTRACT EQUITY PROGRAM & EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

Please include the required completed forms with your bid.

Non-compliance with the Guidelines may deem a bid non-responsive, and therefore, ineligible for contract award. Your firm is responsible for:

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

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

[Contract Equity Program Guidelines and Forms](#)

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

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

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



EXHIBIT B

INSURANCE REQUIREMENTS

Insurance certificates are not required at the time of submission; however, by signing Exhibit A – RFQ Response Packet, the bidder agrees to meet the minimum insurance requirements stated in the RFQ. This documentation must be provided to the District, prior to award.

The following are the minimum insurance limits, required by the District, to be held by the Contractor performing on this RFQ:

INDEMNIFICATION AND INSURANCE

A. Indemnification

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

B. Insurance Requirements

CONTRACTOR shall take out and maintain during the life of the Agreement all the insurance required in this section, and if requested shall submit certificates for review and approval by the District. The Notice to Proceed shall not be issued, and CONTRACTOR shall not commence work until such insurance has been approved by the District. The certificates shall be on forms approved by the District. Acceptance of the certificates shall not relieve CONTRACTOR of any of the insurance requirements, nor decrease the liability of CONTRACTOR. The District reserves the right to require CONTRACTOR to provide insurance policies for review by the District.

C. Workers Compensation Insurance

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. CONTRACTOR shall require any subcontractor to provide it with evidence of Workers Compensation Insurance.

D. Commercial General Liability Insurance

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. If CONTRACTOR elects to self-insure (self-fund) any liability exposure during the contract period above \$50,000, CONTRACTOR 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. CONTRACTOR shall require any subcontractor to provide evidence of liability insurance coverages.

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

\$2,000,000/Occurrence, Bodily Injury, Property Damage -- Automobile.

\$2,000,000/Occurrence, Bodily Injury, Property Damage -- General Liability.

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

1. The District, its Directors, officers, and employees are Additional Insureds in the policy(ies) as to the work being performed under the contract.
2. The coverage is *Primary and non-contributory* to any other applicable insurance carried by the District.
3. The policy(ies) covers *contractual liability*.
4. The policy(ies) is written on an *occurrence* basis.
5. The policy(ies) covers *personal injury* (libel, slander, and wrongful entry and eviction) liability.
6. The policy(ies) covers *products and completed operations*.
7. The policy(ies) covers the use of *owned, non-owned* and hired automobiles.
8. The policy(ies) and/or a separate pollution liability policy(ies) shall cover pollution liability for claims related to the release or the threatened release of pollutants into the environment arising out of or resulting from Consultant's performance under this agreement.
9. The policy(ies) will not be canceled nor the above coverages/endorsements reduced without 30 days written notice to East Bay Municipal Utility District at the address above.

GENERAL REQUIREMENTS

CONTENTS

1. DEFINITIONS
2. BOND
3. CONTRACTOR'S FINANCIAL OBLIGATION
4. SAMPLES OR SPECIMENS
5. MATERIAL AND WORKMANSHIP
6. DEFECTIVE WORK
7. WARRANTY OF TITLE
8. WARRANTY OF FITNESS
9. SAFETY AND ACCIDENT PREVENTION
10. CHARACTER OF WORKFORCE
11. PREVAILING WAGES
12. PAYROLL RECORDS
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16. EFFECT OF EXTENSIONS OF TIME
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26. COVENANT AGAINST GRATUITIES
27. RIGHTS AND REMEDIES OF THE DISTRICT
28. WAIVER OF RIGHTS
29. CONFIDENTIALITY

1. DEFINITIONS

The following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.

- a. **"Change Order"** A Change Order is a written instrument used for modifying the contract with regards to the scope of Work, contract sum, and/or Contract Time. An approved Change Order is a Change Order signed by the District. An executed Change Order is a Change Order signed by both the District and the Contractor.

- b. **“Contract”** means the agreement between the District and Contractor as memorialized in the Contract Documents.
- c. **“Business Entity”** means any individual, business, partnership, joint venture, corporation, sole proprietorship, or other private legal entity recognized by statute.
- d. **“Buyer”** means the District’s authorized contracting official.
- e. **“Contract Documents”** comprise the entire agreement between the District and the Contractor and can include the District’s contract form if used, any purchase order, RFP, RFQ or Contractor response packet, and any addenda, appendices and District approved changes or amendments. The Contract Documents are intended to be complementary and include all items necessary for the Contractor’s proper execution and completion of the Work. Any part of the Work not shown or mentioned in the Contract Documents that is reasonably implied, or is necessary or usual for proper performance of the Work, shall be provided by the Contractor at its expense.
- f. **“Contractor”** means the Business Entity with whom the District enters into a contractual agreement. Contractor shall be synonymous with “supplier”, “vendor”, “consultant” or other similar term.
- g. **“Day”** unless otherwise specified, days are calendar days, measured from midnight to the next midnight.
- h. **“District”** means the East Bay Municipal Utility District, its employees acting within the scope of their authority, and its authorized representatives.
- i. **“Goods”** means off the shelf software and all types of tangible personal property, including but not limited to materials, supplies, and equipment.
- j. **“Project Manager”** shall be the District designated individual responsible for administering and interpreting the terms and conditions of the Contract Documents, for matters relating to the Contractor’s performance under the Contract with the District, and for liaison and coordination between the District and Contractor.
- k. **“Work”** means all labor, tasks, materials, supplies, and equipment required to properly fulfill the Contractor’s obligations as required in the Contract Documents.
- l. **“Work Day”** Unless otherwise specified, work day includes all days of the year except Saturdays, Sundays and District holidays.

2. BOND

- a. When required in the District’s bid or proposal solicitation documents, the Contractor to whom award is made shall furnish a good and approved faithful performance bond and/or payment bond within ten business days after receiving the forms for execution.
- b. The bonds shall be executed by a sufficient, admitted surety insurer (i.e.: as listed on website [http://interactive.web.insurance.ca.gov/webuser/idb_co_list\\$.startup](http://interactive.web.insurance.ca.gov/webuser/idb_co_list$.startup)) admitted to transact such business in California by the California Department of Insurance. After acceptance of the bond(s) by the District, a copy of the bond(s) will be

returned to the Contractor.

- c. If, during the continuance of the Contract, any of the sureties, in the opinion of the District, are or become irresponsible, the District may require other or additional sureties, which the Contractor shall furnish to the satisfaction of the District within ten days after notice. If the Contractor fails to provide satisfactory sureties within the ten-day period, the Contract may be terminated for cause under Article 18.

3. CONTRACTOR'S FINANCIAL OBLIGATION

The Contractor shall promptly make payments to all persons supplying labor and materials used in the execution of the contract.

4. SAMPLES OR SPECIMENS

The Contractor shall submit samples or prepare test specimens of such materials to be furnished or used in the work as the Project Manager may require.

5. MATERIAL AND WORKMANSHIP

- a. All goods and materials must be new and of the specified quality and equal to approved sample, if samples have been required. In the event any goods or materials furnished or services provided by the Contractor in the performance of the Contract fail to conform to the requirements, or to the sample submitted by the Contractor, the District may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the District, and immediately replace all such rejected items with others conforming to the Contract. All work shall be done and completed in a thorough, workmanlike manner, notwithstanding any omission from these specifications or the drawings, and it shall be the duty of the Contractor to call attention to apparent errors or omissions and request instructions before proceeding with the work. The Project Manager may, by appropriate instructions, correct errors and supply omissions, which instructions shall be binding upon the Contractor as though contained in the original Contract Documents.
- b. All materials furnished and all Work must be satisfactory to the Project Manager. Work, material, or machinery not in accordance with the Contract Documents, in the opinion of the Project Manager, shall be made to conform.

6. DEFECTIVE WORK

The Contractor shall replace at its own expense any part of the work that has been improperly executed, as determined by the Project Manager. If Contractor refuses or neglects to replace such defective work, it may be replaced by the District at the expense of the Contractor, and its sureties shall be liable therefor.

7. WARRANTY OF TITLE

Contractor shall warrant to the District, its successors and assigns, that the title to the materials, supplies or equipment covered by the Contract, when delivered to the District or to its successors or assigns, is free from all liens and encumbrances.

8. WARRANTY OF FITNESS

Contractor hereby warrants that all materials furnished shall meet the requirements and conditions of the Contract Documents; shall be fit for the purposes intended and fulfill its design functions; be free of all patent and latent defects in design, materials and workmanship; and perform satisfactorily. It is understood and agreed that by acceptance of this warranty and the acceptance of the materials or supplies to be manufactured or assembled pursuant to these specifications, the District does not waive any warranty either expressed or implied in Sections 2312 to 2317, inclusive, of the Commercial Code of the State of California or any products liability of the Contractor as determined by any applicable decision of a court of the State of California or of the United States.

9. SAFETY AND ACCIDENT PREVENTION

In performing work under the Contract on District premises, Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. Contractor shall take any additional precautions as the District may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract or Contractor's right to precede in accordance with the default provisions of the Contract Documents.

10. CHARACTER OF WORKFORCE

The Contractor shall employ none but skilled competent qualified personnel to perform the Work, and shall maintain discipline and order in the conduct of the Work at all times.

11. PREVAILING WAGES & DIR REGISTRATION

- a. Please see www.dir.ca.gov for further information regarding the below.
- b. All Contractors and Subcontractors of any tier bidding on, or offering to performing work on a public works project shall first be registered with the State Department of Industrial Relations (DIR) pursuant to Section 1725.5 of the Labor Code. No bid will be accepted nor any contract entered into without proof of the Contractor and Subcontractors' current registration with the DIR (LC § 1771.1).
- c. All public works projects awarded after January 1, 2015, are subject to compliance monitoring and enforcement by the DIR (LC § 1771.4) and all Contractors are required post job site notices, "as prescribed by regulation" (LC § 1771.4).
- d. To the extent applicable, pursuant to Section 1773 of the Labor Code, the District has obtained from the Director of Industrial Relations of the State of California, the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime work in the locality in which the Work is to be performed, for each craft, classification, or type of worker needed to execute the contract. Pursuant to Section 1773.2 of the Labor Code, a copy of the prevailing wage rates is on file with the District and available for inspection by any interested party at www.dir.ca.gov.
- e. The holidays upon which such rates shall be paid shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification, or type

of worker employed on the Work.

- f. The Contractor shall post a copy of the general prevailing rate of per diem wages at the jobsite pursuant to Section 1773.2 of the Labor Code.
- g. Pursuant to Section 1774 of the Labor Code, the Contractor and any of its Subcontractors shall not pay less than the specified prevailing rate of wages to all workers employed in the execution of the contract.
- h. As set forth with more specificity in Section 1773.1 of the Labor Code, "per diem" wages include employer payments for health and welfare, pension, vacation, travel, subsistence and, in certain instances, apprenticeship or other training programs, and shall be paid at the rate and in the amount spelled out in the pertinent prevailing wage determinations issued by the Director of Industrial Relations.
- i. The Contractor shall, as a penalty to the State or the District, forfeit not more than the maximum set forth in Section 1775 of the Labor Code for each calendar day, or portion thereof, for each worker paid less than the prevailing rates for the work or craft in which the worker is employed under the contract by the Contractor or by any Subcontractor under him. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which such worker was paid less than the stipulated prevailing wage rate shall be paid to such worker by the Contractor.
- j. The specified wage rates are minimum rates only and the District will not consider and shall not be liable for any claims for additional compensation made by the Contractor because of its payment of any wage rate in excess of the general prevailing rates. All disputes in regard to the payment of wages in excess of those specified herein shall be adjusted by the Contractor at its own expense.
- k. General prevailing wage determinations have expiration dates with either a single asterisk or a double asterisk. Pursuant to California Code of Regulations, Title 8, Section 16204, the single asterisk means that the general prevailing wage determination shall be in effect for the specified contract duration. The double asterisk means that the predetermined wage modification shall be paid after the expiration date. No adjustment in the Contract Sum will be made for the Contractor's payment of these predetermined wage modifications.

12. PAYROLL RECORDS & ELECTRONIC SUBMISSION

- a. The Contractor and each Subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the Work. The payroll records shall be certified and shall be available for inspection in accordance with the provisions of Section 1776 of the Labor Code. Certified payroll records shall be on the forms provided by the DIR or contain the same information required on the Department's form.

- b. The Contractor shall submit for each week in which any contract Work is performed a copy of all payroll records to the Engineer. The Contractor shall be responsible for submission of copies of payroll records of all Subcontractors.
- c. The Contractor or Subcontractor shall certify the payroll records as shown on the DIR form. In addition, the records shall be accompanied by a statement signed by the Contractor or Subcontractor certifying that the classifications truly reflect the Work performed and that the wage rates are not less than those required to be paid.
- d. For public works projects awarded on or after April 1, 2015, or that are still ongoing after April 1, 2016, no matter when awarded, each Contractor and Subcontractor shall furnish the certified payroll related records as more specifically described above and in Labor Code section 1776 directly to the Labor Commissioner (see LC § 1771.4). These records shall be provided to the Labor Commissioner at least monthly or more frequently if required by the terms of the Contract. For exception on projects covered by collective bargaining agreements like a PLA, please see Labor Code section 1771.4.
- e. In the event of noncompliance with the requirements of Section 1776 of the Labor Code, the Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with said Section. Should noncompliance still be evident after such 10-day period, the Contractor shall, as a penalty to the State or the District, forfeit the amount set forth in Section 1776 of the Labor Code for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.
- f. The Contractor and every Subcontractor shall post at the workplace and comply with all required wage related workplace postings. Copies of the required postings may be downloaded or ordered electronically from the Department of Industrial Relations website at <http://www.dir.ca.gov/wpnodeb.html>.

13. HOURS OF LABOR

Pursuant to the provisions of Sections 1810, et seq. of the Labor Code and any amendments thereof:

- a. Eight hours of labor constitutes a legal day's Work under the contract.
- b. The time of service of any worker employed upon the work shall be limited and restricted to eight hours during any one calendar day, and forty hours during any one calendar week except as provided in Article 13.iv below.
- c. The Contractor shall, as a penalty to the State or the District, forfeit the amount set forth in Section 1813 of the Labor Code for each worker employed in the execution of the contract by the Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any calendar day and forty hours in any one calendar week in violation of this Article and the provisions of Labor Code, Sections 1810, et seq.
- d. Work performed by employees of the Contractor in excess of eight hours per day, and forty hours during any one calendar week, shall be permitted upon compensation for all

hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay.

- e. The Contractor and every Subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by him in connection with the Work; the record shall be kept open at all reasonable hours to the inspection of the District and to the Division of Labor Standards Enforcement of the State of California.

14. EMPLOYMENT OF APPRENTICES

- a. In the performance of the contract, the Contractor and any Subcontractor shall comply with the provisions concerning the employment of apprentices in Section 1777.5 of the Labor Code and any amendments thereof.
- b. In the event the Contractor or any Subcontractor willfully fails to comply with the aforesaid section, such Contractor or Subcontractor shall be subject to the penalties for noncompliance in Labor Code, Section 1777.7.

15. CHANGES

- a. Changes in the Work can only be made in writing signed by an authorized employee of the District. If the change causes an increase or decrease in the contract sum, or a change in the time for performance under the Contract, an adjustment may be made as determined by the Project Manager.
- b. The District reserves the right to make changes in the design of materials, equipment, or machinery, to make alterations or additions to or deviations or subtractions from the Contract and any specifications and drawings, to increase or decrease the required quantity of any item or portion of the Work or to omit any item or portion of the Work, as may be deemed by the Project Manager to be necessary or advisable and to order such extra work as may be determined by the Project Manager to be required for the proper execution and completion of the whole Work contemplated. Any such changes will be ordered in writing by the Project Manager. The determination of the Project Manager on all questions relating to changes, including extra work, shall be conclusive and binding.
- c. Prior to issuing an amendment or change to the Contract, the Project Manager may request that the Contractor submit a proposal covering the changes. Within 10 business days of receiving the request, the Contractor shall submit its proposal to the Project Manager of all costs associated with the proposed amendment or change and any request for an extension of Contract time. Contractor's proposal shall include detailed estimates with cost breakdowns, including labor, material, equipment, overhead, and profit. Labor shall be broken down into hours and rate per hour. If applicable, the proposal shall include a breakdown for off-site labor (including factory labor, engineering, etc.). The Contractor's proposal shall include an analysis of schedule impact when the Contractor is requesting an adjustment in contract time. The Contractor shall be responsible for any delay associated with its failure to submit its change proposal within the time specified. If the Project Manager decides not to issue an amendment or change after requesting a proposal from the Contractor, the Contractor will be notified in writing. The Contractor is not entitled to reimbursement for Change Order

preparation costs if the Contractor's proposal is not accepted by the Project Manager.

- d. If the Contractor agrees with the terms and conditions of the approved Change Order, the Contractor shall indicate its acceptance by signing the original copy and returning it to the Project Manager within 10 Work Days after receipt or with reasonable promptness and in such sequence as to not delay the Work or activities of the District or of separate contractors, whichever is sooner. If notice of any change is required to be given to a surety by the provisions of any bond, the Contractor shall provide notice and the amount of each applicable bond shall be adjusted separately. Payment in accordance with the terms and conditions set forth in the executed Change Order shall constitute full compensation for all Work included in the Change Order and the District will be released from any and all claims for direct, indirect, and impact expenses and additional time impact resulting from the Work. If the Contractor disagrees with the terms and conditions of the approved Change Order, the Contractor shall indicate specific areas of disagreement and return the approved Change Order to the Project Manager with a detailed written dispute. No payment will be made on the disputed work until the approved Change Order is returned to the Project Manager. However, whether or not the Contractor agrees with the terms and conditions of an approved Change Order, the Contractor shall immediately revise its sequence of operations as required to facilitate timely completion of the changed work and shall proceed with the revised work sequence.
- e. The Project Manager may, after having received a written cost quotation from the Contractor, order the Contractor, in writing, to proceed with the work prior to issuance of an approved Change Order through a change directive. The change directive will authorize the Contractor to proceed with the work subject to the cost quotation submitted by the Contractor. Within five days following receipt of the change directive, the Contractor shall submit a detailed change proposal documenting the amount of compensation. The Project Manager will review the change proposal and, at its option, will either issue an approved Change Order for the work or direct the Contractor to perform the work through Force Account. Until the method of compensation is determined and the approved Change Order is received, the Contractor shall keep full and complete time and material records of the cost of the ordered work and shall permit the Project Manager to have access to such records. An approved Change Order shall supersede any previously issued written change directive covering the same Work.

16. EFFECT OF EXTENSIONS OF TIME

The granting, or acceptance, of extensions of time to complete the Work or furnish the labor, supplies, materials or equipment, or any one of the aforementioned, will not operate as a release of Contractor or the surety on Contractor's faithful performance bond.

17. DELAYS

- a. The Contractor shall take reasonable precautions to foresee and prevent delays to the Work. When the Contractor foresees a delay event, and upon the occurrence of a delay event, the Contractor shall immediately notify the Project Manager of the probability or the actual occurrence of a delay, and its cause. With respect to all delays (compensable, excusable or inexcusable), the Contractor shall reschedule the Work and revise its operations, to the extent possible, to mitigate the effects of the delay. Within 15 days from the beginning of a delay the Contractor shall provide the Project Manager with a

detailed written description of the delay, its cause, its impact and the Contractor's mitigation plans. Failure to provide the notification required above waives the Contractor's right to any additional time or compensation resulting from the delay for whatever cause. The Project Manager will investigate the facts and ascertain the extent of the delay, and the Project Manager's findings thereon shall be final and conclusive, except in the case of gross error. An extension of time must be approved by the Project Manager to be effective, but an extension of time, whether with or without consent of the sureties, shall not release the sureties from their obligations, which shall remain in full force until the discharge of the contract.

- b. For inexcusable delays (delays caused by circumstances within the Contractor's control, the control of its subcontractors or supplies of any tier, or within the scope of the Contractor's contract responsibilities) the Contractor shall not be entitled to an extension of time or additional compensation for any loss, cost, damage, expense or liability resulting directly or indirectly from the inexcusable delay.
- c. For excusable delays (delays to completion of the Work within the time limits set forth in the Contract Documents directly caused by events beyond the control of both the Contractor and the District, which delay is not concurrent with an inexcusable delay and which could not have been avoided by the Contractor through reasonable mitigation measures).
- d. For compensable delays (delays to completion of the Work within the time limits set forth in the Contract Documents that could not be avoided by Contractor mitigation, caused directly and solely by the District or by causes within the exclusive control of the District, and which were not concurrent with any other type of delay) the Project Manager will grant the Contractor an extension of the time to perform under the Contract and compensation in an amount that represents the Contractor's actual direct costs incurred as a direct result of the compensable delay. The Contractor may recover its direct costs only and may not recover (and waives) all other types of indirect, consequential, special and incidental damages.
- e. For concurrent delays (two or more independent causes of delay directly preventing the Contractor from completing the Work within the time limits set forth in the Contract Documents where the delays occur at the same time during all or a portion of the delay period being considered, and where each of the delays would have caused delay to the Contractor even in the absence of any of the other delays, and none of the delays could have been avoided by Contractor mitigations) the following rules apply:
 - i. One or more of the concurrent delays are excusable or compensable, then the period of concurrent delay will be treated as an excusable delay; and
 - ii. All of the concurrent delays are inexcusable, then the period of concurrent delay will be inexcusable.

18. TERMINATION

- a. Termination by the District for Cause:

- i. District may terminate the Contractor's right to proceed under the Contract, in whole or in part, for cause at any time after the occurrence of any of the following events, each of which constitutes a default:
 - 1. The Contractor becomes insolvent or files for relief under the bankruptcy laws of the United States.
 - 2. The Contractor makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.
 - 3. A receiver is appointed to take charge of the Contractor's property.
 - 4. The Contractor fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the Work in accordance with the Contract Documents.
 - 5. The Contractor fails to make progress so as to endanger performance of the Work within the contractually required time.
 - 6. The Contractor disregards legal requirements of agencies having jurisdiction over the Work, the Contractor, or the District.
 - 7. The Contractor fails to provide the District with a written plan to cure a District identified default within five business days after the District's request for a plan to cure; the District does not accept the Contractor's plan for curing its default; or the Contractor does not fully carry out an accepted plan to cure.
 - 8. The Contractor abandons the Work. Abandonment is conclusively presumed when the District requests a written plan to cure a default and the Contractor does not submit the plan within five business days of the District's request.
 - 9. The Contractor materially fails to meet its obligations in accordance with the Contract Documents.
 - 10. The Contractor is in default of any other material obligation under the Contract Documents.
- ii. If any of the above events occur, the District may, in its discretion, require that the Contractor submit a written plan to cure its default, which plan must be provided to the District within 5 business days of the request and must include a realistic, executable plan for curing the noted defaults.

- iii. Upon any of the occurrences referred to in Article 18.a.i. above, the District may, at its election and by notice to the Contractor, terminate the Contract in whole or in part; accept the assignment of any or all of the subcontracts; and then complete the Work by any method the District may deem expedient. If requested by the District, the Contractor shall remove any part or all of the Contractor's materials, supplies, equipment, tools, and machinery from the site of the Work within seven days of such request; and, if the Contractor fails to do so, the District may remove or store, and after 90 days sell, any of the same at the Contractor's expense.
- iv. No termination or action taken by the District after termination shall prejudice any other rights or remedies of the District provided by law or by the Contract Documents.
- v. Conversion: If, after termination for other than convenience, it is determined that the Contractor was not in default or material breach, or that the default or material breach was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for convenience pursuant to Article 18.b. below.

b. Termination by the District for Convenience:

- i. The District may, at its option, and for its convenience, terminate the Contract at any time by giving written notice to the Contractor specifying the effective date of termination. Upon such termination, the Contractor agrees to comply with the notice and further agrees to waive any claims for damages, including loss of anticipated profits, on account of the termination; and, as the sole right and remedy of the Contractor, the District shall pay the Contractor as set forth below.
- ii. Upon receipt of a notice of termination for convenience, the Contractor shall, unless the notice directs otherwise, do the following:
 - 1. Immediately discontinue its performance of the Contract to the extent specified in the notice.
 - 2. Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of a portion of the Work that is not discontinued or that is necessary for an orderly cessation of the Work.
 - 3. Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent they relate to the performance of the discontinued portion of the Work.
 - 4. Thereafter, do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials,

plants, and equipment in transit to or on the site of performance.

- iii. Upon such termination for convenience, the District will pay to the Contractor the sum of the following:
 - 1. The amount of the contract sum allocable to the portion of the Work properly performed by the Contractor as of the effective date of termination, less sums previously paid to the Contractor.
 - 2. Previously unpaid costs of any items delivered to the project site that were already fabricated for subsequent incorporation into the Work.
 - 3. Any proven losses with respect to materials and equipment directly resulting from the termination.
 - 4. Reasonable demobilization costs.
- iv. The above reimbursement is the sole and exclusive remedy to which the Contractor is entitled in the event the contract is terminated for convenience; and the Contractor expressly waives any other claims, damages, demands, compensation or recovery related to this contract or project. The Contractor agrees to sign a general release incorporating this waiver.
- c. Effect of Termination: Upon termination, the obligations of the Contract shall continue as to portions of the Work already performed and, subject to the Contractor's obligations under Article 18.b.ii, as to bona fide obligations assumed by the Contractor prior to the date of termination.
- d. Force Majeure: If the contract is suspended or terminated by the District because Contractor's performance is prevented or delayed by an event including an irresistible, superhuman cause, or by the act of public enemies of the State of California or of the United States ("Force Majeure") , the Contractor will be paid for Work performed prior to the Force Majeure event at either (i) the unit prices named in the Contract; or (ii) in the event no unit prices are named, a sum equal to the percentage of the total contract amount that matches the percentage of the total contract Work performed prior to the Force Majeure event.

19. DAMAGES

All losses or damages to material or equipment to be furnished pursuant to the Contract Documents occurring prior to receipt and final acceptance of the Work shall be sustained by the Contractor. The Contractor shall sustain all losses arising from unforeseen obstructions or difficulties, either natural or artificial, encountered in the prosecution of the Work, or from any action of the elements prior to final acceptance of the work, or from an act or omission on the part of the Contractor not authorized by the Contract Documents.

20. ORDER OF PRECEDENCE

- a. In the case of conflicts, errors, or discrepancies in any of the Contract Documents, the order of precedence is as follows. Within the same order of precedence, specific requirements shall take precedence over general requirements.
 - i. Approved Change Orders.
 - ii. Addenda.
 - iii. RFQ or RFP.
 - iv. Referenced Standard Specifications and Drawings.
 - v. Contractor's Response Packet
- b. With reference to drawings:
 - i. Numerical dimensions govern over scaled dimensions.
 - ii. Detailed drawings govern over general drawings.
 - iii. Addenda/Change Order drawings govern over contract drawings.
 - iv. Contract drawings govern over standard drawings.
 - v. Notes apply only to the drawing where the notes appear, unless classified as "typical" or intended to apply elsewhere in which case they apply to all drawings where the conditions or circumstance noted occurs.
 - vi. Typical details apply to all drawings unless a specific different detail is shown

21. INDEMNIFICATION/RESPONSIBILITY

- a. Contractor shall indemnify, keep and save harmless the District and each of its directors, officers, agents and employees against any and all suits, claims or actions arising out of any of the following:
 - i. Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance or implementation of this Contract; or
 - ii. Any allegation that materials or services developed, provided or used for this Contract infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.
- b. Contractor further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered, or settlement reached, against the District or any of the other agencies or individuals enumerated above in any such action, Contractor shall, at its expense, satisfy and discharge the same.

c. This indemnification shall survive termination or expiration of the Contract.

22. PROHIBITION OF ASSIGNMENT

The Contractor shall not assign, transfer, or otherwise dispose of any of its rights, duties or obligations under this Contract.

23. NEWS RELEASES

The Contractor, its employees, subcontractors, and agents shall not refer to the District, or use any logos, images, or photographs of the District for any commercial purpose, including, but not limited to, advertising, promotion, or public relations, without the District's prior written consent. Such written consent shall not be required for the inclusion of the District's name on a customer list.

24. TRANSFER OF INTEREST

Contractor shall not assign, transfer or otherwise substitute its interest in the Contract or any of the contract obligations without prior written consent from the District.

25. SEVERABILITY

Should any part of the Contract 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 the Contract, which shall continue in full force and effect, provided that the remainder of the Contract can be interpreted to give effect to the intentions of the parties.

26. COVENANT AGAINST GRATUITIES

The Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the District with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the District shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the District in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the District provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

27. RIGHTS AND REMEDIES OF THE DISTRICT

The rights and remedies of the District provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

28. WAIVER OF RIGHTS

Any action or inaction by the District or the failure of the District on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the District of its rights and shall not prevent the District from enforcing such provision or right on any future

occasion. Rights and remedies are cumulative and are in addition to any other rights or remedies that the District may have at law or in equity.

29. CONFIDENTIALITY

Contractor agrees to maintain in confidence and not disclose to any person or entity, without the District's prior written consent, any trade secret or confidential information, knowledge or data relating to the products, process, or operation of the District. Contractor 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 Contractor during the term of the Contract. The covenants contained in this paragraph shall survive the termination of this Contract for whatever cause.