

# EAST BAY MUNICIPAL UTILITY DISTRICT

## REQUEST FOR PROPOSAL (RFP) for FMC737-19-01 Temporary Administrative Services

Contact Person: Suzanne Porter, Building Tenant Services  
Sup. Phone Number: (510) 287-0813  
E-mail Address: [Suzanne.Porter@ebmud.com](mailto:Suzanne.Porter@ebmud.com)

For complete information regarding this project, see RFP posted at <https://www.ebmud.com/business-center/requests-proposal-rfps/> or contact the EBMUD representative listed above. Please note that prospective bidders are responsible for reviewing this site during the RFP process, for any published addenda regarding this RFP.

**RESPONSE DUE**  
by  
**4:00 p.m.**  
on  
**November 13, 2018**  
at  
**EBMUD, Purchasing Division**  
**375 Eleventh St., First Floor**  
**Oakland, CA 94607**



375 Eleventh Street, Oakland, CA 94607  
Website: [ebmud.com](http://ebmud.com)

# **EAST BAY MUNICIPAL UTILITY DISTRICT**

**RFP**

**for**

**FMC737-19-01 Temporary Administrative Services**

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

It is the intent of these specifications, terms, and conditions to describe temporary administrative services to complete a State mandated program.

East Bay Municipal Utility District (District) intends to award a contract to the Proposer(s) who best meets the District's requirements. The contract is estimated to last approximately six to 18 months. The District will also use this RFP to establish a list of Temporary Administrative Services contractors, should the successful bidder not be able to meet the District's schedule as defined in the evaluation criteria.

The Tap Research Project, already in progress, is a review of approximately 340,000 scanned paper tap records to identify service lateral materials, diameters, lengths, installation and renewal dates, and other relevant data. Using a computerized mapping interface, clerical staff will key information into a separate database for further scrutiny. It is anticipated that approximately 130 records will be reviewed per day at a rate of two to three minutes per record.

**B. PROPOSER QUALIFICATIONS****1. Proposer Minimum Qualifications**

- a. Proposer, Proposer's principal, or Proposer's staff shall have been regularly engaged in the business of providing temporary staffing services for at least 5 years.
- b. Proposer shall be a member of the American Staffing Association.
- c. Proposer shall possess all permits, licenses, and professional credentials necessary to perform services as specified under this RFP.

**C. SPECIFIC REQUIREMENTS**

The contractor will provide up to two (2) temporary Administrative Clerks to work exclusively on the District's Tap Research Project. The contractor shall assume the following:

- Two workers equivalent to an Administrative Clerk classification working 40 hours per week, up to 2080 hours. Said Administrative Clerks will work on the project approximately 6 months, equaling 1040 hours each. There may be additional work available associated with the project up to 18 months.

- The contractor will provide resumes of qualified candidates to the District for review. The District will select potential candidates from the resumes, and the contractor will schedule candidate interviews with the District.

The contractor shall select candidates who meet the following criteria:

1. Thoroughly review electronic versions of scanned historical, hand-written documents of varying formats and clarity to extract key data elements;
2. Possess critical thinking skills;
3. Able to decipher information;
4. Maintain superb attention to detail;
5. Complete 8 hours of work per day;
6. Follow established procedures concerning lunch (30 minutes) and break periods (two 15 minute breaks);
7. Proficient in MS Office;
8. Sit for long periods of time while working in a quiet office environment;
9. Complete repetitive tasks with 99% accuracy;
10. Maintain an average of one record reviewed per two minutes;
11. Able to read maps online;
12. Learn assigned tasks, including preparing documents to be scanned and scanning documents;
13. Follow both oral and written instructions;
14. Learn the policies and procedures pertaining to the work;
15. Express self clearly and concisely;

16. Deal tactfully and effectively with the public and fellow coworkers;
17. Work under limited supervision;
18. Maintain attention to detail;
19. Prepare reports and records according to established format;
20. Establish and maintain effective working relationships with others;
21. Learn the operation of a variety of standard office equipment.
22. Report to work on time and engage in job-related tasks for the duration of the assigned shift unless given prior approval by Supervisor. Unscheduled absences should be reported to the District as soon as possible and may be subject to review.

If the candidate fails to meet the above criteria, the contractor will provide additional candidates as needed. If the contractor is not able to provide suitable candidates within two weeks of request, the District may select the next responsive bidder.

#### Work Hour Restrictions

1. All work shall be completed Monday through Friday, 7:30 am – 5:00 pm, unless approved in advance by District staff.

#### Work Location Restrictions

1. All work shall be completed at 375 11<sup>th</sup> St., Oakland CA, unless approved in advance by District staff.

#### D. DELIVERABLES / REPORTS

1. Not Used

## II. CALENDAR OF EVENTS

EVENT	DATE/LOCATION
RFP Issued	October 30, 2018
Response Due	November 13, 2018 by 4:00 p.m.
Anticipated Contract Start Date	December 10, 2018

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

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

### **III. DISTRICT PROCEDURES, TERMS, AND CONDITIONS**

#### **A. RFP ACCEPTANCE AND AWARD**

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

**B. EVALUATION CRITERIA/SELECTION COMMITTEE**

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

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

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

The Evaluation Criteria are as follows:

	<b>Evaluation Criteria</b>
<b>A.</b>	<p><b>Technical Criteria:</b> In each area described below, an evaluation will be made of the probability of success of and risks associated with, the RFP response:</p> <ol style="list-style-type: none"> <li>1. Services - A comparison will be made of the proposed services with the requirements of this RFP. Credit will be given for responsiveness, and technical expertise.</li> </ol>
<b>B.</b>	<p><b>Cost:</b> The points for Cost will be computed by dividing the amount of the lowest responsive RFP response received by each Proposer's total proposed cost.</p> <p>While not reflected in the Cost evaluation points, an evaluation may also be made of:</p> <ol style="list-style-type: none"> <li>1. Reasonableness (i.e., does the proposed pricing accurately reflect the Proposer's effort to meet requirements and objectives?);</li> <li>2. Realism (i.e., is the proposed cost appropriate to the nature of the products and services to be provided?); and</li> <li>3. Affordability (i.e., the ability of the District to finance this project).</li> </ol> <p>Consideration of price in terms of overall affordability may be controlling in circumstances where two or more RFP responses are otherwise judged to be equal, or when a superior RFP response is at a price that the District</p>

	cannot afford.
<b>C.</b>	<b>Implementation Plan and Schedule:</b> An evaluation will be made of the likelihood that the Proposer's implementation plan and schedule will meet the District's schedule.
<b>D.</b>	<b>Relevant Experience:</b> RFP responses will be evaluated against the RFP specifications and the questions below: <ol style="list-style-type: none"> <li>1. Do the individuals assigned to the project have experience on similar projects?</li> <li>2. Are résumés complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the project requires?</li> <li>3. How extensive is the applicable education and experience of the personnel designated to work on the project?</li> </ol>
<b>E.</b>	<b>References (See Exhibit A – RFP Response Packet):</b> If a short list process is used for a solicitation, references are only performed on the shortlisted Proposers and the score for reference checks is not included in the preliminary short list score.
<b>F.</b>	<b>Oral Presentation and Interview:</b> The oral interview may consist of standard questions asked of each of the Proposers and specific questions regarding the specific RFP response.
<b>G.</b>	<b>Understanding of the Project:</b> RFP responses will be evaluated against the RFP specifications and the questions below: <ol style="list-style-type: none"> <li>1. Has the Proposer demonstrated a thorough understanding of the purpose and scope of the project?</li> <li>2. How well has the Proposer identified pertinent issues and potential problems related to the project?</li> <li>3. Has the Proposer demonstrated that it understands the deliverables the District expects it to provide?</li> <li>4. Has the Proposer demonstrated that it understands the District's time schedule and can meet it?</li> </ol>
<b>H.</b>	<b>Methodology:</b> RFP responses will be evaluated against the RFP specifications and the questions below: <ol style="list-style-type: none"> <li>1. Does the methodology depict a logical approach to fulfilling the requirements of the RFP?</li> <li>2. Does the methodology match and contribute to achieving the objectives set out in the RFP?</li> <li>3. Does the methodology interface with the District's time schedule?</li> </ol>



<b>I.</b>	<b>Contract Equity Program:</b> Proposer shall be eligible for SBE or DVBE preference points if they are a certified small business entity, as described in the guidelines contained in Exhibit A-Contract Equity Program, <u>and</u> they check the appropriate box, requesting preference, in Exhibit A-Proposer Information and Acceptance. Qualified DVBEs and/or SBEs will receive an additional 5 points to their total score.
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**C. PRICING**

1. Prices quoted shall be firm for the first 24 months of any contract that may be awarded pursuant to this RFP.
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. Proposers 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 the District issues the Notice of Intent to Award, which is sent to all entities who submitted a proposal. The District will reject the protest as untimely if it is received after this specified time frame. Protests will be accepted from proposers or potential proposers only.

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

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 protester. If a firm is representing the protester, they shall include their contact information in addition to that of the protesting firm.

Protests must be mailed 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 business 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. WARRANTY

1. Not Used

F. 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 will notify the General or Professional Service Provider of any invoice adjustments required.
3. Invoices shall contain, at a minimum, District purchase order number, invoice number, remit to address, and itemized services description.
4. The District will pay General or Professional Service Provider in an amount not to exceed the negotiated amount(s) which will be referenced in the agreement signed by both parties.

G. LIQUIDATED DAMAGES

1. Not Used

H. BONDS

1. Not Used

**IV. RFP RESPONSE SUBMITTAL INSTRUCTIONS AND INFORMATION**

A. DISTRICT CONTACTS

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

FOR INFORMATION REGARDING TECHNICAL SPECIFICATIONS:

Attn: Suzanne Porter

EBMUD- Building Services

E-Mail: [Suzanne.porter@ebmud.com](mailto:Suzanne.porter@ebmud.com)

PHONE: (510) 287-0813

FOR INFORMATION ON THE CONTRACT EQUITY PROGRAM:

Attn: Contract Equity Office

PHONE: (510) 287-0114

AFTER AWARD:

Attn: Suzanne Porter

EBMUD- Building Services

E-Mail: [Suzanne.Porter@ebmud.com](mailto:Suzanne.Porter@ebmud.com)

PHONE: (510) 287-0813

B. SUBMITTAL OF RFP RESPONSE

1. Late and/or unsealed responses will not be accepted.
2. RFP responses submitted via electronic transmissions will not be accepted. Electronic transmissions include faxed RFP responses or those sent by electronic mail ("e-mail").
3. RFP responses will be received only at the address shown below, must be SEALED, and must be received at the District Purchasing Division by 4:00 p.m. on the due date specified in the Calendar of Events. Any RFP 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 Proposer unopened. All RFP 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 RFP responses.

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

Mailed:

Andrew Akelman, Manager of Purchasing  
East Bay Municipal Utility District  
**FMC737-19-01 Temporary Administrative Services**  
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-EBMUD  
East Bay Municipal Utility District  
**FMC737-19-01 Temporary Administrative Services**  
EBMUD–Purchasing Division  
375 Eleventh Street, First Floor  
Oakland, CA 94607

**Proposer's name, return address, and the RFP number and title must also appear on the mailing package.**

5. Proposers are to submit one (1) original hardcopy RFP response (Exhibit A – RFP 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 RFP response shall be borne by the Proposer.
7. California Government Code Section 4552: In submitting an RFP response to a public purchasing body, the Proposer offers and agrees that if the RFP response is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Proposer for sale to the purchasing body pursuant to the RFP response. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the Proposer.

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

C. RESPONSE FORMAT

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



# **EXHIBIT A**

## **INSURANCE REQUIREMENTS**



## EXHIBIT A

# INSURANCE REQUIREMENTS & SAMPLE FORMS

Insurance certificates are not required at the time of submission; however, by signing Exhibit A – RFP Response Packet, the bidder agrees to meet the minimum insurance requirements stated in the RFP. 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 RFP:

### 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.

The Workers' Compensation Carrier agrees to waive rights of recovery against District regardless of the applicability of any insurance proceeds, and to require all indemnifying parties to do likewise. All Workers' Compensation coverage maintained or procured by permit Holder

shall be endorsed to delete the subrogation condition as to District, or must specifically allow the named insured to waive subrogation prior to a loss.

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 DISTRICT and its Directors, officers, and employees are additional insureds in the policy(ies) as to the work being performed under this Agreement.

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 the District's Property in Consultant's care, custody, and control.
6. The policy(ies) covers *personal injury* (libel, slander, and wrongful entry and eviction) liability.
7. Not Used
8. The policy(ies) covers *products and completed operations*.
9. The policy(ies) covers the use of *owned, non-owned* and hired automobiles.
10. 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.



11. 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.



# CERTIFICATE OF COMMERCIAL GENERAL AND AUTO LIABILITY INSURANCE

**THIS IS TO CERTIFY TO:**

East Bay Municipal Utility District (EBMUD)

Department: \_\_\_\_\_

Street Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

**THE FOLLOWING DESCRIBED POLICY HAS BEEN ISSUED TO:**

District Contract Number: \_\_\_\_\_

Insured: \_\_\_\_\_

Address: \_\_\_\_\_

**LOCATION AND DESCRIPTION OF PROJECT/AGREEMENT:**  
\_\_\_\_\_**TYPE OF INSURANCE:** Commercial General and Automobile Liability Coverage/Endorsements as required by agreement.**LIMITS OF LIABILITY:****(MINIMUM)**

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

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

**SELF INSURED RETENTION (\$):**

(Auto)

(GL)

(if applicable)

Aggregate Limits (AUTO)

(GL)

(if applicable)

**INSURANCE COMPANY(IES):**

(Auto)

(GL)

**POLICY NUMBER(S):**

(Auto)

(GL)

**POLICY TERM:**

From: (Auto)

(GL)

To: (Auto)

(GL)

**THE FOLLOWING COVERAGES OR ENDORSEMENTS ARE INCLUDED IN THE POLICY(IES):**

1. ☒ The District, its Directors, Officers and Employees are *Additional Insureds* in the policy(ies) as to work being performed under this agreement. ENDORSEMENT NO. \_\_\_\_\_
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 District's Property in Consultant's care, custody and control.
6. ☒ The policy(ies) covers *personal injury* (libel, slander, and wrongful entry and eviction) liability.
7. ☐ The policy(ies) covers *explosion, collapse, and underground hazards*.
8. ☐ The policy(ies) covers *products and completed operations*.
9. ☒ The policy(ies) covers the use of *owned, non-owned* and hired automobiles.
10. ☐ 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.
11. ☒ 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.

**IT IS HEREBY CERTIFIED that the above policies provide liability insurance as required by the agreement between the East Bay Municipal Utility District and the insured.**

Signed \_\_\_\_\_

Address \_\_\_\_\_

Firm \_\_\_\_\_

Date \_\_\_\_\_

Phone \_\_\_\_\_



## CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

**THIS IS TO CERTIFY TO:**

East Bay Municipal Utility District (EBMUD)

Department:

Street Address: 375 11<sup>th</sup> Street, MS 702Mailing Address: P.O. Box 24055City, State, Zip: Oakland, CA 94623-1055**THE FOLLOWING DESCRIBED POLICY HAS BEEN ISSUED TO:**

District Purchase Order

Number:

(Completed by EBMUD)

Insured:

Address:

**LOCATION AND DESCRIPTION OF PROJECT/AGREEMENT:****TYPE OF INSURANCE:** Workers' Compensation Insurance as required by California State Law.

The Workers' Compensation Carrier agrees to waive rights of recovery against District regardless of the applicability of any insurance proceeds, and to require all indemnifying parties to do likewise. All Workers' Compensation coverage maintained or procured by permit Holder shall be endorsed to delete the subrogation condition as to District, or must specifically allow the named insured to waive subrogation prior to a loss.

**INSURANCE COMPANY:****POLICY NUMBER:****POLICY**

From:

To:

**TERM:**

**The policy will not be canceled nor the above coverage reduced without 30 days written notice to East Bay Municipal Utility District at the address above.**

**IT IS HEREBY CERTIFIED the above policy provides insurance as required by the agreement between East Bay Municipal Utility District at the Insured.**

Signed:

Date:

Firm:

E-mail

Address:

Phone:

"This certificate or verification of insurance is not an insurance policy and does not amend, extend, or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term or conditions of any contract or other document with respect to which this certificate or verification or insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions, and conditions of the policies."



## **EXHIBIT B**

# **CONTRACT EQUITY PROGRAM FORMS**



## **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.



# EMPLOYMENT DATA AND CERTIFICATION INSTRUCTIONS (P-025)

**COMPLETION OF THIS FORM IS REQUIRED FOR ALL BIDS AND PROPOSALS.  
AN IMPROPER OR INCOMPLETE FORM MAY RESULT IN REJECTION OF YOUR BID OR PROPOSAL OR  
TERMINATION OF YOUR CONTRACT**

The East Bay Municipal Utility District **REQUIRES** the completion of this form when submitting any formal bid in response to a Notice to Contractors (NTC), Request for Statement of Qualifications (RSOQ), Request for Quotation (RFQ), or Request for Proposal (RFP) for materials, equipment, construction or professional or general services. Bidder/Proposer who fails to complete all applicable sections of this form may be denied contracts with the District.

**Note:** If you have difficulty completing this form or need clarification of the instructions, contact the Contract Equity Office at 510-287-0114.

## SECTION A

FIRM NAME	<input type="checkbox"/> PRIME  <input type="checkbox"/> SUBCONTRACTORS/TRUCKERS/ SUPPLIERS <b>Submit a separate P-25 form for each subcontractor/trucker/supplier doing work for \$70,000 or more.</b>		
PARENT COMPANY			
STREET ADDRESS (City, State, ZIP)			
MAILING ADDRESS (City, State, ZIP)			
PHONE NO.	FAX NO.	WEBSITE	E-MAIL

### A1. TYPE OF ORGANIZATION

<input type="checkbox"/> <b>INDIVIDUAL</b>	NAME OF OWNER:		
<input type="checkbox"/> NONPROFIT CORP.	<input type="checkbox"/> PUBLICLY HELD CORP.	STATE OF INCORPORATION:	
<input type="checkbox"/> PRIVATE CORP.	<input type="checkbox"/> FOREIGN-OWNED		

Name(s), title, family relationship(s) and percentage of stock ownership for all shareholders who own 25% or more of stock in the corporation.

NAME	TITLE	FAMILY RELATIONSHIP	PERCENTAGE
			_____%
			_____%
			_____%

### ☐ **JOINT VENTURE**

List of Participants – Indicate percentage of work to be realized by each.

_____	_____ %
_____	_____ %

### ☐ **PARTNERSHIP**

Names of Partners – Indicate whether (G) General or (L) Limited.

_____	_____
_____	_____

### A2. COMPOSITION OF OWNERSHIP

Indicate the percent of ethnic and gender ownership below

	Non-Hispanic Origin		Hispanic/ Latin American	Asian			Native American	Other	Refuse to State*
	White/ Caucasian	Black/ African American		Asian American	Asian-Pacific Islander American	Asian- Indian American		Indicate	
MALE									
FEMALE									
TOTAL									

\* Firms that refuse to state will be classified as "Other".

## SECTION B

### B1. EMPLOYMENT DATA

Indicate below the number of employees in each occupational category for each of the ethnic groups listed for your firm's permanent workforce. (Report employees in only one category. Permanent workforce is defined as full- and part-time employees with 6 months or more of continuous service.) You may attach your EEO1 report in lieu of completing the form below. Please provide both your firm's consolidated and individual establishment EEO1 reports.

RACE/ETHNICITY (number of employees)													
Hispanic or Latino		Not Hispanic or Latino											
		Male						Female					
Male	Female	White	Black or African American	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races	White	Black or African American	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races
A	B	C	D	E	F	G	H	I	J	K	L	M	N
JOB CATEGORIES													Total A-N
Executive/Senior Level Officials & Managers													
First/Mid-Level Officials & Managers													
Professionals													
Technicians													
Sales Workers													
Administrative Support Workers													
Craft Workers													
Laborers & Helpers													
Service Workers													
Firm's Total													
Bay Area* Total													

\* Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Solano, Sonoma, and Santa Clara Counties

**B1a.** Identify the metropolitan statistical area (MSA) from which your firm's total permanent workforce is drawn. (See page 5)

**B1c.** Name of person responsible for affirmative action and compliance with equal employment opportunity laws in your firm:

**B1b.** If your firms total permanent workforce is located in one county or parish, please identify:

PRINT NAME

TITLE

TELEPHONE NUMBER

## SECTION C

### **CERTIFICATION OF FIRM'S OWNERSHIP AND COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS REGARDING EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION REPORTING AND COMPLIANCE PROGRAMS INCLUDING HAVING A DISTRICT APPROVED PROCESS FOR RESPONDING TO COMPLAINTS OF DISCRIMINATION, HARASSMENT, AND RETALIATION**

The undersigned has been (is) authorized to execute this certificate on behalf of \_\_\_\_\_  
NAME OF FIRM \_\_\_\_\_ and

swears under penalty of perjury that the foregoing statements are true and correct and that they include all material information necessary to identify and explain the operations of this firm as well as the ownership thereof. Any material misrepresentation will be grounds for terminating any purchase orders or contracts which may be or were awarded and for initiating actions under Federal or State laws concerning false statements. The District reserves the right to request support documentation, such as tax records, articles of incorporation and board minutes to verify composition of ownership.

The undersigned does further certify that the firm named above complies with the following non-discrimination clauses:

There shall be no discrimination against any person, or groups of persons, per Government Code Section 12940, Labor Code Section 1735, or any other applicable law or regulation in the performance of this contract.

There shall be no discrimination in the performance of this contract, against any person, or group of persons, on account of race, color, religion, religious 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, sexual orientation, or military and veteran status. The Contractor shall not establish or permit any such practice(s) of discrimination with reference to the contract. Contractors determined to be in violation of this section will be deemed to be in material breach of the contract.

**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.**

The Contractor shall include the nondiscrimination and compliance provisions of these clauses in all subcontracts

EXECUTED IN \_\_\_\_\_

CITY, COUNTY, STATE

ON \_\_\_\_\_

DATE

BY \_\_\_\_\_

PRINT NAME

TITLE

SIGNATURE

PHONE NUMBER



**Instructions to Determine Your Statistical Areas (SA):** If you operate a business solely or predominantly within one of the SA's listed below, use that location. If you have multiple facilities within a single state, use a State SA. If you have multiple facilities throughout the United States, use Total United States percentage. If you have any questions, call 510-287-0114.

CA STATISTICAL AREAS	WM%	WW%	EM%	CA STATISTICAL AREAS	WM%	WW%	EM%
BAKERSFIELD	29.7%	24.6%	45.7%	SAN JOSE	26.9%	21.0%	52.1%
FRESNO	25.1%	21.6%	53.3%	SAN LUIS OBISPO-ATASCADERO-PASA ROBLES	42.3%	36.6%	21.1%
LOS ANGELES-LONG BEACH	20.2%	16.4%	63.5%	SANTA BARBARA-SANTA MARIA-LOMPOC	31.8%	28.6%	39.6%
MERCED	24.9%	21.1%	54.0%	SANTA CRUZ-WATSONVILLE	37.5%	32.1%	30.4%
MODESTO	33.0%	28.4%	38.6%	SANTA ROSA	39.8%	36.9%	23.4%
OAKLAND	28.0%	24.2%	47.8%	STOCKTON-LODI	28.1%	24.5%	47.4%
REDDING	46.6%	41.5%	11.9%	VALLEJO-FAIRFIELD-NAPA	30.2%	26.8%	42.9%
RIVERSIDE-SAN BERNADINO	28.2%	23.4%	48.3%	VENTURA	33.3%	27.6%	39.1%
SACRAMENTO	36.1%	32.3%	31.6%	YUBA CITY	34.9%	31.0%	34.1%
SAN DIEGO	32.4%	27.5%	40.2%				
SAN FRANCISCO	30.8%	25.1%	44.0%				

CA COUNTIES	WM%	WW%	EM%	CA COUNTIES	WM%	WW%	EM%
9 BAY AREA COUNTIES*	32.3%	27.8%	39.9%	SAN BERNARDINO	26.5%	22.3%	51.1%
ALAMEDA/CONTRA COSTA	28.9%	24.9%	46.2%	SAN DIEGO	32.4%	27.5%	40.2%
ALAMEDA	24.5%	21.6%	53.9%	SAN FRANCISCO	29.2%	22.5%	48.3%
CONTRA COSTA	33.3%	28.2%	38.5%	SAN JOAQUIN	28.1%	24.5%	47.4%
EL DORADO	46.7%	39.4%	13.9%	SAN LUIS OBISBO	42.3%	36.6%	21.1%
FRESNO	24.7%	21.4%	54.0%	SAN MATEO	28.6%	23.6%	47.9%
LOS ANGELES	20.2%	16.4%	63.5%	SANTA CLARA	26.9%	21.0%	52.1%
MARIN	42.8%	38.4%	18.8%	SANTA CRUZ	37.5%	32.1%	30.4%
MENDOCINO	40.4%	37.0%	22.6%	SHASTA	46.6%	41.5%	11.9%
MERCED	24.9%	21.1%	54.0%	SOLANO	27.8%	24.6%	47.6%
MONTEREY	23.8%	21.3%	54.9%	SONOMA	39.8%	36.9%	23.4%
NAPA	37.6%	33.6%	28.8%	STANISLAUS	33.0%	28.4%	28.6%
ORANGE	30.9%	25.5%	43.6%	YOLO	31.7%	29.8%	38.5%
RIVERSIDE	30.1%	24.7%	45.3%	YUBA	36.7%	34.0%	29.4%
SACRAMENTO	32.7%	30.0%	37.3%				

\*ALAMEDA, CONTRA COSTA, MARIN, NAPA, SAN FRANCISCO, SAN MATEO, SOLANO, SONOMA, AND SANTA CLARA

STATES	WM%	WW%	EM%	STATES	WM%	WW%	EM%
ALABAMA	40.8%	33.2%	26.0%	MONTANA	49.1%	42.5%	8.4%
ALASKA	40.2%	33.1%	26.7%	NEBRASKA	47.1%	42.7%	10.2%
ARIZONA	37.0%	31.7%	31.3%	NEVADA	37.8%	31.3%	30.9%
ARKANSAS	44.0%	37.5%	18.5%	NEW HAMPSHIRE	50.6%	45.0%	4.4%
CALIFORNIA	28.0%	23.6%	48.4%	NEW JERSEY	36.7%	31.5%	31.7%
COLORADO	42.2%	36.2%	21.6%	NEW MEXICO	26.6%	23.1%	50.3%
CONNECTICUT	42.4%	37.8%	19.8%	NEW YORK	35.0%	30.9%	34.1%
DELEWARE	39.3%	35.5%	25.3%	NORTH CAROLINA	39.1%	34.0%	26.9%
DISTRICT OF COLUMBIA	19.2%	18.0%	62.8%	NORTH DAKOTA	49.6%	44.4%	6.0%
FLORIDA	35.7%	30.9%	33.4%	OHIO	46.1%	40.2%	13.7%
GEORGIA	35.9%	30.0%	34.2%	OKLAHOMA	41.7%	35.4%	22.9%
HAWAII	13.1%	11.1%	75.8%	OREGON	45.5%	39.5%	15.0%
IDAHO	48.6%	40.8%	10.5%	PENNSYLVANIA	46.4%	40.2%	13.4%
ILLINOIS	38.6%	33.6%	27.8%	RHODE ISLAND	44.1%	41.4%	14.5%
INDIANA	47.1%	40.6%	12.3%	SOUTH CAROLINA	37.6%	32.4%	30.0%
IOWA	49.2%	44.8%	6.0%	SOUTH DAKOTA	48.0%	43.6%	8.4%
KANSAS	45.6%	40.1%	14.3%	TENNESSEE	44.1%	37.1%	18.8%
KENTUCKY	48.4%	41.9%	9.7%	TEXAS	31.5%	26.1%	42.4%
LOUISIANA	37.3%	30.0%	32.7%	UTAH	47.7%	39.1%	13.2%
MAINE	50.6%	46.5%	2.9%	VERMONT	50.4%	46.3%	3.3%
MARYLAND	34.0%	30.2%	35.8%	VIRGINIA	38.6%	34.0%	27.3%
MASSACHUSETTS	44.0%	40.6%	15.3%	WASHINGTON	43.6%	37.6%	18.8%
MICHIGAN	44.1%	37.5%	18.4%	WEST VIRGINIA	51.9%	43.3%	4.9%
MINNESOTA	47.6%	43.1%	9.3%	WISCONSIN	47.5%	42.8%	9.6%
MISSISSIPPI	36.1%	29.6%	34.3%	WYOMING	49.0%	41.4%	9.6%
MISSOURI	45.6%	40.3%	14.1%				

TOTAL USA 39.0% 33.7% 27.2%

**WM** = White Men, **WW** = White Women, **EM** = Ethnic Minority.

Figures compiled from the 2010 Census of Population, U.S. Department of Commerce, Bureau of the Census.



# DESIGNATION OF SUBCONTRACTORS (P-046)

Name of Bidder/Proposer \_\_\_\_\_

In compliance with the provisions of the Subletting and Subcontracting Fair Practices Act (Division 2, Part 1, Chapter 4 of the Public Contract Code of the State of California, and any amendments thereof), each bidder shall set forth below:

1. The name, the location of the place of business, and the California Contractor license number of each Subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work or improvement, or a Subcontractor licensed by the State of California who, under subcontract to the prime Contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of one percent of the Contractor's total bid. List all Subcontractors meeting these criteria, including sole-source Subcontractors.
2. The portion and estimated dollar amount of the work that will be done by each Subcontractor listed below. The Contractor shall list only one Subcontractor for each portion as is defined by the Contractor in its bid.

All Contractors bidding on a public works project and all Subcontractors of any tier shall be registered with the State Department of Industrial Relations pursuant to Section 1725.5 of the Labor Code.

Please type or legibly print (attach additional sheets as necessary)

SUBCONTRACTOR'S COMPANY NAME CONTACT NAME / ADDRESS / PHONE NO.	CALIFORNIA LICENSE NUMBER	DESCRIPTION OF WORK TO BE PERFORMED	ESTIMATED \$ AMOUNT



# DESIGNATION OF SUBCONTRACTORS (P-046)

SUBCONTRACTOR'S COMPANY NAME CONTACT NAME / ADDRESS / PHONE NO.	CALIFORNIA LICENSE NUMBER	DESCRIPTION OF WORK TO BE PERFORMED	ESTIMATED \$ AMOUNT

# Designation of Subcontractors – From Public Contract Code Section 4105 - 4110

**4105.** Circumvention by a general contractor who bids as a prime contractor of the requirement under Section 4104 for him or her to list his or her subcontractors, by the device of listing another contractor who will in turn sublet portions constituting the majority of the work covered by the prime contract, shall be considered a violation of this chapter and shall subject that prime contractor to the penalties set forth in Sections 4110 and 4111.

**4106.** If a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of 1 percent of the prime contractor's total bid, the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself. If after award of contract, the prime contractor subcontracts, except as provided for in Sections 4107 or 4109, any such portion of the work, the prime contractor shall be subject to the penalties named in Section 4111.

**4107.** A prime contractor whose bid is accepted may not:

(a) Substitute a person as subcontractor in place of the subcontractor listed in the original bid, except that the awarding authority, or its duly authorized officer, may, except as otherwise provided in Section 4107.5, consent to the substitution of another person as a subcontractor in any of the following situations:

(1) When the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the subcontractor's bid and at the price specified in the subcontractor's bid, when that written contract, based upon the general terms, conditions, plans, and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime contractor.

(2) When the listed subcontractor becomes insolvent or the subject of an order for relief in bankruptcy.

(3) When the listed subcontractor fails or refuses to perform his or her subcontract.

(4) When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor as set forth in Section 4108.

(5) When the prime contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions set forth in Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error.

(6) When the listed subcontractor is not licensed pursuant to the Contractors License Law.

(7) When the awarding authority, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work.

(8) When the listed subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

(9) When the awarding authority determines that a listed subcontractor is not a responsible contractor.

Prior to approval of the prime contractor's request for the substitution, the awarding authority, or its duly authorized officer, shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified has five working days within which to submit written objections to the substitution to the awarding authority. Failure to file these written objections constitutes the listed subcontractor's consent to the substitution.

If written objections are filed, the awarding authority shall give notice in writing of at least five working days to the listed subcontractor of a hearing by the awarding authority on the prime contractor's request for substitution.

(b) Permit a subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, without the consent of the awarding authority, or its duly authorized officer.

(c) Other than in the performance of "change orders" causing changes or deviations from the original contract, sublet or subcontract any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which his or her original bid did not designate a subcontractor.

**4107.2.** No subcontractor listed by a prime contractor under Section 4104 as furnishing and installing carpeting, shall voluntarily sublet his or her subcontract with respect to any portion of the labor to be performed unless he or she specified the subcontractor in his or her bid for that subcontract to the prime contractor.

**4107.5.** The prime contractor as a condition to assert a claim of inadvertent clerical error in the listing of a subcontractor shall within two working days after the time of the prime bid opening by the awarding authority give written notice to the awarding authority and copies of that notice to both the subcontractor he or she claims to have listed in error and the intended subcontractor who had bid to the prime contractor prior to bid opening.

Any listed subcontractor who has been notified by the prime contractor in accordance with this section as to an inadvertent clerical error shall be allowed six working days from the time of the prime bid opening within which to submit to the awarding authority and to the prime contractor written objection to the prime contractor's claim of inadvertent clerical error. Failure of the listed subcontractor to file the written notice within the six working days shall be primary evidence of his or her agreement that an inadvertent clerical error was made.

The awarding authority shall, after a public hearing as provided in Section 4107 and in the absence of compelling reasons to the contrary, consent to the substitution of the intended subcontractor:

(a) If (1) the prime contractor, (2) the subcontractor listed in error, and (3) the intended subcontractor each submit an affidavit to the awarding authority along with such additional evidence as the parties may wish to submit that an inadvertent clerical error was in fact made, provided that the affidavits from each of the three parties are filed within eight working days from the time of the prime bid opening, or

(b) If the affidavits are filed by both the prime contractor and the intended subcontractor within the specified time but the subcontractor whom the prime contractor claims to have listed in error does not submit within six working days, to the awarding authority and to the prime contractor, written objection to the prime contractor's claim of inadvertent clerical error as provided in this section.

If the affidavits are filed by both the prime contractor and the intended subcontractor but the listed subcontractor has, within six working days from the time of the prime bid opening, submitted to the awarding authority and to the prime contractor written objection to the prime contractor's claim of inadvertent clerical error, the awarding authority shall investigate the claims of the parties and shall hold a public hearing as provided in Section 4107 to determine the validity of those claims. Any determination made shall be based on the facts contained in the declarations submitted under penalty of perjury by all three parties and supported by testimony under oath and subject to cross-examination. The awarding authority may, on its own motion or that of any other party, admit testimony of other contractors, any bid registries or depositories, or any other party in possession of facts which may have a bearing on the decision of the awarding authority.

**4107.7.** If a contractor who enters into a contract with a public entity for investigation, removal or remedial action, or disposal relative to the release or presence of a hazardous material or hazardous waste fails to pay a subcontractor registered as a hazardous waste hauler pursuant to Section 25163 of the Health and Safety Code within 10 days after the investigation, removal or remedial action, or disposal is completed, the subcontractor may serve a stop notice upon the public entity in accordance with Chapter 4 (commencing with Section 9350) of Title 3 of Part 6 of Division 4 of the Civil Code.

**4108.** (a) It shall be the responsibility of each subcontractor submitting bids to a prime contractor to be prepared to submit a faithful performance and payment bond or bonds if so requested by the prime contractor.

(b) In the event any subcontractor submitting a bid to a prime contractor does not, upon the request of the prime contractor and at the expense of the prime contractor at the established charge or premium therefor, furnish to the prime contractor a bond or bonds issued by an admitted surety wherein the prime contractor shall be named the obligee, guaranteeing prompt and faithful performance of the subcontract and the payment of all claims for labor and materials furnished or used in and about the work to be done and performed under the subcontract, the prime contractor may reject the bid and make a substitution of another subcontractor subject to Section 4107.

(c) (1) The bond or bonds may be required under this section only if the prime contractor in his or her written or published request for subbids clearly specifies the amount and requirements of the bond or bonds.

(2) If the expense of the bond or bonds required under this section is to be borne by the subcontractor, that requirement shall also be specified in the prime contractor's written or published request for subbids.

(3) The prime contractor's failure to specify bond requirements, in accordance with this subdivision, in the written or published request for subbids shall preclude the prime contractor from imposing bond requirements under this section.

**4109.** Subletting or subcontracting of any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the awarding authority setting forth the facts constituting the emergency or necessity.

**4110.** A prime contractor violating any of the provisions of this chapter violates his or her contract and the awarding authority may exercise the option, in its own discretion, of (1) canceling his or her contract or (2) assessing the prime contractor a penalty in an amount of not more than 10 percent of the amount of the subcontract involved, and this penalty shall be deposited in the fund out of which the prime contract is awarded. In any proceedings under this section the prime contractor shall be entitled to a public hearing and to five days' notice of the time and place thereof.



## **EXHIBIT C**

### **GENERAL REQUIREMENTS**

## GENERAL REQUIREMENTS

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#### 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](http://www.dir.ca.gov) for further information regarding the below.
- b. All Contractors and Subcontractors of any tier bidding on, or offering to perform 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 to 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](http://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 Project Manager. 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/wpnodb.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. 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.

## **25. 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.

## **26. 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.

## **27. 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.

**28. 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.



# **EXHIBIT D**

## **PUBLIC WORKS FORM**

## DECLARATION OF NONCOLLUSION

### TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

The undersigned declares, under penalty of perjury under the laws of the State of California, that the bid submitted to the East Bay Municipal Utility District for \_\_\_\_\_

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is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

Firm: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature of Bidder)

Signed At: \_\_\_\_\_ County, State of: \_\_\_\_\_



# **EXHIBIT E**

## **GENERAL SERVICES AGREEMENT**

**EAST BAY MUNICIPAL UTILITY DISTRICT  
STANDARD SERVICE AGREEMENT  
for  
FMC737-18-01 Temporary Administrative Service**

This Agreement is made and entered into on this \_\_\_\_\_ day of (month), 201\_, by and between the East Bay Municipal Utility District, (“District”), and \_\_\_\_\_, (“Contractor”).

The compensation payable to Contractor shall not exceed *dollar amount written out* (\$\_\_\_\_\_) for the term of this Agreement. Payment will be made in accordance with Exhibit E (Payment Terms and Procedures) to this Agreement.

The District desires to obtain\_\_\_\_\_services ( “the Services”) which are more fully described in Exhibit A to this Agreement and;

Contractor is professionally and legally qualified to provide the Services and is willing to provide them to District and;.

WHEREAS, The District Board of Directors has authorized the contract by Motion Number \_\_\_\_\_and;

Contractor is an independent Contractor and not an employee of District. Contractor expressly warrants that it will not represent that it is an employee or servant of District. Contractor is retained to render professional services only and all payments made are compensation solely for such services as it may render and recommendations it may make in carrying out the work. It is agreed by the parties that Contractor, in the performance of its obligations under this agreement, is subject to the control or direction of District as to the designation of tasks to be performed, the results to be accomplished, and not the means, methods, or sequence used by the Contractor for accomplishing the results.

Any notice from District to Contractor shall be directed to:

(contractors firm's name)  
(address)  
Attention: (contact, usually the contractor's project manager)

Any notice from Contractor to District shall be directed to:

East Bay Municipal Utility District  
375 11th Street, MS \_\_\_\_\_  
Oakland, CA 94623-1055  
Attention: (DISTRICT Project Manager)



## ***Temporary Administrative Services***

Such personal delivery or mailing shall constitute a good, sufficient and lawful notice.

Contractor shall take out and maintain during the life of the Agreement all of the insurance required, as set forth in Exhibit C (Insurance Requirements) to this Agreement. Contractor shall not commence work until such insurance has been approved by District. Acceptance of the certificates shall not relieve Contractor of any of the insurance requirements, nor decrease the liability of Contractor.

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

**Contractor 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.**

Contractor shall include the bolded nondiscrimination provisions above in all subcontracts. Contractor shall not establish or permit any such discrimination. Contractors determined to be in violation of this section shall be deemed to be in material breach of this Agreement.

Now, therefore it is agreed that District retains Contractor to provide the Services, and Contractor accepts such engagement based on the requirements described in this Agreement and the following Exhibits, all of which are incorporated into this Agreement by this reference:

Exhibit A	Statement of Work
Exhibit B	CEP Forms General Requirements
Exhibit C	General Requirements
Exhibit D	Public Works Form
Exhibit D	CEP Forms
Exhibit E	Payment Terms and Procedures

This Agreement represents the entire understanding of District and Contractor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters contained in this agreement. This Agreement may only be modified by amendment in writing signed by each party. This Agreement and all matters relating to it shall be governed by the laws of the State of California.

Each party executing this Agreement warrants that he or she has authority to enter into this Agreement on behalf the party for whom he or she signs. This Agreement shall become effective as of the date of the second signature.

**IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.**

DISTRICT

CONTRACTOR

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
(Printed)

DIR Registration No. \_\_\_\_\_  
(IF NECESSARY – when project is a  
“public work” and subject to prevailing  
wage payment)

PO Number: \_\_\_\_\_

Name: \_\_\_\_\_  
(Printed)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

By: \_\_\_\_\_  
Office of General Counsel Signature



# EXHIBIT A

## RFP RESPONSE PACKET

RFP For – **FMC737-19-01 Temporary Administrative Services**

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

From: \_\_\_\_\_  
(Official Name of Proposer)

### RFP RESPONSE PACKET GUIDELINES

- **AS DESCRIBED IN SECTION IV- RFP RESPONSE SUBMITTAL INSTRUCTIONS AND INFORMATION, PROPOSERS ARE TO SUBMIT ONE (1) ORIGINAL HARDCOPY RFP RESPONSE WITH ORIGINAL INK SIGNATURES CONTAINING THE FOLLOWING, IN THEIR ENTIRETY:**
  - **EXHIBIT A – RFP RESPONSE PACKET**
    - **INCLUDING ALL REQUIRED DOCUMENTATION AS DESCRIBED IN “EXHIBIT A- REQUIRED DOCUMENTATION AND SUBMITTALS”**
  - **EXHIBIT B – INSURANCE REQUIREMENTS**
  - **EXHIBIT C - GENERAL REQUIREMENTS**
  - **EXHIBIT D - CONTRACT EQUITY PROGRAM**
  - **EXHIBIT E - PUBLIC WORKS FORM**
  - **EXHIBIT F – STANDARD SERVICES AGREEMENT**
- **PROPOSERS THAT DO NOT COMPLY WITH THE REQUIREMENTS, AND/OR SUBMIT AN INCOMPLETE RFP RESPONSE MAY BE SUBJECT TO DISQUALIFICATION AND THEIR RFP RESPONSE REJECTED IN WHOLE.**
- **IF PROPOSERS ARE MAKING ANY CLARIFICATIONS AND/OR AMENDMENTS, OR TAKING EXCEPTION TO ANY PART OF THIS RFP, THESE MUST BE SUBMITTED IN THE EXCEPTIONS, CLARIFICATIONS, AND AMENDMENTS SECTION OF THIS EXHIBIT A – RFP RESPONSE PACKET. THE DISTRICT, AT ITS SOLE DISCRETION, MAY ACCEPT AMENDMENTS/EXCEPTIONS, OR MAY DEEM THEM TO BE UNACCEPTABLE, THEREBY RENDERING THE RFP RESPONSE DISQUALIFIED.**
- **BIDDERS SHALL NOT MODIFY DISTRICT LANGUAGE IN ANY PART OF THIS RFP OR ITS EXHIBITS, NOR SHALL THEY QUALIFY THEIR RFP RESPONSE.**



## PROPOSER INFORMATION AND ACCEPTANCE

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

Addendum #	Date

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

8. Insurance certificates are not required at the time of submission. However, by signing Exhibit A – RFP Response Packet, the Proposer agrees to meet the minimum insurance requirements stated in the RFP. This documentation must be provided to the District prior to execution of an agreement by the District, and shall include an insurance certificate which meets the minimum insurance requirements, as stated in the RFP.
9. The undersigned acknowledges that RFP responses, in whole or in part, are NOT to be marked confidential or proprietary. The District may refuse to consider any RFP response or part thereof so marked. RFP responses submitted in response to this RFP may be subject to public disclosure. The District shall not be liable in any way for disclosure of any such records.
10. The undersigned Proposer hereby submits this RFP response and binds itself to the District. The RFP, subsequent Addenda, Proposers Response Packet, and any attachments, shall be used to form the basis of a Contract, which once executed shall take precedence.
11. The undersigned acknowledges **ONE** of the following (please check only one box)\*:
- ☐ Proposer is not an SBE nor a DVBE and is ineligible for any Proposal preference; **OR**
- ☐ Proposer is an SBE or DVBE as described in the Contract Equity Program (CEP) and Equal Employment Opportunity (EEO) Guidelines, and has completed the CEP and EEO forms at the hyperlink contained in the CEP and EEO section of this Exhibit A.

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

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

Street Address Line 1: \_\_\_\_\_

Street Address Line 2: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Webpage: \_\_\_\_\_

Type of Entity / Organizational Structure (check one):

☐ Corporation

☐ Joint Venture

☐ Limited Liability Partnership

☐ Partnership

☐ Limited Liability Corporation

☐ Non-Profit / Church

☐ Other: \_\_\_\_\_

Jurisdiction of Organization Structure: \_\_\_\_\_

Date of Organization Structure: \_\_\_\_\_

Federal Tax Identification Number: \_\_\_\_\_

Department of Industrial Relations (DIR) Registration Number: \_\_\_\_\_

Primary Contact Information:

Name / Title: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Street Address Line 1: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

Name and Title of Signer (printed): \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_



## PROPOSAL FORM

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

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

Quantities listed herein are annual 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
Administrative Clerk	Per Hour	1040	\$	\$
Administrative Clerk	Per Hour	1040	\$	\$
TOTAL COST				\$



## REQUIRED DOCUMENTATION AND SUBMITTALS

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

1. **Letter of Transmittal:** RFP response shall include a description of the Proposer’s capabilities and approach in providing its services to the District, and provide a brief synopsis of the highlights of the RFP response and overall benefits to the District. This synopsis should not exceed three (3) pages in length and should be easily understood.
2. **Key Personnel:** RFP response shall include a complete list of all key personnel associated with the RFP. This list must include all key personnel who will provide services/training to District staff and all key personnel who will provide maintenance and support services. For each person on the list, the following information shall be included:
  - (a) The person’s relationship with the Proposer, including job title and years of employment with the Proposer;
  - (b) The role that the person will play in connection with the RFP;
  - (c) The person’s telephone number, fax number, and e-mail address;
  - (d) The person’s educational background; and
  - (e) The person’s relevant experience, certifications, and/or merits
3. **Description of the Proposed Equipment/System:** Not Used.
4. **Description of the Proposed Services:** Not Used.
5. **Implementation Plan and Schedule:** Not Used.
6. **Evidence of Qualification Testing:** Not Used.
7. **Sustainability Statement:** Not Used.
8. **References:**
  - (a) Proposers must use the templates in the “References” section of this Exhibit A – RFP Response Packet to provide references.
  - (b) References should have similar scope, volume, and requirements to those outlined in these specifications, terms, and conditions.



- Proposers must verify the contact information for all references provided is current and valid.
  - Proposers 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 Proposer's performance record on work similar to that described in this RFP. The District reserves the right to contact references other than those provided in the RFP response and to use the information gained from them in the evaluation process.

9. **Exceptions, Clarifications, Amendments:**

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

10. **Contract Equity Program:**

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



## REFERENCES

RFP For - **FMC737-19-01 Temporary Administrative Services**

**Proposer Name:** \_\_\_\_\_

**Proposer must provide a minimum of 3 references.**

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

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

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

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

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



## EXCEPTIONS, CLARIFICATIONS, AMENDMENTS

### RFP For - FMC737-19-01 Temporary Administrative Services

**Proposer Name:** \_\_\_\_\_

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

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

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

\*Print additional pages as necessary



## EXHIBIT B

# INSURANCE REQUIREMENTS

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

The following are the minimum insurance limits, required by the District, to be held by the GENERAL OR PROFESSIONAL SERVICE PROVIDER performing on this RFP:

### INDEMNIFICATION AND INSURANCE

#### A. Indemnification

GENERAL OR PROFESSIONAL SERVICE PROVIDER 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 GENERAL OR PROFESSIONAL SERVICE PROVIDER'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

GENERAL OR PROFESSIONAL SERVICE PROVIDER 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 GENERAL OR PROFESSIONAL SERVICE PROVIDER 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 GENERAL OR PROFESSIONAL SERVICE PROVIDER of any of the insurance requirements, nor decrease the liability of GENERAL OR PROFESSIONAL SERVICE PROVIDER. The District reserves the right to require GENERAL OR PROFESSIONAL SERVICE PROVIDER to provide insurance policies for review by the District.

#### C. Workers Compensation Insurance

GENERAL OR PROFESSIONAL SERVICE PROVIDER 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. GENERAL OR PROFESSIONAL SERVICE PROVIDER shall require any subcontractor to provide it with evidence of Workers Compensation Insurance.

#### D. Professional Liability Insurance (Errors and Omissions)

GENERAL OR PROFESSIONAL SERVICE PROVIDER shall maintain during the life of the agreement professional liability insurance with a minimum of \$2,000,000/Occurrence. A three year tail is required if coverage on a claims-made basis. A deductible may be acceptable upon approval by the District. The policy will provide 30 days advance written notice to the District for cancellation or reduction in coverage. The Consultant shall require any subcontractor to provide evidence of the same professional liability insurance coverage.

E. Commercial General Liability Insurance

GENERAL OR PROFESSIONAL SERVICE PROVIDER 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 GENERAL OR PROFESSIONAL SERVICE PROVIDER elects to self-insure (self-fund) any liability exposure during the contract period above \$50,000, GENERAL OR PROFESSIONAL SERVICE PROVIDER 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. GENERAL OR PROFESSIONAL SERVICE PROVIDER shall require any subcontractor or Professional Service Provider 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. Not Used
6. The policy(ies) covers *personal injury* (libel, slander, and wrongful entry and eviction) liability.
7. Not Used
8. Not Used
9. The policy(ies) covers the use of *owned, non-owned*, and hired automobiles.

10. Not Used

11. 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.

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.



# CERTIFICATE OF COMMERCIAL GENERAL AND AUTO LIABILITY INSURANCE

**THIS IS TO CERTIFY TO:**

East Bay Municipal Utility District (EBMUD)

Department: \_\_\_\_\_

Street Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

**THE FOLLOWING DESCRIBED POLICY HAS BEEN ISSUED TO:**

District Contract Number: \_\_\_\_\_

Insured: \_\_\_\_\_

Address: \_\_\_\_\_

**LOCATION AND DESCRIPTION OF PROJECT/AGREEMENT:****TYPE OF INSURANCE:** Commercial General and Automobile Liability Coverage/Endorsements as required by agreement.**LIMITS OF LIABILITY:**

(MINIMUM)

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

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

**SELF INSURED RETENTION (\$):**

(Auto)

(GL)

(if applicable)

Aggregate Limits (AUTO)

(GL)

(if applicable)

**INSURANCE COMPANY(IES):**

(Auto)

(GL)

**POLICY NUMBER(S):**

(Auto)

(GL)

**POLICY TERM:**

From: (Auto)

(GL)

To: (Auto)

(GL)

**THE FOLLOWING COVERAGES OR ENDORSEMENTS ARE INCLUDED IN THE POLICY(IES):**

1. ☒ The District, its Directors, Officers and Employees are *Additional Insureds* in the policy(ies) as to work being performed under this agreement. ENDORSEMENT NO. \_\_\_\_\_
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 District's Property in Consultant's care, custody and control.
6. ☒ The policy(ies) covers *personal injury* (libel, slander, and wrongful entry and eviction) liability.
7. ☐ The policy(ies) covers *explosion, collapse, and underground hazards*.
8. ☐ The policy(ies) covers *products and completed operations*.
9. ☒ The policy(ies) covers the use of *owned, non-owned* and hired automobiles.
10. ☐ 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.
11. ☒ 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.

**IT IS HEREBY CERTIFIED that the above policies provide liability insurance as required by the agreement between the East Bay Municipal Utility District and the insured.**

Signed \_\_\_\_\_

Address \_\_\_\_\_

Firm \_\_\_\_\_

Date \_\_\_\_\_

Phone \_\_\_\_\_



## CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

**THIS IS TO CERTIFY TO:**

East Bay Municipal Utility District (EBMUD)

Department:

Street Address: 375 11<sup>th</sup> Street, MS 702Mailing Address: P.O. Box 24055City, State, Zip: Oakland, CA 94623-1055**THE FOLLOWING DESCRIBED POLICY HAS BEEN ISSUED TO:**

District Purchase Order

Number:

(Completed by EBMUD)

Insured:

Address:

**LOCATION AND DESCRIPTION OF PROJECT/AGREEMENT:****TYPE OF INSURANCE:** Workers' Compensation Insurance as required by California State Law.

The Workers' Compensation Carrier agrees to waive rights of recovery against District regardless of the applicability of any insurance proceeds, and to require all indemnifying parties to do likewise. All Workers' Compensation coverage maintained or procured by permit Holder shall be endorsed to delete the subrogation condition as to District, or must specifically allow the named insured to waive subrogation prior to a loss.

**INSURANCE COMPANY:****POLICY NUMBER:****POLICY  
TERM:**

From:

To:

**The policy will not be canceled nor the above coverage reduced without 30 days written notice to East Bay Municipal Utility District at the address above.**

**IT IS HEREBY CERTIFIED the above policy provides insurance as required by the agreement between East Bay Municipal Utility District at the Insured.**

Signed:

Date:

Firm:

E-mail

Address:

Phone:

"This certificate or verification of insurance is not an insurance policy and does not amend, extend, or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term or conditions of any contract or other document with respect to which this certificate or verification or insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions, and conditions of the policies."





# **EXHIBIT C**

## **GENERAL REQUIREMENTS**

## 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 & DIR REGISTRATION
12. PAYROLL RECORDS & ELECTRONIC SUBMISSION
13. HOURS OF LABOR
14. EMPLOYMENT OF APPRENTICES
15. CHANGES
16. EFFECT OF EXTENSIONS OF TIME
17. DELAYS
18. TERMINATION
19. DAMAGES
20. ORDER OF PRECEDENCE
21. INDEMNIFICATION/RESPONSIBILITY
22. PROHIBITION OF ASSIGNMENT
23. NEWS RELEASES
24. SEVERABILITY
25. COVENANT AGAINST GRATUITIES
26. RIGHTS AND REMEDIES OF THE DISTRICT
27. WAIVER OF RIGHTS
28. 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](http://www.dir.ca.gov) for further information regarding the below.
- b. All Contractors and Subcontractors of any tier bidding on, or offering to perform 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 to 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](http://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 Project Manager. 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/wpnodb.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. 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.

## **25. 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.

## **26. 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.

## **27. 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.

**28. 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.





# **EXHIBIT D**

## **CONTRACT EQUITY PROGRAM FORMS**



## **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.



# EMPLOYMENT DATA AND CERTIFICATION INSTRUCTIONS (P-025)

**COMPLETION OF THIS FORM IS REQUIRED FOR ALL BIDS AND PROPOSALS.  
AN IMPROPER OR INCOMPLETE FORM MAY RESULT IN REJECTION OF YOUR BID OR PROPOSAL OR  
TERMINATION OF YOUR CONTRACT**

The East Bay Municipal Utility District **REQUIRES** the completion of this form when submitting any formal bid in response to a Notice to Contractors (NTC), Request for Statement of Qualifications (RSOQ), Request for Quotation (RFQ), or Request for Proposal (RFP) for materials, equipment, construction or professional or general services. Bidder/Proposer who fails to complete all applicable sections of this form may be denied contracts with the District.

**Note:** If you have difficulty completing this form or need clarification of the instructions, contact the Contract Equity Office at 510-287-0114.

## SECTION A

FIRM NAME	<input type="checkbox"/> PRIME  <input type="checkbox"/> SUBCONTRACTORS/TRUCKERS/ SUPPLIERS <b>Submit a separate P-25 form for each subcontractor/trucker/supplier doing work for \$70,000 or more.</b>		
PARENT COMPANY			
STREET ADDRESS (City, State, ZIP)			
MAILING ADDRESS (City, State, ZIP)			
PHONE NO.	FAX NO.	WEBSITE	E-MAIL

### A1. TYPE OF ORGANIZATION

<input type="checkbox"/> <b>INDIVIDUAL</b>	NAME OF OWNER:		
<input type="checkbox"/> NONPROFIT CORP.	<input type="checkbox"/> PUBLICLY HELD CORP.	STATE OF INCORPORATION:	
<input type="checkbox"/> PRIVATE CORP.	<input type="checkbox"/> FOREIGN-OWNED		

Name(s), title, family relationship(s) and percentage of stock ownership for all shareholders who own 25% or more of stock in the corporation.

NAME	TITLE	FAMILY RELATIONSHIP	PERCENTAGE
			%
			%
			%

### ☐ JOINT VENTURE

List of Participants – Indicate percentage of work to be realized by each.

	%
	%

### ☐ PARTNERSHIP

Names of Partners – Indicate whether (G) General or (L) Limited.


### A2. COMPOSITION OF OWNERSHIP

Indicate the percent of ethnic and gender ownership below

	Non-Hispanic Origin		Hispanic/ Latin American	Asian			Native American	Other	Refuse to State*
	White/ Caucasian	Black/ African American		Asian American	Asian-Pacific Islander American	Asian- Indian American		Indicate	
MALE									
FEMALE									
TOTAL									

\* Firms that refuse to state will be classified as "Other".

SECTION B

B1. EMPLOYMENT DATA

Indicate below the number of employees in each occupational category for each of the ethnic groups listed for your firm's permanent workforce. (Report employees in only one category. Permanent workforce is defined as full- and part-time employees with 6 months or more of continuous service.) You may attach your EEO1 report in lieu of completing the form below. Please provide both your firm's consolidated and individual establishment EEO1 reports.

RACE/ETHNICITY (number of employees)																	
Hispanic or Latino			Not Hispanic or Latino														
			Male						Female								
			Male	Female	White	Black or African American	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races	White	Black or African American	Native Hawaiian or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or More Races	Total A-N
JOB CATEGORIES	A		B		C	D	E	F	G	H	I	J	K	L	M	N	O

\* Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Solano, Sonoma, and Santa Clara Counties

**B1a.** Identify the metropolitan statistical area (MSA) from which your firm's total permanent workforce is drawn. (See page 5)

**B1c.** Name of person responsible for affirmative action and compliance with equal employment opportunity laws in your firm:

**B1b.** If your firms total permanent workforce is located in one county or parish, please identify:

PRINT NAME

TITLE

## SECTION C

### **CERTIFICATION OF FIRM'S OWNERSHIP AND COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS REGARDING EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION REPORTING AND COMPLIANCE PROGRAMS INCLUDING HAVING A DISTRICT APPROVED PROCESS FOR RESPONDING TO COMPLAINTS OF DISCRIMINATION, HARASSMENT, AND RETALIATION**

The undersigned has been (is) authorized to execute this certificate on behalf of \_\_\_\_\_  
NAME OF FIRM \_\_\_\_\_ and

swears under penalty of perjury that the foregoing statements are true and correct and that they include all material information necessary to identify and explain the operations of this firm as well as the ownership thereof. Any material misrepresentation will be grounds for terminating any purchase orders or contracts which may be or were awarded and for initiating actions under Federal or State laws concerning false statements. The District reserves the right to request support documentation, such as tax records, articles of incorporation and board minutes to verify composition of ownership.

The undersigned does further certify that the firm named above complies with the following non-discrimination clauses:

There shall be no discrimination against any person, or groups of persons, per Government Code Section 12940, Labor Code Section 1735, or any other applicable law or regulation in the performance of this contract.

There shall be no discrimination in the performance of this contract, against any person, or group of persons, on account of race, color, religion, religious 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, sexual orientation, or military and veteran status. The Contractor shall not establish or permit any such practice(s) of discrimination with reference to the contract. Contractors determined to be in violation of this section will be deemed to be in material breach of the contract.

**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.**

The Contractor shall include the nondiscrimination and compliance provisions of these clauses in all subcontracts

EXECUTED IN \_\_\_\_\_

CITY, COUNTY, STATE

ON \_\_\_\_\_

DATE

BY \_\_\_\_\_

PRINT NAME

TITLE

SIGNATURE

PHONE NUMBER

## P-025 SUPPLEMENT

**Instructions to Determine Your Statistical Areas (SA):** If you operate a business solely or predominantly within one of the SA's listed below, use that location. If you have multiple facilities within a single state, use a State SA. If you have multiple facilities throughout the United States, use Total United States percentage. If you have any questions, call 510-287-0114.

CA STATISTICAL AREAS	WM%	WW%	EM%	CA STATISTICAL AREAS	WM%	WW%	EM%
BAKERSFIELD	29.7%	24.6%	45.7%	SAN JOSE	26.9%	21.0%	52.1%
FRESNO	25.1%	21.6%	53.3%	SAN LUIS OBISPO-ATASCADERO-PASA ROBLES	42.3%	36.6%	21.1%
LOS ANGELES-LONG BEACH	20.2%	16.4%	63.5%	SANTA BARBARA-SANTA MARIA-LOMPOC	31.8%	28.6%	39.6%
MERCED	24.9%	21.1%	54.0%	SANTA CRUZ-WATSONVILLE	37.5%	32.1%	30.4%
MODESTO	33.0%	28.4%	38.6%	SANTA ROSA	39.8%	36.9%	23.4%
OAKLAND	28.0%	24.2%	47.8%	STOCKTON-LODI	28.1%	24.5%	47.4%
REDDING	46.6%	41.5%	11.9%	VALLEJO-FAIRFIELD-NAPA	30.2%	26.8%	42.9%
RIVERSIDE-SAN BERNADINO	28.2%	23.4%	48.3%	VENTURA	33.3%	27.6%	39.1%
SACRAMENTO	36.1%	32.3%	31.6%	YUBA CITY	34.9%	31.0%	34.1%
SAN DIEGO	32.4%	27.5%	40.2%				
SAN FRANCISCO	30.8%	25.1%	44.0%				

CA COUNTIES	WM%	WW%	EM%	CA COUNTIES	WM%	WW%	EM%
9 BAY AREA COUNTIES*	32.3%	27.8%	39.9%	SAN BERNARDINO	26.5%	22.3%	51.1%
ALAMEDA/CONTRA COSTA	28.9%	24.9%	46.2%	SAN DIEGO	32.4%	27.5%	40.2%
ALAMEDA	24.5%	21.6%	53.9%	SAN FRANCISCO	29.2%	22.5%	48.3%
CONTRA COSTA	33.3%	28.2%	38.5%	SAN JOAQUIN	28.1%	24.5%	47.4%
EL DORADO	46.7%	39.4%	13.9%	SAN LUIS OBISBO	42.3%	36.6%	21.1%
FRESNO	24.7%	21.4%	54.0%	SAN MATEO	28.6%	23.6%	47.9%
LOS ANGELES	20.2%	16.4%	63.5%	SANTA CLARA	26.9%	21.0%	52.1%
MARIN	42.8%	38.4%	18.8%	SANTA CRUZ	37.5%	32.1%	30.4%
MENDOCINO	40.4%	37.0%	22.6%	SHASTA	46.6%	41.5%	11.9%
MERCED	24.9%	21.1%	54.0%	SOLANO	27.8%	24.6%	47.6%
MONTEREY	23.8%	21.3%	54.9%	SONOMA	39.8%	36.9%	23.4%
NAPA	37.6%	33.6%	28.8%	STANISLAUS	33.0%	28.4%	28.6%
ORANGE	30.9%	25.5%	43.6%	YOLO	31.7%	29.8%	38.5%
RIVERSIDE	30.1%	24.7%	45.3%	YUBA	36.7%	34.0%	29.4%
SACRAMENTO	32.7%	30.0%	37.3%				

\*ALAMEDA, CONTRA COSTA, MARIN, NAPA, SAN FRANCISCO, SAN MATEO, SOLANO, SONOMA, AND SANTA CLARA

STATES	WM%	WW%	EM%	STATES	WM%	WW%	EM%
ALABAMA	40.8%	33.2%	26.0%	MONTANA	49.1%	42.5%	8.4%
ALASKA	40.2%	33.1%	26.7%	NEBRASKA	47.1%	42.7%	10.2%
ARIZONA	37.0%	31.7%	31.3%	NEVADA	37.8%	31.3%	30.9%
ARKANSAS	44.0%	37.5%	18.5%	NEW HAMPSHIRE	50.6%	45.0%	4.4%
CALIFORNIA	28.0%	23.6%	48.4%	NEW JERSEY	36.7%	31.5%	31.7%
COLORADO	42.2%	36.2%	21.6%	NEW MEXICO	26.6%	23.1%	50.3%
CONNECTICUT	42.4%	37.8%	19.8%	NEW YORK	35.0%	30.9%	34.1%
DELEWARE	39.3%	35.5%	25.3%	NORTH CAROLINA	39.1%	34.0%	26.9%
DISTRICT OF COLUMBIA	19.2%	18.0%	62.8%	NORTH DAKOTA	49.6%	44.4%	6.0%
FLORIDA	35.7%	30.9%	33.4%	OHIO	46.1%	40.2%	13.7%
GEORGIA	35.9%	30.0%	34.2%	OKLAHOMA	41.7%	35.4%	22.9%
HAWAII	13.1%	11.1%	75.8%	OREGON	45.5%	39.5%	15.0%
IDAHO	48.6%	40.8%	10.5%	PENNSYLVANIA	46.4%	40.2%	13.4%
ILLINOIS	38.6%	33.6%	27.8%	RHODE ISLAND	44.1%	41.4%	14.5%
INDIANA	47.1%	40.6%	12.3%	SOUTH CAROLINA	37.6%	32.4%	30.0%
IOWA	49.2%	44.8%	6.0%	SOUTH DAKOTA	48.0%	43.6%	8.4%
KANSAS	45.6%	40.1%	14.3%	TENNESSEE	44.1%	37.1%	18.8%
KENTUCKY	48.4%	41.9%	9.7%	TEXAS	31.5%	26.1%	42.4%
LOUISIANA	37.3%	30.0%	32.7%	UTAH	47.7%	39.1%	13.2%
MAINE	50.6%	46.5%	2.9%	VERMONT	50.4%	46.3%	3.3%
MARYLAND	34.0%	30.2%	35.8%	VIRGINIA	38.6%	34.0%	27.3%
MASSACHUSETTS	44.0%	40.6%	15.3%	WASHINGTON	43.6%	37.6%	18.8%
MICHIGAN	44.1%	37.5%	18.4%	WEST VIRGINIA	51.9%	43.3%	4.9%
MINNESOTA	47.6%	43.1%	9.3%	WISCONSIN	47.5%	42.8%	9.6%
MISSISSIPPI	36.1%	29.6%	34.3%	WYOMING	49.0%	41.4%	9.6%
MISSOURI	45.6%	40.3%	14.1%				

TOTAL USA 39.0% 33.7% 27.2%

**WM** = White Men, **WW** = White Women, **EM** = Ethnic Minority.

Figures compiled from the 2010 Census of Population, U.S. Department of Commerce, Bureau of the Census.



# DESIGNATION OF SUBCONTRACTORS (P-046)

Name of Bidder/Proposer \_\_\_\_\_

In compliance with the provisions of the Subletting and Subcontracting Fair Practices Act (Division 2, Part 1, Chapter 4 of the Public Contract Code of the State of California, and any amendments thereof), each bidder shall set forth below:

1. The name, the location of the place of business, and the California Contractor license number of each Subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work or improvement, or a Subcontractor licensed by the State of California who, under subcontract to the prime Contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of one percent of the Contractor's total bid. List all Subcontractors meeting these criteria, including sole-source Subcontractors.
2. The portion and estimated dollar amount of the work that will be done by each Subcontractor listed below. The Contractor shall list only one Subcontractor for each portion as is defined by the Contractor in its bid.

All Contractors bidding on a public works project and all Subcontractors of any tier shall be registered with the State Department of Industrial Relations pursuant to Section 1725.5 of the Labor Code.

Please type or legibly print (attach additional sheets as necessary)

SUBCONTRACTOR'S COMPANY NAME CONTACT NAME / ADDRESS / PHONE NO.	CALIFORNIA LICENSE NUMBER	DESCRIPTION OF WORK TO BE PERFORMED	ESTIMATED \$ AMOUNT



# DESIGNATION OF SUBCONTRACTORS (P-046)

SUBCONTRACTOR'S COMPANY NAME CONTACT NAME / ADDRESS / PHONE NO.	CALIFORNIA LICENSE NUMBER	DESCRIPTION OF WORK TO BE PERFORMED	ESTIMATED \$ AMOUNT



# Designation of Subcontractors – From Public Contract Code Section 4105 - 4110

**4105.** Circumvention by a general contractor who bids as a prime contractor of the requirement under Section 4104 for him or her to list his or her subcontractors, by the device of listing another contractor who will in turn sublet portions constituting the majority of the work covered by the prime contract, shall be considered a violation of this chapter and shall subject that prime contractor to the penalties set forth in Sections 4110 and 4111.

**4106.** If a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of 1 percent of the prime contractor's total bid, the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself. If after award of contract, the prime contractor subcontracts, except as provided for in Sections 4107 or 4109, any such portion of the work, the prime contractor shall be subject to the penalties named in Section 4111.

**4107.** A prime contractor whose bid is accepted may not:

(a) Substitute a person as subcontractor in place of the subcontractor listed in the original bid, except that the awarding authority, or its duly authorized officer, may, except as otherwise provided in Section 4107.5, consent to the substitution of another person as a subcontractor in any of the following situations:

(1) When the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the subcontractor's bid and at the price specified in the subcontractor's bid, when that written contract, based upon the general terms, conditions, plans, and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime contractor.

(2) When the listed subcontractor becomes insolvent or the subject of an order for relief in bankruptcy.

(3) When the listed subcontractor fails or refuses to perform his or her subcontract.

(4) When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor as set forth in Section 4108.

(5) When the prime contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions set forth in Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error.

(6) When the listed subcontractor is not licensed pursuant to the Contractors License Law.

(7) When the awarding authority, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work.

(8) When the listed subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

(9) When the awarding authority determines that a listed subcontractor is not a responsible contractor.

Prior to approval of the prime contractor's request for the substitution, the awarding authority, or its duly authorized officer, shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified has five working days within which to submit written objections to the substitution to the awarding authority. Failure to file these written objections constitutes the listed subcontractor's consent to the substitution.

If written objections are filed, the awarding authority shall give notice in writing of at least five working days to the listed subcontractor of a hearing by the awarding authority on the prime contractor's request for substitution.

(b) Permit a subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, without the consent of the awarding authority, or its duly authorized officer.

(c) Other than in the performance of "change orders" causing changes or deviations from the original contract, sublet or subcontract any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which his or her original bid did not designate a subcontractor.

**4107.2.** No subcontractor listed by a prime contractor under Section 4104 as furnishing and installing carpeting, shall voluntarily sublet his or her subcontract with respect to any portion of the labor to be performed unless he or she specified the subcontractor in his or her bid for that subcontract to the prime contractor.

**4107.5.** The prime contractor as a condition to assert a claim of inadvertent clerical error in the listing of a subcontractor shall within two working days after the time of the prime bid opening by the awarding authority give written notice to the awarding authority and copies of that notice to both the subcontractor he or she claims to have listed in error and the intended subcontractor who had bid to the prime contractor prior to bid opening.

Any listed subcontractor who has been notified by the prime contractor in accordance with this section as to an inadvertent clerical error shall be allowed six working days from the time of the prime bid opening within which to submit to the awarding authority and to the prime contractor written objection to the prime contractor's claim of inadvertent clerical error. Failure of the listed subcontractor to file the written notice within the six working days shall be primary evidence of his or her agreement that an inadvertent clerical error was made.

The awarding authority shall, after a public hearing as provided in Section 4107 and in the absence of compelling reasons to the contrary, consent to the substitution of the intended subcontractor:

(a) If (1) the prime contractor, (2) the subcontractor listed in error, and (3) the intended subcontractor each submit an affidavit to the awarding authority along with such additional evidence as the parties may wish to submit that an inadvertent clerical error was in fact made, provided that the affidavits from each of the three parties are filed within eight working days from the time of the prime bid opening, or

(b) If the affidavits are filed by both the prime contractor and the intended subcontractor within the specified time but the subcontractor whom the prime contractor claims to have listed in error does not submit within six working days, to the awarding authority and to the prime contractor, written objection to the prime contractor's claim of inadvertent clerical error as provided in this section.

If the affidavits are filed by both the prime contractor and the intended subcontractor but the listed subcontractor has, within six working days from the time of the prime bid opening, submitted to the awarding authority and to the prime contractor written objection to the prime contractor's claim of inadvertent clerical error, the awarding authority shall investigate the claims of the parties and shall hold a public hearing as provided in Section 4107 to determine the validity of those claims. Any determination made shall be based on the facts contained in the declarations submitted under penalty of perjury by all three parties and supported by testimony under oath and subject to cross-examination. The awarding authority may, on its own motion or that of any other party, admit testimony of other contractors, any bid registries or depositories, or any other party in possession of facts which may have a bearing on the decision of the awarding authority.

**4107.7.** If a contractor who enters into a contract with a public entity for investigation, removal or remedial action, or disposal relative to the release or presence of a hazardous material or hazardous waste fails to pay a subcontractor registered as a hazardous waste hauler pursuant to Section 25163 of the Health and Safety Code within 10 days after the investigation, removal or remedial action, or disposal is completed, the subcontractor may serve a stop notice upon the public entity in accordance with Chapter 4 (commencing with Section 9350) of Title 3 of Part 6 of Division 4 of the Civil Code.

**4108.** (a) It shall be the responsibility of each subcontractor submitting bids to a prime contractor to be prepared to submit a faithful performance and payment bond or bonds if so requested by the prime contractor.

(b) In the event any subcontractor submitting a bid to a prime contractor does not, upon the request of the prime contractor and at the expense of the prime contractor at the established charge or premium therefor, furnish to the prime contractor a bond or bonds issued by an admitted surety wherein the prime contractor shall be named the obligee, guaranteeing prompt and faithful performance of the subcontract and the payment of all claims for labor and materials furnished or used in and about the work to be done and performed under the subcontract, the prime contractor may reject the bid and make a substitution of another subcontractor subject to Section 4107.

(c) (1) The bond or bonds may be required under this section only if the prime contractor in his or her written or published request for subbids clearly specifies the amount and requirements of the bond or bonds.

(2) If the expense of the bond or bonds required under this section is to be borne by the subcontractor, that requirement shall also be specified in the prime contractor's written or published request for subbids.

(3) The prime contractor's failure to specify bond requirements, in accordance with this subdivision, in the written or published request for subbids shall preclude the prime contractor from imposing bond requirements under this section.

**4109.** Subletting or subcontracting of any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the awarding authority setting forth the facts constituting the emergency or necessity.

**4110.** A prime contractor violating any of the provisions of this chapter violates his or her contract and the awarding authority may exercise the option, in its own discretion, of (1) canceling his or her contract or (2) assessing the prime contractor a penalty in an amount of not more than 10 percent of the amount of the subcontract involved, and this penalty shall be deposited in the fund out of which the prime contract is awarded. In any proceedings under this section the prime contractor shall be entitled to a public hearing and to five days' notice of the time and place thereof.



# **EXHIBIT E**

## **PUBLIC WORKS FORM**

## DECLARATION OF NONCOLLUSION

### TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

The undersigned declares, under penalty of perjury under the laws of the State of California, that the bid submitted to the East Bay Municipal Utility District for \_\_\_\_\_

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is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

Firm: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature of Bidder)

Signed At: \_\_\_\_\_ County, State of: \_\_\_\_\_



# **EXHIBIT F**

## **GENERAL SERVICE AGREEMENT**

# USING THE STANDARD SERVICE AGREEMENT (SSA)

## When to Use

The following document is the EBMUD Standard Service Agreement (SSA) template. The SSA is used to formally incorporate all documents governing vendor performance and District expectations for the following:

1. General services contracts (i.e., hauling, software configuration/install, maintenance/repairs). For instructions on contracts requiring Department of Industrial Relations (DIR) registration, please see [the Purchasing Division web-link under "DIR Compliance Process"](#).
2. Materials procurements (i.e., materials with install, materials with complex configuration and/or acceptance requirements)

The above are examples of typical uses for the SSA, however this template may be applied to other types of procurements. For any questions on use or applicability of the SSA, please contact the Purchasing Division.

## How to Use

This SSA format has been reviewed and approved by the Office of General Counsel (OGC) and the Purchasing Division and is revised on an ongoing basis, as needed. Therefore you should begin each draft by pulling this document from the root location at [the Purchasing Division web-link under "Templates"](#).

This document contains **red text** which denotes instructions, verbiage to be modified, or other areas in need of consideration. The red text is meant to assist you in developing your SSA. Remember to remove all instructional text prior to finalizing and to convert any remain red text to black font.

**Notes on signing:** District signature should be made by an authorized signee in your Department. Please consult District Procedures and your management for the appropriate signee within your workgroup. District signature is not to take place until after the Contractor has signed and the BD-1 or GM-1 has been approved. As noted on the signature page, the "approved as to form" line is to be completed by OGC. For expenditures approved via BD-1, OGC reviews the draft agreement prior to BOD approval, and signs as to form after BOD approval. For GM approved expenditures, OGC signs as to form prior to approval of the GM-1. For projects authorized by staff other than the GM or the BOD, please consult District Procedures and your departmental management for their requirements regarding OGC contracting approval. Please refer to **Procedure 409** - Contract Execution and Administration, for further details on this process.

For any questions please contact the Purchasing Division.

**EAST BAY MUNICIPAL UTILITY DISTRICT  
STANDARD SERVICE AGREEMENT  
for  
FMC737-18-01 Temporary Administrative Service**

This Agreement is made and entered into on this \_\_\_\_\_ day of (month), 201\_, by and between the East Bay Municipal Utility District, (“District”), and \_\_\_\_\_, (“Contractor”).

The compensation payable to Contractor shall not exceed *dollar amount written out* (\$\_\_\_\_\_) for the term of this Agreement. Payment will be made in accordance with Exhibit E (Payment Terms and Procedures) to this Agreement.

The District desires to obtain\_\_\_\_\_services ( “the Services”) which are more fully described in Exhibit A to this Agreement and;

Contractor is professionally and legally qualified to provide the Services and is willing to provide them to District and;.

WHEREAS, The District Board of Directors has authorized the contract by Motion Number \_\_\_\_\_and;

Contractor is an independent Contractor and not an employee of District. Contractor expressly warrants that it will not represent that it is an employee or servant of District. Contractor is retained to render professional services only and all payments made are compensation solely for such services as it may render and recommendations it may make in carrying out the work. It is agreed by the parties that Contractor, in the performance of its obligations under this agreement, is subject to the control or direction of District as to the designation of tasks to be performed, the results to be accomplished, and not the means, methods, or sequence used by the Contractor for accomplishing the results.

Any notice from District to Contractor shall be directed to:

(contractors firm's name)

(address)

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

Any notice from Contractor to District shall be directed to:

East Bay Municipal Utility District

375 11th Street, MS \_\_\_\_\_

Oakland, CA 94623-1055

Attention: (DISTRICT Project Manager)

## ***Temporary Administrative Services***

Such personal delivery or mailing shall constitute a good, sufficient and lawful notice.

Contractor shall take out and maintain during the life of the Agreement all of the insurance required, as set forth in Exhibit C (Insurance Requirements) to this Agreement. Contractor shall not commence work until such insurance has been approved by District. Acceptance of the certificates shall not relieve Contractor of any of the insurance requirements, nor decrease the liability of Contractor.

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

**Contractor 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.**

Contractor shall include the bolded nondiscrimination provisions above in all subcontracts. Contractor shall not establish or permit any such discrimination. Contractors determined to be in violation of this section shall be deemed to be in material breach of this Agreement.

Now, therefore it is agreed that District retains Contractor to provide the Services, and Contractor accepts such engagement based on the requirements described in this Agreement and the following Exhibits, all of which are incorporated into this Agreement by this reference:

Exhibit A	Statement of Work
Exhibit B	CEP Forms General Requirements
Exhibit C	General Requirements
Exhibit D	Public Works Form
Exhibit D	CEP Forms
Exhibit E	Payment Terms and Procedures

This Agreement represents the entire understanding of District and Contractor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters contained in this agreement. This Agreement may only be modified by amendment in writing signed by each party. This Agreement and all matters relating to it shall be governed by the laws of the State of California.

Each party executing this Agreement warrants that he or she has authority to enter into this Agreement on behalf the party for whom he or she signs. This Agreement shall become effective as of the date of the second signature.

**IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.**

DISTRICT

CONTRACTOR

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
(Printed)

DIR Registration No. \_\_\_\_\_  
(IF NECESSARY – when project is a  
“public work” and subject to prevailing  
wage payment)

PO Number: \_\_\_\_\_

Name: \_\_\_\_\_  
(Printed)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

By: \_\_\_\_\_  
Office of General Counsel Signature