

# **REQUEST FOR PROPOSAL (RFP)**

## for FMC736-24-04 Facility Landscape Maintenance

### **ADDENDA**

Prospective bidders are responsible for reviewing any published addenda regarding this bid at [ebmud.com/business-center](http://ebmud.com/business-center)

### **CONTACT**

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### **RESPONSE DUE**

January 8, 2025  
4:00 p.m. PST

### **SUBMIT ELECTRONICALLY TO\***

**Tracy Barrow**, EBMUD  
[tracy.barrow@ebmud.com](mailto:tracy.barrow@ebmud.com)

*\*Hardcopy proposals will not be accepted*

# **EAST BAY MUNICIPAL UTILITY DISTRICT**

RFP for FMC736-24-04 Facility Landscape Management

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**I. STATEMENT OF WORK**

**A. SCOPE**

Work to be done consists of furnishing all labor, supervision, methods of processes, implements, tools, machinery, safety equipment, traffic control, materials and proper licensing required to provide labor, material, and equipment to perform required Landscape Maintenance Services throughout the District. Typical maintenance work shall include, but not be limited to, the tasks listed below in those areas designated by the District representative and covered more thoroughly in the Detail Specifications section of this request for proposal. The scope of the landscape maintenance work may vary according to need. This contract covers landscape maintenance and irrigation services only.

Location	Address	Description	Frequency	Acreage
East Area Service Center	2551 N. Main Street, Walnut Creek CA 94596	Trimming of shrubs, ground cover and limbing up trees. Weeding entire site and spot spraying weeds. Inspect and run irrigation system. Maintain irrigation system and ensure it is working order.	Quarterly	1.3
Castaneda Service Center	5050 Crow Canyon Road, San Ramon CA 94583	One time weed abatement/general cleanup* throughout the entire site, followed by cutting and spraying of weeds	Quarterly	2.0
North Area Service Center	3999 Lakeside Drive, Richmond CA 94806	Pruning of trees and shrubs inside and outside fenced area. Weeding entire site and spot spraying weeds and general cleanup*	Quarterly	4.0
South Area Service Center	589 E. Lewelling Blvd., San Lorenzo CA 94580	One time weed abatement/general clean* up throughout the entire site.	Quarterly	1
Administration Building	375 11th Street Oakland CA 94607	Weeding, spraying of tree wells and terraces. Trim trees and maintain ground floor exterior planter boxes and irrigation. Inspect and run irrigation. Ensure it is in working order.	Quarterly	N/A
Adeline Maintenance Center Administration Building	1100 21st Street, Oakland CA 94607	One time general cleanup*, weed abatement and pruning of shrubs and trees to security standards.	Quarterly	4.5
Adeline Maintenance Center Fleet Building	1199 21st Street, Oakland CA 94607	One time general cleanup*, weed abatement and pruning of shrubs and trees to security standards.	Quarterly	2.25
Adeline Maintenance Center Shops Building	1200 21st Street, Oakland CA 94607	One time general cleanup*, weed abatement and pruning of shrubs and trees to security standards.	Quarterly	4.5
Adeline Maintenance Center Central Yard	2144 Popular Street, Oakland CA 94607	One time general cleanup*, weed abatement and pruning of shrubs and trees to security standards.	Quarterly	1.5
Adeline Maintenance Center Fuel Center	1250 21st Street, Oakland CA 94607	One time general cleanup*, weed abatement and pruning of shrubs and trees to security standards.	Quarterly	.25
Oakport Center	5601 Oakport Street, Oakland CA 94621	One time general cleanup*, weed abatement and pruning of trees and shrubs	Quarterly	32

Maloney Pumping Plant	5211 La Honda Rd, El Sobrante	Trimming shrubs, weeding, surface cleaning within property boundaries. Inspect and run irrigation. Ensure it's in proper working order	Quarterly	1.6
Diablo Vista Pumping Plant	Adjacent to 3291 Mt Diablo Ct, Lafayette	Trimming shrubs, weeding, surface cleaning, within property boundaries. Inspect and run irrigation. Ensure it's in proper working order	Quarterly	.2
Danville Pumping Plant	300 feet West of 2081 Danville Blvd, Alamo	Trimming shrubs, vines, weeding, surface cleaning withing property boundaries	Quarterly	1.1
Holly Pumping Plant	Adjacent to 5491 Terra Granada Dr, Walnut Creek	Trimming shrubs, weeding, surface cleaning, within property boundaries. Inspect and run irrigation. Ensure it's in proper working order	Quarterly	.15

\*See general cleanup requirements in "Detail Specifications" section

The Contractor shall furnish and maintain records designating exact locations and areas of repairs and maintenance. Such reports shall be signed by the Contractor and the District Representative in charge of overseeing the work. All work for which a progress payment is made shall be reported on and certified according to the foregoing procedure, and in addition thereto, the District Representative shall certify that the work has been inspected and was completed to the satisfaction of the District prior to payment by the District.

**B. CONTRACTOR QUALIFICATIONS**

**1. Contractor Minimum Qualifications**

- a. Contractor, Contractor's principal, or Contractor's staff shall have been regularly engaged in the business of providing landscape maintenance for at least five (5) years.
- b. Contractor shall during the term of the agreement, hold valid State of California Contractor's License C-27 (Landscaping Contractor).
- c. Contractor shall possess all permits, licenses, and professional credentials necessary to perform services as specified under this RFP.

**C. SPECIFIC REQUIREMENTS**

**1. Authorization of Work**

Work will not be performed without prior written approval and only as authorized by the District Representative.

**2. Time of Completion**

Upon notification by the District Representative, the Contractor shall proceed immediately with the work per the agreed upon schedule. The District will not

tolerate projects that have been started and left idle. Work shall commence and be diligently prosecuted without interruption until completed.

3. Progress of Work

Work shall proceed in an orderly manner and be diligently prosecuted to completion. Wherever possible, any repair work shall be completely finished prior to workmen proceeding to the next location. Any exceptions shall be approved by the District Representative.

4. Alterations

The District reserves the right to increase or decrease the quantity of any item or portion of the work or to omit portions of the work as may be deemed necessary or advisable by the District. The District Representative may make such alterations or deviations, additions to, or omissions from these specifications, as may be determined during the progress of the work to be necessary and advisable for the proper completion thereof. Such alterations or deviations, additions or omissions shall in no way affect or make void the contract. Upon written order of the District Representative, Contractor shall proceed with the works as increased, decreased, or altered.

If during the course of work the Contractor experiences conflict with the plans/scope of work, the Contractor shall notify the District Representative before proceeding with said work.

5. Acceptance of Work Done

The District Representative will make inspections and determine that the work has been completed in all respects in accordance with these specifications.

6. Billing Form

Contractor shall provide a billing form and progress payment form approved by the District Representative. At a minimum, the detail shall include the following: the date, service location, the work performed, a copy of the work order, if applicable, purchase order number, and total charges for the work performed.

7. Work Orders

The District Representative will place all requests for extra service directly to the Contractor by written Work Order or via telephone call or electronic mail. The District Representative reserves the right to request from the Contractor a written cost estimate before authorizing the work. The Contractor shall respond with a cost estimate within 24 hours, excluding weekends and holidays.

8. Response Time

All maintenance services shall be completed within a responsible and expedient manner, based on the severity of the request.

9. Response Process

After initial contact and after "Notice to Proceed" is given by the District Representative, the Contractor shall respond accordingly.

The Contractor shall provide all necessary transportation to and from work sites. Transportation shall be fully insured by Contractor.

Only upon request and authorization by the District Representative shall the Contractor perform work after hours.

Contractor will notify the District Representative upon completion of work. Notification shall be within twenty-four (24) hours of completion of assigned task.

Failure to comply with response times shall be considered as non-compliance. Repeated failure to comply may result in contract termination.

10. Method of Work

Contractor shall perform all services required within these specifications. All services shall be performed in the highest professional manner, and in accordance with all applicable, current industry standards, regulations codes and statues. Unless the means or methods of performing a task are specified elsewhere in this contract, Contractor shall employ methods that are generally accepted and used by the industry.

All work shall be performed per the Standard Specifications for Public Works Construction (Green Book), Latest Edition. All work shall comply with the applicable licensing, and/or all local or County ordinances, whatever may apply.

The Contractor shall be responsible and shall take necessary precautions to prevent public trespass into areas of work.

Rubbish, green waste, and construction debris shall be disposed of at an approved dump site. After removal operations have been completed, the grounds shall be left in a neat and presentable condition, satisfactory to the District Representative.

The Contractor shall provide traffic control per the Manual on Uniform Traffic Control Devices (M.U.T.C.D.), subject to approval by the District Representative.

11. NPDES Regulations

The Contractor shall ensure all discharges in the course of their work comply with all applicable National Pollution Discharge Elimination System (NPDES) and/or Waste Discharge Requirements (WDR) Permit Requirements. Requirements, include but are not limited to monitoring, reporting, and District's Best Management Practices (BMPs).

12. Protection of Existing Utilities

The Contractor shall verify the location of all utilities prior to maintenance and shall be held liable for all damages incurred due to his operations.

The Contractor must take all precautionary measures to protect existing utilities. When necessary, the Contractor shall have all utilities located by contacting the responsible agencies at least 48 hours prior to commencing work. The Contractor's attention is directed to the one-call utility notification service provided by Underground Service Alert (USA). USA member utilities will provide the Contractor with the locations of their substructures when given at least 48 hours' notice. Such requests should be requested through USA.

13. Integrated Pest Management Regulations

The Contractor shall comply with all Federal, State, and local regulations governing use of pesticides and will abide by the District's Integrated Pest Management Program guidelines. The Contractor shall use EBMUD's list of preapproved products to treat weeds.

14. Contract Termination

If at any time, in the opinion of the District Representative, the Contractor fails to supply suitable equipment, an adequate working force, and/or material of proper quality, or shall fail in any respect to perform any work with diligence and force specified and intended in and by the terms of the contract, notice thereof in writing shall be served upon them. Should the contractor neglect or refuse to provide means for satisfactory compliance with the contract, as directed by the District Representative, within the time specified in such notice, the District in any such case shall have the power to terminate all or any portion of the contract.

15. Contract Extension

Prior to expiration of the contract, EBMUD at its sole discretion, and in writing, may exercise up to two options to extend the term of the contract for one year each. If EBMUD exercises one or more options to extend the contract term, it

may request that CONTRACTOR provide updated insurance, CEP and bond documents. All work, terms and conditions set forth in the State of Work, will remain in effect.

16. Extra Work

Extra work will not be performed without prior written approval by the District Representative unless a condition exists wherein it appears there is danger of injury to persons or damage to property.

Extra work may be required by the District Representative as a result of acts of God, vandalism, theft, civil disturbances, accidents or improvements.

Payment for extra work will be based on actual cost of labor; plus wholesale cost of materials, plus a 10% markup. Extra services other than those listed shall be negotiated on a time and material basis with a "not to exceed" amount.

17. Protection of Private Property

The Contractor must remain within the maintenance areas to the best of his ability. The Contractor must protect all existing private property.

18. Protection of Maintenance Areas

Contractor shall protect property and facilities adjacent to the maintenance areas and all property and facilities within the maintenance areas. After completion of the scheduled work or project, the maintenance area shall be clean and in a presentable condition. All public or privately owned improvements and facilities shall be restored to their original condition and location. In the event improvements of the facilities are damaged, they shall be replaced with new materials equal or better to the original. Contractor shall repair such damage at their expense.

Nothing herein shall be construed to entitle the Contractor to the exclusive use of any public street; way or parking area during performance of the contract work, and Contractor shall conduct their operations so as not to interfere with the authorized work of utility companies or other agencies in such streets, ways or parking areas.

19. Quarterly Reporting

Contractor shall make quarterly contact with the District Representative to determine work level and effort, as well as maintenance performance. On Monday of each week, Contractor shall provide the District with a quarterly log sheet showing the names, dates, and hours worked of all employees for the previous week.

20. Withholding of Payment

If, in the event that inadequacies/deficiencies are determined by the District Representative, the Contractor will have 24 hours from the time such items have been determined to be corrected as necessary. If the Contractor fails to correct within 24 hours, there will be deductions from the monthly payment due, for work not performed or to acceptable standards.

21. Contact Information

Contractor shall provide the District Representative with a contact person(s) and a phone number to always reach the contract representative, 24 hours per day.

22. Reports and Schedules

The Contractor shall submit, at a minimum, quarterly reports and schedules as requested. Failure to submit reports and schedules in a timely manner may result in a delay of monthly payments. Such reports must be detailed and thorough, and may include, but not be limited to, the following:

- (1) Suggestions for improving problem areas
- (2) Reports of work planned
- (3) Cost information to perform extra work for upgrading specific areas
- (4) Maintenance schedules

D. DETAIL SPECIFICATIONS

The following are conditions and specifications covering general landscaping throughout the District. The Contractor is expected to keep constant vigilance on the quality of their work performed throughout the District.

1. General Site Clean Up

- a. Contractor to make sure site is free from litter and vegetative debris, and swept broom clean. Trash and debris to be hauled away (see Debris Removal specifications below).
- b. Remove dead plant material and cut back and remove dead or damaged branches.

2. Irrigation

- a. At sites with working irrigation systems, the Contractor shall maintain the complete irrigation system in operational condition.

- b. All systems to be operationally checked a minimum of once per quarter.
- c. It is the responsibility of the Contractor to conserve water and assure that all applicable watering rules and regulations are followed.
- d. Irrigation to all plants shall be made by the use of permanent irrigation systems. Manually water as needed to supplement the permanent irrigation system. Failure of the irrigation system to provide full and proper coverage shall not relieve the Contractor of the responsibility to provide appropriate irrigation. It is the Contractor's responsibility to make sure that the irrigation system is maintained and operates properly.
- e. The Contractor is responsible for the complete operation and maintenance of the irrigation system. The Contractor shall examine the irrigation system for damage or malfunction quarterly and shall report damage or malfunction to the District Representative in writing. If the Contractor fails to report the broken or malfunctioning irrigation system components within one week of the breakage or malfunction, the Contractor shall be responsible for all damages resulting from the broken irrigation system component.
- f. Alert District staff of any adjustments needed to watering times.
- g. Do not allow over-watering of plant material.
- h. Do not allow run-off from any irrigation.
- i. Do not allow overspray onto sidewalks, streets, or structures.
- j. The Contractor shall replace or repair, at the Contractor's expense, any irrigation components damaged by their activities or neglect as well as the cost for any water loss during this time, unless due to excluded damage (i.e. normal wear and tear, vandalism). Repairs shall be made as soon as possible. If the damage was due to excluded damage, the irrigation repairs will be paid for as additional work. The Contractor shall make notification of needed repairs as soon as possible. Regardless of the cause of damage, the Contractor shall take immediate action to prevent further damage by shutting off the damaged part of the irrigation system and commencing with hand watering as needed. As soon as possible after receiving written authorization to proceed, the Contractor shall make repairs. The following items are considered to be minor repairs: damaged or clogged sprinkler nozzles, adjustment of sprinkler patterns or arcs, adjustment of sprinkler position (i.e.; raise, lower, or straighten sprinkler head). These minor repair items shall be corrected by Landscape Maintenance Contractor at Contractor's expense.

- k. Any replacement of irrigation system components shall be made with materials of the same manufacturer and model as the original equipment.
- l. Substitutions of materials other than original equipment shall be approved only when the original equipment has been discontinued and is no longer available for purchase at any location. The substituted equipment must be completely compatible with the original and must be approved in advance by the District Representative.
- m. All repairs to the system shall be identical to the original installation, unless approved otherwise in advance by the District Representative. If a change to the installation will result in lower future maintenance costs, less frequent breakage, or an increase in public safety, request authorization to make the change from the District Representative.
- n. The Contractor shall check the entire irrigation system quarterly for items such as dry spots and missing or malfunctioning irrigation components. Check for leaking valves, water running across walks, water standing in puddles, or any other condition which hampers the correct operation of the system, use of the area, or public safety. The Contractor shall carefully observe plant materials for signs of stress, indicating a lack of water. Plants that die due to irrigation failure will be considered have died due to the Contractor's negligence and shall be replaced at the Contractor's expense.
- o. Repair and adjust all sprinkler heads to maintain proper coverage.
- p. Damage not resulting from Contractor's negligence but as an act of vandalism will be reported promptly to the District, together with an estimate of costs for correction of the condition. Payment will be based on actual costs of labor, wholesale cost of materials, plus a percentage of materials.
- q. Irrigation of parks will be accomplished between the hours of 9:00 p.m. and 7:00 a.m. subject to change by the District Representative. Controller operations are performed by the Contractor.
- r. Repairs to the irrigation system shall be completed within 24 hours of notification by the District Representative.
- s. Special watering requirements, i.e. fertilization programs, renovation, etc. shall be monitored by the Contractor daily. Any needed variances will be discussed with the District Representative.
- t. Contractor shall be proficient and capable in maintaining the existing irrigation system, including controllers and all components.

- u. Currently, East Area Service Center and the Administration Building have working irrigation systems.

### 3. HERBICIDE/PESTICIDE APPLICATION

All work involving the use of chemicals shall be in done compliance with all Federal, State, and Local regulations. The Contractor shall have an employee who has a State of California Qualified Applicators License or Certificate to supervise chemical applications.

- a. Contractor will make every effort to promote Integrated Pest Management practices when evaluating the use of chemicals for management of weeds and pests in the contract area. Contact the District Representative with any major problems of weed or pest infestations.
- b. State licensed Pest Control Advisor (PCA) written site recommendations for each chemical or combination of chemicals for each site must be turned in to the District Representative twenty-one (21) calendar days after any contract is awarded (including contract renewals) and at no additional cost to District. Should an unforeseen chemical application be necessary, a Pest Control Advisor's recommendation shall be submitted to the District Representative (14) days prior to its use. PCAs will review District developed Decision Documents for work areas prior to recommending products for use.
- c. Notification of upcoming application work signage shall be posted by the contractor at least 24 hours prior to spraying public access areas.
- d. Broadleaf weeds in all turf shall be controlled as necessary by recommendation of a Pest Control Advisor.
- e. All chemical applications shall be done with extreme care to avoid any hazard to any person, pet or damage to property or the environment in the work area. All spraying shall be done when air currents are still to limit drift to six (6) inches.
- f. The Contractor shall submit copies of their chemical use reports each month to the appropriate County agency and provide copies of the reported usage each quarter to the District's Facility Supervisor. .
- g. An annual report shall be filled out and submitted to the District by June 30 of each year, The form shall be an annual tabulation of all chemicals and fertilizer applied. Failure to submit this form will result in delay of payment.

- h. Records of all operations stating dates, times, methods of application, chemical formulations, applicator's names, and weather conditions shall be made and retained in an active file for a minimum of two (2) years by the Contractor. These records must be available for review upon request from the District Representative, County, State or Federal Officers.
- i. All chemicals requiring a special permit for use must be registered with the County Agricultural Commissioner's office and a permit obtained with a copy to the District before use. A Pest Control Advisor's recommendation Facility Landscape Maintenance must be on file with the District Representative prior to use of special permit chemicals.

### 3. FERTILIZATION

All work involving the use of chemicals shall be in compliance with all Federal, State, and County laws.

- a. Contractor shall provide District with a monthly log documenting all areas where fertilizer has been applied. Log shall show date, location, time, brand name, chemical analysis, rate of application and total quantity of fertilizer applied.
- b. Fertilizer recommendations are to be based on soil test analysis and/or leaf tissue analysis taken at the appropriate time supplied at Contractor's expense.
- c. All sidewalks, roads, curbs, and patios will be swept clean of granular fertilizer after applications to minimize staining.
- d. Shrubs, when recommended by the District Representative, with the rate of each application to be one pound of actual nitrogen per 1,000 sf, using a 15-15-15 formula material, or a formula specified by the District Representative.
- e. Ground cover- when recommended by the District Representative, should be fertilized once a year with the rate of each application to be one pound of actual nitrogen per 1000 SF, using 15-15-15 formula material, or a formula specified by the District Representative.
- f. Note: All fertilizer shall be as noted, or a formula specified by the District Representative, at Contractor's expense.

### 4. PRUNING (TREES UP TO 15')

- a. Tree pruning shall be performed with the intent of developing structurally sound trees with safety as the ultimate goal. Prune for symmetrical appearance typical of the species and proper safety clearance and access.
- b. All pruning shall be done using the International Society of Arboriculture (ISA) pruning standards, ANSI A300 Standards, ANSI Z133 Safety Standards and maintain compliance with the Migratory Bird Treaty Act (MTBA). Excessive pruning, stubbing back, or topping will not be permitted unless specifically approved by the District Representative.
- c. All plant material shall be trimmed to prevent encroachment onto private property.
- d. Prune plant materials so that all traffic control signs are clearly visible to approaching drivers.
- e. Prune trees for security perimeter fence sensors at a distance of at least 18" away, horizontally and vertically along the length of the fence.
- f. Remove all dead, diseased and insect infested branches, and limbs.
- g. Report severe damage or hanging limbs that are above fifteen feet (15') to the District Representative immediately. Limbs that have fallen or are otherwise lying on or contiguous to District maintained property shall be picked up by Contractor as soon as discovered or notified.
- h. Excessive pruning, stubbing back, or topping will not be permitted. All pruning cuts shall be made beyond, but close to, the branch collar ring. Trees shall be cleanly cut with no tearing of the bark. Shearing or "lollipopping" shall not be permitted unless specifically approved by the District Representative.
- i. Contractor is required to evaluate trees two (2) times per year for removal of stakes and for pruning. A pruning schedule shall be submitted to the District Representative by October 15th of each year.
- j. All trimmings and debris shall be removed and appropriately disposed of on the same day generated.
- k. The Contractor shall provide replacement trees, at Contractor's expense, if trees are damaged or if the pruning and safety standards are not met.
- l. Stakes and ties will be placed as recommended by the District Representative. Remove as soon as no longer needed. All costs will be at contractor's expense.

- m. All guys and ties shall be checked frequently to avoid girdling.
- n. Trees over 15 feet tall are maintained by separate contract.
- o. Remove all sucker growth from base of tree and other locations in which it may appear.
- p. All locations with brush against property fences or buildings shall be cut back at least 18" from the fences or buildings.

5. PLANTING

- a. Extra planting, if necessary, will be by specifications supplied by District staff.
- b. Dig the planting hole as deep as the root ball and twice as wide or wider than the root ball. Be certain that the plant is not buried below the original soil level.
- c. Contractor is responsible for any extra watering (by hand or otherwise) that is needed to keep plant material alive.
- d. All new plant material and irrigation installations shall be guaranteed for a period of one calendar year, except due to "Acts of God", i.e. damage or death of plant material due to wind or storm events, or vandalism, theft, or other willful acts over which the maintenance contractor has no control. Existing plants shall be replaced by Contractor if it is determined by the District Representative that they died due to Contractor's negligence.

6. WEEDING

- a. Grounds and turf shall be kept weed free or at management level as determined by the District Representative.
- b. Contractor shall be responsible for eradicating weeds growing in cracks, expansion joints, and area contiguous to the District landscape by way of mechanical and/or chemical means.

7. DEBRIS REMOVAL

- a. At no time shall any debris be blown into any roadway. Clippings and debris shall be blown into piles along the curb and removed. All safety precautions shall be maintained at all times while working in the roadways.

- b. Removal of all landscape debris generated on the property during landscape maintenance is the sole responsibility of the Contractor, at no additional expense to the District. All debris will be managed and disposed of in accordance with waste management regulations and disposed of at a District approved disposal site. Notify the District Representative if treated wood waste is generated at the site for handling and disposal direction.
- c. In the event that illegal dumping is encountered at the Oakport Facility or at any other location where facility landscape maintenance is being performed, the contractor shall inform the District of the location of the debris and estimated quantity. The District will make arrangements for the area to be cleaned up, or we will request a price quotation (lump sum or time and materials) for the contractor to perform this work.

8. SHRUB AND GROUND COVER

- a. Prune all shrubs to maintain a reasonable size in a manner of a soft natural desirable appearance. No heading back or box shape hedging shall be allowed unless otherwise specified by the District Representative.
- b. Thin out and remove dead wood from all shrubs annually, or as specified by the District Representative.
- c. Trim and/or edge to maintain all walkways, curbs, roadways, trails, etc., to clearly define interface from turf and ground covers.
- d. Trim and/or edge borders to clearly define interface from ground covers quarterly.
- e. Ground covers shall be maintained to prevent any climbing or invading of trees, shrubs, walls, hardscape items, utilities, etc.
- f. Fertilize per specifications above.

9. HARD SURFACE AREAS

- a. These areas shall include sidewalks, tennis courts, common seating areas, basketball courts, bicycle trails, AC walkways, pathways, etc.
- b. All areas shall be inspected quarterly and maintained in a neat, clean, and safe condition at all times.
- c. All areas shall be cleaned quarterly to remove all deposits of silt, sand, glass, and any other foreign debris.
- d. Cracks and crevices shall be kept free of weeds at all times.

- e. Special emphasis shall be placed on chemical edging along bicycle trails and AC walkways to prevent damage to asphalt by vegetation. All such damage allowed to occur shall be repaired at the Contractor's expense.
- f. Paths and trails are to have unobstructed accessibility (i.e. free from low and protruding limbs, guy wires, etc.).
- g. Pathways and trails are to be neatly edged.

10. MISCELLANEOUS OPERATIONS

- a. All walkways or other public access areas within shall be swept or cleaned quarterly, or more if necessary (as approved by the District Representative), to remove any glass or other debris.
- b. All sidewalk areas abutting maintained areas shall be cleaned when dirtied by Contractor's operations, and at other times as required by the District Representative.
- c. All leaves, pine needles, paper, and debris shall be removed from landscaped areas and disposed of offsite quarterly, or as specified by the District Representative.
- d. Trash and recycling containers provided by the District shall be emptied quarterly, or more if necessary and washed after emptying (when necessary) as determined by the District Representative. Contractor shall provide plastic liners for all trash cans at Contractor's expense.
- e. All concrete bench drains and other surface drains, to include the portion under a sidewalk, shall be kept free of vegetation, debris and algae to allow unrestricted water flow.
- f. Sump drains for drinking fountains shall be inspected monthly and cleaned/cleared as necessary.
- g. All other drainage facilities shall be cleaned of all vegetation and debris.
- h. All grates shall be tested for security and refastened as necessary. Missing or damaged grates shall be reported to the District Representative.
- i. Special care shall be taken properties with infrared sensors along fence lines. Trees, shrubs, or bushes shall be cut back at least 18" or as needed to not interfere with the infrared sensors.

11. EROSION CONTROL

- a. Proper erosion control measures shall be implemented to protect against erosion of pathways, berms, and slopes.
- b. No runoff shall be allowed to run into the watershed.

12. GRAFFITI

- a. Any graffiti or vandalism that is placed on any surface within the work area shall be reported immediately to the District Representative.

13. LIGHTING

- a. The landscape maintenance contractor shall remove all fallen branches from any light fixtures, including poles and bollards.
- b. Report any daylight burners or broken lights immediately to the District Representative.

14. STORM SERVICES

- a. Contractor shall be responsible for the checking of landscape maintenance areas and for the removal and disposal of broken branches, fallen trees, drainage systems and erosion control during inclement weather.
- b. In the event of inclement weather, if at any time the landscaped areas become flooded and there is standing water, it will be the Contractor's responsibility to remove water immediately in accordance with NPDES and/or WDR requirements.

15. GENERAL

- a. All operations will be conducted to provide maximum safety for the public.
- b. Where contract work may create potential or known hazards on streets or roads and to persons traversing them, Contractor shall obtain at his own expense and place whatever signs, lights, barricades, cones or other safety devices are necessary to prevent accidents, injuries or damages, consistent with the Manual on Uniform Traffic Control Devices (M.U.T.C.D.), subject to approval by the District Representative, and with all other applicable ordinances and statutes.
- c. When working, personnel shall wear safety reflective vests at all times.
- d. Contractor's vehicles shall be properly identified with their name, logo and telephone number.

- e. Contractor's personnel shall report problem areas, such as dry spots in turf and gophers, as noticed during regular operations, to their Supervisor, who will inform the District Representative immediately.
- f. Notification of all "speciality type" maintenance operations shall be given to the District Representative 48 hours prior to each of these operations by the Contractor. "Specialty Type" maintenance operations are defined as fertilization, turf aerification, turf dethatching, and annual type bedding plant replacements.
- g. Contractor is required as part of this agreement to furnish all materials necessary to accomplish maintenance in accordance with the foregoing specifications. Contractor is further required to stock high usage items for repair of irrigation systems. Contractor will be reimbursed the wholesale cost of such materials and parts upon presentation of properly itemized invoices. Any other types of materials required to be furnished will be considered as extra work.
- h. Contractor shall not block trails with equipment or materials during or after his maintenance operations.
- i. Remove from maintained grounds, as necessary, any and all animal feces or materials detrimental to human health.
- j. Work performed under this contract shall conform to the current NPDES permit and District Storm Water Ordinances.
- k. Contractor will clean sidewalks, roadways, pathways, and any other areas littered by his operations, prior to leaving the subject location. In all service areas, leaves, paper, weeds, or other debris will be removed a minimum of once per week as determined by the District Representative and disposed properly.
- l. Contractor shall be required to maintain an office within 50 miles of District and provide a telephone service during normal working hours. Contractor shall provide an email address available for correspondence between the District and the Contractor which shall be monitored and responded to by the Contractor on a daily basis if necessary. The site supervisor shall always be available to the District via cell phone. Contractor is further required to provide District with an emergency number for contact outside the normal working hours.
- m. Contractor shall be required to provide uniforms for all field personnel that provide the public with the employee's name and the company name.

- n. Contractor shall submit a monthly work schedule identifying the crews and where they are working on a daily basis. Inspections may be made the day after service to verify compliance with specifications. Notices of deficiency shall be made and 48 hours shall be given to correct problems or deductions may be taken.
- o. District will not provide storage of any materials. Bulk materials, such as soil and chips, are to be delivered and installed within 24 hours.
- p. Any spills or accidents are to be immediately addressed in a safe and compliant manner and relayed to the District representative.

E. DELIVERABLES / REPORTS

- 1. Contractor shall submit reports in accordance with the specific requirements.

II. CALENDAR OF EVENTS

EVENT	DATE/LOCATION	
RFP Issued	December 10, 2024	
MANDATORY Site Walk ***	December 19th @ 8:30am (approximately 3-4 hours); Multiple Locations	Meet at: Maloney Pumping Plant 5211 La Honda Rd El Sobrante, CA 94806
Addendum to Announce Pre-Approved Equivalents (if necessary)		
Response Due	January 8, 2025 by 4:00 p.m.	
Anticipated Contract Start Date	March 4, 2025	

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

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

A. MANDATORY SITE WALK

Proposed contractors shall contract EBMUD to register to attend the mandatory site visit. Please send email with the following information: Name, Company, Contact Information, to:

Tracy Barrow  
Construction and Maintenance Scheduler

Email: [tracy.barrow@ebmud.com](mailto:tracy.barrow@ebmud.com)

Mandatory site walk/Proposal conference will be held to:

1. Allow the District to discuss the scope of the project.
2. Provide Contractors an opportunity to view a site, receive documents, etc. necessary to respond to this RFP.
3. Provide an opportunity for Contractors to ask specific questions about the project and request RFP clarifications.
4. Provide the District with an opportunity to receive feedback regarding the project and RFP.

All questions deemed to be pertinent by the District will be addressed in Addenda following the site walk/Proposal conference.

**\*\*\*In order to be eligible to Proposal on this RFP**, a representative from the Contractor's company **MUST** attend site walk and sign into confirm their attendance. If an RFP response is submitted by a company that was not in attendance at this meeting, its RFP response **WILL** be rejected\*\*\*

### **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 Contractor 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 Contractor 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 Contractor'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 Contractor stipulates to the contrary, and to waive minor technical defects and administrative errors, as the interest of the District may require. Award will be made, or proposals rejected by the District as soon as possible after proposals have been opened.

**B. EVALUATION CRITERIA/SELECTION COMMITTEE**

All proposals will be evaluated by a Selection Committee. The Selection Committee may be composed of District staff and other parties that have expertise or experience in this type of procurement. The Selection Committee will select a Contractor 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. Contractor 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>Cost:</b>                      The points for Cost will be computed by dividing the amount of the lowest responsive RFP response received by each Contractor’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 Contractor’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</p>

	be equal, or when a superior RFP response is at a price that the District cannot afford.
<b>B.</b>	<b>Implementation Plan and Schedule:</b> An evaluation will be made of the likelihood that the Contractor’s implementation plan and schedule will meet the District’s schedule. Additional credit will be given for the identification and planning for mitigation of schedule risks which the Contractor believes may adversely affect any portion of the District’s schedule.
<b>C.</b>	<b>Relevant Experience:</b> RFP responses will be evaluated against the RFP specifications and the questions below: 1. Do the individuals assigned to the project have experience on similar projects? 2. How extensive is the applicable experience of the personnel designated to work on the project?
<b>D.</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 Contractors and the score for reference checks is not included in the preliminary short list score.
<b>E.</b>	<b>Understanding of the Project:</b> RFP responses will be evaluated against the RFP specifications and the questions below: 1. Has the Contractor demonstrated a thorough understanding of the purpose and scope of the project? 2. Has the Contractor demonstrated that it understands the deliverables the District expects it to provide? 3. Has the Contractor demonstrated that it understands the District’s time schedule and can meet it?
<b>F.</b>	<b>Contract Equity Program:</b> Contractor 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-Contractor Information and Acceptance. Qualified DVBEs and/or SBEs will receive an additional 5 points to their total score.

c. PRICING

1. Prices quoted shall be firm for the first 12 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. Contractors 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.
5. Prevailing Wages:

All Contractors proposing 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.

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 of the State of California.

Pursuant to the provisions of Division 2, Part 7, Chapter 1, Article 2, and any amendments thereof of the Labor Code of the State of California, the Contractor and any Subcontractor shall pay not less than the specified prevailing rate of wages to all workers employed in the execution of the contract.

The Contractor shall, as a penalty to the State or the District, forfeit Twenty-Five (\$25.00) Dollars for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing rates for any work or craft in which such worker is employed under the contract by the Contractor or by any Subcontractor. The difference between such stipulated prevailing wage rates and the amount paid to such worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor. The Contractor shall comply with the provisions of Section 1776 of the Labor Code of the State of California. For all classes of work not specified herein, the minimum wage shall be that specified for general laborer.

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 payment by Contractor 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 his own expense.

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 project.

**D. NOTICE OF INTENT TO AWARD AND PROTESTS**

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

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

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

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

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

Protests must be mailed, hand delivered, or emailed to the Manager of Purchasing, Mailstop 102, East Bay Municipal Utility District, 1010 Franklin St., Oakland, CA 94607 or P.O. Box 24055, Oakland, California 94623. Facsimile and electronic mail protests must be followed by a mailed or hand delivered identical copy of the protest and must arrive within the seven workday time limit. Any proposal protest filed with any other District office shall be forwarded immediately to the Manager of Purchasing.

In the event that the protest is denied, the protester can appeal the determination to the requesting organization’s Department Director. The appeal must be submitted to the Department Director no later than five workdays from the date which the protest determination was transmitted by the District, to the protesting party. The appeal shall focus on the points raised in the original protest, and no new points shall be raised in the appeal.

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

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

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

E. WARRANTY

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

F. INVOICING

1. Following the District's acceptance of product(s) meeting all specified requirements, and/or the complete and satisfactory performance of services, the District will render payment within thirty (30) days of receipt of a correct invoice.
2. The District will notify the General or Professional Service Provider of any invoice adjustments required.
3. Invoices shall contain, at a minimum, District purchase order number, invoice number, remit to address, and itemized services description.

4. The District will pay 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. BONDS

1. The successful Contractor will be required to post and maintain a performance bond and Payment bonds for one hundred percent (100%) of the total contract amount with the District. Bonds must be on District forms attached to this RFP as **Exhibit E - Bond Forms**.

**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: Ed Bettencourt, Facility Supervisor

EBMUD-Facilities Maintenance

E-Mail: [edwin.bettencourt@ebmud.com](mailto:edwin.bettencourt@ebmud.com)

PHONE: (510) 287-1185

FOR INFORMATION ON THE CONTRACT EQUITY PROGRAM:

Attn: Contract Equity Office

PHONE: (510) 287-0114

AFTER AWARD:

Attn: Ed Bettencourt, Facility Supervisor

EBMUD- Facilities Maintenance

E-Mail: [edwin.bettencourt@ebmud.com](mailto:edwin.bettencourt@ebmud.com)

PHONE: (510) 287-1185

B. SUBMITTAL OF RFP RESPONSE

1. At this time, no hardcopy proposals will be accepted. Upload your RFP response in pdf format and prior to the bid due date/time RFP submittals, in their entirety, shall be emailed to [tracy.barrow@ebmud.com](mailto:tracy.barrow@ebmud.com). The District's email has limitations on attachment size. Make sure your response is less than 25 megabytes. If the file exceeds the limit, you will need to send multiple emails. Contractors are solely responsible for ensuring timely delivery of the proposals. The District shall not be responsible for any issues related to transfer

of files through email. You may call at (510) 287-0627 to check receipt of the proposal.

2. All costs required for the preparation and submission of an RFP response shall be borne by the Contractor.
3. California Government Code Section 4552: In submitting an RFP response to a public purchasing body, the Contractor 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 Contractor 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 Contractor.
4. Contractor expressly acknowledges that it is aware that if a false claim is knowingly submitted (as the terms "claim" and "knowingly" are defined in the California False Claims Act, Cal. Gov. Code, §12650 et seq.), the District will be entitled to civil remedies set forth in the California False Claim Act.
5. The RFP response shall remain open to acceptance and is irrevocable for a period of one hundred eighty (180) days, unless otherwise specified in the RFP documents.
6. It is understood that the District reserves the right to reject any or all RFP responses.

C. RESPONSE FORMAT

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



**EXHIBIT A**  
**RFP RESPONSE PACKET**  
**RFP For – FMC736-24-04 Facility Landscape Maintenance**

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

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

**RFP RESPONSE PACKET GUIDELINES**

- **SUBMITTAL SHALL CONTAIN THE FOLLOWING:**
  - **EXHIBIT A – RFP RESPONSE PACKET**
    - **INCLUDING ALL REQUIRED DOCUMENTATION AS DESCRIBED IN “EXHIBIT A-REQUIRED DOCUMENTATION AND SUBMITTALS”**
  - **EXHIBIT D – IRAN CONTRACTING ACT CERTIFICATION**
  - **EXHIBIT F – PUBLIC WORKS FORMS**
  - **EXHIBIT G – CONTRACT EQUITY FORMS**
  
- **CONTRACTORS 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 CONTRACTORS ARE MAKING ANY CLARIFICATIONS AND/OR AMENDMENTS, OR TAKING EXCEPTION TO ANY PART OF THIS RFP, THESE MUST BE SUBMITTED IN THE EXCEPTIONS, CLARIFICATIONS, AND AMENDMENTS SECTION OF THIS EXHIBIT A – RFP RESPONSE PACKET. THE DISTRICT, AT ITS SOLE DISCRETION, MAY ACCEPT AMENDMENTS/EXCEPTIONS, OR MAY DEEM THEM TO BE UNACCEPTABLE, THEREBY RENDERING THE RFP RESPONSE DISQUALIFIED.**
  
- **PROPOSORS SHALL NOT MODIFY DISTRICT LANGUAGE IN ANY PART OF THIS RFP OR ITS EXHIBITS, NOR SHALL THEY QUALIFY THEIR RFP RESPONSE BY INSERTING THEIR OWN LANGUAGE OR FALSE CLAIMS IN THEIR RESPONSE. ANY EXCEPTIONS AND CLARIFICATIONS MUST BE PLACED IN THE “EXCEPTIONS/ CLARIFICATIONS” PAGE, NOT BURIED IN THE PROPOSAL ITSELF.**



### CONTRACTOR 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 Contractor, 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor hereby submits this RFP response and binds itself to the District. The RFP, subsequent Addenda, Contractors 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)\*:
- Contractor is not an SBE nor a DVBE and is ineligible for any Proposal preference; **OR**
- Contractor 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 Contractor 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 Contractor (exactly as it appears on Contractor's corporate seal and invoice): \_\_\_\_\_

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

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

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

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

Type of Entity / Organizational Structure (check one):

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

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

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

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

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: \_\_\_\_\_

Does Contractor or any employee/representative/service provider have any relatives currently employed with EBMUD? (This does not impact award of a qualified proposal; required reporting purposes only.)

YES  NO

If so, please list :

CONTRACTOR OR CONTRACTOR EMPLOYEE FIRST AND LAST NAME	DISTRICT EMPLOYEE FIRST AND LAST NAME	RELATIONSHIP

**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.

Location	Acreage	Quarterly Cost Year 1	Quarterly Cost Year 2	Quarterly Cost Year 3	Maintenance Cost Year 1	Maintenance Cost Year 2	Maintenance Cost Year 3	Total Maintenance Cost (Years 1-3)
East Area Service Center	1.3	\$	\$	\$	\$	\$	\$	\$
Castaneda Service Center	2.0							
North Area Service Center	4.0							
South Area Service Center	1							
Administration Building	N/A							
Adeline Maintenance Center Administration Building	4.5							
Adeline Maintenance Center Fleet Building	2.25							
Adeline Maintenance Center Shops Building	4.5							
Adeline Maintenance Center Central Yard	1.5							

Location	Acreage	Quarterly Cost Year 1	Quarterly Cost Year 2	Quarterly Cost Year 3	Maintenance Cost Year 1	Maintenance Cost Year 2	Maintenance Cost Year 3	Total Maintenance Cost (Years 1-3)
Adeline Maintenance Center Fuel Center	.25							
Oakport Center	32							
Maloney Pumping Plant	1.6							
Diablo Vista Pumping Plant	.2							
Danville Pumping Plant	1.1							
Holly Pumping Plant	.15							
<b>Subtotals</b>					\$	\$	\$	N/A
<b>Grand Total</b>								\$

**FOR INFORMATIONAL PURPOSES, BIDDER IS TO STATE ITS HOURLY RATES FOR THE FOLLOWING:**

1. NORMAL HOURLY RATE: \_\_\_\_\_
2. OVERTIME: \_\_\_\_\_
3. AFTER HOURS: \_\_\_\_\_
4. WEEKENDS: \_\_\_\_\_
5. HOLIDAYS: \_\_\_\_\_
6. EMERGENCY CALLS: \_\_\_\_\_



## REQUIRED DOCUMENTATION AND SUBMITTALS

All of the specific documentation listed below is required to be submitted with the Exhibit A – RFP Response Packet. Contractors 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 Contractor’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 Contractor, including job title and years of employment with the Contractor;
  - (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. **Implementation Plan and Schedule:** The RFP response shall include an implementation plan and schedule. The plan for implementing the proposed equipment/system and services shall include an Acceptance Test Plan. In addition, the plan shall include a detailed schedule indicating how the Contractor will ensure adherence to the timetables for the final equipment/system and/or services.
4. **Sustainability Statement:** Contractors shall submit a statement regarding any sustainable, environmental or socially responsible initiatives or practices that they or their suppliers engage in. This information can be in relation to the specific services or work products solicited via this RFP, or in relation to the manufacture, delivery, or business practices of your firm.
5. **References:**
  - (a) Contractors 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.
  - Contractors must verify the contact information for all references provided is current and valid.
  - Contractors 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 Contractor'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.

6. **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 Contractor'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.**

7. **Contract Equity Program:**

- (a) Every Contractor 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 Contractor 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 – FMC736-24-04 Facility Landscape Maintenance**

**Contractor Name:** \_\_\_\_\_

**Contractor must provide a minimum of three (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 – FMC736-24-04 FACILITY LANDSCAPE MAINTENANCE**

**Contractor 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>Contractor takes exception to...</i>

\*Print additional pages as necessary



## CONTRACT EQUITY PROGRAM & EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

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

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

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



## **EXHIBIT B INSURANCE REQUIREMENTS**

**CONTRACTOR/COMPANY NAME:** \_\_\_\_\_

CONTRACTOR shall take out and maintain during the life of the Agreement all insurance required and CONTRACTOR shall not commence work until such insurance has been approved by DISTRICT. The proof of insurance shall be on forms provided by DISTRICT directly following these Insurance Requirements.

CONTRACTORS are not required to submit completed insurance verification documents with their bid but will be required to submit them upon notification of award. By signing Exhibit A – RFP Response Packet, the BIDDER agrees to meet the minimum insurance requirements stated in the RFP.

**The following provisions are applicable to all required insurance:**

- A. Prior to the beginning of and throughout the duration of Services, and for any additional period of time as specified below, CONTRACTOR shall, at its sole cost and expense, maintain insurance in conformance with the requirements set forth below.
- B. CONTRACTOR shall provide Verification of Insurance as required by this Agreement by providing the completed Verification of Insurance as requested below by signing and submitting Exhibit B (“Insurance Requirements”) to the DISTRICT. The Insurance Requirements may be signed by the insurance broker or the insurance broker’s agent (Insurance Broker/Agent) for the CONTRACTOR, or by an officer of the CONTRACTOR (Officer), or by the CONTRACTOR’s risk manager (Risk Manager). The Notice to Proceed shall not be issued, and CONTRACTOR shall not commence Services until a signed Verification of Insurance evidencing the specific coverages and limits required by this Agreement has been received by the DISTRICT.
- C. CONTRACTOR shall carry and maintain the minimum insurance requirements as defined in this Agreement. CONTRACTOR shall require any contractor/subcontractor to carry and maintain the minimum insurance required in this Agreement to the extent the insurance applies to the scope of the services to be performed by contractor/subcontractor.
- D. Receipt of a signed Verification of Insurance by the DISTRICT shall not relieve CONTRACTOR of any of the insurance requirements, nor decrease liability of CONTRACTOR.
- E. Insurance must be maintained, and an updated Verification of Insurance must be provided to the DISTRICT before the expiration of insurance by having the Insurance Broker/Agent, Officer, or Risk Manager update, sign and return the Insurance Requirements to the DISTRICT’s contract manager. The updated Insurance Requirements shall become a part of the Agreement but shall not require a change order to the Agreement. It is the CONTRACTOR’s sole responsibility to provide or to ensure that an updated Verification of Insurance is provided to the DISTRICT. The DISTRICT has no obligation to solicit, remind, prompt, request, seek, or otherwise obtain any updated Verification of Insurance, and any actual or alleged failure on the part of the DISTRICT to obtain any updated Verification of Insurance under this Agreement shall not in any way be construed to be a waiver of any right or remedy of the DISTRICT, in this or any regard.

- F. The insurance required hereunder may be obtained by a combination of primary, excess and/or umbrella insurance, and all coverage shall be at least as broad as the requirements listed in this Agreement.
- G. Any deductibles, self-insurance, or self-insured retentions (SIRs) applicable to the required insurance coverage must be declared to and accepted by the DISTRICT.
- H. At the option and request of the DISTRICT, CONTRACTOR shall provide documentation of its financial ability to pay the deductible, self-insurance, or SIR.
- I. CONTRACTOR is responsible for the payment of any deductibles or SIRs pertaining to the policies required under this Agreement. In the event CONTRACTOR is unable to pay the required SIR, CONTRACTOR agrees that such SIR may be satisfied, in whole or in part, by the DISTRICT as the additional insured at the DISTRICT's sole and absolute discretion, unless to do so would terminate or void the policy(ies).
- J. Unless otherwise accepted by the DISTRICT, all required insurance must be placed with insurers with a current A.M. Best's rating of no less than A- V.
- K. CONTRACTOR shall defend the DISTRICT and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier required by this Agreement.
- L. For any coverage that is provided on a claims-made coverage form (which type of form is permitted only where specified), the retroactive date must be shown, must be before the date of this Agreement, and must be before the beginning of any Services related to this Agreement.
- M. For all claims-made policies the updated Verification of Insurance must be provided to the DISTRICT for at least three (3) years after expiration or termination of this Agreement.
- N. If claims-made coverage is canceled or is non-renewed and if the claims-made coverage is not replaced with another claims-made policy form with a retroactive date prior to the effective date of this Agreement and prior to the start of any Services related to this Agreement, CONTRACTOR must purchase an extended reporting period for a minimum of three (3) years after expiration or termination of the Agreement.
- O. In the event of a claim or suit, and upon request by the DISTRICT, CONTRACTOR agrees to provide a copy of the pertinent policy(ies) within 10 days of such request to the DISTRICT for review. Any actual or alleged failure on the part of the DISTRICT to request a copy of the pertinent policy(ies) shall not in any way be construed to be a waiver of any right or remedy of the DISTRICT, in this or any regard. Additionally, the DISTRICT may, at any time during CONTRACTOR's performance under this Agreement, request a copy of the Declarations pages and Schedule of Forms and Endorsements of any policy required to be maintained by CONTRACTOR hereunder, whether or not a suit or claim has been filed. Premium details may be redacted from any such documents requested.
- P. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained herein.
- Q. Where additional insured coverage is required, the additional insured coverage shall be primary and non-contributory, and will not seek contribution from the DISTRICT's insurance or self-insurance.

- R. CONTRACTOR agrees to provide immediate Notice to the DISTRICT of any loss or claim against CONTRACTOR arising out of, pertaining to, or in any way relating to this Agreement or to Services performed under this Agreement. The DISTRICT assumes no obligation or liability by such Notice but has the right (but not the duty) to monitor the handling of any such claim(s) if the claim(s) is likely to involve the DISTRICT.
- S. It is the obligation of the CONTRACTOR to ensure all contractors/subcontractors performing services under this Agreement maintain the necessary coverages and limits. CONTRACTOR shall ensure that all contractors/subcontractors agree to the same indemnity obligation that CONTRACTOR agrees to in this Agreement based on the nature and scope of services being performed by each contractor/subcontractor. CONTRACTOR shall require that each contractor/subcontractor include the DISTRICT, its directors, officers, and employees as additional insureds on its liability policy(ies) (excepting Professional Liability and Workers' Compensation) for all ongoing and completed operations with coverage as broad as required of CONTRACTOR under this Agreement. Failure or inability to secure fully adequate insurance shall in no way relieve the CONTRACTOR or all contractors/subcontractors of the responsibility for its own acts or the acts of any contractors/subcontractors or any employees or agents of either. All contractors/subcontractors are to waive subrogation against the DISTRICT on all policies. CONTRACTOR shall be responsible for maintaining records evidencing contractors'/subcontractors' compliance with the necessary insurance coverages and limits, and such records shall be made available to the DISTRICT within 10 days upon request.
- T. It is CONTRACTOR's responsibility to ensure its compliance with the insurance requirements. Any actual or alleged failure on the part of the DISTRICT to obtain proof of insurance required under this Agreement shall not in any way be construed to be a waiver of any right or remedy of the DISTRICT, in this or any regard.
- U. Notice of Cancellation/Non-Renewal/Material Reduction. The insurance requirements hereunder are mandatory, and the DISTRICT may, at its sole and absolute discretion, terminate the services provided by CONTRACTOR, should CONTRACTOR breach its obligations to maintain the required coverage and limits set forth in this Agreement. No coverage required hereunder shall be cancelled, non-renewed or materially reduced in coverage or limits without the DISTRICT being provided at least thirty (30) days prior written notice, other than cancellation for the non-payment of premiums, in which event the DISTRICT shall be provided ten (10) days prior written notice. Replacement of coverage with another policy or insurer, without any lapse in coverage or any reduction of the stated requirements does not require notice beyond submission to the DISTRICT of an updated Verification of Insurance which shall be met by having the Insurance Broker/ Agent, or Officer, or Risk Manager update, sign and return the Insurance Requirements.

**I. Workers' Compensation and Employer's Liability Insurance Coverage**

- A. Workers' Compensation insurance including Employer's Liability insurance with minimum limits as follows:
  - Coverage A. Statutory Benefits Limits
  - Coverage B. Employer's Liability of not less than:
    - Bodily Injury by accident: \$1,000,000 each accident
    - Bodily Injury by disease: \$1,000,000 each employee
    - Bodily Injury by disease: \$1,000,000 policy limit

- B. If there is an onsite exposure of injury to CONTRACTOR, and/or contractor/subcontractor’s employees under the U.S. Longshore and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations or statutes applicable to maritime employees, coverage is required for such injuries or claims.
- C. If CONTRACTOR is exempt from carrying Workers’ Compensation Insurance, CONTRACTOR must return the completed Verification of Insurance confirming that CONTRACTOR has no employees and is exempt from the State of California Workers’ Compensation requirements.
- D. If CONTRACTOR is self-insured with respect to Workers’ Compensation coverage, CONTRACTOR shall provide to the DISTRICT a Certificate of Consent to Self-Insure from the California Department of Industrial Relations. Such self-insurance shall meet the minimum limit requirements and shall waive subrogation rights in favor of the DISTRICT as stated below in section “E.”
- E. Waiver of Subrogation. Workers’ Compensation policies, including any applicable excess and umbrella insurance, must contain a waiver of subrogation endorsement providing that CONTRACTOR and each insurer waive any and all rights of recovery by subrogation, or otherwise, against the DISTRICT, its directors, board, and committee members, officers, officials, employees, agents, and volunteers. CONTRACTOR shall defend and pay any and all damages, fees, and costs, of any kind arising out of, pertaining to, or in any way relating to CONTRACTOR’s failure to provide waiver of subrogation from the insurance carrier.

**Verification of Workers’ Compensation and Employer’s Liability Insurance Coverage**

By checking the box and signing below, I hereby verify that the CONTRACTOR is exempt from the State of California’s requirement to carry Workers’ Compensation insurance.

As the CONTRACTOR’s Insurance Broker/Agent, Officer, or Risk Manager, I hereby verify that I have reviewed and confirmed that the CONTRACTOR carries Workers’ Compensation insurance as required by this Agreement, including the relevant provisions applicable to all required insurance.

Self-Insured Retention: Amount: \$ \_\_\_\_\_

Policy Limit: \$ \_\_\_\_\_

Policy Number: \_\_\_\_\_

Policy Period: from \_\_\_\_\_ to \_\_\_\_\_

Insurance Carrier Name: \_\_\_\_\_

Insurance Broker/Agent or Officer or Risk Manager - Print Name: \_\_\_\_\_

Insurance Broker/Agent or Officer or Risk Manager’s Signature: \_\_\_\_\_

## **II. Commercial General Liability Insurance (“CGL”) Coverage**

- A. CONTRACTOR’s insurance shall be primary, and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.
- B. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policies or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the CONTRACTOR.
- C. Minimum Requirements. CGL insurance with minimum per occurrence and aggregate limits as follows:

Bodily Injury and Property Damage	\$2,000,000 per occurrence & aggregate
Personal Injury/Advertising Injury	\$2,000,000 per occurrence & aggregate
Products/Completed Operations	\$2,000,000 per occurrence & aggregate
- D. Coverage must be on an occurrence basis and be as broad as Insurance Services Office (ISO) form CG 00 01.
- E. Coverage for Products, and Completed Operations, and Ongoing Operations must be included in the insurance policies and shall not contain any “prior work” coverage limitation or exclusion applicable to any Services performed by CONTRACTOR and/or contractor/subcontractor under this Agreement.
- F. There will be no exclusion for explosions, collapse, or underground liability (XCU).
- G. Insurance policies and Additional Insured Endorsement(s) shall not exclude liability and damages to work arising out of, pertaining to, or in any way relating to services performed by contractor/subcontractor on CONTRACTOR’s behalf.
- H. Contractual liability coverage shall be included and shall not limit, by any modification or endorsement, coverage for liabilities assumed by CONTRACTOR under this Agreement as an “insured contract.”
- I. Waiver of Subrogation. The policy shall be endorsed to include a Waiver of Subrogation ensuring that the CONTRACTOR and its insurer(s) waive any rights of recovery by subrogation, or otherwise, against the DISTRICT, its directors, board, and committee members, officers, officials, agents, volunteers, and employees. CONTRACTOR shall defend and pay any and all damages, fees, and costs, of any kind, arising out of, pertaining to, or in any way resulting from CONTRACTOR’s failure to provide the waiver of subrogation from its insurance carrier(s).
- J. Independent Contractor’s Liability shall not limit coverage for liability and/or damages arising out of, pertaining to, or in any way resulting from Services provided under this Agreement.
- K. To the fullest extent permitted by law, the DISTRICT, its directors, board, and committee members, officers, officials, employees, agents, and volunteers must be covered as Additional Insureds on a primary and noncontributory basis on all underlying, excess and umbrella policies that shall be evidenced in each case by an endorsement. Coverage for the Additional Insureds

must be as broad as ISO forms CG 20 10 (ongoing operations) and CG 20 37 (completed operations) for liability arising in whole, or in part, from work performed by or on behalf of CONTRACTOR, or in any way related to Services performed under this Agreement.

- L. A severability of interest provision must apply for all the Additional Insureds, ensuring that CONTRACTOR's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the policies' limit(s).

**Verification of Commercial General Liability (CGL) Insurance Coverage**

**As the CONTRACTOR'S Insurance Broker/Agent, Officer, or Risk Manager, I hereby verify that I have reviewed and confirmed that the CONTRACTOR carries Commercial General Liability insurance, as required by this Agreement, including the relevant provisions applicable to all required insurance:**

**Self-Insured Retention: Amount: \$** \_\_\_\_\_

**Policy Limit:** \_\_\_\_\_

**Policy Number:** \_\_\_\_\_

**Policy Period: from** \_\_\_\_\_ **to** \_\_\_\_\_

**Insurance Carrier Name:** \_\_\_\_\_

**Insurance Broker/Agent or Officer or Risk Manager - Print Name:** \_\_\_\_\_

**Insurance Broker/Agent or Officer or Risk Manager's Signature:** \_\_\_\_\_

**III. Business Auto Liability Insurance Coverage**

- A. CONTRACTOR's insurance shall be primary, and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.
- B. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policies or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the CONTRACTOR.
- C. Minimum Requirements. Auto insurance with minimum coverage and limits as follows:
  - Each Occurrence Limit (per accident) and in the Aggregate: \$2,000,000
  - Bodily Injury and Property Damage: \$2,000,000
- D. Coverage must include either "owned, non-owned, and hired" autos or "any" automobile. This provision ensures the policy covers losses arising out of use of company-owned vehicles

(“owned autos”), employee’s personal autos (“non-owned autos” meaning not owned by company/insured) or autos that are rented or leased (“hired autos”).

- E. If CONTRACTOR is transporting hazardous materials or contaminants, evidence of the Motor Carrier Act Endorsement-hazardous materials clean-up (MCS-90, or its equivalent) must be provided.
- F. If CONTRACTOR’s Scope of Services under this Agreement exposes a potential pollution liability risk related to transport of potential pollutants, seepage, release, escape or discharge of any nature (threatened or actual) of pollutants into the environment arising out of, pertaining to, or in any way related to CONTRACTOR’s and/or contractor’s/subcontractor’s performance under this Agreement, then Auto Liability Insurance policies must be endorsed to include Transportation Pollution Liability insurance. Alternatively, coverage may be provided under the CONTRACTOR’s Pollution Liability Policies if such policy has no exclusions that would restrict coverage under this Agreement. Coverage shall also include leakage of fuel or other “pollutants” needed for the normal functioning of covered autos.
- G. To the fullest extent permitted by law, the DISTRICT, its directors, board, and committee members, officers, officials, employees, agents, and volunteers must be covered as Additional Insureds on a primary and noncontributory basis on all underlying and excess and umbrella policies.
- H. A severability of interest provision must apply for all the Additional Insureds, ensuring that CONTRACTOR’s insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the insurer’s limits of liability.

**Verification of Business Auto Liability Insurance Coverage**

**As the CONTRACTOR’S Insurance Broker/Agent, Officer, or Risk Manager, I hereby verify that I have reviewed and confirmed that the CONTRACTOR carries Business Automobile Liability insurance, as required by this Agreement, including the relevant provisions applicable to all required insurance:**

**Self-Insured Retention: Amount: \$** \_\_\_\_\_

**Policy Limit: \$** \_\_\_\_\_

**Policy Number:** \_\_\_\_\_

**Policy Period: from** \_\_\_\_\_ **to** \_\_\_\_\_

**Insurance Carrier Name:** \_\_\_\_\_

**Insurance Broker/Agent or Officer or Risk Manager – Print Name:** \_\_\_\_\_

**Insurance Broker/Agent or Officer or Risk Manager’s Signature:** \_\_\_\_\_

**IV. Professional Liability (also known as Errors and Omissions) Insurance Coverage**

- A. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage

of any insurance policies or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the CONTRACTOR.

B. Minimum Requirements: Professional Liability Insurance with minimum limits as follows:

Each Claim: \$2,000,000  
Aggregate Limit: \$2,000,000

If Coverage is written on a claims-made form, the following shall apply:

1. The retroactive date must be shown and must be before the date of the Agreement or the beginning of the Services.
2. Insurance must be maintained, and evidence of insurance must be provided for a minimum of three (3) years after completion of the Services.
3. If claims-made coverage is canceled or non-renewed, and not replaced with another claims-made policies form with a retroactive date prior to the effective date of the Agreement, CONTRACTOR must purchase an extended reporting period for a minimum of three (3) years after completion of the Services.

C. Insurance shall include prior acts coverage sufficient to cover the services under this Agreement.

**Verification of Professional Liability (Errors and Omissions) Insurance Coverage**

**As the CONTRACTOR’S Insurance Broker/Agent, Officer, or Risk Manager, I hereby verify that I have reviewed and confirmed that the CONTRACTOR carries Professional Liability insurance as required by this Agreement, including the relevant provisions applicable to all required insurance.**

**Self-Insured Retention: Amount: \$** \_\_\_\_\_

**Policy Limit: \$** \_\_\_\_\_

**Policy Number:** \_\_\_\_\_

**Policy Period: from** \_\_\_\_\_ **to** \_\_\_\_\_

**Insurance Carrier Name:** \_\_\_\_\_

**Insurance Broker/Agent or Officer or Risk Manager- Print Name:** \_\_\_\_\_

**Insurance Broker/Agent or Officer or Risk Manager’s Signature:** \_\_\_\_\_

**V. Pollution Liability Insurance Coverage**

A. CONTRACTOR’s insurance shall be primary, and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.

B. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policies or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the CONTRACTOR.

C. Minimum Requirements: Pollution Liability Insurance with minimum limits, as follows:

Each Claim or Occurrence Limit:	\$2,000,000
Aggregate Limit:	\$2,000,000

D. Coverage must be included for bodily injury and property damage, including coverage for loss of use and/or diminution in property value, and for clean-up costs arising out of, pertaining to, or in any way related to the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of contaminants or pollutants, arising out of, pertaining to, or in any way resulting from any Services performed by CONTRACTOR under this Agreement; including any transportation of hazardous wastes, hazardous materials, or contaminants.

E. If Coverage is written on a claims-made form, the following shall apply:

1. The retroactive date must be shown and must be before the date of the Agreement or the beginning of the Services.
2. Insurance must be maintained, and evidence of insurance must be provided for a minimum of three (3) years after completion of the Services.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement, CONTRACTOR must purchase an extended reporting period for a minimum of three (3) years after completion of the Services.

F. Insurance written on a claims-made basis shall include prior acts coverage sufficient to cover the services provided by CONTRACTOR under this Agreement.

**Verification of Pollution Liability Insurance Coverage**

**As the CONTRACTOR’S Insurance Broker/Agent, Officer, or Risk Manager, I hereby verify that I have reviewed and confirmed that the CONTRACTOR carries Pollution Liability insurance, as required by this Agreement, including the relevant provisions applicable to all required insurance.**

**Self-Insured Retention: Amount: \$** \_\_\_\_\_

**Policy Limit: \$** \_\_\_\_\_

**Policy Number:** \_\_\_\_\_

**Policy Period: from** \_\_\_\_\_ **to** \_\_\_\_\_

**Insurance Carrier Name:** \_\_\_\_\_

**Insurance Broker/Agent or Officer or Risk Manager - Print Name:** \_\_\_\_\_

**Insurance Broker/Agent or Officer or Risk Manager's Signature:** \_\_\_\_\_

**VI. Excess and/or Umbrella Liability Insurance Coverage (Optional – See Paragraph A below)**

- A. The insurance requirements set forth above may be satisfied by a combination of primary and excess or umbrella policies. Where excess or umbrella policies are used the following shall apply:
- B. CONTRACTOR's insurance shall be primary, and any insurance or self-insurance procured or maintained by the DISTRICT shall not be required to contribute to it.
- C. The insurance requirements under this Agreement shall be the greater of (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policies or proceeds available to the Named Insured. It is agreed that these insurance requirements shall not in any way act to reduce coverage that is broader or that includes higher limits than the minimums required herein. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the CONTRACTOR.
- D. Minimum Requirements: It is expressly understood by the parties that CONTRACTOR's Excess and/or Umbrella Liability policies shall, at minimum, comply with all insurance requirements set forth within this Agreement, and shall be at least as broad as coverage required of the underlying policies required herein.
  - 1. Coverage for Products, Completed Operations, and Ongoing Operations must be included in the insurance policies and shall not contain any "prior work" coverage limitation or exclusion applicable to any Services performed under this Agreement and, if it is a claims-made policy, it must be maintained for a minimum of three (3) years following final completion of the Services.
  - 2. There will be no exclusion for explosions, collapse, or underground damage (XCU).
  - 3. Insurance policies and Additional Insured Endorsements shall not exclude coverage for liability and damages from services performed by contractor/subcontractor on CONTRACTOR's behalf.
  - 4. Contractual liability coverage shall be included and shall not limit, by any modification or endorsement, coverage for liabilities assumed by CONTRACTOR under this Agreement as an "insured contract."
  - 5. Independent Contractor's Liability shall not limit coverage for liability and/or damage arising out of, pertaining to, or in any way related to Services provided under this Agreement.
  - 6. To the fullest extent permitted by law, the DISTRICT, its directors, officers, officials, agents, volunteers, and employees must be covered as Additional Insureds on a primary and noncontributory basis on all excess and umbrella policies. The Additional Insureds must be covered for liability arising in whole or in part from any premises, Products, Ongoing Operations, and Completed Operations by or on behalf of CONTRACTOR, in any way related to Services performed under this Agreement.

7. A severability of interest provision must apply for all the Additional Insureds, ensuring that the CONTRACTOR's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the policy's limits.
8. CONTRACTOR and its excess and/or umbrella Liability insurance coverage must waive any rights of subrogation against the DISTRICT, its directors, officers, officials, employees, agents, and volunteers, and CONTRACTOR shall defend and pay any damages as a result of failure to provide the waiver of subrogation from the insurance carrier(s).

**Verification of Excess and/or Umbrella Liability Insurance Coverage**

**As the CONTRACTOR'S Insurance Broker/Agent, Officer, or Risk Manager, I hereby verify that I have reviewed and confirmed that the CONTRACTOR carries Excess and/or Umbrella Liability insurance, as required by this Agreement, including the relevant provisions applicable to all required insurance.**

**Excess/Umbrella Limits: Amount \$** \_\_\_\_\_

**Policy Limit: \$** \_\_\_\_\_

**Policy Number:** \_\_\_\_\_

**Policy Period from** \_\_\_\_\_ **to** \_\_\_\_\_

**Insurance Carrier Name:** \_\_\_\_\_

**Underlying Policy(ies) listed above to which Excess/Umbrella applies:**

\_\_\_\_\_

**Insurance Broker/Agent or Officer or Risk Manager - Print Name:** \_\_\_\_\_

**Insurance Broker/Agent or Officer or Risk Manager's Signature:** \_\_\_\_\_



**EXHIBIT C**  
**GENERAL REQUIREMENTS**

# GENERAL REQUIREMENTS

Effective: June 9, 2021  
Supersedes: September 1, 2020

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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**

Contractor expressly warrants that all goods furnished will conform strictly with the specifications and requirements contained herein and with all approved submittals, samples and/or models and information contained or referenced therein, all affirmations of fact or promises, and will be new, of merchantable quality, free from defects in materials and workmanship, including but not limited to leaks, breaks, penetrations, imperfections, corrosion, deterioration, or other kinds of product deficiencies. Contractor expressly warrants that all goods to be furnished will be fit and sufficient for the purpose(s) intended. Contractor expressly warrants that all goods shall be delivered free from any security interest, lien or encumbrance of any kind, and free from any claim of infringement, copyright or other intellectual property violation, or other violation of laws, statutes, regulations, ordinances, rules, treaties, import

restrictions, embargoes or other legal requirements. Contractor guarantees all products and services against faulty or inadequate design, manufacture, negligent or improper transport, handling, assembly, installation or testing, and further guaranties that there shall be strict compliance with all manufacturer guidelines, recommendations, and requirements, and that Contractor guaranties that it will conform to all requirements necessary to keep all manufacturer warranties and guarantees in full force and effect. These warranties and guarantees are inclusive of all parts, labor and equipment necessary to achieve strict conformance, and shall take precedence over any conflicting warranty or guarantee. These warranties and guarantees shall not be affected, limited, discharged or waived by any examination, inspection, delivery, acceptance, payment, course of dealing, course of performance, usage of trade, or termination for any reason and to any extent. In the absence of any conflicting language as to duration, which conflicting language will take precedence as being more specific, Contractor's aforesaid warranties and guarantees shall be in full force and effect for a period of one year from the date of acceptance by the District but shall continue in full force and effect following notice from District of any warranty or guarantee issue, until such issue has been fully resolved to the satisfaction of District.

**8. NOT USED**

**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
- d. to post job site notices, "as prescribed by regulation" (LC § 1771.4).
- e. 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).

- f. 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.
- g. 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.
- h. 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.
- i. 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.
- j. 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.
- k. 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.
- l. General prevailing wage determinations have expiration dates with either a single
- m. 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**

If prevailing wages apply, Contractor and each Subcontractor, as appropriate, shall comply with the following:

- a. 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 the Project Manager will grant the Contractor an extension of time in an amount equal to the period of Excusable Delay based on the analysis of schedule impact and delay analysis diagram, which shall be the Contractor's sole and exclusive remedy for such delay. Excusable Delays shall include labor strikes, adverse weather, and Acts of God.
- 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
- e. District, and which were not concurrent with any other type of delay) the Project
- f. 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.
- g. 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**

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

**22. PROHIBITION OF ASSIGNMENT**

The Contractor shall not assign, transfer, or otherwise dispose of any of its rights, duties or obligations under this Contract. This prohibition does not apply to the District. The District retains the right to assign this Contract in whole or in part at any time upon reasonable terms.

**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**  
**Iran Contracting Form**



# EXHIBIT D IRAN CONTRACTING ACT CERTIFICATION

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

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

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

### CERTIFICATION FOR PARAGRAPH 1:

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

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

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

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

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

**OR**

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



# **EXHIBIT E**

## **Bond Forms**



DATE \_\_\_\_\_

# PAYMENT BOND

CONTRACTOR (Name and California address where service may be effected)

SURETY (Name and California address where service may be effected)

AMOUNT OF BOND (Sum in words and figures)

CONTRACT DOCUMENTS (As named in the Contract)

**KNOW ALL PERSONS BY THESE PRESENTS:**

THAT, WHEREAS, the contractor named above, hereinafter called the Contractor, has this day entered into a Contract with East Bay Municipal Utility District, hereinafter called the District, to perform and complete the work set forth in the Contract Documents named in the Contract, all now on file in the office of the Secretary of the District, as will more fully appear by reference to said Contract, which is made a part hereof; and

WHEREAS, Sections 9550 to 9566 inclusive of the Civil Code of the State of California, and any amendments thereof, require contractors upon public work to file with the body by whom such contract was awarded a good and sufficient bond to secure the claims to which reference is made in said sections, NOW THESE PRESENTS

WITNESSETH: That the Contractor, as Principal, and the Surety named above, as Surety, are held and firmly bound unto any and all materialmen, persons, firms, or corporations furnishing materials, provisions, or other supplies used in, upon, for, or about the performance of the work contracted to be done, and to all persons, firms or corporations renting or hiring implements or machinery for or contributing to the said work to be done and to all persons who perform work or labor of any kind or nature thereon, or in connection therewith, and to all persons who supply both work and materials, in the sum entered on the first page hereof, lawful money of the United States of America, being not less than the total amount payable by the terms of said Contract, for which payment well, truly and promptly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly, and severally, firmly by these presents.

**PAYMENT BOND**

The condition of the above obligation is such that if the Contractor, or the Contractor’s subcontractors, fail to pay for any materials, provisions or other supplies used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, the Surety will pay for the same, in an amount not exceeding the sum specified in this Bond, provided that any and all claims hereunder shall be filed and proceedings had in connection therewith as required by the provisions of said Sections 9550 to 9566 inclusive of the Civil Code of the State of California, and any amendments thereof: PROVIDED ALSO, that in case suit is brought upon this Bond a reasonable attorney’s fee shall be awarded by the court to the prevailing party in said suit, said attorney’s fee to be fixed as costs in said suit, and to be included in the judgment therein rendered.

No prepayment or delay in payment and no change, extension, addition, or alteration of any provision of said Contract or Contract Documents agreed to between the Contractor and the District, and no forbearance on the part of the District, shall operate to release the Surety from liability on this Bond, and consent to make such alterations without further notice to or consent by the Surety is hereby given, and the Surety hereby waives the provisions of Section 2819 of the Civil Code of the State of California.

Dated the day and year entered on the first page hereof.

Each signator to this bond hereby declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

\_\_\_\_\_  
Contractor

By \_\_\_\_\_

\*Title \_\_\_\_\_

By \_\_\_\_\_

\*\*Title \_\_\_\_\_

(SEAL OF SURETY)

\_\_\_\_\_  
Surety

By \_\_\_\_\_

Title \_\_\_\_\_

*Note: The signature of the Surety on this bond must be acknowledged before a Notary Public. An executed Power of Attorney indicating that the Surety’s representative is authorized to bind the Surety must accompany this bond.*

The foregoing Bond was accepted and approved this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_, East Bay Municipal Utility District

Specifications / Proposal No. \_\_\_\_\_

\*If corporation, Corporate President or CEO; if Partnership, Partner.  
\*\*Corporate Secretary or financial officer.



DATE \_\_\_\_\_

# FAITHFUL PERFORMANCE BOND

CONTRACTOR (Name and California address where service may be effected)
SURETY (Name and California address where service may be effected)
AMOUNT OF BOND (Sum in words and figures)
CONTRACT DOCUMENTS (As named in the Contract)

**KNOW ALL PERSONS BY THESE PRESENTS:**

THAT, the contractor named above, hereinafter called the Contractor, as Principal, and the Surety named above, as Surety, are held and firmly bound unto the East Bay Municipal Utility District, hereinafter called the District, in the sum entered above, lawful money of the United States of America, for the payment of which sum well and truly to be made to the District, we, and each of us, bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

The condition of the above obligation is such that whereas the Contractor and the District entered into a Contract of even date herewith, by the terms and conditions of which the Contractor agreed to perform and complete the work, or manufacture, complete, and deliver the material or equipment, set forth in the Contract Documents named in the Contract, all now on file in the office of the Secretary of the District, as will more fully appear by reference to said Contract, which is made a part of this bond;

# FAITHFUL PERFORMANCE BOND

NOW, THEREFORE, if the Contractor shall well and truly carry out, execute and perform all things by the Contractor to be carried out, executed and performed, according to the terms and conditions of said Contract, including any and all warranty and guaranty obligations contained therein, then this obligation shall become null and void, otherwise to remain in full force and effect throughout the period of performance, including any warranty or guaranty period.

No prepayment or delay in payment, and no change, extension, addition, or alteration of any provision of said Contract or Contract Documents agreed to between the Contractor and the District, and no forbearance on the part of the District shall operate to release the Surety from liability on this Bond, and consent to make such alterations without further notice to or consent by the Surety is hereby given, and the Surety hereby waives the provisions of Section 2819 of the Civil Code and Section 359.5 of the Code of Civil Procedure of the State of California.

Each signator to this bond hereby declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated the day and year entered on the first page hereof.

\_\_\_\_\_  
Contractor

By \_\_\_\_\_

\*Title \_\_\_\_\_

By \_\_\_\_\_

\*\*Title \_\_\_\_\_

(SEAL OF SURETY)

\_\_\_\_\_  
Surety

By \_\_\_\_\_

Title \_\_\_\_\_

*Note: The signature of the Surety on this bond must be acknowledged before a Notary Public. An executed Power of Attorney indicating that the Surety's representative is authorized to bind the Surety must accompany this bond.*

The foregoing Bond was accepted and approved this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_, East Bay Municipal Utility District

Specifications / Proposal No. \_\_\_\_\_

\*If corporation, Corporate President or CEO; if Partnership, Partner.

\*\*Corporate Secretary or financial officer.



**EXHIBIT F**  
**Contract Equity Program (CEP)**  
**Documents**

EAST BAY MUNICIPAL UTILITY DISTRICT



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CONTRACT EQUITY PROGRAM  
AND  
EQUAL EMPLOYMENT  
OPPORTUNITY GUIDELINES

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MARCH 2019

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# I. CONTRACT EQUITY PROGRAM

The following Contract Equity (CE) Program Guidelines were established to enhance equal opportunities for business owners.

The District provides assistance to all prospective bidders/proposers in obtaining subcontractor participation by all availability groups, including identification of possible business enterprises.

The CE Program requires bidders/proposers to conduct outreach to potential subcontractors to ensure that opportunities to participate in District contracts are publicized as widely as possible. This outreach is intended to broaden the pool of competitive bidders, lower prices to the District, and help achieve diversity among District contractors and subcontractors. The District's expectation is that with bidders'/proposers' Good Faith Outreach Efforts to subcontractors of all races, ethnicities, genders, and sexes, the composition of District contractors and subcontractors will reflect the broad diversity present in the marketplace, consistent with the Contracting Objectives of the CE Program.

Additionally, contractors and workers located in the counties of Alameda, Contra Costa, San Joaquin, Calaveras, Amador and other counties that are directly impacted by District contracts and/or operations, should be targeted in outreach efforts.

**A bidder's/proposer's noncompliance with these guidelines may deem its bid or proposal nonresponsive, and therefore, ineligible for contract award.**

The requirement of the District's CE Program is that all bidders/proposers **shall document** Good Faith Outreach Efforts in the ten areas set forth in Section A. Section B provides an exemption from this requirement for bidders/proposers who meet the District's Contracting Objectives or obtain a waiver from the District's Contract Equity Administrator.

**Materiality:** The documentation and certification required by the District are material, will govern the potential contractor and its subcontractors' performance and will be made part of the bid/proposal and the resulting contract with the District.

**Nondiscrimination:** 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, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (including genetic characteristics or cancer), genetic information, marital or domestic partnership status, family or medical leave status, sex, gender, gender identity, gender expression, age (over 40), sexual orientation, military and veteran status, pregnancy, pregnancy disability leave status, or any other status protected by federal, state and local laws. 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 this clause in all subcontracts.

The Contractor shall post applicable EEO policies and the District's "Working Together With Respect" poster to this effect in its workplace where the District contract is being performed.

**Severability:** Should any part of the CE Program be declared to be unconstitutional, invalid, or beyond the authority of the District to enter into or carry out, by a final decision of a court or tribunal of competent jurisdiction, such decision shall not affect the validity of the remainder of the Program, which shall continue in full force and effect.

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## A. GOOD FAITH OUTREACH EFFORTS

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All bidders/proposers shall implement all ten of the Good Faith Outreach Efforts listed below which are based on California Public Contract Code Section 2000<sup>1</sup>, subject to the provisions of Section B, and are encouraged to attend any pre-solicitation, pre-bid or pre-proposal meetings scheduled by the District to inform all bidders/proposers of the CE Program requirements.

The apparent low bidder/recommended proposer shall submit Form P-041 documenting such Good Faith Outreach Efforts, as applicable, within **2 Work Days** of bid opening time or in accordance with submittal guidelines in the request for proposal, bid document, or Instruction to Bidders.

To demonstrate Good Faith Outreach Efforts in each of the ten areas, the bidder/proposer shall have:

1. ***signed and submitted*** the Contract Equity Program Guidelines Certification, Form P-042, with the bid or proposal documents, certifying that the bidder is informed as to the Program requirements;
2. ***identified and selected*** specific subcontracting, supplying, and trucking areas of the contract to be performed by business enterprises in all availability groups as defined herein;
3. ***advertised*** not less than 10 calendar days before the date the bids/proposals are due, in one or more daily or weekly newspapers, minority, women or other association publications, trade-oriented journals, or other media, specified by the District, for all business enterprises that may be interested in participating in the contract;
4. ***provided*** written notice of interest in bidding/proposing on the contract to a reasonable number of enterprises in all availability groups not less than 10 calendar days before the date the bids/proposals are due. The District's business directory, which includes white men-,

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<sup>1</sup>The District will apply Section 2000 to include ALL business enterprises (not limited to minority- and women-owned business enterprises); and the term "local agency" in that section has been changed to "District".

white women-, and ethnic minority-owned firms, is available free of charge<sup>2</sup>. A list of agencies that also provide business directories can be found in the appendix of these guidelines;

5. ***followed up*** initial solicitations of interest by contacting the business enterprises to determine with certainty whether the enterprises are interested in performing specific items of the project;
6. ***provided*** interested business enterprises with information about the proposal, plans, specifications, and requirements for the selected subcontracting or material supply work;
7. ***requested*** assistance from community organizations or contractor groups; local, state, or federal business assistance offices, or other organizations that provide assistance in the recruitment and placement of business enterprises, if any is available;
8. ***negotiated*** in good faith with the business enterprises in all availability groups, and did not unjustifiably reject as unsatisfactory bids/proposals prepared by any such business enterprises, as determined by the District;
9. ***advised and/or made*** efforts, where applicable, to assist interested business enterprises in all availability groups in obtaining bonds, lines of credit, or insurance required by the District or potential contractor; and
10. ***implemented*** efforts that the District could reasonably expect to obtain business enterprise participation reflective of the broad diversity of contractors in the marketplace.

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## B. EXEMPTIONS FROM OUTREACH REQUIREMENTS

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### 1. CONTRACTING OBJECTIVES

The District has Contracting Objectives<sup>3</sup> based on the availability of all firms located in the District's geographic market areas that are interested in and able to do business with the District. Contracting Objectives apply to all contractors, regardless of their race, ethnicity, gender, or sex and to all contracts that are determined to have subcontracting opportunities, including supply opportunities and trucking. The CE Program groups all businesses into three (business owner) availability groups<sup>4</sup>:

- White Men
- White Women
- Ethnic Minority (both men and women)

Publicly held corporations managed and controlled by 51% of one of the three availability groups may count their participation towards meeting the contracting objective for that group.

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<sup>2</sup>The names of the firms listed in these directories are offered as a service. EBMUD has no independent knowledge regarding the composition of the firm's ownership, or the quality of the work performed by any listed entity.

<sup>3</sup>The Contracting Objectives represent percentages of the total value of a contract. The dollar value of the work performed by the contractor and his/her subcontractors is included in calculating the amount of participation by each availability group and determining if the Contracting Objectives are met. Contracting Objectives are based on the results of a Disparity Study conducted by the District which verified the number of businesses located within the District's geographic market area available to perform prime and subcontract work in all contracting categories.

<sup>4</sup>For example, when subcontracting opportunities are available, a \$200,000 construction contract would have 25% (\$50,000) or more of the work performed by white men-owned businesses, 9% (\$18,000) or more by white women-owned businesses, and 25% (\$50,000) by ethnic minority-owned businesses (both men and women).

Bidders/Proposers who already meet or exceed the Contracting Objectives for **all three availability groups**, as listed in the chart below, are exempt from the Good Faith Outreach Efforts requirements set forth in Section A.

<b>CONTRACTING OBJECTIVES</b>			
<b>AVAILABILITY GROUP</b>	<b>CONTRACTING CATEGORIES</b>		
	<b>Construction</b>	<b>Professional or General Services</b>	<b>Materials &amp; Supplies</b>
White Men	25%	25%	25%
White Women	9%	6%	2%
Ethnic Minorities (Men and Women)	25%	25%	25%

Contract participation includes all written agreements with business enterprises for any goods and services required for the completion of the project. This includes participation as a:

- Contractor
- Joint Venture Partner
- Subcontractor (including Trucker)
- Supplier (including provider of other services necessary to fulfill the requirements of the contract, such as shipping, transportation, testing, equipment rental, insurance services, etc.)

All business enterprises shall perform a commercially useful function, i.e., shall be responsible for the execution of a distinct element of work and shall carry out their responsibility by actually performing, managing and/or supervising the work.

The dollar value of the following is included for determining the amount of participation by each availability group for the Contracting Objectives:

- the work to be performed by the contractor,
- the work to be performed by each member of a joint venture,
- the work to be performed by subcontractors at any tier,
- material or supplies purchased from a manufacturer or dealer of such material or supplies, if not previously counted by contractor, joint venture, or subcontractor in their dollar value,
- reasonable fees and commissions for providing bona fide services to procure and/or deliver essential personnel, facilities, equipment, materials, or supplies required for performance of the contract,
- reasonable fees and commissions for providing bonds or insurance specifically required for the performance of the contract, and
- the dollar value of trucking is based on the following:
  - the amount to be paid to a trucker who performs the trucking with his/her own trucks, tractors, and employees,
  - the amount to be paid to trucking brokers provided the broker has submitted to the District information identifying the availability groups of all truckers to be used on the project, or
  - twenty percent (20%) of the amount to be paid to a trucking broker who has not provided such information.

## **2. NO SUBCONTRACTING OPPORTUNITIES**

Contracts which can be reasonably demonstrated to have no subcontracting, supplying, or trucking opportunities are exempt from the Good Faith Outreach Efforts requirements.

## **3. WAIVER**

Under limited circumstances, at the discretion of the Contract Equity Administrator, and upon written request by the bidder/proposer, a waiver of the CE Program's Good Faith Outreach Efforts requirements may be granted.

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## **C. INFORMATIONAL MEETINGS**

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The District may hold pre-solicitation, pre-bid, and/or pre-proposal meetings to explain the technical specifications and the Contract Equity Program and Equal Employment Opportunity Guidelines for an individual project. All prospective bidders/proposers/subcontractors are strongly advised to attend such pre-meetings. The time and place of the meeting, if any, will be announced in the front section of the bid/proposal document.

Pre-award and/or pre-notice-to-proceed meetings may be held with the recommended awardee to ensure that the technical specifications and the Contract Equity Program and Equal Employment Opportunity Guidelines for the project are fully understood, and to discuss the contents of the submitted forms and documents.

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## **D. DOCUMENTATION**

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### **1. CONSTRUCTION AND MATERIALS AND SUPPLIES CONTRACTS WITH SUBCONTRACTABLE ITEMS ONLY**

Apparent low bidders may be required to document Good Faith Outreach Efforts to achieve subcontractor participation within **2 Work Days** of bid opening time unless this requirement is otherwise stated in the Instruction to Bidders. Failure to submit the required information by the time specified may be grounds for determining the bid non-responsive.

## II. EQUAL EMPLOYMENT OPPORTUNITY

Pursuant to Policy 1.04 – Contractors’ Compliance with Equal Employment Opportunity, approved by the Board of Directors, all business enterprises and their subcontractors performing work for the District shall be Equal Employment Opportunity (EEO) employers. All business enterprises and their subcontractors shall assure that there is no discrimination, harassment or retaliation against any person based on race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (including genetic characteristics or cancer), genetic information, marital or domestic partnership status, family or medical leave status, sex, gender, gender identity, gender expression, age (over 40), sexual orientation, military and veteran status, pregnancy, pregnancy disability leave status, or any other status protected by federal, state and local laws, and shall be bound by all laws prohibiting such discrimination, harassment or retaliation in employment.

District contractors shall have written policies and procedures that a) prohibit EEO discrimination, harassment and retaliation, and b) set forth the contractor’s investigation procedures for responding to EEO complaints. Contractors shall submit documentation of those written policies and procedures upon request by the District in order to be considered as eligible for contract award. Contractors shall also post applicable EEO policies, procedures and the District’s “Working Together With Respect” poster in their workplaces where the District contract is being performed.

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### A. EMPLOYMENT DATA & CERTIFICATION (Form P-025)

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The Employment Data and Certification Form P-025 shall be completed as specified below or bid/proposal may be deemed nonresponsive:

1. For all Bidders/Proposers of the bid/proposal, to be submitted with bid package:

Complete Sections A and B of Form P-025. In Section B, the required employment data shall be for the bidder’s/proposer’s permanent workforce<sup>5</sup> only. An EEO-1 Report may be submitted in lieu of completing Section B. For informational purposes, the P-025 Form provides for a comparison of the bidder’s/proposer’s current workforce with the composition of the labor market in the Metropolitan Statistical Area or Areas (MSA) from which the bidder’s/proposer’s workforce is drawn. The bidder/proposer shall also complete Section C of Form P-025.

2. For Subcontractors/Suppliers/Truckers of the apparent low bidder, to be submitted within 2 Work Days of bid opening time or proposal submission due date:

Each bidder/proposer shall submit a Form P-025 for each subcontractor/supplier/trucker known at this time performing work equal to or greater than **\$80,000** under this specification in accordance with submission requirements given in the Instructions to Bidders or the Request for Proposal. The form shall be completed as provided in Paragraph 1. For informational purposes, the P-025 Form provides for a comparison of the subcontractor’s/supplier’s/trucker’s current

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<sup>5</sup> Permanent workforce is defined as employees with 6 months or more of continuous service.

workforce with the composition of the labor market in the MSA from which the subcontractor's/supplier's/trucker's workforce is drawn.

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## **B. GOOD FAITH OUTREACH EFFORTS TOWARDS EQUAL EMPLOYMENT OPPORTUNITY**

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Upon request, the apparent low bidder/proposer shall submit satisfactory documentation showing voluntary and legal Good Faith Outreach Efforts on its part to assure that its employment practices comply with EEO laws.

The District has not attempted to set forth either the minimum or maximum voluntary steps that contractors may take to address their respective employment situations. Contractors who do business with the District have flexibility to make those efforts that are best suited to their particular employment situation so long as those efforts are legal, in good faith and will best serve the goal of equal employment opportunity. Contractors have the option of submitting a copy of their Affirmative Action Plan, if they have one, or documentation of Good Faith Outreach Efforts which may include, but is not limited to, the following:

- Disseminating an equal employment opportunity and affirmative action policy both within the organization and externally.
- Having a recruitment program designed to attract qualified members of all ethnic and gender backgrounds available in the relevant job market such as by:
  - ✓ Notifying community organizations when employment opportunities are available and maintaining records of the organizations' responses;
  - ✓ Maintaining a file of the names and addresses of every worker referred as a result of outreach efforts, indicating what action was taken with respect to each referred person, and if the person was not employed, the reasons why;
  - ✓ Promptly notifying the District when the union(s) with whom the contractor or subcontractor has a collective bargaining agreement has not referred a worker, as requested; and
  - ✓ Making periodic recruitment efforts at schools, organizations, recruitment and training centers.
- Having a systematic plan to organize work and redesign jobs in ways that provide opportunities for persons lacking journey-level knowledge or skills to enter and, with appropriate training, to progress in a career field.
- Revamping selection procedures and seniority practices which have not yet been validated in order to reduce or eliminate exclusionary effects on particular groups in particular job classifications.
- Initiating measures designed to assure that members of all ethnic and gender backgrounds who are qualified to perform the job are included within the pool of persons from which the selection is made.
- Participating in community-based training programs and on-the-job training opportunities.
- Promoting after-school, summer and vacation employment for youth.
- Establishing a system to regularly monitor the effectiveness of the program for removing barriers to achieve equal employment opportunity, and the procedures for making timely adjustments in this program where effectiveness is not demonstrated.

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## **C. CONTRACTORS' EEO RESPONSIBILITIES ARISING FROM THE PERFORMANCE OF THE DISTRICT CONTRACT**

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The District requires all contractors to comply with state and federal EEO laws.

Contractors are required to promptly and appropriately address all EEO concerns that arise from the performance of the District contract raised by:

- Their employees,
- Their job applicants,
- EBMUD employees who allege EEO discrimination or harassment by the contractor or contractor's employee, and/or
- Members of the public who allege EEO discrimination or harassment by the contractor or contractor's employees.

All contractors shall cooperate fully with any District investigation of EEO complaints arising from the performance of the District contract that involve District staff. In that event, the District will provide copies of its policies and procedures regarding such investigations, and will require the contractor's cooperation in accordance with those policies and procedures.

All contractors shall distribute copies of their EEO policy, EEO complaint procedure, and the District's "Working Together With Respect" brochure/poster to all of their employees and post them in a prominent and accessible location in the workplace or on the project site. These documents shall provide the name and contact information of the contractor's staff responsible for responding to EEO concerns.

Contractors are required to provide training to all of their supervisors and managers to assure that they are aware of the contractor's prohibition against EEO discrimination, harassment and retaliation, and understand the process to report EEO concerns; and supervisors and managers shall respond appropriately when they become aware of EEO concerns. This training shall comply with California Government Code Section 12950.1.

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## **D. MONITORING COMPLIANCE**

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### **1. PRE-CONTRACT AWARD:**

The District will evaluate the documentation provided by the apparent low bidder/proposer under Section II.B and may request further documentation. The apparent low bidder/proposer shall submit all additional documentation required by the District in a timely manner or may be deemed a nonresponsive bidder/proposer. A nonresponsive bidder/proposer may be deemed ineligible for contract award.

### **2. POST-CONTRACT AWARD:**

The District will evaluate the documentation provided by the contractor in response to EEO complaints filed per Section II.C and may request further documentation. Contractors who fail to submit the required documentation in a timely manner may be denied future contracts with the District or have their contracts terminated.

# III. CONTRACT COMPLIANCE

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## A. RECORDS

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All firms doing business with the District shall:

- maintain records of all business enterprises performing work on the project, and records of total award and payments made to those enterprises,
- permit authorized District staff and/or authorized District representatives to review such records as may be required to assure the accuracy of the submitted information,
- submit a summary of subcontractor payments to the District with each payment request/invoice on the Subcontractor Payment Report (Form P-047) in the format required by the District,
- maintain all employment and personnel records of employees who worked on the District project for a minimum of two years, and
- maintain records of action(s) taken to address EEO discrimination, harassment, and retaliation complaints filed during and arising from the performance of the EBMUD contract.

**NOTE:** Failure to submit the required information in a timely manner may cause the District to hire an auditor, at the contractor's expense, to compile summary payment information, and/or may result in the withholding of payments and/or termination of the contract.

If requested by the District, the contractor shall submit the contractor's and/or subcontractors' records. These records are specified in the contract and may include any or all of the following:

- All contracts or purchase orders entered into with subcontractors, truckers, and suppliers;
- Payment records reflecting total contract award and total dollars actually paid to subcontractors, truckers, and suppliers. Such records shall indicate the name, business address, and actual monthly amount for each firm. Upon completion of the contract, the contractor shall submit, within thirty (30) calendar days, a summary of all the monthly summaries showing total dollars actually paid each firm during the whole contract;
- Certified weekly payroll records showing all employees and workers hired and dollar amounts and wage rates paid for work on this contract. Such payroll records shall include the name, address, social security number, sex, race, and other sufficient information for each employee to allow District verification of contractor and/or subcontractor compliance with the requirements for Equal Employment Opportunity;
- Monthly Employment Utilization Reports within ten (10) calendar days after the end of the month;
- Documentation of all Good Faith Outreach Efforts utilized in order to solicit, promote and increase all availability groups' participation;
- Records of action(s) taken to address EEO discrimination, harassment, and retaliation complaints filed during and arising from the performance of the EBMUD contract; and
- Any other records or documentation maintained by the contractor or its subcontractors which indicate their compliance with these Contract Equity Program and Equal Employment Opportunity Guidelines.

The contractor and all its subcontractors shall maintain records which include for each employee their:

- name,
- address,
- telephone number,
- construction trade/union affiliation/trade status (if any),
- dates of changes in trade status (if any),
- employee identification number (if any)/social security number,
- race,
- sex,
- hours worked per week in the indicated trade/task, and
- rate of pay.

Records shall be maintained in an easily understandable and retrievable form approved by the District.

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## **B. SUBCONTRACTOR SUBSTITUTION OR REPLACEMENT**

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The contractor may request to substitute or replace any subcontractor, including truckers, and suppliers, listed on the Form P-040 - Contract Equity Participation. Such requests shall be in writing, clearly state the reasons for the substitution or replacement, and provide supporting evidence or documentation as appropriate. No substitution or replacement shall occur without the prior written authorization of the District.

Authorization to utilize another subcontractor may be requested for the following reasons:

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, when that written contract, based upon the general terms, conditions, plans and specifications for the project involved or the terms of such subcontractor's written bid, is presented to the subcontractor by the Contractor, or
2. When the listed subcontractor becomes bankrupt or insolvent, or
3. When the listed subcontractor fails or refuses to perform his subcontract, or
4. When the listed subcontractor fails or refuses to meet the bond requirements of the Contractor as set forth in Section 4108 of the Public Contract Code, or
5. When the Contractor demonstrates to the District, subject to the further provisions set forth in Section 4107.5 of the Public Contract Code, that the name of the subcontractor was listed as the result of an inadvertent clerical error, or
6. When the listed subcontractor is not licensed pursuant to the Contractors License Law, or
7. When the District 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, or
8. When the listed subcontractor is ineligible to work on a public works project pursuant to Section 1725.5, 1777.1 or 1777.7 of the Labor Code, or
9. When the listed subcontractor is not a responsible contractor.

Prior to approval of the prime contractor's request for the substitution the District 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 shall have five working days within which to submit written objections to the substitution to the awarding authority. Failure to file these written objections shall constitute the listed subcontractor's consent to the substitution.

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

The contractor whose bid is accepted may not:

- (a) permit a subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed on the P-040 Form, without the consent of the District.
- (b) 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 one percent of the prime contractor's total bid as to which his or her original bid did not designate a subcontractor.

If a subcontractor is replaced, the contractor shall make Good Faith Outreach Efforts as set forth in these Contract Equity Program and Equal Employment Opportunity Guidelines when replacing the original or listed subcontractor with another District-approved firm. The contractor shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed subcontractor or by other forces (including those of the contractor) pursuant to prior written authorization of the District.

## IV. CONSEQUENCES OF NONCOMPLIANCE

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### A. ENFORCEMENT

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During the performance of the contract, the District may review the contractor's and its subcontractors' compliance with these Contract Equity Program and Equal Employment Opportunity Guidelines. Compliance shall be evaluated and measured from the initial day of performance under this contract. Noncompliance may be deemed a substantial material breach of the contract and the contract may be terminated.

Where the District finds the contractor or any of its subcontractors to be in noncompliance, the District may take such actions and impose such sanctions and penalties, described below, as may be appropriate to enforce compliance and recover District costs for damages caused by the breach of contract.

The District will notify the contractor in writing where the contractor or any of its subcontractors are not in compliance with these Contract Equity Program and Equal Employment Opportunity Guidelines. The contractor shall then notify the District in writing within five (5) working days as to what corrective measures shall be implemented by the contractor and/or subcontractor, trucker, and supplier to effect compliance.

In the event that the contractor or any of its subcontractors is still in noncompliance fifteen (15) working days after the date of the District's written citation, the contractor shall provide the District, within two (2) working days from the District request to do so, written documentation of all corrective measures and Good Faith Outreach Efforts implemented and their results.

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### B. CONTRACTOR'S NONCOMPLIANCE

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In the event of the contractor's noncompliance with these Contract Equity Program and Equal Employment Opportunity Guidelines during bidding/proposing, the contractor's bid/ proposal may be deemed nonresponsive, and therefore, ineligible for contract award.

In the event of the contractor's noncompliance with these Contract Equity Program and Equal Employment Opportunity Guidelines during the performance of the contract, the contractor may be considered in material breach of contract. In addition to any other remedy which the District may have under this contract or by operation of law, the District in its sole discretion may impose the following provisions against the contractor:

- Withhold progress payments to the contractor starting from the date of the District's written notification of noncompliance to the contractor and continuing for up to sixty (60) working days after the notification date or until compliance is verified by the District, or the contractor demonstrates to the satisfaction of the District that Good Faith Outreach Efforts have been implemented to correct the noncompliance, whichever occurs first.

In the event of willful noncompliance as determined by the District, the District may cancel or suspend the contract in whole or in part with continuance thereof conditioned upon showing a satisfactory to the District of the contractor's ability to comply.

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### **C. SUBCONTRACTOR'S NONCOMPLIANCE**

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The contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Contract Equity Program and Equal Employment Opportunity Guidelines.

The contractor shall take such action, including sanctions and penalties as appropriate, with respect to any subcontract or purchase order as necessary to enforce the terms and conditions of these Contract Equity Program and Equal Employment Opportunity Guidelines. In the event that the District determines that a subcontractor is in noncompliance, the District may also ask the contractor to terminate any such subcontract and substitute an eligible subcontractor in lieu thereof, at no increase in the contract price or time for performance.

Failure of the contractor to enforce subcontractor compliance with these guidelines may also be deemed a substantial material breach of the contract. The District, in its sole discretion, may impose against the contractor any or all of the provisions noted for contractor's noncompliance until such time that subcontractor's compliance is achieved.

## V. SUMMARY OF FORMS

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### CONSTRUCTION BIDDERS SHALL COMPLETE AND SUBMIT:

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- Form P-025** – Employment Data and Certification  
*(all Bidders shall submit with their bid; the apparent low Bidder **shall**, within 2 Work Days of bid opening time, **also submit** for all known Subcontractors doing \$80,000 or more worth of work)*
  - Form P-040** – Contract Equity Participation  
*(apparent low and second low Bidders within 2 Work Days of bid opening time)*
  - Form P-041** – Good Faith Outreach Efforts Documentation  
*(apparent low Bidder within 2 Work Days of bid opening time)*
  - Form P-042** – Contract Equity Program Guidelines Certification Form  
*(apparent low and second low Bidders within 2 Work Days of bid opening time)*
  - Form P-046** – Designation of Subcontractors  
*(all Bidders **shall** submit with bid; for all subcontractors doing over one-half of one percent of the Contractor's total bid amount)*
- 

### MATERIALS AND SUPPLIES BIDDERS SHALL COMPLETE AND SUBMIT:

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- Form P-025** – Employment Data and Certification  
*(all Bidders shall submit with their bid; the apparent low Bidder **shall**, within 2 Work Days of bid opening time, **also submit** for all known Subcontractors doing \$80,000 or more worth of work)*
  - Form P-040** – Contract Equity Participation  
*(apparent low and second low Bidders within 2 Work Days of bid opening time)*
  - Form P-041** – Good Faith Outreach Efforts Documentation  
*(apparent low Bidder within 2 Work Days of bid opening time)*
- 

### PROFESSIONAL/GENERAL SERVICES PROPOSERS SHALL COMPLETE AND SUBMIT WITH PROPOSAL:

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- Form P-025** – Employment Data and Certification  
*(all Proposers and their known Subcontractors doing \$80,000 or more worth of work)*
- Form P-040** – Contract Equity Participation  
*(all Proposers)*
- Form P-041** – Good Faith Outreach Efforts Documentation  
*(recommended Proposer as requested)*

# VI. APPENDIX

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## POLICY STATEMENTS

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### **Policy 1.03 – Contract Equity Program**

Prevent the District from participating in or perpetuating discrimination in the marketplace or granting of preferences based on race, sex, ethnicity or other protected categories as prohibited by Article 1, Section 31, of the California Constitution. The District will encourage balanced opportunities among all sexes, and racial and ethnicity groups by establishing contract participation objectives based on the availability, in its geographic market areas, of businesses by race, sex and ethnicity that are willing and able to do business with the District. The contracting objectives will be reviewed regularly and the progress toward achievement of the objectives will be reported to the Board of Directors in order to monitor achievement of equitable parity in contract participation.

### **Policy 1.04 – Contractors’ Compliance With Equal Employment Opportunity**

Ensure that all enterprises that do business with the District take lawful and adequate steps to assure that their employment practices comply with EEO laws.

Contractors shall furnish all information and reports required by the District to ensure their compliance with these policies. Notification of these policies will serve as official notice in determining responsiveness and compliance. Contractors who fail to comply with these policies may be denied contracts with the District or have their contracts terminated.

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## AGENCIES WITH BUSINESS DIRECTORIES

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- **State of California – Department of Transportation**  
Civil Rights Program – MS 79  
1823 – 14<sup>th</sup> Street, Sacramento, CA 95814  
916-324-8347, Fax: 916-324-1949, Toll Free: 866-810-6346  
Email: [DBE\\_Certification@dot.ca.gov](mailto:DBE_Certification@dot.ca.gov)  
Website: [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm)  
**Publication Distribution Unit - Disadvantaged Business Enterprise Directory**  
1900 Royal Oaks Drive, Sacramento, CA 95815-3800  
916-445-3520
- **City of Oakland – Contract Compliance & Employment Services Division**  
250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612  
510-238-3970, Fax: 510-238-3363  
Email: [cces@oaklandnet.com](mailto:cces@oaklandnet.com)  
Website: <http://cces.oaklandnet.com/ContComp>
- **City and County of San Francisco – Human Rights Commission**  
25 Van Ness Avenue, Suite 800, San Francisco, CA 94102-6033  
415-252-2530  
Email: [hrc.info@sfgov.org](mailto:hrc.info@sfgov.org) Website: <http://sf-hrc.org/>
- **Port of Oakland**  
530 Water Street, Oakland, CA 94607  
510-627-1419  
Email: [pbell@portoakland.com](mailto:pbell@portoakland.com) – Pamela Bell, SRD Contract Compliance  
Website: <http://www.portofoakland.com/srd/>
- **Alameda County General Services Agency**  
1221 Oak Street, Room 249, Oakland, CA 94612  
510-891-5500;  
Email: Patricia McFadden for SLEB Certification – [patricia.mcfadden@acgov.org](mailto:patricia.mcfadden@acgov.org)  
Susan Wewetzer for Contract Compliance – [susan.wewetzer@acgov.org](mailto:susan.wewetzer@acgov.org)  
Website: <http://www.acgov.org/auditor/sleb>
- **Department of General Services – Office of Small Business & DVBE Services**  
707 3<sup>rd</sup> Street, 1<sup>st</sup> Floor, Room 400, West Sacramento, CA 95605  
916-375-4940, Fax: 916-375-4950  
Email: [OSDSHelp@dgs.ca.gov](mailto:OSDSHelp@dgs.ca.gov)  
Website: <http://www.dgs.ca.gov/pd/programs/osds.aspx>

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## EBMUD BUSINESS DIRECTORY

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- **Contract Equity Office**  
375 – 11<sup>th</sup> Street, Oakland, CA 94623  
510-287-0114, Fax: 510-287-2158  
Email: [cntrteq@ebmud.com](mailto:cntrteq@ebmud.com)

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## GLOSSARY OF TERMS

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### AVAILABILITY GROUPS:

- **White Men-Owned Business:** An independent business that is at least 51% owned, operated and controlled by one or more non-ethnic minority men who are citizens or lawful permanent residents of the United States.
- **White Women-Owned Business:** An independent business that is at least 51% owned, operated and controlled by one or more non-ethnic minority women who are citizens or lawful permanent residents of the United States.
- **Ethnic Minority-Owned Business:** An independent business that is at least 51% owned, operated and controlled by one or more ethnic minority persons from the following groups who are citizens or lawful permanent residents of the United States:
  - **Black/African American**  
Persons having origins in any of the racial groups of Africa
  - **Hispanic/Latin American**  
Persons of Mexican, Puerto Rican, Cuban, Central or South American origin
  - **Asian-Pacific Island American**  
Persons having origins from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U. S. Trust Territories of the Pacific, or the Northern Marianas
  - **Asian-Indian American**  
Persons having origins from India, Pakistan, or Bangladesh
  - **Native American**  
Persons having origins in any of the original peoples of the Americas who maintain cultural identification through tribal affiliation or community recognition

### CONTRACTING OBJECTIVES:

The minimum percentage of the total value of a contract to be represented by businesses in each availability group, depending on the type of contract.

### CONTRACTOR:

The individual, partnership, joint venture, or corporation with whom the contract is made by the District. A contractor may be a construction contractor, a consultant, a supplier, a trucker, or a service provider.

### CONTROL:

There are two aspects of control: operational and managerial control; both of which are required. Under operational control, the 51%-or-more owner shall show that he or she independently makes the basic decisions in daily and long-term business operations. To determine managerial control, the 51%-or-more owner shall demonstrate that he or she makes independent and unilateral business decisions that guide the future and destiny of payroll clerks, letters of credit, contractual matters, banking services, and other such agreements.

### DISABLED VETERAN BUSINESS ENTERPRISE:

See **SMALL BUSINESS ENTERPRISE**.

### INDEPENDENT BUSINESS:

A business that is not inextricably associated with another firm through ownership, affiliation, or sharing of employees, facilities, profits, and losses.

## **GEOGRAPHIC MARKET AREA:**

Counties where most of the businesses are located which receive District contracts.

- **Construction:** Alameda, Contra Costa, San Francisco, and San Mateo Counties
- **Professional & General Services:** Alameda, Contra Costa, San Francisco, Santa Clara, and Marin Counties
- **Supplies:** Alameda, Contra Costa, San Francisco, Santa Clara, and San Joaquin Counties

## **JOINT VENTURE:**

An undertaking by two or more persons, without a corporate or partnership designation, formed for the purpose of carrying out a single business enterprise for profit.

## **LOCAL BUSINESS ENTERPRISE:**

A business whose primary place of business is a fixed office located in counties, such as Alameda, Contra Costa, San Joaquin, Calaveras, Amador and other counties that are directly impacted by District contracts and/or EBMUD operations. A fixed office is not a post office box, a temporary location, a movable property, a location that was established to oversee a project such as a construction project office, or work space provided in exchange for services, as opposed to monetary rent.

## **LOCAL RESIDENT:**

An individual employee who resides in Alameda, Contra Costa, San Joaquin, Calaveras, or Amador County or in any county(ies) directly impacted by this EBMUD project.

## **POTENTIAL CONTRACTOR:**

An individual, partnership, joint venture, or corporation who has participated in a competitive bid process or a qualification selection process to do business with the District as a construction contractor, consultant, supplier, trucker, or service provider.

## **REASONABLE FEES AND COMMISSIONS:**

Fees and commissions that are not excessive as compared with those customarily allowed for similar services.

## **SMALL BUSINESS ENTERPRISE:**

“Small business” means an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and which, together with affiliates, has 100 or fewer employees, and average annual gross receipts of fifteen million dollars (\$15,000,000) or less over the previous three years, or is a manufacturer, as defined in Government Code Section 14837 subdivision (c), with 100 or fewer employees.

For the purposes of public works contracts, as defined in Section 1101 of the Public Contract Code, and engineering contracts, as described in Section 4525 of the Government Code, for public works projects, awarded through competitive bids or otherwise, “small business” means an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and which, together with affiliates, has 200 or fewer employees, and average annual gross receipts of thirty-six million dollars (\$36,000,000) or less over the previous three years.

A Disabled Veteran Business that meets the following requirements shall also fall under the definition of a small business.

**DISABLED VETERAN BUSINESS ENTERPRISE:**

An independent business that is at least 51% owned and managed or controlled by one or more disabled veteran(s) who are citizens or lawful permanent residents of the United States and meets all the following:

- A veteran of the U.S. military, naval, or air service;
- The veteran must have a service-connected disability of at least 10% or more; and
- The veteran must be domiciled in California.

**SUBCONTRACTOR:**

The person or persons, co-partnership, firm or entity in direct contract with the Contractor or with any other Subcontractor for the purpose of furnishing materials, equipment, and/or performing a part of the contract work.

**SUPPLIER:**

A manufacturer, fabricator, distributor, or any person or organization who supplies materials or equipment for the contract work, including that fabricated to a special design, but who does not ordinarily perform labor at the jobsite.





# 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
PARENT COMPANY			<input type="checkbox"/> SUBCONTRACTORS/TRUCKERS/ SUPPLIERS
STREET ADDRESS (City, State, ZIP)			<b>Submit a separate P-25 form for each subcontractor/trucker/supplier doing work for \$80,000 or more.</b>
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.
<input type="checkbox"/> PRIVATE CORP.	<input type="checkbox"/> FOREIGN-OWNED
STATE OF INCORPORATION:	

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			Asian			Native American	Other Indicate	Refuse to State*
	White/ Caucasian	Black/ African American	Hispanic/ Latin American	Asian American	Asian-Pacific Islander American	Asian- Indian American			
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.

JOB CATEGORIES	RACE/ETHNICITY (number of employees)														Total A-N
	Hispanic or Latino		Not Hispanic or Latino							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	O	
Executive/Senior Level Officials & Managers															
First/Mid-Level Officials & Managers															
Professionals															
Technicians															
Sales Workers															
Administrative Support Workers															
Craft Workers															
Laborers & Helpers															
Service Workers															
<b>Firm's Total</b>															
<b>Bay Area* Total</b>															

\* 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 firm's 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

## 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.



# CONTRACT EQUITY PARTICIPATION (P-040)

BIDDER'S /  
PROPOSER'S NAME

PROJECT NAME

ADDRESS

SPEC. / PROPOSAL NO. (If applicable)

E-MAIL ADDRESS

BID / PROPOSAL AMOUNT \$

PHONE NO.

FAX NO.

This form shall be submitted by **first and second** apparent low bidders within 2 Work Days of bid opening time for construction projects and by **all proposers** with their proposal for professional and general services. All subcontractors<sup>1</sup>, truckers and suppliers at any tier level of participation, known at this time shall be listed on this form. Submit a separate P-025 form for each Subcontractor/Trucker/Supplier with a subcontract amount of \$80,000 or more.

COMPANY AND CONTACT NAME, ADDRESS, PHONE NUMBER AND E-MAIL ADDRESS	OWNERSHIP			TYPE OF WORK TO BE DONE <sup>3</sup>	ESTIMATED DOLLAR AMOUNT
	ETHNICITY <sup>2</sup>	GENDER			
		M	F		

Note: Additional spaces are provided on the back of this form.

The subcontractors, truckers, and suppliers listed in this schedule shall be utilized for the Work conditioned upon execution of a contract with East Bay Municipal Utility District. Substitution or replacements of these subcontractors, truckers, and suppliers must comply with Section III.B. Substitution or Replacement in the Contract Equity Program and Equal Employment Opportunity Guidelines.

\_\_\_\_\_  
Signature of Authorized Bidder / Proposer's Official

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Title

<sup>1</sup> The person or persons, co-partnership, firm or entity in direct contract with the Contractor or with any other Subcontractor for the purpose of furnishing materials, equipment, and/or performing part of the contract work.

<sup>2</sup> Ethnic Classifications: **A/PIA** Asian-Pacific Islander American      **H/LA** Hispanic/Latin American      **W/CA** White/Caucasian American  
**B/AA** Black/African American      **NA** Native American

<sup>3</sup> Describe exact portion, location (if necessary) of item to be performed or furnished by that subcontractor.





# GOOD FAITH OUTREACH EFFORTS DOCUMENTATION (P-041)

The apparent low bidder shall submit the following information to demonstrate that a good faith outreach effort to meet the Contracting Objectives has been made if its Form P-040 Contract Equity Participation indicates that the Contracting Objectives will not be met. It is suggested that even if the Contracting Objectives appear to be met on Form P-040, this form still needs to be completed in case the Contracting Objectives are determined by District evaluation to have not been met.

The *complete* description of the following items along with all of the Good Faith Outreach Efforts (GFOE's) are in the Section IA of the Contract Equity Program and Equal Employment Opportunity Guidelines:

- Items of works for which the bidder requested subbids, trucking or materials to be supplied by subcontractors in all availability groups
- Information furnished interested subcontractors, truckers, or suppliers in the way of plans, specifications and requirements for the work
- Any breakdown of items of work into economically feasible units to facilitate subcontractor participation (GFOE's #2 & 6)

ITEMS OF WORK OR SUPPLIES IDENTIFIED	
1	6
2	7
3	8
4	9
5	10
INFORMATION FURNISHED	
BREAKDOWN OF ITEMS	





# GOOD FAITH OUTREACH EFFORTS DOCUMENTATION (P-041)

- The names of subcontractors, truckers, and suppliers who submitted bids for any of the work indicated on page one of this form whose bids were not accepted
- A summary of the bidder's discussions and/or negotiations with them
- The name of the subcontractor, trucker or supplier that was selected for that portion of the work, and the reasons for the bidder's choice. *(If the reason for rejecting a bid was price, give the price bid by the rejected subcontractor and the price bid by the selected subcontractor, trucker, or supplier.) (GFOE #8)*

NAME OF REJECTED SUBCONTRACTOR	SUMMARY OF DISCUSSIONS / NEGOTIATIONS	NAME OF SELECTED SUBCONTRACTOR AND REASONS FOR THAT CHOICE

Please Note: Use additional sheets of paper, if necessary.



# GOOD FAITH OUTREACH EFFORTS DOCUMENTATION (P-041)

- Assistance that the bidder has extended to rejected subcontractors identified above to remedy the deficiency in their subbids (GFOE #9)

NAME OF REJECTED SUBCONTRACTOR	ASSISTANCE EXTENDED

- Any additional data to support a demonstration of good faith efforts, such as contacts with subcontractor's assistance agencies (GFOE #7):

NAME OF COMMUNITY ORGANIZATIONS OR CONTRACTORS GROUPS	ADDITIONAL GOOD FAITH OUTREACH EFFORTS

**Please Note:** Use additional sheets of paper, if necessary. Appropriate documentation, such as copies of newspaper ads, letters soliciting bids, and telephone logs, should accompany this form.



# CONTRACT EQUITY PROGRAM GUIDELINES CERTIFICATION (P-042)

Pursuant to the East Bay Municipal Utility District's ("District") Contract Equity Program Guidelines, Section I, Paragraph A.1, I hereby declare, under the penalty of perjury under the laws of the State of California, that

- 1) I am duly authorized to execute this certification on behalf of my company, corporation, joint-venture or sole-proprietorship, which has submitted a bid/proposal to District Specification/Proposal/Quotation No. \_\_\_\_\_ ;
- 2) I am familiar with the District's Contract Equity Program and Equal Employment Opportunity Guidelines and understand all of the program's requirements;
- 3) I understand and agree to comply with the District's Contract Equity Program, and all of the requirements therein, including each of the Good Faith Outreach Efforts;
- 4) I will post and distribute applicable District-supplied Equal Employment Opportunity material. My firm has a process for responding to complaints of Equal Employment Opportunity discrimination, harassment, and retaliation and a copy will be provided upon request;
- 5) I understand and agree that promoting local access to jobs that pay prevailing wages may improve the workforce diversity and may benefit employment in communities being impacted by this project; and
- 6) I understand, and expressly agree, on behalf of my company, corporation, joint-venture or sole-proprietorship, that the District may disqualify the bid/proposal submitted if we have not complied with the District's Contract Equity Program, and all of the requirements therein.

EXECUTED IN \_\_\_\_\_  
*(City, County, State)*

ON \_\_\_\_\_ FOR \_\_\_\_\_  
*(Month, Date, Year) (Bidder's / Proposer's Company Name)*

BY \_\_\_\_\_  
*(Print Name) (Title)*

\_\_\_\_\_  
*(Signature) (Phone Number)*



# 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.
3. The California State Department Industrial Relations (DIR) registration number of each subcontractor.

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 and DIR REGISTRATION 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 G**

### **Payment Terms**

## INVOICING

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.

Invoices shall be submitted in accordance with the terms and conditions set forth in the Statement of Work.

The District shall notify Contractor of any invoice adjustments required.

Invoices shall contain, at a minimum, District PO number, invoice number, remit to address, and itemized products and/or services description.

All deliverables must be submitted to and approved by the District, in writing, prior to the final payment being issued



**EXHIBIT H**  
**Public Works Forms**



## DECLARATION OF NONCOLLUSION

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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)

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

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



# DECLARATION OF ELIGIBILITY TO WORK ON PUBLIC WORKS PROJECTS

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The undersigned hereby certifies under penalty of perjury under the laws of the State of California that in connection with bidding on:

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The bidder is eligible to bid on public works projects in the State of California;

The bidder is not barred from bidding on or being awarded a contract for public works pursuant to California Labor Code Sections 1725.5, 1777.1 or 1777.7;

The bidder has obtained from each and every sub-contractor it intends to employ on this project, a statement of eligibility to work on public works projects in the State of California indicating that the subcontractor is not barred from performing work on a public works project pursuant to California Labor Code Sections 1725.5, 1777.1 or 1777.7;

If at any time during the course of performing work for East Bay Municipal Utility District, the contractor (formerly known as the bidder) becomes, or any of its sub-contractors become, ineligible to work on public works projects in the State of California, the contractor will immediately notify East Bay Municipal Utility District of this fact in writing.

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

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

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

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