



**REQUEST FOR PROPOSAL (RFP) No. ESS 0620**  
for  
**Flagging Services**

***ADDENDA***

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

***CONTACT***

**Andrew Elkin**, Construction Maintenance Scheduler  
(510) 287-0827  
[andrew.elkin@ebmud.com](mailto:andrew.elkin@ebmud.com)

***RESPONSE DUE***

Month September 2, 2025  
4:00 p.m. PST

***SUBMIT ELECTRONICALLY TO\****

**Andrew Elkin**, Construction Maintenance Scheduler  
[andrew.elkin@ebmud.com](mailto:andrew.elkin@ebmud.com)

*\*Hardcopy proposals will not be accepted*

# **EAST BAY MUNICIPAL UTILITY DISTRICT**

RFP for Flagging Services - No. ESS 0620

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**I. STATEMENT OF WORK**

**A. SCOPE**

The East Bay Municipal Utility District (District) invites all qualified flagging services contractors to provide their services throughout the District service area.

It is the intent of these specifications, terms, and conditions to use flagging services primarily to augment District forces during the repair or replacement of the District's infrastructure when District resources are not available. These services include assisting with traffic control, pedestrian assistance, street closure, detour setup, monitoring, removal, and the creation of certified traffic plans.

East Bay Municipal Utility District (District) intends to award a 1 year contract with four one year options to extend at the sole discretion of the District to the Proposer(s) who best meets the District's requirements.

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**B. PROPOSER QUALIFICATIONS**

**1. Proposer Minimum Qualifications**

- a. Proposer shall be certified, highly productive and willing to work "as directed."
- b. Proposer shall possess all permits, licenses, and professional credentials necessary to perform services as specified under this RFP.
- c. Proposer shall maintain proper licenses and be registered with DIR if applicable.

The District reserves the right, at any time during the term of the contract, to re-request any of the required documentation or to ask that contractor employees demonstrate their proficiency on equipment which they will operate in the performance of their duties for the District.

**C. SPECIFIC REQUIREMENTS**

Specific requirements are outlined in the following materials. All contractors submitting responses to this RFP must review these materials carefully and take actions as noted. Please be sure all required documents are included in the submission packages:

1. Review District guidelines for Flagging Services.

2. An agreement regarding payment of prevailing wages which must be signed and returned.
3. Statement of responsibility related to work performed for the District to be signed and returned.
4. Register your company on-line at [www.ebmud.com](http://www.ebmud.com) (if you are not registered).
5. Register with the Department of Industrial Relations (DIR) and provide your DIR number on the List of Equipment in Exhibit E.
6. A copy of the District Certificate of Liability Insurance.
7. Billing and Payment – Contractor shall invoice for services rendered using the attached description and rate sheet. Exhibit F. Rates for additional services not included on rate sheet should be discussed at the time services are scheduled and should be itemized separately on invoice.

**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 Proposer being recommended for contract award. The document providing this notification is the Notice of Intent to Award.

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 proposers or potential proposers only.

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

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. TAGS

"Tags", (also known by other names such as material tags, timesheets, receipts, Bill of Lading, etc), for the services that has been done or materials that have been delivered each day, **should be given only to the supervisor onsite (foreman, GPS, etc.) of the crew the driver is assigned to that day before being released for the day. The tags must include the following information:**

- a. Vendor name
- b. Program or project job number
- c. Date
- d. Jobsite address
- e. District ORG number
- f. First and last name of EBMUD onsite supervisor accepting tag
- g. Employee ID of EBMUD onsite supervisor accepting tag

- h. Quantity and description of materials delivered and/or quantity and description of hours worked, rounded to the nearest half hour (30 minutes).

F. **SUPPLIER PERFORMANCE EXPECTATIONS AND PROCESS**

**In order to maintain safety and service level expectations, all District service providers are expected to follow stated general guidelines as well as service/RFP specific guidelines and any stated additional guidelines. Depending upon the severity of the deviation from District requirements as stated in the RFQ/RFP the District may move forward with one or more of the following:**

- a. Formalized verbal warning by site manager to supplier's site staff and written documentation to supplier/contractor's supervisory management, EBMUD Purchasing and Contract Equity.
- b. District Purchasing and project staff meeting with supplier/contractors' management resulting in mutually accepted written agreement on resolution, and next actions if applicable.
- c. Final opportunity to cure issued by District requiring the supplier/contractor supervisory management to provide a formalized final plan to correct performance issues. This plan will include specific steps to ensure that no further deviations occur.

II. **CALENDAR OF EVENTS**

EVENT	DATE/LOCATION
RFP Issued	August 18, 2025
Response Due	September 2, 2025 by 4:00 p.m.
Notice of Intent to Award	September 15, 2025
Anticipated Contract Start Date	October 28, 2025

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

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

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

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

1. Contractors submitting complete application packets with all the requested requirements will be added to the Districts vendor list.
2. The District has the right to decline to award this contract or any part of it for any reason.
3. Any specifications, terms, or conditions issued by the District, or those included in the Proposer's submission, in relation to this RFP, may be incorporated into any purchase order or contract that may be awarded as a result of this RFP.
4. Award of contract. The District reserves the right to reject any or all proposals, to accept one part of a proposal and reject the other, unless the bidder stipulates to the contrary, and to waive minor technical defects and administrative errors, as the interest of the District may require. Award will be made or proposals rejected by the District as soon as possible after bids have been opened.

#### **B. PRICING**

Contractors are required to use the attached Flagging Rates Sheet (Exhibit E) for pricing when submitting itemized invoices.

Hourly pay rate will be considered for adjustment in years two and four of the agreement.

1. Prevailing Wages:

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.

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 Forty (\$40.00) and not more than Two Hundred (\$200.00) 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 provisions of Section 1776 of the Labor Code of the State of California shall be complied by the Contractor. 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.

Certified payroll shall be submitted to the District upon request.

c. INVOICING

1. After award, Contractors must refer to “Flagging Services Guidelines” (Exhibit D) and adhere to proper invoice requirements as specified within. Deviation from this format will cause delay and/or rejections in order to have invoice corrected and resubmitted in the correct format.



- a. 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. CONTRACTOR shall also provide any additional information requested by the DISTRICT in order to complete payment of the invoices. CONTRACTOR certifies that the proposed cost and pricing data used herein reflect the payment of prevailing wage rates where applicable and are complete, current, and accurate. CONTRACTOR agrees to use every appropriate method to contain its fees and costs under this Agreement.
2. The District will notify the contractor 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.

#### **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: **Andrew Elkin**, Construction Maintenance Scheduler  
EBMUD Equipment Support/Maintenance Support Division  
E-Mail: [andrew.elkin@ebmud.com](mailto:andrew.elkin@ebmud.com)  
PHONE: (510) 287-0827

**FOR INFORMATION ON THE CONTRACT EQUITY PROGRAM:**

Attn: Contract Equity Office  
PHONE: (510) 287-0114

**AFTER AWARD:**

Attn: **Andrew Elkin**, Construction Maintenance Scheduler  
EBMUD Equipment Support/Maintenance Support Division  
E-Mail: [andrew.elkin@ebmud.com](mailto:andrew.elkin@ebmud.com)  
PHONE: (510) 287-0827

##### **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,

and email to [andrew.elkin@ebmud.com](mailto:andrew.elkin@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.

Proposers 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) 287-0827 to check receipt of the proposal.

2. All costs required for the preparation and submission of an RFP response shall be borne by the Proposer.
3. California Government Code Section 4552: In submitting an RFP response to a public purchasing body, the Proposer offers and agrees that if the RFP response is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Proposer for sale to the purchasing body pursuant to the RFP response. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the Proposer.
4. Proposer expressly acknowledges that it is aware that if a false claim is knowingly submitted (as the terms "claim" and "knowingly" are defined in the California False Claims Act, Cal. Gov. Code, §12650 et seq.), the District will be entitled to civil remedies set forth in the California False Claim Act.
5. The RFP response shall remain open to acceptance and is irrevocable for a period of 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. **Proposers shall not modify the existing text for any part of Exhibits A, B, C, D, E, or F or qualify their RFP responses. Proposers shall not submit to the District a re-typed or otherwise re-created version of these documents or any other District-provided document.**
2. RFP responses, in whole or in part, are NOT to be marked confidential or proprietary. The District may refuse to consider any RFP response or part thereof so marked. RFP responses submitted in response to this RFP may be subject to public disclosure. The District shall not be liable in any way for disclosure of any such records.



**EXHIBIT A**  
**RFP RESPONSE PACKET**  
**RFP For Flagging Services – No. ESS 0620**

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

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

**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”**
- **PROPOSERS THAT DO NOT COMPLY WITH THE REQUIREMENTS, AND/OR SUBMIT AN INCOMPLETE RFP RESPONSE MAY BE SUBJECT TO DISQUALIFICATION AND THEIR RFP RESPONSE REJECTED IN WHOLE.**
- **IF PROPOSERS ARE MAKING ANY CLARIFICATIONS AND/OR AMENDMENTS, OR TAKING EXCEPTION TO ANY PART OF THIS RFP, THESE MUST BE SUBMITTED IN THE EXCEPTIONS, CLARIFICATIONS, AND AMENDMENTS SECTION OF THIS EXHIBIT A – RFP RESPONSE PACKET. THE DISTRICT, AT ITS SOLE DISCRETION, MAY ACCEPT AMENDMENTS/EXCEPTIONS, OR MAY DEEM THEM TO BE UNACCEPTABLE, THEREBY RENDERING THE RFP RESPONSE DISQUALIFIED.**
- **PROPOSERS 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.**



## PROPOSER INFORMATION AND ACCEPTANCE

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

Addendum #	Date

4. The undersigned hereby certifies to the District that all representations, certifications, and statements made by the Proposer, as set forth in this RFP Response Packet and attachments, are true and correct and are made under penalty of perjury pursuant to the laws of California.
5. The undersigned acknowledges that the Proposer is, and will be, in good standing in the State of California, with all the necessary licenses, permits, certifications, approvals, and authorizations necessary to perform all obligations in connection with this RFP and associated RFP documents.
6. It is the responsibility of each Proposer to be familiar with all of the specifications, terms, and conditions and, if applicable, the site condition. By the submission of an RFP response, the Proposer certifies that if awarded a contract it will make no claim against the District based upon ignorance of conditions or misunderstanding of the specifications.
7. Patent indemnity: General or Professional Service Providers who do business with the District shall hold the District, its Directors, officers, agents, and employees harmless from liability of any nature or kind, including cost and expenses, for infringement or use of any patent, copyright or other proprietary right, secret process, patented or unpatented invention, article, or appliance furnished or used in connection with the contract or purchase order.
8. Insurance certificates are not required at the time of submission. However, by signing Exhibit A – RFP Response Packet, the Proposer agrees to meet the minimum insurance requirements stated in the RFP. This documentation must be provided to the District prior to execution of an agreement by the District

and shall include an insurance certificate which meets the minimum insurance requirements, as stated in the RFP.

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

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

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

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

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

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

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

Type of Entity / Organizational Structure (check one):

☐ Corporation

☐ Joint Venture

☐ Limited Liability Partnership

☐ Partnership

☐ Limited Liability Corporation

☐ Non-Profit / Church

☐ Other: \_\_\_\_\_

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

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

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

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

Primary Contact Information:

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

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

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

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

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

Does proposer 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\_\_\_\_\_



## REQUIRED DOCUMENTATION AND SUBMITTALS

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

1. Prevailing Wage Agreement
2. Statement of Responsibility
3. Insurance Certificates (Workers Comp, Commercial General and Auto Liability)
4. **References:**
  - (a) Proposers must use the templates in the “References” section of this Exhibit A – RFP Response Packet to provide references.
  - (b) References should have similar scope, volume, and requirements to those outlined in these specifications, terms, and conditions.
    - Proposers must verify the contact information for all references provided is current and valid.
    - Proposers are strongly encouraged to notify all references that the District may be contacting them to obtain a reference.
  - (c) The District may contact some or all of the references provided in order to determine Proposer’s performance record on work similar to that described in this RFP. The District reserves the right to contact references other than those provided in the RFP response and to use the information gained from them in the evaluation process.
5. **Exceptions, Clarifications, Amendments:**
  - (a) The RFP response shall include a separate section calling out all clarifications, exceptions, and amendments, if any, to the RFP and associated RFP documents, which shall be submitted with the proposer’s RFP response using the template in the “Exceptions, Clarifications, Amendments” section of this Exhibit A – RFP Response Packet.
  - (b) **THE DISTRICT IS UNDER NO OBLIGATION TO ACCEPT ANY EXCEPTIONS, AND SUCH EXCEPTIONS MAY BE A BASIS FOR RFP RESPONSE DISQUALIFICATION.**
6. **Contract Equity Program:**
  - (a) Every proposer must fill out, sign, and submit the appropriate sections of the Contract Equity Program and Equal Employment Opportunity documents located at the hyperlink contained in the last page of this Exhibit A. Special attention should be given to

completing Form P-25, "Employment Data and Certification". Any proposer needing assistance in completing these forms should contact the District's Contract Equity Office at (510) 287-0114 prior to submitting an RFP response.





**REFERENCES**  
**RFP For Flagging Services No. ESS 0620**

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

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

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

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

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

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

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



EXCEPTIONS, CLARIFICATIONS, AMENDMENTS  
RFP For Flagging Services No. ESS 0620

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

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

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

Reference to:			Description
Page No.	Section	Item No.	
p. 23	D	1.c.	Proposer takes exception to...
			Contract

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

PROPOSER shall take out and maintain during the life of the Agreement all insurance required and PROPOSER 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.

PROPOSERS 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 coverages 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:** \_\_\_\_\_

**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**  
**RFP For Flagging Services No. ESS 0620**  
Effective: 13 September 19  
Supersedes: 30 May 17

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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,
- c. 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 guaranties 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 to post job site notices, "as prescribed by regulation" (LC § 1771.4).
- d. To the extent applicable, pursuant to Section 1773 of the Labor Code, the District has obtained from the Director of Industrial Relations of the State of California, the general prevailing rates of per diem wages and the general prevailing rates for holiday and overtime work in the locality in which the Work is to be performed, for each craft, classification, or type of worker needed to execute the contract. Pursuant to Section 1773.2 of the Labor Code, a copy of the prevailing wage rates is on file with the District and available for inspection by any interested party at [www.dir.ca.gov](http://www.dir.ca.gov).

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

## 12. PAYROLL RECORDS & ELECTRONIC SUBMISSION

- a. The Contractor and each Subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the Work. The payroll records shall be certified and shall be available for inspection in accordance with the provisions of Section 1776 of the Labor Code. Certified payroll records shall be on the forms provided by the DIR or contain the same information required on the Department's form.
- b. The Contractor shall submit for each week in which any contract Work is performed a copy of all payroll records to the Project Manager. The Contractor shall be responsible for submission of copies of payroll records of all Subcontractors.
- c. The Contractor or Subcontractor shall certify the payroll records as shown on the DIR form. In addition, the records shall be accompanied by a statement signed by the Contractor or Subcontractor certifying that the classifications truly reflect the Work performed and that the wage rates are not less than those required to be paid.
- d. For public works projects awarded on or after April 1, 2015, or that are still ongoing after April 1, 2016, no matter when awarded, each Contractor and Subcontractor shall furnish the certified payroll related records as more specifically described above and in Labor Code section 1776 directly to the Labor Commissioner (see LC § 1771.4). These records shall be provided to the Labor Commissioner at least monthly or more frequently if required by the terms of the Contract. For exception on projects covered by collective bargaining agreements like a PLA, please see Labor Code section 1771.4.
- e. In the event of noncompliance with the requirements of Section 1776 of the Labor Code, the Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respect such Contractor must comply with said Section. Should noncompliance still be evident after such 10-day period, the Contractor shall, as a penalty to the State or the District, forfeit the amount set forth in Section 1776 of the Labor Code for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.
- f. The Contractor and every Subcontractor shall post at the workplace and comply with all required wage related workplace postings. Copies of the required postings

may be downloaded or ordered electronically from the Department of Industrial Relations website at <http://www.dir.ca.gov/wpnodeb.html>.

### **13. HOURS OF LABOR**

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

- a. Eight hours of labor constitutes a legal day's Work under the contract.
- b. The time of service of any worker employed upon the work shall be limited and restricted to eight hours during any one calendar day, and forty hours during any one calendar week except as provided in Article 13.d 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 an 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 change directive. The change directive will authorize the Contractor to proceed with the work subject to the cost quotation submitted by the Contractor. Within five days following receipt of the change directive, the Contractor shall submit a detailed change proposal documenting the amount of compensation. The Project Manager will review the change proposal and, at its option, will either issue an approved Change Order for the work or direct the Contractor to perform the work through Force Account. Until the method of compensation is determined and the approved Change Order is received, the Contractor shall keep full and complete time and material records of the cost of the ordered work and shall permit the Project Manager to have access to such records. An approved Change Order shall supersede any previously issued written change directive covering the same Work.

## **16. EFFECT OF EXTENSIONS OF TIME**

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

## **17. DELAYS**

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

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

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



## 18. TERMINATION

### a. Termination by the District for Cause:

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



- ii. If any of the above events occur, the District may, in its discretion, require that the Contractor submit a written plan to cure its default, which plan must be provided to the District within 5 business days of the request and must include a realistic, executable plan for curing the noted defaults.
- iii. Upon any of the occurrences referred to in Article 18.a.i. above, the District may, at its election and by notice to the Contractor, terminate the Contract in whole or in part; accept the assignment of any or all of the subcontracts; and then complete the Work by any method the District may deem expedient. If requested by the District, the Contractor shall remove any part or all of the Contractor's materials, supplies, equipment, tools, and machinery from the site of the Work within seven days of such request; and, if the Contractor fails to do so, the District may remove or store, and after 90 days sell, any of the same at the Contractor's expense.
- iv. No termination or action taken by the District after termination shall prejudice any other rights or remedies of the District provided by law or by the Contract Documents.
- v. Conversion: If, after termination for other than convenience, it is determined that the Contractor was not in default or material breach, or that the default or material breach was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for convenience pursuant to Article 18.b. below.

b. Termination by the District for Convenience:

- i. The District may, at its option, and for its convenience, terminate the  
Contract at any time by giving written notice to the Contractor specifying the effective date of termination. Upon such termination, the Contractor agrees to comply with the notice and further agrees to waive any claims for damages, including loss of anticipated profits, on account of the termination; and, as the sole right and remedy of the Contractor, the District shall pay the Contractor as set forth below.
- ii. Upon receipt of a notice of termination for convenience, the Contractor shall, unless the notice directs otherwise, do the following:
  - 1. Immediately discontinue its performance of the Contract to the extent specified in the notice.

2. Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of a portion of the Work that is not discontinued or that is necessary for an orderly cessation of the Work.
  3. Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent they relate to the performance of the discontinued portion of the Work.
  4. Thereafter, do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment in transit to or on the site of performance.
- iii. Upon such termination for convenience, the District will pay to the Contractor the sum of the following:
1. The amount of the contract sum allocable to the portion of the Work properly performed by the Contractor as of the effective date of termination, less sums previously paid to the Contractor.
  2. Previously unpaid costs of any items delivered to the project site that were already fabricated for subsequent incorporation into the Work.
  3. Any proven losses with respect to materials and equipment directly resulting from the termination.
  4. Reasonable demobilization costs.
- iv. Upon such termination for convenience, the District will pay to the Contractor the sum of the following: The above reimbursement is the sole and exclusive remedy to which the Contractor is entitled in the event the contract is terminated for convenience; and the Contractor expressly waives any other claims, damages, demands, compensation or recovery related to this contract or project. The Contractor agrees to sign a general release incorporating this waiver.

- c. Effect of Termination: Upon termination, the obligations of the Contract shall continue as to portions of the Work already performed and, subject to the

Contractor's obligations under Article 18.b.ii, as to bona fide obligations assumed by the Contractor prior to the date of termination.

- d. Force Majeure: If the contract is suspended or terminated by the District because Contractor's performance is prevented or delayed by an event including an irresistible, superhuman cause, or by the act of public enemies of the State of California or of the United States ("Force Majeure"), the Contractor will be paid for Work performed prior to the Force Majeure event at either (i) the unit prices named in the Contract; or (ii) in the event no unit prices are named, a sum equal to the percentage of the total contract amount that matches the percentage of the total contract Work performed prior to the Force Majeure event.

## **19. DAMAGES**

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

## **20. ORDER OF PRECEDENCE**

- a. In the case of conflicts, errors, or discrepancies in any of the Contract Documents, the order of precedence is as follows. Within the same order of precedence, specific requirements shall take precedence over general requirements.
  - i. Approved Change Orders.
  - ii. Addenda.
  - iii. RFQ or RFP.
  - iv. Referenced Standard Specifications and Drawings.
  - v. Contractor's Response Packet.
- b. With reference to drawings:
  - i. Numerical dimensions govern over scaled dimensions.
  - ii. Detailed drawings govern over general drawings.
  - iii. Addenda/Change Order drawings govern over contract drawings.

- iv. Contract drawings govern over standard drawings.
- v. Notes apply only to the drawing where the notes appear, unless classified as “typical” or intended to apply elsewhere in which case they apply to all drawings where the conditions or circumstance noted occurs.
- vi. Typical details apply to all drawings unless a specific different detail is shown.

## **21. INDEMNIFICATION/RESPONSIBILITY**

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

## **22. PROHIBITION OF ASSIGNMENT**

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

### EBMUD GUIDELINES FOR FLAGGING SERVICES

#### RFP For Flagging Services No. ESS 0620

- Rate Per Hour – The District will pay the attached Flagging Sheet Rates (Exhibit E)
- Invoice must contain the following information:
  - a. Site supervisor/contact person name
  - b. EBMUD budget unit number
  - c. Program or project job number
  - d. Location of jobsite
  - e. Attach copy of any tags and or permits.
- Work day is 8-hours Monday through Friday, with possible flex start times.
- Partial days may be required and will be paid at a 4-hour minimum or actual time worked whichever is greater.
- Lunches and breaks are taken in conjunction with District Crew schedules unless otherwise directed by GPS, Foreman, or Lead person of job. **EBMUD does not pay for breaks and lunch.**
- If job is canceled before the end of the previous day's work shift (4:30 PM) no time will be paid.
- For same day rain delay, FM&O flagging service personnel will be paid 2 hours reporting time or actual hours worked whichever is greater.
- If a job is cancelled for other than operator's equipment breakdown or rain delay, the District will pay a 4-hour minimum or actual hours worked whichever is greater.
- Standard hourly Labor rate + standard hourly equipment rate = standard hourly work rate.
- Overtime will be paid at 1.5 times the standard hourly labor rate when authorized by EBMUD. Referred to as "Time and a half" on the rate sheet. (EBMUD pays overtime for labor only, not equipment.)
- Sundays and holidays will be paid at two times the standard hourly labor rate when authorized by EBMUD. Referred to as "Double time" on the rate sheet. (EBMUD pays overtime for labor only, not equipment.)
- Prevailing wages are in effect when working for EBMUD.
- Travel time is not billable
- Equipment move time, if any, will be calculated into your standard hourly rate.
- Equipment break down will not be paid time.
- Equipment must be in good repair, have no excessive leaks, and meet all DMV and OSHA requirements.
- The District reserves the right to reject any equipment arriving at a jobsite with obvious safety defects or deficiencies.
- When required, must have a current Department of Industrial Regulations (DIR) number on file with EBMUD to be active.

- All FM&O vendors will provide and wear all Personal Protective Equipment (PPE), which at a minimum will consist of hard hat, reflective vest, steel toed safety boots, and hearing protection.
- The District does not pay for any surcharges unless agreed to ahead of time.
- In cases where contractor has billed the District for permit fees or bonds related to work performed and some or all of these fees are refunded to contractor by said city/agency, contractor shall refund EBMUD in that amount.
- All work assignments will be at the discretion of the District and the Equipment Support Section (ESS) is the only District group authorized to assign work. Work assignments from any work group or District staff other than ESS is unauthorized.



**EXHIBIT E**  
**FLAGGING RATE SHEETS**  
**RFP For Flagging Services No. ESS 0620**

ITEM#	ITEM	DESCRIPTION	PRICE PER HOUR
1	<b>Mon-Fri (8 hour Workday)</b>	Includes 2 Traffic Control Workers (TCW) with Truck & Equipment (including setup and take-down)	\$239.00
2		<i>Time and a Half after 8 Hours/Day</i>	\$339.00
3		<i>Double Time after 12 Hours/Day</i>	\$452.00
4		<b>Additional TCW</b>	\$113.00
5		<i>Time and a Half after 8 Hours/Day</i>	\$169.50
6		<i>Double Time after 12 Hours/Day</i>	\$226.00
7	<b>Saturdays (8 hour workday)</b>	Includes 2 TCW with Truck & Equipment (setup and take-down)	\$287.00
8		<i>Time and a Half after 8 Hours/Day</i>	\$411.00
9		<i>Double Time after 12 Hours/Day</i>	\$548.00
10		<b>Additional TCW</b>	\$137.00
11		<i>Time and a Half after 8 Hours/Day</i>	\$205.50
12		<i>Double Time after 12 Hours/Day</i>	\$274.00
13	<b>Sundays/Holidays (8 hour workday)</b>	Includes 2 TCW with Truck & Equipment (setup and take-down)	\$342.00
14		<i>Time and a Half after 8 Hours/Day</i>	\$591.00
15		<i>Double Time after 12 Hours/Day</i>	\$788.00
16		<b>Additional TCW</b>	\$197.00
17		<i>Time and a Half after 8 Hours/Day</i>	\$295.50
18		<i>Double Time after 12Hours/Day</i>	\$394.00
		<b>RENTAL ITEMS</b>	<b>UNIT PRICE</b>
19	<b>Daily</b>	Arrow Board/FAS, rental per day, Each	\$83.00
20	<b>Weekly</b>	Arrow Board/FAS, rental per week, Each	\$239.00
21	<b>Daily</b>	PCMS/Message Board, rental per day, Each	\$197.00
22	<b>Weekly</b>	PCMS/Message Board, rental per week, Each	\$597.00

**EXHIBIT F**  
**ADDITIONAL INFORMATION TO BE PROVIDED TO THE DISTRICT**  
**RFP For Flagging Services No. ESS 0620**

1. PREVAILING WAGE AGREEMENT
2. STATEMENT OF RESPONSIBILITY

PREVAILING WAGE AGREEMENT

\_\_\_\_\_ agrees to pay prevailing  
wages to

(Name of Company)

all qualified employees as outlined per the California DIR working on District projects. I understand failure to comply with the prevailing wage guidelines will result in termination of all District purchase orders and the disqualification of my company as an acceptable vendor until all applicable state laws are adhered to.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

### STATEMENT OF RESPONSIBILITY

I agree to perform services when required by EBMUD under the terms and conditions stated on the purchase order and the Statement of Responsibility as shown below. Any changes to this agreement must be agreed to in writing by the District. The District assumes no responsibility whatsoever for loss or damage of equipment owned and/or operated by the contractor, his agents, or employees.

The entire responsibility for any and all injury to the public, to individuals, and to property resulting directly or indirectly from the performance of the work hereunder shall rest upon the contractor, and he expressly agrees to indemnify, defend, and hold the District, its Directors, officers, and employees free and harmless from and against any and all loss, liability, expense, claims, costs, suits, and damages including attorneys' fees, arising out of the contractor's operation, performance, or negligence under this contract.

All safety orders, rules, and recommendations of the Division of Industrial Safety of the Department of Industrial Relations of the State of California applicable to the work to be done under this contract shall be obeyed and enforced by the contractor. The contractor shall comply with all applicable Federal, State, and local laws, ordinances, codes, and regulations.

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Company Name

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Signature

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Printed Name and Title

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Date