

EAST BAY MUNICIPAL UTILITY DISTRICT

REQUEST FOR QUOTATION (RFQ) No. 1911 for COMPACT FRONT LOADING COLD MILLING MACHINE

Contact Person: John W. Grimes, Buyer II
Phone Number: (510) 287-0316
E-mail Address: john.grimes@ebmud.com

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

RESPONSE DUE
by
1:30 p.m.
on
January 16, 2019
at
EBMUD, Purchasing Division
375 Eleventh St., First Floor
Oakland, CA 94607



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

EAST BAY MUNICIPAL UTILITY DISTRICT

RFQ No. 1911

for

COMPACT FRONT LOADING COLD MILLING MACHINE

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

It is the intent of these specifications, terms, and conditions to describe requirement to furnish and deliver, f.o.b. the District's Heavy Equipment Garage, 1199 – 21st Street, Oakland, California 94607, one (1) Wirtgen Model W 120 CFI Compact Front Loading Cold Milling Machine, or pre-approved equal, as specified within.

East Bay Municipal Utility District (District) intends to award a contract to the lowest cost bidder(s) whose response meets the District's requirements.

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

- a. Bidder, bidder's principal, or bidder's staff shall have been regularly engaged in the business of providing construction or commercial truck equipment for at least three (3) years.
- b. Bidder shall be a certified or Wirtgen manufacturer, dealer, or provider.
- c. Bidder shall possess all permits, licenses, and professional credentials necessary to supply product and perform services as specified under this RFQ.

C. SPECIFICATIONS

1. This District requirement is for Compact Front Loading Cold Milling Machine, as specified. All products shall be in brand new and unused condition.
2. **Approved Manufacturer/Model and Pre-Approved or Equal Procedure:**
 - **Wirtgen/Model W 120 CFI**
 - Or other pre-approved equal(s)

Manufacturer/Models other than those listed will be considered as part of this bid submittal process, provided that, by December 27, 1018, interested parties shall have submitted substitutions for approval as detailed below:

- a. **Proposals for "pre-approved or equal" substitutions requested during the bidding period shall be furnished in writing to:**

Mtc. Support Division, Jason Nossardi (MS #58)
ofc. (510)287-0878, cell. (510)772-9785, jason.nossardi@ebmud.com

East Bay Municipal Utility District
P.O. Box 24055
Oakland, CA 94623-1055

Outside of mailing envelope shall be marked "Submittal Request for Substitution, RFQ No. 1911." **The requests for substitution must be submitted by December 27, 2018.**

- b. Proposals shall be accompanied by complete technical and descriptive data necessary to determine equality of the material, product, thing, or service. Samples shall be provided when requested. The burden of proof as to availability, comparative quality, suitability, and performance of the proposed substitution shall be upon the bidder. The bidder will not be reimbursed for any work and costs necessary for making the substitution workable. Proposals will be evaluated and deemed accepted, rejected, or incomplete by the District; the District will be the sole judge as to such matters. **If the substitution is accepted, bidders will be notified by addenda.**
3. Unit shall be a brand new and unused model of Wirtgen W 120 CFi compact front loading cold milling machine, mounted on four crawler tracks, or District pre-approved equivalent, with all standard equipment as described in the manufacturer's published literature and manuals, as well as special accessories described herein. The machine shall be completely serviced and ready for use prior to inspection and delivery. The model bid shall be a current production machine and there shall be a minimum of 12 units operating successfully in California. **Unit(s) offered shall meet the following specifications:**

DIMENSIONS AND CAPACITIES:

Overall Length (transport)	40' 11" (max)
Height (transport)	9' 10" (max)
Width	9' 1" (max)
Weight, Shipping	44,290 lbs. (min)
Weight, Operating, CE	46,936 lbs. (min)
Weight, Operating Maximum	48,933 lbs. (max)

MILLING DRUM:

Drum diameter at cutting bit, tip to tip	39" (min)
Cutting width	48" (min)
Cut depth range, single pass	0"-13" (min)
Number of teeth per inch of drum length	2.5 (min)
Maximum cross slope angle	10 deg (min)

CONVEYORS:

Swing angle, from center	60 deg left, 60 deg right (min)
Width, pickup	26" (min)
Width, load out	24" (min)
Length, horizontal from pivot	25' 9" (min)
Loading height, ground to bottom of conveyor	18' 1" (min)

TRAVEL SPEED:

Self-transport, maximum	4.7 MPH
Milling range	0-105 FPM
Inside turning radius	63" (max)

TANK CAPACITIES:

Fuel, Shall be full at delivery	162 US gal (min)
Water	423 US gal (min)
Hydraulic oil	34 US gal (min)

ENGINE: Water cooled diesel, "Cummins", QSL 9.0, 345 SAE Net HP (min), at 1900 RPM, 549 CID (min), 1000 ft/lbs torque (min), at 1500 RPM. The engine must be EPA Tier 4 Final compliant. The engine shall be elastically mounted in the chassis to reduce vibration and noise levels.

The following items shall be furnished and installed:

- A. Dry type air cleaner with service indicator.
- B. Fuel/water separators and filters shall be provided in accordance with engine manufacturer's recommendations.
- C. Visual and audible warning devices for high coolant temperature and low oil pressure. Visual warning shall have a light for temperature and low oil pressure warning.
- D. Lube oil filters in accordance with engine manufacturer's recommendations.
- E. The engine shall be equipped with an "environmental drain" arrangement for oil and coolant to prevent spillage when draining for service.
- F. Engine power to ground drive system shall be hydrostatic drive, provided by a single variable displacement pump.
- G. Fuel tank to include a clean-out access cover.
- H. For the purpose of greater fuel economy, there shall be an automatic throttle control which raises the engine to maximum throttle when milling begins, and lowers the throttle to idle when milling is stopped. When in travel mode the automatic throttle will adjust the engine speed variably, dependent on the position of the travel drive lever and ground speed requirement.

CHASSIS: Shall be designed for heavy use and be capable of withstanding all forces and loads developed in pavement milling operations without permanent deformation or cracking. The chassis or accessories shall provide at least one completely unobstructed side for flush curbside cuts. Chassis shall include the following items or accessories:

- A. Work platform for operator(s) with adequate, supported access ladders and hand railing. The access ladder shall be positioned at the rear of the machine to allow the operator to mount and dismount without exposing himself to traffic passing the sides of the machine.
- B. Toolbox and/or locking compartments.
- C. Hydraulic oil tank with an integral cleanout/inspection cover.
- D. Water tank with an integral cleanout/inspection cover.
- E. Operators control station with fully adjustable seat and steering column.
- F. Water spray system for milling drum.
- G. Hydraulic ground drive.
- H. The milling drum shall be positioned in the rear of the machine, between and on a direct line axis with the rear tracks to provide for maximum weight transfer to the milling drum. The milling drum shall not be located in front of any drive or steering tracks. The operator platform shall be directly positioned over the drum to allow for maximum control and visibility.
- I. The front tracks shall be fitted to individually suspended support legs with a minimum diameter of 7.0 inches. Each front support leg shall utilize hydraulic cylinders, which can be simultaneously actuated to adjust the height of the front of the machine. The front leg cylinder hydraulic system shall be constructed so that both tracks remain in contact with the ground on uneven surfaces or when making a partial cut.
- J. For improved ground clearance, all steering linkages for the front tracks shall be mounted from directly under the machine frame and attached to collars on the front legs where they enter the leg support barrels. To maintain front track alignment and reduce track assembly wear, the front track tie rod shall be mounted between the two leg collars. Tie rods connected to the track frames are not acceptable.
- K. The rear tracks shall be fitted to individually suspended support legs with a minimum diameter of 8.0 inches. Each rear support leg shall utilize hydraulic cylinders, which can be individually or simultaneously actuated to adjust the milling depth and angle.
- L. The right rear track and support leg shall be operable in three positions. Position 1 will place the track directly adjacent the drum on the right, position 2 will place the track outboard the drum and in a location that will allow the track to be completely in the prior cut when matching the prior cuts start line, position 3 will place the track completely in front of the drum and inboard of the right cutting edge. Shifting the right rear leg location shall be done by the operator without the need to leave the operators station or lower the cutting drum to the ground.

INSTRUMENTS AND CONTROLS: All electric gauges shall be illuminated and have a vandalism protection cover over the operator's panel with a lockable hasp. Cover shall be removable or hinged and shall not hinder the operator's view. All instruments and controls shall be fully labeled. All labels shall be of the international symbol type.

The following instruments shall be provided in a centrally located operator's control station:

- A. Hour meter.
- B. Engine oil pressure gauge with low engine oil pressure warning light and horn.
- C. Water temperature gauge with high engine temperature warning light and horn.
- D. Low water level indicator with light and warning horn.
- E. Fuel level gauge.

The following controls shall be provided at the operator's control station:

- A. Profiler directional controls (steering wheel type).
- B. Illuminated cutting drum operating controls (start/stop), with automatic safety circuit to prevent damage to the drum drive by clutch engagement at other than engine idle speed.
- C. Ground speed control with incorporated brake on/off control.
- D. Conveyor system controls (elevation, swing, on/off and speed control).
- E. Illuminated water spray system controls (on/off).
- F. Mold board controls, lift, lower, float and lock. The moldboard pressure shall be adjustable from the operators console and include a gauge to indicate moldboard "down" pressure.
- G. Full automatic grade controls, with manual override, 1/8 inch tolerance (min).
- H. Machine elevation manual controls for front and rear legs. The rear leg elevation controls shall have two vertical speeds operable by a single switch for each leg.
- I. Emergency engine stop switch(s), mounted at the operator's control panel(s), easily accessible and operable by an operator wearing work gloves.
- J. Multi-position ignition (off, on and work light position).
- K. Control for flow divider (off, on and momentary on).
- L. On/off and engine RPM adjustment controls for automatic performance regulator system.
- M. There shall be an automatic "in motion" circuit when in the milling mode. When the travel drive lever is moved from neutral, the throttle will increase to maximum, the water spray and the conveyor drive will actuate. Returning the travel lever to neutral shall lower the throttle to idle and stop the water spray and conveyor

ELECTRICAL SYSTEM: Shall be 24 volt, direct current, negative ground. All electrical circuits shall be protected by reset-able circuit breakers. Alternator, regulator, starter, battery disconnect switch.

HYDRAULIC SYSTEM: Hydraulic pumps shall be driven by a pressure lubricated, mechanical gearbox powered by, but separate from the diesel engine, to eliminate the possibility of a leaking pump seal causing contamination of the engine oil. The pump drive gearbox shall have an “environmental drain” arrangement to prevent oil spillage when draining the gearbox for service. Belt driven hydraulic pumps are not acceptable. Shall provide hydraulic power to the following systems:

- A. Ground drive. For ease of service, hydraulic hoses to drive motors shall pass through bulkhead fittings before entering the machine frame.
- B. Steering.
- C. Chassis lift.
- D. Mold board.
- E. Conveyor and conveyor lift.
- F. Hydraulic side plate lifters.
- G. Thermostatically controlled, hydraulically driven, variable speed, engine cooling fan.
- H. 150 micron oil strainer(s).
- I. 10 micron return line filter(s).
- J. 10 micron suction filter(s).
- K. Forced air hydraulic oil cooler with low temperature bypass and thermostatically controlled cooling fan.
- L. All fittings shall be in accordance with recommended practices. Black iron piping is not acceptable.
- M. The hydraulic tank shall have shut-off valves or other means to change filters without loss of hydraulic fluid. The reservoir shall have a filter breather/filler cap and an “environmental drain” arrangement to prevent oil spillage when draining hydraulic oil.

GROUND DRIVE: Shall be as follows:

- A. Four (4), minimum 10” wide by 52” long, hydraulically driven tracks at the front and rear of the machine. Track assemblies shall have a minimum of three bottom support rollers.
- B. Automatic, hydraulic track tensioning system.
- C. Bolt-on polyurethane track pads shall be easily replaceable without disassembly of the crawler tracks. No part of the track drive planetary shall protrude beyond the outer edge of the track grousers.
- D. The right rear track shall be steerable to enhance the machines maneuverability.
- E. Full hydraulic (hydrostatic) proportional balanced drive, infinitely variable throughout the travel and milling speed ranges.
- F. Hydrostatic drive type brakes, providing dynamic braking.
- G. Over-pressure bypass valve, over-pressure cut-off valve to prevent excessive temperatures in the pump.
- H. Parking brake, spring applied, hydraulically released disc type on all four tracks.

- I. Hydraulic flow divider to ensure consistent tractive effort and to prevent track slippage. Shall be switchable by operator (off, on and momentary on).
- J. An emergency tow valve shall allow the machine to be towed in case of engine power loss. The tow package shall release the parking brake system without the need of external engine or hydraulic power and create a temporary internal by-pass in the hydraulic ground drive system so that the machine may be towed for short distances.

MILLING DRUM SYSTEM: Shall include the following:

DEPTH OF CUT:

- A. The milling drum shall be capable of cutting from 0 to 13 inches below grade, without removing or modifying side plates or moldboard door.
- B. The milling drum must be capable of cutting different depths from one side of the drum to the other within the maximum cross slope specifications of the milling machine.

DRIVE:

- A. Engine power to milling drum shall be via a dry friction clutch, heavy-duty, minimum 10 rib, drive belts with automatic tensioner, two reversible sheaves to provide two milling drum speeds, and a planetary reduction gearbox inside the drum. The drum drive system must automatically disengage upon engine start-up and shut-down. Countershaft style drum drive transmissions are not acceptable. A hydraulic drum drive system via a combination of hydraulic pumps and motors is not acceptable.
- B. The drum drive clutch shall be a hydraulically engaged, dry, multi-disc style clutch.
- C. The belt drive automatic hydraulic belt tensioner shall include a nitrogen accumulator to protect the drive system from shock damage. Shear shafts in the drum drive system are not acceptable.

DRUM, BITS, FLIGHTING:

- A. Welded, triple-wrap flighting attachment to drum.
- B. Bolt-on tool holder system, "Quick Change" type with a single bolt per holder, allowing easy field replacement without the need for a welder, using only common hand tools. The holder system shall ensure precise alignment of holder geometry to maintain high tooth endurance. Tool holders retained by a wedge or interference fit only, are not acceptable. To increase the life of the tool holders, they shall have a face diameter of at least 44mm (1.73") in order to accept milling bits with 44mm washers or wear shoulders.
- C. Bits shall be industry standard type with a 0.765 inch shank diameter.
- D. Drum shall be equipped with manganese faced, bolt-on material removal paddles.
- E. Automatic disengagement of the drum drive when the access door is open.
- F. Hydraulically powered drum rotation device button operated from the ground level for turning the drum when changing teeth.
- G. The support bearing on the opposite end of the drum from the gearbox shall be a heavy duty, long life, cylindrical roller bearing using oil bath lubrication.

- H. Hydraulic side plate lifters to enhance curb cutting capability. The side plate lift shall be via hydraulic cylinders attached directly to the side plates. A cable and pulley lift system is not acceptable. Side plates shall lower automatically when the operating switch is released. In addition, for safety and serviceability, the side plates shall be capable of being locked in the up position **only** when drum access door is open for service.
- I. The milling machine shall be equipped with a quick-change drum system. This system shall allow for the replacement of one drum width with another, from a minimum of 12" cut width, up to 48" cut width. All drum widths shall allow for a full depth cut. The moldboard shall be easily modified to match the cut width. It shall be possible to change drum widths in the shop, in a period of four hours or less, without the need to drain oil or water from the drum drive system.
- J. There shall be a vacuum system to remove dust from the cutting drum and machine operators area. This system shall consist of a hydraulically driven fan which draws air through ducting from the drum housing and directs it to the upper area of the machines discharge conveyor.

MOLDBOARD:

- A. Shall have segmented, replaceable, abrasion resistant carbide steel scraper blade wear edges, across the full width.
- B. Hydraulic lift cylinder(s) with positive up/down controls and a "float" mode. There shall be a moldboard pressure adjustment at the operator's station with a gauge showing the moldboard 'down' pressure.
- C. The moldboard shall have a positive mechanical lock to keep the back door up if the hydraulic suspension should fail.

AUTOMATIC GRADE PROFILING CONTROLS:

- A. An automatic, electronic grade control system, using proportional hydraulic control valves shall be provided. The system shall be capable of maintaining cut depth within +/- 1/8-inch tolerance.
- B. Grade sensors shall be integral to the drum housing side plate lift cylinders and use the drum housing side plates as a grade reference for normal milling operations.
- C. Electronic, non-contact, sonic or laser grade sensors shall be available as an option. A grade averaging system consisting of three grade sensors per machine side shall be available as an option. Controls shall accept sonar and laser sensors without modification.
- D. Automatic, electronic cross slope control shall be included with the grade control system. The cross slope shall be operated using the same control unit as the depth control. The control units shall be capable of switching between depth function and slope function without the necessity of stopping the machine. Grade/slope mode switches shall be positioned at the machine operator's station.
- E. There shall be a continuous readout of the operating slope angle whether in the depth or slope mode.

- F. There shall be a grade system control for each side of the machine. The system controller shall have a keyboard to control all grade functions, and two digital readouts for each machine side. One readout shall indicate the current command for either depth of cut, or cross slope in percent. The second readout shall indicate the measured depth of cut, or cross slope in percent. The depth controls shall be capable of operating in either inch or centimeter measurements, and shall be easily changed from one to the other by the grade control operator.
- G. For use when working from a string line, the control units shall incorporate an “operating window” function that can be turned on or off by the grade control operator. The operating window shall have a range of adjustment of between +/- 3.5” max, and +/- .5” minimum.
- H. Grade controls for both machine sides shall be mounted at, and operated from the machine operator’s station.

CONVEYOR SYSTEM: Shall be capable of both discharging into a truck bed and windrowing onto the pavement. The conveyor shall be capable of loading tandem-axle trucks from the rear or side, and semi-trailers from the side. Discharge of the conveyor must extend 25 feet from the front of the machine frame.

COMPONENTS:

- A. Hydrostatically powered conveyor, two pieces. Conveyor belt speed shall be infinitely adjustable, from zero to maximum speed. Shall be equipped with load sensing system, which maintains conveyor speed when engine speed drops, under load, to less than full load, maximum RPMs.
- B. Left and right swing at least 60 degrees each direction from center.
- C. Single assembly conveyor carrier and bottom support rollers. Conveyor frame shall be of tubular, lattice style construction for light weight, stiffness and ease of belt replacement. Drive pulley tension must be adjustable. Drive pulley and return pulley tracking must be adjustable.
- D. Permanent pressure lubrication fittings on all idlers, or alternately, the idler bearings shall be sealed and permanently lubricated.
- E. Primary and secondary belts shall be heavy-duty, three ply with 1.25 inch tall cleats.
- F. The conveyor shall have a discharge capacity to handle all material milled by the drum within the operating speed and depth specifications.
- G. The loading conveyor must be easily and quickly detachable, by one man, without the need for hand tools. The machine must be capable of rear flush cutting to allow for milling out of corners and flush cutting to barriers.
- H. The loading conveyor frame shall be hinged and have a hydraulic folding mechanism that allows the conveyor to be folded in order to reduce the machines overall length for transport. The controls for the folding system shall be at the operator’s station and it shall be possible for one man to carry out the folding procedure without the need to dismount the machine.
- I. The primary conveyor shall be easily removable from the machine for service.

- J. The primary conveyor shall be attached at the drum end to a front moldboard/gradation beam assembly. This assembly shall be hydraulically adjustable for height above grade, or to allow the gradation beam to contact grade, to minimize the slabbing of broken asphalt.

WATER SPRAY SYSTEM:

- A. Main water tank, 423 gallon capacity.
- B. Tank shall be corrosion protected.
- C. Nozzles shall be of the quick removal, twist-off design, and easily accessible for service
- D. The spray bar shall be located at the top rear of the drum housing and be constructed of stainless steel.
- E. Water filter, in-line between the tank and pump. The filter shall be rated for system water flow rate and pressure with 80 mesh nominal filtration and basket type construction. The water system shall have a non-gravity-drip solenoid to keep water from draining out of the tank when the pump is shut off. The water pump shall be connected for, and be capable of loading the machines main water tank from a separate reservoir.
- F. Pump shall be a high capacity, self-priming, centrifugal type to ensure lowest possible milling bit temperature. The water pump shall start and stop automatically with the machine travel when in the milling mode. There shall be a manual over ride for the water pump control as well.
- G. There shall be a hydrant style filling connection at ground level on the left side of the machine, as well as a filler opening in the top of the water tank.
- H. Pressure washing circuit with quick disconnect located near cutter drum.

ADDITIONAL EQUIPMENT:

- A. Electric backup alarm, steam cleanable.
- B. Exhaust stack with rain cap and heat shield (if applicable).
- C. All deck walking areas shall be either diamond plate decking, grating or non-skid coated plate type decking.
- D. Operator's platform shall have conveniently located controls and provide excellent visibility forward and backward.

LIGHTING: The following lights shall be furnished and installed.

- A. Two easily removable, halogen work lights on the front of the machine.
- B. One easily removable, halogen work light on right side of the machine to illuminate the drum working area.
- C. Two easily removable, halogen work lights at the loading end of the secondary conveyor.
- D. One easily removable amber warning light, halogen, with on/off switch at the operators panel.

WARRANTY REQUIREMENTS:

- A. Standard machine warranty shall be 12 months or 1,000 hours – Parts and labor.

TRAINING REQUIREMENTS:

- A. Responsible dealer will provide a minimum of eight (8) hours of basic operator and maintenance training.

D. **INSPECTION**

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

In the case that an item or lot is rejected, District Inspectors will provide Contractor and the EBMUD Purchasing Division with an Inspectors Job Report which will itemize the product deficiencies and required corrective action.

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

E. **DELIVERY REQUIREMENTS**

The District's Heavy Equipment Garage can receive the units between 8:00 a.m. and 3:30 p.m., Mondays through Fridays except for District holidays. Precise delivery schedules are to be arranged by contacting Steve Pietrobono, Manager of Fleet and Construction Support, at (510)287-0850.

F. **PARTS BOOKS, SERVICE MANUALS, AND OPERATION INSTRUCTIONS**

One complete set of operating instructions, parts books and service repair manuals must be furnished at the time new equipment is delivered. **NO EXCEPTIONS. PAYMENT WILL NOT BE MADE UNLESS MANUALS ARE RECEIVED.**

G. **COMPLIANCE**

Unit(s) offered shall comply with all applicable regulations and codes in effect on the date of the bid opening, including but not limited to the following:

1. Department of Transportation, Federal Highway Administration, 49 CFR Motor Carrier Safety Regulations and Standards

2. Federal Motor Vehicle Safety Regulations and Standards
3. U.S. Environmental Protection Agency
4. Federal Energy Administration
5. California Vehicle Code
6. California Code of Regulations (California Administrative Code, Title 13)
(Government Industrial Safety Orders, Title 8)

H. SERVICE

Prior to delivery, the equipment shall receive the manufacturer's standard pre-delivery service and the equipment shall be tested and functionally ready to operate.

I. CONTRACTOR WARRANTY REPAIR REQUIREMENTS

Equipment under warranty shall be repaired and returned within five (5) working days or a replacement unit acceptable to the District shall be provided to the District on the sixth day and thereafter until the original unit is returned to District service. Cost associated with the replacement unit shall be the responsibility of the Contractor. In addition, any unit out of service for warranty repair in excess of fifteen (15) working days in a calendar year shall be replaced with a unit acceptable to the District commencing on the sixteenth day and everyday thereafter at the expense of the Contractor.

J. VEHICLE LICENSING

Licensing of new equipment for the State of California shall be done by the Dealer. The District will provide application for Exempt Registration to the Dealer.

The address on all documents shall be as follows:

East Bay Municipal Utility District
375 Eleventh Street
Oakland, California 94607

K. SAFETY ORDERS AND VEHICLE CODE

The equipment furnished must conform with any applicable Safety Orders of the California Division of Industrial Safety, must be equipped with all legal equipment required by the State of California Vehicle Code, and must comply with any applicable federal, state, and local laws and regulations concerning vehicular equipment.

L. FAILURE TO MEET SPECIFICATIONS

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

II. CALENDAR OF EVENTS

EVENT	DATE/LOCATION
RFQ Issued	December 12, 2018
Deadline For Submission of Questions	December 20, 2018
Deadline For Submittal of Proposed Pre-Approval Substitutions	December 27, 2018
Addendum to Announce Pre-Approved Equivalents (if necessary)	January 3, 2019
Response Due	January 16, 2019, by 1:30 p.m.
Anticipated Contract Start Date	January 29, 2019

Note: All dates are subject to change.

Bidders are responsible for reviewing <https://www.ebmud.com/business-center/materials-and-supplies-bids/current-requests-quotation-rfqs/> for any published addenda. Hard copies of addenda will not be mailed out.

III. DISTRICT PROCEDURES, TERMS, AND CONDITIONS**A. RFQ ACCEPTANCE AND AWARD**

1. RFQ responses will be evaluated to determine that they are responsive, responsible, and that they meet the specifications as stated in this RFQ.
2. The District reserves the right to award to a single or to multiple Contractors, dependent upon what provides the lowest overall cost to the District.
3. The District has the right to decline to award this contract or any part of it for any reason.

4. Any specifications, terms or conditions, issued by the District, or those included in the bidder's submission, in relation to this RFQ, may be incorporated into any purchase order or contract that may be awarded as a result of this RFQ.
5. 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

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

C. PROTESTS

Protests must be in writing and must be received no later than seven (7) business days after the District issues the Notice of Intent to Award, which is sent to all entities who submitted a bid package. The District will reject the protest as untimely if it is received after this specified time frame. Protests will be accepted from bidders or potential bidders only.

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

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

Protests must be mailed or hand delivered to the Manager of Purchasing, East Bay Municipal Utility District, 375 Eleventh Street, Oakland, CA 94607 or P.O. Box 24055,

Oakland, California 94623. Facsimile and electronic mail protests must be followed by a mailed or hand delivered identical copy of the protest and must arrive within the seven day time limit. Any bid protest filed with any other District office shall be forwarded immediately to the Manager of Purchasing.

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

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

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

D. METHOD OF ORDERING

1. Written POs may be issued upon approval of written itemized quotations received from the Contractor.
2. POs and payments for products and/or services will be issued only in the name of Contractor.
3. Any and all change orders shall be in writing and agreed upon, in advance, by Contractor and the District.

E. TERM / TERMINATION / RENEWAL

1. The term of the contract, which may be awarded pursuant to this RFQ, will be four (4) months.
2. This Agreement may be terminated for convenience by the District provided the Contractor is given written notice of not less than 30 calendar days. Upon such termination, the District shall pay the Contractor the amount owing for the products ordered and satisfactorily received by the District. This shall be the sole

and exclusive remedy to which the Contractor is properly entitled in the event of termination by the District.

3. This Agreement may be terminated for cause at any time, provided that the District notifies Contractor of impending action.

F. WARRANTY

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

G. INVOICING

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

IV. RFQ RESPONSE SUBMITTAL INSTRUCTIONS AND INFORMATION

A. DISTRICT CONTACTS

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

TECHNICAL SPECIFICATIONS:

Attn: Jason Nossardi, Equipment Supervisor

EBMUD-Mtc. Support Div./Mtc. & Construction Dept.

E-Mail: jason.nossardi@ebmud.com

PHONE: (510) 287-0878

CONTRACT EQUITY PROGRAM:

Attn: Contract Equity Office

PHONE: (510) 287-0114

AFTER AWARD:

Attn: Jason Nossardi, Equipment Supervisor

EBMUD-Mtc. Support Div./Mtc. & Construction Dept.

E-Mail: jason.nossardi@ebmud.com

PHONE: (510) 287-0878

B. SUBMITTAL OF RFQ RESPONSE

1. Responses must be submitted in accordance with Exhibit A – RFQ Response Packet, including all additional documentation stated in the “Required Documentation and Submittals” section of Exhibit A.
2. Late and/or unsealed responses will not be accepted.
3. RFQ responses submitted via electronic transmissions will not be accepted. Electronic transmissions include faxed RFQ responses or those sent by electronic mail (“e-mail”).
4. RFQ responses will be received only at the address shown below, must be SEALED, and must be received at the District Purchasing Division by 1:30 p.m. on the due date specified in the Calendar of Events. Any RFQ response received after that time or date, or at a place other than the stated address cannot be considered and will be returned to the bidder unopened.

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

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

Mailed:

Kelley Smith, Manager of Purchasing
East Bay Municipal Utility District
COMPACT FRONT LOADING COLD MILLING MACHINE
RFQ No. 1911
EBMUD–Purchasing Division
P.O. Box 24055
Oakland, CA 94623

Hand Delivered or delivered by courier or package delivery service:

Kelley Smith, Manager of Purchasing
 East Bay Municipal Utility District
 COMPACT FRONT LOADING COLD MILLING MACHINE
 RFQ No. 1911
 EBMUD–Purchasing Division
 375 Eleventh Street, First Floor
 Oakland, CA 94607

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

6. All costs required for the preparation and submission of an RFQ response shall be borne by the bidder.
7. California Government Code Section 4552: In submitting an RFQ response to a public purchasing body, the bidder offers and agrees that if the RFQ response is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the RFQ response. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.
8. Bidder expressly acknowledges that it is aware that if a false claim is knowingly submitted (as the terms “claim” and “knowingly” are defined in the California False Claims Act, Cal. Gov. Code, §12650 et seq.), the District will be entitled to civil remedies set forth in the California False Claim Act.
9. The RFQ response shall remain open to acceptance and is irrevocable for a period of one hundred eighty (180) days, unless otherwise specified in the RFQ documents.
10. It is understood that the District reserves the right to reject any or all RFQ responses.
11. RFQ responses, in whole or in part, are NOT to be marked confidential or proprietary. The District may refuse to consider any RFQ response or part thereof so marked. RFQ responses submitted in response to this RFQ may be subject to public disclosure. The District shall not be liable in any way for disclosure of any such records.



EXHIBIT A

RFQ RESPONSE PACKET

RFQ No. 1911 –COMPACT FRONT LOADING COLD MILLING MACHINE

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

From: _____
(Official Name of Bidder)

RFQ RESPONSE PACKET GUIDELINES

- **BIDDERS ARE TO SUBMIT ONE (1) ORIGINAL HARDCOPY RFQ RESPONSE WITH ORIGINAL INK SIGNATURES, ONE (1) COPY CONTAINING THE FOLLOWING, IN THEIR ENTIRETY:**
 - **EXHIBIT A – RFQ RESPONSE PACKET**
 - **INCLUDING ALL REQUIRED DOCUMENTATION AS DESCRIBED IN “EXHIBIT A-REQUIRED DOCUMENTATION AND SUBMITTALS”**
- **ALL PRICES AND NOTATIONS MUST BE PRINTED IN INK OR TYPEWRITTEN; NO ERASURES ARE PERMITTED; ERRORS MAY BE CROSSED OUT AND CORRECTIONS PRINTED IN INK OR TYPEWRITTEN ADJACENT, AND MUST BE INITIALED IN INK BY PERSON SIGNING THE RFQ RESPONSE.**
- **BIDDERS THAT DO NOT COMPLY WITH THE REQUIREMENTS, AND/OR SUBMIT AN INCOMPLETE RFQ RESPONSE MAY BE SUBJECT TO DISQUALIFICATION AND THEIR RFQ RESPONSE REJECTED IN TOTAL.**
- **IF BIDDERS ARE MAKING ANY CLARIFICATIONS AND/OR AMENDMENTS, OR TAKING EXCEPTION TO ANY PART OF THIS RFQ, THESE MUST BE SUBMITTED IN THE EXCEPTIONS, CLARIFICATIONS, AND AMENDMENTS SECTION OF THIS EXHIBIT A – RFQ RESPONSE PACKET. THE DISTRICT, AT ITS SOLE DISCRETION, MAY ACCEPT AMENDMENTS/EXCEPTIONS, OR MAY DEEM THEM TO BE UNACCEPTABLE, THEREBY RENDERING THE RFQ RESPONSE DISQUALIFIED.**
- **BIDDERS SHALL NOT MODIFY DISTRICT LANGUAGE IN ANY PART OF THIS RFQ OR ITS EXHIBITS, NOR SHALL THEY QUALIFY THEIR RFQ RESPONSE.**



BIDDER INFORMATION AND ACCEPTANCE

1. The undersigned declares that all RFQ documents, including, without limitation, the RFQ, Addenda, and Exhibits, have been read and that the terms, conditions, certifications, and requirements are agreed to.
2. The undersigned is authorized to offer, and agrees to furnish, the articles and services specified in accordance with the RFQ documents.
3. The undersigned acknowledges acceptance of all addenda related to this RFQ.
4. The undersigned hereby certifies to the District that all representations, certifications, and statements made by the bidder, as set forth in this RFQ Response Packet and attachments, are true and correct and are made under penalty of perjury pursuant to the laws of California.
5. The undersigned acknowledges that the bidder is, and will be, in good standing in the State of California, with all the necessary licenses, permits, certifications, approvals, and authorizations necessary to perform all obligations in connection with this RFQ and associated RFQ documents.
6. It is the responsibility of each bidder to be familiar with all of the specifications, terms, and conditions and, if applicable, the site condition. By the submission of an RFQ response, the bidder certifies that if awarded a contract it will make no claim against the District based upon ignorance of conditions or misunderstanding of the specifications.
7. Patent indemnity: Contractors who do business with the District shall hold the District, its Directors, officers, agents, and employees, harmless from liability of any nature or kind, including cost and expenses, for infringement or use of any patent, copyright, or other proprietary right, secret process, patented or unpatented invention, article, or appliance furnished or used in connection with the contract or purchase order.
8. Insurance certificates are not required at the time of submission. However, by signing Exhibit A – RFQ Response Packet, the bidder agrees to meet the minimum insurance requirements stated in the RFQ. This documentation must be provided to the District prior to execution of an agreement by the District, and shall include an insurance certificate which meets the minimum insurance requirements, as stated in the RFQ.
9. The undersigned acknowledges that RFQ responses, in whole or in part, are NOT to be marked confidential or proprietary. The District may refuse to consider any RFQ response or part thereof so marked. RFQ responses submitted in response to this RFQ may be subject to public disclosure. The District shall not be liable in any way for disclosure of any such records.
10. The undersigned bidder hereby submits this RFQ response and binds itself on award to the District under this RFQ to execute in accordance with such award a contract and to furnish the bond or bonds

and insurance required by the RFQ. The RFQ, subsequent Addenda, bidder's Response Packet, and any attachments, shall constitute the Contract, and all provisions thereof are hereby accepted.

11. The undersigned acknowledges **ONE** of the following (please check only one box)*:

- ☐ Bidder is not an SBE and is ineligible for any bid preference; **OR**
- ☐ Bidder is an SBE or DVBE as described in the Contract Equity Program (CEP) and Equal Employment Opportunity (EEO) Guidelines, is requesting a 5% bid preference, and has completed the 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 bidder is ineligible for bid preference and none will be given. For additional information on SBE bid preference, please refer to the Contract Equity Program and Equal Employment Opportunity Guidelines at the above referenced hyperlink.

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

Street Address Line 1: _____

Street Address Line 2: _____

City: _____ State: _____ Zip Code: _____

Webpage: _____

Type of Entity / Organizational Structure (check one):

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

Jurisdiction of Organization Structure: _____

Date of Organization Structure: _____

Federal Tax Identification Number: _____

Department of Industrial Relations (DIR) Registration Number: _____

Primary Contact Information:

Name / Title: _____

Telephone Number: _____ Fax Number: _____

E-mail Address: _____

Street Address Line 1: _____

City: _____ State: _____ Zip Code: _____

SIGNATURE: _____

Name and Title of Signer (printed): _____

Dated this _____ day of _____ 20_____



BIDDING SHEET

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

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

Bidders may, but are not required to, bid on both schedules.

COMPACT FRONT LOADING COLD MILLING MACHINE

Item	Quantity	Unit of Measure	Description	Total Price
1	1	each	Compact Front Loading Cold Milling Machine (Wirtgen Model W 120 CFi, or pre –approved equal model), as herein specified. Make _____ Model _____	\$ _____
TOTAL COST				\$ _____



REQUIRED DOCUMENTATION AND SUBMITTALS

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

1. **Description of the Proposed Equipment/System:** RFQ response shall include a description of the proposed equipment/system, as it will be finally configured during the term of the contract. The description shall specify how the proposed equipment/system will meet or exceed the requirements of the District and shall explain any advantages that this proposed equipment/system would have over other possible equipment/systems. The description shall include any disadvantages or limitations that the District should be aware of in evaluating the RFQ response. Finally, the description shall describe all product warranties provided by bidder.
2. **Sustainability Statement:** Contractors shall submit a statement regarding any sustainable or environmental initiatives or practices that they or their suppliers engage in. This information can be in relation to the specific products procured under this RFQ or in relation to the manufacture, delivery, or office practices of your firm.

If applicable, please also provide any information you have available on the below:

- a. Has your firm taken steps to enhance its ability to assess, track and address issues regarding Greenhouse Gas (GHG) Emissions in answer to recent legislations such as the [Buy Clean California Act](#)? If so, please attach any data you can on the embedded greenhouse gas emissions in the production and transport of the products and/or services which will be provided via this RFQ. If this is not available, please describe the approach you plan to take in order to gather and report this information in the future. For further information in this topic, please see: <http://www.ghgprotocol.org/scope-3-technical-calculation-guidance>
3. **References:**
 - (a) Bidders must use the templates in the “References” section of this Exhibit A – RFQ Response Packet to provide references.
 - (b) References should have similar scope, volume, and requirements to those outlined in these specifications, terms, and conditions.
 - Bidders must verify the contact information for all references provided is current and valid.

- Bidders are strongly encouraged to notify all references that the District may be contacting them to obtain a reference.
- (c) The District may contact some or all of the references provided in order to determine Bidder's performance record on work similar to that described in this RFQ. The District reserves the right to contact references other than those provided in the RFQ response.

4. **Exceptions, Clarifications, Amendments:**

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

5. **Contract Equity Program:**

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



REFERENCES

RFQ No. 1911 –COMPACT FRONT LOADING COLD MILLING MACHINE

Bidder Name: _____

Bidder must provide a minimum of three references.

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

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

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

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

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



EXCEPTIONS, CLARIFICATIONS, AMENDMENTS

RFQ No. 1911—COMPACT FRONT LOADING COLD MILLING MACHINE

Bidder Name: _____

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

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

*Print additional pages as necessary



CONTRACT EQUITY PROGRAM & EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

Please include the required completed forms with your bid.

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

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

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

[Contract Equity Program Guidelines and Forms](#)

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

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

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



EXHIBIT B

INSURANCE REQUIREMENTS

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

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

INDEMNIFICATION AND INSURANCE

A. Indemnification

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

B. Insurance Requirements

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

C. Workers Compensation Insurance

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

D. Commercial General Liability Insurance

CONTRACTOR shall take out and maintain during the life of the Agreement Automobile and General Liability Insurance that provides protection from claims which may arise from

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

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

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

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

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

1. The District, its Directors, officers, and employees are Additional Insureds in the policy(ies) as to the work being performed under the contract.
2. The coverage is *Primary and non-contributory* to any other applicable insurance carried by the District.
3. The policy(ies) covers *contractual liability*.
4. The policy(ies) is written on an *occurrence* basis.
5. The policy(ies) covers the District's Property in Consultant's care, custody, and control.
6. The policy(ies) covers *personal injury* (libel, slander, and wrongful entry and eviction) liability.
7. The policy(ies) covers *products and completed operations*.
8. The policy(ies) covers the use of *owned, non-owned* and hired automobiles.
9. The policy(ies) will not be canceled nor the above coverages/endorsements reduced without 30 days written notice to East Bay Municipal Utility District at the address above.

GENERAL REQUIREMENTS

CONTENTS

1. DEFINITIONS
2. BOND
3. CONTRACTOR'S FINANCIAL OBLIGATION
4. SAMPLES OR SPECIMENS
5. MATERIAL AND WORKMANSHIP
6. DEFECTIVE WORK
7. WARRANTY OF TITLE
8. WARRANTY OF FITNESS
9. SAFETY AND ACCIDENT PREVENTION
10. CHARACTER OF WORKFORCE
11. PREVAILING WAGES & DIR REGISTRATION
12. PAYROLL RECORDS & ELECTRONIC SUBMISSION
13. HOURS OF LABOR
14. EMPLOYMENT OF APPRENTICES
15. CHANGES
16. EFFECT OF EXTENSIONS OF TIME
17. DELAYS
18. TERMINATION
19. DAMAGES
20. ORDER OF PRECEDENCE
21. INDEMNIFICATION/RESPONSIBILITY
22. PROHIBITION OF ASSIGNMENT
23. NEWS RELEASES
24. SEVERABILITY
25. COVENANT AGAINST GRATUITIES
26. RIGHTS AND REMEDIES OF THE DISTRICT
27. WAIVER OF RIGHTS
28. CONFIDENTIALITY

1. DEFINITIONS

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

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

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

2. BOND

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

returned to the Contractor.

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

3. CONTRACTOR'S FINANCIAL OBLIGATION

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

4. SAMPLES OR SPECIMENS

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

5. MATERIAL AND WORKMANSHIP

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

6. DEFECTIVE WORK

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

7. WARRANTY OF TITLE

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

8. WARRANTY OF FITNESS

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

9. SAFETY AND ACCIDENT PREVENTION

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

10. CHARACTER OF WORKFORCE

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

11. PREVAILING WAGES & DIR REGISTRATION

- a. Please see www.dir.ca.gov 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.
- e. The holidays upon which such rates shall be paid shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification, or type

of worker employed on the Work.

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

12. PAYROLL RECORDS & ELECTRONIC SUBMISSION

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

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

13. HOURS OF LABOR

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

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

- d. Work performed by employees of the Contractor in excess of eight hours per day, and forty hours during any one calendar week, shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay.
- e. The Contractor and every Subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by him in connection with the Work; the record shall be kept open at all reasonable hours to the inspection of the District and to the Division of Labor Standards Enforcement of the State of California.

14. EMPLOYMENT OF APPRENTICES

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

15. CHANGES

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

change after requesting a proposal from the Contractor, the Contractor will be notified in writing. The Contractor is not entitled to reimbursement for Change Order preparation costs if the Contractor's proposal is not accepted by the Project Manager.

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

16. EFFECT OF EXTENSIONS OF TIME

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

17. DELAYS

- a. The Contractor shall take reasonable precautions to foresee and prevent delays to the Work. When the Contractor foresees a delay event, and upon the occurrence of a delay event, the Contractor shall immediately notify the Project Manager of the probability or the actual occurrence of a delay, and its cause. With respect to all delays (compensable, excusable or inexcusable), the Contractor shall reschedule the Work and revise its

operations, to the extent possible, to mitigate the effects of the delay. Within 15 days from the beginning of a delay the Contractor shall provide the Project Manager with a detailed written description of the delay, its cause, its impact and the Contractor's mitigation plans. Failure to provide the notification required above waives the Contractor's right to any additional time or compensation resulting from the delay for whatever cause. The Project Manager will investigate the facts and ascertain the extent of the delay, and the Project Manager's findings thereon shall be final and conclusive, except in the case of gross error. An extension of time must be approved by the Project Manager to be effective, but an extension of time, whether with or without consent of the sureties, shall not release the sureties from their obligations, which shall remain in full force until the discharge of the contract.

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

18. TERMINATION

- a. Termination by the District for Cause:

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

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

b. Termination by the District for Convenience:

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

performance of the discontinued portion of the Work.

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

19. DAMAGES

All losses or damages to material or equipment to be furnished pursuant to the Contract Documents occurring prior to receipt and final acceptance of the Work shall be sustained by the

Contractor. The Contractor shall sustain all losses arising from unforeseen obstructions or difficulties, either natural or artificial, encountered in the prosecution of the Work, or from any action of the elements prior to final acceptance of the work, or from an act or omission on the part of the Contractor not authorized by the Contract Documents.

20. ORDER OF PRECEDENCE

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

21. INDEMNIFICATION/RESPONSIBILITY

- a. Contractor shall indemnify, keep and save harmless the District and each of its directors, officers, agents and employees against any and all suits, claims or actions arising out of any of the following:
 - i. Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance or implementation of this Contract; or
 - ii. Any allegation that materials or services developed, provided or used for this Contract infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

- b. Contractor further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered, or settlement reached, against the District or any of the other agencies or individuals enumerated above in any such action, Contractor shall, at its expense, satisfy and discharge the same.
- c. This indemnification shall survive termination or expiration of the Contract.

22. PROHIBITION OF ASSIGNMENT

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

23. NEWS RELEASES

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

24. SEVERABILITY

Should any part of the Contract be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of the Contract, which shall continue in full force and effect, provided that the remainder of the Contract can be interpreted to give effect to the intentions of the parties.

25. COVENANT AGAINST GRATUITIES

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

26. RIGHTS AND REMEDIES OF THE DISTRICT

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

27. WAIVER OF RIGHTS

Any action or inaction by the District or the failure of the District on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the District of its

rights and shall not prevent the District from enforcing such provision or right on any future occasion. Rights and remedies are cumulative and are in addition to any other rights or remedies that the District may have at law or in equity.

28. CONFIDENTIALITY

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