



1600 Franklin Street
Oakland, CA 94612

**CONTRACT DOCUMENTS
and
TECHNICAL SPECIFICATIONS**

for

**IFB NO. 2020-1500
HEAVY DUTY TOWING SERVICES**

Date of Issue: **13 August 2020**

Closing Date and Time: **28 August 2020** at 2:00pm

Single Point of Contact (SPC): Jamell Woodard, Contracts Specialist, jwoodard@actransit.org

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

The Alameda-Contra Costa Transit District promotes equal opportunity for all individuals without regard to age, color, disability, marital status, national origin, race, religion or creed, sex or gender, sexual orientation, or veteran status.



ALAMEDA-CONTRA COSTA TRANSIT DISTRICT
INVITATION FOR BIDS
HEAVY DUTY TOWING SERVICES
IFB NO. 2020-1500

SECTION A: GENERAL INFORMATION

- Bid Request.** The Alameda-Contra Costa Transit District (“AC Transit” or the “District”) is issuing this Invitation for Bid (“IFB”) to receive bids on or before 28 August 2020 at 2:00pm Pacific Standard Time, at the District’s General Office, 1600 Franklin Street, Oakland, California 94612, for a qualified vendor (hereafter referred to as “Bidder”) to provide Heavy Duty Towing Services, as set out in Part III, Scope of Work/Services. The District invites sealed bids in accordance with the provisions, specifications, and instructions set forth in this IFB.

This IFB outlines the scope of services requested for the District, as well as information that should be included in the bid. It includes the District’s objectives, describes the general characteristics of the services to be provided, and *(without being exhaustive)* outlines the principal obligations of the District and the selected Bidder. Additional details on the scope of the services are included in the Scope of Work/Services section. **Late Bids will not be considered.** All Bidders are cautioned to read the entire IFB, noting insurance and submittal requirements, and to complete all required forms. Failure to provide all requested information may cause the bid to be considered nonresponsive.

It is the District’s intent to award one (1) fixed price contract(s) to (a) responsible and qualified Bidder(s) considering overall price, experience and responsiveness to this IFB.

The initial base period of the contract is anticipated to be three (3) years. In addition, the District may elect to exercise the option to extend the contract for up to an additional two (2) years, one (1) year at a time, up to a cumulative maximum term of five (5) years, as listed on the Bid Forms.

- Schedule.** Following is the projected Schedule of Events that outlines the pertinent dates of which Bidders should be aware; N/A denotes the event is not applicable to this IFB:

Event	Date	Time
IFB Distribution Date	13 August 2020	
Bidder’s Deadline to Submit Question and /or Clarification to Designated POC	20 August 2020	2:00pm
District to Issue Response to Questions / Requests for Clarification (<i>approx.</i>)	21 August 2020	
Deadline to Submit Bids	See IFB cover page	

**All dates & times are tentative. The District reserves the right to alter this schedule as it deems necessary or appropriate. Any changes will be issued via an addendum to this IFB. All reference in this IFB to “time” will mean Pacific Standard Time (PST).*

***A Pre-Bid Conference may be scheduled to answer questions and requests for clarification. The District may, at its discretion, choose to schedule an [optional] virtual pre-Bid conference. Instructions will be provided on the District’s website (<http://www.actransit.org/acpronet>) listed on this IFB’s project page under Current Procurement Opportunities.*

- Description of the District.** The Alameda-Contra Costa Transit District is a California Special District created by the voters in 1956 and is subject to regulation under Transit District Law, as amended (*see California Public Utilities Code Section 24501 et seq.*). The District provides public transit services to riders throughout western Contra Costa County to southern Alameda County. The District has four (4) operating divisions in addition to the Central Maintenance Facility, Training Center, and the General Office. The District is financed through the receipt of transit fares, property taxes, and state and federal funding.
- Single Point of Contact (SPC).** The SPC for this IFB is identified on the cover page, along with the SPC’s contact information. Bidder shall direct all communications related to any provision of the IFB in writing only to the SPC, whether about the technical requirements of the IFB, contractual requirements, the IFB process, or any other provision. *Bidders may not contact any other District personnel regarding this IFB.*

SECTION B: METHOD / DEFINITIONS

- Method.** The District is using the Competitive Sealed Bid method.
- Definition of Terms.** For the purposes of this IFB, capitalized words are defined as defined below or as defined in 49 U.S.C. § 5302 as well as those definitions listed in Circular 4220, IF Chapter I - Items 5 a – ff.
- Inquiry Period.** The Inquiry Period begins on the date of first advertisement of the IFB and continues until the Deadline for Submission. IFB packages will be distributed to potential Bidders during the Inquiry Period.
- Publishing.** This IFB and attachments are published on the District’s Procurement website at <http://www.actransit.org/acpronet>. IFB documents will not be mailed to prospective Bidders. Modifications to this IFB, if any, will be made by written Addenda published on the website. Prospective Bidder is solely responsible for checking the website to determine whether or not any Addenda have been issued. Addenda are incorporated into the IFB by this reference.
- Pre-Bid Conference.** The District may schedule an in-person or virtual pre-bid conference, at its discretion. Attendance at such conferences is optional. Instructions for attendance will be posted on the District’s website (<http://www.actransit.org/acpronet>), listed under Current Procurement Opportunities and detailed on this IFB’s project page.

The purpose of this conference is to allow potential Bidders to ask questions regarding this IFB, the District's competitive contracting process and to discuss / clarify any issues. This is an opportunity for Bidders to raise concerns regarding specifications, terms, conditions, and any requirements of this solicitation. Failure to raise concerns over any issues at this opportunity will be a consideration in any protest filed regarding such items that were known as of the pre-bid conference. Only answers issued in writing by the District to questions asked before or during the pre-bid conference are binding on the parties to an awarded contract.

6. **Examination of Site.** The Bidder shall be responsible for having ascertained all pertinent local and existing conditions determinable by inspection and inquiry both on the Site and adjacent thereto, including any other work being performed thereon, and shall include in its bid all costs attendant upon problems arising from said conditions existing at the time of submission of its bid.

Reference is made to the Contract Documents for information relating to reports, explorations, underground facilities, and easements. On request, the District will provide each Bidder access to the Site to conduct such examinations, investigations, explorations, tests and studies as each Bidder deems necessary for submission of a bid. The Bidder must fill all holes, clean up, and restore the Site to its former condition upon completion of such explorations, investigations, tests and studies, and hold the District harmless from any damage to property or injury to persons resulting from or arising out of such explorations, investigations, tests, and studies.

SECTION C: INSTRUCTIONS TO BIDDERS

1. Bid Submittal

- A. **Registration into AC Transit's Online Supplier System.** If you have not previously completed a one-time registration into the AC Transit Online Supplier system, we request you register at this time at: <http://www.actransit.org/purchasing/acpronet/?page=register>. The Registration System is used by District staff to locate your contract(s) and identify companies for bid lists on future purchases. Bids are not rejected for failure to register, however, if you win a contract and have not registered, you will be required to register in the system. Women, minority-owned, and Veteran-owned firms are asked to self-identify. To complete the process, firms are required to submit a W-9, Taxpayer Identification Number and Certification containing original signature in bid. If you have questions or require assistance, please contact sotenbreit@actransit.org.
- B. **Registration into System for Award Management (SAM).** As a public entity that receives federal funding, AC Transit is required by the Federal Transit Administration (FTA) and the Federal Acquisition Regulation (FAR) to compile and maintain a list of parties debarred, suspended, or disqualified by federal agencies. The System for Award Management (SAM) (<https://www.sam.gov>) is a government run site required by the federal government that collects information on organizations applying for grants and contracts and serves as a central registration point for government contractors. A SAM registration is required for any entity to bid on and get paid for federal contracts or to receive federal funds. FAR also requires all prospective vendors to be registered in SAM prior to the award of a contract, basic agreement, basic ordering agreement, or blanket purchase agreement. If your business is not currently registered in SAM, you will need to complete registration.

This registration is sometimes referred to as "self-certifying" your small business. Using SAM, you will be able to register your business size and socio-economic status while completing the required solicitation clauses and certification. By completing your required solicitation clauses and certifications you certify that the information provided about your company and its business activities are correct.

To register with SAM, go to the [SAM website](#), create a user account, and click "Register/Updated Entity". If you have the information below readily available, you may expect to spend approximately one to three (1-3) hours entering the required data:

- Dun & Bradstreet DUNS number. A DUNS number is a nine-digit identification number for each physical location of your business. As with SAM registration, obtaining a DUNS number is free; it is provided by Dun & Bradstreet and can be requested at <https://fedgov.dnb.com/webform>.
- [Taxpayer Identification Number \(TIN\) or Employment Identification Number \(EIN\)](#).
- Original signed notarized letter stating the registrant is the authorized Entity Administrator,
- Your bank's routing number, your bank account number, and your bank account type, i.e. checking or savings, to set up Electronic Funds Transfer (EFT)
- North American Industry Classification System (NAICS) Code(s). NAICS codes are used to classify products and services offered by companies. You can search for the appropriate NAICS code by keyword on the Census website here: <https://www.census.gov/eos/www/naics/>.
- Commercial and Government Entity (CAGE) Code. If you do not already have a CAGE Code one will be assigned to you by the Defense Logistics Agency (DLA) after you complete your SAM registration

Once submitted, a SAM registration is typically approved or "activated" in three (3) weeks or less. Once approved, the SAM registration is valid for one (1) year from the date the registration is complete and must be renewed before sixty (60) days of expiration to avoid potential penalties. It will take three to five (3-5) business days for your renewal to become active and replace your current registration. Updates made in SAM are reflected the next business day. Additional time may be needed if the structure of your organization has changed since your last renewal. There is NO FEE to register or maintain your registration in SAM.gov. If you have questions or require assistance, please contact sotenbreit@actransit.org.

- C. **Communications with the District.** All Bidder communications concerning this acquisition shall be directed to the SPC. Unless authorized by the District, no other District official or employee is empowered to speak for the District with respect to this acquisition. Any Bidder seeking to obtain information, clarification, or interpretations from any other District official or District employee (*other than the SPC*) is advised that such material is used at the Bidder's own risk. The District will not be bound by any such information, clarification, or interpretation.

Following the bid submittal deadline, Bidders shall continue to direct communications to only the SPC. The SPC will send out information to responding companies as decisions are concluded.

Contact by a Bidder regarding this acquisition with a District employee other than the SPC or an individual specifically approved by the District in writing, may be grounds for rejection of the Bidder's bid.

- D. **Questions and/or Requests for Clarifications About This IFB.** Unless otherwise instructed herein, all inquiries, whether relating to the IFB process, administration, deadline or method of award, or to the intent or technical aspects of the IFB must (a) be delivered to the SPC via email submission; (b) reference the IFB number, time and date of opening and the title of the IFB; (c) identify Bidder's name and contact information; (d) refer to the specific area of the IFB being questioned (i.e. page, section and paragraph number); and (e) be received on/before the due date and time for Questions/Requests for Clarifications indicated in Part I, Schedule of Events. Unauthorized contact with other District staff regarding this IFB may result in the disqualification of the Bidder.

Upon examination of this IFB document, Bidder should promptly notify the District of any ambiguity, inconsistency, or error they may discover. Any questions or requests for clarifications of the bid scope shall be submitted in writing by electronic transmission to the SPC. Questions and requests for clarification must be received no later than the due date and time indicated in Part I, Schedule of Events.

If the District deems its answer to a question merely clarifies the existing terms and conditions and does not have a material impact on other potential Bidders or the IFB itself, no further documentation of that question is required. If the District deems that its answer to a question has a material impact on the IFB itself, the District will create an addendum to this IFB. All addenda issued by the District become a part of the IFB. Addenda will be delivered to all Potential Bidders using the same method of delivery of the original IFB material. The District accepts no liability in connection with the delivery of any addenda. Copies of addenda will also be made available on the District website at <http://www.actransit.org/acpronet> (under "Current" and "Pending" Solicitations). All Bidders must provide written acknowledgement of their receipt of all addenda in their bid response.

Interpretations, corrections, or changes that are made in any other manner, including oral modifications, are not binding to the District, and Bidders must not rely on them. Any interpretation, change, or correction of said specifications will be issued by written Addenda only, duly issued by the District, which shall become a part of the bid documents. Any amendment to a submitted bid must be in writing and must be delivered to the District on/before the IFB submission deadline. All oral modifications of these conditions or specifications are void and ineffective. The District reserves the right to reject any bid that contains unauthorized conditions or exceptions.

2. **Submission of Bids.** To receive consideration, bids must be received by the Procurement Department prior to 2:00pm local time on the date indicated in Part I, Schedule of Events. Clocks are located throughout the Procurement Department, at the District's front lobby desk, and times can be verified by visiting <http://www.time.gov>. Requests for extensions of this time and date will not be granted, unless deemed to be in the District's best interest. To receive consideration, bids must be delivered on/before to the date and time for bid opening. The final Technical Bid and Bid Forms shall be submitted electronically via email, organized as outlined herein. The electronic copy must contain all required completed and signed forms. In order to submit bids to AC Transit, you must comply with the following:

Bidder's electronic submission must be formatted using Adobe Acrobat (.pdf) or Microsoft Excel (.xls) with the total combined size of the bid and pricing information compressed so it does not exceed 10.0 megabytes. Files shall conform to the naming convention of: "IFB Number 2020-1500 Company Name" {Ex: "IFB2020-1500_AC Transit"}.

The Technical Bid must be included as a (.pdf) file; and the Bid Form must be submitted as a separate Microsoft Excel (.xls) file with all related Attachments. The District will not be responsible for corruption of any file submitted. *If the submitted file cannot be viewed and printed as submitted, it will not be considered.*

Bidders are responsible for verifying successful delivery of electronic transmission to the SPC on/before the time and date specified in Part I, Schedule of Events as *late submissions will not be considered*. When sending bids by email, Bidders are responsible for marking the email "return receipt" and "notify when read" to ensure to know we have received the submission and to be alerted when the email was opened at the predetermined submission opening time. Once your email is received by the District you will receive an email acknowledgement notification confirming receipt of the submission. In order to ensure your full response is evaluated, you must also provide a flash drive and two (2) hard copy versions of the Technical Bid and Price Forms.

Alternative to email submission, Bidders may opt to submit final bids by U.S. mail, private carrier (UPS/FedEx), or hand delivery in sealed envelopes to the SPC's attention on/before the due date and time indicated in Part I, Schedule of Events. Bidders mailing their bids shall allow for sufficient mail time to ensure receipt of their bids by the Procurement Department by the time and date fixed for acceptance of the bids. *(Please note: Bidders choosing to submit bids via U.S. Mail should allow at least an additional twenty-four (24) hours in the delivery process for internal District mailroom distribution). The Bidder should ensure the Bid Form is in a separate sealed envelope from the Technical Proposal.* All packages shall be clearly marked with the IFB Number, Project Title, and the Due Date and Time. ***Final Bids (or unsolicited amendments to bids) received after the time and date specified will not be considered and will be deemed as disqualified.*** Bids will be accepted and logged in at the time and date specified above.

Regardless of method of delivery, each bidder must also submit a flash drive and one (1) original and one (1) copy of their complete bid on/before the bid due date.

The District will reject any bids or unsolicited bid addenda that are received after the deadline. The District recommends that Bidders submit bids as early as possible. The District will reject late bids regardless of the cause for the delay. Submission of a bid shall constitute a firm offer to the District for one hundred fifty (150) calendar days from the submission deadline for bids.

A Bidder may withdraw a bid any time before the date and time when bids are due, without prejudice, by submitting a written request for its withdrawal to the SPC. A telephone request is not acceptable. The bid will be set aside prior to the opening of bids and returned to the Bidder unopened. The withdrawal of a bid does not prejudice the right of a Bidder to submit another Bid within the time set for receipt of bids. After the bid due date, a bid may be withdrawn only if the District fails to award the contract within the one hundred fifty (150) calendar day period set forth here, or any agreed-upon extension thereof.

At the hour specified in the notice, the District will open, examine and publicly declare all bids received. Bidders, their representatives, and others interested, are invited to be present at the opening of bids. District staff will review all responsive bids received and awards will be made or bids rejected by the District within a reasonable time after bids have been opened.

3. **Technical Bid Content.** Bids shall be prepared simply and economically, providing a straightforward and concise description of the Bidder's capabilities and approach for meeting the requirements of this IFB. Each Bidder must carefully review the requirements of the IFB and the contents of its bid. Before submitting a bid, read the *entire* solicitation including the contract terms and conditions. Failure to read any part of this solicitation will not relieve a bidder of the contractual obligations. All bids must be submitted in a sealed envelope. The face of the sealed envelope shall indicate the IFB number, time and date of opening and the title of the IFB. Once opened, bids cannot be altered, except as allowed by the IFB. The bid documents shall be divided into sections with cover pages identifying the contents of the sections, and properly formatted for printing. The bid must address all requirements set forth in this IFB and documents shall be divided into sections and cover pages identifying the contents of the sections, and properly formatted for printing.

Bidder shall describe the goods to be provided or the services to be performed or both. A bid that merely offers to provide the goods or services as stated in this IFB *may be* considered non-responsive and *may not* be considered further.

Bid submissions should be submitted using the electronic forms provided and must be signed by the individual or authorized principal of the firm. Bidders that use alternative documents are responsible for ensuring the content is substantially similar to the District form and the document is readable by the District. The District is not responsible for the accuracy of any information regarding the IFB that was gathered through a source different from the inquiry process described in the IFB. Bidders are responsible for checking directly with the District website for any addendums to this IFB. Addendums to this IFB can change the terms and conditions of the IFB, including the bid submission deadline. Although the District is not specifying a page limit, clarity and conciseness are essential and will be considered during bid evaluation. All bid forms must be submitted in English and must be legible.

The bid must include copies of all appropriate forms executed and dated by an authorized signatory of the Bidder authorized to legally bind the Bidder. Bids should not include extensive artwork, unusual printing or other materials not essential to the utility and clarity of the bid. Do not include marketing or advertising material in the bid, unless requested. Bids containing unsolicited marketing or advertising materials may receive a lower evaluation score if specific information is difficult to locate.

As a public agency, the District's bids, responses, and awarded contracts are a matter of public record, except for such data that is classified as nonpublic. Accordingly, public data is available for review through a properly submitted public records request. To redact nonpublic information from your Bid (*under the California Public Records Act (Cal. Govt. Code Sections 6250 et seq.*)), you must make your request within thirty (30) days of the contract award or non-award date.

It is the Bidder's responsibility to carefully examine the terms, specifications and conditions of the bid documents thoroughly, and comply fully with specifications and all attached terms and conditions and shall judge for itself all of the circumstances and conditions affecting its bid. The District will endeavor to present accurate information, but Bidders are advised to independently verify the accuracy of any information received. Bidder is responsible for providing a full and complete written response, which does not require interpretation or clarification by the District. Bidders must comply with all Federal, State, and City laws, ordinances and rules, and meet any and all registration requirements. Bidder is to provide all requested materials, forms and information at the time of bid submission. Bidder is responsible to ensure submitted materials properly and accurately reflects Bidder's specifications and offering. Bidders are advised that the District's ability to review bids is dependent in part on the Bidder's ability and willingness to submit bids which are well ordered, detailed, comprehensive, and readable. Clarity of language and adequate, accessible documentation is essential. During review of the documentation, the District will rely upon the submitted materials and shall not accept materials from the Bidder after the IFB deadline; however, this does not limit the right of the District to consider additional information (such as references that are not provided by the Bidder but are known to the District, or past experience by the District in assessing responsibility), or to seek clarifications as needed by the District.

- A. **Bid Format and Quantity.** The District wants clear and concise bids. Bid shall be organized as described below. Each section must be clearly labeled with pages numbered and separated by tabs. Bidders should, however, take care to completely answer questions and meet the IFB's requirements thoroughly. Failure to provide *all* of the required submittals may render the bid non-responsive.

All Bidders, including current contract holders, if applicable, must provide detailed and complete responses as all bids and determinations of responsiveness are based solely on the content of this bid. No assumptions will be made or value assigned for the competency of the Bidder whether or not the Bidder is a current or previous contract holder. The District will not be liable for any costs incurred by a Bidder in responding to the IFB, regardless of whether the District awards the Contract through this process, decides not to go forward with the Project, cancels the IFB for any reason, or contracts for the Project through some other process or by issuing another IFB.



1. **Tab 1 - Cover Sheet.** A signed cover letter should be on company letterhead clearly stating the title of the Bid project, the name of the Bidder's firm, business address, telephone, e-mail address, name of contact person, and date of submittal. The following information must be provided:
 - a. Briefly, introduce the firm, indicating whether the firm is local, regional, national or international, its legal entity type and including, but not limited to, the approximate number of professional staff employed. Please and summarize the firm's qualifications including a brief description of the history, background of the firm and length of time in business under the same name.
 - b. Bidders must be licensed to do business in California. Please provide a copy of the firm's business license. The Bidder(s) shall possess and maintain all necessary licenses and permits required to conduct its business and will acquire any additional licenses and permits necessary for the performance of the services prior to the initiation of the Work. Contractor must maintain current licenses, permits, etc., to perform the Work described herein and shall comply with all applicable local, county, state and federal laws and ordinances pertaining to, or regulating the Services to be performed under the Contract awarded related to this IFB.
 - c. The name, title, address, telephone number, and e-mail address of the bidder's contact person during the solicitation process.
 - d. Name(s) of authorized person(s) who will be authorized to represent and with authority to contractually bind the firm.
 - e. A statement that binds the Bidder to the proposed Scope of Work and Bid Form for at least one hundred fifty (150) calendar days from the date of submission of the bid.
 - f. Indicate whether there are any conflicts of interest that would limit the Bidder's ability to provide the requested services. Also please provide a System of Award Management (S.A.M.) number.
 - g. Acknowledge receipt of all addenda by including a copy of the signed addendum.
2. **Tab 2 - Technical Proposal.** Each technical proposal must include a detailed description of the technical components to specific sections and methodologies, capacity, and strategy to perform the scope of work. Disclose any subcontractors who will be used on the project, including identifying the portions and percentages of the work to be performed per subcontractor.
 - a. Past Performance, Experience and References: Bidder must provide a description of sound methodologies and list examples of steps, time, and cost savings achieved under similar contracts (*ideally with similar customers*). Provide relevant and/or current information of past performance (*within the past five (5) years*) by identifying the agency, contact person, and contact person's telephone number for whom the service was provided by completing Attachment B – Bidder's Qualifications and Reference Questionnaire. Bids must provide details on the qualifications of the Bidder including an organizational chart that identifies the proposed management team as well as provide the size, number of employees, primary nature of the business, and other affiliate businesses or services. Bids must also provide details on the referenced projects relating to the quality of work, the relevance of the projects, and insight into the work process of the Bidder's team. The relevance of the project includes the make-up of the team as well as the type of project, experience with public transit agencies, or similar public entities. Please include references from other public transit agencies in Attachment B, if available. Bidders shall include all experience with projects that are similar in scope and nature to this project as well as include the level of achieved client satisfaction for past performances.
 - b. Technical Ability to Perform Required Services: Bidder must provide a detailed description of its ability to provide the required services including a demonstrated understanding of the IFB requirements, its capacity and its planned strategy to perform the proposed *Scope of Work*. Determinations of responsiveness will be based on the Bidder's ability to meet the necessary requirements.
 - c. Minimum Qualifications: Bids must demonstrate that Bidders meet the following minimum qualifications:
 - Bidder(s) must have a minimum of *five (5) years* of verifiable experience providing Heavy Duty Towing and Related Services equivalent to the Services identified in the Scope of Work/Services in this IFB; and
 - Bidder(s) shall be actively engaged in providing Heavy Duty Towing Services for a period of no less than *five (5) years* and have maintained a record of good performance, sufficient financial support (*annual revenues*), equipment, sufficient personnel (*number of employees*), and adequate facilities (*garage locations*) to satisfactorily execute the Services, if awarded a Contract, under the terms and conditions stated herein. Provide proof and/or documentation; and
 - Bidder(s) shall provide a list of towing vehicles and related equipment that will be utilized to provide services; and
 - Bidder(s) to provide a minimum of *three (3)* professional relevant references (*with specific contact information: name, email, and telephone numbers*) in the local area for which the bidding company has provided similar Heavy Duty Towing and related services that the District may contact regarding past performance and service experience with the company; and
 - Bidder shall include a statement accepting the standard contract terms; and
 - Bidder(s) shall include a statement, in its bid submittal package, that the required insurance coverage will be acquired and maintained without reservation or exclusion for the duration of the contract (*should Bidder secure the contract award*).
3. **Tab 3 – Bid Proposal.** Bidder shall specify bid pricing in the format and on the form(s) provided (Attachment C-Bid Forms), indicating flat rate fees and extended costs. The Attachment C shall be inclusive of all fees for service, profit, overhead, travel, materials, and taxes. The fee shall be presented as a lump sum for each deliverable and service listed in the *Scope of Work* for the timeframe listed in this IFB. In the case of difference between the unit pricing and the extended price, the District shall use the unit pricing. The District may correct the extended price accordingly.

No Guaranteed Quantities. The District does not guarantee to Contractor, either expressed or implied, any minimum or maximum purchase quantities of services or goods under this Contract. The District does reserve the right to purchase any greater or lesser



quantities than indicated in the solicitation estimate. Bidder shall be bound to the prices on the submitted Bid Form for the duration of the Contract term.

Separate Items or in the Aggregate. Bidder may bid separately for any item, unless otherwise provided. The District may make awards on separate items or in an aggregate of several or all items, unless otherwise provided.

Cash Discounts. Cash discount (*discount for prompt payment*) will be taken into consideration in determining the low bid under the following conditions: (a) Discount period must be at least thirty (30) days; (b) the discount period will start on the date of completion of delivery of all items on any purchase order or other authorization or upon date of properly prepared invoices covering such deliveries, whichever is later; and (c) payment is deemed to be made, for the purpose of claiming the discount, on the date of mailing the District check.

Taxes. The supplies, materials or equipment called for under the specifications will be used by the District in the performance of a governmental function and are exempt from taxation by the United States Government. Unless otherwise stated, Bidder shall exclude applicable California State and local sales or use taxes in the total price in the bid. Said tax, wherever applicable, will be paid by the District to the Contractor, if licensed to collect same, or otherwise directly to the State.

Deliveries. Award of a Contract related to this IFB is contingent upon Bidder's ability to timely deliver the Services as outlined in the Technical Specifications. The Services shall be delivered to a District-designated location as identified in Section D-Scope of Work/ Services of this solicitation, or such other location as may be designated by the District from time-to-time. Bidder shall include freight or delivery charges in the total price in its bid proposal. Bidder shall quote prices F.O.B. Destination in Oakland, freight prepaid and allowed. All prices shall be in U.S. Dollars. Any incidental services to be performed at the place of delivery shall be completed by the delivery date listed in the Technical Specifications, unless otherwise agreed upon in writing. Any additional fees for such services shall be delineated in writing and agreed upon, in writing, by both parties.

The selected Bidder will be required to enter into a contract with District, a form of which is provided as Exhibit 1.

Within seventy-two (72) hours of a District request, Bidder agrees to provide financial records to verify labor rates, overhead rates, and other information should the District determine that such information is required to validate bid information or award of a contract to determine the proposed price is fair and reasonable. The District will make an award to the lowest responsive and responsible bidder whose bid complies with all the requirements of the solicitation.

4. **Tab 5 - Required Forms.** Bidder must submit all required forms, specifically:
 - a. Signature Page 1
 - b. Attachment A - Bidder's Statement of Qualifications and Business References
 - c. Attachment B - Prime Contractor and Subcontractor/Supplier Report
 - d. Attachment C - Completed Bid Forms
 - e. Attachment D - Certification Regarding Lobbying
5. **Brand, Manufacturer or Product Names.** Whenever brand, manufacturer or product names are indicated in these specifications, they are included only for the purpose of establishing identification and a general description of the item. Whenever such names appear, the term, "or Approved Equal" is considered to follow. Specifying a brand name, components and/or equipment in the specification shall not relieve the Bidder from its responsibility to produce the product in accordance with the warranty and contractual requirements.

When the name of a manufacturer, brand or make, with or without a model number, is used in describing any item in this document, bids for similar articles will be considered, unless otherwise stated.

Bidder is responsible for notifying the District of any inappropriate brand name, components and/or equipment that may be called for in the specification, and to propose a substitute for consideration. The District shall be the sole judge whether such alternate articles are acceptable.

Unless the Bidder states to the contrary, articles offered are assumed to be the specific articles named in this document and that articles offered are in accordance with the specifications. If not offering the specific articles named, bidder should enclose with bid full information, specifications and descriptive data on items offered. The District reserves the right to permit deviations from the specifications if any article offered is substantially in accord with the specifications and is deemed by the District to be as good quality and as fully satisfactory for its intended use as an article fully meeting specifications.



B. **Public Opening of Bids.** The District will conduct a formal public opening of all bids in response to this IFB. Bids will be read aloud at the date, time, and place designated in Part I, Schedule of Events. Bidders and their authorized representatives are invited to be present. The District may, at its discretion, choose to schedule a virtual Bid opening. Instructions will be provided on the District's website (<http://www.actransit.org/acpronet>) listed on this IFB's project page under Current Procurement Opportunities.

C. **Review of Bids.** The District intends to award a contract with fixed fees/rates to the most qualified, responsible, responsive firm submitting the lowest priced bid. Bids that pass the preliminary screening and mandatory requirements review will be evaluated based on information provided in the bid. Bids will be evaluated for completeness and responsiveness to this IFB's stated requirements as detailed in the Scope of Services and minimum qualifications.

The District may reject the bid of any Bidder deemed not to possess the minimum qualifications to provide or perform the work hereunder. The bid will be evaluated in light of the material and the substantiating evidence presented to the District, not on the basis of what may be inferred. The Bidder may be required upon request to prove to District's satisfaction that it has the skill and experience and that it has the necessary facilities and financial resources to perform in a satisfactory manner and within the required time. A copy of the Bidder's most recent Annual Financial Statement may be requested.

The District normally rejects any incomplete or incorrectly formatted bid, though it may waive any defects or allow an Bidder to submit a correction. The District also may reject any bid which contains unauthorized conditions, limitations or provisos or in which the technical approach, qualifications, or costs are deemed nonresponsive.

Unless stated to the contrary in the Scope of Work, the District reserves the right to make a partial and/or multiple award(s), in the best interest of the District. Bidders are to prepare bids given the District's right to a partial or multiple award(s). Further, the District may eliminate an individual line item when calculating award, in order to best meet the needs of the District, if a particular line item is not routinely available or is a cost that exceeds available District funds.

To qualify for recommendation for award, a Bidder must have been deemed responsive as a result of the criteria set forth below under "*Bidder Responsiveness*".

Responsiveness and Responsibility Determination. District personnel will review all submittals for initial decisions on responsiveness and responsibility, including responsiveness to minimum qualifications. Those found responsive and responsible based on this initial review will then be reviewed for responsiveness in meeting the minimum qualifications.

a. **Responsiveness Determination.** A bid received prior to the bid deadline will be reviewed to determine if it is responsive to all IFB requirements including compliance with the Minimum Qualifications section and the Minimum Submission Requirements section. If the bid is unclear, the SPC may request clarification from bidder. However, clarifications may not be used to rehabilitate a non-responsive bid. If the SPC finds the bid non-responsive, the bid may be rejected, however, the District may waive mistakes in its sole discretion. If a bid does not considerably conform to substantially all of the terms and conditions in the solicitation, or if it requires unreasonable exceptions, it may be considered nonresponsive. All bids must contain suitable responses to the questions in the bid forms. The following requirements must be satisfied in order to meet responsiveness requirements, which is typically ascertained following opening of the bids. If these standards are not met, the bid may be disqualified as nonresponsive.

The Bid:

- is received on/before the deadline for submission; and
- is properly addressed, identified as a sealed bid with a specific IFB number listing the an opening date and time; and
- lists the name, title, address, telephone number, and e-mail address of the Bidder's principal contact person during the solicitation process; and
- contains a separate pricing document (*including apparent discounts*) and all other forms fully completed, even if "*not applicable*" is the answer; and
- includes signed copies of all required forms - completed, dated, and signed and, if applicable, any signed addenda that have been issued in relation to this IFB; and
- includes a statement accepting the standard contract terms; and
- includes a statement that the required insurance coverage will be acquired and maintained without reservation or exclusion for the duration of the contract (*should Bidder secure the contract award*); and
- includes a duly-executed signature page 1 from this IFB, signed by an approved representative of the bidding firm; and
- includes a flash drive with an electronic copy of the entire IFB submittal (in the formats detailed herein); and
- includes two (2) hard copies of the entire RFP submittal (*in the formats detailed herein*).

b. **Responsibility Determination.** District engages in business with only responsible Bidders with sound management, quality control, capacity, experience, financial resources, and ethics to perform its contract. District reserves the right to employ a variety of means to determine the responsibility of potential Bidders, including evaluating its past experience with the Bidder. The Contract may not be awarded to an Bidder that is determined not to be responsible.

The District shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed contract. As a prerequisite to an award of Contract, the District will determine whether the Bidder meets the definition of a "*responsible Bidder*" as set forth in *Public Contract Code Section 1103: "a Bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract."* In making this determination, the District may consider any information about the Bidder, including information submitted in response to this IFB and the Attachment A-Bidder's Statement of Qualifications (*included with the solicitation forms*). Responsibility can be determined at any time during the solicitation process.

To be considered responsible, consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The Contracts Specialist will check to determine whether the Bidder is an excluded



Party on Sam.gov, (*The District may not award a contract to a Contractor that appears on this list.*), as well as the following: Does the vendor have appropriate financial resources, equipment, facility, and personnel? Has the vendor adequately completed the Proposer's Statement of Qualifications & Business Reference Questionnaire? Has the vendor demonstrated its ability to meet the delivery schedule? Has the vendor provided all additional information requested by the District?

The District may reject the bid of any bidder deemed not to possess the minimum qualifications to provide or perform the work hereunder. The District's determination of a Bidder's responsibility may include the following factors: the experience of the Bidder and its key team members; past conduct and past performance on previous contracts; ability to execute this contract properly; and management skill. The District will make such determination of responsibility based on the Bidder's bid, reference evaluations, and any other information the District requests or determines to be relevant. If the District's minimal qualifications and bid requirements are not met, the bid may be disqualified as nonresponsive and nonresponsive.

District will contact the selected Bidders' references to verify and validate past performance. Reference checks indicating poor or failed performance by the Bidder may be cause for rejection of the bid. In addition, failure to provide requested reference contact information may result in a determination of not responsible. The reference evaluation will measure the criteria contained in this part of the IFB as it relates to the Bidder's previous contract performance including, but not limited to, its performance with other local, state and federal entities. The District reserves the right to check references other than those provided in the Bidder's bid. The District may obtain information relevant to criteria in this part of the IFB, which is deemed critical to not only the successful operation and management of the Project, but also the working relationship between the District and the Bidder. The District may contact the client references of the companies or other sources in addition to those specifically provided by the Bidder, at any time to assist the District in understanding the services offered. The District reserves the right to request samples from vendors for a specified job.

Part of the Bidder qualifications include, as a component, the Bidder's financial ability to perform the Contract. The IFB may expressly require the submission of financial statements from all Bidders in the bid contents. If the bid contents do not make this an expressed requirement, the District may still insist that a Bidder submit audited financial statements the past three (3) years if the District is concerned that a Bidder may not have the financial ability to carry out the Contract. In evaluating a Bidder's financial ability, if requested, the District will review the documentation provided by the Bidder to determine if the Bidder's financial position is adequate or inadequate. If the District believes the Bidder's financial ability is not adequate, the District may reject the bid despite its other merits.

The District will determine if an apparent successful Bidder is responsible prior to award and execution of a contract. At any time prior to award, the District may reject a Bidder found to be not Responsible.

- D. **Award Consideration.** The District may reject any and all bids, may waive any minor irregularities or informalities in any bid or in the bidding procedure, and must reject a bid of any party who has been delinquent or unfaithful in any former contract with the District. If the District chooses to award a contract, it shall award a contract to the lowest-priced, responsive, responsible bidder(s) whose bid meets the technical requirements set forth in this solicitation. The District, in its discretion, may award less than the full Scope of Work defined in this IFB. In the event two (2) Bidders submit the same total price, the contract will be awarded to the Bidder who, in the opinion of the District, best meets the District needs.
- E. **Award Notification Process - Intent to Award Notice.** After the District's approval of the award, District will timely notify the successful Bidder, in writing, that District intends to award a Contract to the selected Bidder(s) subject to successful completion of a contract between the parties. The letter will include instructions for final submittals that are due prior to execution of the contract. Notice of award shall be made available to the public through electronic means. The District will also timely notify the unsuccessful bidders of such award. The SPC will maintain a complete file record showing the basis for determining the successful bidder. Should administrative difficulties after bid opening threaten to delay award beyond the Bidders' acceptance period, the District may ask the Bidders to extend the one hundred fifty (150) calendar day bid validity period, with consent of sureties, if any, to avoid the need for re-advertising.
- F. **Award and Contract.** The District reserves the right to contract for all or a partial list of services offered in the bids. This IFB, including any addenda added, and the selected bid shall become part of the Contract initiated by the District. By submitting a bid, Bidder agrees to comply with the requirements of the IFB, including the terms and conditions of the Sample Contract (Exhibit 1). Bidders are responsible to review all specifications, requirements, Terms and Conditions, insurance requirements, and other requirements herein and should price Bids with the understanding that all specifications, requirements, terms and conditions are *mandatory* for the Bidder to comply. Submittal of a bid is agreement to comply without exception, unless modified by the District.

Bidder shall review the attached Sample Contract (Exhibit 1) and note exceptions. A Bidder shall not submit its own standard contract terms and conditions as a response to this IFB. Bidder must submit those exceptions to the District during the Questions / Requests for Clarifications period set forth in herein. *No exceptions will be accepted after the submission deadline.* Unless the District agrees to modify any of the terms and conditions, District intends to enter into a Contract with the successful Bidder substantially in the form set forth in the Sample Contract. Bidder is cautioned the District believes modifications to the standard provisions constitute increased risk and increased cost to the District. Therefore, District will consider the scope of requested exceptions in the evaluation of the bid.

Nothing herein prohibits the District from opening discussions with the apparent successful lowest, responsible, responsive Bidder in order to align the bid or the Contract to best meet District needs within the scope sought by the IFB. If the selected Bidder fails to sign the final Contract within ten (10) business days of delivery, the District may elect to cancel the award and award the Contract to the next lowest responsible, responsive Bidder.

SECTION D: SCOPE OF WORK / SPECIFICATIONS

1. **Project Description.** The purpose of this *Invitation for Bid (IFB)* is to obtain the services of a qualified firm able to provide *Heavy Duty Towing Services*.

2. **Detailed Statement of Work.** The services are more fully described in Attachment 1- A, Scope of Work/ Services, included in this IFB.

SECTION E: STANDARD CONDITIONS

1. **Reserved Rights.** Without limiting the generality of any other provision of this IFB, the District reserves the right, at any time prior to execution of an agreement with the successful Bidder, to exercise all or any of the following rights and options, which rights and options the District may exercise to the extent that the District, in its sole discretion, deems to be in the District's best interests:
 - This IFB and the process it describes are proprietary to the District and is for the sole and exclusive benefit of the District. No other party, including any respondent to this IFB or future Bidder to any IFB which may be issued by the District, is intended to be granted any rights hereunder.
 - All Bidders are notified the Contract for these services is contingent upon funds appropriated by the District and local, regional, state and federal governments. In the event that funding is eliminated or decreased, the District reserves the right to terminate any Contract or modify it accordingly. The District makes no representations that any Contract will be awarded to any Bidder responding to the IFB.
 - The District reserves the right, in its sole discretion:
 - To cancel the IFB at any time and for any reason, with or without issuing another IFB, with no cost or penalty to the District; or to reject all bids and re-solicit or cancel this IFB if deemed by the District to be in its best interest;
 - To re-issue this IFB without change or modification; or to issue a subsequent IFB for this project with terms and conditions that are substantially different from the terms and conditions set forth in this IFB.
 - To correct inaccurate awards resulting from its clerical errors. This may include, in extreme circumstances, revoking the awarding of a contract already made to an Bidder and subsequently awarding the contract to another Bidder. Such action on the part of the District shall not constitute a breach of contract on the part of the District since the contract with the initial Bidder is deemed to be void *ab initio* and of no effect as if no contract ever existed between the District and the Bidder.
 - To permit or reject amendments (including information inadvertently omitted), modifications, alterations and/or corrections of bids by some or all of the Bidders following Bid submission.
 - To waive any informality, defect, non-responsiveness, or derivation from this IFB that is not, in the District's sole judgment, material to the bid.
 - To not proceed with the process described in this IFB, or to change any time schedules set forth herein, including to extend bid due dates.
 - To reject any bid that is untimely, incomplete, unclear, conditional, contains irregularities of any kind, is not in conformity with applicable law, not responsive to this IFB, contains ambiguities or services not called for by this IFB, or whose conduct violates ethical regulations.
 - To reject the bid of a Bidder that, has been delinquent or unfaithful in the performance of any contract with the District, or is financially or technically incapable of performing the services required in this IFB, or is otherwise not a responsible Bidder.
 - To rescind its rejection of any bid(s) with a previously rejected Bidder.
 - To request clarifications of any unclear bid; and to request that some or all of the Bidders modify bids or provide additional information following evaluation by the District.
 - To consider, and accept for evaluation, a late modification of a bid if the bid itself was submitted on time; the modifications were requested by the District; and the modifications make the terms of the bid more favorable to the District.
 - To request additional or supplemental information (including but not limited to information inadvertently omitted by any Bidder in response to this IFB) from any or all Bidders.
 - To conduct such investigations as the District considers appropriate with respect to the qualifications of any Bidder and/or any information contained in any bid.
 - To duplicate, without limitation, all materials submitted for purposes of this IFB, and duplicate for public information in response to data requests regarding the bid.
2. **Protest Procedures.** District's protest policies, as detailed in Board Policy 468, may be accessed via the following link: http://www.actransit.org/wp-content/uploads/board_policies/BP%20468%20-%20Procurement%20Protest-1.pdf
3. **DBE Program/SBE Goal.** There is no goal for this contracting opportunity.
4. **Vendor Registration.** Online Vendor Registration is required prior to the contract award on the District's online system: <http://www.actransit.org/purchasing/vendor-registration-and-log-in/>. All prospective vendors must also be registered in the federal government's System for Award Management (SAM) database (<https://www.sam.gov>) prior to the award of a contract, basic agreement, basic ordering agreement, or blanket purchase agreement.
5. **W-9 Form Required.** Each offeror shall submit a completed W-9 form with its proposal. In the event of contract award, this information is required in order to issue purchase orders and payments. A copy of this form can be downloaded from <http://www.irs.gov/pub/irs-pdf/fw9.pdf>.
6. **Cost of Bid Submission and Pre-Contractual Expenses.** Bidder shall pay all the costs in submitting its bid, including, but not limited to, the costs to prepare, present and/or submit the bid in response to this IFB, costs of samples and other supporting materials, costs to participate in demonstrations, pre-bid conferences, or costs associated with protests. The District shall not be liable for any pre-contractual expenses incurred by any Bidder and Bidders shall not include any such expenses as part of the bid. The District shall be held harmless and free from any and all liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this IFB. Pre-contractual expenses are defined as expenses incurred by Bidder in:
 - Bids in response to this IFB (including copies or other expenses of any submitted documentation).
 - Other expenses incurred by a Bidder prior to the date of award and formal Notice to Proceed for any contract.
7. **Waiver.** By submitting a bid, the corresponding Bidder represents and warrants that it has sufficiently informed itself in all matters affecting the performance of the work or the furnishing of the labor, supplies, material, or equipment called for by the envisioned Contract; that Bidder has



checked its bid for errors and omissions; that the prices stated in its bid are correct and as intended by it and are a complete and correct statement of its prices for performing the work or furnishing the labor, supplies, materials, or equipment required by the Contract.

8. **Ownership/Permission to Use Materials.** Responses to this IFB become the exclusive property of the District. At such time as the Procurement Department makes an award recommendation to the General Manager or the Board of Directors, as applicable, and following the District's issuance of the *Notice of the Intent to Award*, all Bids become public record and subject to public inspection. Application of the *California Public Records Act (Cal. Govt. Code Sections 6250 et seq.)* will determine whether any information is actually exempt from disclosure.

The District shall not in any way be liable or responsible for the disclosure of any such bid or portions thereof, if they are not plainly marked as "Confidential," "Trade Secret," or "Proprietary" or if disclosure is required under the Public Records Act. Any bid which contains language purporting to render all or significant portions of the Bid "Confidential," "Trade Secret," or "Proprietary" shall be regarded as non-responsive. Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the District may not accept or approve that the information that an Bidder submits is a trade secret. If a request is made for information marked "Confidential," "Trade Secret," or "Proprietary," the District shall provide the Bidder who submitted the information with reasonable notice to allow the Bidder to seek protection from disclosure by a court of competent jurisdiction

All bids submitted in response to this IFB become the Property of the District. By submitting a bid in response to this IFB, Bidder grants the District a non-exclusive, perpetual, irrevocable, royalty-free license for the rights to copy, distribute, display, prepare derivative works of and transmit the bid solely for the purpose of evaluating the bid, negotiating a Contract, if awarded to Bidder, or as otherwise needed to administer the IFB process, and to fulfill obligations under *California Public Records Act (Cal. Govt. Code Sections 6250 et seq.)*. Bids, including supporting materials, will not be returned to Bidder unless the bid is submitted late.

9. **Public Records Act/Confidentiality.** The *California Public Records Act (Cal. Govt. Code Sections 6250 et seq.)* mandates public access to government records. Therefore, unless the information is exempt from disclosure by law, the content of any request for explanation, exception or substitution, response to these specifications, protest or any other written communication between the District and the Bidder shall be available to the public.

If the Bidder believes any communication contains trade secrets or other proprietary information the Bidder believes would cause substantial injury to the Bidder's competitive position if disclosed, the Bidder shall request the District withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential. The Bidder may not designate its entire bid as confidential. Additionally, Bidder may not designate *Bid Forms* as confidential.

If the Bidder requests that the District withhold from disclosure information identified as confidential, and the District complies with the Bidder's request, the Bidder shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify, defend, and hold harmless the District from and against all damages (including but not limited to attorneys' fees that may be awarded to the party requesting the Bidder information), and pay any and all cost and expenses related to the withholding of the Bidder information. The Bidder shall not make a claim, sue or maintain any legal action against the District or its directors, officers, employees or agents in connection with the withholding from the disclosure of Bidder information or in connection with the disclosure of Bidder Information in the event the District determines such information is subject to disclosure.

If the Bidder does not request that the District withhold from disclosure information identified as confidential, the District shall have no obligation to withhold the information from disclosure and may release the information sought without liability to the District.

10. **Conflict of Interest.** By submitting a bid, the Bidder represents and warrants that no director, officer or employee of the District is in any manner interested directly or indirectly in the bid or in the Contract which may be made under it or in any expected profits to arise there from, as set forth in *Article 4, Division 4, Title I (commencing with Sec. 1090)* of the Government Code of the State of California.

The Bidder warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under *California Government Code Sections 1090 et seq. or Sections 87100 et seq.* during the performance of services under this Contract. The Bidder further covenants that it will not knowingly employ any person having such an interest in the performance of this Contract. Violation of this provision may result in this Contract being deemed void and unenforceable.

Depending on the nature of the work performed, the Bidder may be required to publicly disclose financial interests under the District's Conflict of Interest Code. The Bidder agrees to promptly submit a *Statement of Economic Interest* on the form provided by the District upon receipt. No person previously in the position of director, officer, employee or agent of the District may act as an agent or attorney for, or otherwise represent, the Bidder by making any formal or informal appearance, or any oral or written communication, before the District, or any officer or employee of the District, for a period of twelve (12) months after leaving office or employment with the District if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, awards or revocation of a permit, license, grant or Contract.

The Bidder warrants that it has no organizational conflicts of interest at this time. Alternatively, the Bidder must disclose all known organizational conflicts of interest. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to the District; a firm or person's objectivity in performing the contract work is or might be impaired, or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other agreement.

11. **No Collusion.** By submitting a bid, each Bidder represents and warrants that its bid is genuine and not a sham or collusive or made in the interest of or on behalf of any person not named therein; that the Bidder has not directly induced or solicited any other person to submit a sham bid or any other person to refrain from submitting a Bid; and that the Bidder has not in any manner sought collusion to secure any improper advantage over any other person submitting a Bid.

Penalty for Collusion. If, at any time, it shall be found that the person, firm or corporation to whom a contract has been awarded has, in presenting any bid or bids, colluded with any other party or parties, then the contract so awarded shall be null and void and the Contractor and its bondsmen shall be liable to the District for all loss or damage which the District may suffer thereby and the District may advertise for a new contract for said labor, supplies, materials, or equipment.



12. **Non-Conforming Bid.** A bid shall be prepared and submitted in accordance with the provisions of these IFB instructions and specifications. Any alteration, omission, addition, variance, or limitation of, from or to a bid may be sufficient grounds for nonacceptance of the bid, at the sole discretion of the District.
13. **Gratuities.** No person shall offer, give or agree to give any District employee any gratuity, discount or offer of employment in connection with the award of contract by the District. No District employee shall solicit, demand, accept or agree to accept from any other person a gratuity, discount or offer of employment in connection with a District contract.
14. **Ex-Parté Communications / Cone of Silence Policy.** In accordance with California Public Contract Code section 20216(d), the District Board of Directors, or any person responsible for awarding a contract shall not have any ex-parté communication with a bidder or any representative of the bidder except in writing and if the communication is made public.

Any verbal or written communication between any potential or actual offeree, or its representatives and any District Board Member, staff member, committee member, or contractor regarding this procurement are strictly prohibited from the date of the solicitation advertisement through the date of execution of the Contract. The only exceptions to this are: (1) written requests regarding information or clarification made to District's designated Contracts Specialist (*or other procurement designee*) during the allowable time period under the solicitation; and (2) any communications at a publicly noticed meeting of the District Board of Directors. Any violation of the requirements set forth in this section shall constitute grounds for immediate and permanent disqualification of the Bidder from participation in this procurement.

In the context of this IFB, an "ex-parté communication" is any communication between a Bidder (or the Bidder's representative) and the District's General Manager, Board Member, officer, employee or consultant, regardless of who initiates the communication, other than as part of the procurement process specified herein, before the District issues a Notice to Proceed, unless it is in writing and available for disclosure to the general public.

15. **Disqualification.** Factors such as, but not limited to, any of the following may be considered just cause to disqualify a bid without further consideration:
 - Any attempt to improperly influence any member of the procurement staff;
 - Evidence of collusion, directly or indirectly, among Bidders in regard to the amount, terms or conditions of this bid;
 - Evidence of incorrect information submitted as part of the bid;
 - Evidence of Bidder's inability to successfully complete the responsibilities and obligation of the bid;
 - Existence of any lawsuit, unresolved contractual claim or dispute between Bidder and the District; or
 - Bidder's default under any previous agreement with the District, which results in termination of the Contract.
16. **Firms or Persons Not Eligible to Submit a Bid.** In order to avoid any conflict of interest or perception of a conflict of interest, Bidder(s) selected to provide professional services under this IFB will be subject to the following requirements:
 - The Bidder(s) who works on the procurement will be precluded from submitting bids as a prime contractor or subcontractor in the ultimate procurement.
 - The Bidder(s) may not have interest in any potential Bidder for the ultimate procurement.
17. **Authorized Representative.** Bids must be signed by a duly authorized officer(s) eligible to sign contract documents for the Bidder (*the "Authorized Signer"*). Failure of the authorized representative to sign the bid may subject the bid to rejection by the District. Consortiums, joint ventures, or teams submitting bid, although permitted and encouraged, will not be considered responsive unless it is established that all contractual responsibility rests solely with one (1) Bidder or one (1) legal entity. The submittal should indicate the responsible entity. Bidders should be aware that joint and several responsibility and liability will attach to any resulting Contract and failure of one (1) party in a joint venture to perform will not relieve the other party or parties of total liability.
18. **Insurance.** Bidder shall include with their bid a copy of their current Certificate of Insurance that illustrates the current level of coverage the Bidder carries. The Certificate can be a current file copy and does not need to include any "additional insured" language for the District. Upon Contract award, the selected Bidder, at Bidder's sole cost and expense and for the full term of the Contract or any extension thereof, shall obtain and maintain, at a minimum, all of the insurance requirements outlined in Exhibit 2. All policies, endorsements, certificates and/or binders shall be subject to the approval of the District's Claims and Liability Manager as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Claims and Liability Manager. The selected Bidder agrees to provide the District with a copy of said policies, certificates and/or endorsement upon award of contract.
19. **Additional Bid Information.**
 - **Cancellation of IFB; Rejection of Bid; No Damages.** The District may reject any or all bids in-whole or in-part or may cancel this IFB at any time when the rejection or cancellation is in the best interest of the District, as determined by the District. The District shall not be liable to any Bidder for any loss or expense caused by or resulting from the delay, suspension, or cancellation of the IFB, award, or rejection of any bid.
 - **Changes or Corrections in Bid Submittal.** Prior to the bid submittal closing date and time, a Bidder may make changes to its bid, if the change is initialed and dated by the Bidder. No change shall be allowed after the closing date and time. Note that you cannot change, mark-up or cross-out any condition, format, provision or term that appears on the District's published Bid Form. If you need to change any of your own prices or answers that you write on the Bid Form must be made in pen, initialed, and be clear in intent. Do not use white-out.
 - **Errors in Bids.** The Bidder is responsible for errors and omissions in its bids. No such error or omission shall diminish the Bidder's obligations to the District.
 - **Withdrawal of Bid.** A bid submission may be withdrawn by written request of the Bidder, prior to the bid closing date and time. After the closing date and time, the submittal may be withdrawn only with permission by the District.
 - **Prohibition as Subcontractor.** No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
 - **Duration of Bid.** Each Bidder agrees that its bid prices and costs shall be a firm offer to the District and shall remain valid for the one hundred



fifty (150) calendar day period as stated herein.

- **Rejection of Bids and Rights of Award.** The District reserves the right to reject any or all bids at any time with no penalty. The District also has the right to waive immaterial defects and minor irregularities in any submitted bid.
- **Incorporation of IFB and Bid in Contract.** This IFB and the Bidder's response, including all promises, warranties, commitments, and representations made in the successful bid as accepted by the District, shall be binding and incorporated by reference in the District's contract with the Bidder.

SECTION F: EXHIBITS AND ATTACHMENTS

ATTACHMENTS *(to be completed and returned with the bid):*

- Attachment A - Signature Page
- Attachment B - Bidder's Statement of Qualifications and Business References
- Attachment C - Bid Forms
- Attachment D - Prime Contractor and Subcontractor/Supplier Report
- Attachment E - Certification Regarding Lobbying

EXHIBITS *(to be reviewed prior to bid submission):*

- Exhibit 1 - Sample Contract
- Exhibit 2 - Insurance Requirements



**ATTACHMENT A
SIGNATURE PAGE**

INVITATION FOR BIDS

AC TRANSIT DISTRICT
Purchasing Department
1600 Franklin Street
Oakland, CA 94612

Original Bids will be accepted until 2:00pm PST via email or US mail in sealed envelopes to the SPC’s attention by the due date and time indicated herein to the District’s General Office located at 1600 Franklin, 6th Floor, Oakland, CA 94612.

Pre-Bid Conference: TBD
Questions Due: 20 August 2020

Sign and Return This Page. Bidder should retain a duplicate copy for their files.

Invitation For Bid (IFB) No. 2020-1500

Date: _____

Title: _____

ALL BIDDERS COMPLETE THIS SECTION:

_____ **2020**

Upon execution of a Contract Acceptance Form, the undersigned agrees to furnish, subject to provisions on the reverse of this form, all articles or services within the dates specified, in the manner and at the prices stated, in accordance with the advertisement, specifications, bid, special conditions and general conditions, all of which are made part of the contract bid, when authorized by Purchase Order, Contract Order, or Letter of Agreement issued by the District.

Name under which business is conducted: _____

Contact Person: _____ Contact No.: _____

Business street address: _____

City _____ State _____ Zip Code _____

IF SOLE OWNER, sign here:

I sign this Contract Bid as sole owner of the business named above:

Signed _____ Typed Name _____

IF PARTNERSHIP OR JOINT VENTURE, sign here:

The undersigned certify that we are partners in the business (joint venture) named above and that we sign this Contract Bid with full authority to do so (one or more partners sign):

Signed _____ Typed Name _____

Signed _____ Typed Name _____

IF CORPORATION, sign here:

The undersigned certify that they sign this Invitation for Bid with full authority to do so:

Corporate Name: _____

Signed _____ Typed Name _____ Title _____

Signed _____ Typed Name _____ Title _____

Incorporated under the laws of the State of _____



ATTACHMENT B
BIDDER'S STATEMENT OF QUALIFICATIONS & BUSINESS REFERENCES

A. Bidder's Name: _____

B. How many years has your organization been in business under your present business name? _____

C. 3-Year Annual Gross Sales

Year:	Year:	Year:
\$	\$	\$

D. Give information below about all your current and ongoing projects. *Attach additional sheets if necessary.*

Client	Location <i>(city/ state)</i>	Type of Work	Value of Work	Percent Completed of Overall Project	Scheduled Completion Date

E. List all key projects your organization has completed, which are similar in nature to the Scope of Services outlined in this solicitation during the last three (3) years, at a minimum. *(Attach additional sheets if necessary.)*

Client	Location <i>(city/ state)</i>	Type of Work	Value of Work	Year Started	Year Completed

F. Give information below about the relevant experience of the principal individuals of your present organization including those individuals to be in responsible charge of this project. *Attach additional sheets if necessary.*

Individual's Name	Title	Years of Professional Experience	Type of Work

G. References: List a minimum of two (2) professional references for whom your organization has performed work similar in nature to the *Scope of Services* outlined in this solicitation. *Do not list AC Transit as a reference. Attach additional sheets if necessary.*

Business Name	Contact Person	Phone	Email

H. Have you or your organization, or any officer or partner thereof, defaulted on a contract?

No Yes If yes, please explain below. *Attach additional sheets if necessary.*

I. Is any pending litigation or adverse findings against your organization?

No Yes If yes, please explain below. *Attach additional sheets if necessary.*



- J. Has your firm ever been debarred by a Federal, State or Local Government agency?
 No **Yes** If yes, please explain below. Attach additional sheets if necessary.

The undersigned Bidder represents and warrants that the foregoing information is true and accurate to the best of its knowledge and the undersigned intends that the District rely thereof in awarding the attached contract.

Signature of Bidder

Name/Title

Dated: _____



**ATTACHMENT C
 BID FORM**

BASE PERIOD YEAR 1 COSTS (NOVEMBER 1, 2020 THROUGH OCTOBER 31, 2021)

Instructions: Included in the costs below shall be all labor, materials, taxes, insurance, any subcontractor costs, travel expenses, telephone costs, copying costs, profit, administrative and overhead fees, and all other costs as required to perform the services listed in the Scope of Services for the term detailed.

TOWING CHARGES

The Contractor shall perform the services required by the District in accordance with specifications stated in the scope of services. All Vehicles will be towed in accordance with guidelines contained in the IFB.

Buses/Vehicle types shall include, but not be limited to:

ITEM NO.	BUS/VEHICLE TYPE	ESTIMATED TOWS*	FLAT RATE FEE	EXTENDED COST
			Base Period Year 1	Base Period Year 1
1.	Gillig 40' Diesel	20	\$	\$
2.	Gillig 40' Battery	25	\$	\$
3.	New Flyer Artic / Diesel	25	\$	\$
4.	New Flyer Artic / Hydrogen	20	\$	\$
5.	VanHool 30'	25	\$	\$
6.	VanHool 40'	25	\$	\$
7.	VanHool 60"	25	\$	\$
8.	VH 40' Hydrogen Bus	20	\$	\$
9.	MCI 45'	25	\$	\$
10.	Ford / Eldorado 23'	20	\$	\$
11.	New Flyer 40' / Hydrogen	20	\$	\$
12.	New Flyer 40' / Battery	20	\$	\$
13.	Cars	20	\$	\$
14.	Medium Duty Trucks	20	\$	\$
15.	Vacuum Trailer	20	\$	\$
16.	Vans & Pick-Up Trucks	20	\$	\$
17.	Forklifts	20	\$	\$
18.	Yard Scrubber	20	\$	\$
19.	Double Deck	20	\$	\$
BASE PERIOD YEAR 1 TOTAL				\$

***The number of tows shown on this sheet are for estimating purposes ONLY. Quantities will be based on actual need. Must bid on all items. Do not alter this form.**

Notes: The bid prices listed herein shall be inclusive of all cost associated with providing Heavy Duty Towing Services, including any anticipated fuel cost. Fuel surcharges **will not** be allowed during the term of the resulting contract.



ATTACHMENT C
BID FORM

BASE PERIOD YEAR 2 COSTS (NOVEMBER 1, 2021 THROUGH OCTOBER 31, 2022)

Instructions: Included in the costs below shall be all labor, materials, taxes, insurance, any subcontractor costs, travel expenses, telephone costs, copying costs, profit, administrative and overhead fees, and all other costs as required to perform the services listed in the Scope of Services for the term detailed.

TOWING CHARGES

The Contractor shall perform the services required by the District in accordance with specifications stated in the scope of services. All Vehicles will be towed in accordance with guidelines contained in the IFB.

Buses/Vehicle types shall include, but not be limited to:

ITEM NO.	BUS/VEHICLE TYPE	ESTIMATED TOWS*	FLAT RATE FEE	EXTENDED COST
			Base Period Year 2	Base Period Year 2
1.	Gillig 40' Diesel	20	\$	\$
2.	Gillig 40' Battery	25	\$	\$
3.	New Flyer Artic / Diesel	25	\$	\$
4.	New Flyer Artic / Hydrogen	20	\$	\$
5.	VanHool 30'	25	\$	\$
6.	VanHool 40'	25	\$	\$
7.	VanHool 60"	25	\$	\$
8.	VH 40' Hydrogen Bus	20	\$	\$
9.	MCI 45'	25	\$	\$
10.	Ford / Eldorado 23'	20	\$	\$
11.	New Flyer 40' / Hydrogen	20	\$	\$
12.	New Flyer 40' / Battery	20	\$	\$
13.	Cars	20	\$	\$
14.	Medium Duty Trucks	20	\$	\$
15.	Vacuum Trailer	20	\$	\$
16.	Vans & Pick-Up Trucks	20	\$	\$
17.	Forklifts	20	\$	\$
18.	Yard Scrubber	20	\$	\$
19.	Double Deck	20	\$	\$
BASE PERIOD YEAR 2 TOTAL				\$

*The number of tows shown on this sheet are for estimating purposes ONLY. Quantities will be based on actual need. Must bid on all items. Do not alter this form.

Notes: The bid prices listed herein shall be inclusive of all cost associated with providing Heavy Duty Towing Services, including any anticipated fuel cost. Fuel surcharges will not be allowed during the term of the resulting contract.



**ATTACHMENT C
 BID FORM**

BASE PERIOD YEAR 3 COSTS (NOVEMBER 1, 2022 THROUGH OCTOBER 31, 2023)

Instructions: Included in the costs below shall be all labor, materials, taxes, insurance, any subcontractor costs, travel expenses, telephone costs, copying costs, profit, administrative and overhead fees, and all other costs as required to perform the services listed in the Scope of Services for the term detailed.

TOWING CHARGES

The Contractor shall perform the services required by the District in accordance with specifications stated in the scope of services. All Vehicles will be towed in accordance with guidelines contained in the IFB.

Buses/Vehicle types shall include, but not be limited to:

ITEM NO.	BUS/VEHICLE TYPE	ESTIMATED TOWS*	FLAT RATE FEE	EXTENDED COST
			Base Period Year 3	Base Period Year 3
1.	Gillig 40' Diesel	20	\$	\$
2.	Gillig 40' Battery	25	\$	\$
3.	New Flyer Artic / Diesel	25	\$	\$
4.	New Flyer Artic / Hydrogen	20	\$	\$
5.	VanHool 30'	25	\$	\$
6.	VanHool 40'	25	\$	\$
7.	VanHool 60"	25	\$	\$
8.	VH 40' Hydrogen Bus	20	\$	\$
9.	MCI 45'	25	\$	\$
10.	Ford / Eldorado 23'	20	\$	\$
11.	New Flyer 40' / Hydrogen	20	\$	\$
12.	New Flyer 40' / Battery	20	\$	\$
13.	Cars	20	\$	\$
14.	Medium Duty Trucks	20	\$	\$
15.	Vacuum Trailer	20	\$	\$
16.	Vans & Pick-Up Trucks	20	\$	\$
17.	Forklifts	20	\$	\$
18.	Yard Scrubber	20	\$	\$
19.	Double Deck	20	\$	\$
BASE PERIOD YEAR 3 TOTAL				\$

*The number of tows shown on this sheet are for estimating purposes ONLY. Quantities will be based on actual need. Must bid on all items. Do not alter this form.

Notes: The bid prices listed herein shall be inclusive of all cost associated with providing Heavy Duty Towing Services, including any anticipated fuel cost. Fuel surcharges will not be allowed during the term of the resulting contract.



**ATTACHMENT C
 BID FORM**

1st OPTION PERIOD (YEAR 4) COSTS (NOVEMBER 1, 2023 THROUGH OCTOBER 31, 2024)

Instructions: Included in the costs below shall be all labor, materials, taxes, insurance, any subcontractor costs, travel expenses, telephone costs, copying costs, profit, administrative and overhead fees, and all other costs as required to perform the services listed in the Scope of Services for the term detailed.

TOWING CHARGES

The Contractor shall perform the services required by the District in accordance with specifications stated in the scope of services. All Vehicles will be towed in accordance with guidelines contained in the IFB.

Buses/Vehicle types shall include, but not be limited to:

ITEM NO.	BUS/VEHICLE TYPE	ESTIMATED TOWS*	FLAT RATE FEE 1 st Option Period Year 4	EXTENDED COST 1 st Option Period Year 4
1.	Gillig 40' Diesel	20	\$	\$
2.	Gillig 40' Battery	25	\$	\$
3.	New Flyer Artic / Diesel	25	\$	\$
4.	New Flyer Artic / Hydrogen	20	\$	\$
5.	VanHool 30'	25	\$	\$
6.	VanHool 40'	25	\$	\$
7.	VanHool 60"	25	\$	\$
8.	VH 40' Hydrogen Bus	20	\$	\$
9.	MCI 45'	25	\$	\$
10.	Ford / Eldorado 23'	20	\$	\$
11.	New Flyer 40' / Hydrogen	20	\$	\$
12.	New Flyer 40' / Battery	20	\$	\$
13.	Cars	20	\$	\$
14.	Medium Duty Trucks	20	\$	\$
15.	Vacuum Trailer	20	\$	\$
16.	Vans & Pick-Up Trucks	20	\$	\$
17.	Forklifts	20	\$	\$
18.	Yard Scrubber	20	\$	\$
19.	Double Deck	20	\$	\$
1st OPTION PERIOD (YEAR 4) TOTAL				\$

***The number of tows shown on this sheet are for estimating purposes ONLY. Quantities will be based on actual need. Must bid on all items. Do not alter this form.**

Notes: The bid prices listed herein shall be inclusive of all cost associated with providing Heavy Duty Towing Services, including any anticipated fuel cost. Fuel surcharges will not be allowed during the term of the resulting contract.



**ATTACHMENT C
 BID FORM**

2ND OPTION PERIOD (YEAR 5) COSTS (NOVEMBER 1, 2024 THROUGH OCTOBER 31, 2025)

Instructions: Included in the costs below shall be all labor, materials, taxes, insurance, any subcontractor costs, travel expenses, telephone costs, copying costs, profit, administrative and overhead fees, and all other costs as required to perform the services listed in the Scope of Services for the term detailed.

TOWING CHARGES

The Contractor shall perform the services required by the District in accordance with specifications stated in the scope of services. All Vehicles will be towed in accordance with guidelines contained in the IFB.

Buses/Vehicle types shall include, but not be limited to:

ITEM NO.	BUS/VEHICLE TYPE	ESTIMATED TOWS*	FLAT RATE FEE 2 nd Option Period Year 5	EXTENDED COST 2 nd Option Period Year 5
1.	Gillig 40' Diesel	20	\$	\$
2.	Gillig 40' Battery	25	\$	\$
3.	New Flyer Artic / Diesel	25	\$	\$
4.	New Flyer Artic / Hydrogen	20	\$	\$
5.	VanHool 30'	25	\$	\$
6.	VanHool 40'	25	\$	\$
7.	VanHool 60"	25	\$	\$
8.	VH 40' Hydrogen Bus	20	\$	\$
9.	MCI 45'	25	\$	\$
10.	Ford / Eldorado 23'	20	\$	\$
11.	New Flyer 40' / Hydrogen	20	\$	\$
12.	New Flyer 40' / Battery	20	\$	\$
13.	Cars	20	\$	\$
14.	Medium Duty Trucks	20	\$	\$
15.	Vacuum Trailer	20	\$	\$
16.	Vans & Pick-Up Trucks	20	\$	\$
17.	Forklifts	20	\$	\$
18.	Yard Scrubber	20	\$	\$
19.	Double Deck	20	\$	\$
	2ND OPTION PERIOD (YEAR 5) TOTAL			\$

***The number of tows shown on this sheet are for estimating purposes ONLY. Quantities will be based on actual need. Must bid on all items. Do not alter this form.**

Notes: The bid prices listed herein shall be inclusive of all cost associated with providing Heavy Duty Towing Services, including any anticipated fuel cost. Fuel surcharges will not be allowed during the term of the resulting contract.



**ATTACHMENT C
 BID FORM**

BASE PERIOD YEAR 1 TOTAL:	\$
BASE PERIOD YEAR 2 TOTAL:	
BASE PERIOD YEAR 3 TOTAL:	
BASE PERIOD TOTAL:	
1ST OPTION PERIOD (YEAR 4) TOTAL:	
2ND OPTION PERIOD (YEAR 5) TOTAL:	
GRAND TOTAL:	

Hourly Rate Fees:**

	Hourly Rate Fees**
BASE PERIOD YEAR 1:	\$
BASE PERIOD YEAR 2:	
BASE PERIOD YEAR 3:	
1ST OPTION PERIOD (YEAR 4):	
2ND OPTION PERIOD (YEAR 5):	

****FOR INFORMATIONAL PURPOSES ONLY:** Hourly rates shall apply only after occurrence of standby time (contractor called to scene and is delayed in towing due to vehicle hold by police, accident or AC Transit caused delay in towing). Hourly rates applied only after the first (2) hours of standby time the towing/wrecker has been delayed on the scene at the request of AC Transit personnel.

Note: The bid prices/fees listed herein shall be inclusive of all costs associated with providing Heavy Duty Towing Services.

Other costs added to the bid forms by bidders will not be considered and may result in a rejection of the bid as non-responsive.



ATTACHMENT D
PRIME CONTRACTOR & SUBCONTRACTOR / SUPPLIER REPORT
Complete All Sections of Form and Return with Bids

The Bidder is **required** to complete the following information in accordance with the provisions of Public Contract Code Sections 4100 to 4113, inclusive. This form shall include prime contractor, all suppliers, and all subcontractors that will perform work, provide labor, or render services in connection with the project in an amount in excess of **one-half of one percent (0.5%)** of the total amount of Bidder's Grand Total Bid Price. AC Transit reserves the right to request additional documentation to validate any and all information provided on this form. **COMPLETE ALL FIELDS OR INDICATE N/A. DO NOT LEAVE BLANKS.**

Prime/Sub-Contractor/Supplier Name/Address/Contact Information	Type of Work or Materials	Value of Work & Materials <i>(complete both items)</i>	DBE/SBE UTILIZATION AC Transit reserves the right to request further documentation to validate provided information on meeting the DBE/SBE requirements for this procurement.	Annual Gross Receipts List annual gross receipts for last three years (i.e. 2019, 2018, 2017)
Prime Contractor:		Percentage (%)	Is Prime Contractor: <input type="checkbox"/> DBE <input type="checkbox"/> SBE <input type="checkbox"/> Not Applicable If DBE or SBE, include the following: Certifying Agency: _____ _____ Certification No.: _____ Certification Date: _____ Expiration Date: _____	
Address:				
Contact Person:		Dollar Value (\$)		
Phone:				
Email:				
How Many Years in Business?				
DIR Registration #:				
License No (if applicable):				
Subcontractor/Supplier:				
Address:				
Contact Person:	Dollar Value (\$)			
Phone:				
Email:				
How Many Years in Business?				
DIR Registration #:				
License No (if applicable):				
Subcontractor/Supplier:			Percentage (%)	Is Subcontractor or Supplier: <input type="checkbox"/> DBE <input type="checkbox"/> SBE <input type="checkbox"/> Not Applicable If DBE or SBE, include the following: Certifying Agency: _____ _____ Certification No.: _____ Certification Date: _____ Expiration Date: _____
Address:				
Contact Person:		Dollar Value (\$)		
Phone:				
Email:				
How Many Years in Business?				
DIR Registration #:				
License No (if applicable):				

Revised August 2019

(DO NOT LIST ALTERNATIVE SUBOFFERORS FOR THE SAME WORK. ATTACH ADDITIONAL SHEETS AS NECESSARY.)



**ATTACHMENT E
 CERTIFICATION REGARDING LOBBYING**

Bidder shall certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Bidder shall also disclose the name of any registrant under the *Lobbying Disclosure Act of 1995* who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded to the District. Bidders shall ensure that all of its Subcontractors included in their Bid shall certify the same.

Please choose one:

- No, Bidder has not participated in lobbying activities as outlined above
- Yes, Bidder has participated in lobbying activities as outlined above
If yes –and complete the Disclosure of Lobbying Activities form on the following page

Name of Bidder: _____ Person Completing Form: _____

Signature: _____ Date: _____

DISCLOSURE OF LOBBYING ACTIVITIES <i>(Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352)</i>		
1. Type of Federal Action: <input type="checkbox"/> contract <input type="checkbox"/> grant <input type="checkbox"/> cooperative agreement <input type="checkbox"/> loan <input type="checkbox"/> loan guarantee <input type="checkbox"/> loan insurance	2. Status of Federal Action: <input type="checkbox"/> bid/offer/application <input type="checkbox"/> initial award <input type="checkbox"/> post-award	3. Report Type: <input type="checkbox"/> initial filing <input type="checkbox"/> material change For Material Change Only: Year _____ Quarter _____ Date of last report: _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Sub-awardee Tier, if known: _____ Congressional District, if known: _____	5. If Reporting Entity in No. 4 is Sub-awardee, Enter Name and Address of Prime: _____ _____ _____ Congressional District, if known: _____	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable:	
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____	
10a. Name and Address of Lobbying Entity: (if individual, last name, first name, MI):	10b. Individuals Performing Services (including address if different from No. 10a):	
<i>(Attach Continuation Sheet(s), if necessary)</i>		
11. Amount of Payment (check all that apply): \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment (check all that apply): <input type="checkbox"/> retainer <input type="checkbox"/> one-time fee <input type="checkbox"/> commission <input type="checkbox"/> contingent fee <input type="checkbox"/> deferred <input type="checkbox"/> other (specify: _____)	
12. Form of Payment (check all that apply): <input type="checkbox"/> cash <input type="checkbox"/> in-kind; specify: nature _____ value _____	14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:	
15. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reference was placed by the user above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each failure.	Signature: _____ Print Name: _____ Title: _____ Telephone #: _____ Date: _____	



EXHIBIT 1



SAMPLE CONTRACT

THIS CONTRACT (this “Contract”) is made and entered into this ___ day of _____ 2020 (the “Effective Date”), by and between **ALAMEDA-CONTRA COSTA TRANSIT DISTRICT**, a special transit district established pursuant to *California Public Utilities Code, Section 24501* et seq., having its principal place of business at 1600 Franklin Street, Oakland, California 94612 (hereinafter “AC Transit” or the “District”) and _____, a _____ corporation, having its principal place of business at _____ (hereinafter the “Contractor”).

THE PARTIES AGREE AS FOLLOWS:

1. **Scope of Services.** Contractor shall provide services (the “Services”) in full accordance with the *Invitation for Bids No. 2020-1500* prepared and issued by the District, entitled *Heavy Duty Towing Services dated 13 August 2020*, a copy of which is attached hereto and incorporated by this reference. Contractor agrees to undertake, carry out and complete all work established herein in a professional and efficient manner satisfactory to District standards.

Contractor hereby agrees to furnish the materials, supplies and services in compliance with all terms, conditions, specifications, and addenda in the above referenced solicitation. Contractor is hereby cautioned not to perform any work or provide any service under this Contract until valid certificates of insurance, all current and valid copies of any required licenses/and / or certifications are received and accepted by the District, if applicable, a purchase order is issued for the work/services described herein and the *AC Transit Project Manager (Stuart Hoffman)* has approved the start date for the project. Any work initiated prior to the official contract award and the submission of the documents referenced above shall be performed solely at Contractor's risk.

2. **Contract Term.** Services under this Contract shall commence on/about 01 November 2020 and continue through 31 October 2023, unless otherwise extended by the District or unless this Contract is terminated sooner pursuant to *Section 31-Termination* or extended by the parties, as allowed for herein. Services shall be performed at the District’s direction and within the term set forth herein unless otherwise mutually agreed upon by the District and the Contractor.

OPTION TO EXTEND THE CONTRACT (PRICED). At the sole discretion of the District, this Contract may be extended unilaterally by the exercise of *two (2) one (1) year* priced options. If exercised, the District shall notify Contractor, in writing, of its intent to exercise each priced option at least *thirty (30) days* prior to the exercise of said option(s). The option(s) shall be exercised in accordance with the prices proposed in the original submitted bid.

3. **Contract Price.** Contractor shall faithfully perform all of the Work hereunder as detailed in *Section 1* of the Contract (Scope of Work) and in accordance with the bid as accepted by the District set forth in Contractor’s Bid attached hereto as *Attachment 1-Bid Forms*, not to exceed _____ (\$ _____) per year), in accordance with Contractor’s Bid, as accepted by the District, for a total estimated Contract value of _____ (\$ _____) for the three (3) year base period, for all services (*Exhibit A-Scope of Services*) to be performed in accordance with this Contract. The contract price stated herein is the District’s approximate cost for Heavy Duty Towing Services. The District does not guarantee the number of tows. Towing Services will be based on actual Heavy Duty Towing Service usage throughout the term of the Contract.

Costs for these services will be on a firm-fixed price basis. The total “not to exceed” price shall include all services, labor, materials, taxes, profit, overhead, insurance, subcontractor/subconsultant costs, and all other costs and miscellaneous expenses incurred by the Contractor as reflected in the bid. The District and Contractor must mutually agree upon any adjustments in payment in writing.

Contractor shall submit invoices, with a payment term of net thirty (30) days, at the end of each month services have been provided. Invoices shall clearly describe in detail the services rendered by Contractor during the previous month and shall state the number of tows at each location / hours performed and the applicable flat rate fee /and/or hourly rate. Rates shall be in accordance with the Contractor’s Bid, as accepted by the District. No payment will be made for work in progress. Invoices shall be submitted electronically to accountspayable@actransit.org. The District will endeavor to pay properly submitted, undisputed invoices within thirty (30) calendar days of initial receipt. *Please reference the Contract Number and Purchase Order Number on all submitted invoices. Failure to do so could delay payment.*

Disputed Charges. If the District, in good faith, believes there is a dispute concerning the accuracy or applicability of any charge or other invoiced amount, it will notify Contractor of the nature of such dispute not later than ten (10) calendar days after receipt of invoice and will provide reasonable support for such dispute together with such notice of disputed charges. In such event, the District may withhold such disputed charges or other invoiced amounts from payment of that or subsequent invoices. Failure by the District to identify a disputed charge or other invoiced amount prior to payment of such charge or amount will not limit or waive any of its rights or remedies with respect thereto, including its right to withhold such disputed charges or amounts from payments on subsequent invoices. Contractor shall use diligent efforts to provide any supporting documentation required by the District to resolve any such disputes.

Withholding Payments. Payments may be withheld on account of (1) defective or non-conforming equipment, supplies, materials or Work not remedied; (2) Claims asserted or evidence which indicates probable assertion of claims; (3) Failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment; (4) Damage to another Contractor or District property; or (5) unsatisfactory prosecution of the Work by the Contractor.

4. **Component Parts.** This Contract shall consist of the following documents, each of which is on file with the District, and is incorporated into and made a part of this Contract by reference. In the event of a conflict these documents shall control in order of precedence as set forth below:

- This Contract and any Amendments



- IFB No. 2020-1500 and any addenda thereto, as incorporated by reference
- Contractor's Bid *dated* _____, and all attachments, as accepted by the District
- [Optional] Accepted Modifications to the Terms and Conditions attached hereto

5. **Notices.** All communications relating to the day-to-day activities of the provided services shall be exchanged between the District's representative, Stuart Hoffman, Technical Services Manager, and the Contractor's representative, _____. All other notices, consent or other communication ("Notice") required or permitted under this Contract shall be in writing and either delivered in person, mailed or electronically delivered as follows:

<u>DISTRICT</u> Jamell Woodard, Contracts Specialist AC Transit 1600 Franklin Street, 6 th Floor Oakland, CA 94612 Phone: 510.891.7258 Email: jwoodard@actransit.org	<u>CONTRACTOR</u> Contact Name/Title Contractor's Name Contractor's Address Contractor's Address Contractor's Phone: Contractor's Email:
---	--

A Notice shall be deemed received at the time it is personally served, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, ten (10) days after the Notice is deposited in the United States mail as above provided. Any time period stated in a Notice shall be computed from the time the Notice is deemed received. Either party may change its mailing address or the person to receive Notice by notifying the other party as provided in this section. This requirement for duplicate notice is not intended to change the effective date of the Notice sent by facsimile transmission.

6. **Vendor Registration.** If Contractor is not already an AC Transit registered vendor, Online Vendor Registration is required prior to contract award on the District's online system: <http://www.actransit.org/purchasing/vendor-registration-and-log-in/>. To complete the process, include a W-9, Request for Taxpayer Identification Number and Certification-containing original signature. All prospective vendors must also be registered in the federal government's System for Award Management (SAM) database (<https://www.sam.gov>) prior to the award of a contract.
7. **Cost of Bid Submission and Pre-Contractual Expenses.** Bidder shall pay all the costs in submitting its bid, including, but not limited to, the costs to prepare, present and/or submit the bid in response to this IFB, costs of samples and other supporting materials, costs to participate in demonstrations, pre-bid conferences, or costs associated with protests. The District shall not be liable for any pre-contractual expenses incurred by any Bidder and Bidders shall not include any such expenses as part of the bid. The District shall be held harmless and free from any and all liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this IFB. Pre-contractual expenses are defined as expenses incurred by Bidder in:
- Bids in response to this IFB (including copies or other expenses of any submitted documentation).
 - Other expenses incurred by a Bidder prior to the date of award and formal Notice to Proceed for any contract.
8. **Subcontracting.** The Contractor shall not subcontract any services to be performed by it under this Contract without the prior written approval of the District, except for service firms engaged in drawing, reproduction, typing, and printing. Any subcontractors must be engaged under written contract with the Contractor with provisions allowing the Contractor to comply with all requirements of this Contract. The Contractor shall be solely responsible for reimbursing any subcontractors, and the District shall have no obligation to them. The Contractor shall be solely responsible for subcontractor insurance requirements, prompt payment affidavits, certifications regarding lobbying, and DBE designations.

For contract monitoring and tracking purposes, the District utilizes B2GNow. This is an interactive system that requires all tiers of contractors to login and submit payment data for prompt payment compliance and subcontractor utilization purposes. If no subcontractors are being proposed, the District may waive the requirement of utilizing this system.

9. **Ownership of Work.** All reports, designs, drawings, plans, specifications, schedules, and other materials prepared, or in the process of being prepared, for the services to be performed by Contractor shall be and are the property of the District and the District shall be entitled to access thereto, and copies thereof, during the progress of the work. In the event that the work, which is the subject of this Contract, is not completed, for any reason whatsoever, all materials generated under this Contract shall be delivered as the District may direct.
10. **Changes.** If the Contractor seeks any changes to the *Scope of Work* that would require a modification of the amount of compensation or the time required for performance, the changes must be reviewed and approved in writing in advance of any action to implement the change by the Project Manager. In the event Contractor encounters any unanticipated conditions or contingencies that may affect the scope of work or services, schedule, or the amount of compensation specified herein, the Contractor shall so advise the District immediately upon notice of such condition or contingency. The written notice shall explain the circumstances giving rise to the unforeseen condition or contingency and shall set forth the proposed adjustment in schedule or compensation. This written notice shall be given to the District prior to the time that the Contractor performs work or services related to any proposed adjustment.

The District may at any time by written order, make changes to the *Scope of Work* described in this Contract, and Contractor shall provide such additional services, supplies or materials at the Contractor's fair market prices, less discounts ordinarily allowed to users of such materials or equipment or at regular labor charges less customary discount, or both. If such changes cause an increase in the budgeted cost of or the time required for performance of the agreed upon work, the Contractor shall notify the District in writing of the amount of time and compensation adjustments that are required.

If the District deems it necessary that any work, materials or equipment which are mentioned, specified or indicated, or otherwise provided for in the Contract or in the specifications forming a part of the Contract shall be required to be omitted from, in or about the work, the Contractor shall be notified, in writing, to omit the performance of such work and the furnishing of such materials or equipment. A deduction shall be made from the amount to be paid to the Contractor in an amount which the District and Contractor shall determine and mutually agree to be the reasonable value of such work, materials or equipment, and such determination and agreement shall be final and conclusive upon the Contractor.



It is understood, however, that the amount of work, materials, or equipment required by the Contract shall not, in accordance with the above provisions referring to additions and omissions, be increased or diminished so as to substantially alter the general character or extent of the Contract. Any and all pertinent changes shall be expressed in a written supplement to this Contract prior to implementation of such changes.

11. **Service Delivery.** Award of this Contract is contingent upon Contractor's ability to timely deliver the Services as outlined in the *Scope of Work*. In the event of breach of this clause, the District reserves the right to: (a) terminate this Contract without liability by giving an immediate notice and to charge the Contractor with any loss incurred as a result of the Contractor's failure to make the delivery within the time specified; or (b) charge a penalty of one-tenth percent (0.1%) of the total contract price for every day of delay or breach of the delivery schedule by the Contractor.

12. **Indemnification.**

- A. Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless the District, and its agents, representatives, officers, directors and employees (Indemnified Group) from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, related to, arising from or out of any of the following:

Any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to work or services in the performance of this contract, including but not limited to, work or services by any subcontractor or anyone directly or indirectly employed by or contracting with a Contractor or a subcontractor or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Contractor's and subcontractor's employees or subcontractors; or

Any allegation that materials or services provided by the Contractor infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

- B. If any claim, action or proceeding is brought against the Indemnified Group, by reason of any event that is the subject of this contract and or described herein, Contractor, at its sole cost and expense, shall pay, resist or defend such claim or action on behalf of the Indemnified Group by attorney of Contractor, or if covered by insurance, Contractor's insurer, all of which must be approved by the District which approval shall not be unreasonably withheld or delayed.

The District shall cooperate with all reasonable efforts in the handling and defense of such claim. Included in the foregoing, the District may engage its own attorney to defend or assist in its defense, and the Contractor shall pay the reasonable costs and expenses thereof. Any settlement of claims must fully release and discharge the Indemnified Group from any further liability for those claims. The release and discharge shall be in writing and shall be subject to approval by the District, which approval shall not be unreasonably withheld or delayed. If Contractor, its agents or employees, neglects or refuses to defend the Indemnified Group as provided by this contract, any recovery or judgment against the Indemnified Group for a claim covered under this contract shall conclusively establish Contractor's liability to the Indemnified Group in connection with such recovery or judgment, and if the District desires to settle such dispute, the District shall be entitled to settle such dispute in good faith and Contractor shall be liable for the amount of such settlement, and all expenses connected to the defense, including reasonable attorney fees, and other investigative and claims adjusting expenses. This indemnification shall survive the termination of this Contract.

- C. Insurance provisions set forth in this contract are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

13. **Insurance Requirements.** See *Exhibit 2*.

14. **Small/Micro Business Enterprise (SBE/MBE) Goal.**

- A. The District seeks to utilize Small Business Enterprises (SBE), including Disadvantaged Business Enterprises (DBE) and Micro Business Enterprises (MBE) to the extent permissible by law, when such businesses are available and the price of their goods, material or services sought is reasonable and competitive in the marketplace.

- B. This project has no specific goal for SBE participation.

15. **Contractor's Status.** Neither the Contractor, nor any party contracting with the Contractor shall be deemed to be an agent or employee of the District. The Contractor is and shall be an independent contractor, and the legal relationship of any persons performing services for the Contractor shall be one solely between said parties.

Contractor shall not subcontract any services to be performed by it under this Contract without the prior written approval of the District, except for service firms engaged in drawing, production, typing and printing. Contractor shall be solely responsible for reimbursing any subcontractors and the District shall have no obligation to them.

16. **Rights in Data.** The term "subject data" as used herein means recorded information, whether or not copyrighted, that is delivered under this Contract. The term includes graphic or pictorial delineation in media, text in specifications or related performance or design-type documents and machine forms. Except for its own internal use, Contractor may not publish or reproduce such data in whole or in part, nor may Contractor authorize others to do so, without the written consent of the District, until such time as the District may have either released or approved release of such data.

In the event the *Scope of Work* in this Contract is not completed, all data generated under this Contract shall become subject data and shall be delivered as the District may direct.

All reports, designs, drawings, plans, specifications, schedules, and other materials prepared, or in the process of being prepared, for the services to be performed by Contractor shall be and are the property of the District and the District shall be entitled to access thereto, and copies thereof, during the progress of the work.



Any and all rights, title, and interest (including, without limitation, patent rights, copyright and any other intellectual-property or proprietary right) to materials prepared under this Contract are hereby assigned to the Contractor. The Contractor agrees to execute any additional documents which may be necessary to evidence such assignment.

The Contractor represents and warrants that all materials prepared under this Contract are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Contract do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual-property or proprietary right of any third party.

17. Intellectual Property Rights.

17.1 In case of an alleged or actual claim, demand, action, suit, litigation proceeding or the like of a third party against the District, its Board of Directors, officers, business partners or staff (together "District Indemnitees") alleging that an ordered Product or its use infringes or misappropriates any third party's patent, trademark, trade secret, copyright or other intellectual property right, Contractor shall (i) indemnify, defend and hold harmless the District Indemnitees from and against any and all liabilities, losses, judgements, settlements, damages, costs and expenses (including attorney's fees) and the like arising out of or being related to any such intellectual property claim, and (ii) at its costs acquire for the District a right to use the Product or, in case this is not possible at reasonable conditions, modify the Product to become non-infringing or to deliver an equivalent non-infringing Product. If both remedies set forth in (ii) of the previous sentence are impossible, the District Indemnitees shall be entitled to return the affected Products against payment of the price for which Contractor has sold these Products without any reduction even if the respective District Indemnitee has not purchased the affected Product directly from Contractor.

17.2 Contractor's obligations pursuant to this Section 17 shall not apply to the extent that: (i) customized software product is produced to the District's detailed design and the District's design is the cause of the claim; or (ii) product(s) are used in combination with equipment, software or other products not supplied, required or recommended by Contractor and such infringement would not have occurred but for such combination.

17.3 The District shall inform Contractor without unreasonable delay in writing of any claims related to protective rights as mentioned in Section 0 and Contractor shall be given the opportunity to take over the defense against such intellectual property claims.

18. Release of Information. Before releasing any reports, promotional materials or information prepared in connection with this Contract, the Contractor shall provide a copy or copies for first review and approval by the District. Contractor shall not use the District's name or logo without specific written permission from the District's Designated Representative.

19. Evaluation of Contractor's Performance. The District reserves the right to evaluate the Contractor's performance under this Contract, including but not limited to, compliance with all Contract flow down requirements for subcontractors, and to provide feedback and require corrective action, as appropriate. The Contractor agrees to comply, including attending and participating in periodic Contract review meetings, with any District directed Contract evaluation, project improvement plan, or corrective action for fulfillment of Contract requirements. The Contractor agrees to promptly provide the District with any supporting documentation or evidence it may request, including but not limited to, subcontracts. The failure of the Contractor to provide such documentation or adequately perform under this Contract may result in suspension, termination, debarment, or any other remedy the District deems appropriate.

20. Most Favored Customer. Contractor represents the prices charged the District do not exceed existing prices to other customers for the same or substantially similar items or services for comparable quantities under similar terms and conditions.

21. Transition/Migration Cooperation. The Contractor agrees that upon termination of this Contract for any reason, sufficient efforts and cooperation will be provided to ensure an orderly and efficient transition of services to the customer or to a different contractor. The Contractor shall provide full disclosure to the subsequent Contractor and to the District on the equipment, software and required processes and procedures to perform the District's services. The Contractor agrees to transfer licenses or assign agreements for any software or services used to provide the services to the District or to a subsequent Contractor. The Contractor agrees to support the transition of code, data, and environments, including virtual server images if any.

22. Notice of Labor Disputes.

A. If the Contractor or a subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor or subcontractor shall immediately give notice, including all relevant information, to the District's Project Manager and the District's Contracts Specialist.

B. The Contractor agrees to insert the substance of this clause, including this paragraph in any subcontract under which a labor dispute may delay the timely performance of this Contract; except that each subcontract should provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor should immediately notify the next higher tier subcontractor or the Contractor, as the case may be, of all relevant information concerning the dispute.

23. Safety. Contractor shall be solely and completely responsible for conditions on the jobsite, including safety of all persons and property during performance of the Services. This requirement shall apply continuously and not be limited to normal working hours. Contractor shall promptly and fully comply with and carry out safety requirements as prescribed by federal, state, or local laws or regulations and industry standards.

24. Licensing and Certifications. Contractor is required to obtain all applicable business and professional licenses required to perform work within the Alameda, Contra Costa, and San Francisco Counties and the State of California.

25. Removal of Contract Personnel.

A. The Contractor acknowledges that any person assigned to work under this Contract must perform their duties so as to not unduly impair contract performance. By assigning a person to work under this Contract, the Contractor agrees to be responsible for the behavior of that person during contract performance.



- B. The Contractor acknowledges that the District has the right to require the removal of any Contractor and any subcontractor employee that the District determines, at its sole discretion, to be negatively effecting performance of work under the contract. Examples of such behavior include, but are not limited to: (1) conduct which poses a threat to the safety of anyone working under the contract and any District employee; (2) conduct which is disruptive to contract performance; (3) careless work; (4) conduct which is not appropriate when working with District employees under this Contract; and (5) conduct in violation of District policy or local, state or federal laws.
- C. The District will provide written notice to the Contractor that a person's behavior is unacceptable or unduly impairing contract performance. Upon receipt of written notice from the District, the Contractor agrees to remove that person from doing any further work on the Contract, and to cause that person to be removed from providing service under this Contract. The Contractor agrees that it is not entitled to any additional costs it may incur as a result of the removal of the person from the District. The Contractor agrees to find a timely replacement and in no event shall this period exceed seventy-two (72) hours from that person being removed.
26. **Communication with Contractor's Staff.** In order to ensure efficient communication of operational needs, the District staff shall be permitted to communicate directly with Contractor's staff regarding day to day issues for the purpose of inquiry as to factual performance issues. The District will not give Contractor's staff directions concerning performance under this Contract. Issues which affect the Contract will be communicated through the General Manager.
27. **Application of Federal, State and Local Laws and Regulations.** During the Contract period of performance, the Contractor shall be subject to and comply with all current and new FTA, Federal, State and/or local laws, regulations, policies, procedures, and directives, and shall adhere to all financial privacy laws and regulations, if Federal funds are used to supplement District funding. Contractor agrees that the most recent of such Federal requirements will govern the administration of a contract at any particular time, except if there is sufficient evidence in the Contract of a contrary intent. To achieve compliance with changing requirements, the Contractor agrees to include in all agreements with subcontractors a statement that Federal requirements may change and that any changed requirement will apply. Federal terms and conditions will be incorporated through an attachment or amendment to the contract.
28. **Anti-Kickback and Gratuities.** The Contractor is prohibited from receiving any kickbacks, gratuities, payments, merchandise, equipment, supplies, services or favors in exchange for directing additional billable services to any sub-contractor.
29. **No Assignment.** This Contract is personal to each of the parties hereto. The Contractor shall not assign any of its rights nor transfer, convey, sublet or otherwise dispose of any of its obligations under this Contract without the prior written consent of the District. The written consent must appear on the contract or be attached to it.
30. **Force Majeure.** Each party shall be excused from performance of any of its obligations under this Contract if such inability was caused by an event beyond that party's reasonable control ("Force Majeure Event"). A Force Majeure Event shall include (i) natural disasters (*e.g., earthquake, hurricanes, floods, fire*); (ii) major upheavals (*e.g., war, riots, act of terrorism, sabotage, embargoes*); (iii) epidemics or pandemics; or (iv) government intervention (*e.g., government orders, court orders, confiscation, condemnation, future laws, government shutdown*).
- If a Force Majeure Event occurs, then Contractor shall make all commercially reasonable efforts to deliver product or services to the District or to provide the District with replacement product or service. In either case, the District shall reimburse Contractor for reasonable costs incurred by Contractor in order to provide the product, replacement product or service. If the Force Majeure Event continues exceeds thirty (30) days, the District may pause or terminate the Contract for Convenience in accordance with *Section 31* of this Contract.
31. **Termination.**
- A. **Termination for Convenience of the District.** The District, by written notice, may terminate this contract, in whole or in part, whenever the District determines that such termination is in its best interests. Any termination under this provision shall be affected by delivery to the Contractor of a notice of termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. After receipt of said notice, Contractor shall stop work on this contract on the date and to the extent specified in said notice, terminate all applicable orders and subcontracts, and complete all work not terminated by said notice. After receipt of said notice, Contractor shall submit to the District its termination claim setting forth Contractor's actual, direct, and unavoidable costs incurred which cannot be canceled as a result of said termination with such information as may be required by the District to evaluate the claim. The determination of the District on the claim shall be final subject only to an appeal pursuant to the dispute resolution procedures set forth herein.
- B. **Termination for Default.** In the event that the Contractor breaches the terms or violates the conditions of the contract and does not within ten (10) calendar days after receipt from the District of a notice of default (or, in the case of a default that cannot be remedied within ten (10) calendar days, to commence to cure said default within said ten (10) calendar days and thereafter to diligently pursue said cure until the default is remedied), the District may in its discretion terminate the contract, or such portion thereof, as the District determines to be most directly affected by the default. No new work shall be undertaken by Contractor and no new deliveries will be made after the date of receipt of such termination notice. Contractor shall submit to the District its termination claim setting forth Contractor's actual, direct, and unavoidable costs incurred which cannot be canceled as a result of said termination with such information as may be required by the District to evaluate the claim. The determination of the District on the claim shall be final subject only to an appeal pursuant to the dispute resolution procedures set forth herein.
- The term "default" for purposes of this provision includes, but is not limited to, the performance of work in violation of the terms of this contract; abandonment, assignment, delegation or subletting of this contract without approval of the District; bankruptcy or appointment of a receiver for Contractor's property; failure to perform services or other required acts within the time specified for the contract or any extension thereof; refusal or failure to provide proper workmanship; failure to take effective steps to end a prolonged labor dispute; and the



performance of the contract in bad faith. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the convenience of the District.

- C. **Termination for Force Majeure.** The performance of work under this Contract may be terminated by the District, in its discretion, based upon unforeseen causes beyond the control and without the fault or negligence of the Contractor such as *Force Majeure Events* which render impossible the Contractor's performance under the contract.
- D. **Termination for Non-Appropriation of Funds.** The continuation of this Contract is contingent upon the appropriation of funds by local, state and federal bodies. If local, state or federal contracts, grants, the Board of Directors, or other authorizations of funding fail to appropriate sufficient funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, or if such appropriation is reduced by the veto of the Governor, or for any other lawful purpose, and the effect of such reduction is to provide insufficient funds for the continuation of this Contract, the Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the District's or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the District from future performance of the Contract, but not from their rights and obligations existing at the time of termination. Upon termination of this Contract, the District shall pay the Contractor only its allowable costs to the date of termination. Contractor shall be entitled to payment for work performed satisfactorily and reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. If the Contractor has any property in its possession belonging to the District, the Contractor will account for the same and dispose of it in the manner the District directs. The District shall notify the Contractor, in writing, as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

In the event of termination under the above Termination conditions, Contractor will be paid for those services performed or deliveries made pursuant to this Contract to the satisfaction of the District up to the effective date of termination. In no event will the District be liable for costs incurred by Contractor after receipt of notice of termination. If the Contractor has any property in its possession belonging to the District, the Contractor will account for the same and dispose of it in the manner the District directs. Contractor shall have the right to remove any of its equipment within sixty (60) days of the termination date.

- 32. **Suspension of Work.** The District unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Director may determine to be appropriate for the convenience of the District. Upon suspension of Work, the District shall pay the Contractor its allowable costs to the date of suspension. Contractor shall be entitled to payment for work performed satisfactorily and reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract.
- 33. **Dispute Resolution.** The District and Contractor agree to attempt in good faith to resolve all disputes arising out of or under this Contract or the respective rights and liabilities of the Parties informally. The Parties agree that any dispute arising from this Contract, that is not resolved within thirty (30) days by the Parties' representatives responsible for the administration of this Contract will be set forth in writing to the attention of the District's General Manager for resolution. In case any disagreement, difference or controversy still cannot reach mutual agreement thereon, then the Parties agree to use an alternative dispute resolution process such as mediation and/or arbitration to resolve their dispute prior to initiating any formal action in court. Such disagreement, difference, or controversy shall be determined by binding arbitration, according to the rules of the American Arbitration Association with said arbitration being held in Oakland, California. The costs and expenses of any Arbitration shall be borne and paid as the Arbitrator(s) shall, by their award, direct. The submission to Arbitration is hereby made a condition precedent to the institution of any action at law or in equity with respect to the controversy involved; and such action at law or in equity shall be restricted solely to the subject matter of the challenge of such award on the grounds and only in the manner permitted by law. Unless otherwise directed by the District, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.

In the event any controversy, claim or dispute between the District and the Contractor arising out of or related to this Contract, or the breach hereof, that has not been resolved by informal discussions and negotiations, either party may, by written notice to the other, invoke the formal dispute resolution procedures set forth herein. The written notice invoking these procedures shall set forth in reasonable detail the nature, background and circumstances of the controversy claim or dispute. During the thirty (30) days following said written notice, the parties shall meet, confer and negotiate in good faith to resolve the dispute. Either party may, during said thirty (30) day period, request the utilization of the services of a professional mediator, and the other party or parties to this dispute shall cooperate with such request and share the reasonable costs of such mediator.

- A. In the event any controversy, claim or dispute between the District and the Contractor arising out of or related to this contract, or the breach hereof, cannot be settled or resolved amicably by the parties during the thirty (30) day period of good faith negotiations provided for above, the either party or any party hereto may submit said controversy, claim or dispute for binding arbitration before a single neutral arbitrator in accordance with the provisions contained herein and in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Rules"); provided, however, that notwithstanding any provisions of such Rules, the parties to the arbitration shall have the right to take depositions and obtain discovery regarding the subject matter of the arbitration, as provided in Title III of Part 4 (commencing with Section 1985) of the California Code of Civil Procedure, as and to the extent that the arbitrator deems fair and reasonable. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitrator shall determine all questions of fact and law relating to any controversy, claim or dispute hereunder, including but not limited to whether or not any such controversy, claim or dispute is subject to the arbitration provisions contained herein.
- B. Any party desiring arbitration shall serve on the other party or parties and the San Francisco Office of the American Arbitration Association, in accordance with the aforesaid Rules, its Notice of Intent to Arbitrate ("Notice"). The parties shall select a single, neutral arbitrator who is generally familiar with the factual and legal issues that relate to this Contract and the dispute to be resolved by arbitration. In the event that the parties are unable to agree on a neutral arbitrator, then one shall be selected in accordance with the Rules. The arbitration provided hereunder is hereby declared to be self-executing and it shall not be necessary to petition a court to compel arbitration.



- C. The parties to the arbitration shall share equally all costs of the arbitration, including the fee of the neutral arbitrator, and each party shall bear its own costs. The arbitrator shall have the authority, in accordance with the provisions of this Contract, to award to the prevailing party its costs, including its share of the arbitration costs, and reasonable attorneys' and expert witness fees and expenses.
 - D. If a controversy, claim or dispute arises between the parties which is subject to the arbitration provisions hereunder, and there exists or later arises a controversy, claim or dispute between the parties, or either of them, and any third party, which controversy, claim or dispute arises out of or relates to the same transaction or series of transactions, said third party controversy, claim or dispute shall be consolidated with the arbitration proceedings hereunder; provided, however, that any such third party shall be a party to an agreement with either of the parties which provides for the arbitration of disputes thereunder in accordance with rules and procedures substantially the same in all material respects as provided for herein or, if not, shall consent to arbitration as provided for hereunder.
 - E. All arbitration proceedings shall be held in Oakland, County of Alameda, California.
 - F. The Notice of the demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
 - G. Unless otherwise directed by the District, the Contractor shall continue performance under this Agreement while matters in dispute are being resolved.
34. **Continuity of Services.** Contractor acknowledges that the timely and complete performance of its obligations pursuant to this Contract is critical to the business and operations of the District. Accordingly, in the event Contractor or its affiliate is unwilling or unable to perform the Services hereunder as contracted, the District shall have the right to engage a Third Party to perform such duties until such time as Contractor is able to fulfill the duties as contracted.
35. **Records.** All Contractor and any subcontractor costs incurred in the performance of this Contract will be subject to audit. The Contractor shall provide the District with copies of fully executed subcontracts. The Contractor and any subcontractors shall permit the District or its authorized representatives to, within forty-eight (48) hours of notice, inspect, examine, make excerpts from, transcribe, and copy the Contractor's books, work, documents, papers, materials, payrolls records, accounts, and any and all data relevant to the Contract at any reasonable time, and to audit and verify statements, invoices or bills submitted by the Contractor pursuant to this Contract. The Contractor shall also provide such assistance as may be required in the course of such audit. The Contractor shall retain these records and make them available for inspection hereunder for a period of four (4) years after expiration or termination of the Contract.

If, as a result of the audit, it is determined by the District's Contractor or staff that reimbursement of any costs including profit or fee under this Contract was in excess of that represented and relied upon to establish the contract price or represented as a basis for payment, the Contractor agrees to reimburse the District for those costs within sixty (60) days of written notification by the District. The Contractor warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under *California Government Code §§ 1090 et seq. or §§ 87100 et seq.* during the performance of services under this Contract. The Contractor further covenants that it will not knowingly employ any person having such an interest in the performance of this Contract. Violation of this provision may result in this Contract being deemed void and unenforceable.

36. **Reporting.** Contractor shall provide weekly Project Status Reports to the District's Project Manager or his/her designee, as requested.
37. **Claims Process (Public Contract Code § 9204).** A claim is a separate demand by the Contractor for one or more of the following: (i) a time extension for relief from damages or penalties for delay, (ii) payment of money or damages arising from work done pursuant to the contract for a public work, or (iii) payment of an amount disputed by the District. A claim must be sent by registered or certified mail, and upon receipt of a claim sent by registered or certified mail, the District will review it and, within forty-five (45) days, provide a written statement identifying the disputed and undisputed portions of the claim. The forty-five (45) day period may be extended by mutual agreement or, until after the next Board of Directors meeting, if the Board must approve the disputed and undisputed portions of the claim. Any payment due on the undisputed portion of the claim must be processed within sixty (60) days.

If the claimant disputes the District's written response or if the District fails to respond to a claim within the time prescribed, the claimant must demand a meet and confer for settlement of the issues in dispute. The District must then schedule a meet and confer conference within thirty (30) days for settlement of the dispute. Any disputed portion of the claim that remains in dispute after the meet and confer conference will be subject to nonbinding mediation, as specified. The District can also require arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if the mediation does not resolve the dispute.

If the District fails to respond to a claim from a contractor within the above referenced time periods, the claim is deemed rejected in its entirety. Unpaid claim amounts which are not paid in a timely manner shall accrue interest at seven percent (7%) per annum.

To read the full AB 626 language, please refer to: http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0601-0650/ab_626_cfa_20160627_172317_sen_comm.html.

38. **Conflict of Interest.** By signing this Contract, Contractor warrants and represents that it presently has no interest, direct or indirect, and agrees that it will not acquire any interest in any manner or degree with the performance of the services called for under this Contract that would present a conflict of interest under *California Government Code §§ 1090 et seq. or §§ 87100 et seq.* during the performance of services under this Contract. The Contractor further covenants that in the performance of this Contract, it will not knowingly employ any person having such an interest in the performance of this Contract and that the Contractor receives no commissions or other payments from parties other than the District as a result of work performed hereunder. Failure to comply with this provision and/or violation of this provision may be basis for termination of this Contract for default and the collection of any applicable damages.



Depending on the nature of the work performed, a Contractor of the District is subject to the same conflict of interest prohibitions that govern District employees and officials (*Cal. Govt. Code Section 1090 et seq. and Cal. Govt. Code Section 87100 et seq.* as well as all applicable federal regulations and laws). During the solicitation process or the term of the Contract, Contractor and its employees may be required to disclose financial interests.

No person previously in the position of director, officer, employee or agent of the District may act as an agent or attorney for, or otherwise represent, the Contractor by making any formal or informal appearance, or any oral or written communication, before the District, or any officer or employee of the District, for a period of twelve (12) months after leaving office or employment with the District if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant or contract.

The Contractor shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Contract and other solicitations. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to the District; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other contract.

The Contractor shall not engage the services of any subcontractor or independent contractor on any work related to this Contract if the subcontractor or independent contractor, or any employee of the subcontractor or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Contract.

If at any time during the term of this Contract, the Contractor becomes aware of an organizational conflict of interest in connection with the work performed hereunder, the Contractor immediately shall provide the District with written notice of the facts and circumstances giving rise to this organizational conflict of interest. The Contractor's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the term of this Contract, the District becomes aware of an organizational conflict of interest in connection with the Contractor's performance of the work hereunder, the District shall similarly notify the Contractor. In the event a conflict is presented, whether disclosed by the Contractor or discovered by the District, the District will consider the conflict presented and any alternatives proposed and meet with the Contractor to determine an appropriate course of action. The District's determination as to the manner in which to address the conflict shall be final.

During the term of this Contract, the Contractor must maintain lists of its employees, and the subcontractors and independent Contractor used and their employees. The Contractor must provide this information to the District upon request. However, submittal of such lists does not relieve the Contractor of its obligation to assure that no organizational conflicts of interest exist. The Contractor shall retain this record for four (4) years after the District makes final payment under this Contract. Such lists may be published as part of future District solicitations.

The Contractor shall maintain written policies prohibiting organizational conflicts of interest and shall ensure that its employees are fully familiar with these policies. The Contractor shall monitor and enforce these policies and shall require any subcontractors and affiliates to maintain, monitor and enforce policies prohibiting organizational conflicts of interest.

Failure to comply with this section may subject the Contractor to damages incurred by the District in addressing organizational conflicts that arise out of work performed by the Contractor, or to termination of this Contract for breach.

39. **Statement of Economic Interest.** The District's Conflict of Interest Code designates some Contractors and Consultants as a category of persons who must complete Form 700, Statement of Economic Interest, at the beginning of the contract period and again at the termination of the contract. Selected Contractors may be required to complete the Form 700 before work may begin.
40. **Prohibited Interests.** By signing this Contract, Contractor represents and warrants that neither the General Manager nor any Director, officer, or employee of the District is in any manner interested, directly or indirectly, in the bid or in the contract which may be awarded under it, or in any expected profits to arise therefrom (*State of California Government Code section 1090 et seq.*). No Director, officer, or employee of the District during his/her tenure or for one (1) year thereafter, shall have any interest direct or indirect, in this Contract or the proceeds thereof. Contractor covenants that it presently has no interest, direct or indirect, which would conflict in any manner or degree with the performance of the services called for under this Contract. Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed by Contractor. The District may require Contractor to file an annual Statement of Economic Interest form pursuant to the *Political Reform Act of 1974 (Government Code Section 81000 et seq.)*.
41. **No Collusion Declaration.** By signing this Contract, Contractor represents and warrants that its Bid is genuine and not a sham or collusive or made in the interest of or on behalf of any person not named therein; that Contractor has not directly induced or solicited any other person to submit a sham Bid or any other person to refrain from submitting a Bid; and that Contractor has not in any manner sought collusion to secure any improper advantage over any other person submitting a Bid.

Penalty for Collusion. If, at any time, it shall be found that the person, firm or corporation to whom a contract has been awarded has, in presenting any bid(s), colluded with any other party or parties, then the contract so awarded shall be null and void and the Contractor and its bondsmen shall be liable to the District for all loss or damage which the District may suffer thereby and the District may advertise for a new contract for said labor, supplies, materials, or equipment.
42. **Non-Discrimination Assurance – Title VI of the Civil Rights Act.** The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of *49 CFR Part 26* in the award and administration of U.S. DOT-assisted contracts. Further, the Contractor agrees to comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of *Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq.*, and with U.S. DOT regulations, "*Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act*," *49 C.F.R. Part 21*. The Contractor shall obtain the same assurances from its joint venture partners, subcontractors, and subconsultants by including this assurance in all subcontracts entered into under this Contract. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this



Contract or such other remedy as the District deems appropriate, which may include, but is not limited to withholding monthly progress payments, assessing sanctions, liquidated damages, and/or disqualifying the contractor from future bidding as non-responsible.

During the performance of this Contract, Contractor and its subconsultants and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subconsultants or subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subconsultants shall comply with the provisions of the *Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.)* and the applicable regulations promulgated thereunder (*California Code of Regulations, Title 2, Section 7285 et seq.*). The applicable regulations of the *Fair Employment and Housing Commission* implementing *Government Code Section 12990 (a-f)*, set forth in *Chapter 5 of Division 4 of Title 2 of the California Code of Regulations*, are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Contract.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

43. **Equal Employment Opportunity.** In connection with the performance of this Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, citizenship, political activity or affiliation, national origin, ancestry, physical or mental disability, marital status, age, medical condition (as defined under California law), veteran status, sexual orientation, gender identity, gender expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), taking or requesting statutorily protected leave, or any other characteristics protected under federal, state, or local laws. The Contractor shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, disability, national origin, or any other characteristic protected under state, federal, or local laws. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.
44. **Attorney's Fees.** In the event that it becomes necessary for either party to bring a lawsuit to enforce any of the provisions of the Contract, the parties agree that the court having jurisdiction over such dispute shall have the authority to determine and fix reasonable attorney's fees to be paid to the prevailing party.
45. **Waiver.** Failure of any party to exercise any right or option arising out of a breach of this Contract shall not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach.
46. **Governing Law and Venue.** This Contract, its interpretation and all work performed under it shall be governed by the laws of the State of California. In the event of a dispute or breach of contract, venue shall be in Alameda County, California.
47. **Binding on Successors.** All of the terms, provisions and conditions of this Contract shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives.
48. **Third-Party Beneficiaries.** This Contract is not for the benefit of any person or entity other than the parties.
49. **Severability.** If any provision of this Contract shall be deemed invalid or unenforceable, that provision shall be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this Contract, and in any event, the remaining provisions of this Contract shall remain in full force and effect.
50. **Entire Contract; Modification.** This Contract, including any attachments, the solicitation and addenda, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and all such agreements entered into prior hereto are revoked and superseded by this Contract, and no representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements. This Contract may not be changed, modified or rescinded except in writing, signed by authorized representatives of all parties hereto, and any attempt at oral modification of this Contract shall be void and of no effect. In the event of a conflict between the terms and conditions of this Contract and the attachments, the terms of this Contract will prevail.



IN WITNESS WHEREOF, the parties have executed this Contract on the dates set forth below.

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

CONTRACTOR:

Michael A. Hursh
General Manager

Date

Signature

Date

Printed Name

Approved as to Form and Content:

Title

Jill A. Sprague
General Counsel

Date

Signature

Date

Printed Name

Title

**If the Contractor is a corporation, this Contract must be executed by two (2) corporate officers, consisting of: (a) the president, vice president or chair of the board; and (b) the secretary, assistant secretary, chief financial officer or assistant treasurer. In the alternative, this Contract may be executed by a single officer or a person other than an officer provided that evidence satisfactory to the District is provided demonstrating that such individual is authorized to bind the corporation (e.g. a copy of a certified resolution from the corporation's board or a copy of the corporation's bylaws)*



ATTACHMENT 1-A
SCOPE OF WORK/SERVICES

1. **BACKGROUND.** The District operates transit services within Alameda and Contra Costa Counties. Service area is approximately 750 square miles from Crockett to the Milpitas city limits covering 200 square miles west of the hills, plus Transbay service to San Francisco, Palo Alto, and San Mateo, contract bus routes, suburban western, central and eastern Contra Costa County and eastern Alameda County (Livermore Valley).

2. **REQUIREMENT.** It is the District’s intent to award a contract for light, medium and heavy duty towing services.
The Contractor will be required to provide all towing services stated in this IFB, which will be ordered on an as-needed basis by the District.
The Contractor must have the experience, knowledge, tow trucks and related equipment to safely tow cars, trucks, buses, articulated buses, double-deck buses and miscellaneous equipment under all circumstances including vehicles that are overturned and may have left the roadway or pavement.
Contractor experience includes the ability to correct locked up brakes, correct broken suspension and frames and replace tires on any vehicle to enable safe towing. The Contractor must have equipment (air bags) to safely upright any overturned vehicle as part of this contract.
The Contractor must have knowledge to safely tow gasoline, diesel, fuel cell, battery electric and hybrid electric buses and cars. When required by the District, the Contractor must be able to change tires on heavy duty buses and light duty cars and trucks.

3. **RESPONSE TIME.** In all cases the Contractor is required to arrive at the towing site within *ninety (90) minutes* of a call from the District, on a twenty-four (24) hour per day, seven (7) day per week basis, unless otherwise specified by the District.

4. **TOW TAGS.** The Contractor will print and use tow tags which meet the District’s requirements. All tows, whether by the Contractor or any subcontractor, will be documented on the Contractor’s tow tag (*NO EXCEPTIONS*). Tow Tags, which do not contain the required information, will not be paid until the required information is provided. Tow tags must be submitted at the completion of tow to the Division Supervisor. The minimum requirements are as follows:

- A. Size: 5-1/2 x 8-1/2"
- B. Paper: 3-part carbonless (NCR) with white, yellow and pink copies.
- C. Tags will be imprinted with unique serial numbers, Contract Number 2020-1500 and the contractor’s name, address, and telephone number.
- D. Tags will be filled out completely by the tow vehicle operator with the following information at a minimum:
 - 1. Date
 - 2. Time truck dispatched
 - 3. Time call received by vendor
 - 4. Driver
 - 5. Coach #
 - 6. Pick up location & time
 - 7. Drop off location & time
 - 8. Tow price
 - 9. Standby time, if any, and initials of person authorizing standby time.
 - 10. Signature of maintenance person receiving coach.

NOTE: The yellow copy of the fully completed tow tag will be given to the maintenance person receiving the coach. The driver will retain the white and pink copies. (The pink copies will be submitted monthly to the District as invoices).

5. **INVOICING.** The pink copies will be submitted monthly to the District as invoices and mailed to the District’s Accounts Payable Department at P.O. Box 28507, Oakland, CA 94604 and the *Contract Number 2020-1500* must appear on all invoices.

Invoices must have the information set forth in *Section 4.D* above. Invoices without required information will not be paid and will be returned to Contractor for re-submittal.

6. **SERVICE LOCATIONS AND SHOP PHONE NUMBERS.** Place of Services. There is a possibility that during the term of this contract the Contractor will be required to provide towing services outside the District’s towing area.

Name	Address	Phone
Emeryville Division 2	1177 47th Street Emeryville, CA 94608	510-891-4963
Hayward Division 6	1758 Sabre Street Hayward, CA 94545	510-891-2509
Richmond Division 3	2016 MacDonald Avenue Richmond CA 94801	510-620-8918
East Oakland Division 4	1100 Seminary Avenue Oakland CA 94621	510-628-8293
Central Maintenance Facility	10626 International Blvd., Oakland, CA 94603	510-577-8851
San Francisco Transbay Terminal	425 Mission Street, San Francisco, CA 94105	510-891-4897
General Office	1600 Franklin Street, Oakland, CA. 94612	510-891-4794

7. **ESTIMATED ANNUAL TOWING REQUIREMENTS.** The District’s estimated annual requirements for towing services is provided on the Bid Form. These estimates are based on past experience and are provided for estimating purposes only. The towing services furnished hereunder will be those actual services required during the term of the contract.



8. **DISPATCHING OFFICE.** Contractor shall provide a dispatching office capable of providing dependable, punctual response and shall maintain the service level to the satisfaction of the District throughout the contract period. Dispatch office shall be staffed twenty-four (24) hours/day, seven (7) days/week.
9. **EQUIPMENT REQUIREMENTS.** The Contractor must have an adequate number of tow vehicles of sufficient size and capacity to legally tow light, medium and heavy District vehicles and support equipment. Support equipment will include but not limited to the District's yard scrubber, waste oil recovery tank trailer and forklifts. In addition, the contractor will be required to tow any abandoned vehicles left on District property and employee parking garages. For District parking garages the contractor must have a tow truck that can access areas as low as 6' feet 6" inches tall. The District operates double deck buses with a height of no less than 13' 6" that will require the contractor to have the proper equipment to "flat tow" such a vehicle. The double deck bus specifications are listed in section (13).

The contractor is required to supply the District with a list of its towing vehicles along with their bid. Each tow truck must be equipped as required by the Vehicle Code and Title 13 California Administrative Code.

10. **TWO-WAY RADIO COMMUNICATIONS EQUIPMENT.** Each tow truck shall be equipped with communications equipment capable of two-way communications between the Contractor's dispatching office and the tow truck.
11. **HOURS OF SERVICE.** Contractor shall provide 24-hour, 7-days per week, including holidays, towing service in response to Alameda and Contra-Costa County Sheriff Departments, Highway Patrol and AC Transit.
12. **RESPONSIBILITY.** The Contractor shall assume responsibility for all services provided under this contract whether these services are provided by the Contractor or a sub-contractor. District shall have the right to review and approve all subcontractors Contractor may use.
13. **DESCRIPTION OF DISTRICT BUSES / AXLE WIEGHTS / LENGTH**

BUS TYPE	FRT/LBS	CENTER/LBS	REAR/LBS	GVWR/LBS	LENGTH
VanHool 1000	14,780	N/A	26,500	40,800	40'
VanHool 2000	15,650	25,350	15,650	56,650	60'
VanHool 2100	15,650	23,350	15,650	56,650	60'
MCI 6000	16,000	22,500	12,000	48,000	45'
VanHool 5000	15,650	N/A	20,050	33,100	30'
VanHool 1200	15,650	N/A	24,000	39,650	40'
VanHool 5100	12,940	N/A	11,340	24,520	30'
VanHool 2190	15,650	25,300	15,650	56,700	60'
Gillig 1300	14,600	N/A	25,000	39,600	40'
Gillig 1400	14,600	N/A	25,000	39,600	40'
Gillig 6100	14,600	N/A	25,000	39,600	40'
Gillig 1500	14,600	N/A	25,000	39,600	40'
Gillig Hybrid	14,600	N/A	25,000	39,600	40'
Gillig BEB	16,000	N/A	29,000	45,000	40'
Ford / El Dorado 3500	5000	N/A	9600	14,500	26'
New Flyer Fuel Cell	15,873	N/A	28,660	43,820	40'
New Flyer Battery Elec.	15,873	N/A	28,660	43,820	40'
New Flyer Artic Diesel	14,780	24,250	27,760	66,690	60'
New Flyer Artic Hybrid	15,180	25,350	28,640	69,170	60'
New Flyer Artic Fuel Cell	15,080	28,640	28,640	72,360	60'
VanHool Fuel Cell	15,650	N/A	24,000	39,650	40'
Double Deck	16,538	26,460	16,538	58,610	42'

14. **ALL BUS WEIGHTS ARE APPROXIMATE PLUS OR MINUS 5%.** The maximum width of District Vehicle will not exceed 102", the District's automobiles and source vehicles range in size from sub-compact cars to trucks, and equipment. Also, there is other maintenance equipment that may need towing on a weekly basis, i.e., vacuum trucks, yard scrubbers and clean up equipment.
15. **CONTACT PERSON.** Contractor shall provide the name, telephone number and e-mail address of a dedicated contact person to discuss any issues that require resolution during the life of this contract.



16. **BIDDER(S) EMPLOYEES.**

- a. The Bidder(s) and all assigned employees must carry identification at all times while performing the services as outlined herein.
- b. The Bidder(s) shall be solely responsible for selecting, training and employing (or otherwise retaining) personnel as necessary for the Bidder(s) to satisfy the requirements of this IFB and to satisfactorily perform the work and services required.
- c. The Bidder(s) shall be required to provide all employees with uniforms or provide some type of identification “badge/patch” for employees responding to a request for towing services and employees must wear reflective safety gear. Employees responding to a services call must be in uniforms/badge/patch identifying the company when performing service for the District.
- d. The Bidder(s) shall ensure all drivers used on the District calls are appropriately neat, clean and professional.
- e. The Bidder(s) shall advise its employees that they are not permitted to exceed posted speed limits when responding to a call for service.
- f. The Bidder(s) shall ensure and require that all drivers employed under this contract shall be aware of and comply with all traffic laws.
- g. Bidder(s) Tow truck operators must have appropriate National Certification for the vehicle they are operating. Please provide proof of National Certification.
- h. Bidder(s) drivers must have in their possession a valid California Driver’s License operation for any vehicle driven.
- i. Bidder(s) shall ensure that all employees and subcontractor personnel dress and conduct themselves in a professional and safe manner when responding to the District service request.

17. **DAMAGE TO EQUIPMENT.** Towing may be required due to mechanical failure or accident damage. Care must be exercised to assure that the vehicle to be towed is properly secured to prevent further damage. Contractor will be responsible for any damage caused as a result of an accident while under tow or of negligence on behalf of its employees. Before towing any bus from the front, one of the rear axle shafts must be removed and sealed to prevent leakage. The towing contractor will be responsible for any leakage of oil due to improperly sealed hubs when the axle is removed. If a bus has a bicycle rack, the rack must be removed.

18. **BRIDGE TOLLS.** Contractor may add to its invoice any bridge tolls, which apply to a specific tow, provided the toll fee is clearly reflected on the invoice and bridge receipts are attached.



ATTACHMENT 1-B
CONTRACTOR'S BID DOCUMENTS



EXHIBIT 2
INSURANCE REQUIREMENTS

Coverage shall be at least as broad as:

1. **Garage Coverage** Form (GCF): Insurance Services Office *Form CA 00 05* providing Liability Coverage (GCF 00 05, Section II) on an “occurrence” basis, including, but not limited to: covered auto designation symbol, *Code 21 (Any “Auto”), and Code 30 (“Autos”* left with you for service, repair, storage or safekeeping), “on-hook” coverage for accidents or damage occurring while a vehicle is in tow, with liability limits no less than \$10,000,000.00 per accident for bodily injury and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and Garagekeepers Coverage (GCF 00 05, Section III) with coverage limits, inclusive of Comprehensive, Specified Causes of Loss, and Collision in an amount sufficient to cover the replacement cost of any District vehicle in your care, custody, and control at one time.

Any deductibles or self-insured retentions shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$5,000.00 per vehicle or \$10,000.00 per event it must be approved in advance (in writing) by District. Contractor is responsible for any deductible or self-insured retention and shall fund it upon District’s written request, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving the District. The policy definition of “insured contract” shall include assumptions of liability arising out of work performed for the District. *Required Evidence of Insurance: Certificate of Insurance.*

2. **Workers’ Compensation** insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000.00 per accident for bodily injury or disease. *(Not required if Contractor provides written verification it has no employees)*
3. **Other Insurance Provisions:** The insurance policies are to contain, or be endorsed to contain, the following provisions:
 - a. **Additional Insured Status:** The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as *ISO Form CG 20 10 11 85* or both *CG 20 10, CG 20 26, CG 20 33, or CG 20 38;* and *CG 20 37* forms if later revisions used).
 - b. **Primary Coverage:** For any claims related to this contract, the Contractor’s insurance coverage shall be primary insurance primary coverage at least as broad as *ISO CG 20 01 04 13* as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor’s insurance and shall not contribute with it.
 - c. **Notice of Cancellation:** Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the Entity.
 - d. **Waiver of Subrogation:** Contractor hereby grants to Entity a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Entity by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.
 - e. **Self-Insured Retentions:** Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.
 - f. **Acceptability of Insurers:** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the Entity.
 - g. **Claims Made Policies:** If any of the required policies provide coverage on a claims-made basis:
 - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.
 - h. **Verification of Coverage:** Contractor shall furnish the Entity with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language affecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to Entity before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor’s obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
 - i. **Subcontractors:** Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Entity is an additional insured on insurance required from subcontractors.
 - j. **Special Risks or Circumstances:** The District reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.