



**ALAMEDA-CONTRA COSTA TRANSIT DISTRICT
REQUEST FOR QUOTES
TEMPORARY ON-SITE BUS WASHING SERVICES
RFQ NO. 2021-10451**

1. **Background Information.** The Alameda-Contra Costa Transit District ('AC Transit' or the '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 is the largest bus-only system in California and the third largest public bus system in California, covering a 364-square mile service area within the East Bay, San Francisco, and the Peninsula. The District operates 156 bus lines with an average annual ridership of 51,760,000 million trips. We have ~170,000 customers that rely on us to get them where they need to go in a timely manner. The District also partners with the Bay Area Rapid Transit (BART) system to jointly operate the East Bay Paratransit Consortium to provide ADA paratransit service to more than 700,000 riders with disabilities annually. Largely financed through the receipt of transit fares, property taxes, and state and federal funding, the District has four (4) operating divisions in addition to the Central Maintenance Facility, Training Center, and the General Office.

The District is committed to providing well-maintained and clean buses for the community. The District is currently soliciting temporary on-site bus washing services at its Division 4 Facility. The Division 4 Facility is located at 1100 Seminary Avenue in Oakland, California.

2. **Single Point of Contact (SPC).** The SPC for this RFQ shall be Terra Duan, Contracts Specialist, tduan@actransit.org. Vendors shall direct all communications related to any provision of the RFQ in writing only to the SPC, whether about the technical requirements of the RFQ, contractual requirements, the RFQ process, or any other provision. *Vendors may not contact any other District personnel regarding this RFQ. Contact by a Vendor 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 Vendor's bid.*
3. **Scope of Services.** AC Transit is seeking quotes from qualified, US-based firms to provide temporary on-site bus washing services during construction and testing of the bus wash equipment at the District's D4 Operating Division located at 1100 Seminary Ave, Oakland, CA 94621.

The vendor shall:

1. Provide all equipment, tools, supplies, materials, transportation, labor and perform all operations necessary to wash the exterior of the bus fleet under the resulting contract (from this RFQ).
2. Provide wash processes that will capture all wastewater. Vendor is required to remove and properly dispose of all wastewater from the project site.

4. **Questions and/or Requests for Clarifications About This RFQ.** Questions/Clarifications are due by 4:00p on 14 September 2020. Unless otherwise instructed, all inquiries relating to this RFQ must (a) be delivered to the SPC via email submission; (b) reference the RFQ number and title as well as the deadline time and date; (c) identify Vendor's name and contact information; (d) refer to the specific area of the RFQ being questioned (i.e. section and paragraph number); and (e) be received on/before the due date and time stated herein. *Unauthorized contact with other District staff regarding this RFQ may result in the disqualification of the Vendor.*

Responses to questions will be posted on/about 17 September 2020.

5. **Format:** In order to submit quotes to AC Transit, the electronic submission must be formatted using Adobe Acrobat (.pdf) with a total combined file size not exceeding 10.0 megabytes. Files shall conform to the naming convention of: "RFQ2021_10451_Company Name". {Ex: "RFQ2021-10451_AC Transit"}.
6. **Bid Submission:** Vendors may submit quotes for this project (and presentations) via email to tduan@actransit.org on/before 2:00p Pacific Time on 22 September 2020. To receive consideration, quotes with all required information must be delivered on/before the deadline date. Requests for extensions of this time and date will not be granted, unless deemed to be in the District's best interest.

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.* Vendors are responsible for verifying successful delivery of electronic transmission to the SPC on/before the submission deadline time and date as late submissions will not be considered. When sending bids by email, Vendors are responsible for marking the email "return receipt" and "notify when read" to ensure to know the District has received the submission and to be alerted when the email was opened at the predetermined submission opening time. Once the 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 (one (1) original and one (1) copy) of the Technical Bid and Price Forms prior to the bid due date and time deadline.*

Vendors may opt to not email a bid and only 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*. Vendors choosing to only mail 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: Vendors 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 Vendor should ensure the Bid Form is in a separate sealed envelope from the Technical Proposal.* All packages shall be clearly marked with the RFQ Number, Project Title, and the Due Date and Time. ***Final Bids, including the required hard copies and flash drive, 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.

The District will reject any bids lacking the required flash drive and hard copies, responses containing unsolicited bid addenda, or bids that are received after the deadline. The District recommends that Vendors 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.

7. **Experience/Skills:** The District is looking for a Vendor who has minimum two (2) years' experience in providing temporary on-site bus wash services. Additionally, the District is seeking vendors willing to contract for a flat rate for the entire project. The rate should include all fees associated with the project. Please include a list of *three (3)* relevant projects, completed in the past *five (5)* years along with at least *three (3)* professional references (*name, phone, and email*).



- 8. **Quotes:** Quotes are to be submitted along with references *no later than 2:00p PT on 22 September 2020* . Quotes are to be submitted as a lump sum amount based on the details below.

SESSION QUANTITY	PRICE PER BUS	PRICE PER WASH SESSION
100 Buses (<i>mix of 40' and 60' buses</i>)	\$	\$

- 9. **Service Specifications:**
 1. Vendor shall supply a wash process that removes all dirt, grime, and oil from the exterior of the bus.
 2. Vendor shall provide two (2) washes per week for up to three (3) months. Each washing session will be for a mix of 40' and 60' buses.
 3. Washes will occur between the times of 7pm-3am.
 4. Vendor must ensure that all wastewater from the wash is properly captured and removed from the project site and disposed of in a method that meets all state and local guidelines.

Schedule Options: Wash sessions can be...

1. Two (2) days (one hundred (100) buses per session, Sun/Wed)
2. Four (4) days, (fifty (50) buses per session, Sun/M/W/Th)
3. Six (6) days, (thirty-three (33) buses per session, Sun/Mon/Tues/Wed/Thu/Fri).

STANDARD CONDITIONS

- 1. **Reserved Rights.** Without limiting the generality of any other provision of this RFQ, the District reserves the right, at any time prior to execution of an agreement with the successful Vendor, 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 RFQ 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 RFQ or future Vendor to any RFQ which may be issued by the District, is intended to be granted any rights hereunder.
 - All Vendors 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 Vendor responding to the RFQ.
 - The District reserves the right, in its sole discretion:
 - To reject any or all Bids in-whole or in-part or cancel this RFQ at any time and for any reason, with or without issuing another RFQ, with no cost or penalty to the District; or to reject all bids and re-solicit or cancel this RFQ if deemed by the District to be in its best interest, as determined by the District. The District shall not be liable to any Vendor for any loss or expense caused by or resulting from the delay, suspension, or cancellation of the RFQ, award, or rejection of any Bid.
 - To re-issue this RFQ without change or modification; or to issue a subsequent RFQ for this project with terms and conditions that are substantially different from the terms and conditions set forth in this RFQ.
 - To correct inaccurate awards resulting from its clerical errors. This may include, in extreme circumstances, revoking the awarding of a contract already made to a Vendor and subsequently awarding the contract to another Bid. 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 Vendor is deemed to be void *ab initio* and of no effect as if no contract ever existed between the District and the Vendor.
 - To permit or reject amendments (including information inadvertently omitted), modifications, alterations and/or corrections of Bids by some or all of the Vendors following Bid submission (*if the change is initialed and dated by the Vendor*) and such revisions are made prior to the stated bid submission closing date and time. No use of white-out or change, mark-up or cross-out may be made of any condition, format, provision or term that appears on the District's published Bid Form. No change shall be allowed after the closing date and time.
 - To waive any informality, defect, non-responsiveness, immaterial defects, technicalities, minor irregularities, or derivation from this RFQ that is not, in the District's sole judgment, material to the Bid and to accept any Bid it deems to be in the best interest of the District.
 - To not proceed with the process described in this RFQ, 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 RFQ, contains ambiguities or services not called for by this RFQ, or whose conduct violates ethical regulations.
 - To reject the Bid of a Vendor 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 RFQ, or is otherwise not a responsible Vendor;
 - To rescind its rejection of any Bid(s) with a previously rejected Vendor.
 - To request clarifications of any unclear Bid; and to request that some or all of the Vendors modify Bids or provide additional information following evaluation by the District.
 - To consider, and accept for evaluation, a late modification of a proposal if the proposal itself was submitted on time; the modifications were requested by the District; and the modifications make the terms of the proposal more favorable to the District;
 - To request additional or supplemental information (including but not limited to information inadvertently omitted by any Vendor in response to this RFQ) from any or all Vendors.
 - To conduct such investigations as the District considers appropriate with respect to the qualifications of any Vendor and/or any information contained in any Bid.
 - To duplicate, without limitation, all materials submitted for purposes of this RFQ evaluation, and duplicate for public information in response to data requests regarding the bid.



2. **Bids.**

- **Errors in Bids.** The Vendor is responsible for errors and omissions in its bid. No such error or omission shall diminish the Vendor's obligations to the District.
- **Withdrawal of Bid.** A bid submission may be withdrawn by written request of the Vendor, prior to the bid closing date and time. The request for withdrawal shall be signed by an authorized agent of Vendor. Modifications offered in any manner, oral or written, will not be considered after the deadline. After the closing date and time, the submittal may be withdrawn only with permission by the District.
- **Prohibition as Subcontractor.** No Vendor 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 Vendor 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.
- **Incorporation of RFQ and Bid in Contract.** This RFQ and the Vendor'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 Vendor.



EXHIBIT A
TERMS AND CONDITIONS

1. **Period of Performance.** Work/Services shall be completed within *twelve (12) weeks* after the award, unless extended by the parties or terminated earlier.
2. **Price.** The District agrees to pay the Vendor a firm fixed price for all work and services specified in the contract as follows: The contract amount shall include all costs to the performance of the Services specified under the contract. The District shall pay the Vendor in the lump-sum amount of ____ dollars (\$_____).

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, sub-vendor/subconsultant costs, and all other costs and miscellaneous expenses incurred by the Vendor as reflected in the bid. The District and Vendor must mutually agree upon any adjustments in payment, in writing.

Vendor 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 Vendor during the previous month and shall state the number of hours performed/units delivered at each location and the applicable hourly or unit rate being billed. Rates shall be in accordance with the Vendor's Bid, and Best and Final Offer, if any, as accepted by the District. No payment will be made for work in progress. Invoices shall be submitted electronically to accountspayable@actransit.org or mailed to: AC Transit, Attn: Accounts Payable, P.O. Box 28507, Oakland, California 94604. 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 Vendor 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. Vendor shall use diligent efforts to provide any supporting documentation required by the District to resolve any such disputes.

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. **Vendor Registration.** If Vendor 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, Vendors are required to submit a W-9, Taxpayer Identification Number and Certification containing original signature. If you have questions or require assistance, please contact sotenbreit@actransit.org.

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. **All prospective Vendors are required be registered in the SAM database to bid on and get paid for federal contracts or to receive federal funds, prior to the award of a contract.**

4. **W-9 Form Required.** Each vendor shall submit a completed W-9 form with its quote. 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>.
5. **Cost of Bid Submission and Pre-Contractual Expenses.** Vendor 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 RFQ, costs of samples and other supporting materials, costs to participate in demonstrations, pre-bid meetings, licenses or permits, or costs associated with protests. The District shall not be liable for any pre-contractual expenses incurred by any vendor and vendors 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 RFQ. Pre-contractual expenses are defined as expenses incurred by vendor in:
 - Proposals in response to this RFQ (including copies or other expenses of any submitted documentation).
 - Costs associated with interviews and meetings (including travel expenses) incurred in responding to this RFQ.
 - Other expenses incurred by a vendor prior to the date of award and formal Notice to Proceed for any contract.

6. **Waiver.** By submitting a bid, the corresponding vendor 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 vendor 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.

7. **Subcontracting.** The vendor shall not subcontract any services to be performed by it under the contract to be awarded under this RFQ 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 vendor with provisions allowing the vendor to comply with all requirements of the contract. The vendor shall be solely responsible for reimbursing any subcontractors, and the District shall have no obligation to them. The vendor shall be solely responsible for subcontractor's 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 vendors to login and submit payment data for prompt payment compliance and subcontractor's utilization purposes. If no subcontractors are being proposed, the District may waive the requirement of utilizing this system.

8. **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 vendor 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 the work, which is the subject of the contract, is not completed, for any reason whatsoever, all materials generated under the contract shall be delivered as the District may direct.



9. **Ownership/Permission to Use Materials.** Responses to this RFQ 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 proposal "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 a vendor submits is a trade secret. If a request is made for information marked "Confidential," "Trade Secret," or "Proprietary," the District shall provide the vendor who submitted the information with reasonable notice to allow the vendor to seek protection from disclosure by a court of competent jurisdiction.

All bids submitted in response to this RFQ become the Property of the District. By submitting a bid in response to this RFQ, vendor 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 vendor, or as otherwise needed to administer the RFQ 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 vendor unless the bid is submitted late.

10. **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 Vendor shall be available to the public.

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

If the Vendor requests that the District withhold from disclosure information identified as confidential, and the District complies with the Vendor's request, the Vendor 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 Vendor information), and pay any and all cost and expenses related to the withholding of the Vendor information. The Vendor 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 Vendor information or in connection with the disclosure of Vendor Information in the event the District determines such information is subject to disclosure.

If the Vendor 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.

11. **Confidentiality.** In the course of performing work under the contract, Vendor may have access to confidential information of the District, which may be exempt from public disclosure by law. Vendor acknowledges such information is secret and confidential and shall not disclose any such confidential information, directly or indirectly, or use it in any way either during the term of the contract or at any time thereafter, except as required in the course of its performance in accordance with the contract.

12. **Conflict of Interest.** By submitting a bid, the Vendor 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 Vendor 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 the contract. The Vendor further covenants that it will not knowingly employ any person having such an interest in the performance of the contract. Violation of this provision may result in the contract being deemed void and unenforceable.

Depending on the nature of the work performed, the Vendor may be required to publicly disclose financial interests under the District's Conflict of Interest Code. The Vendor 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 Vendor 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 Vendor warrants that it has no organizational conflicts of interest at this time. Alternatively, the Vendor 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.

13. **No Collusion.** By submitting a bid, each Vendor 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 Vendor 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 Vendor 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 Vendor 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.



14. **Non-Conforming Bid.** A bid shall be prepared and submitted in accordance with the provisions of these RFQ 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.
15. **Anti-Kickback and 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. The Vendor is prohibited from receiving any kickbacks, payments, merchandise, equipment, supplies, services or favors in exchange for directing additional billable services to any subcontractor.
16. **Ex-Parté Communications/Cone of Silence Policy.** In accordance with California Public Contract Code Section 20216(d), the District's 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 vendor, or its representatives and any District Board Member, staff member, committee member, or vendor 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's Board of Directors. Any violation of the requirements set forth in this section shall constitute grounds for immediate and permanent disqualification of the Vendor from participation in this procurement.

In the context of this RFQ, an "ex-parté communication" is any communication between an Vendor (or the Vendor'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.

17. **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 evaluation team;
 - Evidence of collusion, directly or indirectly, among Vendors in regard to the amount, terms or conditions of this proposal;
 - Evidence of incorrect information submitted as part of the proposal;
 - Evidence of Vendor's inability to successfully complete the responsibilities and obligation of the proposal;
 - Existence of any lawsuit, unresolved contractual claim or dispute between Vendor and the District;
 - Vendor is in arrears on an existing contract or has failed to perform on a previous contract with the District; or
 - Vendor's default under any previous agreement with the District, which results in termination of the contract.
18. **Firms or Persons Not Eligible to Submit a Bid.** In order to avoid any conflict of interest or perception of a conflict of interest, Vendor(s) selected to provide professional services under this RFQ will be subject to the following requirements:
 - The Vendor(s) who works on the procurement will be precluded from submitting bids as a prime contractor or subcontractor in the ultimate procurement.
 - The Vendor(s) may not have interest in any potential Vendor for the ultimate procurement.
19. **Insurance.** Vendors shall include with their bid a copy of their current Certificate of Insurance that illustrates the current level of coverage the vendor 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 Vendor(s), at Vendor'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 B*. 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 Vendor agrees to provide the District with a copy of said policies, certificates and/or endorsement upon award of contract.
20. **Warranties.** The Vendor and subcontractor will warrant all equipment, for the term of the contract, against defects in materials or workmanship and will replace at no cost to the District any equipment that is defective. The replacement will be made within five (5) working days from the date of the notification of trouble.

Warranty of Title. The Vendor warrants and agrees that title to all materials and equipment furnished under this contract and accepted by the District will pass to the District free and clear of all liens, claims, security interests or encumbrances.

Performance Warranty. Vendor shall supply his standard warranty(ies) on defects in workmanship and material applicable to the materials, supplies or equipment furnished hereunder. The standard warranties should be no less than the minimum requirements stated in the Specifications. All warranties to commence after acceptance of delivery by the District unless otherwise stated. It is understood and agreed that the District does not waive any warranty either expressed or implied or any liability of the manufacturer or Vendor as may be determined by a decision of any court of the State of California or the United States.

21. **Service Delivery.** Award of the contract is contingent upon Vendor'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 the contract without liability by giving an immediate notice and to charge the Vendor with any loss incurred as a result of the Vendor'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 Vendor.
22. **Rendition of Services.** The Vendor hereby agrees to undertake, carry out and complete all work established herein in a professional and efficient manner satisfactory to District standards. The professional service or the performance of work or services required by the District cannot satisfactorily be performed by the regular employees of the District.
23. **Deliverables.** Award of the contract is contingent upon Vendor's ability to timely deliver the Services as outlined in the Deliverables. In the event of breach of this clause, the District reserves the right to: (a) terminate this Agreement without liability by giving an immediate notice and to charge the Vendor with any loss incurred as a result of the Vendor'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 Vendor.
24. **Damages.** All loss or damage arising from any unforeseen obstruction or difficulties, either natural or artificial, which may be encountered in the prosecution of the work, or the furnishing of the supplies, materials, or equipment; or from any action of the elements prior to the final acceptance of



the work, or of the supplies, materials, or equipment; or from any act or omission not authorized by these specifications on the part of the Vendor or any agent or person employed by it, shall be sustained by the Vendor.

25. Indemnification.

- A. Vendor, 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 Vendor relating to work or services in the performance of the contract, including but not limited to, work or services by any subcontractor or anyone directly or indirectly employed by or contracting with a Vendor or a subcontractor or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Vendor's and subcontractor's employees or subcontractors; or

Any allegation that materials or services provided by the Vendor 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 the contract and or described herein, Vendor, at its sole cost and expense, shall pay, resist or defend such claim or action on behalf of the Indemnified Group by attorney of Vendor, or if covered by insurance, Vendor'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 Vendor 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 Vendor, its agents or employees, neglects or refuses to defend the Indemnified Group as provided by the contract, any recovery or judgment against the Indemnified Group for a claim covered under the contract shall conclusively establish Vendor'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 Vendor 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 the contract.

- C. Insurance provisions set forth in the 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.

26. 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.
- C. The Vendor must promptly notify the District whenever and prior to terminating, replacing, or reducing scope of a DBE subcontractor performing work related to the contract; obtain written authorization from the District's Contracts Compliance Department to terminate, replace, or reduce scope of a DBE firm, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work if granted authorization. The Vendor may not terminate, replace, or reduce scope of a DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written authorization from the District.

- 27. **Most Favored Customer.** Vendor 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.

- 28. **Spare Parts.** Unless otherwise set forth herein, Vendor shall make spare parts available to the District for a period of two (2) years from the date of delivery of the items to the District. If Vendor is unable to so provide spare parts, it shall provide the District with the name(s) of Vendor's suppliers so the District may attempt to procure such parts directly. In the event of such unavailability, Vendor shall provide, at no cost, reasonable assistance to the District in obtaining spare parts.

- 29. **Recycled Products.** The Vendor agrees to comply with all the requirements of *Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962)*, including but not limited to the regulatory provisions of *40 CFR Part 247*, and Executive Order 12873, as they apply to the procurement of the items designated in *Subpart B of 40 CFR Part 247*. The Vendor agrees to comply with the U.S. Environmental Protection Agency (US EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," *40 CFR part 247*.

- 30. **Transition/Migration Cooperation.** The Vendor agrees that upon termination of the 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 Vendor. The Vendor shall provide full disclosure to the subsequent Vendor and to the District on the equipment, software and required processes and procedures to perform the District's services. The Vendor agrees to transfer licenses or assign agreements for any software or services used to provide the services to the District or to a subsequent Vendor. The Vendor agrees to support the transition of code, data, and environments, including virtual server images if any.

31. Notice of Labor Disputes

- A. If the Vendor or a subcontractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the contract, the Vendor shall immediately give notice, including all relevant information, to the District's Project Manager and the District's Contracts Specialist.
- B. The Vendor 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 the 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 shall immediately notify the next higher tier subcontractor or the Vendor, as the case may be, of all relevant information concerning the dispute.

32. **Safety.** Vendor 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. Vendor shall promptly and fully comply with and carry out safety requirements as prescribed by federal, state, or local laws or regulations and industry standards.
33. **Licensing and Certifications.** Vendor is required to obtain all applicable business and professional licenses required to perform work within the City of Oakland, Alameda County and the State of California.
34. **Removal of Contract Personnel**
 - A. The Vendor acknowledges that any person assigned to work under the contract must perform their duties so as to not unduly impair contract performance. By assigning a person to work under the contract, the Vendor agrees to be responsible for the behavior of that person during contract performance.
 - B. The Vendor acknowledges that the District has the right to require the removal of any Vendor 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 the contract; and (5) conduct in violation of District policy or local, state or federal laws.
 - C. The District will provide written notice to the Vendor 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 the contract. The Vendor 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 Vendor agrees to find a timely replacement and in no event shall this period exceed seventy-two (72) hours from that person being removed.
35. **Communication with Contractor's Staff.** In order to ensure efficient communication of operational needs, the District staff shall be permitted to communicate directly with Vendor's staff regarding day to day issues for the purpose of inquiry as to factual performance issues. The District will not give Vendor's staff directions concerning performance under the contract. Issues which affect the contract will be communicated through the General Manager.
36. **Application of Federal, State and Local Laws and Regulations.** During the contract period of performance, the Vendor 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. Vendor agrees that the most recent of such Federal requirements will govern the administration of the 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 Vendor 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 exhibit or amendment to the contract.
37. **Contract Work Hours and Safety Standards Act Not Involving Construction.** The Vendor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts A-41 Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

The Vendor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the Vendor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Vendor will permit such representatives to interview employees during working hours on the job.

The Vendor shall require the inclusion of the language of this clause within subcontracts of all tiers.

38. **Labor and Materials.**
 - A. **Labor Code Requirements.** At its own cost and expense, Contractor shall comply with all laws, rules and regulations that pertain to Contractor's work force. Attention is directed to the following requirements of the California Labor Code:
 1. **Hours of Labor.** Eight hours labor constitutes a legal day's work. The Contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the Contract is made or awarded, forfeit \$25 for each worker employed in the performance of the Contract by the Contractor or any subcontractor under it for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the Labor Code Section 1813.
 2. Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of the Labor Code and notwithstanding any stipulation inserted in any contract pursuant to the requirements of these sections, work performed by employees of the Contractor or subcontractor in excess of 8 hours per day and 40 hours during any one week shall be permitted upon compensation for all hours worked in excess of 8 hours per day and in excess of 40 hours during any one week at not less than 1½ times the basic rate of pay, as provided for in Section 1815. In addition, contractor/subcontractor may be required to pay double the basic rate of pay for all hours worked in excess of 12 hours in any workday and under other circumstances. (See California Code of Regulations sections 16100(c)(6), 16200(a)(3)(F) and applicable prevailing wage determinations.)
 3. **Labor Non-Discrimination.** Section 1735 of the Labor Code states that the Contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter.



Prevailing Wages. See *Section 00 73 43* Prevailing Wages.

4. Payroll Records. The Contractor's attention is directed to the following provisions of Labor Code Section 1776. The Contractor shall be responsible for compliance with these provisions by its subcontractors.
 - a. The Contractor and each subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.
 - b. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
 - (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - (2) A certified copy of a contractor's payroll record shall be sent electronically to the District's Contract Compliance Officer on a weekly basis over the course of the entire project, from the commencement of work through project completion. If needed, contractors shall be afforded the requisite training by the District on how to submit said records.
 - (3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the District, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - (4) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (b), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Contractor, subcontractor and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.
 - (5) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.
 - (6) Contractor and each subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requests such records within ten (10) days after receipt of a written request.
 - (7) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District or the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be redacted in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor shall not be redacted.
 - (8) The Contractor shall inform the District of the location of records enumerated under subdivision (a), including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
 - (9) The Contractor shall have fifteen (15) days in which to comply subsequent to receipt of written notice requesting the records enumerated in subdivision (a). Failure to comply after such fifteen (15) day period will subject Contractor to a penalty to the state or the political subdivision on whose behalf the contract is made or awarded, in the amount of \$100 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due.
 - (10) Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, the penalties specified in subdivision (9) above for noncompliance with the provisions of said Section 1776 may be withheld from any monies due or which may become due to the Contractor.
 - (11) The Contractor and each subcontractor shall preserve their payroll records for a period of three (3) years from the date of completion of the Contract.

39. **Apprentices.** The Contractor shall fully comply with the requirements of Sections 1777.5 and 1777.6 of the California Labor Code and the regulations of the California Apprenticeship Council. In accordance with Section 1777.5, the Contractor shall secure the necessary certificates and shall contribute to the apprenticeship fund or funds, as provided for therein. The Contractor shall require each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work to comply fully with Sections 1777.5 and 1777.6 of the Labor Code. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the State Division of Apprenticeship Standards and its branch offices.

40. **Payment of Prevailing Wages.**

A. This contract will be subject to California prevailing wage laws. The state requirements are set forth below in Section 1.02.

1.02 California Prevailing Wage Requirements

A. General

1. The Contractor and any subcontractor shall comply with Labor Code Sections 1774 and 1775. Pursuant to Section 1775, the Contractor and any subcontractor shall, as a penalty, forfeit to the state or political subdivision not more than \$200 for each calendar day, or portion thereof, for each worker paid less than the prevailing rate as determined by the Director of Industrial Relations for the work or craft in which the worker is employed under the contract. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of whether the failure to pay the correct rate of per diem wages was due to the Contractor's good-faith mistake, and on the previous record of the Contractor or subcontractor in meeting their respective prevailing wage obligations. In addition to said penalty, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor or subcontractor.



2. If a worker employed by a subcontractor on a public works project is not paid at least the general prevailing per diem wages by the subcontractor, the Contractor shall not be liable for the penalties described above unless the Contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the Contractor fails to comply with all of the following requirements:
 - a. The contract executed between the Contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code.
 - b. The Contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.
3. Upon becoming aware of the subcontractor's failure to pay at least the specified prevailing rate of wages to the subcontractor's workers, the Contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public work project.
4. Prior to making final payment to the subcontractor for work performed on the public works project, the Contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid at least the specified general prevailing rate of per diem wages to the subcontractor's employees on the public works project and any amount due pursuant to 1813 of the Labor Code.
 - a. Pursuant to Section 1775 of the Labor Code, the Division of Labor Standards Enforcement shall notify the Contractor on a public works project within fifteen (15) days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers at least the general prevailing rate per diem wages.
 - b. Pursuant to the provisions of Section 1773 of the Labor Code, the District has obtained the general prevailing rate of wages applicable to categories of workers the District anticipates will be utilized for this project for straight time, overtime, Saturday, Sunday and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of workers concerned, or if no collective bargaining applies, those holidays identified in Government Code Section 6700. Prevailing wage rates for this project are available at the District Office of Contract Compliance at 1600 Franklin Street, Oakland, CA 94612 (telephone number: (510) 891-5443. In the event that the Contractor intends to utilize categories of workers different from, or in addition to, those anticipated by the District, it shall be Contractor's responsibility to bring such categories of workers to the District' attention immediately, and to obtain the appropriate wage rate from the Department of Industrial Relations (with the District's assistance if necessary). (See Title 8 California Code of Regulations Section 16202.)
 - c. The Contractor shall post general prevailing wage rates at a prominent place at the site of the work.
 - d. Pursuant to Labor Code Section 1773.6 and Title 8 California Code of Regulations Section 16204, changes in general prevailing wage determinations shall apply to the project only if issued by the Director of Industrial Relations prior to the District's bid issuance date.

1.03 Future Wage Increases

- A. The District will not recognize any claim for additional compensation based on the payment by the Contractor of any increased wage rate required during the term of the Contract to the state or federal prevailing wage rate. The possibility of wage increases during the course of the Contract is one of the elements to be considered by the Contractor in determining the bid, and such wage increases will not, under any circumstances, be considered as the basis of a claim against the awarding body with regard to the Contract.

1.05 General Wage Determinations

- A. The current California Prevailing Wage rates are available at <http://www.dir.ca.gov/OPRL/PWD/index.htm>

41. **Clean Air.** The Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Vendor agrees to report each violation to the District and understands and agrees that the District will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Vendor also agrees to include these requirements in each subcontract exceeding \$150,000.00 financed in whole or in part with Federal assistance provided by FTA.

42. **Clean Water Requirements.** The Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Vendor agrees to report each violation to the District and understands and agrees that the District will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Vendor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

43. **Energy Conservation Requirements.** The Vendor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act of 1975.

44. **Americans With Disabilities Act (ADA).** The Vendor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC § 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, amended, 29 USC § 794; 49 USC § 5301(d); and any implementing requirements FTA may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this contract.

45. **Force Majeure.** Each party shall be excused from performance of any of its obligations under the 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).

46. If a Force Majeure Event occurs, then Vendor 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 Vendor for reasonable costs incurred by Vendor 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 39* herein.

47. **Termination**

A. **Termination for Convenience of the District.** The District, by written notice, may terminate the 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 Vendor 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, Vendor shall stop work on the 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, Vendor shall submit to the District its termination claim setting forth Vendor'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 Vendor 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 Vendor and no new deliveries will be made after the date of receipt of such termination notice. Vendor shall submit to the District its termination claim setting forth Vendor'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 the contract; abandonment, assignment, delegation or subletting of the contract without approval of the District; bankruptcy or appointment of a receiver for Vendor'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 Vendor 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 the 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 Vendor such as *Force Majeure Events* which render impossible the Vendor's performance under the contract.

D. **Termination for Non-Appropriation of Funds.** The continuation of the contract is contingent upon the appropriation of funds by local, state and federal bodies. If local, state or federal contracts, grants, or other authorizations of funding fail to appropriate sufficient funds or if funds are not otherwise made available for continued performance for any fiscal year of the contract after the first fiscal year, 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 the 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 Vendor's rights under any termination clause in the contract. The effect of termination of the contract thereunder will be to discharge both the Vendor 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 the contract, the District shall pay the Vendor only its allowable costs to the date of termination. Vendor 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 Vendor has any property in its possession belonging to the District, the Vendor will account for the same and dispose of it in the manner the District directs. The District shall notify the Vendor, in writing, as soon as it has knowledge that funds may not be available for the continuation of the contract for each succeeding fiscal period beyond the first.

In the event of termination under the above Termination conditions, Vendor will be paid for those services performed or deliveries made pursuant to the 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 Vendor after receipt of notice of termination. If the Vendor has any property in its possession belonging to the District, the Vendor will account for the same and dispose of it in the manner the District directs. Vendor shall have the right to remove any of its equipment within sixty (60) days of the termination date.

48. **Suspension of Work.** The District unilaterally may order the Vendor 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 Vendor its allowable costs to the date of suspension. Vendor 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.

49. **Dispute Resolution.** The District and Vendor agree to attempt in good faith to resolve all disputes arising out of or under the contract or the respective rights and liabilities of the Parties informally. The Parties agree that any dispute arising from the contract, that is not resolved within thirty (30) days by the Parties' representatives responsible for the administration of the 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 Vendor shall continue performance under the contract while matters in dispute are being resolved.

In the event any controversy, claim or dispute between the District and the Vendor arising out of or related to the 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 Vendor arising out of or related to the 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 the 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 the 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 Vendor shall continue performance under this Agreement while matters in dispute are being resolved.

50. **Continuity of Services.** Vendor acknowledges that the timely and complete performance of its obligations pursuant to the contract is critical to the business and operations of the District. Accordingly, in the event Vendor 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 Vendor is able to fulfill the duties as contracted.

51. **Records.** All Vendor and any subcontractor costs incurred in the performance of the contract will be subject to audit. The Vendor shall provide the District with copies of fully executed subcontracts. The Vendor 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 Vendor'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 Vendor pursuant to the contract. The Vendor shall also provide such assistance as may be required in the course of such audit. The Vendor 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 District staff that reimbursement of any costs including profit or fee under the contract was in excess of that represented and relied upon during price negotiations or represented as a basis for payment, the Vendor agrees to reimburse the District for those costs within sixty (60) days of written notification by the District. The Vendor 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 the contract. The Vendor further covenants that it will not knowingly employ any person having such an interest in the performance of the contract. Violation of this provision may result in the contract being deemed void and unenforceable.

52. **Reporting.** Vendor shall provide weekly Project Status Reports to the District's Project Manager or her/his designee, as requested.

53. **Claims Process (Public Contract Code §9204).** A claim is a separate demand by the Vendor 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 Vendor 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.

54. **Statement of Economic Interest.** The District's Conflict of Interest Code designates some Vendors 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. Depending on the nature of the work performed, selected Vendors may be required to complete the Form 700 before work may begin.
55. **Prohibited Interests.** By signing the contract, Vendor 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 her/his tenure or for one (1) year thereafter, shall have any interest direct or indirect, in the contract or the proceeds thereof. Vendor 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 the contract. Vendor further covenants that in the performance of the contract, no person having any such interest shall be employed by Vendor. The District may require Vendor to file an annual Statement of Economic Interest form pursuant to the *Political Reform Act of 1974 (Government Code Section 81000 et seq.)*.
56. **Non-Discrimination Assurance – Title VI of the Civil Rights Act.** The Vendor shall not discriminate on the basis of race, color, national origin, or sex in the performance of the contract. The Vendor shall carry out applicable requirements of *49 CFR Part 26* in the award and administration of U.S. DOT-assisted contracts. Further, the Vendor 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 Vendor shall obtain the same assurances from its joint venture partners, subcontractors, and subconsultants by including this assurance in all subcontracts entered into under the contract. Failure by the Vendor to carry out these requirements is a material breach of the contract, which may result in the termination of the 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 Vendor from future bidding as non-responsible.

During the performance of the contract, Vendor 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. Vendor 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. Vendor 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 the contract by reference and made a part hereof as if set forth in full. Vendor 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.

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

57. **Equal Employment Opportunity.** In connection with the performance of the contract, the Vendor 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 Vendor 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 Vendor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.
58. **Drug and Alcohol Testing.** The Vendor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of California, or the District, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The Vendor agrees further to certify annually its compliance with Part 655 before June 30 and to submit the Management Information System (MIS) reports before January 15 to the District. To certify compliance the Vendor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.
59. **Veterans Employment.**
 - a. To the extent practicable, Vendor agrees that it:
 1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and
 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and



- b. Vendor also assures that its sub-contractor will:
1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and
 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.
60. **No Assignment.** The contract is personal to each of the parties hereto. The Vendor shall not assign any of its rights nor transfer, convey, sublet or otherwise dispose of any of its obligations under the contract without the prior written consent of the District. The written consent must appear on the contract or be attached to it.
61. **Attorney's Fees.** In the event 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.
62. **Waiver.** Failure of any party to exercise any right or option arising out of a breach of the 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.
63. **Governing Law and Venue.** The 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.
64. **Binding on Successors.** All of the terms, provisions and conditions of the contract shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives.
65. **Third-Party Beneficiaries.** The contract is not for the benefit of any person or entity other than the parties.
66. **Severability.** If any provision of the 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 the contract, and in any event, the remaining provisions of the contract shall remain in full force and effect.
67. **Entire Agreement; Modification.** The 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 the 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. The 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 the contract shall be void and of no effect. In the event of a conflict between the terms and conditions of the contract and the attachments, the terms of the contract will prevail.



EXHIBIT B
INSURANCE REQUIREMENTS

Coverage shall be at least as broad as:

1. **Garage Coverage Form (GCF):** No less broad than Insurance Services Office (ISO) *CA 00 05*, covering GCF on an “Occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000.00 per accident or occurrence. 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. The policy shall include pollution legal liability coverage, if it does not then it shall be endorsed to include the coverage or the contractor shall procure a separate pollution legal liability policy applicable to the work being performed, with a limit of no less than \$2,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year.
 - a. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by the 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.
 - b. The policy definition of “insured contract” shall include assumptions of liability arising out of work performed for a municipality (Definition No. 5 of the ISO Garage Coverage form, or its equivalent).
 - c. The policy shall include Garagekeepers Coverage
 - i. Minimum limits: \$1.3M per vehicle, \$2M per location.
 - ii. Coverage shall include Comprehensive and Collision
 - iii. Deductibles shall not exceed \$1,000 per vehicle and \$10,000 per event.
 - iv. Insurance shall apply on a direct primary basis.

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 Vendor provides written verification it has no employees*)
3. If the Vendor maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Vendor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.
4. **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 Vendor 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 Vendor’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 the contract, the Vendor’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 Vendor’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:** Vendor hereby grants to Entity a waiver of any right to subrogation which any insurer of said Vendor may acquire against the Entity by virtue of the payment of any loss under such insurance. Vendor 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 Vendor 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 Vendor must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.
 - h. **Verification of Coverage:** Vendor 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 Vendor’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:** Vendor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Vendor 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.