

Additional Provisions

1. Amendment Process

Should either party, during the term of this agreement, desire a change or amendment to the terms of this Agreement, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed changes/amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes shall be made through the State's official agreement amendment process. No amendment will be considered binding on either party until it is formally approved by the State.

2. Cancellation/Termination

- A. This agreement may be cancelled by CDPH **without cause** upon 30 calendar days advance written notice to the Contractor.
- B. CDPH reserves the right to cancel or terminate this agreement immediately for cause. The Contractor may submit a written request to terminate this agreement only if CDPH substantially fails to perform its responsibilities as provided herein.
- C. The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of this agreement.
- D. Agreement termination or cancellation shall be effective as of the date indicated in CDPH's notification to the Contractor. The notice shall stipulate any final performance, invoicing or payment requirements.
- E. Upon receipt of a notice of termination or cancellation, the Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent agreement costs.
- F. In the event of early termination or cancellation, the Contractor shall be entitled to compensation for services performed satisfactorily under this agreement and expenses incurred up to the date of cancellation and any non-cancelable obligations incurred in support of this agreement.

3. Use of Disabled Veteran Business Enterprises (DVBE)

(Applicable to agreements valued at \$10,000 or more in which the agreement requires actual DVBE participation. Not applicable to agreements and amendments administratively exempted from DVBE requirements by CDPH.)

- A. The State Legislature has declared that a fair portion of the total purchases and contracts or subcontracts for property and services for the State be placed with disabled veteran business enterprises.
- B. All DVBE participation attachments, however labeled, completed as a condition of bidding, contracting, or amending a subject agreement, are incorporated herein and made a part of this agreement by this reference.
- C. Contractor agrees to use the proposed DVBEs, as identified in previously submitted DVBE participation attachments, unless the Contractor submits a written request for substitution of a like or alternate subcontractor. All requests for substitution must be approved by CDPH, in writing, prior to using a substituted subcontractor.

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- D. Requests for substitution must be approved by the program funding this agreement and must include:
- 1) A written explanation of the reason for the substitution.
 - 2) A written description of the business enterprise that will be substituted, including its DVBE certification status.
 - 3) If applicable, the reason a non-DVBE subcontractor is proposed for use.
 - 4) A written description of the work to be performed by the substituted subcontractor and an identification of the percentage share/dollar amount of the overall contract that the substituted subcontractor will perform.
- E. If requested by CDPH, Contractor agrees to provide verification, in a form agreed to by CDPH, that DVBE subcontractor participation under this agreement is in compliance with the goals specified at the time of contract award or in an applicable amendment.

4. Dispute Resolution Process

- A. This provision replaces and supersedes provision 15 of Exhibit D(F).
- B. If a dispute arises between the Contractor and CDPH, the Contractor must seek resolution using the process outlined below.
- 1) The Contractor should first informally discuss the problem with the CDPH program contract manager. If the problem cannot be resolved informally, the Contractor must direct the grievance together with any evidence, in writing, to the program Branch Chief. The grievance must state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief must render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefor. Should the Contractor disagree with the Branch Chief's decision, the Contractor may appeal to the second level.
 - 2) When appealing to the second level the Contractor must prepare an appeal indicating the reasons for disagreement with the Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal. The decision rendered by the Deputy Director or his/her designee shall be the final administrative determination of the Department.
 - 3) Unless otherwise stipulated in writing by CDPH, all dispute, grievance and/or appeal correspondence shall be directed to the CDPH program contract manager.
 - 4) There are organizational differences within CDPH's funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be

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notified in writing by the CDPH program contract manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

5. Performance Evaluation

- A. This provision replaces and supercedes provision 23 of Exhibit D(F).
- B. The Contractor's performance under this agreement shall be evaluated at the conclusion of the term of this agreement. The evaluation shall include, but not be limited to:
 - 1) Whether the contracted work or services were completed as specified in the agreement, and reasons for and amount of any cost overruns.
 - 2) Whether the contracted work or services met the quality standards specified in the agreement.
 - 3) Whether the Contractor fulfilled all requirements of the agreement.
 - 4) Factors outside the control of the Contractor, which caused difficulties in contractor performance. Factors outside the control of the Contractor shall not include a Subcontractor's poor performance.
- C. The evaluation of the Contractor shall not be a public record (PCC 10370).

6. Progress Reports or Meetings

- A. Contractor shall submit progress reports or attend meetings with state personnel at intervals determined by CDPH to determine if the Contractor is on the right track, whether the project is on schedule, provide communication of interim findings, and afford occasions for airing difficulties or special problems encountered so that remedies can be developed quickly.
- A. At the conclusion of this agreement and if applicable, Contractor shall hold a final meeting at which Contractor shall present any findings, conclusions, and recommendations. If required by this agreement, Contractor shall submit a comprehensive final report.

8. Insurance Requirements

Contractor shall comply with the following insurance requirements:

A. Commercial General Liability

The Contractor must furnish to CDPH a certificate of insurance stating that commercial general liability insurance of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined is presently in effect for the Contractor. The commercial general liability insurance policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured agreement. The commercial general liability insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability.

- B. The certificate of insurance must be issued by an insurance company acceptable to the Department of General Services (DGS) Office of Risk and Insurance Management or be provided through partial or total self-insurance acceptable to DGS.

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- C. The certificate of insurance must include the following provisions:
- 1) The insurer will not cancel the insured's coverage without giving 30 days prior written notice to the California Department of Public Health, and
 - 2) The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State of California under this agreement.
- D. The Contractor agrees that the insurance required herein will remain in effect at all times during the term of the agreement. In the event said insurance coverage expires at any time or times during the term of this agreement, the Contractor agrees to provide, at least 30 calendar days before said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the agreement or for a period of not less than one year. CDPH may, in addition to any other remedies it may have, terminate this agreement on the occurrence of such event. New certificates of insurance are subject to the approval of DGS, and the Contractor agrees that no work or services shall be performed prior to such approval.
- E. CDPH will not be responsible for any premiums, deductibles, or assessments on the insurance policy.

9. Avoidance of Conflicts of Interest by Contractor

- A. CDPH intends to avoid any real or apparent conflict of interest on the part of the Contractor, subcontractors, or employees, officers and directors of the Contractor or subcontractors. Thus, CDPH reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest; and, if a conflict is found to exist, to require the Contractor to submit additional information or a plan for resolving the conflict, subject to CDPH review and prior approval.
- B. Conflicts of interest include, but are not limited to:
- 1) An instance where the Contractor or any of its subcontractors, or any employee, officer, or director of the Contractor or any subcontractor has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the contract would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of the contract.
 - 2) An instance where the Contractor's or any subcontractor's employees, officers, or directors use their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business or other ties.
- C. If CDPH is or becomes aware of a known or suspected conflict of interest, the Contractor will be given an opportunity to submit additional information or to resolve the conflict. A Contractor with a suspected conflict of interest will have five (5) working days from the date of notification of the conflict by CDPH to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by CDPH and cannot be resolved to the satisfaction of CDPH, the conflict will be grounds for terminating the contract. CDPH may, at its discretion upon receipt of a written request from the Contractor, authorize an extension of the timeline indicated herein.

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10. Prohibited Follow-on Contracts

- A. No person, firm, or subsidiary thereof who has been awarded a consulting services agreement may submit a bid for, nor be awarded an agreement for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services agreement.
- B. Paragraph A does not apply to any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services agreement which totals no more than 10 percent of the total monetary value of the consulting services agreement.
- C. Paragraphs A and B do not apply to consulting services agreements subject to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

11. Use of Small Business Subcontractors

(Only applicable to agreements awarded in part due to the granting of non-small business subcontractor preference where the Contractor committed to use small business subcontractors for at least 25% of the initial contract cost or amount bid.)

- A. All Non-Small Business Subcontractor Preference Request attachments and Small Business Subcontractor/Supplier Acknowledgment attachments, however labeled, completed as a condition of bidding, are incorporated herein and made a part of this agreement by this reference.
- B. Contractor agrees to use each small business subcontractor/supplier, as identified in previously submitted Non-Small Business Subcontractor Preference Request attachments, unless the Contractor submits a written request for substitution of a like or alternate subcontractor. All requests for substitution must be approved by CDPH, in writing (including email or fax), prior to using a proposed substitute subcontractor.
- C. Requests for substitution must be approved by the funding program and must include, at a minimum:
 - 1) An explanation of the reason for the substitution.
 - 2) A written description of the business enterprise that will be substituted, including its small business certification status.
 - 3) If substitution of an alternate small business does not occur, include a written justification and description of the steps taken to try to acquire a new small business and how that portion of the contract will be fulfilled.
 - 4) A written description of the work to be performed by the substituted subcontractor identified by both task (if applicable) and dollar amount or percentage of the overall contract that the substituted subcontractor will perform. The substituted business, if approved, must perform a commercially useful function in the contract pursuant to Title 2, California Code of Regulations §1896.6.
- D. CDPH may consent to the substitution in any of the situations set forth in Public Contract Code Section 4107 of the Subletting and Subcontracting Fair Practices Act.
- E. Prior to the approval of the prime contractor's request for the substitution, the funding program shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and the reasons for the request to substitute. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor that has been so notified shall have five (5) working days after the receipt of the notice to submit written objections to the

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substitution to the funding program. Failure to file these written objections shall constitute the listed subcontractor's consent to the substitution. If written objections are filed, CDPH shall give notice in writing of at least five (5) working days to the listed subcontractor of a hearing by CDPH on the prime contractor's request for substitution.

- F. Failure of the contractor to subcontract with the small businesses listed in its bid or proposal to CDPH, or failure to follow applicable substitution rules and regulations may be grounds for the Department of General Services to impose sanctions pursuant to Government Code Section 14842.5 and Title 2, California Code of Regulations § 1896.16. In the event such sanction are to be imposed, the Contractor shall be notified in writing and entitled to a hearing pursuant to Title 2, California Code of Regulations § 1896.18 and § 1896.20.
- G. If requested by CDPH, Contractor agrees to provide documentation/verification, in a form agreed to by CDPH, that small business subcontractor usage under this agreement complies with the commitments specified during the contractor selection process.

12. Responsibilities Upon Termination

After receipt of notification of termination of this agreement, and except as otherwise specified by CDPH, the Contractor shall stop work under this agreement on the date specified in the written notice of termination. The Contractor shall:

- 1) Place no further order or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under this agreement that is not terminated;
- 2) Assign to CDPH, effective on the date of termination, in the manner, and to the extent specified by CDPH, all of the rights, titles, and interests for the Contractor under the orders and subcontracts terminated. In the case of said assignment, CDPH has the right, at its discretion, to settle or reimburse the Contractor for payment of any or all claims arising out of the termination of such orders and subcontracts and reduce any settlement amount determined by the amount reimbursed to the Contractor for payment of such orders or subcontracts;
- 3) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of CDPH to the extent CDPH may require. CDPH's approval or ratification shall be final for the purposes of this section.
- 4) Upon the effective date of termination of the agreement and prior to the release of the final payment by CDPH for all items properly chargeable to CDPH hereunder, Contractor shall transfer, assign, and make available to CDPH all property and materials belonging to CDPH, all rights and claims to any and all reservations, contracts, and arrangements with owners of advertising or other contract-related materials, and shall make available to CDPH all written information regarding CDPH' advertising materials. No extra compensation will be paid to the Contractor for services in connection with termination transfers or assignments.
- 5) Take such action as may be necessary, or as CDPH may specify, to protect and preserve any property related to this agreement which is in the possession of the Contractor and in which CDPH has or may acquire an interest.

13. Contractor's Major Agreement Participants

A major agreement participant is any individual employed by the Contractor who exercise a major administrative role, policy role, or consultant role in the performance of this agreement's Scope of

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Work. CDPH reserves the right to approve in advance, assignment of major agreement participants and subcontractors to the CDPH/CPNS account and to terminate the continuing assignment of major agreement participants and subcontractors assigned to this account. If any major agreement participant of the Contractor is unable to perform, due to illness or other factors beyond the Contractor's control, the Contractor shall, within thirty (30) days, offer a substitute major agreement participant for CDPH's approval.

The Contractor's resumes of major agreement participants are incorporated as Exhibit H, "Resumes".

14. Loss Leader

It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. A "loss leader" is any article or product sold at less than cost (a) Where the purpose is to induce, promote or encourage the purchase of other merchandise; or (b) Where the effect is a tendency or capacity to mislead or deceive purchasers or prospective purchasers; or (c) Where the effect is to divert trade from or otherwise injure competitors.