

This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

Department of Fish and Game

CONTRACTOR'S NAME

County of San Mateo

2. The term of this Agreement is: **July 1, 2006 through December 31, 2007**
3. The maximum amount of this Agreement is: **\$ 94,991.00**
Ninety-four thousand, nine hundred ninety-one dollars and no cents
4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope of Work	3 pages
Exhibit B – Budget Detail and Payment Provisions	3 pages
*Exhibit C – General Terms and Conditions	GTC 306
Exhibit D – DFG Additional Provisions	6 pages
Exhibit E – Federal Provisions	3 pages

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at www.ols.dgs.ca.gov/standard+language

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

County of San Mateo

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

455 County Center, 4th Floor, Redwood City, CA 94063-1646

STATE OF CALIFORNIA

AGENCY NAME

California Department of Fish and Game

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Lee Renwick, Assistant Deputy Director, Administration

ADDRESS

**1416 9th Street
Sacramento, CA 95814**

**California Department of General
Services Use Only**

Exempt per:

**EXHIBIT A – SCOPE OF WORK
(DFG EXA 04/03)**

1. Contractor agrees to provide to the State Department of Fish and Game (DFG) with a habitat conservation plan for San Bruno Mountain.
2. The services shall be performed at locations chosen by the Contractor. Primary location is San Mateo County.
3. The services shall be provided at times and locations necessary to complete the plan and meet reporting requirements.
4. The Project Officials during the term of this agreement will be:

DFG Contract Manager

Dave Johnston
Department of Fish and Game
Central Coast Region
P.O. Box 47
Yountville, CA 94599
Phone: 831-466-0234
Email: djohnston@dfg.ca.gov

Contractor Project Director

Name: Sam Herzberg
County of San Mateo
Environmental Services Agency
455 County Center, 4th Floor
Redwood City, CA 94063
Phone: 650-599-1388
Email: SHerzberg@co.sanmateo.ca.us

5. Scope of Work

A. Background and Objectives

The San Bruno Mountain Habitat Conservation Plan Reassessment Project (Reassessment Project) is being undertaken to amend the San Bruno Mountain Habitat Conservation Plan (HCP). San Mateo County Parks is the Plan Operator and the Cities of Brisbane, Daly City, and South San Francisco are also parties to the HCP, as are the United States Fish and Wildlife Service (Service), California Department of Fish and Game (DFG), and California State Parks. The goal of the Reassessment Project is to reflect changes and new information regarding species status, habitat preservation, species protection, and recent Service regulation and policy. A major component of the Reassessment Project is to add the endangered Callippe silverspot butterfly, listed in 1997, hitherto a species of concern on San Bruno Mountain, to the permit and to assess the effect on the newly designated Bay Checkerspot butterfly critical habitat.

At the time of the issuance of the Section 10(a) Permit (Permit) for incidental take in 1983, it was recognized that the Callippe silverspot butterfly was also a rare organism and seemed to occur only on San Bruno Mountain. The Service listed the Callippe silverspot butterfly as endangered in 1997. Because of this listing, no development or active land management has occurred in areas of existing Callippe silverspot butterfly habitat and there is currently no permitted incidental take of the Callippe silverspot butterfly. As a result, the permittees, working closely with the Service, are reassessing the HCP to provide appropriate conservation, monitoring, and funding measures in order to include the Callippe silverspot on the Permit. The Service has determined that in order to add the Callippe silverspot to the Permit, an Environmental Impact Statement (EIS) would be necessary based on the potential significance of permitting take of this endangered species and the effects on the human environment from management of conserved habitat.

Following initiation of the HCP Reassessment Project, San Mateo County Parks was provided a donation by Brookfield Homes, developers of the Northeast Ridge under the HCP,

EXHIBIT A – SCOPE OF WORK (Continued)
(DFG EXA 04/03)

in the amount of \$125,000 to prepare the required Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the project. Following a competitive bidding process, Jones and Stokes Associates (Jones and Stokes) were selected by the County of San Mateo to prepare the EIR/EIS on the HCP Reassessment Project. County Parks is concerned that the \$125,000 provided by Brookfield Homes is not sufficient to develop an adequate EIR/EIS. The HCP Reassessment Project is complicated and contentious, involving significant public input and expectations, particularly for new funding. County Parks and its partners applied for and received a grant under this program in 2002. The monies received from that grant have proven inadequate to complete the EIR/EIS and supplemental funding to finish the process have been awarded. Those funds are the subject of this contract.

B. Tasks to be Performed

1. Response to Comments and Public Hearing – It is anticipated that there will be a significant number of substantive comments. Based upon the intense public interest in the HCP, the scope the proposed amendment, the lawsuit, and the fact that the San Bruno Mountain HCP was the first HCP permitted in the nation, it is certain that the number of substantive comments will substantially exceed that which was previously anticipated. This task will be to prepare the response to those comments and hold a public hearing.
2. Administrative Draft Final EIS/EIR and HCP and Final EIS/EIR and HCP –It is expected that the circulated draft EIR/EIS will require substantial revision. This task involves the preparation of an administrative draft final EIR/EIS and HCP to be reviewed by the Service and DFG and as well as a final EIR/EIS and HCP.
3. County Counsel Review of Legal Adequacy of EIR/EIS – The HCP Reassessment project will require a considerable amount of County Counsel staff time to review the issues and legal adequacy of the HCP and EIR/EIS on behalf of the HCP Trustees. While County Counsels may routinely review documents of this type, the significantly expanded contribution of the Counsel's office for this project is best addressed as a distinct task.

C. Schedule of Completion Dates:

The following is an estimated timetable for completing the tasks of this contract. It is anticipated that the tasks will be completed by December of 2007.

Month 1: Respond to public comments on Draft HCP Amendment and Draft EIS. Begin preparation of final documents.

Month 3: Clearance and Publication.

Month 4: Publish Final HCP Amendment and Final EIS for 30-day cooling off period.

Month 7: Final decision documents - Record of Decision, Biological Opinion, Section 10 Findings, Implementation Agreement – completed by Service. Permit decision by Service.

EXHIBIT A – SCOPE OF WORK (Continued)
(DFG EXA 04/03)

D. Reports/ Products/ Deliverables

1. Notices to Landowners and Cities of public meetings, agendas, briefing papers for public meetings. Due at billing for Task 1.
2. Administrative Draft Final EIR and Final EIR including response to comments. Due at billing for Task 2. Provide 1 CD with all information.
3. Memo from County Counsel to County Parks addressing the legal adequacy of the Final EIR/EIS and HCP. Due at billing for Task 3.
4. Description of activities conducted as local match for the federal Grant. The description should include the total dollar amount of the match which must equal at least \$48,200, a breakdown of the match amount indicating the amount for in-kind services or local funding to subcontractors by task, and either back-up materials documenting all hours and expenditures contributing to the match or provide a contact person and location where all back-up materials are maintained. Due at billing for each task.

**EXHIBIT B – BUDGET DETAIL AND PAYMENT PROVISIONS
(DFG EXB 08/05)**

1. Invoicing and Payment

- A. For services rendered in accordance with the Scope of Work, and upon receipt of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates specified herein, which is attached hereto and made a part of this Agreement.
- B. The Contractor shall be paid no more frequently than monthly in arrears, upon submission of an original and two copies of the invoice, which properly details all charges, expenses, direct and indirect costs. Invoices shall be submitted to:

**Contract Manager: David Johnston
Department of Fish and Game
Central Coast Region
P.O. Box 47
Yountville, CA 94599**

- C. The original and one (1) approved copy of the invoice will be forwarded to the Department of Fish and Game's Accounting Claims Section by the Contract Manager. Payment of any invoice will be made only after receipt of a complete, supported, documented and accurately addressed invoice. Failure to use the address exactly as provided above, may result in the return of the invoice to the Contractor. All invoices must be approved by the Contract Manager.
- D. Payments made prior to satisfactory completion of all work required by the Agreement shall not exceed, in the aggregate, ninety percent (90%) of the total earned with the balance to be paid upon satisfactory completion of the task or Agreement, and provided further, that the Department of Fish and Game shall retain from the Contractor's earnings for each period for which payment is made, an amount equal to ten percent (10%) of such earnings, pending satisfactory completion of the task or Agreement.
- E. The invoice shall contain the following information:
 - 1. The word "Invoice" should appear in a prominent location at the top of the page(s);
 - 2. Printed name of the Contractor;
 - 3. Business address of the Contractor including P.O. Box, City, State, and Zip Code;
 - 4. Name of the Region/Division of the Department of Fish and Game being billed;
 - 5. The date of the invoice and the time period covered;
 - 6. The number of the agreement upon which the claim is based, and;

EXHIBIT B – BUDGET DETAIL AND PAYMENT PROVISIONS (Continued)
(DFG EXB 08/05)

7. An itemized account of the services for which the Department of Fish and Game is being billed. Include all of the following:
 - a. The time period covered by the invoice, i.e., the term "from" and "to";
 - b. A description of the services performed;
 - c. The method of computing the amount due will be line item budget/cost reimbursement method. Payments will be made by the State to the Contractor, in arrears, upon receipt of an itemized invoice showing the time period covered and the work items accomplished. The invoice must be itemized using the categories and following the format of the attached budget.
 - d. The total amount due. This should be in a prominent location in the lower right-hand portion of the last page and clearly distinguished from other figures or computations appearing on the invoice; the total amount due shall include all costs incurred by the Contractor under the terms of this agreement; and
 - e. The original signature of the Contractor (not required of established firms or entities using preprinted letterhead invoices)

2. Contract Written Prior to Approval of the Budget Act/Budget Contingency Clause

- A. It is mutually understood between the parties that this agreement may have been written prior to approval of the Budget Act for the mutual benefit of both parties in order to avoid program and fiscal delays.
- B. This agreement is valid and enforceable only if sufficient funds are made available by the Budget Act for the Fiscal Year(s) involved for the purposes of this program. In addition, this agreement is subject to any additional restrictions, limitations, or conditions enacted by the Legislature and contained in the Budget Bill or any statute enacted by the Legislature which may affect the provisions, terms, or funding of this agreement in any manner.
- C. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other considerations under this Agreement and the Contractor shall not be obligated to perform any provisions of this Agreement.
- D. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to the Contractor to reflect the reduced amount.

EXHIBIT B – BUDGET DETAIL AND PAYMENT PROVISIONS (Continued)
(DFG EXB 08/05)

3. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in Government Code Chapter 4.5, commencing with Section 927.

4. Budget Flexibility

Subject to the prior review and approval of the Contract Manager, line item shifts of up to ten percent of the annual contract total may be made per fiscal year. Line item shifts may be proposed/requested by either the State or the Contractor in writing and must not increase or decrease the total contract amount allocated per fiscal year.

LINE ITEM BUDGET

Personal Services - San Mateo County

Title	Rate (per hour)	Hours	Total
Chief Deputy County Counsel	\$87.43	142.8	\$12,485.00
Benefits @ 34.16%			\$ 4,265.00
Subtotal			\$ 16,750.00
Overhead @ 49.2%			\$ 8,241.00
Total			\$24,991.00

Operating Expenses - Subcontractors

Jones and Stokes	\$ 70,000.00
Total	\$ 70,000.00
Grand Total	\$ 94,991.00

Travel Expenses and per diem rates set at the rate specified by the Department of Personnel Administration for similar employees. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the State.

EXHIBIT D – DFG ADDITIONAL PROVISIONS

(DFG AP – Revised 03/06)

1. **Excise Tax:** The State of California is exempt from federal excise taxes, and no payment will be made for any taxes levied on employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement. California may pay any applicable sales and use tax imposed by another state.
2. **Availability of Funds:** Work to be performed under this Agreement is subject to the availability of funds through the State's normal budget process.
3. **Licenses and Permits:** The Contractor shall be an individual or firm licensed to do business in California and shall obtain at his/her expense, all license(s) and permit(s) required by law for accomplishing any work required in connection with this Agreement.
 - a. If you are a Contractor located within the State of California, a business license from the city or county in which you are headquartered is necessary; however, if you are a corporation, a copy of your incorporation documents/letter from the Secretary of State's Office can be submitted.
 - b. If you are a Contractor outside the State of California, you will need to submit to the Department of Fish and Game (DFG), a copy of your business license or incorporation papers for your respective state showing that your company is in good standing in that state.
 - c. In the event any license(s) and/or permit(s) expire at any time during the term of this Agreement, the Contractor agrees to provide DFG a copy of the renewed license(s) and/or permit(s) within thirty (30) days following the expiration date.
 - d. In the event the Contractor fails to keep in effect, at all times, all required license(s) and permit(s), the State may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.
4. **Rights in Data:** The Contractor agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes and other written graphic work produced in the performance of this Agreement, are subject to the rights of the State as set forth in this section.

The State shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purpose whatsoever and to authorize others to do so. If any such work is copyrightable, the Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, the State reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish such work, or any party thereof, and to authorize others to do so.

5. **Settlement of Disputes:** Unless otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which cannot be resolved informally, shall be decided by the following two-step procedure:
 - a. The Contractor must provide written notice of the particulars of such disputes to the Contract Manager or his/her duly appointed representative. The Contract Manager must respond in writing within ten (10) working days of receipt of the written notice of dispute. Should the Contractor disagree with the Contract Manager's decision, the Contractor may appeal to the second level. Pending the decision on appeal, the Contractor shall proceed diligently with the performance of this Agreement in accordance with the Contract Manager's decision.
 - b. The second level appeal must indicate why the Contract Manager's decision is unacceptable, attaching to it, the Contractor's original statement of the dispute with supporting documents, along with a copy of the Contract Manager's response. This letter shall be sent to:

Department of Fish and Game
Attention: Deputy Director (or designee)
1416 9th Street, 12th Floor
Sacramento, CA 95814

EXHIBIT D – DFG ADDITIONAL PROVISIONS
(DFG AP – Revised 03/06)

The second level appeal must be filed within fifteen (15) working days upon receipt of the Contract Manager's decision. Failure to submit an appeal within the period specified shall constitute a waiver of all such rights to an adjustment of this Agreement.

The Deputy Director, or designee, shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director, or designee, shall be returned to the Contractor within fifteen (15) working days of the receipt of the appeal. The decision of the Deputy Director, or designee, will be final.

6. Property Acquisitions: Property, as used in this section, shall include:

- a. Equipment – Tangible property (including furniture) with a unit cost of \$500 or more and a useful life of four (4) years or more. Actual cost includes the purchase price plus all costs to acquire, install, and prepare the equipment for its intended use.
- b. Furniture – Standard office furnishings including desks, chairs, bookcases, credenzas, tables, etc.
- c. Portable Assets – Items considered "highly desirable" because of their portability and value, e.g., calculators, typewriters, Dictaphones, cameras and microscopes.
- d. Electronic Data Processing (EDP) Equipment – All computerized and auxiliary automated information handling including system design and analysis, conversion of data, computer programming, information storage and retrieval, voice, video, and data communications, requisite system controls, simulation and all related interactions between people and machines.

The Contractor may purchase property under this Agreement **only** if specified in Exhibit "B" (Budget Detail and Payment Provisions). Any property purchased by the Contractor with funds provided under this Agreement shall be the property of the State during the customary depreciable life thereof. The Contractor shall promptly report any such purchase to the Contract Manager and to the State's Property Officer. Should this Agreement be terminated for any reason, or upon expiration and failure to negotiate hereof, all such property shall be returned to the State within the timeframe negotiated between the Contractor and the State.

Prior written authorization by the Contract Manager shall be required before the Contractor will be reimbursed for any property purchase not specified in the Budget. The Contractor shall provide to the Contract Manager all particulars regarding the necessity for such property and the reasonableness of the cost.

Before property purchases made by the Contractor are reimbursed by the State, the Contractor shall submit paid vendor receipts identifying the Agreement number, purchase price, description of the item, serial number, model number, and location, including the street address, where the property will be used during the term of this Agreement. Said paid receipts shall be attached to the Contractor's invoices.

The Contractor shall keep adequate and appropriate records of all property purchased with Agreement funds and at the time of purchase, prepare a Property Purchased with State Funds report and submit one (1) copy to the Contract Manager and one (1) copy to the Property Officer. A copy must be retained by the Contractor.

The State reserves the right at any time to evaluate the cost of property and reimburse at an amount equal to costs reflected in, but not limited to, Agreements to the State Department of General Services, Procurement Division, as negotiated with vendors who supply the same type of property.

All property shall be tagged after acquisition by the Contractor in accordance with instructions provided. The purpose of tagging assets is to designate the assets as belonging to the State. Whatever property is lost, stolen, or destroyed, the Contractor shall immediately report the loss, theft, or destruction to the local law enforcement agency (or the California Highway Patrol {CHP} if the crime occurs on either state-owned or state leased property) and to the Contract Manager. The Contractor will also prepare a Property Survey Report.

EXHIBIT D – DFG ADDITIONAL PROVISIONS

(DFG AP – Revised 03/06)

In the case of stolen property, the Contractor shall also complete a CHP Report of Crime on State Property (STD 99), obtain a copy of the law enforcement agency's report and submit these to the Contract Manager. The Contractor shall adjust their property records and retain a copy of the Property Survey Report as documentation.

Losses of State property due to fraud or embezzlement shall be reported in the same manner as described above. The Contractor shall be charged with any loss and damages to State property due to the Contractor's negligence.

The Contractor shall, at the request of the State, submit an inventory of property furnished or purchased under the terms of this Agreement. Such inventory will be required not more frequently than annually.

Upon termination, expiration, or failure to negotiate renewal of this Agreement, all property purchased with Agreement funds shall promptly be returned to the State. The Contractor shall prepare an Inventory of State Furnished Property report and submit to the State and shall at that time query the Contract Manager as to the State's requirements, including the manner and method in returning said property to the State. Final disposition of such property shall be at the State's expense in accordance with instructions from the Contract Manager to be issued immediately after receipt of the final inventory.

State policies and procedures applicable to procurement with nonfederal funds shall apply to procurement by the Contractor under this Agreement provided that procurements conform to applicable State law and the standards identified in this section. These include but are not limited to: 1) statutes applicable to State agencies; 2) statutes applicable to State college and university public works projects; 3) the California Constitution governing University of California contracting; 4) the State Administrative Manual; 5) statutes applicable to specific local agencies; and 6) applicable city and county charters and implementing ordinances including policies and procedures incorporated in local government manuals or operating memoranda.

7. **Income Restrictions:** The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this Agreement, shall be paid by the Contractor to the State, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the State under this Agreement.
8. **Confidentiality of Data:** All financial, personal, technical, and other data and information relating to DFG operations which are designated confidential by DFG and made available to the Contractor in order to carry out this Agreement, or which becomes available to the Contractor in carrying out this Agreement, shall be protected by the Contractor for the protection of the Contractor's data and information are deemed by DFGs confidential information, as such methods and procedures may be used, with the written consent of DFG, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of this Agreement or is rightfully obtained from third parties.
9. **Right to Terminate:** The State reserves the right to terminate this Agreement subject to thirty (30) days written notice to the Contractor. The Contractor may submit a written request to terminate this Agreement only if the State should substantially fail to perform its responsibilities as provided herein. However, the Agreement can be immediately terminated for cause. The term "for cause" shall mean the Contractor fails to meet the terms, conditions, and/or responsibilities of the Agreement. In this instance, the Agreement termination shall be effective as of the date indicated on the State's notification to the Contractor.

The Contractor shall not incur any new obligations beyond the date of termination and shall cancel all outstanding obligations relating to this Agreement. The State shall reimburse the Contractor for any reasonable non-cancelable projects incurred by the Contractor prior to the termination date.

This Agreement may be suspended or cancelled without notice, at the option of the Contractor if the Contractor or State's premises or equipment are destroyed by fire or other catastrophe, or so substantially damaged that it is impractical to continue service, or in the event the Contractor is unable to render service as a result of any action by any governmental authority.

EXHIBIT D – DFG ADDITIONAL PROVISIONS

(DFG AP – Revised 03/06)

- 10. DVBE Participation and Reporting Requirements (when required):** The Contractor agrees to use Disabled Veteran Business Enterprise (DVBE) subcontractors or supplies originally identified by the Contractor unless the Contractor requests substitution in writing beforehand to the Contract Manager and the Contractor Manager has approved such substitution. At a minimum, the request must include:
- A written explanation of the reason for the substitution; and
 - The identity of the person or firm substituted.
- The request and the Contract Manager's approval is not to be construed as an excuse for noncompliance with any other provision of law, including but not limited to the subletting and subcontracting Fair Practices Act or any other Agreement requirements relating to the substitution of subcontractors.
- Failure to adhere to at least the level of participation for DVBE proposed by the Contractor may be cause for Agreement termination and recovery of damages under the rights and remedies due the State.
- 11. Disclosure Requirements:** Any document or written report prepared in whole or in part pursuant to this Agreement shall contain a disclosure statement indicating that the document or written report was prepared through an Agreement with the State. The disclosure statement shall include the Agreement number and dollar amount of all Agreements and subcontracts relating to the preparation of such documents or written reports. The disclosure statement shall be contained in a separate section of the document or written report.
- If the Contractor or subcontractor(s) are required to prepare multiple documents or written reports, the disclosure statement may also contain a statement indicating that the total Agreement amount represents compensation for multiple documents or written reports.
- The Contractor shall include in each of its subcontracts for work under this Agreement, a provision which incorporates the requirements stated within this section.
- 12. Use of Subcontractors:** If the Contractor desires to accomplish part of the services through the use of one (1) or more subcontractors, the following conditions must be met:
- The Contractor shall submit any subcontracts to the State for *prior* approval;
 - The Agreement between the primary Contractor and the subcontractor(s) must be in writing;
 - The subcontract must include specific language which establishes the rights of the auditors of the State to examine the records of the subcontractor relative to the services and materials provided under the Agreement; and
 - Upon termination of any subcontract, the State shall be notified immediately in writing.
- Further, any subcontract in excess of \$100,000 entered into as a result of this Agreement, shall contain all applicable provisions stipulated in this Agreement.
- 13. Potential Subcontractor:** Nothing contained in this Agreement or otherwise shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of its responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons directly employed or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.
- 14. Travel and Per Diem:** The Contractor agrees that all travel and per diem paid its employees under this Agreement shall be at rates not to exceed those amounts paid to the State's represented employees under collective bargaining agreements currently in effect. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the State.

EXHIBIT D – DFG ADDITIONAL PROVISIONS

(DFG AP – Revised 03/06)

15. **Novation:** If the Contractor proposes any novation Agreement, the State shall act upon the proposal within sixty (60) days after receipt of the written proposal. The State may review and consider the proposal, consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection may be made orally within the sixty (60) day period, and confirmed in writing within five (5) days. No novation shall become operative or otherwise binding on the State pursuant to this paragraph in the absence of a formal Agreement amendment which has been approved in accordance with all applicable State policy, laws, and procedures.
16. **Priority Hiring Considerations (Agreements over \$200,000):** The Contractor agrees to give priority consideration in filling vacancies in positions funded by the Agreement to qualified recipients of aid under Welfare and Institutions Code Section 11200.
17. **Liability Insurance (when required):** When the Contractor submits a signed Agreement to the State, the Contractor shall furnish to the State a certificate of insurance stating that there is liability insurance presently in effect for the Contractor of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined.

The certificate of insurance will include provisions a., b., and c. in their entirety:

- a. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to the State;
- b. The State of California, its officers, agents, employees, and servants must be included as additional insured, by only insofar as the operations under this Agreement are concerned; and
- c. The State will not be responsible for any premiums or assessment on the policy.

The Contractor agrees that the bodily injury liability insurance herein provided for shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time during the term of this Agreement, the Contractor agrees to provide, prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided herein for not less than the remainder of the term of this Agreement, or for a period of not less than one (1) year.

New certificates of insurance are subject to the approval of the Department of General Services, and the Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, the State may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

DFG will not provide for nor compensate the Contractor for any insurance premiums or costs for any type or amount of insurance.

The insurance required above shall cover all Contractor supplied personnel and equipment used in the performance of this Agreement. If subcontractors performing work under this Agreement do not have insurance equivalent to the above, Contractor liability shall provide such coverage for the subcontractor, except for coverage for error, mistake, omissions, or malpractice, which shall be provided by the subcontractor if such insurance is required by the State.

18. **Worker's Compensation Insurance (when required):** The Contractor certifies and is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement.
19. **Computer Software:** The Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

EXHIBIT D – DFG ADDITIONAL PROVISIONS
(DFG AP – Revised 03/06)

20. **Inspection:** The State, through any authorized representative, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made by the State of the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require its subcontractor's to provide all reasonable facilities and assistance for the safety and convenience of the State's representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.
21. **Force Majeure:** Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by "Force Majeure". As used in this section, "Force Majeure" is defined as follows: Acts of war and acts of God such as earthquakes, floods, and other natural disasters such that performance is impossible.
22. **Forced, Convict, and Indentured Labor:** No foreign-made equipment, materials, or supplies furnished to the State pursuant to this Agreement may be produced in whole or in part by forced labor, convict labor, or indentured labor. By submitting a bid to the State or accepting a purchase order, the Contractor agrees to comply with this provision of the Agreement. This requirement does not apply to public works Agreements.
23. **Consultant – Staff Expenses:** The Contractor represents that it has or shall secure at its own expense, all staff required to perform the services described in this Agreement. Such personnel shall not be employees of or have any contractual relationship with the California State Department of Fish and Game or any other governmental entity.
24. **Contractor's Duties, Obligations, and Rights:** The Contractor is hereby apprised that California Public Contract Code Sections 10355 through 10382 is applicable and relative to the Contractor's duties, obligations, and rights in performing services under this Agreement.
25. **Evaluation of Contractor (over \$5,000):** Performance of the Contractor under this Agreement will be evaluated. The evaluation shall be prepared on a Contract/Contractor Evaluation Sheet (STD 4), and maintained in the Agreement file.

If the Contractor did not satisfactorily perform the work or service, a copy of the negative evaluation form will be submitted to the Contractor and to the Department of General Services, Legal Division, within fifteen (15) days of the completion of the evaluation. The Contractor will have thirty (30) days to prepare and send statements defending its performance under the Agreement. The evaluation of the Contractor shall not be a public record.
26. **Progress Reports or Meetings (when required):** The Contractor shall submit progress reports or attend meetings with the State personnel not more often than monthly to allow the State to determine if the Contractor is on the right track, whether the project is on schedule, provide communication to interim findings, and afford occasions for airing of difficulties or special problems encountered so that the remedies can be developed quickly. At the conclusion of this Agreement, the Contractor shall hold a final meeting with the State during which the Contractor shall present his/her findings, conclusions, and recommendations.
27. **Legal Contracts (only):** In accordance with Public Contract Code Section 10353.5, the Contractor shall:
 - Agree to adhere to legal costs and billing guidelines designed by the State Agency;
 - Adhere to litigation plans designated by the State Agency;
 - Adhere to case phasing of activities designated by the State Agency;
 - Submit and adhere to legal budgets as designated by the State Agency;
 - Maintain legal malpractice insurance in an amount not less than the amount designated by the State Agency;
 - Submit to legal bill audits and law firm audits if requested by the State Agency. The audits may be conducted by employees and designees of the State Agency or by any legal cost control providers retained by the State Agency for this purpose; and
 - Submit to a legal cost and utilization review, as determined by the State Agency.