



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

C-18

For the meeting of: March 7, 2017

Date: January 23, 2017

To: Board of Supervisors

From: Connie Beck, Director L.W.
Department of Health and Human Services

Subject: State Standard Agreement with State Water Resources Control Board for Water Testing by the Public Health Laboratory for the Period of June 20, 2017 through March 31, 2019

RECOMMENDATION(S):

That the Board of Supervisors:

1. Approve state standard agreement 16-041-110 with the State Water Resources Control Board (SWRCB) for water testing by the Department of Health and Human Services (DHHS) Public Health Laboratory for up to \$52,480 for the period of June 20, 2017 through March 31, 2019.
2. Authorize the Chair to sign two (2) originals of the agreement.
3. Authorize the Public Health Director to sign future amendments to this agreement upon County Counsel and Risk Management review and approval; and
4. Direct the Clerk of the Board to return two (2) signed agreements to DHHS – Contract Unit to forward to the Public Health Department.

SOURCE OF FUNDING:

Public Health Funds.

Prepared by Lara Zintsmaster, AA

CAO Approval *E. K. Hayes*

REVIEW:

Auditor *MSM*

County Counsel _____

Human Resources *df*

Other _____

TYPE OF ITEM:

- Consent
- Departmental
- Public Hearing
- Other _____

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of: _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor *Fennell* Seconded by Supervisor *Wilson*

- Ayes *Sundberg, Fennell, Bass, Bohn, Wilson*
- Nays _____
- Abstain _____
- Absent _____

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: *Mar 7, 2017*

By: *Kathy Hayes*
Kathy Hayes, Clerk of the Board

DISCUSSION:

In the Northern California region numerous beaches and streams of watersheds draining to coastal waters are currently listed or proposed to be listed as impaired water bodies under Section 303(d) of the federal Clean Water Act for exceeding numeric criteria set for pathogens.

The key pollutant sources are not readily identified without further investigation, despite there being a number of plausible sources of pathogens (e.g., homeless encampments, improper septic disposal and sewer treatment, extensive beach recreation, animal waste, etc.). Additional monitoring and testing is required to determine the source timing, duration, location, extent and magnitude of fecal contamination.

The analysis of standard indicator bacteria have utility in screening for health risks, however, these standard indicator bacteria are not suitable for assessing the sources contributing to impairment of the water bodies. The Coastal Watershed Pathogen Indicator Bacteria Study implements the molecular analysis of bacteroides bacteria, which make better indicators of recent fecal material input and can be used to identify possible animal or human sources of the pathogenic indicator bacteria. The standard indicator bacteria and the additional analysis of the bacteroides bacteria in local water bodies will strengthen our understanding and assist in identifying the sources of fecal contamination, which will allow the Public Health department to focus on appropriate mitigation efforts based on the data.

The Humboldt County DHHS Public Health Laboratory is the only Northern California laboratory certified by the state that can meet required testing parameters and provide the data needed for the development of the Coastal Watershed Pathogen Indicator Bacteria Study.

FINANCIAL IMPACT:

Approval of state standard agreement #16-041-110 with the State Water Resources Control Board will allow the Public Health Laboratory to be reimbursed for water testing up to \$52,480 in Fund 1175, Budget Unit 435, Public Health Laboratory, for the period of June 20, 2017 through March 31, 2019. These funds were not anticipated in the approved budget for fiscal year (FY) 2016-17. An appropriation transfer will be completed to cover any funds received between June 20, 2017 and June 30, 2017. This appropriation transfer will reduce the State Aid Health Realignment revenue line. The remainder of these funds will be included in the proposed county budgets for FYs 2017-18 and 2018-19. There will be no impact to the county's General Fund.

This agreement supports the Board's Strategic Framework by creating opportunities for improved safety and health.

OTHER AGENCY INVOLVEMENT:

N/A

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could choose not to approve the agreement with the State Water Resources Control Board. This is not recommended as the Public Health Laboratory would not be able to assist the State in identifying the source of documented and increased fecal contamination in our local water bodies.

ATTACHMENTS:

Two (2) originals of state standard agreement 16-041-110

STATE OF CALIFORNIA
STANDARD AGREEMENT
 STD 213 (Rev 06/03)

AGREEMENT NUMBER 16-041-110
REGISTRATION NUMBER

- This Agreement is entered into between the State Agency and the Contractor named below:
STATE AGENCY'S NAME
State Water Resources Control Board
CONTRACTOR'S NAME
County of Humboldt
- The term of this Agreement is **June 20, 2017** Through **March 31, 2019**
- The maximum of this Agreement is: **\$52,480.00**
Fifty Two Thousand Four Hundred Eighty Dollars and Zero Cents.
- 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	4 pages
Exhibit B – Budget Detail and Payment Provisions	3 pages
Attachment I – Budget	1 page
Exhibit C* – General Terms and Conditions	GTC 610
Exhibit D – Special Terms and Conditions	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 <http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx>.

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

CONTRACTOR		California Department of General Services Use Only
<small>CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)</small> County of Humboldt		
<small>BY (Authorized Signature)</small> 	<small>DATE SIGNED (Do not type)</small> 3/7/17	
<small>PRINTED NAME AND TITLE OF PERSON SIGNING</small> Virginia Bass, Chair, Board of Supervisors		
<small>ADDRESS</small> 529 I Street Eureka, CA 95501		
STATE OF CALIFORNIA		
<small>AGENCY NAME</small> State Water Resources Control Board		
<small>BY (Authorized Signature)</small> 	<small>DATE SIGNED (Do not type)</small>	
<small>PRINTED NAME AND TITLE OF PERSON SIGNING</small> Shannon Similai, Chief, Business Management Services Branch, DAS		
<small>ADDRESS</small> 1001 I Street, 18 th Floor Sacramento, CA 95814		

**EXHIBIT A
 SCOPE OF WORK**

1. OVERVIEW:

- A. The County of Humboldt (Contractor) agrees to provide to the State Water Resources Control Board (State Water Board) and the North Coast Regional Water Quality Control Board (Regional Water Board), collectively referred to herein as the Water Boards, analytic and reporting services as described herein:

The Contractor shall provide laboratory analyses for pathogenic indicator bacteria of ambient water samples collected for development on a Total Maximum Daily Load (TMDL) in coastal watersheds.

- B. The services shall be performed at: The County of Humboldt Department of Health & Human Services Public Health Laboratory, 529 I Street, Eureka, California 95501
- C. The services shall be provided during laboratory operating hours between 8:30 a.m. and 5:00 p.m., Monday through Thursday, excluding Fridays, weekends and State holidays.
- D. The Project Representatives during the term of this Agreement will be:

North Coast Regional Water Quality Control Board	County of Humboldt Department of Health & Human Services Public Health Laboratory
Lisa Bernard, Contract Manager North Coast Regional Water Quality Control Board 5550 Skylane Blvd., Suite A Santa Rosa, CA 95403 Telephone: 707-576-2677 Fax: 707-523-0135 E-mail: lisa.bernard@waterboards.ca.gov	Jeremy Corrigan c/o County of Humboldt Department of Health & Human Services Public Health Laboratory 529 I Street Eureka, CA 95501 Telephone: 707-268-2179 Fax: 707-445-7640 E-mail: JCorrigan@co.humboldt.ca.us

Direct all inquiries to:

North Coast Regional Water Quality Control Board	County of Humboldt Department of Health & Human Services Public Health Laboratory
Steve Butkus Telephone: 707-576-2834 Fax: 707-523-0135 E-mail: sbutkus@waterboards.ca.gov	Jeremy Corrigan Telephone: 707-268-2179 Fax: 707-445-7640 E-mail: JCorrigan@co.humboldt.ca.us

The parties may change their Project Representative upon providing ten (10) business days written notice to the other party. Said changes shall not require an Amendment to this Agreement.

EXHIBIT A SCOPE OF WORK

2. WORK TO BE PERFORMED:

A. Background and Goals

Numerous beaches and streams of watersheds draining to coastal waters are currently listed or proposed to be listed as impaired waterbodies under Section 303(d) of the federal Clean Water Act for exceeding numeric criteria set for pathogens.

The key pollutant sources are not readily identified without further investigation. Although there are a number of plausible sources of pathogens (e.g., homeless encampments, improper septic disposal and sewer treatment, extensive beach recreation and accompanying wastes, animal waste, etc.), additional monitoring is required to determine the source timing, duration, location, extent, and magnitude of fecal contamination. Existing and increasing human activity in riparian zones and outdated riparian land use planning has exacerbated local conditions and contributed to increased pathogen bacteria loads.

The analysis of standard indicator bacteria (i.e., *E. coli* and *Enterococcus* bacteria) have utility in screening for health risks, however, these standard indicator bacteria are not suitable for assessing recent inputs or the sources contributing to impairment. The pathogenic indicator bacteria commonly measured do not make ideal indicators of recent fecal material input since they may survive for months after introduction into the environment. *Bacteroides* bacteria make better indicators of recent fecal material input since they do not survive long in the environment. The DNA markers of *Bacteroides* bacteria can be used to identify possible animal sources of the pathogenic indicator bacteria. The current research (Griffith et al. 2013) recommends that the sampling and identification of *Bacteroides sp.* should accompany the collection of the commonly measured pathogenic indicator bacteria to provide answers to questions concerning the animal sources of the bacteria.

The *Bacteroides* bacteria in ambient water samples are analyzed using the laboratory methods of *quantitative polymerase chain reaction* (qPCR). qPCR is a laboratory technique used to amplify and simultaneously quantify a target DNA molecule. The Contractor is certified by the State of California (State) to analyze a large variety of samples using qPCR. The Water Board staff developed a Coastal Watershed Pathogen Indicator Bacteria Quality Assurance Project Plan. The Coastal Watershed Pathogen Indicator Bacteria Study includes sampling for *Bacteroides* bacteria and there are very few commercial laboratories available to conduct this work. Additionally, there are no other state agency, university, or commercial laboratories close enough to the coastal watersheds to allow necessary processing of samples for *Bacteroides* bacteria. The partnership in monitoring with the local public health agency will assist in the Coastal Watershed Pathogen Indicator TMDL implementation process.

The Contractor is certified by the State to analyze for ambient water samples of fecal indicator bacteria. They are the only local laboratory within the sample holding time requirement of 6-hours that provide a calculation of precision criteria required by Standard Method 9020: VI, which is required by the Quality Assurance Project Plan (QAPP) for data utilized in the development of the Coastal Watershed Pathogen Indicator Bacteria Study. The partnership in monitoring with the local public health agency will also assist in the Coastal Watershed Pathogen Indicator TMDL implementation process.

EXHIBIT A SCOPE OF WORK

B. Tasks and Deliverables

The Contractor shall be responsible for the performance of the work as set forth herein below and for the preparation of products as specified in this Exhibit. The Laboratory Director shall promptly notify the Water Boards Contract Manager of events or proposed changes that could affect the scope, budget, or schedule of work performed under this Agreement.

Task 1: Project Management and Administration

- 1.1 The Contractor shall provide all technical and administrative services as needed for Agreement completion; monitor, supervise, and review all work performed; and coordinate budgeting and scheduling to assure that the Agreement is completed within budget, on schedule, and in accordance with approved procedures, applicable laws, and regulations.
- 1.2 The Contractor shall ensure that the Agreement requirements are met through completion of analytical data reports submitted to the Water Boards Contract Manager within ninety (90) calendar days of sample analysis.
- 1.3 The Contractor shall notify the Water Boards Contract Manager at least ten (10) working days prior to any public or media event publicizing the accomplishments and/or results of this Agreement and shall provide the opportunity for attendance and participation by the Water Boards representatives. In the event of a significant laboratory finding, a finding that may pose an immediate risk to public health, the Contractor shall be allowed to notify the Humboldt County Public Health Officer or designee immediately. The Contractor will also notify the Water Boards Contract Manager or designee of the significant finding immediately.

Task 2: Pathogenic Indicator Bacteria Analyses

The Regional Water Boards staff will collect water samples from locations in the coastal watersheds identified in the Coastal Watershed Pathogen Indicator Quality Assurance Project Plan. The Water Boards will deliver the samples to the County of Humboldt Department of Health & Human Services Public Health Laboratory, 529 I Street, Eureka, within 6-hours of sampling.

- 2.1 The Contractor shall analyze for the following pathogenic indicator bacteria using the methods specified below.
 - 1) 162 water samples for Colilert® tests. IDEXX. 2001. Colilert® Test Pack Procedures IDEXX Laboratories, Inc., Westbrook, Maine. Online at www.idexx.com.
 - 2) 160 water samples for Enterolert® tests. IDEXX. 2001. Enterolert® Test Pack Procedures IDEXX Laboratories, Inc., Westbrook, Maine. Online at www.idexx.com.
 - 3) 120 water samples for Total Coliform by Multiple Tube Fermentation— Standard Method 9221 B <https://courses.washington.edu/envh433/Readings/coliform.PDF>.
 - 4) 168 water samples for real time quantitative polymerase chain reaction (qPCR) tests for *Bacteroides* bacteria DNA markers.

**EXHIBIT A
SCOPE OF WORK**

2.2 The Contractor shall ensure that the Agreement requirements are met through the completion of analytical data reports submitted to the Water Boards Contract Manager within ninety calendar (90) days of sample analysis. In addition, a laboratory quality assurance/quality control report shall be submitted with each set of data. The analytical data reports shall describe analyses conducted and report results with quality assurance data. The reports shall include laboratory analytical results in hardcopy paper or electronic spreadsheet formats. Quality assurance information shall be provided as basis for payment of invoices.

Deliverable Schedule Timeline

Task #	Deliverable	Deliverable Due
2.2	a. Report of analytical results	Within 90 calendar days of sample analysis and in no case later than March 31, 2019.
2.2	b. Laboratory quality assurance/quality control report shall provide a basis for payment of invoice	To be submitted within 90 calendar days of sample analysis with each set of data reported.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

1. INVOICING AND PAYMENT

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the Water Boards agree 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. Invoices shall include the Agreement number and shall be submitted in triplicate not more frequently than monthly in arrears to:

Lisa Bernard
North Coast Regional Water Quality Control Board
5550 Skyland Blvd., Suite A
Santa Rosa, CA 95403

- C. The Contractor shall also send a copy of the invoice or payment request to the Water Boards' Accounting Operations Section:

State Water Resources Control Board – Accounting
1001 I Street, 18th Floor
Sacramento, California 95814

- D. Contractors who are certified as small businesses or recognized as non-profit organizations by the Office of Small Business and DVBE Services (OSDS) will be paid in accordance with California Government Code, Title 1, Section 926.15. Invoices for all other Contractors shall be paid within 45 calendar days. In either situation, payment of any invoice will be made only after receipt of a complete, adequately supported, properly documented and accurately addressed invoice or payment request. Failure to use the address exactly as provided above may result in return of the invoice or payment request to the Contractor. Payment shall be deemed complete upon deposit of the payment, properly addressed, postage prepaid, in the United States mail. All invoices must be approved by the Contract Manager.
- E. The invoice shall contain the following information:
1. The word "INVOICE" should appear in a prominent location at the top of page(s);
 2. Printed name of the Contractor;
 3. Business address of the Contractor, including P.O. Box, City, State, and Zip Code;
 4. The date of the invoice;
 5. The number of the Agreement upon which the claim is based; and
 6. An itemized account of the services for which the Water Boards is being billed;
 - a) The time period covered by the invoice, i.e., the term "from" and "to";
 - b) A brief description of the services performed;
 - c) The method of computing the amount due. On cost reimbursable Agreements, invoices must be itemized based on the categories specified in the Budget. The amount claimed for salaries/wages/consultant fees must also be explained; i.e., hours or days worked times the hourly or daily rate = the total amount claimed;
 - 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) Original signature of Contractor (not required of established firms or entities using preprinted letterhead invoices).

**EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS**

- f) A line item for any payments made to a Disabled Veteran's Business Enterprise (DVBE) subcontractor.

2. BUDGET CONTINGENCY CLAUSE

- A. 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 Water Boards shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the Water Boards shall have the option to either cancel this Agreement with no liability occurring to the Water Boards, or offer an Agreement Amendment to Contractor to reflect the reduced amount.
- C. The Water Boards' obligation to make any payments under this Contract shall be suspended during such time as the Budget Act covering that fiscal year has not been approved by the Legislature and signed into law by the Governor.

- 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. TIMELY SUBMISSION OF FINAL INVOICE

- A. A final undisputed invoice shall be submitted for payment no more than thirty (30) calendar days following the expiration or termination date of this Agreement, unless a later or alternate deadline is agreed to in writing by the Contract Manager. Said invoice should be clearly marked "Final Invoice," thus indicating that all payment obligations of the Water Boards under this Agreement have ceased and that no further payments are due or outstanding.
- B. The Water Boards may, at its discretion, choose not to honor any delinquent final invoice if the Contractor fails to obtain prior written Water Boards approval of an alternate final invoice submission deadline. Written Water Boards approval shall be sought from the Contract Manager prior to the expiration or termination date of this Agreement.

5. EXPENSE ALLOWABILITY/FISCAL DOCUMENTATION

- A. Invoices received from a Contractor and accepted and/or submitted for payment by the Water Boards, shall not be deemed evidence of allowable Agreement costs.
- B. The Contractor shall maintain for review and audit and supply to the Water Boards upon request, adequate documentation of all expenses claimed pursuant to this Agreement to permit a determination of expense allowability.
- C. If the allowability or appropriateness of an expense cannot be determined by the Water Boards because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate according to generally accepted accounting principles or practices, all questionable costs may be disallowed and payment may be withheld by the Water Boards. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

- D. If travel is a reimbursable expense, receipts must be maintained to support the claimed expenditures.
- E. Costs and/or expenses deemed unallowable are subject to recovery by the Water Boards. See provision entitled, "Recovery of Overpayments" for more information.

6. RECOVERY OF OVERPAYMENTS

- A. Contractor agrees that claims based upon a contractual agreement or an audit finding and/or an audit finding that is appealed and upheld, will be recovered by the Water Boards by one of the following options:
 - (a) Contractor's remittance to the Water Boards of the full amount of the audit exception within 30 days following the Water Boards' request for repayment;
 - (b) A repayment schedule, which is agreeable to both the Water Boards and the Contractor.
- B. The Water Boards reserves the right to select which option will be employed and the Contractor will be notified by the Water Boards in writing of the claim procedure to be utilized.
- C. Interest on the unpaid balance of the audit finding or debt will accrue at a rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund commencing on the date that an audit or examination finding is mailed to the Contractor, beginning 30 days after Contractor's receipt of the Water Boards' demand for repayment, or commencing on the date that an audit or examination finding is mailed to the Contractor, if applicable.
- D. If the Contractor has filed a valid appeal regarding the report of audit findings, recovery of the overpayments will be deferred until a final administrative decision on the appeal has been reached. If the Contractor loses the final administrative appeal, Contractor shall repay, to the Water Boards, the over-claimed or disallowed expenses, plus accrued interest. Interest accrues from the Contractor's first receipt of Water Boards' notice requesting reimbursement of questioned audit costs or disallowed expenses.

**EXHIBIT B, ATTACHMENT I
 BUDGET**

Analysis or service to be performed	Description	Number of Samples	Unit cost (per sample)	Total Cost
Total coliform bacteria concentration	Multiple Tube Fermentation (MTF) Standard Method No. 9221-B	120	\$50.00	\$6,000
Colilert®	IDEXX Laboratories, Inc., Westbrook, Maine. Online at www.idexx.com .	162	\$40.00	\$6,480
Enterolert®	IDEXX Laboratories, Inc., Westbrook, Maine. Online at www.idexx.com .	160	\$40.00	\$6,400
Bacteroides	Quantitative Polymerase Chain Reaction (qPCR)	168	\$200.00	\$33,600
TOTAL				\$52,480

Table Notes: 'The Board of Supervisors set lab prices annually due increases in operating and consumable expenses. The Labs do not specifically know what these price increases might be. We do not anticipate that these cost increases will be significant. If the price for the lab analysis does increase due to Board of Supervisor approval, fewer water samples will be processed, so that the total contract budget will not be exceeded.

EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

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

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

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: 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. (PCC 10344(e).)

**EXHIBIT D
SPECIAL TERMS AND CONDITIONS**

- 1. DISPUTE RESOLUTION PROCESS:** Any dispute arising under or relating to the terms of this Agreement, or related to the performance hereunder, which is not disposed of by Agreement shall be decided by the Contract Manager, who shall reduce such decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contract Manager shall be final and conclusive unless, within fifteen (15) calendar days from the date of receipt of such copy, the Contractor mails or otherwise delivers a written appeal to the State Water Resources Control Board Executive Director. The decision of the Executive Director, or authorized representative, on such appeal shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by any substantial evidence. In connection with any appeal under this Section, the Contractor shall be afforded an opportunity to be heard and to offer evidence and argument in support of the appeal. Pending final decision on any dispute hereunder, the Contractor shall proceed diligently with the performance of the Agreement work as directed by the Contract Manager unless the Contractor has received notice of termination. Decisions on any disputes hereunder may include decisions of both fact and law; provided, however, that nothing herein shall be construed as making final any decision on a question of fact or law in the event of any subsequent legal proceeding before a court of competent jurisdiction.

Authority to terminate performance under the terms of this Agreement is not subject to appeal under this Section. All other issues including, but not limited to, the amount of any equitable adjustment and the amount of any compensation or reimbursement which should be paid to the Contractor shall be subject to the disputes process under this Section. (PCC 10240.5, 10381, 22200 et seq, 40 CFR 31.70)

- 2. PERMITS, WAIVER, REMEDIES AND DEBARMENT:** The Contractor shall procure all permits and licenses necessary to accomplish the work contemplated in this Agreement, pay all charges and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work.

Any waiver of rights with respect to a default or other matter arising under the Agreement at any time by either party shall not be considered a waiver of rights with respect to any other default or matter.

Any rights and remedies of the Water Boards provided for in this Agreement are in addition to any other rights and remedies provided by law.

Contractor shall not subcontract with any party who is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension". Contractor shall not subcontract with any individual or organization on USEPA's List of Violating Facilities. (40 CFR, Part 31.35, Gov. Code 4477)

- 3. TRAVEL AND PER DIEM:** Any reimbursement for necessary travel and per diem shall, unless otherwise specified in this Agreement, be at the rates and rules currently in effect, as established by the California Department of Human Resources (Cal HR). If the Cal HR rates change during the term of the Agreement, the new rates shall apply upon their effective date and no amendment to this Agreement shall be necessary. Local government agency, education and special districts will pay travel time and per diem according to their respective statutory requirements. No travel outside the state of California shall be reimbursed without prior authorization from the Water Boards. Verbal authorization should be confirmed in writing. Written authorization may be in a form including fax or email confirmation.

**EXHIBIT D
SPECIAL TERMS AND CONDITIONS**

- 4. CANCELLATION / TERMINATION WITHOUT CAUSE:** In addition to the "Termination for Cause" provisions in Section 7 of Exhibit C of this Agreement, the Water Boards may terminate this Agreement without cause if doing so is in the best interest of the State, by giving thirty (30) days written notice to the Contractor. Such notification shall state the effective date of termination or cancellation and include any final performance and/or payment/invoicing instructions/requirements. Upon receipt of a notice of termination or cancellation from the Water Boards, Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent Contract costs.

Termination Process (for both Terminations for Cause and Terminations without Cause):

Any termination shall be effected by written notice to the Contractor, either hand-delivered to the Contractor or sent certified mail, return receipt requested. The notice of termination shall specify the effective date of termination.

Upon receipt of notice of termination, and except as otherwise directed in the notice, the Contractor shall:

- a. Stop work on the date specified in the notice;
- b. Place no further orders or enter into any further Subcontracts for materials, services or facilities except as necessary to complete work under the Agreement up to effective date of termination;
- c. Terminate all orders and Subcontracts;
- d. Promptly take all other reasonable and feasible steps to minimize any additional cost, loss, or expenditure associated with work terminated, including, but not limited to reasonable settlement of all outstanding liability and claims arising out of termination of orders and Subcontracts;
- e. Deliver or make available to the Water Boards all data, drawings, specifications, reports, estimates, summaries, and such other information and material as may have been accumulated by the Contractor under this Agreement, whether completed, partially completed, or in progress.

In the event of termination, final payment may include reasonable compensation for satisfactory services rendered, materials supplied, and expenses incurred, if any, pursuant to this Agreement prior to the effective date of termination.

- 5. COMPUTER SOFTWARE:** Contractor certifies that it has appropriate systems and controls in place to ensure that Water Boards funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

6. SUBCONTRACTING:

- A. As a requirement of this Agreement (and any amendments thereto) subcontracting is limited to \$50,000 or 25% of the total contract, whichever is less. If the total of all subcontracts exceeds the limitation, all subcontracts must be in accordance with the following conditions:
- B. Subcontract service(s) must be selected by the primary contractor pursuant to a bidding process requiring at least three bids from responsible bidders. A bidding process is not required when a subcontractor(s) is one of the following entities:

Entities excluded from bidding:

**EXHIBIT D
SPECIAL TERMS AND CONDITIONS**

1. Another state entity, including:
 - a) A governmental agency from any state (Public Contract Code § 10340)
 - b) A state college or state university from any state.
 - i. A local governmental entity or agency, including those created as a Joint Powers Authority (JPA)
 - ii. An auxiliary organization of the California State University (CSU), or a California community college
 - iii. The Federal Government
 - iv. A foundation organized to support the Board of Governors of the California Community Colleges, or
 - v. An auxiliary organization of the Student Aid Commission established under Education code § 69522.
- C. By signing this Agreement, the Contractor is certifying selection of a non-excluded subcontractor(s) was pursuant to a bidding process requiring at least three bids from responsible bidders.
- D. The Water Boards will only pay overhead charges on the first \$25,000 for each subcontract.
7. **FORCE MAJEURE:** Except for defaults of Subcontractors, neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disaster, nuclear accident, strike, lockout, riot, freight embargo, public regulated utility, or governmental statutes or regulations superimposed after the fact. If a delay or failure in performance by the Contractor arises out of a default of its Subcontractor, and if such default of its Subcontractor, arises out of causes beyond the control of both the Contractor and Subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for damages of such delay or failure, unless the supplies or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.