

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 Contract. California may pay any applicable sales or use tax imposed by another state.

2. STATUTORY AND REGULATORY PROVISIONS

A. This Contract shall be governed and construed in accordance with all applicable statutory and regulatory provisions including, but not limited to:

- 1) Health and Safety Code section §125290.30 Public and Financial Accountability Standards
- 2) Health and Safety Code section §125290.10 - §125292.10
- 3) Public Contracting Code sections §10500 -
- 4) University of California – Policy BFB-BUS-43 Purchase of goods and services
- 5) All other applicable laws and regulations.

B. Any provision of this Contract in conflict with the applicable laws and regulations is hereby amended to conform to the provisions of those laws and regulations. Such amendment of the Contract shall be effective on the effective date of the statutes or regulations necessitating it, and shall be binding on the parties even though the amendment may not have been reduced to writing and formally agreed upon and executed by the parties. If, due to amendment in laws or regulations, Contractor is unable or unwilling to comply with the provisions of the amendment(s), State or Contractor may terminate this Contract in accordance with the Termination provision of this Contract.

3. APPROVAL

This Agreement is of no force or effect until signed by both parties and approved by the Director of Finance or General Counsel, if required. Contractor may not commence performance until such approval has been obtained.

4. 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.

5. INDEPENDENT CONTRACTOR STATUS

- A. Both parties agree that in the performance of this Agreement neither the Independent Contractor nor the Programmer shall be considered an agent or employee of CIRM, and neither shall be covered by the State of California Worker's Compensation Insurance or Unemployment Insurance, neither shall be eligible to participate in CIRM's retirement programs, and neither shall be entitled to any other CIRM employee benefits.
- B. The Contractor shall be solely responsible for the conduct and control of the work to be performed by the Contractor under this Agreement, except that the Contractor is accountable to CIRM for the results of such work. The Contractor's services for CIRM shall be performed in accordance with currently approved methods and ethical standards applicable to the Contractor's professional capacity.
- C. California State Contract Code 10515 (a) states: No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract on or after July 1, 2003, for the provision of services, procurement of goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.

6. ASSIGNMENT OR SUBCONTRACTING

The Contractor may not assign or transfer this Agreement, or any interest or claim, or subcontract any portion of the work, without the prior written approval of CIRM. The withholding or granting of such approval is totally discretionary with CIRM. If CIRM consents to such assignment or transfer, the terms and conditions of this Agreement shall be binding upon any assignee or transferee.

7. 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.

8. PROPERTY RIGHTS, INCLUDING PATENTS AND COPYRIGHTS

All written and other tangible material ("Material") produced pursuant to this Agreement by the Contractor shall be considered a work-made-for-hire under the Copyright Act. To the extent said Material does not qualify as a work-made-for-hire, Contractor hereby assigns all right, title, and interest, including, but not limited to, copyright and all copyright rights in the Material to CIRM and shall execute any and all documents necessary to effectuate such assignment. In the event Contractor uses any individual who is not a full-time employee of Contractor or uses any other entity to perform any of the work required by Contractor hereunder, Contractor shall require said individual or entity to sign an agreement before commencing work that contains identical wording to the foregoing two sentences except that the word "Contractor" shall be replaced with the individual's or entity's name.

9. RECORDS ABOUT INDIVIDUALS

- A. The Contractor acknowledges that the creation and maintenance of records pertaining to individuals is subject to certain requirements set forth by the California Information Practices Act (Civil Code 1798, et seq.) and by CIRM policy. Such requirements include provisions governing the collection, maintenance, accuracy, dissemination, and disclosure of information about individuals, including the right of access by the subject individuals.
- B. If the Contractor creates confidential or personal records about an individual, as defined by the Information Practices Act, including notes or tape recordings, the information shall be collected to the greatest extent practicable directly from the individual who is the subject of the information. When collecting the information, the Contractor shall inform the individual that the record is being made and of the purpose of the record.
- C. Records containing confidential or personal information about individuals are the property of CIRM and subject to CIRM's policies and applicable federal and state laws. The Contractor agrees to deliver all such records, including originals and all copies and summaries, to CIRM upon termination of this Agreement.

- D. The Contractor shall not use recording devices in discussions with CIRM's employees without notifying all parties to the discussion that the discussion is being recorded.

10. EXAMINATION AND AUDIT

The Contractor agrees that CIRM and its authorized agents shall have the right to review and copy any records and supporting documentation pertaining to the performance of this Agreement including, but not limited to, all documents, records and work papers whether obtained or copied from CIRM or developed by the Contractor. Contractor agrees to maintain such records for a minimum of five (5) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow CIRM and its authorized agent's access to such records during normal business hours. Further, Contractor agrees to include a similar right of access in any subcontract related to the performance of this Agreement.

In accordance with state law, the Contractor agrees that CIRM, its authorized agents, the State Controller's Office, and the Bureau of State Audits (collectively, the "Auditors") shall have the right, in connection with an audit, to review and copy any records and supporting documentation pertaining to the performance of this Agreement including, but not limited to, all documents, records and work papers whether obtained or copied from CIRM or developed by the Contractor. Contractor agrees to maintain such records for possible audit for a minimum of five (5) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the Auditors 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 Auditors to audit records and interview staff in any subcontract related to the performance of this Agreement.

11. CONFLICT OF INTEREST

- A. The Contractor will not hire any officer or employee of CIRM to perform any service covered by this Agreement. If the work is to be performed in connection with a federal or state contract or grant, the Contractor will not hire any employee of the government concerned to perform any service covered by this Agreement.
- B. The Contractor affirms that to the best of his/her knowledge there exists no actual or potential conflict between the Contractor's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interests or service under this Agreement, any question regarding

possible conflict of interest which may arise as a result of such change will be raised with CIRM.

- C. The Contractor shall not be in a reporting relationship to a CIRM employee who is a nearrelative, nor shall the near relative be in a decision-making position with respect to the Contractor.
- D. The Contractor and/or Programmers may be requested to execute Form 700 Statement of Economic Interests as published by the Fair Political Practices Commission. Statements of Economic Interests are public documents. More information about Form 700 is available at www.fppc.ca.gov.

12. AFFIRMATIVE ACTION

The Contractor recognizes that as a state government contractor or subcontractor, the Contractor is obligated to comply with all state laws and regulations regarding equal opportunity and affirmative action in government contracts. When applicable, the Contractor agrees that all such laws and their implementing regulations are incorporated herein as though set forth in full. These laws include the nondiscrimination requirements of Government Code sections 12990 and 11135, and the nondiscrimination program and clause required by Title 2, Division 4, Chapter 5 of the California Code of Regulations.

13. CONFIDENTIALITY

The Contractor shall keep confidential any and all information provided by CIRM, and/or by a CIRM grantee, including by any of their agents or representatives, and any information conveyed orally to the Contractor by CIRM and/or by a CIRM grantee, including any of their agents or representatives, with oral notification of its confidentiality (the "Confidential Information"). The Contractor agrees to maintain the secrecy of CIRM's Confidential Information and agrees not to use it except in performing the Services under this Agreement and not to disclose it to anyone outside CIRM or anyone within CIRM's organization who does not have a need to know it to perform under this Agreement. This non-disclosure provision shall not apply to any of the following:

- A. Information which the Contractor can demonstrate by written records was known to him or her prior to the effective date of this Agreement;
- B. Is currently in, or in the future enters, the public domain other than through a breach of this Agreement or through other acts or omissions of the Contractor; or
- C. Is obtained lawfully from a third party.

14. RESOLUTION OF DISPUTES

If the Contractor disputes any action by CIRM arising under or out of the performance of this contract, the Contractor shall notify CIRM of the dispute in writing and request a claims decision. CIRM shall issue a decision within 30 days of the Contractor's notice. If the Contractor disagrees with CIRM's claims decision, the Contractor shall submit a formal claim to the President of CIRM. The decision by the President of CIRM shall be final and conclusive on the claim unless the decision is arbitrary, capricious or grossly erroneous or if any determination of fact is unsupported by substantial evidence. The decision may encompass facts, interpretation of the contract and determinations or applications of law. The decision shall be in writing following an opportunity for the Contractor to present oral or documentary evidence and arguments in support of the claim. Contractor shall continue with the responsibilities under this Agreement during any dispute.

15. POTENTIAL SUBCONTRACTORS

For all Agreements, with the exception of Interagency Agreements and other governmental entities/auxiliaries exempt from bidding, nothing contained in this Contract or otherwise shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of Contractor's 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 either directly 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 enforce the payment of any moneys to any subcontractor.

16. INSURANCE REQUIREMENTS

- A. Upon contract award, contractor must furnish to the State an original certificate(s) of insurance stating that the contractor has the following types of coverage, if applicable:
 - 1) Commercial General Liability: Combined Single Limit (CSL) for no less than \$1,000,000 per occurrence for bodily injury and property damage. The policy must include coverage for liabilities arising out of premises, operations, independent contractors, products/completed operations, personal & advertising injury, and liability assumed under an insured contract. This

insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the contractor's limit of liability.

- 2) Professional Liability: (Applies to any contract in which the work is of a professional nature such as, but not limited to, physicians, architects, engineers, accountants, or Contractors) Covering any damages caused by an error, omission, or any negligent acts. Limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
- 3) Automobile Liability (Applies to any contract in which the contractor will likely use a vehicle to complete the project or drive a vehicle onto State property): Limits of not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of an automobile including owned, hired, and non-owned autos.
 - a) MCS90 endorsement on the Automobile policy **(required whenever contractor will be transporting Hazardous materials i.e. Pest Control and Waste contracts.)**
- 4) Workers' Compensation (Mandatory for all Contractors who have at least one employee): Contractor shall maintain workers' compensation and employer's liability coverage for all its employees who will be engaged in the performance of the contract, including special coverage extensions where applicable. Contractor shall furnish a certificate for Workers' Compensation issued by an insurance carrier licensed to write Workers' Compensation insurance in the State of California, including the name of the carrier and the date of expiration of insurance, or a Certificate of Consent to Self-Insure issued by the Department of Industrial Relations.
- 5) The certificate(s) of insurance shall be on an ACORD form, or equivalent, and must show "occurrence" coverage. The certificates of insurance must also contain all of the following provisions:
 - a) Name and address of the insurance company, policy number, and beginning and ending dates of the policy.
 - b) Statement that the insurer will not cancel the insured's coverage without 30 days prior written notice to the State.
 - c) Statement that the State of California, its officers, agents, employees, and servants are included as additional insured on the policy, but only insofar as the operations under this contract.

- 6) Contractor agrees that any insurance herein provided shall be in full force and effect at all times during the term of the contract. In the event said insurance coverage expires at any time during the term of this contract, Contractor agrees to provide, at least ten (10) days prior to 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 contract, or for a period of not less than one (1) year. In the event contractor fails to keep in effect at all times insurance coverage herein provided, State may, in addition to any other remedies it may have, terminate the contract upon the occurrence of such event, subject to the provisions of the contract.
- 7) Contractor shall notify the State within five (5) days if any insurance coverage identified in the contract is altered in any way.

17. RIGHT TO TERMINATE

- A. The State reserves the right to terminate this Contract subject to thirty (30) days written notice to the Contractor. Contractor may submit a written request to terminate this Contract only if the State should substantially fail to perform its responsibilities as provided herein. However, the Contract can be immediately terminated for cause. The term “for cause” shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of the contract. In this instance, the contract termination shall be effective as of the date indicated on the State’s notification to the Contractor.
- B. This Contract 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.

18. 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.

19. SMALL BUSINESS / DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION

In accordance with requirements set forth by the State, CIRM shall enforce all laws, rules, and regulations pertaining to this program. It is the Contractors responsibility to provide CIRM with all required documents as outlined in this agreement. CIRM reserves the right to contact each Small Business(SB) and Disabled Veteran Business Enterprise (DVBE) identified by the Contractor to verify compliance. Failure to meet SB/DVBE requirements under Exhibit C (GTC 04/2017), paragraphs 19.a and 19.b ([CA Standard Contract Language](https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/Standard-Contract-Language)) may deem the Contractor to be non-responsible and rejected from future bid and contract opportunities with CIRM. (<https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/Standard-Contract-Language>)

20. CONTRACTOR – 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 any governmental entity.

21. NON-DISCRIMINATION CLAUSE

During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. 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. (See Cal. Code Regs., tit. 2, §111105.)

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

22. 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.

23. GOVERNING LAW

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

24. UNENFORCEABLE PROVISIONS

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.

25. ORDER OF PRECEDENTS

In the event of any inconsistency between the terms of the Agreement and Exhibit C: General Terms and Conditions, the terms and conditions of Exhibit C shall govern and control.

26. ASSEMBLY BILL 334 – PUBLIC CONTRACTS – CONFLICT OF INTEREST

(1) A statement identical or substantially similar to the following is included in the initial contract between the public entity and the independent contractor:

“Contractor/consultant’s duties and services under this agreement shall not include preparing or assisting the public entity with any portion of the public entity’s preparation of a request for proposals, request for qualifications, or any other

solicitation regarding a subsequent or additional contract with the public entity. The public entity entering this agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. Contractor/consultant's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Contractor/consultant shall cooperate with the public entity to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by contractor pursuant to this agreement.”

(2) The independent contractor is not in breach of the contractual obligations set forth in paragraph (1).

If the initial contract does not contain this statement, A.B. 334 creates a second safe harbor. New Government Code section 1097.6(d) will provide “a complete defense” to a Section 1090 violation “in any criminal, civil, or administrative proceeding” if either of the following apply: (1) the contractor is not considered an “officer” under Section 1090, or (2) the contractor “did not engage in or advise on the making of the subsequent contract,” as described above.