



June 27, 2016

Mike Conway
City of Merced
678 West 18th Street
Merced, CA 95340

Re: P1680003 00 CALIFORNIA SHARED HABITAT ALLIANCE FOR RECREATIONAL ENHANCEMENT
(SHARE) PROGRAM

Enclosed are one (1) complete set of the Agreement and six (6) signature sheets. Please sign and return all six (6) signature sheets, as well as the "Acknowledgment Disclaimer", with original signatures, **within fifteen (15) working days** to:

For United States Postal Service deliveries:
California Department of Fish and Wildlife
Contracts Management Section
Attn: Amy Manasero
P.O Box 944209
Sacramento, CA 94244-2090

For hand deliveries and Non-United States Postal Service deliveries:
California Department of Fish and Wildlife
Contracts Management Section
Attn: Amy Manasero
1831 9th Street
Sacramento, CA 95811

Failure to return agreement in fifteen (15) working days could affect execution of agreement. Please do not make any changes to this Agreement. Contact the Contract Manager for direction.

Agreements are not effective until approved by the Department of General Services or the Department of Fish and Wildlife as required by State procedure. A fully approved Agreement will be sent to you when executed.

Please refer to the box(es) checked below for further instruction:

- ☒ [X] If you do not have a Payment Data Record form (STD 204) on file with CDFW, please complete the attached, sign and return.
- ☒ [X] Contractor Certification Clauses (CCC 307). The Contractor Certification package contains clauses and conditions that may apply to your Agreement and to persons doing business with the State of California. The CCC 307 is available on the Internet at <http://www.ols.dgs.ca.gov/Standard+Language/default.htm>. Please download, sign and return "Page One". Failure to do so will prohibit the State of California from doing business with your company.
- ☒ [X] Please return a copy of your Authorizing Resolution.
- ☐ [] Please submit the Accord Certificate of Liability Insurance (not less than \$1,000,000).
- ☐ [] This agreement is funded under a federal grant or contract. The Federal Funding Accountability and Transparency Act of 2006 (FFATA) requires the State to report sub-recipient data. Please complete and submit the enclosed FFATA Contractor Certification form (FG_GMB 868).
- ☒ [X] Voluntary Statistical Data Sheet (VSDS). The completion and return of this form is strictly voluntary
- ☐ [] Other

Questions concerning the services to be performed under this Agreement should be directed to the Contract Manager Victoria Barr at (916) 445-4034.

Sincerely,

Steven Saul
Contract Analyst

Enclosure(s)
c: File, Suspense
WFD, Victoria Barr
WLB, Richard Jackson



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ACKNOWLEDGEMENT OF WORK COMMENCEMENT AUTHORIZATION DISCLAIMER

Where approval from the California Department of Fish and Wildlife (CDFW) and the California Department of General Services (DGS) applies, the attached contract shall be of no force or effect until it is signed by both parties (CDFW and Contractor) and/or approved by the DGS. The signing of this contract by your organization does not authorize the commencement of work.

By signing this letter, your organization acknowledges and agrees not to begin work until all approvals have been obtained, the contract has been fully executed, and the contractor has been given authorization to begin work. Should any work begin before all approvals are obtained or authorization is given, services will be considered voluntary.

Please be advised that failure to sign and return this letter will delay approval of your contract.

Authorized Signature

Date

Printed Name and Title of Person Signing

STATE OF CALIFORNIA STANDARD AGREEMENT STD. 213 (Rev 06/03)		AGREEMENT NUMBER P1680003											
		REGISTRATION NUMBER											
1. This Agreement is entered into between the State Agency and the Contractor named below: STATE AGENCY'S NAME California Department of Fish and Wildlife CONTRACTOR'S NAME City of Merced													
2. The term of this Agreement is: Upon Approval through June 30, 2019													
3. The maximum amount of this Agreement is: \$18,000.00 Eighteen Thousand Dollars and Zero 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.													
<table style="width: 100%; border: none;"> <tr> <td style="width: 60%;">Exhibit A – Scope of Work</td> <td style="width: 40%; text-align: right;">3 pages</td> </tr> <tr> <td>Exhibit A, Attachment 1 – Property Map</td> <td style="text-align: right;">1 page</td> </tr> <tr> <td>Exhibit B – Budget Detail and Payment Provisions</td> <td style="text-align: right;">2 pages</td> </tr> <tr> <td>* Exhibit C – General Terms and Conditions</td> <td style="text-align: right;">GTC 610</td> </tr> <tr> <td>Exhibit D – CDFW Additional Provisions</td> <td style="text-align: right;">8 pages</td> </tr> </table>				Exhibit A – Scope of Work	3 pages	Exhibit A, Attachment 1 – Property Map	1 page	Exhibit B – Budget Detail and Payment Provisions	2 pages	* Exhibit C – General Terms and Conditions	GTC 610	Exhibit D – CDFW Additional Provisions	8 pages
Exhibit A – Scope of Work	3 pages												
Exhibit A, Attachment 1 – Property Map	1 page												
Exhibit B – Budget Detail and Payment Provisions	2 pages												
* Exhibit C – General Terms and Conditions	GTC 610												
Exhibit D – CDFW Additional Provisions	8 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											
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) City of Merced													
BY (Authorized Signature) 	DATE SIGNED (Do not type)												
PRINTED NAME AND TITLE OF PERSON SIGNING Steve Carrigan – City Manager													
ADDRESS 678 West 18th Street Merced, CA 95340													
STATE OF CALIFORNIA													
AGENCY NAME California Department of Fish and Wildlife		<input checked="" type="checkbox"/> Exempt per FGC 1572											
BY (Authorized Signature) 	DATE SIGNED (Do not type)												
PRINTED NAME AND TITLE OF PERSON SIGNING Karen Edgren, Chief, Business Management Branch													
ADDRESS P.O. Box 944209 Sacramento, CA 94244-2090													

1. The City of Merced (Contractor) agrees to provide, to the California Department of Fish and Wildlife (CDFW), public access to the wetlands at the Waste Water Treatment Plant for wildlife-dependent recreational opportunities as described herein.
2. Land access shall be provided in Merced County, California (APN No: 065-110-001), as identified in Exhibit A, Attachment 1 (Property Map).
3. Land access shall be provided as determined by the CDFW Contract Manager.
4. The Project Officials during the term of this Agreement will be:

CDFW Contract Manager

Name: Victoria Barr
Phone: (916) 445-4034
Fax: (916) 445-4048
E-mail: victoria.barr@wildlife.ca.gov

Contractor Project Director

Name: Lindsey Johnson
Phone: (209) 385-6298
Fax: (209) 388-8945
E-mail: johnsonl@cityofmerced.org

Direct all inquiries to:

CDFW:

Section/Unit: Wildlife Branch
Attention: Victoria Barr
Address: 1812 Ninth Street
Sacramento, CA 95811
Phone: (916) 445-4034
Fax: (916) 445-4048
E-mail: victoria.barr@wildlife.ca.gov

Contractor:

Section/Unit: City of Merced
Attention: Steve Carrigan
Address: 678 West 18th Street
Merced, CA 95340
Phone: (209) 385-6834
Fax: (209) 388-8945
E-mail: carrigans@cityofmerced.org

5. SCOPE OF WORK

A. Background and Objectives

Sections 1572 and 1573 of the Fish and Game Code authorize CDFW to enter into contracts to compensate private landowners, as defined therein, for providing public access to property that is suitable for wildlife-dependent recreational activities. The California Shared Habitat Alliance for Recreational Enhancement (SHARE) Program will assist with facilitating public access to private lands by providing private landowners, or their representatives, annual incentive payments in return for providing public use of the land or public access for wildlife-dependent recreational activities, including but not limited to: hunting, fishing, wildlife observation, conservation education, and related outdoor activities, in accordance with detailed annual public access management plans developed by the SHARE coordinator and CDFW wildlife biologists in cooperation with the private landowner or their designated representative.

The Contractor is entering into an agreement with CDFW to provide public access to the 300-acre wetland area located on the south end of the Merced Waste Water Treatment Plant for wildlife-dependent recreational opportunities. Public access will be regulated in accordance with an Annual Public Access Plan that will be developed by CDFW specifically for said property. The Annual Public Access Plan will ensure that high-quality recreational opportunities are developed and maintained on this property.

B. Work to be Performed

The Contractor shall:

- 1) Allow CDFW access to approximately 300 acres of seasonal wetlands to conduct various wildlife-dependent recreational activities. The Agreement land is identified in Exhibit A, Attachment 1 (Property Map), which is attached and hereby made a part of this Agreement. The dates shall be determined by January of each year and detailed in the Annual Public Access Plan.

SHARE activities to be offered:

- a) Waterfowl Hunts
 - Up to 35 days during the waterfowl season
 - 6-10 hunters per day
 - Each hunt consists of 1 day
 - b) Dove Hunts
 - 7 days during dove season
 - 16 hunters per day
 - Each hunt consists of 1 day
 - c) Pheasant Hunts
 - 4-20 days during pheasant season
 - 16 hunters per day
 - Each hunt consists of 1 day
 - d) Bird Watching Days
 - Up to 24 days in the spring
 - 10 users per day
 - Each opportunity consists of 1 day
- 2) Conduct SHARE activities on Mondays, Wednesdays, Saturdays, Sundays and holidays.
 - 3) Assist CDFW with developing the Annual Public Access Plan by February of each year of the Agreement. The Plan needs to include access dates and property rules.
 - 4) Provide a marked entrance to the property with off-road parking.
 - 5) Provide a platte map and field map of the property to CDFW for hunters.

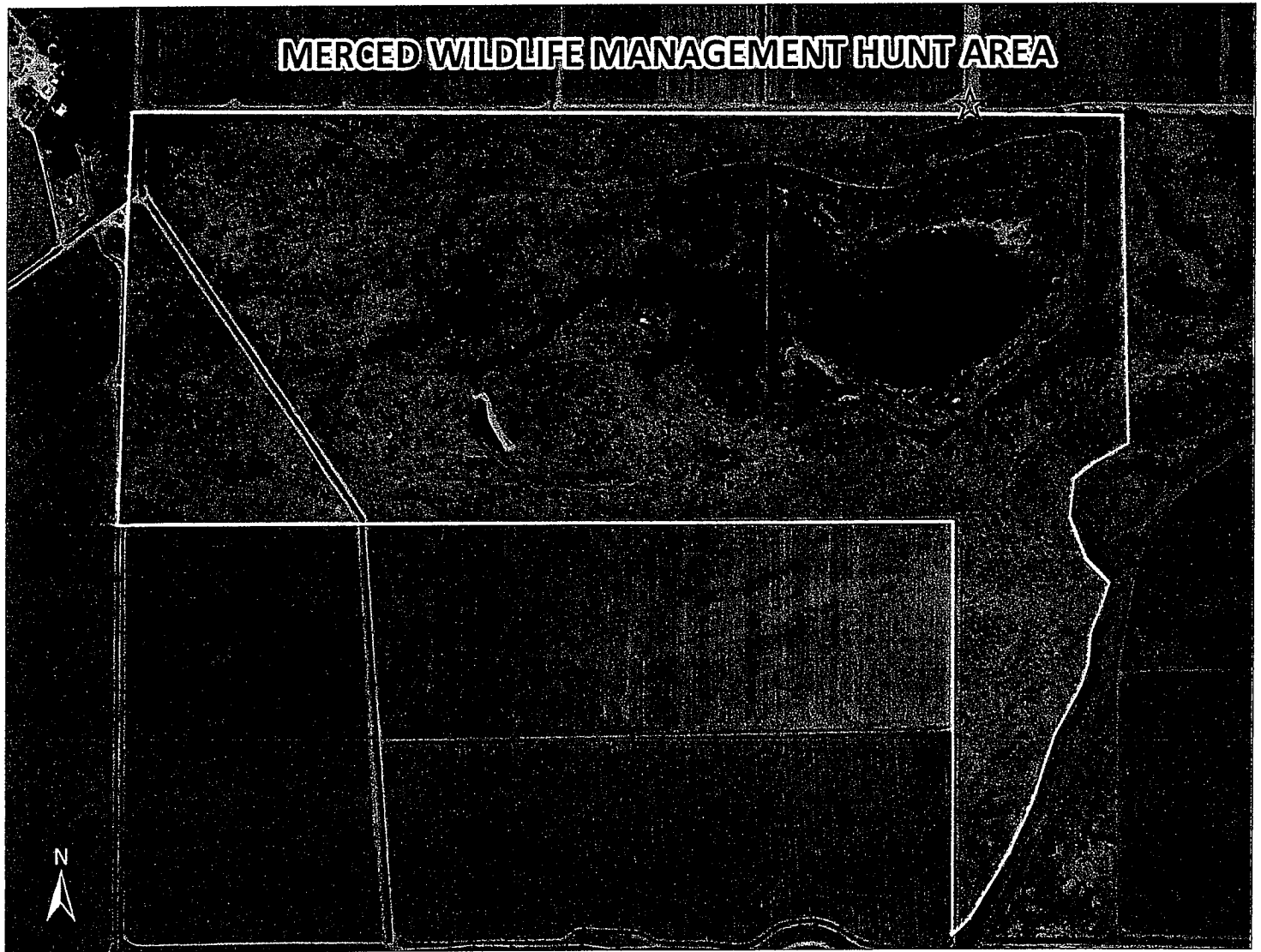
The CDFW shall:

- 1) Conduct a drawing for SHARE Access Permits prior to each SHARE program activity.
- 2) Provide each SHARE Program participant with a SHARE Program liability waiver form (DFG 859, Rev. 12-11) which must be signed by each participant before entering a SHARE property.
- 3) Provide each hunter with a map of the property.
- 4) Provide each hunter with the rules of the property.
- 5) Maintain all program data (i.e. number of participants, contact information, hunt dates, etc.) for recreational activities conducted on the Agreement lands.

The terms, conditions, and restrictions of the Agreement are hereinafter set forth:

- 1) The Annual Public Access Plan shall contain various hunting management strategies that are intended to result in the public's access to private lands while preserving the natural, aesthetic, archeological and agricultural value of the Agreement lands. CDFW, in conjunction with the Contractor, will annually review the Annual Public Access Plan. The Annual Public Access Plan will define those specific hunt management activities (such as defining hunt areas and periods, number of allowable hunters, weapon type restrictions, etc.) required in that calendar year to achieve the level of public hunting opportunity described in the Annual Public Access Plan. The Annual Public Access Plan will be delivered to the Contractor within forty-five (45) days following the completion of the joint review.
- 2) The Contractor shall be protected from liability under the state recreational liability statute (Civil Code Section 846), as stipulated in Fish and Game Code Section 1573 (d).
- 3) Prior to entering the Agreement lands, CDFW shall require all persons participating in the SHARE program to sign a SHARE Program liability waiver form (DFG 859, Rev. 12-11) releasing the State of California or any private group, nonprofit organization, governmental entity, or other organization involved in administering the program, and the Contractor, from liability for any injury or damage that arises from, or is connected with that person's use of the land. Upon request, CDFW shall provide a copy of the signed waiver to the Contractor.

Exhibit A – Attachment 1 (Property Map)



1. INVOICING AND PAYMENT

- A. For services satisfactorily rendered, and upon receipt and approval of the invoice(s), 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 annually, 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: Victoria Barr
Region / Division: California Department of Fish and Wildlife, Wildlife Branch
Address: 1812 Ninth Street, Sacramento, CA 95811

- C. The original and one (1) approved copy of the invoice will be forwarded to the California Department of Fish and Wildlife'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. Following a determination by the State that the Contractor has fulfilled its obligations under this Agreement as described in the Annual Public Access Plan, for the preceding (8) eight month period, the State shall remit payment to the Contractor of \$9.55 (nine dollars fifty-five cents) for each of the 1,473 acres of the Agreement lands for a total annual payment not to exceed \$14,067.15. The maximum amount payable under the terms of this Agreement shall not exceed \$14,067.15 including all applicable taxes and expenses.
- 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 California Department of Fish and Wildlife 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;
 - 7. An itemized account of the services for which the California Department of Fish and Wildlife 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 based on a fixed amount or lump sum method. Upon satisfactory performance, the State agrees to pay the Contractor an annual lump sum for all work described herein for the total specified amount or partial payment for partial work completed as described herein;

- 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

- 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 additional 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.

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 DETAIL

<u>Cost/Acre</u>	<u># Acres/Year</u>	<u>Amount/Year</u>	<u># Years</u>	<u>Agreement Total</u>
\$20.00	300 acres	\$6,000.00	3-years	\$18,000.00

1. **LICENSES AND PERMITS (If Applicable)** ~ The Contractor shall be an individual or firm licensed to do business in California and shall obtain, at his/her expense, all licenses and permits required by law for accomplishing any work required in connection with this Agreement.

If you are a Contractor located within the State of California, a business license from the City/County in which you are headquartered is necessary; however, if you are a corporation, a copy of your incorporation documents/letters from the Secretary of State's Office can be submitted. If you are a Contractor outside the State of California, you will need to submit to CDFW, a copy of your business license or incorporation papers for your respective State showing that your company is in good standing in that State.

In the event any licenses and/or permits expire at any time during the term of this Agreement, Contractor agrees to provide the California Department of Fish and Wildlife (CDFW) a copy of the renewed licenses and/or permits within thirty (30) days following the expiration date. In the event the Contractor fails to keep in effect, at all times, all required licenses and permits, the State may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

2. **RIGHTS IN DATA** ~ The Contractor agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes and other written or 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 purposes 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, and use such work, or any part thereof, and to authorize others to do so.

3. **RIGHT TO TERMINATE** ~ CDFW reserves the right to terminate this agreement subject to 30 days written notice to the Contractor. 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 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.

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.

4. **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 (2) step procedure:

- a. The Contractor must provide written notice of the particulars of such disputes to the CDFW Contract Manager or appointed representative. The CDFW 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 CDFW 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 CDFW Contract Manager's decision.

- b. The second level appeal must indicate why the CDFW Contract Manager's decision is unacceptable, attaching it to the Contractor's original statement of the dispute with supporting documents, and a copy of the CDFW Contract Manager's response. This letter of appeal shall be sent to the California Department of Fish and Wildlife, Deputy Director, or duly appointed representative. The second level appeal must be filed within fifteen (15) working days upon receipt of the CDFW 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.

5. PROPERTY ACQUISITIONS – Property, as used in this section shall include:

- a. **Equipment** – Tangible property (including furniture) with a unit cost of \$5,000.00 or more, and a useful life of four (4) years or more. Actual costs include 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, etc.
- 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 titled '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 CDFW 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 CDFW Contract Manager shall be required before the Contractor will be reimbursed for any property purchases not specified in the Budget. The Contractor shall provide to the CDFW 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 CDFW, the Contractor shall submit paid vendor receipts identifying the Agreement number, purchase price, description of the item, serial number, model number, and location, including street address where property

will be used during the term of this Agreement. Said paid receipts shall be attached to Contractors' 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 CDFW Contract Manager, and one (1) copy to the Property Officer; one (1) copy must be retained by the Contractor.

CDFW 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 the State Department of General Services, Procurement Division has negotiated with vendors who supply the same type of property. The Contractor shall tag all acquisitions. The purpose of tagging assets is to designate the assets as belonging to the State.

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 CDFW 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 State expense in accordance with instructions from the CDFW Contract Manager to be issued immediately after receipt of the final inventory.

6. **LOST, STOLEN or DESTROYED PROPERTY** ~ 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 CDFW Contract Manager and prepare a Property Survey Report.

In the case of stolen property, the Contractor shall also complete a CHP Report of Crime on State Property (STD 99) form, and obtain a copy of the law enforcement agency's report to submit to the CDFW 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.

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 CDFW, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by CDFW under this Agreement.
8. **CONFIDENTIALITY OF DATA** ~ The Contractor shall protect from disclosure all information made available by CDFW. The Contractor shall not be required to keep confidential any data or information which is publicly available, independently developed by the Contractor, or lawfully obtained from third parties. Written consent of CDFW must be obtained prior to disclosing information under this Agreement.
9. **DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) PARTICIPATION REQUIREMENTS**
~ The Contractor agrees to use DVBE subcontractors or suppliers originally identified by the Contractor, unless the Contractor requests substitution, in writing beforehand to the CDFW

Contract Manager and the CDFW Contract Manager has approved such substitution. At a minimum, the request must include:

- a. A written explanation of the reason for the substitution; and
- b. The identity of the person or firm substituted.

The request and the CDFW 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.

10. **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 CDFW. 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.

11. **USE OF SUBCONTRACTOR(S)** ~ 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:
- a. The Contractor shall submit any subcontracts to the State for approval prior to starting any of the work;
 - b. The Agreement between the primary Contractor and the subcontractor must be in writing;
 - c. 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
 - d. 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.

12. **POTENTIAL SUBCONTRACTOR(S)** ~ Nothing contained in this Agreement or otherwise shall create any contractual relation between the State and any subcontractor(s) and no subcontract shall relieve the primary 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 subcontractor(s) 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 subcontractor(s) is an independent obligation from the State's obligation to make payments to the primary Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.

13. **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 nonrepresented/excluded State employees. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from CDFW.
14. **NOVATION** ~ If the Contractor proposes any Novation Agreement, CDFW 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 confirm in writing within five (5) days. No Novation Agreement shall become operative or otherwise binding on the State pursuant to this paragraph in the absence of a formal Novation Agreement amendment which has been approved in accordance with all applicable State policy, laws and procedures.
15. **INSURANCE** ~ When the Contractor submits a signed Agreement to CDFW, the Contractor shall also furnish, either proof of self-insurance or certificate(s) of insurance, showing that the required insurance is presently in effect. Contractor agrees to make complete copies of applicable insurance policies available to CDFW upon request. The State will not be responsible for any premiums or assessments on the policy.

General Provisions Applying to All Policies

- 1) **Coverage Term** – Coverage needs to be in force for the complete term of the contract. If insurance expires during the term of the contract, a new certificate must be received by the State at least ten (10) days prior to the expiration of this insurance. Any new insurance must still comply with the original terms of the contract.
- 2) **Policy Cancellation / Termination & Notice of Non-Renewal** – Contractor shall provide to the State within two business days a copy of any notice of Cancellation/Termination or Non-renewal received by contractor for any of the required insurance policies. In the event Contractor fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.
- 3) **Deductible** – Contractor is responsible for any deductible or self-insured retention contained within their insurance program.
- 4) **Primary Clause** – Any required insurance contained in this contract shall be primary, and not excess or contributory, to any other insurance carried by the State.
- 5) **Insurance Carrier Required Rating** – All insurance companies must carry a rating acceptable to the Office of Risk and Insurance Management. If the Contractor is self insured for a portion or all of its insurance, review of financial information including a letter of credit may be required.

- 6) Endorsements – Any required endorsements requested by the State must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance. This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.

In the case of Contractor's utilization of subcontractors to complete the contracted scope of work, contractor shall include all subcontractors as insured's under Contractor's insurance or supply evidence of insurance to the State equal to policies, coverages and limits required of Contractor.

- 7) Inadequate Insurance – Inadequate or lack of insurance does not negate the contractor's obligations under the contract.

Provider hereby represents and warrants that Provider is currently and shall remain, for the duration of this Agreement at Provider's own expense, insured against:

- 1) Commercial General Liability – Contractor shall maintain general liability on an occurrence form with limits not less than \$1,000,000.00 per occurrence for bodily injury and property damage liability combined with a \$2,000,000.00 annual policy aggregate. The policy shall 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.

The policy must be endorsed to include the State of California, its officers agents and employees as additional insured, but only with respect to work performed under the Contract..

- 2) Automobile Liability – (If applicable) Contractor shall maintain motor vehicle liability with limits not less than \$1,000,000.00 combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles.

The policy must be endorsed to include the State of California, its officers agents and employees as additional insured, but only with respect to work performed under the Contract..

- 3) Aircraft Liability – (If applicable) When aircraft are used in the performance of agreement work contractor, or its subcontractor, shall maintain aircraft liability with limits of not less than \$10,000,000.00 each accident.

The policy must be endorsed to include the State of California, its officers agents and employees as additional insured, but only with respect to work performed under the Contract.

- 4) Watercraft Liability – (If applicable) When watercraft are used in the performance of agreement, the work contractor or its subcontractor, shall maintain watercraft liability with limits of not less than \$1,000,000.00 each accident.

When watercraft is used in performance of work on or over navigable waters of the United States, contractor's workers' compensation policy shall be endorsed to include the United States Longshore and Harbor Workers' Compensation Act coverage. The coverage applies to work on or over navigable waters of the U.S.

The policy must be endorsed to include the State of California, its officers agents and employees as additional insured, but only with respect to work performed under the Contract..

- 5) Professional Liability – (If applicable) Contractor shall maintain professional liability covering any damages caused by a negligent error, act or omission with limits of not less than \$1,000,000.00 per occurrence and \$3,000,000.00 policy aggregate. The policy's retroactive date must be shown on the certificate of insurance and must be before the date this contract was executed or before the beginning of contract work.

- 6) Pollution Liability – (If applicable) Contractor shall maintain pollution liability with Limits no less than \$1,000,000 each occurrence and \$2,000,000 aggregate.

The policy must be endorsed to include the State of California, its officers agents and employees as additional insured, but only with respect to work performed under the Contract..

- 7) Workers Compensation and Employers Liability – Contractor shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Contract. Employer's liability limits of \$1,000,000.00 are required.

When work is performed on State owned or controlled property the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the State. The waiver of subrogation endorsement shall be provided.

When watercraft is/are used in performance of agreement work contractor's workers' compensation policy shall be endorsed to include applicable special coverage extensions where applicable.

16. **COMPUTER SOFTWARE (IT SERVICES)** ~ 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.

17. **INSPECTION** ~ The State, through any authorized representatives, 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 their subcontractor(s) to provide all reasonable facilities and assistance for the safety and convenience of the State 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.

- 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, acts of God such as earthquakes, floods, and other natural disasters such that performance is impossible.
- 19. 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 (construction) Agreements.
- 20. CONTRACT STAFF REQUIREMENTS** ~ 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 Wildlife or any other governmental entity.
- 21. EVALUATION OF CONTRACTOR (CONSULTANT AGREEMENTS ONLY)** ~ 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 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.

- 22. REQUIREMENTS FOR LEGAL AGREEMENTS ONLY** ~ In accordance with Public Contract Code § 10353.5, the Contractor shall:
- ❖ Agree to adhere to legal costs and billing guidelines designated by the State;
 - ❖ Adhere to litigation plans designated by the State;
 - ❖ Adhere to case phasing of activities designated by the State;
 - ❖ Submit and adhere to legal budgets as designated by the State;
 - ❖ Maintain legal malpractice insurance in an amount not less than the amount designated by the State;
 - ❖ Submit to legal bills legal bill audits and law firm audits if requested by the State or by any legal cost control providers retained by the State for this purpose; and
 - ❖ Submit to a legal cost and utilization review, as determined by the State.