



BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

December 23, 2010

Request for Qualifications No. 2010-008

Public Engagement Policy and Plan

The Bay Area Air Quality Management District (Air District) invites your firm to submit a Statement of Qualifications (SOQ) to assist the Air District with the creation of a district-wide Public Engagement Policy and Plan aimed at laying out guidance and tools for engaging stakeholders in District actions. The Air District intends to develop a Public Engagement Policy and a Public Engagement Plan to be approved by the Board of Directors to help provide the agency with consistency when working with the public.

This document constitutes the Request for Qualifications (RFQ) for this project. Responses should be submitted according to the instructions set forth in this RFQ. Any addenda to this RFQ that may be issued by the Air District will be posted at <http://www.baaqmd.gov/Divisions/Administration/RFP-RFQ/Open-RFP-RFQ.aspx>; it is the proposer's responsibility to check for addenda to this RFQ and comply with new or revised requirements that may be stated therein.

Statement of Qualifications Due Date

Firms must submit an original and five (5) copies, as well as one (1) electronic copy of their Statement of Qualifications (SOQ) by 4:00 p.m., January 21, 2011 to the Air District Administrative Analyst, Tom Flannigan. SOQs received after that date and time will not be considered. Submission of the electronic copy will not satisfy the SOQ submission deadline.

Submitted SOQs will be considered firm offers to enter into a contract to perform the work in connection with this RFQ for a period of one hundred twenty (120) days from their submission. The Air District reserves the right in its sole discretion not to enter into any contract as a result of this RFQ.

Small businesses, women-owned businesses and minority-owned businesses are encouraged to apply.

Air District Project Manager

SOQs and all inquiries relating to this RFQ shall be submitted to the Bay Area Air Quality Management District, Attention: Tom Flannigan, at the address shown below. E-mail inquiries may be directed to tflannigan@baaqmd.gov. For telephone inquiries call (415) 749-4748.

Bay Area Air Quality Management District
Tom Flannigan, Administrative Analyst
939 Ellis Street
San Francisco, CA 94109

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I. PURPOSE & PROJECT DESCRIPTION

A. Purpose

The Bay Area Air Quality Management District is the public agency entrusted with regulating stationary sources of air pollution in the nine counties that surround the San Francisco Bay: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, southwestern Solano, and southern Sonoma Counties.

The Air District is governed by a 22-member Board of Directors composed of locally elected officials from each of the nine Bay Area counties. The Board oversees policies and adopts regulations for the control of air pollution within the district. The Board appoints the Air District's Executive Officer/ Air Pollution Control Officer, who implements Board policies and gives direction to staff. The Air District is assisted by an Advisory Council that provides input to the Board and the Executive Officer on air quality matters. The Council is made up of 20 representatives from community, health, environmental, and other organizations. An independent, five-member Hearing Board serves to adjudicate regulatory compliance issues that may arise between the Air District and local industries, and also hears appeals of permitting decisions made by the Executive Officer. The Air District consists of over 350 staff members, including engineers, inspectors, planners, scientists, and other professionals.

The work of the Air District affects the region's entire population. The Air District executes public engagement efforts for a variety of its programs. In the Bay Area, a certain amount of air pollution comes from stationary industrial sources, such as refineries and power plants. But a greater percentage of harmful air emissions come from cars and trucks, construction equipment, and other mobile sources. California has more cars per household (1.8) than any other state, along with a thriving business economy and a continually expanding population. All of these factors contribute to the state's air quality challenges. There are three major types of air pollutants that constitute a public health concern for the Bay Area: ozone, particulate matter and toxic air contaminants.

Air District staff recently completed an *Assessment of Limited English Proficient Populations and Current Services*. This assessment reviewed the language needs of Bay Area residents and current practices by the District to meet these needs. Based on information captured in the *Assessment*, the Air District made a determination to develop an agency-wide policy and plan to ensure consistency across programs that addresses Air District stakeholders, including limited-English proficient populations.

The Air District seeks to develop a Public Engagement Policy and Plan that outlines a comprehensive set of strategies for communicating with diverse Air District stakeholders, such as: limited English proficient populations; minority populations; CARE impacted communities; city and county governments; nongovernmental organizations and community-based organizations; community residents in urban, rural and suburban populations; permit holders; and businesses and industrial organizations. The Plan should address a range of Air District programs, including: rule development, permitting, compliance assistance, enforcement, air quality planning, grants and incentives, public information and Air District councils and committees.

B. Project Description

The Air District is initiating an eight to nine-month process to develop a Public Engagement Policy and Plan that aims to:

- Enable the Air District decision makers to include residents and stakeholders in the Air District public engagement process;
- Provide the Air District with the guidance to incorporate diverse people, voices, ideas, and information to achieve quality outcomes;
- Help the Air District anticipate and address stakeholder concerns early in its processes so that outcomes are successful;
- Help the Air District establish open and transparent processes that the public can access and engage in;
- Promote a culture of participation with programs and stakeholders that supports ongoing quality public engagement.

The Air District reserves the right in its sole discretion to determine which Consultant's qualifications, experience, available resources and ability to perform according to the required schedule best suits the project.

The anticipated product of this process is an agency-wide policy and plan for consideration and approval by the Air District Board of Directors. This policy and plan should help the Air District achieve the above goals by outlining specific principles and procedures for engaging the breadth of the Air District stakeholders in the variety of Air District programs.

A summary of anticipated work for the project is provided in Appendix A: Summary of Anticipated Work, which includes tasks that illustrate the type of work that may be requested of the Consultant or consultant teams. All work will be assigned pursuant to Air District-initiated task orders. Payment for work performed under task orders may be based on deliverables or time and materials, as determined by the Air District. Each Task Order awarded by the Air District will include a specific scope of work based on the areas identified in Appendix A.

C. Areas of Consultant Expertise

The Air District seeks specific areas of Consultant expertise, including but not limited to:

- Experience developing and drafting Public Engagement Policies and Plans for public agencies with multi-county jurisdictions and regulatory authority;
- Proven understanding of best practices in public engagement policies and plans;
- Staff with academic background in public engagement and civic process;
- Experience developing four-factor analyses for limited English proficient speakers;
- Proven understanding of the demographics of the Bay Area, the Air District jurisdiction and functions;
- Experience working with and interacting with diverse stakeholders, such as: limited English proficient populations; minority populations; CARE impacted communities; city and county governments; nongovernmental organizations and community-based organizations; community residents in urban, rural and suburban populations; permit holders; and businesses and industrial organizations; and
- Experience facilitating stakeholder working groups with diverse interests and backgrounds.

II. SCHEDULE AND BUDGET

A. Schedule

The Air District expects the work to commence on or about March 9, 2010 and to be completed by October 31, 2011. At the Air District's sole option, the contract may be extended for additional work related to the *Summary of Anticipated Work* outlined in Appendix A.

A proposers' conference will be held on 10:00 a.m., January 13, 2011 at the District Headquarters, 939 Ellis St., San Francisco, in the 4th floor Conference Room. A tentative timeline for consultant selection is outlined below.

Tentative Consultant Selection Timeline

December 23, 2010	Issue RFQ
January 13, 2011 10:00 a.m.	Proposers' Conference
January 14, 2011 4:00 p.m.	Last day to submit inquiries/questions
January 21, 2011 4:00 p.m.	Deadline for submittal of quotes
January 24, 2011 through February 18, 2011	Evaluation of submissions
February 14-18	Interviews as needed
February 28, 2011	Contractor recommendation submitted to Board of Directors Public Outreach Committee for consideration
March 2, 2011	Contractor recommendation and contract amount submitted to Board of Directors for consideration
March 9, 2011	Execute contract and begin work

B. Budget

Funding for this project is subject to the Air District Board of Directors approval of consultant selection and contract amount. This project is budgeted for up to and may not exceed \$200,000.

III. FORM OF STATEMENT OF QUALIFICATIONS

Sections that should be included in each SOQ are described below. Page limits, where specified, are for single-sided print. Proposers are encouraged to print double-sided copies to save paper. Should Consultants choose to form teams to respond to this RFQ, the Air District encourages only forming teams should the team members and their respective disciplines naturally support one another in the completion of work stated in *Appendix A: Summary of Anticipated Work*.

A. Transmittal Letter

A transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm. The transmittal letter should include the name, telephone number and email of a contact person if different from the signatory. The letter should indicate that the SOQs are firm offers to enter into a contract to perform work related to this RFQ for a period of one hundred twenty (120) days from SOQ submission.

B. Title Page

Title page showing the RFQ subject, the name of the proposer's firm, address, telephone number, fax, name of contact person and email, and the date. Please also indicate the names of other firms if submitting as a team.

C. Qualifications and Experience

A detailed statement of the firm's qualifications and previous experience in conducting work similar to all items described in the *Summary of Anticipated Work* (Appendix A), and short resumes of the personnel the proposer intends to use to perform the task(s), summarizing the individual's training and experience relevant to items in relation to the areas of consultant expertise described below. This section should demonstrate experience and expertise of lead staff in all items included in Section I (C) and Appendix A. If subcontractors are used, include the resumes of key subcontractor personnel, as well. For clarity, a table is requested showing each proposed staff person and their applicable skills and/or areas of expertise relevant to Section I (C) and the *Summary of Anticipated Work*.

D. Similar Projects

A summary (no longer than one page each) of at least three (3) projects completed within five (5) years prior to the date of this RFQ similar in subject matter and scope to all items in the *Summary of Anticipated Work*. The summary must include the name of the client agency, the contract term and amount, and a contact person (with telephone number and e-mail) who may be contacted as a reference.

E. Air District Contracts

A list of any contracts with the Air District by the Consultant or any of its sub-consultants in the past three (3) years, including a brief description of the scope of work, the contract amount, date of execution and the Air District project manager.

F. Work Sample

Five copies of one report or final work product prepared by key members of the consultant team in which scope and details are comparable to those required as part of this project, which identifies the authors. The work sample will be considered in evaluating firm and staff expertise and experience, and written presentation effectiveness.

G. Hourly Rates

Provide the fully loaded hourly rates for all personnel to be used on the project, including sub-consultants. Fully-loaded hourly rate means an hourly rate that includes all applicable surcharges such as taxes, insurance and fringe benefits as well as indirect costs, overhead and profit allowance, and ordinary materials and supplies.

H. Statement of Firm's Environmental Stewardship

Include a statement regarding the firm's commitment to environmental stewardship. Include indication of participation in the Spare the Air Employer program, Green Business Program or other. Include indication of whether firm is local and address of office where work is expected to be completed.

I. Statement Regarding Participation of Small Businesses, Women-Owned Businesses, and Minority-Owned Businesses in SOQ

Please indicate whether any small businesses, women-owned businesses or minority owned businesses are participating in the consultant team.

IV. QUALIFICATIONS EVALUATION

A. Minimum Qualifications

The Administrative Analyst will conduct an initial review of the SOQs for responsiveness to ensure that each SOQ meets the minimum qualifications set out below. Proposers failing to meet the minimum qualifications will not be deemed responsive. To be eligible for Statement of Qualification evaluation, a firm must demonstrate that:

- The consultant, non-profit or academic institution has completed at least three (3) projects for government agency clients within the last five (5) years that are substantially similar to the work described in *Appendix A, Summary of Anticipated Work*.
- Lead staff identified in the SOQ must have individually held a similar role in at least (3) projects within the five (5) years prior to the date of this RFQ.

The Air District reserves the right to request additional information from responsive proposers prior to evaluation. Responsive SOQs will then be evaluated to determine whether they meet the minimum qualifications.

B. Evaluation

Responsive SOQs meeting the minimum qualifications in relation to Appendix A will then be evaluated by a panel of staff representatives from the Air District and possibly other partner agencies and organizations, based on the following evaluation factors, listed in order of relative importance.

1. Overall firm and proposed staff expertise and experience in relation to the areas of expertise sought by the Air District and the items identified in Appendix A.
2. Specific qualifications of lead staff for indicated tasks;

3. Communication skills and presentation effectiveness, including the abilities to write and present both qualitative and quantitative information in a clear and illustrative manner. Oral communication skills will be evaluated if interviews are held.
4. Hourly rates;
5. Completeness and clarity of SOQ, including responses to H and I; and
6. Demonstration of a Quality Assurance process in developing a work product.

An SOQ that fails to include one or more items requested in Section III may be considered responsive, if evaluation in every criterion is possible. Any SOQ that does not include enough information to permit the evaluators to rate the proposal in any one of the evaluation factors listed above will be considered non-responsive and will not be evaluated.

Following the evaluation, the panel may elect to recommend award to one Consultant or Consultant team. References may be checked for one or more firms prior to final evaluation.

The Air District reserves the right to not convene interviews and to make an award on the basis of written SOQs, alone. Further, the Air District reserves the right to accept or reject any and all submitted SOQs, to waive minor irregularities, and to request additional information from the firms at any stage of the evaluation.

C. Recommendation for Award

Based on the panel's evaluation, Air District staff will recommend a consultant or team of consultants as well as a proposed contract amount(s) to the Air District Public Outreach Committee and Board of Directors for approval. The Executive Officer may then enter into a contract with the selected firm(s).

Any awards made will be to firms that present qualifications that, in the opinion of the Air District, are the most advantageous to the Air District, based on the evaluation factors in Section IV.

V. GENERAL CONDITIONS

A. Limitations

This RFQ does not commit the Air District to award a contract or to pay any costs incurred in the preparation of a proposal in response to this RFQ.

B. Selection

The Air District intends to select the Consultant or Consultant team whose SOQ is most advantageous to the Air District, based on the evaluation criteria outlined above.

C. Binding Offer

A signed SOQ submitted to the Air District in response to this RFQ shall constitute a binding offer from Consultant or Consultant teams to contract with the according to the terms of the proposal for a period of one hundred twenty (120) days after its date of submission, which shall be the date SOQs are due to the Air District.

D. Contract Arrangements

A contract awarded by the Air District will include a general scope of work based on the areas identified Appendix A. The Air District reserves the right in its sole discretion to determine which consultant's qualifications, experience, available resources, ability to perform according to the required schedule, and hourly rates best suit the project.

The total budget by will be established upon entering the contract.

A sample Air District consultant contract is enclosed for your reference as Appendix B. If a proposer wishes to propose a change to any standard Air District contract provision, the provision and the proposed alternative language must be submitted prior to the closing date for receipt of requests for clarifications/exceptions listed above. If no such change is requested, the Consultant will be deemed to accept the Air District's standard contract provisions.

The selected Consultant will be required to maintain insurance coverage, during the term of the contract, at the levels described in the sample consultant contract. The Consultant agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements within five (5) days of the Air District's notice to firm that it is the successful proposer.

All work will be assigned pursuant to Air District-initiated task orders. Payment for work performed under task orders may be based on deliverables or time and materials, as determined by the Air District.

E. Public Records

This RFQ and any material submitted by a proposer in response to this RFQ are subject to public inspection under the California Public Records Act (Government Code § 6250 et seq.), unless exempt by law. Proposals and proposal evaluation records will remain confidential until the Air District Board of Directors or Public Outreach Committee is notified of staff recommendation for consultant selection.

F. Cost of SOQ Preparation

The Air District will not reimburse any Consultant for costs related to preparing and submitting an SOQ.

APPENDIX A: SUMMARY OF ANTICIPATED WORK

The services to be performed by the selected Consultant or Consultant teams shall consist of those directed by the Air District through signed task orders. The Air District reserves the right to determine which consultant's qualifications, experience, available resources and ability to perform according to the required schedule, best suit the project. Development of the policy and plan may include the following elements:

- Gathering stakeholder input through surveys, stakeholder interviews, focus groups, workshops, or other contractor recommended processes;
- Consideration of public engagement recommendations received from stakeholders;
- Development of tools to identify stakeholders for a variety of Air District programs and initiatives;
- Summary of best practices in public engagement policies and plans;
- Development of stakeholder-specific engagement strategies for Air District programs including: rule development, permitting, compliance assistance, enforcement, air quality planning, grants and incentives, public information, and Air District councils and committees;
- Implementation recommendations for stakeholder engagement strategies;
- Development, drafting and presentation of Public Engagement Policy and Plan;
- Four-factor analysis for limited English proficient speakers in the Air District jurisdiction based on U.S. EPA guidance;
- Cost estimates regarding engagement strategies;
- Solicitation of stakeholder feedback on plan form and content;
- Conduct workshops and/or training for Air District staff around plan development, plan content, and public engagement best practices; and
- Facilitation of stakeholder working group in development of policy and plan.

Additional, related work may also be required.

**APPENDIX B:
AIR DISTRICT STANDARD MASTER SERVICES AGREEMENT**

The selected consultant will be required to sign the Air District's Master Services Agreement. A sample copy of this agreement is pasted below.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

MASTER SERVICES CONTRACT

CONTRACT NO. [year]-[no.]

1. **PARTIES** – The parties to this Contract (“Contract”) are the Bay Area Air Quality Management District (“DISTRICT”) whose address is 939 Ellis Street, San Francisco, CA 94109, and [name of company or individual] (“CONTRACTOR”) whose address is [address, city, state, zip].
2. **RECITALS**
 - A. DISTRICT is the local agency with primary responsibility for regulating stationary source air pollution in the Bay Area Air Quality Management District in the State of California. DISTRICT is authorized to enter into this Contract under California Health and Safety Code Section 40701. DISTRICT desires to contract with CONTRACTOR for Services as defined herein. DISTRICT is entering into this Contract based on CONTRACTOR's stated qualifications to perform the Services.
 - B. All parties to this Contract have had the opportunity to have this contract reviewed by their attorney.
3. **DEFINITIONS**
 - A. “Purchase Order” shall mean the written or electronic document used by DISTRICT to track payments to CONTRACTOR under this Contract.
 - B. “Services” shall mean the services to be provided by CONTRACTOR hereunder as generally described in the General Description of Services, attached hereto as Attachment A and made a part hereof by this reference, and as specifically described in Task Orders issued pursuant to this Contract.
 - C. “Task Order” shall mean a written request by DISTRICT for specific services to be performed by CONTRACTOR.
4. **PERFORMANCE REQUIREMENTS**
 - A. CONTRACTOR is authorized to do business in the State of California. CONTRACTOR attests that it is in good tax standing with federal and state tax authorities.
 - B. CONTRACTOR agrees to obtain any and all required licenses, permits, and all other appropriate legal authorizations from all applicable federal, state and local jurisdictions and pay all applicable fees.
 - C. CONTRACTOR shall not engage in any performance of work during the term of this contract that is in direct or indirect conflict with duties and responsibilities set forth in the Scope of Work.
 - D. CONTRACTOR shall exercise the degree of skill and care customarily required by accepted professional practices and procedures.
 - E. CONTRACTOR shall ensure that any subcontractors, employees and agents performing under this Contract comply with the performance standards set forth in paragraph D above.
5. **TERM** – The term of this Contract is from [date] to [date], unless further extended by amendment of this Contract in writing, or terminated earlier. CONTRACTOR shall not submit any invoice for services performed under this Contract until the Contract is fully executed.

6. TERMINATION

- A. The DISTRICT may terminate this Contract at any time, at will, and without specifying any reason, by notifying CONTRACTOR in writing. The notice of termination shall specify the effective date of termination, which shall be no less than thirty (30) calendar days from the date of delivery of the notice of termination, and shall be delivered in accordance with the provisions of section 13 below. Immediately upon receipt of the notice of termination, CONTRACTOR shall cease all services under this Contract, except such services as are specified in the notice of termination. CONTRACTOR shall deliver a final invoice for all remaining services performed but not billed, including any services specified in the termination notice, on or before ten (10) business days following the termination date.
- B. Either party may terminate this Contract for breach by the other party.
- i) Failure to perform any agreement or obligation contained in this Contract or failure to complete the services in a satisfactory manner shall constitute a breach of the Contract.
 - ii) The non-breaching party may terminate the Contract by delivery of a written notice of breach. The notice of breach shall specify the date of termination, which shall be no earlier than ten (10) business days from delivery of the notice of breach. In the alternative, at its sole discretion, the non-breaching party may require the breaching party to cure the breach. The notice of breach shall specify the nature of the breach and the date by which such breach must be cured.
 - iii) If CONTRACTOR fails to perform any obligation under this Contract, DISTRICT at its sole discretion, may perform, or cause the performance, of the obligation itself. In that event, DISTRICT shall deduct the costs to perform such obligation and any other costs to cure the breach from the maximum amount available to CONTRACTOR under this Contract. DISTRICT's performance hereunder shall not be deemed a waiver or release of any obligation of, or default by, CONTRACTOR under this Contract.
 - iv) The notice of breach shall be provided in accordance with the notice requirements set forth in section 13.
 - v) The non-breaching party reserves all rights under law and equity to enforce this Contract and recover any damages.

7. INSURANCE

- A. CONTRACTOR shall maintain the following insurance:
- i) Workers' compensation and employers' liability insurance as required by California law or other applicable statutory requirements.
 - ii) Occurrence-based commercial general liability insurance or equivalent form with a limit of not less than one million dollars (\$1,000,000) each occurrence. Such insurance shall include DISTRICT and its officers, agents, and employees as additional insureds and shall be primary with respect to any insurance maintained by DISTRICT.
 - iii) Business automobile liability insurance or equivalent form with a limit of not less than one million dollars (\$1,000,000) each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles.
 - iv) [Optional] Professional liability insurance with limits not less than [to be determined by Business Manager] each claim.
- B. All insurance shall be placed with insurers acceptable to DISTRICT.
- C. Prior to commencement of work under this Contract, CONTRACTOR shall furnish properly-executed certificates of insurance for all required insurance. Upon request by DISTRICT, CONTRACTOR shall provide a complete copy of any required insurance policy. CONTRACTOR shall notify DISTRICT in writing thirty (30) days prior to cancellation or modification of any required insurance policy. Any such modifications are subject to pre-approval by DISTRICT.

D. If CONTRACTOR fails to maintain the required insurance coverage set forth above, DISTRICT reserves the right either to purchase such additional insurance and to deduct the cost thereof from any payments owed to CONTRACTOR or to terminate this Contract for breach.

8. INDEMNIFICATION

A. CONTRACTOR shall indemnify and hold DISTRICT, its officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Contract but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of CONTRACTOR, its officers, agents, employees.

B. DISTRICT shall indemnify and hold CONTRACTOR, its officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fee, or claims for injury or damages arising out of the performance of this Contract but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of DISTRICT, its officers, agents, employees.

9. AGREEMENT TO PROVIDE SERVICES

A. CONTRACTOR hereby agrees to provide to DISTRICT, as DISTRICT may from time to time designate, such services as DISTRICT may order by Task Order, all in accordance with and subject to the terms, covenants and conditions of this Contract. DISTRICT agrees to pay for these services ordered by DISTRICT in accordance with and subject to the terms, covenants and conditions of this Contract.

B. All Task Orders issued by DISTRICT to CONTRACTOR for services during the term of this Contract are subject to the provisions of this Contract as though fully set forth in such Task Order. In the event that the provisions of this Contract conflict with any Task Order issued by DISTRICT to CONTRACTOR, the provisions of this Contract shall govern. No other terms and conditions, including, but not limited to, those contained in CONTRACTOR's standard printed terms and conditions, on CONTRACTOR's order acknowledgment, invoices or otherwise, shall have any application to or effect upon or be deemed to constitute an amendment to or to be incorporated into this Contract, any Task Order, or any transactions occurring pursuant hereto or thereto, unless this Contract shall be specifically amended to adopt such other terms and conditions in writing by the parties.

C. Notwithstanding any other provision of this Contract to the contrary, DISTRICT shall have no obligation to order or purchase any services hereunder and the placement of any Task Order shall be in the sole discretion of DISTRICT. Without limiting the generality of the foregoing, the actual quantity of services to be purchased hereunder shall be determined by DISTRICT in its sole discretion. This Contract is not exclusive. CONTRACTOR expressly acknowledges and agrees that DISTRICT may purchase at its sole discretion, services that are identical or similar to the services described in this Contract from any third party.

10. TASK ORDERS – Each Task Order will specify the following items, as relevant: specific services requested, schedule for services, location where services are to be performed (with contact person), and cost or estimated cost of services. Each Task Order issued under this Contract shall be made part of, and be incorporated into this Contract, and shall reference this Contract on the face of each Task Order. Should any Task Order not conform to or satisfy the terms of this Contract, CONTRACTOR shall have five (5) business days after receipt to reject the Task Order. By not rejecting the Task Order within five (5) business days, CONTRACTOR will have accepted the Task Order. Acceptance by CONTRACTOR is limited to the provisions of this Contract and the Task Order. No additional or different provisions proposed by CONTRACTOR or DISTRICT shall apply. In addition, the parties

agree that this Contract and accepted Task Orders constitute a contract for services and satisfy all statutory and legal formalities of a contract.

11. PRICING, INVOICES, AND PAYMENT

- A. DISTRICT shall pay CONTRACTOR for all services ordered and provided in compliance with the terms and conditions of this Contract and with Task Orders issued under this Contract.
- B. CONTRACTOR shall submit original invoices to DISTRICT in form and substance and format reasonably acceptable to DISTRICT. Each invoice, including supporting documentation, must be prepared in duplicate on CONTRACTOR's letterhead; must list DISTRICT's contract number, Purchase Order Number, and the CONTRACTOR's Social Security Number or Federal Employer Identification Number; and must be submitted to: Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109, Attn: Contracts Manager.
- C. Except as specifically set forth in Attachment A or in Task Orders under this Contract, DISTRICT shall not be responsible for any additional costs or expenses of any nature incurred by CONTRACTOR in connection with the provision of the services, including without limitation travel expenses, clerical or administrative personnel, long distance telephone charges, etc.
- D. CONTRACTOR represents, warrants and covenants that the prices, charges and fees for services set forth in this Contract (on the whole) are at least as favorable as the prices, charges and fees CONTRACTOR charges (on the whole) to other of its customers or clients for the same or substantially similar services provided under the same or substantially similar circumstances, terms, and conditions. If CONTRACTOR agrees or contracts with other clients or customers similarly situated during the Term of this Contract, and offers or agrees to financial terms more favorable than those set forth herein (on the whole), CONTRACTOR hereby agrees that it will reduce the prices, charges and/or fees charged to DISTRICT in respect of the services hereunder to the most favorable rates received by those other clients or customers.

12. DISPUTE RESOLUTION – A party that disputes a notice of breach must first seek mediation to resolve the dispute in accordance with the provisions set forth below.

- A. Upon receipt of a notice of breach of contract, the party may submit a demand for mediation to resolve whether or not a breach occurred. The party must state the basis of the dispute and deliver the demand within ten (10) business days of the date of receipt of the notice of breach.
- B. The mediation shall take place at DISTRICT's office at 939 Ellis Street, San Francisco, or at such other place as may be mutually agreed upon by the parties and the mediator.
- C. The parties shall make good faith efforts to hold the mediation within thirty (30) days after receipt of the demand for mediation.
- D. Each party shall bear its own mediation costs.
- E. In the event the parties are unable to resolve the dispute, either party may file an action in a court of competent jurisdiction to enforce the Contract.
- F. Maximum recovery under this section shall be limited to the total value of all Task Orders issued under this Contract. The mediation costs shall not reduce the maximum amount recoverable under this section.

13. NOTICES – All notices that are required under this Contract shall be provided in the manner set forth herein, unless specified otherwise. Notice to a party shall be delivered to the attention of the person listed below, or to such other person or persons as may hereafter be designated by that party in writing. Notice shall be in writing sent by e-mail, facsimile, or regular first class mail. In the case of e-mail and facsimile communications, valid notice shall be deemed to have been delivered upon sending, provided the sender obtained an electronic confirmation of delivery. E-mail and facsimile communications shall be deemed to have been received on the date of such transmission, provided such date was a business day and delivered prior to 4:00 p.m. PST. Otherwise, receipt of e-mail and facsimile communications shall be deemed to have occurred on the following business day. In the

case of regular mail notice, notice shall be deemed to have been delivered on the mailing date and received five (5) business days after the date of mailing.

DISTRICT: Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109
Attn: [name]

CONTRACTOR: [company or individual name]
[street address]
[city, state, zip]
Attn: [company contact]

14. **ADDITIONAL PROVISIONS** – All attachment(s) to this Contract are expressly incorporated herein by this reference and made a part hereof as though fully set forth.

15. **EMPLOYEES OF CONTRACTOR**

- A. CONTRACTOR shall be responsible for the cost of regular pay to its employees, as well as cost of vacation, vacation replacements, sick leave, severance pay, and pay for legal holidays.
- B. CONTRACTOR, its officers, employees, agents, or representatives shall not be considered employees or agents of DISTRICT, nor shall CONTRACTOR, its officers, employees, agents, or representatives be entitled to or eligible to participate in any benefits, privileges, or plans, given or extended by DISTRICT to its employees.
- C. [Optional]CONTRACTOR shall assign those employees listed in the Cost Schedule to perform services under this Contract. CONTRACTOR shall not assign different employees to perform these services without the express written permission of DISTRICT, which DISTRICT will not unreasonably withhold.
- D. [Optional]DISTRICT reserves the right to review the credentials to perform the services for any of CONTRACTOR's employees assigned herein and to disapprove CONTRACTOR's assignments. CONTRACTOR warrants that it will not employ any subcontractor(s) without prior written approval from DISTRICT.

16. **CONFIDENTIALITY** – In order to carry out the purposes of this Contract, CONTRACTOR may require access to certain of DISTRICT's confidential information (including trade secrets, inventions, confidential know-how, confidential business information, and other information that DISTRICT considers confidential) (collectively, "Confidential Information"). It is expressly understood and agreed that DISTRICT may designate in a conspicuous manner Confidential Information that CONTRACTOR obtains from DISTRICT, and CONTRACTOR agrees to:

- A. Observe complete confidentiality with respect to such information, including without limitation, agreeing not to disclose or otherwise permit access to such information by any other person or entity in any manner whatsoever, except that such disclosure or access shall be permitted to employees of CONTRACTOR requiring access in fulfillment of the services provided under this Contract.
- B. Ensure that CONTRACTOR's officers, employees, agents, representatives, and independent contractors are informed of the confidential nature of such information and to assure by agreement or otherwise that they are prohibited from copying or revealing, for any purpose whatsoever, the contents of such information or any part thereof, or from taking any action otherwise prohibited under this section.
- C. Not use such information or any part thereof in the performance of services to others or for the benefit of others in any form whatsoever whether gratuitously or for valuable consideration, except as permitted under this Contract.

- D. Notify DISTRICT promptly and in writing of the circumstances surrounding any possession, use, or knowledge of such information or any part thereof by any person or entity other than those authorized by this section. Take at CONTRACTOR's expense, but at DISTRICT's option and in any event under DISTRICT's control, any legal action necessary to prevent unauthorized use of such information by any third party or entity which has gained access to such information at least in part due to the fault of CONTRACTOR.
 - E. Take any and all other actions necessary or desirable to assure such continued confidentiality and protection of such information during the term of this Contract and following expiration or termination of the Contract.
 - F. Prevent access to such materials by a person or entity not authorized under this Contract.
 - G. Establish specific procedures in order to fulfill the obligations of this section.
17. INTELLECTUAL PROPERTY RIGHTS – Title and full ownership rights to all intellectual property developed under this Contract shall at all times remain with DISTRICT, unless otherwise agreed to in writing.
18. PUBLICATION
- A. DISTRICT shall approve in writing any report or other document prepared by CONTRACTOR in connection with performance under this Contract prior to dissemination or publication of such report or document to a third party. DISTRICT may waive in writing its requirement for prior approval.
 - B. Until approved by DISTRICT, any report or other document prepared by CONTRACTOR shall include on each page a conspicuous header, footer, or watermark stating “DRAFT – Not Reviewed or Approved by BAAQMD,” unless DISTRICT has waived its requirement for prior approval pursuant to paragraph A of this section.
 - C. Information, data, documents, or reports developed by CONTRACTOR for DISTRICT, pursuant to this Contract, shall be part of DISTRICT's public record, unless otherwise indicated. CONTRACTOR may use or publish, at its own expense, such information, provided DISTRICT approves use of such information in advance. The following acknowledgment of support and disclaimer must appear in each publication of materials, whether copyrighted or not, based upon or developed under this Contract.

“This report was prepared as a result of work sponsored, paid for, in whole or in part, by the Bay Area Air Quality Management District (District). The opinions, findings, conclusions, and recommendations are those of the author and do not necessarily represent the views of the District. The District, its officers, employees, contractors, and subcontractors make no warranty, expressed or implied, and assume no legal liability for the information in this report.”
 - D. CONTRACTOR shall inform its officers, employees, and subcontractors involved in the performance of this Contract of the restrictions contained herein and shall require compliance with the above.
19. NON-DISCRIMINATION – In the performance of this Contract, CONTRACTOR shall not discriminate in its recruitment, hiring, promotion, demotion, and termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, marital status, sexual orientation, medical condition, or physical or mental disability and shall comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, Executive Order No. 11246 (30 Federal Register 12319), and all administrative rules and regulations issued pursuant to said Acts and Order. CONTRACTOR shall also require each subcontractor performing services in connection with

this Contract to comply with this section and shall include in each contract with such subcontractor provisions to accomplish the requirements of this section.

20. PROPERTY AND SECURITY – Without limiting CONTRACTOR’S obligations with regard to security, CONTRACTOR shall comply with all the rules and regulations established by DISTRICT for access to and activity in and around DISTRICT’S premises.
21. ASSIGNMENT – No party shall assign, sell, license, or otherwise transfer any rights or obligations under this Contract to a third party without the prior written consent of the other party, and any attempt to do so shall be void upon inception.
22. WAIVER – No waiver of a breach, of failure of any condition, or of any right or remedy contained in or granted by the provisions of this Contract shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies. Further, the failure of a party to enforce performance by the other party of any term, covenant, or condition of this Contract, and the failure of a party to exercise any rights or remedies hereunder, shall not be deemed a waiver or relinquishment by that party to enforce future performance of any such terms, covenants, or conditions, or to exercise any future rights or remedies.
23. ATTORNEYS’ FEES – In the event any action is filed in connection with the enforcement or interpretation of this Contract, each party shall bear its own attorneys’ fees and costs.
24. FORCE MAJEURE – Neither DISTRICT nor CONTRACTOR shall be liable for or deemed to be in default for any delay or failure in performance under this Contract or interruption of services resulting, directly or indirectly, from acts of God, enemy or hostile governmental action, civil commotion, strikes, lockouts, labor disputes, fire or other casualty, judicial orders, governmental controls, regulations or restrictions, inability to obtain labor or materials or reasonable substitutes for labor or materials necessary for performance of the services, or other causes, except financial, that are beyond the reasonable control of DISTRICT or CONTRACTOR, for a period of time equal to the period of such force majeure event, provided that the party failing to perform notifies the other party within fifteen calendar days of discovery of the force majeure event, and provided further that that party takes all reasonable action to mitigate the damages resulting from the failure to perform. Notwithstanding the above, if the cause of the force majeure event is due to party’s own action or inaction, then such cause shall not excuse that party from performance under this Contract.
25. SEVERABILITY – If a court of competent jurisdiction holds any provision of this Contract to be illegal, unenforceable or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them will not be affected.
26. HEADINGS – Headings on the sections and paragraphs of this Contract are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Contract.
27. DUPLICATE EXECUTION – This Contract is executed in duplicate. Each signed copy shall have the force and effect of an original.
28. GOVERNING LAW – Any dispute that arises under or relates to this Contract shall be governed by California law, excluding any laws that direct the application to another jurisdiction’s laws. Venue for resolution of any dispute that arises under or relates to this Contract, including mediation, shall be San Francisco, California.
29. ENTIRE CONTRACT AND MODIFICATION – This Contract represents the final, complete, and exclusive statement of the agreement between the parties related to CONTRACTOR providing services to DISTRICT and supersedes all prior and contemporaneous understandings and agreements

of the parties. No party has been induced to enter into this Contract by, nor is any party relying upon, any representation or warranty outside those expressly set forth herein. This Contract may only be amended by mutual agreement of the parties in writing and signed by both parties.

30. SURVIVAL OF TERMS – The provisions of sections 8 (Indemnification), 16 (Confidentiality), 17 (Intellectual Property Rights), and 18 (Publication) shall survive the expiration or termination of this Contract.

IN WITNESS WHEREOF, the parties to this Contract have caused this Contract to be duly executed on their behalf by their authorized representatives.

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

[company name]

By: _____
Jack P. Broadbent
Executive Officer/APCO

By: _____
[name]
[title]

Date: _____

Date: _____

Approved as to form:
District Counsel

By: _____
Brian C. Bunger
District Counsel