

**OPC CONTRACT FOR PROFESSIONAL SERVICES 11/08**

**Standard Provisions**

**EXPENDITURE OF FUNDS AND ALLOCATION OF FUNDING AMONG BUDGET ITEMS**

The contractor shall expend funds in the manner described in the budget included under the "SCOPE OF CONTRACT" section, above. The allocation of funds among the items in the budget may vary by as much as ten percent without approval by the Executive Officer. Any difference of more than ten percent must be approved in writing by the Executive Officer. The Conservancy may withhold payment for changes in particular budget items which exceed the amount allocated in the approved budget by more than ten percent and which have not received the approval required above. The total amount of this contract may not be increased except by amendment to this contract. Any increase in the funding for any particular budget item shall mean a decrease in the funding for one or more other budget items unless there is a written amendment to this contract.

**INDEMNIFICATION AND HOLD HARMLESS**

The contractor shall be responsible for, indemnify and save harmless the Conservancy, the Ocean Protection Council, and their officers, agents and employees from any and all liabilities, claims, demands, damages, or costs, including without limitation litigation costs and attorneys fees, resulting from or arising out of the willful or negligent acts or omissions of the contractor, its officers, agents, subcontractors and employees, or in any way connected with or incident to this contract, except for the active negligence of the

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Conservancy, the Ocean Protection Council, and their officers, agents or employees. The duty of the contractor to indemnify and save harmless includes the duty to defend as set forth in Civil Code section 2778.

The contractor waives any and all rights to any type of express or implied indemnity or right of contribution from the State, its officers, agents or employees, for any liability resulting from, growing out of, or in any way connected with or incident to this contract.

**INSURANCE**

Throughout the term of this contract, the contractor shall procure and maintain insurance, as specified in this section, against claims for injuries to persons or damage to property that may arise from or in connection with any activities by the contractor or its agents, representatives, employees, or subcontractors associated with the project undertaken pursuant to this contract.

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:
  - a. Insurance Services Office (“ISO”) Commercial General Liability coverage (occurrence Form CG 0001) **or** ISO Comprehensive General Liability form (1973) or comparable with Broad Form Comprehensive General Liability endorsement.

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- b. Automobile Liability coverage - ISO Form Number CA 0001, Code 1 (any auto).
- c. Workers' Compensation insurance as required by the Labor Code of the State of California.

**[Include d. only if the contract is for "professional services", the most typical of which includes architect, engineer, software design, accounting .]**

- d. Errors and Omissions Liability insurance appropriate to the contractor's profession.

- 2. Minimum Limits of Insurance. The contractor shall maintain limits no less than:

**[Include 2(c) below only if 1(d) under "Minimum Scope of Insurance," above, has been included. If not, then delete 2(c) (by placing the cursor next to each paragraph number and then using: "Table" menu – "Delete" – "Rows").]**

- a. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to the activities under this contract or the general aggregate limit shall be twice the required occurrence limit.  
*(Including operations, products and completed operations, as applicable)*

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- b. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
  
- c. Errors and Omissions: \$1,000,000 per occurrence.
  
- 3. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Executive Officer.
  
- 4. Required Provisions. Each insurance policy required by this section shall be endorsed to state that coverage shall not be canceled by either party, except after thirty days' prior written notice by certified mail, return receipt requested, has been given to the Conservancy. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
  - a. The State of California, its officers, agents and employees are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the contractor; and with respect to liability arising out of work or operations performed by or on behalf of the contractor including materials, parts or equipment furnished in connection with such work or operations.

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- b. For any claims related to this contract, the contractor's insurance coverage shall be primary insurance as respects the State of California, its officers, agents and employees.
  - c. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of section 2782 of the Civil Code.
5. Acceptability of Insurers. Insurance is to be placed with insurers admitted to transact business in the State of California and having a Best's rating of "B+" or better or, in the alternative, acceptable to the Conservancy and approved in writing by the Executive Officer.
6. Subcontractors. The contractor shall include all subcontractors as insureds under its policies or shall require each subcontractor to provide and maintain coverage consistent with the requirements of this section.
7. Verification of Coverage. The contractor shall furnish the Conservancy with original certificates, in the form attached as Exhibit \_\_\_ to this contract, **[exhibit follows at end of model contract, below—fill in highlighted areas]** and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Executive Officer before

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work commences. The Conservancy reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage, at any time.

8. Premiums and Assessments. The Conservancy is not responsible for premiums and assessments on any insurance policy.

**[Include the following section only if requiring “Errors and Omissions” insurance under section 1(d) above:**

9. Claims Made. If errors-and-omissions coverage is written on a claims-made form:
  - a. The “Retro Date” must be shown, and must be before the date of this contract or the beginning of work.
  - b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the work.
  - c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a “Retro Date” prior to the effective date, the Contractor must purchase “extended reporting” coverage for a minimum of five years after completion of the work under this contract.
  - d. A copy of the claims reporting requirements must be submitted to the Executive Officer for review.

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**NONDISCRIMINATION**

During the performance of this contract, the contractor and its subcontractors shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, ethnic group identification, physical disability (including HIV and AIDS), mental disability, medical condition, marital status, age (over 40) or sexual orientation (Government Code section 12940). The contractor and its subcontractors also shall not unlawfully deny a request for or take unlawful action against any individual because of the exercise of rights related to family-care leave (Government Code sections 12945.1 and 12945.2). The contractor and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination, harassment and unlawful acts.

Pursuant to Government Code section 12990, the contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.) and the applicable regulations (California Code of Regulations, Title 2, section 7285.0 et seq.). The regulations of the Fair Employment and Housing Commission regarding contractor Nondiscrimination and Compliance (Chapter 5 of Division 4 of Title 2 of the California Code of Regulations) are incorporated into this contract by this reference.

The contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. This nondiscrimination clause shall be included in all subcontracts entered into by the contractor to perform work provided for under this contract.

**[Add the following section if the contract total is \$100,000 or more (need to add if amendment creates total consideration of \$100,000 or more):]**

**NONDISCRIMINATION IN PROVISION OF BENEFITS - DOMESTIC PARTNERS**

The contractor certifies that it is in compliance with Public Contract Code section 10295.3, which prohibits discrimination in the provision of benefits as between the contractor's employees with spouses and its employees with domestic partners and as between the domestic partners of its employees and the spouses of its employees.

**AUDITS/ACCOUNTING/RECORDS**

The contractor shall maintain financial accounts, documents, and records (collectively, "records") relating to this contract, in accordance with the guidelines of "Generally

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Accepted Accounting Principles” published by the American Institute of Certified Public Accountants. The records shall include, without limitation, evidence sufficient to reflect properly the amount, receipt, deposit, and disbursement of all funds related to the services that the contractor is providing, and time and effort reports. The contractor shall maintain adequate supporting records in a manner that permits tracing of transactions from the invoices to the accounting records and to the supporting documentation.

The contractor shall retain these records for three years following the date of final disbursement by the Conservancy under this contract, regardless of the termination date. The records shall be subject to examination and audit by the Conservancy and the Bureau of State Audits during this period.

Additionally, the Conservancy, the Ocean Protection Council, and their respective agents may review, obtain, and copy all records relating to performance of the contract. The contractor shall provide the Conservancy, the Ocean Protection Council, and their respective agents with any relevant information requested and shall permit the Conservancy, the Ocean Protection Council, and their agents access to the contractor’s premises, upon reasonable notice, during normal business hours, to interview employees and inspect and copy books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this contract and any applicable laws and regulations. The contractor shall maintain these records for a period of three years after final payment under the contract.

If the contractor retains any subcontractors to accomplish any of the work of this contract, the contractor shall first enter into a contract with each subcontractor requiring the subcontractor to meet the terms of this section and to make the terms applicable to all lower-tier subcontractors.

The Conservancy may disallow all or part of the cost of any activity or action that it determines to be not in compliance with the requirements of this contract.

### **INDEPENDENT CONTRACTOR STATUS**

The contractor shall maintain its status as an independent contractor as defined in section 3353 of the California Labor Code. To this end, the contractor shall be under the control of the State, acting through its agent, the Conservancy, but only as to the results of its work and not as to the means by which the results are accomplished.

**[Include the following section unless the performance of the contract will not involve any purchase or use of computer software:]**

### **COMPUTER SOFTWARE**



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The contractor certifies that it has instituted and will employ systems and controls appropriate to ensure that, in the performance of this contract, state funds will not be used for the acquisition, operation or maintenance of computer software in violation of copyright laws.

**[Add the following section if the contract total is more than \$200,000:]**

**PRIORITY HIRING CONSIDERATIONS**

To the extent required by Public Contract Code section 10353, the contractor shall give priority consideration in filling vacancies in positions funded by this contract to qualified recipients of aid under Chapter 2 (commencing with section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, in accordance with Article 3.9 (commencing with section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

**[Add the following section and the “Certification of Compliance . . .” Exhibit, only where the predominant purpose of the contract is to supply goods, as opposed to services.]**

**GOODS MADE WITH FORCED LABOR**

By signing this contract, the contractor certifies and agrees that it will comply with Public Contract Code section 6108, and that no equipment, materials, or supplies furnished under this contract will be or have been produced in whole or in part by, or with the benefit of, sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor, or exploitation of children in a sweatshop. The contractor shall cooperate fully in providing reasonable access to the contractor’s records, documents, agents, employees, or premises if reasonably required by the Conservancy or by the Department of Industrial Relations or the Department of Justice to determine compliance with section 6108.

**[Add the following section if the contract total is more than \$100,000:]**

**FAMILY-SUPPORT OBLIGATIONS**

The contractor acknowledges the state policy contained in Public Contract Code section 7110, that state contractors recognize the importance of child- and family-support obligations and fully comply with all applicable state and federal laws relating to child- and family-support enforcement. In executing this contract, the contractor represents that, to the best of the contractor’s knowledge, the contractor is fully complying with the earnings-assignment orders of all employees and is providing the names of all new employees the New Hire Registry maintained by the Employment Development Department.

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**DRUG-FREE WORKPLACE REQUIREMENTS**

By signing this contract the contractor certifies that it will comply with the requirements of the Drug-Free Workplace Act of 1990, commencing at Government Code section 8350. The Act generally requires the contractor to notify its employees that illegal drug distribution, use or possession is prohibited and will be subject to disciplinary action and to establish a drug awareness program that, in addition, informs employees about the dangers of drug abuse in the workplace and about any available employee assistance programs.

**NATIONAL LABOR RELATIONS BOARD**

By signing this contract, the contractor states under penalty of perjury that, during the two-year period immediately preceding the date of the contract, no more than one final unappealable finding of contempt of court has been issued against the contractor for failure to comply with an order of the National Labor Relations Board.

**AIR AND WATER POLLUTION**

In accordance with Government Code section 4477, the contractor represents that it is not in violation of any order or resolution of the State Air Resources Board or an air pollution control district, and is not subject to a cease and desist order issued pursuant to section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions, and has not been finally determined to be in violation of provisions of federal law relating to air or water pollution.

**RECYCLING CONTENT**

In accordance with Public Contract Code section 12205, the contractor certifies under penalty of perjury that at least \_\_\_ percent of the materials, goods, or supplies offered, or products used in the performance of this contract will qualify as post-consumer material and at least \_\_\_ percent as secondary material as defined in Public Contract Code section 12200.

**SETTLEMENT OF DISPUTES**

If any dispute arises out of this contract, the contractor shall file a "Notice of Dispute" with the Executive Officer within ten days of discovery of the problem. Within ten days of such notification, the Executive Officer shall meet with the contractor and designated Conservancy staff members for the purpose of resolving the dispute. If the Executive

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Officer is unable to resolve the dispute to the contractor's satisfaction, the contractor may proceed under Government Code sections 900 et seq. with any claims against the Conservancy arising out of this contract.

**CONTRACTOR IDENTIFICATION AND EVALUATION**

Within thirty days of completion of all work described in the "Scope of Contract," the contractor shall be evaluated by Conservancy staff. The evaluation shall be kept with records of this contract at the Conservancy's offices. If negative, a copy shall be sent (as required by law) to the Department of General Services, Legal Office. The evaluation shall be made available to the contractor upon request.

**EXECUTIVE OFFICER'S DESIGNEE**

The Executive Officer shall designate a Conservancy project manager who shall have authority to act on behalf of the Executive Officer with respect to this contract. The Executive Officer shall notify the contractor of the designation in writing.

**AMENDMENT**

This contract may be modified only upon written agreement of the parties. However, the schedule [as provided in the **SCOPE OF CONTRACT** section, above] may be modified by written letter of the contractor countersigned by the Executive Officer, and that modification shall have the same effect as if included in the text of this contract.

**ASSIGNMENT, SUBCONTRACTING AND DELEGATION**

The contractor has been selected to provide the services and perform the tasks of this contract because of its unique skills and experience. Except as expressly provided in this contract, the contractor shall not assign, subcontract or delegate any of the services and tasks to be performed, without written authorization by the Executive Officer.

**TIMELINESS**

Time is of the essence in this contract.

**LOCUS**

This contract is deemed entered into in the County of Alameda.

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# CERTIFICATE OF INSURANCE

State Coastal Conservancy, State of California

ISSUE DATE ( \_ / \_ / \_ )

Contract #: 0 - SCC Project Mgr:

<b>PRODUCER (Agent or Broker)</b>	THIS CERTIFICATE OF INSURANCE IS NOT AN INSURANCE POLICY AND DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.  <b>BEST'S RATING</b>  <b>COMPANIES</b>  COMPANY LETTER <b>A</b> _____ COMPANY LETTER <b>B</b> _____ COMPANY LETTER <b>C</b> _____ COMPANY LETTER <b>D</b> _____
<b>INSURED</b>	

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS ARE SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	ALL LIMITS IN THOUSANDS	
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY or <input type="checkbox"/> COMPREHENSIVE GENERAL LIABILITY <input type="checkbox"/> ISO form (1973) or comparable with Broad Form Comprehensive General Liability endorsement . <input type="checkbox"/> Other: _____  <input type="checkbox"/> OCCURENCE <input type="checkbox"/> OTHER _____  <input type="checkbox"/> General Aggregate applies per project				EACH OCCURRENCE	\$
					FIRE DAMAGE (Any one fire)	\$
					MEDICAL EXPENSE (any one person)	\$
					PERSONAL & ADVERTISING INJURY	\$
					GENERAL AGGREGATE	\$
					PRODUCTS-COMP/OPS AGGREGATE	\$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO (ISO Form Number CA 0001, Code or equivalent.)  <input type="checkbox"/> OTHER: _____ <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NONOWNED AUTOS <input type="checkbox"/> GARAGE LIABILITY				COMBINED SINGLE LIMIT (each accident)	\$
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE	\$
	<b>EXCESS LIABILITY</b> <input type="checkbox"/> UMBRELLA <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE	\$
					AGGREGATE	\$
	<input type="checkbox"/> <b>WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY</b>				STATUTORY	\$
					EACH ACCIDENT	\$
					DISEASE-POLICY LIMIT	\$
					DISEASE-EACH EMPLOYEE	\$
	<b>ERRORS &amp; OMISSIONS</b> DESCRIBE: _____ <input type="checkbox"/> OCCURENCE				EACH Occurrence	\$

DESCRIPTION OF OPERATIONS/LOCATION/VEHICLES/RESTRICTION/DEDUCTIBLES/SELF INSURED RETENTIONS/SPECIAL ITEMS

**THE FOLLOWING PROVISIONS APPLY:**

- None of the above-described policies will be canceled until after 30 days' written notice has been given to the State Coastal Conservancy at 1330 Broadway, 13<sup>th</sup> Floor, Oakland, CA 94612.
- The State of California (State), its officials, officers, employees and volunteers are added as insureds on all liability insurance policies listed ABOVE.
- It is agreed that any insurance or self-insurance maintained by the State will apply in excess of and not contribute with, the insurance described above.
- All rights of subrogation under the property insurance policy listed above have been waived against the State.
- The workers' compensation insurer named above, if any, agrees to waive all rights of subrogation against the State for injuries to employees of the insured resulting from work for the State or use of the State's premises or facilities.

<b>CERTIFICATE HOLDER/ADDITIONAL INSURED</b>	<b>AUTHORIZED REPRESENTATIVE</b>
State of California	SIGNATURE _____ TITLE _____ PHONE NO. _____

EXHIBIT