



BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT

September 20, 2012

Request for Proposals No. 2012-015

**CEQA Analysis for the Bay Area and Monterey Bay  
Plug-In Electric Vehicle Readiness Plan**

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**SECTION I – SUMMARY**

This Request for Proposals (RFP) solicits proposals from qualified bidders to provide assistance in conducting environmental review of the Bay Area and Monterey Bay Plug-In Electric Vehicle Readiness Plan for adoption by the Bay Area Air Quality Management District (District).

**Proposals must be received at the Air District offices by 1:00 p.m. on Wednesday, October 10, 2012. Late proposals will not be considered.** To respond to this RFP, an interested company should submit two (2) hard copies and one (1) electronic copy (in Microsoft Word or Adobe PDF format) of its proposal to:

**Tom Flannigan, Administrative Analyst, [tflannigan@baaqmd.gov](mailto:tflannigan@baaqmd.gov)  
Bay Area Air Quality Management District  
939 Ellis Street, San Francisco, California, 94109**

Proposals must address all information requested in this RFP. A proposal may add information not requested in this RFP, but the information should be in addition to, not instead of, the requested information and format. Minority business enterprises, women's business enterprises, and Certified Green Businesses are encouraged to submit proposals.

**Any questions regarding this RFP should be directed to Tom Flannigan at [tflannigan@baaqmd.gov](mailto:tflannigan@baaqmd.gov).**

## SECTION II – BACKGROUND

The District is a regional governmental agency that regulates air pollution in the San Francisco Bay Area. The District includes Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, southwestern Solano, and southern Sonoma counties.

The District, in coordination with its partners—the Association of Bay Area Governments (ABAG), the Metropolitan Transportation Commission (MTC), the Bay Area Clean Cities Coalitions (San Francisco, East Bay, and Silicon Valley), the Bay Area EV Strategic Council, the Monterey Bay Electric Vehicle Association (MBEVA), and other stakeholders—is developing a regional plug-in electric vehicle (PEV) readiness plan for the Bay Area (Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano and Sonoma counties) and Monterey Bay (Monterey, Santa Cruz, and San Benito counties) regions.

The District is the recipient of grants from the United States Department of Energy (DOE) and the California Energy Commission (CEC) under the following solicitations respectively: "Clean Cities Community Readiness and Planning for Plug-In Electric Vehicle Charging Infrastructure Funding Opportunity Number: DE- FOA-0000451", dated April 19, 2011, and "Alternative and Renewable Fuel and Technology Vehicle Program-Solicitation Number PON-10-602, Regional Plans to Support Plug-In Electric Vehicle Readiness", dated May 12, 2011. The development of the PEV Readiness Plan for the Bay Area and Monterey Bay regions (Plan)—that is being prepared in response to the elements outlined in the funding agreements with the DOE and the CEC—will seek to identify the systems and resources that are needed to support accelerated PEV deployment, infrastructure, investment, and readiness in the region. A key component of the process will be to conduct a review of the potential environmental impacts associated with the adoption of the Plan.

A Draft Plan is scheduled for release to the public on September 20, 2012, and will be available at: <http://www.bayareapevready.org/participate/process/>.

The following additional background material is available for bidders who are interested in submitting a proposal in response to this RFP:

- **Materials related to the DOE Requirements:**
  - **APPENDIX I: Listing of DOE Required Plan Elements.** These are the planning elements required by the DOE grant.
  - **APPENDIX II: Plan Outline.** Contains an expanded description for each section of the Plan.
- **Materials related to the development of the PEV Readiness Plan:**
  - **[The Bay Area and Monterey Bay Local Best Practices Document:](#)** Highlights community actions, best practices, and local resources to get ready for PEVs in the Region.
  - **[The Bay Area and Monterey Bay Planning Concepts Document:](#)** Provides an introduction to the PEV ecosystem, with a goal of identifying the key planning elements that require further research, analysis, and planning to help the region achieve the goal of being PEV Ready.

## SECTION III – INSTRUCTIONS TO BIDDERS

### A. General

1. All proposals must be made in accordance with the conditions of this RFP. Failure to address any of the requirements is grounds for rejection of this proposal.
2. All information should be complete, specific, and concise as possible.
3. Proposals should include any additional information that the respondent deems pertinent to the understanding and evaluation of the bid.
4. The District may modify the RFP or issue supplementary information or guidelines during the proposal preparation period prior to the due date. Please check our website for updates.
5. Proposals shall constitute firm offers. Once submitted, proposals cannot be altered without the written consent of the District, but proposals may be withdrawn.
6. The District reserves the right to reject any and all proposals.
7. The total quotation for this project shall not exceed \$70,000.
8. All questions must be in written form and directed to Tom Flannigan and arrive no later than **1 PM Monday, October 1, 2012**. All questions will be answered in writing in the order received and posted on the BAAQMD RFP webpage by **4 PM Thursday, October 4, 2012**.
9. The cost for developing the proposal is the responsibility of the bidder, and shall not be chargeable to the Air District.

### B. Submittal of Proposals

All proposals must be prepared and submitted according to the specifications set forth in Section V and this section. Failure to adhere to these specifications may be cause for the rejection of the proposal.

1. Two hard copies and one electronic copy (in Microsoft Word or Adobe PDF format) of the proposals must arrive at the address below (also specified in Section I) **by 1:00 p.m. on Wednesday, October 10, 2012**, and should be directed to:

**Tom Flannigan, Administrative Analyst, [tflannigan@baaqmd.gov](mailto:tflannigan@baaqmd.gov)  
Bay Area Air Quality Management District  
939 Ellis Street, San Francisco, CA 94109**

2. Proposals received after the time and date, previously specified, will not be considered.
3. Signature – All proposals should be signed by an authorized representative of the bidder.
4. Submittal – Submit two (2) complete hard copies and one (1) electronic copy (in Microsoft Word or Adobe PDF format) of the proposal in a sealed envelope. Electronic submissions will be acknowledged with a return email.

Plainly mark the upper, left-hand corner with the name and address of the bidder and the RFP number. Late proposals will not be accepted. Any correction or re-submission of proposals will not extend the submittal due date.

5. Addenda – The Air District may modify this RFP and/or issue supplementary information or guidelines relating to the RFP during the proposal preparation period.
6. Grounds for Rejection – A proposal may be immediately rejected at any time after the deadline; if it is not in the prescribed format; or if it is not signed by an individual who is authorized to represent the firm.
7. Disposition of the Proposals – All responses to this RFP become property of the Air District and will be kept confidential until a recommendation for award of a contract has been announced. Thereafter, submittals are subject to public inspection and disclosure under the California Public Records Act. If a respondent believes that any portion of its submittal is exempt from public disclosure, it may mark that portion “confidential.” The Air District will use reasonable means to ensure that such confidential information is safeguarded, but will not be held liable for inadvertent disclosure of the information. Proposals marked “confidential” in their entirety will not be honored, and the Air District will not deny public disclosure of any portion of submittals so marked.

By submitting a proposal with portions marked “confidential,” a respondent represents it has a good faith belief that such portions are exempt from disclosure under the California Public Records Act and agrees to reimburse the Air District for, and to indemnify, defend, and hold harmless the Air District, its officers, employees, and agents, from and against any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs, and expenses, including without limitation, attorneys’ fees, expenses, and court costs of any nature whatsoever, arising from or relating to the Air District’s non-disclosure of any such designated portions of a proposal.

8. Modification – Once submitted, proposals, including the composition of the contracting team, cannot be altered without prior written consent of the Air District. All proposals shall constitute firm offers valid for ninety (90) days from due date.

**C. Interviews**

1. The Air District, at its option, may interview bidders. The interviews will be for the purpose of clarifying the proposals.
2. Submittal of new proposal material at an interview will not be permitted.

**D. District Requirements**

An example of a typical contract for professional services used by the Air District that contains standard Air District requirements is included in Section VII.

## SECTION IV – SCOPE OF WORK AND TIMELINE

### A. Scope of Work

Selected contractor will prepare CEQA analyses and appropriate CEQA documents related to the District's Bay Area and Monterey Bay Plug-In Electric Vehicle (PEV) Readiness Plan.

The contract will be structured in phases with Task Orders to be issued for each of the required stage of the CEQA analysis. The first Task Order will be for the preparation of an Initial Study and associated filings. If the Initial Study finds that preparation of additional analysis including an Environmental Impact Report is required for the Plan, additional Task Orders will be issued for those portions of the project.

The CEQA analysis and preparation of the Initial Study for this project will be completed within 30 days once the draft Final Plan is received. If requested, District staff will provide information about affected facilities and known potential environmental impacts of the Bay Area and Monterey Bay PEV Readiness Plan.

Depending on the level of analysis that is required, the Scope of Work will include either a portion or all of the following tasks:

#### 1. Task Order 1: Initial Study:

- i. The consultant shall prepare an Initial Study of potential impacts that may result upon adoption of the PEV Readiness Plan.
- ii. The Initial Study should contain sufficient information in order for District staff to determine the level of environmental review necessary to comply with CEQA requirements.

#### 2. Task Order 2: Negative Declaration or Mitigated Negative Declaration (Path 1); OR Environmental Impact Report (Path 2):

- i. If necessary, the consultant shall prepare a Notice of Preparation (NOP), including a project description and list of probable environmental effects of the PEV Readiness Plan. In addition, the consultant will review and assess NOP comments and prepare responses.
- ii. The consultant will be responsible for attending no more than three (3) District Mobile Source Committee / District Board of Directors meetings (one of which will be a public hearing). The consultant will work with Air District staff in the development of presentation materials for the meetings. The consultant will be responsible for recording all public and Board comments, including a summary of comments within the environmental document.
- iii. The consultant will prepare an administrative draft of the environmental document for internal District staff review and comment. District comments will then be incorporated into the draft environmental document. The draft environmental document will include all sections required by CEQA.
- iv. The consultant will confer with potential affected stakeholders and other members of the public and respond to comments.

- v. The consultant will coordinate with affected public agencies, address concerns and respond to comments.
- vi. The consultant will prepare written responses to comments received during the environmental document public review period. The environmental document will include a list of persons, organizations, and agencies that submitted comments.
- vii. If necessary, the consultant will prepare a Mitigation Monitoring and Reporting Program (MMRP) to ensure the implementation of measures identified to mitigate any adverse environmental effects of the project. The MMRP shall be included in the environmental document as an appendix.
- viii. The consultant will prepare findings and a statement of overriding considerations (if applicable) for approval by the District Board of Directors.

**B. Timeline**

If the Initial Study (IS) concludes that a Negative Declaration (Path 1) or Mitigated Negative Declaration (Path 2) is required the project shall be completed and all deliverables received within six months of the Notice to Proceed. If the IS concludes that an Environmental Impact Report is required (Path 3) the project shall be completed and all deliverables received within sixteen months of the Notice to proceed. The tentative timeline shown in Table 1 on the next page is subject to change based on factors including the date of the award. District staff will work with the consultant to determine the final project schedule.

**Table 1: PEV Readiness Plan Environmental Review Timeline (TENTATIVE)**

**Path 1: Prepare Initial Study, and if applicable, a Negative Declaration**

Action	Date
Executive Officer executes agreement Notice to Proceed and Consultant / Air District Staff Kick-off Meeting	Week of Oct. 22, 2012
Consultant completes Initial Study (IS) and Negative Declaration (if applicable)	Week of Nov. 19, 2012

**Paths 1 & 2: Prepare Negative Declaration (ND) or Mitigated Negative Declaration (MND)**

**Path 3: Prepare Environmental Impact Report**

Action	Date
Notice of Intent to Adopt	Nov 19, 2012
Neg Dec or Mitigated Neg Dec (released) / review and consultation period	Dec 2012
Presentation of Final Draft Plan and ND/MND to Mobile Source Committee	Dec 2012
Presentation of Final Draft Plan and ND/MND to District Board of Directors and Public Hearing on ND/MND	Dec 2013
Notice of Determination	Jan 2012
PEV Readiness Plan Adoption	Jan 2012

Action	Date
Notice of Preparation (NOP)	Nov 19, 2012
NOP Comments Due (30-day comment period)	Dec 2012
Administrative Draft EIR (DEIR) (Released)	June 2013
Notice of Completion (DEIR)	Aug 2013
Public Notice of Availability (DEIR released to public)	Aug 2013
DEIR presentation to Mobile Source Committee (All affected agencies to be invites)	Aug 2013
Presentation of DEIR to District Board of Directors	September 2013
Public Hearing DEIR (Public hearing for draft Plan will also be held)	Oct 2013
Comments on DEIR Due (45-day comment period)	Oct 2013
Final EIR & Plan (Adopt & certify)	Oct 2013
Notice of Determination	Oct 2013

**SECTION V – PROPOSAL FORMAT AND CONTENT**

Submitted proposals must follow the format outlined below and include all requested information. Failure to submit proposals in the required format can result in the proposal being eliminated from evaluation and consideration.

- A. Technical Proposal** (Section references below refer to the organization of the proposal and not to sections of this RFP)
1. Cover Letter – Must include the name, address, and telephone number of the company, and must be signed by the person(s) authorized to represent the firm.
  2. Table of Contents – Clearly identify material contained in the proposal by section
  3. Summary (Section I) – State overall approach to conducting CEQA analysis

and preparing required documents as described above in *Section IV. Scope of Work*.

4. Firm Contact Information (Section II) – Provide the following information about the firm:
  - ix. Address and telephone number of office nearest to San Francisco, California
  - x. Name of firm’s representative designated as the contact
  - xi. Name of project manager, if different from the individual designated as the contact
5. Program Schedule (Section III) – Provide projected milestones or benchmarks for completing the project within the total time allowed.
6. Firm Organization (Section IV) – Provide a statement of your firm’s background and related experience in preparing CEQA related documents and filings. Describe the technical capabilities of the firm and, in particular, the firm’s exposure with working with environmental regulations, if any. Provide references of other, similar projects including contact name, title, and telephone number for all references listed.
7. Project Organization (Section V) – Describe the proposed management structure, program monitoring procedures, and organization of the engagement team. Provide a statement detailing your approach to the project, specifically address the firm’s ability and willingness to commit and maintain staffing to successfully conclude the project on the proposed schedule.
8. Assigned Personnel (Section VI) – Provide the following information about the staff to be assigned to the project:
  - i. List all key personnel assigned to the project by level and name. Provide a description of their background, along with a summary of their experience in providing similar services for governmental agencies, and any specialized expertise they may have. Substitution of project manager or lead staff will not be permitted without prior written approval of the Air District’s assigned program manager.
  - ii. Provide a statement of the availability of staff in any local office with requisite qualifications and experience to conduct the requested project.
  - iii. Provide a statement of education and training programs provided to, or required of, the staff identified for participation in the project. Make particular mention of with reference to experience dealing with governmental agencies, procedures, and environmental regulations.
9. Retention of Working Papers (Section VII) – All working papers are the property of the Air District. Include a statement acknowledging that if your firm is awarded the contract, you will retain project related papers and related reports for a minimum of five years.
10. Subcontractors (Section VIII) – List any subcontractors that will be used, the work to be performed by them, and the total number of hours or percentage of time they will spend on the contract.



11. Conflict of Interest (Section IX) – Address possible conflicts of interest with other clients affected by contractors’ actions performed by the firm on behalf of the District. The District recognizes that prospective bidders may have contracts to perform similar services for other clients. Include a complete list of such clients for the past three years with the type of work performed and the total number of years performing such tasks for each client. The District reserves the right to consider the nature and extent of such work in evaluating the proposal.
12. Additional Data (Section X) – Provide other essential data that may assist in the evaluation of the proposal (e.g. green business certification, proof of minority and/or women owned business status etc.). The Air District encourages bids from minority and/or women owned businesses, local and green businesses.
13. References (Section XI) - Provide references of other, similar projects including contact name, title, and telephone number for all references listed.
14. Form 700 Statement (Section XII) – Provide statement of person(s) representing firm and their willingness to submit Form 700 Statement of Economic Interests, if awarded this contract.

**B. Cost Proposal – Not to exceed \$70,000**

1. Name and Address – The Cost Proposal must have the name and complete address of the bidder in upper, left hand corner.
2. Cost Proposal –The bidder shall provide an estimate of the resources required to complete the project scope of services. The estimate of staff hours should be in spreadsheet format and at a minimum include total hours by task, and name or classification, in addition to a total for the entire project. The cost proposal shall be fully inclusive of all services required to complete the scope of services, and shall include the bidder’s overhead rate, profit percent, and an itemized list for direct costs. Costs must be shown in a matrix format, by task, and showing hours and base labor rates per staff member. Also, estimate printing and other production costs for technical memoranda, drafts and final reports.
3. The proposal shall be signed by an individual authorized to bind the offer of said proposal. The proposal shall be a firm offer for a minimum of 90 days, and shall contain a statement to that effect. The proposal should contain a statement that all work will be performed at a not-to exceed price for:
  - i. Task Order 1: - Total cost for CEQA analysis on the Plan, including preparation of an Initial Study and associated filings.
  - ii. Task Order 2 (Path 1): Total cost to complete a Negative Declaration;
  - iii. Task Order 2 (Path 2): Total cost to complete a Mitigated Negative Declaration; and
  - iv. Task Order 2 (Path 3): Total cost to complete a draft and final Environmental Impact Report.
4. The Cost Proposal does not need to be a separate, sealed document.

**C. Proposal length**

1. Proposals may not exceed five pages (or 10 sides) in length. All documents submitted must be on double-sided sheets of size 8.5 by 11 inches. Font size may be no less than standard Microsoft office type size 12 and all documents must be single-spaced.
2. Cover letters, resumes and supporting documentation for staff qualifications do not count against the page limit.

**SECTION VI – PROPOSAL EVALUATION**

The Selection Panel will evaluate the proposals based on the outlined content requirements described in Sections IV and VIII using the evaluation criteria categories and weighing outlined in Table 2. The Selection Panel will recommend the selection of the contractor to the District’s Executive Officer/Air Pollution Control Officer (APCO).

Proposals will be evaluated on the following criteria:

**Table 2: Criteria to Evaluate Proposals**

Category	Weight	Description
Technical Approach	35%	Responsiveness to RFP, based upon a clear understanding of the work to be performed; approach, and identification of deliverables, discussion of alternatives, potential problems, critical path activities and schedule.
Management Approach and Resources	20%	Presentation of organization, responsibilities, management approach, and budget schedule adherence, staff work load/resource allocation, and accessibility of project team.
Experience of Firm and Personnel	20%	Similar previous experience, performance on past projects, technical capabilities, and client satisfaction.
Cost	25%	Cost associated with each of the Task Orders.

The Air District reserves the right to reject any and all proposals submitted and/or to request additional information. During the selection process, the Air District’s evaluation panel may interview bidders. The interviews will be for clarification only. The submittal of new material will not be permitted at that time. If two or more proposals receive the same number of points, the Air District will accept the lower cost offer.

## SECTION VII – SAMPLE CONTRACT

A sample contract to carry out the work described in this RFP is presented on the following pages.

### PROFESSIONAL SERVICES CONTRACT

#### CONTRACT NO. year-number

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 described in the Scope of Work, attached hereto as Attachment A and made a part hereof by this reference. 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. 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 comply with all laws and regulations that apply to its performance under this Contract, including any requirements to disclose potential conflicts of interest under DISTRICT’s Conflict of Interest Code.
  - D. 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.
  - E. CONTRACTOR shall exercise the degree of skill and care customarily required by accepted professional practices and procedures.
  - F. CONTRACTOR shall ensure that any subcontractors, employees and agents performing under this Contract comply with the performance standards set forth in paragraph D above.
4. 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.

5. 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 10 below. Immediately upon receipt of the notice of termination, CONTRACTOR shall cease all work under this Contract, except such work as is specified in the notice of termination. CONTRACTOR shall deliver a final invoice for all remaining work performed but not billed, including any work 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 perform 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 payment otherwise due to CONTRACTOR for work performed 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 10.
  - v) The non-breaching party reserves all rights under law and equity to enforce this Contract and recover any damages.

6. 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. If CONTRACTOR is a sole proprietor, CONTRACTOR may meet this insurance requirement with personal

automobile liability insurance carrying a business use endorsement or by demonstrating to the satisfaction of DISTRICT that business use is covered under the CONTRACTOR's personal automobile liability insurance. A CONTRACTOR using only rental vehicles in performing work under this Contract may meet this insurance requirement by purchasing automobile liability insurance in the required coverage amount from the rental agency.

- 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.

7. 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, or 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, or employees.

8. PAYMENT

- A. DISTRICT shall pay CONTRACTOR for services in accordance with the terms set forth in the Cost Schedule, which is attached hereto as Attachment B and incorporated herein by this reference.
- B. CONTRACTOR shall submit invoice(s) to DISTRICT for services performed. Each invoice shall specify the total cost of the services for which the invoice is submitted, shall reference tasks shown in the Scope of Work, the hours associated with same, or percentage completion thereof, and the amount of charge claimed, and, as appropriate, shall list any charges for equipment, material, supplies, travel, and subcontractors' services.
- C. DISTRICT's payment of invoices shall be subject to the following limitations and requirements:
  - i) Each invoice, including supporting documentation, shall be prepared in duplicate on CONTRACTOR's letterhead; shall list DISTRICT's contract number, the period covered by the invoice, and the CONTRACTOR's Social Security Number or Federal Employer

- Identification Number; and shall be submitted to: Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109, Attn: Contracts Manager.
- ii) DISTRICT shall not pay interest, fees, handling charges, or the cost of money on the Contract.
  - iii) DISTRICT shall pay CONTRACTOR within thirty (30) calendar days after approval by DISTRICT of an itemized invoice.
- D. The total amount for which DISTRICT may be held liable for the performance of services specified in this Contract shall not exceed \$30,000.
9. 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 \$30,000. The mediation costs shall not reduce the maximum amount recoverable under this section.
10. 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: BAAQMD contact

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

11. 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.
12. 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. CONTRACTOR shall assign those employees listed in the Cost Schedule to perform work under this Contract. CONTRACTOR shall not assign different employees to perform this work without the express written permission of DISTRICT, which DISTRICT will not unreasonably withhold.
  - D. DISTRICT reserves the right to review the credentials to perform the work of 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.
13. 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.
14. 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.
15. 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.
16. 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, and all administrative rules and regulations issued pursuant to said Acts. CONTRACTOR shall also require each subcontractor performing work 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.



17. 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.
18. 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.
19. 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.
20. 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.
21. 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.
22. 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.
23. 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.
24. COUNTERPARTS/FACSIMILES/SCANS – This Contract may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall be deemed an

original, and all of which together shall constitute the same contract. The parties may rely upon a facsimile copy or scanned copy of any party's signature as an original for all purposes.

25. 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 of 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.
26. 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.
27. SURVIVAL OF TERMS – The provisions of sections 7 (Indemnification), 13 (Confidentiality), 14 (Intellectual Property Rights), and 15 (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

**APPENDIX I – Listing of U.S. Department of Energy Required Plan Elements**

**APPENDIX II – Plan Outline**