

1 AGREEMENT

2 **30296**

3 THIS AGREEMENT is made and entered, in duplicate, as of August 1,
4 2007 for reference purposes only, pursuant to Resolution No. RES-07-0103, adopted by
5 the City Council of the City of Long Beach at its meeting on July 24, 2007, by and
6 between ROMTEC, INC., DOING BUSINESS IN CALIFORNIA AS OREGON ROMTEC,
7 INC. ("Contractor"), an Oregon corporation located at 18240 N. Bank Road, Roseburg,
8 Oregon 97470, and the CITY OF LONG BEACH ("City"), a municipal corporation.

9 WHEREAS, Section 1802 of the Long Beach City Charter permits the City
10 to make purchases under the purchasing contracts of other governmental agencies when
11 authorized to do so by a resolution; and

12 WHEREAS, the City desires to purchase three (3) prefabricated restrooms
13 from Contractor; and

14 WHEREAS, the State of California Multiple Award Schedule (CMAS) has a
15 contract for the purchase of these prefabricated restrooms under Contract No. 4-04-54-
16 0011A ("CMAS Contract"); and

17 WHEREAS, Resolution No. RES-07-0103 authorizes the City Purchasing
18 Agent to purchase these prefabricated restrooms from Contractor by virtue of the CMAS
19 Contract;

20 NOW, THEREFORE, in consideration of the terms and conditions
21 contained in this Agreement, the parties agree as follows:

22 1. The CMAS Contract with Contractor is incorporated by this reference
23 as if fully set forth, and the same terms and conditions contained in the CMAS Contract
24 shall be applicable here except as follows:

25 a. Wherever the CMAS Contract refers to the State of California,
26 it shall be deemed to refer to the City of Long Beach.

27 b. Contractor shall sell, furnish and deliver to the City equipment
28 of substantially the same type and kind purchased by the State of California

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 Multiple Award Schedule and on the same terms and conditions offered to the
2 State of California, except as modified by Exhibit "A" attached to and incorporated
3 in this Agreement, for an amount not to exceed \$850,000.00, including tax, for a
4 period extending until the warranty on the prefabricated restrooms expires. To the
5 extent that the CMAS Contract and this Agreement are inconsistent, the following
6 priority shall govern: (1) this Agreement and (2) the CMAS Contract.

7 c. Payment for the equipment purchased from Contractor by the
8 City shall be made by the City on delivery to and acceptance of the equipment by
9 the City and submittal of an invoice to the City. Payment is due thirty (30) days
10 after the date of the invoice.

11 d. All warranties shall accrue to the City of Long Beach.

12 e. The parties may, by mutual agreement, amend this
13 Agreement with the approval of the City's City Council.

14 2. Neither this Agreement nor any money that becomes due to
15 Contractor under this Agreement may be assigned by Contractor without the prior written
16 consent of the City Manager or his designee.

17 3. Any notice given under this Agreement shall be in writing and
18 personally delivered or deposited in the U.S. Postal Service, return receipt, and shall be
19 delivered or mailed to Contractor at the relevant address first stated above, and to the
20 City at 333 West Ocean Boulevard, Long Beach, California 90802 Attn: City Manager.
21 Notice shall be deemed given three (3) days after deposit in the mail.

22 4. The terms appearing on the CMAS Contract are incorporated in this
23 Agreement.

24 5. Contractor shall cooperate with the City in all matters relating to self-
25 accrual of use tax. Contractor shall contact the City Treasurer for additional information
26 regarding self-accrual.

27 6. This Agreement and all documents which are incorporated by
28 reference in this Agreement constitute the entire understanding between the parties and

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1 supersede all other Agreements, oral or written, with respect to the subject matter of this
2 Agreement. If there is any legal proceeding between the parties to enforce or interpret
3 this Agreement, or to protect or establish any rights or remedies, the prevailing party shall
4 be entitled to its costs and expenses, including reasonable attorney's fees.

5 IN WITNESS WHEREOF, the parties have caused this document to be duly
6 executed with all formalities required by law as of the date first stated above.

7 ROMTEC, INC., DOING BUSINESS IN
8 CALIFORNIA AS OREGON ROMTEC,
9 INC., an Oregon corporation

10 September 17, 2007 By Dan Jones

11 DAN JONES
(Type or Print Name)

12 _____, 2007 By Kelly Hink

13 Kelly Hink
(Type or Print Name)

14 "Contractor"

15 CITY OF LONG BEACH, a municipal
16 corporation

17 9/30/07, 2007 By [Signature]

18 City Manager

19 "City"

20 This Agreement is approved as to form on 9/24,
21 2007.

22 ROBERT E. SHANNON, City Attorney

23 By [Signature]
24 Deputy

EXHIBIT “A”



DEPARTMENT OF GENERAL SERVICES
Procurement Division

707 Third Street • West Sacramento, CA 95605 • (916) 375-4400 • Fax (916) 375-4505 • www.pd.dgs.ca.gov

March 30, 2007

Award of Renewal Contract
OREGON ROMTEC, INC.
Contract Number 4-04-54-0011A, Supplement No. 2

The State of California accepts your firm's offer and renews the attached California Multiple Award Schedule (CMAS) contract for the term identified on page one of the contract. The contract has been awarded the same contract number as the original CMAS contract. This contract number must be shown on each invoice rendered. Additionally, this letter shall not be construed as a commitment to purchase any or all of the State's requirements from your firm.

Agencies may procure their products and/or services from your firm during the term of this contract. This acceptance letter, the attached CMAS contract pages including ordering instructions and special provisions as well as CMAS Terms and Conditions, and the applicable product/services catalog or listing shall be considered part of the CMAS contract.

It is your firm's responsibility to furnish, upon request, copies of the CMAS contract to state and local agencies. A complete CMAS contract includes the following: 1) CMAS cover pages (signature page, ordering instructions and special provisions as prepared by the CMAS Unit), Std. 204 Payee Data Record, and any attachments or exhibits as prepared by the CMAS Unit, 2) CMAS Terms and Conditions, 3) Federal terms and conditions, and 4) product/service listing and prices (if not already included in the aforementioned). The CMAS Unit strongly recommends to all government agencies to place orders with suppliers who provide ALL of the contract elements described above.

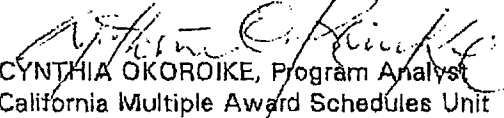
Contractors are required to submit a quarterly report (refer to CMAS Terms and Conditions, General Provisions) to the DGS Procurement Division, CMAS Unit, 707 Third Street, 2nd Floor, West Sacramento, CA 95605-2811, Attention: Quarterly Report Processing. A separate report is required for each contract, as differentiated by alpha suffix and shall include the activity of the contractor's authorized CMAS resellers when applicable. This report is required within two weeks after the end of March, June, September, and December of each calendar year. Copies of local government agency purchase orders must accompany the CMAS quarterly report. A report is required even when there is no activity.

**THE NEXT QUARTERLY REPORT DUE FOR THIS CONTRACT IS Q2-2007 (APRIL-JUNE),
DUE BY JULY 15, 2007.**

If your firm has an electronic Bulletin Board System (BBS) available to state departments for on-line inquiry of current catalog or listing updates, or your catalog(s) or listing(s) are available on CD ROM, please inform our agencies of how they may avail themselves of these options.

We remind you that prior approval is required from the state for all news releases regarding this contract. Also, it is not acceptable to include any products or services on CMAS which are not approved for the federal GSA award schedule (or other base contract) referenced in your CMAS contract.

Should you have any questions, please contact me at 916/375-4387.


CYNTHIA OKOROIKE, Program Analyst
California Multiple Award Schedules Unit

Attachment

DGS

Department of General Services
Procurement Division
707 Third Street, 2nd Floor
West Sacramento, CA 95605-2811

State of California
**MULTIPLE AWARD SCHEDULE
SUPPLEMENT NO. 2**

Romtec, Inc. which will do business in California as

OREGON ROMTEC, INC.

4-04-54-0011A - Building-Restroom
Building-Prefab Structure
Building-Utility

(Above descriptions for marketing purposes only. Review contract for products/services available.)


CONTRACT NUMBER: 4-04-54-0011A
CMAS TERM DATES: 3/30/2007 through 3/31/2012
DISTRIBUTION: STATEWIDE

NOTICE: Products and/or services on this CMAS contract may be available on a mandatory Strategically Sourced (CSSI) Contract. If this is the case, the use of this CMAS contract is restricted unless the State agency has an approved exemption pursuant to MIM 05-11, and as further explained in the CSSI Contract User Instructions. Information regarding CSSI contracts can be obtained at the website: www.pd.dgs.ca.gov/stratsourcing. This requirement is not applicable to local government entities.

The purpose of this supplement is to renew this contract through 3-31-2012. In addition, this supplement replaces in its entirety OREGON ROMTEC, INC. existing California Multiple Award Schedule (CMAS) that expires on 3-31-2007. The most current Ordering Instructions and Special Provisions and CMAS Terms and Conditions dated July 2006, products and/or services and pricing are included herein. Please review these provisions carefully because they may have changed since issuance of your last contract.

Agency non-compliance with the requirements of this contract may result in the loss of delegated authority to use the CMAS program.

Contractor non-compliance with the requirements of this contract may result in contract termination.


Effective Date: **3/30/2007**
CYNTHIA OKOROIKE, Program Analyst, California Multiple Award Schedules Unit

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
OREGON ROMTEC, INC.
CMAS NO. 4-04-54-0011A, SUPPLEMENT NO. 2

AVAILABLE PRODUCTS AND/OR SERVICES

This contract provides for the purchase and warranty of Prefabricated Structures and Outdoor Smoking Shelters including installation.

The net prices do not include cost for installation.

Installation services are negotiated on a project-by-project basis.

Pricing for installation shall not exceed commercial price (the price contractors charge their regular commercial customers).

This service qualifies as public works and must remain incidental to overall transaction. Incidental is whatever the agency determines it to be except the total dollar value of the service included in a purchase order must not exceed the dollar value of the product. Agencies must review the public Works Requirements in the CMAS Information Technology Terms and Conditions General Provisions.

CMAS BASE CONTRACT

This CMAS contract is based on some or all of the products and/or services and prices from GSA #GS-07F-0095M (ROMTEC, INC.) with a GSA term of 12/4/2001 through 12/4/2011. The term of this CMAS contract incorporates an extension of three months beyond the expiration of the base GSA contract, and is shown in the "CMAS Term Dates" on page 1.

ISSUE PURCHASE ORDER TO:

Agency purchase orders must be mailed to the following address, or faxed to 541/496-0803:

OREGON ROMTEC, INC.
18240 North Bank Road
Roseburg, OR 97470
Attn: Kendra Pettengill

Agencies with questions regarding products and/or services may contact the contractor as follows:

Phone: 541/496-3541
E-mail: romtec6@romtec.com

CALIFORNIA SELLER'S PERMIT

OREGON ROMTEC, INC.'s California Seller's Permit No. is 100893422. Agencies can verify that this permit is still valid at the following website:
www.boe.ca.gov.

When issuing an order to an authorized reseller on a CMAS contract, it is the agency's responsibility to ensure that the reseller holds a valid California Seller's Permit.

WARRANTY

For warranties, see the federal GSA schedule and the CMAS Terms and Conditions, General Provisions, CMAS Warranty.

DELIVERY

30-45 days after receipt of order, or as negotiated between agency and contractor and included in the purchase order, or as otherwise stipulated in the contract.

PURCHASING AUTHORITY DOLLAR THRESHOLD

No CMAS order may be executed by a State agency that exceeds that agency's CMAS purchasing authority threshold or the CMAS maximum order limit, whichever is less.

MAXIMUM ORDER LIMITS (Local Governments are Exempt)

The order limits for orders placed against CMAS contracts are as follows:

Information Technology Goods & Services: \$500,000

Non-Information Technology Services: \$250,000
(DGS-PD prior approval required if over \$50,000. See further below.)

Non-Information Technology Goods: \$100,000

These transactions are subject to the following requirements:

- State agencies must solicit a minimum of 3 contractors including 1 small business and/or DVBE (if available) and document responses. This is not a bid transaction so small business preference, protest language, intents to award, evaluation criteria, advertising, etc. are not applicable.
- If less than 3 offers received, state agencies must document their files with the reasons why the other suppliers solicited did not respond with an offer.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
OREGON ROMTEC, INC.
CMAS NO. 4-04-54-0011A, SUPPLEMENT NO. 2**

- If only one source is known (competing offers cannot be obtained), the non-competitive bid (NCB) contract process must be followed. See the latest Management Memo (currently MM 03-10 including supplements), or whichever Management Memo is in effect at the time a purchase order is issued, for NCB guidelines. Exceptions to NCB process are also addressed in MM 03-10.
- Evaluation and award may be based on best value, as applicable, and not restricted to lowest cost.
- For CMAS transactions under \$5,000 only one offer is required if the state agency can establish and document that the price is fair and reasonable.
- Orders for Information Technology Goods and Services exceeding \$250,000 require additional documentation. See the latest Management Memo (currently MM 03-10) for specific information on these additional requirements.
- Exemptions to the CMAS order limits are not allowed.
- Local governments set their own order limits, and are not bound by the above order limits and requirements.

SPLITTING ORDERS

Splitting orders to avoid any monetary limitations is prohibited.

Do not circumvent normal procurement methods by splitting purchases into a series of delegated purchase orders (SAM 3572).

Splitting a project into small projects to avoid either fiscal or procedural controls is prohibited (SAM 4819.34).

MINIMUM ORDER LIMITATION

There is no minimum dollar value limitation on orders placed under this contract.

ORDERING PROCEDURES

1. Order Form

State agencies shall use a Contract/Delegation Purchase Order (Std. 65) for purchases and services.

Local governments shall, in lieu of the State's Purchase Order (Std. 65), use their own purchase order document.

Electronic copies of the State Standard Forms can be found at the Office of State Publishing web site: <http://www.dgs.ca.gov/osp> (select Standard Forms).

The site provides information on the various forms and use with the Adobe Acrobat Reader. Beyond the Reader capabilities, Adobe Acrobat advanced features may be utilized if you have Adobe Business Tools or Adobe Acrobat 4.0 installed on your computer. Direct link to the Standard Form 65:

<http://www.osp.dgs.ca.gov/pdf/std065.pdf>

2. Purchase Orders

The agency is required to forward a copy of each purchase order to the Department of General Services (DGS), Procurement Division, Data Management, 707 Third Street, 2nd Floor, West Sacramento, CA 95605-2811 (IMS# Z-1).

The agency is required to complete and distribute the order form. For services, the agency shall modify the information contained on the order to include the service period (start and end date), and the monthly cost (or other intermittent cost), and any other information pertinent to the services being provided. The cost for each line item should be included in the order, not just system totals. See the CMAS Services Guide at www.dgs.ca.gov/pd (click on CMAS) for guidelines pertaining to all orders for services.

The contractor must immediately reject orders that are not accurate. Discrepancies are to be negotiated and incorporated into the order prior to the products and services being delivered.

3. Service and Delivery after Contract Expiration

The purchase order must be issued before the CMAS contract end term expires. However, delivery of the products or completion of the services may be after the contract end term expires (unless otherwise specifically stated in the contract), but must be as provided for in the contract and as specified in the purchase order.

Also, purchase order amendments cannot be issued to add products or services if the CMAS contract end term has expired.

4. Multiple Contracts on STD. 65 Order Form

Agencies may include multiple CMAS contracts from the same contractor on a single Std. 65 Contract/Delegation Purchase Order. For guidelines, see the Purchasing Authority Manual, Chapter 6.B4.1.

5. Amendments to Department's Purchase Orders

Management Memo 03-10 provides the following direction regarding amendments to department purchase orders:

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
OREGON ROMTEC, INC.
CMAS NO. 4-04-54-0011A, SUPPLEMENT NO. 2**

Orders for IT Goods & Services or Non-IT Goods:
Original orders, which include options for changes (e.g., quantity or time), that were evaluated and considered in the selection for award during the Request for Offers process, may be amended consistent with the terms of the original order, provided that the original order allowed for amendments. If the original order did not evaluate options, then the NCB process must be followed for the amendment.

Orders for Non-IT Services:
Original orders, which do not include options for changes (e.g., quantity or time), may be amended. This only applies to the first amendment, the time shall not exceed one year, or add not more than 30% of the original order value, not to exceed \$250,000. The original contract must have permitted amendments. Outside of these conditions, the NCB process must be followed.

Also see the Purchasing Authority Manual, Chapter 8, Topic 7, for more information on amending purchase orders.

CONTRACT PRICES

Contract prices for products and/or services are maximums. The ordering agency is encouraged to negotiate lower prices.

CONTRACTOR OWNERSHIP INFORMATION

OREGON ROMTEC, INC. is a large business enterprise.

SMALL BUSINESS MUST BE CONSIDERED

Prior to placing orders under the CMAS program, state agencies shall whenever practicable first consider offers from small businesses that have established CMAS contracts [GC Section 14846(b)]. NOTE: The Department of General Services auditors will request substantiation of compliance with this requirement when agency files are reviewed.

The following website lists CMAS Small Business and Disabled Veteran Partners:

www.pd.dgs.ca.gov
(click on CMAS click on State Agencies)

In response to our commitment to increase participation by small businesses, the Department of General Services waives the administrative fee (a fee currently charged to customer agencies to support the CMAS program) for orders to certified small business enterprises.

See the current fees in the DGS Price Book at:
<http://www.ofs.dgs.ca.gov/Price+Book/P/Purchasing.htm>

SMALL BUSINESS/DVBE - TRACKING

State agencies are able to claim subcontracting dollars towards their small business or DVBE goals whenever the Contractor subcontracts a commercially useful function to a certified small business or DVBE. The Contractor will provide the ordering agency with the name of the small business or DVBE used and the dollar amount the ordering agency can apply towards its small business or DVBE goal.

SMALL BUSINESS/DVBE - SUBCONTRACTING

1. The amount an ordering agency can claim towards achieving its small business or DVBE goals is the dollar amount of the subcontract award made by the Contractor to each small business or DVBE.
2. The Contractor will provide an ordering agency with the following information at the time the order is quoted:
 - a. The Contractor will state that, as the prime Contractor, it shall be responsible for the overall execution of the fulfillment of the order.
 - b. The Contractor will indicate to the ordering agency how the order meets the small business or DVBE goal, as follows:
 - List the name of each company that is certified by the Office of Small Business and DVBE Certification that it intends to subcontract a commercially useful function to; and
 - Include the small business or DVBE certification number of each company listed, and attach a copy of each certification; and
 - Indicate the dollar amount of each subcontract with a small business or DVBE that may be claimed by the ordering agency towards the small business or DVBE goal; and
 - Indicate what commercially useful function the small business or DVBE subcontractor will be providing towards fulfillment of the order.
3. The ordering agency's purchase order must be addressed to the prime Contractor, and the purchase order must reference the information provided by the prime Contractor as outlined above.

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OREGON ROMTEC, INC.
CMAS NO. 4-04-54-0011A, SUPPLEMENT NO. 2**

PRODUCT INSTALLATION

The contractor is fully responsible for all installation services performed under the CMAS contract. Product installations must be performed by manufacturer authorized personnel and meet manufacturer documented specifications.

PUBLIC WORKS (INSTALLATION SERVICES ONLY)

A public works contract is defined as an agreement for "the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind" in accordance with the Public Contract Code (PCC) Section 1101. State agencies planning these types of projects need to review the State Contracting Manual (SCM) Sections 10 and 11 for applicable guidelines and regulations. Also, the Department of General Services (DGS), Real Estate Services Division (RESO) can be contacted at 916/376-1748 if you have questions about these types of transactions.

Agency CMAS orders may allow for a public works component only when the service is incidental to the overall project requirements. Agencies are to ensure that the applicable laws and codes pertaining to the contractor and sub-contractor licensing, prevailing wage rates, bonding, labor code requirements, etc. are adhered to by the prime contractor as well as any sub-contractor during performance under the CMAS purchase order. The total dollar value of all services included in a purchase order must not exceed the dollar value of the products.

The bond amount for public works has increased to a sum not less than one hundred percent (100%) of the purchase order price.

Note: In accordance with Labor Code Section 1773.2, the ordering agency is responsible for determining the appropriate craft, classification or type of worker needed for any contract for public works. Also, the agency is to specify the applicable prevailing wage rates as determined by the Director of the Department of Industrial Relations (DIR). In lieu of specifying the prevailing wage rates, the agency may include a statement on the order that the prevailing wage rates are on file at the agency's office, and will be made available upon request. The prevailing wage rates are available from the DIR at www.dir.ca.gov (select Statistics & Research) or (415) 703-4774.

Bonds: For guidelines, see CMAS contract, General Terms and Conditions, Public Works Requirements. Also, see the CMAS Services Guide, Section 2, Bond Requirements provision.

State Contractor's License: Public works services can be obtained through CMAS only if incidental to the overall purchase order. If incidental public works services are included in the purchase order, prior to issuing the purchase order, agencies are to contact the State Contractor's License Board at 1-800-321-2752 to verify that Contractor's License shown below is still active and in good standing. The State Contractor's License Board can also be accessed via the internet at: <http://www.cslb.ca.gov>.

OREGON ROMTEC, INC. California Contractor's License number is 849246. This is a Class B license that is good through 11/30/2008.

SERVICES EXCLUDED ON THE CMAS PROGRAM

The following services are not available on the CMAS Program:

1. Architectural, Construction, Engineering and Environmental Services

Services are not allowed on CMAS that are required by law to be performed by a licensed architect, licensed registered engineer, licensed landscape architect, construction project manager, licensed land surveyor, or environmental services as defined in Government Code 4525. If you have questions about these types of transactions, the Department of General Services (DGS), Real Estate Services Division (RESO) can be contacted at 916/376-1752.

2. Legal Services

Contracting for legal services by state agencies is controlled by statutes (GC 11040) that require Attorney General approval prior to entering into contracts with outside counsel. Additionally, Article VII of the California Constitution requires that state legal work be performed by state employees, absent limited exceptions (Government Code 19130). There are also policy-based approval requirements for all Executive Branch agencies that control the use of private counsel.

3. Other Excluded Services

Also, services involving financial audits, facility planning, registered nursing, and security guards are not available on the CMAS Program.

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
OREGON ROMTEC, INC.
CMAS NO. 4-04-54-0011A, SUPPLEMENT NO. 2

OPEN MARKET/INCIDENTAL, NON-SCHEDULE ITEMS

The only time that open market/incidental, non-schedule items may be included in a CMAS order is when they fall under the parameters of the Not Specifically Priced (NSP) Items provision. If the NSP provision is not included in the schedule, or the products and/or services required do not qualify under the parameters of the NSP provision, the products and/or services must be procured separate from CMAS.

NOT SPECIFICALLY PRICED (NSP) ITEMS

Contractors must be authorized providers of the hardware, software and/or services they offer under the Not Specifically Priced (NSP) Items provision.

Agency and contractor use of the NSP provision is subject to the following requirements:

1. Purchase orders containing only NSP items are prohibited.
2. A purchase order containing NSP items may be issued only if it results in the lowest overall alternative to the State.
3. NSP items shall be clearly identified in the order. Any product or service already specifically priced and included in the contract may not be identified as an NSP item.
4. Maximum Order Limitation: For orders \$250,000, or less, the total dollar value of all NSP items included in a purchase order shall not exceed \$5,000. For orders exceeding \$250,000, and at the option of the contractor, the total dollar value of all NSP items in a purchase order shall not exceed 5% of the total cost of the order, or \$25,000 whichever is lower.
5. An NSP item included in an order issued against a contract is subject to all of the terms and conditions set forth in the contract.
6. Trade-ins, upgrades, involving the swapping of boards, are permissible, where the contract makes specific provisions for this action. In those instances where it is permitted, the purchase order must include the replacement item and a notation that the purchase involves the swapping of a board.

The following NSP items ARE SPECIFICALLY EXCLUDED from any order issued under this contract:

1. Items not intended for use in directly supporting the priced items included in the same order. An NSP item must be subordinate to the specifically priced item that it is supporting. For example, a cable, which is not otherwise specifically priced in the contract, is subordinate to a specifically priced printer or facsimile machine, and is eligible to be an NSP item subject to that cable meeting the remaining NSP requirements. However, a printer or facsimile machine, which is not otherwise specifically priced in the contract, is not subordinate to a specifically priced cable, and is not eligible to be an NSP item.
2. Supply type items, except for the minimum amount necessary to provide initial support to the priced items included in the same order.
3. Items that do not meet the Productive Use Requirements for information technology products. (SAM Section 5203)
4. Any other item or class of items specifically excluded from the scope of this contract.
5. Public Works components NOT incidental to the overall project requirements.
6. Products or services the contractor is NOT factory authorized or otherwise certified or trained to provide.
7. Follow-on consultant services that were previously recommended or suggested by the same contractor.

The contractor is required to reject purchase orders containing NSP items that do not conform to the above requirements. The contractor will promptly notify the agency issuing the non-conforming order of its non-acceptance and the reasons for its non-acceptance.

STATE AND LOCAL GOVERNMENTS CAN USE CMAS

State and local government agency use of CMAS contracts is optional. A local government is any city, county, city and county, district or other local governmental body or corporation, including UC, CSU, K-12 schools and community colleges, that is empowered to expend public funds. While the state makes this contract available, each local government agency should make its own determination whether the CMAS program is consistent with their procurement policies and regulations.

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
OREGON ROMTEC, INC.
CMAS NO. 4-04-54-0011A, SUPPLEMENT NO. 2

UPDATES AND/OR CHANGES

A CMAS amendment is not required for updates and/or changes once the update and/or change becomes effective for the federal GSA schedule, except as follows:

- A CMAS amendment is required when the contract is based on products and/or services from another contractor's multiple award contract and the contractor wants to add a new manufacturer's products and/or services.
- A CMAS amendment is required for new federal contract terms and conditions that constitute a material difference from existing contract terms and conditions. A material change has a potentially significant effect on the delivery, quantity or quality of items provided, the amount paid to the contractor or on the cost to the State.
- A CMAS amendment is required for changes to contracts that require Prison Industry Authority (PIA) approval.

A CMAS amendment is required to update and/or change terms and conditions and/or products and services based on a non-federal GSA multiple award contract.

SELF-DELETING FEDERAL GSA TERMS AND CONDITIONS

Instructions, or terms and conditions that appear in the Special Items or other provisions of the Federal GSA and apply to the purchase, license, or rental (as applicable) of products or services by the U.S. Government in the United States, and/or to any overseas location shall be self-deleting. (Example: "Examinations of Records" provision).

Federal regulations and standards, such as Federal Acquisition Regulation (FAR), Federal Information Resources Management Regulation (FIRMR), Federal Information Processing Standards (FIPS), General Services Administration Regulation (GSAR), or Federal Installment Payment Agreement (FIPA) shall be self-deleting. Federal blanket orders and small order procedures are not applicable.

ORDER OF PRECEDENCE

The CMAS Terms and Conditions shall prevail if there is a conflict between the terms and conditions of the contractor's Federal GSA (or other multiple award contract), packaging, invoices, catalogs, brochures, technical data sheets or other documents (see CMAS Terms and Conditions, CONFLICT OF TERMS).

APPLICABLE CODES, POLICIES AND GUIDELINES

All California codes, policies and guidelines are applicable. THE USE OF CMAS DOES NOT REDUCE OR RELIEVE STATE AGENCIES OF THEIR RESPONSIBILITY TO MEET STATEWIDE REQUIREMENTS REGARDING CONTRACTING OR THE PROCUREMENT OF GOODS OR SERVICES. Most procurement and contract codes, policies, and guidelines are incorporated into CMAS contracts. Notwithstanding this, there is no guarantee that "every" possible requirement that pertains to all the different and unique state processes has been included.

STATEWIDE PROCUREMENT REQUIREMENTS

Agencies must carefully review and adhere to all statewide procurement requirements in the Purchasing Authority Manual, such as:

- Automated Accounting System requirements of State Administrative Manual (SAM) Section 7260-62
- Productive Use Requirements of SAM Section 5203
- SAM Sections 4819.41 and 4832 certifications for information technology procurements and compliance with policies.
- Services may not be paid for in advance.
- Agencies are required to file with the Department of Fair Employment and Housing (DFEH) a Contract Award Report Std. 16 for each order over \$5,000 within 10 days of award, including supplements that exceed \$5,000.
- Pursuant to Public Contract Code Section 10359 state agencies are to report all Consulting Services Contract activity for the preceding fiscal year to DGS and the six legislative committees and individuals that are listed on the annual memorandum from DGS.
- Pursuant to Unemployment Insurance Code Section 1088.8, state and local government agencies must report to the Employment Development Department (EDD) all payments for services that equal \$600 or more to independent sole proprietor contractors. See the contractor's Std. Form 204, Payee Data Record, in the CMAS contract to determine sole proprietorship. All inquiries regarding this subject should be forwarded to EDD: Technical questions: 916/651-6945 or Information and forms: 916/657-0529.
- Annual small business and disabled veteran reports.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
OREGON ROMTEC, INC.
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- Post evaluation reports. Public Contract Code 10369 requires state agencies to prepare post evaluations on form STD 4 for all completed consulting services contracts of more than \$5,000. Copies of negative evaluations must be sent to the DGS Office of Legal Services. The Bureau of State Audits requires state agencies annually to certify compliance with these requirements.

ETHNICITY/RACE/GENDER REPORTING REQUIREMENT

Effective July 1, 2002, in accordance with Public Contract Code 10116, state agencies are to capture information on ethnicity, race, and gender of business owners (not subcontractors) for all awarded contracts, including CAL-Card transactions. Each department is required to independently report this information to the Governor and the Legislature on an annual basis.

Agencies are responsible for developing their own guidelines and forms for collecting and reporting this information.

Contractor participation is voluntary.

PAYMENTS AND INVOICES

1. Payment Terms

Payment terms for this contract are net 45 days.

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires state agencies to pay properly submitted, undisputed invoices not more than 45 days after (I) the date of acceptance of goods or performance of services; or (II) receipt of an undisputed invoice, whichever is later.

2. Payee Data Record (Std. 204)

Each state accounting office must have a copy of the attached Payee Data Record (Std. 204) in order to process payment of invoices. Agencies should forward a copy of the Std. 204 to their accounting office(s). Without the Std. 204, payment may be unnecessarily delayed.

3. DGS Administrative Fee

The Department of General Services (DGS) will bill each state and local agency directly an administrative fee for use of CMAS contracts. The administrative fee should NOT be included in the order total, nor remitted before an invoice is received from DGS. This fee is waived for purchase orders to California certified small businesses.

See the current fees in the DGS Price Book at: <http://www.ofs.dgs.ca.gov/Price+Book/P/Purchasing.htm>

4. Contractor Invoices

Unless otherwise stipulated, the contractor must send their invoices to the agency address set forth in the purchase order. Invoices shall be submitted in triplicate and shall include the following:

- Contract number
- Agency purchase order number
- Agency Bill Code
- Line Item number
- Unit price
- Extended line item price
- Invoice total

State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

The company name on the CMAS contract, purchase order and invoice must match or the State Controller's Office will not approve payment.

5. Advance Payments

Advance payment is allowed for services only under limited, narrowly defined circumstances, e.g., between specific departments and certain types of non-profit organizations, or when paying another government agency (GC 11256 - 11263 and 11019).

It is NOT acceptable to pay in advance, except software maintenance and license fees, which are considered a subscription, may be paid in advance if a provision addressing payment in advance is included in the purchase order.

Warranty upgrades and extensions may also be paid for in advance, one time.

6. Credit Card

OREGON ROMTEC, INC. accepts the State of California credit card (CAL-Card).

A Purchasing Authority Purchase Order (Std. 65) is required even when the ordering department chooses to pay the contractor via the CAL-Card. Also, the DGS administrative fee is applicable for all CMAS orders to suppliers not California certified as a small business.

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7. Lease/Purchase Analysis

State agencies must complete a Lease/Purchase Analysis (LPA) to determine best value when contemplating a lease/rental, and retain a copy for future audit purposes (SAM 3700). Approval by the Department of General Services is not required.

8. Leasing

Except for Federal Lease to Own Purchase (LTOP) and hardware rental provisions with no residual value owed at end term (\$1 residual value is acceptable), Federal GSA Lease provisions are NOT available through CMAS because the rates and contract terms and conditions are not acceptable or applicable to the State.

SEAT Management financing options are NOT available through this contract.

As an alternative, agencies may consider financing through the State's financial marketplace GS \$Mart™. All terms and conditions and lenders are pre-approved for easy financing. The GS \$Mart™ Internet address is www.dgs.ca.gov/pd then click on GS \$Mart™. Buyers without Internet access may contact the GS \$Mart™ Administrator, Pat Mullen by phone at 916/375-4617 or via e-mail at pat.mullen@dgs.ca.gov for further information.

9. Maintenance Tax

The Board of Equalization has ruled that in accordance with Section 1655 of the Sales and Use Tax Regulations of the Business Taxes Law Guide, that whenever optional maintenance contracts include consumable supplies, such supplies are subject to sales tax.

Generally, the State has two options:

1. For contracts that provide for only maintenance services (i.e. the furnishing of labor and parts necessary to maintain equipment), the charges for the provision of maintenance services are not taxable.
2. For contracts that provide for both maintenance services and consumable supply items (i.e. toner, developer, and staples, for example), the provision of the consumable supplies is considered a taxable sale of tangible personal property. Therefore, state agencies awarding optional maintenance contracts are responsible for paying the applicable sales tax on the consumable supplies utilized during the performance period of the maintenance contract.

The contractor will be required to itemize the consumables being taxed for state accounting purposes.

CONTRACTOR QUARTERLY REPORTS

Contractors are required to submit a detailed report quarterly to the DGS Procurement Division, CMAS Unit, 707 Third Street, 2nd Floor, West Sacramento, CA 95605-2811, Attention: Quarterly Report Processing. A separate report is required for each contract, as differentiated by alpha suffix (if applicable). Contractors with resellers are responsible for reporting reseller ordering activity. Any report that does not follow the required format or that excludes information will be deemed incomplete and returned to the contractor.

To facilitate collection of administrative fees, copies of local government agency purchase orders must accompany the CMAS quarterly report. This new requirement is effective beginning the second quarter of 2005, for reports due in the CMAS office within two weeks after the end of June 2005.

New contracts for contractors with existing contracts, and extensions or renewals of existing contracts, will be approved ONLY if the contractor has submitted to the CMAS Unit all quarterly reports due. Each quarterly report is required within two weeks of the end of March, June, September, and December of each calendar year. A report is required even when there is no activity.

The report must include the agency name, purchase order number, purchase order date, agency billing code, pre-tax total order cost, agency contact name, address and phone number, and total dollars for the quarter. Tax must NOT be included in the quarterly report, even if the agency includes tax on the purchase order.

A sample quarterly report indicating required format and information is attached for your reference (Attachment A).

CONTRACTOR PROVIDES COPY OF THE CONTRACT AND SUPPLEMENTS

CMAS contractors are required to provide the entire contract that consists of the following:

- Cover pages with DGS logo and CMAS analyst's signature, and Ordering Instructions and Special Provisions.
- Payee Data Record (Std. 204).
- California CMAS Terms and Conditions.
- Federal GSA Terms and Conditions (unless otherwise stipulated in the CMAS contract).
- Federal GSA products, services, and price list (unless otherwise stipulated in the CMAS contract).
- Supplements, if applicable.

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
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It is important for the agency to confirm that the required products, services, and prices are included in the contract and are at, or below, contract rates. To streamline substantiation that the needed items are in the contract, the agencies should ask the contractor to identify the specific pages from the contract that include the required products, services, and prices. Agencies should save these pages for their file documentation.

CONTRACTORS ACTING AS FISCAL AGENTS ARE PROHIBITED

When a subcontractor ultimately provides all of the products or performs all of the services that a contractor has agreed to provide, and the prime contractor only handles the invoicing of expenditures, then the prime contractor's role becomes that of a fiscal agent because it is merely administrative in nature, and does not provide a commercially useful function. It is unacceptable to use fiscal agents in this manner because the agency is paying unnecessary administrative costs.

AGENCY RESPONSIBILITY

Agencies must contact contractors to obtain copies of the contracts and compare them for a best value purchasing decision.

Each agency is responsible for its own contracting program and purchasing decisions, including use of the CMAS program and associated outcomes.

This responsibility includes, but is not necessarily limited to, ensuring the necessity of the services, securing appropriate funding, complying with laws and policies, preparing the purchase order in a manner that safeguards the State's interests, obtaining required approvals, and documenting compliance with Government Code 19130, b (3) for outsourcing services.

It is the responsibility of each agency to consult as applicable with their legal staff and contracting offices for advice depending upon the scope or complexity of the purchase order.

If you do not have legal services available to you within your agency, the DGS Office of Legal Services is available to provide services on a contractual basis.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
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FLICT OF INTEREST

Agencies must evaluate the proposed purchase order to determine if there are any potential conflict of interest issues.

For guidelines, see the CMAS Services Guide, Attachment B.

FEDERAL DEBARMENT

When federal funds are being expended, the agency is required to obtain (retain in file) a signed "Federal Debarment" certification from the contractor before the purchase order is issued.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants; responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

LIQUIDATED DAMAGES FOR LATE DELIVERY

The value of the liquidated damages must be included in the purchase order to be applicable, mutually agreed upon by agency and contractor, and cannot be a penalty.

ACCEPTANCE TESTING CRITERIA

If the agency wants to include acceptance testing for all newly installed technology systems, and individual equipment, and machines which are added or field modified (modification of a machine from one model to another) after a successful performance period, the test criteria must be included in the purchase order to be applicable.

SHIPPING INSTRUCTIONS

F.O.B. (Free On Board) Destination. Seller pays the freight charges.

AMERICANS WITH DISABILITY ACT (ADA)

Section 504 of the Rehabilitation Act of 1973 as amended; Title VI and VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act, 42 USC 12101; California Code of Regulations, Title 2, Title 22; California Government Code, Sections 11135, et seq.; and other federal and state laws, and Executive Orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities. See Attachment B for Procurement Division's ADA Compliance Policy of Nondiscrimination on the Basis of Disability.

Individual government agencies are responsible for self-compliance with ADA regulations.

Contractor sponsored events must provide reasonable accommodations for persons with disabilities.

DGS PROCUREMENT DIVISION CONTACT AND PHONE NUMBER

Department of General Services
Procurement Division, CMAS Unit
707 Third Street, 2nd Floor
West Sacramento, CA 95605-2811

Phone # 916/375-4363
Fax # 916/375-4663

Calnet # 8/480-4363

ATTACHMENT A

CMAS QUARTERLY BUSINESS ACTIVITY REPORT

- A report is required even when there is no activity for the quarter.
- Copies of local government agency purchase orders must accompany the CMAS quarterly report.
- Quarterly Reports are due two weeks after the end of the quarter

1. Calendar Quarter Number: (Quarter # and Year)
2. CMAS Contract Number: XX-XX-XX-XXXXX (Including alpha suffix if applicable)
3. Contractor: Company Name and Address
4. Contractor Contact: Name and Phone Number

5.	6.	7.	8.	9.	10.	11.	12.
Agency Name	Purchase Order Number	Purchase Order Date	Agency Billing Code	Total Dollars per Purchase Order	Agency Contact	Agency Address	Phone Number
FORMAT							

13. Total dollars for quarter: \$ _____

The Quarterly Report must contain all of the above data elements, but may be in a landscape report format.

1. Identify the calendar quarter number and year for the report you are submitting.
2. Identify your company's CMAS contract number. A separate report is required for each contract, as differentiated by alpha suffix (if applicable). Multiple contracts on Std. 65 State Purchase Order form should be itemized by contract number. For each individual contract (as differentiated by alpha suffix), identify and group together the contract number with line items and subtotal per contract number (do not include tax in the subtotal).
3. Identify your company name and mailing address.
4. Identify the company contact and phone number for the CMAS contract or the person preparing and submitting the report.
5. Identify the State Agency or local government that issued the CMAS order.
6. Identify the purchase order number (and supplement number if applicable) on the order form. This is not your invoice number. This is the number the agency or local government assigns to the order.
7. Identify the date the purchase order was issued. This is not the date you received, accepted, or invoiced the order.
8. Identify the State Agency billing code. This is a five-digit number identified on the upper right hand corner of the Std. 65 purchase order form. You must identify this number on all purchases made by State of California agencies. Local governments will not reference a billing-code. You may leave this blank for local government orders.
9. Identify the total dollars of each purchase order before tax. Tax must NOT be included in the quarterly report, even if the agency includes tax on the purchase order. The total dollars per order should indicate the entire purchase order amount regardless of when you invoice order, perform services, deliver product, or receive payment. For amended orders, enter the incremental increase/decrease only.
10. Identify the "Bill To" agency or local government CONTACT on the purchase order.
11. Identify the "Bill To" agency or local government ADDRESS on the purchase order.
12. Identify the agency or local government phone number on the purchase order.
13. Identify the total dollars pre-tax for all orders placed in that calendar quarter.

ATTACHMENT B

ADA NOTICE

Procurement Division (State Department of General Services)
AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE
POLICY OF NONDISCRIMINATION ON THE BASIS OF DISABILITY

To meet and carry out compliance with the nondiscrimination requirements of the Americans With Disabilities Act (ADA), it is the policy of the Procurement Division (within the State Department of General Services) to make every effort to ensure that its programs, activities, and services are available to all persons, including persons with disabilities.

For persons with a disability needing a reasonable accommodation to participate in the Procurement process, or for persons having questions regarding reasonable accommodations for the Procurement process, please contact the Procurement Division at (916) 375-4400 (main office); the Procurement Division TTY/TDD (telephone device for the deaf) or California Relay Service numbers which are listed below. You may also contact directly the Procurement Division contact person who is handling this procurement.

IMPORTANT: TO ENSURE THAT WE CAN MEET YOUR NEED, IT IS BEST THAT WE RECEIVE YOUR REQUEST AT LEAST 10 WORKING DAYS BEFORE THE SCHEDULED EVENT (i.e., MEETING, CONFERENCE, WORKSHOP, etc.) OR DEADLINE DUE-DATE FOR PROCUREMENT DOCUMENTS.

The Procurement Division TTY telephone numbers are:

Sacramento Office: (916) 376-1891
Fullerton Office: (714) 773-2093

The California Relay Service Telephone Numbers are:

Voice: 1-800-735-2922 or 1-888-877-5379
TTY: 1-800-735-2929 or 1-888-877-5378
Speech-to-Speech: 1-800-854-7784

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
GENERAL PROVISIONS - NON-IT COMMODITIES**

1. **DEFINITIONS:** The following terms shall be given the meaning shown, unless context requires otherwise or a unique meaning is otherwise specified.
 - a) "Business entity" means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability corporation, limited liability partnership, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
 - b) "Buyer" means the State's authorized contracting official.
 - c) "Contract" means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
 - d) "Contractor" means the Business Entity with whom the State enters into this contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.
 - e) "Goods" (commodities) means all types of tangible personal property, including but not limited to materials, supplies, and equipment (including computer equipment and telecommunications).
 - f) "State" means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.
2. **CONTRACT FORMATION:** If this Contract results from a Letter of Offer, then Contractor's offer is deemed a firm offer and this Contract document is the State's acceptance of that offer.
3. **COMPLETE INTEGRATION:** This contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the contract.
4. **SEVERABILITY:** The contractor and the State agree that if any provision of this contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.
5. **INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of contractor, in the performance of this contract, shall act in an independent capacity and not as officers or employees or agents of the State.
6. **APPLICABLE LAW:** This contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this contract.
7. **COMPLIANCE WITH STATUTES AND REGULATIONS:**
 - a) Contractor warrants and certifies that in the performance of this contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California and agrees to indemnify the State against any loss, cost, damage or liability by reason of contractor's violation of this provision.
 - b) If this contract is in excess of \$500,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
8. **CONTRACTOR'S POWER AND AUTHORITY:** The contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this contract.
 - a) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
 - b) Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) the State will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
9. **CMAS -- ASSIGNMENT:** This contract shall not be assignable by the contractor in whole or in part without the written consent of the State. For the purpose of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.

Should the State desire financing of the assets provided hereunder through GS \$Mart, the State's financial marketplace, the Contractor agrees to assign to a State-designated lender its right to receive payment from the State for the assets in exchange for payment by the lender of the cash purchase price for the assets. Upon notice to do so from the State-designated lender at any time prior to payment by the State for the assets, the Contractor will execute and deliver to the State-designated lender an assignment agreement and any additional documents necessary for the State selected financing plan. The State-designated lender will pay the Contractor according to the terms of the Contractor's invoice upon acceptance of the assets by the State.
10. **WAIVER OF RIGHTS:** Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.
11. **CMAS -- ORDER OF PRECEDENCE:** In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:
 - a) these General Provisions - Non-IT Commodities;
 - b) contract form, i.e., Purchase Order STD 65, etc., and any amendments thereto;
 - c) federal GSA (or other multiple award) terms and conditions;

CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS) GENERAL PROVISIONS - NON-IT COMMODITIES

- d) statement of work, including any specifications incorporated by reference herein;
- e) special terms and conditions; and
- f) all other attachments incorporated in the contract by reference.
12. **PACKING AND SHIPMENT:**
- a) All goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
- i) show the number of the container and the total number of containers in the shipment; and
- ii) the number of the container in which the packing sheet has been enclosed.
- b) All shipments by contractor or its subcontractors must include packing sheets identifying: the State's contract number; item number; quantity and unit of measure; part number and description of the goods shipped; and appropriate evidence of inspection, if required. Goods for different contracts shall be listed on separate packing sheets.
- c) Shipments must be made as specified in this contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.
13. **TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the contract.
- a) Contractor must strictly follow contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the buyer.
- b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by the Transportation Management Unit within the Department of General Services Procurement Division and a waiver is granted.
- c) On "F.O.B. Shipping Point" transactions, should any shipments under the contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the equipment and/or material, contractor, on request of the State, shall at contractor's own expense assist the State in establishing carrier liability by supplying evidence that the equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.
14. **TIME IS OF THE ESSENCE:** Time is of the essence in this contract.
15. **DELIVERY:** Contractor shall strictly adhere to the delivery and completion schedules specified in this contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess goods, and may return them to contractor at contractor's expense or utilize any other rights available to the State at law or in equity.
16. **SUBSTITUTIONS:** Substitution of goods may not be tendered without advance written consent of the buyer. Contractor shall not use any specification in lieu of those contained in the contract without written consent of the buyer.
17. **INSPECTION, ACCEPTANCE AND REJECTION:**
- a) Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering goods and services under this contract and will tender to the State only those goods that have been inspected and found to conform to this contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the State during contract performance and for three years after final payment. Contractor shall permit the State to review procedures, practices, processes and related documents to determine the acceptability of Contractor's quality assurance system or other business practices related to performance of the contract.
- b) All goods may be subject to inspection and test by the State or its authorized representatives.
- c) Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- d) All goods to be delivered hereunder may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.
- e) The State shall give notice of rejection of goods delivered or services performed hereunder within a reasonable time after receipt of such goods or performance of such services. Such notice of rejection will state the respects in which the goods do not substantially conform to their specifications. If the State does not provide such notice of rejection within thirty (30) days of delivery, such goods and services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this contract with respect to any nonconformity.
18. **SAMPLES:**
- a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products offered and/or specified in the contract.
- b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at contractor's expense.
19. **CMAS -- WARRANTY:** The following warranty language is in addition to the warranty language provided in the federal GSA Multiple Award Schedule or other base contract used to establish this CMAS Contract. When there is a conflict between the language, the following warranty language overrides.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
GENERAL PROVISIONS - NON-IT COMMODITIES**

Unless otherwise specified, the warranties contained in this contract begin after acceptance has occurred.

- a) Contractor warrants that goods and services furnished hereunder will conform to the requirements of this contract (including all descriptions, specifications and drawings made a part hereof), and such goods will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship and to the extent not manufactured pursuant to detailed designs furnished by the State, free from defects in design. The State's approval of designs or specifications furnished by contractor shall not relieve the contractor of its obligations under this warranty.
- b) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies and users of the goods or services.
- 20. SAFETY AND ACCIDENT PREVENTION:** In performing work under this contract on State premises, contractor shall conform to any specific safety requirements contained in the contract or as required by law or regulation. Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this contract in accordance with the default provisions hereof.
- 21. INSURANCE:** When performing work on property in the care, custody or control of the State, contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance the State deems appropriate under the contract. Contractor shall furnish an insurance certificate evidencing required insurance coverage acceptable to the State. Upon request by the buyer, the contractor may be required to have the State shown as an "additional insured" on selected policies.
- 22. TERMINATION FOR NON-APPROPRIATION OF FUNDS:**
- a) If the term of this contract extends into fiscal years subsequent to that in which it is approved, such continuation of the contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, contractor agrees to take back any affected goods furnished under this contract, terminate any services supplied to the State under this contract, and relieve the State of any further obligation therefor.
- b) STATE AGREES THAT IF PARAGRAPH (a) ABOVE IS INVOKED, GOODS SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.
- 23. TERMINATION FOR THE CONVENIENCE OF THE STATE:**
- a) The State may terminate performance of work under this contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director, Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the contractor a Notice of Termination specifying the extent of termination and the effective date thereof. The parties agree that, as to the terminated portion of the contract, the contract shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and the contract shall not be void.
- b) After receipt of a Notice of Termination, and except as directed by the State, the contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
- i) Stop work as specified in the Notice of Termination.
 - ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
 - iii) Terminate all subcontracts to the extent they relate to the work terminated.
 - iv) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification of which will be final for purposes of this clause.
- 24. TERMINATION FOR DEFAULT:**
- a) The State may, subject to the Force Majeure paragraph contained herein, by written notice of default to the contractor, terminate this contract in whole or in part if the contractor fails to:
- i) Deliver the goods or to perform the services within the time specified in the contract or any amendment thereto;
 - ii) Make progress, so as to endanger performance of this contract (but see subparagraph (b) below); or
 - iii) Perform any of the other provisions of this contract (but see subparagraph (b), below).
- b) The State's right to terminate this contract under subparagraphs (a)(ii) and (a)(iii) above, may be exercised if the contractor does not cure such failure within the time frame stated in the cure notice issued by the buyer.
- c) If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the buyer considers appropriate, goods or services similar to those terminated, and the contractor will be liable to the State for any excess costs for those goods or services. However, the contractor shall continue the work not terminated.
- d) If the contract is terminated for default, the State may require the contractor to transfer title and deliver to the State, as directed by the buyer, any:
- i) Completed goods, and
 - ii) Partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the buyer, the contractor shall also protect and preserve property in its possession in which the State has an interest.
- e) The State shall pay contract price for completed goods delivered and accepted. The contractor and buyer shall agree on the amount of payment for manufacturing materials delivered and accepted for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the buyer determines to be

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necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

- f) If, after termination, it is determined that the contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
- g) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

25. FORCE MAJEURE:

Except for defaults of subcontractors at any tier, the contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the contractor. Examples of such causes include, but are not limited to:

- a) Acts of God or of the public enemy, and
- b) Acts of the federal or state government in either its sovereign or contractual capacity.

If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor shall not be liable for any excess costs for failure to perform.

26. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:

- a) In the event any goods furnished or services provided by the contractor in the performance of the contract should fail to conform to the requirements herein, or to the sample submitted by the contractor, the State may reject the same, and it shall become the duty of the contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the contract.
- b) In addition to any other rights and remedies the State may have, the State may require contractor, at contractor's expense, to ship goods via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the contractor.
- c) In the event of the termination of the contract, either in whole or in part, by reason of default or breach by the contractor, any loss or damage sustained by the State in procuring any items which the contractor agreed to supply shall be borne and paid for by the contractor.
- d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to contractor or to make a claim against the contractor therefore.

27. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

- a) The contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the goods either at the contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the contractor.
- b) Contractor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or

installed by the contractor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the goods provided by the contractor during the contract.

28. **INDEMNIFICATION:** Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers and any other person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation which may be injured or damaged by contractor in the performance of this contract.

29. **INVOICES:** Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

30. **REQUIRED PAYMENT DATE:** Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires state agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

31. **TAXES:** Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or goods supplied to the State pursuant to this contract.

32. **NEWLY MANUFACTURED GOODS:** All goods furnished under this contract shall be newly manufactured goods; used or reconditioned goods are prohibited, unless otherwise specified.

33. **CONTRACT MODIFICATION:** No amendment or variation of the terms of this contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the contract is binding on any of the parties.

34. **CONFIDENTIALITY OF DATA:** All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the contractor in order to carry out this contract, or which become available to the contractor in carrying out this contract, shall be protected by the contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the contractor. If the methods and procedures employed by the contractor for the protection of the contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent

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of the State, to carry out the intent of this paragraph. The contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the contractor's possession, is independently developed by the contractor outside the scope of this contract, or is rightfully obtained from third parties.

35. **NEWS RELEASES:** Unless otherwise exempted, news releases pertaining to this contract shall not be made without prior written approval of the Department of General Services.

36. **PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:**

- a) Contractor shall hold the State of California, its officers, agents and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in connection with the contract.
- b) Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c) Contractor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the goods or software supplied by the contractor or the operation of such goods pursuant to a current version of contractor supplied operating software infringes a United States patent or copyright or violates a trade secret. The contractor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:
 - i) That the contractor shall be notified within a reasonable time in writing by the State of any notice of such claim; and,
 - ii) That the contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, the State shall have the option to participate in such action at its own expense.
- d) Should the goods or software, or the operation thereof, become, or in the contractor's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, the State shall permit the contractor at its option and expense either to procure for the State the right to continue using the goods or software, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such goods or software by the State shall be prevented by injunction, the contractor agrees to take back such goods or software and make every reasonable effort to assist the State in procuring substitute goods or software. If, in the sole opinion of the State, the return of such infringing goods or software makes the retention of other goods or software acquired from the contractor under this contract impractical, the State shall then have the option of terminating such contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such goods or software and refund any sums the State has paid Contractor less any reasonable amount for use or damage.

e) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:

- i) The combination or utilization of goods furnished hereunder with equipment or devices not made or furnished by the Contractor; or,
 - ii) The operation of equipment furnished by the contractor under the control of any operating software other than, or in addition to, the current version of contractor-supplied operating software; or
 - iii) The modification by the State of the equipment furnished hereunder or of the software; or
 - iv) The combination or utilization of software furnished hereunder with non-contractor supplied software.
- f) Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- g) The foregoing states the entire liability of the Contractor to the State with respect to infringement of patents, copyrights or trade secrets.

37. **EXAMINATION AND AUDIT:** Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this contract. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this contract.

38. **DISPUTES:**

- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Contractor shall submit to the Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract, unless the State, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the contract adjustment for which Contractor believes the State is liable. If the Contractor is not satisfied with the decision of the Department Director or designee, the Contractor may appeal the decision to the Department of General Services, Deputy Director, Procurement Division. In the event that this Contract is for information technology goods and/or services, the decision may be appealed to an Executive Committee of State and Contractor personnel.
- b) Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods or providing of services in accordance with the State's instructions. Contractor's failure

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to diligently proceed in accordance with the State's instructions shall be considered a material breach of this Contract.

- c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Department Director or designee or Deputy Director, Procurement Division if an appeal was made. If the State fails to render a final decision within 90 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

39. STOP WORK:

- a) The State may, at any time, by written Stop Work Order to the contractor, require the contractor to stop all, or any part, of the work called for by this contract for a period up to 90 days after the Stop Work Order is delivered to the contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
 - i) Cancel the Stop Work Order; or
 - ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this contract.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the contract price, or both, and the contract shall be modified, in writing, accordingly, if:
 - i) The Stop Work Order results in an increase in the time required for, or in the contractor's cost properly allocable to the performance of any part of this contract; and
 - ii) The contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this contract.
- c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- d) The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.

- 40. **PRIORITY HIRING CONSIDERATIONS:** If this Contract includes services in excess of \$200,000, the Contractor shall give priority

consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.

- 41. **COVENANT AGAINST GRATUITIES:** The contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the contractor, or any agent or representative of the contractor, to any officer or employee of the State with a view toward securing the contract or securing favorable treatment with respect to any determinations concerning the performance of the contract. For breach or violation of this warranty, the State shall have the right to terminate the contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which contractor agreed to supply shall be borne and paid for by the contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

42. NONDISCRIMINATION CLAUSE:

- a) During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. 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.
- b) The contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

- 43. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the contractor within the immediately preceding two-year period because of the contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.

- 44. **ASSIGNMENT OF ANTITRUST ACTIONS:** Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- a) In submitting an offer to the State, the supplier offers and agrees that if the offer is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with

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Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, material, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.

- b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the offer price, less the expenses incurred in obtaining that portion of the recovery.
- c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
- i) the assignee has not been injured thereby, or
 - ii) the assignee declines to file a court action for the cause of action.
45. **DRUG-FREE WORKPLACE CERTIFICATION:** The contractor certifies under penalty of perjury under the laws of the State of California that the contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i) the dangers of drug abuse in the workplace;
 - ii) the person's or organization's policy of maintaining a drug-free workplace;
 - iii) any available counseling, rehabilitation and employee assistance programs; and,
 - iv) penalties that may be imposed upon employees for drug abuse violations.
 - c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting contract:
 - i) will receive a copy of the company's drug-free policy statement; and,
 - ii) will agree to abide by the terms of the company's statement as a condition of employment on the contract.
46. **FOUR-DIGIT DATE COMPLIANCE:** Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.
47. **SWEATFREE CODE OF CONDUCT:**
- a) Contractor declares under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the State pursuant to the contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, 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 sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dlr.ca.gov and Public Contract Code Section 6108.
 - b) Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a).
48. **RECYCLING:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205).
49. **CHILD SUPPORT COMPLIANCE ACT:** For any contract in excess of \$100,000, the contractor acknowledges in accordance with PCC Section 7110, that:
- a) The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
 - b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
50. **AMERICANS WITH DISABILITIES ACT:** Contractor assures the State that Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq).
51. **ELECTRONIC WASTE RECYCLING ACT OF 2003:** The Contractor certifies that it complies with the requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42480 of the Public Resources Code, relating to hazardous and solid waste. Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.
52. **USE TAX COLLECTION:** In accordance with PCC Section 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise

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State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.

53. **EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Section 10286 and 10286.1, and is eligible to contract with the State.
54. **DOMESTIC PARTNERS:** For contracts executed or amended after July 1, 2004, the contractor may elect to offer domestic partner benefits to the contractor's employees in accordance with Public Contract Code section 10295.3. However, the contractor cannot require an employee to cover the costs of providing any benefits, which have otherwise been provided to all employees regardless of marital or domestic partner status. Commencing on July 1, 2004, Contractor certifies that it is in compliance with the applicable provisions of PCC Section 10295.3 with regard to benefits for domestic partners.

ADDITIONAL CMAS TERMS AND CONDITIONS

55. CMAS -- CONTRACTOR'S LICENSE REQUIREMENTS:

Contracts that include installation or the wording "Furnish and Install" require at the time of contract award that contractors possess a valid California State Contractor's License. If subcontractors are used, they must also possess a valid California State Contractor's License. All businesses which construct or alter any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the California State License Board (CSLB) if the total cost (labor and materials) of the project is \$500.00 or more. Failure to be licensed or to keep the license current and in good standing shall be grounds for contract revocation.

56. CMAS -- PUBLIC WORKS REQUIREMENTS

(LABOR/INSTALLATION):

- a) Prior to the commencement of performance, the Contractor must obtain and provide to the State, a payment bond, on Standard Form 807, when the Contract involves a public works expenditure (labor/installation costs) in excess of \$5,000. Such bond shall be in a sum not less than one hundred percent (100%) of the Contract price. Forms shall be provided to the Contractor.
- b) In accordance with the provisions of Section 1773 of the California Labor Code, the Contractor shall, conform and stipulates to the general prevailing rate of wages, including employer benefits as defined in Section 1773.1 of the California Labor Code, applicable to the classes of labor to be used for public works such as at the delivery site for the assembly and installation of the equipment or materials under the purchase order. Pursuant to Section 1770 of the California Labor Code, the Department of Industrial Relations has ascertained the general prevailing rate of wages in the county in which the work is to be done, to be as listed in the Department of Transportation booklet entitled *General Prevailing Wage Rates*. The booklet is compiled monthly and copies of the same are available from the Department of Industrial Relations, Prevailing Wage Unit at www.dir.ca.gov (select Statistics & Research) or (415) 703-4774. The booklet is required to be posted at the job site.
- c) The Contractor hereby certifies by signing this Contract that:

- i) Contractor has met or will comply with the standards of affirmative compliance with the Non-Discrimination Clause Requirements included herein.
- ii) Contractor is aware of the provisions of Section 3700 of the Labor Code that require every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor will comply with such provisions before commencing the performance of the work of the purchase order.

d) Laws to be Observed

i) Labor

Pursuant to Section 1775 of the California Labor Code the Contractor shall, as a penalty to the State or Political subdivision on whose behalf the purchase order is made or awarded, forfeit not more than fifty (\$50.00) for each calendar day, or portions thereof, for each worker paid by him or subcontractor under him, less than the prevailing wage so stipulated; and in addition, the Contractor further agrees to pay to each workman the difference between the actual amount paid for each calendar day, or portions thereof, and the stipulated prevailing wage rate for the same. This provision shall not apply to properly indentured apprentices.

Pursuant to Sections 1810-1815 of the California Labor Code, inclusive, it is further agreed that the maximum hours a worker is to be employed is limited to eight hours a day and forty hours a week and the Contractor shall forfeit, as a penalty to the State, twenty-five (\$25) for each worker employed in the execution of the purchase order for each calendar day during which a workman is required or permitted to labor more than eight hours in any calendar day or more than forty hours in any calendar week, in violation of California Labor Code Sections 1810-1815, inclusive.

ii) Worker's Compensation Insurance

The Contractor will be required to secure the payment of compensation to its employees in accordance with the provisions of Labor Code Section 3700.

iii) Travel and Subsistence Payments

Travel and subsistence payments shall be paid to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Labor Code Section 1773.8.

iv) Apprentices

Special attention is directed to Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code and Title 8, California Administrative Code Section 200 et seq. Each contractor and/or subcontractor must, prior to commencement of the public works Contract/purchase order, contact the Division of Apprenticeship Standards, 525 Golden Gate Avenue, San Francisco, CA, or one of its branch offices to insure compliance and complete understanding of the law regarding apprentices and specifically the required ratio thereunder. Responsibility for compliance with this section lies with the prime Contractor.

v) Payroll

The Contractor shall keep an accurate payroll record showing the name, social security account, and work classification specific and straight time and overtime hours worked by each employee. A certified copy of the employee's payroll record shall be available for

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Inspection as specified in section 1776 of the California Labor Code.

57. CMAS -- TERMINATION OF CMAS CONTRACT:

- a) The State may terminate this CMAS Contract at any time upon 30 days prior written notice.
- b) If the Contractor's GSA Multiple Award Schedule is terminated within the term of the California Multiple Award Schedule, the California schedule shall also be considered terminated on the same date.
- c) Upon termination or other expiration of this Contract, each party will assist the other party in orderly termination of the Contract and the transfer of all assets, tangible and intangible, as may facilitate the orderly, nondisrupted business continuation of each party.
- d) Prior to the expiration of this Contract, this Contract may be terminated for the convenience of both parties by mutual consent.
- e) This provision shall not relieve the Contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.

58. CMAS -- CONTRACT AMOUNT: There is no guarantee of minimum purchase of Contractor's products or services by the State.

59. CMAS -- DEBARMENT CERTIFICATION (FEDERALLY FUNDED CONTRACTS): When Federal funds are being expended, the prospective recipient of Federal assistance funds is required to certify to the buyer, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

60. CMAS -- PURCHASE ORDERS FUNDED IN WHOLE OR PART BY THE FEDERAL GOVERNMENT: All contracts (including individual orders), except for State construction projects, which are funded in whole or in part by the federal government may be canceled with 30 days notice, and are subject to the following:

- a) It is mutually understood between the parties that this Contract (order) may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Contract (order) were executed after that determination was made.
- b) This Contract (order) is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal year during which the order was generated for the purposes of this program. In addition, this Contract (order) is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress that may affect the provisions, terms or funding of this Contract (order) in any manner.
- c) If it is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Contract (order) shall be amended to reflect any reduction in funds. The department has the option to void the Contract (order) under the 30-day cancellation clause or to amend the Contract to reflect any reduction of funds.

61. CMAS -- CONFLICT OF INTEREST:

- a) Current State Employees (Public Contract Code Section 10410):
 - i) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity or enterprise is required as a condition of regular State employment.
 - ii) No officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
- b) Former State Employees (Public Contract Code Section 10411):
 - i) For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the Contract while employed in any capacity by any State agency.
 - ii) For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed Contract within the twelve-month period prior to his or her leaving State service.

62. CMAS -- SUBCONTRACTING REQUIREMENTS:

Any subcontractor that the CMAS supplier chooses to use in fulfilling the requirements of this Contract/purchase order, and which is expected to receive more than ten (10) percent of value of the Contract/purchase order, must also meet all contractual, administrative, and technical requirements of the Contract/purchase order, as applicable.

63. CMAS -- RENTAL AGREEMENTS:

The State does not agree to:

- Indemnify a contractor;
- Assume responsibility for matters beyond its control;
- Agree to make payments in advance;
- Accept any other provision creating a contingent liability against the State; or
- Agree to obtain insurance to protect the Contractor.

The State's responsibility for repairs and liability for damage or loss is restricted to that made necessary by or resulting from the negligent act or omission of the State or its officers, employees, or agents.

If the Contractor maintains the equipment, the Contractor must keep the equipment in good working order and make all necessary repairs and adjustments without qualification. The State may terminate for default or cease paying rent should the Contractor fail to maintain the equipment properly.

Personal property taxes are not generally reimbursed when leasing equipment (SAM 8736).

64. CMAS -- LEASE (Lease \$Mart™): If an agency desires to lease through Lease \$Mart™, the Contractor agrees to sell to lessor the assets at the same price as they agree to sell to the State.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
GENERAL PROVISIONS - NON-IT COMMODITIES**

65. **CMAS -- QUARTERLY REPORTS:** Contractors are required to submit quarterly business activity reports, as specified in this Contract, even when there is no activity. A separate report is required for each contract, as differentiated by alpha suffix.
66. **CMAS -- LIQUIDATED DAMAGES:**
In the event that the Contractor fails to deliver in accordance with the Contract requirements, the parties agree that the delay will interfere with the proper implementation of the State's programs, to the loss and damage of the State. From the nature of the case, it would be impracticable and extremely difficult to fix the actual damages sustained in the event of any such delay. The State and Contractor, therefore, presume that in the event of any such delay the amount of damage which will be sustained from a delay will be the amounts set forth in the Statement of Work, and the State and the Contractor agree that in the event of any such delay, the Contractor shall pay such amounts as liquidated damages and not as a penalty. Amounts due the State as liquidated damages may be deducted by the State from any money payable to the Contractor. The State shall notify the Contractor in writing of any claim for liquidated damages pursuant to this paragraph on or before the date State deducts such sums from money payable to the Contractor.
67. **CMAS -- PROGRESS PAYMENTS/PERFORMANCE BONDS:**
In accordance with PCC 10314: Any contract for goods to be manufactured by the Contractor specially for the State and not suitable for sale to others in the ordinary course of the Contractor's business may provide, on such terms and conditions as the department deems necessary to protect the State's interests, for progress payments for work performed and costs incurred at the Contractor's shop or plant, provided that not less than 10 percent of the Contract price is required to be withheld until final delivery and acceptance of the goods, and provided further, that the Contractor is required to submit a faithful performance bond, acceptable to the department, in a sum not less than one-half of the total amount payable under the Contract securing the faithful performance of the Contract by the Contractor.

www.romtec.com
info@romtec.com



18240 North Bank Rd., Roseburg, OR 97470
541-496-3541 fax: 541-496-0803

QUOTE #

CMAS QUOTATION - CONTRACT #4-04-54-0011A
State of California Contractor's License # 849246

Agency/ Owner: _____
Architect/
Engineer: _____
Contact: _____
Address: _____
City: _____
State - Zip: _____
Phone: _____
Fax: _____
E-mail: _____
Project
Location: _____

Date: 05/09/07

Job: B7 Restroom

Contractor: CITY OF LONG BEACH PARKS, REC & MARINE

Contact: PHILIP LOPEZ

Address: 6204 E. 2ND STREET

City: LONG BEACH

State: CA

Zip: 90815

Phone: 562-570-1583

Fax: 562-570-1588

E-mail: philip_lopez@longbeach.gov



CLICK HERE for photos, drawings & product info at www.romtec.com.

TERMS: Materials payment due net 35-day from date of shipment. Construction payment due upon completion or per mutually agreed-to payment schedule.

Quantity	Model	Description	Comm. Price	Extension
1	2088 Custom	Sierra IV 6-Pak Single-User Restroom with outdoor sinks-Building Kit Package (Includes Marine Grade Roofing Upgrade, FRP Duct, Locknetics & 10" Solatube Skylights)	\$69,279	\$69,279.00
		Roofing:Dark Mocha brown metal, unless otherwise specified. Exterior:split face concrete, unless otherwise specified.		
1	-B	Stainless Plumbing Fixture Pkg - S4SUcs (w/WALL mount toilets) includes mop sink, 2 hose bibs, 1 exterior shower & 2 drinking fountains.	\$14,267	\$14,267.00
1	-C	Electrical Fixture Pkg - S4SUcs (single phase)	\$1,145	\$1,145.00
1		Sierra IV Single-User Restroom: 2-roll white steel toilet paper dispenser (6), California restroom signs-unisex or M/W (6), restroom signs-unisex or M/W (6), Bradley 583 seat cover dispenser (6), Bradley 6562 soap dispenser (2), Bradley 251-33 paper towel dispenser (1), Bradley 377 waste receptacle (1), Bradley 4722-15 sanitary napkin receptacle (6)	\$3,275	\$3,275.00
				\$0.00
SUBTOTAL				\$87,966.00
CMAS DISCOUNT: Available only to qualified California State and Local Entities				-\$7,846.57
Structural Engineering Fee SIN# 361-30			\$2,500.00	\$2,500.00
NSP				
1.75		Shipping & Handling From Roseburg, OR to: Long Beach, California	Zip Code:	\$5,661.00
TOTAL				\$88,280.43

A COMPLETE SET OF STAMPED PLANS, INCLUDING FOOTING & FOUNDATION DETAILS, IS INCLUDED WITH BUILDING PURCHASE.
ROMTEC IS HUBZONE CERTIFIED

*** SPECIAL INSTRUCTIONS:**

- * This quote is effective for 90 days from above date; thereafter all prices are subject to change without notice.
- * There is 15% restocking fee on all returned items.
- * This quotation is subject to the terms and conditions listed on the second sheet of this form (Click Terms tab below).



Bernie Eatherton

5/9/2007

Authorized Signature

Date

www.romtec.com
info@romtec.com



18240 North Bank Rd., Roseburg, OR 97470
541-496-3541 fax: 541-496-0803

QUOTE #

CMAS INSTALL QUOTATION - CONTRACT #4-04-54-0011A
State of California Contractor's License # 849246

Agency/ Owner: _____
Architect/ Engineer: _____
Contact: _____
Address: _____
City: _____
State - Zip: _____
Phone: _____
Fax: _____
E-mail: _____

Date: 05/09/07
Job: _____
Contractor: City of Long Beach
Contact: Phillip Lopez
Address: 6204 E. 2nd Street
City: Long Beach
State: CA Zip: 90825
Phone: 562-570-1583
Fax: _____
E-mail: philip_lopez@longbeach.gov

TERMS: Materials payment due net 35-day from date of shipment. Construction payment due upon completion or per mutually agreed-to payment schedule.

Quantity	Model	CMAS INSTALLATION DESCRIPTION	Comm. Price	Extension
1	Custom SierralV Six Pack	CMAS BUILDING CONSTRUCTION COST ESTIMATE: Sierra Concrete Construction Cost Estimate assumes a prevailing wage job, which is semi-truck accessible, with utilities within 10 feet of foundation. Includes connection to utilities and plumbing and electrical rough in. Estimates also include excavation and pouring the footing, foundation and slab. Plus, the construction and trim out of the complete building with all fixtures and features. Permits, rock excavation, demolition, sidewalks and other site construction are NOT included. This estimate assumes there are no bonding requirements. Should bonding become a requirement, Romtec will supply a bond to cover the construction portion of the job only and not for the building product it supplies itself. Further, should bonding be required, there will be a 10% increase of the construction total added to the quote. SIN#361-32		\$105,420.00
TOTAL				\$105,420.00

*** SPECIAL INSTRUCTIONS:** _____

Construction quotes are valid for 30 days from the date of quote.



Nannette Sibley
Authorized Signature

5/9/2007
Date

Romtec					
Item	Qty	Unit	Description	Unit Price	Extension
1	1	ea	Sierra IV 6-pak	\$69,279.00	\$69,279.00
2	1	lt	plumbing	\$14,267.00	\$14,267.00
3	1	lt	electrical fixture	\$1,145.00	\$1,145.00
4	1	lt	dispensers	\$3,275.00	\$3,275.00
					\$87,966.00
					\$87,966.00
5	1	lt	CMAS discount		-\$7,846.57
6	1	lt	structural engr fee		\$2,500.00
7	1	lt	shipping & handling		\$5,661.00
			sub total		\$88,280.43
			8.25% tax (on \$87,966)		\$7,257.20
8	1	lt	installation		\$105,420.00
9	1	lt	bonding 10%		\$10,542.00
					\$211,499.63