

SAMPLE CONTRACT LANGUAGE

2.0 Terms and Conditions

The parties agree to the terms and conditions listed below:

- 2.1 **Scope of Services:** Contractor will perform the services described in Exhibit A
- 2.2 **Payments:** SMAQMD will make payments to the Contractor as outlined in Exhibit B so long as the Contractor is providing the services set forth in Exhibit A.

A. **Invoices:** Payment will be on a reimbursement basis. Contractor will submit one original and one duplicate monthly invoice to SMAQMD in the following format:

1. The invoice must include an itemization of Contractor staff costs, including: name, position, work tasks, date of service, date of meeting, meeting topics, number of hours worked, rate per hour and total cost.
2. The invoice must also include appropriate documentation for all costs and expenses.
3. Invoices that do not contain the information required under this section are incomplete and will not be paid until complete information is submitted.
4. Invoices need to be received at the SMAQMD office by the second working day of the month. Facsimile or e-mail invoices are acceptable, provided they contain all necessary information.
5. SMAQMD will authorize payment to Contractor no later than 60 calendar days after receipt of a completed invoice.
6. Contractor must submit the final invoice within 10 days of the Contract termination date.

B. **Invoicing Limitations:** The following restrictions limit SMAQMD's obligation to pay invoices:

1. SMAQMD will reimburse Contractor only for Contractor's approved costs as outlined in Exhibit B. The Contractor must document these costs through invoices, receipts and other appropriate records. SMAQMD will not, under any circumstances, reimburse Contractor for any commitments made by Contractor for services not yet performed.
2. Contractor is solely responsible for payment to all vendors, subcontractors and consultants used in the performance of this Contract. It is not the intent of SMAQMD and Contractor to create third party beneficiary rights in these entities.

3. In the event Contractor fails to comply with any provision of this Contract, SMAQMD may withhold payment until Contractor has corrected the noncompliance.
- 2.3 **Rights to Contracted Products:** All reports, research data, and every other work product of any kind or character arising from or relating to this Contract is the exclusive property of SMAQMD.
 - 2.4 **Contract Term:** The term of this Contract will commence _____ and terminate _____.
 - 2.5 **Applicable Laws/Choice of Law/Venue:** Contractor must observe and comply with all applicable laws and regulations. This Contract is executed in Sacramento County, California and is governed by the laws of the State of California. Any action arising out of this Contract must be filed in a state court or federal court located in Sacramento, California.
 - 2.6 **Status of Contractor:** Contractor is an independent contractor, and no relationship of employer-employee exists between SMAQMD and Contractor, or Contractor's employees, subcontractors, or consultants. Accordingly, Contractor, its employees, subcontractors and consultants do not have any of the entitlements of an SMAQMD employee.
 - A. **Direction and Control:** Contractor is subject to the control and direction of SMAQMD regarding the designation of tasks to be performed and the results to be accomplished under this Contract, but not the means, methods, or sequence used by Contractor for accomplishing the tasks and results.
 - B. **Direction of Third Parties:** If the Contractor employs any third persons, these persons will be under the exclusive control of Contractor. All terms of employment, including but not limited to hours, wages, working conditions, discipline, hiring, and discharging will be determined by Contractor.
 - C. **Right to Bind:** Neither the Contractor nor its employees, subcontractors or consultants have the right to act on behalf of SMAQMD in any capacity, or to bind SMAQMD to any obligation.
 - D. **Taxes:** SMAQMD will not make any deductions or withholdings from the compensation paid to Contractor. Contractor must issue all forms required by federal and state laws for income and employment tax purposes, including W-2 and 941 forms, for all of Contractor's assigned personnel.
 - 2.7 **Conflict of Interest:** No officer or employee of SMAQMD has any pecuniary interest, direct or indirect, in this Contract or the proceeds of the Contract. No officer or employee of Contractor may serve on the SMAQMD's governing body or hold any District position which nominates, recommends, supervises or authorizes payment to Contractor.

2.8 **Nondiscrimination:**

A. **Requirements:** Contractor must not discriminate based on:

1. Color, race, creed, national origin, religion, sex, age, or physical or mental handicap in violation of Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d) and its implementing regulations, or in violation of any other state or federal law;
2. Sexual orientation as determined by federal, state, or local laws and regulations.

B. **Prohibited Discrimination:** Prohibited discrimination under this Contract means disparate treatment on the basis of race, color, creed, national origin or sexual orientation. Discrimination includes, but is not limited to:

1. Denying persons any service or benefit which is different, or is provided in a different manner or at a different time from that provided to other participants under this Contract;
2. Subjecting persons to segregation or separate treatment in any matter related to the receipt of services;
3. Restricting persons in any way from the enjoyment of any advantage or privilege enjoyed by others under this Contract;
4. Treating persons differently from others in determining whether they satisfy any admission, enrollment quota, eligibility, membership, or other requirement that individuals must meet in order to be provided any service or benefit under this Contract;
5. Assigning times or places for the provision of services on the basis of race, color, creed, national origin or sexual orientation of the persons to be served.

2.9 **Indemnification:**

A. **Scope:** Contractor will indemnify and defend SMAQMD, its officers, agents, employees and volunteers from any and all liabilities of any kind to the extent that they arise from negligent acts or omissions of Contractor in his/her performance of this Contract. SMAQMD will indemnify and defend Contractor, its board, officers, agents, and employees, from any and all liabilities of any kind that arise from any negligent or wrongful acts or omissions of SMAQMD in its performance of this Contract.

B. **Counsel:** Contractor will also use counsel reasonably acceptable to SMAQMD in carrying out its obligations under this section. The provisions of this section will survive the expiration or early termination of this Contract.

2.10 **Waiver of Claims:** Contractor waives any claims against SMAQMD, its officers, agents, employees or volunteers from damage or loss caused by:

- A. Any suit or proceeding directly or indirectly attacking the validity of this Contract, or any part of this Contract.
- B. Any judgement or award: (i) declaring this Contract, or any part of this Contract, either void or voidable, or (ii) delaying the performance of any part of this Contract.

2.11 **Insurance:**

- A. **Insurance Requirement:** Contractor will maintain insurance to cover its operations throughout this Contract and any Contract extensions.
 - 1. The insurance must meet the requirements in Exhibit C.
 - 2. Any insurance or self-insurance maintained by SMAQMD will apply in excess of, and not contribute to, insurance maintained by Contractor.
 - 3. Contractor will give SMAQMD 30-days written notice prior to modifying the insurance obtained under this section. SMAQMD may object to the modification within 15 days of receiving the notice. If SMAQMD objects, it may demand the relief specified in paragraph 2.17 (B).
 - 4. This section does not limit Contractor's indemnification obligation in Section 2.9.
- B. **Involuntary Policy Modifications:** If Contractor's insurer modifies its insurance in any manner that affects the specifications in Exhibit C, Contractor must notify SMAQMD within 48 hours of the modification. SMAQMD may demand that Contractor obtain additional coverage sufficient to comply with the specifications in Exhibit C, or may terminate this Contract as provided in section 2.17 (B).

2.12 **Assignments:** No performance required or payment due under this Contract may be subcontracted, delegated or assigned without the express written consent of SMAQMD.

2.13 **Subcontracts:** In the event that any part of this Contract is subcontracted, Contractor agrees to document the following affirmative steps for utilizing Minority Business Enterprises (MBE) or Women Owned Business Enterprises (WBE) as required by the Environmental Protection Agency:

- A. Inclusion of MBEs and WBEs on solicitation lists.
- B. Assure MBEs and WBEs are solicited once they are identified.
- C. Where feasible, divide total requirements into smaller tasks to permit maximum MBE/WBE participation.
- D. Where feasible, establish delivery schedules which will encourage MBE and WBE participation.
- E. Encourage use of the services of the U.S. Department of Commerce's Minority Business Development Agency (MBDA) and the U.S. Small Business Administration to identify MBEs and WBEs.

2.14 **Successors:** This Contract will bind the successors of SMAQMD and Contractor in the same manner as if they were expressly named.

- 2.15 **Alteration:** No alteration or variation of the terms of this Contract is valid unless made in writing and signed by both parties.
- 2.16 **Recordkeeping:**
- A. **Records:** Contractor will maintain all necessary records, books and accounts to verify that the Contract funds are used only for the purposes stated in this Contract.
 - B. **Audits:** SMAQMD may audit all expenditures made by the Contractor under this Contract. Contractor must ensure that SMAQMD staff have access, at all reasonable times, to the documents kept by Contractor in connection with all funds expended under this Contract.
 - C. **Duration:** Contractor must maintain these documents for 5 years after the termination of this Contract and any Contract extensions. At the end of the 5-year period, Contractor must either continue to maintain the documents or surrender the documents to SMAQMD, unless SMAQMD states, in writing, that Contractor may destroy documents.
- 2.17 **Termination:**
- A. **30-day Notice Termination:** Either SMAQMD or Contractor may terminate this contract for any reason by giving the other party 30-days written notice. If this contract is terminated under this paragraph, SMAQMD may proceed with the work in any manner deemed proper by SMAQMD without recourse by Contractor, its officers, agents, employees or volunteers.
 - B. **5-day Notice Termination:** SMAQMD may terminate this Contract with 5 days written notice if Contractor fails to perform any of the terms and conditions of this Contract in the time and manner specified. If the Contract is terminated under this paragraph, SMAQMD may proceed with the work in any manner deemed proper by SMAQMD without recourse by Contractor, its officers, agents, employees or volunteers.
 - C. **Immediate Termination:** SMAQMD may terminate or amend this Contract without prior notice if advised by SMAQMD that funds are not available for this Contract, or if funds are not specifically appropriated for this Contract in SMAQMD's final budget for the term of this Contract and any extensions to the Contract. If SMAQMD terminates or amends this Contract under this paragraph, SMAQMD must serve notice of the action on the Contractor within 2 working days. Contractor will be paid for expenses and work performed through the termination date.
- 2.18 **Waiver of Contract Provisions:** Waiver by either party of any default, breach or condition precedent will not be construed as waiver of any other default, breach or condition precedent or right under this Contract.
- 2.19 **Time:** Time is of the essence in the performance of each of the provisions of this Contract.

- 2.20 **Severability:** If any provision of this Contract is held invalid or unenforceable, its invalidity or unenforceability will not affect any other provisions of this Contract, and this Contract will be construed and enforced as if such provision had not been included.
- 2.21 **Payments that contravene the law:** SMAQMD has no liability for payments that are found to contravene the law. Contractor will reimburse SMAQMD for any payments made by SMAQMD to Contractor and later determined to contravene federal, state or local laws and regulations.
- 2.22 **Contingency Clause:** This contract is subject to any contingency clauses stated in Exhibit B - Payment Terms and Conditions.
- 2.23 **Entire Agreement:** This Contract constitutes the entire agreement between SMAQMD and Contractor. Both parties revoke all prior or contemporaneous oral or written agreements between them that are inconsistent with this Contract. In the event of a dispute between the parties regarding the Contract, this Contract will be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Contract. This Contract consists of:
 - A. **This Contract**
 - B. **Exhibit A – Scope of Services**
 - C. **Exhibit B – Payment Terms and Conditions**
 - D. **Exhibit C - Insurance Requirements**

2.24 **Communications:** Any communication between the parties that is required under the provisions of this Contract must be in writing, and be either: (i) personally delivered, (ii) sent by prepaid, certified first class mail, return receipt requested, or (iii) sent by facsimile (provided confirmation of delivery is obtained at the time of transmission). Communications must be addressed to the parties as follows:

	To Contractor	To SMAQMD
Name		
Company Name		
Address		
City and State		
Phone		
Fax		
Email		

- A. **Change of Address:** Either party may change the address for service by giving 15 days advance written notice to the other party.
- B. **Effective Date:** All notices will be effective upon receipt and will be deemed received: (i) upon delivery, if personally delivered, (ii) on the 5th day following deposit in the mail, if sent by certified mail, or (iii) upon the date stated in the facsimile delivery confirmation, if sent by facsimile.

2.25 **Contract Manager:** _____ is SMAQMD's named Contract Manager for this contract. It is the responsibility of the Contract Manager to: 1) verify compliance with the terms and conditions of the contract, 2) determine that the work has been completed,

3) ensure that funding is available to pay approved invoices, and 4) approve all invoices under the Contract.

2.26 **Authority to Bind:** The persons signing on behalf of the parties to this Contract warrant that they have the legal authority to execute the Contract.

Executed by:

SIGNATURE PAGE

Exhibit A
Scope of Services

Contractor will provide technical support to the Program Coordination Division. Each task will be assigned to Contractor by an authorized District representative in a detailed, written work authorization. Contractor will perform primarily in the following work areas:

1. Gather and analyze emission inventory information for relevant source categories.
2. Compile and analyze information on available air pollution control technology.
3. Develop control strategies.
4. Propose regulatory language.
5. Analyze the emission impacts of proposed rules and control strategies.
6. Estimate the costs of compliance with proposed rules and control strategies.
7. Analyze the socioeconomic impact of proposed rules and control strategies.
8. Prepare written documents to support rule and plan adoption.
9. Participate in public workshops and assist in responding to public comments.

Exhibit B
Payment Terms and Conditions

1. Contractor must perform and complete all work required under this contract in a professional manner and in accordance with the professional standards observed by competent practitioners of the profession in which Contractor, its subcontractors or agents, are engaged.
2. The APCO has the sole discretion to determine whether Contractor has successfully completed the tasks.
3. Payment will be made on a reimbursement basis. Contractor must submit one original and one duplicate invoice to SMAQMD on a monthly basis, in a mutually agreed upon format. The SMAQMD shall approve payment within 30 calendar days of receipt of invoice.
4. Contractor will be reimbursed only for approved expenses, and only for expenses documented by receipts and records. Airline travel must include copies of airline tickets, dates of travel, purpose for travel, and written record of APCO approval.
5. It is understood by Contractor that \$_____ is the maximum payment budgeted for this contract in fiscal year _____. Funding for subsequent fiscal years is dependent upon annual SMAQMD budget approval.
6. Contractor may charge a 10% fee for administering subcontractor contracts.
7. Contractor may charge a 10% fee for administering travel.
8. With the exception of 7 and 8 above, no other administrative fees may be charged under this contract.
9. Section 2.2 of this contract contains additional reporting and fiscal requirements.
10. Payments for Contractor hours worked shall be made in accordance with the rates shown in the table below:

Name	Title	Location	Hourly Rate

Note: Contractor is required to notify SMAQMD in writing if additional personnel are to be added to the list above or if any individual is promoted to a higher payroll title level. SMAQMD may object to the change if it deems the change unreasonable.

Exhibit C
Insurance Requirements

Without limiting Contractor's indemnification, Contractor will procure and maintain for the duration of the contract, insurance against claims for injuries or persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives or employees. SMAQMD will retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of SMAQMD, the insurance provisions in these requirements do not provide adequate protection, SMAQMD may require Contractor to obtain insurance sufficient in coverage, form and amount to provide adequate protection. SMAQMD requirement must be reasonable but will be imposed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

Verification of Coverage

Contractor will furnish SMAQMD with certificates evidencing coverage required above. Certified copies of required endorsements must be attached to provided certificates. All certificates are to be received and approved by SMAQMD before work commences. SMAQMD reserves the right to require that Contractor provide complete, certified copies of any policy of insurance offered in compliance with these specifications. As an alternative to insurance certificates, the Contractor's insurer may voluntarily provide complete, certified copies of all required insurance policies, including endorsements, affecting the coverage required by these specifications.

Minimum Scope of Insurance

Coverage will be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
3. Worker's Compensation insurance as required by the State of California.
4. Employer's Liability Insurance.

Minimum Limits of Insurance

Contractor will maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit will apply separately to this project/location or the general aggregate limit will be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation: Statutory
4. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

Deductible and Self-Insured Retention

Any deductibles or self-insured retention must be declared to and approved by SMAQMD. At the option of SMAQMD, either: the insurer will reduce or eliminate such deductibles or self-insured retention as respects SMAQMD, their officers, officials, employees and volunteers; or the Contractor will procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. SMAQMD, its officers, officials, employees, agents and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; or premises owned, occupied, or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage may not contain special limitations on the scope of protection afforded to SMAQMD, its officers, officials, employees, agents or volunteers.
2. For any claims related to this project, the Contractor's insurance coverage will be primary insurance as respects SMAQMD, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by SMAQMD, its officers, officials, employees, agents or volunteers will be excess of the Contractor's insurance and will not contribute to it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties will not affect coverage provided to SMAQMD, its officers, official, employees, agents or volunteers.
4. The Contractor's insurance will apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. SMAQMD may waive or alter this requirement, or accept self-insurance in lieu of any required policy of insurance if the interests of SMAQMD and the general public are adequately protected.