



**Our Region's Trusted Water Leader**  
**San Diego County Water Authority**

September 27, 2018

Honorable Betty T. Yee, Chair  
 California State Lands Commission  
 100 Howe Avenue, Suite 100-South  
 Sacramento, CA 95825-8202

**MEMBER AGENCIES**

- Carlsbad  
Municipal Water District
- City of Del Mar
- City of Escondido
- City of National City
- City of Oceanside
- City of Poway
- City of San Diego
- Fallbrook  
Public Utility District
- Helix Water District
- Lakeside Water District
- Olivenhain  
Municipal Water District
- Otay Water District
- Padre Dam  
Municipal Water District
- Camp Pendleton  
Marine Corps Base
- Rainbow  
Municipal Water District
- Ramona  
Municipal Water District
- Rincon del Diablo  
Municipal Water District
- San Dieguito Water District
- Santa Fe Irrigation District
- South Bay Irrigation District
- Vallejitos Water District
- Valley Center  
Municipal Water District
- Vista Irrigation District
- Yulma  
Municipal Water District

Dear Ms. Yee,

The Water Authority has been pursuing a one-year Camp Pendleton Seawater Desalination Project - Intake Testing Program (Study) to support future sustainable alternative water supply development as part of a long-term strategy. The purpose of this letter is to inform you of our intent to withdraw our application for State Lands Commission approval due to the extraordinary permitting challenges created by State Lands Commission staff, that go above and beyond the statutory and regulatory requirements for this project.

The temporary facilities required for the Study would consist of a small-scale pilot treatment plant with one small screened open ocean intake and one subsurface intake, that would pump up to 40 gallons per minute (gpm), and treat up to 20 gpm of seawater. Data obtained through the Study was intended to develop information that would support the desalination intake configuration regulations enacted as part of the 2015 Amendment to the Water Quality Control Plan for Ocean Waters of California Addressing Desalination Facility Intakes, Brine Discharges (OPA) for proposed desalination projects. The Study would have been the first in the State to investigate the feasibility of an innovative subsurface intake technology (Neodren®), which is a preferred technology under the OPA. Due to the Statewide and federal interest in this innovative new technology, both the Department of Water Resources and the US Bureau of Reclamation authorized \$1.4 million in grant funding for the Study.

The Study requires State Lands Commission approval for a lease of state lands for the temporary installation of small subsurface and open ocean intakes. The Water Authority applied for the State Lands lease on July 21, 2016. Consistent with the legislative intent supporting feasibility studies, the Water Authority filed a Statutory Exemption for the project under Public Resources Code §21150. State Lands staff indicated in letters dated October 7, 2016 and June 7, 2017, that a mitigated negative declaration would be needed for the State Lands Commission's approval, as a responsible agency. In the interest of full public disclosure, and to support the State Lands Commission's CEQA determination, the Water Authority prepared and submitted to State Lands staff on March 2, 2018, a 214-page draft Negative Declaration with full supporting documentation. The documentation provided shows that the Study will have no significant impact on the environment.

**OTHER REPRESENTATIVE**

County of San Diego

State Lands staff responded with the attached letter and request for funding dated June 26, 2018, stating that staff now must prepare a full environmental impact report (EIR), because an EIR is required for any project that "may have a significant impact on the environment." The staff indicated that development of an EIR (for this 20 gpm temporary pilot facility) would be done at an additional cost of \$626,000 to the Water Authority and its ratepayers. This amount is on top of the \$130,000 the Water Authority expended to prepare the negative declaration previously requested by State Lands Commission staff. It is important to note here that the entire cost to construct this pilot unit is estimated at \$2.5 million.

At issue are the extensive and unnecessary CEQA requirements being mandated by State Lands staff for a study which is statutorily exempt from CEQA, and for which we have provided substantial documentation demonstrating that the Study will have no significant impact on the environment. The staff at the State Lands Commission has placed significant hurdles for the project approval resulting in extensive delays and a disproportionately high cost on the permitting of this Study. Because of this we can no longer justify expending additional public agency funds to continue this pursuit, and we are planning to withdraw our application.

Because the Study will likely never reach the State Lands Commission for your consideration, we are sending you this letter to inform you of what we perceive to be untenable positions being taken by your staff, the net result of which will have a significant chilling effect on innovation and research of new technology to support environmentally sensitive, new water supplies for California. In particular, the Water Authority's research could have been used to optimize the development of ocean desalination, including the use of subsurface intakes, while protecting the environment and ensuring consistency with the OPA.

As we look toward the future of water supply in California, including the many challenges created by climate change, we are hoping that the State Lands Commission will reflect on your role in balancing the public interest and ensuring sensible environmental review. We encourage you to develop a policy approach that is more supportive of innovation and provides for more streamlined permitting and approvals for research projects as allowed by the statutes.

Sincerely,



Maureen A. Stapleton  
General Manager

Attachment: State Lands Letter (June 26, 2018)

CC: San Diego County Water Authority Board of Directors  
State Lands Commission:  
Honorable Gavin Newsom, Lieutenant Governor (Member)  
Keely Bosler, Finance Director (Member)  
Jennifer Lucchesi, Executive Officer  
Cheryl Hudson, Public Land Management Specialist

**San Diego Regional Water Quality Control Board:**

**Dave Gibson, Executive Officer**

**David Barker, Supervising WRC Engineer**

**Department of Water Resources:**

**Kamyar Guivetchi, Division Chief**

**Richard Mills, Section Chief**

**California Coastal Commission – Tom Luster, Senior Environmental Scientist**

**MCI West-MCB Camp Pendleton – Jessica Spurlock**

**U.S. Bureau of Reclamation – Steve Dundorf, Grants Officer**

**CALIFORNIA STATE LANDS COMMISSION**  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202



*Established in 1938*

JENNIFER LUCCHESI, *Executive Officer*  
(916) 574-1800 Fax (916) 574-1810  
California Relay Service TDD Phone 1-800-735-2929  
from Voice Phone 1-800-735-2922

**Contact Phone: (916) 574-1911**  
**Contact Fax: (916) 574-1885**

June 26, 2018

File Ref: W 27039

Maureen A. Stapleton  
General Manager  
San Diego County Water Authority  
4677 Overland Ave  
San Diego, CA 92123

Dear Ms. Stapleton:

This letter is in response to your letter dated May 3, 2018, requesting that the State Lands Commission provide you with a letter stating its position regarding CEQA compliance for the application by San Diego County Water Authority (SDCWA) to lease state sovereign land for the Camp Pendleton Seawater Desalination Project – Intake Testing Program (Project). As noted in your letter, Commission staff determined that an Environmental Impact Report is required for the Commission's review of the Project.

SDCWA relied on a statutory exemption from CEQA for feasibility and planning studies<sup>1</sup> when it approved the Project and filed a Notice of Exemption on August 5, 2016. SDCWA informed Commission staff of its use of the exemption in a letter dated September 9, 2016. When reviewing SDCWA's application Commission staff concluded that the proposed physical construction and ground-disturbing activities required to implement the Project go beyond planning and feasibility studies. Therefore, staff cannot recommend that the Commission rely on the statutory exemption. As a result, the Commission has assumed the duties of Lead Agency for CEQA compliance when considering SDCWA's application as required by the State CEQA Guidelines.<sup>2</sup>

The Lead Agency is responsible for determining whether an EIR is required for a project under CEQA.<sup>3</sup> The CEQA process is meant to protect the environment along with fostering informed self-government.<sup>4</sup> A strong presumption in favor of preparing an EIR is built into CEQA: a lead agency "shall prepare . . . an environmental impact report on any project which they propose to carry out or approve that *may* have a significant effect

<sup>1</sup> Cal. Code Regs., tit. 14, § 15262.

<sup>2</sup> Cal. Code Regs., tit. 14, § 15052.

<sup>3</sup> Pub. Resources Code, § 21080.1.

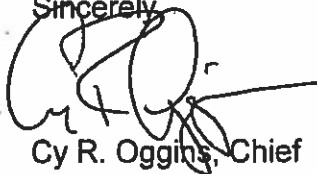
<sup>4</sup> *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.

on the environment."<sup>5</sup> An EIR demonstrates that the approving agency has analyzed and considered the environmental implications of its actions and serves as the principal method by which related environmental information is brought to the attention of the public.<sup>6</sup>

After reviewing the information submitted by SDCWA, including SDCWA's Applicant-prepared draft Negative Declaration, Commission staff determined that an EIR is required for the proposed Project. An EIR will provide the public with the information it needs to analyze the Project's potential benefits and environmental impacts. An EIR will also allow the Commission to make an informed decision regarding whether use of sovereign land for this Project is in the State's best interests.

To allow Commission staff to continue processing your application, please sign the attached Reimbursement Agreement Amendment to cover Commission staff's costs incurred in reviewing the application for the use of sovereign land and preparing the necessary EIR.<sup>7</sup>

Sincerely,



Cy R. Oggins, Chief  
Environmental Planning and Management Division

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<sup>5</sup> Pub. Resources Code, § 21100 subd. (a) [emphasis added].

<sup>6</sup> *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.

<sup>7</sup> Under Public Resources Code section 21089, a lead agency may require reimbursement for the cost to prepare an EIR.

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME <b>California State Lands Commission (State)</b>
CONTRACTOR'S NAME <b>San Diego County Water Authority</b>

2. The term of this Agreement is: **August 8, 2016 through August 30, 2019**

3. The maximum amount of this Agreement is: **\$ 626,000.00**

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope of Work	2	Page(s)
Exhibit B – Budget Detail and Payment Provision/Definitions and Terms	2	Page(s)
Exhibit C* – General Terms and Conditions	GTC 610	
Check mark one item below as Exhibit D:	2	Page(s)
<input checked="" type="checkbox"/> Exhibit D – Special Terms and Conditions (attached hereto as part of this Agreement)		
<input type="checkbox"/> Exhibit D* – Special Terms and Conditions		

*Items shown with an Asterisk (\*) are hereby incorporated by reference and made part of this Agreement as if attached hereto. These documents can be viewed at <http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx>.*

**IN WITNESS WHEREOF, this Agreement has been executed by parties hereto.**

<b>CONTRACTOR</b>		<b>CALIFORNIA Department of General Services Use only</b>
CONTRACTOR'S NAME (if other than individual, state whether a corporation, partnership, etc.) <b>San Diego County Water Authority</b>		
BY (Authorized Signature)	DATE SIGNED	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS <b>4677 Overland Avenue, San Diego, California 92123</b>		
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME <b>California State Lands Commission</b>		
BY (Authorized Signature)	DATE SIGNED	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Denise Cook, Fiscal Officer</b>		
ADDRESS <b>100 Howe Avenue, Suite 100-South, Sacramento, California 95825</b>		

EXHIBIT A

**SCOPE OF WORK**

1. **Work to be Performed** – San Diego County Water Authority, the "Applicant", enters into this Agreement with the California State Lands Commission, the "Commission" or the "State" (hereafter the Applicant and the Commission are referred to as the "Parties") for the processing of a General Lease application. The Applicant has submitted an application for the proposed construction, use and maintenance of the Camp Pendleton Seawater Desalination facility (intake testing program, located at the Marine Corp Base Camp Pendleton Del Mar Recreational Beach, 0.5 miles south of Highway 5, near the city of Oceanside in the County of San Diego. The State hereby agrees to perform the following services:

- A. **Application Processing**: The State shall process the Applicant's lease application. Processing costs shall include, but not be limited to, actual costs of the State staff time for document preparation, negotiation of terms and conditions, review of project impacts on the Public Trust, field inspections, preparation of field reports, technical review, boundary services (including land descriptions and exhibits), engineering review, appraisals, and coordination with other governmental agencies. Work performed in processing the Applicant's lease application shall not be considered worked performed for Environmental Analysis or the Mitigation Monitoring Program, as described below.
- B. **Environmental Analysis**: The State as the Responsible Agency for this project, agrees to conduct or contract separately for the necessary environmental analyses under CEQA for the Applicant's proposed project to determine the potential environmental impacts, mitigation measures and documentation as prescribed by CEQA.
- C. **Mutual Understanding**: This Agreement is entered into by the parties hereto with the express understanding that the State cannot assure: 1) final approval of the permit or lease for the proposed project; 2) that permits from other State or local permitting agencies are obtainable; 3) that either the State or the Applicant by entering into this Agreement is representing that the project will go forward as proposed; and 4) that either the State or the Applicant is irrevocably committed to proceeding with this project.

2. **Parties' Agents**

A. The State's Project Officer shall be:

Cheryl Hudson  
California State Lands Commission  
Land Management Division  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825  
Tel. 916-574-0732  
Fax 916-  
Email: [Cheryl.Hudson@slc.ca.gov](mailto:Cheryl.Hudson@slc.ca.gov)

B. The State Environmental Officer shall be:

Alexandra Borack  
California State Lands Commission  
Environmental Planning & Management  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825  
Tel. 916-574-2399  
Fax 916-574-1880  
Email: [Alexandra.Borack@slc.ca.gov](mailto:Alexandra.Borack@slc.ca.gov)

C. The Applicant's Project Manager shall be:

Jeremy Crutchfield  
San Diego County Water Authority  
4677 Overland Avenue  
San Diego, CA 92123  
Tel. 858-522-6834  
Fax  
Email: [JCrutchfield@sdcwa.org](mailto:JCrutchfield@sdcwa.org)

D. The Applicants Agent is:

Chris Johnson  
Michael Baker International  
14725 Alton Parkway  
Irvine, CA 92618  
Tel. 949-855-3685  
Fax  
Email: [chrijohnson@mbakerintl.com](mailto:chrijohnson@mbakerintl.com)

**EXHIBIT A**

3. **Notices and Authorities**

- A. Any notice or other written communications required or permitted under this Agreement may be personally delivered in writing to the State's Project Officer or Applicant's Project Manager, or may be sent by certified mail, return receipt requested, to the address stated above and shall, based on such delivery or sending, be deemed to have been effectively communicated. Either party may change such address by written notice to the other party.

Any notice given other than as provided above, shall not be deemed to be effectively communicated until received in writing.

- B. The Project Manager shall have full authority to act on behalf of the Applicant for administration of the project. All communications given to the Project Manager shall be as binding, as if given to the Applicant.
- C. The State may change its Project Officer, at any time, by written notice to the Applicant. The Applicant may change its Project Manager, at any time, by written notice to the State's Project Officer.



EXHIBIT B

**BUDGET AND PAYMENT PROVISIONS**

1. **Invoicing and Payment** – Applicant agrees to reimburse the State for all reasonable costs associated with the processing of its application according to this Standard Agreement whether prior or subsequent to the execution of this Agreement. Processing costs shall include, but not be limited to, staff time associated with those tasks outlined in Exhibit A, Scope of Work. Staff costs shall be computed in accordance with Section 8752 of the State Administrative Manual and shall include salaries and wages, related staff benefits and administrative overhead.

The invoice shall be mailed to the Applicant's Project Manager. Payments shall reference the Agreement number assigned to this project and must be mailed to the following address:

California State Lands Commission  
100 Howe Avenue, Suite 100 South  
Sacramento, CA 95825-8202  
Attention Accounting

2. **Estimated Reimbursable Costs** – The initial estimated costs are based on the information and contracts existent as of the date of this Agreement, it is estimated that the itemized reimbursable costs for Work To Be Performed will be:

(a) Initial CSLC Application Processing Fees	\$6,000
(b) Environmental Analysis and Review	\$100,000
(c) Engineering Review	\$20,000
(i) Estimated CSLC staff Costs:	
(ii) Environmental Consultant:	\$500,000
(d) Engineering Compliance & Mitigation Monitoring	<i>to be determined</i>
<b>(e) Approximate Total Cost</b>	<b>\$626,000</b>

Estimated costs above are based on the initial processing of the application. Additional costs will be determined upon defining of the scope of the project and cost of consultant contracts.

3. **Expense Deposits and Billings** – A deposit has been made by the Applicant in the amount of \$3,025 minus \$25.00 for filing fees. Costs incurred by the State are charged on a monthly basis and will be applied against the deposit until exhausted. Then after, the applicant will be billed and all payments are due 30 days from the date of the invoice. The State reserves the right to demand an expense deposit equal to the remainder of the Agreement should the Applicant fail to pay invoices within the time specified. Total costs invoiced, including expense deposits, shall not exceed the dollar amount specified in this Agreement unless amended.
4. **Additional Costs or Services** – Applicant will be advised of any estimated cost increase in writing in accordance with this Agreement should the need for additional services become known or as costs previously estimated exceed the above estimate.

Upon notification of the need for additional funds, the Applicant shall have the right to terminate this Agreement in accordance with the Termination clause; or dispute the change. The Applicant shall have the option to dispute or accept the increase with all the terms and conditions of this Agreement being unchanged and in effect. Applicant shall notify the State within five (5) days of notice of any intent to terminate the Agreement or dispute the change. Non-response shall be acknowledged as acceptance of the additional charges and Applicant will be billed for the balance in accordance with the terms above.

5. **Definitions and Terms** - Wherever the following abbreviations and terms (or pronouns in place of them) are used, the intent and meaning shall be interpreted as provided in this section. Working titles having a masculine gender, and pronouns referring to such said titles, are utilized in this Agreement for the sake of brevity and are not intended to refer to either sex or the neuter. All references to the singular shall refer also to the plural. All references to the plural shall refer also to the singular.
- A. As used within this Agreement, the terms "Applicant" and "Contractor" are used interchangeably and are to be considered the same entity.
  - B. As used within this Agreement, the terms "State" and "CSLC" are used interchangeably and are to be considered the same entity.
  - C. The term "Agreement" refers to this document as executed by the Applicant and the State. This document includes Standard Form and any attached Exhibits.
  - D. The term "Application Processing" refers to all staff services necessary to process an Applicant's proposed lease application but shall not include staff services for environmental analysis or project mitigation monitoring pursuant to CEQA.
  - E. The term "Project" means that activity which is the subject of the application for a permit, lease or other entitlement from the State.
  - F. The term "Project Manager" refers to that person appointed or designated by the Applicant to administer the project for the Applicant.
  - G. The term "Project Officer" refers to that person appointed by the State to process the project application.
  - H. The term "CEQA" refers to the California Environmental Quality Act of 1970, as amended (Public Resources Code § 21000 et seq.).
  - I. The term "Environmental Officer" refers to that person designated by the State to be responsible for the preparation of the environmental analysis and conduct of the mitigation monitoring program.
  - J. The term "Applicant's Agent" refers to that person designated by the Applicant to provide technical assistance and support to the State in coordinating transmittal of project technical information and shall have no authority to act for the Applicant unless otherwise stated in writing by Applicant to the State's Project Officer.
  - K. The term "Mitigation Monitoring Program" refers to that program mandated by CEQA as found in Public Resources Code section 21081.6.

EXHIBIT D

**SPECIAL TERMS AND CONDITIONS**

1. **Type of Agreement** – This Agreement between the State and the Applicant is for the reimbursement of costs, from the Applicant to the State, for Application Processing and Project related activities, detailed in Exhibits A and B of this Agreement, performed by staff of the California State Lands Commission. This Agreement does not involve the procurement of goods or services from the Applicant.
2. **Effective Reimbursement Period** – Notwithstanding the date of Agreement approval in paragraph 1 of GTC 610, the Applicant agrees to reimburse the State for the costs of Application Processing and Project related activities detailed in Exhibits A and B of this Agreement, that accrue beginning on the date listed in form STD.213, paragraph 2 of this Agreement until the termination of this Agreement.
3. This paragraph supersedes paragraph 5 of, Exhibit C, "Indemnification":

**Indemnification** – Applicant shall defend, indemnify, and hold harmless the State of California and any and all agencies or departments thereof, including but not limited to, any and all boards, commissions, officers, agents, employees, and representatives (Indemnitees), against any and all claims, liabilities, charges, losses, expenses, and costs including the State's attorneys' fees (Liabilities), that may arise from, or by reason of: (1) any action or inaction by the Indemnitees in connection with the issuance or denial of any lease, permit, or other entitlement; (2) as a result of approvals or authorizations given by the State to the Applicant pursuant to or as a result of Applicant's project application; or (3) provisions of the issued lease or permit, provisions of CEQA, an environmental document certified or adopted by the State related to the Applicant's project application, or any other regulations, requirements, or programs by the State, except for any such Liabilities caused solely by the gross negligence or intentional acts of the State or its officers, agents, and employees. This obligation of the Applicant to indemnify, defend, and hold harmless the Indemnitees shall not apply to the extent that any such obligation is void or otherwise unenforceable; and further, the provisions of the preceding sentence shall not apply to any claims, litigation, or other actions brought by the Applicant against the Indemnitees in relation to the Applicant's application or this Agreement.

4. This paragraph supersedes paragraph 6 of GTC 610, Exhibit C, "Disputes":

**Disputes** – Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under or relating to the performance of this Agreement which is not disposed of by Agreement shall be decided by the Project Officer, who shall reduce his decision to writing in regard to the dispute and shall transmit a copy thereof to the Applicant within thirty (30) days. The decision of the Project Officer shall be final and conclusive, unless within thirty (30) days from the date of receipt of such copy, the Applicant transmits to the State a written appeal. Said appeal shall be supported with specificity.

- a. In connection with any appeal proceeding under this clause, the Applicant shall be afforded an opportunity to be heard before the State Lands Commission within sixty (60) days of the receipt by the State of the Applicant's written appeal and to offer evidence in support of its appeal. Pending the final decision of any such dispute, the Applicant shall proceed diligently with the performance of the Agreement and in accordance with the written decision of the Project Officer which is the subject of the Applicant's appeal including the payment of invoices to the State.
- b. The procedure described herein shall not prejudice or deny the Applicant his remedies at law. However, the Applicant agrees to exhaust the procedure described herein before pursuing his remedies at law. All amounts paid to the State under protest shall be held by the State in trust until the dispute is resolved.

5. Termination – This paragraph supersedes paragraph 7 of GTC 610, Exhibit C, “Termination for Cause”:

Either party may elect to terminate this Agreement by written notice at any time prior to referral of the project to the Commission upon ten (10) days written notice to the other party. The Applicant agrees that in the event of termination of this Agreement by either party as provided above, it shall reimburse the State upon its written request one hundred percent (100%) of all costs incurred by the State in the performance of its obligations as described in this Agreement.

6. Reimbursement of Costs – Applicant shall reimburse the State in full for all reasonable costs and attorney's fees, including, but not limited to, those charged it by the California Office of the Attorney General, that the State incurs in connection with the defense of any action brought against the State challenging this Agreement or any other matter related to this Agreement or the work performed by the State under this Agreement. In addition, Applicant shall reimburse the State for any court costs and reasonable attorney fees that the State may be required by a court to pay as a result of such action. Applicant may participate in the defense of the action, but its participation shall not relieve it of its obligations under this Paragraph. The provision of this Paragraph shall not apply to any claims, litigation or other actions which may be brought by either Applicant or the State against each other and shall not apply to the extent that any such obligation is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement. Nothing in this Paragraph shall be construed to require the State to defend itself against all or any aspect of the challenge to this Agreement or work performed under this Agreement. However, Applicant may take whatever legal action is available to it to defend this Agreement or any work performed under this Agreement against any challenge by a third party, whether or not the State chooses to raise a defense against such a challenge.
7. Records – Upon five (5) business days' notice, the State's records relating to its costs shall be available for the Applicant's audit in the State's office in Sacramento. Said audit shall take place only during regular business hours of the State. Payment of costs by the Applicant shall not constitute a waiver of its rights to audit nor an acknowledgment by the Applicant of the validity of the costs that have been paid. Nothing herein shall be deemed to require the State, its consultants, other contractors and subcontractors to maintain books, records, or documents other than those usually maintained by them, provided that such books, records and documents reasonably segregate and identify the costs for which reimbursement is required hereunder. As used herein, “State's records” include any audit of the consultant by the State or its designated representative as authorized in this Agreement.
8. The following Paragraphs in Exhibit C does not apply to Reimbursement/Revenue Agreement therefore, 4, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, and 20 of GTC 610, Exhibit C, are hereby waived and shall have no force or effect upon this Agreement.