

SAMPLE CONTRACT PROVISIONS
KEYED TO JBCM CHAPTER 8, APPENDIX B

1	Termination due to nonavailability of funds	The JBE's payment obligations under this Agreement are subject to annual appropriation and the availability of funds. Funding beyond the current appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement. Upon notice, the JBE may terminate this Agreement in whole or in part, without prejudice to any right or remedy of the JBE, if expected or actual funding is withdrawn, reduced, or limited in any way. If this Agreement is terminated for nonavailability of funds, the JBE will pay Contractor for the fair value of work satisfactorily performed prior to the termination, not to exceed the total Agreement amount.
2	Loss leader	Contractor shall not sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code.
3	Antitrust claims	Contractor shall assign to the JBE 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. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Contractor for sale to the JBE. Such assignment shall be made and become effective at the time the JBE tenders final payment to Contractor. If the JBE receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the JBE any portion of the recovery, including treble damages, attributable to overcharges that were paid by Contractor but were not paid by the JBE as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by Contractor, the JBE shall, within one (1) year from such demand, reassign the cause of action assigned under this part if Contractor has been or may have been injured by the violation of law for which the cause of action arose and (a) the JBE has not been injured thereby, or (b) the JBE declines to file a court action for the cause of action.
4	Recycled products/post-consumer material	If Contractor will sell to the JBE, or use in the performance of this Agreement, goods specified in PCC 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), then with respect to those goods: (i) Contractor shall use recycled products in the performance of this Agreement to the maximum extent doing so is economically feasible, and (ii) upon request, Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the PCC 12200, in such goods regardless of whether the goods meet the requirements of PCC 12209. With respect to printer or duplication cartridges that comply with the requirements of PCC 12156(e), the certification required by this subdivision shall specify that the cartridges so comply.
5	Priority hiring	Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with PCC 10353.

6	DVBE commitment	<p>This section is applicable if Contractor received a disabled veteran business enterprise (“DVBE”) incentive in connection with this Agreement. Contractor’s failure to meet the DVBE commitment set forth in its bid or proposal constitutes a breach of the Agreement. If Contractor used DVBE subcontractor(s) in connection with this Agreement: (i) Contractor must use the DVBE subcontractors identified in its bid or proposal, unless the JBE approves in writing replacement by another DVBE subcontractor in accordance with the terms of this Agreement; and (ii) Contractor must <u>complete and return to the JBE a post-contract certification form (https://www.courts.ca.gov/documents/JBCM-Post-Contract-Certification-Form.docx), promptly upon completion of the awarded contract, and by no later than the date of submission of Contractor’s final invoice to the JBE. If the Contractor fails to do so, the JBE will withhold \$10,000 from the final payment, or withhold the full payment if it is less than \$10,000, until the Contractor submits a complete and accurate post-contract certification form. The JBE shall allow the Contractor to cure the deficiency after written notice of the Contractor’s failure to complete and submit an accurate post-contract certification form. Notwithstanding the foregoing and any other law, if after at least 15 calendar days, but no more than 30 calendar days, from the date of the written notice the Contractor refuses to comply with these certification requirements, the JBE shall permanently deduct \$10,000 from the final payment, or the full payment if less than \$10,000. The post-contract certification form shall include within sixty (60) days of receiving final payment under this Agreement <u>certify in a report to the JBE: (1) the total amount of money Contractor received under the Agreement; (2) the total amount of money and the percentage of work each Contractor committed to provide to each DVBE subcontractor and the amount each DVBE subcontractor received under the Agreement; (32) the name and address of each DVBE subcontractor to which Contractor subcontracted work in connection with the Agreement; (43) the amount of money each DVBE subcontractor actually received from Contractor in connection with the Agreement, and the corresponding percentage this payment comprises of the total amount of money Contractor received under the Agreement; and (54) that all payments under the Agreement have been made to the applicable DVBE subcontractors. Upon request by the JBE, the Contractor shall provide proof of payment for the work. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. The Contractor will comply with all rules, regulations, ordinances and statutes that govern the DVBE program, including, without limitation, Military and Veterans Code Section 999.5.</u></u></p>
7	Small business preference commitment	<p>This section is applicable if Contractor received a small business preference in connection with this Agreement. Contractor’s failure to meet the small business commitment set forth in its bid or proposal constitutes a breach of this Agreement. Contractor must within sixty (60) days of receiving final payment under this Agreement report to the JBE the actual percentage of small/micro business participation that was achieved. If Contractor is a nonprofit veteran service agency (“NVSA”), Contractor must employ veterans receiving services from the NVSA for not less than 75 percent of the person-hours of direct labor required for the production of goods and the provision of services performed pursuant to this Agreement.</p>
8	Union activities	<p>THREE OPTIONS:</p>

		<p>1. If the Agreement is <u>\$50,000 or under</u>, and <u>allows</u> for the reimbursement of Contractor expenses:</p> <p>Contractor must include with any request for reimbursement from the JBE a certification that Contractor is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing. If Contractor incurs costs or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from the JBE was sought for these costs, and Contractor will provide those records to the Attorney General upon request.</p> <p>2. If the Agreement is <u>over</u> \$50,000, and <u>allows</u> for the reimbursement of Contractor expenses:</p> <p>Contractor must include with any request for reimbursement from the JBE a certification that Contractor is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing. No JBE funds received under this Agreement will be used to assist, promote or deter union organizing during the term of this Agreement (including any extension or renewal term). If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no JBE funds were used for those expenditures and no reimbursement from the JBE was sought for these costs. Contractor will provide those records to the Attorney General upon request.</p> <p>3. If the Agreement is <u>over</u> \$50,000, but <u>does not allow</u> for the reimbursement of Contractor expenses.</p> <p>No JBE funds received under this Agreement will be used to assist, promote or deter union organizing during the term of this Agreement (including any extension or renewal term). If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no JBE funds were used for those expenditures. Contractor will provide those records to the Attorney General upon request.</p>
9	Insurance	<p>A. Basic Coverage: Contractor shall provide and maintain at the JBE’s discretion and Contractor’s expense the following insurance during the term of this Agreement:</p> <p>1. Commercial General Liability: The policy must be at least as broad as the Insurance Services Office (ISO) Commercial General Liability “occurrence” form, with coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy must provide limits of at least \$1,000,000 per occurrence and annual aggregate.</p> <p>2. Workers Compensation and Employer’s Liability. The policy is required only if Contractor has employees. The policy must include workers’ compensation to meet minimum requirements of the California Labor Code, and it must provide coverage for employer’s liability bodily injury at minimum limits of \$1,000,000 per accident or disease.</p>

		<p>3. Automobile Liability. This policy is required only if Contractor uses an automobile or other vehicle in the performance of this Agreement. The policy must cover bodily injury and property damage liability and be applicable to all vehicles used in Contractor’s performance of this Agreement whether owned, non-owned, leased, or hired. The policy must provide combined single limits of at least \$1,000,000 per occurrence.</p> <p>4. Professional Liability: This policy is required only if Contractor performs professional services under this Agreement. The policy must cover liability resulting from any act, error, or omission committed in Contractor’s performance of services under this Agreement, at minimum limits of \$1,000,000 per occurrence and annual aggregate. If the policy is written on a “claims made” form, Contractor shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the termination and acceptance of all services provided under this Agreement. The retroactive date or “prior acts inclusion date” of any such “claims made” policy must be no later than the date that activities commence pursuant to this Agreement.</p> <p>5. Commercial Crime Insurance: This policy is required only if Contractor handles or has regular access to the JBE’s funds or property of significant value to the JBE. This policy must cover dishonest acts including loss due to theft of money, securities, and property; forgery, and alteration of documents; and fraudulent transfer of money, securities, and property. The minimum liability limit must be <i>\$/Dollar amount</i>.</p> <p>B. Umbrella Policies: Contractor may satisfy required coverage limits through any combination of basic coverage and umbrella insurance.</p> <p>C. Aggregate Limits of Liability: The basic coverage limits of liability may be subject to annual aggregate limits. If this is the case the annual aggregate limits of liability must be at least two (2) times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.</p> <p>D. Deductibles and Self-Insured Retentions: Contractor shall declare to the JBE all deductibles and self-insured retentions that exceed \$100,000 per occurrence. Any increases in deductibles or self-insured retentions that exceed \$100,000 per occurrence are subject to JBE approval. Deductibles and self-insured retentions do not limit Contractor’s liability.</p> <p>E. Additional Insured Endorsements: Contractor’s commercial general liability policy, automobile liability policy, and, if applicable, umbrella policy must be endorsed to name the following as additional insureds with respect to liabilities arising out of the performance of this Agreement: the <i>[JBE name]</i>, the State of California, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees.</p> <p>F. Certificates of Insurance: Before Contractor begins performing work, Contractor shall give the JBE certificates of insurance attesting to the existence of coverage. Contractor shall provide prompt written</p>
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10	BSA audit provision	This Agreement is subject to examinations and audit by the State Auditor for a period three (3) years after final payment.
11	General audit and records provision	Contractor must allow the JBE or its designees to review and audit Contractor's (and any subcontractors') documents and records relating to this Agreement, and Contractor (and its subcontractors) shall retain such documents and records for a period of four (4) years following final payment under this Agreement. If an audit determines that Contractor (or any subcontractor) is not in compliance with this Agreement, Contractor shall correct errors and deficiencies by the twentieth (20th) day of the month following the review or audit. If an audit determines that Contractor has overcharged the JBE five percent (5%) or more during the time period subject to audit, Contractor must reimburse the JBE in an amount equal to the cost of such audit.
12	Indemnification by contractor	Contractor will defend (with counsel satisfactory to the JBE or its designee) indemnify and hold harmless the JBE, other California judicial branch entities, and their officers, agents, and employees from and against all claims, losses, and expenses, including attorneys' fees and costs, that arise out of or in connection with (i) a latent or patent defect in any goods, (ii) an act or omission of Contractor, its agents, employees, independent contractors, or subcontractors in the performance of this Agreement, (iii) a breach of a representation, warranty, or other provision of this Agreement, and (iv) infringement of any trade secret, patent, copyright or other third party intellectual property.

		This indemnity applies regardless of the theory of liability on which a claim is made or a loss occurs. This indemnity will survive the expiration or termination of this Agreement, and acceptance of any goods, services, or deliverables. Contractor shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement which would bind an indemnified party, without the JBE's prior written consent, which consent shall not be unreasonably withheld; and the JBE shall have the right, at its option and expense, to participate in the defense and/or settlement of a claim through counsel of its own choosing. Contractor's duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.
13	Independent contractor provision	Contractor is an independent contractor to the JBE. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the JBE. Contractor has no authority to bind or incur any obligation on behalf of the JBE. If any governmental entity concludes that Contractor is not an independent contractor, the JBE may terminate this Agreement immediately upon notice.
14	Termination for cause	The JBE may terminate this Agreement, in whole or in part, immediately "for cause" if (i) Contractor fails or is unable to meet or perform any of its duties under this Agreement, and this failure is not cured within ten (10) days following notice of default (or, in the opinion of the JBE, is not capable of being cured within this cure period); (ii) Contractor or Contractor's creditors file a petition as to Contractor's bankruptcy or insolvency, or Contractor is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business; or (iii) Contractor makes or has made under this Agreement any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading. If the JBE terminates this Agreement in whole or in part for cause, the JBE may acquire from third parties, under the terms and in the manner the JBE considers appropriate, goods or services equivalent to those terminated, and Contractor shall be liable to the JBE for any excess costs for those goods or services.
15	Termination by JBE for convenience	The JBE may terminate, in whole or in part, this Agreement for convenience upon thirty (30) days notice.
16	Effect of expiration or termination; survival provisions	Termination or expiration of this Agreement shall not affect the rights and obligations of the parties which arose prior to any such termination or expiration (unless otherwise provided herein) and such rights and obligations shall survive any such termination or expiration. Rights and obligations which by their nature should survive shall remain in effect after termination or expiration of this Agreement, including any section of this Agreement that states it shall survive such termination or expiration.
17	Prohibition on assignment and subcontracting	Contractor may not assign or subcontract its rights or duties under this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the JBE. Consent may be withheld for any reason or no reason. Any assignment or subcontract made in contravention of the foregoing shall be void and of no effect.
18	Binding on successors	This Agreement will be binding on the parties and their permitted successors and assigns.

19	Personnel and background checks	Contractor shall cooperate with the JBE if the JBE wishes to perform any background checks on Contractor's personnel by obtaining, at no additional cost, all releases, waivers, and permissions the JBE may require. Contractor shall not assign personnel who refuse to undergo a background check. Contractor shall provide prompt notice to the JBE of (i) any person who refuses to undergo a background check, and (ii) the results of any background check requested by the JBE and performed by Contractor. Contractor shall ensure that the following persons are not assigned to perform services for the JBE: (a) any person refusing to undergo such background checks, and (b) any person whose background check results are unacceptable to Contractor or that, after disclosure to the JBE, the JBE advises are unacceptable to the JBE.
20	GAAP compliance	Contractor maintains an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles.
21	Ownership of results, rights in work product	Contractor irrevocably assigns to the JBE all right, title and interest worldwide in and to the materials created under this Agreement, and all applicable intellectual property rights related to the materials created under this Agreement, including copyrights, trademarks, trade secrets, moral rights, and contract and licensing rights. Contractor grants to the JBE a nonexclusive, transferable, sublicenseable (through multiple tiers), worldwide, perpetual, irrevocable, fully-paid and royalty-free license to use, reproduce, make derivative works of, perform, display, and distribute any portion of the materials delivered by Contractor but not created under this Agreement. Upon the expiration or termination of this Agreement, or upon the JBE's notice at any time, Contractor shall give all materials to the JBE or to another party at the JBE's direction.
22	Confidentiality	During the term of this Agreement and at all times thereafter, Contractor will: (a) hold all Confidential Information in strict trust and confidence, (b) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this Agreement, and (c) refrain from disclosing or permitting others to disclose any Confidential Information to any third party without obtaining the JBE's express prior written consent on a case-by-case basis. Contractor will disclose Confidential Information only to its employees or contractors who need to know that information in order to perform services hereunder and who have executed a confidentiality agreement with Contractor at least as protective as the provisions of this section. The provisions of this section shall survive the expiration or termination of this Agreement. Contractor will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Contractor protects its own confidential or proprietary information of a similar nature, and with no less than the greater of reasonable care and industry-standard care. The JBE owns all right, title and interest in the Confidential Information. Contractor will notify the JBE promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the JBE to protect such Confidential Information. Upon the JBE's request and upon any termination or expiration of this Agreement, Contractor will promptly (a) return to the JBE or, if so directed by the JBE, destroy all Confidential Information (in every form and medium), and (b) certify to the JBE in writing that Contractor has fully complied with the foregoing obligations.

		<p>“Confidential Information” means: (i) any information related to the business or operations of the JBE, including information relating to the JBE’s personnel and users; and (ii) all financial, statistical, personal, technical and other data and information of the JBE (and proprietary information of third parties provided to Contractor) which is designated confidential or proprietary, or that Contractor otherwise knows, or would reasonably be expected to know, is confidential. Confidential Information does not include information that Contractor demonstrates to the JBE’s satisfaction that: (a) Contractor lawfully knew prior to the JBE’s first disclosure to Contractor, (b) a third party rightfully disclosed to Contractor free of any confidentiality duties or obligations, or (c) is, or through no fault of Contractor has become, generally available to the public.</p>
23	Publicity	Contractor shall not make any public announcement or press release about this Agreement without the prior written approval of the JBE.
24	Choice of law (California)	California law, without regard to its choice-of-law provisions, governs this Agreement.
25	Amendment	Except as otherwise specified in this Agreement, no amendment or change to this Agreement will be effective unless expressly agreed in writing by a duly authorized officer of the JBE.
26	Waiver	A waiver of enforcement of any of this Agreement’s terms or conditions by the JBE is effective only if expressly agreed in writing by a duly authorized officer of the JBE. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
27	Severability	If any part of this Agreement is held unenforceable, all other parts remain enforceable.
28	Time of the essence	Time is of the essence in Contractor’s performance under this Agreement.
29	Negotiated agreement	This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654.
30	Headings	All headings are for reference purposes only and do not affect the interpretation of this Agreement.
31	Counterparts	This Agreement may be executed in counterparts, each of which is considered an original.
32	Entire agreement	This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties.
33	Informal dispute resolution	The parties shall attempt in good faith to resolve informally and promptly any dispute that arises under this Agreement.
34	Suspension of work	The JBE may issue a written order to Contractor to suspend, delay, or interrupt all or any part of the work for the period of time that the JBE determines appropriate. The JBE shall not be liable to Contractor for loss of profits arising out of such written order. After the period of time specified in the written order has elapsed, the work covered by the written order shall resume unless the JBE terminates the work covered by the written order.