003976

Contract # **059260**

STATE OF UTAH CONTRACT

1. **CONTRACTING PARTIES**: This contract is between the following agency of the State of Utah: **Department of Transportation**, Agency Code: **810**, **Traffic Management Division**, referred to as (STATE), and the following CONTRACTOR:

Penna Power Brian Haynes
Name

1706 South Major Street
Address

Salt Lake City — City
Utah — State
84115 — Zip

LEGAL STATUS OF CONTRACTOR
[ ] Sole Proprietor
[ ] Non-Profit Corporation
[X] For-Profit Corporation
[ ] Partnership
[ ] Government Agency

Contact Person **Dave Smith**
Federal Tax ID # **87-0410756**
Phone # **801.487.4800**
Vendor # **38199F**
Email **dsmith@ppbh.com**
Commodity Code #s **91503, 91502, 91826, 91876 & 96153**

2. **GENERAL PURPOSE OF CONTRACT**: The general purpose of this contract is to provide: **Public Relations/Information Management Services as it relates to the CommuterLink Program.**

3. **PROCUREMENT**: This contract is entered into as a result of the procurement process on RX#, **810 56-144**, FY **05**, Bid# **NO5571**.

4. **CONTRACT PERIOD**: Effective date **May 01, 2005** Termination date **April 30, 2008,** unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options: **Two (2) One (1) Year**

5. **CONTRACT COST**: This is a **Requirements Contract** (See Utah Procurement Rules, R33-3-707 (3) and CONTRACTOR will be paid at a blended hourly rate of **$100.00 per hour** for work authorized under the authority of this contract.

6. **ATTACHMENT A**: Division of Purchasing's Standard Terms and Conditions
ATTACHMENT B: Scope of Work
ATTACHMENT C: Special Terms and Conditions

Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.

7. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED**:
a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
b. Utah State Procurement Code, Procurement Rules, and CONTRACTOR'S response to Bid # **NO5571** dated **April 20, 2005**.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

6-15-05
Signature — Date

John Haynes, President and Partner

STATE

17 Jun 05
Kelvin G. Thacker, Procurement Manager — Date

JUL 01 2005
Director, Division of Purchasing — Date

CONTRACT RECEIVED AND PROCESSED BY DIVISION OF FINANCE
JUL - 6 2005
Director, Division of Finance — Date

James T. Phillips, C.P.M., A.P.P.	801.965.3836	801.9654073	jamesphillips@utah.gov
Agency Contact Person	Telephone Number	Fax Number	Email Address

JUL 18 2005 ENT'D JUL 19 2005

(Revision 08/26/2003)

ATTACHMENT A

STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.

2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and state laws and regulations.

4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow state and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.

6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the STATE to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the STATE, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the STATE. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the STATE for these contract services. Persons employed by the STATE and acting under the direction of the STATE shall not be deemed to be employees or agents of the Contractor.

7. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State of Utah, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the STATE's sole negligence.

8. **EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.

9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.

10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the same persons or by persons holding the same position as persons who signed the original agreement on behalf of the parties hereto, and attached to the original signed copy of the contract.

11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the STATE. The Contractor must notify the STATE Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.

12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 15 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

13. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the STATE cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the STATE is reduced due to an order by the Legislature or the Governor, or is required by STATE law, or if federal funding (when applicable) is not provided, the STATE may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the STATE upon 30 days written notice. In the case that funds are not appropriated or are reduced, the STATE will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the STATE will not be liable for any future commitments, penalties, or liquidated damages.

14. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from STATE funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.

15. **WARRANTY:** The contractor agrees to w ·nt and assume responsibility for all products (incl g hardware, firmware, and/or software products) that it licenses, contracts, or sells to the Stat Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the STATE has relied on the contractor's skill or judgment to consider when it advised the STATE about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the STATE has not been warned. Remedies available to the STATE include the following: The contractor will repair or replace (at no charge to the STATE) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the STATE of Utah may otherwise have under this contract.

16. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, and may be available for distribution. and Contractor gives the STATE express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the STATE except as to latent defects, fraud and Contractor's warranty obligations.

18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the STATE. The STATE contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the STATE will be those prices listed in the contract. The STATE has the right to adjust or return any invoice reflecting incorrect pricing.

19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card.

20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the STATE, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.

21. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the STATE.

22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the STATE to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The STATE will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the STATE may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future solicitations.

23. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The STATE may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

24. **PROCUREMENT ETHICS**: The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the STATE, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-73, Utah Code Annotated, 1953, as amended).

25. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. STATE Standard Terms and Conditions; 2. STATE Special Terms and Conditions; 3. Contractor Terms and Conditions.

(Revision date: Nov 21, 2003)

ATTACHMENT B

SCOPE OF WORK

The CONTRACTOR shall provide UDOT and its local agency partners with public relations and information management services. This shall consist of extensive public relations support and marketing strategies, coordination of media releases/events, research and provide written articles and award applications and perform other duties (as listed below) on an assigned or as-needed basis. The CONTRACTOR shall provide a single point of contact who will coordinate these services in a timely manner, to coordinate and freely exchange information with the UDOT staff and personnel from other agencies including but not limited to Salt Lake City, Utah Transit Authority, the Department of Public Safety, Salt Lake County, Metropolitan Planning Organizations, Federal Highway Administration. Furthermore, the CONTRACTOR is expected to coordinate and cooperate with any or all consultants working with the Department.

The CommuterLink Public Relations Technical Advisory Committee in concert with the UDOT Program Specialist will prioritize the CONTRACTOR's work activities. The UDOT Program Specialist will be the contact for the CONTRACTOR. UDOT will direct the CONTRACTOR through written Task Orders, which will identify requirements and any deliverables. Task Orders will detail the services to be performed, the time frame the services are to be conducted, and the maximum estimated budget for each assignment. The CONTRACTOR shall provide formal, written responses outlining the tasks to be accomplished with associated hours. Once the CONTRACTOR has received approval to begin the requested assignment, they shall start work as soon as possible. If a Task Order changes significantly during the course of performing the Task Order, then the original Task Order may be modified accordingly.

The following are some specific types of support that may be requested:

- **Public Information Research** UDOT conducts periodic surveys to determine the level of public awareness of CommuterLink. The CONTRACTOR may be required to conduct additional awareness surveys to determine any changes. Additional public awareness surveys may be conducted throughout the course of the contract as well as specific information needs for the traveling public. The CONTRACTOR may also be called upon to write articles to share research information with state or national publications.
- **Public Relations Campaign** The CONTRACTOR shall develop a new long-term public awareness plan and goals, as well as to develop other strategies for increasing the public's awareness of the CommuterLink program and make recommendations regarding public awareness strategies that help meet Department goals within the budget allocated.
- **Existing Public Relations Activities** The CONTRACTOR may be tasked with reviewing existing public relations and traveler information strategies and making recommendations regarding changes that can be made to the existing outlets to enhance Public Awareness value. The existing outlets include live radio broadcasts from the Traffic Operations Center (TOC), distribution of video images to local broadcast television stations, Public Service Announcement's (PSA's) and traffic reports on local radio stations and a CommuterLink website.
- **Press Releases and Media Events** The CONTRACTOR may be tasked with developing press releases to be published in local newspapers, magazines and/or trade journals. Also, they may be tasked with participating in media events used to enhance awareness of the benefits and services the CommuterLink system provides or to provide the customers with information about new system features. In addition, press releases shall be provided to the local broadcast radio and television outlets.
- **Partnership Activities** Coordinate and facilitate a CommuterLink PR Technical Advisory Committee planning meeting to include update and distribution of a quarterly newsletter. The CONTRACTOR shall coordinate campaign activities targeted at developing new partnerships for CommuterLink. The CommuterLink PR Technical Advisory Committee will provide direction for campaign activities. The CONTRACTOR may be asked to represent the Department in some of these activities.
- **Awareness Activities** The CONTRACTOR shall be tasked with tracking activities in specific local and national organizations and responding to requests to coordinate and write articles for publication. To include but not limited to the submittal of award applications, with supporting media technical requirements.(i.e.: video, scripts, etc.)
- **Public Service Announcements** Through existing agreements with broadcast media outlets, UDOT has the ability to develop and broadcast Public Service Announcements (PSA's). The CONTRACTOR may be requested to work with the Department to develop PSA's including identifying the message to be delivered and scripting the announcements.

- **Collateral Materials** The De' 'ment has developed brochures, flyers, an . vanced Traveler Information Business Plan and other informational ma..ial regarding CommuterLink. The CONTRACTOR may be requested to review this material and make recommendations regarding updating the material, developing new material, or facilitate the production and distribution of new or existing material.
- **Media Liaison** The CONTRACTOR may be requested to assist the Department by serving as a liaison to the local media regarding CommuterLink issues. This work could include contacting local media outlets on a routine basis to ascertain issues related to the CommuterLink program that needs to be addressed.
- **Tours and Presentations** The CONTRACTOR may be tasked to assist the Department in developing outlines and messages used in providing tours of the TOC, or giving presentations regarding COmmuterLink.
- **Training** The CONTRACTOR may be tasked with conducting workshops and providing training to public agency personnel (UDOT and others) about formulating press release material, public service announcements, presentation strategies, etc.

ATTACHMENT C

SPECIAL TERMS AND CONDITIONS

CHANGE IN PERSONNEL No change in personnel assigned to individual projects will be permitted without prior written approval by the STATE. All personnel must be available during the time frames specified on individual projects.

NON-COMPETE CLAUSE The CONTRACTOR represents its officers and employees are free to contract with STATE and are not subject to restrictions by the terms of their present or past employment including, but not limited to an agreement not to compete for a period of time unless disclosure has been made. CONTRACTOR must disclose to the STATE any possible conflicts, in writing, before the contract is signed, and the STATE will evaluate whether to continue with contract execution. STATE may elect to terminate a contract immediately with a CONTRACTOR who is subsequently determined to be subject to such restrictions without liability to the STATE. If the STATE elects to terminate a contract for this reason, the STATE will supersede paragraph #12 in Attachment A - Standard Terms and Conditions and will not provide 30 day prior notice to the CONTRACTOR.

INVOICING. CONTRACTOR shall submit invoices to STATE Program Specialist:

Dian Williams, Program Specialist
UDOT, Traffic Management Division
2070 South 2760 West
Salt Lake City, UT 84104

The contract number shall appear on all invoices and correspondence. Billings must be itemized, showing hours worked by each staff member with a clear definition of the project phase the work relates to. All billings must correlate to the project progress reports and submitted in a timely manner. Upon approval of the invoice by the STATE Project Manager, payments will be processed every other week. STATE will remit payment by mail.

PROGRESS REPORTS. The CONTRACTOR will submit monthly progress reports in sufficient detail to document progress of the work and support the monthly claim for payment. Minimally the progress reports shall identify the deliverables completed, for which payment requests are being made, a brief synopsis of the Task Order contents, and the invoice number of the payment request. The report is to be submitted at the same time as an invoice. Payments will not be made without a supporting progress report. Separate project reports and invoices shall be submitted for each active Task Order.

PRICE GUARANTEES. The CONTRACTOR agrees the prices bid on services in this contract shall be guaranteed for the term of the contract.

NOTIFICATION. Notice given under this contract shall be written, or sent by facsimile or other electronic means. Written notice shall be sent by registered or certified mail, postage prepaid, return receipt requested, or by any other overnight delivery service which delivers to the noticed destination and provides proof of delivery to the sender. Facsimile or other electronic notice must be followed within three (3) days by written notice. All notices shall be effective when first received at the following addresses:

If to CONTRACTOR:

Dave Smith, Vice President
Penna Powers Brian Haynes
1706 South Major Street
Salt Lake City, UT 84115
(801) 487.4800 Voice
(801) 487.0707 Fax

If to STATE:

Dian Williams, Program Specialist
UDOT, Traffic Management Division
2070 South 2760 West
Salt Lake City, UT 84104
(801) 887.3457 Voice
(801) 887.3727 Fax

with copies to:

John Haynes
Traci Houghton

with copies

Tom Hudachko
Jim Phillips

RESPONSIBILITY FOR WAGES. The CONTRACTOR is responsible for all applicable company wages in accordance with the federal, state and local laws and ordinances.

CONFIDENTIAL INFORMATION. To the extent work under this contract requires the CONTRACTOR may be given access to confidential or proprietary business, technical, or financial information belonging to the STATE. The CONTRACTOR shall, after receipt thereof, treat such information as confidential. Both parties shall maintain, as confidential, and shall not disclose to any person outside its employ, nor use for purposes other than performance of this Contract, any specifications, drawings, blueprints, data, business information, or other confidential information which is learned by virtue of this Contract, except where required by law. CONTRACTOR agrees not to appropriate such information to their own use or disclose such information to other parties unless specifically authorized by the STATE in writing. Upon expiration of this Contract, both parties shall promptly return all confidential material and copies to the other party. The foregoing obligations, however, shall not apply to:

A. Information which, at the time of receipt by the CONTRACTOR, is in public domain.

B. Information which is published after receipt by the CONTRACTOR, or otherwise becomes part of the public domain through no fault of the CONTRACTOR.

C. Information which the CONTRACTOR can demonstrate was already in its possession at the time of receipt, and was not acquired directly or indirectly from the STATE.

D. Information which the CONTRACTOR can demonstrate was received from a third party who did not require the CONTRACTOR to hold such information in confidence.

QUALITY OF SERVICES. CONTRACTOR represents to STATE that it is experienced in and thoroughly familiar with all aspects of the services required hereunder and is properly qualified as applicable and is equipped, organized, and financially able to perform the services.

No changes in the services to be provided by CONTRACTOR under this Contract shall be made without STATE's prior written approval.

OWNERSHIP OF WORK PRODUCT. Any and all scripts, copy, illustrations, photography, music or other materials prepared by CONTRACTOR for STATE shall be and remain the property of CONTRACTOR until such time as CONTRACTOR has been paid in full. Upon payment in full, all materials which were approved and used by STATE shall become the sole and exclusive property of STATE.

CONTRACTOR further agrees that STATE is and shall be vested with all rights, title, and interests, including patent, copyright, trade secret, and trademark rights in CONTRACTOR's work product produced under this Contract. CONTRACTOR shall not encumber said work product in any way or act(s) inconsistent with STATE's title thereto.

All documents and data pertaining to work required by this contract will be the property of the STATE and must be delivered to the STATE within 10 working days after termination of the contract, regardless of the reason for termination; and without restriction or limitation to their further use. Cost to all the above items will be considered as included in the basic contract compensation of the work as described.

INTELLECTUAL PROPERTY INDEMNITY. Upon STATE's written notification to CONTRACTOR, CONTRACTOR shall defend, at its expense, any claim against STATE alleging the Services, or any part thereof, infringe on any patent, copyright, trademark, trade secret, mask work, or other intellectual property interest in any country, and shall pay all costs and damages awarded. If an injunction against STATE's use, sale, lease, license, other distribution of the Services or Product, or any part thereof, results from such a claim (or, if STATE reasonably believes such an injunction is likely), CONTRACTOR shall, at its

expense, (and in addition to the CONTR ' 'TOR's other obligations hereunder) and a ΓATE requests, obtain for STATE the right to continue using, selling, leasing, licensing, or otherwise non-infringing but functionally equivalent. The provisions of this section shall not apply to any claim for infringement resulting solely from CONTRACTOR's compliance with STATE's detailed design specifications, where provided

FAILURE TO COMPLETE. At any time the CONTRACTOR determines the contract work cannot be completed within the specified time or budget, the CONTRACTOR must notify STATE in writing, immediately. The STATE may, at its sole discretion, extend the contract by written modification.

NON-PERFORMANCE. If, at any time, CONTRACTOR fails to demonstrate the required expertise (as represented in the CONTRACTOR's proposal) or fails to meet acceptable standards of performance, the STATE reserves the right to require the CONTRACTOR to replace individual(s) with a competent individual(s). This replacement must be approved by the STATE Project Specialist. If the CONTRACTOR fails to accomplish project objectives or meet schedule commitments established in meetings with the STATE Project Manager, this contract may be canceled immediately. If the STATE elects to terminate the contract for this reason, the STATE will supersede paragraph #12 in Attachment A - Standard Terms and Conditions, and will not provide 30 days prior notice to the CONTRACTOR.

TERMINATION. The occurrence of any of the following constitutes a breach by CONTRACTOR unless corrected by CONTRACTOR within two (2) weeks.

- CONTRACTOR failure to perform services and/or deliver product on time.
- Services performed and/or products delivered by CONTRACTOR do not conform with the terms set forth in this Contract.
- CONTRACTOR fails to perform any material provision of this Contract.
- CONTRACTOR assigns this Contract, or any obligation or rights hereunder. (The term "assign" to include, without limitation, a transfer of majority.)
- CONTRACTOR sells or merges with a third-party (not a parent or subsidiary company) without the prior written consent of STATE.
- CONTRACTOR becomes insolvent or makes an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of CONTRACTOR's assets.

CONTRACTOR shall cure any of the above breaches and notify STATE of such cure within two (2) weeks from receipt of a notice to cure from STATE. If CONTRACTOR fails to cure, STATE may terminate this Contract by giving CONTRACTOR written notice. STATE shall have no liability to CONTRACTOR thereafter except for payment of any balance due for conforming services performed prior to the date of STATE's notice to cure. STATE may, at its option and without regard to CONTRACTOR's ability to cure, terminate this Contract for cause in the event of any second or subsequent instances of the above breaches by CONTRACTOR.

On termination, the work products produced by the CONTRACTOR in any stage of completion shall be turned over to the STATE immediately. An appraisal of the value of work performed to the date of termination shall be made to establish the amount due to or from the Contractor. Also, all accounts and payments will be processed in accordance with financial arrangements set forth herein for work performed and/or material or services furnished up until the date of termination.

TERMINATION FOR OTHER THAN NON-PERFORMANCE. If the STATE terminates for reasons other than non-performance, the CONTRACTOR is relieved of any performance responsibilities on the project, and the withheld performance guarantee amount will be released by the STATE. The estimated completion of projects may overlap in new fiscal years. (STATE fiscal year is from July 1, to June 30). If funding is not allocated for individual projects, which overlap into the new fiscal year, the project will be automatically terminated on June 30th without written notice to CONTRACTOR.

CONTRACT SCHEDULE, DELAYS AND F' 'ENSION: Completion of the contract in ac dance with the schedule is the responsibility of the CONTRACTOR. 1... CONTRACTOR agrees to proceed with the performance of this contract continually and diligently in accordance with the agreed upon contract schedule and will make no charges or claims for extra compensation due to delays or hindrances within its control. Failure to comply with the contract schedule constitutes adequate justification for contract termination. The STATE may allow an extension of time beyond the agreed upon schedule, but by doing so does not waive any of its rights under the contract to secure full and complete contract performance