Contract # 059127

STATE OF UTAH CONTRACT

003314

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:

Vaisala, Inc.
Name

PO Box 3659
Address

Boulder CO 80307
City State Zip

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

Contact Person Brook Pearson Phone (303)-262-4055 Email Brooke.pearson@Vaisala.com
Federal Tax ID# 042731916 Vendor # 92094A Commodity Code # 90620000000 & 72515000000

2. GENERAL PURPOSE OF CONTRACT: The general purpose of this contract is to provide:

Repair Parts and Services for our existing Road & Weather Information System. UDOT's Road Weather Information System (RWIS) is a collection of various atmospheric and surface sensors that provide near real time monitoring of the weather, and its affects on Utah's roads

3. PROCUREMENT: This contract is entered into as a result of the procurement process on RX# 4600000163 , FY04 Bid# SS04303.

4. CONTRACT PERIOD: Effective date 01 December 2004 Termination date 30 December 2007 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewals: Two (2) one year renewal options. SW DRA

5. CONTRACT COSTS: This is a Requirements Contract. The CONTRACTOR will be paid per the prices as detail in Attachment B, of the contract.

6. **ATTACHMENT A**: Division of Purchasing's Standard Terms and Conditions
ATTACHMENT B: Scope of Work and Pricing.
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 #SS04303 dated 06/22/04 .

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

CONTRACTOR

29 Jan 05
Contractor's signature Date

B Pearson WAT Sales Manager
Type or Print Name and Title

ENT'D MAR 30 2005

STATE

DEC 14 2004
Dave Miles, Operations Engineer Date

FEB 10 2005
Director, Division of Purchasing Date

DRA 2/9/5

CONTRACT RECEIVED AND PROCESSED BY DIVISION OF FINANCE

FEB 14 2005
Director, Division of Finance Date

Denice McCarthy	(801) 965- 4761	(801) 965-4073	dmccarthy@utah.gov
Agency Contact Person	Telephone Number	Fax Number	Email Address

(Revision 08/26/2003)

JUL 23 2005

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 third party, 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 thirty (30) 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 90 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 warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of 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.

Attachment B
Scope of Work/ Prices and Fees

Road Weather Information System (RWIS)

Introduction
UDOT's Road Weather Information System (RWIS) is a collection of various atmospheric and surface sensors that provide near real time monitoring of the weather, and its affects on Utah's roads. Included in this process are expert systems, which employ the atmospheric/surface data to generate alarms and actions for UDOT personnel, as well as initiate warnings, advisories, and highway restrictions for travelers. Another intricate component of the RWIS system is the data collection and dissemination process. UDOT utilizes a myriad of servers (some maintained by the vendors) that gather, process and disseminate the data into a useful manner for the end users.

Scope of Work
This is a requirements contract to supply spare parts for weather and surface instrumentation, as well as engineering services for design, repair and field work provided as necessary to ensure a continuous collection of near real time atmospheric and surface data. Included in these services is engineering and support necessary to maintain data processing, collection and dissemination of data. This will be a 3 year contract with (2) one year renewal options.

List of items to be covered under contract:

Item	Type of sensor	Unit Price	Price each for 5 units	Price each for 10 units	Price each for 15 units	Price each for 60 units
# 1	HMP45D Air temp and humidity sensor	528	528	502	502	
# 2	DTR502 Radiation shield for HMP45D	276	270	260	260	
# 3	DRS511AB5 Pavement sensor (166ft cable)	2360	2360	2242	2242	
# 4	PWD10 Visibility Sensor	3620	3510	3440	3440	
# 5	Present Weather and Visibility sensor PWD12	5357	5200	5090	5090	
# 6	DTS151UKG5 Sub-surface temperature sensor (166ft cable)	310	295	270	265	
# 7	WAT12&WAA151&WAV151 Wind speed and Direction (heated)	1650	1600	1570	1570	
# 8	DRI511 card to add 2 pavement sensors	1347	1310	1240	1280	
# 9	ROSA RPU for 2 pavement sensors	7260	7040	6900	6530	
# 10	DRD11A Precipitation sensor (yes/no light/moderate/heavy	933	900	840	800	
#11	WMS301ICE10M Combined Wind speed and Direction sensor	1025	974	920	895	

Attachment B
Scope of Work/ Prices and Fees

Road Weather Information System (RWIS)

Item	Type of sensor	Unit Price	Price each for 5 units	Price each for 10 units	Price each for 15 units	Price each for 60 units
#12	Intelligent Communications Interface DMC586	1590	1453			
#13	Upgrade of data dissemination. Unit is each RWIS ESS per winter season		2360	1500		
#14	Upgrade of RWIS to display Thermal Maps of forecast minimum road temperature (forecast service required). Unit is each mile					390

#15	RWIS ESS Pre-season Preventative Maintenance Service with Certificate of Conformity. Includes hotel and travel expenses	2450	850			
#16	RWIS ESS sensor monitoring and data quality per winter season	630				
	RWIS ESS commissioning	2450				
#17	Engineering services. Daily rate. Includes hotel and travel expenses	2450				
#18	RWIS Server Maintenance. Daily Rate. Includes hotel and travel expenses	2650				

Attachment C
Special Terms & Conditions

1. CONTRACT This is a requirements contract to provide service and repair parts for the Road Weather Information System (RWIS) for the Department of Transportation State Wide. Services and product for a period of three (3) years with two(2) one year renewal options.

2. QUANTITY OR AMOUNT ESTIMATES State does not guarantee to purchase any amount under this contract. Estimated amounts are for bidding purposes only and are not to be construed as a guarantee to purchase any amount.

3. PRICING The Contractor agrees that the prices bid on materials/services in this contract shall be guaranteed for one (1) year.

ANY CHANGE REQUEST ON PRICES MUST GUARANTEE THE PRICE FOR ONE YEAR, AND MUST BE MADE AT LEAST THIRTY (30) DAYS PRIOR TO THE REQUESTED EFFECTIVE DATE. ANY SUCH REQUEST MUST INCLUDE SUFFICIENT DOCUMENTATION SUPPORTING THE REQUEST. REQUESTS FOR CHANGE ON ANY PRICING IN THIS CONTRACT SHALL NOT BE EFFECTIVE UNTIL IT IS APPROVED BY THE PROCUREMENT SUPERVISOR OR THE PROCUREMENT MANAGER OF THE UTAH DEPARTMENT OF TRANSPORTATION.

4. WAGES The Contractor shall be responsible for all applicable company wages in accordance with the federal, state, and local laws and ordinances.

5. PURCHASE ORDERS Prior to award of a Purchase Order(s) for each specific project; a detailed scope of work including survey type, survey length and location, data analysis locations and/or intervals, time schedule, special conditions, number of cores, features to be located, special performance requirements, and deliverables shall be identified in writing by UDOT.

6. WORK SCHEDULING Work Schedules shall be negotiated between UDOT and CONTRACTOR. If CONTRACTOR is not available to meet time the requirements of UDOT, another contractor may be used for the project.

7. MOBILIZATION AND TRAVEL COSTS Mobilization costs to and from Salt Lake City Utah to a home base location will be proposed. All travel expense must be approved by UDOT's Project Manager prior to CONTRACTOR'S departure. Travel expenses for air fare, lodging, car rental, and limited telephone charges must be itemized separately and indicate individual incurring the expenses. Per diem will be paid at the rate as per UDOT's travel policy.

Upon approval of the invoice by UDOT"S Project Manager, payment will be remitted by mail.

8. WORK HOURS Normal work hours are between 6 AM and 6 PM, Monday through Friday. Unit prices associated with field surveys for work outside of this time range and for the convenience of UDOT shall be agreed in writing prior to award of Purchase Order for each project. This additional compensation does not apply to mobilization to and from Salt Lake City.

9. INVOICING THE CONTRACT NUMBER MUST APPEAR ON ALL INVOICES, BILLS OF LADING, PACKAGES AND ALL CORRESPONDENCE.

The State reserves the right to adjust incorrect invoices.

Attachment C
Special Terms & Conditions

The Contractor shall submit invoices to:

Utah Department of Transportation
Traffic Operation Center
Ralph Patterson / RWIS, project Manager
P O Box 145790
Salt Lake City, Utah 84104-5790

The State will remit payment by mail.

10. NON-ASSIGNMENT The Contractor shall not sublet, assign or transfer any part of the contract without prior written approval from the Procurement Supervisor or the Procurement Manager of the Utah Department of Transportation. The provision of monies due under this contract shall not be assignable without prior written approval from the Procurement Supervisor or the Procurement Manager of the Utah Department of Transportation.

11. INSURANCE Prior to commencing work the Contractor shall provide the State with proof of insurance. The insurance policy shall provide coverage to the Contractor for bodily injury and property damage arising from the Contractor=s negligent execution of the instructions, duties, obligations and projects assigned to it by the State. Liability and Property Damage Insurance Policy shall be$1,000,000 aggregate minimum . The Contractor shall provide a Certificate of Insurance for each time period of this contract.

The Contractor shall provide adequate Fire and Comprehensive Insurance to cover the value of and the loss of use of the aircraft and other equipment used to fulfill the obligations of this contract.

All insurance coverage provided by the Contractor shall name the State of Utah, UDOT and its employees as additional insureds.

12. AUTHORIZATION TO USE SERVICES The use of services shall be authorized and requested in writing, and <u>only</u> by the respective State Representative.

13. 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.

14. LIQUIDATED DAMAGES: CONTRACTOR agrees to delivery of items as quoted in this bid. Failure to deliver as quoted, constitutes an event of default. The actual damages to the Department of Transportation for delay will be difficult or impassible to determine. Therefore, in lieu of actual damages, the vendor shall pay to the Department of Transportation, liquidated damages for each calendar day of delay, an amount of $50.00 per unit, up to a maximum of 90 calendar days (including pilot unit). Should the vendor be unable to complete the delivery at the

end of the 90-day period, the Utah Department of Transportation may, at its option, treat the contract as breached, terminate the contract, purchase substitute goods else-where, and charge

the full increase, if any, in cost and handling for such purchase to the defaulting vendor, and seek such additional relief as provided by law. The vendor shall not be charged for liquidated damages when delay arises out of causes beyond the control and without the fault or negligence of the vendor

Attachment C
Special Terms & Conditions

15. COMPLETE DELIVERY Delivery shall not be deemed to be complete until the goods have been actually received and accepted by STATE, including setup and testing if applicable, notwithstanding any agreement to pay freight, express or other transportation charges.

16. NOTIFICATION All notices or correspondence given pursuant to this contract shall be sent to:

CONTRACTOR
Brooke Pearson , National sales Manager
Traffic Weather, Vaisala Solutions,
PO Box 3659
Boulder, CO 80307
Dir. 303 262 4055
Fax: 303 262 4058
Brooke.person@vaisala.com

STATE
Denice McCarthy
4501 South 2700 West
Box 148260
Salt Lake City, UT84119 –5998
801.965.4761 Voice
801.965.4073 Fax
dmccarthy@utah.gov

Technical questions can be directed to:

CONTRACTOR
Brook Pearson, National Sales Manager
Traffic Weather, Vaisala Solutions
PO Box 3569
Boulder, CO 80307
Dir. 303 626-4055
Fax:303-262-4058
Brook.person@vaisala.com

STATE
Ralph Patterson / RWIS, project
Utah Dept of Transportation
Traffic Operation Center
P O Box 145790
Salt Lake City, Utah 84104-5790
801-887-3735
801-887-3732
rpatterson@utah.gov

17. NON-PERFORMANCE If, at any time, the individuals proposed fail to demonstrate the required expertise (as represented in the CONTRACTOR's proposal) or fail to meet acceptable standards of performance, the STATE reserves the right to require the CONTRACTOR to replace this individual with a competent individual. This replacement must be approved by the STATE Project Manager. 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. Waiver of any individual requirements shall not be deemed as a waiver of any other contract provisions. Lack of demand shall not be deemed of a requirement waiver. If the STATE elects to terminate the contract for non-performance, the STATE will supersede paragraph # 12 in Attachment A -Standard Terms and Conditions, and will not provide 30 day prior notice to the CONTRACTOR.

18. QUALITY 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.

19. TERMINATION The occurrence of any of the following constitutes a breach by CONTRACTOR unless corrected by CONTRACTOR within five (5) days.

- CONTRACTOR failure to perform services and/or deliver product on time.
- Services performed and/or product delivered by CONTRACTOR do not conform with the terms set forth in this Contract.
- CONTRACTOR fails to perform any material provision of this Contract.
- STATE and CONTRACTOR do not reach an agreement on the next Pricing Period.

Attachment C
Special Terms & Conditions

- 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 five (5) days 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.

20. 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.

21. 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.

22. CONTRACT SCHEDULE, DELAYS AND EXTENSIONS: Completion of the contract in accordance with the schedule is the responsibility of the CONTRACTOR. The 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

Attachment C
Special Terms & Conditions

23. CHANGES AND EXTRA WORK: The CONTRACTOR shall notify the STATE in writing within seven calender days of alleged changes to the contract due to differing site conditions, extra work, altered work beyond the scope of the contract, or actions taken by the STATE that changed the contract terms and conditions. Work associated with the alleged change shall be suspended immediately and before any expenses are incurred. The written notification to the STATE shall include the following:

(a) The date of occurrence and the nature and circumstances of the occurrence that constitute a change;

(b) Name, title and activity of each STATE representative knowledgeable of the change;

(c) Identification of any documents and the substance of any verbal communication involved in the change;

(d) Basis for the claim that the work is not required by the contract; and,

(e) Detailed estimate of additional time and/or costs that would be incurred due to the change.

Failure of the CONTRACTOR to provide the required notice under this subsection shall constitute a waiver of any and all claims that may arise as a result of the alleged change. Following submission of the notification and in the absence of directions received to the contrary from the STATE, the CONTRACTOR shall continue diligent prosecution of the work under the contract to the maximum extent possible without impacting conditions of the alleged change. Within 14 calendar days after receipt of notice, the STATE shall respond in writing, either confirming or denying that a change has occurred, and advising the CONTRACTOR of the method and manner of further performance. Confirmed changes shall be followed by a negotiated written modification to the contract in accordance with the Contract Modifications clause of this attachment to the contract.