

Emergency Highway Spill Agreement September 2018
Service Agreement Under \$10,000
Exhibit A

Scope of Work

1. Contractor agrees to provide emergency response, cleanup and disposal services of Hazardous Material and/or non-hazardous material spilled on highways for the California Department of Transportation (Caltrans), as described herein.
2. Caltrans's Contract Manager is the District Hazardous Material (HazMat) Manager (DHM) or his/her designee as stated in this Agreement.
3. Contractor shall conform to all applicable State and Federal laws & regulations, including, but not limited to, the California Contractors' State License Board and Cal OSHA regulations. Contractor shall provide all equipment, tools, materials, labor, training and personal protective equipment necessary for the handling, storage, testing, pickup, transportation and disposal of Hazardous Materials. At all times, the Contractor will ensure that all equipment and employees performing the requirements of this agreement comply with the employee safety regulations for the class of chemicals and hazardous material involved.
4. Contractor's work on State highway spill cleanup/salvage and/or disposal of Hazardous Materials will be coordinated and cleaned up according to appropriate Federal, State, or local regulatory agency requirements and with the approval of the DHM or his/her authorized representative. Hazardous materials and substances to be removed shall be safely collected, handled, transported, stored, and disposed in full compliance with all applicable Federal, State and local laws, ordinances, rules and regulations.
5. Contractor's emergency work started on the date specified on the ADM-4028 Hazmat Emergency Highway Spill Agreement; and shall expire when the work is completed as directed by the District's HazMat Manager. As soon as practicable to do so, (not later than five (5) working days after completion of all work at the spill location), Contractor will provide the DHM with a written estimate of actual costs involved in the cleanup of the spill.
6. Detailed description of work to be performed and duties of all parties:
 - A. Contractor's employees dispatched to spill site shall carry job skill certifications at all times while on Caltrans job site. At the discretion of the DHM, if it is determined that the spill exceeds the on-site Contractor's capabilities, additional approved contractors will be called out to assist. Should the DHM determine that the Contractor's response team dispatched to the scene is insufficiently trained or experienced to safely perform the required duties; the DHM may instruct the Contractor's team to either leave the scene or contact the Contractor's dispatcher to request and await arrival of an experienced employee of the Contractor to direct the team's activities.

Emergency Highway Spill Agreement September 2018
Service Agreement Under \$10,000
Exhibit A

- B. The State will not pay the Contractor for a response team that is dismissed from the scene, nor will the State pay the Contractor for “stand-by” time for a response team awaiting the arrival of a qualified employee to direct their activities at the scene. In all cases, it shall be the Contractor’s sole responsibility to ensure that the team dispatched to a highway spill is comprised of the appropriate qualified personnel to perform all the required spill cleanup services.
- C. At the discretion of the DHM, at any stage in a particular cleanup event where Caltrans forces can take over safely and legally and where the necessary State of California personnel and equipment are available, Caltrans may do the work. In any event, Caltrans will provide as much advance notice as practical to the Contractor concerning which portion of the work is to be handled by the Contractor and which portion is to be handled by State forces, if any.
- D. Contractor, when directed by the DHM, will identify, neutralize, contain, collect, remove and dispose of spilled Hazardous Materials, including the removal of contaminated surfaces for the purpose of cleanup and immediate removal in accordance with all applicable State and Federal laws and regulations. The DHM has full authority to determine the services to be performed, within the scope of this Agreement, by the Contractor at each spill site.
- E. At the discretion of the DHM, it may be appropriate to have the Contractor provide a full range of services from identification through collection, storage and disposal of the spilled Hazardous Materials. In other cases, at the discretion of the DHM, it may be appropriate to use the Contractor for identification, containment, and only collection and removal sufficient to allow reopening of the road to traffic.
- F. Response Equipment
The Contractor certifies that the equipment used in this Agreement is in good and efficient working order and shall be maintained in that condition during the term of the Agreement.
- G. Traffic Control
Contractor will provide Traffic Control when requested by the DHM. Contractor will provide all necessary traffic controls, including barricades, portable flashing beacons and detours to accomplish the work per the Manual of Traffic Controls for Construction and Maintenance Work Zones.

[\(Reference Chapter 2, Section 2 and Chapter 4, Section 12\)](#)

Emergency Highway Spill Agreement September 2018
Service Agreement Under \$10,000
Exhibit A

H. Health and Safety Plan and Training

Contractor shall provide the District's HazMat Manager with copies of training certificates and will ensure that its employees will have documentation of this training available at each spill site. The Contractor certifies that its Health and Safety Plan will continue throughout the term of the Agreement and that it meets the requirements of Title 8 of the California Code of Regulations and General Industrial Safety Order Section 3203 (CFR OSHA) and 29 CCR 5192. Contractor will continue to adhere to all Health and Safety Program and Training requirements as specified in Exhibit E, Special Provisions.

I. Confined Space and Rescue

The Contractor shall respond with confined space entry and rescue personnel and equipment when Contractor notes that it is within its resource capabilities. Personnel shall be fully trained in confined space entry and equipment protocols prior to any assignment under this agreement. Contractor shall obtain all confined space entry permits when required. Copies of confined space entry permits shall be submitted with invoice.

J. Stabilization and removal

Cleanup and mitigation actions shall be taken to recover the material from the affected media. These actions shall include whatever steps are necessary, which have been approved by the DHM and are in accordance with all applicable Federal, State, and local laws and regulations.

K. Site Survey Report

Contractor may be required to conduct an initial on-scene survey of specific spill sites. The purpose of the survey will be to gain sufficient on-scene familiarity with the incident to enable the Contractor to propose a work plan to accomplish the project in the most effective, efficient, and safe manner. This work plan shall define the types and quantities of response personnel, equipment, and materials. When an on-scene survey is conducted, an on-scene survey report is required. The report shall include site map (noting spill location), drain inlets, water basins, spill contingency plan, work plan, site safety plan, and lab analysis report.

L. The DHM will have the final approval on the final site cleanup.

M. Contractor is responsible to provide decontaminated or new sample containers, labels, appropriate preservation, and chain of custody records for the sampling from the cleanup work site to the laboratory. Contractor is responsible for providing clear and accurate explanation of the analytical results.

Emergency Highway Spill Agreement September 2018
Service Agreement Under \$10,000
Exhibit A

N. Packaging and Marking

Contractor shall provide necessary personnel and all required materials to ship, manifest, package, mark, label, and seal and load the materials and/or waste for transport in accordance with all applicable Federal, State, and local laws & regulations. When re-packaging is necessary, the Contractor shall be responsible for disposal of the original containers. Packaging of waste is to be performed in the most cost-effective manner to eliminate re-packaging. At no time can any material be commingled with any other generator waste.

O. Transport

- 1) Contractor's on-site representative shall provide to the DHM accurate spill information. Contractor shall obtain prior approval from the DHM for the type of transporting equipment to be utilized and the route of movement. Contractor shall advise the DHM in advance of any transport delays to the disposal facility, such as full laboratory analysis, disposal facility hours of operation, etc., which will result in the temporary storage of spill material. Transport to an alternate disposal site that is authorized by the U.S. Environmental Protection Agency and California State Water Resources Control Board (SWRCB) to handle the specific spilled material may be pre-authorized by the DHM if it is determined to be in the best interest of the State. Refer to Section Q (4), Disposal, below.
- 2) DHM in charge at the spill site shall authorize the Contractor to transfer the Hazardous Materials by signing the Contractor's Uniform Hazardous Waste Manifest.
- 3) Contractor may transport Hazardous Materials from an emergency spill site to a Caltrans Maintenance Facility or to a California Department of Toxic Substance Control (DTSC) registered transfer storage and disposal facility (TSDF).
- 4) Contractor's Registration with the California Environmental Protection Agency (CAL-EPA), Department of Toxic and Substance Control, (DTSC) must be kept current at all times. A copy of the current Transporters Registration document must be kept with each vehicle shipping Hazardous Materials.

P. Hazardous Waste Storage

Temporary storage of material may be provided at Contractor's facility as approved by the DHM. Hazardous waste storage shall include whatever steps are necessary, which have been approved by the DHM and are in accordance with all applicable Federal, State, and local laws and regulations.

Emergency Highway Spill Agreement September 2018
Service Agreement Under \$10,000
Exhibit A

Q. Disposal

- 1) Disposal shall include preparation and packaging on location, shipping and disposing in compliance with all existing laws and regulations of the United States including, but not limited to, EPA Hazardous Waste Regulations in 40 CFR 260 et seq.; Department of Transportation Regulations in 49 CFR 100 et seq.; and laws and regulations of any state, county, township or municipal subdivision thereof or other governmental agency which may be applicable to the removal, transportation, storage and disposal of the hazardous materials and waste.
- 2) The Project Supervisor shall adequately verify the waste stream prior to removing it from the site, and the Contractor shall establish a waste profile it routinely sees at highway spills.
- 3) Disposal methods shall be those that are most cost-effective and in the best interest of the State. Waste disposal shall require a receipt included with the individual invoice.
- 4) The Contractor shall transport waste to appropriate facilities within the State of California. Only waste that cannot be treated or disposed in California's TSD facility shall be transported out of state. Treatment, storage, and disposal of hazardous waste shall be at a Department of Toxic Substance Control (DTSC) permitted facility. Non-hazardous material disposal shall be in compliance with all State and local regulations and meet landfill acceptance criteria. Contractor will not be reimbursed for the time spent profiling, gathering cost documentation, checking completion of paper work, or locating a disposal facility.
- 5) Contractor shall assure Caltrans that the disposal sites used are approved by Federal, State, and local governments and are operated with integrity; and that there are no known pending administrative or judicial actions to restrict their use. Caltrans may conduct inspections of disposal facilities used by the contractor to insure proper compliance with Federal, State and local law, regulations and permit requirements.
- 6) At no time shall waste that is non-hazardous be disposed of as hazardous. Contractor shall be required to obtain certified weight receipts when disposal cost is calculated by weight. Certified weight receipts shall be included on invoice of identifying spill incident.

Emergency Highway Spill Agreement September 2018
Service Agreement Under \$10,000
Exhibit A

- 7) Hazardous Waste Manifests, non-hazardous waste disposal certificates, and other pertinent waste management certificates shall be included in Contractor's invoice package for each identified spill incident or payment will not be allowed.

R. Analytical

Contractor shall have access to State certified analytical facilities capable of performing chemical analyses on 24-hour turnaround bases. Standard turnaround time for laboratory analysis shall be 48 hours or less. Laboratories performing chemical analyses for the Contractor shall be certified by the California State Water Resources Control Board, Environmental Laboratory Accreditation Program (SWRCB-ELAP) for the specific required cleanup analyses. Mobile laboratory units shall be certified by SWRCB, for the specific cleanup analyses. Laboratory methods not certified by SWRCB may be performed by laboratories only if recognized by SWRCB for comparable test methods or if the laboratory is certified as a US EPA Contract laboratory.

S. Laboratories

Laboratories performing chemical analyses for the Contractor shall be certified by the California State Water Resources Control Board's, Environmental Laboratory Accreditation Program (SWRCB-ELAP) for the specific required cleanup analyses. Mobile laboratory units shall be certified by SWRCB, for the specific cleanup analyses. Laboratory methods not certified by SWRCB may be performed by laboratories only if recognized by SWRCB for comparable test methods or if the laboratory is certified as a US EPA Contract laboratory. Standard turnaround time for laboratory analysis shall be 48 hours but may be longer at the discretion of the DHM. The Contractor is responsible to provide decontaminated or new sample containers, labels, appropriate preservation and chain of custody records for the sampling from the cleanup work site to the laboratory. The transportation of samples to the laboratory shall be paid per the authorized verbal agreement or public rate sheet prior to the start of work. Transportation rate shall include labor and transportation costs, chain of custody records, sampling containers, and labeling incurred from the cleanup work site to the laboratory for laboratory analysis. The cost for laboratory analysis shall be at actual invoice cost, no additional charges shall be allowed. The Contractor is responsible for providing clear and accurate explanation of the analytical results.

Emergency Highway Spill Agreement September 2018
Service Agreement Under \$10,000
Exhibit A

7. Quality Control and Monitoring

The Contractor and subcontractor(s) (if applicable) are subject to announced and/or unannounced inspections of their operations, records, and facilities by the State to verify agreement compliance. This does not relieve the Contractor of his/her responsibility to ensure proper agreement compliance by his/her own inspections or other means.

8. Spill Diary

All Caltrans/contractor communications (callout procedures), labor, equipment, materials, and other items of work provided by the Contractor has been documented by the Caltrans HazMat Manager or his/her authorized representative using the Caltrans Hazardous Spill Diary (Form DM-M 157). The Caltrans Spill Diary was signed and approved by the onsite DHM and the Contractor's representative and is incorporated herein as Attachment 1. The Spill Diary is not an invoice document, will not include any price schedules, and is not intended to interfere with or substitute for the contract price schedules.

Emergency Highway Spill Agreement September 2018
Service Agreement Under \$10,000
Exhibit B

Budget Detail and Payment Provisions

1. Invoicing and Payment

- A. For services satisfactorily rendered and approved by the District HazMat Manager, and upon receipt and approval of the itemized invoice(s), the State agrees to compensate the Contractor for actual expenditures incurred.
- B. The Contractor will be paid, in arrears, in full payment for all work and services performed under this Agreement and in accordance with the CAL-Card Service Agreement Under \$10,000, ADM 4028, Section 3, Payment Provisions.

C. CAL-Card Payment Option

Upon receipt of an itemized invoice, in arrears, stating the goods/services provided, time period covered, detailed costs and the Agreement number, the Contract Manager will notify the Contractor of payment authorization. The Contractor will provide the Contract Manager a copy of the itemized, transaction receipt showing payment was received, the invoice, the contract number and the CAL-Card card verification number charged. Contractor to send invoices to Caltrans's Contract Manager as noted above.

- D. Progress payments will be made based on services provided and actual costs incurred. Not less than 10 percent (10%) of the Agreement amount shall be withheld pending final completion of the Agreement. The retention amount will be paid to the Contractor after Caltrans has evaluated the Contractor's performance and made a determination that all Agreement requirements have been satisfactorily fulfilled.

2. Budget Contingency Clause

- A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional or legislative appropriation of funds, for the mutual benefit of both parties in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made.
- B. This Agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government or the California State Legislature for the purpose of this program. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress or the State Legislature that may affect the provisions, terms or funding of this Agreement in any manner.

Emergency Highway Spill Agreement September 2018
Service Agreement Under \$10,000
Exhibit B

- C. It is mutually agreed that if the Congress or the State Legislature does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
- D. Pursuant to Government Code, Section 927.13, no late payment penalty shall accrue during any time period for which there is no Budget Act in effect, nor on any payment or refund that is the result of a federally mandated program or that is directly dependent upon the receipt of federal funds by a state agency.
- E. Caltrans has the option to terminate the Agreement under the thirty (30) day termination clause or to amend the Agreement to reflect any reduction of funds.

3. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

4. Cost Limitation

- A. Total amount of this Agreement shall not exceed the agreed upon amount specified on the CAL-Card Service Agreement Under \$10,000, ADM-4028.
- B. It is understood and agreed that this total is an estimate and that the State will pay only for those services actually rendered as authorized by the Contract Manager or his/her designee.

5. Materials/Supplies

The Contractor will be reimbursed for the actual cost of materials/supplies purchased to be consumed or installed at the work site in performance of the Agreement (including applicable sales tax), without additional allowance for markup. Contractor costs associated with the purchase and installation of materials/supplies are considered as a component of the Contractor's hourly rate for services that include wages, overhead, general and administrative expenses and profit. Costs of materials/supplies are to be substantiated by a copy of the appropriately signed invoice verifying the actual cost and delivery of the replaced components to Caltrans. Total expenditures for materials/supplies shall not exceed the amount set forth in the line item for parts in the approved Confirmation of Verbal Agreement and shall not exceed the Contractor's current year's published rates.

6. Excise Tax

The State of California is exempt from federal excise taxes, and no payment will be made for any taxes levied on employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement. California may pay any applicable sales and use tax imposed by another state.

Emergency Highway Spill Agreement September 2018
Service Agreement Under \$10,000
Exhibit B

7. Cost Principles

- A. The Contractor agrees that the Cost Principles and Procedures in 48 CFR, Part 31, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, in 2 CFR, Part 200, shall be used to determine the allowable individual items of cost.
- B. Any costs for which payment has been made to the Contractor that are determined by subsequent audit to be unallowable under 48 CFR, Part 31 or CFR, Part 200 are subject to repayment by Contractor to Caltrans.
- C. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Section.

8. Costs Included in Bid Rates

The cost of employer payments to or on behalf of employees, subsistence, travel, compensation insurance premiums, unemployment contributions, social security taxes, Agreement bond premiums, and any other taxes or assessments INCLUDING SALES AND USE TAXES required by law or otherwise shall be included in the Agreement rates and no additional allowance will be made thereof, unless separate payment provision should specifically so provide.

Emergency Highway Spill Agreement September 2018
Service Agreement Under \$10,000
Exhibit D

Special Terms and Conditions

1. Settlement of Disputes

- A. Any dispute concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by the Caltrans's Contract Officer, who may consider any written or verbal evidence submitted by the contractor. The decision of the Contract Officer, issued in writing, shall be the final decision of Caltrans.
- B. Neither the pendency of a dispute nor its consideration by the Contract Officer will excuse the contractor from full and timely performance in accordance with the terms of the Agreement.

2. Termination

- A. If, after award and execution of the Agreement, the Contractor's performance is unsatisfactory, the Agreement may be terminated for default. Additionally, the Contractor may be liable to Caltrans for damages including the difference between the Contractor's original bid price and the actual cost of performing the work by another Contractor. Default is defined as the Contractor failing to perform services required by the Agreement in a satisfactory manner.
- B. Caltrans reserves the right to terminate this Agreement for any or no cause upon thirty (30) days written notice to the Contractor or immediately in the event of default or material breach by the Contractor.
- C. The State may terminate this Agreement immediately for good cause. The term "good cause" may be defined as "impossibility of performance" or "frustration of purpose," but does not include material breach, default, or termination without cause. In this instance, the Agreement termination shall be effective as of the date indicated on the State's notification to the Contractor.
- D. In the event that the total Agreement amount is expended prior to the expiration date, Caltrans may, at its discretion, terminate this Agreement with thirty (30) days notice to Contractor.

Emergency Highway Spill Agreement September 2018
Service Agreement Under \$10,000
Exhibit D

3. Subcontractors

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of his/her responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor.
- B. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.
- C. Contractor shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the Contractor by the State.
- D. Any substitution of subcontractors must be approved in writing by the State's Contract Manager in advance of assigning work to a substitute subcontractor.
- E. Any subcontractor performing work within this agreement must be listed on Attachment 2 (subcontractors list).

4. Retention of Records/Audits

- A. For the purpose of determining compliance with Government Code Section 8546.7, the Contractor and Subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under the Agreement. The State, the State Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the Contractor that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.
- B. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this article.

Emergency Highway Spill Agreement September 2018
Service Agreement Under \$10,000
Exhibit D

5. Non-Solicitation

The contractor warrants, by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained or contracted by the contractor for the purpose of securing business. For breach or violation of this warranty, the state shall have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

6. Reporting Small Business (SB)/Micro Business (MB) and/or Disabled Veterans Business Enterprise (DVBE) Utilization

If SB/MB and/or DVBE Subcontractor participation is a requirement of this Agreement, the Contractor must report the actual amount paid to certified Subcontractors. The Contractor must comply with Government Code Section 14841 and Military and Veterans Code Section 999.5(d) by reporting the actual utilization of certified Subcontractor(s) during the performance of this Agreement. The Contractor shall prepare and submit the [Report of Utilization of Small/Micro Business and Disabled Veteran Business Enterprise State Funded Contracts Only, form ADM-3059](#) to the Caltrans Contract Manager within 60 days from receipt of final payment.

7. Disabled Veterans Business Enterprise (DVBE) Participation (Without Goals)

The State has established no goals for the participation of DVBE for this contract. However, the Contractor shall be fully informed respecting the California Public Contract Code Section 10115 et seq., which is incorporated by reference. Contractor is urged to obtain DVBE subcontractor participation should clearly defined portions of the work become available.

8. Small Business or Disabled Veteran Business Enterprise Certification

- A. Contractor shall maintain its status as a Department of General Services certified Small Business (SB)/Micro Business (MB) or Disabled Veteran Business Enterprise (DVBE), as applicable, throughout the term of this Agreement.
- B. Subcontractor must also maintain its certification with the DGS Office of Small Business & Disabled Veteran Business Enterprise Services as a SB/MB or DVBE, as applicable for the duration of this Agreement.

Emergency Highway Spill Agreement September 2018
Service Agreement Under \$10,000
Exhibit D

9. Laws to be Observed

The Contractor shall keep fully informed of all existing and future state and federal laws and county, and municipal ordinances and regulations which in any manner affect those engaged or employed in the work, the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. The Contractor shall at all times observe and comply with; and shall cause all agents and employees to observe and comply with, all such existing and future laws, ordinances, regulations, orders, and decrees of bodies or tribunals having any jurisdiction or authority over the Agreement. If any discrepancy or inconsistency is discovered in the plans, drawings, specification, or Agreement for the work in relation to any such law, ordinance, regulation, order, or decree, the Contractor shall immediately report the same to the Caltrans Contract Manager in writing.

10. Specific Legal References

Any reference to specific statutes, regulations or other legal authority in this Agreement shall not relieve the Contractor from the responsibility of complying with all existing and future laws, ordinances, regulations, orders, and decrees of bodies or tribunals having any jurisdiction or authority over the Agreement.

11. Equipment Indemnification

- A. The contractor shall indemnify the state for any claims against the State for loss or damage to the contractor's property or equipment during its use under this Agreement and shall at the contractor's own expense maintain such fire, theft, liability or other insurance as deemed necessary for this protection. The contractor assumes all responsibility which may be imposed by law for property damage or personal injuries caused by defective equipment furnished under this Agreement or by operations of the contractor or the contractor's employees under this Agreement.
- B. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this article.

12. Assumption of Risk and Indemnification Regarding Exposure to Environmental Health Hazards

In addition to and not a limitation of the Contractor's indemnification obligations contained elsewhere in this Agreement, the Contractor hereby assumes all risks of the consequences of exposure of Contractor's employees, agents, Subcontractors, Subcontractors' employees, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, to any and all environmental health hazards, local and otherwise, in

Emergency Highway Spill Agreement September 2018
Service Agreement Under \$10,000
Exhibit D

connection with the performance of this Agreement. Such hazards include, but are not limited to, bodily injury and/or death resulting in whole or in part from exposure to infectious agents and/or pathogens of any type, kind or origin. Contractor also agrees to take all appropriate safety precautions to prevent any such exposure to Contractor's employees, agents, Subcontractors, Subcontractors' employees, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement. Contractor also agrees to indemnify and hold harmless Caltrans, the State of California, and each and all of their officers, agents and employees, from any and all claims and/or losses accruing or resulting from such exposure. Except as provided by law, Contractor also agrees that the provisions of this paragraph shall apply regardless of the existence or degree of negligence or fault on the part of Caltrans, the State of California, and/or any of their officers, agents and/or employees.

13. Mandatory Organic Waste Recycling

It is understood and agreed that pursuant to Public Resources Code §42649.8 et. seq, if Contractor generates four (4) cubic yards of organic waste per week the contractor shall arrange for organic waste recycling services. "Organic waste" means food waste, green waste, landscape and pruning waste, non-hazardous wood waste, and food-soiled paper waste that is mixed in food.

The Contractor shall take at least one of the following actions:

- 1) Source separate organic waste from other waste and subscribe to a basic level of organic waste recycling service that includes collection and recycling of organic waste.
- 2) Recycle its organic waste onsite or self-haul its own organic waste for recycling.
- 3) Subscribe to an organic waste recycling service that may include mixed waste processing that specifically recycles organic waste.

When applicable, Contractor must comply with these provisions.

Emergency Highway Spill Agreement 092018
Service Agreement Under \$10,000
Exhibit E

Special Provisions

1. General Provisions Required in all Insurance Policies
 - A. Deductible: Contractor is responsible for any deductible or self-insured retention contained within the insurance program.
 - B. Coverage Term: Coverage must be in force for the complete term of this Agreement. If insurance expires during the term of this Agreement, a new certificate must be received by the Caltrans Contract Manager at least ten (10) days prior to the expiration of the insurance. Any new insurance must continue to comply with the original terms of this Agreement **(enter Agreement number)**.
 - C. Policy Cancellation or Termination and Notice of Non-Renewal: Contractor shall provide, to the Caltrans Contract Manager within five (5) business days, following receipt by Contractor, a copy of any cancellation or non-renewal of insurance required by this Agreement. In the event Contractor fails to keep, in effect at all times, the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.
 - D. Primary Clause: Any required insurance contained in this Agreement shall be primary, and not excess or contributory, to any other insurance carried by the State.
 - E. Inadequate Insurance: Inadequate or lack of insurance does not negate the Contractor's obligations under this Agreement.
 - F. Endorsements: Any required endorsements requested by the State must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.
 - G. Insurance Carrier Required Rating: All insurance companies must carry a rating acceptable to the Department of General Services, Office of Risk and Insurance Management (ORIM). If the Contractor is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required. [Department of General Services, ORIM](#) website.
 - H. Contractor shall include all of its subcontractors as insured's under Contractor's insurance or supply evidence of insurance to the State equal to the policies, coverage's and limits required of Contractor.
 - I. The State will not be responsible for any premiums or assessments on the policy.

Emergency Highway Spill Agreement 092018
Service Agreement Under \$10,000
Exhibit E

J. Commercial General Liability

- 1) Contractor shall maintain general liability on an occurrence form with limits not less than **\$1,000,000** per occurrence and **\$2,000,000** aggregate for bodily injury and property damage liability. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured Agreement. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability. The policy must include:

Caltrans, State of California, its officers, agents, and employees are included as additional insured, but only with respect to work performed for the State of California under this Agreement. The additional insured endorsement must accompany the certificate of insurance.

- 2) This endorsement must be supplied under form acceptable to the Department of General Services, Office of Risk and Insurance Management.

K. Automobile Liability

Contractor shall maintain motor vehicle liability with limits not less than \$1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles. The same additional insured designation and endorsement required for general liability is to be provided for this coverage.

L. Workers' Compensation and Employer's Liability

Contractor shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Agreement. Employer's liability limits of **\$1,000,000** are required. When work is performed on State owned or controlled property the workers' compensation policy shall contain a waiver of subrogation in favor of the State. The waiver of subrogation endorsement shall be provided to the Caltrans' Contract Manager.

M. Pollution Liability

Contractor shall maintain Pollution Liability covering the Contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs incurred, all arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous

Emergency Highway Spill Agreement 092018
Service Agreement Under \$10,000
Exhibit E

materials. Limits of not less than **\$1,000,000** per incident and an annual aggregate amount of **\$2,000,000** shall be provided. The same additional insured designation and endorsement required for general liability is to be provided for this coverage.

2. Motor Carrier Permit Requirements

- A. Contractor must have a valid Motor Carrier Permit(s) (MCP) issued from the Department of Motor Vehicles (DMV) for its services as a Motor Carrier of Property under this Agreement. Contractor shall pay any required fees necessary to obtain and maintain in good standing the required MCP(s).
- B. The MCP(s) required for the Contractor's Motor Carriers of Property under Cal. Vehicle Code sections 34601 and 34620 shall be on file with the Contractor for the duration of this Agreement. Upon request of the Caltrans Contract Manager or his/her designee, the Contractor must immediately provide to Caltrans a copy of the required MCP(s).

3. License Requirements, Permits, and Certificates

- A. The Contractor shall be properly licensed in accordance with the laws of the State of California and shall possess a Class A General Engineering Contractor license issued by the California Contractors State License Board and, including but not limited to, a hazardous waste hauler license, a hazardous substances removal contractor certificate, asbestos removal certification, tire haulers permit, confined space entry permit, hazardous waste of concern transporter permit, and bio-hazard certificate. Additionally, the contractor and all subcontractors shall be responsible for obtaining and maintaining current, all applicable State and local licenses, registrations, permits, and certifications during the performance period of this agreement. This includes but is not limited to hazardous waste permits and storage variances.
- B. The Contractor shall be an individual or firm qualified to do business in California and shall obtain at his/her/its expense all license(s) and permit(s) required by law for accomplishing any work required in connection with this Agreement.
- C. If Contractor headquartered within the State of California, Contractor must have a business license or equivalent from the city/county in which it is headquartered. If Contractor is a corporation or other business entity (apart from a sole proprietorship or general partnership), then Contractor must be registered and active/in good standing with the California Secretary of State.

Emergency Highway Spill Agreement 092018
Service Agreement Under \$10,000
Exhibit E

- D. If Contractor headquartered outside the State of California, Contractor must submit to Caltrans a copy of its business license or equivalent. If Contractor is a foreign corporation or other business entity (apart from a sole proprietorship or general partnership), then Contractor must be registered and active/in good standing with the California Secretary of State.
 - E. In the event, any license(s) and/or permit(s) expire at any time during the term of this Agreement; Contractor agrees to provide the Caltrans Contract Manager a copy of the renewed license(s) and/or permit(s) within thirty (30) days following the expiration date. In the event Contractor fails to keep in effect at all times all required license(s) and permit(s), the State may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.
4. Licensed Contractor Standards for Quality of Work
- A. Licensed contractors must observe professional standards for quality of work or the California Contractors State License Board will invoke disciplinary action.
 - B. Notice is hereby given that certain actions by a Contractor, including, but not limited to the following, constitute grounds for disciplinary action once the State has notified the license board of all violations:
 - 1) A willful departure from plans and specifications or disregard of trade standards for good and workmanlike construction in any material respect that might prejudice Caltrans, owner of the property upon which you perform work (Bus. & Prof. Code §7109).
 - 2) The failure to observe and comply with all of the applicable labor laws (Bus. & Prof. Code §7110).
 - 3) Material failure to complete this Agreement (Bus. & Prof. Code §7113).
 - C. Should the State determine that the work or materials provided vary materially from the specifications, or, that defective work when completed was not performed in a workmanlike manner, then the Contractor warrants that the Contractor shall perform all necessary repairs, replacement and corrections needed to restore the property according to the Agreement plans and specifications, all at no further or additional cost to the State.

Emergency Highway Spill Agreement 092018
Service Agreement Under \$10,000
Exhibit E

5. Interfacing with Pedestrian and Vehicular Traffic

Pursuant to the authority contained in Section 591 of the Vehicle Code, Caltrans has determined that within such areas as are within the limits of the project and are open to public traffic, the contractor shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14 and 15 of the Vehicle Code. The contractor shall take all necessary precautions for safe operations of the contractor's equipment and the protection of the public from injury and damage from such property.

6. Health and Safety Program

A. Contractor shall provide a safe and healthful work environment as required by California Labor Code, Sections 6400 through 6410.

B. Contractor shall continue its health and safety program as required by and in compliance with Title 8, California Code of Regulations, and 29 CFR 1910.120, 1910.1200 and 29 CFR 1.34 (b).

- 1) Firms health and safety policies and responsibilities.
- 2) Key personnel and their health and safety responsibilities [29 CFR 1910.120 (b) (ii) (A)].
- 3) Employee responsibilities [29 CFR 1910.120 (b) (ii) (A)].
- 4) Personal protective equipment program [29 CFR 1910.120 (b) (ii) (A)].
- 5) Respiratory protection program [29 CFR 134 (b)].
- 6) Medical surveillance program [29 CFR 1910.120 (f)].
- 7) Exposure monitoring program [29 CFR 1910.120 (h)].
- 8) Training program [29 CFR 1910.1200].
- 9) Record keeping and documentation of program elements.
- 10) Hazardous communication program and hearing conservation program [29 CFR 1910.95 (C)].

Emergency Highway Spill Agreement 092018
Service Agreement Under \$10,000
Exhibit E

7. Training Requirements

Contractor shall provide training as required by 8 CCR, Sections 3202 and 5192 and by 29 CFR, Part 1910.120, and in accordance with the contractor's health and safety program to all response personnel. Work is anticipated to be within lane closures. Employees shall be trained in Manual of Traffic Controls for Construction and Maintenance Work Zones as required by Sections 21400-21401 of the California Vehicle Code. Contractor shall provide documentation to the State that all response personnel have received all such training and that all response supervisors and above have received training in hazardous materials first responder operations, appropriate supervisory training and Hazwoper and Hazwoper Refresher training.

8. Hazardous Material

Hazardous Material is defined as follows in Health and Safety Code §22501(o): "Hazardous Material" means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment. "Hazardous Materials" include, but are not limited to, hazardous substances, hazardous waste, and any material which a handler or the administering agency has a reasonable basis for believing that it would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment.