

STANDARD AGREEMENT

STD 213 (rev 9/01)

Division Of Procurement And Contracts (DPAC) A&E Boiler Revision Date 6/14/12

AGREEMENT NUMBER

11A2026

REGISTRATION NUMBER

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

STATE AGENCY'S NAME

STATE OF CALIFORNIA

DEPARTMENT OF TRANSPORTATION (Hereinafter referred to as "Department" or "Caltrans")

CONSULTANT'S NAME

Simon Wong Engineering, Inc. (Hereinafter referred to as "the Consultant")

2. The term of this Agreement is from September 4, 2012 or upon Caltrans approval, whichever is later, through December 31, 2015.

3. The maximum amount of this Agreement is: \$23,920,000.00
Twenty Three Million Nine Hundred Twenty Thousand Dollars and No Cents

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

Exhibit A – Scope Of Work And Deliverables	4 Pages
Exhibit B – Budget Detail And Payment Provisions	7 Pages
Exhibit C – General Terms And Conditions 610 (Electronic File: GTC 610*)	1 Page
Exhibit D – Special Terms And Conditions	26 Pages
Exhibit E – Additional Provisions	11 Pages
Exhibit F – Prevailing Wage Requirements	6 Pages
Attachment 1 – Scope Of Work	20 Pages
Attachment 2 – Cost Proposal	52 Pages
Attachment 3 – Sample Task Order Format	5 Pages
Attachment 4 – DBE Participation (form ADM-0227F A&E)	1 Page
Attachment 5 – Disadvantaged Business Enterprises Utilization Report (form ADM-3069)	2 Pages

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

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

CONTRACTOR (herein referred to as "the Consultant")

CONSULTANT'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

Simon Wong Engineering, Inc.

BY (Authorized Signature)



DATE SIGNED (Do not type)

9/30/12

PRINTED NAME AND TITLE OF PERSON SIGNING

Marc McIntyre, Executive V.P.

ADDRESS

9968 Hibert Street, 2nd Floor, San Diego, CA 92131**STATE OF CALIFORNIA**

AGENCY NAME

Department of Transportation

BY (Authorized Signature)



DATE SIGNED (Do not type)

9/4/2012

PRINTED NAME AND TITLE OF PERSON SIGNING

Liz Salinas, Branch Chief

ADDRESS

Division of Procurement and Contracts, MS 65
1727 30th Street
Sacramento, CA 95816

California Department of General Services
Use Only

Exempt per: PCC 10430 (d)

EXHIBIT A
SCOPE OF WORK AND DELIVERABLES

I. SCOPE OF WORK

The Consultant shall perform professional and technical roadway construction management, engineering, surveying and inspection services on an “as-needed” basis to support the development and construction of proposed Caltrans transportation facilities in San Diego County.

- A. The work to be performed under this Agreement is described in Attachment 1.
- B. The services shall be performed in San Diego County.
- C. This Agreement will commence on **September 4, 2012** or upon approval by Caltrans, whichever is later and no work shall begin before that time. This Agreement is of no effect unless approved by Caltrans. The Consultant shall not receive payment for work performed prior to approval of the Agreement and before receipt of notice to proceed by the Caltrans Contract Manager. This Agreement shall expire on **December 31, 2015**. The services shall be provided during working hours, Monday through Friday, except holidays unless otherwise specified in a Task Order. The parties may amend this Agreement as permitted by law.
- D. All inquiries during the term of this Agreement will be directed to the project representatives identified below:

THE DEPARTMENT	THE CONSULTANT
Contract Manager: Mark Parra	Project Manager: Marc McIntyre
District/Division: District 11 / Division of Construction	Office/Branch:
Address: 4050 Taylor Street San Diego, CA 92110	Address: 9968 Hibert Street, 2 nd Floor San Diego, CA 92131
Phone: 619-688-6882	Phone: 858-566-3113
Fax: 619-688-6848	Fax: 858-566-6844
e-mail: mark_parra@dot.ca.gov	e-mail: mmcintyre@simonwongeng.com

E. Work Guarantee

Caltrans does not guarantee, either expressly or by implication, that any work or services will be required under this Agreement.

EXHIBIT A
SCOPE OF WORK AND DELIVERABLES

F. Licenses and Permits

1. The Consultant shall obtain at its expense all license(s) and permit(s) required by law for accomplishing any work required in connection with this Agreement.
2. In the event the Consultant fails to keep in effect at all times all required license(s) and permit(s), Caltrans may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

II. TASK ORDER

- A. Specific projects will be assigned to the Consultant through issuance of Task Orders. See sample Task Order format, Attachment 3.
- B. After a project to be performed under this Agreement is identified by Caltrans, Caltrans will prepare a draft Task Order. The draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a Caltrans Project Coordinator. The draft Task Order will be delivered to the Consultant for review. The Consultant shall return the draft Task Order within no more than ten (10) calendar days along with a cost estimate including a written estimate of the number of hours per staff person, any anticipated reimbursable expenses, and total dollar amount. The Consultant agrees that each cost estimate shall be the product of a good faith effort exercise of engineering judgment. After agreement has been reached on the negotiable items, the finalized Task Order shall be signed by both Caltrans and the Consultant. If Caltrans and Consultant are unable to reach agreement, Caltrans may terminate this Agreement in accordance with the provisions of Exhibit D, entitled "Termination."
- C. Task Orders may be negotiated for a Firm Fixed Price or for specific rates of compensation, both of which must be based on the labor and other rates set forth in the Consultant's Cost Proposal, Attachment 2.
- D. A Task Order is of no force or effect until returned to Caltrans and signed by an authorized representative of Caltrans. No expenditures are

EXHIBIT A
SCOPE OF WORK AND DELIVERABLES

authorized on a project and work shall not commence until a Task Order for that project has been executed by Caltrans.

- E. The Consultant shall not commence performance of work or services on a Task Order until it has been approved by Caltrans and notification to proceed has been issued by the Caltrans Contract Manager. No payment will be made for any work performed prior to approval or after the period of performance of the Task Order.
- F. If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- G. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- H. The total amount payable by Caltrans for an individual Task Order shall not exceed the amount agreed to in the Task Order. Task Orders and/or Task Order Revisions require written approval by the Consultant and Caltrans.
- I. If applicable, when a subsequent agreement for the same or similar scope of work is executed within three (3) months prior to the termination of this Agreement, no additional Task Orders shall be executed under this Agreement upon the effective date of the subsequent agreement.
- J. Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement.

III. CONSULTANT REPORTS AND/OR MEETINGS

- A. The Consultant shall submit progress reports at least once a month. The report should be sufficiently detailed for the Caltrans Contract Manager to determine if the Consultant is performing to expectations and is on schedule, to provide communication of interim findings and to afford occasions for airing difficulties or special problems encountered so remedies can be developed. Separate detail shall be provided for each on-going Task Order.

EXHIBIT A
SCOPE OF WORK AND DELIVERABLES

- B. Progress reports shall identify the total number of hours worked by the Consultants' and Subconsultants' personnel by use of the Caltrans Work Breakdown Structure (WBS) level element(s). The WBS is included in the Guide to Project Delivery Workplan Standards, which can be found at <http://www.dot.ca.gov/hq/projmgmt/guidance.htm>.
- C. The Consultant's Project Manager shall meet with the Caltrans Contract Manager as needed to discuss progress on the Agreement.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

I. FUNDING REQUIREMENTS

- 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 Caltrans 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.
- 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. Caltrans has the option to terminate the Agreement under the 30-day termination clause pursuant to Exhibit D, section III.
- E. Pursuant to Government Code, Section 927.13(d), 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.

II. COMPENSATION AND PAYMENT

- A. The Consultant will be reimbursed for hours worked at the hourly rates specified in the Consultant's Cost Proposal, (See Attachment 2). The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These

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rates are not adjustable for the performance period set forth in this Agreement.

- B. In addition, the Consultant will be reimbursed for direct costs, other than salary costs, that are identified in an executed Task Order.
- C. Consultant shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. The Consultant is responsible for paying the appropriate rate, including escalations that take place during the term of the Agreement.
- D. A mistake, inadvertence, or neglect by the Consultant in failing to pay the correct rates of prevailing wage will be remedied solely by the Consultant and will not, under any circumstances, be considered as the basis of a claim against Caltrans on the Agreement.
- E. In compliance with 49 CFR 26.37, revised on February 28, 2011, a Disadvantaged Business Enterprises Utilization Report (form ADM-3069) is required, as specified in this Agreement.
 - 1. The Consultant shall submit a Disadvantaged Business Enterprises Utilization Report (form ADM-3069), Attachment 5, with each invoice. Also refer to Exhibit D, Special Terms and Conditions.
 - 2. Failure to provide the Disadvantaged Business Enterprises Utilization Report (form ADM-3069) with the invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Consultant when a satisfactory Disadvantaged Business Enterprises Utilization Report (form ADM-3069) is submitted to the Caltrans Contract Manager.
- F. Transportation and subsistence costs to be reimbursed shall be the actual costs incurred, but not to exceed the rates stipulated in the "Caltrans Travel Guide, Consultant/Contractors Travel Policy." See <http://www.dot.ca.gov/hq/asc/travel/ch12.htm>.

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- G. Progress payments:
1. Progress payments will be made monthly in arrears based on services provided at specific hourly rates and allowable direct cost incurred for Task Orders negotiated with specific rates of compensation. Progress payments for Firm Fixed Price Task Orders will be based on the percentage of work completed.
 2. To determine allowable incurred Subconsultant costs that are eligible for reimbursement, in addition to reimbursement for actual costs that are incurred, Caltrans will allow Subconsultant costs that are treated by the Consultant as accrued due to such costs having been billed to the Consultant and recognized by the Consultant and Caltrans as valid, undisputed, due and payable.
 3. By submitting accrued but unpaid Subconsultant costs for reimbursement, the Consultant agrees that within ten (10) days of receipt of reimbursement, the full amount submitted as a reimbursable accrued Subconsultant cost shall be paid to the Subconsultant.
- H. The Consultant shall not commence performance nor will payment be made for any work performed prior to approval of this Agreement by State and written notification to proceed has been issued by the Caltrans Contract Manager, nor will any payment be made for work performed after the expiration date of this Agreement.
- I. The Consultant will be reimbursed in arrears for services satisfactorily rendered and approved by the Caltrans Contract Manager, as promptly as fiscal procedures will permit upon receipt by the Caltrans Contract Manager of itemized invoices in triplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order.
- J. Invoices shall be submitted showing the Caltrans WBS level element for each billable hour increment and/or detail of work performed on each milestone, on each project as applicable. Task Orders and invoicing shall include, but are not limited to, the WBS elements listed for defined/related services and products. The WBS is included in the Guide

EXHIBIT B
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to Project Delivery Workplan Standards, which can be found at <http://www.dot.ca.gov/hq/projmgmt/guidance.htm>. Incomplete invoices shall be returned unpaid to the Consultant for correction. Caltrans shall not pay disputed portions of invoices.

- K. When prevailing wage rates apply, the Consultant must submit with each invoice a certified copy of the payroll for compliance verification. Invoice payment will not be made until the payroll has been verified and the invoice approved by the Caltrans Contract Manager.
- L. The sample invoice format can be found at <http://caltrans-opac.ca.gov/aeinfo.htm>. Invoices shall reference this Agreement number, project title, and Task Order number. Invoices shall be submitted no later than 45 calendar days after completion of each billing period. Any credit, as provided under this Agreement, due Caltrans must be reimbursed by the Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to the Caltrans Contract Manager or Consultant Service Unit at the following address:

DEPARTMENT OF TRANSPORTATION
Attention: Mark Parra
District 11 / Division of Construction
4050 Taylor Street
San Diego, CA 92110

- M. 49 CFR 18.23 requires that federal funds must be expended within 90 days of the expiration of the funding period. Accordingly, the invoices for approved monthly services must be submitted by the Consultant and received by the Caltrans Contract Manager within 45 calendar days of the completion of the approved monthly services specified in each Task Order. If Caltrans does not receive invoices from the Consultant by the required deadline, Caltrans may reduce the payment on the invoice based on the formula set forth in Government Code 927.6 to offset in part the loss of federal funds encumbered for this Agreement.
- N. The final Task Order invoice shall state the final cost and all credits due Caltrans. The final invoice should be submitted within 60 calendar days after completion of the services.

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- O. Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.
- P. The total amount payable by Caltrans, for all Task Orders resulting from this Agreement, shall not exceed \$23,920,000. It is understood and agreed that this total is an estimate, and that the actual amount of work requested by Caltrans may be less. There is no guarantee, either expressed or implied, as to the actual dollar amount that will be authorized under this Agreement through Task Orders. In no event shall Task Orders be issued that will exceed this maximum.
- Q. Any written report prepared as a requirement of this Agreement shall contain, in a separate section of such written report, the number and dollar amounts of all agreements and subagreements relating to the preparation of those reports if the combined costs for work by nonemployees of the State exceed \$5,000.00.
- R. Prime Consultant's Indirect Cost Rates (ICR) indicated in Attachment 2, Cost Proposal, are based on 48 CFR, Part 31.
- S. Attachment 2, Cost Proposal, is subject to a Certified Public Accountant (CPA) Indirect Cost (Overhead) Audit Workpaper Review and/or audit. Attachment 2 shall be adjusted by the Consultant and approved by the Caltrans Contract Manager to conform to the Workpaper Review recommendations or audit recommendations. The Consultant agrees that individual terms of cost identified in the audit report shall be incorporated into the Agreement by this reference if directed by Caltrans at its sole discretion. Refusal by the Consultant to incorporate the Workpaper Review recommendations or audit recommendations will be considered a breach of the Agreement terms and cause for termination of the Agreement.
- T. Limitations: Use of the rate(s) contained in this Agreement is subject to any statutory or administrative limitations and is applicable to a given contract only to the extent that funds are available. Acceptance of the rate(s) agreed to herein is predicated upon the following conditions:
 - 1. That no costs other than those incurred by the Consultant or allocated to the Consultant were included in its indirect cost pool as finally

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

accepted and that such costs are legal obligations of the Consultant and allowable under the governing cost principles.

2. That the same costs that have been treated as indirect costs have not been claimed as direct costs.
3. That similar types of costs have been accorded consistent accounting treatment to all clients (state, federal, local government, commercial/private) under similar circumstances, and
4. That the information provided by the Consultant which was used as a basis for acceptance of the rate(s) agreed to herein is not subsequently found to be materially inaccurate.

The elements of indirect cost and the type of distribution base(s) used in computing provisional rates are subject to revision when final rates are established. Also, the rates cited in this Agreement are subject to audit.

- U. At the discretion of Caltrans, the indirect rate(s) and related workpapers may be reviewed by Caltrans Division of Audits & Investigations (A&I) to verify the accuracy and CPA's compliance with 48 CFR, Part 31 and related laws and regulations, and to determine if the audit report format is acceptable.
- V. Any subagreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

III. COST PRINCIPLES

- A. The Consultant agrees that Title 48 Code of Federal Regulations (CFR), Part 31, Contract Cost Principles and Procedures (48 CFR 31 et seq.), shall be used to determine the allowability of individual terms of cost.
- B. The Consultant also agrees to comply with Federal procedures in accordance with Title 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (49 CFR 18).

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- C. Any costs for which payment has been made to the Consultant that are determined by subsequent audit to be unallowable under 48 CFR 31 or 49 CFR 18 are subject to repayment by the Consultant to Caltrans.
- D. Any subagreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all the provisions of this clause.

EXHIBIT C
GENERAL TERMS AND CONDITIONS

NOTE: In this Exhibit C – GTC 610, the General Terms and Conditions are included in this Agreement by reference and made part of this Agreement as if attached hereto. See <http://www.ols.dgs.ca.gov/Standard+Language/default.htm>.

The following language is to be included in lieu of the Standard Indemnification Clauses used in DGS GTC – 610 General Terms and Conditions.

Indemnification

The Consultant agrees to indemnify, defend, and hold harmless Caltrans, its officers, agents, and employees from any and all claims, demands, costs, or liability arising from or connected with the services provided hereunder due to negligent or intentional acts, errors, or omissions of the Consultant. The Consultant will reimburse Caltrans for any expenditure, including reasonable attorney fees, incurred by Caltrans in defending against claims ultimately determined to be due to negligent or intentional acts, errors, or omissions of the Consultant.

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

I. AMENDMENT (CHANGE IN TERMS)

- A. No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties, and approved as required. No oral understanding or agreement not incorporated in Agreement is binding on any of the parties.
- B. The Consultant shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by the Caltrans Contract Manager.
- C. There shall be no change in the Consultant's Project Manager or members of the project team, as listed in the cost proposal, which is a part of this Agreement, without prior written approval by the Caltrans Contract Manager. If the Consultant obtains approval from the Caltrans Contract Manager to add or substitute personnel, the Consultant must provide the Personnel Request Form, a copy of the SF330 or resume for the additional or substituted personnel, along with a copy of the certified payroll for that person.

II. DISPUTES

- A. The Consultant shall continue with the responsibilities under this Agreement during any work dispute. Any dispute concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by a committee consisting of the Caltrans Contract Manager and the Caltrans Contract Officer who may consider written or verbal information submitted by the Consultant.
- B. Any dispute not resolved by the committee consisting of the Caltrans Contract Manager and Caltrans Contract Officer may be reviewed by the Consultant Claims Review Committee (CCRC). The CCRC will consist of the Division Chief of Project Delivery (Chairperson), Deputy Director of Administration and the Chief Counsel of Legal Services or their designees. Additional members or their designees may serve on the committee.

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- C. Not later than 30 days after completion of all work under the Agreement, the Consultant may request review by the CCRC of unresolved claims or disputes. The request for review will be submitted in writing through the Caltrans Contract Officer to the Chairperson, CCRC. A meeting by the CCRC will be scheduled after the Chairperson concurs. After the meeting, the CCRC will make recommendations to the Deputy Director of the functional program area, who will make the final decision for Caltrans.
- D. Neither the pendency of a dispute nor its consideration by the committee will excuse the Consultant from full and timely performance in accordance with the terms of this Agreement.

III. TERMINATION

This section regarding termination is in addition to GTC 610.

- A. Caltrans reserves the right to terminate this Agreement immediately in the event of breach or failure of performance by the Consultant, or upon thirty (30) calendar days written notice to the Consultant if terminated for the convenience of Caltrans.
- B. Caltrans may terminate this Agreement and be relieved of any payments except as provided for under early termination should the Consultant fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, Caltrans may proceed with the work in any manner deemed proper by Caltrans. All costs to Caltrans shall be deducted from any sum due the Consultant under this Agreement and the balance, if any, shall be paid to the Consultant upon demand.

IV. EARLY TERMINATION OF THIS AGREEMENT OR TASK ORDER(S),
OR SUSPENSION OF THIS AGREEMENT

General Conditions

- A. In the event this Agreement is terminated, suspended, or a Task Order is terminated for the convenience of Caltrans, the Consultant shall be paid for the percentage of the work completed, relative to the total work effort

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called for under this Agreement, and for termination costs. No billable costs will be considered payable under the Agreement during suspension.

- B. Within 30 days of the date the Consultant is notified of the early termination of Task Order(s) issued against this Agreement for the convenience of Caltrans, the Consultant shall prepare and submit to the Caltrans Contract Manager, for approval, two (2) separate supplemental cost proposals:
1. A final revised cost proposal for all project-related costs for the revised termination date, and
 2. A cost proposal specifically addressing the termination settlement costs only.

V. CONSULTANT'S DELIVERABLES UNDER EARLY TERMINATION

The Consultant shall provide all project-related documents and correspondence required as part of the Scope of Work/Deliverables or included in Task Orders. Project-related documents shall be described, listed, and identified as part of the final revised cost proposal. Project-related documents shall include all documents that are in complete and final form and which have been accepted as complete by Caltrans, or documents in draft and/or incomplete form for those deliverables, which are in progress by the Consultant and have not been accepted as complete. All documents must be received and accepted before the settlement cost invoice is paid.

VI. INVOICE SUBMITTAL UNDER EARLY TERMINATION

Separate final invoices for project-related costs and termination settlement costs shall be submitted no later than thirty (30) calendar days after the date the Consultant is notified of acceptance of the final cost proposals by the Caltrans Contract Manager. Invoices shall be submitted in accordance with EXHIBIT B. The invoice for termination settlement costs shall include the following, to the extent they are applicable: lease termination costs for equipment and facilities approved under the terms of this Agreement; equipment salvage costs for equipment valued over \$500.00; rental costs for unexpired leases, less the residual value of the lease; cost of alterations and

**EXHIBIT D
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reasonable restorations required by the lease; settlement expenses, e.g., accounting, legal, clerical, storage, transportation, protection and disposition of property acquired or produced under this Agreement, indirect costs, such as payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs related to wages and salaries, incurred as settlement costs.

VII. TERMINATION ISSUES FOR SUBCONSULTANTS, SUPPLIERS, AND SERVICE PROVIDERS

The Consultant shall notify any Subconsultant and service or supply vendor providing services under this Agreement of the early termination date of this Agreement. Failure to notify any Subconsultant and service or supply vendor shall result in the Consultant being liable for the termination costs incurred by any Subconsultant and service or supply vendor for work performed under this Agreement, except those specifically agreed to in the termination notice to the Consultant.

VIII. COST PRINCIPLES UNDER EARLY TERMINATION

Termination settlement expenses will be reimbursed in accordance with 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31. Subpart 31.205-42 (c) dealing with initial costs is not applicable to Architectural and Engineering Agreement terminations.

IX. DISPUTES UNDER EARLY TERMINATION CONDITIONS

Disputes under early termination conditions shall be resolved in accordance with this Exhibit.

X. CONSULTANT CLAIMS AGAINST THIS AGREEMENT OR TASK ORDER(S) UNDER EARLY TERMINATION

The Consultant agrees to release Caltrans from any and all further claims for services performed arising out of this Agreement or its early termination, upon acceptance by the Consultant of payment in the total amount agreed upon as full and final payment of its costs from performance and early termination of this Agreement or Task Order(s).

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XI. NON-DISCRIMINATION

This section regarding non-discrimination is in addition to GTC 610.

- A. During the performance of this Agreement, the Consultant and its Subconsultants shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), medical condition (cancer), age, marital status, denial of family and medical care leave, and denial of pregnancy disability leave. Consultants and Subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. The Consultant and Subconsultants shall comply with the provision of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. The Consultant and its Subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- B. Appendix A, relative to nondiscrimination on federally assisted projects, is attached hereto and made a part of this Agreement. (See the last three pages of this Exhibit D.)
- C. The Consultant shall comply with the nondiscrimination program requirements of Title VI of the Civil Rights Act of 1964. Accordingly, 49 CFR Part 21, and 23 CFR Part 200 is applicable to this Agreement by reference.
- D. The Consultant shall include the nondiscrimination and compliance provisions of this clause in all subagreements to perform work under this Agreement.

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XII. RETENTION OF RECORD/AUDITS

- A. For the purpose of determining compliance with Government Code Section 8546.7, the Consultant, Subconsultants, and Caltrans 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 (3) years from the date of final payment under the Agreement. Caltrans, 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 Consultant that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.
- B. Any subagreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all the provisions of this clause.

XIII. SUBCONTRACTING

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subconsultants, and no subagreement shall relieve the Consultant of its responsibilities and obligations hereunder. The Consultant agrees to be as fully responsible to the State for the acts and omissions of its subconsultants 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 Consultant. The Consultant's obligation to pay its subconsultants is an independent obligation from the State's obligation to make payments to the Consultant.
- B. The Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the Caltrans Contract Manager, except that which is expressly identified in the Consultant's Cost Proposal.

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- C. Any subagreement 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 subconsultants unless otherwise noted.
- D. Contractor shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to the Consultant by the State.
- E. Any substitution of subconsultants must be approved in writing by the Caltrans Contract Manager in advance of assigning work to a substitute subconsultant.

XIV. EQUIPMENT PURCHASE

- A. Prior authorization in writing by the Caltrans Contract Manager shall be required before the Consultant enters into any non-budgeted purchase order or subagreement exceeding \$500.00 for supplies, equipment, or Consultant services. The Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service or consulting work not covered in the Consultant's Cost Proposal and exceeding \$500.00, with prior authorization by the Contract Manager, three (3) competitive quotations must be submitted with the request or the absence of bidding must be adequately justified.
- C. The Consultant shall maintain an inventory record for each piece of non-expendable equipment purchased or built with funds provided under the terms of this Agreement. The inventory record of each piece of such equipment shall include the date acquired, total cost, serial number, model identification (on purchased equipment), and any other information or description necessary to identify said equipment. Non-expendable equipment so inventoried are those items of equipment that have a normal life expectancy of one (1) year or more and an approximate unit price of \$5,000.00 or more. In addition, theft-sensitive items of equipment costing less than \$5,000.00 shall be inventoried. A copy of the inventory record must be submitted to Caltrans on request by Caltrans.

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- D. Any equipment purchased by the Consultant will be returned to Caltrans at the end of this Agreement or, if not returned to Caltrans, it will be disposed of as agreed to by both parties. Both Caltrans and Consultant agree to comply with State Administrative Manual, Section 3520, Disposal of Surplus Personal Property, if Caltrans determines that Caltrans will not retain the equipment.
- E. 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000.00 is credited to the project.
- F. Any subagreement entered into as a result of this Agreement shall contain all the provisions of this clause.

XV. INSPECTION OF WORK

The Consultant and any Subconsultants shall permit Caltrans and the FHWA to review and inspect the project activities at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

XVI. SAFETY

- A. The Consultant shall comply with OSHA regulations applicable to the Consultant regarding necessary safety equipment or procedures. The Consultant shall comply with safety instructions issued by the District Safety Officer and other State representatives. The Consultant's personnel shall wear white hard hats and orange safety vests at all times while working on the construction project site.
- B. 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 Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. The Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

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- C. The Consultant or Subconsultant(s) must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s) as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practice, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.
- D. Any subagreement, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

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XVII. INSURANCE

A. The Consultant shall furnish to Caltrans Certificates of Insurance for the minimum coverage set forth below. The Consultant shall be fully responsible for all policy deductibles and any self-insured retention. All insurance shall be with an insurance company with an A.M. Best's Financial Strength Rating of A- or better with a Financial Size Category of VI or better.

B. Required Coverages and Limits:

1. Workers Compensation (statutory) and Employers Liability Insurance:

\$1,000,000 for bodily injury for each accident

\$1,000,000 policy limit for bodily injury by disease

\$1,000,000 for each employee for bodily injury by disease

If there is an exposure of injury to the Consultant's employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

If work is performed on State owned or controlled property the policy shall contain a waiver of subrogation in favor of the State. The waiver of subrogation endorsement shall be provided in addition to the certificate of insurance.

2. Commercial General Liability Insurance with limits no less than:

\$1,000,000 per occurrence

\$2,000,000 products completed operations aggregate

\$2,000,000 general aggregate

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The policy's general aggregate shall apply separately to the Consultant's work under this Agreement by evidencing a per project aggregate endorsement separately attached to the certificate of insurance.

The policy shall include coverage for liabilities arising out of premises, operations, independent consultants, products, completed operations, personal & 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 Consultant's limit of liability. The policy must include:

Caltrans, State of California, its officers, agents, employees and servants are included as additional insureds, but only with respect to work performed under this Agreement.

This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.

3. Automobile liability, including owned, non-owned and hired autos, with limits not less than \$1,000,000 combined single limit per accident. The same additional insured designation and endorsement required for general liability is to be provided for this coverage.
4. A \$1,000,000 umbrella or excess liability shall include premises/operations liability, products/completed operations liability, and auto liability coverage. The umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.
5. Professional Liability insurance with limits no less than:

\$1,000,000 per claim

\$2,000,000 in the aggregate

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The policy's retroactive date must be shown on the certificate and must be before this contract is executed or before the beginning of contract work.

Additionally, the Consultant shall maintain, or make a good faith effort to maintain, the Professional Liability insurance for a period of three (3) years after its performance under this Agreement.

- C. The insurance above shall be maintained in effect at all times during the term of this Agreement. If the insurance expires during the term of the Agreement, a new certificate must be submitted to the Caltrans Contract Manager not less than ten (10) days prior to the expiration of insurance. Failure to maintain the required coverage shall be sufficient grounds for Caltrans to terminate this Agreement for cause, in addition to any other remedies Caltrans may have available. Inadequate or lack of insurance does not negate the Consultant's obligations under the Agreement.
- D. The Consultant shall provide to the Caltrans Contract Manager within five (5) business days following receipt by Consultant a copy of any cancellation or non-renewal of insurance required by this Agreement. In the event Consultant fails to keep in effect at all times the specified insurance coverage, Caltrans may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of the Agreement.
- E. Any required endorsements requested by Caltrans must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.
- F. Any required insurance contained in this Agreement shall be primary and not in excess of or contributory to any other insurance carried by Caltrans.
- G. Caltrans will not be responsible for any premiums or assessments on the policy.
- H. For Agreements with hazardous activities, new certificates of insurance are subject to the approval of DGS, and the Consultant agrees that no work or services shall be performed prior to such approval.

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- I. The Consultant shall require all subconsultants to carry insurance based on the cost of the subcontract and the potential risk to Caltrans of the subcontracted work. Notwithstanding any coverage requirements for subconsultants, the Consultant shall be responsible for ensuring sufficient insurance coverage for all work performed under the Agreement, including the work of subconsultants.

XVIII. OWNERSHIP OF PROPRIETARY PROPERTY

For the purposes of this section (Ownership of Proprietary Property) the following definitions shall apply:

Work: As delineated in Attachment 1 (Scope of Work) of the Agreement.

Work Product: As defined as Deliverable in Attachment 1 (Scope of Work) of the Agreement, including but not limited to, all Work and Deliverables conceived or made, or made hereafter conceived or made, either solely or jointly with others during the term of this Agreement and during a period of six (6) months after the termination thereof, which relates to the Work commissioned or performed under this Agreement.

Inventions: Any idea, design, concept, technique, invention, discovery, improvement or development regardless of patentability made solely by the Consultant or jointly with the Consultant's Subcontractor and/or the Consultant's Subcontractor's employee's with one or more employees of the Department of Transportation (hereinafter referred to as "Caltrans"), during the term of this Agreement and in performance of any Work under this Agreement, provided that either the conception or reduction to practice thereof occurs during the term of this Agreement and in performance of Work issued under this Agreement.

A. Ownership of Work Product and Rights

1. Ownership of Work Product

All Work Product derived by the Work performed by the Consultant, its employees or by any of the Consultant's Subcontractor's employees under this Agreement, shall be owned by Caltrans and shall be considered works made for hire by the Consultant's

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Subcontractor for Caltrans. Caltrans shall own all United States and international copyrights in the Work Product.

As such, all Work Product shall contain, in a conspicuous place, a copyright designation consisting of a “c” in a circle followed by the four-digit year in which the Work Product was produced, followed by the words “California Department of Transportation.” For example, a Work Product created in the year 2003 would contain the copyright designation © 2003 California Department of Transportation.

2. Vesting of Copyright Rights

Consultant, its employees or any of Consultant’s Subcontractor’s employees agrees to perpetually assign, and upon creation of each Work Product automatically assigns, to Caltrans, its successors and assigns, ownership of all United States and international copyrights in each and every Work Product, insofar as any such Work Product, by operation of law, may not be considered work made for hire by the Consultant’s Subcontractor from Caltrans. From time to time upon Caltrans’ request, the Consultant’s Subcontractor and/or its employees, shall confirm such assignments by execution and delivery of such assignments, confirmations or assignment, or other written instruments as Caltrans may request. Caltrans, its successors and assigns, shall have the right to obtain and hold in its or their own name(s) all copyright registrations and other evidence of rights that may be available for Work Product. Consultant hereby agrees to waive all moral rights relating to identification of authorship restriction or limitation on use, or subsequent modifications of the Work.

B. Inventions

1. Vesting of Patent Rights

The Consultant, its employees and any Consultant’s Subcontractor hereby agrees to assign to Caltrans, its successors, and assigns, all Inventions, together with the right to seek protection by obtaining patent rights therefore and to claim all rights or priority there under, and the same shall become and remain Caltrans’ property regardless

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of whether such protection is sought. The Consultant, its employees and Consultant's Subcontractor shall promptly make a complete written disclosure to Caltrans of each Invention not otherwise clearly disclosed to Caltrans in the pertinent Work Product, specifically pointing out features or concepts that the Consultant, its employees and Consultant's Subcontractor believes to be new or different. The Consultant, its employees and Consultant's Subcontractor shall, upon Caltrans' request and at Caltrans' expense, cause patent applications to be filed thereon, through solicitors designated by Caltrans, and shall sign all such applications over to Caltrans, its successors, and assigns. The Consultant, its employees and Consultant's Subcontractor shall give Caltrans and its solicitors all reasonable assistance in connection with the preparation and prosecution of any such patent applications and shall cause to be executed all such assignments or other instruments or documents as Caltrans may consider necessary or appropriate to carry out the intent on this Agreement.

2. Agency

In the event that Caltrans is unable for any reason whatsoever to secure the Consultant's, its employees' and/or Consultant's Subcontractor's signature to any lawful or necessary document required or desirable to apply for or prosecute any United States application (including renewals or divisions thereof), Consultant, its employees and Consultant's Subcontractor hereby irrevocably designates and appoints Caltrans and its duly authorized officers and agents, as its agent and attorney-in-fact, to act for and on Consultant, its employees and Consultant's Subcontractor's behalf and stead, to execute and file such applications and to do all other lawfully permitted acts to further the prosecution and issuance of any copyrights, trademarks or patents thereon with the same legal force and effect as if executed by Consultant, its employees and/or Consultant's Subcontractor. Caltrans shall have no obligations to file any copyright, trademark or patent applications.

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3. Avoidance of Infringement

In performing services under this Agreement, Consultant and its employees agree to avoid designing or developing any items that infringe one or more patents or other intellectual property rights of any third party. If Consultant or its employees becomes aware of any such possible infringement in the course of performing any Work under this Agreement, Consultant or its employees shall immediately notify Caltrans in writing.

C. Additional Provisions

Subcontractors

Consultant shall affirmatively bind by contract any of its subcontractors or service vendors (hereinafter "Consultant's Subcontractor") providing services under this Agreement to conform to the provisions of Exhibit D, section XIX. Consultant's Subcontractor shall then provide the signed contract to the Consultant, who shall provide it to the Caltrans Contract Manager prior to the commencement of any work. In performing services under this Agreement, Consultant's Subcontractor agrees to avoid designing or developing any items that infringe one or more patents or other intellectual property rights of any third party. If Consultant's Subcontractor becomes aware of any such possible infringement in the course of performing any Work under this Agreement, Consultant's Subcontractor shall immediately notify the Consultant in writing, Consultant will then immediately notify Caltrans in writing.

XIX. OWNERSHIP OF DATA

- A. Upon completion of all work under this Agreement, all intellectual property rights, ownership and title to all reports, documents, plans, specifications, and estimates produced as part of this Agreement will automatically be vested in Caltrans and no further agreement will be necessary to transfer ownership to Caltrans. The Consultant shall furnish

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Caltrans all necessary copies of data needed to complete the review and approval process.

- B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine readable form, are intended for one-time use in the construction of the project for which this Agreement has been entered into.
- C. The Consultant is not liable for claims, liabilities or losses arising out of, or connected with, the modification or misuse by Caltrans of the machine readable information and data provided by the Consultant under this Agreement; further, the Consultant is not liable for claims, liabilities or losses arising out of, or connected with, any use by Caltrans of the project documentation on other projects, for additions to this project, or for the completion of this project by others, excepting only such use as may be authorized, in writing, by the Consultant.
- D. Any subagreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

XX. CLAIMS FILED BY CALTRANS CONSTRUCTION CONTRACTOR

- A. If claims are filed by the Caltrans construction contractor relating to work performed by the Consultant's personnel and additional information or assistance from the Consultant's personnel is required in order to evaluate or defend against such claims, the Consultant agrees to make its personnel available for consultation with Caltrans construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. The Consultant's personnel that Caltrans considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from Caltrans. Consultation or testimony will be reimbursed at the same rates, including travel costs, that are being paid for the Consultant's personnel services under this Agreement.
- C. Services of the Consultant's personnel in connection with Caltrans' construction contract claims will be performed pursuant to a written

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supplement, if necessary, extending the termination date of this Agreement in order to finally resolve the claims.

- D. Any subagreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

XXI. CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to Caltrans' operations, which is designated confidential by Caltrans and made available to the Consultant in order to carry out this Agreement, shall be protected by the Consultant from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion or public hearing held by Caltrans relating to this Agreement shall not authorize the Consultant to further disclose such information or disseminate the same on any other occasion.
- C. The Consultant shall not comment publicly to the press or any other media regarding this Agreement or Caltrans' actions on the same, except to Caltrans staff, Consultant's own personnel involved in the performance of this Agreement, at public hearings, or in response to questions from a Legislative committee.
- D. The Consultant shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this Agreement without prior review of the contents thereof by Caltrans and receipt of Caltrans' written permission.
- E. All information related to the construction estimate is confidential and shall not be disclosed by the Consultant to any entity, other than Caltrans.
- F. Any subagreement, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

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XXII. EVALUATION OF CONSULTANT

The Consultant's performance will be evaluated by Caltrans. A copy of the evaluation will be sent to the Consultant for comments. The evaluation, together with the comments, shall be retained by Caltrans.

XXIII. STATEMENT OF COMPLIANCE

The Consultant's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the Consultant has, unless exempt, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

XXIV. DEBARMENT AND SUSPENSION CERTIFICATION

- A. The Consultant's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the Consultant or any person associated therewith in the capacity of owner, partner, director, officer or manager:
1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 3. Does not have a proposed debarment pending; and
 4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to Caltrans. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining bidder responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

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XXV. CONFLICT OF INTEREST

- A. During the term of this Agreement, the Consultant shall disclose any financial, business, or other relationship with Caltrans or the California Transportation Commission that may have an impact upon the outcome of this Agreement or any ensuing Caltrans construction project. The Consultant shall also list current clients who may have a financial interest in the outcome of this Agreement or any ensuing Caltrans construction project which will follow.
- B. The Consultant hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.
- C. The Consultant hereby certifies that neither the Consultant, its employees, nor any firm affiliated with the Consultant providing services on this project prepared the Plans, Specifications, and Estimates for any construction project included within this Agreement. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.
- D. The Consultant further certifies that neither the Consultant, nor any firm affiliated with the Consultant, will bid on any construction contract included within this Agreement. Additionally, the Consultant certifies that no person working under this Agreement is also employed by the construction contractor for any project included within this Agreement.
- E. Except for Subconsultants whose services are limited to materials testing, no Subconsultant who is providing service on this Agreement shall have provided services on the design of any project included within this Agreement.
- F. Any subagreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

XXVI. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The Consultant warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or

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paid to any state agency employee. For breach or violation of this warranty, Caltrans shall have the right, in its discretion, to terminate this Agreement without liability, to pay only for the value of the work actually performed, or to deduct from this Agreement price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

XXVII. PROHIBITION OF EXPENDING STATE OR FEDERAL FUNDS FOR LOBBYING

- A. The Consultant certifies, to the best of his or her knowledge and belief, that:
1. No State or Federal appropriated funds have been paid or will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of any State or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any State or Federal agreement, the making of any State or Federal grant, the making of any State or Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any State or Federal agreement, grant, loan, or cooperative agreement.
 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal Agreement, grant, loan, or cooperative agreement, the Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil

EXHIBIT D
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penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

- C. The Consultant also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000.00, and that all such subrecipients shall certify and disclose accordingly.

XXVIII. CONSULTANT CODE OF BUSINESS ETHICS AND CONDUCT (DEC. 2007)

A. Definition

United States, as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

B. Code of Business Ethics and Conduct

1. Within 30 days after contract award, the Consultant shall:
 - a. Have a written code of business ethics and conduct; and
 - b. Provide a copy of the code to each employee engaged in performance of the contract.
2. The Consultant shall promote compliance with its code of business ethics and conduct.

C. Awareness Program and Internal Control System for Other Than Small Businesses

This paragraph C does not apply if the Consultant has represented itself as a small business concern pursuant to the award of this contract. The Consultant shall establish within 90 days after contract award:

1. An ongoing business ethics and business conduct awareness program; and
2. An internal control system.
 - a. The Consultant's internal control system shall:

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- (1) Facilitate timely discovery of improper conduct in connection with Government contracts; and
 - (2) Ensure corrective measures are promptly instituted and carried out.
- b. For example, the Consultant's internal control system should provide for:
- (1) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Consultant's code of business ethics and conduct and the special requirements of Government contracting.
 - (2) An internal reporting mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports;
 - (3) Internal and/or external audits, as appropriate; and
 - (4) Disciplinary action for improper conduct.
- D. Subcontracts

The Consultant shall include the substance of this clause, including this paragraph 4, in subcontracts, except when the subcontract:

1. Is for the acquisition of a commercial item; or
2. Is performed entirely outside the United States.

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STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

APPENDIX A — FEDERAL FUNDING REQUIREMENTS

I. COMPLIANCE WITH REGULATIONS

The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations Part 21 – Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

II. NON-DISCRIMINATION

The Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

III. SOLICITATIONS FOR SUBAGREEMENTS, INCLUDING
PROCUREMENTS OF MATERIALS AND EQUIPMENT

In all solicitations, either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential Subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

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IV. INFORMATION AND REPORTS

The Consultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State Department of Transportation or any duly authorized representative of the Federal Government to be pertinent to ascertain compliance with such regulations or directives. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the State Department of Transportation, or any duly authorized Federal Agency as appropriate, and shall set forth what efforts it has made to obtain the information.

V. SANCTIONS FOR NONCOMPLIANCE

In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the State Department of Transportation shall impose such Agreement sanctions as it or any Federal funding agency may determine to be appropriate, including, but not limited to:

- A. Withholding of payments to the Consultant under the Agreement until the Consultant complies, and/or
- B. Cancellation, termination or suspension of the Agreement, in whole or in part.

VI. INCORPORATION OF PROVISIONS

The Consultant shall include the provisions of paragraphs (1) through (6) in every subagreement, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Consultant will take such action with respect to any Subconsultant procurement as the State Department of Transportation or any Federal funding agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a Consultant becomes involved in, or is threatened with, litigation with a Subconsultant or supplier as a result of such direction, the Consultant may request the State Department of Transportation to enter into such litigation to

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protect the interest of the State, and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

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EXHIBIT E
ADDITIONAL PROVISIONS

- I. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM PARTICIPATION WITHOUT GOALS
- A. This Agreement is subject to Title 49, Code of Federal Regulations, Part 26 (49 CFR 26) entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” in the award and administration of federally assisted Agreements. The regulations in their entirety are incorporated by this reference and made part of this Agreement as if attached hereto.
 - B. There is no specific contract goal for DBE participation in this Agreement. However, the Consultant will still be required to submit a Disadvantaged Business Enterprises Utilization Report (form ADM-3069), Attachment 5, with each invoice (also refer to Exhibit B, Budget Detail and Payment Provisions).
 - C. It is the policy of Caltrans that DBEs, as defined in 49 CFR 26, shall be encouraged to participate in the performance of Agreements financed in whole or in part with federal funds to assist the State in meeting its federally mandated overall annual DBE goal. Consultant shall ensure that DBEs have an opportunity to participate in the performance of this Agreement and shall take all necessary and reasonable steps, as set forth in 49 CFR 26, for this assurance. Consultant shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Failure to carry out the requirements of this paragraph shall constitute a breach of Agreement and may result in termination of this Agreement or other remedies Caltrans may deem appropriate.
 - D. In order to ascertain whether or not the overall annual DBE goal is achieved, Caltrans tracks DBE participation on all federal-aid contracts. The Disadvantaged Business Enterprise (DBE) Information / Underutilized DBE (UDBE) Participation form (ADM 0227F A&E) is attached as Attachment 4 and incorporated as part of this Agreement.
 - E. Consultant shall notify the Caltrans Contract Manager, in writing, of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

EXHIBIT E
ADDITIONAL PROVISIONS

F. Any subcontract entered into between the Consultant and Subconsultant(s) as a result of this Agreement shall contain all of the provisions of this section.

II. DBE INFORMATION AND CONTRACT GOAL REQUIREMENT FOR UDBE PARTICIPATION

- A. This Agreement is subject to Title 49, Code of Federal Regulations, Part 26 (49 CFR 26), entitled "Participation by Disadvantaged Business Enterprises (DBEs) in Department of Transportation Financial Assistance Programs," in the award and administration of federally assisted Agreements. The regulations in their entirety are incorporated by reference and made part of this Agreement as if attached hereto.
- B. A UDBE is a firm that meets the definition of a DBE as specified in 49 CFR 26 that is also one of the following groups: African Americans, Asian-Pacific Americans, Native Americans, or Women. Only the participation of UDBEs will count toward any contract goal.
- C. The contract goal for UDBE participation for this Agreement is 7 percent. Participation by DBE prime and Subconsultants shall be in accordance with the information contained in the Disadvantaged Business Enterprise (DBE) Information / Underutilized DBE (UDBE) Participation form (ADM 0227F A&E) attached hereto and incorporated as part of this Agreement.
- D. Non-compliance by Consultant or Subconsultant(s) with the requirements of the regulations is a material breach of this Agreement and may result in termination of the Agreement or other such appropriate remedy for a breach of this Agreement, as Caltrans deems appropriate.
- E. Consultant or subconsultant shall not discriminate on the basis of race color, national origin or sex in the performance of this Agreement. Each subcontract signed by and between Consultant and Subconsultant(s) in the performance of this Agreement must include this assurance.

EXHIBIT E
ADDITIONAL PROVISIONS

III. SUBCONSULTANTS

- A. Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the Caltrans Contract Manager.
- 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 subconsultants.
- C. Any substitution of Subconsultant(s) must be approved in writing by the Caltrans Contract Manager in advance of assigning work to a substitute Subconsultant(s).
- D. Nothing contained in this Agreement or otherwise shall create any contractual relation between the State and any Subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to the State for the acts and omissions of its Subconsultant(s) 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 Consultant. Consultant's obligation to pay its Subconsultant(s) is an independent obligation from the State's obligation to make payments to Consultant. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any subconsultant.

IV. PERFORMANCE OF DBE CONSULTANTS AND OTHER DBE
SUBCONSULTANTS/SUPPLIERS

- A. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible for materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid

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under the Agreement is commensurate with the work it is actually performing, and other relevant factors.

- B. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- C. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, presume that it is not performing a CUF.
- D. DBE Subconsultants shall perform the work and supply the materials that they have listed in their response to the Agreement award requirements specified on form ADM 0227F A&E, attached, unless Consultant has received prior written authorization to perform the work with other forces or to obtain the materials from other sources as set forth in the section below entitled "DBE/UDBE Substitution."
- E. Consultant shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or by other forces (including those of Consultant) pursuant to prior written authorization of the Caltrans Contract Manager.

V. EXCLUSION OF RETENTION

- A. In conformance with 49 CFR 26.29 (b) (1), the retention of proceeds required by Public Contract Code (PCC), Section 10261 shall not apply.
- B. In conformance with Public Contract Code (PCC) Section 7200 (b), in subcontracts between Consultant and a Subconsultant and in subcontracts between a Subconsultant and any Subconsultant thereunder, retention proceeds shall not be withheld, and the exceptions provided in PCC Section 7200 (c), shall not apply. At the option of Consultant, Subconsultant(s) may be required to furnish payment and performance bonds issued by an admitted surety insurer.

EXHIBIT E
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- C. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

VI. PAYMENT TO DBE AND NON-DBE SUBCONSULTANT(S)

- A. Consultant shall pay its DBE Subconsultant(s) and non-DBE Subconsultant(s) within ten (10) calendar days from receipt of each payment made to Consultant by the State.
- B. Prior to the fifteenth of each month, Consultant shall submit documentation to the Caltrans Contract Manager showing the amount paid to DBE trucking companies listed in Consultant's DBE information. This monthly documentation shall indicate the portion of the revenue paid to DBE trucking companies, which is claimed toward DBE participation. Consultant shall also obtain and submit documentation to the Caltrans Contract Manager showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The records must confirm that amount of credit claimed toward DBE participation conforms to the requirements of section VIII below entitled, "DBE/UDBE Substitutions."
- C. Consultant shall also submit to the Caltrans Contract Manager documentation showing the truck number, name of owner, California Highway Patrol CA number and if applicable, the DBE certification number of the truck owner for all trucks used during that month for which DBE participation will be claimed. This documentation shall be submitted on the Monthly DBE Trucking Verification form provided to Consultant by the Caltrans Contract Manager.
- D. Consultant shall return all moneys withheld in retention from a Subconsultant within thirty (30) days after receiving payment for work satisfactorily completed, even if other Agreement work is not completed and has not been accepted in conformance with the terms of the Agreement. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to Consultant or Subconsultant in the event of a dispute involving late

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payment or non-payment to Consultant or deficient subcontract performance or noncompliance by a Subconsultant.

VII. DBE RECORDS

- A. Consultant shall maintain records of all subcontracts entered into with certified DBE Subconsultant(s) and records of materials purchased from certified DBE supplier(s). The records shall show the name and business address of each DBE Subconsultant or vendor and the total dollar amount actually paid each DBE Subconsultant or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE (prime) Consultant shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- B. The Consultant shall prepare and submit a Disadvantaged Business Enterprises Utilization Report (form ADM-3069), Attachment 5, to the Caltrans Contract Manager with every invoice (refer to Exhibit B, Budget Detail and Payment Provisions).

VIII. DBE/UDBE SUBSTITUTIONS

- A. Consultant may not substitute a listed DBE Subconsultant, supplier or, if applicable, a trucking company, without the prior written approval of the Caltrans Contract Manager. Failure to obtain approval of substitute subconsultants before work is performed, supplies are delivered, or services are rendered may result in payment being denied by Caltrans.
- B. Consultant must make an adequate good faith effort (GFE) to find another certified DBE/UDBE Subconsultant to substitute for the original DBE/UDBE Subconsultant. GFE shall be directed at finding another DBE/UDBE Subconsultant to perform at least the same amount of work under the Agreement as the DBE/UDBE Subconsultant that was substituted or terminated to the extent needed to meet the contract goal for DBE/UDBE participation established for the Agreement.
- C. The requirement that DBEs must be certified by the Statement of Qualification due date does not apply to DBE substitutions after award of

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the Agreement. DBEs substituted after award must be certified at the time of the substitution.

- D. Consultants shall submit requests for substitution to the Caltrans Contract Manager. Authorization to use other Subconsultants or suppliers may be requested for the following reasons:
1. Listed DBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written Agreement, when such written Agreement, based upon the terms and conditions for this Agreement or on the terms of such Subconsultant's or supplier's written proposal, is presented by Consultant.
 2. Listed DBE becomes bankrupt or insolvent.
 3. Listed DBE fails or refuses to perform subcontract or furnish listed materials.
 4. Consultant stipulated that a bond was a condition of executing subcontract and listed DBE Subconsultant failed or refuses to meet the bond requirements of Consultant.
 5. Work performed by listed Subconsultant is substantially unsatisfactory and is not in substantial conformance with scope of work to be performed, or Subconsultant is substantially delaying or disrupting the progress of work.
 6. When it would be in the best interest of the State.
- E. At a minimum, Consultant's substitution request to the Caltrans Contract Manager must include a:
1. Written explanation of the substitution reason and, if applicable, Consultant must also include the reason a non-DBE Subconsultant is proposed for use.
 2. Written description of the substitute business enterprise, including its business status, DBE certification number, and status as a sole proprietorship, partnership, corporation, or other entity.
 3. Written notice detailing a clearly defined portion of the work identified both as a task and as a percentage share/dollar amount of the overall Agreement that the substitute firm will perform.

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- F. Prior to the approval of Consultant's substitution request, the Caltrans Contract Manager must give written notice to the Subconsultant being substituted by Consultant. A copy of the notice sent by the Caltrans Contract Manager must be sent to the Division of Procurement and Contracts (DPAC). The notice must do all of the following:
1. Give the reason Consultant is requesting substitution of the listed Subconsultant;
 2. Give the listed Subconsultant five working days within which to submit written objections to DPAC and copies to the Caltrans Contract Manager;
 3. Notify the Subconsultant that if a written objection is not received or received past the due date, such failure will constitute consent to the substitution; and
 4. Be served by certified or registered mail to the last known address of the listed Subconsultant.

The listed Subconsultant, who has been so notified, shall have five working days within which to submit written objections of the substitution to the Caltrans Contract Manager. Failure to submit a written objection shall constitute the listed Subconsultant's consent to the substitution.

- G. If written objections are filed by the listed Subconsultant, DPAC will render a written decision. DPAC shall give written notice of at least five (5) working days to the listed Subconsultant of a hearing by Caltrans on Consultant's request for substitution.

IX. DBE CERTIFICATION AND DE-CERTIFICATION STATUS

- A. If a DBE Subconsultant is decertified during the life of the Agreement, the decertified Subconsultant shall notify Consultant in writing with the date of decertification. If a Subconsultant becomes a certified DBE during the life of the Agreement, the Subconsultant shall notify Consultant in writing with the date of certification.
- B. Consultant shall report any changes to the Caltrans Contract Manager within 30 days.

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X. DBE/UDBE ELIGIBILITY

A. The dollar value of work performed by a UDBE is credited/counted toward the goal only after the UDBE has been paid.

B. Credit for UDBE Prime Consultants

Consultant, if a certified UDBE, is eligible to claim all of the work toward the goal except that portion of the work to be performed by non-UDBE Subconsultants.

C. Credit for Material or Supplies

Credit for materials or supplies purchased from DBEs will be as follows:

1. If the materials or supplies are obtained from a DBE manufacturer, one hundred percent (100%) of the cost of the materials or supplies will count toward the DBE goal. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
2. If the materials or supplies are purchased from a DBE regular dealer, sixty percent (60%) of the cost of the materials or supplies will count toward the DBE goal. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this paragraph.

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3. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not an ad hoc or Agreement by Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph.
 4. Credit for materials or supplies purchased from a DBE that is neither a manufacturer nor a regular dealer will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.
- D. Credit for DBE trucking companies will be as follows:
1. The DBE must manage and supervise the entire trucking operation for which it is responsible. There cannot be a contrived arrangement for the purpose of meeting the DBE/UDBE goal.
 2. The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the Agreement.
 3. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.
 4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.
 5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total

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value of the transportation services provided by the lessee, since these services are not provided by the DBE.

6. For the purposes of this paragraph, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

XI. TERMINATION OF DBE/UDBE

A. In conformance with 49 CFR 26.53 (f) (1) and 26.53 (f) (2):

1. Consultant shall not terminate for convenience a listed DBE Subconsultant and then perform that work with its own forces (personnel), or those of an affiliate, unless Consultant has received prior written authorization from the Caltrans Contract Manager to perform the work with other forces (other than Consultant's own personnel) or to obtain materials from other sources;
2. If a DBE Subconsultant is terminated or fails to complete its work for any reason, Consultant will be required to replace that original DBE subconsultant with another DBE subconsultant; and
3. If a UDBE Subconsultant is terminated or fails to complete its work for any reason, Consultant will be required to make GFE to replace the original UDBE Subconsultant with another UDBE Subconsultant to the extent needed to meet the Agreement goal.

B. Noncompliance by Consultant with the requirements of this section is considered a material breach of this Agreement and may result in termination of the Agreement or other such appropriate remedies for a breach of this Agreement as Caltrans deems appropriate.

EXHIBIT F
PREVAILING WAGE REQUIREMENTS

I. STATE PREVAILING WAGE RATES

- A. The Consultant shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this Agreement are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer. (http://www.dot.ca.gov/hq/construc/LaborCompliance/LCO_District_Map.pdf). These wage rates are made a specific part of this Agreement by reference pursuant to Labor Code Section 1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at Caltrans construction sites, at Caltrans facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve Caltrans projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.
- B. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov>.
- C. Payroll Records
1. Each Consultant and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Section 1776 of the California Labor Code and as defined in Section 16000 of Title 8 of the California Code of Regulations, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Consultant or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty or perjury, stating both of the following:
 - a. The information contained in the payroll record is true and correct.

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- b. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.
2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the Consultant under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by Caltrans representatives at all reasonable hours at the principal office of the Consultant. The Consultant shall provide copies of certified payrolls or permit inspection of its records as follows:
 - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
 - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of Caltrans, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to Caltrans, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the Consultant.
 - c. The public shall not be given access to certified payroll records by the Consultant. The Consultant is required to forward any requests for certified payrolls to the Caltrans Contract Manager by both facsimile and regular mail on the business day following receipt of the request.
3. Each Consultant shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) days after receipt of a written request.
4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by Caltrans shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address and social security

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number. The name and address of the Consultant awarded the Agreement or performing the Agreement shall not be marked or obliterated.

5. The Consultant shall inform Caltrans of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
 6. The Consultant or Subconsultant shall have ten (10) days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the Consultant or Subconsultant fails to comply within the ten-day period, he or she shall, as a penalty to Caltrans, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by Caltrans from payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.
- D. When prevailing wage rates apply, the Consultant must submit with each invoice a certified copy of the payroll for compliance verification. Invoice payment will not be made until the payroll has been verified and the invoice approved by the Caltrans Contract Manager.
- E. Penalty
1. The Consultant and any Subconsultant under the Consultant shall comply with Labor Code Sections 1774 and 1775. Pursuant to Section 1775, the Consultant and any Subconsultant shall forfeit to the State or political subdivision on whose behalf the Agreement is made or awarded a penalty of not more than fifty dollars (\$50.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the Agreement by the Consultant or by any Subconsultant under the Consultant in violation of the requirements of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive.

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2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the Consultant or subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the Consultant or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the Consultant or Subconsultant had knowledge of the obligations under the Labor Code. The Consultant is responsible for paying the appropriate rate, including any escalations that take place during the term of the Agreement.
3. In addition to the penalty and pursuant to Labor Code Section 1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Consultant or Subconsultant.
4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime Consultant of the project is not liable for the penalties described above unless the prime Consultant had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime Consultant fails to comply with all of the following requirements:
 - a. The Agreement executed between the Consultant and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Sections 1771, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code.
 - b. The Consultant shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
 - c. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers,

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the Consultant shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.

- d. Prior to making final payment to the Subconsultant for work performed on the public works project, the Consultant shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Section 1813 of the Labor Code.
5. Pursuant to Section 1775 of the Labor Code, Caltrans shall notify the Consultant on a public works project within 15 days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
6. If Caltrans determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if Caltrans did not retain sufficient money under the contract to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the Consultant shall withhold an amount of moneys due the Subcontractor sufficient to pay those employees the general prevailing rate of per diem wages if requested by Caltrans.

F. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The Consultant shall forfeit, as a penalty to the State of California, twenty-five dollars (\$25.00) for each worker employed in the execution of the Agreement by the Consultant or any Subconsultant under the Consultant for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the Labor Code, and in particular Sections 1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at

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not less than one and one-half times the basic rate of pay, as provided in Section 1815.

G. Employment of Apprentices

1. Where either the prime contract or the subcontract exceeds \$30,000, the Consultant and any subcontractors under him or her shall comply with all applicable requirements of Labor Code sections 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
2. Contractors and subcontractors are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, Contractors and subcontractors are advised to contact the State Division of Apprenticeship Standards, P. O. Box 420603, San Francisco, California 94142-0603, or one of its branch offices, for additional information regarding the employment of apprentices and for the specific journey-to-apprentice ratios for the contract work. The prime Consultant is responsible for all subcontractors' compliance with these requirements Penalties are specified in Labor Code Section 1777.7.

H. Any subagreement entered into as a result of this Agreement shall contain all of the provisions of this clause.

Scope of Work/Deliverables
 Roadway Construction Inspection for San Diego County

A. Project Description

1. Purpose of Work

The Consultant shall perform professional and technical roadway Construction Management, Engineering, Surveying and inspection services on an "as needed" basis to support the development and construction of proposed Caltrans transportation facilities in San Diego County. In addition, the Consultant shall perform professional and technical Materials Sampling and Testing services on an "as needed" basis if and only if there is a Conflict of Interest on a District 11 project. The Caltrans Contract Manager shall assign specific projects to the Consultant through the issuance of Task Orders.

The Task Orders may include, but are not limited to, providing construction inspection including electrical and landscape, construction engineering and administration support, surveying and construction staking, constructability reviews, and providing materials sampling and testing.

A list of anticipated projects for District 11 is attached; however this list is not exclusive. Caltrans intends to utilize this Contract to complete a specific piece of work for each of the projects listed herein utilizing the services detailed by the scope of work. Caltrans may find it necessary to solicit a separate contract for a specific project listed herein that has the same scope of work as this Contract. Caltrans reserves the right to procure A&E services involving the projects listed below or unlisted projects involving in whole or in part the same scope of work using a project-specific contract. The Consultant shall not be excluded from competing for the award of a project-specific contract.

Proj EA	Proj ID	County – Route	Post Mile	Description
403304	1100000783	SD-5	PM R22.3	Clean/treat bridge deck w/concrete & methacrylate
2E0064	1100020036	SD-56	PM 3.5	Mitigation Site Habitat Restoration
296714	1100020264	SD-75	PM 9.3 - PM 10.1	Upgrade Sidewalks and Driveways to ADA Standards
297804	1100000413	SD-76	PM 28.8 - PM 29.1	Install Traffic Signal & Welding
259804	1100000200	SD-78	PM 15.3 - PM 15.7	Replace Nordahl Bridge & Widen Off Ramp
280804	1100000304	SD-78	PM 20.6-PM35.5	Install Rumble Strips and Upgrade End Treatments
298704	1100000419	SD-79	PM 45.6 - PM 52.8	Centerline Rumble Strips and Shoulder Upgrade
080404	1100020001	SD/5	0.3/10.0	Pavement Rehabilitation
2M0204	1100000431	SD/5	3.2/R15.3	Clean & Treat Bridge Deck with Methacrylate, Seals
240104	1100020023	SD/5	10.0/20.0	Pavement Rehabilitation
284604	1100000325	SD/5	R23.9/R28.2	Upgrade Median Guardrail to Concrete Barrier

Proj EA	Proj ID	County – Route	Post Mile	Description
401904	1100000535	SD/5	R038.9/R038.9	Rehabilitate Ramp at Manchester Avenue in Encintas
289304	1100000355	SD/5	R39.8/R54.4	Install Ramp Meters & HOV Lanes
292404	1100000372	SD/5, 805	R40.1	Storm Water Mitigation Slope Erosion Repair
2M1304	1100020033	SD/5	R049.7/R062.1	Treat Bridge with Methacrylate, repair joint seals
239504	1100000164	SD/5	R052.8/R054.9	Highway Planting Restoration
261404	1100000209	SD/5	R59.4/R60	Roadside Rest Area Restoration/ADA Compliance
401804	1100000534	SD/5	R061.8/R062.1	Widening North Bound Offramp and Local Street
261704	1100000213	SD/8	3.0/12.6	Freeway Maintenance Access - Various Locations
236404	1100020020	SD/8	R21.6/R25.9	Pavement Rehabilitation
2M1604	1100020035	SD/8	R039.7/R061.5	Pavement Rehabilitation-PCC Grind
243204	1100000174	SD/8	R49.0	Roadside Rest Area Restoration/ADA Compliance
288404	1100000348	SD/52, 805	2.6 / 5.9, 22.5 / 24.5	Recycled Water Conversion
2T0704	1100000447	SD/52, 125	14.5/15.5, 21.9/22.3	Mitigation Planting Phase 2
2T0114	1100000445	SD/52	015/017.3	Mitigation Planting-Phase 1
2T0014	1100000443	SD/52	017.3/017.5	Mitigation Planting Phase 3
402304	1100000536	SD/56	6.8/8.7	Recycled Water Conversion
403404	1100000784	SD-75	R20.5-R21.9	Clean and Treat Bridge Deck With Methacrylate
080104	1100000044	SD/76	R7.3/13.1	Construct 4- Lane Highway
281014	1100000307	SD/76	019.5/040.7	Install Rumble Strip
273404	1100000263	SD/76	23.1/23.5	Bridge Replacement (SCOUR)
294504	1100000387	SD-78	3.5-5.8	INSTALL OUTER SEPARATION BARRIER
2M1904	1100020040	SD/78	45.2/57.9	Bonded Wearing Course
294604	1100000388	SD/125	010.6/010.9	Widen Jamacha Southbound Off Ramp
265004	1100000230	SD/163	001.7/003.2	Install Highway Planting/Irrigation Systems
239304	1100020021	SD/163	3.8/R11.1	Metal Beam Guardrail
081654	1100000063	SD/805	007.7/009.1	Landscape Mitigation as Required
2M1704	1100020042	SD/805	020.4/028.1	Pavement Rehabilitation - PCC Grind
288904	1100000352	SD/805	24.7	Abandon Existing Culvert
089754	1100000065	SD/805	25.2/26.3	Interchange Improvements and Road Widening
2T0404	1100000446	SD/5, 805	26.5/28	Construct HOV lanes and direct access ramp
091834	1100020125	SD/905, 805	R8.4/R9.8, 3.1/4.2	Construct New Freeway (Phase 2)
288804	1100000351	SD/905	R009.5/R015.0	Construct New Freeway

2. Location of Work:

The work shall be performed on projects to improve the Caltrans transportation system in San Diego County. The specific location of the work to be performed will be stated in each Task Order.

B. Description of Required Services

1. Required Services

- a. Field Inspection - The Consultant (Assistant Resident Engineers, Field Engineers, Field Landscape Architects, and Field Electrical Engineers) shall perform and assist in performing the duties of a Construction Inspector including field, electrical, and landscape construction engineering. This work includes, but is not limited to, quantity calculations, checking grade and alignment, and insuring compliance with project plans and specifications. The Consultant's field construction personnel shall be experienced in reviewing, inspecting, and approving traffic control systems, including lane closures, in accordance with Caltrans standards and procedures. The Consultant shall identify actual and potential problems associated with the construction project and recommend solutions.
- b. Field Office Engineering – The Consultant shall perform office engineering including, but not limited to, developing Change Orders, reviewing shop drawings, calculating pay quantities, and preparing engineering and As-built drawings. The Consultant shall prepare calculations, records, reports and correspondence related to project activities.
- c. Field Office Support – The Consultant shall provide field office support to prepare correspondence, process progress pay estimates and extra work billings, review billings, and set up and maintain the project files.
- d. Surveying –The Consultant shall perform surveying services using the latest technological equipment, including Global Positioning System GPS equipment. The information shall be submitted in digital formats as requested. The Consultant shall also provide, or have access to provide, photogrammetric mapping services.

The Consultant shall also provide construction staking. This work shall include preparing staking notes and performing slope, fence, rough and finish grade, curb, drainage and minor structure, utility, and major structure staking.

- e. Constructability Reviews – The Consultant shall conduct constructability reviews on construction contracts and prepare an evaluation report of findings per Caltrans applicable standards. The reviews shall identify contract plans and specification errors, omissions, and inconsistencies and assure overall Plans, Specifications, and Estimate (PS&E), constructability, operability, and maintainability. The work may include, but is not limited to, the following:

- Evaluate plans and specifications and suggest appropriate changes to avoid potential claims, contract change orders, and revisions during the construction phase.
 - Evaluate plans for geometric consistency and recommend needed changes or design exceptions.
 - Establish or evaluate Critical Path Method (CPM) schedules, project duration, milestone dates, and applicable construction restrictions.
 - Evaluate construction staging and verify construction working days and construction windows.
 - Identify permit requirement impacts to construction schedule and methods.
 - Evaluate compatibility of contract plans, specifications, and applicable standards.
 - Review environmental impacts of proposed construction methods to insure the project construction can be accomplished within the environmental constraints.
 - Determine the feasibility of constructing the contract features with minimal or no revisions in the field.
 - Evaluate the effectiveness of the Traffic Management Plans.
 - Evaluate construction site access for each phase of Traffic Management Plans, including material delivery and specialized equipment needs.
 - Evaluate property/business owner access, bicycle and pedestrian safety access during the final design configuration and construction.
 - Review construction details shown on the plans and verify they are buildable and maintainable.
 - Check for consistency between roadway and structure plans.
 - Check for utility conflicts and clearances for constructability and project schedule. Also, verify the utility plans conform to Caltrans policy on high and low risk facilities.
 - Evaluate constructability and maintainability of drainage plans profiles and details.
 - Evaluate constructability of storm water pollution control plans.
 - Prepare and submit a comprehensive report on all findings during the constructability review.
- f. All construction inspection and construction engineering services associated with structures, such as but not limited to bridges and buildings are specifically excluded from the scope of this Contract.
- g. Materials Sampling and Testing – The Consultant shall provide materials sampling and control for various highway or major Public Works construction projects. The Consultant shall have access to plant and mobile laboratories to perform testing. The Consultant shall provide a copy of the firm’s nuclear gauge license to Caltrans.

Materials testing during construction of State highway facilities may include, but are not limited to, the following tests:

California Test Method No.	Description	Response Time for Completing Tests (Hours)
125	Sampling Roadway Materials	2
202	Sieve Analysis	4
205	Crushed Particles	4
211	LA Rattler	4
216	Maximum Density	4
217	Sand Equivalent	4
226	Moisture Content	4
227	Cleanness Value	5
229	Durability	
231	Nuclear Gage Relative Compaction	4
302	Film Stripping	
366	Stabilometer	6
367	Air Voids	2
371	TSR	
375	Relative Compaction of A.C.	4
382	Ignition Oven	
504	Entrained Air Content	1
518	Unit Weight/PCC	2
523	Flexural Strength (Beam)	4
526	Operation of California Profilograph and Evaluation of Profiles	6
533	Ball Penetration	1
539	Sampling Fresh Concrete	1
540	Concrete Cylinder Fabrication	2

h. Source/Plant Inspection and Lab Work

2. WBS Codes

Task Orders are based on Caltrans Work Breakdown Structure (WBS). The standard Caltrans WBS is on the internet at:

<http://www.dot.ca.gov/hq/projmgmt/guidance.htm>

Examples of the WBS Codes to be used for this Contract include, but are not limited to, the following:

<u>WBS Code</u>	<u>Description</u>
100.10	Project Management – PA&ED Component
100.15	Project Management – PS&E Component
100.20	Project Management – Construction Component
160.20	Engineering and Land Net Surveys
160.30.10	Surveys and Mapping for Environmental Studies

<u>WBS Code</u>	<u>Description</u>
185.10	Engineering and Photogrammetric Surveys
185.10.50	Control Surveys
185.10.55	Photogrammetric Maps and Products
185.10.60	Engineering Surveys
185.10.65	As-Built Centerline Surveys
185.10.70	Pavement Surveys
255.35	Construction Staking Package and Control
255.35.10	Construction Staking Package
255.35.20	Project Control for Construction
255.50	Secured Lease for Resident Engineer Office Space or Trailer
270.10	Construction Staking Package and Control
270.10.10	Construction Staking Package
270.10.20	Project Control for Construction
270.15	Construction Stakes
270.15.15	Slope Stakes
270.15.25	Rough Grade Stakes
270.15.30	Final Grade Stakes
270.15.35	Drainage and Minor Structure Stakes
270.15.50	Miscellaneous Stakes
270.15.55	Photogrammetric Product for Construction
270.15.60	Ground Stakes for Major Structure
270.15.65	Superstructure Stakes for Major Structure
270.20	Construction Engineering Work
270.20.05	Resident Engineer's File Review
270.20.10	Project Plans, Special Provisions, and Estimate Review
270.20.15	Contract Pay Quantities
270.20.20	Lines and Grades Control
270.20.25	Contractors' Falsework Submittals Review
270.20.30	Contractors' Trenching and Shoring Submittals Review
270.20.35	Shop Plans Review
270.20.40	Cost Reduction Incentive Proposals (CRIPS) Review
270.20.45	Contractors' Water Pollution Control Program Review
270.20.50	Technical Support
270.20.99	Other Construction Engineering Work Products
270.25	Construction Contract Administration Work
270.25.05	Secured Lease for Resident Engineer Office Space or Trailer
270.25.10	Set Up Construction Project Files
270.25.15	Pre-construction Meeting
270.25.20	Progress Pay Estimates
270.25.25	Weekly Statement of Working Days
270.25.30	Construction Project Files and General Field Office Clerical Work
270.25.35	Labor Compliance Activities
270.25.40	Approved Subcontractor Substitutions
270.25.45	Coordination

<u>WBS Code</u>	<u>Description</u>
270.25.50	Civil Rights Contract Compliance
270.25.99	Other Construction Contract Administration Work Products
270.30	Contract Item Work Inspection
270.30.05	Photographed Jobsite and Contractors' Operations
270.30.10	Inspection of Contractors' Work for Compliance
270.30.15	Contractors' Operations Relative to Safety Requirements Documentation
270.30.20	Daily Diary of Contract Operations
270.30.25	Punch List
270.40	Safety and Maintenance Reviews
270.45	Relief from Maintenance Process
270.55	Final Inspection and Acceptance Recommendation
270.60	Plant Establishment Administration
270.65	TMP Implementation During Construction
270.70	Updated Environmental Commitments Record
270.75	Resource Agency Permit Renewal and Extension Requests
270.80	Long-Term Environmental Mitigation/Mitigation Monitoring during Construction Contract
270.99	Other Construction Engineering and General Contract Administration
285.05	Contract Change Order (CCO) Process
285.05.05	Need For CCO Determination
285.05.10	Draft Contract Change Order
285.05.15	Contract Change Order Approval
285.05.20	Payments for Contract Change Order Work
285.10	Functional Support
285.10.05	Field Surveys for Contract Change Order
285.10.10	Staking for Contract Change Order
285.10.15	Other Functional Support
295.05	Processed Estimate After Acceptance
295.10	Proposed Final Contract Estimate
295.15	As-Built Plans
295.20	Project History File
295.25	Final Report
295.30	Processed Final Estimate
295.35	Certificate of Environmental Compliance
295.40	Long Term Environmental Mitigation/Mitigation Monitoring After Construction Contract Acceptance
295.45	Post-Construction Traffic Operations Activities
295.45.05	Speed Survey Records
295.45.05.05	Speed Survey
295.45.05.10	Signed Speed Survey
295.45.10	Commission TMS Elements
295.99	Other Accept Contract/ Prepare Final Construction Estimate and Final Report

In addition, the following codes may be used if and only if there is a Conflict of Interest on a District 11 Project:

270.35	Construction Material Sampling and Testing
270.35.05	Materials Sampling and Testing for Quality Assurance
270.35.10	Plant Inspection for Quality Assurance
270.35.15	Independent Assurance Sampling and Testing
270.35.20	Source Inspection

The Consultant shall only provide incidental non-A&E services (e.g., office support, meeting support) necessary for the completion of the A&E tasks and/or deliverables performed on projects by the Consultant, covered by the scope of work and detailed in executed Task Orders. These incidental services can only be provided to support the Consultant's personnel who are performing A&E services on this Contract and the Contract amount spent on such incidental services must be relatively minor when compared to the professional A&E services being performed.

The Consultant will not be reimbursed for any non-A&E services provided to Caltrans unless provided in the fashion described above. In addition, training is not allowed to be performed by the Consultant.

C. Personnel

The Consultant's personnel shall be capable of performing the work described above in "Required Services" with minimal instructions.

1. Project Manager – The Consultant's Project Manager shall coordinate all matters with the Caltrans Contract Manager. In addition to other specified responsibilities, the Project Manager shall be a licensed as a Registered Civil Engineer, in the State of California, with a minimum of ten (10) years of demonstrated experience in construction. The Project Manager is responsible for all matters related to the Consultant's personnel and operations, including, but not limited to, the following:
 - Supervising, reviewing, monitoring, training, and directing the Consultant's personnel.
 - Assigning personnel to complete the required Task Order work as specified.
 - Administering personnel actions.
 - Maintaining project files.
 - Developing, organizing, facilitating, and attending scheduled coordination meetings and preparation and distribution of meeting minutes.
 - Implementing and maintaining quality control procedures to manage conflicts, insure product accuracy, and identify critical reviews and milestones.
 - Overseeing that all safety measures are in place.
2. Construction Inspector / Assistant Resident Engineers (ARE's) – Construction Inspector / ARE's shall have five (5) years of construction inspection experience on highway construction projects and be capable of assisting the Resident Engineer in all aspects of required field and office construction engineering work, including field

engineering of the traffic control system compliance, and Water Pollution control Program (Storm Water Pollution Prevention Plan) enforcement.

3. Field Engineers – Field Construction Engineers shall have the following qualifications:

Graduation from a four-year curriculum in civil engineering accredited by the Accreditation Board for Engineering Technology. They shall have at least four (4) years of construction engineering experience on highway or major Public Works projects performing the duties listed in “Required Services”.

4. Field Landscape Architects – Field Landscape Architects shall have the following qualifications:

Three (3) years of increasingly responsible landscape architectural experience in a landscape architecture office and full time study in Agricultural Engineering, Architectural Engineering, Architecture, Irrigation Management, Landscape Architecture, Landscape Management, Ornamental Horticulture, or another closely related field from an accredited college or university. Or,

A Bachelor's degree in Landscape Architecture or a closely related field.

Also, they shall have at least two (2) years of Landscape construction experience on highway or major Public Works projects. They shall have knowledge of Landscape theory, planting and irrigation systems.

5. Field Electrical Engineering Technician – Field Electrical Engineering Technicians shall have the following qualifications:

Completion of a recognized apprenticeship as an electrician and two (2) years of additional experience in the repair, maintenance and installation of electrical equipment and electronic control devices. Or,

Five (5) years of successful and varied experience in the repair, maintenance and installation of electrical equipment and electronic control devices. An Associate of Arts or Certificate of Arts Degree in Electrical Technology may be substituted for two (2) years of the required experience.

Also, they shall have at least two (2) years of electrical construction experience on highway or major Public Works projects. They shall have knowledge of electrical theory, traffic signal, ramp metering, fiber optics, and lighting systems.

6. Field Office Engineers – Construction Office Engineers shall be capable of assisting the Resident Engineer in all aspects of required office construction engineering work including, but not limited to, performing office engineering (such as develop change orders, prepare engineering drawings and calculate pay quantities), and handling contract with construction personnel and the public.

7. Field Office Technicians – Field Office Technicians shall be qualified to prepare correspondence, process progress pay estimates and extra work billings, review billings, and setting up and maintaining project files.
8. Surveyors - The Surveyor shall be licensed in the State of California and shall have experience using GPS equipment.
9. Constructability Reviews – The Consultant's personnel responsible for the constructability reviews shall be a registered engineer in the State of California. In addition, the Consultant's personnel must have extensive and current experience in construction practices, equipment and methodology.
10. The Consultant's personnel shall be knowledgeable of, and comply with, all applicable local, State and Federal laws and policies.
11. The Consultant shall, throughout the life of the contract, retain within its firm or through subconsultants, a staff of people qualified to perform each of the tasks.
12. Construction Materials Testers – Materials Testers shall possess proper certification and be certified in radiation safety and proper use of nuclear soil gauges prior to the start of work. They shall have current certification by Caltrans in the testing procedure prior to that individual's performance of any Field or Laboratory work that requires certification. Common test methods that require certification include, but are not limited to, the following California Test Methods: 105, AG125, AC125, PC125, MS125, 201, 202, 216, 231, 375, 523, 524, 533, 539, 540, and any other applicable California Test Method. In addition, Material Testers shall be capable of assisting the Resident Engineer in all aspects of material testing work including, but not limited to, the following:
 - Have the ability to establish specific location for appropriate tests when construction contract administration personnel are not available.
 - Be familiar with construction practices and be able to orient themselves at the project site.
 - Have knowledge of, and comply with, safety and health regulations and requirements applicable to the projects.
13. Supervisors of laboratory and/or field technicians shall have at a minimum three (3) years experience performing material tests. The supervisors shall be certified by the National Institute for Certification in Engineering Technologies (NICET) at Level III or higher in the appropriate Construction Materials Testing field, or meet one (1) of the following requirements:
 - Be registered as a Professional Engineer in the State of California with one (1) year of highway experience.
 - Be registered as an Engineer-in Training in the State of California with two (2) years of highway experience.

- Hold a Bachelors degree in Civil Engineering or an associate degree in Civil Engineer technology with three (3) years of highway experience.

D. Equipment Requirements

1. Office Equipment and Supplies (Consultant's Office) - The Consultant shall have adequate office equipment and supplies to complete the required work. Such equipment and supplies shall include, but are not be limited to, the following:
 - Computers, printers, plotters, and calculators.
2. Field Equipment and Supplies - The Consultant shall have adequate field equipment and supplies to complete the required Field Engineering and Materials Testing work. The equipment and supplies for each field construction personnel shall include, but is not limited to, the following:
 - a. A vehicle suitable for the work to be performed and terrain condition of the project sites. Vans without side windows shall not be used. Vehicles shall be fully equipped with all necessary tools, instruments, and supplies required for the efficient operation of a Field Engineer, including cellular phones.
 - b. Each vehicle shall have an overhead flashing amber light.
 - c. Laptop computer (s).
 - d. Safety equipment including hard hat, hard soled boots, eye protection, and an approved vest as appropriate for the requested field engineering work.
 - e. Survey and GPS equipment required to perform site surveying. Unless otherwise specified, the survey data shall be submitted in ASCII file or GIS-ready format.
3. Laboratory Equipment and Supplies - The Consultant's laboratory shall meet the latest requirements, as applicable, of American Standard for Testing Materials (ASTM) Designation D3666 "Evaluation of Inspection and Testing Agencies for Bituminous Paving Materials", E329 "Recommended Practice for Inspection and Testing Agencies for Concrete, Steel, and Bituminous Materials as Used in Construction", and C1077 "Testing Concrete and Concrete Aggregates for use in Construction and Criteria for Laboratory Evaluation". Alternatively, the Independent Assurance Program of the California Department of Transportation can certify the laboratory.

In case of discrepancy or conflict, the following requirements supersede those of the above ASTM standards:

- a. All Testing and laboratory equipment used on the Contract shall conform to the requirement of the California Test Methods.

- b. When required by Caltrans, a temporary testing laboratory will be established in the general vicinity of the project or projects requiring materials testing. The laboratory is to be fully staffed, equipped and supplied to conduct all the tests required in a timely manner.
- c. Testing machines must be calibrated annually by impartial means using devices of accuracy traceable to the National Bureau of Standards. Records for calibration shall be provided to the Caltrans Contract Manager upon request.

Calibration charts for nuclear devices shall be within one (1) year of use and shall be kept up to date throughout the term of the Contract. No separate payments shall be made for calibration of equipment.

- 4. The Consultant may claim reimbursement for providing equipment or supplies. However, such claimed costs must be in compliance with 48 Code of Federal Regulation, Chapter 1, Part 31 (Federal Acquisition Regulation - FAR cost principles) and be consistent with the Consultant's company-wide allocation policies and charging practices with all clients including the federal government, state governments, local agencies and private clients.

E. Additional Requirements

1. General Standards

- a. All services required herein shall be performed in accordance with current revisions of Caltrans regulations, policies, procedures, manuals, and standards. Work not covered by these shall be performed in accordance with the highest accepted professional standards in the industry.
- b. The Consultant shall assist in obtaining compliance with the labor standard provisions of the projects and the related wage determination decisions of the Secretary of Labor.
- c. The Consultant shall assist Caltrans in obtaining compliance with the equal opportunity provisions of the projects.
- d. The Consultant's personnel shall assist Caltrans in obtaining compliance with the safety and accident prevention provisions of the projects. Caltrans shall retain jurisdictional control for traffic control but shall receive assistance from Consultant forces in reviewing and monitoring.
- e. For Constructability Reviews, the Consultant shall conduct a detailed review of the project plan submittal using a checklist provided by the Task Order Manager and compile comments prior to the Constructability Review Meeting. A draft evaluation report addressing all constructability issues shall be prepared and submitted prior to the Constructability Review Meeting. The final report shall be submitted a week after the meeting.

- f. The Consultant's personnel will join the Caltrans Constructability Review Team during the Constructability Review Meeting. This team may consist of Caltrans staff from various disciplines who will be invited on an as-needed basis. The Consultant shall prepare minutes of this meeting unless otherwise stated in the Task Order.
- g. All Constructability Reviews shall be performed in conformance with applicable Federal, State, and local statutes, regulations, ordinances, standards and guidelines including, but not limited to, the following:
- Caltrans Standard Plans & Specifications
 - Caltrans Highway Design, Traffic, Construction, and Project Development Procedure Manuals
 - <http://www.dot.ca.gov/hq/oppd/hdm/hdmtoc.htm#hdm>
 - <http://www.dot.ca.gov/hq/traffops/signtech/signdel/trafficmanual.htm>
 - <http://www.dot.ca.gov/hq/construc/constmanual/>
 - <http://www.dot.ca.gov/hq/oppd/pdpm/pdpmn.htm>
 - Caltrans Storm Water Quality and Water Pollution Control Standard Special Provisions
 - Caltrans Storm Water Quality Manuals and Handbooks
 - <http://www.dot.ca.gov/hq/construc/stormwater/manuals.htm>
 - California Health and Safety, Contract, and Business and Profession Codes
 - Traffic Safety Guidelines
 - http://www.dot.ca.gov/hq/construc/manual2001/chapter2/chp2_2.pdf
 - California Code of Regulations
 - Construction Staking Handbook
 - http://www.dot.ca.gov/hq/row/landsurveys/SurveysManual/12_Surveys.pdf
 - Construction Manual
 - <http://www.dot.ca.gov/hq/construc/constmanual/>
 - Standard Specifications
 - http://www.dot.ca.gov/hq/esc/oe/specifications/std_specs/2010_StdSpecs/2010_StdSpecs.pdf
 - Manual of Test (3 volumes)
 - <http://www.dot.ca.gov/hq/esc/ctms/index.html>

- h. Department of Transportation's Standard Specifications (dated May 2006): This Agreement cites specific portions of the Caltrans's Standard Specifications. Only the sections of the Standard Specifications cited in this Agreement are requirements and are hereby incorporated by this reference as if attached to this Agreement. All other portions of the Standard Specifications are not applicable to this Agreement. The Standard Specifications can be accessed via the internet at <http://www.dot.ca.gov/hq/esc/oe/>.

2. Laboratory Standards

- a. Materials sampling and testing during construction shall be in accordance with the current Caltrans "Construction Manual", "Bridge Construction Records and Procedures Manual", "Manual of Test" (3 Volumes), "Standard Specifications", "Standard Plans", project plans and special provisions.
- b. The Consultant's laboratory shall participate in the AASHTO Material Reference Laboratory (ARML) or Cement and Concrete Reference Laboratory (CCRL) inspection programs as appropriate. Copies of applications, correspondence, reports and corrective actions shall be provided to Caltrans.

Due to the time requirements to enter into these programs, the Consultant may perform work on Caltrans projects prior to field engineering. However, the Consultant shall provide proof an application has been submitted to enter one or both of the programs and shall continue to make a good faith effort to have its laboratory inspected at the earliest possible opportunity. Certification by the AASHTO Accreditation program will be required for laboratories, upon completion of the current cycle of field engineering.

- c. Other than assignments covered by the ASTM standards, the Consultant's laboratory shall accept only those assignments from Caltrans in which the Consultant can perform competently by its own personnel and equipment.
- d. When the Consultant is providing material testing during construction, Caltrans will request testing from the Consultant on the afternoon prior to the day that testing is required. Unless otherwise stated in the Task Order, the Consultant shall submit completed test documents for each test performed to the relevant field project offices by the end of the week following the week in which the test was completed. Test documents that are incomplete or unsatisfactory will be returned to the Consultant for the necessary revisions and must be resubmitted within one (1) week.
- e. When the Consultant is providing materials testing during construction, failing tests shall be reported immediately.
- f. All test documents produced by the Consultant shall be certified (signed and stamped) by the Laboratory Manager. In the absence of the Laboratory Manager, certification shall be made by an Acting Laboratory Manager who

shall possess a valid Certificate of Registration issued by the California State Board of Registration as a Civil Engineer. All test results shall be recorded on the appropriate forms as prescribed in the Caltrans "Manual of Test".

- g. The Consultant shall certify in writing that each tester is qualified to perform the required tests and plant field engineering according to the current procedures described in the Caltrans Testing manual.
- h. The Consultant shall have a program in effect during the entire time work is being performed under contract to train personnel and arrange achievement of the required certifications.
- i. The Consultant shall maintain a laboratory procedure manual describing the methods used for recording, processing, and reporting data, sources of reference materials, standards, and test methods.
- j. The Consultant shall maintain an inventory of the testing equipment (listing the manufacturer, model, serial number, calibration and tolerances).
- k. Caltrans and the Federal Highway Administration (FHWA) reserve the right to periodically review field testing and sampling in progress at job sites and lab facilities by Consultant's employees.
- l. The Consultant shall have a quality control plan in effect for the duration of work being performed under the Contract. This plan shall include quality control, quality assurance and equipment calibration programs for the Consultant's main laboratory and for any satellite or project laboratories.
- m. If any laboratory work is to be subcontracted, the subconsultant's laboratory shall meet the same requirements as the Consultant's laboratory.

3. Availability and Work Hours

- a. Unless specified in each Task Order, the Consultant shall begin the required work within three (3) working days after receiving a fully executed Task Order. Once the work begins, the work shall be prosecuted diligently until all required work has been completed satisfactorily.
- b. The Project Manager shall be accessible to the Caltrans Contract Manager at all times during normal working hours.
- c. Unless otherwise specified in the Task Order or directed by the Caltrans Contract Manager, the normal workday includes all hours worked by Caltrans' Construction Contractor.
- d. Overtime may be required. However, overtime shall be worked only when directed in writing by the Caltrans Contract Manager, Caltrans' Resident Engineer, or specifically required by the Task Order.

- e. Night work may be required on projects involving high traffic areas. The Caltrans Construction Contractor's operations may be restricted to specific hours during the week. These restricted hours shall become the normal workday for the Consultant's personnel.
- f. If a Consultant's Field Engineer or Materials Tester is on a leave of absence, the Consultant shall provide a replacement employee until the assigned Field Engineer returns to work. The replacement employee shall meet all the requirements of a permanently assigned employee.

4. Safety

In addition to the requirements specified elsewhere in this Contract, the following also shall apply:

- a. The Consultant shall maintain an awareness of health and safety requirements and enforce applicable regulations and contract provisions for the protection of the public and project personnel.
- b. The Consultant shall conform to all safety requirements for testing and storage of nuclear gauges.
- c. The Consultant's personnel shall comply with all safety provisions of the Caltrans Safety and Traffic Manuals.
- d. The Consultant shall provide, at no cost to Caltrans, all safety equipment. The Consultant's personnel shall wear white hard hats, hard soled boots, eye protection, and approved safety vests at all times while working in the field.
- e. The Consultant shall provide, at no cost to Caltrans, appropriate safety training for all Consultant's field personnel, including training required for working on and near highways.
- f. Fieldwork shall not be performed when conditions prevent a safe and efficient operation and shall only be performed with written authorization by Caltrans.

F. Materials to be Provided by Caltrans

Caltrans shall provide the Consultant materials, plans or manuals necessary to complete a Task Order. The Consultant shall execute the specific work described in the Task Order based on the materials supplied. These materials are for the Consultant's use only and shall be returned at the end of the Contract. Materials (if applicable) that might be furnished by Caltrans are:

1. Approved project plans and special provisions for the projects.

2. Existing documents, if any, that are applicable to the current project within the project limits.
3. Caltrans construction forms as necessary, including electronic or hardcopy (as specified by the Resident Engineer) daily diary forms.
4. Caltrans "Construction manual", "Manual of Test" (3 volumes), "Standard Specifications", "Standard Plans", project plans and special provisions.
5. Limited office space, including all utilities, equipment and supplies will be made available for use by the Consultant's personnel. This limited office space is typical space provided to Caltrans construction field personnel. The Consultant, including all subconsultants, shall disclose and use Field Office Overhead Rate in the cost proposal.
6. Caltrans Manuals, Standards, and forms appropriate for each Task Order.
7. State will permit Consultant to calibrate Consultant's nuclear gauges on State's test blocks.

G. Work to be Performed by Caltrans

1. Product Approval

All deliverables, drawings, and documents produced by the Consultant as specified by the Task Order shall be subject to the approval and acceptance by the Caltrans Contract Manager, or his designated staff. The minimum standard of work quality shall be that of the highest standards in the industry.

The Caltrans Contract Manager, in cooperation with the District/Region Area Construction Manager and the Construction Engineer shall decide all questions which may arise as to the quality or acceptability of deliverables furnished and work performed for this Contract.

In the event of non-acceptance due to errors or omissions, the Consultant shall make corrections prior to payment. Work that does not conform to the requirements specified herein and the applicable Task Order will not be paid.

2. Personnel Approval

Resumes containing the qualifications and experience of the Consultant's personnel shall be submitted to the Caltrans Contract Manager for review prior to assignment on the projects. If in the opinion of the Caltrans Contract Manager, an individual lacks adequate experience, the Consultant's employee will be rejected and a replacement employee shall be supplied with adequate experience.

The Caltrans Contract Manager will have the responsibility of determining the quality and quantity of work performed by the Consultant's personnel. If at any time

the level of performance is below expectations, Caltrans may release the Consultant's personnel and request another person assigned as needed.

H. Deliverables

Unless otherwise specified in the Task Order, the deliverables shall conform to the following:

1. The Consultant shall obtain written approval from Caltrans for any products (deliverables), if they form part of any Task Order issued by the Caltrans Contract Manager.
2. All reports, calculations and other applicable documents shall be prepared on Caltrans standardized forms. Necessary forms will be provided by Caltrans for Consultants' use.
3. Written documents shall be submitted in both hardcopy and electronic files in the Caltrans approved format (Microsoft Word) and shall conform to the requirements of Caltrans.
4. Daily Assistant Resident Engineer diaries and extra work diaries shall be delivered to the Caltrans Resident Engineer daily.
5. The Consultant, Assistant Resident Engineers, Plant Field Engineers, and Materials Testers shall prepare daily diary reports of construction operations. Construction Office Engineers shall prepare a brief report of daily office operations. The reports shall be prepared on Caltrans provided forms and shall be prepared daily at the end of the day's work.
6. Construction contract progress payment quantity documents shall be delivered to the Caltrans Resident engineer within five (5) working days after completion of the work or no later than the last working day proceeding the 20th of each month.
7. Final payment quantity documents shall be delivered to the Caltrans Resident Engineer no later than five (5) working days after acceptance by Caltrans of the completed construction project.
8. Field measurements, test data and other documents as required by Caltrans' procedures shall be recorded, maintained and submitted as directed by the Caltrans Resident Engineer.
9. For each Task Order, a milestone submittal schedule shall be prepared by the Caltrans Contract Manager. Milestones may be changed by written agreement between the Caltrans Contract Manager and the Consultant's Project Manager. Prior to concluding such an agreement, the Caltrans Contract Manager will obtain the necessary internal Caltrans approvals.
10. The Consultant shall prepare and update the WBS for each Task Order issued by the Caltrans Contract Manager showing a deliverables' schedule as well as other relevant data needed for Consultant's work control and Caltrans review of work status.

11. The Consultant shall maintain a separate set of project files for each Task Order issued by the Caltrans Contract Manager. These files shall be indexed in accordance with Caltrans Project Development Uniform File System. If requested by the Caltrans Contract Manager, the Consultant shall provide these file copies.

I. Conflict of Interest

The Consultant and its subconsultants will not provide Design Engineering services including lead Project Management services and follow-on Construction Management and inspection services on the same Department of Transportation project(s). The Consultant will not assign subconsultants to perform construction management and inspection services on projects that they have previously provided or are providing Design Engineering services, including lead Project Management services.

The Consultant and its subconsultants will not provide material Quality Control services for construction contractor(s) when the project is assigned to the Consultant to provide material Quality Assurance services on the projects that are listed and that have been identified by project EA and project ID in this scope of work. The Consultant will not have any financial relationship with the construction contractor(s) who are working on the projects that are assigned to consultants for material Quality Assurance services through Task Orders on this Agreement. The Consultant will not assign subconsultants to perform material Quality Assurance services on projects where the subconsultant is performing material Quality Control services for the same construction contractor(s). Conflict of Interest also includes providing services to all subcontractors, fabricators, equipment installers, material suppliers, and other firms associated with the projects listed in the Scope of Work.

Throughout the Contract term, the Consultant agrees that, prior to providing engineering services to any construction contractor on any of the Caltrans projects' listed in the scope of this Scope of Work, it will disclose that potential business relationship and seek Caltrans consent to render those services. The submitted documentation will be used for determining potential conflict of interest that may affect the firm's qualifications when competing for or performing work on the contract. A conflict of interest may include a situation in which, during the term of the contract, the Consultant provides engineering services to a construction contractor who is subsequently awarded a contract with Caltrans on a project for which the Consultant is working on a Task Order under this Agreement. In this situation, the Consultant must immediately notify the Caltrans Contract Manager regarding the conflict. The Contract Manager will then terminate the Task Order involving the conflict of interest and Caltrans may obtain the conflicted services in any way allowed by law. Failure by the Consultant to notify the Caltrans Contract Manager is grounds for termination of the contract for default pursuant to Exhibit D, Section III of the Contract.

All construction engineering deliverables produced by the Consultant shall be free of any conflict of interest and shall be subject to the approval and acceptance by the Caltrans Contract Manager.

In the event of non-acceptance due to discovery of conflict of interest, the Consultant shall provide replacement deliverables free of any conflict of interest prior to payment. In the event replacement deliverables are not possible, the Consultant shall not receive compensation for the deliverables containing conflict of interest.

Examples of conflict of interest are the following:

- a) Having performed Design & Construction work on the same project.
- b) Roadway Inspector or Surveyor from the same company that performs Quality Control for the Contractor and Quality Assurance for Caltrans concurrently on the same project.
- c) Landscape Architects or Electrical Engineer from the same company that performs Quality Control for the Contractor and Quality Assurance for Caltrans concurrently on the same project.