

STATE OF CALIFORNIA
STANDARD AGREEMENT

Department Of Transportation

STD 213 (rev 9/01)

Division Of Procurement And Contracts (DPAC) A&E Boiler Revision Date 5/30/12

AGREEMENT NUMBER 43A0304	REGISTRATION NUMBER
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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

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

2. The term of this Agreement is from October 22, 2012 or upon Caltrans approval, whichever is later, through October 31, 2016.

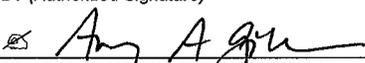
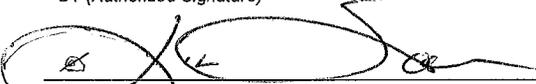
3. The maximum amount of this Agreement is: **\$6,000,000.00**
Six Million Dollars and No Cents

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	6 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	12 Pages
Attachment 1 – Scope Of Work	13 Pages
Attachment 2 – Cost Proposal	33 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")		<i>California Department of General Services Use Only</i>
CONSULTANT'S NAME (if other than an individual, state whether a corporation, partnership, etc.) HDR Engineering, Inc.		
BY (Authorized Signature) 	DATE SIGNED (Do not type) 10/15/12	
PRINTED NAME AND TITLE OF PERSON SIGNING AMY GILLERAN, SENIOR VICE PRESIDENT		
ADDRESS 2379 Gateway Oaks Drive, Suite 200 Sacramento, CA 95833		
STATE OF CALIFORNIA		
AGENCY NAME Department of Transportation		
BY (Authorized Signature) 	DATE SIGNED (Do not type) 10/19/12	
PRINTED NAME AND TITLE OF PERSON SIGNING Liz Salinas, Branch Chief		
ADDRESS Division of Procurement and Contracts, MS 65 1727 30 th Street, Sacramento, CA 95816		

Exempt per: PCC 10430(d)

STANDARD AGREEMENT

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CONTRACTOR (herein referred to as "the Consultant")

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

HDR Engineering, Inc.

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

2379 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833**STATE OF CALIFORNIA**

AGENCY NAME

Department of Transportation

BY (Authorized Signature)

DATE SIGNED (Do not type)

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

- A. The work to be performed under this Agreement is described in Attachment 1.
- B. The services shall be performed Statewide.
- C. This Agreement will commence on October 22, 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 October 31, 2016. 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: Jennifer Gillies	Project Manager: Serge Stanich
District/Division: Environmental/Biological Studies & Technical Assistance/MS#27	Office/Branch:
Address: P.O.Box 942874	Address: 2379 Gateway Oaks Drive, Suite 200
Sacramento, CA 94274-0001	Sacramento, CA 95833
Phone: 916-653-6976	Phone: 916-679-8839
Fax: 916-653-7757	Fax: 916-679-8701
e-mail: Jennifer_Gillies@dot.ca.gov	e-mail: serge.stanich@hdrinc.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

EXHIBIT A
SCOPE OF WORK AND DELIVERABLES

remedies can be developed. Separate detail shall be provided for each on-going Task Order.

- 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, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

- B. In addition, the Consultant will be reimbursed for direct costs, other than salary costs, that are identified in an executed Task Order.
- C. 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.
- D. 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>.
- E. 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.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

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.
- F. 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.
- G. 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.
- H. Invoices shall be submitted showing the Caltrans Work Breakdown Structure (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 Work Breakdown Structure (WBS) elements listed for defined/related services and products. 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>. Incomplete invoices shall be returned unpaid to the Consultant for correction. Caltrans shall not pay disputed portions of invoices.
- I. 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:

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

DEPARTMENT OF TRANSPORTATION
Environmental/Biological Studies and Technical Assistance/MS#27
Attn: Jennifer Gillies
P.O. Box 942874
Sacramento, CA 94274-0001

- J. 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.
- K. 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.
- L. Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.
- M. The total amount payable by Caltrans, for all Task Orders resulting from this Agreement, shall not exceed **\$6,000,000.00**. 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.
- N. 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.
- O. Prime Consultant's Indirect Cost Rates (ICR) indicated in Attachment 2, Cost Proposal, are based on 48 CFR, Part 31.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

- P. 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.
- Q. 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 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.

- R. At the discretion of Caltrans, the indirect rate(s) and related workpapers may be reviewed by Caltrans Division of Audits & Investigations (A&I)

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

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.

- S. 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).
- 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.

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

- 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

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

for the percentage of the work completed, relative to the total work effort 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

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

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 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.

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

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).

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.)

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

- 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.

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

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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.
- 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

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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.

- 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

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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.
- 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

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

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contract work. The same additional insured designation and endorsement required for general liability is to be provided for this coverage.

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

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shall be considered works made for hire by the Consultant's 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,

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and the same shall become and remain Caltrans' property regardless 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.

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Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

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. 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 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:

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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 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.

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SPECIAL TERMS AND CONDITIONS

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:
 - (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:

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- (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

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Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

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

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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 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.

FM 94 1984M

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.

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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 10 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.

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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

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subcontracted, industry practices, whether the amount the firm is to be paid 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,

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Subconsultant(s) may be required to furnish payment and performance bonds issued by an admitted surety insurer.

- 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

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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 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

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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 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.

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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.
- 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.

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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.

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

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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.

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.

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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 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

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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.

SCOPE OF WORK/DELIVERABLES
Biological and Technical Assistance Support Services
On-Call

A. Project Description

1. Purpose of Work

The Consultant shall perform professional and technical services required for Biological and Technical Support Services on an “as-needed” basis to support the development and construction of proposed Caltrans transportation facilities. The Consultant shall provide consultant and/or research services to Caltrans Division of Environmental Analysis, Office of Biological Services and Technical Assistance. All work and document shall be prepared in accordance with the Standard Environmental Reference (<http://www.dot.ca.gov/ser/>).

The Consultant shall conduct research, analysis, coordination, biological field studies, prepare reports, biological assessments, training and guidance material and implementation manuals and provide other services related to environmental/biological issues as requested by the Caltrans Contract Manager.

The purpose of these services is to support the development, construction, and monitoring of the State transportation system. Consultant’s studies and services will be in support of and may be part of the required documentation for project approval and commitments under State and Federal environmental laws and regulations.

2. Location of Work

Work shall be performed to assist the Headquarters Biology Program and will focus on larger, programmatic issues rather than project level studies to assist the Caltrans' transportation system throughout California. The specific location of the work to be performed will be stated in each Task Order.

B. Description of Required Services

1. Required Services

The Consultant shall provide professional and technical biological services including, but not limited to a wide range of biological information and products related to programmatic agreements, construction contract specifications, permit streamlining, fisheries and wildlife habitat assessment and passage, invasive species issues, endangered species issues, wetland issues, restoration, conservation and mitigation bank planning, wildlife-vehicle collisions, wildlife and fisheries crossings, habitat conservation planning, advance mitigation planning, information management for project scoping and mitigation, and fish passage barrier remediation project development services and grant preparation services to the California Department of Transportation (Caltrans) and prepare reports as requested by the Caltrans Contract Manager.

The purpose of these services is to facilitate effective communication and assist in developing and implementing program level agreements and strategies pursuant to the requirements of, but not limited to, SAFETEA-LU 6001, the California Environmental Quality

Act, Fish and Game Code 1600 et seq. -Lake and Streambed Alteration Agreements, California Endangered Species Act, the Clean Water Act, U.S. Army Corps of Engineers 404 process, the Regional Water Quality Control Board 401 process, National Environmental Policy Act and Federal Endangered Species Act consultations under Section 7 when projects have a Federal nexus, and other applicable State and Federal laws. See the following web site for details <http://www.dot.ca.gov/ser/>. The Consultant shall provide assistance to the State, including strategic advice and guidance, communications strategy, outreach, coordination and overall project management as requested. This will provide cost savings to the State in allowing for greater flexibility of services available.

Specifically, the services of this Agreement will: 1) Increase the Department's ability to meet delivery goals by providing additional technical expertise during peak workload periods; 2) Provide independent, third-party analysis, review and consultation that can help the Department establish credibility with state and federal regulatory and resource agencies; 3) Provide access to specialized expertise, equipment, and laboratory facilities that are not available within the Department; 4) Improve the Department's ability to share information with partners, stakeholders and the public; 5) Assist the Department in preparing passage remediation project plans and documents necessary to compete for available fish passage restoration grants, and 6) Increase the Department's ability to respond to changing regulations and protocols.

As needed, the Consultant will provide Biological Technical Studies and services. Contractor shall follow normal State and Federal study procedures and the Standard Environmental Reference - <http://www.dot.ca.gov/ser/>.

- a) Provide technical assistance and support to the Office of Biological Studies and Technical Assistance in the Division of Environmental Analysis in Caltrans.
- b) Develop, deliver, coordinate, and facilitate meetings/trainings related to biological issues, including but not limited to: Wetland Delineations, California Rapid Assessment Method (CRAM), Fish Passage, Technical Writing, Bats and Transportation, wildlife connectivity and crossing, wildlife-vehicle collisions, environmental laws and regulations, and Habitat Creation and Restoration.
- c) Species specific expertise, survey experience and technical assistance including but not limited to: mammals, invertebrates, amphibians, reptiles, fish and plants.
- d) Analyze data statistically and geospatially; develop and manage databases
- e) Provide assistance for the development of content to support the Standard Environmental Reference <http://www.dot.ca.gov/ser/> chapters, policies, guidance, templates, and similar documents.
- f) Provide technical assistance and expertise in the implementation of the Environmental Management System (EMS) Portfolio. Technical assistance includes, but not limited to; data collection and analysis, meeting facilitations, user training, business analysis and evaluation of system and user interface requirements and various other assistance required for implementing EMS in a diverse enterprise environment.

- g) Provide expertise and assistance with web-based collaboration tools that promote information sharing with internal and external stakeholders.
- h) Provide conflict resolution and negotiation services, including training, to assist with project or program related issues.
- i) Provide assistance with staff to translate regulatory and other permit or agreement language into construction contract requirements such as special provisions or plans.
- j) Fish Passage Assessments shall be undertaken to identify and characterize stream-highway crossings and to identify any impediments or barriers at Caltrans culvert or bridge structures that inhibit resident or anadromous fish movement within the study area. Fish passage assessments shall utilize the methodology and analyze results according to species passage criteria defined in the California Department of Fish and Game's document titled "California Salmonid Stream Habitat Restoration Manual" (<http://www.dfg.ca.gov/nafwb/manual.html>), the California Department of Fish and Game's document titled "Culvert Criteria for Fish Passage" (May 2002 or more recent), and the National Oceanic and Atmospheric Administration - Fisheries document titled "Guidelines for Salmonid Passage at Stream Crossings" (September 2001 or more recent) as modified by Caltrans to address rights of entry issues (see Reconnaissance Fish Passage Assessment Instructions and Procedures, March 2007, and Detailed Fish Passage Assessment Data Collection Instructions and Procedures, April 2007).
- k) Provide engineering expertise as needed to help inform development of guidance materials and design criteria for biologically related mitigation such as structure modification for wildlife and fish passage.
- l) The Contractor may be required to provide fish passage barrier remediation project development services necessary to successfully compete for various environmental grants such as but not limited to the DFG Fisheries Restoration Grant Program or similar to advance mitigation grants that may become available to the Department. Project development services include environmental analysis for fish passage barrier assessment as described in item B. 1. j. above, and barrier remediation design services utilizing Caltrans approved design and construction manuals specifically including Fish Passage Design for Road Crossing, An Engineering Document Providing Fish Passage Design Guidance for Caltrans Projects, May 2007, as necessary to prepare appropriate and successful grant applications.
- m) The Consultant shall only provide incidental non-Architectural and Engineering (A&E) services (i.e., traffic control, office support, field office support, GIS support) only when necessary for the completion of the A&E tasks and/or deliverables performed by the Consultant described in executed Task Orders and covered by the scope of work in this Agreement. These incidental services can only be provided to support the Consultant personnel who are

performing A&E services, tasks, and deliverables on this Agreement. The Consultant will not be reimbursed for any non-A&E services provided to Caltrans unless provided in the fashion described above.

2. Personnel

The Consultant staff shall be capable of performing the Biological and Technical Support Services as described above in "Description of Required Services" with minimal instructions.

- a. Consultant Project Manager - The Consultant Project Manager shall coordinate all Biological and Technical Support Services matters with the Caltrans Contract Manager and Caltrans Task Order Manager. The Consultant Project Manager shall have "substantial knowledge and experience" in performing the Biological and Technical Support Services and as outlined in the Caltrans Quality Control and Assurance for Biological Technical Documents (http://www.dot.ca.gov/ser/vol1/sec3/natural/Ch14Bio/files/QC_guidance.pdf). "Substantial knowledge" is defined as having a Bachelor's or higher degree in biology or a related field. "Substantial experience" is defined as having a minimum of five (5) years of experience in performing the Biological Support Services. Any advanced degree in biology or a related field may be substituted for three (3) years experience. The Consultant Project Manager shall be accessible to the Caltrans Contract Manager at all times during normal State working hours. The Consultant Project Manager is responsible for all matters related to the Consultant staff and operations, including, but not limited to, the following:
 - Supervising, reviewing, monitoring, training, and directing the Consultant staff.
 - 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.
- b. Consultant Task Order Manager - For each Task Order the Consultant shall provide a Consultant Task Order Manager to coordinate the Consultant's Task Order operations with the Caltrans Contract Manager and Caltrans Task Order Manager. The Consultant Task Order Manager shall have "substantial knowledge and experience" in performing the Biological and Technical Support Services and as outlined in the Caltrans Quality Control and Assurance for Biological Technical Documents

(http://www.dot.ca.gov/ser/vol1/sec3/natural/Ch14Bio/files/QC_guidance.pdf). "Substantial knowledge" is defined as having a Bachelor's or higher degree in biology or a related field. "Substantial experience" is defined as having a minimum of five (5) years of experience in performing the Biological Support Services. Any advanced degree in biology or a related field may be substituted for three (3) years experience. The Consultant Task Order Manager shall be accessible to the Caltrans Contract Manager and Caltrans Task Manager at all times during normal State working hours that Task Order work is underway.

- c. Consultant's Team Qualifications - The Consultant team member professional qualification will be specified in each Task Order, however, the professional qualifications depending on the task performed may at a minimum, include but not be limited to the Caltrans Quality Control and Assurance for Biological Technical Documents (http://www.dot.ca.gov/ser/vol1/sec3/natural/Ch14Bio/files/QC_guidance.pdf) and the following:
 - i. Bachelor degree in Natural Sciences field with a minimum of three (3) years experience in: (1) biological impact analysis of transportation projects including impacts to species of concern and their habitats, wetlands, or waters of the State or (2) biological mitigation development and monitoring.
 - ii. The Consultant personnel or the subconsultant performing biological services must have three (3) years of experience at minimum and appropriate credentials approved by the Caltrans Task Order Manager and Contract Manager for conducting the biological tasks and studies as referenced in the Scope of Work.
 - iii. The Consultant personnel or the subconsultant performing biological services must have all knowledge, skills, experience, permits and approvals required by Permits, Licenses, Agreements or Certifications that apply to the specific project(s) that is (are) relevant to each Task Order, prior to beginning Task Order field work.
- d. The Consultant Staff – The Consultant staff shall be capable of assisting the Consultant Project Manager in all aspects of the required Biological and Technical Support Services work.
- e. In responding to the Caltrans' Task Order and in consultation with Caltrans, the Consultant Project Manager shall identify the specific individuals proposed for the task and their job assignments. The Consultant shall provide documentation that proposed staff meet the appropriate minimum qualifications as specified. The Consultant Task Order Manager (who may be other than the Consultant Project Manager) shall be assigned to conduct, or direct the conduct of, all work assigned under a single Task Order. The Consultant Task Order Manager shall be the primary contact for their assigned Task Order and be available for communication with Caltrans.

- f. After Caltrans' approval of the Consultant's staff proposal and finalization of a Task Order, the Consultant may not add or substitute staff without Caltrans' prior approval. The Consultant is required to submit a written request and obtain the Caltrans Contract Manager prior written approval for any substitutions or alterations to the Consultant's originally proposed staff and project organization, as depicted on the Consultant's Organization Chart, which is incorporated here by reference.
- g. The Consultant shall, throughout the life of the Agreement, retain within the Consultant's firm or through the subconsultant's a staff of people qualified to perform each of the tasks. The Caltrans Contract Manager's prior approval is required for any substitutions or additions of key personnel identified on the project organization chart or the Consultant's cost proposal. Substituted staff is subject to the same qualification requirements as the staff replaced. The lead Biological and Technical Support Services person shall have significant experience in Biological and Technical Support Services survey and monitoring work of similar transportation facility for at least two (2) previous projects, unless otherwise approved by the Caltrans Contract Manager.
- h. The responsible Biological and Technical Support Services person signing reports and documents or any other deliverable requiring the signature of a qualified Biological and Technical Support Services shall be currently employed by the Consultant or its subconsultants at the time of deliverable submittal and through the Caltrans review and acceptance process.
- i. Any product or deliverable not fully approved by Caltrans bearing the signature of the qualified Biological and Technical Support Services person no longer employed shall be replaced by another product or deliverable bearing the signature of a replacement qualified Biological and Technical Support Services person. In such an eventuality, no additional time and/or cost will be allowed to the Consultant without prior written approval of the Caltrans Contract Manager.
- j. A qualified Biological and Technical Support Services person whose signature appears on any document or deliverable that has not been fully approved by Caltrans and who is no longer currently employed by the Consultant or its subconsultants shall be replaced with a qualified Biological and Technical Support Services person.
- k. All Consultant work shall be conducted under the direction of the Consultant Project Manager who is appropriately experienced as described above. Reports and studies requiring the qualified Biological and Technical Support Services person signature shall be produced by the Consultant staff having appropriate experience and signed by a qualified Biological and Technical Support Services person.

- I. The Consultant Project Manager's and key personnel's performance shall be evaluated by Caltrans, annually and at the end of the Agreement. Evaluation shall be based on the following:
 - i. Job performance
 - ii. Quality of work
 - iii. Timely submittal of reports, invoices, and diaries, and other required documents
 - iv. Early detection of problems and timely resolutions
 - v. Requesting timely approval for personnel changes and travel expenditure
 - vi. Ability to control costs

- m. The Consultant will maintain appropriately qualified staff to perform all work specified in a Task Order. Such staff must meet appropriate minimum qualifications as defined in the Caltrans Environmental Handbook, Volume I (<http://www.dot.ca.gov/ser/envhand.htm>). Staff with expertise in the following mapping software GPS, ESRI, GIS, and GeoRef (<http://www.agiweb.org/index.html>) will also be needed.

- n. Other project staff not identified, such as, but not limited to, field and laboratory technicians also must satisfy appropriate minimum qualifications as defined above and outlined in the Caltrans Environmental Handbook, Volume I (<http://www.dot.ca.gov/ser/envhand.htm>). Caltrans' prior approval is required for all staff not identified on the Consultant's organization chart.

3. Additional Requirements

a. General Requirements

- i. The Consultant shall carry out instructions as received from the Caltrans Contract Manager and the Caltrans Task Order Manager, and shall cooperate with Caltrans, the FHWA, and any other Consultants working on various Task Order(s).

- ii. It is not the intent of the foregoing paragraph to relieve the Consultant of professional responsibility during the performance of this Agreement. In those instances for which the Consultant believes a better solution to a task being performed or a problem/issue being addressed is possible, the Consultant shall promptly notify the Caltrans' Task Order Manager of these concerns, together with the reasons therefore. However, Caltrans will make all final decisions on the scope of the Consultant's activities and investigations.

- iii. The Consultant is required to coordinate activities and work closely with multiple stakeholders including but not limited to, the Caltrans' planners, engineers, and project managers and planning, engineering, and construction firms contracted by Caltrans.

Biological and Technical Support Services work is a critical element of both project planning and construction schedules and must be accomplished in a timely fashion. Task Orders may be written for treatment of unanticipated finds encountered during project work. When unanticipated finds are encountered, a rapid response will be necessary to avoid costly construction delays.

b. Availability and Work Hours

- i. Unless specified in each Task Order, the Consultant shall begin the required work within five (5) 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.
- ii. The Consultant Project Manager shall be accessible to the Caltrans Contract Manager at all times during normal working hours.
- iii. Unless otherwise specified in the Task Order or directed by the Caltrans Contract Manager, the normal workday will be Monday through Friday, from 8 a.m. to 5 p.m. and the normal workweek shall be 40 hours.
- iv. Overtime may be required. However, overtime shall be worked only when directed in writing by the Caltrans Contract Manager and specifically required by the Task Order.

c. Consultant Reports and/or Meetings

- i. The Consultant shall submit progress reports at least once a month. The report should be sufficiently detailed for the Task Order Manager and 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.
- ii. Progress reports shall identify the total number of hours worked by the Consultant's and subconsultants' personnel by use of the California Department of Transportation's Work Breakdown Structure (WBS) level element(s):
<http://www.dot.ca.gov/hq/projmgmt/guidance.htm>
- iii. When applicable, progress reports shall indicate an estimated percentage of work completed and a corresponding estimate of budget spent for work deliverables. The estimate of work completion and budget spent shall be for the same time period. The progress

reports shall include actual DBE and UDBE utilization on a monthly and cumulative basis.

- iv. The Consultant's Task Order Manager shall meet with the Caltrans Contract Manager as needed to discuss progress on the Agreement.
- v. Monthly Progress Reports shall cover the same period of performance as the monthly invoices.
- vi. Consultant shall be available, on two (2) days' notice, to meet with Caltrans; to participate in internal Caltrans meetings, and to provide technical expertise on an as-needed basis.

d. Standards

- i. All Biological and Technical Support Services shall be performed in accordance with State and Federal regulations, policies, procedures, and the highest industry standards, including latest Caltrans standards and compliance with State and Federal Highway Administration (FHWA) guidelines for implementing those requirements and any permits, licenses, agreements or certifications that apply to specific Task Orders.
- ii. The Consultant has total responsibility for the accuracy and completeness of the deliverables as specified in the Task Order. The deliverables will be reviewed by Caltrans for conformity with Project standards. Reviews by Caltrans do NOT include detailed review or checking of major components, related details or accuracy of information. The responsibility for accuracy and completeness of such items remains solely that of the Consultant.
- iii. The Consultant shall not incorporate in the studies any materials or equipment of a single or sole source origin without the advance written approval of Caltrans.
- iv. The Consultant shall have a quality control plan in effect during the entire time the work is being performed under the Agreement. The Consultant shall provide an outline of the quality control program and shall identify critical quality control reviews within each Task Order. The Caltrans Contract Manager will periodically request evidence that the quality control/quality assurance plan is functioning. The Quality Control/Quality Assurance (QC/QA) plan shall contain provisions for the development of appropriate "check lists" to maintain product quality and control. These "checklists" shall be delivered to the Caltrans Contract Manager with QC/QA plan and updated as required. Within 30 days of the Notice to Proceed (NTP) the Consultant shall submit, to the Contract Manager a job specific QC/QA plan and staffing plan.

- v. The plans, designs, specifications, estimates, calculations, reports, studies, graphics and other documents furnished under this Agreement shall be of a quality acceptable to the Caltrans Contract Manager and the Caltrans Task Order Manager. The criteria for acceptance shall be a product of neat appearance, well organized, technically and grammatically correct, checked for error and conformity to Caltrans.

e. Safety

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

- i. The Consultant's personnel shall comply with all safety provisions of the Caltrans Safety and Traffic Manuals. The Consultant shall comply with Occupational Safety and Health Administration (OSHA) regulations, applicable to the Consultant, regarding safety equipment and procedures.
- ii. The Consultant shall provide, at no cost to Caltrans, all safety equipment. The Consultant's personnel shall wear white hard hats, eye protection, and approved safety vests at all times while working in the field.
- iii. Fieldwork shall not be performed when conditions prevent a safe, efficient operation and shall only be performed with written authorization by Caltrans.
- iv. The Consultant shall provide, at no cost to Caltrans, appropriate safety training for all of the Consultant's field personnel, including training required for working on and near highways.
- v. The Consultant shall be solely responsible for the health and safety protection of its employees, subconsultant and subconsultants' employees in performance of this Agreement.

Pursuant to the authority contained in Section 591 of the Vehicle Code, Caltrans has determined that within areas that 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.

4. Materials to be provided by Caltrans

Caltrans shall provide the Consultant materials necessary to complete the Task Order. The Consultant shall execute the specific work described in the Task Order based on the

material supplied. Materials (if applicable) that might be furnished by Caltrans will be listed in the individual Task Orders and may include:

- a. Reproducible project map(s) and/or aerial photographs.
- b. Data and information from other relevant on-going and previous studies conducted and prepared by Caltrans.
- c. Caltrans will provide Permits to Enter for private property access. The Consultant is responsible for notifying the property owner 48 hours in advance of entering the property, unless otherwise specified in the Permit. The Consultant shall notify the Caltrans' Task Order Manager within 48 hours if permission has been denied. The Consultant shall carry the Permits to Enter on their person while performing work outside the Caltrans Right-of-Way. No work shall be performed by the Consultant outside the Caltrans Right-of-Way without Permits to Enter.

5. Equipment Requirements

- a. Field Equipment – The Consultant shall provide all materials and equipment to complete all required fieldwork, including all GPS equipment.
- b. Office Equipment and Supplies (Consultant's Office) - The Consultant shall have adequate office equipment and supplies to complete the required Biological Support Services.
- c. Written documents and spreadsheets shall be in Caltrans approved format (Microsoft Word and Microsoft Excel).
- d. 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.

6. Work to be performed by Caltrans

a. Product Approval and Payment

All Biological and Technical Support Services deliverables, drawings, and documents produced by the Consultant as specified by the Task Order shall be subject to approval and acceptance by the Caltrans Contract Manager and the Caltrans Task Order Manager.

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 and will be corrected at the Consultant's expense at no additional cost to Caltrans.

b. 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.

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 personnel and request another person be assigned as a replacement. The replacement staff must meet the qualifications required by this agreement for performance of the work as demonstrated by a resume submitted by the Consultant.

7. Deliverables

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

- a. 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.
- b. Specifications and other written documents shall be submitted in both hardcopy and electronic files in Caltrans' approved format (Microsoft Word) and shall conform to the requirements of the Caltrans' Office Engineer.
- c. When the Consultant is required to prepare and submit studies, reports, plans, or any other deliverable to Caltrans as required by any Task Order issued by the Caltrans Contract Manager, these documents will be reviewed. They shall be submitted in draft as scheduled and the opportunity provided for Caltrans to direct revisions, prior to final submittal. The Consultant shall also submit one (1) electronic copy of each report required under this Agreement in a specified format (CD, DVD, hard copy, or flash drive). The file formats shall be specified in each Task Order. Appropriate documentation shall accompany each digital device indicating the contents of each file. The specific schedule for Caltrans' review of the Consultant's submittals will be specified in the Task Order issued by the Caltrans Contract Manager.
- d. If the Consultant fails to submit the required deliverable items set forth in each Task Order issued by the Caltrans Contract Manager, Caltrans shall have the right to withhold payment and/or terminate this Agreement in accordance with the termination provisions of the Agreement. If the Agreement is terminated, the Consultant shall at Caltrans' request, return all

materials recovered or developed by the Consultant under the Agreement including, but not limited to, photos, field notes, computer data files, maps, and reports.

- e. 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 Project Manager through an amendment to the Task Order. Prior to concluding such an agreement, the Caltrans Contract Manager will obtain the necessary internal Caltrans approvals.
- f. The Consultant shall be capable of working in either English or Metric units.
- g. The Consultant shall prepare and update the Caltrans Work Break Down Structure (WBS) for each Task Order issued by the Caltrans Contract Manager showing a deliverables' schedule.

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 (http://www.dot.ca.gov/hq/oppd/pdpm/chap_pdf/chapt07.pdf). If requested by the Caltrans Contract Manager, the Consultant shall provide these file copies.

- h. Deliverables specified in each Task Order shall be delivered to:

CALIFORNIA DEPARTMENT OF TRANSPORTATION
Division Name
Street Address
City, State, Zip
Attn: (name of Task Order Manager)