

**STANDARD AGREEMENT**

STD 213 (rev 9/01)

Division Of Procurement And Contracts (DPAC) A&amp;E Boiler Revision Date 01/06/14

AGREEMENT NUMBER

43A0317

REGISTRATION NUMBER

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

STATE AGENCY'S NAME

STATE OF CALIFORNIA

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

CONSULTANT'S NAME

Sonoma Technology, Inc. (Hereinafter referred to as "the Consultant")

2. The term of this Agreement is from **February 10, 2014** or upon Caltrans approval, whichever is later, through **June 30, 2016**.3. The maximum amount of this Agreement is: **\$3,600,000.00**  
**Three Million Six Hundred Thousand Dollars and No Cents.**

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

Exhibit A – Scope Of Work And Deliverables	4 Pages
Exhibit B – Budget Detail And Payment Provisions	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	10 Pages
Attachment 1 – Scope Of Work	11 Pages
Attachment 2 – Cost Proposal	20 Pages
Attachment 3 – Sample Task Order Format	5 Pages
Attachment 4 – DBE Participation (form ADM-0227F A&E)	1 Page
Attachment 5 – Disadvantaged Business Enterprises Utilization Report (form ADM-3069)	2 Pages

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

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.****CONTRACTOR (herein referred to as "the Consultant")**

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

Sonoma Technology, Inc.

BY (Authorized Signature)

DATE SIGNED (Do not type)

2-5-14

PRINTED NAME AND TITLE OF PERSON SIGNING

Lyle R. Chinkin, President

ADDRESS

1455 N. McDowell Blvd., Suite D  
Petaluma, CA 94954-6503**STATE OF CALIFORNIA**

AGENCY NAME

Department of Transportation

BY (Authorized Signature)

DATE SIGNED (Do not type)

2/7/14

PRINTED NAME AND TITLE OF PERSON SIGNING

LIZ SALINAS, Branch Chief

ADDRESS

Division of Procurement and Contracts, MS 65  
1727 30<sup>th</sup> Street, Sacramento, CA 95816California 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. CONFLICT OF INTEREST SUPPORT WORK
  - 1. For services in which the Consultant cannot perform the work free of conflict of interest as defined in this Agreement, the Consultant agrees that Caltrans may obtain these services from another qualified Consultant, whose contract includes the same scope of work, or in any other manner permitted by law.
  - 2. Caltrans may require the Consultant to perform work as described herein but located outside the geographic limits of this Agreement when the consultant contractor for another Caltrans District cannot perform the work free of conflict of interest. For such work, Caltrans will select a consultant to perform the same work by assignment of a Task Order in the following order of priority:
    - a. The consultant contract covers the same District, but not the same geographic area as this Agreement;
    - b. The consultant contract covers the closest area geographically to the geographic jurisdiction of this Agreement;
    - c. The consultant contract covers the next closest area geographically to the geographic jurisdiction of this Agreement; and so on.
  - 3. Should the consultant for priority number 1 not exist or be unable to perform the work free of conflict of interest, then Caltrans shall select the consultant for priority number 2 to perform the work, and so on.
- D. This Agreement will commence on **February 10, 2014** 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

EXHIBIT A  
SCOPE OF WORK AND DELIVERABLES

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 **June 30, 2016**. The services shall be provided during working hours, Monday through Friday, except holidays. A normal workweek shall consist of forty (40) hours unless otherwise specified in the Task Order or directed by Caltrans Contract Manager. The parties may amend this Agreement as permitted by law.

- E. All inquiries during the term of this Agreement will be directed to the project representatives identified below:

THE DEPARTMENT	THE CONSULTANT
Contract Manager: Jim Elder	Consultant Contract Manager: Douglas Eisinger
District/Division: D43/Division of Environmental Analysis, MS 27	Office/Branch:
Address: 1120 N Street Sacramento, CA 95814	Address: 1455 N. McDowell Blvd., Suite D Petaluma, CA 94954-6503
Phone: (916) 653-3876	Phone: (707) 665-9900
Fax: (916) 653-6366	Fax: (707) 665-9800
e-mail: Jim.Elder@dot.ca.gov	e-mail: doug@sonomatech.com

- F. Work Guarantee

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

- G. 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.

EXHIBIT A  
SCOPE OF WORK AND DELIVERABLES

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 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.

EXHIBIT A  
SCOPE OF WORK AND DELIVERABLES

- G. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- H. The total amount payable by Caltrans for an individual Task Order shall not exceed the amount agreed to in the Task Order. Task Orders and/or Task Order Revisions require written approval by the Consultant and Caltrans.
- I. If applicable, when a subsequent agreement for the same or similar scope of work is executed within three (3) months prior to the termination of this Agreement, no additional Task Orders shall be executed under this Agreement upon the effective date of the subsequent agreement.
- J. Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement.

III. CONSULTANT REPORTS AND/OR MEETINGS

- A. The Consultant shall submit progress reports at least once a month. The report should be sufficiently detailed for the Caltrans Contract Manager to determine if the Consultant is performing to expectations and is on schedule, to provide communication of interim findings and to afford occasions for airing difficulties or special problems encountered so remedies can be developed. Separate detail shall be provided for each on-going Task Order.
- 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 Contract 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>. When prevailing wages apply to the services described in Attachment 1, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.
- 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

EXHIBIT B  
BUDGET DETAIL AND PAYMENT PROVISIONS

by the Consultant as accrued due to such costs having been billed to the Consultant and recognized by the Consultant and Caltrans as valid, undisputed, due and payable.

3. By submitting accrued but unpaid Subconsultant costs for reimbursement, the Consultant agrees that within ten (10) days of receipt of reimbursement, the full amount submitted as a reimbursable accrued Subconsultant cost shall be paid to the Subconsultant.
- 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.

EXHIBIT B  
BUDGET DETAIL AND PAYMENT PROVISIONS

Invoices shall be mailed to the Caltrans Contract Manager or Consultant Service Unit at the following address:

DEPARTMENT OF TRANSPORTATION  
District 43 – Division of Environmental/Analysis, MS 27  
Attn: Jim Elder, Contract Manager  
1120 N Street  
Sacramento, CA 95814

- J. Task Orders will be encumbered with various types of funding. 49 CFR 18.23 requires that federal funds must be expended within 90 days of the expiration of the funding period. In addition, the encumbrances for state and local funds can be lost if not expended within specified timeframes. 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 so that encumbered funds can be expended. If Caltrans does not receive invoices from the Consultant by the required deadline, and this results in a loss of funding, Caltrans will reduce the payment on the invoices in the amount of the loss.
- 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 Caltrans Contract Manager notifies the Consultant Contract Manager of completion of the services. Should Caltrans dispute any of the costs billed in the final Task Order invoice, Caltrans shall pay the undisputed portions of the invoice as provided in this Section II. Caltrans will not pay for charges that are in dispute until final resolution of the cost-related disputes.
- 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 **\$3,600,000.00**. 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

EXHIBIT B  
BUDGET DETAIL AND PAYMENT PROVISIONS

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.
- P. Attachment 2, Cost Proposal, is subject to a Certified Public Accountant (CPA) Indirect Cost (Overhead) Audit Workpaper Review and/or audit. Caltrans, at its sole discretion, may review and/or audit and approve CPA ICR documentation. 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, per Exhibit D, section III.
- 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.

EXHIBIT B  
BUDGET DETAIL AND PAYMENT PROVISIONS

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) 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 Contract 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. No later than 30 calendar days after Caltrans Contract Manager notifies the Consultant Contract Manager that all work under the Agreement has been completed, the Consultant may request review by the CCRC of claims or disputes that are not resolved by the Caltrans Contract Manager and Caltrans Contract Officer under subsection II.A. above. 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 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.

EXHIBIT D  
SPECIAL TERMS AND CONDITIONS

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

General Conditions

- A. In the event this Agreement is terminated, suspended, or a Task Order is terminated for the convenience of Caltrans, the Consultant shall be paid for the percentage of the work completed, relative to the total work effort called for under this Agreement, and for termination costs. No billable costs will be considered payable under the Agreement during suspension.
- B. Within 30 calendar 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.

EXHIBIT D  
SPECIAL TERMS AND CONDITIONS

VI. INVOICE SUBMITTAL UNDER EARLY TERMINATION

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

EXHIBIT D  
SPECIAL TERMS AND CONDITIONS

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 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

EXHIBIT D  
SPECIAL TERMS AND CONDITIONS

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 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.

EXHIBIT D  
SPECIAL TERMS AND CONDITIONS

- 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.

EXHIBIT D  
SPECIAL TERMS AND CONDITIONS

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

EXHIBIT D  
SPECIAL TERMS AND CONDITIONS

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

EXHIBIT D  
SPECIAL TERMS AND CONDITIONS

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

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

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

EXHIBIT D  
SPECIAL TERMS AND CONDITIONS

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

XVIII. OWNERSHIP OF PROPRIETARY PROPERTY

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

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

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

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

A. Ownership of Work Product and Rights

1. Ownership of Work Product

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

EXHIBIT D  
SPECIAL TERMS AND CONDITIONS

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

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

2. Vesting of Copyright Rights

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

B. Inventions

1. Vesting of Patent Rights

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

EXHIBIT D  
SPECIAL TERMS AND CONDITIONS

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.

EXHIBIT D  
SPECIAL TERMS AND CONDITIONS

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

EXHIBIT D  
SPECIAL TERMS AND CONDITIONS

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

EXHIBIT D  
SPECIAL TERMS AND CONDITIONS

- 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.

XXVI. STANDARD OF CARE

Consultant represents that it possesses all necessary training, licenses, experience, and certifications to perform the Scope of Work, and shall perform all services in accordance with the degree of skill and care ordinarily

EXHIBIT D  
SPECIAL TERMS AND CONDITIONS

used by competent practitioners of the same professional discipline under similar circumstances, and localities, taking into consideration the contemporary state of the practice and the project conditions.

XXVII. 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.

XXVIII. 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.

XXIX. 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

EXHIBIT D  
SPECIAL TERMS AND CONDITIONS

award, but will be considered in determining bidder responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

XXX. 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. All consultant personnel are required to complete security and privacy awareness training each year. See <http://itsecurity.dot.ca.gov/training>.
- 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.

XXXI. 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.

XXXII. PROHIBITION OF EXPENDING STATE OR FEDERAL FUNDS FOR LOBBYING

- A. The Consultant certifies, to the best of his or her knowledge and belief, that:

EXHIBIT D  
SPECIAL TERMS AND CONDITIONS

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.

EXHIBIT D  
SPECIAL TERMS AND CONDITIONS

XXXIII. 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 calendar 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:

- (1) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the

EXHIBIT D  
SPECIAL TERMS AND CONDITIONS

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 D, in subcontracts, except when the subcontract:

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

EXHIBIT D  
SPECIAL TERMS AND CONDITIONS

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

APPENDIX A — FEDERAL FUNDING REQUIREMENTS

I. COMPLIANCE WITH REGULATIONS

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

II. NON-DISCRIMINATION

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

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

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

EXHIBIT D  
SPECIAL TERMS AND CONDITIONS

IV. INFORMATION AND REPORTS

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

V. SANCTIONS FOR NONCOMPLIANCE

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

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

VI. INCORPORATION OF PROVISIONS

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

EXHIBIT D  
SPECIAL TERMS AND CONDITIONS

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. DBE INFORMATION AND CONTRACT GOAL REQUIREMENT FOR DBE 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 DBE is a firm that has been certified as a DBE as specified in 49 CFR 26. Only the participation of certified DBEs will count toward any contract goal.
  - C. The contract goal for DBE participation for this Agreement is three percent (3%). Participation by DBE prime and Subconsultants shall be in accordance with the information contained in the Disadvantaged Business Enterprise (DBE) Information 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.
- II. 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.

EXHIBIT E  
ADDITIONAL PROVISIONS

- 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.

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

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

EXHIBIT E  
ADDITIONAL PROVISIONS

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 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.

IV. EXCLUSION OF RETENTION

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

EXHIBIT E  
ADDITIONAL PROVISIONS

- V. 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 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 30 calendar days after receiving payment for work satisfactorily completed, even if other Agreement work is not completed and has not been accepted in conformance with the terms of the Agreement. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to Consultant or Subconsultant in the event of a dispute involving late payment or non-payment to Consultant or deficient subcontract performance or noncompliance by a Subconsultant.

EXHIBIT E  
ADDITIONAL PROVISIONS

VI. 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).

VII. DBE 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 Subconsultant to substitute for the original DBE Subconsultant. GFE shall be directed at finding another DBE Subconsultant to perform at least the same amount of work under the Agreement as the DBE Subconsultant that was substituted or terminated to the extent needed to meet the contract goal for DBE 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.

EXHIBIT E  
ADDITIONAL PROVISIONS

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

EXHIBIT E  
ADDITIONAL PROVISIONS

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.

VIII. 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.

EXHIBIT E  
ADDITIONAL PROVISIONS

IX. DBE ELIGIBILITY

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

B. Credit for DBE Prime Consultants

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

C. Credit for Material or Supplies

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

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

EXHIBIT E  
ADDITIONAL PROVISIONS

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 goal.
  2. The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the Agreement.
  3. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.
  4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.
  5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total

EXHIBIT E  
ADDITIONAL PROVISIONS

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.

X. TERMINATION OF DBE

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; and
2. If a DBE Subconsultant is terminated or fails to complete its work for any reason, Consultant will be required to make GFE to replace the original DBE Subconsultant with another DBE 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**

### **Air Quality Study Support Services On-Call**

#### **A. Project Description**

The Consultant will perform research, conduct technical studies and prepare reports on an “on-call” basis as requested by the Caltrans’ Contract Manager to assist with special studies in the fields of air quality modeling, Mobile Source Air Toxins (MSAT) analysis Climate Change and health risk assessment (HRA), issues. This work will be conducted on a statewide basis to meet requirements of both State and Federal mobile source air quality regulations including NEPA and CEQA regulations. The Consultant will also provide assistance with Federal Conformity Hot Spot issues associated with statewide project development. The Consultant will need to be able to assist with air quality mitigation strategies for transportation operations and construction activities.

#### **B. Location of Work**

The Air Quality Study Support Services shall be performed on projects throughout the state. The Consultant shall provide its services statewide. The specific location of the work to be performed within the state will be stated in each Task Order.

#### **C. Required Services**

This contract will require expertise involving air quality environmental studies, air quality related health risk assessments, field investigation of highway construction activity air quality impacts. Some staff development work and research may be required with this contract. Caltrans Contract Manager will assign specific tasks to the Consultant by issuing Task Orders. The services and deliverables will not include the creation or improvement (including updates and upgrades) of automated models, algorithms, simulations or other similar automated programs or systems. Consultant shall provide all necessary equipment and instrumentation to perform work as follows:

1. Review highway project air quality studies and develop strategies for regulatory compliance including PM Hot Spot analysis.
2. Develop strategies to mitigate greenhouse gas impacts from operational and construction activities on the State highway system.
3. Present project specific solutions to District staff via on-site presentations or through memos to improve the quality of air quality studies for transportation projects.
4. Develop guidance and non-automated tools to streamline the analysis of air quality and greenhouse gas impacts from projects on the State highway system. The work includes updating existing tools to comply with changing air quality regulations.
5. Conduct studies to assist with long-term strategic planning, including the areas of soundwall and vegetative barrier air quality mitigation. Assist in updating and refining guidance manuals and specifications for new transportation air quality and climate change procedures.

6. Provide expertise in strategizing meetings between Caltrans air quality experts and the various resource agencies to handle project related air quality and climate change regulatory compliance.
7. Develop and conduct meetings with District staff to assist with skill development in air quality analysis work with the use of guidance manuals, tools and webinars.
8. Assist with development of policies for Health Risk Assessment of Projects.

#### **D. Schedule of Performance/Period of Performance**

1. Task Orders will be issued and executed during the term of this contract. Task Orders shall be completed in the timeframe stated in the Task Order and prior to the expiration of the Contract.
2. Services and deliverables identified in a Task Order will be completed and delivered as specified in the Task Order.

#### **E. Personnel Requirements**

##### **1. Consultant Contract Manager:**

The Consultant's Contract Manager will be an employee of the prime consultant. The Consultant shall furnish a Contract Manager to coordinate the Consultant's operations under the contract with Caltrans Contract Manager. The Consultant Contract Manager responsible for overseeing air quality work shall be a California registered Professional Engineer or at a minimum have a BS or BA degree in a related field and five (5) years of demonstrated experience in mobile source air quality analysis and regulatory compliance. The Consultant's Contract Manager shall be accessible to Caltrans Contract Manager at all times during Caltrans normal working hours. The Consultant's Contract Manager shall be responsible for all matters that are related to the Consultant's personnel and operations including but not limited to:

- a. Supervise, Review, monitor, and direct Consultant's personnel.
- b. Assign qualified personnel to perform Task Order work.
- c. Administer personnel actions.
- d. Maintaining project files.
- e. Developing, organizing, facilitating, and attending scheduled coordination meetings and preparation and distribution of meeting minutes.
- f. Implement and maintain quality control procedures to manage conflicts, ensure product accuracy and identify critical reviews and milestones.
- g. Overseeing that all safety measures are in place.

##### **2. Task Order Manager :**

- a. The Task Order Manager shall be accessible to Caltrans' Contract Manager and Caltrans Task Order Manager at all times during Caltrans normal working hours while the Task

Order work is underway. The Consultant Task Order Manager shall have "substantial knowledge and experience" in performing the air quality studies and air quality related analysis support services. "Substantial experience" is defined as having a minimum of five (5) years of experience in performing in a related field. "Substantial knowledge" is defined as having a Bachelor's or higher degree in a related field. Any advanced degree in a related field may be substituted for three (3) years experience.

Or

- b. The Task Order Manager for Task Orders requiring air quality studies shall be a registered Professional Engineer who is licensed in the State of California.

### 3. Consultant's Team Qualifications

- a. Any non-lead Personnel or the subconsultant performing environmental services (such as CEQA/NEPA related documentation and air quality studies), must have three (3) years of experience at minimum and appropriate credentials for conducting critical tasks and studies as referenced in the Standard Environmental Reference (SER).
- b. In responding to the Caltrans Task Order and in consultation with Caltrans, the Consultant Contract 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.
- c. 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.
- d. The Consultant shall, throughout the life of the contract, 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.
- e. The Consultant's personnel shall be capable, competent, and experienced in performing the types of Air Quality Support Services work in this Agreement with minimal instructions. Personnel skill level should match the Task complexity.
- f. Substituted staff is subject to the same qualification requirements as the staff replaced. The lead environmental support services person shall have significant experience in the related field on similar transportation facility for at least two (2) previous projects, unless otherwise approved by the Caltrans Contract Manager.
- g. The responsible environmental support services person signing reports and documents or any other deliverable requiring the signature of a qualified environmental 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.

- h. Any product or deliverable not fully approved by Caltrans bearing the signature of the qualified environmental support services person no longer employed shall be replaced by another product or deliverable bearing the signature of a replacement qualified environmental 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.
- i. A qualified environmental 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 environmental support services person
- j. Air Quality Qualifications - Any lead analyst or staff member responsible for the assessment of air quality studies, air quality regulations , or review and approval of final air quality reports shall at a minimum have a BS or BA degree in a related field and five (5) years of demonstrated experience.

#### **F. Availability and Work Hours**

1. The Consultant shall begin the required work within three (3) working days after receiving a fully executed Task Order unless the Task Order specifies a later starting date. Once the work begins, the Consultant shall perform the work diligently until all required work has been completed to Caltrans' satisfaction.
2. The Consultant shall begin fieldwork as specified in the Task Order only after receiving a written Notice to Proceed.
3. The normal workweek shall consist of forty (40) hours unless otherwise specified in the Task Order or directed by Caltrans' Contract Manager.
4. The Consultant shall conduct all onsite work in accordance with the Caltrans Manual of Traffic Controls in order to conduct operations safely and minimize traffic delays. The Consultant shall consider and present options for accessing monitoring sites that minimize impacts to the traveling public. The Consultant shall make these options known to Caltrans's Task Manager.
5. The Consultant shall coordinate all onsite work with the Construction Resident Engineering needed. The Consultant shall make these arrangements known to Caltrans Task Order Manager.

#### **G. Deliverables**

1. The Consultant shall submit the Task Order deliverables to the address specified in the Task Order. Electronic reports for which a physical medium, such as a compact disk, has not been specified may be submitted by electronic mail as specified in the Task Order.
2. The Consultant shall provide services in close liaison with Caltrans Contract Manager or Caltrans Task Order Manager. Caltrans will exercise its review and approval functions through its Contract Manager and/or Task Manager at key points as specified in the Task Order. Caltrans will perform milestone reviews for the specific products and deliverables that are listed in each Task Order.

3. If a Task Order is scheduled to take less than six (6) months, the Consultant shall prepare a work plan with a list of tasks, a budget, and a target completion dates.
4. If a Task Order is scheduled to last for six (6) months or longer, the Consultant may be required, as specified in the Task Order, to prepare and update a critical path method network diagram for the Task Order which shows a deliverables schedule as well as other relevant data that are needed for the Consultant's work control and Caltrans review of the Consultant's work. The relevant data shall include a list of activities with a budgeted cost and a target completion date for each activity.
5. Task Order may require the Consultant to submit a project plan that describes means for accomplishing the Task Order's scope of work. The project plan shall include maps of proposed monitoring locations, methodology, work scheduling, traffic control, types of equipment to be used, site access, all necessary internal and external permits, and plans for accomplishing the work.
6. The Consultant shall obtain Caltrans written approval for each deliverable that a Task Order identifies. Each Task Order shall specify the format and content requirements for the deliverables in that Task Order. The services and deliverables will not include the creation or improvement (including updates and upgrades) of automated models, algorithms, simulations or other similar automated programs or systems.
7. The Consultant shall submit studies, reports, plans, and other deliverables as required by Task Orders and this contract to Caltrans in draft as scheduled and Caltrans will direct revisions prior to the Consultant's final submittal. The Task Order will specify the schedule for Caltrans review of the Consultant's submittals.
8. Caltrans will prepare a schedule in each Task Order for the submittal of milestones. Milestones may be changed by written agreement between Caltrans and the Consultant by an amendment to the Task Order. Prior to concluding such an agreement, Caltrans' Contract Manager will obtain the necessary internal Department review and concurrence.
9. The Consultant shall submit a progress report to Caltrans' Contract Manager and Caltrans Task Order Manager on or before the 15th day of each month during which the Task Order is in effect. This report shall contain the following elements:
  - a. Time frame of the reporting period.
  - b. Work completed in the reporting period (activities and accomplishments).
  - c. Work to be completed in the month after the reporting period.
  - d. Total amount of Task Order expenditure.
  - e. Expenditures in this progress report period.
  - f. Total expenditures to date.
  - g. Total expended but not yet invoiced to Caltrans.
  - h. Remaining balance of Task Order.

- i. For each milestone, task and deliverable: the budgeted cost, the actual cost to date, the actual cost to date as a percent of the budgeted cost, the percent of the milestone, task, deliverable that has been completed, and the estimated dollar expenditure (if any) over the budgeted cost.
  - j. Comments about causes for delay that significantly impact the Task Order's services (e.g., a staff shortage, or weather condition that could delay the timely completion of a deliverable).
10. The Consultant's Project Manager shall meet with Caltrans' Contract Manager and Caltrans Task Order Manager as needed to discuss progress on the project.
11. The Consultant shall submit four (4) copies of a compact disk or DVD disk that contains electronic copies of pertinent files for all final reports that the Consultant has prepared on a computer. The electronic copies shall meet the following criteria:
- a. Text-based documents shall be submitted as Adobe Portable Document Format ("pdf") file using Adobe Acrobat Professional software. Caltrans may post this file to its website. The "pdf" file shall:
    - 1) Be inclusive of all graphics (e.g., page orientation, photographs or other images, charts, and tables) and be suitable for printing in final form.
    - 2) Contain functioning bookmarks, indexes, tables of contents or other hyperlinks as directed elsewhere in this Task Order.
    - 3) Be configured (e.g., bookmarks, thumbnails, annotations, signatures, and security settings) as directed in the Task Order.
    - 4) Be optimized for use by Adobe Acrobat Reader, unless otherwise specified.
  - b. Text-based documents shall also be submitted in Microsoft Word format, version 2007, unless otherwise specified. Each document shall be inclusive of all graphics (e.g., photographs, image graphics, charts, and tables). Photographs shall be in "jpeg" file format. Other image graphics shall be in "gif" format unless specified otherwise elsewhere in the Task Order.
  - c. All graphics (e.g., photographs and engineering drawings) shall be submitted separately from the "pdf" and Microsoft Word documents and shall be in their original resolution and original file format. Caltrans will use these files for archive purposes.
  - d. Spreadsheet files shall be submitted in Microsoft Excel format, version 2007, unless otherwise specified.
  - e. Database files shall be submitted in FileMaker Pro version 11 format, unless otherwise specified.
  - f. The Consultant shall provide appropriate documentation for the contents of all electronic media.
  - g. The Consultant shall not format electronic files as "view only" or "read only" unless specified in the Task Order.

12. The Consultant shall provide, at a minimum, to Caltrans five (5) hard copies of each final report, study, and technical memorandum that the Consultant prepares. Draft reports, studies and technical memoranda may be submitted in electronic form unless specified otherwise.
13. All documents and reports that the Consultant produces shall include the following statement:  
"For individuals with sensory disabilities, this document is available in alternate formats upon request. Please call or write to Caltrans Division of Environmental Analysis, Attn: Bruce Rymer, MS 27, P.O. Box 942874, Sacramento, CA 94274-0001. (916) 653-3876 Voice, or dial 711 to use a relay service."
14. A report (technical memorandum, project plans, other deliverable documents) shall include the following information on the document cover and the document spine, if appropriate:
  - a. Caltrans logo
  - b. Title of report
  - c. Report date (month and year)
  - d. A prominent display of the following identifying information:  
California Department of Transportation  
Division of Environmental Analysis, MS 27  
1120 N Street, Sacramento, CA 95814
15. Consultant-prepared reports shall not contain any references to the firm's name, including logos, acknowledgements, or credits. The Consultant may utilize an internal filing number or other methodology while the document is in its draft stages and when distribution of the report is internal to the Department's Division of Environmental Analysis. When the Consultant distributes a draft document beyond the Division of Environmental Analysis, the Consultant shall remove all reference numbers, other than Caltrans' alpha-numeric system, prior to distribution. Distribution beyond the Division of Environmental Analysis requires the advance consent of the Caltrans' Contract Manager. All copyright interests will be assigned to Caltrans.
16. If the Consultant fails to submit the required deliverable items as set forth in a Task Order, Caltrans shall have the right to withhold payment for such items and/or to terminate the Agreement in accordance with Contract provisions.
17. The Consultant shall report data in accordance with the most current version of Caltrans' Electronic Data Deliverable format. Caltrans will provide this format to the Consultant.

## **H. General Requirements**

1. The Project Manager shall cooperate with the Department, the Federal Highway Administration, and any of the Department's stakeholders that are working on a project.
2. If the Consultant believes that a better air quality procedure or solution to a problem is possible, the Consultant shall promptly notify Caltrans' Contract Manager of these suggestions and receive the Contract Manager's written approval before implementing them.

3. Upon approval of the Contract Manager, the Consultant may directly contact governmental regulatory agencies and others only for the purpose of obtaining information, expertise, and assistance. The Consultant shall maintain a written record of all such contacts and shall transmit copies of those records to Caltrans on a regular basis as defined by Caltrans' Contract Manager. The written record shall include time and date, participants, summary of conversation, and recommendations.
4. The Consultant shall include Caltrans' Contract Manager in written communications to other Caltrans personnel for the clarification of any scope of work that was not adequately defined in any Task Order received.
5. Caltrans is responsible for all final consultation, both informal and formal, with local, state and federal agencies. The Consultant shall assist Caltrans in such consultations as specified in each Task Order and as directed by Caltrans' Contract Manager.
6. The Consultant shall assist Caltrans in obtaining necessary approvals and permits for any work. The Consultant shall identify all necessary approvals and permits, prepare signature-ready permit applications, and track the status of permit applications, required for completion of the Task Order deliverables, as specified in each Task Order.
7. The Consultant shall provide to Caltrans the final Task Order cost proposal as approved by Caltrans. As a supplement to the cost proposal, the Consultant shall submit job descriptions for all of the staff that it and its subconsultants propose to use for this contract. This cost proposal shall be in printed hard copy and in an electronic file. When the Consultant adds staff to this cost proposal, the Consultant shall submit an updated cost proposal to Caltrans. Caltrans' Contract Manager may request that the update be for either the incremental change or the total amount. The Consultant shall use Microsoft Excel, version 2007, for the electronic copy of the cost proposal, unless otherwise specified.
8. Caltrans will not reimburse the Consultant for costs to relocate its staff to the geographic area of the contract. Caltrans will not reimburse the Consultant for long-term per diem costs, unless preapproved by Caltrans' Contract Manager.

#### **I. Standards**

1. The Consultant shall perform all work in conformance with applicable federal, state, and local statutes, regulations, standards and guidelines, including, but not limited to, the following:
  - a. Caltrans Standard Specifications, download at [www.caltrans-opac.ca.gov/publicat.htm](http://www.caltrans-opac.ca.gov/publicat.htm)
  - b. Caltrans Standard Plans, download at [www.caltrans-opac.ca.gov/publicat.htm](http://www.caltrans-opac.ca.gov/publicat.htm)
  - c. Caltrans Project Development Guidance Manual, download at [www.caltrans-opac.ca.gov/publicat.htm](http://www.caltrans-opac.ca.gov/publicat.htm)
  - d. Caltrans Standard Environmental Reference (SER) – download at <http://www.dot.ca.gov/ser/>
2. Caltrans' Contract Manager, in cooperation with the Consultant's Contract Manager, shall decide all questions that pertain to the quality and acceptability of the deliverables that are furnished by the Consultant and the work that the Consultant performs for this contract.

3. The Consultant shall have the capability to send to and receive from Caltrans' electronic mail system, including attachments for word processing, spreadsheets, and databases.

## **J. Quality Control**

1. The Consultant shall have a quality control plan in effect during the entire time that it is performing work under this contract. The Consultant shall provide an outline of its quality control program and shall identify critical quality control reviews within each Task Order schedule.
2. The Consultant's quality control plan shall establish a process whereby:
  - a. Calculations are independently checked, corrected and back-checked.
  - b. All draft and final reports are reviewed for accuracy, completeness, and readability before submittal to Caltrans.
  - c. All job-related correspondence and memoranda are routed and received by affected persons and then filed in the appropriate Task Order file.
  - d. Field activities are routinely verified for accuracy and completeness, such that any discovered deficiencies do not become systemic or may influence the result of a Task Order deliverable.
  - e. Conclusions and recommendations are supported by the preponderance of factual, objective data.
3. The Consultant shall not incorporate materials or equipment of single or sole source origin into the prepared materials without written approval from Caltrans.
4. Estimates, calculations, reports, and other documents that the Consultant furnishes to Caltrans under each Task Order shall be of a quality that is acceptable to Caltrans' Contract Manager.
5. Drawings, estimates, calculations, reports, and other documents that the Consultant furnishes to Caltrans under a Task Order are of acceptable quality when they are:
  - a. Neat in appearance
  - b. Well organized
  - c. Technically and grammatically correct
  - d. Checked by designated reviewers (Caltrans and Consultant personnel)
6. The Consultant shall identify the preparer and the designated reviewer for each document that the Consultant furnishes to Caltrans under each Task Order. The Consultant shall comply with all applicable state and federal standards and requirements.
7. The minimum standard of appearance, organization, and content of the drawings and reports shall be that of similar types that Caltrans prepares.

8. The Consultant shall maintain a complete project file for each Task Order that it performs under this contract. The Consultant shall make this file available to Caltrans' Contract manager or designees during Caltrans' normal work hours and shall transfer this file to Caltrans upon completion of work under the Task Order.

#### **K. Health and Safety**

1. The Consultant shall be responsible for the health and safety of its employees, subconsultants, and subconsultants' employees in the performance of this contract.
2. The Consultant shall comply with all applicable occupational health and safety standards, rules and regulations that are established by the State of California and the federal government, and the safety instructions that Caltrans issues for performance of Task Order work.

#### **L. Materials Furnished by Caltrans**

1. Caltrans will furnish the following materials to the Consultant:
  - a. Guidance documents standards, forms, and other policies and procedures as listed above
  - b. Appropriate background material for each Task Order
  - c. Caltrans Encroachment Permit: If a Caltrans encroachment permit is required for a Task Order, Caltrans will issue that permit without charge to the Consultant.
  - d. Electronic templates of Task Order and Progress Reporting formats

#### **M. Orientation Provided by Caltrans**

Caltrans may provide orientation regarding Contract and Task Order requirements for each Task Order as deemed necessary by Caltrans. The orientation may consist of instructions on Caltrans procedures, practices, and requirements for the specific Air Quality Policies. The Consultant shall perform the Stormwater Policy and Permit Support Services work in conformance with the orientation instructions, in addition to the Contract requirements specified herein and in the executed Task Order.

#### **N. Equipment and Materials Furnished by the Consultant**

1. The Consultant shall provide all necessary tools, instruments, and safety equipment that are required to accurately, efficiently and safely perform the work that each Task Order identifies.
2. The Consultant shall ensure that all required sampling and monitoring equipment and materials are present at the site and in good operating condition at the beginning of each workday.
3. The Consultant may claim reimbursement for providing equipment or supplies at actual and competitive rates. 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.

## **O. Payment Provisions**

1. In the case cited in Exhibit B, paragraph P (BUDGET DETAIL AND PAYMENT PROVISIONS) of the Agreement, If Caltrans reviews a Consultant's independent CPA's indirect cost rate (ICR) audit workpapers and is unable to issue cognizant approval, Caltrans will reimburse the Consultant at a provisional ICR of 100% or two thirds (2/3) of the Consultant's proposed ICR, whichever is lower, until a \*FAR compliant ICR (e.g. 48 \*CFR, Part 31; GAGAS; CAS, if applicable; in accordance with procedures and guidelines of the AASHTO Audit Guide; etc.) is received.
2. Consultant is to submit a revised independent CPA audited ICR and audit report, if required, within twelve (12) months of the date the original ICR is rejected by Caltrans. Caltrans will then have up to 12 months to review the Consultant's revised independent CPA audited ICR workpapers and audit report.
3. If Caltrans is still unable to issue cognizant approval, or if the revised independent CPA audited ICR is submitted after completion of all work under this Agreement, overhead cost reimbursement will be limited to the provisional ICR established upon initial rejection of the ICR for all rendered services and will be final.
4. If Caltrans approves, accepts, or rejects the revised independent CPA audited ICR and all work under this agreement is completed, the Consultant shall submit to Caltrans a final invoice within 60 days of Caltrans final ICR review.