

STATE OF CALIFORNIA
STANDARD AGREEMENT

Department Of Transportation

STD 213 (rev 9/01)

Division Of Procurement And Contracts (DPAC) A&E Boiler Revision Date 08/01/14

AGREEMENT NUMBER

53A0178

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

Value Management Strategies, Inc. (Hereinafter referred to as "the Consultant")

2. The term of this Agreement is from September 15, 2014 or upon Caltrans approval, whichever is later, through June 30, 2017.

3. The maximum amount of this Agreement is: **\$2,500,000.00**
 Two Million Five 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	5 Pages
Exhibit B – Budget Detail And Payment Provisions	6 Pages
Exhibit C – General Terms And Conditions 610 (GTC 610)	1 Page
Exhibit D – Special Terms And Conditions	22 Pages
Exhibit E – Additional Provisions	3 Pages
Attachment 1 – Scope Of Work	10 Pages
Attachment 2 – Cost Proposal	30 Pages
Attachment 3 – Sample Task Order Format	5 Pages
Attachment 4 – STD 840 DVBE Participation/GSPD-05-105 Bidders Declaration	2 Pages

Item shown with an Asterisk (*) is hereby incorporated by reference and made part of this Agreement as if attached hereto.

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

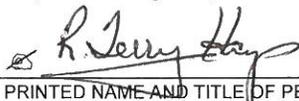
CONTRACTOR (herein referred to as "the Consultant")

*California Department of General Services
 Use Only*

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

Value Management Strategies, Inc.

BY (Authorized Signature)



DATE SIGNED (Do not type)

9-12-14

PRINTED NAME AND TITLE OF PERSON SIGNING

R. Terry Hays Chairman/CFO

ADDRESS

900 Canterbury Place, Suite 330, Escondido, CA 92025

STATE OF CALIFORNIA

AGENCY NAME

Department of Transportation

BY (Authorized Signature)



DATE SIGNED (Do not type)

9/15/14

PRINTED NAME AND TITLE OF PERSON SIGNING

Phillip Rodriguez, Branch Chief

ADDRESS

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

Exempt per: PCC 10430 (d)

EXHIBIT A
SCOPE OF WORK AND DELIVERABLES

I. SCOPE OF WORK

The Consultant, on an as-needed basis, shall perform or assist in the performance of Value Analysis (VA) studies on process and product evaluation activities within California Department of Transportation (Caltrans), in the statewide dissemination of information regarding the VA methodology, policies and practices within Caltrans, and the facilitation of meetings initiated by Caltrans headquarters Division of Design (DOD) for the purpose of updating transportation design policies and procedures.

- 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.

EXHIBIT A
SCOPE OF WORK AND DELIVERABLES

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 **September 15, 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 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, 2017**. The services shall be provided during working hours, Monday through Friday, except holidays unless otherwise specified in a Task Order. The parties may amend this Agreement as permitted by law.

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

THE DEPARTMENT	THE CONSULTANT
Caltrans Contract Manager: Ray Tritt	Consultant Contract Manager: Robert Stewart
District/Division: Division of Design/Office of Special Projects, MS 28	Office/Branch:
Address: 1120 N Street Sacramento, CA 95814	Address: 900 Canterbury Place, Suite 330 Escondido, CA 92025
Phone: 916-653-3348	Phone: 760-741-5518
Fax: 916-654-5881	Fax: 760-741-5617
e-mail: ray.tritt@dot.ca.gov	e-mail: rob@vms-inc.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.

EXHIBIT A
SCOPE OF WORK AND DELIVERABLES

2. In the event the Consultant fails to keep in effect at all times all required license(s) and permit(s), Caltrans may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

II. TASK ORDER

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

EXHIBIT A
SCOPE OF WORK AND DELIVERABLES

will be made for any work performed prior to approval or after the period of performance of the Task Order.

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

III. CONSULTANT REPORTS AND/OR MEETINGS

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

EXHIBIT A
SCOPE OF WORK AND DELIVERABLES

- 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. 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>.
- D. Progress payments:
1. Progress payments will be made monthly in arrears based on services provided at specific hourly rates and allowable direct cost incurred for Task Orders negotiated with specific rates of compensation. Progress payments for Firm Fixed Price Task Orders will be based on the percentage of work completed.
 2. To determine allowable incurred Subconsultant costs that are eligible for reimbursement, in addition to reimbursement for actual costs that are incurred, Caltrans will allow Subconsultant costs that are treated by the Consultant as accrued due to such costs having been billed to the Consultant and recognized by the Consultant and Caltrans as valid, undisputed, due and payable.
 3. By submitting accrued but unpaid Subconsultant costs for reimbursement, the Consultant agrees that within ten (10) days of receipt of reimbursement, the full amount submitted as a reimbursable accrued Subconsultant cost shall be paid to the Subconsultant.
- E. The Consultant shall not commence performance nor will payment be made for any work performed prior to approval of this Agreement by the State and written notification to proceed has been issued by the Caltrans

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

Contract Manager, nor will any payment be made for work performed after the expiration date of this Agreement.

- F. 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.
- G. 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.
- H. The sample invoice format can be found at <http://caltrans-opac.ca.gov/aeinfo.htm>. Invoices shall reference this Agreement number, project title, and Task Order number. Invoices shall be submitted no later than 45 calendar days after completion of each billing period. Any credit, as provided under this Agreement, due Caltrans must be reimbursed by the Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to the Caltrans Contract Manager or Consultant Service Unit at the following address:
- DEPARTMENT OF TRANSPORTATION
Attention: Ray Tritt
Division of Design/Office of Special Projects, MS 28
1120 N Street
Sacramento, CA 95814
- I. 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 also be lost if not expended within specified time

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

frames. 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.

- J. 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.
- K. Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.
- L. The total amount payable by Caltrans, for all Task Orders resulting from this Agreement, shall not exceed **\$2,500,000.00**. It is understood and agreed that this total is an estimate, and that the actual amount of work requested by Caltrans may be less. There is no guarantee, either expressed or implied, as to the actual dollar amount that will be authorized under this Agreement through Task Orders. In no event shall Task Orders be issued that will exceed this maximum.
- M. 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.
- N. Prime Consultant's Indirect Cost Rates (ICR) indicated in Attachment 2, Cost Proposal, are based on 48 CFR, Part 31.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

- O. Caltrans, at its sole discretion, may review and/or audit and approve either the Independent CPA's ICR documentation for the Consultant, or the Consultant's and/or Subconsultants' in-house developed ICRs at any time before the execution of this Agreement, while this Agreement is in effect, or after expiration of this Agreement up to the time limit set forth in Exhibit D, section XII, Retention of Records/Audits.
- P. Limitations: Use of the rate(s) contained in this Agreement is subject to any statutory or administrative limitations and is applicable to a given contract only to the extent that funds are available. Acceptance of the rate(s) agreed to herein is predicated upon the following conditions:
1. That no costs other than those incurred by the Consultant or allocated to the Consultant were included in its indirect cost pool as finally accepted and that such costs are legal obligations of the Consultant and allowable under the governing cost principles.
 2. That the same costs that have been treated as indirect costs have not been claimed as direct costs.
 3. That similar types of costs have been accorded consistent accounting treatment to all clients (state, federal, local government, commercial/private) under similar circumstances, and
 4. That the information provided by the Consultant which was used as a basis for acceptance of the rate(s) agreed to herein is not subsequently found to be materially inaccurate.

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

- Q. At the discretion of Caltrans, the indirect cost rate(s) and related Independent CPA workpapers may be reviewed by Caltrans Division of Audits & Investigations (A&I) to verify the accuracy and the CPA's compliance with 48 CFR, Part 31 and related laws and regulations,

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

compliance with Government Auditing Standards, and to determine if the audit report format is acceptable.

- R. 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.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx>.

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, any Subconsultant, and by extension, the Consultant's Independent CPA, 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. The Consultant shall include the nondiscrimination and compliance provisions of this clause in all subagreements to perform work under this Agreement.

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

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, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the Agreement including, but not limited to, the costs of administering the Agreement. All parties, including the Consultant's Independent CPA, shall make such workpapers and 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, Subconsultants, and the Consultant's Independent CPA, that are pertinent to the Agreement for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.
- B. Any subagreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all the provisions of this clause.

XIII. SUBCONTRACTING

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any Subconsultants, and no subagreement shall relieve the Consultant of its responsibilities and obligations hereunder. The Consultant agrees to be as fully responsible to the State for the acts and omissions of its Subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Consultant. The Consultant's obligation to pay its Subconsultants is an independent obligation from the State's obligation to make payments to the Consultant.
- B. The Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work shall be

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

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 Caltrans Contract Manager, three (3) competitive quotations must be submitted with the request or the absence of bidding must be adequately justified.
- C. The Consultant shall maintain an inventory record for each piece of non-expendable equipment purchased or built with funds provided under the terms of this Agreement. The inventory record of each piece of such equipment shall include the date acquired, total cost, serial number, model identification (on purchased equipment), and any other information or description necessary to identify said equipment. Non-expendable equipment so inventoried are those items of equipment that have a normal life expectancy of one (1) year or more and an approximate unit price of \$5,000.00 or more. In addition, theft-sensitive items of equipment costing less than \$5,000.00 shall be inventoried. A

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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.
- 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

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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.

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.

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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

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

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shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.

5. Professional Liability insurance with limits no less than:

\$1,000,000 per claim

\$2,000,000 in the aggregate

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

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- 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.
- 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

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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 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

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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 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

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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.

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.

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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.
- 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 DEPARTMENT'S 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

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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.
- 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.

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

XXII. 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 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.

XXIII. 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.

XXIV. 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.

XXV. 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;

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3. Does not have a proposed debarment pending; and
 4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to Caltrans. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining bidder responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

XXVI. 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.

XXVII. 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

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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.

XXVIII. PROHIBITION OF EXPENDING STATE OR FEDERAL FUNDS FOR LOBBYING

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

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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.

XXIX. 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.

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- 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 Consultant's code of business ethics and conduct and the special requirements of Government contracting.
 - (2) An internal reporting mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports;
 - (3) Internal and/or external audits, as appropriate; and
 - (4) Disciplinary action for improper conduct.

D. Subcontracts

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

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

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ADDITIONAL PROVISIONS

DISABLED VETERANS BUSINESS ENTERPRISE (DVBE)
PARTICIPATION WITH GOALS

A. The Consultant has complied with the requirements of Public Contract Code Section 10115 et. seq. The DVBE participation commitment for this Agreement is ten percent (10%) of the Agreement amount. Participation by DVBE Prime and Subconsultants shall be in accordance with the information contained in the Bidder/Proposer DVBE information Form STD 840 attached to and made a part hereof.

B. Substitutions of DVBE's

The Consultant must use the DVBE Subconsultants and/or suppliers contained in the solicitation response to Caltrans, unless a substitution has been preapproved in writing by the Caltrans Contract Manager. No substitutions are to be made without receipt of prior written approval from the Caltrans Contract Manager. Failure to obtain approval of substitute Consultants before work is performed, supplies are delivered or services are rendered may result in payment being denied by Caltrans.

C. At a minimum, the Consultant's substitution request must include:

1. A written explanation of the substitution reason; and if applicable, the Consultant must also include the reason a non-DVBE Subconsultant is proposed for use.
2. The Consultant must also include a written description of the substitute business enterprise; include their business status as a sole proprietorship, partnership, corporation, or other entity, and the firm's DVBE certification status, if any.
3. A written notice detailing a clearly defined portion of the work identified both as a task and as a percentage share/dollar amount of this overall Agreement that the substitute firm will perform.

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ADDITIONAL PROVISIONS

- D. Prior to the approval of the Prime Consultant's substitution request, the Caltrans Contract Manager must give a written notice to the Subconsultant being substituted by the Prime Consultant. A copy of the notice sent by the Caltrans Contract Manager must be forwarded to the Contracts Office. The notice must give the following:
1. Give the reason the Prime Consultant is requesting substitution of the listed Subconsultant;
 2. Give the listed Subconsultant five (5) working days within which to submit written objections to the Caltrans Contract Manager and a copy to the Contract Office (DPAC).
 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. The notice shall be served by certified or registered mail to the last known address of the listed Subconsultant.
- E. If written objections are filed by the listed Consultant, the Contracts Office will render a written decision.
- F. Caltrans may consent to the substitution of another Subconsultant in any of the following situations:
1. When the listed Subconsultant becomes bankrupt, insolvent, or goes out of business.
 2. When the listed Subconsultant fails or refuses to perform his or her subagreement.
 3. When the listed Subconsultant is not licensed pursuant to any applicable licensing requirement of any regulatory agency of the State of California.
 4. When Caltrans or the Caltrans Contract Manager determines that the work performed by the listed Subconsultant is substantially unsatisfactory and not in substantial accordance with the plans and specifications,

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Agreement requirements, or that the Subconsultant is substantially delaying or disrupting the progress of the work.

5. DVBE's substituted after award must be certified at the time of the substitution.
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- G. The request for substitution and Caltrans' approval or disapproval is not to be construed as an excuse for non-compliance with any other provision of law, including but not limited to, the subletting and subcontracting Fair Practices Act (Section 4100 et. seq. of the Public Contract Code) or any other Agreement requirements relating to the substitution of Subconsultants. Failure to adhere to the DVBE participation in the performance of this Agreement may be cause for Agreement termination and recovery of damages under the rights and remedies due Caltrans.
 - H. Any DVBE firm acting/working under subcontract must be responsible for providing materials, supplies, equipment, or services and must carry out its responsibility by actually performing, managing, or supervising the work involved that is normal for its business services and functions.
 - I. The Consultant shall maintain records of all subagreements entered into with DVBE Subconsultants including records of materials purchased from DVBE suppliers. Such records shall show the name and address of each DVBE Subconsultant or supplier and the total dollar amount paid to each one. Upon completion of this Agreement, a summary of these records shall be prepared and certified correct by the Consultant or his authorized representative and the summary shall be furnished to the Caltrans Contract Manager.

Scope of Work/Deliverables

A. Description of Required Services

The Consultant, on an as-needed basis, shall perform or assist in the performance of Value Analysis (VA) studies on process and product evaluation activities within California Department of Transportation (Caltrans), in the statewide dissemination of information regarding the Value Analysis (VA) methodology, policies and practices within Caltrans, and the facilitation of meetings initiated by Caltrans headquarters Division of Design (DOD) for the purpose of updating transportation design policies and procedures.

Specific duties will be assigned to the Consultant through the issuance of Task Orders by the Caltrans Contract Manager. Task Orders shall be reviewed by Caltrans Department of Procurement and Contracts. The subject matter of Task Orders may include, but are not limited to the following:

1. Perform a VA study on process and product evaluation activities related to Caltrans business practices and document the VA study findings. These reports are to be organized and conducted in accordance with those standards and procedures identified in Caltrans VA Program and available on Caltrans Internet site www.dot.ca.gov/hq/oppd/value and as described in the task order. Typically value analysis study reports consist of preliminary, final and closeout reports.
2. Perform or assist in the performance of process improvement activities related to Caltrans' VA studies.
3. Provide all materials and equipment necessary including a meeting room, ancillary facilities and incidentals, as required to optimally perform each VA study.
4. Provide or assist Caltrans to disseminate information to statewide personnel regarding VA practices, process improvements, policy improvements, or product recommendations on an as-needed basis. The information would involve VA Study methodologies and best practices in Caltrans.
5. Provide or assist Caltrans to provide meeting facilitation for the purpose of updating design policies and practices for Caltrans transportation projects. These activities will include, but not limited to, providing agendas, documenting meetings and follow-up action items, developing consensus, gathering internal and external information, interpreting the information, and/or developing implementation plans from the outcome of the meetings. The following sections provide additional "Work Detail" for this task.

In order to ensure that the policies and guidance owned by the DOD are successfully investigated, analyzed, negotiated and the decisions documented regarding the interpretation and implementation, the DOD requires the services of a consultant to provide facilitation services to:

- A. Investigate and document the policies and guidance owned by the DOD in regards to:
 - i. How they are included in existing Caltrans publications including, but not limited to: Project Development Procedures Manual, Highway Design Manual, Workflow Task Manual, Construction Manual, Right of Way Manual, Traffic Manual, and other design related manuals.
 - ii. How districts are implementing said policies and the implementation variance.
 - iii. How local agencies, resource agencies and regulatory agencies recommend that these policies should be implemented

- B. Organize and document the data gathered in Item A above.
 - i. Policies will require different levels of involvement of several headquarters divisions and districts.
 - ii. The consultant shall:
 - Analyze or assist in the analysis of the data to assist in the development of consensus in the interpretation and implementation of these design policies.
 - Document consensus with various stakeholders.
 - Help schedule meetings and locate meeting rooms
 - Have multiple individuals available to develop consensus should it be desirable to work on multiple policies concurrently.
 - Assists the Caltrans Contract Manager and Caltrans Task Manager to determine the Caltrans management, HQ divisions and district level of participation in consensus development of interpretation and implementation of individual policies.

- C. Develop a process to ensure consensus in the interpretation and implementation of future Division of Design policies. The process needs to be able to obtain complete buy-in from stakeholders of the interpretation and implementation of policies.

B. Value Analysis Standards

1. For the purpose of this Agreement, Value Analysis is a function-oriented, systematic team approach, used to analyze and improve value in a project, product or process. It is a powerful methodology for solving

problems and/or reducing costs while improving performance/quality requirements.

2. All work under this contract shall be performed in accordance with the Caltrans' policies, procedures, manuals and standards including compliance with Federal Highway Administration (FHWA) VA requirements.
3. The Value Analysis studies are to be conducted and organized in accordance with the standards and procedures identified in the State's VA Program and available on Caltrans Internet site www.dot.ca.gov/hq/oppd/value.

C. Deliverables

1. The Consultant shall provide the VA study for each Task Order in close liaison with Caltrans. Caltrans will exercise review and approval functions through the Caltrans Contract Manager at key points in the production of each Task Order deliverable.
2. Deliverables shall be described with specificity in each Task Order, and may include, but not be limited to, Final and Preliminary reports detailing the proceeding findings and recommendations for each study performed under this Contract. Said report shall be delivered to Caltrans in final form within a time period stipulated in each Task Order. All deliverables must follow the guidelines specified in the Caltrans VA Team Leader available on the Caltrans Internet site www.dot.ca.gov/hq/oppd/value, unless modified in the Task Order.
3. The Consultant shall have a quality control / quality assurance plan in effect during the entire time that it is performing work under this Agreement. Consultant quality control / quality assurance plan shall be adequate to ensure accurate VA study documentation. The Consultant shall provide an outline of its quality control / quality assurance plan and shall identify critical quality control reviews within each Task Order deliverable schedule.

D. Personnel

1. The Consultant shall, throughout the life of the Agreement retain within the Consultant's firm, or through sub-consultants, a staff of people who are qualified to perform each of the tasks that are listed in the Task Orders cost proposal. The Consultant's personnel shall be capable of performing their work with minimal instructions.
2. The Consultant shall not alter the originally proposed staff and project organization without prior written approval from Caltrans' Contract Manager.

3. The Consultant shall provide a Project Manager to coordinate the Consultant's operations under the Agreement. The Consultant's Project Manager shall be accessible to Caltrans' Contract Manager at all times during Caltrans' normal working hours. The Consultant's Project Manager shall be responsible for all matters that are related to the Consultant's personnel and operations including but not limited to:
 - a. Review, monitor, train and direct Consultant's personnel.
 - b. Assign qualified personnel to perform Task Order work.
 - c. Administer personnel actions.
4. Consultant team shall include qualified individuals with Certified Value Specialist (CVS) certifications to serve as team leaders on Value Analysis studies as specified by Task Order. A CVS certification must be a current certification issued by Society of American Value Engineers (SAVE) International.
5. The Prime Consultant must provide and maintain a minimum of two (2) employees with current CVS certifications. Furthermore, the prime consultant must provide and maintain a minimum of four (4) individuals with CVS certifications either as direct employees or as employees of the prime consultant's subcontractor/s.
6. Consultant team shall include, but not limited to, additional qualified subject matter experts (SME) VA team members in areas of construction management, construction materials expert, hydraulics engineering, environmental engineering, biological engineering, geotechnical engineering, traffic engineering, traffic modeling, structural engineering, landscape architect, cost estimating engineer, or risk analysis/management professionals. This may necessitate securing the services of persons with a minimum of 10 years experience currently employed by the Consultant or subconsultants. The following professional licenses are required, but not limited to:
 - a. Registered Professional Engineer in State of California
 - b. Registered Geologist in State of California
 - c. Registered Landscape Architect in State of California
 - d. Registered Traffic Engineer in State of California
 - e. Registered Structural Engineer in State of California

E. Conflict Of Interest

Any person, firm or subsidiary thereof who may provide, has provided, or is currently providing design engineering services and/or construction engineering services under a contractual relationship with a construction contractor(s) on any task order made under this Agreement must disclose the contractual relationship,

the dates and the nature of the services (either actually provided or potentially to be provided).

For each task order, the Consultant must disclose any and all services provided by the Consultant to Caltrans and all Consultant clients which either actually or potentially may be provided to Caltrans under the contract(s) under any task order.

Throughout the Agreement term, Consultant will ensure that Consultant and its subconsultants will, prior to providing any engineering services to any construction contractor on any of the Caltrans task orders made under this Agreement, disclose all actual and potential business relationships between the Consultant and subconsultants, the mitigation efforts to eliminate conflict of interest, and the results of such efforts. Consultant may submit a written request seeking Caltrans' consent to render the engineering services. The written request will be granted only if Caltrans determined that there is no actual conflict of interest, the potential conflict of interest is permissible under State law and it will not affect the effectiveness, quality or price of the services, or the effect of the actual or potential conflict of interest can be effectively mitigated in accordance with State law and there is no other commercially reasonable option available to Caltrans.

A conflict of interest includes situations in which, during the term of the Agreement, the Consultant and/or its subconsultants provides engineering services to a construction contractor who is awarded a contract with Caltrans on a project for which there is an assigned Task Order under awarded Agreement. In this situation, the Consultant must immediately notify the Caltrans Contract Manager regarding the conflict. The Contract Manager will then terminate the Task Order involving the conflict of interest and Caltrans may obtain the services at issue in any way allowed by law. Failure by the Consultant to notify the Caltrans Contract Manager is grounds for termination of the contract for default. The Consultant and its subconsultants have not, currently do not and will not provide design engineering services (including lead project management services and claim services) on the same Caltrans project(s) identified in any task order.

All construction management deliverables including construction inspection produced by the Consultant and its subconsultants shall be free of any actual or potential conflict of interest and shall be subject to the approval and acceptance by the Caltrans Contract Manager.

In the event of non-acceptance due to discovery of conflict of interest, the Consultant shall provide replacement deliverables (at its sole cost and expense) free of any conflict of interest as a prerequisite for receipt of payment and at no additional cost to Caltrans. In the event the Consultant is unable to provide replacement deliverables, the Consultant shall not receive compensation for the deliverables containing the conflict of interest. If work is later determined to contain a conflict of interest, either the Consultant shall reimburse Caltrans for any amount paid for the conflicted work or Caltrans may deduct that payment

from any current or future amounts owed to the Consultants. Failure by the Consultant to disclose any conflict of interest to the Caltrans Contract Manager is grounds for termination of the contract for default.

F. Standard Of Care

Consultant represents that it possesses all necessary training, licenses and permits to perform the Scope of Work, and that its performance of the Scope of work will conform to the standards listed above or if no Standards listed, will conform to the standards of practice of a professional having experience and expertise in performing professional services of like nature and complexity of this Agreement's Scope of Work, working on similar, successfully completed projects per defined requirements in the contracts for the similar projects. If the Consultant is familiar with standards or practices that exceed any standards set forth in this Agreement, the Consultant shall inform the Caltrans Contract Manager of the better standard or practice. The Caltrans Contract Manager, in his/her sole discretion, shall decide whether to adopt the recommended standard or practice in performance of the Scope of Work under this Agreement.

G. Task Order

1. Specific projects will be assigned by the Caltrans Contract Manager to the Consultant through issuance of Task Orders describing in detail the services to be performed. Caltrans shall provide to the Consultant electronic templates of Task Order formats and required standard provisions.
2. After a project to be performed under this Agreement is identified by Caltrans, Caltrans shall prepare a draft Task Order and a separate cost estimate. The draft Task Order will identify (with specificity):
 - I. the purpose or goal of the Task Order, including the duties (if any) that is identified with Caltrans work breakdown system (WBS) activity codes;
 - II. the scope of services;
 - III. the expected results;
 - IV. the project deliverables;
 - V. the performance criteria or performance tests for the services (which demonstrate that the project deliverables satisfy the purpose or goal of the Task Order);
 - VI. the performance schedule, the Task Order term, or project schedule, and due dates for milestones/deliverables;

- VII. any milestone or tollgate deliverables (such as, but not be necessarily limited to, any deliverables that shall be delivered and accepted prior to subsequent work being performed);
 - VIII. and identification of the following information: contract number, name of the Caltrans Contract Manager, Task Order Number, and name of Requester).
3. Task Order Assignment Process:
- I. The draft Task Order will be delivered to the Consultant for review. The Task Order shall identify the Caltrans Contract Manager. The Consultant shall return the draft Task Order to the Caltrans Contract Manager within no more than three (3) calendar days after receipt unless the time frame is extended by the Caltrans Contract Manager. The draft Task Order returned to Caltrans shall clarify the purpose or goal, deliverables, expected results, and project schedule, or other items.
 - II. The Consultant will also provide a cost estimate, and the cost estimate shall be in the format prescribed in the draft Task Order.
 - III. Task Orders may be negotiated 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.
 - IV. 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 this Agreement. Task Orders are not valid until approved by Caltrans and subsequently signed by both parties. No payment will be due or made for any work performed on an unsigned Task Order, and Caltrans shall not pay for any work described on the unsigned Task Order.
 - V. Once the parties reach agreement, each Task Order shall be signed first by the Consultant Contract Manager, and subsequently, by the Caltrans' Functional Manager and Caltrans Contract Manager.
4. 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.
5. 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.

6. The total amount payable by Caltrans for an individual Task Order shall not exceed the amount set forth in the Task Order. Task Orders and/or Task Order Revisions require written agreement between the Consultant and Caltrans.
7. Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement.
8. At the Caltrans Contract Manager's direction, the Caltrans Task Order Manager shall assist the Caltrans Contract Manager in monitoring and verification of Consultant's performance and deliverables. The Caltrans Contract Manager shall have the ultimate responsibility and authority to verify Consultant's performance cost, schedule and deliverable.

H. General Requirements

1. For each Task Order, the Consultant shall carry out instructions as received from the Caltrans Contract Manager, and as directed by Caltrans, shall coordinate activities and work closely with multiple stakeholders including, but not be necessarily limited to, Caltrans' various functional units, Caltrans' project managers, local agencies, other state agencies, other agencies, other entities with an interest in the project, other consultants, other contractors, and firms (and its suppliers and subcontractors) contracted by Caltrans working on the same projects or adjacent projects. In the event an instruction or direction is unclear to the Consultant, the Consultant shall ask the Caltrans Contract Manager to clarify the instruction or direction. The work is a critical element of project planning and construction schedules and shall be accomplished in a timely fashion.
2. It is not the intent of the foregoing paragraph to relieve the Consultant of professional responsibility during the performance of this Agreement. In instances where the Consultant believes a better standard solution to a task being performed or a issue being addressed is possible, the Consultant shall promptly notify the Caltrans Contract Manager of these concerns, together with the reasons therefore. However, Caltrans shall make all final decisions on the scope of the Consultant's activities and investigations.
3. The Consultant's timesheet/expenses shall be approved by the Caltrans Contract Manager before submitting timesheets or expense reimbursement requests for payment.
4. Consultant has total responsibility for and shall verify the accuracy and completeness of the analytical results, plans, designs, specifications, estimates, notes, calculations, analysis, reports, graphics, drawings, visual simulations, studies, deliverables, backup documents, other documents, and other items required by this Agreement prepared by the

Consultant for the projects as specified in this Agreement and in each Task Order. The analytical results, plans, designs, specifications, estimates, notes, calculations, analysis, reports, graphics, drawings, visual simulations, studies, deliverables, backup documents, other documents, and other items required by this Agreement are subject to Caltrans' review, approval, and acceptance. The responsibility for accuracy and completeness of such items remains solely that of the Consultant.

5. The Caltrans Contract Manager shall address all questions which may arise as to the quality or acceptability of deliverables furnished and work performed for this Agreement.
6. The Consultant shall only provide incidental non-Architectural and Engineering (A&E) services, such as meeting support, provided (a) such services are necessary for the completion of the A&E tasks and/or deliverables performed by the Consultant described in executed Task Orders and covered by the work in this Agreement and (b) the rendering of the services is approved in advance by the Caltrans Contract Manager. These incidental services shall only be provided to support the Consultant's personnel who are performing A&E services, tasks, and deliverables on this Agreement. The Consultant shall not be paid or reimbursed for any incidental non-A&E services provided to Caltrans unless provided in the fashion described in this Agreement and included in the executed Task Order. The Consultant is responsible for ensuring that Task Orders include any incidental non-A&E services. Services to train Caltrans personnel shall not be provided by the Consultant under this Agreement.
7. The Consultant may not disclose any information to third parties without prior written approval of the Caltrans Contract Manager.
8. The Consultant shall include the Caltrans Contract Manager in written communications to other Caltrans personnel for any clarification on the scope of work.
9. The Consultant shall obtain the Caltrans Contract Manager's approval prior to making presentations at non-Caltrans sponsored conferences or workshops for any services provided under this Agreement.
10. The Consultant shall notify the Caltrans Contract Manager or designee in writing a minimum one (1) week before it begins any field work, unless the Task Order specifies some other notification date.
11. **Materials Provided by Caltrans**
Caltrans shall provide the Consultant study material such as as-built plan sheets, project reports, or other similar project related data, necessary to

complete a Task Order. The Consultant shall execute the specific work described in the Task Order based on the material supplied.

12. Materials Provided by Consultant

Unless otherwise specified herein or in the Task Order, the Consultant shall provide all materials to complete the required work.