STATE OF CALIFORNIA

Department Of Transportation

STANDARD AGREEMENT

STD 213 (rev 9/01)

Division Of Procurement And Contracts (DPAC) A&E Boiler Revision Date 4/26/16

AGREEMENT NUMBER	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

(Hereinafter referred to as "the Consultant")

2. The term of this Agreement is from or upon Caltrans approval, whichever is later, through .

3. The maximum amount of this Agreement is:

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	9	Pages
Exhibit B – Budget Detail And Payment Provisions	9	Pages
Exhibit C* – General Terms And Conditions 610 (GTC 610)	1	Page
Exhibit D – Special Terms And Conditions	28	Pages
Exhibit E – Additional Provisions	11	Pages
Exhibit F – Prevailing Wage Requirements	8	Pages
Attachment 1 – Scope Of Work		Pages
Attachment 2 – Cost Proposal		Pages
Attachment 3 – Sample Task Order Format		Pages
Attachment 4 – DBE Participation (form ADM-0227F A&E) Delete if not applicable or revise.		Pages
Attachment 5 – Disadvantaged Business Enterprises Utilization Report (form ADM-3069)		Pages

Items shown with an Asterisk (*) are hereby incorporated by reference and made part of this Agreement as if attached hereto. These documents can be viewed at http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx

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

CONTRACTOR (herein referred to as "the Consultant")

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

BY *(Authorized Signature)*

DATE SIGNED *(Do not type)*

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

STATE OF CALIFORNIA

AGENCY NAME

Department of Transportation

BY *(Authorized Signature)*

DATE SIGNED *(Do not type)*

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

California Department of General Services Use Only

☐ Exempt per:

1727 30th Street, MS 65
Sacramento, CA 95816

EXHIBIT A
SCOPE OF WORK AND DELIVERABLES

I. SCOPE OF WORK

Note to the analyst. If writing this Agreement from an RFQ, insert a brief overview/introduction of services to be provided by contract manager. Revise as needed.

A. The work to be performed under this Agreement is described in Attachment 1.

B. The services shall be performed at (location).

C. CONFLICT OF INTEREST SUPPORT WORK

1. For services in which the Consultant cannot perform the work free of conflict of interest as defined in this Agreement, the Consultant agrees that Caltrans may obtain these services from another qualified Consultant, whose contract includes the same scope of work, or in any other manner permitted by law.

2. Caltrans may require the Consultant to perform work as described herein but located outside the geographic limits of this Agreement when the consultant contractor for another Caltrans District cannot perform the work free of conflict of interest. For such work, Caltrans will select a consultant to perform the same work by assignment of a Task Order in the following order of priority:

   a. The consultant contract covers the same District, but not the same geographic area as this Agreement;

   b. The consultant contract covers the closest area geographically to the geographic jurisdiction of this Agreement;

   c. The consultant contract covers the next closest area geographically to the geographic jurisdiction of this Agreement; and so on.

3. Should the consultant for priority number 1 not exist or be unable to perform the work free of conflict of interest, then Caltrans shall select the consultant for priority number 2 to perform the work, and so on.

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D. This Agreement will commence on 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 . The services shall be provided during (time frame i.e., working hours, Monday through Friday, except holidays). 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:

Use the consultant's physical address, not P.O.box.

THE DEPARTMENT	THE CONSULTANT
Caltrans Contract Manager:	Consultant Contract Manager:
District/Division:	Office/Branch:
Address:	Address:
Phone:	Phone:
Fax:	Fax:
e-mail:	e-mail:

F. Work Guarantee

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

G. Licenses and Permits

1. The Consultant shall obtain at its expense all license(s) and permit(s) required by law for accomplishing any work required in connection with this Agreement.

2. In the event the Consultant fails to keep in effect at all times all required license(s) and permit(s), Caltrans may, in addition to any

EXHIBIT A
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other remedies it may have, terminate this Agreement upon occurrence of such event.

II. TASK ORDER

A. 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. 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, and a separate cost estimate. The draft Task Order will identify (with specificity):

1. The purpose or goal of the Task Order, including the duties (if any) that are identified with Caltrans Work Breakdown System/Work Breakdown Structure (WBS) activity codes.

2. The scope of services.

3. The expected results.

4. The project deliverables.

5. The performance criteria or performance tests for the services (which demonstrate that the project deliverables and schedule to submit deliverables satisfy the purpose or goal of the Task Order).

6. The performance period, the Task Order term, project schedule, and/or due dates for milestones/deliverables.

7. Any milestone or tollgate deliverables (including, but not limited to, any deliverables that shall be delivered and accepted prior to subsequent work being performed).

8. The Contract Number, the Caltrans Contract Manager, the Task Order Number, the Caltrans Project Coordinator, and the Requestor.

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C. Task Order Assignment Process:

1. The draft Task Order will be delivered to the Consultant for review. 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.

2. The Consultant shall also provide a cost estimate, including, at a minimum, the names of the individuals proposed for work on the individual tasks, the individuals' classifications, the duties the individuals shall perform along with the Caltrans activity codes (WBS) for such duties, a written estimate of the number of hours per staff person under each duty or activity, any anticipated reimbursable expenses, an estimate of DBE or DVBE utilization under each individual task, and total dollar amount, which shall be based on rates in the Consultant's Cost Proposal, Attachment 2. The Consultant agrees that each cost estimate shall be the product of a good faith effort exercise of engineering judgment. The schedule for Task Orders shall be identified in the Task Order. No Task Order will be written with a term that extends beyond the expiration date of this Agreement.

3. 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.

4. After agreement has been reached on the Task Order items, the finalized Task Order shall be signed by both Caltrans and the Consultant. If Caltrans and the Consultant are unable to reach agreement, Caltrans may terminate this Agreement in accordance with the provisions of Exhibit D, section III, Termination. Task Orders are not valid until approved by Caltrans and subsequently signed by both parties. No payment shall 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.

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5. Once the parties reach agreement, each Task Order shall be signed first by the Consultant Contract Manager, and subsequently, by the Caltrans Contract Manager, the Caltrans Functional Manager, and the Caltrans Task Order Manager. A Task Order is of no force or effect until returned to Caltrans and signed by an authorized representative of Caltrans.

D. The Consultant shall only perform work that is authorized and described in a written Task Order that has been signed by the parties and approved by 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. No payment will be made for any work performed prior to approval or after the expiration date of the Task Order.

E. 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.

F. 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 amendments require written agreement by the Consultant and Caltrans and approval by the Caltrans Contract Manager.

G. 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.

H. Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement.

I. All personnel to be used in the Task Order (by name or job classification) shall only be individuals identified in the Consultant's Cost Proposal unless a substitution of personnel has been approved in advance by the Caltrans Contract Manager as set forth in the "General Requirements" section of Attachment 1.

J. At the Caltrans Contract Manager's direction, the Caltrans Task Order Manager shall assist the Caltrans Contract Manager in the monitoring

EXHIBIT A
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and verification of the Consultant's performance and deliverables. The Caltrans Contract Manager shall have the ultimate responsibility and authority to verify the Consultant's performance, cost, schedule, and deliverables, and verification that the acceptance and performance criteria and/or performance tests are satisfied. The Caltrans Contract Manager shall verify that the acceptance and performance criteria and/or performance tests are satisfied prior to written acceptance for payment.

K. The following items shall be included in Task Orders:

1. The Consultant employee's headquarters and/or primary residence as defined in the Caltrans Travel Guide shall be identified in the Task Order for travel purposes or for the purpose of determining appropriate travel reimbursement.

2. The Caltrans Contract Manager's prior written approval is required for all domestic or international travel.

L. The Consultant shall notify Caltrans at least forty-eight (48) hours before fieldwork is to begin, unless otherwise specified in the Task Order.

M. Schedule of Performance and Time Requirements/Task Order Schedules

1. Task Orders shall be issued and executed throughout the duration of this Agreement. Task Orders shall be completed in the timeframe identified in the Task Order and prior to the expiration of this Agreement.

2. Services and deliverables identified in a Task Order shall be completed and delivered in the time required by the respective Task Order and in accordance with the terms of this Agreement.

N. Additional standards related to the Scope of Work in this Agreement for specific work may be included in the Task Order. If such additional standards conflict with the standards specified in this Agreement, the standards specified in this Agreement shall prevail over the Task Order standards.

EXHIBIT A
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O. The Consultant shall make every effort to choose the most cost effective alternatives while performing the work under this Agreement. Utilizing the most cost-effective alternatives includes, but is not limited to, personnel assignments, overtime, travel, per diem and any reimbursable Other Direct Cost (ODC) items. Cost effectiveness without sacrificing quality is of paramount importance.

P. The Caltrans Contract Manager has the sole authority and responsibility to make and approve amendments and revisions to the Scope of Work, schedule, cost or deliverables in a Task Order.

III. CONSULTANT REPORTS AND/OR MEETINGS

Note: additional reporting requirements may be incorporated into this exhibit for the contract manager to meet the needs of the project oversight.

A. Monthly Progress Report

1. 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.

2. The Consultant shall submit a progress report for each Task Order to the Caltrans Contract Manager in coordination with the Caltrans Task Order Manager on or prior to the first (1st) day of each month during which the Task Order is active. The Caltrans Contract Manager may alter the submittal date of the report to coordinate with the Consultant's administrative processes. This report shall contain the following elements:

   a. Time frame of the reporting period.
   b. Work completed in the reporting period (activities and accomplishments).
   c. Work to be completed in the time period after the reporting period.

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d. Total amount of Task Order authority.
e. Expenditures in this progress report period.
f. Total expenditures to date.
g. Total expended but not yet invoiced to Caltrans.
h. Remaining Task Order authority.
i. For each milestone, task and deliverable:
   (1) The budgeted cost.
   (2) The actual cost to date.
   (3) The actual cost to date as a percent of the budgeted cost.
   (4) The percent of the milestone/task/deliverable that has been completed.
   (5) A schedule of Task Order milestones (including tollgate milestones), the current status of progress toward each milestone (including, but not limited to, on schedule, off schedule with correction in place, or out of schedule with no current correction), and a schedule of deliverables.
   (6) 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.
j. Projected travel costs for the time period after the reporting period with detail about the personnel involved, the purpose of the travel, location of travel and the cost.
k. Comments about other issues that may impact the Task Order's services (e.g. a staff shortage that may delay the timely completion of a deliverable) or cost.
l. If applicable, progress reports shall include actual DBE or DVBE participation on a monthly and cumulative basis.

3. When applicable, progress reports shall indicate an estimated percentage of work completed and a corresponding estimate of

EXHIBIT A
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budget spent for work deliverables. The estimate of work completion and budget spent shall be for the same time period.

4. Monthly Progress Reports shall cover the same time period as the monthly invoices.

B. Meetings

1. The Consultant's Contract Manager shall meet with the Caltrans Contract Manager, in person or via teleconference, a minimum of once per month or an "as needed" basis as determined by the Caltrans Contract Manager to review and discuss procedures and progress on the Agreement.

2. The Consultant Contract Manager shall be responsible for drafting of the minutes of the meetings and submitting them to the Caltrans Contract Manager within one (1) week of the meeting for review and comment. The Consultant Contract Manager shall distribute a final version of meeting minutes within two (2) calendar days of final approval. The minutes/notes shall indicate issues discussed and the resolution of issues and/or the required action items.

3. Project Coordination Meetings (focus meetings) may be called by Caltrans or the Consultant at any time that any party requires discussion of Project issues. The Consultant shall prepare the minutes of the meeting and submit them to Caltrans three (3) calendar days after the meeting.

4. Prior to completion of the Agreement, the Consultant shall hold a final meeting with the Caltrans Contract Manager to present findings, conclusions, and recommendations and shall submit a comprehensive final report on the Task Orders in the Agreement, as applicable.

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

OPTION 1: If Prevailing Wages DO NOT APPLY, use paragraphs A & B.

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

OPTION 2: If Prevailing Wages DO APPLY, use following four paragraphs.

A. The Consultant will be reimbursed for hours worked at the hourly rates specified in the Consultant's Cost Proposal, (See Attachment 2). The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.

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

C. Consultant shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. The Consultant is responsible for paying the appropriate rate, including escalations that take place during the term of the Agreement.

D. A mistake, inadvertence, or neglect by the Consultant in failing to pay the correct rates of prevailing wage will be remedied solely by the Consultant and will not, under any circumstances, be considered as the basis of a claim against Caltrans on the Agreement.

Use the following paragraphs in all Agreements.

E. In compliance with 49 CFR 26.37, revised on February 28, 2011, a Disadvantaged Business Enterprises Utilization Report (form ADM-3069) is required, as specified in this Agreement.

1. The Consultant shall submit a Disadvantaged Business Enterprises Utilization Report (form ADM-3069), Attachment 5, with each invoice. Also refer to Exhibit D, Special Terms and Conditions.

2. Failure to provide the Disadvantaged Business Enterprises Utilization Report (form ADM-3069) with the invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to

EXHIBIT B
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the Consultant when a satisfactory Disadvantaged Business Enterprises Utilization Report (form ADM-3069) is submitted to the Caltrans Contract Manager.

F. Transportation and subsistence costs to be reimbursed shall be the actual costs incurred, but not to exceed the rates stipulated in the "Caltrans Travel Guide, Consultant/Contractors Travel Policy." See http://www.dot.ca.gov/hq/asc/travel/ch12.htm. 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.

G. Progress payments:

1. Progress payments will be made monthly in arrears based on services provided at specific hourly rates and allowable direct cost incurred for Task Orders negotiated with specific rates of compensation. Progress payments for Firm Fixed Price Task Orders will be based on the percentage of work completed.

2. To determine allowable incurred Subconsultant costs that are eligible for reimbursement, in addition to reimbursement for actual costs that are incurred, Caltrans will allow Subconsultant costs that are treated by the Consultant as accrued due to such costs having been billed to the Consultant and recognized by the Consultant and Caltrans as valid, undisputed, due and payable.

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

H. The Consultant shall not commence performance nor will payment be made for any work performed prior to approval of this Agreement by State and written notification to proceed has been issued by the Caltrans Contract Manager, nor will any payment be made for work performed after the expiration date of this Agreement.

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I. The Consultant will be reimbursed in arrears for services satisfactorily rendered and approved by the Caltrans Contract Manager, as promptly as fiscal procedures will permit upon receipt by the Caltrans Contract Manager of itemized invoices in triplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order.

J. Invoices shall be submitted showing the Caltrans 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 in Attachment 1 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.

If Prevailing Wages DO APPLY, use the following paragraph.

K. When prevailing wage rates apply, the Consultant must submit with each invoice a certified copy of the payroll for compliance verification. Invoice payment will not be made until the payroll has been verified and the invoice approved by the Caltrans Contract Manager.

Use the following clauses in all agreements.

L. The sample invoice format can be found at http://www.dot.ca.gov/hq/dpac/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:

WRITE-IN REQUIRED

DEPARTMENT OF TRANSPORTATION

EXHIBIT B
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M. Task Orders will be encumbered with various types of funding. 49 CFR 18.23 requires that federal funds must be expended within 90 days of the expiration of the funding period. In addition, the encumbrances for state and local funds can be lost if not expended within specified time 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.

N. The final Task Order invoice shall state the final cost and all credits due Caltrans. The final invoice should be submitted within 60 calendar days after 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.

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

Write-in required

P. The total amount payable by Caltrans, for all Task Orders resulting from this Agreement, shall not exceed . It is understood and agreed that this total is an estimate, and that the actual amount of work requested by Caltrans may be less. There is no guarantee, either expressed or implied, as to the actual dollar amount that will be authorized under this Agreement through Task Orders. In no event shall Task Orders be issued that will exceed this maximum.

Q. Any written report prepared as a requirement of this Agreement shall contain, in a separate section of such written report, the number and dollar amounts of all agreements and subagreements relating to the

EXHIBIT B
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preparation of those reports if the combined costs for work by nonemployees of the State exceed $5,000.00.

R. Prime Consultant's Indirect Cost Rates (ICR) indicated in Attachment 2, Cost Proposal, are based on 48 CFR, Part 31.

Use the following paragraph in all agreements whose total value equals or exceeds $3.500.000. Delete the paragraph if the total value is less than $3,500,000.

S. Attachment 2, Cost Proposal, is subject to a Certified Public Accountant (CPA) Indirect Cost (Overhead) Audit Workpaper Review and/or audit. Caltrans, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. Attachment 2 shall be adjusted by the Consultant and approved by the Caltrans Contract Manager to conform to the Workpaper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the Consultant to incorporate the Workpaper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the Agreement terms and cause for termination of the Agreement, per Exhibit D, section III.

1. During a Caltrans' review of the indirect cost rate (ICR) audit workpapers created by a Consultant's independent CPA, Caltrans will work with the CPA and/or Consultant toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans identifies significant issues during the review and is unable to issue a cognizant approval letter, Caltrans will reimburse the Consultant at a provisional ICR until a FAR compliant ICR [e.g. 48 CFR, Part 31; GAGAS (Generally Accepted Audited Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the AASHTO Audit Guide; and other applicable procedures and guidelines] is received and approved by Caltrans. Provisional rates will be as follows:

    a. If the proposed rate is less than 150% - the provisional rate reimbursed will be 90% of the proposed rate.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

b. If the proposed rate is between 150% and 200% - the provisional rate reimbursed will be 85% of the proposed rate.

c. If the proposed rate is greater than 200% - the provisional rate reimbursed will be 75% of the proposed rate.

2. If Caltrans is unable to issue a cognizant approval letter per paragraph S.1. above, Caltrans may require Consultant to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. Caltrans will then have up to six (6) months to review the Consultant's and/or the independent CPA's revisions.

3. If the Consultant fails to comply with the provisions of this Section S, or if Caltrans is still unable to issue a cognizant approval letter after the revised independent CPA-audited ICR is submitted, overhead cost reimbursement will be limited to the provisional ICR that was established upon initial rejection of the ICR and set forth in paragraph S.1. above for all rendered services. In this event, this provisional ICR will become the actual and final ICR for reimbursement purposes under this Agreement.

4. The Consultant may submit to Caltrans a final invoice only when all of the following items have occurred: (1) Caltrans approves or rejects the original or revised independent CPA-audited ICR; (2) all work under this Agreement has been completed to the satisfaction of Caltrans; and, (3) Caltrans has issued its final ICR review letter. The Consultant must submit its final invoice to Caltrans no later than 60 days after occurrence of the last of these three items.

The provisional ICR will apply to this contract and all other contracts executed between Caltrans and the Consultant, either as a prime or subconsultant, with the same fiscal period ICR.

Use the remainingparagraphs/clause(s) of this Exhibit B in all agreements.

T. 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

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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.

U. 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.

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

W. 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.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

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 2, Code of Federal Regulations, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200).

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 2 CFR 200 are subject to repayment by the Consultant to Caltrans.

D. When a Consultant or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2, Code of Federal Regulations, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

E. 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.

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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.

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If this Agreement does not require submission of plans, specifications and estimates (PS&E), use paragraph C below and delete paragraph D below.

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.

If this Agreement requires submission of plans, specifications and estimates (PS&E), delete paragraph C above and use paragraph D below.

D. No later than 30 calendar days after Caltrans Contract Manager notifies the Consultant Contract Manager that all deliverables necessary to complete the plans, specifications and estimate (PS&E) have been completed, the Consultant may request review by the CCRC of unresolved 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.

Use paragraph E. below for all contracts.

E. 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.

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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.

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.

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V. CONSULTANT'S DELIVERABLES UNDER EARLY TERMINATION

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

VI. INVOICE SUBMITTAL UNDER EARLY TERMINATION

Separate final invoices for project-related costs and termination settlement costs shall be submitted no later than 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.

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VIII. COST PRINCIPLES UNDER EARLY TERMINATION

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

IX. DISPUTES UNDER EARLY TERMINATION CONDITIONS

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

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

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

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 deny the Agreement's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The Consultant shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

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B. The Consultant shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, § 12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code, §§ 11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article.

C. The Consultant shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than twenty four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Caltrans shall require to ascertain compliance with this clause.

D. 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.

E. Appendix A, relative to nondiscrimination on federally assisted projects, is attached hereto and made a part of this Agreement. (See the last three pages of this Exhibit D.)

F. The Consultant shall comply with the nondiscrimination program requirements of Title VI of the Civil Rights Act of 1964. Accordingly, 49 CFR Part 21 and 23 CFR Part 200 are applicable to this Agreement by reference.

G. The Consultant shall include the nondiscrimination and compliance provisions of this clause in all subagreements to perform work under this Agreement.

XII. RETENTION OF RECORD/AUDITS

A. For the purpose of determining compliance with Government Code Section 8546.7, the Consultant, Subconsultants, and Caltrans shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence

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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 subcontracted without written authorization by the Caltrans Contract Manager, except that which is expressly identified in the Consultant's Cost Proposal.

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C. Any subagreement in excess of $25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to Subconsultants unless otherwise noted.

D. Contractor shall pay its Subconsultants within ten (10) calendar days from receipt of each payment made to the Consultant by the State.

E. Any substitution of Subconsultants must be approved in writing by the Caltrans Contract Manager in advance of assigning work to a substitute Subconsultant.

XIV. EQUIPMENT PURCHASE

A. Prior authorization in writing by the Caltrans Contract Manager shall be required before the Consultant enters into any non-budgeted purchase order or subagreement exceeding $500.00 for supplies, equipment, or Consultant services. The Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.

B. For purchase of any item, service or consulting work not covered in the Consultant's Cost Proposal and exceeding $500.00, with prior authorization by the Contract Manager, three (3) competitive quotations must be submitted with the request or the absence of bidding must be adequately justified.

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

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D. Any equipment purchased by the Consultant will be returned to Caltrans at the end of this Agreement or, if not returned to Caltrans, it will be disposed of as agreed to by both parties. Both Caltrans and Consultant agree to comply with State Administrative Manual, Section 3520, Disposal of Surplus Personal Property, if Caltrans determines that Caltrans will not retain the equipment.

E. 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than $5,000.00 is credited to the project.

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

XV. INSPECTION OF WORK

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

XVI. SAFETY

A. The Consultant shall comply with OSHA regulations applicable to the Consultant regarding necessary safety equipment or procedures. The Consultant shall comply with safety instructions issued by the District Safety Officer and other State representatives. The Consultant's personnel shall wear white hard hats and orange safety vests at all times while working on the construction project site.

B. Pursuant to the authority contained in Section 591 of the Vehicle Code, Caltrans has determined that within such areas as are within the limits of the project and are open to public traffic, the Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. The Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

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C. The Consultant or Subconsultant(s) must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s) as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practice, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

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

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XVII. INSURANCE

Revised 5/7/12. Change limits for professional liability coverage as necessary. (See hidden text under B.5 below.) Discuss with the contract manager for other types of coverage that may be required, i.e. aircraft liability insurance, pollution liability, etc. For hazardous contracts, the DGS Office of Risk and Insurance Management, (DGS/ORIM) must approve the insurance certificate(s) prior to DGS legal approval. (Send a copy of the language below, the STD 215 and the insurance certificates for DGS/ORIM approval. Then forward DGS/ORIM approval to Jeanne Scherer, Caltrans Legal, for concurrence.)

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

B. Required Coverages and Limits:

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

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

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

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

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

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

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

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5. Professional Liability insurance with limits no less than:

   $1,000,000 per claim

   $2,000,000 in the aggregate for low to medium risk. Change amount to $4,000,000 for high risk.

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

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

C. The insurance above shall be maintained in effect at all times during the term of this Agreement. If the insurance expires during the term of the Agreement, a new certificate must be submitted to the Caltrans Contract Manager not less than ten (10) days prior to the expiration of insurance. Failure to maintain the required coverage shall be sufficient grounds for Caltrans to terminate this Agreement for cause, in addition to any other remedies Caltrans may have available. Inadequate or lack of insurance does not negate the Consultant's obligations under the Agreement.

D. The Consultant shall provide to the Caltrans Contract Manager within five (5) business days following receipt by Consultant a copy of any cancellation or non-renewal of insurance required by this Agreement. In the event Consultant fails to keep in effect at all times the specified insurance coverage, Caltrans may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of the Agreement.

E. Any required endorsements requested by Caltrans must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.

F. Any required insurance contained in this Agreement shall be primary and not in excess of or contributory to any other insurance carried by Caltrans.

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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.

If a PS&E is required in the scope of work, use the following section "DAMAGES DUE TO ERRORS AND OMISSIONS," paragraphs A through C. Otherwise remove and re-number sections. (fars, subpart 36.6)

XVIII. DAMAGES DUE TO ERRORS AND OMISSIONS

A. Architect-Engineer Consultants shall be responsible for the professional quality, technical accuracy, and coordination of all services required under this Agreement. A firm may be liable for Caltrans costs resulting from errors or deficiencies in designs furnished under its Agreement.

B. When a modification to a construction contract is required because of an error or deficiency in the services provided under this A&E Agreement, the Caltrans Contract Officer (with the advice of technical personnel and legal counsel) shall consider the extent to which the A&E Consultant may be reasonably liable.

C. The Caltrans Contract Officer shall enforce the liability and collect the amount due, if the recoverable cost will exceed the administrative cost involved or is otherwise in Caltrans' interest. The Caltrans Contract Officer shall include in the Agreement file a written statement of the reasons for the decision to recover or not to recover the costs from the firm.

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XIX. OWNERSHIP OF PROPRIETARY PROPERTY

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

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

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

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

A. Ownership of Work Product and Rights

1. Ownership of Work Product

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

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a Work Product created in the year 2014 would contain the copyright designation © 2014 California Department of Transportation.

2. Vesting of Copyright Rights

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

B. Inventions

1. Vesting of Patent Rights

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

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Caltrans' request and at Caltrans' expense, cause patent applications to be filed thereon, through solicitors designated by Caltrans, and shall sign all such applications over to Caltrans, its successors, and assigns. The Consultant, its employees and Consultant's Subcontractor shall give Caltrans and its solicitors all reasonable assistance in connection with the preparation and prosecution of any such patent applications and shall cause to be executed all such assignments or other instruments or documents as Caltrans may consider necessary or appropriate to carry out the intent on this Agreement.

2. Agency

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

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.

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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.

XX. 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

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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.

XXI. CLAIMS FILED BY CALTRANS CONSTRUCTION CONTRACTOR

A. If claims are filed by the Caltrans construction contractor relating to work performed by the Consultant's personnel and additional information or assistance from the Consultant's personnel is required in order to evaluate or defend against such claims, the Consultant agrees to make its personnel available for consultation with Caltrans construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

B. The Consultant's personnel that Caltrans considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from Caltrans. Consultation or testimony will be reimbursed at the same rates, including travel costs, that are being paid for the Consultant's personnel services under this Agreement.

C. Services of the Consultant's personnel in connection with Caltrans' construction contract claims will be performed pursuant to a written supplement, if necessary, extending the termination date of this Agreement in order to finally resolve the claims.

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.

XXII. 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.

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B. Permission to disclose information on one occasion or public hearing held by Caltrans relating to this Agreement shall not authorize the Consultant to further disclose such information or disseminate the same on any other occasion.

C. The Consultant shall not comment publicly to the press or any other media regarding this Agreement or Caltrans' actions on the same, except to Caltrans staff, Consultant's own personnel involved in the performance of this Agreement, at public hearings, or in response to questions from a Legislative committee.

D. The Consultant shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this Agreement without prior review of the contents thereof by Caltrans and receipt of Caltrans' written permission.

E. All information related to the construction estimate is confidential and shall not be disclosed by the Consultant to any entity, other than Caltrans.

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

XXVI. STANDARD OF CARE

Consultant represents that it possesses all necessary training, licenses, experience, and certifications to perform the Scope of Work, and shall perform all services in accordance with the degree of skill and care ordinarily used by competent practitioners of the same professional discipline under similar circumstances, and localities, taking into consideration the contemporary state of the practice and the project conditions.

XXVII. EVALUATION OF CONSULTANT

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

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XXVIII. STATEMENT OF COMPLIANCE

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

XXIX. DEBARMENT AND SUSPENSION CERTIFICATION

A. The Consultant's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the Consultant or any person associated therewith in the capacity of owner, partner, director, officer or manager:

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;

2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;

3. Does not have a proposed debarment pending; and

4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

B. Any exceptions to this certification must be disclosed to Caltrans. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining bidder responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

XXX. CONFLICT OF INTEREST

A. During the term of this Agreement, the Consultant shall disclose any financial, business, or other relationship with Caltrans or the California Transportation Commission that may have an impact upon the outcome of this Agreement or any ensuing Caltrans construction project. The

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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.

If PS&E is required, use paragraphs C & D below; otherwise delete them.

C. The Consultant hereby certifies that neither the Consultant nor any firm affiliated with the Consultant will bid on any construction contract or on any Agreement to provide construction inspection for any construction project resulting from this Agreement. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

D. Except for Subconsultants whose services are limited to providing surveying or materials testing information, no Subconsultant who has provided design services in connection with this Agreement shall be eligible to bid on any construction contract or on any Agreement to provide construction inspection for any construction project resulting from this Agreement.

If construction inspection is required, use the following two paragraphs; otherwise delete them.

E. The Consultant further certifies that neither the Consultant, nor any firm affiliated with the Consultant, will bid on any construction contract included within this Agreement. Additionally, the Consultant certifies that no person working under this Agreement is also employed by the construction contractor for any project included within this Agreement.

F. Except for Subconsultants whose services are limited to materials testing, no Subconsultant who is providing service on this Agreement shall have provided services on the design of any project included within this Agreement.

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Use the following paragraph in all agreements.

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

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

XXXI. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

The Consultant warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any state agency employee. For breach or violation of this warranty, Caltrans shall have the right, in its discretion, to terminate this Agreement without liability, to pay only for the value of the work actually performed, or to deduct from this Agreement price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

XXXII. PROHIBITION OF EXPENDING STATE OR FEDERAL FUNDS FOR LOBBYING

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

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

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Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal Agreement, grant, loan, or cooperative agreement, the Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000.00 and not more than $100,000.00 for each such failure.

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

XXXIII. Consultant Code of Business Ethics and Conduct (Dec. 2007)

A. Definition

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

B. Code of Business Ethics and Conduct

1. Within 30 calendar days after contract award, the Consultant shall:

   a. Have a written code of business ethics and conduct; and
   b. Provide a copy of the code to each employee engaged in performance of the contract.

2. The Consultant shall promote compliance with its code of business ethics and conduct.

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

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

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

D. Subcontracts

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

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

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STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION

APPENDIX A — FEDERAL FUNDING REQUIREMENTS

I. COMPLIANCE WITH REGULATIONS

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

II. NON-DISCRIMINATION

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

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

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

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IV. INFORMATION AND REPORTS

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

V. SANCTIONS FOR NONCOMPLIANCE

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

A. Withholding of payments to the Consultant under the Agreement until the Consultant complies, and/or

B. Cancellation, termination or suspension of the Agreement, in whole or in part.

VI. INCORPORATION OF PROVISIONS

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

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

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Rev. 7/16/12 DBE participation language for Agreements that are fully or partially funded with Federal Funds.

Use 1st section if no goals were advertised and no participation was committed. Use 2nd section if goals were advertised and/or committed.

I. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM PARTICIPATION WITHOUT GOALS

A. This Agreement is subject to Title 49, Code of Federal Regulations, Part 26 (49 CFR 26) entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," in the award and administration of federally assisted Agreements. The regulations in their entirety are incorporated by this reference and made part of this Agreement as if attached hereto.

B. There is no specific contract goal for DBE participation in this Agreement. However, the Consultant will still be required to submit a Disadvantaged Business Enterprises Utilization Report (form ADM-3069), Attachment 5, with each invoice (also refer to Exhibit B, Budget Detail and Payment Provisions).

C. It is the policy of Caltrans that DBEs, as defined in 49 CFR 26, shall be encouraged to participate in the performance of Agreements financed in whole or in part with federal funds to assist the State in meeting its federally mandated overall annual DBE goal. Consultant shall ensure that DBEs have an opportunity to participate in the performance of this Agreement and shall take all necessary and reasonable steps, as set forth in 49 CFR 26, for this assurance. Consultant shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Failure to carry out the requirements of this paragraph shall constitute a breach of Agreement and may result in termination of this Agreement or other remedies Caltrans may deem appropriate.

D. In order to ascertain whether or not the overall annual DBE goal is achieved, Caltrans tracks DBE participation on all federal-aid contracts. The Disadvantaged Business Enterprise (DBE) Information form (ADM

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0227F A&E) is attached as Attachment 4 and incorporated as part of this Agreement.

E. Consultant shall notify the Caltrans Contract Manager, in writing, of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

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

Write-in required for paragraph C.

II. DBE INFORMATION AND CONTRACT GOAL REQUIREMENT FOR DBE PARTICIPATION

A. This Agreement is subject to Title 49, Code of Federal Regulations, Part 26 (49 CFR 26), entitled "Participation by Disadvantaged Business Enterprises (DBEs) in Department of Transportation Financial Assistance Programs," in the award and administration of federally assisted Agreements. The regulations in their entirety are incorporated by reference and made part of this Agreement as if attached hereto.

B. A DBE is a firm that has been certified as a DBE as specified in 49 CFR 26. Only the participation of certified DBEs will count toward any contract goal.

C. The contract goal for DBE participation for this Agreement is __ percent ( ) %. Participation by DBE prime and Subconsultants shall be in accordance with the information contained in the Disadvantaged Business Enterprise (DBE) Information form (ADM 0227F A&E) attached hereto and incorporated as part of this Agreement.

D. Non-compliance by Consultant or Subconsultant(s) with the requirements of the regulations is a material breach of this Agreement and may result in termination of the Agreement or other such appropriate remedy for a breach of this Agreement, as Caltrans deems appropriate.

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E. Consultant or Subconsultant shall not discriminate on the basis of race color, national origin or sex in the performance of this Agreement. Each subcontract signed by and between Consultant and Subconsultant(s) in the performance of this Agreement must include this assurance.

Use remaining paragraphs in all contracts.

III. SUBCONSULTANTS

A. Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the Caltrans Contract Manager.

B. Any subcontract in excess of $25,000, entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to Subconsultants.

C. Any substitution of Subconsultant(s) must be approved in writing by the Caltrans Contract Manager in advance of assigning work to a substitute Subconsultant(s).

D. Nothing contained in this Agreement or otherwise shall create any contractual relation between the State and any Subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to the State for the acts and omissions of its Subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its Subconsultant(s) is an independent obligation from the State's obligation to make payments to Consultant. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any Subconsultant.

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

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

B. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.

C. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry practice for the type of work involved, presume that it is not performing a CUF.

D. DBE Subconsultants shall perform the work and supply the materials that they have listed in their response to the Agreement award requirements specified on form ADM 0227F A&E, attached, unless Consultant has received prior written authorization to perform the work with other forces or to obtain the materials from other sources as set forth in the section below entitled “DBE Substitution.”

E. Consultant shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or by other forces (including those of Consultant) pursuant to prior written authorization of the Caltrans Contract Manager.

V. EXCLUSION OF RETENTION

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A. In conformance with 49 CFR 26.29 (b) (1), the retention of proceeds required by Public Contract Code (PCC), Section 10261 shall not apply.

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

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

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

A. Consultant shall pay its DBE Subconsultant(s) and non-DBE Subconsultant(s) within ten (10) calendar days from receipt of each payment made to Consultant by the State.

B. Prior to the fifteenth of each month, Consultant shall submit documentation to the Caltrans Contract Manager showing the amount paid to DBE trucking companies listed in Consultant's DBE information. This monthly documentation shall indicate the portion of the revenue paid to DBE trucking companies, which is claimed toward DBE participation. Consultant shall also obtain and submit documentation to the Caltrans Contract Manager showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The records must confirm that amount of credit claimed toward DBE participation conforms to the requirements of section VIII below entitled, "DBE Substitutions."

C. Consultant shall also submit to the Caltrans Contract Manager documentation showing the truck number, name of owner, California Highway Patrol CA number and if applicable, the DBE certification number of the truck owner for all trucks used during that month for which DBE participation will be claimed. This documentation shall be submitted

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on the Monthly DBE Trucking Verification form provided to Consultant by the Caltrans Contract Manager.

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

VII. DBE RECORDS

A. Consultant shall maintain records of all subcontracts entered into with certified DBE Subconsultant(s) and records of materials purchased from certified DBE supplier(s). The records shall show the name and business address of each DBE Subconsultant or vendor and the total dollar amount actually paid each DBE Subconsultant or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE (prime) Consultant shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

B. The Consultant shall prepare and submit a Disadvantaged Business Enterprises Utilization Report (form ADM-3069), Attachment 5, to the Caltrans Contract Manager with every invoice (refer to Exhibit B, Budget Detail and Payment Provisions).

VIII. DBE SUBSTITUTIONS

A. Consultant may not substitute a listed DBE Subconsultant, supplier or, if applicable, a trucking company, without the prior written approval of the Caltrans Contract Manager. Failure to obtain approval of substitute Subconsultants before work is performed, supplies are delivered, or services are rendered may result in payment being denied by Caltrans.

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B. Consultant must make an adequate good faith effort (GFE) to find another certified DBE Subconsultant to substitute for the original DBE Subconsultant. GFE shall be directed at finding another DBE Subconsultant to perform at least the same amount of work under the Agreement as the DBE Subconsultant that was substituted or terminated to the extent needed to meet the contract goal for DBE participation established for the Agreement.

C. The requirement that DBEs must be certified by the Statement of Qualification due date does not apply to DBE substitutions after award of the Agreement. DBEs substituted after award must be certified at the time of the substitution.

D. Consultants shall submit requests for substitution to the Caltrans Contract Manager. Authorization to use other Subconsultants or suppliers may be requested for the following reasons:

1. Listed DBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written Agreement, when such written Agreement, based upon the terms and conditions for this Agreement or on the terms of such Subconsultant's or supplier's written proposal, is presented by Consultant.
2. Listed DBE becomes bankrupt or insolvent.
3. Listed DBE fails or refuses to perform subcontract or furnish listed materials.
4. Consultant stipulated that a bond was a condition of executing subcontract and listed DBE Subconsultant failed or refuses to meet the bond requirements of Consultant.
5. Work performed by listed Subconsultant is substantially unsatisfactory and is not in substantial conformance with scope of work to be performed, or Subconsultant is substantially delaying or disrupting the progress of work.
6. When it would be in the best interest of the State.

E. At a minimum, Consultant's substitution request to the Caltrans Contract Manager must include a:

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1. Written explanation of the substitution reason and, if applicable, Consultant must also include the reason a non-DBE Subconsultant is proposed for use.
2. Written description of the substitute business enterprise, including its business status, DBE certification number, and status as a sole proprietorship, partnership, corporation, or other entity.
3. Written notice detailing a clearly defined portion of the work identified both as a task and as a percentage share/dollar amount of the overall Agreement that the substitute firm will perform.

F. Prior to the approval of Consultant's substitution request, the Caltrans Contract Manager must give written notice to the Subconsultant being substituted by Consultant. A copy of the notice sent by the Caltrans Contract Manager must be sent to the Division of Procurement and Contracts (DPAC). The notice must do all of the following:

1. Give the reason Consultant is requesting substitution of the listed Subconsultant;
2. Give the listed Subconsultant five working days within which to submit written objections to DPAC and copies to the Caltrans Contract Manager;
3. Notify the Subconsultant that if a written objection is not received or received past the due date, such failure will constitute consent to the substitution; and
4. Be served by certified or registered mail to the last known address of the listed Subconsultant.

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

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

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IX. DBE CERTIFICATION AND DE-CERTIFICATION STATUS

A. If a DBE Subconsultant is decertified during the life of the Agreement, the decertified Subconsultant shall notify Consultant in writing with the date of decertification. If a Subconsultant becomes a certified DBE during the life of the Agreement, the Subconsultant shall notify Consultant in writing with the date of certification.

B. Consultant shall report any changes to the Caltrans Contract Manager within 30 days.

X. DBE ELIGIBILITY

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

B. Credit for DBE Prime Consultants

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

C. Credit for Material or Supplies

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

1. If the materials or supplies are obtained from a DBE manufacturer, one hundred percent (100%) of the cost of the materials or supplies will count toward the DBE goal. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.

2. If the materials or supplies are purchased from a DBE regular dealer, sixty percent (60%) of the cost of the materials or supplies will count toward the DBE goal. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general

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character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this paragraph.

3. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not an ad hoc or Agreement by Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph.

4. Credit for materials or supplies purchased from a DBE that is neither a manufacturer nor a regular dealer will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

D. Credit for DBE trucking companies will be as follows:

1. The DBE must manage and supervise the entire trucking operation for which it is responsible. There cannot be a contrived arrangement for the purpose of meeting the DBE goal.

2. The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the Agreement.

3. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.

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4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.

5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.

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

XI. TERMINATION OF DBE

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

1. Consultant shall not terminate for convenience a listed DBE Subconsultant and then perform that work with its own forces (personnel), or those of an affiliate, unless Consultant has received prior written authorization from the Caltrans Contract Manager to perform the work with other forces (other than Consultant's own personnel) or to obtain materials from other sources; and

2. If a DBE Subconsultant is terminated or fails to complete its work for any reason, Consultant will be required to make GFE to replace the original DBE Subconsultant with another DBE Subconsultant to the extent needed to meet the Agreement goal.

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

EXHIBIT F
PREVAILING WAGE REQUIREMENTS

Prevailing wages will apply if the services to be performed will involve one or more of the following: land surveying (e.g., flag persons, survey party chief, rodman/chainman), materials sampling/testing (e.g., drilling rig operators, pile driving, crane operators) and other laborers/crafts affected by state and federal labor laws. Typically, such work will fall within agreements designated under the following CAT's category codes: NF-inspection work, NG-materials sampling and testing work, NK-soils/foundation investigations work, and NL-land surveying work. However, prevailing wages provision will also be required in any agreement that has a combination of such services (e.g., PS&E, environmental hazardous materials, and site investigation). Revised 08/14/02; FHWA. If you are unsure, ask an A&E coordinator.

If prevailing wages do not apply, delete Exhibit F.

I. CONSULTANT/CONTRACTOR REGISTRATION PROGRAM

No Consultant or Subconsultant may be awarded a contract containing public work elements unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

II. STATE PREVAILING WAGE RATES

A. The Consultant shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this Agreement are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer. (http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/District-Region_Map_Construction_7-8-15.pdf). These wage rates are made a specific part of this Agreement by reference pursuant to Labor Code Section 1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at Caltrans construction sites, at Caltrans facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve Caltrans projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.

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B. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations Internet site at http://www.dir.ca.gov.

C. Payroll Records

1. Each Consultant and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Section 1776 of the California Labor Code and as defined in Section 16000 of Title 8 of the California Code of Regulations, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Consultant or Subconsultant in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty or perjury, stating both of the following:

   a. The information contained in the payroll record is true and correct.

   b. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the Consultant under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by Caltrans representatives at all reasonable hours at the principal office of the Consultant. The Consultant shall provide copies of certified payrolls or permit inspection of its records as follows:

   a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.

   b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished

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upon request to a representative of Caltrans, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to Caltrans, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the Consultant.

c. The public shall not be given access to certified payroll records by the Consultant. The Consultant is required to forward any requests for certified payrolls to the Caltrans Contract Manager by both facsimile and regular mail on the business day following receipt of the request.

3. Each Consultant shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) days after receipt of a written request.

4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by Caltrans shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address and social security number. The name and address of the Consultant awarded the Agreement or performing the Agreement shall not be marked or obliterated.

5. The Consultant shall inform Caltrans of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

6. The Consultant or Subconsultant shall have ten (10) days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the Consultant or Subconsultant fails to comply within the ten-day period, he or she shall, as a penalty to Caltrans, forfeit one hundred dollars ($100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by Caltrans from payments then due. A contractor is not subject to a

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penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

D. When prevailing wage rates apply, the Consultant must submit with each invoice a certified copy of the payroll for compliance verification. Invoice payment will not be made until the payroll has been verified and the invoice approved by the Caltrans Contract Manager.

E. Penalty

1. The Consultant and any Subconsultant under the Consultant shall comply with Labor Code Sections 1774 and 1775. Pursuant to Section 1775, the Consultant and any Subconsultant shall forfeit to the State or political subdivision on whose behalf the Agreement is made or awarded a penalty of not more than two hundred dollars ($200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the Agreement by the Consultant or by any Subconsultant under the Consultant in violation of the requirements of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive.

2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the Consultant or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the Consultant or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the Consultant or Subconsultant had knowledge of the obligations under the Labor Code. The Consultant is responsible for paying the appropriate rate, including any escalations that take place during the term of the Agreement.

3. In addition to the penalty and pursuant to Labor Code Section 1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which

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each worker was paid less than the prevailing wage rate shall be paid to each worker by the Consultant or Subconsultant.

4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime Consultant of the project is not liable for the penalties described above unless the prime Consultant had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime Consultant fails to comply with all of the following requirements:

   a. The Agreement executed between the Consultant and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Sections 1771, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code.

   b. The Consultant shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.

   c. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the Consultant shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.

   d. Prior to making final payment to the Subconsultant for work performed on the public works project, the Consultant shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Section 1813 of the Labor Code.

5. Pursuant to Section 1775 of the Labor Code, Caltrans shall notify the Consultant on a public works project within 15 days of receipt of a

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complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.

6. If Caltrans determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if Caltrans did not retain sufficient money under the contract to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the Consultant shall withhold an amount of moneys due the Subcontractor sufficient to pay those employees the general prevailing rate of per diem wages if requested by Caltrans.

F. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The Consultant shall forfeit, as a penalty to the State of California, twenty-five dollars ($25.00) for each worker employed in the execution of the Agreement by the Consultant or any Subconsultant under the Consultant for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the Labor Code, and in particular Sections 1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half times the basic rate of pay, as provided in Section 1815.

G. Employment of Apprentices

1. Where either the prime contract or the subcontract exceeds $30,000, the Consultant and any subcontractors under him or her shall comply with all applicable requirements of Labor Code sections 1777.5, 1777.6 and 1777.7 in the employment of apprentices.

2. Contractors and subcontractors are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, Contractors and subcontractors are advised to contact the State Division of Apprenticeship Standards, P. O. Box

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420603, San Francisco, California 94142-0603, or one of its branch offices, for additional information regarding the employment of apprentices and for the specific journey-to-apprentice ratios for the contract work. The prime Consultant is responsible for all subcontractors' compliance with these requirements. Penalties are specified in Labor Code Section 1777.7.

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

If Agreement is 100% State-funded, delete the following clause.

III. FEDERAL PREVAILING WAGES

A. The work herein proposed will be financed in whole or in part with Federal funds; therefore, all of the statutes, rules, and regulations promulgated by the Federal government are applicable to work financed in whole or in part with Federal funds and will be applicable to work performed at a construction project site.

B. Federal Requirements

1. Federal Requirements for Federal-Aid Construction Projects provisions shall apply to this Agreement and are made a part of the Agreement.

Federal prevailing wage determinations and any general prevailing wage determination addenda are to be attached to the Agreement.

2. The current Federal Prevailing Wage Determinations issued under the Davis-Bacon and related Acts shall apply to this Agreement and are made a part of the Agreement.

C. When prevailing wage rates apply, the Consultant must submit, with each invoice, a certified copy of the payroll for compliance verification. Invoice payment will not be made until the payroll has been verified and the invoice approved by the Caltrans Contract Manager.

D. If there is any conflict between the State prevailing wages and the Federal prevailing wages, the higher rate shall be paid.

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