Exhibit A
Consulting Services Agreement (Federal)

Scope of Work

1. The work to be performed under this Agreement shall be in accordance with Contractor’s Cost Proposal dated (DATE), Attachment 1, Contractor’s Technical Proposal entitled (NAME) dated (DATE), Attachment 2, and the Scope of Work in this Agreement. Contractor’s Cost and Technical Proposals are attached hereto and incorporated by reference. If there is any conflict between Contractor’s Cost and Technical Proposals, on one hand, and any other provisions of this Agreement, including, but not limited to Exhibits A, B, C, D, and E, and Attachments 3 and 4 on the other hand, the latter will prevail over Contractor’s Cost and Technical Proposals.

2. Contractor (hereinafter sometimes referred to as Consultant) agrees to provide (type of service) to the California Department of Transportation (Caltrans), as described herein:

3. Subcontracting is not permitted under this Agreement. All references to subcontracting or Subcontractors as found herein are not applicable to this Agreement.

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

5. This Agreement will commence on _____ or upon approval by Department of General Services (DGS), whichever is later, and no work shall begin before that time. This Agreement is of no effect unless approved by DGS. Contractor shall not receive payment for work performed prior to approval of the Agreement and before receipt of notice to proceed by 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.

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. Contractor shall not receive payment for work performed prior to approval of the Agreement and before receipt of notice to proceed by 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.

6. Any personnel that have been identified in Contractor’s Attachment 1, Cost Proposal, whether by name or title, may be replaced only if approved in advance, in writing, by Caltrans Contract Manager without the necessity of an Amendment. All personnel replaced by Contractor must possess qualifications that equal or exceed the qualifications of the replaced personnel without any increase to rates as stated in Attachment 1, Cost Proposal. All replacement personnel must provide Caltrans Contract Manager with a resume.
7. All inquiries during the term of this Agreement will be directed to the project representatives listed below:

<table>
<thead>
<tr>
<th>Department of Transportation:</th>
<th>Contractor:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section/Unit:</td>
<td>Section/Unit:</td>
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<tr>
<td>Contract Manager:</td>
<td>Project Manager:</td>
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<tr>
<td>Address:</td>
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<td>Phone:</td>
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<td>Email:</td>
<td>Email:</td>
</tr>
</tbody>
</table>

8. Detailed description of work to be performed and duties of all parties:

9. Contractor, in collaboration with Caltrans staff, shall provide assistance with Public Relation Services (PRS), including but not limited to, public service announcements, press releases, broadcast media, media kits, news conferences, outreach activities/events, public engagement activities/events, social media, web content, graphic design, project branding and fact sheets when necessary.

All PRS-related work performed by Contractor shall be appropriately reviewed and approved by Caltrans Contract Manager and Caltrans District Chief Public Relations Officer (PIO)/Assistant Deputy Director of Public Affairs prior to implementation/release. Caltrans Contract Manager/District Chief PIO will report all PRS-related activities and events to Caltrans Headquarters Public Affairs Office on the Week Ahead Report (WAR) and the Day Ahead Report (DAR).

Contractor shall comply with Governor’s Memo 02-18-2011 that prevents State spending on promotional and marketing items.
Exhibit B
Consulting Services Agreement (Federal)

Budget Detail and Payment Provisions

1. Invoicing and Payment

A. For services satisfactorily rendered, and upon approval of services by Caltrans Contract Manager, and upon receipt and approval of the invoices, the State agrees to compensate Contractor for actual expenditures incurred in accordance with the rates in Attachment 1 and this Exhibit B. Incomplete or disputed invoices shall be returned to Contractor, unpaid, for correction.

B. In compliance with the recent passage of the revised regulation (Title 49 CFR 26.37), the Disadvantaged Business Enterprises Utilization Report (ADM-3069) is required, as specified, in this agreement.

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

2) Failure to provide the Disadvantaged Business Enterprises Utilization Report (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 Contractor when a satisfactory Disadvantaged Business Enterprises Utilization Report (ADM-3069) form is submitted to Caltrans Contract Manager.

C. Invoices shall be itemized per Attachment 1, Cost Proposal, and shall include the Agreement Number, dates of services, (include any other specific information that identifies line item charges in accordance with the Attachment 1, the Cost Proposal. E.g. Itemized line items may include the charges by location, service month, number of hours by classifications, etc.) other direct expenses and any other applicable items from Attachment 1 and shall be submitted in triplicate not more frequently than monthly in arrears to:

   Department of Transportation
   Office/Unit Name, MS Number
   Attention: Contract Manager’s Name
   Street Address/P.O. Box
   City, CA Zip Code

D. Invoices shall be submitted showing the Caltrans Work Breakdown Structure (WBS) element for each billable hour increment.

E. Invoices shall be submitted showing the Caltrans Work Breakdown Structure (WBS) element for each billable hour increment. When Service Requests are negotiated, the appropriate WBS level will be identified by Caltrans Contract Manager.

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

G. Invoices shall be itemized in accordance with the Cost Proposal, Attachment 1, and include supporting documentation for materials, supplies, and equipment.
2. **Budget Contingency Clause**
   
   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 the State 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. Pursuant to Government Code Section 927.13, 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.
   
   E. Caltrans has the option to terminate the Agreement under the thirty (30) day termination clause or to amend the Agreement to reflect any reduction of funds.

3. **Prompt Payment Clause**
   
   A. Payment will be made in accordance with, and within the time specified in, Government Code, Chapter 4.5, commencing with Section 927 and all agreements must comply with Public Contract Code Sections 10262 and 10262.5.
   
   B. Pursuant to Public Contract Code Section 10262, Contractor shall pay its Subcontractor(s) within seven (7) calendar days from receipt of each payment made to Contractor by Caltrans.
   
   C. Failure of Contractor adhering to Public Contract Code Section 10262 may result in termination of this Agreement per Public Contract Code Section 10253 and disciplinary action by the Contractors State License Board may be implemented.
   
   D. Pursuant to 49 Code of Federal Regulations, Part 26.29(b), Caltrans will not withhold payment from Contractor, and Contractor, and any of its subcontractors, shall not withhold payment from any subcontractor when the Agreement is Federally funded.
   
   E. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this clause.

4. **Rates**
   
   A. Rates for these services may be found on Attachment 1 of this document.
Exhibit B
Consulting Services Agreement (Federal)

B. The basis for determining overhead or indirect costs included therein shall be in accordance with Contractor’s indirect cost rates. These indirect cost rates are derived from the federal negotiated rates cited in the negotiated Agreement between ____________ University and the ____________ applicable to the time period. Additionally, fringe benefit rates will be determined by the actual rates, per employee, in effect at the time the services are performed.

C. If Contractor has not entered into an Agreement with a Federal Agency and therefore is not bound by that Federal Agency’s negotiated rates, the basis for determining overhead and indirect costs shall be based upon the cost principles as outlined in Section ___.

5. Allowable Costs and Payments
   A. The method of payment for this Agreement will be based on actual costs incurred by Contractor and the amount set forth in sub-paragraph B. Caltrans will reimburse Contractor for actual costs (including labor costs, employee benefits, travel, overhead and other direct costs) incurred by Contractor in performance of the work, which amount will not exceed $TBD. Actual costs shall not exceed the estimated wage rates and other estimated costs set forth in Contractor’s cost proposal without prior written Agreement between Caltrans and Contractor.

   B. In addition to the actual costs, Caltrans will pay Contractor a total fixed fee of $TBD as follows. In each invoice, Contractor shall charge a pro rata share of the fixed fee based on the percentage of work completed to the satisfaction of Caltrans Contract Manager and Caltrans shall pay the pro rata share upon approval of the invoice in accordance with the procedures set forth in Exhibit B, Section 1.

   C. Transportation and subsistence costs shall not exceed rates authorized to be paid non-represented State employees under current California Department of Human Resources (CalHR) rules.

   D. Contractor shall not commence performance of work or services until this Agreement has been approved by Caltrans and Caltrans Contract Manager has issued the Notice to Proceed. No payment will be made prior to approval nor for any work performed prior to approval of this Agreement.

   E. The total amount payable by Caltrans shall not exceed $TBD.

6. Allowable Costs and Payments
   A. The method of payment for this Agreement will be based on actual costs. (There will be no fixed fee as ____________ is a non-profit organization. Wages and fringe benefits will be reimbursed at actual costs. Actual costs shall not exceed the estimated wage rates and other estimated costs set forth in Contractor’s costs proposal (Attachment ___) without prior written Agreement between Caltrans and Contractor.

   B. Contractor will be reimbursed for direct costs, other than salary costs, that are identified in Contractor’s cost proposal (Attachment ___).
C. Contractor will bill in arrears for costs incurred during the billing period. If applicable, salary costs will be itemized and billed by position classification. Documentation supporting specific salary costs will be presented if requested by the State. Non-wage costs will be billed, in summary, according to general expense categories. A detailed report of transactions will support the billing. Individual expenditures exceeding $500 will be supported a photocopy of the original documentation. Documentation in support of expenditures less than $500 will be presented if requested by the State.

D. Transportation and subsistence costs shall not exceed rates authorized to be paid non-represented State employees under current CalHR rules.

E. The total amount payable by Caltrans shall not exceed $_______________.

F. Contractor shall not commence performance of work or service until this Agreement has been approved by the State. No payment will be made prior to approval nor for any work performed prior to approval of this Agreement.

7. Cost Principles

A. Contractor agrees that the Contract Cost Principles and Procedures in 48 CFR, Part 31, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, in 2 CFR, Part 200, shall be used to determine the allowable individual items of cost.

B. Any costs for which payment has been made to Contractor that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200, are subject to repayment by Contractor to Caltrans.

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

8. Failure to Pay

Should Cities or Counties fail to pay moneys due the State within 30 days of demand or within such other period as may be agreed between the parties hereto, State, acting through the State Controller, may withhold an equal amount from future apportionment due Cities or Counties from the Highway Users Tax Fund.

9. Excise Tax

The State of California is exempt from Federal excise taxes, and no payment will be made for any taxes levied on employees' wages. Caltrans will pay for any applicable State or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement. Caltrans may pay any applicable sales and use tax imposed by another state.

10. Materials/Supplies

Contractor will be reimbursed for the actual cost of materials/supplies purchased to be consumed or installed at the work site in performance of the Agreement (including applicable sales tax), without additional allowance for markup. Contractor costs associated with the purchase and installation of materials/supplies are considered as a component of
Exhibit B  
Consulting Services Agreement (Federal)

Contractor's hourly rate for services that include wages, overhead, general and administrative expenses and profit. Costs of materials/supplies are to be substantiated by a copy of the appropriately signed invoice verifying the actual cost and delivery of the replaced components to Caltrans. Total expenditures for materials/supplies shall not exceed the amount set forth in the line item for parts in Attachment 1.

11. Equipment Purchase (By Contractor)

A. Prior authorization in writing by Caltrans Contract Manager shall be required before Contractor enters into any non-budgeted purchase order or subcontract exceeding $500 for supplies, equipment, or consultant services. Contractor 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 Contractor's Cost Proposal and exceeding $500, with prior authorization by Caltrans Contract Manager, three competitive quotations must be submitted with the request or the absence of bidding must be adequately justified.

C. Any equipment purchased as a result of this Agreement is subject to the following: Contractor 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 year or more and an approximate unit price of $5,000 or more. In addition, theft-sensitive items of equipment costing less than $5,000 shall be inventoried. A copy of the inventory record must be submitted to the State on request by the State.

D. Any equipment purchased by Contractor will be returned to Caltrans at the end of this Agreement unless used under a subsequent Agreement between the parties or research project funded by Caltrans. Both Caltrans and Contractor agree to comply with State Contracting Manual (SCM), Section 7.29.

E. 2 CFR Part 200.313 requires a credit to Federal funds when participating equipment with a fair market value greater than $5,000 is credited to the project.

F. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this clause.
Special Terms and Conditions

1. Settlement of Disputes
   A. Any dispute concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by Caltrans Contract Officer, who may consider any written or verbal evidence submitted by Contractor. The decision of Caltrans Contract Officer, issued in writing, shall be Caltrans' final decision on the dispute.
   B. Neither the pendency of a dispute nor its consideration by Caltrans Contract Officer will excuse Contractor from full and timely performance in accordance with the terms of the Agreement.
   C. The final decision by Caltrans Contract Officer does not preclude subsequent litigation of the dispute in a court of competent jurisdiction.

2. Termination
   A. If, after award and execution of the Agreement, Contractor’s performance is unsatisfactory, the Agreement may be terminated for default. Additionally, Contractor may be liable to Caltrans for damages, including the difference between Contractor’s original bid price and the actual cost of performing the work by another Contractor. Default is defined as Contractor failing to perform services required by the Agreement in a satisfactory manner.
   B. Caltrans reserves the right to terminate this Agreement for any or no cause upon 30 days written notice to Contractor or immediately in the event of default or material breach by Contractor.
   C. The State may terminate this Agreement immediately for good cause. The term "good cause" may be defined as "impossibility of performance" or "frustration of purpose," but does not include material breach, default, or termination without cause. In this instance, the Agreement termination shall be effective as of the date indicated on the State’s notification to Contractor.
   D. In the event that the total Agreement amount is expended prior to the expiration date, Caltrans may, at its discretion, terminate this Agreement with 30 days’ notice to Contractor.

3. Evaluation of Contractor
   Performance of Contractor under this Agreement will be evaluated. The evaluation shall be prepared on Contract/Contractor Evaluation (STD 4), and maintained in the Office file, and DGS, Office of Legal Services, if the evaluation is negative and the Agreement price is over $5,000.

4. Non-Solicitation
   Contractor warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona
Exhibit D
Consulting Services Agreement (Federal)

Fide employees or bona fide established commercial or selling agencies maintained or contracted by Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

5. Subcontractors

A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any Subcontractors, and no subcontract shall relieve Contractor of its responsibilities and obligations hereunder. Contractor agrees to be as fully responsible to the State for the acts and omissions of its Subcontractors 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 Contractor. Contractor's obligation to pay its Subcontractors is an independent obligation from the State's obligation to make payments to Contractor.

B. Contractor shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted except for Subcontractors listed on Attachment Subcontracting Provisions/List.

C. 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 Subcontractors.

D. Contractor shall pay its Subcontractors within 10 calendar days from receipt of each payment made to Contractor by the State.

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

6. Contractor's Reports and/or Meetings

A. Contractor shall submit progress reports at least once a month to allow Caltrans Contract Manager to determine if Contractor is performing to expectations or is on schedule, to provide communication of interim findings and to afford occasions for airing difficulties or special problems encountered so that remedies can be developed.

B. Contractor shall meet with Caltrans Contract Manager as needed to discuss progress on the Agreement.

C. Prior to completion of the Agreement, Contractor shall hold a final meeting with Caltrans Contract Manager to present findings, conclusions and recommendations and shall submit a comprehensive final report on the project.

D. Any document or written report prepared as a requirement of this Agreement shall contain, in a separate section preceding the main body of the document, a list of all Contracts and subcontracts (including dollar amounts) relating to the preparation of
Exhibit D
Consulting Services Agreement (Federal)

those documents or reports if the combined costs for work by non-employees of Contractor exceed $5,000.

7. Publication

A. Other than as provided in sections 3 through 6 of Exhibit E hereof, Contractor shall not copyright any deliverable(s) developed and funded under this Agreement.

B. Contractor shall have the right to publish any and all information, conclusions and developments (except that which is designated as CONFIDENTIAL by Caltrans) resulting from work conducted under this Agreement.

C. Any publication by Contractor shall give proper credit to Caltrans. All publications shall bear an appropriate inscription acknowledging the State’s copyright ownership to the Work and Deliverable(s) (including but not limited to, all reports, design materials, advertisements, training materials, writings, articles, computer programs, inventions and any documentation related to the Agreement) consisting of a “c” in a circle followed by the four-digit year in which the Work or Deliverable was produced, followed by the words “California Department of Transportation. All rights reserved.”

D. Contractor shall submit to Caltrans any materials released for publication simultaneously with submission to the publisher for the purpose of comment and review by the State with respect to the presence of patentable, confidential, and/or proprietary subject matter within the materials released for publication.

E. Caltrans will take all reasonable steps to have United States Patent Applications, or other appropriate protection of intellectual property, filed prior to the time the information, conclusions or developments are published or otherwise made available to the public.

F. Contractor agrees to keep confidential, any proprietary information supplied to it by Caltrans during the course of the Agreement and designated in writing as “CONFIDENTIAL”. Such information will not be included in any published material without the prior written approval of the parties.

G. All publications shall contain the following disclaimer in a separate section preceding the main body of the document:

“The contents of this report reflect the views of the author who is responsible for the facts and accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the State of California or the Federal Highway Administration. This publication does not constitute a standard, specification or regulation.”

A. Other than as provided in sections 3 through 6 of Exhibit E. Contractor shall not copyright the training course materials or written report developed and funded from this Agreement.

B. The training course materials/written product/report funded from this Agreement shall become the property of the State, and all publication use rights are reserved to the State.
Exhibit D
Consulting Services Agreement (Federal)

C. The written product or title pages of the report/course outline shall bear an appropriate description acknowledging the source of funds used to produce the report/document/training course and materials.

D. The course outline/written product/report shall contain the following disclaimer in a separate section preceding the main body of the document:

"The contents of this training course/documentation/report reflect the views of the author who is responsible for the facts and accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the State of California or the Federal Highway Administration. This course outline/document/report does not constitute a standard, specification, or regulation."

8. Confidentiality of Data

A. All financial, statistical, personal, technical, or other data and information relative to the Caltrans’ operations, which is designated confidential by Caltrans and made available to Contractor in order to carry out this Agreement, shall be protected by Contractor from unauthorized use and disclosure.

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

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

D. Contractor 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 Contractor to any entity, other than Caltrans.

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

9. State-Owned Data–Integrity and Security

A. Contractor shall comply with the following requirements to ensure the preservation, security, and integrity of State-owned data on portable computing devices and portable electronic storage media:

1) Encrypt all State-owned data stored on portable computing devices and portable electronic storage media using government-certified Advanced Encryption Standard (AES) cipher algorithm with a 256-bit or 128-bit encryption key to protect Caltrans data stored on every sector of a hard drive, including temp files, cached data, hibernation files, and even unused disk space.
Exhibit D
Consulting Services Agreement (Federal)

2) Data encryption shall use cryptographic technology that has been tested and approved against exacting standards, such as FIPS 140-2 Security Requirements for Cryptographic Modules.

3) Encrypt, as described above, all State-owned data transmitted from one computing device or storage medium to another.

4) Maintain confidentiality of all State-owned data by limiting data sharing to those individuals contracted to provide services on behalf of the State, and limit use of State information assets for State purposes only.

5) Install and maintain current anti-virus software, security patches, and upgrades on all computing devices used during the course of the Agreement.

6) Notify Caltrans Contract Manager immediately of any actual or attempted violations of security of State-owned data, including lost or stolen computing devices, files, or portable electronic storage media containing State-owned data.

7) Advise the owner of the State-owned data, the agency Information Security Officer, and the agency Chief Information Officer of vulnerabilities that may present a threat to the security of State-owned data and of specific means of protecting that State-owned data.

B. Contractor shall use the State-owned data only for State purposes under this Agreement.

C. Contractor shall not transfer State-owned data to any computing system, mobile device, or desktop computer without first establishing the specifications for information integrity and security as established for the original data file(s) (State Administrative Manual (SAM) section 5335.1).

10. 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 Caltrans 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, Contractor will still be required to submit a Disadvantaged Business Enterprises Utilization Report (ADM-3069), Attachment ___, 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. Contractor 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 49 CFR 26, for this assurance. Contractor 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. Contractor shall notify 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.

E. If subcontracting is allowed in this solicitation, any subcontract entered into between Contractor and Subcontractor(s) as a result of this Agreement shall contain all of the provisions of this section.

11. 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 which meets the definition of a DBE as specified in 49 CFR 26. Only the participation of certified DBEs will count toward any Agreement goal. DBE participation will count toward Caltrans’ federally mandated overall annual DBE goal. In order to ascertain whether its overall annual DBE goal is being achieved, Caltrans tracks DBE participation on all federal-aid contracts.

C. The certified DBE participation contract goal for this Agreement is __% (Note: The Analyst shall insert the required goal percentage as committed by Contractor in the Disadvantage Business Enterprise (DBE) Information form–ADM-0277f) Participation by DBE prime and Subcontractors shall be in accordance with the information contained in the Disadvantaged Business Enterprise (DBE) Information form ADM-0227f, attached hereto and incorporated as part of this Agreement.

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

E. Contractor or Subcontractor 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 Contractor and Subcontractor(s) in the performance of this Agreement must include this assurance.

12. Performance of DBE Contractors and other DBE Subcontractors/Suppliers

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

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 30 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 Subcontractors shall perform the work and supply the materials which they have listed in their response to the Agreement award requirements specified in the form ADM-0227F, attached, unless Contractor 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 8 below entitled, “DBE Substitution”.

E. Contractor 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 Contractor) pursuant to prior written authorization of Caltrans Contract Manager.

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

B. In conformance with Public Contract Code Section 7200(b), in subcontracts between Contractor and a Subcontractor and in subcontracts between a Subcontractor and any Subcontractor thereunder, retention proceeds shall not be withheld, and the exceptions provided in Public Contract Code Section 7200(c), shall not apply. At the option of Contractor, Subcontractor(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 the provisions of this clause.

14. Payment to DBE and Non-DBE Subcontractor(s)
A. Contractor shall pay its DBE Subcontractor(s) and non-DBE Subcontractor(s) within seven (7) calendar days from receipt of each payment made to Contractor by the State.

B. Prior to the 15th of each month, Contractor shall submit documentation to Caltrans Contract Manager showing the amount paid to DBE trucking companies listed in Contractor’s DBE information. This monthly documentation shall indicate the portion of the revenue paid to DBE trucking companies, which is claimed toward DBE
participation. Contractor shall also obtain and submit documentation to 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 8 below entitled, “DBE Substitutions.”

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

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

15. DBE Records

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

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

16. DBE Substitutions

A. Contractor shall not substitute or add a Subcontractor, supplier or, if applicable, a trucking company, listed in the original bid/proposal without the prior written approval of Caltrans Contract Manager. This includes work that a prime contractor can perform with its own forces, or with a non-DBE firm, or another DBE firm.

B. Prior to the substitution request, the prime contractor must notify the DBE in writing, of the intent to substitute allowing for five days of response time in opposition of the rejection.

C. Prime Contractor must have good cause in which to substitute the DBE firm. A good cause includes:
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1) The DBE fails or refused to execute a written contract.
2) The DBE fails or refuses to perform the work consistent with normal industry standards.
3) The DBE fails or refuses to meet the prime contractor’s nondiscriminatory bond requirements.
4) The DBE becomes bankrupt or has credit unworthiness.
5) The DBE is ineligible to work because of suspension and debarment.
6) It has been determined that the DBE is not a responsible contractor.
7) The DBE voluntarily withdraws, with written notification, from the contract.
8) The DBE is ineligible to receive credit for the type of work required.
9) The DBE owner dies or becomes disabled resulting in the inability to perform the work on the contract.
10) Or other documented compelling reason.

D. Contractor must make an adequate GFE to find another certified DBE Subcontractor to substitute for the original DBE. The GFE shall be directed at finding another DBE to perform at least the same amount of work under the Agreement as the DBE that was substituted to the extent needed to meet the established contract goal for DBE participation.

E. Noncompliance by Contractor 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.

F. The requirement that DBEs must be certified by the bid opening 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.

G. At a minimum, Contractor’s substitution request to Caltrans Contract Manager must include a:

1) Written explanation of the substitution reason; and if applicable, Contractor must also include the reason a non-DBE Subcontractor is proposed for use.

2) Written description of the substitute business enterprise include 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.

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

1) Give the reason Contractor is requesting substitution of the listed Subcontractor;
2) Give the listed Subcontractor five (5) working days within which to submit written objections to DPAC and copies to Caltrans Contract Manager;
3) Notify Subcontractor 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 Subcontractor.

I. The listed Subcontractor, who has been so notified, shall have five (5) working days within which to submit written objections to the substitution to Caltrans Contract Manager. Failure to submit a written objection shall constitute the listed Subcontractor’s consent to the substitution.

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

17. DBE Certification and De-certification Status

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

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

18. 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 Contractors

Contractor, 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 Subcontractors.

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

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 which 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 (1) fully licensed, insured, and operational truck used on the Agreement.

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

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

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

19. Termination of DBE

A. Contractor shall not terminate a DBE Subcontractor, supplier or, if applicable, a trucking company, listed in the original bid/proposal without the prior written approval of Caltrans Contract Manager. This includes work that a prime contractor can perform with its own forces, or with a non-DBE firm, or another DBE firm.

B. Prior to the termination request, prime contractor must notify the DBE, in writing, of the intent to terminate allowing for five days of response time in opposition of the rejection.

C. Prime Contractor must have good cause in which to terminate the DBE firm. A good cause includes:
   1) The DBE fails or refused to execute a written contract.
   2) The DBE fails or refuses to perform the work consistent with normal industry standards.
   3) The DBE fails or refuses to meet the prime contractor’s nondiscriminatory bond requirements.
   4) The DBE becomes bankrupt or has credit unworthiness.
   5) The DBE is ineligible to work because of suspension and debarment.
   6) It has been determined that the DBE is not a responsible contractor.
   7) The DBE voluntarily withdraws, with written notification, from the contract.
   8) The DBE is ineligible to receive credit for the type of work required.
   9) The DBE owner dies or becomes disabled resulting in the inability to perform the work on the contract.
   10) Or other documented compelling reason.

D. Contractor must make an adequate GFE to find another certified DBE Subcontractor to substitute for the original DBE. The GFE shall be directed at finding another DBE to perform at least the same amount of work under the Agreement as the DBE that was substituted or terminated to the extent needed to meet the established contract goal for DBE participation.

E. Noncompliance by Contractor 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.
20. Disadvantaged Business Enterprise (DBE) Assurances

A. The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (USDOT) assisted Agreement or in the administration of its DBE Program or the requirements of 49 CFR, Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR, Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted Agreements. The recipient’s DBE Program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification by the applicable USDOT agency to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 49 CFR Part 26. They may also, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq).

B. Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Contractor shall carry out applicable requirements of 49 CFR, Part 26, in the award and administration of USDOT Federally-assisted Agreements. Failure by Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of the Agreement or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

1) Withholding monthly progress payments
2) Assessing sanctions
3) Liquidated damages
4) Disqualifying contractor from future bidding as non-responsible

Each subcontract signed by the bidder must include this assurance.

C. Contractor must make available to Caltrans Contract Manager a copy of all DBE subcontracts upon request.

D. Contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless Contractor obtains authorization from Caltrans. Unless Caltrans provides prior authorization approving a request for termination or substitution of a listed DBE, Contractor shall not be entitled to any payment for work or materials unless it is performed or supplied by the listed DBEs.

21. Title VI Assurances

A. Appendix A

During the performance of this Agreement, Contractor, for itself, its assignees and successors in interest (hereinafter referred to as “Contractor”) agrees as follows:
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1) Compliance with Regulations: Contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made part of this Agreement.

2) Non-discrimination: Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, national origin, age, sex, or disability in the selection and retention of Subcontractors, including procurements of materials and leases of equipment. Contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential Subcontractor or supplier will be notified by Contractor of Contractor’s obligations under this Agreement and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, national origin, age, sex, or disability.

4) Information and Reports: Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Caltrans or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish the information, Contractor will so certify to Caltrans or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

5) Sanctions for Noncompliance: In the event of Contractor’s noncompliance with the non-discrimination provisions of this Agreement, Caltrans will impose such Agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
   a) Withholding of payments to Contractor under the Agreement until Contractor complies, and/or
   b) Cancelling, terminating, or suspending an Agreement, in whole or in part.

6) Incorporation of Provisions: Contractor will include the provisions of paragraphs one (1) through six (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Contractor will act with respect to any subcontract or procurement as Caltrans or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Contractor becomes involved in, or threatened with litigation by a subcontractor or
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supplier because of such direction, Contractor may request Caltrans to enter into such litigation to protect the interests of the State. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

B. Appendix E (Pertinent Non-Discrimination Authorities)

During the performance of this Agreement, Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as "Contractor") agrees to comply with the following non-discrimination statutes and authorities, including, but not limited to:

1) Title VI of the Civil Rights Act of 1964 (42 USC Sections 2000d et seq., 78 Stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;

2) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 USC Section 4601) prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

3) Federal-Aid Highway Act of 1973 (23 USC Sections 324 et seq.) prohibits discrimination on the basis of sex);

4) Section 504 of the Rehabilitation Act of 1973 (29 USC Sections 794 et seq.), as amended, prohibits discrimination on the basis of disability; and 49 CFR Part 27;

5) The Age Discrimination Act of 1975, as amended, (42 USC Sections 6101 et seq.) prohibits discrimination on the basis of age);

6) Airport and Airway Improvement Act of 1982 (49 USC Sections 471 and 47123), as amended, prohibits discrimination based on race, creed, color, national origin, or sex;

7) The Civil Rights Restoration Act of 1987 (PL 100-209) broadened the scope, coverage, and applicability of Title VI of the Civil Right Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not;

8) Titles II and III of the Americans with Disabilities Act (42 USC Sections 12131-12189), which prohibit discrimination of the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities as implemented by Department of Transportation regulations 49 CFR Parts 37 and 38;

9) The Federal Aviation Administration's Non-discrimination statute (49 USC Section 47123) prohibits discrimination on the basis of race, color, national origin, and sex;

10) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations, which requires each Federal agency to conduct its programs, policies, and activities that substantially affect
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human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin, and requires each Federal agency to make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations;

11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 CFR Sections 74087 to 74100);

12) Title IX of the Education Amendments of 1972 (20 USC 1681 et seq.), as amended, which prohibits you from discriminating because of sex in education programs or activities.

22. Federal Lobbying Activities Certification

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

No State or Federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, 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.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Agreement, grant, loan, or cooperative agreement, Contractor shall complete and submit Standard Form-LLL, Disclosure of Lobbying Activities", in accordance with its instructions.

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, USC. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.
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B. Contractor also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000, and that all such Subcontractors shall certify and disclose accordingly.

23. Retention of Records/Audits

A. For the purpose of determining compliance with Government Code Section 8546.7, Contractor and Subcontractors shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including, but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement. The State, the State Auditor, Federal Highway Administration (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 Contractor that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

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

24. Rebates, Kickbacks, and Other Unlawful Consideration

Contractor 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, the State shall have the right, in its discretion, to terminate the Agreement without liability, to pay only for the value of work performed, or to deduct from the Agreement price or otherwise recover the full amount of each rebate, kickback or other unlawful consideration.

25. Prohibition from Bidding

This Agreement is subject to the provisions of Public Contract Code Section 10365.5, which states: "No contractor who has been awarded a consulting services Agreement may submit a bid for, nor be awarded an Agreement for, the provision of services, goods and supplies, or any other related action which is required, suggested or otherwise deemed appropriate in the end product of the original consulting services Agreement."

26. Consultant Contractor’s Rights and Obligations

Contractor is advised that the provisions of Public Contract Code Sections 10335 through 10381 pertaining to the duties, obligations, and rights of a consultant service Contractor are applicable to this Agreement.

27. Audit Review Procedures

A. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by Agreement shall be reviewed by the Chairperson of the Audit Review Committee (ARC). The ARC will consist of the Deputy Director, Audits and Investigations (Chairperson); Deputy Director of the functional Program
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area; the Chief Counsel, Legal Division, or their designated alternates; and if Caltrans chooses, two representatives of Caltrans' choosing, from private industry. The two representatives from private industry will be advisory in nature only and will not have voting rights. Additional members or their alternates may serve on the ARC.

B. Not later than 30 days after issuance of the final audit report, Contractor may request a review by the ARC of unresolved audit issues. The request for review will be submitted in writing to the Chairperson of the ARC. The request must contain detailed information of the factors involved in the dispute, as well as justifications for reversal. A meeting by the ARC will be scheduled if the Chairperson concurs that further review is warranted. After the meeting, the ARC will make recommendations to the appropriate Chief Deputy Director. The Chief Deputy Director will make the final decision for Caltrans. The final decision will be made within three (3) months of receipt of the notification of dispute.

C. Neither the pendency of a dispute nor its consideration by Caltrans will excuse Contractor from full and timely performance, in accordance with the terms of this Agreement.

28. Debarment and Suspension Certification

A. Contractor's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that Contractor 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.

29. Target Area Contract Preference Act (TACPA)

A. This portion of the Agreement applies only to Contractors who are certified and participating in the TACPA Preference Program established by Government Code Sections 4530 et seq., and all attendant rules and regulations (Title 2, California Administrative Code, Sections 1896.30 et seq.), when performing work at a work site location in a qualified distressed area or when employing persons in accordance with Government Code Section 4533.1.
B. Contractor or vendor agrees that the State contracting agency, or its delegacy, will have the right to inspect its facilities and operations and to inspect, review, obtain, and copy all records pertaining to performance of the Agreement or compliance with the requirements of the Act and attendant rules and regulations. Contractor or vendor further agrees that such records shall be maintained for a period of three (3) years after final payment under the Agreement.

C. Contractor or vendor agrees with respect to a certification to hire persons with high risk of unemployment, to:

1) Act in good faith for the purpose of maintaining such persons as employees for the duration of the Agreement performance; and

2) Make a reasonable effort to replace such persons, who for any reason permanently cease to be on the payroll, with other persons with high risk of unemployment; and

3) Promptly report to the state contracting agency and thereafter confirm in writing within seven (7) days the names of any such persons who have been terminated or absent from work for more than three (3) consecutive work days and to communicate reasons for the termination or absence. Contractor or vendor agrees under such circumstances to consult with the state contracting agency and the Employment Development Department with respect to replacement of such persons.

30. Assumption of Risk and Indemnification Regarding Exposure to Environmental Health Hazards

In addition to, and not a limitation of, Contractor’s indemnification obligations contained elsewhere in this Agreement, Contractor hereby assumes all risks of the consequences of exposure of Contractor’s employees, agents, Subcontractors, Subcontractors’ employees, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, to any and all environmental health hazards, local and otherwise, in connection with the performance of this Agreement. Such hazards include, but are not limited to, bodily injury and/or death resulting in whole or in part from exposure to infectious agents and/or pathogens of any type, kind, or origin. Contractor also agrees to take all appropriate safety precautions to prevent any such exposure to Contractor’s employees, agents, Subcontractors, Subcontractors’ employees, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement. Contractor also agrees to indemnify and hold harmless Caltrans, the State of California, and each and all of their officers, agents and employees, from any and all claims and/or losses accruing or resulting from such exposure. Except as provided by law, Contractor also agrees that the provisions of this paragraph shall apply regardless of the existence or degree of negligence or fault on the part of Caltrans, the State of California, and/or any of their officers, agents and/or employees.

31. ADA Compliance

All entities that provide electronic or information technology or related services that will be
posted online by Caltrans must be in compliance with Government Code Sections 7405 and 11135 and the Web Content Accessibility Guidelines (WCAG) 2.0 or subsequent version, published by the Web Accessibility Initiative of the World Wide Web Consortium at a minimum Level AA success. All entities will respond to and resolve any complaints/deficiencies regarding accessibility brought to their attention.

32. Force Majeure

Neither party shall be liable to the other for any delay in, or failure of, performance, nor shall any such delay in, or failure of, performance constitute default, if such delay or failure is (directly or indirectly) caused by “Force Majeure” without the fault, intentional act, or negligence of Contractor. As used in this section, “Force Majeure” shall include, but shall not be limited to, acts of God, fire, flood, earthquake, other natural disaster, nuclear accident, strike, lockout, riot, freight embargo, interruption in service by a regulated utility, or governmental statutes or regulations superimposed after the fact.

33. Electronic Signatures

Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures for this Agreement. Documents that are referenced by this Agreement may still require manual signatures.
Additional Provisions

1. General Provisions Required in all Insurance Policies
   A. Deductible: Contractor is responsible for any deductible or self-insured retention contained within the insurance program.
   B. Coverage Term: Coverage must be in force for the complete term of this Agreement. If insurance expires during the term of this Agreement, a new certificate must be received by Caltrans Contract Manager at least 10 days prior to the expiration of the insurance. Any new insurance must continue to comply with the original terms of this Agreement (enter Agreement number).
   C. Policy Cancellation or Termination and Notice of Non-Renewal: Contractor shall provide, to Caltrans Contract Manager within five (5) business days, following receipt by Contractor, a copy of any cancellation or non-renewal of insurance required by this Agreement. In the event Contractor fails to keep, in effect at all times, the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.
   D. Primary Clause: Any required insurance contained in this Agreement shall be primary, and not excess or contributory, to any other insurance carried by the State.
   E. Inadequate Insurance: Inadequate or lack of insurance does not negate Contractor's obligations under this Agreement.
   F. Endorsements: Any required endorsements requested by the State must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.
   G. Insurance Carrier Required Rating: All insurance companies must carry a rating acceptable to the DGS, Office of Risk and Insurance Management (ORIM). If Contractor is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required. DGS, ORIM Website: https://www.dgs.ca.gov/ORIM.
   H. Contractor shall include all of its subcontractors as insureds under Contractor's insurance or supply evidence of insurance to the State equal to the policies, coverage's and limits required of Contractor.
   I. The State will not be responsible for any premiums or assessments on the policy.

2. Insurance Requirements
   A. Commercial General Liability
      1) Contractor shall maintain general liability on an occurrence form with limits not less than $1,000,000 per occurrence and $2,000,000 aggregate for bodily injury and property damage liability. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured
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Agreement. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to Contractor's limit of liability. The policy must include:

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

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

B. Automobile Liability

Contractor shall maintain motor vehicle liability with limits not less than **$1,000,000** combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle, including owned, hired, and non-owned motor vehicles. The same additional insured designation and endorsement required for general liability is to be provided for this coverage.

C. Workers' Compensation and Employer’s Liability

Contractor shall maintain statutory workers' compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Agreement. Employer's liability limits of **$1,000,000** are required. When work is performed on State owned or controlled property the workers' compensation policy shall contain a waiver of subrogation in favor of the State. The waiver of subrogation endorsement shall be provided to Caltrans' Contract Manager.

D. Pollution Liability

Contractor shall maintain Pollution Liability covering Contractor's liability for bodily injury, property damage, and environmental damage resulting from pollution and related cleanup costs incurred, all arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Limits of not less than **[$[Insert Limit of Insurance]]** per incident and an annual aggregate amount of **[$[Insert double the limit]]** shall be provided. The same additional insured designation and endorsement required for general liability is to be provided for this coverage.

E. Professional Liability

Contractor shall maintain Professional Liability at **$1,000,000** covering any damages caused by a negligent error, act, or omission. The policy’s retroactive date must be displayed on the certificate of insurance and must be before the date this Agreement was executed or before the beginning of this Agreement work. Contractor is responsible to maintain continuous coverage for up to three years after the notice of completion.

F. Fidelity Bond/Crime Insurance

Contractor shall maintain Employee Dishonesty and theft, forgery, or alteration, and when applicable, Inside/Outside Money and Securities coverage for state-owned
property in the care, custody and/or control of Contractor. Coverage limits shall not be less than \$[\text{insert value here}]. A Clients’ Property endorsement as broad as CR 04 01 08 13 must be endorsed to this policy and noted on the certificate of insurance. The policy shall include as loss payee DOT and the State of California.

G. Satisfying a Self-Insured Retention (SIR)

All insurance required by this Agreement must allow, but not require, the State to pay any SIR and/or act as Contractor’s agent in satisfying any SIR. The choice to pay any SIR and/or act as Contractor’s agent in satisfying any SIR is at the State’s discretion. If the State chooses to pay any SIR and/or act as Contractor’s agent in satisfying any SIR, Contractor shall reimburse the State for the same.

H. Available Coverages/Limits

In the event the insurance coverages obtained by Contractor is broader in scope than, and/or the limits are higher than, those required under the Agreement, all such broader coverage and/or higher limits available to Contractor shall also be available and applicable to the State.

3. Ownership of Proprietary Property

For the purposes of this section (Ownership of Proprietary Property) of Exhibit E of Agreement __________ (herein after referred to as “this Agreement”) the following definitions shall apply:

Work: As delineated in Exhibit A of the Agreement.

Work Product: As defined as deliverable in Exhibit A 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. “Work Product” includes all deliverables, inventions, innovations, improvements, or other works of authorship Contractor may conceive of or develop in the course of this Agreement, whether or not they are eligible for patent, copyright, trademark, trade secret, or other legal protection.

Inventions: Any idea, methodologies, design, concept, technique, invention, discovery, improvement, or development regardless of patentability made solely by Contractor or jointly with Contractor’s Subcontractor and/or Contractor’s Subcontractor’s employee(s) with one or more employees of 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 and Copyright Rights: Except in regard to Pre-existing Works, all Work Product derived by the Work performed by Contractor, its employees, and/or by any of Contractor’s Subcontractor’s employees under this Agreement, shall be owned by Caltrans and shall be considered to be works made
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for hire by Contractor, its employees, and/or Contractor’s Subcontractor’s employees 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. All Rights Reserved.” For example, a Work Product created in the year 2012 would contain the copyright designation © 2012 California Department of Transportation. All Rights Reserved.

2) Vesting of Copyright Rights: Contractor, its employees, Contractor’s Subcontractor, and Contractor’s Subcontractor’s employees, agree to perpetually assign, and upon creation of each Work Product automatically assign, to Caltrans, its successors, and assigns, ownership of all United States and international copyrights in each and every Work Product, both Work Product considered, by operation of law, to be works made for hire for Caltrans and Work Product which, by operation of law, may not be considered works made for hire by Contractor, its employees, Contractor’s Subcontractor, and/or Contractor’s Subcontractor’s employees for Caltrans. From time to time upon Caltrans’s request, Contractor, its employees, Contractor’s Subcontractor, and/or Contractor’s Subcontractor’s employees, shall confirm such assignments by execution and delivery of such assignments, confirmations of 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. Contractor 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: Contractor, its employees, Contractor’s Subcontractor, and Contractor’s Subcontractor’s employees hereby agree 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’s property regardless of whether such protection is sought. Contractor, its employees, Contractor’s Subcontractor, and Contractor’s Subcontractor’s employees 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 Contractor, its employees, Contractor’s Subcontractor, and/or Contractor’s Subcontractor’s employees believe to be new or different. Contractor, its employees, Contractor’s Subcontractor, and Contractor’s Subcontractor’s employees shall, upon Caltrans’s request and at Caltrans’s expense, cause patent applications to be filed thereon, through attorneys designated by Caltrans, and shall sign all such applications over to Caltrans, its successors, and assigns. Contractor, its employees, Contractor’s
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Subcontractor, and Contractor’s Subcontractor’s employees shall give Caltrans and its attorneys 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 of this Agreement.

2) **Agency:** In the event that Caltrans is unable for any reason whatsoever to secure Contractor’s, its employees’, Contractor’s Subcontractor’s, and/or Contractor’s Subcontractor’s employees’ signature(s) to any lawful or necessary document required or desirable to apply for or prosecute any United States application (including renewals or divisions thereof), Contractor, its employees, Contractor’s Subcontractor, and Contractor’s Subcontractor’s employees hereby irrevocably designate and appoint Caltrans and its duly authorized officers and agents, as its/their agent and attorney-in-fact, to act for and on Contractor, its employees, Contractor’s Subcontractor, and Contractor’s Subcontractor’s employees’ 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, and/or patents thereon with the same legal force and effect as if executed by Contractor, its employees, Contractor’s Subcontractor, and/or Contractor’s Subcontractor’s employees. Caltrans shall have no obligations to file any copyright, trademark or patent applications.

3) **Avoidance of Infringement:** In performing services under this Agreement, Contractor, its employees, Contractor’s Subcontractor, and Contractor’s Subcontractor’s 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 Contractor, its employees, Contractor’s Subcontractor, and/or Contractor’s Subcontractor’s employees become aware of any such possible infringement in the course of performing any Work under this Agreement, Contractor, its employees, Contractor’s Subcontractor, and Contractor’s Subcontractor’s employees shall immediately notify Caltrans’ Contract Manager of same in writing.

4) **Pre-Existing Works and License:** Contractor acknowledges that all Work Product shall be the sole and exclusive property of Caltrans, except that any pre-existing works created by Contractor and third parties outside of the Agreement but utilized in connection with the Agreement (the “Pre-existing Works”) shall continue to be owned by Contractor or such parties. Contractor agrees to notify Caltrans Contract Manager in writing of any Pre-existing Works used in connection with any Work Product produced under this Agreement and hereby grants to Caltrans a non-exclusive, perpetual, royalty-free license to utilize the Pre-existing Works in connection with the Work Product.

C. **Additional Provisions**

**Subcontractors:** Contractor shall affirmatively bind by contract any of its Subcontractors or service vendors (hereinafter “Contractor’s Subcontractor”) providing services under this Agreement to conform to the provisions of this Exhibit E. Contractor’s Subcontractor shall then provide the signed contract to Contractor, who
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shall provide it to Caltrans Contract Manager prior to the commencement of any work. In performing services under this Agreement, Contractor’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 Contractor’s Subcontractor becomes aware of any such possible infringement in the course of performing any Work under this Agreement, Contractor’s Subcontractor shall immediately notify Contractor of same in writing, and Contractor shall then immediately notify Caltrans’s Contract Manager of same in writing.

D. Ownership of Data:

1) 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.

2) It is understood and agreed that all calculations, drawings, and specifications, whether in hard copy of machine-readable form, are intended for one-time use in the construction of the project for which this Agreement has been entered into.

3) The Consultant is not liable for claims, liabilities or losses arising out of, or connected with, the modification or misuse by Caltrans of the machine readable information and data provided by the Consultant under this Agreement; further, the Consultant is not liable for claims, liabilities or losses arising out of, or connected with, any use by Caltrans of the project documentation on other projects, for additions to this project, or for the completion of this project by others, excepting only such use as may be authorized, in writing, by the Consultant.

4) Any sub-agreement or subcontract in excess of $25,000.00 entered into as a result of this Agreement, shall contain all of the provisions of this clause.

4. Prohibition of Delinquent Taxpayers

Public Contract Code Section 10295.4 prohibits the State from entering into an Agreement for goods or services with any taxpayer, whose name appears on either list maintained by the California Department of Tax and Fee Administration or the Franchise Tax Board pursuant to Revenue and Taxation Code Sections 7063 and 19195, respectively, of the 500 largest tax delinquencies. Public Contract Code Section 10295.4 provides no exceptions to these prohibitions.