

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. 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 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. Retention of Records/Audits

- A. For the purpose of determining compliance with Government Code Section 8546.7, the 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 years from the date of final payment under the Agreement. Caltrans, 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 Contractor's books, records, and documents 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.

4. Subcontractors

Contractor shall perform work contemplated with resources available within its own organization and no portion of work shall be subcontracted.

5. Disabled Veterans Business Enterprise (DVBE) Participation (Without Goals)

Caltrans has established no goals for DVBE participation for this Agreement. However, Contractor shall be fully informed respecting California Public Contract Code Sections 10115 et seq., which is incorporated by reference. Contractor is urged to obtain DVBE Subcontractor participation should clearly defined portions of the work become available.

6. Laws to be Observed

Contractor shall keep fully informed of all existing and future laws, including: State and Federal, and county and municipal ordinances and regulations including but not limited to Senate Bill 1383 of 2016 Title 14, CCR, General Provisions section 18981.2, Public Resources Code sections 42652 et. seq., and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same, which in any manner affect those engaged or employed in the work, the materials used in the work, or which in any way affect the conduct of the work.

Contractor shall at all times observe and comply with and shall cause all agents and employees to observe and comply with, all such existing and future laws, ordinances, regulations, orders, and decrees of bodies or tribunals having any jurisdiction or authority over the Agreement.

Contractor shall protect and indemnify the State of California and all officers and employees thereof connected with the work against any claim, injury, or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by Contractor, its Subcontractor(s), or an employee(s). If any discrepancy or inconsistency is discovered in the plans, drawings, specification, or Agreement for the work in relation to any such law, ordinance, regulation, order, or decree, Contractor shall immediately report the same to Caltrans Contract Manager in writing.

7. Specific Legal References

Any reference to specific statutes, regulations, or other legal authority in this Agreement shall not relieve Contractor from responsibility of complying with all existing and future laws, ordinances, regulations, orders, and decrees of bodies or tribunals having any jurisdiction or authority over the Agreement.

8. Equipment Indemnification

- A. Contractor shall indemnify Caltrans for any claims against Caltrans for loss or damage to Contractor's property or equipment during its use under this Agreement and shall at Contractor's own expense maintain such fire, theft, liability, or other insurance as deemed necessary for this protection. Contractor assumes all responsibility which may be imposed by law for property damage or personal injuries caused by defective equipment furnished under this Agreement or by operations of Contractor or Contractor's employees under this Agreement.
- B. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this clause.

9. 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 the 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.

Except for defaults of Subcontractors, 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 the 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.

If a delay in, or failure of, performance by Contractor arises out of a default of its Subcontractor, and if such default of its Subcontractor arises out of causes beyond the (direct or indirect) control of both Contractor and Subcontractor, and without the fault, intentional act, or negligence of either of them, Contractor shall not be liable for damages of such delay or failure, unless the supplies or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule.

10. Employment of Undocumented Workers

By signing this Agreement, Contractor swears or affirms that it has not, in the preceding five (5) years, been convicted of violating a State or Federal law relative to the employment of undocumented workers.

11. Insurance-General Requirements

- A. Deductibles and SIRs: Contractor is responsible for any deductible or self-insured retention contained within the insurance program. All insurance required by this Agreement must allow, but not require, 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.
- 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.
- 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 Department of General Services, Office of Risk and Insurance Management (ORIM). If the Contractor is self-insured for a portion or all of its insurance,

review of financial information including a letter of credit may be required. Department of General Services, ORIM Website: <https://www.dgs.ca.gov/ORIM>.

- H. Contractor shall include all its Subcontractors as insureds under Contractor's insurance or supply evidence of insurance to State equal to policies, coverages, and limits required of Contractor.
- I. State will not be responsible for any premiums or assessments on the policy.
- J. Available Coverages/Limits: In the event 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.

12. Insurance Requirements

A. Commercial General Liability

- 1. Contractor shall maintain commercial general liability 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 Agreement. Required limits are \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the 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 Department of General Services, Office of Risk and Insurance Management.

B. 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.

C. Automobile Liability

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

D. Contractor's Pollution Liability (if applicable to the work performed)

Contractor shall maintain Contractor's 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. Required limits are \$1,000,000 per occurrence and \$2,000,000 aggregate. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. The same additional insured designation and endorsement

required for general liability is to be provided for this coverage.

13. Licenses and Permits

- A. Contractor shall be properly licensed in accordance with the laws of the State of California and shall possess an active license issued by the California Contractors State License Board (CSLB) that is appropriate for the work being performed.
- B. Contractor shall be an individual or firm licensed to do business in California and shall obtain at its expense all license(s) and permit(s) required by law for accomplishing any work required in connection with this Agreement.
- C. If Contractor is headquartered in the State of California, Contractor must have a business license or equivalent from the city/county in which it is headquartered. If Contractor is a corporation or other business entity (apart from a sole proprietorship or general partnership), then Contractor must be registered and active/in good standing with the California Secretary of State.
- D. In the event any license(s) and/or permit(s) expire at any time during the term of this Agreement, Contractor agrees to provide Caltrans a copy of the renewed license(s) and/or permit(s) within 30 days following the expiration date. In the event Contractor fails to keep in effect at all times all required license(s) and permit(s), Caltrans may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

14. Licensed Contractor Standards for Quality of Work

- A. Licensed contractors must observe professional standards for quality of work or the California Contractors State License Board (CSLB) will invoke disciplinary action.
- B. Notice is hereby given that certain actions by Contractor, including, but not limited to, the following, constitute grounds for disciplinary action once Caltrans has notified the license board of all violations:
 - 1. A willful departure from plans and specifications or disregard of trade standards for good and workmanlike construction in any material respect that might prejudice the Caltrans owner of the property upon which you perform work (Bus. and Prof. Code, 7109).
 - 2. The failure to observe and comply with all the applicable labor laws (Bus. and Prof. Code Section 7110).
 - 3. Material failure to complete this Agreement (Bus. and Prof. Code 7113).
- C. Should Caltrans determine that the work or materials provided vary materially from the specifications, or, that defective work when completed was not performed in a workmanlike manner, then Contractor warrants that they shall perform all necessary repairs, replacement and corrections needed to restore the property according to the Agreement plans and specifications, all at no further or additional cost to Caltrans.

15. 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 State Board of Equalization 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.

16. 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.

17. Interfacing with Pedestrian Vehicular Traffic

Pursuant to authority contained in California Vehicle Code Section 591, Caltrans has determined that within such areas as are within the limits of project and are open to public traffic, Contractor shall comply with all the requirements set forth in California Vehicle Code, Divisions 11, 12, 13, 14 and 15. Contractor shall take all necessary precautions for safe operations of Contractor's equipment and the protection of the public from injury and damage from such property.

18. Motor Carrier Permit Requirements (If applicable)

- A. Contractor must have a valid Motor Carrier Permit(s) (MCP) issued from the Department of Motor Vehicles (OMV) for its services as a Motor Carrier of Property under this Agreement. Contractor shall pay any required fees necessary to obtain and maintain in good standing the required MCP(s).
- B. The MCP(s) required for Contractor's Motor Carriers of Property under California Vehicle Code Sections 34601 and 34620 shall be on file with Contractor for the duration of this Agreement. Upon request of Caltrans Contract Manager or their designee, Contractor must immediately provide to Caltrans a copy of the required MCP(s).

19. Contractor's Reports and/or Meetings

When reports and/or meetings are required as part of this Agreement, the following shall apply:

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

20. Publication-Part A:

Publication Part A is to this Agreement when a Publishable Report is a part of this Agreement.

- A. 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 the State) resulting from work conducted under this Agreement.
- C. Any publication by Contractor shall give proper credit to the State. 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 State any materials released for publication simultaneously with submission to publisher for purpose of comment and review by State with respect to presence of patentable, confidential, and/or proprietary subject matter within materials released for publication.
- E. State 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 State during the course of Agreement and designated in writing as "CONFIDENTIAL". Such information will not be included in any published material without the prior written approval of 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."

21. Publication-Part B:

Publications Part B is applicable to this Agreement when materials, written products, or documents other than "publishable reports" are part of this Agreement.

- A. 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.
- 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."

22. 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 Contractor in order to carry out this Agreement, shall be protected by the Contractor from unauthorized use and disclosure.
- B. Permission to disclose information on one (1) 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 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 Section.

23. 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 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.

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

4. Install and maintain current anti-virus software, security patches, and upgrades on all computing devices used during the course of the Agreement.
 5. 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.
 6. Advise the owner of State-owned data, agency Information Security Officer, and agency Chief Information Officer of vulnerabilities that may present a threat to 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 Section 5335.1)

24. Ownership of Proprietary Property

For the purposes of this section (**Ownership of Proprietary Property**) of this Agreement (herein after referred to as "this Agreement") the following definitions shall apply:

Work: As delineated in the Agreement and any referenced attachments.

Work Product: As defined as Deliverable in the Agreement and any referenced attachments, 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.

25. Ownership of Work Product and Rights

- A. **Ownership of Work Product:** Except in regard to Pre-existing Works, all Work Product derived by the Work Performed by the Contractor, its employees, or by any of the Contractor's Subcontractor's employees under this Agreement, shall be owned by Caltrans and shall be considered to be works made for hire by the Contractor's Subcontractor for Caltrans. Caltrans shall own all United States and international copyrights in the Work Product.

As such, all Work Product shall contain, in a conspicuous place, a copyright designation consisting of a "c" in a circle followed by the four-digit year in which the Work Product was produced, followed by the words "California Department of Transportation." For example, a Work Product created in the year 2012 would contain the copyright designation © 2012 California Department of Transportation.

- B. **Vesting of Copyright Rights:** Contractor, its employees, or any of Contractor'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 Contractor's Subcontractor from Caltrans. From time to time upon Caltrans request, the Contractor'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. Contractor hereby agrees to waive all moral rights relating to identification of authorship restriction or limitation on use, or subsequent modifications of the Work.

26. Inventions

- A. **Vesting of Patent Rights:** Contractor, its employees, and any Contractor'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. Contractor, its employees and Contractor'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 Contractor, its employees and Contractor's Subcontractor believes to be new or different. Contractor, its employees and Contractor's Subcontractor shall, upon Caltrans' request and at Caltrans' expense, cause patent applications to be filed thereon, through solicitors designated by Caltrans, and shall sign all such applications over to Caltrans, its successors, and assigns. Contractor, its employees and Contractor'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.
- B. **Agency:** In the event that Caltrans is unable for any reason whatsoever to secure Contractor's, its employees', and/or Contractor'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), Contractor, its employees, and Contractor'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 Contractor, its employees and Contractor'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 Contractor, its employees and/or Contractor's Subcontractor. Caltrans shall have no obligations to file any copyright, trademark or patent applications.
- C. **Avoidance of Infringement:** In performing services under this Agreement, Contractor 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 Contractor or its employees becomes aware of any such possible infringement in the course of performing any Work under this Agreement, Contractor or its employees shall immediately notify Caltrans in writing.
- D. **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 in writing of any Pre-existing Works used in connection with any Work Product produced under this Agreement and hereby grants to exclusive, perpetual, royalty free license to utilize the Pre-existing Works in connection with the Work Product.

27. Executive Order N-12-23- Generative Artificial Intelligence (GenAI) Technology Use and Reporting:

- A. During the term of the contract, Contractor must notify the State in writing if their services or any work under this contract includes, or makes available, any previously unreported GenAI technology, including GenAI from third parties or subcontractors. Contractor shall immediately complete the [GenAI Reporting and Factsheet \(STD 1000\)](#) to notify the State of any new or previously unreported GenAI technology. At the direction of the State, Contractor shall discontinue the use of any new or previously undisclosed GenAI technology that materially impacts functionality, risk or contract performance, until use of such GenAI technology has been approved by the State.
- B. Failure to disclose GenAI use to the State and submit the GenAI Reporting and Factsheet (STD 1000) may be considered a breach of the contract by the State at its sole discretion and the State may consider such failure to disclose GenAI and/or failure to submit the GenAI Reporting and Factsheet (STD 1000) as grounds for the immediate termination of the contract. The State is entitled to seek any and all relief it may be entitled to as a result of such non-disclosure.
- C. The State reserves the right to amend the contract, without additional cost, to incorporate GenAI Special Provisions into the contract at its sole discretion and/or or terminate any contract that presents an unacceptable level of risk to the State.

28. Confidentiality and Information

Caltrans may provide its own intellectual property and confidential business and technical information to Contractor in connection with the work to be performed by Contractor under this Agreement. Such intellectual property and information shall be designated as confidential upon or prior to disclosure by Caltrans. In addition, the preparation and specifications of deliverables shall in all instances be treated as confidential, unless and until disclosed publicly by Caltrans. All confidential written materials shall be marked with the legend "California Department of Transportation-Confidential." Contractor shall use its best efforts to prohibit any use or disclosure of Caltrans' confidential information, except as necessary to perform work under this Agreement. In the event that Contractor is an entity or otherwise will be causing individuals in its employ or under its supervision to participate in the rendering of the work, Contractor warrants that it shall cause each of such individuals to execute a Confidentiality Agreement.

29. 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.

30. Mandatory Organic Waste Recycling

It is understood and agreed that pursuant to Public Resources Code Sections 42649.8 et seq., if Contractor generates two (2) cubic yards or more of organic waste or commercial solid waste per week, the Contractor shall arrange for organic waste recycling services or commercial waste recycling services that separate/source organic waste recycling. Contractor shall provide proof of compliance, i.e., organic waste recycling services or commercial waste recycling services that separate/source organic waste recycling, upon request from Caltrans Contract Manager.

31. Janitorial Services Registration

No Contractor or Subcontractor may be awarded a janitorial services Agreement unless registered with the Labor Commissioner's Office pursuant to Labor Code Sections 1420-1434.

32. ADA Compliance

All entities that provide electronic or information technology or related services that will be posted online by the California Department of Transportation 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.

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.

34. Employee Wages and Benefits for Janitorial and Housekeeping, Laundry, Window Cleaning, and Security Guard Services

- A. Pursuant to Government Code Section 19134, Contractor shall provide applicable wages and employee benefits and/or In Lieu Cash payment rates to all covered employees. With the exception of receiving holiday pay as described in Government Code Section 19134(h), this section does not apply to personal services Agreements for the services performed by employees of nonprofit organizations that are employed in accordance with any of the following:
- (1) A special license issued pursuant to Labor Code Section 1191.5; (2) A special certificate issued pursuant to Section 214 of Title 29 of the United States Code (USC); (3)

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A community rehabilitation plan described in Welfare and Institutions Code (WIC) Sections 19152 and 19404; and/or (4) A habilitation services program as described in WIC Sections 19352 and 19356.6.

1. "Wages" means hourly payments paid pursuant to Government Code Section 19134 to a covered employee for work performed by such employee. Wages must be valued of at least 85 percent (85%) of wages paid to State of California employees performing similar work.
2. "Employee Benefits" includes:
 - a) Health Benefits (means coverage a Contractor provides to a covered employee, either through a purchased plan or by self-insurance) for:
 - (1) Basic health care, as identified in 28 California Code of Regulations Section 1300.67, and
 - (2) Dental services, and
 - (3) Vision services.
 - b) Retirement Benefits, and
 - c) Holiday Pay, sick pay, and vacation pay.

Benefits shall be valued of at least 85 percent (85%) of the State cost for State of California employees performing similar work, **or** In Lieu Cash Payments, **or** a combination of the actual benefit and In Lieu Cash Payments totaling at least 85 percent (85%) of the State cost.

In Lieu Cash Payments to Covered Employees are valued of at least 85 percent (85%) of the State cost for State of California employees performing similar work.

3. "Covered Employee" means a person who performs any of the services as more than an incidental part of their duties under this Agreement. This excludes a person who performs solely supervisory or administrative services under this Agreement, or an owner/operator.

B. Rates

Minimum hourly wage rates are determined by the California Department of Human Resources (CalHR). Hourly wage rates for specific personal service classifications are included in annual Personal Services Contracts, which may be found at: <http://www.calhr.ca.gov/state-hr-professionals/Pages/personal-services-contracts.aspx>. Government Code Section 19134 requires CalHR to set rates at 85 percent (85%) of the State's salary and benefit cost for State employees performing similar duties. The current rate, which includes the hourly wage rate plus minimum blended benefits rate for this Agreement are as follows:

Classification: **(Enter Correct Class Title)**
Current hourly rate is **\$Enter Current Rate**
Current blended Benefits rate is **\$Enter Current Rate**

Hourly wage rates and/or blended benefits rate may be adjusted annually in February by CalHR. Any published rate changes that occur during the term of this Agreement shall be effective via an amendment to this Agreement. The effective rate change date shall be applied retroactively, pursuant to the effective date published by CalHR. Contractor compliance with the Employee Benefits rate may be accomplished by one (1) of the following three (3) options:

1. Providing a benefit plan to the employees valued at the CalHR blended benefits rate.

Contractors electing to provide actual benefits (versus cash-in-lieu) to their employees must provide evidence of benefit coverage to Caltrans upon notice of award. Evidence shall consist of the name and address of the applicable insurance company(ies), insurance company telephone number, or a signed statement on company letterhead that Contractor is self-insured and the type of insurance offered for each employee plan, **or**

2. Cash equal to CalHR blended benefits rate, or
3. Combination of a benefit plan and cash payments which together equal CalHR blended benefits rate.

C. Reports

In order to receive any payment under this Agreement, Contractor shall provide, along with their monthly invoice, a monthly report that shall comply with California Code of Regulations Section 1896.370(a), and include the following items:

1. The number of Covered Employees who received Wages and Employee benefits and/or Cash Payments in the preceding month.
2. The number of hours each Covered Employee worked on this Agreement in the preceding month.
3. The name of each Covered Employee who received Wages and Employee Benefits and/or Cash Payments in the preceding month.
4. The amount paid to each Covered Employee for Wages and Employee Benefits and/or Cash Payments in the preceding month. Contractor must itemize amounts paid for wages and for each type of employee Benefit/In Lieu Cash Payment separately.
5. The total monthly cost of Wages and Employee Benefits and/or Cash Payments in the preceding month, excluding any administrative or indirect costs.

D. Agreements and documents relating to implementing Government Code Section 19134 may be audited by Caltrans, the DGS, and/or the Bureau of State Audits, or, in the case of a State- Leased Facility, by the contracting lessor.

E. Failure to comply with the provisions of Government Code Section 19134 constitutes a material breach, which could subject the Agreement to immediate termination by Caltrans.

35. Executive Order N-6-22 - Russia Sanctions

On March 4, 2022, Governor Gavin Newsom issued Executive Order [N-6-22](#) (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law unless the contract has been Federalized (i.e. there is federal participation in any phase). The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The State shall provide Contractor advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.