

STANDARD AGREEMENT

STD 213 (rev 9/01)

Division Of Procurement And Contracts (DPAC) A&E Boiler Revision Date 08/06/08

AGREEMENT NUMBER

04A3144

REGISTRATION NUMBER

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

STATE AGENCY'S NAME

STATE OF CALIFORNIA

DEPARTMENT OF TRANSPORTATION (Hereinafter referred to as "the Department")

CONSULTANT'S NAME

Caltrop Corporation (Hereinafter referred to as "the Consultant")

2. The term of this Agreement is from December 4, 2008 through December 3, 2011.

3. The maximum amount of this Agreement is: \$40,000,000.00
Forty Million Dollars and No Cents

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

Exhibit A – Scope Of Work and Deliverables	10 Pages
Exhibit B – Budget Detail And Payment Provisions	5 Pages
Exhibit C – General Terms And Conditions 307 (GTC 307)	1 Page
Exhibit D – Special Terms And Conditions	17 Pages
Exhibit E – Additional Provisions	3 Pages
Exhibit F – Prevailing Wage Requirements	6 Pages
Attachment 1 – Scope of Work and Deliverables	9 Pages
Attachment 2 – Cost Proposal	46 Pages
Attachment 3 – Sample Task Order Format	5 Pages
Attachment 4 – Documentation of Disabled Veteran Business Enterprise Program Requirements form (Std840) and Bidder Declaration form (GSPD-05-105)	2 Pages

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

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

CONTRACTOR (herein referred to as "the Consultant")

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

Caltrop Corporation

BY (Authorized Signature)



DATE SIGNED (Do not type)

11/25/08

PRINTED NAME AND TITLE OF PERSON SIGNING

David H. Saber, Vice President

ADDRESS

2200 Powell Street, Suite 1125, Emeryville, CA 94608

STATE OF CALIFORNIA

AGENCY NAME

Department of Transportation

BY (Authorized Signature)



DATE SIGNED (Do not type)

11/26/08

PRINTED NAME AND TITLE OF PERSON SIGNING

Liz Salinas, Contract Officer

ADDRESS

Division of Procurement and Contracts
1727 30th Street, MS 65
Sacramento, CA 95816California Department of General Services
Use Only Exempt per: PCC 10430(d)

**EXHIBIT A
 SCOPE OF WORK AND DELIVERABLES**

I. SCOPE OF WORK

The Consultant will provide “On Call” independent quality assurance services for the structural materials incorporated in the Toll Bridge Program projects located within the geographical limits of the Department’s District 4.

- A. The work to be performed under this Agreement is described in Attachment 1.
- B. The services shall be performed domestically, within the continental U.S.A., as well as internationally.
- C. This Agreement will commence on the start date December 4, 2008 as presented herein or upon approval by the Department, whichever is later and no work shall begin before that time. This Agreement is of no effect unless approved by the Department. The Consultant shall not receive payment for work performed prior to approval of the Agreement and before receipt of notice to proceed by the Department’s Contract Manager. This Agreement shall expire on December 3, 2011. The services shall be provided Monday through Friday, and on weekends and holidays when required. The parties may amend this agreement as permitted by law.
- D. All inquiries during the term of this Agreement will be directed to the project representatives identified below:

THE DEPARTMENT	THE CONSULTANT
Contract Manager: Prakash Sivagnanasunda	Project Manager: Dave Saber
District/Division: Consultant Services Unit, MS 7B	Office/Branch:
Address: 111 Grand Ave Oakland, CA 94612	Address: 2200 Powell Street, Suite 1125 Emeryville, CA 94608
Phone: 510-286-6114	Phone: 510-496-2050
Fax: 510-622-0198	Fax: 510-601-1776
e-mail: Prakash_Sivagnanasunda@dot.ca.gov	e-mail: dsaber@caltrop.com

EXHIBIT A
SCOPE OF WORK AND DELIVERABLES

E. Work Guarantee

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

F. Licenses and Permits

1. The Consultant shall obtain at its expense all license(s) and permit(s) required by law for accomplishing any work required in connection with this Agreement.
2. In the event the Consultant fails to keep in effect at all times all required license(s) and permit(s), the Department may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

II. TASK ORDER

- A. Specific projects will be assigned to the Consultant through issuance of Task Orders. See sample Task Order format, Attachment 3.
- B. After a project to be performed under this Agreement is identified by the Department, the Department will prepare a draft Task Order, less the cost estimate. The draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a Department of Transportation Project Coordinator. The draft Task Order will be delivered to the Consultant for review. The Consultant shall return the draft Task Order within no more than ten (10) calendar days along with a cost estimate including a written estimate of the number of hours per staff person, any anticipated reimbursable expenses, and total dollar amount. The Consultant agrees that each cost estimate shall be the product of a good faith effort exercise of engineering judgment. After agreement has been reached on the negotiable items, the finalized Task Order shall be signed by both the Department and the Consultant. If the Department and Consultant are unable to reach agreement, the Department may terminate this

EXHIBIT A
SCOPE OF WORK AND DELIVERABLES

Agreement in accordance with the provisions of Exhibit D, entitled "Termination."

- C. Task Orders may be negotiated for a Firm Fixed Price or for specific rates of compensation, both of which must be based on the labor and other rates set forth in the Consultant's Cost Proposal, Attachment 2.
- D. A Task Order is of no force or effect until returned to the Department and signed by an authorized representative of the Department. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by the Department.
- E. The Consultant shall not commence performance nor will payment be made for any work performed prior to approval of this Agreement by State and written notification to proceed has been issued by the Department's Contract Manager, nor will any payment be made for work performed after the expiration date of this Agreement.
- F. If the Consultant fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- G. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.
- H. The total amount payable by the Department for an individual Task Order shall not exceed the amount agreed to in the Task Order. Task Orders and/or Task Order revisions require written approval by the Consultant and the Department.

III. CONSULTANT REPORTS AND/OR MEETINGS

- A. The Consultant shall submit progress reports at least once a month. The report should be sufficiently detailed for the Department's Contract Manager to determine if the Consultant is performing to expectations and is on schedule, to provide communication of interim findings and to afford occasions for airing difficulties or special problems encountered

EXHIBIT A
SCOPE OF WORK AND DELIVERABLES

so remedies can be developed. Separate detail shall be provided for each on-going Task Order.

- B. Progress reports shall identify the total number of hours worked by the Consultants' and Subconsultants' personnel by use of the Department of Transportation's Work Breakdown Structure (WBS) level element(s). The WBS is included in the "Guide to Project Delivery Workplan Standards," which can be found at <http://www.dot.ca.gov/hq/projmgmt/guidance.htm>.
- C. The Consultant's Project Manager shall meet with the Department's Contract Manager as needed to discuss progress on the Agreement.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

I. FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional or legislative appropriation of funds for the mutual benefit of both parties in order to avoid program and fiscal delays that would occur if the agreement were executed after that determination was made.
- B. This Agreement is valid and enforceable only if sufficient funds are made available to the Department 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. The Department has the option to terminate the Agreement under the 30-day cancellation clause.

II. COMPENSATION AND PAYMENT

- A. The Consultant will be reimbursed for hours worked at the hourly rates specified in the Consultant's Cost Proposal, (See Attachment 2). The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this agreement.
- B. Consultant shall be responsible for any future adjustments to prevailing wage rates including but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. The Consultant is responsible for paying the appropriate rate, including escalations that take place during the term of the Agreement.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

- C. A mistake, inadvertence, or neglect by the Consultant in failing to pay the correct rates of prevailing wage will be remedied solely by the Consultant and will not, under any circumstances, be considered as the basis of a claim against the Department on the Agreement.
- D. In addition, the Consultant will be reimbursed for direct costs, other than salary costs, that are identified in an executed Task Order.
- E. Transportation and subsistence costs to be reimbursed shall be the actual costs incurred, but not to exceed the rates stipulated in the Department of Transportation "Caltrans Travel Guide, Consultant/Contractors Travel Policy." See <http://www.dot.ca.gov/hq/asc/travel/ch12.htm>.
- F. Progress payments:
 - 1. Progress payments will be made monthly in arrears based on services provided at specific hourly rates and allowable direct cost incurred for Task Orders negotiated with specific rates of compensation. Progress payments for Firm Fixed Price Task Orders will be based on the percentage of work completed.
 - 2. To determine allowable incurred Subconsultant costs that are eligible for reimbursement, in addition to reimbursement for actual costs that are incurred, the Department will allow Subconsultant costs that are treated by the Consultant as accrued due to such costs having been billed to the Consultant and recognized by the Consultant and the Department as valid, undisputed, due and payable.
 - 3. By submitting accrued but unpaid Subconsultant costs for reimbursement, the Consultant agrees that within ten (10) days of receipt of reimbursement, the full amount submitted as a reimbursable accrued Subconsultant cost shall be paid to the Subconsultant.
- G. The Consultant shall not commence performance nor will payment be made for any work performed prior to approval of this Agreement by State and written notification to proceed has been issued by the

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

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

- H. The Consultant will be reimbursed in arrears for services satisfactorily rendered and approved by the Department's Contract Manager, as promptly as fiscal procedures will permit upon receipt by the Department's Contract Manager of itemized invoices in triplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order.
- I. Invoices shall be submitted showing the Department of Transportation Work Breakdown Structure (WBS) level element for each billable hour increment and/or detail of work performed on each milestone, on each project as applicable. Task Orders and invoicing shall include, but are not limited to, the WBS elements for defined/related services and products. The WBS is included in the Guide to Project Delivery Workplan Standards, which can be found at <http://www.dot.ca.gov/hq/projmgmt/guidance.htm>. Incomplete invoices shall be returned unpaid to the Consultant for correction. The Department shall not pay disputed portions of invoices.
- J. When prevailing wage rates apply, the Consultant must submit with each invoice a certified copy of the payroll for compliance verification. Invoice payment will not be made until the payroll has been verified and the invoice approved by the Department's Contract Manager.
- K. The sample invoice format can be found at <http://caltrans-opac.ca.gov/aeinfo.htm>. Invoices shall reference this Agreement number, project title, and Task Order number. Invoices shall be submitted no later than 45 calendar days after completion of each billing period. Any credit, as provided under this Agreement, due the Department must be reimbursed by the Consultant prior to the expiration or termination of this Agreement. Invoices shall be mailed to the Department's Contract Manager or Consultant Service Unit at the following address:

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

DEPARTMENT OF TRANSPORTATION
Attention: Prakash Sivagnanasunda
Consultant Services Unit, MS 7B
111 Grand Ave
Oakland, CA 94612

- L. Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.
- M. The total amount payable by the Department, for all Task Orders resulting from this Agreement, shall not exceed **\$40,000,000.00**. It is understood and agreed that this total is an estimate, and that the actual amount of work requested by the Department may be less. There is no guarantee, either expressed or implied, as to the actual dollar amount that will be authorized under this Agreement through Task Orders. In no event shall Task Orders be issued that will exceed this maximum.
- N. Any written report prepared as a requirement of this Agreement shall contain, in a separate section of such written report, the number and dollar amounts of all agreements and subagreements relating to the preparation of those reports if the combined costs for work by nonemployees of the State exceed \$5,000.00.
- O. Attachment 2, Cost Proposal, is subject to a post award audit and concurrence review of the ICR. Attachment 2 shall be adjusted by the Consultant and approved by the Contract Manager to conform to the audit recommendations or ICR review. The Consultant agrees that individual items of cost identified in the audit report may be incorporated into the Agreement at the Department's sole discretion. Refusal by the Consultant to incorporate the interim audit or post award recommendations will be considered a breach of the Agreement terms and cause for termination of the Agreement.
- P. Any subagreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

III. COST PRINCIPLES

- A. The Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., shall be used to determine the allowability of individual items of cost.
- B. The Consultant also agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- C. Any costs for which payment has been made to the Consultant that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq. or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, are subject to repayment by the Consultant to the Department.
- D. Any subagreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all the provisions of this clause.

IV. CONTINGENT FEE

The Consultant 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 fide employees or bona fide established commercial or selling agencies maintained by the Consultant for the purpose of securing business. For breach or violation of this warranty, the Department has the right to annul this Agreement without liability, pay 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.

EXHIBIT C
GENERAL TERMS AND CONDITIONS

NOTE: In this Exhibit C – GTC 307, the General Terms and Conditions are included in this Agreement by reference and made part of this Agreement as if attached hereto. See <http://www.ols.dgs.ca.gov/Standard+Language/default.htm>.

The following language is to be included in lieu of the Standard Indemnification Clauses used in DGS GTC – 307 General Terms and Conditions.

Indemnification

The Consultant agrees to indemnify, defend, and hold harmless the Department, its officers, agents, and employees from any and all claims, demands, costs, or liability arising from or connected with the services provided hereunder due to negligent or intentional acts, errors, or omissions of the Consultant. The Consultant will reimburse the Department for any expenditure, including reasonable attorney fees, incurred by the Department in defending against claims ultimately determined to be due to negligent or intentional acts, errors, or omissions of the Consultant.

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

I. AMENDMENT (CHANGE IN TERMS)

- A. No amendment or variation of the terms of this agreement shall be valid unless made in writing, signed by the parties, and approved as required. No oral understanding or agreement not incorporated in agreement is binding on any of the parties.
- B. The Consultant shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by the Department's Contract Manager.
- C. There shall be no change in the Consultant's Project Manager or members of the project team, as listed in the cost proposal, which is a part of this Agreement, without prior written approval by the Department's Contract Manager. If the Consultant obtains approval from the Department's Contract Manager to add or substitute personnel, the Consultant must provide the Personnel Request Form, a copy of the SF330 or resume for the additional or substituted personnel, along with a copy of the certified payroll for that person.

II. DISPUTES

- A. The Consultant shall continue with the responsibilities under this Agreement during any work dispute. Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by a committee consisting of the Department's Contract Manager and the Departmental Contract Officer who may consider written or verbal information submitted by the Consultant.
- B. Any dispute, other than audit, not resolved by the committee consisting of the Department's Contract Manager and Departmental Contract Officer may be reviewed by the Consultant Claims Review Committee (CCRC). The CCRC will consist of the Division Chief of Project Delivery (Chairperson), Deputy Director of Administration and the Chief Counsel of Legal Services or their designees. Additional members or their designees may serve on the committee.

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

- C. Not later than 30 days after completion of all work under the Agreement, the Consultant may request review by the CCRC of unresolved claims or disputes, other than audit. The request for review will be submitted in writing through the Departmental Contract Officer to the Chairperson, CCRC. A meeting by the CCRC will be scheduled after the Chairperson concurs. After the meeting, the CCRC will make recommendations to the Deputy Director of the functional program area, who will make the final decision for the Department.
- D. Neither the pendency of a dispute nor its consideration by the committee will excuse the Consultant from full and timely performance in accordance with the terms of this Agreement.

III. TERMINATION

This section regarding termination is in addition to GTC 307.

- A. The Department reserves the right to terminate this Agreement immediately in the event of breach or failure of performance by the Consultant, or upon thirty (30) calendar days written notice to the Consultant if terminated for the convenience of the Department.
- B. The Department may terminate this Agreement and be relieved of any payments except as provided for under early termination should the Consultant fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the Department may proceed with the work in any manner deemed proper by the Department. All costs to the Department shall be deducted from any sum due the Consultant under this Agreement and the balance, if any, shall be paid to the Consultant upon demand.

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

General Conditions

- A. In the event this Agreement is terminated, suspended, or a Task Order is terminated for the convenience of the Department, the Consultant shall

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

be paid for the percentage of the work completed, relative to the total work effort called for under this Agreement, and for termination costs. No billable costs will be considered payable under the Agreement during suspension.

- B. Within 30 days of the date the Consultant is notified of the early termination of Task Order(s) issued against this Agreement for the convenience of the Department, the Consultant shall prepare and submit to the Department's Contract Manager, for approval, two (2) separate supplemental cost proposals:
1. A final revised cost proposal for all project-related costs for the revised termination date, and
 2. A cost proposal specifically addressing the termination settlement costs only.

V. CONSULTANT'S DELIVERABLES UNDER EARLY TERMINATION

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

VI. INVOICE SUBMITTAL UNDER EARLY TERMINATION

Separate final invoices for project-related costs and termination settlement costs shall be submitted no later than thirty (30) calendar days after the date the Consultant is notified of acceptance of the final cost proposals by the Department's Contract Manager. Invoices shall be submitted in accordance with EXHIBIT B. The invoice for termination settlement costs shall include the following, to the extent they are applicable: lease termination costs for

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

equipment and facilities approved under the terms of this Agreement; equipment salvage costs for equipment valued over \$500.00; rental costs for unexpired leases, less the residual value of the lease; cost of alterations and reasonable restorations required by the lease; settlement expenses, e.g., accounting, legal, clerical, storage, transportation, protection and disposition of property acquired or produced under this Agreement, indirect costs, such as payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs related to wages and salaries, incurred as settlement costs.

VII. TERMINATION ISSUES FOR SUBCONSULTANTS, SUPPLIERS, AND SERVICE PROVIDERS

The Consultant shall notify any Subconsultant and service or supply vendor providing services under this Agreement of the early termination date of this Agreement. Failure to notify any Subconsultant and service or supply vendor shall result in the Consultant being liable for the termination costs incurred by any Subconsultant and service or supply vendor for work performed under this Agreement, except those specifically agreed to in the termination notice to the Consultant.

VIII. COST PRINCIPLES UNDER EARLY TERMINATION

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

IX. DISPUTES UNDER EARLY TERMINATION CONDITIONS

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

X. AUDIT REVIEW PROCEDURES UNDER EARLY TERMINATION

Audit review procedures shall be in accordance with Exhibit D, Audit Review Procedures, section below.

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

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

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

XII. NON-DISCRIMINATION

This section regarding non-discrimination is in addition to GTC 307.

- A. During the performance of this agreement, the Consultant and its Subconsultants shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), medical condition (cancer), age, marital status, denial of family and medical care leave, and denial of pregnancy disability leave. Consultants and Subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. The Consultant and Subconsultants shall comply with the provision of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. The Consultant and its Subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- B. The Consultant shall include the nondiscrimination and compliance provisions of this clause in all subagreements to perform work under this Agreement.

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

XIII. RETENTION OF RECORD/AUDITS

- A. For the purpose of determining compliance with Public Contract Code Section 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code Section 8546.7, the Consultant, Subconsultants, and the Department 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 Department, the State Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the Consultant that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.
- B. Any subagreement in excess of \$25,000.00, entered into as a result of this Agreement, shall contain all the provisions of this clause.

XIV. 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 of Audits & Investigation (Chairperson); Deputy Director of Project Delivery; the Director of Legal Services or their designated alternates; and two (2) representatives 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 an interim or final audit report, the Consultant may request a review by the ARC of unresolved audit

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

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 the Department. 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 Department will excuse the Consultant from full and timely performance, in accordance with the terms of this Agreement.

XV. SUBCONTRACTING

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subconsultants, and no subagreement shall relieve the Consultant of its responsibilities and obligations hereunder. The Consultant agrees to be as fully responsible to the State for the acts and omissions of its subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Consultant. The Consultant's obligation to pay its subconsultants is an independent obligation from the State's obligation to make payments to the Consultant.
- B. The Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the Department's Contract Manager, except that which is expressly identified in the Consultant's Cost Proposal.
- C. Any subagreement in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants unless otherwise noted.

EXHIBIT D
SPECIAL TERMS AND CONDITIONS

- D. Contractor shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to the Consultant by the State.
- E. Any substitution of subconsultants must be approved in writing by the Department's Contract Manager in advance of assigning work to a substitute subconsultant.

XVI. EQUIPMENT PURCHASE

- A. Prior authorization in writing by the Department's Contract Manager shall be required before the Consultant enters into any non-budgeted purchase order or subagreement exceeding \$500.00 for supplies, equipment, or Consultant services. The Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service or consulting work not covered in the Consultant's Cost Proposal and exceeding \$500.00, with prior authorization by the Department's Contract Manager, three (3) competitive quotations must be submitted with the request or the absence of bidding must be adequately justified.
- C. The Consultant shall maintain an inventory record for each piece of non-expendable equipment purchased or built with funds provided under the terms of this Agreement. The inventory record of each piece of such equipment shall include the date acquired, total cost, serial number, model identification (on purchased equipment), and any other information or description necessary to identify said equipment. Non-expendable equipment so inventoried are those items of equipment that have a normal life expectancy of one (1) year or more and an approximate unit price of \$5,000.00 or more. In addition, theft-sensitive items of equipment costing less than \$5,000.00 shall be inventoried. A copy of the inventory record must be submitted to the Department on request by the Department.
- D. At the conclusion of the Agreement or if the Agreement is terminated, the Consultant may either keep the equipment and credit the Department in an amount equal to its fair market value or sell such equipment at the best price obtainable, at a public or private sale, in accordance with

