

## ATTACHMENT 2 CONTRACT TERMS

### EXHIBIT B - SPECIAL PROVISIONS

#### 1. DEFINITIONS

Terms defined below and elsewhere throughout the Contract Documents shall apply to the Agreement as defined.

- A. **“Acceptance”** means the written acceptance issued to the Contractor by the State after the Contractor has completed a Deliverable or other Contract requirement, in compliance with the Contract Documents, including without limitation, *Attachment 2 Contract Terms, Exhibit D - Work to be Performed*, and *Attachment 2 Contract Terms, Exhibit E - Acceptance of the Work and Sign-off Form*.
- B. **“Administrative Director”** refers to that individual or authorized designee, empowered by the State to make final and binding executive decisions on behalf of the State.
- C. **“Amendment”** means a written document issued by the State and signed by the Contractor which alters the Contract Documents and identifies the following: (i) a change in the Work; (ii) a change in Contract Amount; (iii) a change in time allotted for performance; and/or (iv) an adjustment to the Agreement terms.
- D. **“Appropriation Year”** means the period of time that the legislative authority has authorized spending for a defined purpose. The Appropriation Year for agreements funded by the Legislature of the State of California commences July 1 and ends on June 30 of each year. The Appropriation Year for agreements funded by the United States Congress commences October 1 and ends on September 30 of each year.
- E. **“Community Based Organization”** or **“CBO”** are not “top down” agencies but evolve over time from mutual interest or need at the community level. CBO’s may also be known as public interest groups, community service groups, injury prevention advocacy groups, and grassroots groups.
- F. **“Confidential Information”** means trade secrets, financial, statistical, personnel, technical, and other Data and information relating to the State’s business or the business of its constituents. Confidential Information does not include: (i) information that is already known by the receiving party, free of obligation of confidentiality to the disclosing party; (ii) information that becomes generally available to the public, other than as a result of disclosure by the receiving party in breach of this Agreement; (iii) information that is independently developed by the receiving party without reference to the Confidential Information; and (iv) information that the receiving party rightfully

obtains from a Third Party free of the obligation of confidentiality to the disclosing party.

- G. The “**Contract**” or “**Contract Documents**” constitute the entire integrated agreement between the State and the Contractor, as attached to and incorporated by a fully executed State Standard Agreement form. The terms “Contract” or “Contract Documents” may be used interchangeably with the term “Agreement.”
- H. “**Contract Amount**” means the total amount encumbered under this Agreement for any payment by the State to the Contractor for performance of the Work, in accordance with the Contract Documents.
- I. The “**Contractor**” means the individual, association, partnership, firm, company, consultant, corporation, affiliates, or combination thereof, including joint ventures, contracting with the State to do the Contract Work. The Contractor is one of the parties to this Agreement.
- J. “**Court(s)**” means one or more of the variety of Courts in the California Court system, including *criminal, civil, family, domestic violence* and *probate Courts*, where elders or their caregivers come to seek the Court’s protection through restraining orders or conservatorships.
- K. “**Data**” means all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
- L. “**Day**” means calendar day, unless otherwise specified.
- M. “**Deliverable(s)**” or “**Submittal(s)**” means one or more items, if specified in the Contract Documents, that the Contractor shall complete and deliver or submit to the State for acceptance.
- N. “**DUI Courts, Sentencing and “Courage to Live” in California Middle & High Schools Project**” or “**Project**” refers to all activity relative to this Agreement including activity of the Contractor, its Subcontractors, the State and the State’s representatives, pertaining to promoting innovation in collaborative justice courts, as further set forth in Exhibit D, Work to be Performed, development of a statewide DUI prevention and intervention curriculum aimed at educating juveniles about the dangers of drinking and driving under the influence.
- O. “**Force Majeure**” means a delay which impacts the timely performance of Work which neither the Contractor nor the State are liable for because such delay or failure to perform was unforeseeable and beyond the control of the party. Acts of Force Majeure include, but are not limited to:

- i. Acts of God or the public enemy;
  - ii. Acts or omissions of any government entity;
  - iii. Fire or other casualty for which a party is not responsible;
  - iv. Quarantine or epidemic;
  - v. Strike or defensive lockout; and,
  - vi. Unusually severe weather conditions.
- P. “**Grant**” refers to the amount available for funding the Project for the 2007-2008 Appropriation Year, pursuant to the California Office of Traffic Safety Grant Agreement #AL0717 to develop and implement a statewide peer court DUI intervention and prevention strategies program aimed at educating juveniles about the dangers of drinking and driving under the influence.
- Q. “**Grantee**” and “**Subgrantee**” The “Grantee” refers to the recipient of the **Grant**, the Judicial Council of California, Administrative Office of the Courts “AOC”. The “**Subgrantee**” refers to a subrecipient of Grant/subgrant funds via a sub-tiered award by the Grantee.
- R. “**Grantor**” refers to the “**National Highway Traffic Safety Administration**” or “**NHTSA.**” NHTSA is the federal awarding agency funding the Grant to the AOC through the State of California, Office of Traffic Safety.
- S. “**Key Personnel**” refers to the Contractor’s personnel identified in the resume set forth in *Exhibit TBD - Contractor’s Key Personnel*, whom the State has identified and approved to perform the Work of the Contract.
- T. “**Material**” means all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication technology.
- U. “**Notice**” means a written document initiated by the authorized representative of either party to this Agreement and given by:
- i. Depositing in the U. S. Mail (or approved commercial express carrier) prepaid to the address of the appropriate authorized representative of the other party, which shall be effective upon date of receipt; or
  - ii. Hand-delivered to the other party’s authorized representative, which shall be effective on the date of service.
- V. “**Office of Traffic Safety**” or “**OTS**” means the state of California agency funding the Grant to the Contractor through the AOC.

- W. The “**State**” refers to the Judicial Council of California / Administrative Office of the Courts (“AOC”). The State is one of the parties to this Agreement.
- X. “**State Standard Agreement**” means the form used by the State to enter into agreements with other parties. Several originally signed, fully executed versions of the State Standard Agreement, together with the integrated Contract Documents, shall each represent the Agreement as an individual “Contract Counterpart.”
- Y. “**Stop Work Order**” means the written Notice, delivered in accordance with this Agreement, by which the State may require the Contractor to stop all, or any part, of the Work of this Agreement, for the period set forth in the Stop Work Order. The Stop Work Order shall be specifically identified as such and shall indicate that it is issued pursuant to the Stop Work provision in this *Attachment 2 Contract Terms, Exhibit B - Special Provisions*.
- Z. “**Subcontractor**” shall mean an individual, firm, partnership, or corporation having a contract, purchase order, or agreement with the Contractor, or with any Subcontractor of any tier for the performance of any part of the Agreement. When the State refers to Subcontractor(s) in this document, for purposes of this Agreement and unless otherwise expressly stated, the term “Subcontractor” includes, at every level and/or tier, all subcontractors, sub-consultants, suppliers, and materialmen.
- AA. “**Task(s)**” means one or more functions, if specified in the Contract Documents, to be performed by the Contractor for the State.
- BB. “**Third Party**” refers to any individual, association, partnership, firm, company, corporation, consultant, Subcontractor, or combination thereof, including joint ventures, other than the State or the Contractor, which is not a party to this Agreement.
- CC. “**To Be Determined**” or “TBD” is the item that is not yet identified. Any and all To Be Determined items, set forth herein, shall be determined prior to award or by mutual agreement between the Contractor and the State and incorporated into the Agreement via Amendment(s).
- DD. “**Work**” or “**Work to be Performed**” or “**Contract Work**” may be used interchangeably to refer to the service, labor, Materials, Data, and other items necessary for the execution, completion and fulfillment of the Agreement by the Contractor to the satisfaction of the State. Work may be defined to include Tasks, Deliverables, and/or Submittals, as required by the Contract.

**2. MANNER OF PERFORMANCE OF WORK**

The Contractor shall complete all Work specified in these Contract Documents to the State's satisfaction and in compliance with the Non-discrimination/No Harassment Clause, as set forth in this *Attachment 2 Contract Terms, Exhibit B - Special Provisions*.

**3. TERMINATION OTHER THAN FOR CAUSE**

- A. In addition to termination for cause under *Attachment 2 Contract Terms, Exhibit A – Standard Provisions, paragraph 3*, the State may terminate this Agreement at any time upon providing the Contractor written Notice at least ten (10) days before the effective date of termination. Upon receipt of the termination Notice, the Contractor shall promptly discontinue all services affected unless the Notice specifies otherwise.
- B. If the State terminates all or a portion of this Agreement other than for cause, the State shall pay the Contractor for the fair value of satisfactory services rendered before the termination, not to exceed the total Contract Amount.

**4. STATE'S OBLIGATION SUBJECT TO AVAILABILITY OF FUNDS**

- A. The State's obligation under this Agreement is subject to the availability of authorized funds. The State may terminate the Agreement or any part of the Contract Work, without prejudice to any right or remedy of the State, for lack of appropriation of funds. If expected or actual funding is withdrawn, reduced or limited in any way prior to the expiration date set forth in this Agreement, or in any Amendment hereto, the State may terminate this Agreement in whole or in part, upon written Notice to the Contractor. Such termination shall be in addition to the State's rights to terminate for convenience or default.
- B. Payment shall not exceed the amount allowable for appropriation by Legislature. If the Agreement is terminated for non-appropriation:
  - i. The State will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination; and
  - ii. The Contractor shall be released from any obligation to provide further services pursuant to the Agreement as are affected by the termination.
- C. Funding for this Agreement beyond the current appropriation year is conditional upon appropriation by the Legislature of sufficient funds to support the activities described in this Agreement. Should such an appropriation not be approved, the Agreement may terminate at the close of the current appropriation year. The appropriation year ends on June 30 of each year.

## **5. DEFICIENT PERFORMANCE**

Should the State find the Contractor or any of its Subcontractors to be deficient in any aspects of performance under this Agreement, the Contractor shall submit a proposed corrective action plan to the State. The corrective action plan shall identify specific action to be taken to correct the deficient performance and shall be submitted within forty-five (45) Days after notification of the deficiencies. Should the Contractor fail to present a corrective action plan as required or take appropriate corrective action, the State shall notify the Contractor in writing that this Agreement is terminated, in whole or in part.

## **6. STOP WORK**

- A. The State may, at any time, by written Notice to the Contractor, require the Contractor to stop all, or any part, of the Work of this Agreement, for a period up to ninety (90) Days after the Notice is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this provision. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Stop Work Order during the period of Work stoppage. Within a period of ninety (90) Days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
- i. Cancel the Stop Work Order; or
  - ii. Terminate the Work covered by the Stop Work Order as provided for in either of the termination provisions of this Agreement.
- B. If a Stop Work Order issued under this provision is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume Work. The State shall make an equitable adjustment in the delivery schedule, the Contract Amount, or both, and the Agreement shall be modified, in writing, accordingly, if:
- i. The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Agreement; and
  - ii. The Contractor asserts its right to an equitable adjustment within thirty (30) Days after the end of the period of Work stoppage; however, if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Agreement.
- C. If a Stop Work Order is not canceled and the Work covered by the Stop Work Order is terminated in accordance with the Termination Other Than For Cause provision or the

State's Obligation Subject to Availability of Funds provision, as set forth under this *Attachment 2 Contract Terms, Exhibit B - Special Provisions*, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.

- D. The State shall not be liable to the Contractor for loss of profits because of the Stop Work Order issued under this provision.

## 7. STANDARD OF PROFESSIONALISM

The Contractor shall conduct all work consistent with professional standards for the industry and type of work being performed under the Agreement.

## 8. AGREEMENT ADMINISTRATION/COMMUNICATION

- A. Under this Agreement, the Project Manager, shall monitor and evaluate the Contractor's performance. All requests and communications about the Work to be Performed under this Agreement shall be made through the Project Manager. Any Notice from the Contractor to the State shall be in writing and shall be delivered the Project Manager as follows:

Judicial Council of California  
Administrative Office of the Courts  
TBD, Project Manager  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688

- B. Notice to the Contractor shall be directed in writing to: TBD.

## 9. ACCEPTANCE OF THE WORK

- A. The Project Manager shall be responsible for the sign-off Acceptance of all the Work required and submitted pursuant to this Agreement. Prior to approval of the Work and prior to approval for payment, the Project Manager will apply the Acceptance Criteria set forth in subparagraph B of this provision, as appropriate, to determine the acceptability of the Work provided by the Contractor. Unsatisfactory ratings will be resolved as set forth in this provision.
- B. Acceptance Criteria for Work (“**Criteria**”) provided by the Contractor pursuant to this Agreement:
- i. Timeliness: The Work was delivered on time;
  - ii. Completeness: The Work contained the Data, Materials, and features required in the Contract; and

- iii. Technical accuracy: The Work is accurate as measured against commonly accepted standard (for instance, a statistical formula, an industry standard, or de facto marketplace standard).
- C. The Contractor shall provide the Work to the State, in accordance with direction from the Project Manager. The State shall accept the Work, provided the Contractor has delivered the Work in accordance with the Criteria. The Project Manager shall use the Acceptance and Signoff Form, provided as *Attachment 2 Contract Terms, Exhibit E - Acceptance and Sign-off Form* to this Agreement, to notify the Contractor of the Work's acceptability.
- D. If the State rejects the Work provided, the Project Manager shall submit to the Contractor a written rejection using *Attachment 2 Contract Terms, Exhibit E - Acceptance and Sign-off Form*, describing in detail the failure of the Work as measured against the Criteria. If the State rejects the Work, then the Contractor shall have a period of ten (10) business days from receipt of the Notice of rejection to correct the stated failure(s) to conform to the Criteria.
- E. If the Project Manager requests further change, the Contractor shall meet with the Project Manager, within three (3) business days of such request, to discuss changes for the final submission of the Work. The Contractor shall provide the Work within three (3) business days after this meeting, at which time the Work will be accepted or the question of its acceptability referred to the Administrative Director of the AOC and a principal of the Contractor, as set forth in subparagraph F below.
- F. If agreement cannot be reached between the Project Manager and the Contractor on the Work's acceptability, a principal of the Contractor and the Administrative Director of the AOC, or its designee, shall meet to discuss the problem. If agreement cannot be reached, in the reasonable judgment of the Administrative Director of the AOC, or its designee, and/or the Contractor fails to cure such deficiencies that are perceived in the Work to the reasonable satisfaction of the Administrative Director, or its designee, in the reasonable time established by the Administrative Director, the State may reject the Work and will notify the Contractor in writing of such action and the reason(s) for so doing. Upon rejection of the Work, the State may terminate this Agreement pursuant to the terms of Standard Provisions paragraph 3, as set forth in *Attachment 2 Contract Terms, Exhibit A - Standard Provisions*.

## **10. CONTRACTOR'S PERSONNEL AND REPLACEMENT OF PERSONNEL**

- A. Contractor's personnel will have the ability and authority to make decisions commensurate with his or her role and level of responsibility regarding the Work of this Agreement. The responsibilities of the Contractor's Key Personnel are set forth in *Attachment 2 Contract Terms, Exhibit D - Work to be Performed*.



- B. The State has the right to review resumes and interview the Contractor's proposed personnel prior to commencement of the Work of this Agreement. If, in the State's reasonable opinion, any of the proposed personnel is unsatisfactory or does not meet the State's requirements, the Contractor shall submit a different candidate for consideration.
- C. The individuals assigned as Key Personnel at the time of agreement, with qualifications supported by their resumes, are included in *Exhibit TBD - Contractor's Key Personnel*. Any revision to the individuals identified as Key Personnel must be approved in writing by the Project Manager.
- D. The State reserves the right to disapprove the continuing assignment of any of the Contractor's personnel provided to the State under this Agreement if in the State's opinion, the performance of the Contractor's personnel is unsatisfactory. The State agrees to provide Notice to the Contractor in the event it makes such a determination. If the State exercises this right, the Contractor shall immediately assign replacement personnel, possessing equivalent or greater experience and skills.
- E. If any of the Contractor's personnel become unavailable during the term of this Agreement, the Contractor shall immediately assign replacement personnel, possessing equivalent or greater experience and skills.
- F. If any of the Contractor's personnel become unavailable or are disapproved and the Contractor cannot furnish a replacement acceptable to the State, the State may terminate this Agreement for cause pursuant to *Attachment 2 Contract Terms, Exhibit A - Standard Provisions, paragraph 3*.

## **11. ASSIGNMENTS OR SUBCONTRACTING**

- A. This Agreement is based upon the unique expertise of the Contractor. Therefore, in addition to the prohibition against assignment under *Attachment 2 Contract Terms, Exhibit A - Standard Provisions, paragraph 4*, it is the policy of the State to withhold consent from proposed assignments, subcontracts, or novations when such transfer of responsibility would operate to decrease the State's likelihood of receiving performance under this Agreement. No performance of this Agreement or any portion thereof may be assigned or subcontracted by the Contractor without the express written consent of the State, and any attempt by the Contractor to assign or subcontract any performance of this Agreement without the express written consent of the State shall be void and shall constitute a breach of this Agreement. If the Contractor is authorized by the State to subcontract or assign, all the terms of this Agreement shall be included in such subcontract or assignment.
- B. Any substitution or prolonged absence of the personnel who were specifically identified in the original proposal, as accepted, must be approved. Failure to obtain acceptance shall constitute a major breach of this Agreement.

**12. DEBARRED AND SUSPENDED PARTIES**

Grantee, Subgrantee, Contractor, and Subcontractor must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension."

**13. NON-DUPLICATION OF GRANT-FUNDED EXPENDITURES**

The Contractor certifies that neither the Contractor nor any Subcontractor has any ongoing or completed projects with the State, or other funding sources, that duplicate or overlap any Work contemplated or described in this Agreement. The Contractor agrees that any pending or proposed request for other funds that would duplicate or overlap Work under this Agreement will be revised to exclude any such duplication of funded expenditures. Any such duplication of expenditures subsequently determined by audit will be subject to recovery by the State.

**14. NO SUPPLANTATION**

The Contractor certifies in good faith that, by signing this Agreement, no supplantation of nonfederal, state, or county funds will occur with Grant funds. Grant funds may not be used to supplant or replace already allocated funding for salaries of any current Contractor staff (including judges, district attorneys, public defenders, drug court coordinators, probation officers, treatment personnel or clerical staff). Funds provided pursuant to this Grant may only be used for pay for new or expanded services for which no funds have been previously identified.

**15. PROGRAM INCOME**

Program/Contract activities that generate revenues as a result of NHTSA-OTS-AOC funding must be reported to AOC. Written notification of the source and amount of such income must be made to AOC at the earliest opportunity. A separate account must be maintained for the collection, expenditure, and disposition of program income. Program income generated shall be utilized to further the objectives of the Program or reduce current Program costs. Records shall be held for a period of three (3) years after the final reimbursement and close of the Program/Contract. (Reference (41 CFR 105-71.125 and Office of Traffic Safety, Grant Program Manual, Volume II, Chapter 1).

**16. EVALUATION OF CONTRACTOR**

The State shall evaluate the Contractor's performance under the Agreement.

**17. CONFIDENTIALITY**

A. Both the State and the Contractor acknowledge and agree that in the course of performing the Work under this Agreement, the State may disclose Confidential Information to the

Contractor.

- B. The Contractor agrees not to disclose the Confidential Information to any Third Party and to treat it with the same degree of care as it would its own confidential information. It is understood, however, that the Contractor may disclose the State's Confidential Information on a "need to know" basis to the Contractor's employees and Subcontractors and, as directed by the Project Manager, representatives of the State that are working on the Project. All such employees and Subcontractors of the Contractor shall have executed a confidentiality agreement with the Contractor requiring a promise of confidentiality concerning the Contractor's clients and business.
- C. The Contractor shall acquire no right or title to the Confidential Information. The Contractor agrees not to use the Confidential Information for any purpose except as contemplated pursuant to this Agreement. Notwithstanding the foregoing, the Contractor may disclose the Confidential Information (i) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it; (ii) as appropriate to respond to any summons or subpoena applicable to it; or (iii) to the extent necessary to enforce its rights under this Agreement.

## **18. SERVICES WARRANTY**

The Contractor warrants and represents that each of its employees, independent contractors or agents assigned to perform any services or provide any technical assistance in planning, development, training, consulting or related services under the terms of this Agreement shall have the skills, training, and background reasonably commensurate with his or her level of performance or responsibility, so as to be able to perform in a competent and professional manner. The Contractor further warrants that the services provided hereunder will conform to the requirements of this Agreement. All warranties, including any special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and any other recipients of the services provided hereunder.

## **19. CHANGES AND AMENDMENTS**

Changes or Amendments to any component of the Contract Documents can be made only with prior written approval from the Project Manager. Requests for changes or Amendments must be submitted in writing and must be accompanied by a narrative description of the proposed change and the reasons for the change. Additional funds may not be encumbered under the Agreement due to an act of Force Majeure, although the performance period of the Agreement may be amended due to an act of Force Majeure. After the Project Manager reviews the request, a written decision shall be provided to the Contractor. Amendments to the Agreement shall be authorized via bilateral execution of a State Standard Agreement.

## **20. ANTITRUST CLAIMS**

The Contractor by signing this Agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Code sections set out below.

- A. The Government Code chapter on antitrust claims contains the following definitions:
  - i. “Public purchase” means a purchase by means of competitive bids of goods, services, or materials by the state or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of § 16750 of the Business and Professions Code.
  - ii. “Public purchasing body” means the state or the subdivision or agency making a public purchase. (Reference: GC § 4550)
- B. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under § 4 of the Clayton Act (15 USC 15 [Title 15 Commerce and Trade, Chapter 1, Monopolies and Combinations in Restraint of Trade, § 15, Suits by Persons Injured]) or under the Cartwright Act (Chapter 2 ) commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. (Reference: GC § 4552)
- C. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. (Reference: GC § 4553)
- D. Upon demand in writing by the assignor, the assignee shall, within one (1) year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (i) the assignee has not been injured thereby, or (ii) the assignee declines to file a court action for the cause of action. ((Reference: GC § 4554)

## **21. CONSULTANT CONTRACTS**

- A. Competition. No Grantee shall draft, or cause to be drafted, any invitation to bid or request for proposal, in connection with the awarding of a consulting services contract, in such a manner as to limit the bidding directly to any one bidder. At least three (3) competitive bids or proposals shall be secured for each consulting services contract. (Reference: PCC §§ 10372 and 10373)

- B. Progress schedule. Grantees entering into a contractual agreement for consultant services totaling one thousand USD (\$1,000.00) or more shall include detailed criteria and a mandatory progress schedule. (Reference: PCC § 10371)
- C. Progress payments. Grantees may provide for progress payments to consultants for work performed or costs incurred in the performance of the contract. Not less than 10 percent (10%) of the contract amount shall be withheld pending final completion of the contract and an evaluation of the contractor's performance. If the contract consists of the performance of separate and distinct tasks, then any funds so withheld with regard to a particular task may be paid upon completion of that task and an evaluation of the contractor's performance. (Reference: PCC § 10379)
- D. Reimbursement. A fully executed copy of the consultant contract or subcontract and questionnaire shall be submitted to AOC for inclusion in the official project file prior to request for reimbursement.

## **22. ACCOUNTING SYSTEM REQUIREMENT**

The Contractor shall maintain an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles or GAAP.

## **23. RETENTION OF RECORDS**

The Contractor shall maintain all financial Data, supporting documents, and all other records relating to performance and billing under this Agreement for a period in accordance with State and Federal law, a minimum retention period being no less than four (4) years. The retention period starts from the date of the submission of the final payment request. The Contractor is also obligated to protect Data adequately against fire or other damage.

## **24. RIGHT TO AUDIT**

- A. The Contractor shall permit all Data and records relating to performance, procedures, and billing to the State under this Agreement to be inspected and/or audited, at any reasonable time, by the authorized representative of any of the following or its designee: The Contractor shall permit the authorized representative of the State or its designees or both at any reasonable time to inspect or audit all Data relating to performance and billing to the State under this Agreement:
  - i. The Administrative Office of the Courts;
  - ii. The California Office of Traffic Safety;
  - iii. The National Highway Traffic Safety Administration; and
  - iv. Any state or federal government auditing agency.

- B. The right of each agency to inspect and/or audit this Agreement is independent of whether or not any other audit or inspection has been performed.
- C. The Contractor further agrees to maintain such Data for a period of four (4) years after final payment under this Agreement.

## **25. SINGLE AUDIT ACT CERTIFICATION**

The OTS is the agency responsible for administering California's federal highway safety funds on behalf of the Governor. Federal funds are provided for this Project by the United States Department of Transportation. This Project is listed in the Catalog of Federal Domestic Assistance (CFDA) as "State and Community Highway Safety 20.600." The records and supportive documentation for all completed projects are subject to an on-site audit and OTS reserves the right to inspect and review during normal working hours the work product of any independent auditor in support of their audit. The Grantee certifies that it will comply with the Single Audit Act of 1984 (31 U.S.C. 7501 et. seq.), as amended, which requires the following:

- A. State or local governments that receive five hundred thousand USD (\$500,000.00) or more a year in federal financial assistance shall have an audit made in accordance with the Office of Management and Budget (OMB) Circular No. A-133.
- B. State or local governments that receive less than five hundred thousand USD (\$500,000.00) a year shall be exempt from compliance with the Act and other federal audit requirements.
- C. Nothing in this paragraph exempts State or local governments from maintaining records of federal financial assistance or from providing access to such records to Federal Agencies, as provided for in federal law or in Circular A-133 "Audits of States, Local Governments and Non-Profit Organizations".
- D. The State Controller's Office notifies OTS of those cities, counties, and special districts that have not submitted an audit report or have not indicated to SCO that they are exempt each fiscal year. Grantee agencies that are not in compliance will be notified and required to provide verification of compliance or be subject to sanctions including, reimbursement withholding or Grant cancellation.

## **26. AUDIT COMPLIANCE**

The Contractor shall accept responsibility for receiving, replying to, and/or complying with any audit exceptions by appropriate state and federal audit agencies that directly relate to the services to be performed under this Agreement. A draft of any reply shall be reviewed and approved for release by AOC Internal Audit prior to release to the cognizant entity. A copy of the final reply shall be submitted to AOC Internal Audit.

## **27. DISCLOSURE REQUIREMENTS**

- A. Any document or written report prepared for or under the direction of a state or local agency, which is prepared in whole or in part by non-employees of such agency, shall contain the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of such document or written report; provided, however, that the total cost for work performed by non-employees of the agency exceeds five thousand USD (\$5,000.00). The contract and subcontract numbers and dollar amounts shall be contained in a separate section of such document or written report.
- B. When multiple documents or written reports are the subject or product of the contract, the total contract amount may represent compensation for multiple documents or written reports. (Reference GC § 7550)
- C. All copyrights and rights in the Data produced with funding from this Agreement that may presumptively vest in the Contractor shall be transferred to the State.

## **28. COPYRIGHTS**

- A. The federal and state awarding agencies reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes, in accordance with 41 CFR 105-71.134:
  - i. The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and
  - ii. Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

## **29. INTANGIBLE PROPERTY**

- A. The recipient (e.g. Grantee, Subgrantee, Contractor, or Subcontractor) may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under award. The Judicial Council of California, Administrative Office of the Courts; California Office of Traffic Safety; and the National Highway Traffic Safety Administration reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes, and to authorize others to do so.
- B. Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

- C. The federal government has the right to:
- i. Obtain, reproduce, publish or otherwise use the data first produced under an award; and
  - ii. Authorize others to receive, reproduce, publish, or otherwise use such data for federal purposes.
- D. In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the federal government in developing an agency action that has the force and effect of law, the federal awarding agency shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the federal awarding agency obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 USC 552(A)(4)(a)).
- i. The following definitions apply for purposes of the preceding paragraph of this section:
    - (a) Research data is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This “recorded” material excludes physical objects (e.g., laboratory samples). Research data also do not include:
      - (I) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and
      - (II) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.
    - (b) Published is defined as either when:
      - (I) Research findings are published in a peer-reviewed scientific or technical journal; or
      - (II) A federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.
    - (c) Used by the federal government in developing an agency action that has the force



and effect of law is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

- E. Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of OMB Circular A-110, paragraph 34(g).

### **30. TRADE SECRET, PATENT AND COPYRIGHT INDEMNIFICATION**

- A. The Contractor shall hold the State, its officers, agents, and employees harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, or appliance furnished or used in connection with the Agreement.
- B. The Contractor may be required to furnish a bond to the State against any and all loss, damage, costs, expenses, claims, and liability for patent, copyright, and trade secret infringement.
- C. Should the Data, Materials, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, the State shall permit the Contractor at its option and expense either to procure for the State the right to continue using the Data or Materials, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Data or Materials by the State shall be prevented by injunction, the Contractor agrees to take back such Data or Materials and make every reasonable effort to assist the State in procuring substitute Data or Materials. If, in the sole option of the State, the return of such infringing Data or Materials makes the retention of other Data or Materials acquired from the Contractor under this Agreement impractical, the State shall then have the option of terminating such contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Data or Materials and refund any sums that the State has paid the Contractor less any reasonable amount for use or damage.
- D. The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright, or trade secret infringement which is based upon the following:
  - i. The combination or utilization of Data and/or Materials furnished hereunder with equipment or devices not made or furnished by the Contractor; or,

- ii. The operation of equipment furnished by the Contractor under the control of any operating software other than, or in addition to, the current version of Contractor-supplied operating software; or,
  - iii. The modification by the State of the equipment furnished hereunder or of the software; or,
  - iv. The combination or utilization of software furnished hereunder with non-Contractor supplied software.
- E. The Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
- F. The foregoing states the entire liability of the Contractor to the State with respect to infringement of patents, copyrights, or trade secrets.

**31. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA**

- A. The State agrees that all Data and Materials appropriately marked or identified in writing as proprietary, and furnished hereunder, are provided for the State's exclusive use for the purposes of this Agreement only. All such proprietary Data and software shall remain the property of the Contractor. The State agrees to take all reasonable steps to insure that such proprietary Data are not disclosed to others, without prior written consent of the Contractor.
- B. The State will use reasonable efforts to insure, prior to disposing of any media, that any licensed Data and Materials contained thereon have been erased or otherwise destroyed.
- C. The State agrees that it will take appropriate action by instruction, agreement, or otherwise, with its employees, or other persons permitted access to licensed software and other proprietary Data, to satisfy its obligations under this Agreement with respect to use, copying, modification, protection, and security of proprietary software and other proprietary Data.

**32. RIGHTS TO INVENTIONS MADE UNDER GRANT-FUNDED AGREEMENT**

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the federal government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

### **33. OWNERSHIP OF INTELLECTUAL PROPERTY, ETC.**

- A. Unless the Contractor and the State reach a written agreement to the contrary, the Contractor agrees for itself and its personnel that pursuant to the State's requirement (i) all documents, deliverables, software, systems designs, disks, tapes, and any other Data or Materials created in whole or in part by the Contractor in the course of or related to providing services to the State shall be treated as if it were "work for hire" for the State, and (ii) the Contractor will immediately disclose to the State all discoveries, inventions, enhancements, improvements, and similar creations (collectively, "Creations") made, in whole or in part, by the Contractor in the course of or related to providing services to the State.
- B. All ownership and control of the above Data, Materials, and Creations, including any copyright, patent rights, and all other intellectual property rights therein, shall vest exclusively with the State, and the Contractor hereby assigns all right, title, and interest that the Contractor may have in such Data, Materials, and Creations to the State, without any additional compensation and free of all liens and encumbrances of any type. The Contractor affirms that the amount encumbered under this Agreement for the Work performed includes payment for assigning such rights to the State. The Contractor agrees to execute any documents required by the State to register its rights and to implement the provisions herein.

### **34. SOLICITATION**

No employee of the applicant agency, the Contractor, or any agency acting on behalf of the agency, may solicit or accept gratuities, favors, or anything of monetary value from contractors or potential contractors.

### **35. LOGOS**

The OTS, Business, Transportation and Housing Agency, and California energy and AOC logos will appear on all promotional materials where appropriate and practical. Contact the Project Manager for appropriate computer disk copies of the logos.

### **36. COPYRIGHTS AND RIGHTS IN DATA**

- A. The federal and state awarding agencies reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes, in accordance with 41 CFR 105-71.134:
  - i. The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and
  - ii. Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

**37. LIMITATION ON PUBLICATION**

The Contractor shall not, without prior written consent of the State, directly or indirectly, make use of advertising or publicity containing any reference to the State or any of its employees.

**38. CREDITS AND DISCLAIMERS**

The following will accompany the dissemination and/or publication of all Data developed under funding from this Agreement:

"This project is a part of the California Traffic Safety Program and was made possible through the support of the Judicial Council of California, Administration Office of the Courts; California Office of Traffic Safety; Business, Transportation and Housing Agency; State of California; and the National Highway Traffic Safety Administration. The opinions, findings, and conclusions in this publication are those of the author and not necessarily those of the Judicial Council of California, Administration Office of the Courts; California Office of Traffic Safety; Business, Transportation and Housing Agency; State of California; or the National Highway Traffic Safety Administration."

**39. LIMITATION ON STATE'S LIABILITY**

The State shall not be responsible for loss of or damage to any non-State equipment arising from causes beyond the State's control.

**40. INSURANCE REQUIREMENTS**

- A. General. The Contractor shall obtain and maintain the minimum insurance set forth in subparagraph B, below. By requiring such minimum insurance, the State shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Agreement. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. For full coverage, each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, when required, may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work which is the subject of this Agreement.
- B. Minimum Scope and Limits of Insurance. The Contractor shall maintain coverage and limits no less than the following:
  - i. In the event Contractor has employees: Workers' Compensation at statutory requirements of the State of residency.

- ii. In the event Contractor has employees: Employers' Liability with limits not less than \$500,000.00 for each accident.
  - iii. Commercial General Liability Insurance with limits not less than \$500,000.00 for each occurrence, Combined Single Limit Bodily Injury and Property Damage.
  - iv. Business Automobile Liability Insurance with limits not less than \$500,000.00 for each occurrence, Combined Single Limit Bodily Injury and Property Damage, including owned and non-owned and hired automobile coverage, as applicable.
- C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the State. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the State and shall be the sole responsibility of the Contractor.
- D. Other Insurance Provisions. The General Liability policy required in this Agreement is to contain, or be endorsed to contain, the following provisions:
- i. The State, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Agreement.
  - ii. To the extent of the Contractor's negligence, the Contractor's insurance coverage shall be primary insurance as respects the State, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the State, its officers, officials, employees or agents shall not contribute with the insurance or benefit the Contractor in any way.
  - iii. The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- E. The Contractor shall provide the State certificates of insurance satisfactory to the State evidencing all required coverages before Contractor begins any Work under this Agreement, and complete copies of each policy upon the State's request.
- F. If at any time the foregoing policies shall be or become unsatisfactory to the State, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the State, the Contractor shall, upon Notice to that effect from the State, promptly obtain a new policy, and shall submit the same to the State, with the appropriate certificates and endorsements, for approval.

- G. All of the Contractor's policies shall be endorsed to provide advanced written Notice to the State of cancellation, nonrenewal, and reduction in coverage, within fifteen (15) Days, mailed to the following address: Judicial Council, Administrative Office of the Courts, Business Services Manager, 455 Golden Gate Avenue, 7<sup>th</sup> Floor, San Francisco, CA 94102-3688.

#### **41. CONFLICT OF INTEREST**

- A. The Contractor and employees of the Contractor shall not participate in proceedings that involve the use of State funds or that are sponsored by the State if the person's partner, family, or organization has a financial interest in the outcome of the proceedings. The Contractor and employees of the Contractor shall also avoid actions resulting in or creating the appearance of (i) use of an official position with the government for private gain; (ii) preferential treatment to any particular person associated with this Agreement or the Work of this Agreement; (iii) loss of independence or impartiality; (iv) a decision made outside official channels; or (v) adverse effects on the confidence of the public in the integrity of the government or this Agreement.
- B. The Contractor certifies and shall require any Subcontractor to certify to the following:  
  
Former State employees will not be awarded a contract for two (2) years from the date of separation if that employee had any part of the decision making process relevant to the contract, or for one (1) year from the date of separation if that employee was in a policy making position in the same general subject area as the proposed contract within the twelve (12) month period of his or her separation from state service.

#### **42. POLITICAL ACTIVITIES**

- A. The Contractor shall not contribute or make available Grant funds, Program personnel, or equipment awarded by the Agreement to any political party or association, or the campaign of any candidate for public or party office. The Contractor shall not use funds awarded to the Contractor in advocating or opposing any ballot measure, initiative, or referendum. Finally, the Contractor and employees of the Contractor shall not intentionally identify the State with any partisan or nonpartisan political activity associated with a political party or association or campaign of any candidate for public or party office.
- B. All individuals employed by a state or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency, including grants from the California Office of Traffic Safety, have been made aware of the provisions of 5 USC, Government Organization and Employees; Part II, Civil Service Functions and Responsibilities; Chapter 15, Political Activity of Certain State and Local Employees; §§ 1501 through

1508 (the Hatch Act). This statute does not include individuals employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a state or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.

**43. COVENANT AGAINST GRATUITIES**

The Contractor warrants by signing this Agreement that no gratuities, in the form of entertainment, gifts, or otherwise, were offered by the Contractor or any agent, director, or representative of the Contractor, to any officer, official, agent, or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State will have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring, on the open market, any items which the Contractor agreed to supply, shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

**44. NATIONAL LABOR RELATIONS BOARD**

By executing this Agreement, the Contractor certifies under penalty of perjury under the laws of the State of California that no more than one (1) final, unappealable finding of contempt of court by a federal Court has been issued against the Contractor within the immediately preceding two (2) year period because of the Contractor's failure to comply with an order of the National Labor Relations Board.

**45. DRUG-FREE WORKPLACE**

The Contractor certifies that it will provide a drug-free workplace as required by California Government Code, § 8355 through § 8357.

**46. EQUAL EMPLOYMENT OPPORTUNITY**

All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." (Reference: OMB Circular A-110, Appendix A—reference applies to Clauses 31 through 37)

**47. NONDISCRIMINATION/NO HARASSMENT CLAUSE**

A. During the performance of this Agreement, the Contractor and its Subcontractors shall not unlawfully discriminate against any employee or proposer for employment because of

race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. The Contractor shall ensure that the evaluation and treatment of employees and proposers for employment are free of such discrimination.

- B. During the performance of this Agreement, the Contractor and its Subcontractors shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom the Contractor or its Subcontractors interact in the performance of this Agreement. The Contractor and its Subcontractors shall take all reasonable steps to prevent harassment from occurring.
- C. The Contractor shall comply with applicable provisions of the Fair Employment and Housing Act, California Government Code, §§ 12990 et seq., and the applicable regulations promulgated under California Code of Regulations, title 2, §§ 7285 et seq. The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code, § 12990, 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 of it as if set forth in full.
- D. The Contractor and any of its Subcontractors shall give written Notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- E. The Contractor shall include the nondiscrimination/no harassment and compliance provisions of this clause in any and all subcontracts issued to perform Work under the Agreement.

#### **48. AMERICANS WITH DISABILITIES ACT**

By signing this Agreement, Contractor assures the State that it complies with applicable provisions of the Americans with Disabilities Act (“ADA”) of 1990 (42 U.S.C. §§ 012101 et seq.), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.

#### **49. PERMITS AND LICENSES**

The Contractor shall observe and comply with all federal, state, city, and county laws, rules, and regulations affecting services under this Agreement. The Contractor shall procure and keep in full force and effect during the term of this Agreement all permits and licenses necessary to accomplish the Work contemplated in this Agreement.



## **50. FEDERAL LAWS AND STANDARDS**

- A. The following contain the federal laws and standards that must be adhered to when procuring goods or services for OTS projects, as applicable:
- i. Title 41 CFR, Part 105-71, Uniform Administrative Requirements for Grants and Cooperative Agreements (available at web site <http://www.access.gpo.gov/>);
  - ii. Title 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements;
  - iii. Title 49 CFR, Part 19, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations;
  - iv. Title 49 CFR, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs;
  - v. Office of Management and Budget (OMB) Circular A-21, Cost Principles for Educational Institutions (OMB circulars are available at website <http://www.whitehouse.gov/omb/>);
  - vi. OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments;
  - vii. Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government, A Guide for State, Local and Indian Tribal Governments, Implementation Guide for OMB Circular A-87 (available at website <http://www.hhs.gov/grantsnet/state/ft.html>);
  - viii. OMB Circular A-122, Cost Principles for Non-profit Organizations; and
  - ix. OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.

## **51. CALIFORNIA LAW**

This Agreement shall be subject to and construed in accordance with the laws of the State of California.

## **52. SEVERABILITY**

If any term or provision of this Agreement is found to be illegal or unenforceable, this Agreement shall remain in full force and effect and that term or provision shall be deemed stricken.

## **53. WAIVER**

The omission by either party at any time to enforce any default or right, or to require performance of any of this Agreement's terms, covenants, or provisions by the other party at the time designated,

shall not be a waiver of the default or right, nor shall it affect the right of the party to enforce those provisions later.

**54. SIGNATURE AUTHORITY**

The parties signing this Agreement certify that they have proper authorization to do so.

**55. APPROVAL**

This Agreement is of no force or effect until signed by both parties and approved by the Office of Traffic Safety. Grantee, Subgrantee, Contractor, or Subcontractor may not commence performance until such approval has been obtained.

**56. SURVIVAL**

The termination or expiration of the Agreement shall not relieve either party of any obligation or liability accrued hereunder prior to or subsequent to such termination or expiration, nor affect or impair the rights of either party arising under the Agreement prior to or subsequent to such termination or expiration, except as expressly provided herein.

**57. ENTIRE AGREEMENT**

This Agreement, consisting of all documents as defined herein, constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties. No waiver, alteration, modification of, or addition to the terms and conditions contained herein shall be binding unless expressly agreed in writing by a duly authorized representative of the State.

***END OF EXHIBIT***