

CONTRACTUAL AGREEMENT AMENDMENT

STD. 213 A (Rev 6/03)

CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED _____ Page

AGREEMENT NUMBER 22A0486	AMENDMENT NUMBER A01
REGISTRATION NUMBER:	

- This Agreement is entered into between the State Agency and Contractor named below:
STATE AGENCY'S NAME
California Department of Transportation (Department)
CONTRACTOR'S NAME
The Regents of the University of California (Contractor)
- The term of this Agreement is **November 1, 2008** through **October 31, 2011**
- The maximum amount of this Agreement after this amendment is: **\$00.00**
- The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

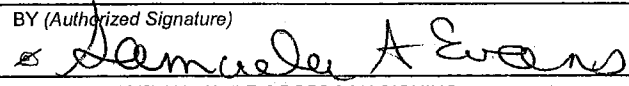
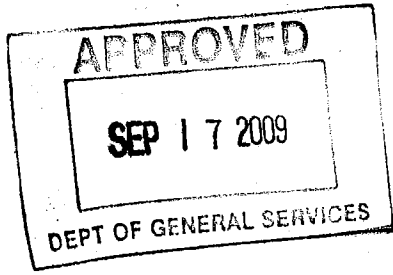
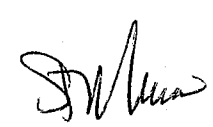
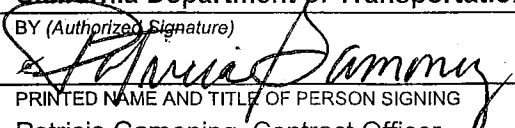
The parties hereto mutually agree to amend Agreement No.22A0486, dated 9/25/08 as follows:

Exhibit F, #1 Direct Costs as follows:

1. **Direct Costs-** Includes hourly labor costs, fringe benefits, materials, equipment, subcontractor's services, travel and per diem. *Direct costs also include an allocated portion of third party owned facility costs for research projects located at off campus facilities. However, no overhead will be applied to this cost in accordance with the exclusion provided by the Modified Total Direct Costs definition.*

All other terms and conditions of the original agreement and any amendments shall remain in full force and effect.

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

CONTRACTOR		CALIFORNIA Department of General Services Use Only
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.) The Regents of the University of California		
BY (Authorized Signature) 	DATE SIGNED (Do not type) 9/15/09	
PRINTED NAME AND TITLE OF PERSON SIGNING Samuela Evans, Contracts & Grants Officer		
ADDRESS 1111 Franklin Street, 5th Floor, Oakland, CA 94607		
STATE OF CALIFORNIA		
AGENCY NAME California Department of Transportation		 <input type="checkbox"/> Exempt per:
BY (Authorized Signature) 	DATE SIGNED (Do not type) 9-16-09	
PRINTED NAME AND TITLE OF PERSON SIGNING Patricia Gamoning, Contract Officer.		
ADDRESS Division of Procurement and Contracts 1727 30th Street, MS #65, Sacramento, CA, 95816		

STATE OF CALIFORNIA
CONTRACTUAL AGREEMENT
 STD 213 (Rev 06/03)

AGREEMENT NUMBER 22A0486
REGISTRATION NUMBER

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

STATE AGENCY'S NAME

California Department of Transportation (Department)

CONTRACTOR'S NAME

The Regents of the University of California (Contractor)

2. The term of this Agreement is:

November 1, 2008 Through October 31, 2011

3. The maximum amount of this Agreement is: **\$00.00**

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

Exhibit A – Scope of Work	3 Pages
Exhibit B – Budget Detail and Payment Provisions	8 Pages
Exhibit C – General Terms and Conditions (GIA101)	1 Page
Exhibit D – Special Terms and Conditions	10 Pages
Exhibit E – Additional Provisions	7 Pages
Exhibit F – Glossary	3 Pages
Attachment 1 – Incorporated Research Technical Agreements	2 Pages
Attachment 2 – Sample Schedule According to Tasks and/or Deliverables	2 Pages
Attachment 3 – Sample Master Budget	1 Page
Attachment 4 – Sample Invoice	1 Page

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

CONTRACTOR

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

The Regents of the University of California

BY (Authorized Signature)

Kathleen P. Babcock

DATE SIGNED (Do not type)

Sept. 11, 2008

PRINTED NAME AND TITLE OF PERSON SIGNING

Kathleen P. Babcock, Coordinator of Government Contracts & Grants,
 RAO

ADDRESS

1111 Franklin Street, 5th Floor, Oakland, CA 94607

STATE OF CALIFORNIA

AGENCY NAME

California Department of Transportation

BY (Authorized Signature)

Jan Smelser

DATE SIGNED (Do not type)

9/11/08

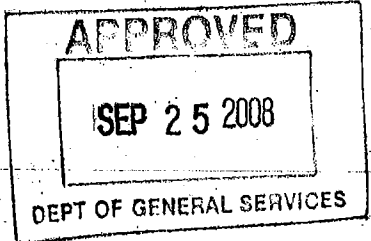
PRINTED NAME AND TITLE OF PERSON SIGNING

Jan Smelser, Chief, Division of Procurement and Contracts

ADDRESS

1727 30th Street, 4th Floor, MS 65, Sacramento, CA 95816

California Department of General Services Use Only



Exempt per:

Free

**EXHIBIT A
INTERAGENCY AGREEMENT**

SCOPE OF WORK

1. The work to be performed under this On-Call Agreement shall be submitted and executed either by a Technical Agreement or by Task Orders executed under a Technical Agreement. All provisions of this On-Call Agreement shall automatically be incorporated into all subsequent Technical Agreements and Task Orders by reference. This On-Call Agreement supersedes Agreement Numbers 65A0105 and 65A0108 and all amendments to those agreements. This On-Call Agreement incorporates the existing Research Technical Agreements (RTA) listed in Attachment 1.
2. This On-Call Agreement does not apply to University Transportation Centers (UTC).
3. Technical Agreements may be utilized in either of two ways:
 - a. For specific projects which are subject to all provisions of this On-Call Agreement and encumber a specific amount of money relative to the budget and schedule in the applicable Technical Proposal, or
 - b. For a group of related projects, the Technical Agreement would contain a general scope of work and encumber a general dollar amount. Work will be assigned through subsequent Task Orders, subject to the provisions of this On-Call Agreement.

The decision regarding the use of option 'a' or 'b' is solely at the discretion of the Department.

4. Technical Agreements and Task Orders may not modify the language of this On-Call Agreement and alternative language to this On-Call Agreement is not permissible in any subsequent Technical Agreement or Task Order. Additionally, the Project Manager/ Principle Investigator and Contract Managers for Technical Agreements or Task Orders do not have the authority to amend the language of this On-Call Agreement.
5. This On-Call Agreement shall begin on November 1, 2008, contingent upon approval by the Department of General Services, and expire on October 31, 2011, unless extended by amendment.
6. The State has the unilateral right to exercise options to extend this On-Call Agreement for three (3) additional one (1) year periods, or any portion thereof, by written amendment to the contract. Terms and conditions shall remain the same for the entire contract period including any extensions.

EXHIBIT A
INTERAGENCY AGREEMENT

7. Approval

This On-Call Agreement, all Technical Agreements, and all Task Orders are not valid until signed by both parties and approved by the Department of General Services.

- 8.** Department will not reimburse Contractor or Contractor's subcontractors for any costs (whether allowable costs or not) related to a Technical Agreement or subsequent Task Order, or the RTA's listed in Attachment 1 that the Contractor or Contractor's subcontractor incurred before or after the term of this On-Call Agreement, that Technical Agreement, Task Order or RTA.

9. Amendment

This On-Call Agreement may only be modified by mutual agreement in the form of a contract amendment between the Department's Division of Procurement and Contracts (DPAC) and the Contractor and approved as required by law.

- 10.** Inquiries regarding the terms of this On-Call Agreement shall be directed to:

California Department of Transportation (Department)	The Regents of the University of California (Contractor)
Section/Unit: Division of Procurement and Contracts (DPAC)	Office: Research Administration Office University of California
DPAC Representative: Jan Smelser, Chief	Contractor Representative: William Tucker, Executive Director
Address: 1727 30 th Street, MS 65	Address: 1111 Franklin St. 5 th Floor
Sacramento, CA 95816	Oakland, CA 94607-5200
Phone: (916) 227-6000	Phone: (510) 587-6037
Fax: (916) 227-6102	Fax: (510) 587-6090

- 11.** Contractor shall identify a specific Principle Investigator, and where appropriate a Project Manager, in each Technical Agreement and applicable Task Order and the Department shall identify a Contract Manager in each Technical Agreement and applicable Task Order. The Contractor may change a Project Manager or Principle Investigator for a Technical Agreement and/or Task Order only with the prior written approval of the Department Contract Manager identified in the applicable Technical Agreement or Task Order. The Department may change the Contract Manager

EXHIBIT A
INTERAGENCY AGREEMENT

designated in this On-Call Agreement or a subsequent Technical Agreement and/or Task Order by written notice to the Contractor.

12. Contractor shall not make substitutions of key personnel specified in Technical Agreements or Task Orders without prior written authorization by the Department Contract Manager specified in the Technical Agreement or Task Order.
13. For each Technical Agreement or Task Order written under this On-Call Agreement, the Contractor shall provide a project proposal that includes, but is not limited to, the following:
 - a. Detailed description of work.
 - b. Identified deliverables. (Attachment 2)
 - c. A schedule in time increments (weeks, months) for completion of deliverables.
 - d. Identify each subcontractor to be used, the percentage of work each subcontractor will complete, a detailed scope of work, identified schedule including deliverables, and a budget and cost proposal tied to the schedule and deliverables.
 - e. Identify all equipment to be purchased with a value greater than \$5,000.00. Identify the estimated cost of the equipment and how it specifically fits into the scope of work. (SAM 8602)
 - f. List all travel and per diem, staff who will travel, purpose of travel, estimated travel expenses, and how the travel specifically relates to the accomplishment of the Technical Agreement or Task Order as applicable.
 - g. Cost proposals/Budget (Attachment 2 and Attachment 3) shall be tied to the schedule.
14. Pursuant to each Technical Agreement and/or Task Order executed under this On-Call Agreement, Contractor shall deliver to the Department all deliverables, data, and inventions as defined in Exhibit E.

EXHIBIT B
Interagency Agreement

BUDGET DETAIL AND PAYMENT PROVISIONS

1. Invoicing

A. For services rendered in accordance with a Technical Agreement or subsequent Task Order, and approved by the Department Contract Manager, executed under this On-Call Agreement, and upon receipt and written approval of the invoices, the Department shall reimburse the Contractor for actual allowable costs incurred for work performed in accordance with the approved budget for the applicable Technical Agreement and Task Orders.

B. The Department shall only accept invoices and make payments for achievements toward the completion of deliverables, or percentage of effort toward completion of tasks, as set forth in the schedule provided in the Contractor's proposal, attached and incorporated in to the specific Technical Agreement or Task Order.

In addition to each invoice, a detailed report is required documenting efforts made and supporting the expenses incurred.

C. The Contractor shall submit three (3) copies of the invoice (Attachment 4) to the Department. Copies of supporting documentation, as set forth in paragraph E below, must accompany each copy of the invoice. The Department will not accept an invoice for work, which has not been approved or is not reasonable in accordance with the proposal. The Department shall not accept an invoice for which work has not been approved and will return the invoice unpaid as a disputed invoice to the Contractor.

D. Contractor shall submit invoices no more frequently than monthly, in arrears, bearing the agreement number. The invoice shall reference the Technical Agreement and, if applicable, the Task Order number, and shall contain the following seven line items:

1. Salaries
2. Benefits
3. Supplies
4. Equipment
5. Travel
6. Subcontractors/ Consultants
7. Indirect Costs

E. The Contractor shall provide a standard detail ledger report, as supporting documentation, with each invoice.

EXHIBIT B
Interagency Agreement

- F. The Department shall withhold payment equal to ten (10%) percent of the total Technical Agreement or Task Order cost pending completion of all work and submission, to the Department by the Contractor, of a final report (including computer diskette copy), that has been approved by the Department. The Contractor must submit an invoice in triplicate and the applicable standard detail ledger report with the revised final report for reimbursement of the ten (10%) percent of cost withheld. Approval will not be withheld based on scientific differences between Contractor and the Department in the interpretation of the research data.
- G. Any subcontract entered into as a result of a Technical Agreement or Task Order shall contain all of the provisions of this section.

2. Budget Contingency Clause

- A. It is mutually understood between the parties that each Technical Agreement or Task Order 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 Technical Agreement or Task Order were executed after that determination was made.
- B. A Technical Agreement or Task Order is valid and enforceable only if sufficient funds are made available to the State by the United States Government or the California State Legislature for the purpose of this program. In addition, a Technical Agreement or Task Order 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 the Technical Agreement or Task Order in any manner.
- C. It is mutually agreed that if the Congress or the California State Legislature does not appropriate sufficient funds for the program, a Technical Agreement or Task Order shall be amended to reflect any reduction in funds.
- D. The State has the option to terminate this On-Call Agreement, Technical Agreement, or Task Order under the termination provisions of Exhibit D or to amend a Technical Agreement to reflect any reduction of funds.

3. Travel and Per Diem

- A. Reimbursement for travel expenses or per diem will only be made for travel specified in the Technical Agreement or Task Order. For specific travel not set forth in the Technical Agreement or Task Order, Contractor shall submit a written request for approval of travel plans, which justifies that such travel is necessary for the successful performance of services under the applicable Technical Agreement or

EXHIBIT B
Interagency Agreement

Task Order and which identifies anticipated costs of the travel. The Department Contract Manager shall review the request and if the request is approved and if funding permits, the Department Contract Manager shall approve the request in writing.

- B. The Contractor shall be reimbursed for travel and per diem in accordance with University of California's travel policy and the Contractor's approved rates found at <http://www.ucop.edu/ucophome/policies/bfb/g28.html>, which are hereby incorporated by this reference in this On-Call Agreement and all subsequent Technical Agreements or Task Orders. Travel expenses in violation of Contractor's travel policy or in excess of the Contractor's approved rates shall not be reimbursed.
- C. Origination and destination points for calculating travel expenses shall be from the office location where the employees are assigned for the majority of the work they perform as a Contractor's employee.
- D. The Technical Agreement or Task Order Cost Proposal shall identify anticipated staff traveling, the purpose, the amount, and destination for each trip.
- E. Reimbursement of transportation and subsistence cost for other parties, including but not limited to Contractor's subcontractors, shall be at the actual allowable costs incurred, but not to exceed the rates stipulated in the UC/Contractors Travel Policy" found at <http://www.ucop.edu/ucophome/policies/bfb/g28.html>.
- F. Any subcontract entered into as a result of a Technical Agreement or Task Order shall contain all of the provisions of this section.

4. Payment

- A. Costs for this Agreement shall be computed in accordance with State Administrative Manual Sections 8752 and 8752.1, except as stipulated in Item H of this section.
- B. Nothing herein contained shall preclude advance payments pursuant to Article 1, Chapter 3, Part 1, Division 3, Title 2 of the Government Code of the State of California.
- C. Reimbursement for services rendered shall be at the rate defined in each Technical Agreement or Task Order. Under no circumstances shall actual allowable costs exceed the maximum payable set forth in a Technical Agreement or Task Order.
- D. The method of payment for Technical Agreements and Task Orders will be based on reimbursement of actual allowable costs.

EXHIBIT B
Interagency Agreement

- E. Upon receipt and approval of an invoice which properly details all charges in relation to the scheduled deliverables during the invoice period, the Department agrees to reimburse the Contractor for actual allowable costs incurred in accordance with the costs included in the Technical or Task Order Cost Proposal.
- F. The Contractor will only be reimbursed for actual allowable costs incurred consistent with the estimated line item costs identified in the Contractor's cost proposal, incorporated into the applicable Technical Agreement or Task Order. Specifically, reimbursements will be made for services rendered per the scope of work in accordance with the schedule and deliverables included in the Technical Agreement or Task Order Cost Proposal. Estimated line items in accordance with Exhibit B, Item 1 D as set forth in the Technical Agreement or Task Order Cost Proposal shall not be exceeded without prior written approval by the Department Contract Manager; approved invoices do not comprise prior written approval. If reimbursed actual allowable costs are exceeded for specified line items without the Contract Manager's prior written approval, the Department shall direct the Contractor, in writing, to either reimburse the excess costs to the Department or the deduct those costs from future invoices.
- G. Wages and fringe benefits will be reimbursed at actual allowable cost. The Contractor shall use the salary and wage rates commensurate with current approved personnel status and level of expertise for the time period during which the work was performed.
- H. The indirect cost rate applied by the Contractor shall not exceed 17.5% for allowable indirect costs incurred at all University of California campuses and the Office of the President. This rate shall be applied solely to modified total direct costs as defined in OMB Circular A-21.
- I. Each invoice is subject to the approval of the Department Contract Manager identified in the applicable Technical Agreement or Task Order. The Department Contract Manager may not process a payment request if the following conditions have not been met:
 - 1. All required reports and deliverables have been submitted and comply with the terms of the Task Order, Technical Agreement, and On-Call Agreement.
 - 2. All appropriate permits or permit waivers from governmental agencies have been secured.
 - 3. The final invoice must be received by the Department no later than 120 calendar days after the Technical Agreement, Task Order, and On-Call Agreement termination date. The Contractor acknowledges and agrees that amounts invoiced by the Contractor more than 120 calendar days from the Technical

EXHIBIT B
Interagency Agreement

Agreement, Task Order and On-Call Agreement termination date will not be reimbursed, unless the Department Contract Manager has given written approval otherwise.

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

5. Cost Limitation

- A. The total amount of reimbursement shall be detailed in each Technical Agreement or Task Order. It is understood and agreed that the total of a Technical Agreement or Task Order is an estimate and that the Department will pay only for those services actually rendered in accordance with the Technical or Task Order Cost Proposal.

6. Cost Principles

- A. The Contractor 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 allowance of individual items of cost.
- B. The Contractor also agrees to comply with Federal procedures in accordance with Office of Management and Budget Circular A-21, Cost Principles for Educational Institutions, which establishes principles for determining actual allowable costs applicable to grants, contracts, and other agreements with educational institutions, except that the overhead rate set forth in paragraph 4H of this Exhibit B shall apply.
- C. Any costs for which payment has been made to Contractor that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., OMB A-21, Cost Principles for Educational Institutions, are subject to repayment by Contractor to State.
- D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

7. Student Costs

- A. Pursuant to OMB Circular A-21, the Department shall reimburse allowable student costs itemized on the cost proposal at an established hourly rate, including in-state resident fees. The Department shall not reimburse additional compensation such as non-resident tuition, books, scholarships, immigration fees, International VISA payments, living expenses and other student aid costs.

EXHIBIT B
Interagency Agreement

8. Program Income

A. Program Income

1. The Contractor shall account for program income related to projects financed in whole or in part with federal and/or state funds.
2. Program income earned during the project period shall be remitted by the Contractor to the Department within six months of receipt by the Contractor unless the specific Technical Agreement or Task Order provides for one of the following methods:
 - a.) Add to funds committed to the project by the awarding agency and the Contractor and used to further eligible project or research program objectives.
 - b.) Use to finance the non-state share of the project or program.
 - c.) Deducted from the total project or program allowable cost in determining the net allowable cost on which the Department share of costs is based.
3. When Department authorizes the disposition of program income as described in paragraphs (2) (a) or (2) (b), program income in excess of any limits stipulated shall be used in accordance with paragraph (2) (c).

9. Equipment Provisions

A. General Provisions:

The following is applicable to equipment purchased or furnished by other agencies and equipment purchased by Contractor where such expense is charged to and/or reimbursed from Technical Agreement or Task Order funds.

1. Unless itemized in the Technical Agreement or Task Order Cost Proposal, no equipment shall be purchased under the auspices of a Technical Agreement or Task Order without prior written approval from the Department Contact Manager. All equipment of any kind, purchased or reimbursed with Technical Agreement or Task Order funds or furnished by the Department under the terms of Technical Agreements or Task Orders is the property of the Department.
2. The cost of equipment shall include the net purchase/invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty, or protective in-transit insurance, shall be included or

EXHIBIT B
Interagency Agreement

excluded from the unit acquisition cost in accordance with the Contractor's regular accounting practices.

3. The Department reserves the right to acquire any equipment necessary to the performance of a Technical Agreement or Task Order through the State of California's procurement process. The Contractor's allowable cost for the approved purchase of the equipment shall be deducted from the total amount payable to Contractor under the Technical Agreement or Task Order. The equipment provided by the Department will be equivalent to Contractor's specifications, as described in Contractor's Technical Agreement or Task Order proposal.
4. The Department reserves the right to full and adequate access to its equipment.
5. The Department may require the Contractor to repair any damage or replace any lost or stolen items to the satisfaction of the Department at the Contractor's sole expense if the damage was caused while equipment was in possession of Contractor. The Contractor must obtain written direction from the assigned Department Contract Manager prior to taking action under this section.
6. Any equipment purchased or built as a result of a Technical Agreement and/or Task Order is subject to the following:
 - a. The Contractor shall maintain an inventory record for each piece of non-expendable equipment purchased or built with funds provided under the terms of this Agreement.
 - b. 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.
 - c. Non-expendable equipment so inventoried are those items of equipment that have a normal life expectancy of one year or more and an approximate unit price of \$5,000.00 or more. In addition, theft-sensitive items of equipment costing less than \$5,000.00 shall be inventoried.
 - d. A copy of the inventory record must be submitted to the Department Contract Manager, identified in each Technical Agreement or Task Order, within six (6) months of the end of each fiscal year (June 30).
7. The title of equipment purchased under a Technical Agreement and/or Task Order vests with the Department. At the conclusion of the Technical Agreement or Task Order or if the Technical Agreement or Task Order is terminated, the equipment shall be disposed of in the following manner:

EXHIBIT B
Interagency Agreement

- a. Contractor may either keep the equipment and credit the State 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 established State procedures, and credit the State in an amount equal to the sales price.

If the Contractor elects to keep the equipment, fair market value shall be determined, at the Contractor's expense, on the basis of a competent, independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to the State and Contractor. If it is determined to sell the equipment, the terms and conditions of such sale must be approved in writing, in advance, by the Contract Manager.

- b. Or, through mutual written agreement between the Department and Contractor, the equipment may be returned to the Department with any cost incurred by the Contractor being designated as an allowable charge against the applicable Technical Agreement or Task Order.
 - c. Or, the Department may authorize, in writing, the continued use of such equipment for work to be performed under a different Technical Agreement or Task Order.
8. 49CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value, greater than \$5,000.00, is credited to the project/ Technical Agreement or project/Task Order.
 9. Any subcontract entered into as a result of a Technical Agreement or Task Order shall contain all of the provisions of this section.

10. Materials/Supplies

The Contractor shall be reimbursed only for the allowable cost of materials/supplies identified in the Technical Agreement or Task Order as itemized, by category, on Technical Agreement or Task Order Cost Proposal and purchased to be consumed or installed at the work site in the performance of the services under a Technical Agreement or Cost Proposal (including applicable sales tax), without additional allowance for mark-up.

EXHIBIT C
Interagency Agreement

**GENERAL TERMS AND CONDITIONS FOR INTERAGENCY AGREEMENTS
(GIA101)**

1. **APPROVAL:** This Agreement is not valid until signed by both parties and approved by the Department of General Services, if required.
2. **AUDIT:** The agency performing work under this Agreement agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement if it exceeds \$10,000. The agency performing work agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of record retention is stipulated.
3. **PAYMENT:** Allowable costs for this Agreement shall be computed in accordance with State Administrative Manual Section 8752 and 8752.1, except as stipulated in Exhibit B, Section 4H
4. **AMENDMENT:** 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 the Agreement is binding on any of the parties.
5. **SUBCONTRACTING:** All subcontracting must comply with the requirements of the State Contracting Manual, Section 3.06.
6. **ADVANCE PAYMENT:** The parties to this interagency agreement may agree to the advancing of funds as provided in Government Code Sections 11257 through 11263.
7. **DISPUTES:** The agency performing work under this Agreement shall continue with the responsibilities under this Agreement during any dispute.
8. **TIMELINESS:** Time is of the essence in this Agreement.

EXHIBIT D
Interagency Agreement

SPECIAL TERMS AND CONDITIONS

1. Settlement of Disputes

- A. Any dispute concerning a question of fact arising under this On-Call Agreement that is not disposed of by agreement between the DPAC representative and the Contractor's Project Manager identified in this On-Call Agreement, shall be decided by the Department's Contract Officer, who may consider any written or verbal evidence submitted by the Contractor. The decision of the Contract Officer, issued in writing, shall be the Department's final decision on all questions of fact considered and determined by the Contract Officer.
- B. Neither the pendency of a dispute nor its consideration by the Contract Officer will excuse the Contractor from full and timely performance in accordance with the terms of this On-Call Agreement, a Technical Agreement, or a Task Order.
- C. The Department's final decision shall be binding and conclusive regarding the dispute unless the Contractor commences an action in a court of competent jurisdiction.

2. Termination

- A. Either Party reserves the right to terminate this On-Call Agreement, a Technical Agreement, or Task Order without cause upon thirty (30) days written notice to the other Party, or immediately in the event of a material breach. In the event of termination, Contractor shall be paid for all actual Allowable Costs incurred up to the date of termination, including any non-cancelable obligations.
- B. In the event that the total Agreement amount is expended prior to the expiration date, Department may, at its sole discretion, terminate this Agreement with 30 days notice to Contractor.

3. Subcontracting

- A. The Contractor shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted except for subcontracts expressly identified in the Technical Agreement or Task Order.
- B. If the total of all subcontract(s) exceeds \$50,000.00 or 25% of the total contract amount, whichever is less, the Contractor must certify that the subcontractor has been selected by the Contractor pursuant to a competitive bidding process that requires at least three bids from responsible bidders. Services may be subcontracted without competitive bid only when the contract is with:

EXHIBIT D
Interagency Agreement

- A governmental agency from California or any state (PCC § 10340) or A state college or state university from California or any state.
- A local governmental entity or agency, including those created as a Joint Powers Authority (JPA)
- An auxiliary organization of the CSU, or a California community college
- The Federal Government
- A foundation organized to support the Board of Governors of the California Community Colleges, or
- An auxiliary organization of the Student Aid Commission established under Education Code § 69522.

If the Contractor is unable to obtain three (3) competitive bids or three (3) statements of qualification, the Contractor shall submit a written explanation to the Department. The Department will decide whether to seek authorization to allow the Contractor to proceed with the proposed subcontract. The Contractor may only charge overhead on the first \$25,000.00 for each subcontract.

- C. Nothing contained in this On-Call Agreement or any subsequent Technical Agreement, Task Order or otherwise, shall create any contractual relationship between the Department and any subcontractors, and no subcontract shall relieve the Contractor of its responsibilities and obligations hereunder. The Contractor's obligation to pay its subcontractors is an independent obligation from the Department's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.
- D. Any subcontract in excess of \$25,000.00, entered into as a result of this On-Call Agreement, Technical Agreement, or Task Order, shall contain all the provisions stipulated in this On-Call Agreement to be applicable to subcontractors.
- E. Any substitution of subcontractors identified in a Technical Agreement or Task Order must be approved in writing by the State's Contract Manager, as identified in the applicable Technical Agreement or Task Order, in advance of assigning work to a substitute subcontractor. The Contractor must follow the procedures set forth in subsection B, above, to procure substitute subcontractors.

EXHIBIT D
Interagency Agreement

4. Reports and/or Meetings

- A. Technical Agreements and/or Task Orders may require the Contractor to submit progress reports not more than once per month to allow the Contract Manager to determine if the Contractor is performing to expectations or is on schedule, to provide communication of interim findings and to afford occasions for airing difficulties or special problems encountered so that remedies can be developed.
- B. For each Technical Agreement and/or Task Order, the Contractor shall meet with the Contract Manager as needed to discuss progress on the Technical Agreement and/or Task Order.
- C. Prior to completion of a Technical Agreement and/or Task Order, the Contractor shall hold a final meeting with the Contract Manager to present findings, conclusions and recommendations and shall submit a comprehensive final report on the project.

5. Confidentiality Of Data

- A. All financial, statistical, personal, technical, intellectual property or other data and information relative to the Department's operations, which is designated in writing as confidential by the Department (hereinafter referred to as Departmental Confidential Information) and made available to the Contractor in order to carry out this On-Call Agreement, Technical Agreement and/or Task Order, shall be protected by the Contractor from unauthorized use and disclosure.
- B. Authorization of Contractor to disclose Departmental Confidential Information on one occasion or public hearing held by the Department relating to this On-Call Agreement, Technical Agreement, or Task Order shall not authorize the Contractor to further disclose such information or disseminate the same on any other occasion.
- C. The parties agree that neither will use the name of the other party or its employees in any advertisement, press release or publicity with reference to this On-Call Agreement, Technical Agreement, or Task Order, without prior written approval from the other party.
- D. Any subcontract, entered into as a result of this On-Call Agreement or subsequent Technical Agreement or Task Order, shall contain all of the provisions of this clause.

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6. Publication and Presentations

- A. The title pages of the publication/ report or introduction of the presentation shall bear an appropriate inscription or acknowledgment of the sources of funds used to produce the publication/ report or presentation.
- B. The publication/ report or presentation shall contain the following disclaimer in a separate section preceding the main body of the document or presentation:

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

7. Conflicts of Interest

- A. Representational Conflicts of Interest:

Contractor shall use its internal processes and controls related to conflicts of interest.

- B. Financial Conflicts of Interest:

Contractor should be aware of the following provisions of Government Code § 1090:

"Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity."

- C. Contractor agrees to notify the applicable Department Contract Manager should a conflict of interest or a potential conflict of interest arise. The Department will review the facts of the Conflict of Interest and determine whether or not to proceed with the Technical Agreement and/or Task Order.

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8. Statutory Compliance

The Contractor is responsible for complying with all statutes and regulations pertinent to the performance of this On-Call Agreement and all subsequent Technical Agreements or Cost Proposals.

9. Insurance Provisions

A. Contractor shall provide appropriate insurance documentation, such as documentation of self-insurance, as applicable to each Technical Agreement and/ or Task Order based upon the scope of work and Contractor Proposal, such as, but not limited to, Commercial Liability and Automotive Liability. Irrespective of the self-insurance coverage maintained by the Contractor, Contractor's self-insurance programs will not limit Contractor's legal liability.

B. Liability Insurance Provisions

1. Contractor is responsible for any deductible or self-insured retention contained within the insurance program.
2. The Insurance policy shall contain a provision that states that coverage will not be cancelled without 30 days prior written notice to the State.
3. Coverage must be in force for the complete term of this Agreement. If insurance expires during the term of this Agreement, a new certificate must be received by the Department at least ten (10) days prior to the expiration of this insurance. This new insurance must still meet the terms of this Agreement.
4. In the event Contractor fails to keep in effect at all times the specified insurance coverage, the Department may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of the Agreement.
5. Any insurance required to be carried shall be primary, and not excess, to any other insurance carried by the State.
6. The Department will not be responsible for any premiums or assessments on the policy unless allowed for under the provisions of Exhibit B of this On-Call Agreement.

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C. Workers' Compensation/Employer's Liability

Contractor shall maintain statutory workers' compensation and employer's liability coverage for all its employees who will be engaged in the performance of this On-Call Agreement or subsequent Technical Agreement or Task Order, including special coverage extensions where applicable. Employer's liability limits of \$1,000,000.00 per occurrence shall be required.

D. Any subcontract entered into as a result of a Technical Agreement and/or Task Order shall contain all the provisions of this section.

9. Union Organizing

- A. Contractor, by signing this On-Call Agreement, hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this On-Call Agreement and any subsequent Technical Agreement or Cost Proposal.
- B. Contractor will not assist, promote, deter union organizing by employees performing work on a State service Agreement, including a public works Agreement. No State funds received under this Agreement will be used to assist, promote, or deter union organizing.
- C. Contractor will not, for any business conducted under this On-Call Agreement or subsequent Technical Agreement or Task Order, use any State property to hold meetings with employees or supervisors, if the purpose of such meeting is to assist, promote, or deter union organizing, unless the State property is equally available to the general public for holding meetings.
- D. If the Contractor incurs costs or makes expenditures to assist, promote, or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from State funds has been sought for these costs and that Contractor shall provide those records to the Attorney General upon request.

10. Federal Lobbying Activities Certification

Applicable to Technical Agreements or Task Orders in excess of \$100,000.00 and are funded with Federal dollars.

- A. The Contractor certifies, to the best of his or her knowledge and belief, that: No State or Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any State or Federal agency, a member of the State

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Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a member of the Legislature or Congress in connection with the awarding of any State or Federal agreement, the making of any State or Federal grant, the making of any State or Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any State or Federal agreement, grant, loan, or cooperative agreement.

- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal Agreement, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- C. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.
- D. The Contractor also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000.00, and that all such subcontractors shall certify and disclose accordingly.

11. Indemnification and Hold Harmless Requirement

- A. Contractor shall defend, indemnify and hold harmless the Department, its officers, and employees from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damage are caused by or result from the negligent or intentional acts or omissions of Contractor, its officers, or employees.
- B. To the extent permitted by law, the Department shall defend, indemnify and hold harmless Contractor, its officers, and employees from against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this On-Call Agreement, but only in proportion to and to the extent such liability, loss, expense (including reasonable

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attorneys' fees), or claims for injury or damage are caused by or result from the negligent or intentional acts or omissions of the Department, its officers, or employees.

- C. Neither termination of this On-Call Agreement nor completion of the acts to be performed under this On-Call Agreement shall release any party from its obligation to indemnify as to any claims or cause of action asserted so long as the event(s) upon which such claim or cause of action is predicated shall have occurred subsequent to the effective date of this On-Call Agreement and prior to the effective date of termination or completion.

12. Retention of Records/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 this On-Call Agreement or subsequent Technical Agreements or Task Orders pursuant to Government Code Section 8546.7, the Contractor, subcontractors and the State shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this On-Call Agreement or a subsequent Technical Agreement and Task Orders, including but not limited to, the costs of administering an agreement. All parties shall make such materials available at their respective offices at all reasonable times during the this On-Call Agreement, Technical Agreement, or Task Order period and for three (3) years from the date of final payment under a Technical Agreement. The State, the Bureau of State Audits, 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 Contractor that are pertinent to this On-Call Agreement or subsequent Technical Agreements or Task Orders for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.
- B. Any subcontract entered into as a result of a Technical Agreement or Task Order shall contain all the provisions of this section.

13. Title VI

During the performance of this On-Call Agreement, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

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- A. Compliance with regulations:** The Contractor shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation - Title 49 Code of Federal Regulations Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- B. Nondiscrimination:** The Contractor, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.
- C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.
- D. Information and Reports:** The Contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined by the State Department of Transportation or any duly authorized representative of the Federal Government to be pertinent to ascertain compliance with such regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State Department of Transportation, or any duly authorized Federal Agency as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State Department of Transportation shall impose such Agreement sanctions as it or any Federal funding agency may determine to be appropriate, including, but not limited to:

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Withholding of payments to the Contractor under the Agreement until the Contractor complies, and/or Cancellation, termination or suspension of the Agreement, in whole or in part.

F. Incorporation of Provisions: The Contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

The Contractor will take such action with respect to any subcontractor or procurement as the State Department of Transportation or any Federal funding agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the State Department of Transportation to enter into such litigation to protect the interest of the State, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

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ADDITIONAL PROVISIONS

OWNERSHIP OF DELIVERABLE(S)

1. DEFINITIONS

For purposes of this On-Call Agreement the following definitions shall apply:

- A. "Deliverable(s)" means any work performed, prepared, and/or delineated in the scope of work, schedule, and proposal in a Technical Agreements and/or Task Orders, executed under this On-Call Agreement and which is required to be delivered by Contractor to Department under the terms of Technical Agreements and/or Task Orders.
- B. "Data" means original records of scientific and technical data collected in the performance of the work by the Principal Investigator or the project personnel pursuant to Technical Agreements and/or Task Orders, executed under this On-Call Agreement. Data includes, but is not limited to, notebooks, drawings, lists, reports, findings, training materials, specifications, and computations, in written, pictorial, graphic or machine form.
- C. Invention(s): refers to any patentable invention, idea or discovery conceived and reduced to practice in the performance of Technical Agreements and/or Task Orders executed under this On-Call Agreement.
- D. Software
 - 1) The terms "SOFTWARE DELIVERABLE" refers to Software products, including programs, routine and databases supplied or developed by the Contractor.
 - 2) The term "SUPPLIED" refers to products obtained from their owner and used without modifications.
 - 3) The term "DEVELOPED" refers to (1) products obtained from their owner and modified, or (2) products created by the Contractor under the terms of a Technical Agreement and/or Task Order executed under this On-Call Agreement.
 - 4) The term "THIRD PARTY SOFTWARE" refers to Software, including but not limited to operating systems, languages, word processors, database, spreadsheet processors, utility programs, standard device drivers, application generators, graphic utilities, and Software libraries, which are owned by a third party.

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- 5) The term "CONTRACTOR SOFTWARE" refers to Software owned and copyrighted by the Contractor. This category of Software includes, but is not limited to general-purpose network communications and graphic interface utilities, and applications programming and development tools.
- 6) The term "APPLICATIONS SOFTWARE" refers to all Software (excluding third party Software and Contractor Software) and associated documentation developed under the terms of a Technical Agreement and/or Task Order executed under this On-Call Agreement.
- 7) The term "SOFTWARE DOCUMENTATION" refers to all manuals, handbooks, maintenance and libraries and other documents provided via electronic media and printed matter as part of Software for operations, use and maintenance Software.
- 8) The term "SOURCE CODE DOCUMENTATION" refers to the program level Software design documentation, associated data files, data structures, and algorithms necessary for the Department to make program code level modifications to a delivered Software product.
- 9) The term "SOURCE CODE" refers to complete program source code listings, internal documentation embedded in source code listings, associated data files, and data structures necessary for program code level modifications to Software.

2. OWNERSHIP OF DELIVERABLES

Upon completion of each task under the applicable Technical Agreement and/or Task Order, ownership and title to all Deliverables, Data, and Inventions will vest automatically with the Contractor. Absent Federal funding in the development of Deliverable(s) and Data, all patents and copyrights resulting from a Technical Agreement and/or Task Order shall be the sole property of the Contractor and/or subcontractor.

3. USE OF THIRD PARTY SOFTWARE

- A. The Contractor shall not supply or develop Software which requires the use of commercial or non-commercial Third Party Software for proper operation, maintenance, support, or debugging without prior written approval from the Department Contract Manager identified in the applicable Technical Agreement and/or Task Order.

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1) Derivative Works

- a) If the Contractor reasonably believes that a Deliverable(s) constitutes a Derivative Work, the Contractor shall notify the Department in writing, prior to continuing work, detailing (1) the nature of the Pre-existing Work(s); (2) the owner of the Pre-existing Work(s); (3) any restrictions or royalty terms applicable to the Contractor's use of such Pre-existing Work(s) or the Department's exploitation of the Deliverable(s) as a Derivative Work thereof; and (4) the source of the Contractor's authority to employ the Pre-existing Work(s) in the preparation of the Deliverable(s). The Department Contract Manager shall respond with written direction on how to proceed.
- b) Prior to securing any license from a subcontractor, the Contractor shall ascertain if any costs will be associated with securing the license. Contractor shall alert the applicable Contract Manager and obtain written permission to obtain the license(s) before proceeding.
- c) If approved, the Contractor shall secure for the Department, its successors, assigns and all governmental entities, an irrevocable, non-exclusive, non-transferable, royalty-free and perpetual licenses from subcontractors in Pre-existing Works where such licenses are necessary for Contractor and the Department to practice and exploit the Deliverable(s) and exercise the following rights in the Deliverable(s): (1) The right to use, modify, develop new intellectual property material, reproduce, display, perform, publish, distribute internally or externally; and (2) authorize others, doing business with the Department, to do any or all of the foregoing for noncommercial State of California government purposes.
- d) The Contractor may charge the cost of the license to the applicable Technical Agreement or Task Order only if the applicable Contract Manager has given written permission. All such charges shall be in accordance with Cost Principles set out in Exhibit B.

4. REVIEW OF SOFTWARE DELIVERABLES:

The Contractor shall furnish the Department all necessary copies of all Deliverables, Data, and Inventions including, but not limited to, Software Documentation, Source Code Documentation, Source Code, Application Software, Developed Software, and other Software-related manuals and data needed to complete the Department's review, approval, and acceptance of any invoices related to Technical Agreements and/or Task Orders.

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5. DEPARTMENT RIGHTS TO DELIVERABLES, DATA, AND INVENTIONS:

A. Deliverables:

The Contractor and/or subcontractor does hereby grant to the Department, and any and all governmental entities, including transit and special districts, within the United States, an irrevocable, nontransferable and perpetual royalty-free right to possess, use, modify, reproduce, display, publish, perform, and distribute internally and externally, and dispose of all Deliverables provided under a Technical Agreement and/or Task Order and to authorize others doing business with the Department to do any or all of the foregoing for non-commercial, State of California governmental purposes.

B. Data:

The Contractor and/or subcontractor does hereby grant to the Department, and any and all governmental entities, including transit and special districts, within the United States, an irrevocable, nontransferable and perpetual royalty-free right to possess, use, modify, reproduce, display, publish, perform, and distribute internally and externally, and dispose of all copies of Data provided under a Technical Agreement and/or Task Order and to authorize others doing business with the Department to do any or all of the foregoing for non-commercial, State of California governmental purposes.

The Department shall have the right to order, at any time during the performance of this On-Call Agreement, or within three years from either acceptance of Deliverables under a Technical Agreement and/or Task Order or termination of this On-Call Agreement, whichever is later, any Data not delivered under this On-Call Agreement but generated in the performance of a Technical Agreement and/or Task Order. The Contractor shall promptly prepare and deliver that data as is ordered for actual costs of reproduction.

C. Software and other copyrightable Deliverables:

The Contractor and/or subcontractor hereby grants to the Department, and any and all governmental entities, including transit and special districts, within the United States, an irrevocable, non-exclusive, non-transferable, perpetual royalty-free license to reproduce, prepare, modify, create derivative works, publish, distribute copies internally or externally, display and perform publicly any copyrightable Deliverable, including but not limited to Software, Software Documentation, Application Software, Developed Software, Software Source Code, Source Code Documentation, and to authorize others, doing business with the Department to do

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any or all of the foregoing for non-commercial, State of California governmental purposes.

D) Inventions:

When there is no Federal Government funding in the development of the Deliverables, Data, or Invention, the Contractor and/or subcontractor hereby grants to the Department, and any and all governmental entities, including transit and special districts, within the United States, an irrevocable, non-exclusive, non-transferable, perpetual royalty-free license to make, have made, publicly perform, and use any Invention subject to a patent or patent application, and to authorize others, doing business with the Department to do any or all of the foregoing for non-commercial, State of California governmental purposes.

6. PROCESS FOR MANAGING POTENTIAL PATENT INFRINGEMENT

A. Reasonable due diligence review and mitigation procedures

- 1) As a contract performance requirement, the Contractor agrees to conduct, or have conducted on its behalf, a reasonable search for any patents, copyrights, trademarks, or other intellectual property rights of third parties that may be infringed by technology identified as likely to be embodied in a Deliverable.
- 2) The search will be conducted at the outset of a Technical Agreement and/or Task Order based on what known at that time, and again at the completion of the Technical Agreement and/or Task Orders before the final Deliverables(s) is provided to the Department.
- 3) The parties acknowledge that the potential risk of an infringement claim by a third party will vary according to the substance of the scope of work. If the search identifies an actual or possible intellectual property infringement, or there is a finding that intellectual property owned by a third party will be included in a Deliverable, the Contractor shall provide the results of the search to the applicable Department Contract Manager and request program direction.
- 4) The Department may, in accordance with this and other provisions of this On-Call Agreement, direct the Contractor to:
 - a) Modify the technology described in the scope of work as likely to be embodied in a Deliverable; or
 - b) Substitute alternative non-infringing technology, if available; or
 - c) Investigate the feasibility of a license with the intellectual property holder; or

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- d) Deliver the technology despite the potential for infringement, for example where no significant infringing use of the technology is contemplated; or
- e) Retain the services of outside patent counsel for an opinion about the validity of the actual or potential claim of infringement regarding such a Deliverable. If the Department directs the Contractor to retain outside counsel, the Contractor will do so in full consultation with Department Chief Counsel; or
- f) Cease work on the Technical Agreement and/or Task Order.

B. Procedures to manage threatened or actual infringement suits by third parties

1) Suit against the Department:

In the event a third party threatens or files an infringement suit against the Department regarding technology to be or that was embodied in a Deliverable, the Contractor agrees to cooperate and provide pertinent documents regarding such Deliverable as requested by counsel designated by the Department and its legal representative in such infringement claim, subject to the documents availability to the Contractor and allowable disclosure under applicable law. The Department may also contact pertinent Contractor personnel and faculty regarding such infringement suit or allegation. Requests for such documents and contact with personnel in connection with such a potential or actual suit shall be directed to the Contractor's Office of General Counsel for coordination. The Department will provide notice of a threatened or actual suit for infringement to the Contractor's Office of General Counsel and provide periodic updates regarding the status of the action. The Department shall retain its rights to cross-complain against the Contractor regarding the Contractor's actions and Deliverable(s) when deemed necessary by the Department counsel for the defense of any action(s) wherein the Department is named party to an infringement suit.

2) Suit against the Contractor:

In the event a third party threatens or files an infringement suit against the Contractor regarding technology to be or that was embodied in a Deliverable to the Department, the Department agrees to cooperate and provide pertinent documents regarding such a deliverable as requested by counsel designated by the Contractor as its legal representative in such infringement claim, subject to the documents availability to the Department and allowable disclosure under applicable law. The Contractor may also contact pertinent Department personnel regarding such Deliverable(s). Requests for such documents and contact with personnel in connection with such a potential or actual suite shall be directed to the Department Chief Counsel or the Legal Office designated by

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the Chief Counsel for coordination. The Contractor will provide notification of such a potential or actual suit to the Department's Chief Counsel and provide periodic updates regarding the status of the action. The Contractor shall retain its rights to cross-complain against the Department regarding the Department's actions and Deliverable(s) when deemed necessary by the Contractor counsel for the defense of any action(s) wherein the Contractor is named party to an infringement suit.

3) Suit against both the Department and the Contractor

In the event a third party threatens or files an infringement suit against the Department and the Contractor, the parties:

- a) Agree to cooperate and provide pertinent documents regarding technology to be or as embodied in a deliverable as requested by either party, or the party's designated outside counsel as its legal representative in such patent infringement claim subject to the documents' availability and allowable disclosure under applicable law.
- b) Are permitted to contact with pertinent personnel regarding such Deliverable(s).
- c) May request documents and contact personnel in connection with such a potential or actual suit, which requests shall be directed to the respective party's legal office for coordination or another office designated by the legal office.
- d) Will discuss the efficacy of joint representation, and the availability of legal defense.
- e) Will enter a good faith discussion of fee allocation based on facts of the case.
- f) Will enter a good faith discussion regarding the allocation of damages consistent with court findings.

7. SUBCONTRACT PROVISIONS

Any subcontract entered into under a Technical Agreement and/or Task Order shall contain all provisions of this Exhibit E.

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Glossary

1. **Direct Costs** - Includes hourly labor costs, fringe benefits, materials, Equipment, subcontractor services, travel and per diem
2. **Indirect Costs** - Overhead costs for facilities and administration of the contract, support staff based upon a percentage of total modified direct costs
3. **Allowable Costs** - The tests of allowability of costs under this agreement and the principles set forth in OMB Circular A-21 are: (a) the costs must be reasonable; (b) the costs must be allocable to the Technical Agreement or Task Order and the principles and methods provided in this Agreement and the Technical Agreement or Task Order provisions; (c) the costs must be given consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances; and (d) the costs must conform to any limitations or exclusions set forth in OMB Circular A-21 and CFR 49 Part 18, the terms and conditions of this Agreement, the Technical Agreement and/or Task Order and the specific cost proposal.
4. **Consistency** - Consistency in allocating costs incurred for the same purpose means all costs incurred for the same purpose, in like circumstances, are either direct costs only or facilities and administrative costs only with respect to final cost objectives. No final cost objective shall have allocated to it as a cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective. Further, no final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any F&A cost pool to be allocated to that or any other final cost objective.
5. **Equipment** - Tangible nonexpendable personal property, including exempt property, charged directly to the award having a useful life of more than one year and an acquisition cost of \$5,000.00 or more per unit. However, consistent with recipient policy, lower limits may be established. Specifically, equipment is defined as movable articles of non-expendable property that meet the following requirements:
 - a) have a useful life (including extended life due to repairs) of at least one year, and
 - b) have a unit acquisition cost of at least \$5,000.00 for other than land and structures (e.g., identical assets costing \$3,000.00 each for a total of \$12,000.00 [over the threshold amount] would not meet the requirements), and
 - c) be used to conduct work under this contract.

EXHIBIT F
Interagency Agreement

6. **Facilities and Administrative (F&A) Costs** - Costs that are incurred for common or joint objectives and, therefore, cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. F&A costs are synonymous with "indirect" costs.
7. **Key Personnel** – those personnel who play a significant role in the planning or execution of a specific Technical Agreement and/or Task Order and who spend more than ¼ of their normal work hours on that Technical Agreement or Task Order.
8. **Materials & Supplies** - The substances used in constructing a finished object, commodity, device, article or product.
9. **Modified Total Direct Costs** - Modified total direct costs (MTDC) include salaries and wages, fringe benefits, materials and supplies, services, and subgrants and subcontracts up to the first \$25,000.00 on each subgrant or subcontract (regardless of the period covered by the subgrant or subcontract). Equipment, capital expenditures, charges for patient care and tuition remission, rental costs, scholarships, and fellowships as well as the portion of each subgrant and subcontract in excess of \$25,000.00 shall be excluded from MTDC.
10. **Principal Investigator** – The Contractor representative responsible for the management and delivery of the scope of work defined in a Technical Agreement and/or Task Order.
11. **Project Costs** - All actual Allowable Costs, as set forth in the applicable Federal cost principles and this On-Call Agreement, Technical Agreement, or Task Order, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.
12. **Project Manager** – Assigned by a Principle Investigator to manage a specific Technical Agreement and/or Task Order.
13. **Deliverable Product(s)** – All work performed, prepared, and/or delineated in the scope of work, schedule, and proposal in each Technical Agreement and/or Task Order, executed under this On-Call Agreement, including but not limited to, all Deliverables, Data, and Inventions, as defined in Exhibit E, Work or Deliverables conceived, reduced to practice, or made, or made hereafter conceived or made, either solely or jointly with others during the term of this On-Call Agreement, which relates to the Work commissioned or performed under this On-Call Agreement or any subsequent Technical Agreement and/or Task Order.

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14. **Schedule** – A procedural plan that indicates the required time for completion of all work performed, prepared and/or identified in the Proposal and Scope of Work for each Technical Agreement and/or Task Order executed under this On-Call Agreement.

ATTACHMENT 1
Interagency Agreement

List of all Research Technical Agreements as of August 29, 2008

CONTRACT	VENDOR NAME
51A0374	UC BERKELEY
51A0376	REGENTS OF UC RIVERSIDE
51A0391	REGENTS, UC DAVIS
59A0420	REGENTS – UNIV OF CALIF
59A0485	REGENTS, UC DAVIS
59A0496	REGENTS OF THE UC IRVINE
59A0506	REGENTS OF UC-SPONSORED GRT O
59A0511	REGENTS – UNIV OF CALIF
59A0536	REGENTS – UNIV OF CALIFORNIA
59A0537	REGENTS – UNIV OF CALIFORNIA
59A0564	REGENTS OF UC-SPONSORED GRT O
59A0567	REGENTS, UC DAVIS
59A0575	UC DAVIS
59A0580	UC BERKELEY
59A0582	UC BERKELEY
59A0602	UNIVERSITY OF CALIFORNIA SAN DIEGO
59A0622	REGENTS – UNIV OF CALIFORNIA
59A0651	REGENTS OF THE UNIV OF CALIF
59A0655	REGENTS OF THE UNIV OF CALIF
59A0657	REGENTS – UNIV OF CALIFORNIA
59A0658	REGENTS OF UC-SPONSORED GRT O
65A0212	REGENTS OF UC-SPONSORED GRT O
65A0214	REGENTS OF THE UC IRVINE
65A0220	REGENTS, UC DAVIS
65A0222	REGENTS, UC DAVIS
65A0228	REGENTS, UC DAVIS
65A0235	REGENTS UCI
65A0236	REGENTS, UC DAVIS
65A0245	REGENTS, U.C. DAVIS
65A0247	UNIV. OF CALIF. DAVIS
65A0252	REGENTS UCI
65A0257	REGENTS OF UNIV OF CALIF, SANTA BARBARA
65A0261	UNIVERSITY OF CALIFORNIA, REGENTS RIVERSIDE
65A0262	UNIV. OF CA DAVIS - RESEARCH
65A0263	REGENTS, U.C. DAVIS
65A0264	REGENTS, U.C. DAVIS
65A0266	REGENTS, U.C. DAVIS
65A0267	REGENS OF THE UNIV OF CALIFORNIA

