

SAMPLE AGREEMENT

Adaptation Grants (State) Restricted Grant Agreement

This Restricted Grant Agreement (RGA), between the State of California acting by and through its Department of Transportation, referred to herein as **CALTRANS**, and the **COUNTY OF FRESNO**, hereinafter referred to as **AGENCY**, will commence on **November 1, 2024**, or upon approval by **CALTRANS**, whichever occurs later. This RGA is of no effect unless approved by **CALTRANS**. **AGENCY** shall not receive payment for work performed prior to approval of the RGA and before receipt of Notice to Proceed by the **CALTRANS** Contract Manager. This RGA shall expire on [**END Date**].

Recitals

1. Under this RGA, **CALTRANS** intends to convey State restricted grant funds to **AGENCY**, pursuant to Budget Act Line Item 2660-102-0001, who will conduct transportation studies and planning within the regional area under the jurisdiction of **AGENCY** under the terms, covenants, and conditions of this RGA.
2. **CALTRANS** and **AGENCY** intend that only funds that are authorized as restricted grants will be subject to this RGA, and that no funds that should be the subject of a Joint Powers Agreement, Interagency Agreement, or other non-grant agreement shall be subject to this RGA.

Now, Therefore, based upon the terms, covenants, and conditions of this RGA, the parties agree as follows:

Section I

AGENCY Agrees:

To timely and satisfactorily complete all Project work described in **Attachment II** within the project budget and in accordance with the items of this RGA.

Section II

CALTRANS Agrees:

That when conducting an audit of the costs claimed by **AGENCY** under the provisions of this RGA, to conduct the audit in accordance with applicable laws and regulations.

Section III

It Is Mutually Agreed:

1. Under this RGA, **CALTRANS** will convey State grant restricted funds to **AGENCY**, pursuant to Budget Act Line Item 2660-102-0001, and **AGENCY** will conduct transportation studies and planning within the regional area described in **Attachment II**. The funds subject to this RGA must be (a) identified as available for a restricted grant in **CALTRANS**' budget and (b) for the purpose of conducting transportation studies or planning and (c) to a public entity that is responsible for conducting transportation studies or planning.
2. Under this restricted grant, funds may be only used for the purpose set forth in RGA, Resolution (**Attachment I**), Scope of Work and Project timeline (**Attachment II**), and the applicable Grant Application Guide (**Attachment III**), and funds may only be used for costs and expenses that are directly related to such purpose.

3. **AGENCY** shall perform all the duties and obligations described in **Western Fresno County Climate Adaptation Plan**, hereinafter “Project”, subject to the terms and conditions of this RGA and Approved Project Grant Application (Scope of Work and Project timeline), which are attached hereto as **Attachment II**.
4. The resolution authorizing **AGENCY** to execute this RGA pertaining to the above described Project is attached hereto as **Attachment I**.
5. All services performed by **AGENCY** pursuant to this RGA shall be performed in accordance with California Senate Bill No. 198 (SB-198) (Chapter 71, Statutes of 2022), including, but not limited to, Government Code Section 14460(a)(1), as well as all applicable Federal, State, and Local laws, regulations, and ordinances, all applicable **CALTRANS** policies and procedures, and all applicable **CALTRANS** published manuals, including, but not limited to, the applicable Grant Application Guide (**Attachment III**).

California Government Code Section 14460(a)(1) provides: “The department [**CALTRANS**], and external entities that receive state and federal transportation funds from the department, are spending those funds efficiently, effectively, economically, and in compliance with applicable state and Federal requirements. Those external entities include, but are not limited to, private for profit and nonprofit organizations, local transportation agencies, and other local agencies that receive transportation funds either through a contract with the department or through an agreement or grant administered by the department.”

In case of conflict between Federal, State, and Local laws, regulations, and ordinances, and/or any applicable policies, procedures, or published manuals of either **CALTRANS** or **AGENCY**, the order of precedence of the applicability of same to this RGA shall be established in this order: 1) Federal laws and regulations; 2) California laws and regulations; 3) **CALTRANS** policies, procedures, and published manuals; 4) Local ordinances; and 5) **AGENCY** policies, procedures, and published manuals. This RGA may not include any federal funds.

6. Project funding is as follows:

Fund Title	Fund Source	Dollar Amount
State Highway Account (SHA)	State	\$1,500,000
Local Match	Agency Provided	\$194,341
	Total Project Costs	\$1,694,341

No in-kind contributions may be made unless the amount and type of the contribution is identified above.

7. This RGA is exempt from the legal review and approval by the Department of General Services, pursuant to Legal Opinions of the Attorney General: 58 Ops. Cal. Atty. Gen. 586 (1975), 63 Ops. Cal. Atty. Gen. 290 (1980), 74 Ops. Cal. Atty. Gen. 10 (1991), and 88 Ops. Cal. Atty. Gen. 56.
8. Notification of Parties
 - a. **AGENCY's** Project Manager for Project is **Erin Haagenson**.
 - b. **CALTRANS'** Contract Manager is **Christopher Xiong**, “Contract Manager” as used herein includes his/her designee.
 - c. All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when made in writing and received by the parties at

their respective addresses:

COUNTY OF FRESNO

Attention: Erin Haagenson, Program Manager

Phone Number: (559) 600-9908

Email: ehaagenson@fresnocountyca.gov

Address: 2220 Tulare Street, 6th Floor

Fresno, CA 93721

California Department of Transportation

District 6 Local Assistance

Attention: Christopher Xiong, Contract Manager

Phone Number: (559) 908-7064

Email: Christopher.Xiong@dot.ca.gov

Address: 1352 W Olive Ave

Fresno, CA 93728

Period of Performance

- a. Reimbursable work under this RGA shall begin no earlier than on (Insert start date), following the written approval of **CALTRANS** and **AGENCY's** receipt of the Notice to Proceed letter of this RGA by the **CALTRANS** Contract Manager, and will expire on (Insert end date).
- b. **AGENCY** will attend a kickoff meeting with **CALTRANS** to be scheduled within one (1) week from receipt of Notice to Proceed letter by the **CALTRANS** Contract Manager.

1352 Changes in Terms/Amendments

This Agreement may only be amended or modified during the period of performance by mutual written agreement of the parties.

1353 Cost Limitation

- a. The maximum total amount granted and reimbursable to **AGENCY** pursuant to this RGA by **CALTRANS** shall not exceed \$XXXX.XX.
- b. It is agreed and understood that this RGA fund limit is an estimate and that **CALTRANS** will only reimburse the cost of services actually rendered in accordance with the provisions of this RGA and as authorized by the **CALTRANS** Contract Manager at or below that fund limitation established herein.

1354 Termination

- a. **CALTRANS** reserves the right to terminate this RGA upon written notice to **AGENCY** at least 30 days in advance of the effective date of such termination in the event **CALTRANS** determines (at its sole discretion) that **AGENCY** failed to proceed with PROJECT work in accordance with the terms of this RGA. In the event of termination for convenience, **CALTRANS** will reimburse **AGENCY** for all allowable, authorized and non-cancelled costs up to the date of termination
- b. This RGA may be terminated by either party for any reason by giving written notice to the other party at least 30 days in advance of the effective date of such termination. In the event of termination for convenience, **CALTRANS** will reimburse **AGENCY** for all allowable, authorized, and non-cancelled costs up to the date of termination.
- c. **AGENCY** has 60 days after the Termination Date to submit accurate invoices to **CALTRANS** to make final allowable payments for Project costs in accordance to the terms of this RGA. Failure

to submit invoices within this period of time shall result in a waiver by **AGENCY** of its right to reimbursement of expended costs.

1355 Budget Contingency Clause

- a. It is mutually agreed that if the US Congress or the State Legislature fail to appropriate or allocate funds during the current year and/or any subsequent years covered under this RGA do not appropriate sufficient funds for the program, this RGA shall be of no further force and effect. In this event, **CALTRANS** shall have no liability to pay any funds whatsoever to **AGENCY** or to furnish any other considerations under this RGA and **AGENCY** shall not be obligated to perform any provisions of this RGA.
- b. If funding for any fiscal year is reduced or deleted by US Congress or State Legislature for purposes of this program, **CALTRANS** shall have the option to either terminate this RGA with no liability occurring to **CALTRANS**, or offer an RGA Amendment to **AGENCY** to reflect reduced amount.

1356 Payment and Invoicing

- a. The method of payment for this RGA will be based on the actual allowable costs that are incurred in accordance with the provisions of this RGA and in the performance of the Project Work. **CALTRANS** will reimburse **AGENCY** for expended actual allowable direct costs, and including, but not limited to, labor costs, travel, and contracted consultant services costs incurred by **AGENCY** in performance of the Project work. Indirect costs are reimbursable only if the **AGENCY** has identified the estimated indirect cost rate in **Attachment II** and an approved Indirect Cost Allocation Plan or an Indirect Cost Rate Proposal as set forth in **Section III–Cost Principles, Item 16d**. The total cost shall not exceed the cost reimbursement limitation set forth in **Section III–Cost Limitations, Item 11a**. Actual costs shall not exceed the estimated wage rates, labor costs, travel, and other estimated costs and fees set forth in **Attachment II** without an amendment to this RGA, as agreed between **CALTRANS** and **AGENCY**.
- b. Reimbursement of **AGENCY** expenditures will be authorized only for those allowable costs actually incurred by **AGENCY** in accordance with the provisions of this RGA and in the performance of Project work. **AGENCY** must not only have incurred the expenditures on or after the start date and the issuance of the Notice to Proceed letter for this RGA and before the Expiration Date but must have also paid for those costs to claim any reimbursement.
- c. Travel expenses and per diem rates are not to exceed the rate specified by the State of California Department of Human Resources for similar employees (i.e. non-represented employees) unless written verification is supplied that government hotel rates were not then commercially available to **AGENCY**, its subrecipients, contractors, and/or subcontractors, at the time and location required as specified in the California Department of Transportation's Travel Guide Exception Process at the following link: <https://travelpocketguide.dot.ca.gov/>.

Also see website for summary of travel reimbursement rules.

- d. **AGENCY** shall submit invoices to **CALTRANS** at least quarterly, but no more frequently than monthly, in arrears for completion of milestones in accordance with the Project Timeline in **Attachment II** to the satisfaction of **CALTRANS** Contract Manager. Invoices shall reference this RGA Number and shall be signed and submitted to **CALTRANS** Contract Manager at the following address, as stated in **Section III–Notification of Parties, Item 8c**.
- e. Invoices shall include the following information:
 - 1) Names of the **AGENCY** personnel performing work
 - 2) Dates and times of Project Work

3) Locations of Project Work

4) Itemized costs as set forth in **Attachment II**, including identification of each employee, contractor or subcontractor staff who provided services during the period of the invoice, the number of hours and hourly rates for each employee, contractor, sub-recipient or subcontractor staff member, authorized travel expenses with receipts, receipts for authorized materials or supplies, and contractor, subrecipient and subcontractor invoices.

5) **AGENCY** shall submit written progress reports with each set of invoices to allow **CALTRANS** Contract Manager to determine if **AGENCY** is performing to expectations, is on schedule, is within funding cost limitations, to communicate interim findings, and to afford occasions for airing difficulties respecting special problems encountered so that remedies can be developed.

f. Incomplete or inaccurate invoices shall be returned to the **AGENCY** unapproved for correction. Failure to submit invoices on a timely basis may be grounds for termination of this RGA for material breach per **Section III–Termination, Item 12**.

g. **CALTRANS** will reimburse **AGENCY** for all allowable Project costs at least quarterly, but no more frequently than monthly, in arrears and in compliance with the California 45-day Prompt Payment Act (Cal. Gov. Code section 927), upon receipt of an itemized signed invoice.

h. The RGA Expiration Date refers to the last date for **AGENCY** to incur valid Project costs or credits and is the date the RGA expires. **AGENCY** has 60 days after that Expiration Date to make final allowable payments to Project contractors or vendors and submit the Project's Final Product(s) as defined in **Attachment II** and a final invoice to **CALTRANS** for reimbursement for allowable Project costs. Any unexpended Project funds not invoiced by the 60th day will be reverted and will no longer be accessible to reimburse late Project invoices contractor.

1357 Local Match Funds

a. **AGENCY** shall contribute not less than a proportional cash amount toward the services described herein on a monthly or quarterly basis. The frequency of the payments shall be agreed upon by the parties in a document signed by both parties. Notwithstanding the foregoing, to the extent that in-kind contributions are permitted and identified under this RGA, **Section III–Project Funding, Item 6**, the contributions may be counted as cash when they are actually received by **CALTRANS**. Except where expressly allowed in writing herein, reimbursement of credits for local matching funds will be made or allowed only for work performed on and after the date of issuance of the Notice to Proceed and prior to the Expiration Date of this RGA.

b. **AGENCY** agrees to contribute the statutorily required local contribution of matching funds if any is specified within this RGA or in any Attachment hereto, toward the actual cost of the services described in **Attachment II**. **AGENCY** shall contribute not less than its required match amount toward the services described herein. Local cash and in-kind match requirements can be found in the applicable Grant Application Guide (**Attachment III**).

1358 Cost Principles

a. **AGENCY** agrees to comply with Title 2, Code of Federal Regulations (CFR), Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

b. **AGENCY** agrees, and will assure that its contractors, sub-recipients, and subcontractors will be obligated to agree, that (a) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the

allowability of individual Project cost items and (b) and (b) all parties shall comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Every sub-recipient receiving Project funds as a sub-recipient, contractor, or subcontractor under this RGA shall comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards to the extent applicable.

- c. Any Project costs for which **AGENCY** has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, and/or Part 48, Chapter 1, Part 31, are subject to repayment by **AGENCY** to **CALTRANS**. Should **AGENCY** fail to reimburse moneys due **CALTRANS** within 30 days of discovery or demand, or within such other period as may be agreed in writing between the parties hereto, **CALTRANS** is authorized to intercept and withhold future payments due **AGENCY** from **CALTRANS** or any third-party source, including, but not limited to, the State Treasurer, the State Controller or any other fund source.
- d. Prior to **AGENCY** seeking reimbursement of indirect costs, **AGENCY** must have identified estimated indirect cost rate in **Attachment II**, prepare and submit annually to **CALTRANS** for review and approval an indirect cost rate proposal and a central service cost allocation plan (if any) in accordance with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and Chapter 5 of the Local Assistance Procedures Manual which may be accessed at: <https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/lapm/ch05.pdf>.
- e. **AGENCY** agrees and shall require that all its agreements with consultants and subrecipients contain provisions requiring adherence to this section in its entirety **except for section c, above**.

1359 Americans with Disabilities Act

By signing this Agreement, **LOCAL AGENCY** assures **CALTRANS** that in the course of performing Project Work, it will fully comply with the applicable provisions of the Americans with Disabilities Act (ADA) of 1990, as amended, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA (42 USC Section 12101 et seq.).

1360 Iran Contracting Act

Proposed Contractor must complete and submit to Caltrans the Iran Contracting Act Certification certifying that it is not on the most current DGS list of Entities Prohibited from Contracting with Public Entities in California per the Iran Contracting Act, 2010 (<https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/List-of-Ineligible-Businesses>), before the Agreement has been executed, unless Contractor is exempted from the certification requirement by Public Contract Code Section 2205(c) or (d). If claiming an exemption, the proposed Contractor shall provide written evidence that supports an exemption under Public Contract Code Section 2203(c) or (d) before execution of the Agreement.

1361 Indemnification

Neither **CALTRANS** nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by **AGENCY**, its officers, employees, agents, its contractors, its subrecipients, or its subcontractors under or in connection with any work, authority, or jurisdiction conferred upon **AGENCY** under this RGA. It is understood and agreed that **AGENCY** shall fully defend, indemnify, and save harmless **CALTRANS** and all of **CALTRANS'** officers and employees from all claims, suits, or actions of every name, kind, and

description brought forth under, including, but not limited to, tortuous, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by **AGENCY**, its officers, employees, agents, contractors, subrecipients, or subcontractors under this RGA.

1362 Nondiscrimination Clause (2 CCR 11105 Clause b)

- a. During the performance of this RGA, the **AGENCY**, its contractors, its subrecipients, and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. **AGENCY** shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- b. **AGENCY** shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code Sections 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code Sections 11135-11139.5), and the regulations or standards adopted by **CALTRANS** to implement such article.
- c. **AGENCY** shall permit access by representatives of the Department of Fair Employment and Housing and **CALTRANS** upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or **CALTRANS** shall require to ascertain compliance with this clause.
- d. **AGENCY** and its contractors, its sub-recipients, and 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. **AGENCY** shall include the nondiscrimination and compliance provisions of this clause in all agreements with its sub-recipients, contractors, and subcontractors, and shall include a requirement in all agreements with all of same that each of them in turn include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts they enter into to perform work under the RGA.

1363 Retention of Records/Audits

- a. **AGENCY**, its contractors, subcontractors and sub-recipients, agree to comply with Title 2, Code of Federal Regulations (CFR), Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- b. **AGENCY**, its contractors, subcontractors and sub-recipients shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs and matching funds by line. The accounting system of **AGENCY**, its contractors, all subcontractors, and sub-recipients shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of **AGENCY**, its contractors, subcontractors and sub-recipients connected with Project performance under this RGA shall be maintained for a minimum of three (3) years from the date of final payment to **AGENCY** and shall be held open to inspection, copying, and audit by

representatives of **CALTRANS**, the California State Auditor, and auditors representing the federal government. Copies thereof will be furnished by **AGENCY**, its contractors, its subcontractors and sub-recipients upon receipt of any request made by **CALTRANS** or its agents. In conducting an audit of the costs and match credits claimed under this RGA, **CALTRANS** will rely to the maximum extent possible on any prior audit of **AGENCY** pursuant to the provisions of State and **AGENCY** law. In the absence of such an audit, any acceptable audit work performed by **AGENCY's** external and internal auditors may be relied upon and used by **CALTRANS** when planning and conducting additional audits.

- c. For the purpose of determining compliance with applicable State and **AGENCY** law in connection with the performance of **AGENCY's** contracts with third parties pursuant to Government Code Section 8546.7, **AGENCY**, **AGENCY's** sub-recipients, contractors, subcontractors, and **CALTRANS**, shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times during the entire Project period and for three (3) years from the date of final payment to **AGENCY** under this RGA. **CALTRANS**, the California State Auditor, or any duly authorized representative of **CALTRANS** or the United States Department of Transportation, shall each have access to any books, records, and documents that are pertinent to a Project for audits, examinations, excerpts, and transactions, and **AGENCY** shall furnish copies thereof if requested.
- d. **AGENCY**, its subrecipients, contractors, and subcontractors will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by **CALTRANS**, for the purpose of any investigation to ascertain compliance with this RGA.
- e. Additionally, all grants may be subject to a pre-award audit prior to execution of the RGA to ensure **AGENCY** has an adequate financial management system in place to accumulate and segregate reasonable, allowable and allocable costs.
- f. Any contract with a contractor, subcontractor, or sub-recipient entered into as a result of this RGA shall contain all the provisions of this article.

1364 Adjudication of Facts in Disputes

- a. Any dispute concerning a question of fact arising under this RGA that is not disposed of by agreement shall be decided by the **CALTRANS** Contract Officer, who may consider any written or verbal evidence submitted by **AGENCY**. The **CALTRANS** Contract Officer shall issue a written decision within 30 days of receipt of the dispute. If **AGENCY** rejects the decision of the **CALTRANS** Contract Officer, **AGENCY** can pursue any and all remedies authorized by law. Neither party waives any rights to pursue remedies authorized by law.
- b. Neither the pendency of a dispute nor its consideration by **CALTRANS** Contract Officer will excuse **AGENCY** from full and timely performance in accordance with the terms of the RGA.

1365 Third-Party Contracts

- a. **AGENCY** shall perform the work contemplated with resources available within its own organization and no portion of the work shall be contracted to a third party without prior

written authorization by the **CALTRANS** Contract Manager unless expressly included (subrecipient identified) in **Attachment II** as part of the identified Project work.

- b. All State-government-funded procurements must be conducted using a fair and competitive procurement process. **AGENCY** may use its own procurement procedures as long as the procedures comply with the local **AGENCY's** laws, rules, and ordinances governing procurement and all applicable provisions of State law, including, without limitation, the requirement that the **AGENCY** endeavor to obtain at least three (3) competitive bids for solicitation of goods, services, and consulting services (see Part 2, Chapter 2, Articles 3 and 4 of the Public Contract Code); a qualifications-based solicitation process, for which statements of qualifications are obtained from at least three (3) qualified firms for architecture and engineering services (see Title 1, Division 5, Chapter 10 of the Government Code); and, the provisions of the State Contracting Manual (SCM), Chapter 5, which are not inconsistent with this **Item 23, Third Party Contracts**. The SCM can be found and the following link: <https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/State-Contracting>.
- c. Any contract entered into as a result of this RGA shall contain all the provisions stipulated in this RGA to be applicable to **AGENCY's** sub-recipients, contractors, and subcontractors. Copies of all agreements with sub-recipients, contractors, and subcontractors, must be submitted to the **CALTRANS** Contract Manager.
- d. **CALTRANS** does not have a contractual relationship with the **AGENCY's** subrecipients, contractors, or subcontractors, and the **AGENCY** shall be fully responsible for all work performed by its subrecipients, contractors, or subcontractors.
- e. Prior authorization in writing by the **CALTRANS** Contract Manager shall be required before **AGENCY** enters into any non-budgeted purchase order or sub-agreement for supplies or consultant services. **AGENCY** shall provide an evaluation of the necessity or desirability of incurring such costs. **AGENCY** shall retain all receipts for such purchases or services and shall submit them with invoices per **Section III–Payment and Invoicing, Item 14(e)(4), above**.
- f. Any contract entered into by **AGENCY** as a result of this RGA shall mandate that travel and per diem reimbursements and third-party contract reimbursements to subrecipients, contractors, and subcontractors, will be allowable as Project costs only after those costs are incurred and paid for by the subrecipients, contractors, and subcontractors. Travel expenses and per diem rates for subcontractors shall be reimbursed pursuant to **Section III–Payment and Invoicing, Item 14c, above**.

1366 Drug-Free Workplace Certification

By signing this RGA, **AGENCY** hereby certifies under penalty of perjury under the laws of California that **AGENCY** will comply with the requirements of the Drug-Free Workplace Act of 1990 (Gov. Code Sections 8350 et seq.) and will provide a Drug-Free workplace by doing all of the following:

- A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
- B. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(a)(2) to inform employees about all the following:
 - 1) The dangers of drug abuse in the workplace;

- 2) The person's or organization's policy of maintaining a Drug-Free workplace;
 - 3) Any available counseling, rehabilitation, and employee assistance programs; and
 - 4) Penalties that may be imposed upon employees for drug abuse violations.
- C. Provide, as required by Government Code Section 8355(a)(3), that every employee who works on the proposed contract or grant:
- 1) Will receive a copy of the company's Drug-Free Policy Statement.
 - 2) Will agree to abide by the terms of the company's statement as a condition of employment on the contract or grant.
- D. Failure to comply with these requirements may result in suspension of payments under this RGA or termination of this RGA or both, and **AGENCY** may be ineligible for the award of any future state contracts if **CALTRANS** determines that any of the following has occurred: (1) **AGENCY** has made a false certification or, (2) **AGENCY** violates the certification by failing to carry out the requirements as noted above.

1367 Relationship of Parties

It is expressly understood that this agreement is executed by and between two (2) independent governmental entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of an independent party.

1368 State-Owned Data

- a. **AGENCY** agrees to comply with the following requirements to ensure the preservation, security, and integrity of State-owned data on portable computing devices and portable electronic storage media:
- 1) Encrypt all State-owned data stored on portable computing devices and portable electronic storage media using government-certified Advanced Encryption Standard (AES) cipher algorithm with a 256-bit or 128-bit encryption key to protect **CALTRANS** data stored on every sector of a hard drive, including temp files, cached data, hibernation files, and even unused disk space.
 - 2) Data encryption shall use cryptographic technology that has been tested and approved against exacting standards, such as FIPS 140-2 Security Requirements for Cryptographic Modules.
 - 3) Encrypt, as described above, all State-owned data transmitted from one computing device or storage medium to another.
 - 4) Maintain confidentiality of all State-owned data by limiting data sharing to those individuals contracted to provide services on behalf of the State, and limit use of State information assets for State purposes only.
 - 5) Install and maintain current anti-virus software, security patches, and upgrades on all computing devices used during the course of the Agreement.
 - 6) Notify the **CALTRANS** Contract Manager immediately of any actual or attempted violations of security of State-owned data, including lost or stolen computing devices, files, or portable electronic storage media containing State-owned data.
 - 7) Advise the owner of the State-owned data, the **AGENCY** Information Security Officer, and the **AGENCY** Chief Information Officer of vulnerabilities that may present a threat to

the security of State-owned data and of specific means of protecting that State-owned data.

- b. **AGENCY** agrees to use the State-owned data only for State purposes under this Agreement.
- c. **AGENCY** agrees to not transfer State-owned data to any computing system, mobile device, or desktop computer without first establishing the specifications for information integrity and security as established for the original data file(s) (State Administrative Manual (SAM) Section 5335.1).

1369 Assumption of Risk and Indemnification Regarding Exposure to Environmental Health Hazards

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

1370 Mandatory Organic Waste Recycling

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

1371 Project Close Out/Final Product

- a. **AGENCY** will provide two (2) electronic versions of the Final Product(s) to the **CALTRANS** Contract Manager.
- b. **CALTRANS** reserves the right to withhold final payment to **AGENCY** pending receipt of Final Product(s) to the **CALTRANS** Contract Manager.
- c. **AGENCY** will provide one (1) Integrated Climate Adaptation and Resiliency Program (ICARP) final case study/write-up to the Governor's Office of Planning and Research (OPR). The final case study is due at time of project end date and should highlight outcomes, lessons learned, and upcoming adaptation opportunity of the project.

1372 Ownership of Proprietary Property

a. **Definitions**

- 1) **Work**: The work to be directly or indirectly produced by **AGENCY** under this RGA.

- 2) **Work Product:** All deliverables created or produced from **Work** under this RGA including but not limited to, all **Work** and Deliverables conceived or made, or made hereafter conceived or made, either solely or jointly with others during the term of this RGA and during a period of six (6) months after the termination thereof, which relates to the **Work** commissioned or performed under this RGA. "**Work Product**" includes all deliverables, inventions, innovations, improvements, or other works of authorship **AGENCY**, its subrecipients, a third-party contractor or subcontractor may conceive of or develop in the course of this RGA, whether or not they are eligible for patent, copyright, trademark, trade secret, or other legal protection.
- 3) **Inventions:** Any idea, methodologies, design, concept, technique, invention, discovery, improvement or development regardless of patentability made solely by **AGENCY** or jointly with the **AGENCY's** contractor, subcontractor and/or subrecipient and/or the **AGENCY's** contractor, subcontractor and/or subrecipient's employees with one or more employees of **CALTRANS**, during the term of this RGA and in performance of any Work under this RGA, provided that either the conception or reduction to practice thereof occurs during the term of this RGA and in performance of **Work** issued under this RGA.

b. **Ownership of Work Product and Rights**

- 1) **Copyright Ownership of Work Product:** Except in regard to Pre-existing Works, all **Work Product** derived by the **Work** performed by the **AGENCY**, its employees, or by any of the **AGENCY's** contractor's, subcontractor's, and/or subrecipient's employees under this RGA, shall be owned by **CALTRANS** and **AGENCY** and shall be considered to be works made for hire by the **AGENCY** and **AGENCY's** contractor, subcontractor, and/or subrecipient for **CALTRANS** and **AGENCY**. **CALTRANS** and **AGENCY** shall own all United States and international copyrights in the **Work Product**.

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

- 2) **Vesting of Copyright Ownership:** **AGENCY**, its employees, and all of **AGENCY's** contractor's, subcontractor's, and subrecipient's employees, agrees to perpetually assign, and upon creation of each Work Product automatically assigns, to **CALTRANS** and **AGENCY**, its successors, and assigns, ownership of all United States and international copyrights in each and every **Work Product**, insofar as any such **Work Product**, by operation of law, may not be considered work made for hire by the **AGENCY's** contractor, subcontractor, and/or subrecipient from **CALTRANS**. From time to time, **CALTRANS** and the **AGENCY** shall require its contractors, subcontractors, and/or subrecipients and their respective employees to confirm such assignments by execution and delivery of such assignments, confirmations, or assignment, or other written instruments as **CALTRANS** and the **AGENCY** may request. **CALTRANS** and the **AGENCY**, its successors, and assigns, shall have the right to obtain and hold in its or their own name(s) all copyright registrations and other evidence of rights that may be available for **Work Product**. **AGENCY** shall require contractors, including subcontractors, to waive all moral rights relating to identification of authorship restriction or limitation on use, or subsequent modifications of the **Work**.

c. **Inventions**

- 1) **Vesting of Patent Ownership:** **AGENCY** agrees to require subrecipients, contractors, subcontractors and their respective employees to assign to **CALTRANS** and **AGENCY**, its successors, and assigns, all Inventions, together with the right to seek protection by obtaining patent ownership rights and the right to claim all rights or priority there under, and the same shall become and remain **CALTRANS'** property regardless of whether such protection is sought. The **AGENCY**, its employees, and **AGENCY's** contractor, subcontractor, and subrecipient shall promptly make a complete written disclosure to **CALTRANS** of each Invention not otherwise clearly disclosed to **CALTRANS** in the pertinent **Work Product**, specifically pointing out features or concepts that the **AGENCY**, its employees, and/or **AGENCY's** contractor, subcontractor, and/or subrecipient believes to be new or different. The **AGENCY**, its employees, and **AGENCY's** contractor, subcontractor, and subrecipient shall, upon **CALTRANS** and **AGENCY's** request and at **CALTRANS** and **AGENCY's** expense, cause patent applications to be filed thereon, through solicitors designated by **CALTRANS** and **AGENCY**, and shall sign all such applications over to **CALTRANS** and **AGENCY**, its successors, and assigns. The **AGENCY**, its employees, and **AGENCY's** contractor, subcontractor, and subrecipient shall give **CALTRANS** and **AGENCY** and its solicitors all reasonable assistance in connection with the preparation and prosecution of any such patent applications and shall cause to be executed all such assignments or other instruments or documents as **CALTRANS** and **AGENCY** may consider necessary or appropriate to carry out the intent on this RGA.
- 2) **Agency:** In the event that **CALTRANS** and **AGENCY** are unable for any reason whatsoever to secure the **AGENCY's**, its employees', and/or **AGENCY's** contractor's, subcontractor's, and/or sub-recipient's, signature to any lawful or necessary document required or desirable to apply for or prosecute any United States application (including renewals or divisions thereof), **AGENCY**, its employees, and **AGENCY's** contractor, subcontractor, and subrecipient hereby irrevocably designates and appoints **CALTRANS** and **AGENCY** and its duly authorized officers and agents, as its agent and attorney-in-fact, to act for and on **AGENCY**, its employees, and **AGENCY's** contractor's, subcontractor's, and subrecipient behalf and stead, to execute and file such applications and to do all other lawfully permitted acts to further the prosecution and issuance of any copyrights, trademarks, or patents thereon with the same legal force and effect as if executed by **AGENCY**, its employees, and **AGENCY's** contractor, subcontractor, and subrecipient. **CALTRANS** and **AGENCY** shall have no obligations to file any copyright, trademark, or patent applications.

d. **Additional Provisions**

- 1) **Avoidance of infringement:** In performing services under this RGA, **AGENCY** and its employees agree to avoid designing or developing any items that infringe one or more patents or other intellectual property rights of any third party. If **AGENCY** or its employees becomes aware of any such possible infringement in the course of performing any Work under this RGA, **AGENCY** or its employees shall immediately notify **CALTRANS** in writing.
- 2) **Pre-existing Works and License:** **AGENCY** agrees to require contractors, subcontractors, and subrecipients to acknowledge that all **Work Product** shall be the sole and exclusive property of **CALTRANS** and **AGENCY**, except that any **Pre-existing Works** created by **AGENCY** and third parties outside of the RGA but utilized in connection with the RGA (the "**Pre-existing Works**") shall continue to be owned by **AGENCY** or such parties. **AGENCY** agrees to notify **CALTRANS** in writing of any **Pre-existing Works** used in connection with any **Work Product** produced under this RGA and hereby grants to **CALTRANS** a non-exclusive, irrevocable, worldwide, perpetual, royalty-free license to utilize the **Pre-existing Works** in connection with the **Work Product**.

- 3) Contractors, Subcontractors, and Subrecipients: Through contract with its subrecipients, contractors, and subcontractors, **AGENCY** shall affirmatively bind by contract all of its contractors, subcontractors, subrecipients, and service vendors (hereinafter "**AGENCY's** Contractor/Subcontractor/Sub-recipient") providing services under this RGA to conform to the provisions of this Exhibit. In performing services under this RGA, **AGENCY's** Contractor/Subcontractor/Subrecipient shall agree to avoid designing or developing any items that infringe one or more patents or other intellectual property rights of any third party. If **AGENCY's** Contractor/Subcontractor/Subrecipient becomes aware of any such possible infringement in the course of performing any Work under this RGA, **AGENCY's** Contractor/Subcontractor/Subrecipient shall immediately notify the **AGENCY** in writing, and **AGENCY** shall then immediately notify the **CALTRANS** in writing.

e. Ownership of Data

- 1) Upon completion of all **Work** under this RGA, all intellectual property rights, ownership, and title to all reports, documents, plans, specifications, and estimates, produced as part of this RGA will automatically be vested in **CALTRANS** and **AGENCY** and no further agreement will be necessary to transfer ownership to **CALTRANS** and **AGENCY**. The **AGENCY**, its contractors, subcontractors, and subrecipients, shall furnish **CALTRANS** all necessary copies of data needed to complete the review and approval process.
- 2) It is understood and agreed that all calculations, drawings, and specifications, whether in hard copy of machine-readable form, are intended for one-time use in the Project for which this RGA has been entered into.
- 3) **AGENCY**, its contractors, subcontractors, and subrecipients, are not liable for claims, liabilities, or losses arising out of, or connected with, the modification or misuse by **CALTRANS** of the machine-readable information and data provided by **AGENCY**, its contractors, subcontractors, and subrecipients, under this RGA; further, **AGENCY**, its contractors, subcontractors, and subrecipients, are not liable for claims, liabilities or losses arising out of, or connected with, any use by **CALTRANS** of the Project documentation on other projects, for additions to this Project, or for the completion of this project by others, excepting only such use as may be authorized, in writing, by **AGENCY**, its contractors, subcontractors, and subrecipients.
- 4) Any sub-agreement in excess of \$25,000.00 entered into as a result of this RGA shall contain all of the provisions of this clause.

1373 ADA Compliance

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

1374 Electronic Signatures

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

1375 Executive Order N-6-22 – Russia Sanctions

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

Section IV

Attachments:

The following attachments are incorporated into and are made a part of this RGA by this reference and attachment.

- I. AGENCY Resolution
- II. Scope of Work and Project Timeline
- III. Grant Application Guide

In Witness Whereof, the parties hereto have executed this RGA on the day and year first herein above written:

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

AGENCY NAME

By:	By:
Printed Name:	Printed Name:
Title:	Title:
Date:	Date:
	By:
	Printed Name:
	Title:
	Date:
	By:
	Printed Name:
	Title:
	Date: