## GENERAL TERMS, CONDITIONS, AND CERTIFICATIONS

These terms and conditions, when applicable, are to be incorporated by reference and made a part of, but not necessarily limited to, the following documents: grants, subgrants, contracts, subcontracts, interagency agreements, invitations for bid, and requests for proposal for goods or services for which Office of Traffic Safety grant funding reimbursement is requested.

1. **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. (Reference: DGS Standard Agreement "General Terms and Conditions," form GTC304)

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

   a. The Government Code chapter on antitrust claims contains the following definitions:

      (1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the state or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

      (2) "Public purchasing body" means the state or the subdivision or agency making a public purchase. (Reference: GC Section 4550)

   b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it my have under Section 4 of the Clayton Act (15 USC 15 [Title 15 Commerce and Trade, Chapter 1, Monopolies and Combinations in Restraint of Trade, Section 15, Suits by Persons Injured]) or under the Cartwright Act (Chapter 2 ) commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. (Reference: GC Section 4552)

   c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. (Reference: GC Section 4553)

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. (Reference: GC Section 4554)

3. **Approval**. This agreement is of no force or effect until signed by both parties and approved by the Office of Traffic Safety. Subgrantee, contractor, or subcontractor may not commence performance until such approval has been obtained. (Reference: California Department of General Services (DGS) Standard Agreement "General Terms and Conditions," form GTC304)

4. **Assignment**. This agreement is not assignable by the contractor, either in whole or in part, without the consent of the Office of Traffic Safety in the form of a formal written amendment. (Reference: DGS Standard Agreement "General Terms and Conditions," form GTC304)

5. **Audits and access to records**. Contractor agrees that the California Office of Traffic Safety, the National Highway Traffic Safety Administration, or their designated representative(s), shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, contractor agrees to include a similar right of the state to audit records and interview staff in any subcontract related to the performance of this agreement. (Reference: Government Code (GC) 8546.7, Public Contract Code (PCC) 10115 et. seq., California Code of Regulations (CCR) Title 2, Section 1896).

6. **Availability of funds**. It is mutually understood between the parties that this contract may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.

   This contract is valid and enforceable only if sufficient funds are made available to the state by the United States Government for the purpose of this program. In addition, this contract is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this contract in any manner.

   The parties mutually agree that if the Congress does not appropriate sufficient funds for the program, this contract shall be amended to reflect any reduction in funds.

   The Administrator has the option to void the contract under the thirty-day cancellation clause or to amend the contract to reflect any reduction for funds.

   (Reference: State Contracting Manual, Chapter 3)

7. **Buy America Act.** (Applies only to Federal-aid construction grants located on federal-aid highways, highways classified as local roads and rural minor collectors and transportation enhancement grants.) Only steel, iron and manufactured products produced in the United States may be purchased with Federal funds unless the Secretary of Transportation determines that such domestic purchases would be inconsistent with the public interest; that such materials are not reasonably available and of a satisfactory quality; or that inclusion of domestic materials will increase the cost of the overall grant contract by more than 25 percent. Clear justification for the purchase of non-domestic items must be in the form of a waiver request submitted to and approved by the Secretary of Transportation. (Reference: "Buy America Act" 23 USC 101 Note)

8. **Byrd Anti-Lobbying Amendment (31 USC 1352).** Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 USC 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient.

9. **Child Support Compliance Act.** "For any agreement in excess of $100,000, the contractor acknowledges in accordance with, that:

   a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

   b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department." (Reference: DGS Standard Agreement "General Terms and Conditions," form GTC304)

10. **Clean Air Act (42 USC 7401 et seq.) and the Federal Water Pollution Control Act (33 USC 1251 et seq.), as amended.** Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 USC 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 USC 1251 et seq.). Violations shall be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

11. **Compensation.** The consideration to be paid contractor, as provided herein, shall be in compensation for all of contractor's expenses incurred in the performance hereof,

including travel, per diem, and taxes, unless otherwise expressly so provided. (Reference: DGS Standard Agreement "General Terms and Conditions," form GTC304)

12. **Consultant/Subcontracts.**

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

Independent contractor. Contractor, and the agents and employees of contractor, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of the state. (Reference: DGS Standard Agreement "General Terms and Conditions," form GTC304)

Progress schedule. Grantees entering into a contractual agreement for consultant services totaling five thousand dollars ($5,000) or more shall include detailed criteria and a mandatory progress schedule. (Reference: PCC § 10371)

Progress payments: Grantees may provide for progress payments to consultants for work performed or costs incurred in the performance of the contract. Not less than ten percent of the contract amount shall be withheld pending final completion of the contract and an evaluation of the contractor's performance. If the contract consists of the performance of separate and distinct tasks, then any funds so withheld with regard to a particular task may be paid upon completion of that task and an evaluation of the contractor's performance. (Reference: PCC § 10379)

13. **Contract Work Hours and Safety Standards Act (40 USC 327-333).** Where applicable, all contracts awarded by recipients in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation of transmission of intelligence.

14. **Convict/forced labor.** No foreign-made equipment, materials, or supplies furnished pursuant to this contract may be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction. (Reference: PCC § 6108)

15. **Copeland "Anti-Kickback" Act (18 USC 874 and 40 USC 276c).** All contracts and subgrants in excess of $2,000 for construction or repair awarded by recipients and sub recipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USC 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub recipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the federal awarding agency.

16. **Copyrights (41 CFR 105-71.134).** The federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes: (a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

17. **Credits/Disclaimer (OTS Grant Program Manual, Chapter 7).** The Final Report, in addition to any other credits, shall include the following statement: "This grant is a part of the California Traffic Safety Program and was made possible through the support of the California Office of Traffic Safety; Business, Transportation and Housing Agency; State of California; and the National Highway Traffic Safety Administration."

    In addition, the Final Report shall include the following statement: "The opinions, findings, and conclusions expressed in this publication are those of the authors and not necessarily those of the State of California, the National Highway Traffic Safety Administration."

18. **Davis-Bacon Act, as amended (40 USC 276a to a-7).** When required by federal program legislation, all construction contracts awarded by the recipients and sub recipients of more than $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 USC 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the federal awarding agency.

19. **Debarred and suspended parties.** Grantees, subgrantees, contractors, and subcontractors must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." (Reference: 49 CFR 18.35)

20. **Disadvantaged business enterprise/small business affirmative steps.** Grantees, subgrantees, contractors, or subcontractors will take all necessary affirmative steps to assure that disadvantaged business enterprises (DBE), as defined in 49 CFR Section 26.5, and labor surplus area firms are used when possible. Affirmative steps shall include:

    a. Placing qualified DBEs and small businesses on solicitation lists.

    b. Assuring that DBEs and small businesses are solicited whenever they are potential sources.

    c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and DBEs.

    d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and DBEs.

    e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

    f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.

    (Reference: 49 CFR 18)

21. **Disclosure requirements**.

    a. Any document or written report prepared for or under the direction of a state or local agency, which is prepared in whole or in part by non-employees of such agency, shall contain the contract numbers and the dollar amounts of all contracts and subcontracts relating to the preparation of such document or written report when the total cost for such work performed by non-employees of the agency exceeds five thousand dollars ($5,000). The contract and subcontract numbers and dollar amounts shall be set forth in a separate section of each such document or written report.

    b. When multiple documents or written reports are the subject or product of the contract, the total contract amount is deemed to represent the compensation for those multiple documents or written reports. (Reference: GC § 7550)

22. **Disputes**. Contractor shall continue with the responsibilities under this agreement during any dispute. (Reference: DGS Standard Agreements "General Terms and Conditions," form GTC304)

23. **Document Retention and Access.** The Grantee certifies that it will comply with the retention and access requirements for records established by 49 CFR Part 18.42. The required records and documentation relating to the grant and/or sub-contract shall be retained for a minimum of three years after the starting date of the retention period as defined in Section 18.42. The OTS or their authorized representative shall have the right of access to any books, documents, papers, or other records of grantees, contractors, or

sub-contractors which are pertinent to the grant and/or contract, in order to make audits, examinations, excerpts and transcripts. The right of access is not limited by the required retention period and shall last as long as the records are retained.

24. **Equipment**. Equipment acquired under this agreement for use in highway safety program areas shall be used and kept in operation for highway safety purposes by the state; or the state, by formal agreement with appropriate officials of a political subdivision or state agency, shall cause such equipment to be used and kept in operation for highway safety purposes. (Reference: 23 CFR 1200.21)

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

26. **Financial management system**. The grantee, subgrantee, contractor, or subcontractor will comply with all applicable state, local, and federal procurement procedures and will maintain a financial management system that complies with the minimum requirements of 49 CFR 18.20.

27. **Governing law**. This contract is governed by and shall be interpreted in accordance with the laws of the State of California. (Reference: DGS Standard Agreement "General Terms and Conditions," form GTC304)

28. **Indemnification**: Contractor agrees to indemnify, defend, and save harmless the state, its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by contractor in the performance of this agreement. (Reference: DGS Standard Agreement "General Terms and Conditions," form GTC304)

29. **Intangible property**.

    a. The recipient (grantee, subgrantee, contractor, or subcontractor) may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under award. The California Office of Traffic Safety and the National Highway Traffic Safety Administration reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for federal purposes, and to authorize others to do so.

    b. Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and

Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

c. The federal government has the right to:

(1) obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) authorize others to receive, reproduce, publish, or otherwise use such data for federal purposes.

d.

(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the federal government in developing an agency action that has the force and effect of law, the federal warding agency shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the federal awarding agency obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable sub recipients. This fee is in addition to any fees the agency may assess under the FOIA (5 USC 552(A)(4)(a)).

(2) The following definitions apply for purposes of paragraph (d) of this section:

(i) Research data is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). Research data also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) Published is defined as either when:

(A) Research findings are published in a peer-reviewed scientific of technical journal; or

(B) A federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) Used by the federal government in developing an agency action that has the force and effect of law is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

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

(Reference: Office of Management and Budget (OMB) Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and OMB Circular A-102 Grants and Cooperative Agreements with State and Local Governments)

30. **Logos.** The OTS logo will appear on all promotional materials where appropriate and practical. Contact the appropriate OTS Coordinator for copies.

31. **Non-discrimination clause.**

State requirements: During the performance of this agreement, contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor 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.

Federal requirements: In addition to state non-discrimination requirements, grantees, subgrantees, contractors, and subcontractors will comply with all federal statutes and implementing regulations relating to nondiscrimination. Federal nondiscrimination statutes include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color, or national origin and 49 CFR Part 21; (b) Title IX of the Education Amendments of 1972, as amended (20

USC §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794), which prohibits discrimination on the basis of handicaps; Americans with Disabilities Act of 1990 42 USC §§ 12101 et seq. and implementing regulations, relating to nondiscrimination on the basis of disability, 29 CFR Parts 160, 1602 (Title I, EEOC), 28 CFR Part 35 (Title II, Department of Justice) 49 CFR Parts 27, 37, 38 (Title II, III, Department of Transportation) 28 CFR Part 36 (Title III, Department of Justice), 47 CFR §§ 64.601 et seq. (Title IV, FCC), and 49 CFR Part 27 (d) the Age Discrimination Act of 1975, as amended (42 USC §§ 6101-6107, which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse of alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 USC §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 USC §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of house; (i) any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the agreement.

32. **Political Activity (Hatch Act)**. All individuals employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency, including grants from the California Office of Traffic Safety, have been made aware of the provisions of 5 USC, Government Organization and Employees; Part II, Civil Service Functions and Responsibilities; Chapter 15, Political Activity of Certain State and Local Employees; Sections 1501 through 1508. This statute does not include individuals employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization. (Reference: 5 USC §§ 1501-1508 and 5 CFR 151)

33. **Priority hiring considerations**: For contracts in excess of $200,000, the contractor, in accordance with the California Public Contracting Code § 10353, shall consider filling vacancies in positions funded by the contract to qualified recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, in accordance with Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

This section and Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code shall not be applicable to any contracts for a grant as defined in Section 10105. (Section 10105 defines a grant as ". . . the erection, construction, alteration, repair or improvement of any state structure, building, road, or other state improvement of any kind which will exceed a total cost calculated pursuant to subdivision (b)."

This section and Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code shall not be construed so as to do any of the following:

a. Interfere with or create a violation of the terms of valid collective bargaining agreements.

b. Require the contractor to hire an unqualified recipient of aid.

c. Interfere with, or create a violation of, any federal affirmative action obligation of a contractor for hiring disabled veterans or veterans of the Vietnam era.

d. Interfere with, or create a violation of, the requirements of Section 12990 of the Government Code.

(Reference: PCC § 10353)

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

35. **Recycling certification.** The contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this agreement, regardless of whether the produce meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. Contractor may certify that the product contains zero recycled content. (Reference: PCC § 10233, 10308.5, 10354)

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

37. **Single Audit Act Certification.** The OTS is the agency responsible for administering California's' federal highway safety funds on behalf of the Governor. Federal funds are provided for this grant by the United States Department of Transportation. This program is listed in the Catalog of Federal Domestic Assistance (CFDA) as "State and Community Highway Safety 20.600." The records and supportive documentation for all completed

grants are subject to an on-site audit and OTS reserves the right to inspect and review during normal working hours the work product of any independent auditor in support of their audit.

The Grantee certifies that it will comply with the Single Audit Act of 1984 (31 U.S.C. 7501 et. seq.), as amended, which requires the following:

a. State or local governments that receive $500,000 or more a year in federal financial assistance shall have an audit made in accordance with the Office of Management and Budget (OMB) Circular No. A-133.

b. State or local governments that receive less than $500,000 a year shall be exempt from compliance with the Act and other federal audit requirements.

c. Nothing in this paragraph exempts State or local governments from maintaining records of federal financial assistance or from providing access to such records to Federal Agencies, as provided for in federal law or in Circular A-133 "Audits of States, Local Governments and Non-Profit Organizations".

d. The State Controller's Office notifies OTS of those cities, counties, and special districts that have not submitted an audit report or have not indicated to SCO that they are exempt each fiscal year. Grantee agencies that are not in compliance will be notified and required to provide verification of compliance or be subject to sanctions including, reimbursement withholding or grant cancellation.

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

39. **Termination for cause.** The Administrator may terminate this agreement and be relieved of any payments should the Contractor fail to perform the requirements of this agreement at the time and in the manner herein provided. In the event of such termination the Administrator may proceed with the work in any manner deemed proper by the Administrator. All costs to the state shall be deducted from any sum due the contractor under this agreement and the balance, if any, shall be paid to the contractor upon demand. (Reference: DGS Standard Agreement "General Terms and Conditions," form GTC304)

40. **Termination without cause.** The Administrator may terminate unilaterally and without cause upon thirty days written notice to the Contractor. All work performed pursuant to the contract and prior to the date of termination may be claimed for reimbursement. (Reference: State Contracting Manual, Chapter 3)

41. **Timeliness.** Time is of the essence in this agreement. (Reference: DGS Standard Agreement "General Terms and Conditions," form GTC304)

42. **Unenforceable provision.** In the event that any provision of this agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions

of this agreement have force and effect and shall not be effected thereby. (Reference: DGS Standard Agreement "General Terms and Conditions," form GTC304)

## CERTIFICATIONS AND ASSURANCES

1. **STATEMENT OF COMPLIANCE**: Contractor has, unless exempted, complied with the nondiscrimination program requirements (GC 12990 (a-f) and CCR, Title 2, Section 8103). (Not applicable to public entities.)

2. **DRUG-FREE WORKPLACE REQUIREMENTS**: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

   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.

   b. Establish a Drug-Free Awareness Program to inform employees about:

      (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. Every employee who works on the proposed agreement will:

      (1) receive a copy of the company's drug-free workplace policy statement; and,

      (2) agree to abide by the terms of the company's statement as a condition of employment on the agreement.

   Failure to comply with these requirements may result in suspension of payments under the agreement or termination of the agreement or both and grantee, subgrantee, contractor, or subcontractor may be ineligible for award of any future state agreements if the Office of Traffic Safety or the National Highway Traffic Safety Administration determines that any of the following has occurred: (1) the grantee, subgrantee, contractor, or subcontractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 et seq.) (The Drug-Free Workplace Act of 1988 49 CFR Part 29 Subpart F)

3. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION**: Grantee, subgrantee, contractor, or subcontractor certifies that no more than one (1) final unappealable finding of contempt of court by a federal court has been issued against contractor within the immediately preceding two-year period because of contractor's failure to comply with an order of a federal court which orders contractor to comply with

an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)

## DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. **CONFLICT OF INTEREST**. Grantee, subgrantee, contractor, or subcontractor needs to be aware of the following provisions regarding current or former state employees. If grantee, subgrantee, contractor, or subcontractor has any questions on the status of any person rendering services or involved with the agreement, the awarding agency must be contacted immediately for clarification.

   Current State Employees (PCC 10410)

   a. No officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity, or enterprise is required as a condition of regular state employment.

   b. No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

   Former State Employees (PCC 10411)

   a. For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

   b. For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving state service.

   If grantee, subgrantee, contractor, or subcontractor violates any provisions of above paragraphs, such action by grantee, subgrantee, contractor, or subcontractor shall render this agreement void. (PCC 10420)

   Members or boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC 10430(e))

2. **LABOR CODE/WORKERS' COMPENSATION**: Grantee, subgrantee, contractor, or subcontractor needs to be aware of the provisions which require every employer to be

insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions, and grantee, subgrantee, contractor, or subcontractor affirms to comply with such provisions before commencing the performance of the work of this agreement. (Labor Code Section 3700)

3. **AMERICANS WITH DISABILITIES ACT**: Grantee, subgrantee, contractor, or subcontractor assures the state that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 USC 12101 et seq.)

4. **CONTRACTOR NAME CHANGE**: An amendment is required to change the grantee's, subgrantee's, contractor's, or subcontractor's name as listed on this agreement. Upon receipt of legal documentation of the name change an amendment will be processed. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. **CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA**:

   a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

   b. "Doing business" is defined in Revenue and Taxation Code (R&TC) Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

   c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. **RESOLUTION**: Upon request, a county, city, district, or other local public body must provide the state with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. **AIR OR WATER POLLUTION VIOLATION**: Under the state laws, the grantee, subgrantee, contractor, or subcontractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

## CERTIFICATION REGARDING NON-DUPLICATION OF GRANT FUNDING

The certifying applicant has no ongoing or completed grants under agreement with other federal funding sources which duplicate or overlap any work contemplated or described in this traffic safety grant. It is further agreed that any pending or proposed request for other federal grant funds which would duplicate or overlap work under this traffic safety grant will be revised to exclude any such duplication of grant fund expenditures. It is understood that any such duplication of federal fund expenditures subsequently determined by audit will be subject to recovery by the Office of Traffic Safety.

## CERTIFICATION REGARDING FEDERAL LOBBYING

Certification for grants, subgrants, contracts, subcontracts, and cooperative agreements. Signatories to this agreement certify to the best of their knowledge and belief that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the above signed, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. 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 agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the above signed shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. Signatories to this agreement shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, contracts, and subcontracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

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, US Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

## CERTIFICATION REGARDING STATE LOBBYING

None of the funds under this program will be used for any activity specifically designed to urge or influence a state or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any state or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a

state official whose salary is supported with National Highway Traffic Safety Administration funds from engaging in direct communications with state or local legislative officials, in accordance with customary state practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

## CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participants shall attach an explanation to this proposal. (49 CFR 29)

## ENVIRONMENTAL IMPACT

Signatories to this agreement hereby declare that no significant environmental impact will result from implementing this grant or service. If, under a future amendment, this grant or service will be modified in such a manner that a grant would be instituted that could affect environmental quality to the extent that a review and statement would be necessary, the Office of Traffic Safety has certified to the National Highway Traffic Safety Administration that it is prepared to take the action necessary to comply with the National Environmental Policy Act of 1969 (42 USC 4321 et seq.). (Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 CFR 1500 et seq.)

## ENERGY EFFICIENCY

It is understood the certifying applicant will purchase only energy efficient equipment, whenever possible and appropriate.

## LIMITED ENGLISH PROFICIENCY (LEP)

The certifying applicant will take reasonable steps to ensure meaningful access by persons with limited English proficiency to the information and services provided through federal financial assistance.