



**County Executive Office**

**Memorandum**

S42D

March 9, 2017

RECEIVED  
CLERK OF THE BOARD

**To:** Clerk of the Board of Supervisors

MAR 09 2017

**From:** Frank Kim, County Executive Officer

*Maguire for*

**Subject:** Exception to Rule 21

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**The County Executive Office is requesting a supplemental item for the March 14, 2017, Board Hearing Meeting.**

**Agency:** OC Public Works

**Subject:** Award Contract for Construction and Construction Management of Edinger Bridge

**District:** 2

**Reason for supplemental:** OC Public Works is requesting the Board of Supervisors consider the Edinger Avenue Bridge over the Bolsa Chica Channel Replacement Project item at the March 14, 2017, Board meeting. The apparent low bidder did not meet the Disadvantage Business Enterprise (DBE) requirement. Caltrans is currently reviewing the contractors DBE good faith effort documents, and must provide approval prior to the award of the construction contract. The item cannot be moved to a later Board date because the U.S. Army Corps of Engineers' Nationwide Permit (NWP) 14 - Linear Transportation Projects, expires March 18, 2017. The County must be under contract for the permitted activity before the expiration date of the permit, otherwise significant project delays will occur. This Agenda Staff Report and attachments were finalized after the filing deadline to the Clerk of the Board.

Concur:

Chairwoman Michelle Steel, Supervisor, Second District

cc: Board of Supervisors  
County Executive Office  
County Counsel



### SUPPLEMENTAL AGENDA ITEM AGENDA STAFF REPORT

**MEETING DATE:** 03/14/2017  
**LEGAL ENTITY TAKING ACTION:** Board of Supervisors  
**BOARD OF SUPERVISORS DISTRICT(S):** 2  
**SUBMITTING AGENCY/DEPARTMENT:** OC Public Works  
**DEPARTMENT HEAD REVIEW:** Shane Silsby  
*Department Head Signature*  
**DEPARTMENT CONTACT PERSON(S):** Shane Silsby (714) 667-9700  
Nardy Khan (714) 647-3906

RECEIVED  
CLERK OF THE BOARD

MAR 09 2017

**SUBJECT:** Award Contract for Construction and Construction Management of Edinger Bridge

CEO CONCUR

Maguire  
CEO Signature

COUNTY COUNSEL REVIEW

Approved as to form  
Action  
Justin A. Hunt  
County Counsel Signature

CLERK OF THE BOARD  
Discussion

3 Votes Board Majority

**Budgeted:** Yes                      **Current Year Cost:** \$16,090,599                      **Annual Cost:** N/A

**Staffing Impact:** No                      **# of Positions:**                      **Sole Source:** No

**Current Fiscal Year Revenue:** N/A

**Funding Source:** See Financial Impact Section                      **County Audit in last 3 years:** No

**Prior Board Action:** 2/14/2017 #33, 1/10/2017 #30, 8/25/2015 #55, 7/30/2013 #6

#### RECOMMENDED ACTION(S)

1. Award Contract to Kiewit Infrastructure West Co. in the amount of \$14,430,599 for the Edinger Avenue Bridge Replacement Project over the Bolsa Chica Channel.
2. Authorize the Director of OC Public Works or designee to execute the Contract when the required bonds and certificates of insurance have been submitted and approved by the County Executive Office/Office of Risk Management and County Counsel.
3. Authorize return of bid guarantees to all bidders, upon execution of the Contract.
4. Authorize the Director of OC Public Works or designee to execute the Contract with PreScience Corporation for Construction Management and Inspection Services in an amount not-to-exceed \$1,660,000, for a Contract term effective March 14, 2017, through March 13, 2020.

#### SUMMARY:

Approval of the Contract for Construction Services to Kiewit Infrastructure West Co. and approval of the Construction Management and Inspection Services Contract to PreScience Corporation for the Edinger

Avenue Bridge Replacement Project over the Bolsa Chica Channel will allow for the full replacement of a deteriorated timber supported bridge.

### **BACKGROUND INFORMATION:**

The existing Edinger Avenue Bridge over the Bolsa Chica Channel (Bridge) is located in the City of Huntington Beach on Edinger Avenue, approximately 1.6 miles west of Bolsa Chica Road. The structure is a two-lane facility, with one lane in each direction, and includes a sidewalk on the south side. The Bridge was constructed in 1968, is approximately 300 feet long and 30 feet wide, and is the only public land access to the Sunset Aquatic Park and the Sunset Aquatic Shipyard. The Bridge is supported by a timber system foundation that consists of more than 100 wood posts, referred to as piles. Repairs to the Bridge were completed in 1988, 2002, 2006, 2008 and 2015.

On January 13, 2009, the Board of Supervisors (Board) approved the quitclaim deed from the City of Huntington Beach for right-of-way to support construction of a new bridge.

In 2010, the County acquired the services of an engineering firm to conduct a thorough underwater investigation of the timber piles. The investigation revealed pile deterioration and a subsequent pile load evaluation showed a need for reduction in the Bridge load carrying capacity. The California Department of Transportation (Caltrans) reviewed the load evaluation report in 2011 and issued a Bridge Inspection Report identifying the Bridge as structurally deficient, qualifying it for Federal Highway Bridge Program replacement funding with an approved funding amount of \$8,934,625.

On July 30, 2013, the Board adopted Mitigated Negative Declaration No. IP 13-048 for the bridge replacement project.

On February 24, 2015, Caltrans conducted an underwater structural inspection of the Bridge and recommended immediate closure of the Bridge based on its inspection. Due to the marine environment of the Bridge location, the wooden piles deteriorated between the high tide line and low tide and/or mud line with several piles having sections missing with the upper portions of those piles hanging in mid-air.

OC Public Works immediately evaluated the structural condition of the Bridge to identify a safe allowable load until such time as bridge rehabilitation could be implemented. An engineering consultant performed a detailed evaluation of the existing structure considering the pile section losses identified by the Caltrans inspection report. The results of the structural evaluation completed on March 5, 2015, were that the Bridge should be closed as it could fail under its own weight. On March 5, 2015, OC Public Works closed the Bridge immediately to all traffic. The design for the temporary repair of the Bridge was completed on April 2, 2015. Construction of the repairs was completed on April 23, 2015, at which time the Bridge was re-opened to limited vehicle loads.

On August 25, 2015, the Board approved Cooperative Agreement D13-027 (Agreement) between the County and Cities of Huntington Beach and Seal Beach for the Edinger Avenue Bridge over the Bolsa Chica Channel Replacement Project (Project). The purpose of this Agreement was to define the parties' respective rights and obligations with respect to the construction management, funding and ownership of the Project. Project development, regulatory permitting and final design for the permanent Bridge commenced in 2015 and continued through 2016.

On February 14, 2017, the Board approved and authorized the Chair of the Board to execute the Federal Program Supplement Agreement (PSA) No. F058 for the Project. The PSA is a project-specific agreement

that identifies specific federal funds and is required for OC Public Works to receive federal funds for the Project.

### **CONSTRUCTION SERVICES**

On January 10, 2017, the Board approved plans and specifications, adopted a resolution and set the bid opening date for the Project. The Project will replace the existing deteriorated timber supported bridge with a precast concrete bridge, increase the bridge width, upgrade the existing barrier railing, increase the clearance for projected flood water elevations in the Bolsa Chica Channel and have a life expectancy of 75 years. Portions of the roadway connecting to the Bridge will also require widening to provide for a smooth transition for vehicles.

The following summarizes the bids received on February 15, 2017, and the Engineer's Estimate:

	<b><u>Base Bid</u></b>
<b>Engineer's Estimate</b>	<b>\$11,641,315.00</b>
<b>Kiewit Infrastructure West Co.</b>	<b>\$14,430,599.00</b>
Reyes Construction, Inc.	\$14,542,800.65
MCM Construction, Inc.	\$14,791,606.00
Powell Constructors, Inc.	\$16,347,988.75
Guy F. Atkinson	\$16,799,216.25
John S. Meek Company, Inc.	\$18,171,834.60
KEC Engineering	\$20,664,611.80

The lowest responsive and responsible bid submitted by Kiewit Infrastructure West Co. (Contractor) for this Project is approximately 24% above the Engineer's Estimate of \$11,641,315.00. OC Public Works and engineering consultants reviewed the Engineer's Estimate and found that two bid items for furnishing and installation of steel piling were underestimated by approximately \$2 million. By adjusting these two bid items, the difference between the Engineer's Estimate and the Kiewit bid is 6.4%, which falls within normal expected variance between Engineer's Estimate and a responsible bid. The cost difference was also attributed to the Contractor's risk tolerance, technical complexities of the Project and market conditions. Attachment G provides a Bid Analysis Summary that was conducted by consulting firms to perform independent analyses. OC Public Works staff has also approached Caltrans to request additional funding to address the delta from the Engineer's Estimate.

Conditions of the Federal grant funding for this Project included setting the Disadvantaged Business Enterprise (DBE) goal for the Project which was established at 9%. A DBE is a for-profit small business that is at least 51 percent owned by one or more individual(s) who are both socially and economically disadvantaged. The Contractor did not meet the base goal by submitting 6% for DBE, however, the goal was accompanied by a Good Faith Effort (GFE) explaining the rationale. OC Public Works staff consulted with a firm specializing in reviewing GFEs, and the consultant found the GFE provided by the Contractor to be adequate.

The Contractor's License Number 433176 was verified as current and active through the Contractors State License Board database on February 15, 2017. A copy of the verification is on file. The Contractor is qualified to deliver this Project based on reference checks that were completed with Washington State Department of Transportation, Metropolitan Water District of Southern California and the Los Angeles County Metropolitan Transportation Authority and were found to satisfactory.

## **ENGINEERING SERVICES**

On September 8, 2016, OC Public Works issued a Request for Proposals (RFP) for Architect-Engineer (A-E) Services for Construction Management and Inspection Services. The RFP was advertised on the County's online bid system and a total of nine proposals were received.

On October 25, 2016, the evaluation committee completed the written evaluation process and provided its recommendations of five firms to be shortlisted. On November 8, 2016, interviews were conducted with the shortlisted firms and the evaluation committee provided its final recommendations. Based on the criteria set forth in the RFP, OC Public Works is recommending a contract be awarded for Construction Management and Inspection Services to PreScience Corporation Consultant (Consultant). The Memorandum of Recommendation is included as Attachment E.

The Consultant is qualified to perform the required services based on its proposal response to the RFP and interview evaluations. Reference checks were completed with the City of Santa Fe Springs and Metrolink and were found to be satisfactory. Upon completion of both the written and interview evaluations and reference checks, a Contract has been negotiated with the Consultant. This Contract includes subcontractors as described in the attached Contract Summary Form (Attachment D).

Services to be provided by PreScience Corporation include Construction Management and Inspection Services for the Project. These services provided are of a specialty nature and beyond the current workload capacity of OC Public Works in-house staff.

**Compliance with CEQA:** This Project is a necessarily included element of the Project considered in Mitigated Negative Declaration No. IP 13-048, approved by the Board on July 30, 2013, for the Project, which adequately addressed the effects of the proposed Project. No substantial changes have been made in the Project, no substantial changes have occurred in the circumstances under which the Project is being undertaken and no new information of substantial importance to the Project which was not known or could not have been known when the Mitigated Negative Declaration IP 13-048 was approved has become known; therefore no further environmental review is required.

### **FINANCIAL IMPACT:**

Appropriations and revenue for the contracts are included in the FY 2016-17 Modified Budget. The funding sources for this Project include Federal Highway Bridge Program: 55.53% and Road Fund 115: 44.47%. This Project is included in the OC Public Works Capital Improvement Program and is planned to be encumbered 100% in FY 2016-17.

The proposed contracts include a provision stating the contracts are subject to, and contingent upon, applicable budgetary appropriations being approved by the Board for each fiscal year during the terms of these contracts. If such appropriations are not approved, these contracts, altogether or separately, may be immediately terminated without penalty to the County.

### **STAFFING IMPACT:**

N/A

### **ATTACHMENT(S):**

- Attachment A – Contract MA-080-17011352 with Kiewit Infrastructure West Co.
- Attachment B – Contract Summary Form
- Attachment C – Contract MA-080-17011060 with PreScience Corporation
- Attachment D – Contract Summary Form

Attachment E – Memorandum of Recommendation  
Attachment F – Project Location Map  
Attachment G – Bid Analysis Summary

**CONSTRUCTION AGREEMENT**

This Construction Agreement, hereinafter referred to as AGREEMENT, is made and entered into this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between \_\_\_\_\_

\_\_\_\_\_ hereinafter referred to as "COUNTY" and \_\_\_\_\_

\_\_\_\_\_ hereinafter referred to as "CONTRACTOR,"

That COUNTY and CONTRACTOR, for considerations hereinafter named, mutually agree as follows:

- 1. CONTRACTOR shall accomplish to the satisfaction of the ENGINEER, as defined in Section B of the Special Provisions, all work described in this AGREEMENT and the plans and specifications, and shall provide and furnish all the labor, materials, necessary tools, expendable equipment, and all utility and transportation services required for the:

**EDINGER AVENUE BRIDGE AT BOLSA CHICA CHANNEL PROJECT**

hereinafter referred to as PROJECT in accordance with this AGREEMENT. This AGREEMENT includes the following documents and their provisions which are incorporated herein by reference and made a part hereof as though fully set forth:

- A. "Standard Specifications for the Public Works Construction (Greenbook)," hereinafter referred to as STANDARD SPECIFICATIONS, except Sections 209 and 307 of the 2012 edition as published by Building News, Inc.
- B. The following portions of the "Standard Plans and Specifications" (and all standard specifications and plans referenced therein), Department of Transportation, State of California, 2010 Edition, hereinafter referred to as the CALTRANS STANDARD PLANS and CALTRANS STANDARD SPECIFICATIONS respectively:
  - a. Standard Specifications Sections: 9, 12, 15, 19, 42, 46-60, 61-67, 70, 72, 75, 82-86, 88, 90-91, and 95.
  - b. Standard Plan Nos.: A10, A20A-A20D, A24A-A24E, A62, A73A-A73C, A77, A81, D80-D86, T1-T5, T10-T17, all B Sheets, all RS Sheets, and all ES Sheets.

- C. The California Manual on Uniform Traffic Control Devices (CA MUTCD), 2012 Edition. This manual may be downloaded by accessing the following Department of Transportation, State of California, website:
- [http://www.dot.ca.gov/hq/traffops/signtech/mutcdsupp/ca\\_mutcd2012.htm](http://www.dot.ca.gov/hq/traffops/signtech/mutcdsupp/ca_mutcd2012.htm)
- D. The OC Public Works Department (formerly the EMA/PFRD/RDMD) Standard Plans (2013 issue and Supplement(s) thereto) hereinafter referred to as STANDARD PLANS.
- E. Notice to Contractors.
- F. Proposal requirements and conditions (Section A of the Special Provisions).
- G. Supplement to Part 1 of the Standard Specifications for Public Works Construction (Section B of the Special Provisions).
- H. General Miscellaneous (Section C of the Special Provisions).
- I. Permits (Section D of the Special Provisions).
- J. Federal Requirements (Section E of the Special Provisions).
- K. Construction Details (Section F and G of the Special Provisions).
2. COUNTY agrees to pay and CONTRACTOR agrees to accept in full payment for the work to be performed pursuant to this AGREEMENT the sum of Fourteen Million, Four Hundred Thirty Thousand, Five Hundred Ninety-Nine Dollars (\$14,430,599) subject to additions and deductions at the unit prices set forth in CONTRACTOR's proposal in accordance with the AGREEMENT documents. COUNTY agrees to make work progress payments in accordance with the provisions of Section 9-3.2 "Partial and Final Payment" of the STANDARD SPECIFICATIONS, which sums shall be computed from the prices set forth in the bid submitted by CONTRACTOR.

Interest shall begin to accrue on any unpaid progress payment thirty (30) days after the ENGINEER'S submittal of the progress payment estimate. Interest shall be equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.

3. CONTRACTOR agrees to commence construction of the PROJECT within thirty (30) calendar days after receipt of a Notice to Proceed issued by the ENGINEER; CONTRACTOR shall notify the ENGINEER at least five (5) working days in advance of starting work and agrees to continue construction of PROJECT in strict compliance with the plans and Special Provisions, in a due and diligent workmanlike manner without interruption, and to complete construction thereof within



**400 Working Days**

from the date of commencement of work. CONTRACTOR's notice to ENGINEER shall specify the commencement of work date and that date shall be used to compute the AGREEMENT completion date. CONTRACTOR may perform mobilization work prior to the commencement of work date. In the event that CONTRACTOR commences any other work prior to the date specified in the notice to ENGINEER, that earlier date shall be used to compute the AGREEMENT completion date.

With the consent of ENGINEER and submission and approval of all the following documents: bonds, insurance certificates, signed CONSTRUCTION AGREEMENT, each certified by COUNTY, and a Notice of Intent (NOI) and Storm Water Pollution Prevention Plan (SWPPP) in accordance with the State General Construction Activity Storm Water Permit, CONTRACTOR may commence work prior to issuance of Notice to Proceed. If consent is granted, the AGREEMENT completion date, as computed per paragraph 3, shall remain unchanged. Payment shall be made for work in accordance with Paragraph 2 above of the AGREEMENT.

For AGREEMENTS which contain a plant establishment and plant maintenance period, the following applies:

The sixty (60) calendar day plant establishment period shall be accomplished prior to ENGINEER recommending AGREEMENT construction acceptance by the Board of Supervisors, hereinafter referred to as "BOARD". The plant establishment period shall be included within the working day period allowed for this AGREEMENT. For the limited purpose of determining the completion of CONTRACTOR's plant maintenance responsibility, the sixty (60) calendar day plant maintenance period shall commence on the date of AGREEMENT construction completion as determined by the ENGINEER.

4. Liquidated Damages; Extension of Time:

In accordance with Government Code Section 53069.85, CONTRACTOR agrees to forfeit and pay to the COUNTY as liquidated damages the sum of

**Five Thousand Dollars (\$ 5,000.00)**

for each and every calendar day's delay in finishing the work in excess of the summation of the number of working days prescribed herein and the number of working days granted for delays as prescribed in Section 6-6 of the STANDARD SPECIFICATIONS.

CONTRACTOR further agrees that such sum shall be deducted from payments due to or to become due to CONTRACTOR.

5. Change Orders:

COUNTY, through its Director, OC Public Works Department, or his designee, hereinafter referred to as "DIRECTOR," may approve contract cost increases in accordance with Public Contract Code Section 20142.

6. Wage Rates and Payroll Records:

Pursuant to the provisions of Labor Code Section 1773, OWNER has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification, or type of worker needed to execute the Contract from the Director of the Department of Industrial Relations. Copies of the prevailing wage rates are on file at OWNER's principal office. Copies may be obtained from the State Office, Department of Industrial Relations or from the Department of Industrial Relations website: <http://www.dir.ca.gov>. CONTRACTOR shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates. Additionally, CONTRACTOR shall comply with the provisions of Labor Code Sections 1775 (penalties for prevailing wage violations) and 1813 (forfeiture for overtime violations).

Travel and subsistence payments to each workman needed to execute the work shall be made as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the Labor Code.

The CONTRACTOR shall comply with the provisions of Section 1774 of the Labor Code. Failure to comply with the subject section will subject the CONTRACTOR to penalty and forfeiture provisions of Section 1775 of the Labor Code.

The COUNTY will not recognize any claim for additional compensation because of the payment by the CONTRACTOR of any wage rate in excess of the prevailing wage rate set forth in the AGREEMENT. The possibility of wage increases is one of the elements to be considered by the CONTRACTOR in determining his bid, and will not under any circumstances be considered as the basis of a claim against the COUNTY on the AGREEMENT.

The CONTRACTOR and subcontractors shall comply with Section 1777.6 which stipulates that it shall be unlawful to refuse to accept otherwise qualified employees as registered apprentices solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077.

For the duration of the PROJECT, certified payroll records as described in Section 1776 of the Labor Code and/or statements of non-performance for CONTRACTOR and those of subcontractors performing work on the PROJECT shall be delivered to COUNTY on a weekly basis no later than ten (10) calendar days after the end of each weekly pay period.

CONTRACTOR and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly

to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

The requirements of Labor Code Section 1776 provide in part:

- 6.1 CONTRACTOR and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by CONTRACTOR or any Subcontractor(s) in connection with the work.
- 6.2 Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
  - 6.2.1 The information contained in the payroll record is true and correct.
  - 6.2.2 The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.
- 6.3 The payroll records shall be certified and shall be available for inspection at the principal office of CONTRACTOR on the basis set forth in Labor Code Section 1776.
- 6.4 CONTRACTOR shall inform OWNER of the location of the payroll records, including the street address, city and county, and shall, within five working days, provide a notice of any change of location and address of the records.
- 6.5 Pursuant to Labor Code Section 1776, CONTRACTOR and any Subcontractor(s) shall have 10 days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that CONTRACTOR or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to OWNER, forfeit \$100, or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. CONTRACTOR acknowledges that, without limitation as to other remedies of enforcement available to OWNER, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due CONTRACTOR. CONTRACTOR is not subject to a penalty assessment pursuant to this Section due to the failure of a Subcontractor to comply with this Section.

7. Apprentices:

The CONTRACTOR shall familiarize himself with the provisions of Section 1777.5 of the Labor Code regarding employment of apprentices, and shall be responsible for compliance therewith, including compliance by his subcontractors.

CONTRACTOR agrees to comply with the provisions of Labor Code Section 1777.5 and any other applicable laws or regulations, including but not limited to, 8 California Code of Regulations, Section 230.1(A), pertaining to apprentices. Section 1777.5 shall not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than Thirty Thousand Dollars (\$30,000).

CONTRACTOR and subcontractor shall comply with Section 1777.6 of the Labor Code which stipulates that an employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of the Labor Code and Section 12940 of the Government Code.

8. Antitrust Claims:

In accordance with Public Contract Code Section 7103.5, by entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the CONTRACTOR or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) 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, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the CONTRACTOR, without further acknowledgment by the parties. CONTRACTOR shall cause the above requirement to be inserted in all agreements with subcontractors.

9. Auditor - Controller Inspection:

CONTRACTOR agrees to permit COUNTY's Auditor-Controller, or his authorized representative (including auditors from a private auditing firm hired by COUNTY) or DIRECTOR, access during normal working hours to all books, accounts, records, reports, files and other papers or property of CONTRACTOR for the purpose of auditing any aspect of performance under this AGREEMENT. CONTRACTOR agrees to maintain such records in Orange County, California, for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this AGREEMENT or by law. CONTRACTOR agrees to allow interviews of any employees or others who might reasonably have information related to

such records. Further, CONTRACTOR agrees to include a similar right to COUNTY to audit records and interview staff of any SUBCONTRACTOR related to performance of this AGREEMENT.

Should CONTRACTOR cease to exist as a legal entity, CONTRACTOR's records pertaining to this AGREEMENT shall be forwarded to the surviving entity in a merger or acquisition, or in the event of liquidation, to the DIRECTOR.

10. Federally Assisted Contract:

If this AGREEMENT is funded in whole or in part by the Federal Government, CONTRACTOR agrees to comply with the Federal labor standards provisions set forth in the Special Provisions. If the Federal prevailing wage determinations differ from the State's, CONTRACTOR shall not pay less than the higher of the two rates.

11. State Audit:

Pursuant to and in accordance with Section 8546.7 of the California Government Code, in the event that this AGREEMENT involves expenditures of Public funds aggregating in excess of Ten Thousand Dollars (\$10,000), the parties shall be subject to the examination and audit of the Auditor General of the State of California for a period of three (3) years after final payment under this AGREEMENT.

The CONTRACTOR shall maintain records for all costs connected with the performance of this AGREEMENT including, but not limited to, the costs of administering the contract, materials, labor, equipment, rentals, permits, insurance, bonds, etc., for audit or inspection by County, State, or any other appropriate governmental agency during the three (3) year period.

12. Successors and Assigns:

The terms and provisions of this AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

13. Entirety:

This AGREEMENT contains the entire agreement between the parties with respect to the matters provided for herein.

14. Severability:

If any part of this AGREEMENT is held, determined, or adjudicated to be illegal, void, or unenforceable by a court of competent jurisdiction, the remainder of this AGREEMENT shall be given effect to the fullest extent reasonably possible.

15. Governing Law and Venue:

This AGREEMENT has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this AGREEMENT, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure, Section 394.

The parties specifically agree that by soliciting and entering into and performing services under this AGREEMENT, the CONTRACTOR shall be deemed to constitute doing business within Orange County from the time of solicitation of work, through the period when all work under this AGREEMENT is completed, and continuing until the expiration of any applicable limitations period. Furthermore, the parties have specifically agreed, as part of the consideration given and received for entering into this AGREEMENT, to waive any and all rights to request that an action be transferred for trial to another County under Code of Civil Procedure, Section 394.

16. Child Support Enforcement Requirements:

In order to comply with child support enforcement requirements of the COUNTY, within thirty (30) days of notification of selection for award of CONTRACT but prior to official award of CONTRACT, CONTRACTOR agrees to furnish to DIRECTOR the following:

1. In the case of an individual CONTRACTOR, his/her name, date of birth, Social Security number, and residence address;
2. In the case of a CONTRACTOR doing business in a form other than as an individual, the name, date of birth, Social Security Number, and residence address of each individual who owns an interest of ten (10) percent or more in the CONTRACTOR's contracting entity;
3. A certification that the CONTRACTOR has fully complied with all the applicable federal and state reporting requirements regarding its employees; and
4. A certification that the CONTRACTOR has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

It is expressly understood that this data will be transmitted by COUNTY to governmental agencies charged with the establishment and enforcement of child support orders.

Failure of the CONTRACTOR to timely submit the data and/or certifications required above or to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment may result in the CONTRACT being awarded to another CONTRACTOR, or, in the event a

CONTRACT has been issued, shall constitute a material breach of the CONTRACT. Failure to cure such breach within sixty (60) calendar days of notice from COUNTY shall constitute grounds for termination of the CONTRACT.

17. Charges, Fines, Penalties and Assessments

CONTRACTOR shall be responsible for any and all charges, fines, penalties, and/or assessments levied against the COUNTY by any governmental entity, administrative or regulatory agency having jurisdiction, resulting from any action or omission of the CONTRACTOR, CONTRACTOR's subcontractor, suppliers, and/or employees, unless due to the sole and active negligence of the COUNTY. COUNTY is authorized to deduct any such charge, fine penalty, or assessment from any payment COUNTY is otherwise required to make to CONTRACTOR.

If any such charge, fine, penalty, or assessment is levied against the COUNTY subsequent to the completion of the PROJECT as a result of any action or omission as set forth above, CONTRACTOR shall nevertheless be responsible to the COUNTY for the entire sum of such charge, fine, penalty, or assessment and agrees to pay the full amount due within sixty (60) calendar days of receiving an invoice from the COUNTY.

CONTRACTOR shall be liable to the COUNTY for attorney's fees and costs incurred by the COUNTY in enforcing the provisions of this paragraph.

18. Amendments

No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on COUNTY unless authorized by COUNTY in writing.

19. Acceptance

Unless otherwise agreed to in writing by COUNTY acceptance shall not be deemed complete unless in writing and until all the services have actually been received, inspected, and tested to the satisfaction of COUNTY.

20. Non-Discrimination

In the performance of this AGREEMENT, CONTRACTOR agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. CONTRACTOR acknowledges that a violation of this provision shall subject CONTRACTOR to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.

21. Termination for Cause

- A. If CONTRACTOR refuses or fails to prosecute the work with such diligence as will insure its completion within the time specified in AGREEMENT or any extension thereof, or fails to complete said work within such time, the Board of Supervisors may and in accordance with Paragraph 40 below (Breach of Contract) by written notice to CONTRACTOR, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event, COUNTY may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the CONTRACTOR's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the COUNTY resulting from his refusal or failure to complete the work within the specified time.
- B. If fixed and agreed liquidated damages are provided in AGREEMENT and if COUNTY so terminates CONTRACTOR's right to proceed, or CONTRACTOR otherwise fails to complete the work to final completion, the resulting damage will include, but not be limited to, such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned by COUNTY in completing the work.
- C. If fixed and agreed liquidated damages are provided in AGREEMENT and if COUNTY does not so terminate CONTRACTOR's right to proceed, or CONTRACTOR otherwise fails to complete the work to final completion, the resulting damage will include, but not be limited to, such liquidated damages until the work is completed or accepted.
- D. CONTRACTOR's right to proceed shall not be so terminated nor the CONTRACTOR charged with resulting damage if:
- (1) The delay in the completion of the work arises from causes beyond the control and without the fault or negligence of CONTRACTOR, including, but not limited to, acts of God, acts of the public enemy, acts of COUNTY, acts of another contractor in the performance of a contract with COUNTY, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, other than normal weather, or delays of subcontractors or suppliers arising from causes beyond the control and without the fault or negligence of both CONTRACTOR and such subcontractors or suppliers; and
  - (2) CONTRACTOR within ten (10) days from the beginning of any such delays (unless DIRECTOR grants in writing a further period of time before the date of final payment under the AGREEMENT), notifies DIRECTOR in writing of the causes of delay.

DIRECTOR shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the delay is justified. DIRECTOR shall make written findings, and the findings of fact shall be final and conclusive on the parties, subject only to appeal as provided by law.



E. The rights and remedies of COUNTY provided in this Section are in addition to any other rights and remedies provided by law or under this AGREEMENT.

## 22. Termination for Convenience

Notwithstanding any other provision of the AGREEMENT, the COUNTY may, at any time, and without any cause, terminate this AGREEMENT in whole or in part, upon not less than seven (7) days' written notice to CONTRACTOR. Such termination shall be effected by delivery to CONTRACTOR of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated. CONTRACTOR shall immediately stop work in accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by the COUNTY. COUNTY shall pay CONTRACTOR for the Work completed prior to the effective date of the termination, and such payment shall be CONTRACTOR's sole remedy under this AGREEMENT. Under no circumstances will CONTRACTOR be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph. The CONTRACTOR shall insert in all subcontracts that the sub-consultant shall stop work on the date of and to the extent specified in a notice of termination, and shall require sub-consultants to insert the same condition in any lower tier subcontracts.

## 23. Consent to Breach Not Waiver

No term or provision of this AGREEMENT shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

## 24. Remedies Not Exclusive

The remedies for breach set forth in this AGREEMENT are cumulative as to one another and as to any other remedy provided by law, rather than exclusive; and the expression of certain remedies in this AGREEMENT does not preclude resort by either party from resorting to any other remedies provided by law.

## 25. Independent Contractor

CONTRACTOR shall be considered an independent CONTRACTOR and neither CONTRACTOR, its employees, nor anyone working under CONTRACTOR shall be considered an agent or an employee of COUNTY. Neither CONTRACTOR, its employees nor anyone working under CONTRACTOR shall qualify for workers' compensation or other fringe benefits of any kind through COUNTY.

## 26. Indemnification

CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, their elected and appointed officials, officers, employees, agents and those special districts and agencies which County of Orange Board of Supervisors acts as the governing Board (“COUNTY INDEMNITEES”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by CONTRACTOR pursuant to this AGREEMENT. If judgment is entered against CONTRACTOR and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY INDEMNITEES, CONTRACTOR and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve CONTRACTOR of any insurance requirements of obligations created elsewhere in this AGREEMENT.

## 27. Bills and Liens

CONTRACTOR shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. CONTRACTOR shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, CONTRACTOR shall promptly procure its release and, in accordance with the requirements of the indemnification paragraph above, indemnify, defend, and hold COUNTY harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.

## 28. Changes

CONTRACTOR shall make no changes in the work or perform any additional work without the COUNTY’S specific written approval.

## 29. Changes of Ownership

CONTRACTOR agrees that if there is a change or transfer in ownership of CONTRACTOR’S business prior to completion of this AGREEMENT, the new owners shall be required under terms of sale or other transfer to assume CONTRACTOR’S duties and obligations contained in this AGREEMENT and complete them to the satisfaction of COUNTY.

## 30. Force Majeure

CONTRACTOR shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this AGREEMENT caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided CONTRACTOR gives written notice of the cause of the delay to COUNTY within thirty-six (36) hours of the start of the delay and CONTRACTOR avails himself of any available remedies.

### 31. Confidentiality

CONTRACTOR agrees to maintain the confidentiality of all COUNTY and COUNTY -related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this AGREEMENT. All such records and information shall be considered confidential and kept confidential by CONTRACTOR and CONTRACTOR'S staff, agents and employees.

### 32. Compliance with Laws

CONTRACTOR represents and warrants that services to be provided under this AGREEMENT shall fully comply, at CONTRACTOR'S expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by COUNTY in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by COUNTY. CONTRACTOR acknowledges that COUNTY is relying on CONTRACTOR to ensure such compliance, and pursuant to the requirements of the indemnification paragraph above, CONTRACTOR agrees that in accordance with paragraph 26 above, it shall defend, indemnify and hold COUNTY and COUNTY INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

### 33. Terms and Conditions

CONTRACTOR acknowledges that it has read and agrees to all terms and conditions included in this AGREEMENT.

### 34. Headings

The various headings and numbers herein, the grouping of provisions of this AGREEMENT into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

### 35. Calendar Days

Any reference to the word "day" or "days" herein means calendar day or calendar days, respectively, unless otherwise expressly provided.

### 36. Attorney Fees

In any action or proceeding to enforce or interpret any provision of this AGREEMENT, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.

### 37. Interpretation

This AGREEMENT has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this AGREEMENT. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this AGREEMENT by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this AGREEMENT against the party that has drafted it is not applicable and is waived. The provisions of this AGREEMENT shall be interpreted in a reasonable manner to affect the purpose of the parties and this AGREEMENT.

### 38. Notices

Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

For CONTRACTOR:      Name: Matt Scott  
                                 Address: 10704 Shoemaker Avenue  
                                 City: Santa Fe Springs, CA 90670  
                                 Attn: Matt Scott  
                                 Phone: 714-235-1709  
                                 Email: [Matt.Scott@kiewit.com](mailto:Matt.Scott@kiewit.com)

For COUNTY:            Name: Octavio Rivas, Manager, OC Inspection  
                                 Address: 1152 E. Fuit St., Bldg No. 4  
                                 City: Santa Ana, CA 92702  
                                 Attn: Resident Engineer  
                                 Phone: 714-245-4500  
                                 E-mail: [Octavio.Rivas@ocpw.ocgov.com](mailto:Octavio.Rivas@ocpw.ocgov.com)  
                                 Fax: 714-567-7813

cc: OC Public Works Procurement Services  
Address: 300 N. Flower Street  
City: Santa Ana, CA 92703  
Attn: Kevin Work  
Phone: 714-667-9644  
E-mail: [Kevin.Work@ocpw.ocgov.com](mailto:Kevin.Work@ocpw.ocgov.com)

### 39. Breach of Contract

The failure of the CONTRACTOR to comply with any of the provisions, covenants or conditions of this AGREEMENT shall be a material breach of this AGREEMENT. In such event the COUNTY may, and in addition to any other remedies available at law, in equity, or otherwise specified in this AGREEMENT:

1. Afford the CONTRACTOR written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this AGREEMENT within which to cure the breach;
2. Discontinue payment to the CONTRACTOR for and during the period in which the CONTRACTOR is in breach; and
3. Offset against any monies billed by the CONTRACTOR but yet unpaid by the COUNTY those monies disallowed pursuant to the above.

### 40. Default

In the event any equipment or service furnished by the CONTRACTOR in the performance of this AGREEMENT should fail to conform to the specifications therein within one (1) calendar year from the COUNTY's acceptance of the equipment or service, or any performance period specifically specified within the specifications or AGREEMENT, whichever is greater, the COUNTY may reject same, and it shall become the duty of the CONTRACTOR to reclaim and remove the items without expense to the COUNTY and to immediately replace all such rejected equipment or service with others conforming to such specifications, provided that should the CONTRACTOR fail, neglect or refuse to do so within one hundred and twenty (120) calendar days, the COUNTY shall have the right to purchase on the open market a corresponding quantity of any such equipment or service and to deduct from any monies due or that may thereafter become due to the CONTRACTOR the difference between the price specified in this AGREEMENT and the actual cost to the COUNTY.

In the event the CONTRACTOR shall fail to make prompt delivery as specified of any equipment or service, the same conditions as to the rights of the COUNTY to purchase on the open market and to reimbursement set forth above shall apply, except as otherwise provided in this AGREEMENT.

“Any loss or damage sustained by the COUNTY in procuring any equipment or service which the CONTRACTOR agreed to supply under this AGREEMENT but, by reason of the default or breach by the CONTRACTOR, failed to supply, shall be borne and paid for by the

CONTRACTOR. Default shall include failure to carry out any of the requirements of this AGREEMENT, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the work as agreed to herein, or otherwise substantially violating any provision of this AGREEMENT."

41. Conflict of Interest Contractor Personnel

The CONTRACTOR shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the COUNTY. This obligation shall apply to the CONTRACTOR; the CONTRACTOR's employees, agents, and relatives; sub-tier contractors; and third parties associated with accomplishing work and services hereunder. The CONTRACTOR's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the COUNTY.

42. Non-Employment of COUNTY Personnel

CONTRACTOR agrees that no employee of COUNTY or COUNTY INDEMNITEES who is involved in this PROJECT shall be given or offered employment by CONTRACTOR during the life of this AGREEMENT regardless of the assignments said employee may be given or the days or hours employee may work. By accepting this AGREEMENT, CONTRACTOR agrees, for the duration of this AGREEMENT, not to offer or discuss employment with any COUNTY or COUNTY INDEMNITEES employee involved in the performance of this AGREEMENT.

43. Ownership of Documents

The COUNTY has permanent ownership of all directly connected and derivative materials produced under this AGREEMENT by the CONTRACTOR. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole property of the COUNTY and may be used by the COUNTY as it may require without additional cost to the COUNTY. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the CONTRACTOR without the express written consent of the COUNTY.

44. Title to Data

All materials, documents, data or information obtained from the COUNTY data files or any COUNTY medium furnished to the CONTRACTOR in the performance of this AGREEMENT will at all times remain the property of the COUNTY. Such data or information may not be used or copied for direct or indirect use by the CONTRACTOR after completion or termination of this AGREEMENT without the express written consent of the COUNTY. All materials, documents, data or information, including copies furnished to CONTRACTOR by COUNTY must be returned to the COUNTY at the end of this AGREEMENT unless otherwise authorized in writing by the ENGINEER.

**45. Availability of Funds**

The obligation of COUNTY is subject to the availability of funds appropriated for this purpose, and nothing herein shall be construed as obligating the COUNTY to expend or as involving the COUNTY in any contract or other obligation for future payment of money in excess of appropriations authorized by law.

**46. Employee Eligibility Verification**

The CONTRACTOR warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this AGREEMENT meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The CONTRACTOR shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The CONTRACTOR shall retain all such documentation for all covered employees for the period prescribed by the law. The CONTRACTOR shall indemnify, defend with counsel approved in writing by COUNTY, and hold harmless, the COUNTY, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the CONTRACTOR or the COUNTY or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this AGREEMENT.

**47. Registration of Contractors**

CONTRACTOR and all subcontractors must comply with the requirements of California Labor Code Section 1771.1(a), pertaining to registration of CONTRACTORS pursuant to California Labor Code Section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the CONTRACT.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hand and seal the day and year first hereinabove written.

\_\_\_\_\_  
**CONTRACTOR**

By\* \_\_\_\_\_  
**TITLE**

By\* \_\_\_\_\_  
**TITLE**

(If, a corporation, both Secretary and President or Vice President must sign.)  
(Attach acknowledgments)

\_\_\_\_\_  
**FUNDING AGENCY**  
**ORANGE COUNTY FLOOD CONTROL DISTRICT**

By \_\_\_\_\_

**Approved as to form:**  
**Office of the County Counsel,**  
**Orange County, California**

By \_\_\_\_\_  
Deputy

**\* Note:** Pursuant to the requirements of the California Corporations Code Section 313, one of the following two methods must be used by a corporation when it enters into a contract:

- 1) Two people must sign the document; One of them must be the Chairman of the Board, the President or any Vice-President. The other must be the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer.
- 2) One Corporate officer may sign the document, providing that written evidence of the officer's authority to bind the corporation with only his or her signature must be provided. This evidence would ideally by a corporate resolution.



## **FEDERALLY REQUIRED PROVISIONS**

The following Federally required clauses supersede and control only where they conflict with the AGREEMENT or Attachments thereto. In the event of a potential ambiguity between the Federal clauses and the remainder of the AGREEMENT, COUNTY will be solely responsible for interpreting how to implement the AGREEMENT.

**EXHIBIT 12-G REQUIRED FEDERAL-AID CONTRACT LANGUAGE**  
(For Local Assistance Construction Projects)

The following language must be incorporated into all Local Assistance Federal-aid construction contracts.  
The following language, with minor edits, was taken from the Code of Federal Regulations.

**1. DISADVANTAGED BUSINESS ENTERPRISES (DBE).....22**

- A. DBE COMMITMENT SUBMITTAL.....22**
- B. GOOD FAITH EFFORTS SUBMITTAL.....23**
- C. EXHIBIT 15-G - CONSTRUCTION CONTRACT DBE COMMITMENT.....24**
- D. SUBCONTRACTOR AND DISADVANTAGED BUSINESS ENTERPRISE RECORDS.....24**
- E. PERFORMANCE OF DISADVANTAGED BUSINESS ENTERPRISES.....24**

**2. BID OPENING.....26**

**3. BID RIGGING.....26**

**4. CONTRACT AWARD.....26**

**5. CONTRACTOR LICENSE.....26**

**6. CHANGED CONDITIONS.....26**

- A. DIFFERING SITE CONDITION.....26**
- B. SUSPENSIONS OF WORK ORDERED BY THE ENGINEER.....26**
- C. SIGNIFICANT CHANGES IN THE CHARACTER OF WORK.....27**

**7. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES.....28**

**8. BUY AMERICA.....28**

**FURNISH STEEL AND IRON MATERIALS TO BE INCORPORATED INTO THE WORK WITH CERTIFICATES OF COMPLIANCE. STEEL AND IRON MATERIALS MUST BE PRODUCED IN THE U.S. EXCEPT.....28**

**9. QUALITY ASSURANCE.....28**

**10. PROMPT PAYMENT OF FUNDS WITHHELD TO SUBCONTRACTORS.....29**

**11. FORM FHWA-1273 REQUIRED CONTRACT PROVISIONS FEDERAL-AID  
CONTRACTS.....29**

**12. FEMALE AND MINORITY GOALS.....18**

**13. FEDERAL TRAINEE PROGRAM.....19**

**14. TITLE VI ASSURANCE.....21**

**15. USE OF UNITED STATES-FLAG VESSELS (CARGO PREFERENCE ACT).....22**

**1. DISADVANTAGED BUSINESS ENTERPRISES (DBE)**

Under 49 CFR 26.13(b):

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Take necessary and reasonable steps to ensure that DBEs have opportunity to participate in the contract (49 CFR 26).

To ensure equal participation of DBEs provided in 49 CFR 26.5, the Agency shows a goal for DBEs.

Make work available to DBEs and select work parts consistent with available DBE subcontractors and suppliers.

Meet the DBE goal shown elsewhere in these special provisions or demonstrate that you made adequate good faith efforts to meet this goal.

It is your responsibility to verify that the DBE firm is certified as DBE at date of bid opening. For a list of DBEs certified by the California Unified Certification Program, go to: [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm).

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal.

Credit for materials or supplies you purchase from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are obtained from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

You receive credit towards the goal if you employ a DBE trucking company that performs a commercially useful function as defined in 49 CFR 26.55(d)(1) through (4) and (6).

**a. DBE Commitment Submittal**

Submit the Exhibit 15-G *Construction Contract DBE Commitment* form, included in the Bid book. If the form is not submitted with the bid, remove the form from the Bid book before submitting your bid.

If the DBE Commitment form is not submitted with the bid, the apparent low bidder, the 2nd low bidder, and the 3rd low bidder must complete and submit the DBE Commitment form to the Agency. DBE Commitment form must be received by the Agency no later than 4:00 p.m. on the 4th business day after bid opening.

Other bidders do not need to submit the DBE Commitment form unless the Agency requests it. If the Agency requests you to submit a DBE Commitment form, submit the completed form within 4 business days of the request.

Submit written confirmation from each DBE stating that it is participating in the contract. Include confirmation with the DBE Commitment form. A copy of a DBE's quote will serve as written confirmation that the DBE is participating in the contract.

If you do not submit the DBE Commitment form within the specified time, the Agency will find your bid nonresponsive.

***b. Good Faith Efforts Submittal***

If you have not met the DBE goal, complete and submit the DBE Information - Good Faith Efforts, Exhibit 15-H, form with the bid showing that you made adequate good faith efforts to meet the goal. Only good faith efforts directed towards obtaining participation by DBEs will be considered. If good faith efforts documentation is not submitted with the bid, it must be received by the Agency no later than 4:00 p.m. on the 4th business day after bid opening.

If your DBE Commitment form shows that you have met the DBE goal or if you are required to submit the DBE Commitment form, you must also submit good faith efforts documentation within the specified time to protect your eligibility for award of the contract in the event the Agency finds that the DBE goal has not been met.

Good faith efforts documentation must include the following information and supporting documents, as necessary:

1. Items of work you have made available to DBE firms. Identify those items of work you might otherwise perform with your own forces and those items that have been broken down into economically feasible units to facilitate DBE participation. For each item listed, show the dollar value and percentage of the total contract. It is your responsibility to demonstrate that sufficient work to meet the goal was made available to DBE firms.
2. Names of certified DBEs and dates on which they were solicited to bid on the project. Include the items of work offered. Describe the methods used for following up initial solicitations to determine with certainty if the DBEs were interested, and the dates of the follow-up. Attach supporting documents such as copies of letters, memos, facsimiles sent, telephone logs, telephone billing statements, and other evidence of solicitation. You are reminded to solicit certified DBEs through all reasonable and available means and provide sufficient time to allow DBEs to respond.
3. Name of selected firm and its status as a DBE for each item of work made available. Include name, address, and telephone number of each DBE that provided a quote and their price quote. If the firm selected for the item is not a DBE, provide the reasons for the selection.
4. Name and date of each publication in which you requested DBE participation for the project. Attach copies of the published advertisements.
5. Names of agencies and dates on which they were contacted to provide assistance in contacting, recruiting, and using DBE firms. If the agencies were contacted in writing, provide copies of supporting documents.
6. List of efforts made to provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract to assist them in responding to a solicitation. If you have provided information, identify the name of the DBE assisted, the nature of the information provided, and date of contact. Provide copies of supporting documents, as appropriate.
7. List of efforts made to assist interested DBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, and materials, excluding supplies and equipment that the DBE subcontractor purchases or leases from the prime contractor or its affiliate. If such assistance is provided by you, identify the name of the DBE assisted, nature of the assistance offered, and date assistance was provided. Provide copies of supporting documents, as appropriate.

8. Any additional data to support demonstration of good faith efforts.

The Agency may consider DBE commitments of the 2nd and 3rd bidders when determining whether the low bidder made good faith efforts to meet the DBE goal.

**c. Exhibit 15-G - Construction Contract DBE Commitment**

Complete and sign Exhibit 15-G *Construction Contract DBE Commitment* included in the contract documents regardless of whether DBE participation is reported.

Provide written confirmation from each DBE that the DBE is participating in the Contract. A copy of a DBE's quote serves as written confirmation. If a DBE is participating as a joint venture partner, the Agency encourages you to submit a copy of the joint venture agreement.)

**d. Subcontractor and Disadvantaged Business Enterprise Records**

Use each DBE subcontractor as listed on Exhibit 12-B *Bidder's List of Subcontractors (DBE and Non-DBE)* and Exhibit 15-G *Construction Contract DBE Commitment* form unless you receive authorization for a substitution.

The Agency requests the Contractor to:

1. Notify the Engineer of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
  - Name and business address of each 1<sup>st</sup>-tier subcontractor
  - Name and business address of each DBE subcontractor, DBE vendor, and DBE trucking company, regardless of tier
  - Date of payment and total amount paid to each business

If you are a DBE contractor, include the date of work performed by your own forces and the corresponding value of the work.

Before the 15th of each month, submit a Monthly DBE Trucking Verification form.

If a DBE is decertified before completing its work, the DBE must notify you in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify you in writing of the certification date. Submit the notifications. On work completion, complete a Disadvantaged Business Enterprises (DBE) Certification Status Change, Exhibit 17-O, form. Submit the form within 30 days of contract acceptance.

Upon work completion, complete Exhibit 17-F *Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors*. Submit it within 90 days of contract acceptance. The Agency will withhold \$10,000 until the form is submitted. The Agency releases the withhold upon submission of the completed form.

**e. Performance of Disadvantaged Business Enterprises**

DBEs must perform work or supply materials as listed in the Exhibit 15-G *Construction Contract DBE Commitment* form, included in the Bid.

Do not terminate or substitute a listed DBE for convenience and perform the work with your own forces or obtain materials from other sources without authorization from the Agency.

The Agency authorizes a request to use other forces or sources of materials if it shows any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. You stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet your bond requirements.
3. Work requires a contractor's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials.
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. Agency determines other documented good cause.

Notify the original DBE of your intent to use other forces or material sources and provide the reasons. Provide the DBE with 5 days to respond to your notice and advise you and the Agency of the reasons why the use of other forces or sources of materials should not occur. Your request to use other forces or material sources must include:

1. One or more of the reasons listed in the preceding paragraph.
2. Notices from you to the DBE regarding the request.
3. Notices from the DBEs to you regarding the request.

If a listed DBE is terminated or substituted, you must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet the DBE goal.

The substitute DBE must be certified as a DBE at the time of request for substitution.

Unless the Agency authorizes (1) a request to use other forces or sources of materials or (2) a good faith effort for a substitution of a terminated DBE, the Agency does not pay for work listed on the Exhibit 15-G *Construction Contract DBE Commitment* form unless it is performed or supplied by the listed DBE or an authorized substitute.

2. **BID OPENING** The Agency publicly opens and reads bids at the time and place shown on the *Notice to Bidders*.
3. **BID RIGGING** The U.S. Department of Transportation (DOT) provides a toll-free hotline to report bid rigging activities. Use the hotline to report bid rigging, bidder collusion, and other fraudulent activities. The hotline number is (800) 424-9071. The service is available 24 hours 7 days a week and is confidential and anonymous.. The hotline is part of the DOT's effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General.
4. **CONTRACT AWARD** If the Agency awards the contract, the award is made to the lowest responsible and responsive bidder.

#### 5. CONTRACTOR LICENSE

The Contractor must be properly licensed as a contractor from contract award through Contract acceptance (Public Contract Code § 10164).

#### 6. CHANGED CONDITIONS

##### a. Differing Site Conditions

1. During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.
2. Upon written notification, the engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify the contractor of the determination whether or not an adjustment of the contract is warranted.
3. No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.
4. No contract adjustment will be allowed under this clause for any effects caused on unchanged work. (This provision may be omitted by the Local Agency, at their option.)

##### b. Suspensions of Work Ordered by the Engineer

1. If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the



- engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.
2. Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.
  3. No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.
  4. No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

*c. Significant Changes in the Character of Work*

1. The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.
2. If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.
3. If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.
4. The term "significant change" shall be construed to apply only to the following circumstances:
  - When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
  - When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

**7. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES**

The Contractor shall begin work within 15 calendar days after the contract has been approved by the attorney appointed and authorized to represent the City/County of \_\_\_\_\_.

This work shall be diligently prosecuted to completion before the expiration of        WORKING DAYS beginning on the fifteenth calendar day after approval of the contract.

(Insert amount of Liquidated Damages)

The Contractor shall pay to the City/County of \_\_\_\_\_ the sum of \$ \_\_\_\_\_ per day, for each and every calendar day's delay in finishing the work in excess of the number of working days prescribed above.

**8. BUY AMERICA**

**Furnish steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:**

1. Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478 (03/24/1995)];
2. If the total combined cost of the materials does not exceed the greater of 0.1 percent of the total bid or \$2,500, materials produced outside the U.S. may be used.

Production includes:

1. Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending, grinding, and drilling) or chemical composition;
2. Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

**9. QUALITY ASSURANCE**

The Agency uses a Quality Assurance Program (QAP) to ensure a material is produced to comply with the Contract.

You may examine the records and reports of tests the Agency performs if they are available at the job site.

Schedule work to allow time for QAP.

**10. PROMPT PAYMENT OF FUNDS WITHHELD TO SUBCONTRACTORS**

(The local agency must include one of the following three provisions to ensure prompt and full payment of any retainage from the prime contractor, or subcontractor, to a subcontractor. Remove or strike out the methods not used.)

(EITHER)

~~No retainage will be withheld by the agency from progress payments due the prime contractor. Retainage by the prime contractor or subcontractors is prohibited and no retainage will be held by the prime contractor from progress due subcontractors. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime Contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor or deficient subcontract performance, or noncompliance by a subcontractor.~~

(OR)

~~No retainage will be held by the agency from progress payments due the prime contractor. Any retainage held by the prime contractors or subcontractors from progress payments due subcontractors shall be promptly paid in full to subcontractors within 30 days after the subcontractor's work is satisfactorily completed. Federal law (49CFR26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime Contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.~~

(OR)

The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency, of the contract work, and pay retainage to the prime contractor based on these acceptances. The prime contractor, or subcontractor, shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49CFR26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

**11. FORM FHWA-1273 REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONTRACTS**

(Excluding ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS)

[The following 10 pages must be physically inserted into the contract without modification.]

FHWA-1273 -- Revised May 1, 2012

**REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

**ATTACHMENTS**

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

**I. GENERAL**

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor

performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

**II. NONDISCRIMINATION**

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection

for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so



**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

#### **6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

#### 10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR



part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour

Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## 2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under

approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee ( e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department

of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable

on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

#### VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract

requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

#### VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

#### VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each

Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

#### **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

#### **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

##### **1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website

(<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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## 2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### 2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

- 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 participating in covered transactions 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 participant shall attach an explanation to this proposal.

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**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

- 1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
  - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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.
  - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 2. 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 31 U.S.C. 1352. 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.
- 3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**12. FEMALE AND MINORITY GOALS**

To comply with Section II, "Nondiscrimination," of "Required Contract Provisions Federal-Aid Construction Contracts," the following are for female and minority utilization goals for Federal-aid construction contracts and subcontracts that exceed \$10,000:

The nationwide goal for female utilization is 6.9 percent.

The goals for minority utilization [45 Fed Reg 65984 (10/3/1980)] are as follows:

**MINORITY UTILIZATION GOALS**

Economic Area		Goal (Percent)
174	Redding CA: Non-SMSA (Standard Metropolitan Statistical Area) Counties: CA Lassen; CA Modoc; CA Plumas; CA Shasta; CA Siskiyou; CA Tehama	6.8
175	Eureka, CA Non-SMSA Counties: CA Del Norte; CA Humboldt; CA Trinity	6.6
176	San Francisco-Oakland-San Jose, CA: SMSA Counties: 7120 Salinas-Seaside-Monterey, CA CA Monterey	28.9
	7360 San Francisco-Oakland CA Alameda; CA Contra Costa; CA Marin; CA San Francisco; CA San Mateo	25.6
	7400 San Jose, CA CA Santa Clara, CA	19.6
	7485 Santa Cruz, CA CA Santa Cruz	14.9
	7500 Santa Rosa CA Sonoma	9.1
	8720 Vallejo-Fairfield-Napa, CA CA Napa; CA Solano	17.1
	Non-SMSA Counties: CA Lake; CA Mendocino; CA San Benito	23.2
177	Sacramento, CA: SMSA Counties: 6920 Sacramento, CA CA Placer; CA Sacramento; CA Yolo	16.1
	Non-SMSA Counties CA Butte; CA Colusa; CA El Dorado; CA Glenn; CA Nevada; CA Sierra; CA Sutter; CA Yuba	14.3
178	Stockton-Modesto, CA: SMSA Counties: 5170 Modesto, CA CA Stanislaus	12.3
	8120 Stockton, CA CA San Joaquin	24.3
	Non-SMSA Counties CA Alpine; CA Amador; CA Calaveras; CA Mariposa; CA Merced; CA Tuolumne	19.8



179	Fresno-Bakersfield, CA	
	SMSA Counties:	
	0680 Bakersfield, CA	19.1
	CA Kern	
	2840 Fresno, CA	26.1
	CA Fresno	
	Non-SMSA Counties:	
	CA Kings; CA Madera; CA Tulare	23.6
180	Los Angeles, CA:	
	SMSA Counties:	
	0360 Anaheim-Santa Ana-Garden Grove, CA	11.9
	CA Orange	
	4480 Los Angeles-Long Beach, CA	28.3
	CA Los Angeles	
	6000 Oxnard-Simi Valley-Ventura, CA	21.5
	CA Ventura	
	6780 Riverside-San Bernardino-Ontario, CA	19.0
	CA Riverside; CA San Bernardino	
7480 Santa Barbara-Santa Maria-Lompoc, CA	19.7	
CA Santa Barbara		
Non-SMSA Counties		
CA Inyo; CA Mono; CA San Luis Obispo	24.6	
181	San Diego, CA:	
	SMSA Counties	
	7320 San Diego, CA	16.9
	CA San Diego	
Non-SMSA Counties		
CA Imperial	18.2	

For the last full week July during which work is performed under the contract, you and each non material-supplier subcontractor with a subcontract of \$10,000 or more must complete Form FHWA PR-1391 (Appendix C to 23 CFR 230). Submit the forms by August 15.

### 13. FEDERAL TRAINEE PROGRAM

For the Federal training program, the number of trainees or apprentices is 7.

This section applies if a number of trainees or apprentices is specified in the special provisions.

As part of your equal opportunity affirmative action program, provide on-the-job training to develop full journeymen in the types of trades or job classifications involved.

You have primary responsibility for meeting this training requirement.

If you subcontract a contract part, determine how many trainees or apprentices are to be trained by the subcontractor.

Include these training requirements in your subcontract.

Where feasible, 25 percent of apprentices or trainees in each occupation must be in their 1st year of apprenticeship or training.

Distribute the number of apprentices or trainees among the work classifications on the basis of your needs and the availability of journeymen in the various classifications within a reasonable recruitment area.

Before starting work, submit to the City/County of \_\_\_Orange\_\_\_:

1. Number of apprentices or trainees to be trained for each classification
2. Training program to be used
3. Training starting date for each classification

Obtain the City/County's of \_\_\_Orange\_\_\_ approval for this submitted information before you start work. The City/County of \_\_\_Orange\_\_\_ credits you for each apprentice or trainee you employ on the work who is currently enrolled or becomes enrolled in an approved program.

The primary objective of this section is to train and upgrade minorities and women toward journeymen status. Make every effort to enroll minority and women apprentices or trainees, such as conducting systematic and direct recruitment through public and private sources likely to yield minority and women apprentices or trainees, to the extent they are available within a reasonable recruitment area. Show that you have made the efforts. In making these efforts, do not discriminate against any applicant for training.

Do not employ as an apprentice or trainee an employee:

1. In any classification in which the employee has successfully completed a training course leading to journeyman status or in which the employee has been employed as a journeyman
2. Who is not registered in a program approved by the US Department of Labor, Bureau of Apprenticeship and Training

Ask the employee if the employee has successfully completed a training course leading to journeyman status or has been employed as a journeyman. Your records must show the employee's answers to the questions.

In your training program, establish the minimum length and training type for each classification. The City/County of \_\_\_Orange\_\_\_ and FHWA approves a program if one of the following is met:

1. It is calculated to:
  - Meet the your equal employment opportunity responsibilities
  - Qualify the average apprentice or trainee for journeyman status in the classification involved by the end of the training period
2. It is registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, and it is administered in a way consistent with the equal employment responsibilities of Federal-aid highway construction contracts

Obtain the State's approval for your training program before you start work involving the classification covered by the program.

Provide training in the construction crafts, not in clerk-typist or secretarial-type positions. Training is allowed in lower level management positions such as office engineers, estimators, and timekeepers if the training is oriented toward construction applications. Training is allowed in the laborer classification if significant and meaningful training is provided and approved by the division office. Off-site training is allowed if the training is an integral part of an approved training program and does not make up a significant part of the overall training.

The City/County of \_\_\_Orange\_\_\_ reimburses you 80 cents per hour of training given an employee on this contract under an approved training program:

1. For on-site training
2. For off-site training if the apprentice or trainee is currently employed on a Federal-aid project and you do at least one of the following:
  - Contribute to the cost of the training
  - Provide the instruction to the apprentice or trainee
  - Pay the apprentice's or trainee's wages during the off-site training period

3. If you comply this section.

Each apprentice or trainee must:

1. Begin training on the project as soon as feasible after the start of work involving the apprentice's or trainee's skill
2. Remain on the project as long as training opportunities exist in the apprentice's or trainee's work classification or until the apprentice or trainee has completed the training program

Furnish the apprentice or trainee:

1. Copy of the program you will comply with in providing the training
2. Certification showing the type and length of training satisfactorily completed

#### 14. TITLE VI ASSURANCES

During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONTRACTOR) agrees as follows:

- (1) Compliance with Regulations: CONTRACTOR shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.
- (2) Nondiscrimination: CONTRACTOR, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONTRACTOR for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONTRACTOR of the CONTRACTOR'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the California Department of Transportation or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the California Department of Transportation or the FHWA as appropriate, and shall set forth what efforts CONTRACTOR has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of CONTRACTOR'S noncompliance with the nondiscrimination provisions of this agreement, the California Department of Transportation shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - (a) withholding of payments to CONTRACTOR under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
  - (b) cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) Incorporation of Provisions: CONTRACTOR shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

CONTRACTOR shall take such action with respect to any sub-agreement or procurement as the California Department of Transportation or FHWA may direct as a means of enforcing such provisions including

sanctions for noncompliance, provided, however, that, in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONTRACTOR may request the California Department of Transportation enter into such litigation to protect the interests of the State, and, in addition, CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

**15. USE OF UNITED STATES-FLAG VESSELS**

The CONTRACTOR agrees-

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carries, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
2. To Furnish within 20 days following the date of loading for shipments originating within the United State or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
3. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

**MAINTAIN RECORDS AND SUBMIT REPORTS DOCUMENTING YOUR PERFORMANCE UNDER THIS SECTION**

General Decision Number: CA170035 01/06/2017 CA35

Superseded General Decision Number: CA20160035

State: California

Construction Types: Building, Heavy (Heavy and Dredging) and Highway

County: Orange County in California.

BUILDING CONSTRUCTION PROJECTS; DREDGING PROJECTS (does not include hopper dredge work); HEAVY CONSTRUCTION PROJECTS (does not include water well drilling); HIGHWAY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.20 for calendar year 2017 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2017. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number Publication Date  
0 01/06/2017  
ASBE0005-002 07/04/2016

Rates Fringes

Asbestos Workers/Insulator  
(Includes the application of all insulating materials, protective coverings, coatings, and finishes to all types of mechanical systems).....\$ 38.37 20.13  
Fire Stop Technician  
(Application of Firestopping Materials for wall openings and penetrations in walls, floors, ceilings and curtain walls).....\$ 26.15 17.31

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ASBE0005-004 07/04/2016

Rates Fringes

Asbestos Removal  
worker/hazardous material  
handler (Includes

preparation, wetting,  
stripping, removal,  
scrapping, vacuuming, bagging  
and disposing of all  
insulation materials from  
mechanical systems, whether  
they contain asbestos or not)....\$ 18.38 10.82

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\* BRCA0004-010 05/01/2016

Rates Fringes

BRICKLAYER; MARBLE SETTER.....\$ 37.93 14.94

\*The wage scale for prevailing wage projects performed in  
Blythe, China lake, Death Valley, Fort Irwin, Twenty-Nine  
Palms, Needles and 1-15 corridor (Barstow to the Nevada  
State Line) will be Three Dollars (\$3.00) above the  
standard San Bernardino/Riverside County hourly wage rate

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\* BRCA0018-004 06/01/2016

Rates Fringes

MARBLE FINISHER.....\$ 29.20 12.93

TILE FINISHER.....\$ 24.53 11.08

TILE LAYER.....\$ 35.89 9.08

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\* BRCA0018-010 09/01/2016

Rates Fringes

TERRAZZO FINISHER.....\$ 28.53 12.27

TERRAZZO WORKER/SETTER.....\$ 35.57 13.14

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\* CARP0409-001 07/01/2016

Rates Fringes

CARPENTER

(1) Carpenter, Cabinet

Installer, Insulation

Installer, Hardwood Floor

Worker and acoustical

installer.....\$ 39.83 17.03

(2) Millwright.....\$ 40.90 17.03

(3) Piledrivermen/Derrick

Bargeman, Bridge or Dock

Carpenter, Heavy Framer,

Rock Bargeman or Scowman,

Rockslinger, Shingler

(Commercial).....\$ 40.53 17.03

(4) Pneumatic Nailer,

Power Stapler.....\$ 40.09 17.03

(5) Sawfiler.....\$ 39.83 17.03

(6) Scaffold Builder.....\$ 31.60 17.03

(7) Table Power Saw

Operator.....\$ 40.93 17.03

FOOTNOTE: Work of forming in the construction of open cut  
sewers or storm drains, on operations in which horizontal  
lagging is used in conjunction with steel H-□B□e□□a□ms driven or

placed in pre- drilled holes, for that portion of a lagged trench against which concrete is poured, namely, as a substitute for back forms (which work is performed by piledrivers): \$0.13 per hour additional.

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CARP0409-005 07/01/2015

Rates Fringes

Drywall

DRYWALL INSTALLER/LATHER....\$ 40.40 15.03

STOCKER/SCRAPPER.....\$ 10.00 7.17

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CARP0409-008 08/01/2010

Rates Fringes

Modular Furniture Installer.....\$ 17.00 7.41

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ELEC0011-002 12/28/2015

COMMUNICATIONS AND SYSTEMS WORK

Rates Fringes

Communications System

Installer.....\$ 30.73 14.00

Technician.....\$ 30.10 12.48

SCOPE OF WORK:

Installation, testing, service and maintenance of systems utilizing the transmission and/or transference of voice, sound, vision and digital for commercial, educational, security and entertainment purposes for the following: TV monitoring and surveillance, background-foreground music, intercom and telephone interconnect, inventory control systems, microwave transmission, multi-media, multiplex, nurse call systems, radio page, school intercom and sound, burglar alarms, fire alarm (see last paragraph below) and low voltage master clock systems in commercial buildings. Communication Systems that transmit or receive information and/or control systems that are intrinsic to the above listed systems; inclusion or exclusion of terminations and testings of conductors determined by their function; excluding all other data systems or multiple systems which include control function or power supply; excluding installation of raceway systems, conduit systems, line voltage work, and energy management systems. Does not cover work performed at China Lake Naval Ordnance Test Station. Fire alarm work shall be performed at the current inside wireman total cost package.

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ELEC0441-001 08/29/2016

Rates Fringes

CABLE SPLICER.....\$ 44.29 18.13

ELECTRICIAN.....\$ 42.34 18.07

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\* ELEC0441-003 12/28/2015

COMMUNICATIONS & SYSTEMS WORK (excludes any work on Intelligent

Transportation Systems or CCTV highway systems)  
Rates Fringes

Communications System

Installer.....\$ 31.32 12.32  
Technician.....\$ 31.23 15.39

SCOPE OF WORK The work covered shall include the installation, testing, service and maintenance, of the following systems that utilize the transmission and/or transference of voice, sound, vision and digital for commercial, education, security and entertainment purposes for TV monitoring and surveillance, background foreground music, intercom and telephone interconnect, inventory control systems, microwave transmission, multi-media, multiplex, nurse call system, radio page, school intercom and sound, burglar alarms and low voltage master clock systems.

A. Communication systems that transmit or receive information and/or control systems that are intrinsic to the above listed systems SCADA (Supervisory control/data acquisition PCM (Pulse code modulation) Inventory control systems Digital data systems Broadband & baseband and carriers Point of sale systems VSAT data systems Data communication systems RF and remote control systems Fiber optic data systems

B. Sound and Voice Transmission/Transference Systems Background-Foreground Music Intercom and Telephone Interconnect Systems Sound and Musical Entertainment Systems Nurse Call Systems Radio Page Systems School Intercom and Sound Systems Burglar Alarm Systems Low-Voltage Master Clock Systems Multi-Media/Multiplex Systems Telephone Systems RF Systems and Antennas and Wave Guide

C. \*Fire Alarm Systems-installation, wire pulling and testing.

D. Television and Video Systems Television Monitoring and Surveillance Systems Video Security Systems Video Entertainment Systems Video Educational Systems CATV and CCTV

E. Security Systems, Perimeter Security Systems, Vibration Sensor Systems Sonar/Infrared Monitoring Equipment, Access Control Systems, Card Access Systems

\*Fire Alarm Systems

1. Fire Alarms-In Raceways: Wire and cable pulling in raceways performed at the current electrician wage rate and fringe benefits.

2. Fire Alarms-Open Wire Systems: installed by the Technician.

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ELEC0441-004 08/29/2016

Rates Fringes

ELECTRICIAN (TRANSPORTATION  
SYSTEMS, TRAFFIC SIGNALS &



STREET LIGHTING)

Cable Splicer/Fiber Optic

Splicer.....\$ 44.29 18.13

Electrician.....\$ 42.34 18.07

Technician.....\$ 31.76 16.75

SCOPE OF WORK: Electrical work on public streets, freeways, toll-ways, etc, above or below ground. All work necessary for the installation, renovation, repair or removal of Intelligent Transportation Systems, Video Surveillance Systems (CCTV), Street Lighting and and Traffic Signal work or systems whether underground or on bridges. Includes dusk to dawn lighting installations and ramps for access to or egress from freeways, toll-ways, etc.

Intelligent Transportation Systems shall include all systems and components to control, monitor, and communicate with pedestrian or vehicular traffic, included but not limited to: installation, modification, removal of all Fiber optic Video System, Fiber Optic Data Systems, Direct interconnect and Communications Systems, Microwave Data and Video Systems, Infrared and Sonic Detection Systems, Solar Power Systems, Highway Advisory Radio Systems, highway Weight and Motion Systems, etc.

Any and all work required to install and maintain any specialized or newly developed systems. All cutting, fitting and bandaging of ducts, raceways, and conduits. The cleaning, rodding and installation of "fish and pull wires". The excavation, setting, leveling and grouting of precast manholes, vaults, and pull boxes including ground rods or grounding systems, rock necessary for leveling and drainagae as well as pouring of a concrete envelope if needed.

JOURNEYMAN TRANSPORTATION ELECTRICIAN shall perform all tasks necessary toinstall the complete transportation system.

JOURNEYMAN TECHNICIAN duties shall consist of: Distribution of material at job site, manual excavation and backfill, installation of system conduits and raceways for electrical, telephone, cable television and communication systems. Pulling, terminating and splicing of traffic signal and street lighting conductors and electrical systems including interconnect, dector loop, fiber optic cable and video/data.

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ELEC1245-001 06/01/2015

Rates Fringes

LINE CONSTRUCTION

(1) Lineman; Cable splicer..\$ 52.85 15.53

(2) Equipment specialist

(operates crawler tractors, commercial motor vehicles, backhoes, trenchers, cranes (50 tons and below), overhead &

underground distribution

line equipment).....\$ 42.21 14.32

(3) Groundman.....\$ 32.28 14.03

(4) Powderman.....\$ 47.19 14.60

HOLIDAYS: New Year's Day, M.L. King Day, Memorial Day,  
Independence Day, Labor Day, Veterans Day, Thanksgiving Day  
and day after Thanksgiving, Christmas Day

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ELEV0018-001 01/01/2015

Rates Fringes

ELEVATOR MECHANIC.....\$ 49.90 28.38

FOOTNOTE:

PAID VACATION: Employer contributes 8% of regular hourly  
rate as vacation pay credit for employees with more than 5  
years of service, and 6% for 6 months to 5 years of service.  
PAID HOLIDAYS: New Years Day, Memorial Day, Independence Day,  
Labor Day, Veterans Day, Thanksgiving Day, Friday after  
Thanksgiving, and Christmas Day.

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ENGI0012-003 07/01/2016

Rates Fringes

OPERATOR: Power Equipment  
(All Other Work)

GROUP 1.....\$ 39.95 23.35

GROUP 2.....\$ 40.73 23.35

GROUP 3.....\$ 41.02 23.35

GROUP 4.....\$ 42.51 23.35

GROUP 5.....\$ 41.86 23.35

GROUP 6.....\$ 41.83 23.35

GROUP 8.....\$ 42.84 23.35

GROUP 9.....\$ 42.19 23.35

GROUP 10.....\$ 42.96 23.35

GROUP 11.....\$ 42.31 23.35

GROUP 12.....\$ 43.13 23.35

GROUP 13.....\$ 43.23 23.35

GROUP 14.....\$ 43.26 23.35

GROUP 15.....\$ 43.34 23.35

GROUP 16.....\$ 43.46 23.35

GROUP 17.....\$ 43.63 23.35

GROUP 18.....\$ 43.73 23.35

GROUP 19.....\$ 43.84 23.35

GROUP 20.....\$ 43.96 23.35

GROUP 21.....\$ 44.13 23.35

GROUP 22.....\$ 44.23 23.35

GROUP 23.....\$ 44.34 23.35

GROUP 24.....\$ 44.46 23.35

GROUP 25.....\$ 44.63 23.35

OPERATOR: Power Equipment  
(Cranes, Piledriving &  
Hoisting)

GROUP 1.....\$ 43.20 22.15

GROUP 2.....\$ 43.98 22.15

GROUP 3.....\$ 44.27 22.15  
 GROUP 4.....\$ 44.41 22.15  
 GROUP 5.....\$ 44.63 22.15  
 GROUP 6.....\$ 44.74 22.15  
 GROUP 7.....\$ 44.86 22.15  
 GROUP 8.....\$ 45.03 22.15  
 GROUP 9.....\$ 45.20 22.15  
 GROUP 10.....\$ 46.20 22.15  
 GROUP 11.....\$ 47.20 22.15  
 GROUP 12.....\$ 48.20 22.15  
 GROUP 13.....\$ 49.20 22.15

OPERATOR: Power Equipment  
 (Tunnel Work)

GROUP 1.....\$ 41.80 23.35  
 GROUP 2.....\$ 42.58 23.35  
 GROUP 3.....\$ 42.87 23.35  
 GROUP 4.....\$ 43.01 23.35  
 GROUP 5.....\$ 43.23 23.35  
 GROUP 6.....\$ 43.34 23.35  
 GROUP 7.....\$ 43.46 23.35

PREMIUM PAY:

\$3.75 per hour shall be paid on all Power Equipment Operator work on the following Military Bases: China Lake Naval Reserve, Vandenberg AFB, Point Arguello, Seely Naval Base, Fort Irwin, Nebo Annex Marine Base, Marine Corp Logistics Base Yermo, Edwards AFB, 29 Palms Marine Base and Camp Pendleton

Workers required to suit up and work in a hazardous material environment: \$2.00 per hour additional. Combination mixer and compressor operator on gunite work shall be classified as a concrete mobile mixer operator.

SEE ZONE DEFINITIONS AFTER CLASSIFICATIONS

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Bargeman; Brakeman; Compressor operator; Ditch Witch, with seat or similar type equipment; Elevator operator-inside; Engineer Oiler; Forklift operator (includes loed, lull or similar types under 5 tons; Generator operator; Generator, pump or compressor plant operator; Pump operator; Signalman; Switchman

GROUP 2: Asphalt-rubber plant operator (nurse tank operator); Concrete mixer operator-skip type; Conveyor operator; Fireman; Forklift operator (includes loed, lull or similar types over 5 tons; Hydrostatic pump operator; oiler crusher (asphalt or concrete plant); Petromat laydown machine; PJU side dum jack; Screening and conveyor machine operator (or similar types); Skiploader (wheel type up to 3/4 yd. without attachment); Tar pot fireman; Temporary heating plant operator; Trenching machine oiler

GROUP 3: Asphalt-rubber blend operator; Bobcat or similar type (Skid steer); Equipment greaser (rack); Ford Ferguson

(with dragtype attachments); Helicopter radioman (ground);  
Stationary pipe wrapping and cleaning machine operator

GROUP 4: Asphalt plant fireman; Backhoe operator (mini-max or similar type); Boring machine operator; Boxman or mixerman (asphalt or concrete); Chip spreading machine operator; Concrete cleaning decontamination machine operator; Concrete Pump Operator (small portable); Drilling machine operator, small auger types (Texoma super economatic or similar types - Hughes 100 or 200 or similar types - drilling depth of 30' maximum); Equipment greaser (grease truck); Guard rail post driver operator; Highline cableway signalman; Hydra-hammer-aero stomper; Micro Tunneling (above ground tunnel); Power concrete curing machine operator; Power concrete saw operator; Power-driven jumbo form setter operator; Power sweeper operator; Rock Wheel Saw/Trencher; Roller operator (compacting); Screed operator (asphalt or concrete); Trenching machine operator (up to 6 ft.); Vacuum or much truck

GROUP 5: Equipment Greaser (Grease Truck/Multi Shift).

GROUP 6: Articulating material hauler; Asphalt plant engineer; Batch plant operator; Bit sharpener; Concrete joint machine operator (canal and similar type); Concrete planer operator; Dandy digger; Deck engine operator; Derrickman (oilfield type); Drilling machine operator, bucket or auger types (Calweld 100 bucket or similar types - Watson 1000 auger or similar types - Texoma 330, 500 or 600 auger or similar types - drilling depth of 45' maximum); Drilling machine operator; Hydrographic seeder machine operator (straw, pulp or seed), Jackson track maintainer, or similar type; Kalamazoo Switch tamper, or similar type; Machine tool operator; Maginnis internal full slab vibrator, Mechanical berm, curb or gutter (concrete or asphalt); Mechanical finisher operator (concrete, Clary-Johnson-Bidwell or similar); Micro tunnel system (below ground); Pavement breaker operator (truck mounted); Road oil mixing machine operator; Roller operator (asphalt or finish), rubber-tired earth moving equipment (single engine, up to and including 25 yds. struck); Self-propelled tar pipelining machine operator; Skiploader operator (crawler and wheel type, over 3/4 yd. and up to and including 1-1/2 yds.); Slip form pump operator (power driven hydraulic lifting device for concrete forms); Tractor operator-bulldozer, tamper-scraper (single engine, up to 100 h.p. flywheel and similar types, up to and including D-5 and similar types); Tugger hoist operator (1 drum); Ultra high pressure waterjet cutting tool system operator; Vacuum blasting machine operator

GROUP 8: Asphalt or concrete spreading operator (tamping or

finishing); Asphalt paving machine operator (Barber Greene or similar type); Asphalt-rubber distribution operator; Backhoe operator (up to and including 3/4 yd.), small ford, Case or similar; Cast-in-place pipe laying machine operator; Combination mixer and compressor operator (guniting work); Compactor operator (self-propelled); Concrete mixer operator (paving); Crushing plant operator; Drill Doctor; Drilling machine operator, Bucket or auger types (Calweld 150 bucket or similar types - Watson 1500, 2000 2500 auger or similar types - Texoma 700, 800 auger or similar types - drilling depth of 60' maximum); Elevating grade operator; Grade checker; Gradall operator; Grouting machine operator; Heavy-duty repairman; Heavy equipment robotics operator; Kalamazoo balliste regulator or similar type; Kolman belt loader and similar type; Le Tourneau blob compactor or similar type; Loader operator (Athey, Euclid, Sierra and similar types); Mobark Chipper or similar; Ozzie padder or similar types; P.C. slot saw; Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pumpcrete gun operator; Rock Drill or similar types; Rotary drill operator (excluding caisson type); Rubber-tired earth-moving equipment operator (single engine, caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator (multiple engine up to and including 25 yds. struck); Rubber-tired scraper operator (self-loading paddle wheel type-John Deere, 1040 and similar single unit); Selfpropelled curb and gutter machine operator; Shuttle buggy; Skiploader operator (crawler and wheel type over 1-1/2 yds. up to and including 6-1/2 yds.); Soil remediation plant operator; Surface heaters and planer operator; Tractor compressor drill combination operator; Tractor operator (any type larger than D-5 - 100 flywheel h.p. and over, or similar-bulldozer, tamper, scraper and push tractor single engine); Tractor operator (boom attachments), Traveling pipe wrapping, cleaning and bending machine operator; Trenching machine operator (over 6 ft. depth capacity, manufacturer's rating); trenching Machine with Road Miner attachment (over 6 ft depth capacity): Ultra high pressure waterjet cutting tool system mechanic; Water pull (compaction) operator

GROUP 9: Heavy Duty Repairman

GROUP 10: Drilling machine operator, Bucket or auger types (Calweld 200 B bucket or similar types-Watson 3000 or 5000 auger or similar types-Texoma 900 auger or similar types-drilling depth of 105' maximum); Dual drum mixer, dynamic compactor LDC350 (or similar types); Monorail locomotive operator (diesel, gas or electric); Motor patrol-blade operator (single engine); Multiple engine

tractor operator (Euclid and similar type-except Quad 9 cat.); Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Pneumatic pipe ramming tool and similar types; Prestressed wrapping machine operator; Rubber-tired earth-moving equipment operator (single engine, over 50 yds. struck); Rubber tired earth moving equipment operator (multiple engine, Euclid, caterpillar and similar over 25 yds. and up to 50 yds. struck), Tower crane repairman; Tractor loader operator (crawler and wheel type over 6-1/2 yds.); Woods mixer operator (and similar Pugmill equipment)

GROUP 11: Heavy Duty Repairman - Welder Combination, Welder - Certified.

GROUP 12: Auto grader operator; Automatic slip form operator; Drilling machine operator, bucket or auger types (Calweld, auger 200 CA or similar types - Watson, auger 6000 or similar types - Hughes Super Duty, auger 200 or similar types - drilling depth of 175' maximum); Hoe or similar with compressor; Mass excavator operator less than 750 cu. yards; Mechanical finishing machine operator; Mobile form traveler operator; Motor patrol operator (multi-engine); Pipe mobile machine operator; Rubber-tired earth-moving equipment operator (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck); Rubber-tired self-loading scraper operator (paddle-wheel-auger type self-loading - two (2) or more units)

GROUP 13: Rubber-tired earth-moving equipment operator operating equipment with push-pull system (single engine, up to and including 25 yds. struck)

GROUP 14: Canal liner operator; Canal trimmer operator; Remote-control earth-moving equipment operator (operating a second piece of equipment: \$1.00 per hour additional); Wheel excavator operator (over 750 cu. yds.)

GROUP 15: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine-up to and including 25 yds. struck)

GROUP 16: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 17: Rubber-tired earth-moving equipment operator, operating equipment with push-pull system (multiple engine, Euclid, Caterpillar and similar, over 50 cu. yds. struck); Tandem tractor operator (operating crawler type tractors in tandem - Quad 9 and similar type)

GROUP 18: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, up to and including 25 yds. struck)

GROUP 19: Rotex concrete belt operator (or similar types); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 cu. yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, up to and including 25 yds. struck)

GROUP 20: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps, and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 21: Rubber-tired earth-moving equipment operator, operating in tandem (scrapers, belly dumps and similar types in any combination, excluding compaction units - multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)

GROUP 22: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, up to and including 25 yds. struck)

GROUP 23: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, Caterpillar, Euclid, Athey Wagon and similar types with any and all attachments over 25 yds. and up to and including 50 yds. struck); Rubber-tired earth-moving equipment operator, operating with the tandem push-pull system (multiple engine, up to and including 25 yds. struck)

GROUP 24: Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (single engine, over 50 yds. struck); Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar, over 25 yds. and up to 50 yds. struck)

GROUP 25: Concrete pump operator-truck mounted; Rubber-tired earth-moving equipment operator, operating equipment with the tandem push-pull system (multiple engine, Euclid, Caterpillar and similar type, over 50 cu. yds. struck)  
CRANES, PILEDIVING AND HOISTING EQUIPMENT CLASSIFICATIONS

GROUP 1: Engineer oiler; Fork lift operator (includes loed, lull or similar types)

GROUP 2: Truck crane oiler

GROUP 3: A-frame or winch truck operator; Ross carrier operator (jobsite)

GROUP 4: Bridge-type unloader and turntable operator; Helicopter hoist operator

GROUP 5: Hydraulic boom truck; Stinger crane (Austin-Western or similar type); Tugger hoist operator (1 drum)

GROUP 6: Bridge crane operator; Cretor crane operator; Hoist operator (Chicago boom and similar type); Lift mobile operator; Lift slab machine operator (Vagtborg and similar types); Material hoist and/or manlift operator; Polar gantry crane operator; Self Climbing scaffold (or similar type); Shovel, backhoe, dragline, clamshell operator (over 3/4 yd. and up to 5 cu. yds. mrc); Tugger hoist operator

GROUP 7: Pedestal crane operator; Shovel, backhoe, dragline, clamshell operator (over 5 cu. yds. mrc); Tower crane repair; Tugger hoist operator (3 drum)

GROUP 8: Crane operator (up to and including 25 ton capacity); Crawler transporter operator; Derrick barge operator (up to and including 25 ton capacity); Hoist operator, stiff legs, Guy derrick or similar type (up to and including 25 ton capacity); Shovel, backhoe, dragline, clamshell operator (over 7 cu. yds., M.R.C.)

GROUP 9: Crane operator (over 25 tons and up to and including 50 tons mrc); Derrick barge operator (over 25 tons up to and including 50 tons mrc); Highline cableway operator; Hoist operator, stiff legs, Guy derrick or similar type (over 25 tons up to and including 50 tons mrc); K-crane



operator; Polar crane operator; Self erecting tower crane operator maximum lifting capacity ten tons

GROUP 10: Crane operator (over 50 tons and up to and including 100 tons mrc); Derrick barge operator (over 50 tons up to and including 100 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 50 tons up to and including 100 tons mrc), Mobile tower crane operator (over 50 tons, up to and including 100 tons M.R.C.); Tower crane operator and tower gantry

GROUP 11: Crane operator (over 100 tons and up to and including 200 tons mrc); Derrick barge operator (over 100 tons up to and including 200 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 100 tons up to and including 200 tons mrc); Mobile tower crane operator (over 100 tons up to and including 200 tons mrc)

GROUP 12: Crane operator (over 200 tons up to and including 300 tons mrc); Derrick barge operator (over 200 tons up to and including 300 tons mrc); Hoist operator, stiff legs, Guy derrick or similar type (over 200 tons, up to and including 300 tons mrc); Mobile tower crane operator (over 200 tons, up to and including 300 tons mrc)

GROUP 13: Crane operator (over 300 tons); Derrick barge operator (over 300 tons); Helicopter pilot; Hoist operator, stiff legs, Guy derrick or similar type (over 300 tons); Mobile tower crane operator (over 300 tons)

#### TUNNEL CLASSIFICATIONS

GROUP 1: Skiploader (wheel type up to 3/4 yd. without attachment)

GROUP 2: Power-driven jumbo form setter operator

GROUP 3: Dinkey locomotive or motorperson (up to and including 10 tons)

GROUP 4: Bit sharpener; Equipment greaser (grease truck); Slip form pump operator (power-driven hydraulic lifting device for concrete forms); Tugger hoist operator (1 drum); Tunnel locomotive operator (over 10 and up to and including 30 tons)

GROUP 5: Backhoe operator (up to and including 3/4 yd.); Small Ford, Case or similar; Drill doctor; Grouting machine operator; Heading shield operator; Heavy-duty repairperson; Loader operator (Athey, Euclid, Sierra and similar types); Mucking machine operator (1/4 yd., rubber-tired, rail or track type); Pneumatic concrete placing machine operator (Hackley-Presswell or similar type); Pneumatic heading

shield (tunnel); Pumpcrete gun operator; Tractor compressor drill combination operator; Tugger hoist operator (2 drum); Tunnel locomotive operator (over 30 tons)

GROUP 6: Heavy Duty Repairman

GROUP 7: Tunnel mole boring machine operator  
ENGINEERS ZONES

\$1.00 additional per hour for all of IMPERIAL County and the portions of KERN, RIVERSIDE & SAN BERNARDINO Counties as defined below:

That area within the following Boundary: Begin in San Bernardino County, approximately 3 miles NE of the intersection of I-15 and the California State line at that point which is the NW corner of Section 1, T17N, R14E, San Bernardino Meridian. Continue W in a straight line to that point which is the SW corner of the northwest quarter of Section 6, T27S, R42E, Mt. Diablo Meridian. Continue North to the intersection with the Inyo County Boundary at that point which is the NE corner of the western half of the northern quarter of Section 6, T25S, R42E, MDM. Continue W along the Inyo and San Bernardino County boundary until the intersection with Kern County, as that point which is the SE corner of Section 34, T24S, R40E, MDM. Continue W along the Inyo and Kern County boundary until the intersection with Tulare County, at that point which is the SW corner of the SE quarter of Section 32, T24S, R37E, MDM. Continue W along the Kern and Tulare County boundary, until that point which is the NW corner of T25S, R32E, MDM. Continue S following R32E lines to the NW corner of T31S, R32E, MDM. Continue W to the NW corner of T31S, R31E, MDM. Continue S to the SW corner of T32S, R31E, MDM. Continue W to SW corner of SE quarter of Section 34, T32S, R30E, MDM. Continue S to SW corner of T11N, R17W, SBM. Continue E along south boundary of T11N, SBM to SW corner of T11N, R7W, SBM. Continue S to SW corner of T9N, R7W, SBM. Continue E along south boundary of T9N, SBM to SW corner of T9N, R1E, SBM. Continue S along west boundary of R1E, SMB to Riverside County line at the SW corner of T1S, R1E, SBM. Continue E along south boundary of T1s, SBM (Riverside County Line) to SW corner of T1S, R10E, SBM. Continue S along west boundary of R10E, SBM to Imperial County line at the SW corner of T8S, R10E, SBM. Continue W along Imperial and Riverside county line to NW corner of T9S, R9E, SBM. Continue S along the boundary between Imperial and San Diego Counties, along the west edge of R9E, SBM to the south boundary of Imperial County/California state line. Follow the California state line west to Arizona state line, then north to Nevada state line, then continuing NW back to start at the point which is the NW corner of Section 1, T17N, R14E, SBM

\$1.00 additional per hour for portions of SAN JOAQUIN, OBISPO, KERN, SANTA BARBARA & VENTURA as defined below:

That area within the following Boundary: Begin approximately 5 miles north of the community of Cholame, on the Monterey County and San Luis Obispo County boundary at the NW corner of T25S, R16E, Mt. Diablo Meridian. Continue south along the west side of R16E to the SW corner of T30S, R16E, MDM. Continue E to SW corner of T30S, R17E, MDM. Continue S to SW corner of T31S, R17E, MDM. Continue E to SW corner of T31S, R18E, MDM. Continue S along West side of R18E, MDM as it crosses into San Bernardino Meridian numbering area and becomes R30W. Follow the west side of R30W, SBM to the SW corner of T9N, R30W, SBM. Continue E along the south edge of T9N, SBM to the Santa Barbara County and Ventura County boundary at that point which is the SW corner of Section 34. T9N, R24W, SBM, continue S along the Ventura County line to that point which is the SW corner of the SE quarter of Section 32, T7N, R24W, SBM. Continue E along the south edge of T7N, SBM to the SE corner to T7N, R21W, SBM. Continue N along East side of R21W, SBM to Ventura County and Kern County boundary at the NE corner of T8N, R21W. Continue W along the Ventura County and Kern County boundary to the SE corner of T9N, R21W. Continue North along the East edge of R21W, SBM to the NE corner of T12N, R21W, SBM. Continue West along the north edge of T12N, SBM to the SE corner of T32S, R21E, MDM. [T12N SBM is a think strip between T11N SBM and T32S MDM]. Continue North along the East side of R21E, MDM to the Kings County and Kern County border at the NE corner of T25S, R21E, MDM, continue West along the Kings County and Kern County Boundary until the intersection of San Luis Obispo County. Continue west along the Kings County and San Luis Obispo County boundary until the intersection with Monterey County. Continue West along the Monterey County and San Luis Obispo County boundary to the beginning point at the NW corner of T25S, R16E, MDM.

\$2.00 additional per hour for INYO and MONO Counties and the Northern portion of SAN BERNARDINO County as defined below:  
That area within the following Boundary: Begin at the intersection of the northern boundary of Mono County and the California state line at the point which is the center of Section 17, T10N, R22E, Mt. Diablo Meridian. Continue S then SE along the entire western boundary of Mono County, until it reaches Inyo County at the point which is the NE corner of the Western half of the NW quarter of Section 2, T8S, R29E, MDM. Continue SSE along the entire western boundary of Inyo County, until the intersection with Kern County at the point which is the SW corner of the SE 1/4 of Section 32, T24S, R37E, MDM. Continue E along the Inyo and Kern County boundary until the intersection with San Bernardino County at that point which is the SE corner of section 34, T24S, R40E, MDM. Continue E along the Inyo and San Bernardino County boundary until the point which is the NE corner of the Western half of the NW quarter of Section 6, T25S, R42E, MDM. Continue S to that point which is the SW corner of the NW quarter of Section 6, T27S, R42E, MDM. Continue E in a straight line to the California and Nevada

state border at the point which is the NW corner of Section 1,  
T17N, R14E, San Bernardino Meridian. Then continue NW along  
the state line to the starting point, which is the center of  
Section 18, T10N, R22E, MDM. □□□□  
REMAINING AREA NOT DEFINED ABOVE RECIEVES BASE RATE

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ENGI0012-004 08/01/2015

Rates Fringes

OPERATOR: Power Equipment  
(DREDGING)  
(1) Leverman.....\$ 49.50 23.60  
(2) Dredge dozer.....\$ 43.53 23.60  
(3) Deckmate.....\$ 43.42 23.60  
(4) Winch operator (stern  
winch on dredge).....\$ 42.87 23.60  
(5) Fireman-Oiler,  
Deckhand, Bargeman,  
Leveehand.....\$ 42.33 23.60  
(6) Barge Mate.....\$ 42.94 23.60

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IRON0377-002 07/01/2016

Rates Fringes

Ironworkers:  
Fence Erector.....\$ 28.33 20.64  
Ornamental, Reinforcing  
and Structural.....\$ 34.75 29.20  
PREMIUM PAY:  
\$6.00 additional per hour at the following locations:  
China Lake Naval Test Station, Chocolate Mountains Naval  
Reserve-Niland,  
Edwards AFB, Fort Irwin Military Station, Fort Irwin Training  
Center-Goldstone, San Clemente Island, San Nicholas Island,  
Susanville Federal Prison, 29 Palms - Marine Corps, U.S. Marine  
Base - Barstow, U.S. Naval Air Facility - Sealey, Vandenberg AFB  
\$4.00 additional per hour at the following locations:  
Army Defense Language Institute - Monterey, Fallon Air Base,  
Naval Post Graduate School - Monterey, Yermo Marine Corps  
Logistics Center  
\$2.00 additional per hour at the following locations:  
Port Hueneme, Port Mugu, U.S. Coast Guard Station - Two Rock

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LAB00300-005 01/01/2016

Rates Fringes

Asbestos Removal Laborer.....\$ 30.43 16.07  
SCOPE OF WORK: Includes site mobilization, initial site  
cleanup, site preparation, removal of asbest□□s□□-□containing  
material and toxic waste, encapsulation, enclosure and  
disposal of asbestos- containing materials and toxic waste  
by hand or with equipment or machinery; scaffolding,  
fabrication of temporary wooden barriers and assembly of  
decontamination stations.

LABO0345-001 07/03/2016

Rates Fringes

LABORER (GUNITE)

GROUP 1.....	\$ 37.89	20.50
GROUP 2.....	\$ 36.94	20.50
GROUP 3.....	\$ 33.40	20.50

FOOTNOTE: GUNITE PREMIUM PAY: Workers working from a Bosn'n's Chair or suspended from a rope or cable shall receive 40 cents per hour above the foregoing applicable classification rates. Workers doing gunite and/or shotcrete work in a tunnel shall receive 35 cents per hour above the foregoing applicable classification rates, paid on a portal-to-portal basis. Any work performed on, in or above any smoke stack, silo, storage elevator or similar type of structure, when such structure is in excess of 75'-0" above base level and which work must be performed in whole or in part more than 75'-0" above base level, that work performed above the 75'-0" level shall be compensated for at 35 cents per hour above the applicable classification wage rate.

GUNITE LABORER CLASSIFICATIONS

- GROUP 1: Rodmen, Nozzlemen
- GROUP 2: Gunmen
- GROUP 3: Reboundmen

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LABO0652-001 07/04/2016

Rates Fringes

LABORER (TUNNEL)

GROUP 1.....	\$ 38.09	19.07
GROUP 2.....	\$ 38.41	19.07
GROUP 3.....	\$ 38.87	19.07
GROUP 4.....	\$ 39.56	19.07

LABORER

GROUP 1.....	\$ 32.34	19.07
GROUP 2.....	\$ 32.89	19.07
GROUP 3.....	\$ 33.44	19.07
GROUP 4.....	\$ 34.99	19.07
GROUP 5.....	\$ 35.34	19.07

LABORER CLASSIFICATIONS

GROUP 1: Cleaning and handling of panel forms; Concrete screeding for rough strike-off; Concrete, water curing; Demolition laborer, the cleaning of brick if performed by a worker performing any other phase of demolition work, and the cleaning of lumber; Fire watcher, limber, brush loader, piler and debris handler; Flag person; Gas, oil and/or water pipeline laborer; Laborer, asphalt-rubber material loader; Laborer, general or construction; Laborer, general clean-up; Laborer, landscaping; Laborer, jetting; Laborer, temporary water and air lines; Material hose operator (walls, slabs, floors and decks); Plugging, filling of shee

bolt holes; Dry packing of concrete; Railroad maintenance, repair track person and road beds; Streetcar and railroad construction track laborers; Rigging and signaling; Scaler; Slip form raiser; Tar and mortar; Tool crib or tool house laborer; Traffic control by any method; Window cleaner; Wire mesh pulling - all concrete pouring operations

GROUP 2: Asphalt shoveler; Cement dumper (on 1 yd. or larger mixer and handling bulk cement); Cesspool digger and installer; Chucktender; Chute handler, pouring concrete, the handling of the chute from readymix trucks, such as walls, slabs, decks, floors, foundation, footings, curbs, gutters and sidewalks; Concrete curer, impervious membrane and form oiler; Cutting torch operator (demolition); Fine grader, highways and street paving, airport, runways and similar type heavy construction; Gas, oil and/or water pipeline wrapper - pot tender and form person; Guinea chaser; Headerboard person - asphalt; Laborer, packing rod steel and pans; Membrane vapor barrier installer; Power broom sweeper (small); Riprap stonepaver, placing stone or wet sacked concrete; Roto scraper and tiller; Sandblaster (pot tender); Septic tank digger and installer(lead); Tank scaler and cleaner; Tree climber, faller, chain saw operator, Pittsburgh chipper and similar type brush shredder; Underground laborer, including caisson bellower

GROUP 3: Buggymobile person; Concrete cutting torch; Concrete pile cutter; Driller, jackhammer, 2-1/2 ft. drill steel or longer; Dri-pak-it machine; Gas, oil and/or water pipeline wrapper, 6-in. pipe and over, by any method, inside and out; High scaler (including drilling of same); Hydro seeder and similar type; Impact wrench multi-plate; Kettle person, pot person and workers applying asphalt, lay-kold, creosote, lime caustic and similar type materials ("applying" means applying, dipping, brushing or handling of such materials for pipe wrapping and waterproofing); Operator of pneumatic, gas, electric tools, vibrating machine, pavement breaker, air blasting, come-alongs, and similar mechanical tools not separately classified herein; Pipelayer's backup person, coating, grouting, making of joints, sealing, caulking, diapering and including rubber gasket joints, pointing and any and all other services; Rock slinger; Rotary scarifier or multiple head concrete chipping scarifier; Steel headerboard and guideline setter; Tamper, Barko, Wacker and similar type; Trenching machine, hand-propelled

GROUP 4: Asphalt raker, lute person, ironer, asphalt dump person, and asphalt spreader boxes (all types); Concrete core cutter (walls, floors or ceilings), grinder or sander; Concrete saw person, cutting walls or flat work, scoring old or new concrete; Cribber, shorer, lagging, sheeting and

trench bracing, hand-guided lagging hammer; Hand and rock slinger; Laborer, asphalt- rubber distributor boot person; Laser beam in connection with laborers' work; Oversize concrete vibrator operator, 70 lbs. and over; Pipelayer performing all services in the laying and installation of pipe from the point of receiving pipe in the ditch until completion of operation, including any and all forms of tubular material, whether pipe, metallic or non-metallic, conduit and any other stationary type of tubular device used for the conveying of any substance or element, whether water, sewage, solid gas, air, or other product whatsoever and without regard to the nature of material from which the tubular material is fabricated; No-joint pipe and stripping of same; Prefabricated manhole installer; Sandblaster (nozzle person), water blasting, Porta Shot-Blast

GROUP 5: Blaster powder, all work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Driller: All power drills, excluding jackhammer, whether core, diamond, wagon, track, multiple unit, and any and all other types of mechanical drills without regard to the form of motive power; Toxic waste removal

TUNNEL LABORER CLASSIFICATIONS

GROUP 1: Batch plant laborer; Changehouse person; Dump person; Dump person (outside); Swamper (brake person and switch person on tunnel work); Tunnel materials handling person; Nipper; Pot tender, using mastic or other materials (for example, but not by way of limitation, shotcrete, etc.)

GROUP 2: Chucktender, cabetender; Loading and unloading agitator cars; Vibrator person, jack hammer, pneumatic tools (except driller); Bull gang mucker, track person; Concrete crew, including rodder and spreader

GROUP 3: Blaster, driller, powder person; Chemical grout jet person; Cherry picker person; Grout gun person; Grout mixer person; Grout pump person; Jackleg miner; Jumbo person; Kemper and other pneumatic concrete placer operator; Miner, tunnel (hand or machine); Nozzle person; Operating of troweling and/or grouting machines; Powder person (primer house); Primer person; Sandblaster; Shotcrete person; Steel form raiser and setter; Timber person, retimber person, wood or steel; Tunnel Concrete finisher

GROUP 4: Diamond driller; Sandblaster; Shaft and raise work

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LAB00652-003 07/01/2016

Rates Fringes

Brick Tender.....\$ 30.52 18.56

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LAB01184-001 07/04/2016

Rates Fringes

Laborers: (HORIZONTAL  
DIRECTIONAL DRILLING)

(1) Drilling Crew Laborer...	\$ 33.65	13.95
(2) Vehicle Operator/Hauler.	\$ 33.82	13.95
(3) Horizontal Directional Drill Operator.....	\$ 35.67	13.95
(4) Electronic Tracking Locator.....	\$ 37.67	13.95

Laborers: (STRIPING/SLURRY  
SEAL)

GROUP 1.....	\$ 34.86	17.03
GROUP 2.....	\$ 36.16	17.03
GROUP 3.....	\$ 38.17	17.03
GROUP 4.....	\$ 39.91	17.03

LABORERS - STRIPING CLASSIFICATIONS

GROUP 1: Protective coating, pavement sealing, including repair and filling of cracks by any method on any surface in parking lots, game courts and playgrounds; carstops; operation of all related machinery and equipment; equipment repair technician

GROUP 2: Traffic surface abrasive blaster; pot tender - removal of all traffic lines and markings by any method (sandblasting, waterblasting, grinding, etc.) and preparation of surface for coatings. Traffic control person: controlling and directing traffic through both conventional and moving lane closures; operation of all related machinery and equipment

GROUP 3: Traffic delineating device applicator: Layout and application of pavement markers, delineating signs, rumble and traffic bars, adhesives, guide markers, other traffic delineating devices including traffic control. This category includes all traffic related surface preparation (sandblasting, waterblasting, grinding) as part of the application process. Traffic protective delineating system installer: removes, relocates, installs, permanently affixed roadside and parking delineation barricades, fencing, cable anchor, guard rail, reference signs, monument markers; operation of all related machinery and equipment; power broom sweeper

GROUP 4: Striper: layout and application of traffic stripes and markings; hot thermo plastic; tape traffic stripes and markings, including traffic control; operation of all related machinery and equipment



LAB01414-001 08/03/2016

Rates Fringes

LABORER

PLASTER CLEAN-UP LABORER....\$ 31.60 19.28

PLASTER TENDER.....\$ 34.15 19.28

Work on a swing stage scaffold: \$1.00 per hour additional.

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PAIN0036-001 07/01/2015

Rates Fringes

Painters: (Including Lead  
Abatement)

(1) Repaint (excludes San  
Diego County).....\$ 27.29 12.83

(2) All Other Work.....\$ 30.72 12.83

REPAINT of any previously painted structure. Exceptions:  
work involving the aerospace industry, breweries,  
commercial recreational facilities, hotels which operate  
commercial establishments as part of hotel service, and  
sports facilities.

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PAIN0036-008 10/01/2015

Rates Fringes

DRYWALL FINISHER/TAPER.....\$ 36.18 16.82

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PAIN0036-015 06/01/2016

Rates Fringes

GLAZIER.....\$ 41.70 21.13

FOOTNOTE: Additional \$1.25 per hour for work in a condor,  
from the third (3rd) floor and up Additional \$1.25 per  
hour for work on the outside of the building from a swing  
stage or any suspended contrivance, from the ground up

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PAIN1247-002 05/01/2016

Rates Fringes

SOFT FLOOR LAYER.....\$ 31.10 14.06

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PLAS0200-009 08/05/2015

Rates Fringes

PLASTERER.....\$ 38.44 13.77

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PLAS0500-002 07/01/2016

Rates Fringes

CEMENT MASON/CONCRETE FINISHER...\$ 33.30 23.33

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PLUM0016-001 07/01/2016

Rates Fringes

PLUMBER/PIPEFITTER

Plumber and Pipefitter

All other work except  
work on new additions and  
remodeling of bars,  
restaurant, stores and

commercial buildings not  
to exceed 5,000 sq. ft.  
of floor space and work  
on strip malls, light  
commercial, tenant  
improvement and remodel  
work.....\$ 47.19 21.41

Work ONLY on new additions  
and remodeling of bars,  
restaurant, stores and  
commercial buildings not  
to exceed 5,000 sq. ft. of  
floor space.....\$ 45.73 20.43

Work ONLY on strip malls,  
light commercial, tenant  
improvement and remodel  
work.....\$ 35.69 18.76

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PLUM0345-001 07/01/2014

Rates Fringes

PLUMBER  
Landscape/Irrigation Fitter.\$ 29.27 19.75  
Sewer & Storm Drain Work....\$ 33.24 17.13

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ROOF0036-002 08/01/2015

Rates Fringes

ROOFER.....\$ 35.07 14.40  
FOOTNOTE: Pitch premium: Work on which employees are exposed  
to pitch fumes or required to handle pitch, pitch base or  
pitch impregnated products, or any material containing coal  
tar pitch, the entire roofing crew shall receive \$1.75 per  
hour "pitch premium" pay.

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SFCA0669-008 04/01/2016

DOES NOT INCLUDE SAN CLEMENTE ISLAND, THE CITY OF SANTA ANA,  
AND THAT PART OF ORANGE COUNTY WITHIN 25 MILES OF THE CITY  
LIMITS OF LOS ANGELES:

Rates Fringes

SPRINKLER FITTER.....\$ 37.32 20.27

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SFCA0709-003 07/01/2015

SAN CLEMENTE ISLAND, THE CITY OF SANTA ANA, AND THAT PART OF  
ORANGE COUNTY WITHIN 25 MILES BEYOND THE CITY LIMITS OF LOS  
ANGELES:

Rates Fringes

SPRINKLER FITTER (Fire).....\$ 42.93 24.04

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SHEE0105-003 07/01/2016

LOS ANGELES (South of a straight line drawn between Gorman and  
Big Pines)and Catalina Island, INYO, KERN (Northeast part, East  
of Hwy 395), MONO ORANGE, RIVERSIDE, AND SAN BERNARDINO COUNTIES

Rates Fringes

SHEET METAL WORKER  
 (1) Commercial - New  
 Construction and Remodel  
 work.....\$ 41.86 26.88  
 (2) Industrial work  
 including air pollution  
 control systems, noise  
 abatement, hand rails,  
 guard rails, excluding  
 aritechtrual sheet metal  
 work, excluding A-C,  
 heating, ventilating  
 systems for human comfort...\$ 41.86 26.88

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TEAM0011-002 08/01/2016

Rates Fringes

TRUCK DRIVER

GROUP 1.....\$ 29.09 26.39  
 GROUP 2.....\$ 29.24 26.39  
 GROUP 3.....\$ 29.37 26.39  
 GROUP 4.....\$ 29.56 26.39  
 GROUP 5.....\$ 29.59 26.39  
 GROUP 6.....\$ 29.62 26.39  
 GROUP 7.....\$ 29.87 26.39  
 GROUP 8.....\$ 30.12 26.39  
 GROUP 9.....\$ 30.32 26.39  
 GROUP 10.....\$ 30.62 26.39  
 GROUP 11.....\$ 31.12 26.39  
 GROUP 12.....\$ 31.55 26.39

WORK ON ALL MILITARY BASES:

PREMIUM PAY: \$3.00 per hour additional.

[29 palms Marine Base, Camp Roberts, China Lake, Edwards AFB,  
 El Centro Naval Facility, Fort Irwin, Marine Corps  
 Logistics Base at Nebo & Yermo, Mountain Warfare Training  
 Center, Bridgeport, Point Arguello, Point Conception,  
 Vandenberg AFB]

TRUCK DRIVERS CLASSIFICATIONS

GROUP 1: Truck driver  
 GROUP 2: Driver of vehicle or combination of vehicles - 2  
 axles; Traffic control pilot car excluding moving heavy  
 equipment permit load; Truck mounted broom  
 GROUP 3: Driver of vehicle or combination of vehicles - 3  
 axles; Boot person; Cement mason distribution truck; Fuel  
 truck driver; Water truck - 2 axle; Dump truck less than  
 16 yds. water level; Erosion control driver  
 GROUP 4: Driver of transit mix truck, under 3 yds.; Dumpcrete  
 truck, less than 6-1/2 yds. water level  
 GROUP 5: Water truck, 3 or more axles; Truck greaser and tire  
 person (\$0.50 additional for tire person); Pipeline and  
 utility working truck driver, including winch truck and  
 plastic fusion, limited to pipeline and utility work;

Slurry truck driver

GROUP 6: Transit mix truck, 3 yds. or more; Dumpcrete truck, 6-1/2 yds. water level and over; Vehicle or combination of vehicles - 4 or more axles; Oil spreader truck; Dump truck, 16 yds. to 25 yds. water level

GROUP 7: A Frame, Swedish crane or similar; Forklift driver; Ross carrier driver

GROUP 8: Dump truck, 25 yds. to 49 yds. water level; Truck repair person; Water pull - single engine; Welder

GROUP 9: Truck repair person/welder; Low bed driver, 9 axles or over

GROUP 10: Dump truck - 50 yds. or more water level; Water pull - single engine with attachment

GROUP 11: Water pull - twin engine; Water pull - twin engine with attachments; Winch truck driver - \$1.25 additional when operating winch or similar special attachments

GROUP 12: Boom Truck 17K and above

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year.

Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier. Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier. A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

#### ----- WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

\* an existing published wage determination

- \* a survey underlying a wage determination
  - \* a Wage and Hour Division letter setting forth a position on a wage determination matter
  - \* a conformance (additional classification and rate) ruling
- On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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**END OF GENERAL DECISION\_\_**

## Caltrans Required Provisions

Notwithstanding any other provisions in the Contract documents, the following shall take precedence:

### **Contractor's Assurance Clause Regarding Non-Discrimination (EEO)**

Contractor shall ensure that the following clause is placed in every Subcontract agreement:

The Contractor, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.

### **I. PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES (DBE)**

The COUNTY receives Federal Highway Administration (FHWA) federal-aid from the California Department of Transportation (Caltrans) and as a condition of receiving such assistance, the COUNTY has developed a Disadvantaged Business Enterprise (DBE) Program, in accordance with federal regulations published under Title 49 CFR, Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs," Caltrans Local Assistance Procedures Manual (LAPM) and subsequent Guidance in conformance with Title 49 CFR Part 26,

This DOT-assisted project is subject to these stipulated regulations and the COUNTY's DBE Program, which are hereby incorporated in their entirety by this reference. In order to ensure that the COUNTY achieves its overall DBE Program goals and objectives, the COUNTY encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with U.S. DOT funds.

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of federal law. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the COUNTY deems appropriate.

*Any terms used in this section that are defined in 49 CFR Part 26, or elsewhere in the Regulations, must have the meaning set forth in the Regulations. In the event of any conflicts or inconsistencies between the Regulations and the COUNTY's DBE Program with respect to DOT-assisted contracts, the Regulations must prevail.*

#### **A. DBE Goal**

The COUNTY has developed a 9% Disadvantaged Business Enterprise (DBE) goal for this contract in accordance with federal regulations published under Title 49 CFR, Part 26, Caltrans Local Assistance Procedures Manual (LAPM) and subsequent Guidance.

The COUNTY established a 9% DBE contract-specific goal on this project and the Contractor has committed to 9% DBE participation. The Contractor is required to demonstrate DBE responsiveness towards meeting the 9% DBE contract-specific goal on this project and their original DBE commitments.

#### **B. DBE CERTIFICATION AND ELIGIBILITY**

1. The COUNTY requires all DBEs listed for participation to be DBE certified by a California Unified Certification Program (CUCP) certifying member agency. The COUNTY is a non-certifying member agency of the CUCP. Therefore, the COUNTY will accept DBE certifications from member agencies which certify the eligibility of DBEs in accordance with 49 CFR Part 26.81, under the CUCP. Listings of DBEs certified by the CUCP are available at [www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm).
2. It is the responsibility of the Contractor to verify the DBE certification status of all listed DBEs prior to listing the firm as a DBE participant.
3. It is also the responsibility of the Contractor to ensure that each DBE is certified in the NAICS code that corresponds to the DBE's contract scope of work. The COUNTY's evaluation of the "Disadvantaged Business Enterprise (DBE) Participation Listing" form requires DBEs to be certified for the scope listed in accordance with the regulatory requirements.
4. A DBE may participate as a prime Contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of material or supplies, or trucking company.
5. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.



6. A DBE must perform a commercially useful function in accordance with 49 CFR 26.55.
7. A DBE performs a commercially useful function when it is responsible for execution of work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.
8. A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce to presume that it is performing a commercially useful function.
9. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

#### **C. DBE “FRAUDS” AND “FRONTS”**

Only legitimate DBEs are eligible to participate in federally funded contracts. Therefore, Contractor are cautioned against knowingly and willfully using “fronts” to meet DBE goals. The use of “fronts” and “pass through” subcontracts to non-disadvantaged firms constitutes criminal violations. Further, any indication of fraud, waste, abuse, or mismanagement of Federal funds should be immediately reported to the Office of Inspector General (OIG), U.S. Department of Transportation, via the online hotline at <https://www.oig.dot.gov/dot-oig-hotline-complaint-form>, toll-free hotline at 800-424-9071, email at [hotline@oig.dot.gov](mailto:hotline@oig.dot.gov), online complaint form at <https://www.oig.dot.gov/dot-oig-hotline-complaint-form> or U.S. mail at DOT Inspector General, 1200 New Jersey Ave SE, West Bldg. 7<sup>th</sup> Floor, Washington, DC 20590. The hotline is open 24 hours per day, seven days per week. Additional information can be found on [www.oig.dot.gov/hotline](http://www.oig.dot.gov/hotline).

#### **D. Submission of DBE Information and On-going Reporting Requirements (Post-Award)**

If there is a DBE goal on the contract or a DBE firm has been listed by the Contractor, the Contractor must complete and submit the following DBE forms and/or documentation:

1. “Monthly DBE Subcontractor Commitment and Attainment Report/Payment Verification Summary” (Form 103)

If the Contractor is a DBE and/or has proposed to utilize DBEs, the Contractor will be required to complete and submit Form 103 to the COUNTY by the 15th of each month until completion of the Contract, following the first month of contract activity. Upon completion of the contract, the Contractor must clearly mark the last Form 103 submission “Final” to facilitate reporting and capturing actual DBE attainments. Failure to submit these reports in a timely manner shall result in a

penalty of \$10 per day, per report. Failure to submit required reports may also result in additional administrative sanctions pursuant to the COUNTY's DBE Policy and 49 CFR Part 26.

The purpose of this form is to ensure Contractor DBE commitments are attained, properly reported and credited in accordance with DBE crediting provisions based on the capacity the DBE performs the scope of work. This form further serves to collect DBE utilization data required under 49 CFR Part 26.

The COUNTY Form 103 Report must include the following information:

- a. General Contract Information – Including Contract Number and Name, Prime Contractor and the following:
    - i. Original Contract Amount
    - ii. Running Total of Change Order Amount
    - iii. Current Contract Amount
    - iv. Amount Paid to Contractor during Month
    - v. Amount Paid to Contractor from Inception to Date
    - vi. Date of last progress payment
    - vii. DBE Contract Goal
    - viii. Total Dollar Amount of DBE Commitment
    - ix. DBE Commitment as Percentage of Prime Current Contract Amount
  - b. Listed and/Proposed Contractor/Subcontractor Information – For All DBE participation being claimed either Race Neutrally or Race Consciously, regardless of tier:
    - i. DBE Firm Name, Address, Phone Number, DBE Type of Operation, Certification, and Type and Certification Number.
    - ii. DBE Firm Contract Value Information:
    - iii. Original contract amount, running total of change order amount, Current contract amount, Amount paid to Contractor during month and Amount paid to Contractor to date.
2. Contractor signature under penalty of perjury that it has complied with all requirements of 49 CFR, Part 26 and prompt payment requirements of the California Public Contract Code.

Contractor to sign the prompt payment assurance statement of compliance contained within the Form 103. Contractor is to further maintain and submit a detailed running tally of related invoices submitted by DBE(s) and Non DBE(s), including dates of invoice submission, dates accepted and corresponding dates

and amount of payments made on the Payment Verification Form. The Payment and Retention Reporting tally must also include:

DBE(s) and Non DBE(s) Invoice Number, Invoice Amount, Invoice Date, Prime Contractor's Invoice Number that incorporated the corresponding DBE and Non DBE invoice(s) for billing purposes, Date of Invoice submission to COUNTY, date and amount COUNTY paid on Prime Contractor's Invoice. The report must also reflect a breakout of retention withheld (including retention as specified in subcontract agreement(s) and disputed invoice retention) and retention payments made, check number and date paid to DBE and Non DBE.

Contractor is advised not to report the participation of DBE(s) toward the Contractor's DBE attainment until the amount being claimed has been paid to the DBE. Verification of payments and/or a signed Verification of Payment by the applicable DBE or Non DBE must be submitted with Form 103 to authenticate reported payments.

3. DBE Subcontract Agreements

The Contractor must submit to the COUNTY copies of executed subcontracts and/or purchase orders (PO) for all DBE firms participating on the contract within ten working days of award. The Contractor must immediately notify the COUNTY in writing of any problems it may have in obtaining the subcontract agreements from listed DBE firms within the specified time.

4. "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First Tier Subcontractors"

Upon completion of the contract, a summary of these records must be prepared on the: "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First Tier Subcontractors" and certified correct by the Contractor or the Contractor's authorized representative, and must be furnished to the Engineer. The form must be furnished to the COUNTY within 90 days from the date of contract acceptance. The amount of \$10,000 will be withheld from payment until a satisfactory form is submitted.

5. "Disadvantaged Business Enterprises (DBE) Certification Status Change"

If a DBE Subcontractor is decertified during the life of the project, the decertified Subcontractor must notify the Contractor in writing with the date of decertification. If a Subcontractor becomes a certified DBE during the life of the project, the Subcontractor must notify the Contractor in writing with the date of certification (Attach DBE certification/Decertification letter). The Contractor must furnish the written documentation to the COUNTY.

Upon completion of the contract, the "Disadvantaged Business Enterprises (DBE) Certification Status Change" must be signed and certified correct by the

Contractor indicating the DBEs' existing certification status. If there are no changes, please indicate "No Changes". The certified form must be furnished to the COUNTY within 90 days from the date of contract acceptance.

#### **E. DBE Crediting Provisions**

Credit for DBE participation is determined according to the following provisions:

- When a DBE is proposed to participate in the Contract, either as a prime Contractor or subcontractor, only the value of the work proposed to be performed by the DBE with its own forces may be counted toward DBE participation.
- If the Contractor is a DBE joint venture participant, only the DBE proportionate interest in the joint venture shall be counted.
- If a DBE intends to subcontract part of the work of its subcontract to a lower tier subcontractor, the value of the subcontracted work may be counted toward DBE participation only if the DBE subcontractor is a certified DBE and actually performs the work with its own forces. Services subcontracted to a non-DBE firm may not be credited toward the prime Contractor's DBE attainment.
- Contractor is to calculate and credit participation by eligible DBE vendors of equipment, materials, and suppliers toward DBE attainment, as follows:
  1. Sixty percent (60%) of expenditure(s) for equipment, materials, and supplies required under the Contract, obtained from a regular dealer; or
  2. One hundred percent (100%) of expenditure(s) for equipment, materials, and supplies required under the Contract, obtained from a DBE manufacturer.
- The following types of fees or commissions paid to DBE subcontractors, brokers, and packagers may be credited toward DBE attainment, provided that the fee or commission is reasonable, and not excessive, as compared with fees or commissions customarily allowed for similar work, including:
  1. Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of the Contract;
  2. Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies;
  3. Fees and commissions charged for providing any insurance specifically required in the performance of the Contract.

- Contractor may count the participation of DBE trucking companies toward DBE attainment, as follows:
  1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Contract.
  2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Contract.
  3. The DBE receives credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.
  4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.
  5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
  6. For purposes of this paragraph, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
- If the Contractor listed a non-certified DBE 1st tier subcontractor to perform work on this Contract, and the non-certified DBE subcontractor subcontracts a part of its work or purchases materials and/or supplies from a lower-tier DBE certified subcontractor or Vendor, the value of work performed by the lower-tier DBE firm's own forces can be counted toward DBE participation on the Contract.
- The Contractor is advised not to count the participation of DBEs toward the Contractor's DBE attainment until the amount being counted has been paid to the DBE.

**F. Performance of DBE Subcontractors**

The following requirements govern the performance of DBE subcontractors:

- DBEs listed by the Contractor in its "DBE Participation Listing" Form submitted with the executed Contract documents shall perform the work and supply the materials for which they are listed, unless the Contractor has received prior written authorization from the

COUNTY to perform the work with other forces or to obtain the materials from other sources.

- Contractor shall provide written notification to the COUNTY in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

#### **G. DBE Addition/Substitution/Termination Form**

In the event that the Contractor identifies additional DBE subcontractors or suppliers not previously identified for DBE participation under the Contract, Contractor shall notify the COUNTY by completing and submitting a **“DBE Addition/Substitution/ Termination” form** to enable Contractor to capture all DBE participation. Contractor shall also submit, for each DBE identified after Contract execution, a written confirmation from the DBE acknowledging that it is participating in the Contract for a specified value, including the corresponding scope of work (a subcontract agreement can serve in lieu of the written confirmation).

Contractor shall be required to comply with 49 CFR § 26.53 regarding DBE subcontractor terminations, including the following:

- A Contractor shall not terminate a listed DBE subcontractor without the COUNTY’s prior written consent.
- Prior to the termination request, the prime Contractor must notify the DBE, in writing, of the intent to terminate, allowing for five days of response time in opposition of the rejection.
- A Contractor may only terminate a DBE subcontractor for “good cause,” as defined in 49 CFR § 26.53.
- Good cause does NOT exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Contractor (e.g., failure of the Contractor to make timely payments or the unnecessary placing of obstacles in the path of the DBE’s work). Good cause also does NOT exist if the Contractor seeks to terminate a DBE so that it can self-perform the work of the terminated DBE.
- In the event that the Contractor needs to substitute or terminate a DBE firm and if the substitution/termination request meets the definition of “good cause,” the Contractor shall notify the COUNTY by completing and submitting a **“DBE Addition/Substitution/Termination Request” form** for the COUNTY’s written approval prior to actualizing any changes.
- The Contractor must make a Good Faith Effort (GFE) to replace the terminated DBE with another DBE. The Contractor’s GFE shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was

terminated, to the extent needed to meet the established DBE contract goal and/or the Contractor's DBE participation commitment approved by the COUNTY prior to award of the Contract.

- Failure by the Contractor to adhere to these requirements may constitute a material breach of contract, which may result in the termination of the contract or such other remedy as the COUNTY deems appropriate.

#### **H. Non-Compliance and Administrative Sanctions**

A Contractor determined to be non-compliant with DBE Program requirements may be subject to administrative sanctions as outlined below:

- A non-compliant Contractor may be notified by the DBELO or designee, that administrative remedies shall be imposed for failure to: (a) meet the Contractor's DBE commitment by contract end, (b) submit documentation of Good Faith Efforts, (c) submit required DBE utilization reports, (d) submit verification of prompt payment to DBE subcontractors, and/or (e) comply with proper DBE termination procedures. The notice shall state the specific administrative remedies to be imposed.
- The Contractor shall be given ten (10) working days from the date of the notice to file a written appeal to the COUNTY's Executive Director. Failure to respond within the ten (10) day period shall constitute a waiver of appeal.
- The Executive Director or his designee may schedule a hearing to gather additional facts and evidence, and shall issue a final written determination on the matter within thirty (30) working days following receipt of the written appeal. The written decision of the Executive Director or designee is final and there is no further appeal.
- Administrative remedies shall be determined by the DBELO and/or designee and may include, but will not be limited to:
  1. Suspension of progress payments to the Contractor or of any monies held by the COUNTY as retention on the contract until the Contractor is brought into compliance; and/or
  2. Termination of the contract in part or in whole.

#### **I. Contractor's Assurance Clause Regarding Non-Discrimination**

Contractor shall ensure that the following clause is placed in every Subcontract agreement:

"The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of federal law. Failure by the Contractor to carry out these requirements is a

material breach of this Contract, which may result in the termination of this Contract or such other remedy as the COUNTY deems appropriate.”



**SCHEDULE OF WORK ITEMS**

CONTRACTOR shall place lump sum prices in the "Unit Price" column and the "Item Total" column.

<b>SCHEDULE OF WORK ITEMS</b>					
<b>Item</b>	<b>Description</b>	<b>Unit</b>	<b>Quantity</b>	<b>Unit Price</b> <i>(in figures)</i>	<b>Item Total</b> <i>(in figures)</i>
1	DISPUTE RESOLUTION BOARD	LS	1	\$30,000	\$30,000
2	TIME-RELATED OVERHEAD	DAY	400	\$1,500	\$600,000
3	PARTNERING	LS	1	\$40,000	\$40,000
4	PROGRESS SCHEDULE (CRITICAL PATH METHOD)	LS	1	\$25,000	\$25,000
5	STORM WATER POLLUTION PREVENTION PLAN	LS	1	\$45,000	\$45,000
6	SECTION D PERMIT REQUIREMENT	LS	1	\$10,000	\$10,000
7	TEMPORARY TRAFFIC MAINTENANCE	LS	1	\$250,000	\$250,000
8	MOBILIZATION	LS	1	\$400,000	\$400,000
9	CLASS A FIELD OFFICE	MO	22	\$1,750	\$38,500
10	CLEARING AND GRUBBING	LS	1	\$50,000	\$50,000
11	REMOVE ASPHALT CONCRETE PAVEMENT	CY	300	\$75	\$22,500
12	LANDSCAPE MODIFICATIONS AND PRESERVATION	LS	1	\$24,000	\$24,000
13	ADJUST WATER VALVE BOX TO GRADE	EA	3	\$450	\$1,350
14	ADJUST SEWER CLEANOUT TO GRADE	EA	1	\$1,100	\$1,100
15	ADJUST PULL BOX TO GRADE	EA	1	\$500	\$500
16	ADJUST FIRE HYDRANT TO GRADE	EA	1	\$1,500	\$1,500
17	UNCLASSIFIED EXCAVATION	CY	400	\$40	\$16,000

18	IMPORTED BORROW	CY	2,200	\$35	\$77,000
19	ASPHALT CONCRETE	TON	161	\$135	\$21,735
20	ASPHALT CONCRETE: WARM MIX ASPHALT	TON	358	\$135	\$48,330
21	ASPHALT CONCRETE: ASPHALT RUBBER HOT-MIX (ARHM)	TON	370	\$150	\$55,500
22	COLD MILL ASPHALT CONCRETE PAVEMENT	SQYD	356	\$17	\$6,052
23	INLET STRUCTURE TYPE I	EA	1	\$7,500	\$7,500
24	18" CONCRETE FLARED END SECTION	EA	1	\$3,500	\$3,500
25	MISCELLANEOUS CONCRETE (SIDEWALK)	SQFT	1,900	\$15	\$28,500
26	MISCELLANEOUS CONCRETE (CONSTRUCT 6" CURB & GUTTER)	LF	320	\$60	\$19,200
27	MISCELLANEOUS CONCRETE (CONSTRUCT 6" CURB)	LF	100	\$45	\$4,500
28	MISCELLANEOUS CONCRETE (CONSTRUCT 8" CURB & GUTTER)	LF	300	\$70	\$21,000
29	MISCELLANEOUS CONCRETE (CONSTRUCT 8" CURB)	LF	170	\$50	\$8,500
30	MISCELLANEOUS CONCRETE (DEPRESSED CURB DRIVEWAY ENTRANCE)	EA	3	\$4,000	\$12,000
31	MISCELLANEOUS CONCRETE (DRIVEWAY APPROACH)	SQFT	200	\$30	\$6,000
32	MISCELLANEOUS CONCRETE (CROSS GUTTER)	SQFT	600	\$25	\$15,000
33	MISCELLANEOUS CONCRETE (CURB RAMP)	SQFT	160	\$25	\$4,000
34	CHAIN LINK FENCE	LF	150	\$50	\$7,500
35	CHAIN LINK GATE	EA	2	\$3,000	\$6,000
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37	REMOVE TRAFFIC STRIPING AND PAVEMENT MARKINGS	SQFT	2,960	\$3	\$8,880

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	WALL)				
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87	ROCK SLOPE PROTECTION FABRIC (CLASS 8)	SQFT	17,850	\$2.50	\$44,625
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95	BAT HABITAT	EA	12	\$800	\$9,600
			<b>TOTAL BID AMOUNT:</b>		14,430,599

**Abbreviations:**

(A) Additive Bid Item

CF = Cubic Foot

LF = Linear Foot

(D)	Deletable Bid Item	CY = Cubic Yard	LS = Lump Sum
(F)	Final Quantity Bid Item	DAY = Working Day	MO = Month
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(P)	Partial Payment Bid Item	GAL = Gallon	SF = Square Foot
(S)	Specialty Bid Item	LB = Pound	SY = Square Yard
			T&M = Time & Materials

**(A) Additive Bid Item** – shall be bid items that for bidding purposes are not considered part of the base bid but shall be added or subtracted from the total contract amount (based upon the bidder’s proposed bid amounts and the Agency’s available funding for the project) prior to award of the project per Section 20103.8 of the Public Contract Code.

**(D) Deletable Bid Item** – shall be bid items that are considered part of the bidder’s base bid but are items of work that may or may not be deleted from the total contract amount awarded as progression of the work proceeds for the project. A deletable bid item should not be confused with a deductive bid item per Section 20103.8 of the Public Contract Code, but deletable bid items will be subject to Section 3-2.2.1, “Contract Unit Prices,” of the Standard Specifications for Public Works Construction as Published by Building News, Inc. (STANDARD SPECIFICATIONS) as modified by Section B, of these Special provisions.

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## Contract Summary Form

Kiewit Infrastructure West Co.

### Subcontractors

**This contract includes the following subcontractors or pass through to other providers.**

Subcontractor Name	Service(s)	Amount
Griffith Co.	Flatwork	\$55,553
Sierra Landscape	Landscape	\$140,395
Hardy and Harper	AC Paving	\$114,857
Gerdau	Rebar	\$839,432
Con-Fab	Precast Girders	\$835,250
Crosstown Electrical	Temp Signal	\$283,000
VT Electric Inc.	Electrical	\$122,038
Austin Enterprise	Joint Seal	\$44,960
Dywidag System	Post Tensioning	\$108,300
BC Traffic	Striping	\$38,265
ACE Fence Co.	Fencing	\$332,428

### Contract Operating Expenses

<b>SCHEDULE OF WORK ITEMS</b>					
<b>Item</b>	<b>Description</b>	<b>Unit</b>	<b>Quantity</b>	<b>Unit Price</b> <i>(in figures)</i>	<b>Item Total</b> <i>(in figures)</i>
1	DISPUTE RESOLUTION BOARD	LS	1	\$30,000	\$30,000
2	TIME-RELATED OVERHEAD	DAY	400	\$1,500	\$600,000

3	PARTNERING	LS	1	\$40,000	\$40,000
4	PROGRESS SCHEDULE (CRITICAL PATH METHOD)	LS	1	\$25,000	\$25,000
5	STORM WATER POLLUTION PREVENTION PLAN	LS	1	\$45,000	\$45,000
6	SECTION D PERMIT REQUIREMENT	LS	1	\$10,000	\$10,000
7	TEMPORARY TRAFFIC MAINTENANCE	LS	1	\$250,000	\$250,000
8	MOBILIZATION	LS	1	\$400,000	\$400,000
9	CLASS A FIELD OFFICE	MO	22	\$1,750	\$38,500
10	CLEARING AND GRUBBING	LS	1	\$50,000	\$50,000
11	REMOVE ASPHALT CONCRETE PAVEMENT	CY	300	\$75	\$22,500
12	LANDSCAPE MODIFICATIONS AND PRESERVATION	LS	1	\$24,000	\$24,000
13	ADJUST WATER VALVE BOX TO GRADE	EA	3	\$450	\$1,350
14	ADJUST SEWER CLEANOUT TO GRADE	EA	1	\$1,100	\$1,100
15	ADJUST PULL BOX TO GRADE	EA	1	\$500	\$500
16	ADJUST FIRE HYDRANT TO GRADE	EA	1	\$1,500	\$1,500
17	UNCLASSIFIED EXCAVATION	CY	400	\$40	\$16,000
18	IMPORTED BORROW	CY	2,200	\$35	\$77,000
19	ASPHALT CONCRETE	TON	161	\$135	\$21,735
20	ASPHALT CONCRETE: WARM MIX ASPHALT	TON	358	\$135	\$48,330
21	ASPHALT CONCRETE: ASPHALT RUBBER HOT-MIX (ARHM)	TON	370	\$150	\$55,500



22	COLD MILL ASPHALT CONCRETE PAVEMENT	SQYD	356	\$17	\$6,052
23	INLET STRUCTURE TYPE I	EA	1	\$7,500	\$7,500
24	18" CONCRETE FLARED END SECTION	EA	1	\$3,500	\$3,500
25	MISCELLANEOUS CONCRETE (SIDEWALK)	SQFT	1,900	\$15	\$28,500
26	MISCELLANEOUS CONCRETE (CONSTRUCT 6" CURB & GUTTER)	LF	320	\$60	\$19,200
27	MISCELLANEOUS CONCRETE (CONSTRUCT 6" CURB)	LF	100	\$45	\$4,500
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**C O N T R A C T**

**THIS CONTRACT**, hereinafter referred to as “CONTRACT” for purposes of identification hereby numbered MA-080-17011060, and dated \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ is

**BY AND BETWEEN**

County of Orange, a political subdivision of the State of California, hereinafter referred to as “COUNTY”

**AND**

PreScience Corporation, a California Corporation, hereinafter referred to as “A-E”,

which are sometimes individually referred to as “PARTY” or collectively referred to as “PARTIES”.

**RECITALS**

**WHEREAS**, COUNTY requires professional services to accomplish projects and/or services (“PROJECTS/SERVICES”) as described in MA-080-17011060 Scope of Work for Construction Management & Inspection Services- Edinger Bridge Replacement over Bolsa Chica Channel, hereinafter referred to as “Attachment A,” attached hereto and incorporated herein by reference; and

**WHEREAS**, A-E is a firm whose principals are, as required by law, registered by the State of California for the practice of specialized A-E services per the attached Scope of Work.

**NOW, THEREFORE, IT IS AGREED** by and between the PARTIES hereto as follows:

**1. GENERAL**

**1.1. Retainer**

**1.1.1.** COUNTY does hereby retain A-E to perform the PROJECTS/SERVICES as required by this CONTRACT.

**1.1.2.** A professional, duly registered in the State of California, who shall be assigned to PROJECTS/SERVICES and whose services are offered by A-E and accepted by COUNTY is **Chuck Tran, P.E.**

**1.1.3.** A-E may employ special consultants/contractors for the accomplishment of the PROJECTS/SERVICES specified; and, it is agreed that only the following firms or independent consultants/contractors are to be employed to provide these PROJECTS/SERVICES, and that the aggregate money value of their PROJECTS/SERVICES shall not constitute more than forty-nine percent (49%) of the total amount of PROJECTS/SERVICES required under this CONTRACT:

- a. Leighton Consulting, Inc.- *Materials Testing/Geotechnical*
- b. MBI Media, Inc. – *Public Outreach*

- 1.1.4.** Consultants/contractors may be substituted and/or added by mutual agreement of A-E and the Director, County of Orange, OC Public Works or his designee, hereinafter referred to as "DIRECTOR".
- 1.1.5.** A-E's employment of independent consultants/contractors shall not relieve A-E from the performance of its own responsibilities pursuant to this CONTRACT. However, all consultants/contractors independently contracting with COUNTY shall be independently liable to COUNTY for the performance of the work pursuant to their agreements, and A-E shall have no liability for work by contractors independently contracting with COUNTY.

## **1.2. Projects/Services**

### **1.2.1. Description of PROJECTS/SERVICES**

- a. PROJECT/SERVICES to be performed by A-E shall consist of the work as specified herein and as required in Attachment A. If in the event Attachment A shall be in conflict with any provision of this CONTRACT, the wording as set forth in Attachment A shall prevail.
- b. A-E shall be responsible for submitting all PROJECTS/SERVICES to COUNTY in a form which has been thoroughly reviewed and checked for completeness, accuracy and consistency by the registered professional named in Section 1.1.2 herein; and, any PROJECTS/SERVICES not meeting this requirement will be returned to A-E prior to review by COUNTY.

### **1.2.2. Design Criteria and Standards**

All PROJECTS/SERVICES shall be performed in accordance with instructions, criteria and standards set forth by the DIRECTOR.

### **1.2.3. Scheduling**

- a. A-E shall submit progress reports at least once a month. The report should be sufficiently detailed for the Contract Administrator to determine, if A-E is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.
- b. A-E shall allow at least five (5) working days for COUNTY review of progress work schedule. In planning work A-E should anticipate and allow ten (10) working days for COUNTY review of each submittal required in Attachment A.
- c. A-E shall meet, as needed, with COUNTY to review progress of work, adherence to progress schedule, coordination of work, scheduling of seminars, if needed, and to resolve any problems that may develop.
- d. Within five (5) working days of each meeting, A-E shall prepare a brief memorandum summarizing the results of the meeting and shall submit it to COUNTY for concurrence.
- e. A-E shall complete all the work of PROJECTS/SERVICES and obtain all approvals

by the COUNTY within the time frame indicated in Attachment A except A-E shall not be responsible for any delay beyond the control of A-E.

- f. In the event A-E fails to complete the work and obtain the approval of DIRECTOR, or designee, in the time allowed, COUNTY shall have the option of completing the work by its own forces or by contract with another firm. The time allowed for A-E to complete the PROJECTS/SERVICES pursuant to this CONTRACT shall be extended for delay caused by COUNTY in completing its work pursuant to this CONTRACT which delay exceeds the agreed COUNTY review and/or approval time periods.

### 1.3. Assistance by COUNTY STAFF

- 1.3.1. COUNTY shall assign an appropriate staff member to work with A-E in connection with the work of this CONTRACT. Said staff member's duties will consist of the giving of advice and consultations, assisting A-E in negotiations with other public agencies and private parties, miscellaneous items which in the judgment of A-E or COUNTY's staff warrant attention, and all other duties as may be described in Attachment A.
- 1.3.2. All of the above activities, however, shall be the primary responsibility of A-E to schedule, initiate and carry through to completion.

### 1.4. Term (Performance Period) and Maximum Compensation

- 1.4.1. This CONTRACT shall go into effect on **March 14, 2017**, contingent upon approval by COUNTY, and A-E shall commence work after notification to proceed by COUNTY'S Contract Administrator. The CONTRACT shall end on **March 13, 2020, unless extended by contract amendment**. The maximum allowable compensation is **one million six hundred sixty thousand dollars (\$1,660,000)**, except as permitted in Paragraph 1.5 below.
- 1.4.2. A-E is advised that any recommendation for contract award is not binding on COUNTY until the CONTRACT is fully executed and approved by COUNTY.

### 1.5. A-E Compensation and Extra Work

- 1.5.1. For the PROJECTS/SERVICES authorized under this CONTRACT, A-E shall be compensated in accordance with the following:
- 1.5.2. For completion and approval of all PROJECTS/SERVICES where "Extra Work" (defined as changes in approved portions of the PROJECT/SERVICES required by and ordered in writing by DIRECTOR which changes constitute a change in or departure from said approved portions of PROJECTS/SERVICES) is not authorized, compensation including reimbursables shall be described and payable as stipulated in Fee Schedule, herein after referred to as "Attachment B", attached hereto and incorporated herein by reference.
- 1.5.3. Where extra work is authorized for PROJECTS/SERVICES:
- a. The amount for Extra Work shall be determined using Attachment B. Extra Work shall be required by and ordered in writing by DIRECTOR. If this CONTRACT is not approved by the Board of Supervisors, any change that increases the cumulative CONTRACT price beyond \$100,000 must be approved by the Board. Increases in the CONTRACT amount for services within the existing scope of work may be



granted by the DIRECTOR where the amount does not exceed 25 percent of the existing CONTRACT price or \$100,000, whichever is less.

- b. A-E's billing for the Extra Work shall include but not be limited to names of A-E's staff employed in the Extra Work, classification of employees and number of hours worked.

**1.5.4.** For partial completion of work of PROJECTS/SERVICES followed by default on part of A-E:

- a. For failure to complete and secure approval of the first required submittal, there shall be no compensation.
- b. For failure to complete and secure approval of other authorized phases, A-E shall, upon completion of PROJECTS/SERVICES by others, be entitled to receive compensation based on approved work of PROJECTS/SERVICES not to exceed the amounts specified in Attachment A for that particular submittal, plus the reasonable value as determined by COUNTY of the non-approved work; provided, however, that if the cost to COUNTY to complete the CONTRACT exceeds the amount specified herein, A-E shall be liable to COUNTY for such excess costs attributable to A-E's breach of the CONTRACT.

**2. LABOR**

**2.1. Non-Employment of COUNTY Personnel**

- 2.1.1.** A-E agrees that it will neither negotiate, offer, or give employment to any full-time, regular employee of COUNTY in professional classifications of the same skills required for the performance of this CONTRACT who is involved in this Project in a participatory status during the life of this CONTRACT regardless of the assignments said employee may be given or the days or hours employee may work.
- 2.1.2.** Nothing in this CONTRACT shall be deemed to make A-E, or any of A-E's employees or agents, agents or employees of the COUNTY. A-E shall be an independent contractor and shall have responsibility for and control over the details and means for performing the work, provided that A-E is in compliance with the terms of this CONTRACT. Anything in the CONTRACT which may appear to give COUNTY the right to direct A-E as to the details of the performance of the work or to exercise a measure of control over A-E shall mean that A-E shall follow the desires of COUNTY, only in the results of the work.

**2.2. Non-Discrimination**

- 2.2.1.** In the performance of this CONTRACT, A-E agrees that it will comply with the requirements of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons.
- 2.2.2.** A-E acknowledges that a violation of this provision shall subject A-E to all the penalties imposed for a violation of the California Labor Code.

### 2.3. Employee Eligibility Verification

- 2.3.1. A-E warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens, and others and that all its employees performing work under this CONTRACT meet the citizenship or alien status requirement set forth in Federal statutes and regulations. A-E shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations, including but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324 et seq., as they currently exist and as they may be hereafter amended. A-E shall retain all such documentation for all covered employees for the period prescribed by the law.

### 2.4. Independent Contractor

- 2.4.1. As referenced in Section 2.1.2 of this CONTRACT, A-E shall be considered an independent contractor.
- 2.4.2. Neither A-E, its employees nor anyone working under A-E shall qualify for workers' compensation or other fringe benefits of any kind through COUNTY.

### 2.5. Conflict of Interest Contractor Personnel

- 2.5.1. The A-E shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the COUNTY. This obligation shall apply to the A-E; the A-E's employees, agents, and relatives; sub-tier contractors; and third parties associated with accomplishing work and PROJECTS/SERVICES hereunder.
- 2.5.2. A-E's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from: making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the COUNTY.

### 2.6. Labor Code Notice

- 2.6.1. All A-E and subcontractors must comply with the requirements of California Labor Code 1770 et seq. if the work performed is considered a "public works" under California Labor Code 1720 et seq. A-E is encouraged to contact the California Department of Industrial Relations for clarification if the A-E is unsure if some or any of the work performed under this CONTRACT qualifies as "public works".

### 2.7 Prevailing Wages

- 2.7.1 A-E shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at COUNTY's office or may be obtained online at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm> and must be posted at the job site. If the Work involves federal funds or otherwise requires compliance with the Davis-Bacon Fair Labor Standards Act, the A-E and all its subcontractors shall comply with the higher of the state or federal prevailing wage rates.

The COUNTY understands that not all work performed under this contract is subject to prevailing wages, but reminds the A-E that some employees may perform covered work, and therefore be subject to the payment of prevailing wages. Typical Crafts that are subject to

the payment of prevailing wage are, but not limited to the following:

- Building/Construction Inspector and Field Soils and Material Tester
- Laborer and Related Classifications
- Operating Engineer
- Field Surveyor

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county, or counties, in which the work is to be done have been determined by the Director of the California Department of Industrial Relations. The Federal general prevailing wage rates for this project as predetermined by the United States Secretary of Labor are included as an attachment to this Contract. The link for the US DOL Davis-Bacon general prevailing wage rates is: <http://www.wdol.gov/dba.aspx> .

Attention is directed to the US DOL Davis-Bacon general prevailing wage rate requirements in the Contract Documents. If there is a difference between the general prevailing wage rates predetermined by the Secretary of Labor and the general prevailing wage rates determined by the Director of the California Department of Industrial Relational for similar classifications of labor, the A-E and all its subcontractors shall pay not less than higher wage rate. The COUNTY will not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the Federal wage determinations. Where Federal wage determined do not contain the State wage rate determined otherwise available for use by the A-E and all its subcontractors, the A-E and all its subcontractors shall pay not less than the Federal minimum wage rate, which most closely approximates the duties of the employees in question.

### 3. INSURANCE

**3.1.1** Prior to the provision of services under this CONTRACT, the A-E agrees to purchase all required insurance at A-E's expense, including all endorsements required herein, necessary to satisfy the COUNTY that the insurance provisions of this CONTRACT have been complied with. A-E agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the COUNTY during the entire term of this CONTRACT. In addition, all subcontractors performing work on behalf of A-E pursuant to this CONTRACT shall obtain insurance subject to the same terms and conditions as set forth herein for A-E.

**3.1.2** A-E shall ensure that all subcontractors performing work on behalf of A-E pursuant to this CONTRACT shall be covered under A-E's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for A-E. A-E shall not allow subcontractors to work if subcontractors have less than the level of coverage required by COUNTY from A-E under this CONTRACT. It is the obligation of A-E to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by A-E through the entirety of this CONTRACT for inspection by COUNTY representative(s) at any reasonable time.

**3.1.3** All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of A-E's current audited financial report. If A-E's SIR is approved, A-E, in addition to, and without limitation of, any other indemnity provision(s) in this CONTRACT, agrees to all of the following:

- 1 In addition to the duty to indemnify and hold the COUNTY harmless against any and all liability, claim, demand or suit resulting from A-E's, its agents, employee's or subcontractor's performance of this CONTRACT, A-E shall defend the COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2 A-E's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3 The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the A-E's SIR provision shall be interpreted as though the A-E was an insurer and the COUNTY was the insured.

**3.1.4** If the A-E fails to maintain insurance acceptable to the COUNTY for the full term of this CONTRACT, the COUNTY may terminate this CONTRACT.

A. Qualified Insurer

1. The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

2. The policy or policies of insurance maintained by the A-E shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including converge for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claims made or per occurrence \$2,000,000 aggregate

B. Required Coverage Forms

1. The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage as broad.

1. The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

C. Required Endorsements

1. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
  - a. An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the *County of Orange, its elected and appointed officials, officers, employees and agents* as Additional Insureds, or provide blanket coverage, which will state *As Required By Written Contract*.
  - a. A primary non-contributing endorsement using ISO Form CG 20 01 0413, or a form at least as broad evidencing that the A-E's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.
2. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against *the County of Orange, its elected and appointed officials, officers, employees and agents*, or provide blanket coverage, which will state *AS REQUIRED BY WRITTEN CONTRACT*.
3. All insurance policies required by this CONTRACT shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees and agents when acting within the scope of their appointment or employment.
4. A-E shall notify COUNTY in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation may constitute a material breach of the CONTRACT, upon which the COUNTY may suspend or terminate this CONTRACT.
5. If A-E's Professional Liability policy is a "claims made" policy, A-E shall agree to maintain professional liability coverage for two (2) years following completion of CONTRACT.
6. The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).
7. Insurance certificates should be forwarded to the agency/department address listed on the solicitation.
8. If the A-E fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

9. COUNTY expressly retains the right to require A-E to increase or decrease insurance of any of the above insurance types throughout the term of this CONTRACT. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect COUNTY.
10. COUNTY shall notify A-E in writing of changes in the insurance requirements. If A-E does not deposit copies of acceptable Certificates of Insurance and endorsements with COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this CONTRACT may be in breach without further notice to A-E, and COUNTY shall be entitled to all legal remedies.
11. The procuring of such required policy or policies of insurance shall not be construed to limit A-E's liability hereunder nor to fulfill the indemnification provisions and requirements of this CONTRACT, nor act in any way to reduce the policy coverage and limits available from the insurer.

#### **4. INDEMNITY/COMPLIANCE**

**4.1. A-E shall indemnify, defend with counsel approved in writing by COUNTY, and hold harmless, the COUNTY, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against A-E or the COUNTY or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this CONTRACT.**

**4.2. All PROJECTS/SERVICES submitted by A-E shall be complete and shall be carefully checked prior to submission. A-E understands that COUNTY's checking is discretionary, and A-E shall not assume that COUNTY will discover errors and/or omissions. If COUNTY discovers any errors or omissions prior to approving A-E's PROJECTS/SERVICES, the PROJECTS/SERVICES will be returned to A-E for correction. Should COUNTY or others discover errors or omissions in the work submitted by A-E after COUNTY's approval thereof, COUNTY's approval of A-E's PROJECTS/SERVICES shall not be used as a defense by A-E.**

#### **4.3. Indemnification**

**4.3.1.** A-E agrees to, indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, the County of Orange ("COUNTY"), their elected and appointed officials, officers, employees, agents and those special districts and agencies which COUNTY'S Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the A-E. If judgment is entered against A-E and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of A-E and COUNTY or COUNTY INDEMNITEES, A-E and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve A-E of any insurance requirements or obligations created elsewhere in this CONTRACT.

#### **4.4. Bills and Liens**

**4.4.1.** A-E shall pay promptly all indebtedness for labor, materials and equipment used in

performance of the work. A-E shall not permit any lien or charge to attach to the work or the premises, **but if any does so attach, A-E shall promptly procure its release and, in accordance with the requirements of the indemnification paragraph above, indemnify, defend, and hold COUNTY harmless and be responsible for payment of all costs, damages, penalties and expenses arising from or related thereto.**

#### 4.5. Compliance with Laws

- 4.5.1. A-E represents and agrees that services to be provided under this CONTRACT shall fully comply, at A-E's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by COUNTY in its governmental capacity and all other laws applicable to the PROJECTS/SERVICES at the time PROJECTS/SERVICES are provided to and accepted by COUNTY.
- 4.5.2. A-E acknowledges that COUNTY is relying on A-E for such compliance, and pursuant to the requirements of the indemnification paragraph above, **A-E agrees that it shall defend, indemnify and hold COUNTY and COUNTY INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.**

### 5. TERMINATION

#### 5.1. Termination of Contract for Cause

- 5.1.1. If A-E breaches any of the covenants or conditions of this CONTRACT, COUNTY shall have the right to terminate this CONTRACT upon ten (10) days written notice prior to the effective day of termination.
- 5.1.2. A-E shall have the opportunity to cure the alleged breach prior to termination.
- 5.1.3. In the event the alleged breach is not cured by A-E prior to termination, all work performed by A-E pursuant to this CONTRACT, which work has been reduced to plans or other documents, shall be made available to COUNTY.

#### 5.2. Termination for Convenience

- 5.2.1. Notwithstanding any other provision of the CONTRACT, COUNTY may at any time, and without cause, terminate this CONTRACT in whole or in part, upon not less than seven (7) calendar days' written notice to the A-E. Such termination shall be effected by delivery to the A-E of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated.
- 5.2.2. A-E shall immediately stop work in accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by COUNTY.
- 5.2.3. COUNTY shall pay the A-E for the Work completed prior to the effective date of the termination, and such payment shall be the A-E's sole remedy under this CONTRACT.
- 5.2.4. Under no circumstances will A-E be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph.

- 5.2.5.** A-E shall insert in all subcontracts that the subcontractor shall stop work on the date of and to the extent specified in a notice of termination, and shall require subcontractors to insert the same condition in any lower tier subcontracts.

### **5.3. Breach of Contract**

- 5.3.1.** The failure of the A-E to comply with any of the provisions, covenants or conditions of this CONTRACT shall be a material breach of this CONTRACT. In such event, in addition to any other remedies available at law, in equity, or otherwise specified in this CONTRACT, the COUNTY may:
- a. afford the A-E written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this CONTRACT within which to cure the breach;
  - b. discontinue payment to the A-E for and during the period in which the A-E is in breach; and
  - c. offset those monies disallowed pursuant to the above, against any monies billed by the A-E but yet unpaid by the COUNTY.

### **5.4. Default**

- 5.4.1.** In the event any equipment or service furnished by the A-E in the performance of this CONTRACT should fail to conform to the specifications therein within one (1) calendar year from the COUNTY's acceptance of the equipment or service, or any performance period specifically specified within the specifications or CONTRACT, whichever is greater, the COUNTY may reject same, and it shall become the duty of the A-E to reclaim and remove the items without expense to the COUNTY and to immediately replace all such rejected equipment or service with others conforming to such specifications, provided that should the A-E fail, neglect or refuse to do so within one hundred and twenty (120) calendar days, the COUNTY shall have the right to purchase on the open market a corresponding quantity of any such equipment or service and to deduct from any monies due or that may thereafter become due to the A-E the difference between the price specified in this CONTRACT and the actual cost to the COUNTY.
- 5.4.2.** In the event the A-E shall fail to make prompt delivery as specified of any equipment or service, the same conditions as to the rights of the COUNTY to purchase on the open market and to reimbursement set forth above shall apply, except as otherwise provided in this CONTRACT.
- 5.4.3.** In the event of the cancellation of this CONTRACT, either in whole or in part, by reason of the default or breach by the A-E, any loss or damage sustained by the COUNTY in procuring any equipment or service which the A-E agreed to supply under this CONTRACT shall be borne and paid for by the A-E.
- 5.4.4.** Default shall include failure to carry out any of the requirements of this CONTRACT, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the PROJECTS/SERVICES as agreed to herein, or otherwise substantially violating any provision of this CONTRACT.
- 5.4.5.** Upon termination of the CONTRACT with A-E, the COUNTY may begin negotiations with



a third-party A-E to provide goods and/or PROJECTS/SERVICES as specified in this CONTRACT.

- 5.4.6.** The right of either party to terminate this CONTRACT hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.

## **6. MISCELLANEOUS**

### **6.1. Laws to be Observed**

- 6.1.1.** A-E is assumed to be familiar with and, at all times, shall observe and comply with all federal, state and local laws, ordinances and regulations in any manner affecting the conduct of the PROJECTS/SERVICES.

### **6.2. Award of Construction Contract and Other Future Contracts**

- 6.2.1.** A-E is hereby informed that provisions of the Public Contract Code, the Political Reform Act of 1974, other statutes, regulations, and COUNTY policy prohibit, as an impermissible conflict of interest, the award of a contract for the construction of the project(s) on which A-E performed architectural-engineering services under this A-E CONTRACT. A-E is hereby informed that these statutes and regulations could also prohibit the award to A-E of design or other contracts on future phases related to tasks performed by A-E under this CONTRACT. This prohibition applies also to a subcontractor of or parent company of the firm that performed architectural-engineering tasks under this CONTRACT.

### **6.3. Amendments**

- 6.3.1.** No alteration or variation of the terms of this CONTRACT shall be valid unless made in writing and signed by the PARTIES; no oral understanding or agreement not incorporated herein shall be binding on either of the PARTIES; and no exceptions, alternatives, substitutes or revisions are valid or binding on COUNTY unless authorized by COUNTY in writing.

### **6.4. Successors and Assigns**

- 6.4.1.** The terms and provisions of this CONTRACT shall be binding upon and inure to the benefit of the PARTIES hereto and their successors and assigns.

### **6.5. Entirety**

- 6.5.1.** This CONTRACT contains the entire agreement between the PARTIES with respect to the matters provided for herein.

### **6.6. Severability**

- 6.6.1.** If any part of this CONTRACT is held, determined, or adjudicated to be illegal, void, or unenforceable by a court of competent jurisdiction, the remainder of this CONTRACT shall be given effect to the fullest extent reasonably possible.

### **6.7. Binding Obligation**

- 6.7.1.** The PARTIES to this CONTRACT represent and warrant that this CONTRACT has been duly authorized and executed and constitutes the legally binding obligation of their

respective organization or entity enforceable in accordance with its terms.

## **6.8. Governing Law and Venue**

**6.8.1.** This CONTRACT has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this CONTRACT, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the PARTIES hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure, Section 394.

**6.8.2.** The PARTIES specifically agree that by soliciting and entering into and performing PROJECTS/SERVICES under this CONTRACT, the A-E shall be deemed to constitute doing business within Orange County from the time of solicitation of work, through the period when all PROJECTS/SERVICES under this CONTRACT is completed, and continuing until the expiration of any applicable limitations period.

## **6.9. Ownership of Documents**

**6.9.1.** All data, including but not limited to letters, reports, files, plans, drawings, specifications, proposals, sketches, diagrams and calculations, prepared by A-E and/or anyone acting under the supervision of A-E pursuant to this CONTRACT, shall become the property of COUNTY upon preparation by A-E and may be used by the COUNTY as it may require without additional cost to the COUNTY.

**6.9.2.** COUNTY shall not be limited in any way to its use thereof at any time, including the release of this data to third parties. A-E shall be held harmless for release of such data as may be prepared or created under this CONTRACT to any third party. If A-E and/or anyone acting under the supervision of A-E should later desire to use any of the data prepared in connection with this CONTRACT, A-E shall first obtain the written approval of COUNTY.

## **6.10. Confidentiality**

**6.10.1.** All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, and all written or other information submitted to A-E in connection with the performance of this CONTRACT shall be held confidential by A-E and/or anyone acting under the supervision of A-E and shall not, without the prior written consent of COUNTY, be used for any purposes other than the performance of the PROJECTS/SERVICES described in Attachment A, nor be disclosed to any person, partnership, company, corporation or agency, not connected with the performance of the PROJECTS/SERVICES.

**6.10.2.** Nothing furnished to A-E which is generally known among counties in Southern California shall be deemed confidential.

**6.10.3.** A-E and/or anyone acting under the supervision of A-E shall not use COUNTY name or insignia, photographs of the work, or any other publicity pertaining to the work in any magazine, trade paper, newspaper, or other medium without the express written consent of COUNTY.

## **6.11. Publication**

**6.11.1.** No copies of sketches, schedules, written documents, computer based data, photographs,

maps or graphs, including graphic art work, resulting from performance or prepared in connection with this CONTRACT, are to be released by A-E and/or anyone acting under the supervision of A-E to any person, partnership, company, corporation, or agency, without prior written approval by the COUNTY, except as necessary for the performance of the services of this CONTRACT. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after COUNTY approval.

- 6.11.2.** The A-E agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this CONTRACT or any subsequent amendment of, or effort under this CONTRACT. A-E must first obtain review and approval of said media contact from the COUNTY through the COUNTY'S Project Manager. Any requests for interviews or information received by the media should be referred directly to the COUNTY. A-E's are not authorized to serve as a media spokespersons for COUNTY projects without first obtaining permission from the COUNTY Project Manager.

**6.12. Records and Audit/Inspections**

- 6.12.1.** A-E shall keep an accurate record of time expended by A-E and/or consultants employed by A-E in the performance of this CONTRACT.
- 6.12.2.** Within ten (10) days of COUNTY's written request, A-E shall allow COUNTY or authorized State or Federal agencies or any duly authorized representative to have the right to access, examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, time cards or other records relating to this CONTRACT.
- 6.12.3.** A-E shall keep such material, including all pertinent cost accounting, financial records and proprietary data for a period of three (3) years after termination or completion of the CONTRACT or until resolution of any claim or dispute between the PARTIES, whichever is later.
- 6.12.4.** Should A-E cease to exist as a legal entity, records pertaining to this CONTRACT shall be forwarded within a reasonable period of time not to exceed sixty (60) days to its successor in interest or surviving entity in a merger or acquisition, or, in the event of liquidation, to COUNTY.
- 6.12.5.** A-E shall have an adequate financial management system and accounting system as required by 48 CFR Part 16.301-3, 49 CFR Part 18 and 48 CFR Part 31.

**6.13. Notices**

- 6.13.1.** Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the PARTIES' project managers' routine exchange of information and cooperation during the PROJECTS/SERVICES.
- 6.13.2.** Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt, or no greater than four (4) calendar days after being mailed by U. S. certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day.

**6.13.3.** All communications shall be addressed to the appropriate party at the address stated herein or such other address as the PARTIES hereto may designate by written notice from time to time in the manner aforesaid.

For A-E:

PreScience Corporation  
1521 E. McFadden Ave, Unit A  
Santa Ana, CA 92705  
Attn: Chuck Tran  
Phone: 949-721-5640  
E-mail: [chuck.tran@prescienceengineers.com](mailto:chuck.tran@prescienceengineers.com)

For COUNTY: OC Public Works/OC Infrastructure Programs  
300 N. Flower St  
Santa Ana, CA 92703  
Attn: Omeed Pour  
Phone: 714-667-4908  
E-mail: [omeed.pour@ocpw.ocgov.com](mailto:omeed.pour@ocpw.ocgov.com)

cc: OC Public Works Procurement Services  
300 N. Flower St., Suite 838  
Santa Ana, CA 92703  
Attn: Angela Shim  
Phone: 714-667-9643  
E-mail: [angela.shim@ocpw.ocgov.com](mailto:angela.shim@ocpw.ocgov.com)

**6.14. Attorney's Fees**

**6.14.1.** In any action or proceeding to enforce or interpret any provision of this CONTRACT, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.

**6.15. Interpretation**

**6.15.1.** CONTRACT has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this CONTRACT.

**6.15.2.** In addition, each PARTY has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite having the opportunity to do so.

**6.15.3.** Each PARTY further acknowledges that they have not been influenced to any extent whatsoever in executing this CONTRACT by any other PARTY hereto or by any person representing them, or both.

**6.15.4.** Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this CONTRACT against the PARTY that has drafted it is not applicable and is waived.

**6.15.5.** The provisions of this CONTRACT shall be interpreted in a reasonable manner to affect the purpose of the PARTIES and this CONTRACT.

**6.16. Headings**

**6.16.1.** The various headings and numbers herein, the grouping of provisions of this CONTRACT into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

**6.17. Acceptance**

**6.17.1.** Unless otherwise agreed to in writing by COUNTY acceptance shall not be deemed complete unless in writing and until all the services have actually been received, inspected, and tested to the satisfaction of COUNTY.

**6.18. Changes**

**6.18.1.** A-E shall make no changes in the work or perform any additional work without the COUNTY'S specific written approval.

**6.19. Assignment**

**6.19.1.** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the PARTIES. Furthermore, neither the performance of this CONTRACT nor any portion thereof may be assigned or sub-contracted by A-E, by any means whatsoever including but not limited to acquisition by merger, without the express written consent of COUNTY. Any attempt by A-E to assign or sub-contract the performance or any portion thereof of this CONTRACT without the express written consent of COUNTY shall be invalid and shall constitute a breach of this CONTRACT.

**6.20. Changes in Ownership**

**6.20.1.** A-E agrees that if there is a change or transfer in ownership, including but not limited to merger by acquisition, of A-E's business prior to completion of this CONTRACT, the new owners shall be required under terms of sale or other transfer to assume A-E's duties and obligations contained in this CONTRACT and to obtain the written approval of COUNTY of such merger or acquisition, and complete the obligations and duties contained in the CONTRACT to the satisfaction of COUNTY. A-E agrees to pay, or credit toward future work, COUNTY's costs associated with processing the merger or acquisition.

**6.21. Force Majeure**

**6.21.1.** A-E shall not be assessed with damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this CONTRACT caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided A-E gives written notice of the cause of the delay to COUNTY within thirty-six (36) hours of the start of the delay and A-E avails himself of any available remedies.

**6.22. Calendar Days**

**6.22.1.** Any reference to the word "day" or "days" herein means calendar day or calendar days, respectively, unless otherwise expressly provided.

**6.23. Title to Data**

- 6.23.1.** All materials, documents, data or information obtained from the COUNTY data files or any COUNTY medium furnished to the A-E in the performance of this CONTRACT, will at all times remain the property of the COUNTY. Such data or information may not be used or copied for direct or indirect use by the A-E after completion or termination of this CONTRACT without the express written consent of the COUNTY.
- 6.23.2.** All materials, documents, data or information, including copies furnished by COUNTY and loaned to A-E for his temporary use, must be returned to the COUNTY at the end of this CONTRACT unless otherwise specified by the DIRECTOR.
- 6.24. Availability of Funds**
- 6.24.1.** The obligation of COUNTY is subject to the availability of funds appropriated for this purpose, and nothing herein shall be construed as obligating the COUNTY to expend or as involving the COUNTY in any contract or other obligation for future payment of money in excess of appropriations authorized by law.
- 6.25. Contingency of Funding**
- 6.25.1.** A-E acknowledges that funding or portions of funding for this CONTRACT may also be contingent upon receipt of funds from, and/or appropriation of funds by, the State of California or other funding sources to COUNTY. If such funding and/or appropriations are not forthcoming, or otherwise limited, COUNTY may immediately terminate or modify this CONTRACT without penalty.
- 6.26. Contract Construction**
- 6.26.1.** The PARTIES acknowledge that each party and its counsel have reviewed this CONTRACT and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this CONTRACT or any amendment or exhibits hereto.
- 6.27. Conflicts of Interest**
- 6.27.1.** A-E or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose any financial interest that may be materially affected by services provided under this CONTRACT, (2) prohibits such persons from making, or participating in making, decisions that could reasonably affect such interest; and (3) may require the filing a Statement of Economic Interest (Form 700).
- 6.27.2.** If subject to the Act, A-E shall conform to all requirements of the Act. Failure to do so shall constitute a material breach and is grounds for immediate termination of this CONTRACT by COUNTY. Pursuant to Section 4.3 "Indemnification", A-E shall indemnify and hold harmless County for any and all claims for damages resulting from Contractor's violation of this Section.
- 6.28. Usage**
- 6.28.1.** No guarantee is given by the COUNTY to A-E regarding usage of this CONTRACT. The A-E agrees to supply services requested, as needed by the County of Orange, at prices listed in the CONTRACT, regardless of quantity requested.

## 7. FEDERALLY REQUIRED PROVISIONS

The following Federally required clauses supersede and control only where they conflict with the CONTRACT or Attachments thereto. In the event of a potential ambiguity between the Federal clauses and the remainder of the CONTRACT, COUNTY will be solely responsible for interpreting how to implement the CONTRACT.

### 7.1. ALLOWABLE COSTS AND PAYMENTS

- A. A-E will be reimbursed for hours worked at the hourly rates specified in A-Es Cost Proposal (Attachment B). The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this CONTRACT.
- B. In addition, A-E will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in the cost proposal and in the executed Task Order.
- C. Specific projects will be assigned to A-E through issuance of Task Orders.
- D. After a project to be performed under this CONTRACT is identified by COUNTY, COUNTY will prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a COUNTY Project Coordinator. The draft Task Order will be delivered to A-E for review. A-E shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both COUNTY and A-E.
- E. Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in A-E's Cost Proposal.
- F. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.
- G. When milestone cost estimates are included in the approved Cost Proposal, A-E shall obtain prior written approval for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.
- H. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.
- I. A-E shall not commence performance of work or services until this CONTRACT has been approved by COUNTY, and notification to proceed has been issued by COUNTY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this CONTRACT.
- J. A Task Order is of no force or effect until returned to COUNTY and signed by an authorized representative of COUNTY. No expenditures are authorized on a project

and work shall not commence until a Task Order for that project has been executed by COUNTY.

- K. A-E will be reimbursed, as promptly as fiscal procedures will permit upon receipt by COUNTY'S Contract Administrator of itemized invoices in triplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than 45 calendar days after the performance of work for which A-E is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this CONTRACT number, project title and Task Order number. Credits due COUNTY that include any equipment purchased under the provisions of Section 7, subsection 7.7 Equipment Purchase of this CONTRACT, must be reimbursed by A-E prior to the expiration or termination of this CONTRACT. Invoices shall be mailed to COUNTY'S Contract Administrator at the following address:

OC Public Works/ OC Infrastructure Programs  
Attn: Omeed Pour  
300 N Flower St.  
Santa Ana, CA 92703

- L. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this CONTRACT.
- M. The total amount payable by COUNTY for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by CONTRACT amendment.
- N. If the A-E fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- O. Task Orders may not be used to amend this Agreement and may not exceed the scope of work under this CONTRACT.
- P. The total amount payable by COUNTY for all Task Orders resulting from this CONTRACT shall not exceed \$ 1,660,000. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this CONTRACT through Task Orders.

## 7.2. TERMINATION

- A. COUNTY reserves the right to terminate this CONTRACT upon thirty (30) calendar days written notice to A-E with the reasons for termination stated in the notice.
- B. COUNTY may terminate this CONTRACT with A-E should A-E fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, COUNTY may proceed with the work in any manner deemed proper by COUNTY. If COUNTY terminates this CONTRACT with A-E, COUNTY shall pay A-E the sum due to A-E under this CONTRACT prior to termination, unless the cost of completion to COUNTY exceeds the funds remaining in the CONTRACT.



In which case the overage shall be deducted from any sum due A-E under this CONTRACT and the balance, if any, shall be paid to A-E upon demand.

- C. The maximum amount for which the COUNTY shall be liable if this CONTRACT is terminated is **\$1,660,000**.

### **7.3. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

- A. A-E agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- B. A-E also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- C. Any costs for which payment has been made to A-E that are determined by subsequent audit to be unallowable under 49 CFR, Part 18 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by A-E to COUNTY.

### **7.4. RETENTION OF RECORDS/AUDIT**

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; A-E, subconsultants, and COUNTY shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract, including but not limited to, the costs of administering the contract. All PARTIES shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract. The state, State Auditor, COUNTY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of A-E and its certified public accountants (CPA) work papers that are pertinent to the contract and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

### **7.5. AUDIT REVIEW PROCEDURES**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this CONTRACT that is not disposed of by agreement, shall be reviewed by COUNTY'S Chief Financial Officer.
- B. Not later than 30 days after issuance of the final audit report, A-E may request a review by COUNTY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by COUNTY will excuse A-E from full and timely performance, in accordance with the terms of this CONTRACT.

- D. A-E and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a CONTRACT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the CONTRACT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is A-E's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The CONTRACT, cost proposal, and ICR shall be adjusted by A-E and approved by COUNTY contract manager to conform to the audit or review recommendations. A-E agrees that individual terms of costs identified in the audit report shall be incorporated into the CONTRACT by this reference if directed by COUNTY at its sole discretion. Refusal by A-E to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of CONTRACT terms and cause for termination of the CONTRACT and disallowance of prior reimbursed costs.

#### 7.6. SUBCONTRACTING

- A. Nothing contained in this CONTRACT or otherwise, shall create any contractual relation between COUNTY and any subconsultant(s), and no subcontract shall relieve A-E of its responsibilities and obligations hereunder. A-E agrees to be as fully responsible to COUNTY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by A-E. A-E's obligation to pay its subconsultant(s) is an independent obligation from COUNTY'S obligation to make payments to the A-E.
- B. A-E shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this CONTRACT shall be subcontracted without written authorization by COUNTY's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- C. A-E shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to A-E by COUNTY.
- D. Any subcontract entered into as a result of this CONTRACT shall contain all the provisions stipulated in this CONTRACT to be applicable to subconsultants.
- E. Any substitution of subconsultant(s) must be approved in writing by COUNTY's Contract Administrator prior to the start of work by the subconsultant(s).

#### 7.7. EQUIPMENT PURCHASE

- A. Prior authorization in writing, by COUNTY's Contract Administrator shall be required before A-E enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or A-E services. A-E shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service or consulting work not covered in A-E's Cost Proposal and exceeding \$5,000 prior authorization by COUNTY's Contract

Administrator; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

- C. Any equipment purchased as a result of this CONTRACT is subject to the following: "A-E shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, COUNTY shall receive a proper refund or credit at the conclusion of the CONTRACT, or if the CONTRACT is terminated, A-E may either keep the equipment and credit COUNTY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established COUNTY procedures; and credit COUNTY in an amount equal to the sales price. If A-E elects to keep the equipment, fair market value shall be determined at A-E's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by COUNTY and A-E, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by COUNTY." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

#### **7.8. STATE PREVAILING WAGE RATES**

- A. A-E shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- B. Any subcontract entered into as a result of this CONTRACT, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article, unless the awarding agency has an approved labor compliance program by the Director of Industrial Relations.
- C. When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

#### **7.9. CONFLICT OF INTEREST**

- A. A-E shall disclose any financial, business, or other relationship with COUNTY that may have an impact upon the outcome of this CONTRACT, or any ensuing COUNTY construction project. A-E shall also list current clients who may have a financial interest in the outcome of this CONTRACT, or any ensuing COUNTY construction project, which will follow.
- B. A-E hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this CONTRACT.
- C. A-E hereby certifies that neither A-E, its employees, nor any firm affiliated with A-E providing services on this project prepared the Plans, Specifications, and Estimate for any construction project included within this CONTRACT. An affiliated firm is one,

which is subject to the control of the same persons through joint- ownership, or otherwise.

- D. A-E further certifies that neither A-E, nor any firm affiliated with A-E, will bid on any construction subcontracts included within the construction contract. Additionally, A-E certifies that no person working under this CONTRACT is also employed by the construction contractor for any project included within this CONTRACT.
- E. Except for subconsultants whose services are limited to materials testing, no subconsultant who is providing service on this CONTRACT shall have provided services on the design of any project included within this CONTRACT.

#### **7.10. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

A-E warrants that this CONTRACT was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any COUNTY employee. For breach or violation of this warranty, COUNTY shall have the right in its discretion; to terminate the CONTRACT without liability; to pay only for the value of the work actually performed; or to deduct from the CONTRACT price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

#### **7.11. PROHIBITION OF EXPENDING COUNTY STATE OR FEDERAL FUNDS FOR LOBBYING**

- A. A-E certifies to the best of his or her knowledge and belief that:
  - 1. No state, federal or COUNTY appropriated funds have been paid, or will be paid by-or-on behalf of A-E to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal 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 federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; A-E shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- C. A-E also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

#### **7.12. STATEMENT OF COMPLIANCE**

- A. A-E's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that A-E has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
- B. During the performance of this CONTRACT, A-E and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. A-E and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. A-E and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §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 CONTRACT by reference and made a part hereof as if set forth in full. A-E and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- C. The A-E shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- D. The A-E, with regard to the work performed by it during the CONTRACT shall act in accordance with Title VI. Specifically, the A-E shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The A-E shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the CONTRACT covers a program whose goal is employment.

#### **7.13. DEBARMENT AND SUSPENSION CERTIFICATION**

- A. A-E's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that A-E has complied with Title 2 CFR, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in

the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to COUNTY.

- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining A-E responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal Highway Administration.

#### **7.14. FUNDING REQUIREMENTS**

- A. It is mutually understood between the PARTIES that this contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both PARTIES, in order to avoid program and fiscal delays that would occur if the CONTRACT were executed after that determination was made.
- B. This CONTRACT is valid and enforceable only, if sufficient funds are made available to COUNTY for the purpose of this CONTRACT. In addition, this CONTRACT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or COUNTY governing board that may affect the provisions, terms, or funding of this CONTRACT in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this CONTRACT may be amended to reflect any reduction in funds.
- D. COUNTY has the option to void the CONTRACT under the 30-day termination clause pursuant to Article 7.2, or by mutual agreement to amend the CONTRACT to reflect any reduction of funds.

#### **7.15. CHANGE IN TERMS**

- A. This CONTRACT may be amended or modified only by mutual written agreement of the PARTIES.
- B. A-E shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by COUNTY's Contract Administrator.
- C. There shall be no change in A-E's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this CONTRACT without prior written approval by COUNTY's Contract Administrator.

#### **7.16. DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION**

- A. This CONTRACT is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". Consultants who obtain DBE participation on this CONTRACT

will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

- B. The goal for DBE participation for this CONTRACT is 12%. Participation by DBE consultant or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the A-E CONTRACT DBE Information (Exhibit 10-O2) attached hereto and incorporated as part of the CONTRACT. If a DBE subconsultant is unable to perform, A-E must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. A-E or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this CONTRACT. A-E shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by A-E to carry out these requirements is a material breach of this CONTRACT, which may result in the termination of this CONTRACT or such other remedy as COUNTY deems appropriate.
- D. Any subcontract entered into as a result of this CONTRACT shall contain all of the provisions of this section.
- E. A DBE firm may be terminated only with prior written approval from COUNTY and only for the reasons specified in 49 CFR 26.53(f). Prior to requesting COUNTY consent for the termination, A-E must meet the procedural requirements specified in 49 CFR 26.53(f).
- F. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the CONTRACT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the CONTRACT, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the CONTRACT is commensurate with the work it is actually performing, and other relevant factors.
- G. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, CONTRACT, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- H. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its CONTRACT with its own work force, or the DBE subcontracts a greater portion of the work of the CONTRACT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- I. A-E shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business

address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

- J. Upon completion of the CONTRACT, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by A-E or A-E's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to A-E when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to the Contract Administrator.
- K. If a DBE subconsultant is decertified during the life of the CONTRACT, the decertified subconsultant shall notify A-E in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the CONTRACT, the subconsultant shall notify A-E in writing with the date of certification. Any changes should be reported to COUNTY's Contract Administrator within 30 days.

#### **7.17. CONTINGENT FEE**

A-E warrants, by execution of this CONTRACT that no person or selling agency has been employed, or retained, to solicit or secure this CONTRACT upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by A-E for the purpose of securing business. For breach or violation of this warranty, COUNTY has the right to annul this CONTRACT without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the CONTRACT price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

#### **7.18. DISPUTES**

- A. Any dispute, other than audit, concerning a question of fact arising under this CONTRACT that is not disposed of by agreement shall be decided by a committee consisting of COUNTY's Contract Administrator and OC Public Works Director or designee, who may consider written or verbal information submitted by A-E.
- B. Not later than 30 days after completion of all work under the CONTRACT, A-E may request review by COUNTY Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse A-E from full and timely performance in accordance with the terms of this CONTRACT.

#### **7.19. INSPECTION OF WORK**

A-E and any subconsultant shall permit COUNTY, the state, and the FHWA if federal participating funds are used in this CONTRACT; to review and inspect the project activities and



files at all reasonable times during the performance period of this CONTRACT including review and inspection on a daily basis.

#### 7.20. SAFETY

- A. A-E shall comply with OSHA regulations applicable to A-E regarding necessary safety equipment or procedures. A-E shall comply with safety instructions issued by COUNTY Safety Officer and other COUNTY representatives. A-E personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Section 591 of the Vehicle Code, COUNTY has determined that such areas are within the limits of the project and are open to public traffic. A-E shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. A-E shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. Any subcontract entered into as a result of this CONTRACT, shall contain all of the provisions of this Article.
- D. A-E must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five feet or deeper.

#### 7.21. INSURANCE

- A. Prior to commencement of the work described herein, A-E shall furnish COUNTY a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for A-E with a combined single limit (CSL) of not less than one million dollars (\$1,000,000) per occurrence.
- B. The Certificate of Insurance will provide:
  - 1. That the insurer will not cancel the insured's coverage without 30 days prior written notice to COUNTY.
  - 2. That COUNTY, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this CONTRACT are concerned.
  - 3. That COUNTY will not be responsible for any premiums or assessments on the policy.
- C. A-E agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this CONTRACT. In the event said insurance coverage expires at any time or times during the term of this CONTRACT, A-E agrees to provide at least thirty (30) days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the CONTRACT, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of COUNTY. In the event A-E fails to keep in effect at all times insurance coverage as

herein provided, COUNTY may, in addition to any other remedies it may have, terminate this CONTRACT upon occurrence of such event.

#### **7.22. OWNERSHIP OF DATA**

- A. Upon completion of all work under this CONTRACT, ownership and title to all reports, documents, plans, specifications, and estimates produce as part of this CONTRACT will automatically be vested in COUNTY; and no further agreement will be necessary to transfer ownership to COUNTY. A-E shall furnish COUNTY all necessary copies of data needed to complete the review and approval process.
- B. It is understood and agreed that all calculations, drawings and specifications, whether in hard copy or machine-readable form, are intended for one-time use in the construction of the project for which this CONTRACT has been entered into.
- C. A-E is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by COUNTY of the machine-readable information and data provided by A-E under this CONTRACT; further, A-E is not liable for claims, liabilities, or losses arising out of, or connected with any use by COUNTY of the project documentation on other projects for additions to this project, or for the completion of this project by others, except only such use as many be authorized in writing by A-E.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27, Subpart 27.3 - Patent Rights under Government Contracts for federal-aid contracts).
- E. COUNTY may permit copyrighting reports or other agreement products. If copyrights are permitted; the agreement shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

#### **7.23. CLAIMS FILED BY COUNTY'S CONSTRUCTION CONTRACTOR**

- A. If claims are filed by COUNTY's construction contractor relating to work performed by A-E's personnel, and additional information or assistance from A-E's personnel is required in order to evaluate or defend against such claims; A-E agrees to make its personnel available for consultation with COUNTY'S construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. A-E's personnel that COUNTY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from COUNTY. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for A-E's personnel services under this CONTRACT.
- C. Services of A-E's personnel in connection with COUNTY's construction contractor claims will be performed pursuant to a written CONTRACT amendment, if necessary, extending the termination date of this CONTRACT in order to resolve the construction claims.

**7.24. CONFIDENTIALITY OF DATA**

- A. All financial, statistical, personal, technical, or other data and information relative to COUNTY's operations, which are designated confidential by COUNTY and made available to A-E in order to carry out this CONTRACT, shall be protected by A-E from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by COUNTY relating to the CONTRACT, shall not authorize A-E to further disclose such information, or disseminate the same on any other occasion.
- C. A-E shall not comment publicly to the press or any other media regarding the CONTRACT or COUNTY's actions on the same, except to COUNTY's staff, A-E's own personnel involved in the performance of this CONTRACT, at public hearings or in response to questions from a Legislative committee.
- D. A-E shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this CONTRACT without prior review of the contents thereof by COUNTY, and receipt of COUNTY'S written permission.
- E. Any subcontract entered into as a result of this CONTRACT shall contain all of the provisions of this Article.

**7.25. NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

In accordance with Public Contract Code Section 10296, A-E hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against A-E within the immediately preceding two-year period, because of A-E's failure to comply with an order of a federal court that orders A-E to comply with an order of the National Labor Relations Board.

**7.26. EVALUATION OF A-E**

A-E's performance will be evaluated by COUNTY. A copy of the evaluation will be sent to A-E for comments. The evaluation together with the comments shall be retained as part of the CONTRACT record.

**7.27. RETENTION OF FUNDS**

- A. Any subcontract entered into as a result of this CONTRACT shall contain all of the provisions of this section.
- B. No retainage will be withheld by the Agency from progress payments due the prime consultant. Retainage by the prime consultant or subconsultants is prohibited, and no retainage will be held by the prime consultant from progress due subconsultants. Any violation of this provision shall subject the violating prime consultant or subconsultants to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late

*County of Orange, OC Public Works  
PreScience Corporation*

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*MA-080-17011060*

payment or nonpayment by the prime consultant or deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultants and subconsultants.

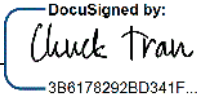
County of Orange, OC Public Works  
PreScience Corporation

MA-080-17011060

IN WITNESS WHEREOF, the PARTIES hereto have executed this CONTRACT on the dates opposite their respective signatures:

PRESCIENCE CORPORATION,  
a California Corporation,

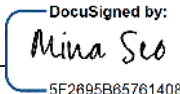
Date: 03/03/2017

By:  \_\_\_\_\_  
Signature DocuSigned by:  
3B6178292BD341F...

Chuck Tran Chairman of the Board / CEO  
Print Name & Title

*(If a corporation, the document must be signed by two corporate officers. The 1<sup>st</sup> must be either Chairman of the Board, President or any Vice President.)*

Date: 03/03/2017

By:  \_\_\_\_\_  
Signature DocuSigned by:  
5F2695B65761408...

Mina Seo Chief Finance Officer/CFO  
Print Name & Title

*(If a corporation, the 2nd signature must be either the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer)*

COUNTY OF ORANGE,  
a political subdivision of the State of California

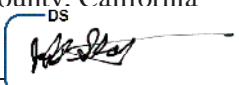
Date: \_\_\_\_\_

By: \_\_\_\_\_

Print  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM  
Office of the County Counsel  
Orange County, California

By:  \_\_\_\_\_

Deputy

**ATTACHMENT A  
STATEMENT OF WORK****I. PURPOSE**

The intent of the CONTRACT is for the A-E firm to provide construction management and inspection services for Edinger Avenue Bridge Replacement over Bolsa Chica Channel Project (Project) in Huntington Beach and Seal Beach, California. This CONTRACT will be utilized to supplement COUNTY staff on the Project.

The Project is located in the City of Huntington Beach, at its western border with the City of Seal Beach. The proposed Project will replace the existing deteriorated timber bridge with a precast concrete bridge, widening the bridge width, upgrading the existing barrier railing, increasing the clearance for projected flood water elevations in the Bolsa Chica Channel, and have a life expectancy of 75 years. Portions of the roadway connecting to the Bridge require widening and reprofiling to provide for a smooth transition. Countess Drive will be improved and reprofiled to match the new Edinger Avenue, and will include various street improvements.

The services of the A-E will be required for the duration of the Project.

**II. PERSONNEL REQUIREMENTS**

The A-E shall assign a Resident Engineer/Structure Representative that is a licensed civil engineer in the State of California, one Construction Inspector, a part time Structural Material Inspector, a part time Scheduler, a part time Public Relations personnel, and a part time Engineering Assistant to the Project. The A-E shall provide the necessary personnel, inspection staff, equipment and transportation to facilitate the performance of the intended construction management and inspection services for the Edinger Avenue Bridge Replacement over Bolsa Chica Channel Project. The project has Federal funding, therefore it is imperative that all activities conform to federal requirements. The duration of the project is anticipated to be 22 months and commence in the Winter of 2017.

**III. GENERAL**

- A. Services furnished by the A-E firm shall be in general accordance with the Project, contract plans and special provisions, "Greenbook" Standard Specifications for Public Works Construction (2012 edition), California Department of Transportation (Caltrans) Standard Specifications (2010), Caltrans Standard Plans (2010), and all other documents stated in the Project Construction Agreement.
- B. The registered engineer and field inspector are expected to work a forty (40) hour week and the material inspector, engineering assistant, scheduler and public relations personnel to work part time/as needed during normal construction contract hours on designated working days or as directed by OC Public Works/OC Construction Representative (COUNTY Representative). Project engineer and inspectors may need to work alternate working days including Saturdays, minor holidays or as directed by the COUNTY Representative in those instances where construction procedures require a revised work schedule and where overtime compensation is approved by the COUNTY Representative. The A-E firm shall provide sufficient staffing to cover alternate working days without the need of overtime.
- C. County will provide a field office for the A-E, unless A-E is able to establish a working office at a place acceptable to the COUNTY.

- D. Attend and actively participate in on-site meetings as directed by COUNTY Representative. Schedule and lead weekly construction meetings with the Contractor and COUNTY, and provide meeting agendas and minutes in a timely fashion. A-E may also be required to schedule additional meetings, as needed, to facilitate proper instruction or to resolve discrepancies or conflicts.
- E. Public Relations: A-E shall provide experienced personnel to perform Public Relations (PR) for the Project, as needed, and at the direction of the COUNTY Representative. This work includes but is not limited to the following duties: maintaining Project webpage and other online services, creation and distribution of electronic handouts, displays, mailers, Project fact sheets, traffic advisories, respond to public inquires and complaints, maintain public communication log, and other activities as needed. Assist COUNTY in community outreach meetings and media relations. Coordinate work with COUNTY as applicable, property owners, other agencies, contractors, developers, and/or other project stakeholders.

#### IV. ENGINEERING

- A. Review and/or recommend approval of submittals and working drawings as required by the contract and/or submitted by the Contractor. These working drawings may include, but are not limited to, shop drawings, stress sheets, anchor bolt layouts, shop details, fabrication and erection plans, demolition plans, equipment lists, cofferdams, falsework, temporary support systems, concrete mix designs, form-work, and for other temporary work and methods of construction the Contractor proposes to use. Review Contractor submitted Request For Information (RFIs) and recommend sound engineering solutions in a timely manner.
- B. Review and advise the COUNTY Representative on the overall project schedule, including staging and completion dates, duration, milestones, and interfaces. Notify the COUNTY Representative immediately if the proposed work schedule does not conform to the contract documents, including the plans, specifications, and permits, or that may require special inspection or testing, or work stoppage.
- C. Review Progress Schedule (Critical Path Method) by Contractor and recommend for approval by COUNTY Representative.
- D. Ability to perform calculations such as grade, deflection, stress, alignment, bridge deck contours and quantity estimates. Knowledge and experience in design and/or construction of either temporary or permanent structures.
- E. Ability to use and reference the following:
1. Caltrans Falsework Manual
  2. Caltrans Foundation Manual
  3. Caltrans Prestress Manual
  4. Caltrans Deck Construction Manual
- F. Identify the scope of work for potential contract change orders.
- G. Prepare independent cost estimates for any changes resulting from design revisions or change in field conditions.
- H. Prepare, and recommend for approval by the COUNTY Representative, all contract change

orders.

- I. Evaluate the merit of any potential claims, or requests for equitable adjustment submitted by the Construction Contractor.
- J. Prepare analysis and response to any potential claims, including recommendations regarding settlement of the claims. Provide testimony at the request of the COUNTY Representative.
- K. Assist OC Construction in project related issues with other County Agencies or departments, engineering and material testing support firms, CEQA consultants, utilities agencies, etc.
- L. Assist COUNTY Representative in community outreach meetings and media relations.
- M. Coordinate work with COUNTY, as applicable, property owners, other agencies, contractors, developers, and/or other project stakeholders.
- N. Review for acceptance/approval of Storm Water Pollution Prevention Plan (SWPPP) in accordance with the general Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit, 2009-0009DWQ, including dewatering/diversion plans per the State's DeMinimus Permit).
- O. Perform bridge profilograph and skid testing as determined by the COUNTY Representative.
- P. Perform pile dynamic monitoring for pile penetration/bearing as determined by the COUNTY Representative.
- Q. Prepare weekly statement of working days and deliver to Contractor on a weekly basis.
- R. Monitor and aggressively manage the initiation, preparation, review and justification for Project cost reduction proposals submitted by the Contractor, Design Engineer, County, or other project participants to affect the most desirable benefit to the Project.
- S. Provide monthly progress reports to the County on the status of the Project, indicating major work activities, status of RFI's, Submittals, Change Orders and othe required information, in a format acceptable to the County. Reports may be requested more frequently or in a separate format, as requested by the County.
- T. Verification and documentation of Contractor fulfillment of construction Disadvantaged Business Goals (DBE).
- U. Perform Labor Compliance as determined by the COUNTY representative.

V. **INSPECTION**

- A. Prior to the start of the construction, if applicable, schedule a preconstruction meeting with personnel representing the COUNTY, the Construction Contractor, and any other involved agencies, including the utilities. This meeting will discuss contract progress schedules, material issues, Construction Contractor issues, right-of-way details, coordination with the utility companies, and other project related issues.
- B. Establish and maintain a submittal log for required submittals of shop drawings, material and



equipment certifications.

- C. Maintain a daily diary which shall describe in detail all work accomplished on a daily basis, weather conditions, number of personnel employed at the site by the Construction Contractor, quantities of materials incorporated into the project, construction equipment at the site, deliveries of construction materials, material shortages, tests, labor disputes, general observations, and any unusual occurrences.
- D. Possess certification for applicable California Test Methods (CTM) and/or the American Society for Testing Materials (ASTM) procedures as required.
- E. Conduct daily job site inspections to assure that the required equipment, materials, and methods of construction are in compliance with the contract drawings, specifications, and regulatory codes.
- F. Perform continuous on-site inspections of all construction work performed under contract to the COUNTY, including structural excavation, safety, trench shoring, earth moving operations, pile driving, installation of trench shoring, fabrication and erection of structural steel, erection of concrete forms and falsework, erection of reinforced steel, placement of concrete into reinforced concrete structures. Placement of concrete street improvement structures such as curb and gutter, sidewalks, and drive approaches. All quantities calculated daily and justified in accordance with Caltrans requirements.
- G. Perform inspections in accordance with construction contract, project, and special provisions, the "Greenbook" Standard Specifications for Public Works Construction (2012 edition), California Department of Transportation (Caltrans) Standard Specifications (2010), and Caltrans Standard Plans (2010).
- H. Assure that the materials provided and the work performed is in accordance with the contract drawings and specifications by obtaining material certifications as required prior to incorporating materials into work. Ascertain that all manufacturers' tests required by specifications are performed before materials or equipment is incorporated into the work. Promptly report to the COUNTY Representative any work or materials which fail to conform to the contract drawings or specifications. Recommend such actions as are necessary and adequate to obtain acceptable work and materials. Notify the Construction Contractor of any and all unacceptable work or material.
- I. Provide the COUNTY Representative with a schedule of materials to be inspected and/or tested and estimate the dates when these services will be necessary. Take samples and perform field/source-controlled tests of construction materials for quality assurance in accordance with California Test Methods (CTMs) and/or the American Society for Testing Materials (ASTM) procedures.
- J. Perform structural materials inspection and testing services and provide certified test results to the Resident Engineer and OC Public Works/Materials Lab. The COUNTY Materials Laboratory will perform various Quality Assurance testing (compaction testing, sand equivalent, gradation, cleanness value, concrete compressive strength, etc.). A-E shall coordinate with Lab for timely materials testing. A/E shall be responsible for all work required for fabricating concrete cylinders, in compliance with the CTM's. A-E inspector shall be currently Caltrans certified to perform required tests.
- K. Notify the COUNTY Representative of any additional testing or inspections necessary to ensure

compliance with the specifications. The COUNTY Representative shall have the sole right to decide if such additional testing and inspection are required and, if required, decide if such testing and inspections are "on-site" or "off-site".

- L. Maintain files on the job site for correspondences, reports of job conferences, test reports, shop drawings, material deliveries, certifications, diaries, other submissions, reproduction of original contract documents including all other project related documents and addenda, permits, contract change orders, supplemental drawings, and all other project related documents in accordance with the "Greenbook" Standard Specifications for Public Works Construction (2012 edition) or as directed by COUNTY Representative. The documents are to be placed in 4" 3-ring binders provided by the A-E, or as otherwise directed by the COUNTY. Ensure compliance with Caltrans Local Assistance Procedures Manual (LAPM) and federal requirements. The A-E shall also maintain a set of plans exclusively for the purpose of noting "As-Built" conditions as the work progresses. The COUNTY Representative will periodically provide staff on-site to audit construction management services provided by the A-E, and that the A-E shall cooperate with the auditor and shall correct deficiencies as noted.
- M. Measure and compute all construction quantities for pay items in accordance with the contract specifications. Prepare monthly progress payments and recommend payments.
- N. Ensure that the Construction Contractor complies with all local, state, and federal laws, ordinances, rules, regulations, regulatory/resource agency permits, and orders as provided by the contract.
- O. Ensure compliance with applicable regulations controlling the work being inspected including California Occupational Safety and Health Administration (Cal-OSHA).
- P. Document and notify the COUNTY Representative and the Construction Contractor's Safety Officer of observed safety deficiencies to ensure the condition is corrected by Construction Contractor. If not corrected, recommend appropriate steps, in accordance with the contract drawings and specifications to ensure public and worker safety.
- Q. The Field inspector shall inform the COUNTY Representative of observed labor relation problems.
- R. In the event interpretation of the meaning and intent of the contract drawings and specifications becomes necessary during construction, the Field inspector shall consult with the COUNTY Representative to ascertain the interpretation and transmit such information to the Construction Contractor.
- S. Advise the COUNTY Representative of all complaints and inquiries from property owners, citizens, officials, or others and assist the COUNTY staff in the investigation and answering of such complaints and inquiries. Maintain a log showing disposition of each complaint and inquiry.
- T. Review project for final completion and provide written notice that the work is ready for final inspection. Monitor and record the Construction Contractor's completion of all contract punch list items. Secure and transmit the required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and final contract records to the COUNTY Representative.
- U. Measure and compute all final construction quantities for pay items in accordance with the contract specifications. Prepare notice of completion that the work has been completed in

- accordance with the drawings and specifications and that the final estimates of payment to the Construction Contractor are correct.
- V. Prepare detailed red line "As-Built" construction drawings to ensure that they show all changes or additions to the original contract documents and submit all final documents to the COUNTY Representative for acceptance within thirty (30) days of final inspection.
  - W. Be trained to use respirators and to work at heights using fall protection equipment.
  - X. Person engaged as welding inspector shall be currently certified as Certified Welding Inspector in accordance with American Welding Society (AWS) QC-1 standard.
  - Y. Person involved in providing inspection and testing services must demonstrate knowledge of fasteners and fastener installation requirements.
  - Z. Perform SWPPP compliance inspections and related duties. Document and take appropriate action to correct SWPPP and/or BMP deficiencies.
  - AA. County to provide all surveying for the Project. A-E required to coordinate survey requests in a timely manner consistent with requirements set by OC Survey.
  - BB. Take and promptly store pictures of the Project on a daily basis.
  - CC. Fill out incident (accident) reports.
  - DD. Maintain continuous 24-hour telephone accessibility during construction activity for emergency use.
  - EE. Document all Contractor delays, reasons for delay, length of time for delay, and phases of work.
  - FF. Provide miscellaneous construction management and inspection services not listed above, as needed, and at the direction of the COUNTY.

#### VI. TIME OF PERFORMANCE

- A. The COUNTY makes no representation as to when the construction will be performed and completed and the time of performance of the actual construction of the contract, regardless of changes in schedule thereof, and whether or not such changes are within control of the COUNTY.
- B. As between the A-E and the COUNTY, the A-E assumes the risk of suspensions of or delays in performance of the CONTRACT, with the following exceptions:
  1. The Construction Contractor fails to finish on the scheduled completion date as a result of failure by the COUNTY to act within a reasonable time to provide necessary information, prompt reviews, decisions, and other matters essential to the project, and the COUNTY grants an extension of time to the construction contract for these reasons.
  2. The Construction Contractor fails to finish on the scheduled completion date as a result of acts of God, strikes, or inability to obtain materials on time through no fault of the Construction Contractor, and the COUNTY grants an extension of time for these reasons.

3. The Construction Contractor fails to finish on the scheduled completion date for reasons under control of the Construction Contractor and the COUNTY requires the A-E to provide inspection and coordination of construction services beyond the scheduled completion date.

**VII. LIMITATION OF AUTHORITY**

A-E shall NOT assume any of the following responsibilities:

- A. Authorize deviations from the CONTRACT documents.
- B. Authorize change orders or extra work for the Project.

**ATTACHMENT B  
COST/COMPENSATION**

- I. COMPENSATION:** This is a **specific rates of compensation contract** between COUNTY and A-E for **Construction Management & Inspection Services- Edinger Bridge Replacement over Bolsa Chica Channel** as set forth in Attachment A, “Scope of Work”.

A-E agrees to accept the specified compensation as set forth in this CONTRACT as full remuneration for performing all services and furnishing all staffing, labor, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by A-E of all its duties and obligations hereunder. A-E shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. **COUNTY shall have no obligation to pay any sum in excess of the Total CONTRACT Amount specified herein below unless authorized by amendment in accordance with Paragraphs 6.3 and 6.18 of the COUNTY CONTRACT Terms and Conditions.**

- II. PRICING:** Payment shall be made in accordance with the provisions of this CONTRACT. Partial progress payments may be allowed at the discretion of the COUNTY Project Manager. Payment shall be as follows:

**A. Classification Rates:**

<b>PRESCIENCE CORPORATION</b>									
<u>Classification Titles</u>	<u>2017 (Jan- Dec)</u>	<u>OT (1.5)</u>	<u>OT (DT)</u>	<u>2018 (Jan- Dec)</u>	<u>OT (1.5)</u>	<u>OT (DT)</u>	<u>2019 (Jan- Dec)</u>	<u>OT (1.5)</u>	<u>OT (DT)</u>
Project Manager	\$216.00	N/A	N/A	\$221.00	N/A	N/A	\$227.00	N/A	N/A
Resident Engineer/Structure Rep <sup>1,2</sup> (prevailing wage work)	\$202.00	\$202.00	\$216.00	\$207.00	\$207.00	\$224.00	\$212.00	\$212.00	\$227.00
Resident Engineer/Structure Rep (non-prevailing wage work)	\$202.00	N/A	N/A	\$207.00	N/A	N/A	\$212.00	N/A	N/A
SMR/Bridge Inspector <sup>1,2</sup> (prevailing wage work)	\$154.00	\$159.00	\$183.00	\$158.00	\$165.00	\$189.00	\$162.00	\$167.00	\$192.00
SMR/Bridge Inspector (non-prevailing wage work)	\$154.00	N/A	N/A	\$158.00	N/A	N/A	\$162.00	N/A	N/A
Lead Inspector <sup>1,2</sup> (prevailing wage work)	\$156.00	\$175.00	\$199.00	\$160.00	\$181.00	\$205.00	\$164.00	\$183.00	\$208.00
Lead Inspector (non-prevailing wage work)	\$156.00	N/A	N/A	\$160.00	N/A	N/A	\$164.00	N/A	N/A
Scheduler	\$169.00	N/A	N/A	\$173.00	N/A	N/A	\$177.00	N/A	N/A

PRESCIENCE CORPORATION (cont'd)									
Engineering Assistant	\$68.00	N/A	N/A	\$70.00	N/A	N/A	\$71.00	N/A	N/A
Other Direct Cost									
Description of Items	Qty	Unit	Unit Cost				Total		
Truck for field person	6,892	Hour	\$ 7.00				\$48,244.00		
Travel Per diem	Actual	Each	\$1,000.00				\$ 1,000.00		
Prevailing Wage	Varies	Hour	\$4,000.00				\$ 4,000.00		
Estimated ODC Total <sup>6</sup>							\$ 53,244.00		
Estimated Labor Total <sup>6</sup>							\$1,556,756.00		
<b>Total Amount</b>							<b>\$1,610,000.00</b>		

LEIGHTON CONSULTING, INC. <sup>3</sup> (materials testing/geotechnical)									
Classification Titles	2017 (Jan-Dec)	OT (1.5)	OT (DT)	2018 (Jan-Dec)	OT (1.5)	OT (DT)	2019 (Jan-Dec)	OT (1.5)	OT (DT)
Structure Material Inspector <sup>1,2</sup> (prevailing wage work)	\$145.51	\$218.26	\$291.01	\$151.33	\$226.99	\$302.65	\$157.38	\$236.07	\$314.76
Structure Material Inspector (non-prevailing wage work)	\$145.51	N/A	N/A	\$151.33	N/A	N/A	\$157.38	N/A	N/A
Testing & Special Inspection Manager/Associate Engineer	\$189.02	N/A	N/A	\$196.58	N/A	N/A	\$204.44	N/A	N/A
Principal in Charge/Principal Engineer	\$315.03	N/A	N/A	\$327.63	N/A	N/A	\$340.74	N/A	N/A
Other Direct Costs									
Description of Items	Qty	Unit	Unit Cost				Total		
Reinforcing Steel									
Resistance Butt-Welded Hoops/Bars, up to No. 10 (CTM 670)	20	Each	\$180.00				\$3,600.00		
Resistance Butt-Welded Hoops/Bars, No. 11 & Over (CTM 670)	4	Each	\$240.00				\$960.00		
Mechanical Rebar Splice (Service), up to No. 10 (CTM 670)	4	Each	\$180.00				\$720.00		
Epoxy coated rebar/dowel film thickness (coating) test (ASTM A775)	24	Each	\$ 45.00				\$1,080.00		
Epoxy coated rebar/dowel continuity (Holiday) test (ASTM A775)	24	Each	\$ 65.00				\$1,560.00		
Epoxy coated rebar flexibility/bend test, up to No. 11 (ASTM A775)	24	Each	\$ 45.00				\$1,080.00		
Prestressing Steel									
Prestressing wire, tension (stress vs. strain plot, ASTM A 416)	22	Each	\$150.00				\$3,300.00		
Post-Tensioned Bars (ASTM A772)	4	Each	\$420.00				\$1,680.00		

<b>LEIGHTON CONSULTING, INC. (cont'd)</b>				
<b>Other Direct Costs (cont'd)</b>				
<b>Fasteners</b>				
Anchor Bolts (ASTM F1554)	1	Each	\$360.00	\$360.00
<b>Pads/Seals</b>				
Elastomeric Bearing Pads (Caltrans SS 51/SP)	2	Each	\$1,620.00	\$3,240.00
Joint Seal Type B, MR1"/MR2" (Caltrans SS 51/SP)	1	Each	\$1,960.00	\$1,960.00
<b>CMU</b>				
CMU compression, to size 8" x 8" x 16" (ASTM C 140)	3	Each	\$ 45.00	\$135.00
CMU moisture, absorption & unit weight (ASTM C 140)	6	Each	\$ 45.00	\$240.00
<b>Electrical Systems</b>				
100W HPS Lighting (Caltrans RSS 86)	2	Each	\$1,296.00	\$2,592.00
<b>Miscellaneous</b>				
Bearing Plates (A536)	2	Each	\$720.00	\$1,440.00
Concrete Compression (ASTM C 39)	30	Each	\$25.00	\$750.00
Pick-up & Delivery	5	Trip	\$90.00	\$450.00
Mileage	400	Mile	\$ 0.54	\$ 216.00
Estimated ODC Total <sup>6</sup>				\$25,363.00
Estimated Labor Total <sup>6</sup>				\$ 4,637.00
<b>Total Amount</b>				<b>\$30,000.00</b>

<b>MBI MEDIA <sup>3</sup></b> <i>(public outreach)</i>				
<b>Classification Titles</b>	<b>2017 (Jan-Dec)</b>	<b>2018 (Jan-Dec)</b>	<b>2019 (Jan-Dec)</b>	
Task Lead	\$167.31	\$174.00	\$180.96	
Project Manager	\$96.67	\$100.53	\$104.55	
Account Coordinator	\$81.80	\$85.09	\$88.49	
Graphic Designer	\$92.95	\$96.67	\$100.53	
<b>Other Direct Cost</b>				
<b>Description of Items</b>	<b>Qty</b>	<b>Unit</b>	<b>Unit Cost</b>	<b>Total</b>
Notification/Ads	2	Each	\$ 850.00	\$1,700.00
Project Boards	4	Each	\$ 95.00	\$ 380.00
Printing	1	Each	\$1,000.00	\$1,000.00
Supplies	2	Each	\$ 500.00	\$1,000.00
Mileage	1,000	Each	\$ 0.54	\$ 540.00
Estimated ODC Total <sup>6</sup>				\$ 4,620.00
Estimated Labor Total <sup>6</sup>				\$ 15,380.00
<b>Total Amount</b>				<b>\$20,000.00</b>

- B. Total CONTRACT Amount Shall Not Exceed: \$1,660,000**
- i. Maximum not to exceed amount of services/reimbursables <sup>4</sup>: \$1,560,000
  - ii. Maximum not to exceed amount for project closeout <sup>5</sup>: \$ 100,000

<sup>1</sup> Classification subject to prevailing wage

<sup>2</sup> All overtime must be authorized in advance by County's project manager and is charged based on California labor and prevailing wage laws.

<sup>3</sup> County will not pay A-E more than the listed amount for Sub-Contractor work, regardless of any agreement between the A-E and their Sub-Contractor. Sub-Contractor rates are listed for convenience only.

<sup>4</sup> Maximum of \$5,000 allocated for reimbursables.

<sup>5</sup> Use of project closeout amount shall be solely at the discretion of the County's Project Manager.

<sup>6</sup> Amounts are only estimated and subject to change, based on services needed.

**III. PRICE INCREASES/DECREASES:** No price increases will be permitted during the term of this CONTRACT. All price decreases will automatically be extended to COUNTY.

**IV. FIRM DISCOUNT AND PRICING STRUCTURE:** A-E guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. A-E agrees that no price increases shall be passed along to COUNTY during the term of this CONTRACT not otherwise specified and provided for within this CONTRACT.

**V. A-E'S EXPENSE:** A-E will not be responsible for reasonable costs related to photo copying, telephone communications and fax communications while on COUNTY sites during the performance of work and services under this CONTRACT. COUNTY will determine what is reasonable.

**VI. REIMBURSABLE ITEMS:** Reimbursable items are non-salary items that are not included in the Scope of Work but necessary for completion of the work and must be authorized in advance by the COUNTY Project Manager. A-E may be entitled to reimbursement for the following, upon prior approval by COUNTY:

- 1) The actual costs of special equipment to be rented, leased or purchased by A-E for use exclusively in the performance of the Scope of Services, to the extent such rental, lease, purchase and costs have been approved in writing by the COUNTY Project Manager.
- 1) Printing expenses paid to outside contractors; to the extent such contractors and reproduction rates have been approved by the COUNTY Project Manager.
- 2) Other actual costs and/or payments specifically approved and authorized in writing by the COUNTY Project Manager and actually incurred by A-E in performance of this CONTRACT.
- 3) Travel costs shall only be reimbursed if approved in advance in writing by COUNTY Project Manager and are subject to the following restrictions:
  - a) Reimbursement of mileage for the business use of a personal vehicle during the conduct of business within the Scope of Services of this CONTRACT shall be based on the Internal Revenue Service Standard Mileage Rate in effect at the time. Mileage between the A-E's "Home Based" office location and OC Public Works location, as well as mileage within OC Public Works property will not be reimbursed.
  - b) Cost of "Home Based" Xerox copies, faxes, and other supplies and materials associated with them will not be reimbursed.
  - c) Cost of cellular phones, cell phone usage plans and usage minutes, and other mobile communication devices will not be reimbursed.
- 4) All reimbursable expenses must be itemized on A-E invoice(s) and documented with receipts. Receipts for reimbursable expenses must be submitted with all A-E invoices. Invoices for reimbursable expenses without back-up receipts will not be paid. A-E is responsible for submitting reimbursable invoices in a format that is acceptable to the COUNTY. Reimbursable items shall be charged at cost. Any third-party or subcontractor services shall also be charged at cost; no mark-ups will be allowed.



**VII. PAYMENT TERMS:** Invoices are to be submitted in monthly arrears, after services have been completed, to the address specified below. Payment will be net thirty (30) days after receipt of an invoice in a format acceptable to the COUNTY, as applicable. Invoices shall be verified and approved by COUNTY and subject to routine processing requirements. The responsibility for providing an acceptable invoice to COUNTY for payment rests with A-E. Incomplete or incorrect invoices are not acceptable and will be returned to the A-E for correction.

Billing shall cover services and/or goods not previously invoiced. The A-E shall reimburse the COUNTY for any monies paid to the A-E for goods or services not provided or when goods or services do not meet the CONTRACT requirements.

Payments made by COUNTY shall not preclude the right of COUNTY from thereafter disputing any items or services involved or billed under this CONTRACT and shall not be construed as acceptance of any part of the goods or services.

**VIII. INVOICING INSTRUCTIONS:** The A-E will provide an invoice on the A-E's letterhead. Each invoice will have a unique number and will include the following information:

- A. A-E's name and address
- B. A-E's remittance address, if different from (A), above
- C. Name of COUNTY agency/department
- D. Delivery/service address
- E. CONTRACT number
- F. Service Date
- G. Description of Services
- H. Total
- I. Taxpayer ID number

Invoices and support documentation are to be forwarded to:

OC Public Works  
Procurement Services  
Attn: Accounts Payable  
300 N Flower St  
Santa Ana, CA 92703

A-E has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the COUNTY via an EFT Authorization Form. To request a form, please contact the DPA.

ATTACHMENT C  
STAFFING PLAN1. A-E KEY PERSONNEL

Name	Classification/Designation	Years of Experience	Licenses/Certifications (include license number)
Chuck Tran	Project Manager	28	Professional Engineer (Civil), CA #48606
Elmo Delos Santos	Resident Engineer	29	Professional Engineer (Civil), CA #48975
Jim Adair	Bridge Inspector	31	Professional Engineer (Civil), CA #41674
Norie Corpuz	Scheduler	24	Professional Engineer (Civil), CA #52174
Jim Devey	Structures/Materials Representative	16	Professional Engineer (Civil), CA #75458
TBD	Engineering Assistant	TBD	TBD
Djan Chandra, PE, GE	Materials Testing/Geotechnical	27	Professional Engineer (Civil), CA #50068 Professional Engineer (Geotechnical), CA #2376
Mary McCormick	Public Outreach	39	Numerous Affiliations (NAWBO, WTS, CMAA)

A-E understands that the personnel represented as assigned to the CONTRACT must remain working on the CONTRACT throughout the duration of the CONTRACT unless otherwise requested or approved by the COUNTY. Substitution or addition of A-E's key personnel in any given category or classification shall be allowed only with prior written approval of the COUNTY's Project Manager. **Note: The written approval of substituted A-E Key Personnel is for departmental use only and shall not be used for auditing purposes outside OC Public Works.**

A-E may reserve the right to involve other A-E personnel, as their services are required. The specific individuals will be assigned based on the need and timing of the service/classification required. Assignment of additional key personnel shall be subject to COUNTY Project Manager written approval. **Note: The written approval of additional A-E Key Personnel is for departmental use only and shall not be used for auditing purposes outside OC Public Works.** COUNTY reserves the right to have any A-E personnel removed from providing services to COUNTY under this CONTRACT. COUNTY is not required to provide any reason for the request for removal of any A-E personnel.

2. SUBCONTRACTOR(S) (IF APPLICABLE)

Listed below are subcontractor(s) anticipated by A-E to perform services specified in Attachment A. Substitution or addition of A-E's subcontractors in any given project function shall be allowed only with prior written approval of the COUNTY Project Manager.

Company Name & Address	Contact Name and Telephone Number	Project Function
<b>Leighton Consulting, Inc.</b> 17781 Cowan Irvine, CA 92614	Djan Chandra, PE, GE (949) 681-4209	Materials Testing/Geotechnical
<b>MBI Media</b> 957 S. Village Oaks Drive, Suite 100 Covina, CA 91724	Mary McCormick (626) 967-1510	Public Outreach

## Contract Summary Form

PreScience Corporation

### Subcontractors

**This contract includes subcontractors or pass through to other providers.**

**This contract includes the following subcontractors or pass through to other providers.**

Subcontractor Name	Service(s)	Amount
Leighton Consulting, Inc.	Materials Testing/Geotechnical	\$30,000
MBI Media	Public Outreach	\$20,000

**Subcontractors listed are team members of each firm, with specific expertise in meeting the requirements of the scope of work. The cost of services is a pass through, with no mark-up by the firms. The actual amount of services anticipated is unknown until a task order is authorized by the County.**

### Contract Operating Expenses

LEIGHTON CONSULTING, INC.				
Other Direct Costs				
<u>Description of Items</u>	<u>Qty</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Total</u>
<b><u>Reinforcing Steel</u></b>				
Resistance Butt-Welded Hoops/Bars, up to No. 10 (CTM 670)	20	Each	\$180.00	\$3,600.00
Resistance Butt-Welded Hoops/Bars, No. 11 & Over (CTM 670)	4	Each	\$240.00	\$960.00
Mechanical Rebar Splice (Service), up to No. 10 (CTM 670)	4	Each	\$180.00	\$720.00
Epoxy coated rebar/dowel film thickness (coating) test (ASTM A775)	24	Each	\$ 45.00	\$1,080.00
Epoxy coated rebar/dowel continuity (Holiday) test (ASTM A775)	24	Each	\$ 65.00	\$1,560.00
Epoxy coated rebar flexibility/bend test, up to No. 11 (ASTM A775)	24	Each	\$ 45.00	\$1,080.00
<b><u>Prestressing Steel</u></b>				
Prestressing wire, tension (stress vs. strain plot, ASTM A 416)	22	Each	\$150.00	\$3,300.00
Post-Tensioned Bars (ASTM A772)	4	Each	\$420.00	\$1,680.00

<b><u>Fasteners</u></b>				
Anchor Bolts (ASTM F1554)	1	Each	\$360.00	\$360.00
<b><u>Pads/Seals</u></b>				
Elastomeric Bearing Pads (Caltrans SS 51/SP)	2	Each	\$1,620.00	\$3,240.00
Joint Seal Type B, MR1"/MR2" (Caltrans SS 51/SP)	1	Each	\$1,960.00	\$1,960.00
<b><u>CMU</u></b>				
CMU compression, to size 8" x 8" x 16" (ASTM C 140)	3	Each	\$ 45.00	\$135.00
CMU moisture, absorption & unit weight (ASTM C 140)	6	Each	\$ 45.00	\$240.00
<b><u>Electrical Systems</u></b>				
100W HPS Lighting (Caltrans RSS 86)	2	Each	\$1,296.00	\$2,592.00
<b><u>Miscellaneous</u></b>				
Bearing Plates (A536)	2	Each	\$720.00	\$1,440.00
Concrete Compression (ASTM C 39)	30	Each	\$25.00	\$750.00
Pick-up & Delivery	5	Trip	\$90.00	\$450.00
Mileage	400	Mile	\$ 0.54	\$ 216.00
Estimated ODC Total <sup>6</sup>				\$25,363.00
Estimated Labor Total <sup>6</sup>				\$ 4,637.00
<b>Total Amount</b>				<b>\$30,000.00</b>

<b>MBI MEDIA</b>				
<b>Other Direct Cost</b>				
<b><u>Description of Items</u></b>	<b><u>Qty</u></b>	<b><u>Unit</u></b>	<b><u>Unit Cost</u></b>	<b><u>Total</u></b>
Notification/Ads	2	Each	\$ 850.00	\$1,700.00
Project Boards	4	Each	\$ 95.00	\$ 380.00
Printing	1	Each	\$1,000.00	\$1,000.00
Supplies	2	Each	\$ 500.00	\$1,000.00
Mileage	1,000	Each	\$ 0.54	\$ 540.00
Estimated ODC Total <sup>6</sup>				\$ 4,620.00
Estimated Labor Total <sup>6</sup>				\$ 15,380.00
<b>Total Amount</b>				<b>\$20,000.00</b>

# Memorandum of Recommendation

**RFP-080-C012710-AS A-E SERVICES FOR CONSTRUCTION MANAGEMENT & INSPECTION SERVICES- Edinger Bridge**

**Evaluations Ranking Summary**

Based on the established criteria set forth in the Request for Proposal, below are the Respondent ranks:

Respondents	Rank
PreScience Corporation	1
Jacobs Project Management Company	2
CALTROP Corporation	3
Psomas	4
FALCON Engineering Services	5

COMBINED RANKINGS OF SHORTLIST	FALCON Engineering Services	Jacobs Project Management Company	CALTROP Corporation	PreScience Corporation	Psomas
Evaluator 1	5	2	4	1	3
Evaluator 2	5	1	3	2	4
Evaluator 3	5	2	1	4	3
Evaluator 4	5	4	1	3	2
Evaluator 5	2	3	4	1	5
<b>TOTAL RANK</b>	<b>22</b>	<b>12</b>	<b>13</b>	<b>11</b>	<b>17</b>
<b>FINAL RANKING</b>	<b>5</b>	<b>2</b>	<b>3</b>	<b>1</b>	<b>4</b>

EVALUATOR 1									
WRITTEN PROPOSAL (500 points)	1	2	3	4	5	6	7	8	9
	Hill International, Inc.	FALCON Engineering Services	HDR Construction Control Corporation	Jacobs Project Management Company	SYRUSA Engineering, Inc.	CALTROP Corporation	PreScience Corporation	Biggs Cardosa Associates, Inc.	Psomas
Technical Expertise (100)	80.00	80.00	80.00	80.00	80.00	80.00	90.00	70.00	80.00
Key Personnel & References (125)	100.00	90.00	100.00	100.00	90.00	100.00	120.00	90.00	90.00
Approach/Understanding of Project (125)	100.00	100.00	100.00	115.00	90.00	100.00	100.00	100.00	100.00
Control of Cost and Schedules: (50)	35.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00
Adequate Staff and Availability to Perform Project (50)	35.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00	40.00
Proposal Organization and Completeness of Response, Degree of Compliance with the County Model Contract (50)	40.00	40.00	35.00	40.00	40.00	40.00	40.00	40.00	40.00
<b>Written Total</b>	<b>390.00</b>	<b>390.00</b>	<b>395.00</b>	<b>415.00</b>	<b>380.00</b>	<b>400.00</b>	<b>430.00</b>	<b>380.00</b>	<b>390.00</b>
INTERVIEW (500 points)									
Question 1 (100)	0.00	75.00	0.00	85.00	0.00	90.00	90.00	0.00	80.00
Question 2 (150)	0.00	65.00	0.00	110.00	0.00	100.00	135.00	0.00	110.00
Question 3 - (120)	0.00	50.00	0.00	110.00	0.00	90.00	105.00	0.00	105.00
Question 4 - (100)	0.00	85.00	0.00	80.00	0.00	90.00	90.00	0.00	90.00
Presentation/Communication Skills (30)	0.00	15.00	0.00	25.00	0.00	20.00	25.00	0.00	20.00
<b>Interview Total</b>	<b>0.00</b>	<b>290.00</b>	<b>0.00</b>	<b>410.00</b>	<b>0.00</b>	<b>390.00</b>	<b>445.00</b>	<b>0.00</b>	<b>405.00</b>
<b>Grand Total</b>	<b>390.00</b>	<b>680.00</b>	<b>395.00</b>	<b>825.00</b>	<b>380.00</b>	<b>790.00</b>	<b>875.00</b>	<b>380.00</b>	<b>795.00</b>
<b>Evaluator Ranking Score</b>	<b>N/A</b>	<b>5</b>	<b>N/A</b>	<b>2</b>	<b>N/A</b>	<b>4</b>	<b>1</b>	<b>N/A</b>	<b>3</b>

EVALUATOR 2									
WRITTEN PROPOSAL (500 points)	1	2	3	4	5	6	7	8	9
	Hill International, Inc.	FALCON Engineering Services	HDR Construction Control Corporation	Jacobs Project Management Company	SYRUSA Engineering, Inc.	CALTROP Corporation	PreScience Corporation	Biggs Cardosa Associates, Inc.	Psomas
Technical Expertise (100)	80.00	80.00	90.00	90.00	80.00	90.00	80.00	80.00	80.00
Key Personnel & References (125)	75.00	100.00	112.50	125.00	100.00	112.50	112.50	75.00	100.00
Approach/Understanding of Project (125)	100.00	100.00	100.00	112.50	100.00	100.00	112.50	100.00	100.00
Control of Cost and Schedules: (50)	40.00	40.00	40.00	45.00	40.00	40.00	45.00	40.00	40.00
Adequate Staff and Availability to Perform Project (50)	35.00	40.00	40.00	50.00	40.00	50.00	45.00	40.00	40.00
Proposal Organization and Completeness of Response, Degree of Compliance with the County Model Contract (50)	40.00	40.00	40.00	45.00	40.00	45.00	45.00	40.00	40.00
<b>Written Total</b>	<b>370.00</b>	<b>400.00</b>	<b>422.50</b>	<b>467.50</b>	<b>400.00</b>	<b>437.50</b>	<b>440.00</b>	<b>375.00</b>	<b>400.00</b>
INTERVIEW (500 points)									
Question 1 (100)	0.00	70.00	0.00	80.00	0.00	85.00	85.00	0.00	85.00
Question 2 (150)	0.00	115.00	0.00	130.00	0.00	100.00	120.00	0.00	120.00
Question 3 - (120)	0.00	80.00	0.00	90.00	0.00	80.00	95.00	0.00	95.00
Question 4 - (100)	0.00	80.00	0.00	90.00	0.00	90.00	80.00	0.00	80.00
Presentation/Communication Skills (30)	0.00	15.00	0.00	30.00	0.00	20.00	30.00	0.00	20.00
<b>Interview Total</b>	<b>0.00</b>	<b>360.00</b>	<b>0.00</b>	<b>420.00</b>	<b>0.00</b>	<b>375.00</b>	<b>410.00</b>	<b>0.00</b>	<b>400.00</b>
<b>Grand Total</b>	<b>370.00</b>	<b>760.00</b>	<b>422.50</b>	<b>887.50</b>	<b>400.00</b>	<b>812.50</b>	<b>850.00</b>	<b>375.00</b>	<b>800.00</b>
<b>Evaluator Ranking Score</b>	<b>N/A</b>	<b>5</b>	<b>N/A</b>	<b>1</b>	<b>N/A</b>	<b>3</b>	<b>2</b>	<b>N/A</b>	<b>4</b>

Memorandum of Recommendation

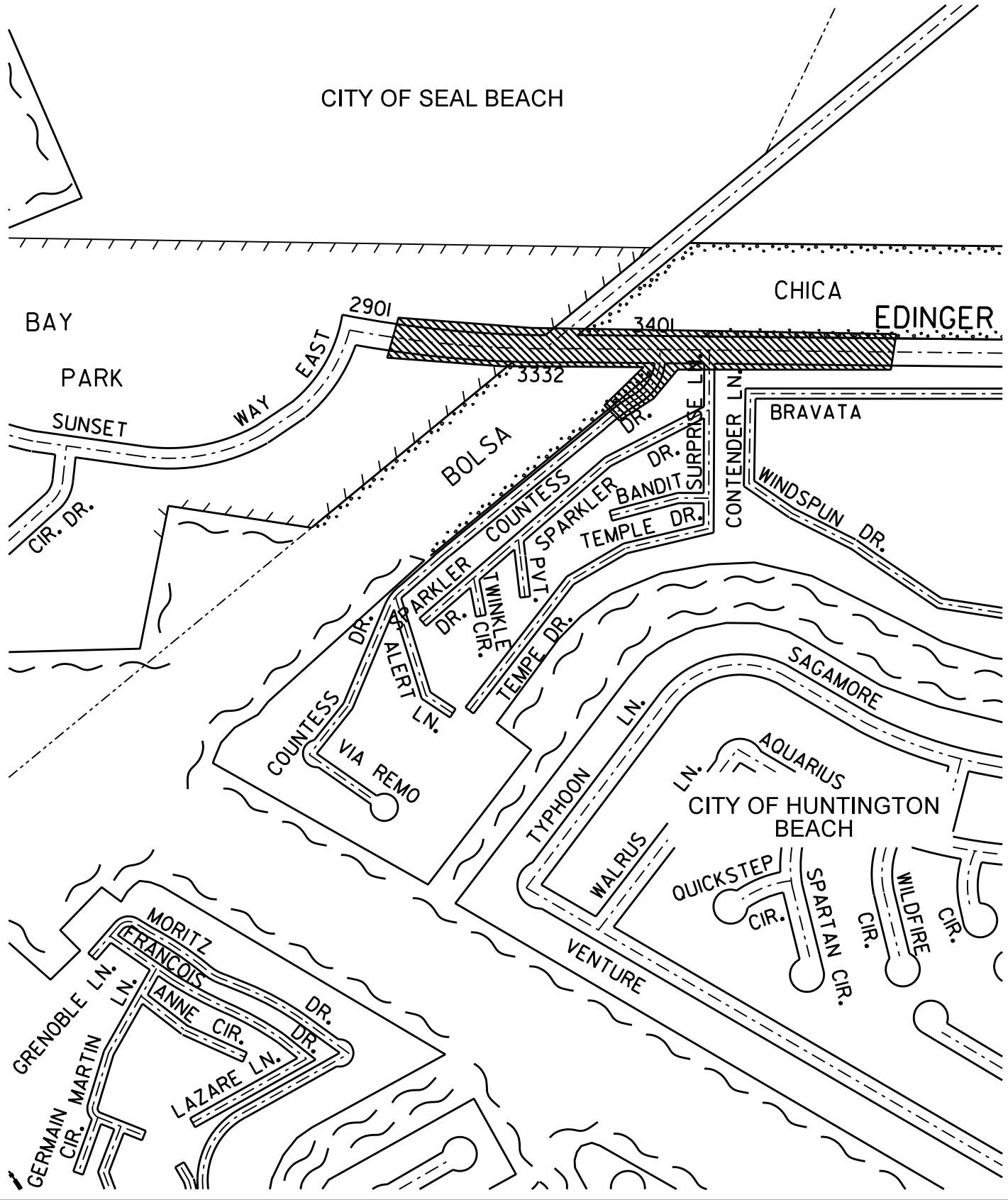
RFP-080-C012710-AS A-E SERVICES FOR CONSTRUCTION MANAGEMENT & INSPECTION SERVICES- Edinger Bridge

EVALUATOR 3									
WRITTEN PROPOSAL (500 points)	1	2	3	4	5	6	7	8	9
	Hill International, Inc.	FALCON Engineering Services	HDR Construction Control Corporation	Jacobs Project Management Company	SYRUSA Engineering, Inc.	CALTROP Corporation	PreScience Corporation	Biggs Cardosa Associates, Inc.	Psomas
Technical Expertise (100)	75.00	80.00	75.00	95.00	75.00	95.00	75.00	75.00	90.00
Key Personnel & References (125)	95.00	95.00	95.00	105.00	90.00	107.00	85.00	90.00	95.00
Approach/Understanding of Project (125)	105.00	110.00	110.00	120.00	85.00	116.00	105.00	95.00	105.00
Control of Cost and Schedules: (50)	50.00	40.00	30.00	45.00	30.00	45.00	45.00	30.00	45.00
Adequate Staff and Availability to Perform Project (50)	50.00	50.00	35.00	50.00	40.00	50.00	50.00	40.00	50.00
Proposal Organization and Completeness of Response, Degree of Compliance with the County Model Contract (50)	50.00	40.00	45.00	45.00	35.00	50.00	45.00	30.00	40.00
<b>Written Total</b>	<b>425.00</b>	<b>415.00</b>	<b>390.00</b>	<b>460.00</b>	<b>355.00</b>	<b>463.00</b>	<b>405.00</b>	<b>360.00</b>	<b>425.00</b>
INTERVIEW (500 points)									
Question 1 (100)	0.00	80.00	0.00	75.00	0.00	100.00	90.00	0.00	80.00
Question 2 (150)	0.00	125.00	0.00	125.00	0.00	105.00	135.00	0.00	125.00
Question 3 - (120)	0.00	90.00	0.00	90.00	0.00	100.00	100.00	0.00	100.00
Question 4 - (100)	0.00	80.00	0.00	80.00	0.00	90.00	80.00	0.00	90.00
Presentation/Communication Skills (30)	0.00	20.00	0.00	30.00	0.00	30.00	30.00	0.00	25.00
<b>Interview Total</b>	<b>0.00</b>	<b>395.00</b>	<b>0.00</b>	<b>400.00</b>	<b>0.00</b>	<b>425.00</b>	<b>435.00</b>	<b>0.00</b>	<b>420.00</b>
<b>Grand Total</b>	<b>425.00</b>	<b>810.00</b>	<b>390.00</b>	<b>860.00</b>	<b>355.00</b>	<b>888.00</b>	<b>840.00</b>	<b>360.00</b>	<b>845.00</b>
<b>Evaluator Ranking Score</b>	<b>N/A</b>	<b>5</b>	<b>N/A</b>	<b>2</b>	<b>N/A</b>	<b>1</b>	<b>4</b>	<b>N/A</b>	<b>3</b>

EVALUATOR 4									
WRITTEN PROPOSAL (500 points)	1	2	3	4	5	6	7	8	9
	Hill International, Inc.	FALCON Engineering Services	HDR Construction Control Corporation	Jacobs Project Management Company	SYRUSA Engineering, Inc.	CALTROP Corporation	PreScience Corporation	Biggs Cardosa Associates, Inc.	Psomas
Technical Expertise (100)	90.00	80.00	80.00	80.00	90.00	90.00	80.00	90.00	90.00
Key Personnel & References (125)	100.00	118.00	100.00	100.00	80.00	113.00	113.00	100.00	88.00
Approach/Understanding of Project (125)	100.00	75.00	100.00	113.00	88.00	113.00	113.00	100.00	118.00
Control of Cost and Schedules: (50)	40.00	30.00	40.00	45.00	40.00	45.00	35.00	40.00	45.00
Adequate Staff and Availability to Perform Project (50)	35.00	30.00	40.00	40.00	40.00	45.00	40.00	40.00	45.00
Proposal Organization and Completeness of Response, Degree of Compliance with the County Model Contract (50)	40.00	30.00	30.00	40.00	35.00	45.00	35.00	40.00	45.00
<b>Written Total</b>	<b>405.00</b>	<b>363.00</b>	<b>390.00</b>	<b>418.00</b>	<b>373.00</b>	<b>451.00</b>	<b>416.00</b>	<b>410.00</b>	<b>431.00</b>
INTERVIEW (500 points)									
Question 1 (100)	0.00	85.00	0.00	80.00	0.00	95.00	80.00	0.00	85.00
Question 2 (150)	0.00	120.00	0.00	120.00	0.00	120.00	120.00	0.00	110.00
Question 3 - (120)	0.00	95.00	0.00	90.00	0.00	100.00	90.00	0.00	110.00
Question 4 - (100)	0.00	85.00	0.00	80.00	0.00	95.00	80.00	0.00	90.00
Presentation/Communication Skills (30)	0.00	20.00	0.00	20.00	0.00	25.00	25.00	0.00	25.00
<b>Interview Total</b>	<b>0.00</b>	<b>405.00</b>	<b>0.00</b>	<b>390.00</b>	<b>0.00</b>	<b>435.00</b>	<b>395.00</b>	<b>0.00</b>	<b>420.00</b>
<b>Grand Total</b>	<b>405.00</b>	<b>768.00</b>	<b>390.00</b>	<b>808.00</b>	<b>373.00</b>	<b>886.00</b>	<b>811.00</b>	<b>410.00</b>	<b>851.00</b>
<b>Evaluator Ranking Score</b>	<b>N/A</b>	<b>5</b>	<b>N/A</b>	<b>4</b>	<b>N/A</b>	<b>1</b>	<b>3</b>	<b>N/A</b>	<b>2</b>

EVALUATOR 5									
WRITTEN PROPOSAL (500 points)	1	2	3	4	5	6	7	8	9
	Hill International, Inc.	FALCON Engineering Services	HDR Construction Control Corporation	Jacobs Project Management Company	SYRUSA Engineering, Inc.	CALTROP Corporation	PreScience Corporation	Biggs Cardosa Associates, Inc.	Psomas
Technical Expertise (100)	70.00	100.00	60.00	100.00	90.00	80.00	60.00	90.00	90.00
Key Personnel & References (125)	75.00	110.00	85.00	100.00	90.00	75.00	110.00	110.00	75.00
Approach/Understanding of Project (125)	65.00	125.00	65.00	125.00	100.00	100.00	100.00	100.00	115.00
Control of Cost and Schedules: (50)	20.00	50.00	30.00	30.00	35.00	40.00	35.00	50.00	35.00
Adequate Staff and Availability to Perform Project (50)	50.00	40.00	30.00	35.00	40.00	30.00	40.00	50.00	25.00
Proposal Organization and Completeness of Response, Degree of Compliance with the County Model Contract (50)	50.00	40.00	30.00	50.00	40.00	50.00	50.00	50.00	50.00
<b>Written Total</b>	<b>330.00</b>	<b>465.00</b>	<b>300.00</b>	<b>440.00</b>	<b>395.00</b>	<b>375.00</b>	<b>395.00</b>	<b>450.00</b>	<b>390.00</b>
INTERVIEW (500 points)									
Question 1 (100)	0.00	60.00	0.00	75.00	0.00	90.00	95.00	0.00	60.00
Question 2 (150)	0.00	115.00	0.00	110.00	0.00	120.00	135.00	0.00	100.00
Question 3 - (120)	0.00	100.00	0.00	90.00	0.00	90.00	110.00	0.00	105.00
Question 4 - (100)	0.00	90.00	0.00	70.00	0.00	90.00	100.00	0.00	80.00
Presentation/Communication Skills (30)	0.00	20.00	0.00	30.00	0.00	30.00	30.00	0.00	30.00
<b>Interview Total</b>	<b>0.00</b>	<b>385.00</b>	<b>0.00</b>	<b>375.00</b>	<b>0.00</b>	<b>420.00</b>	<b>470.00</b>	<b>0.00</b>	<b>375.00</b>
<b>Grand Total</b>	<b>330.00</b>	<b>850.00</b>	<b>300.00</b>	<b>815.00</b>	<b>395.00</b>	<b>795.00</b>	<b>865.00</b>	<b>450.00</b>	<b>765.00</b>
<b>Evaluator Ranking Score</b>	<b>N/A</b>	<b>2</b>	<b>N/A</b>	<b>3</b>	<b>N/A</b>	<b>4</b>	<b>1</b>	<b>N/A</b>	<b>5</b>

CITY OF SEAL BEACH



LOCATION MAP  
 - - - COUNTY/CITY BOUNDARY  
 [Hatched Box] AREA OF WORK

ORANGE COUNTY PUBLIC WORKS  
 EDINGER AVENUE BRIDGE REPLACEMENT  
 FROM SUNSET WAY TO COUNTESS DRIVE

WORK ORDER NO. : ERO3651  
 SCALE : NTS THOMAS GUIDE : 826 J-6

## Edinger Avenue Bridge over Bolsa Chica Channel

### Bid Analysis Summary

Bid Items:	Engineering Firm:	Variance:	Reason:
59, 60	<b>AECOM</b>	Furnish and install piles account for approximately \$2 million in added cost	Complexity of working in a sensitive environment
59	<b>NCM Engineering</b>	Increased cost to <u>furnish</u> piles	Due to high demand and market conditions
60	<b>NCM Engineering</b>	Increased cost to <u>install</u> piles	Regulatory restrictions limit noise and vibrations

Bid Items:	Description:	Kiewit:	Engineers Estimate:	Variance:
59	Furnish 48" Cast-in-Steel Shell Concrete Piling	\$1,789,500	\$906,680	\$882,820
60	Drive 48" Cast-In-Steel Shell Concrete Pile	\$1,500,000	\$466,000	\$1,034,000
			<b>Total:</b>	<b>\$1,916,820</b>



## Memorandum

To	Omeed Mohammad Pour, P.E.	Page	1
CC			
Subject	Edinger Avenue Over Bolsa Chica Channel – Bid Analysis		
From	Janson Ting		
Date	February 20, 2017		

A bid analysis was conducted comparing the three low bids with the original estimate. Our findings are as follows:

Overall, there are several bid items that show a lot of variability amongst the three bidders. For example, on Temporary Construction Trestles (item 51), we are \$500K above one bidder and \$375K below another. This indicates that there are several approaches to bidding this job and the contractor may choose to allocate more risk to certain bid items over to others. Similarly for Structural Concrete, (item 67), the estimate is \$1.2M below one bidder but \$460K above another.

However there are certain trends to consider:

- Items 2, 7, 8 generally depicts the bidder's overall approach to the job. These include the upfront cost (Mobilization) and cost for the duration of the project (Overhead and Temporary Traffic Maintenance). Altogether, this represents an increase of \$800K from the bid estimate. The provisions in Addendum #1, which requires additional insurance and that the contractor turn over all temporary signals for County's ownership may have contributed to some of the increase.
- Items 59 and 60 relate to furnishing and driving CISS piles. These two items account for almost \$2M of the difference. This is primarily due to the amount of complexity of working in a sensitive environment and driving piles using temporary trestles. In addition, due to the various sets of noise requirements presented in the various permits and the MMRP, which made it the contractor's responsibility to keep noise levels under 75dBA for the nearby residents, it is likely that the bidders assigned the most risk in these two items due to anticipated complications and delays. This is evident in the questions asked during the bidding phase.
- The remaining major items (51, 52, 60, 67, 68, 73) account for almost \$1M of the difference. It is noted that there are uncertainties with the amount of hazardous materials present in the existing timber bridge. The testing and disposal of these materials was added to the contractor's responsibility under the addendum. The additional uncertainty may be the cause of the \$245K increase.
- There is one minor items (93) that accounts for a little over \$100K. Bridge Lighting (item 93) cost is high due to uncertainties involved with providing temporary lighting.

# MEMORANDUM

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**Date:** Monday February 20, 2017  
**Attention:** ***Omeed Mohammad Pour, P.E.***  
**Organization:** OC Public Works/Infrastructure  
**From:** Mark Stiller, P.E.  
**CC:** File  
**Subject:** Edinger Avenue Bridge at Bolsa Chica Channel Bid Results Analysis

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Mr. Pour,

Bid results from the Edinger Avenue Bridge at Bolsa Chica Channel bid opening showed a higher project cost than what was forecasted by the Engineer's estimate. The total amounts for three low Contractor bids were closely clustered together (variance range 0.78% to 2.5%), usually a good indicator of quality contract documents. However, a very wide range of individual unit prices was found across the majority of the bid items between the Engineer's estimate and even between the individual Contractor's estimates. The scope of this memorandum focuses on the potential reasons for high variability in various unit costs and also outlines possible reasons for the low Contractor bid which totals approximately 30% higher than the Engineer's estimate.

Individual unit costs are driven by a very broad range of factors that influence the Contractor's pricing. At a minimum, a unit cost considers the Contractor's material costs, rental fees, labor and labor overhead, profit, contingency, subcontractor costs and their understanding of specification-based requirements. Also, Contractors commonly use proprietary and individualized methods of shifting cost between items to help their operations and profitability.

Several bid items in the bid results show a significant deviation from the Engineer's estimate and have a high total cost that contributes in a substantial way to the higher overall bid results. These items are as follows:

- Time-Related Overhead
- Temporary Construction Trestles
- Furnish 48" Cast-in-Steel Shell Concrete Piling
- Drive 48" Cast-in-Steel Shell Concrete Pile
- Structural Concrete (Bridge)
- Bar Reinforcing (Epoxy Coated)

Time-related overhead provides payment for most Contractor home and field office costs that are not associated with a bid item. These overhead costs are based on a cost per day and are sensitive to the specific Contractor's facilities and expected expenses. TRO can vary from 1% to over 20% of a total project cost. The Engineer's estimate assumed the industry standard of 10%, one Contractor bid 4%, the other two bid over 10% based on their higher total project costs. As a result, this item adds over \$500,000 to the project but this is within the normal range for a TRO bid item.

Temporary construction trestles are required to facilitate demolition and construction of the bridge over the Bolsa Chica Channel. The Engineer's estimate was based on a schematic layout of these trestles, including decking, pile supports, steel plates and other details. Also, the time assumed to construct the trestle along with material rental costs were considered along with labor costs for the bridge removal and new bridge construction. Although one Contractor's bid for the temporary construction trestles was well below the Engineer's estimate, the other two bid an additional \$500,000 over the estimated cost. This is likely due to one or more of the following:

# MEMORANDUM

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- Time to construct the bridge and/or trestle is longer than estimated due to resource agencies permit requirements.
- Cost to rent material for the trestle may be higher based on availability, multiple concurrent jobs reducing supply. In Los Angeles/Orange County/Inland Empire regions, major construction activities are either currently underway or ready to start causing temporary demand spikes and supply constraints.
- Size and scope of the trestle is larger than estimated
- Contingency added to address possible environmental risks

Furnish 48" Cast-in-Steel Shell Concrete Piling bid costs are 55% to 97% higher than the Engineer's estimate, totaling as much as \$882,820 more than the expected cost for this item. This item pays for the procurement/fabrication and delivery of the large diameter steel pile shells. Each unit cost is well beyond the Caltrans cost database records for similar items (those used for the Engineer's estimate) and this may be due to one or more of the following:

- Availability issues due to high demand on materials or fabrication resources from other projects
- Each pile is very long individually and requires multiple splices for installation. The Contractor may have minimized the crane size that travels on the trestles, reducing the demands on the trestle but also reducing the carrying capacity. This results in additional splices in the piles. The cost of field splicing large piles is high, and complicating factors such as working over/near the channel could have further increased the cost. A combination of higher splicing cost and a higher number of splices would increase the pile furnish cost dramatically over the Engineer's expectations.

Similar to the furnish piling, Drive 48" Cast-in-Steel Shell Concrete Pile bid costs are 114% to 197% higher than the Engineer's estimate, adding up to \$1,380,000 to the expected cost. This item covers the work required to install the pile in place after delivery. The lowest unit cost for this item is nearly twice the highest Caltrans cost database record for this type of work. The additional costs may be due to one or more of the following":

- Environmental commitments dictate careful control on the noise and vibrations induced to the surroundings via both air and water media. A bubble curtain is specified below the water surface and, though this work is captured in its own bid item, the cost of above water mitigation and uncertainty in the below water mitigations could have been a consideration for the Contractor. The driving may have been slowed down, requiring longer time periods to install each pile, increasing construction duration and adding equipment and labor costs. Additional costs, complications and delays associated with dynamic monitoring to the high degree specified by the project is also a potential cost driver not normally experienced on other projects.
- The specifications refer to a load test pile and anchor pile, items questioned by the Contractors during the bidding phase. This indicated interest and the associated uncertainty may have cause the contractors to provide additional contingency on both furnish and drive pile to cover the expensive process of installing test and anchor piling.

Items such as Structural Concrete and Bar Reinforcing Steel were much more irregular in Contractor pricing with only one or two anomalies for each within the group of bids. Contractors may have tried to capture cost with these items based on otherwise unaccounted for project costs. Some potential drivers for this cost increase could be one or more of the following:

- A perceived inaccurate quantity, whether or not the quantity is correct, may be something the Contractor would try to take advantage of to either cover assumed costs based on a different quantity, or strategizing to gain additional income by setting high unit costs on an expected change order item during construction.
- Controlling mobilization dollar amounts may cause the contractor to add cost to early work items in order to obtain additional payment for front-end costs.

# MEMORANDUM

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- Temporary construction easements provide 12 months of coverage that may not be adequate for the specified work to be completed. This additional constraint on the Contractor's work could cause a cost increase to cover more labor and equipment to achieve the deadline.
- Costs to procure insurance at the high limits shown compounded with the work near the ocean, near environmentally sensitive areas and within the channel may be more than a similar project that is not subject to these factors. There is no specific bid item to capture these costs and the Contractor may have assigned additional cost to one or multiple items to cover the expense.

Each Contractor, and each estimator working on the bid will have a unique approach to market conditions, material and labor availability, profitability strategies and management of risk with contingency. The unexpected high bid results, as compared to the Engineer's estimate, can only be partially explained without an in-depth analysis involving the Contractor themselves and, even then, the Contractor would be unwilling to provide any significant insight on the bidding practices they use to be successful for fear of losing their competitive edge. A voluntary survey of the Contractors regarding these bid results may be prudent to help narrow down the cost drivers that were not captured by the Engineer's estimate for future reference to help close the gap on upcoming project bids.

Please let us know if there is any additional analysis, comments or justifications required to help support the justification of these bid results to the Board. We thank you for the opportunity to assist on this task and will be available to meet and discuss any time.

Regards,



Mark Stiller, P.E.  
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Mark.Stiller@NCMcivil.com  
**NCM Engineering Corporation**