

MILITARY DEPARTMENT
OFFICE OF THE ADJUTANT GENERAL
10601 Bear Hollow Drive
Rancho Cordova, California 95670



**Invitation for Bid (IFB)
Notice to Prospective Bidders
IFB No. 131007 - Mitigation Implementation Planning and Agency Permitting
Camp San Luis Obispo - San Luis Obispo, CA**

7/22/2026

You are invited to review and respond to this IFB. In submitting your bid, you must comply with these instructions. In addition to those programs and preferences that are specified in this solicitation, Prospective Contractors are encouraged to consider programs and preferences that are available, such as those for the use of small businesses, disadvantaged businesses, disabled veteran businesses, and other businesses covered by State and Federal programs and preferences.

As required by Government Code 14838, the California Military Department (CMD) is committed to meeting the State's 25 percent (25%) Small Business (SB) participation goal. Certified SBs, Micro Businesses (MB), and contractors willing to commit to subcontracting a minimum of 25 percent (25%) of their net bid price to certified SBs or MBs are encouraged to submit bids. See **Section 4, Special Programs, Small Business (SB) or Microbusiness (MB) Preference**, in this IFB for requirements.

In the opinion of CMD, this IFB is complete and without need of explanation. However, if you have questions, or should you need any clarifying information, the contact person for this IFB is:

Joy Lubic
California Military Department
10601 Bear Hollow Drive
Rancho Cordova, CA 95670
Joy.Lubic@cmd.ca.gov

Please note that no *verbal* information given will be binding upon the State unless such information is issued in writing as an official addendum.

Technical questions regarding this solicitation will be addressed, in writing, and in accordance with the Questions and Answers portion of this IFB. See **Section 3, Key Actions Dates** for more details.

Joy Lubic
Contracting Analyst

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1. Purpose and Description of Services

- a. Contractor agrees to provide to CMD **Mitigation Implementation Planning and Agency Permitting** services, as described herein:

Contractor shall provide all materials, labor, bonds, licenses, insurance, equipment, tools, permits, taxes, transportation, and fees to complete the emergency mitigation planning as detailed in the Scope of Work.

Contractor shall have **365** calendar days to complete the Work.

2. Bidder Minimum Qualifications

- a. The Prime Bidder must be either an individual or firm currently licensed to do business in California and provide proof of such as required in **Attachment 1 – Required Attachment Checklist**.
- b. The Prime Bidder must have a business license or incorporation papers for their respective State showing that their company is in good standing in that state, if the Prime Bidder's base of operation is located outside the State of California and provide proof of such as required in **Attachment 1 – Required Attachment Checklist**.
- c. Pursuant to Public Contract Code section 2010, a person that submits a bid or proposal to [...] a state agency with respect to any contract in the amount of \$100,000.00 shall complete the **Attachment 10 – California Civil Rights Laws**.
- d. The Contractor must have experience planning and overseeing riparian and wetland ecological restoration. The Contractor must be familiar with habitat restoration techniques, CDFW permit preparation, and local flora and fauna.
- e. The restoration and mitigation deliverables shall be prepared by personnel qualified in fluvial (channel and stream) geomorphology, biology, stream restoration, habitat restoration, and native revegetation, with the restoration lead having no less than five (5) years of experience designing successful restoration projects within coastal California.
- f. The Contractor shall have demonstrated experience preparing site-specific invasive-plant control prescriptions using an integrated pest management approach consistent with the CA ARNG Integrated Pest Management Plan (IPMP).
- g. **The Contractor will provide a Statement of Qualifications (SOQ) or summary of relevant project experience that details previous experience planning and/or implementing riparian or wetland habitat restoration projects at the time of bid submittal.**
- h. The Contractor will have experience with GIS or CADD software and the ability to complete the planting, irrigation, and utility-conflict maps, mitigation-area maps, GPS field mapping, and GIS data products required by this SOW, and to perform quality control on data meeting National Guard Bureau data quality control requirements.
- i. Failure of Bidder to sufficiently provide any or all of the minimum qualifications, in the opinion of CMD, will result in the Bidder's bid deemed non-responsive.

- j. By submitting its bid, Bidder certifies, under penalty of perjury, that its Contractors State License Board (CSLB) license is in a classification appropriate to the work to be undertaken as identified in the **Attachment 12 – Sample Standard Agreement, Exhibit A, Scope of Work**. This requirement has also been added in the **Attachment 12 – Sample Standard Agreement, Exhibit E**. Refer to **Section 3, Bid Requirements and Information, Contractor's License**, for submittal requirements.
- k. Failure of Bidder to sufficiently provide any or all of the minimum qualifications, in the opinion of CMD, will result in the Bidder's bid deemed non-responsive.

3. Bid Requirements and Information

a. Key Action Dates

It is recognized that time is of the essence. All bidders are hereby advised of the following schedule and will be expected to adhere to the required dates and times.

Event	Date	Time (PST)
IFB published on Cal eProcure	7/22/2026	2:00 PM
Request for Information (RFI) Submission Deadline	7/27/2026	5:00 PM
Bid Submission Deadline	8/5/2026	2:00 PM
Public Bid Opening	8/5/2026	2:15 PM

b. Mandatory Pre-Bid Job Walk

- i. There will be No Job Walk for this project.

c. Request for Information (RFI) Period

- i. Potential Bidders may submit written questions regarding the project by 7/27/2026. All questions should be emailed in writing to Joy.Lubic@cmd.ca.gov. NO QUESTIONS will be entertained after 7/27/2026.
- ii. Written questions must include: the individual's name, firm name, complete address and must reference **IFB No. 131007**.
- iii. Written responses to all questions will be collectively compiled and posted to the Cal eProcure website (<https://caleprocure.com/pages/index.aspx>). It is the responsibility of the Bidder to access the website for any changes or addenda that may be posted. Refer to this **IFB, Section 3, A, Key Action Dates**, for the schedule of events and dates/times.

d. Costs Included in Bid Rates

Bid prices/rates shall include the cost of employer payments to or on behalf of employees, subsistence, travel, compensation insurance premiums, unemployment contributions, social security taxes, contract bond premiums, and any other taxes or assessments, including but not limited to, sales and use taxes required by law or otherwise and no additional allowance will be paid unless separate payment provisions in the Agreement should specifically provide otherwise.

e. Employment of undocumented Workers

No State agency or department, as defined in California Public Contract Code Section 10335.7, that is subject to this code, shall award a public works contract to a bidder or contractor, nor shall a bidder or contractor be eligible to bid for or receive a Public Works Agreement, who has, in the preceding five (5) years, been convicted of violating a State or Federal law regarding the employment of undocumented workers (Pub. Cont. Code Section 6101).

f. State General Prevailing Wage Rates

The predetermined general prevailing wage rates published by the Director of Industrial Relations may be obtained via the Internet: <https://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. It is the bidder's responsibility to use the correct classification determination published by the Department of Industrial Relations.

g. Postconsumer Content Certification

Your signature affixed hereon and dated on the Bid/Bidder Certification Sheet, Attachment 2 shall signify that you are aware of the recycle materials, goods, and supplies program requirements of Public Contract Code Sections 12200 and 12205, and that the Recycled-Content Certification will be required for the successful contractor. The awarded bidder will be required to complete a Postconsumer-Content Certification (CalRecycle 74) and provide the form with the signed Agreement. An incomplete form or failure to provide a completed form will result in cancellation of the Agreement. The Postconsumer-Content Certification (CalRecycle 74 form) may be downloaded from CalRecycle's website: <https://calrecycle.ca.gov/>.

h. Mandatory Organic Waste Recycling

The Contractor generating organic waste or commercial solid waste shall arrange for the recycling services required by this section in a manner that is consistent with State and local laws and requirements, including a local ordinance or local jurisdiction's franchise agreement, applicable to the collection, handling, or recycling of organic waste and commercial solid waste. This requirement does not modify, limit or abrogate the Contractors right to sell or donate its recyclable organic waste materials consistent with the requirements of Public Resources Code Sections 42649.8 et seq.

i. Motor Carrier Permit Requirements

- i. Contractor is responsible for determining whether California Vehicle Code Sections 34601 and 34620 require Contractor to have a valid Motor Carrier Permit (MCP) issued by the Department of Motor Vehicles (DMV) in order for Contractor to lawfully perform any part or aspect of the work described in Exhibit A, Scope of Work, and, if California Vehicle Code Sections 34601 and 34620 do require same for any part or aspect of such work, Contractor must have a valid MCP(s) issued from the DMV for its services as a Motor Carrier of Property under this Agreement. Contractor shall pay any required fees necessary to obtain and maintain in good standing during the entire term of this Agreement the any such required MCP(s).

- ii. The MCP(s), if any, required for the Contractor's Motor Carriers of Property under California Vehicle Code Sections 34601 and 34620 shall be on file with the Contractor for the duration of this Agreement. Upon request of CMD, the Contractor must immediately provide to CMD a copy of the required MCP(s), if any.

j. Contractor Registration Program

- i. No Contractor or Subcontractor may be listed on a bid proposal for a public works contract unless registered with the Department of Industrial Relations (DIR), pursuant to Labor Code Section 1725.5 with limited exceptions from this requirement for bid purposes only under LC Section 1771.1(a)).
- ii. No Contractor or Subcontractor may be awarded a public works contract or commercial service contract requiring prevailing wages, unless registered with DIR pursuant to Labor Code Section 1725.5.
- iii. CMD will verify each of the registration numbers prior to contract award. Bidders that do not possess the required DIR registration will be deemed non-responsive and rejected from further consideration in the solicitation process.

k. Contractor's License (does not apply to this IFB)

Bidder must have, at time of bid submittal and for the duration of the contract, a valid, current license issued by the Contractors State License Board (CSLB), for the type of work to be performed. Bidder shall obtain, pay for and maintain, in good standing, all necessary licenses and permits to accomplish the work. Bidders will be considered non-responsive unless proper licensing requirements are met. An invalid license will result in rejection of the bid. Positive verification of a valid license issued by the CSLB will be performed by CMD (reference Business and Professions Code Section 7028.15).

l. Subcontractors

Bidder may subcontract portions of the work as defined in the attached Sample Standard Agreement. Bidder shall perform on the site, and with its own organization, work equivalent to at least twenty percent (20%) of the total amount of work to be performed under the contract. If subcontractors are used, complete the Bidder Declaration (GSPD-05-105), Attachment 5. Bidder must ensure that the subcontractor(s) will have all necessary licenses, permits, and/or certifications to accomplish its portion of the work. Failure of a subcontractor(s) to have the proper licenses, permits, and/or certifications, shall be cause for rejection of bid. The Bidder Declaration can also be downloaded at <https://www.documents.dgs.ca.gov/dgs/fmc/GS/PD/GSPD05-105.pdf>.

m. Non-Collusion Declaration for Public Works

Bidder must submit, as described herein, a non-collusion declaration for Public Works. The non-collusion declaration is attached to this IFB as Attachment 11. Failure to submit a complete declaration shall result in rejection of the bid.

n. Bonds (does not apply to this IFB)

- i. If the proposed bid amount exceeds \$24,999.99, the contractor must submit a bid bond in the amount of at least 10% of the bid amount with the bid packet utilizing a bond form provided by the Surety.
- ii. The bid bond must include the IFB No.131007 and must identify the owner as:

**California Military Department
IFB No. 131007
10601 Bear Hollow Drive
Rancho Cordova, California 95670-6350**

- iii. Bonds must be issued by a California-admitted surety (CCP § 995.311.).

o. Insurance

- i. The bidder, who receives the Agreement award, must provide a Certificate of Insurance providing proof of insurance to the California Military Department within ten (10) working days from the date of notification of award. Refer to the Sample Standard Agreement Exhibit F for the applicable and specific Insurance requirements and coverage limits.
- ii. The insurance carrier shall provide an endorsement for the additional insured statement as follows:

CMD, State of California, its officers, agents, and employees shall be included as additional insured, but only with respect to work performed for the State of California under this Agreement.
- iii. The additional insured endorsement must accompany the certificate of insurance.
- iv. Available Coverages/Limits
- v. In the event the insurance coverages obtained by the Contractor is broader in scope than, and/or the limits are higher than, those required under the contract, all such broader coverage and/or higher limits available to the Contractor shall also be available and applicable to the State.
- vi. In the case of Contractor and/or Permittee's utilization of subcontractors to complete the contracted scope of work, contractor and/or Permittee shall include all subcontractors as insured under Contractor and/or Permittee's insurance or supply evidence of insurance to The State equal to policies, coverages and limits required of Contractor and/or Permittee.

p. California Civil Rights Laws

Any person that submits a bid or proposal to, or otherwise proposes to enter into or renew a contract with, a state agency with respect to any contract in the amount of one hundred thousand dollars (\$100,000.00) or more shall certify, under penalty of perjury, at the time the bid or proposal is submitted or the contract is renewed, that they satisfy all of the conditions set forth in California Public Contract Code Section 2010 and they shall execute the California

Civil Rights Laws Certification, as Attachment 10, completed, signed, and returned with its bid or proposal.

q. Darfur Contracting Act

- i. The Darfur Contracting Act, Public Contract Code Section 10475-10481, applies to any company that currently or within the previous three (3) years has had business activities or other operations outside of the United States. The Act was passed by the California Legislature and signed into law by the Governor to preclude State agencies generally from contracting with “scrutinized” companies that do business in the African nation of Sudan (of which the Darfur region is a part), for the reasons described in Public Contract Code Section 10475. All bidders shall complete the Darfur Contracting Act Certification, Attachment 6, and submit with the proposal.
- ii. If your company has not, within the previous three (3) years, had any business activities or other operations outside of the United States, complete Option 1 on the Darfur Contracting Act Certification form.
- iii. A scrutinized company is a company doing business in Sudan as defined in Public Contract Code Section 10476. Scrutinized companies are ineligible to, and cannot bid on, or submit a bid or proposal for an Agreement with a State agency for goods or services. (Pub. Cont. Code Section 10477(a)).
- iv. Therefore, Public Contract Code Section 10478(a) requires a company that currently has (or within the previous three (3) years has had business activities or other operations outside of the United States to certify that it is not a “scrutinized” company when it submits a bid or proposal to a State agency.
- v. A scrutinized company may still; however, submit a bid or proposal for an Agreement with a State agency for goods or services if the company first obtains permission from the Department of General Services according to the criteria set forth in Public Contract Code Section 10477(b).

r. Iran Contracting Act

- i. Pursuant to the Iran Contracting Act of 2010 (Pub. Cont. Code Sections 2200 et seq., hereinafter “the Act”), persons identified on the list established under Public Contract Code Section 2202.5 (hereinafter “List”) are ineligible to bid on, submit a proposal for, enter into, or renew any contract with the State for goods or services of one million dollars or more.
- ii. Any person who submits a bid or proposal must complete and submit to CMD with its bid proposal, the Iran Contracting Act Verification Form, Attachment 7, certifying that it is not on the most current List unless the person is exempted from the certification requirement by Public Contract Code Section 2203(c) or (d). If claiming an exemption, the person shall provide written evidence that supports an exemption under Public Contract Code Section 2203(c) or (d) with its bid or proposal. The Iran Contracting Act Verification Form can also be downloaded at <https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/SCM/SCM-Link-Docs/Iran-Contracting-Act.pdf>.

- iii. Any person, for a contract that is exempt from bidding or is renewed, or for whom a contract is otherwise awarded by the State, must complete and submit to CMD the Iran Contracting Act Verification Form, certifying that it is not on the most current List, before the contract has been executed by the parties, unless the person is exempted from the certification requirement by Public Contract Code Section 2205(c) or (d). If claiming an exemption, the person shall provide written evidence that supports an exemption under Public Contract Code Section 2203(c) or (d), before execution of the contract.

s. Submission of Bid

- i. All bids must be submitted to CMD by date and time shown in Section 3, Bid Requirements and Information, Item a) Key Action Dates.
- ii. Bids **MUST** be submitted electronically.
- iii. Electronic Submissions
 - 1. Electronic bid submittals shall be sent to PWC@cmd.ca.gov and shall include Joy Lubic at Joy.Lubic@cmd.ca.gov as a copied recipient.
 - 2. All bid documents will be in an attachment (as one PDF). If any bid information is in the body of the email, it shall be rejected. Bids submitted via links to cloud storage services or file-sharing drives will not be accepted.
 - 3. Subject line must include the IFB No. 131007, Mitigation Implementation Planning and Agency Permitting and Contractor Business Name.
 - 4. The bid submission email inbox is ONLY for bid submissions, contact the Contracting Analyst directly with contract questions and/or to receive confirmation that their bid was received.
- iv. **Late bids will not be considered.**
- v. All bids shall include the documents identified in Required Attachment Checklist, Attachment 1. Bids with incomplete documents or not including the proper "required attachments" shall be deemed non-responsive. A non-responsive bid is one that does not meet the basic bid requirements.
- vi. All documents requiring a signature must bear an original signature of a person authorized to bind the bidding firm.
- vii. Bids must be submitted for the performance of all the services described herein. Any deviation from the work specifications will not be considered and will cause a bid to be rejected.
- viii. A bid may be rejected if it is conditional or incomplete, or if it contains any alterations of form or other irregularities of any kind. The State may reject any or all bids and may waive an immaterial deviation in a bid. The State's waiver of immaterial deviation shall in no way modify the IFB document or excuse the bidder from full compliance with all requirements if awarded the agreement.

- ix. Costs for developing bids and in anticipation of award of the agreement are entirely the responsibility of the bidder and shall not be charged to the State of California.
- x. An individual who is authorized to bind the bidder contractually shall sign Bid/Bidder Certification Sheet, Attachment 2. The signature should indicate the title or position that the individual holds in the firm. An unsigned bid may be rejected.
- xi. A bidder may modify a bid after its submission by withdrawing its original bid and resubmitting a new bid prior to the bid submission deadline. Bidder modifications offered in any other manner, oral or written, will not be considered.
- xii. A bidder may withdraw its bid by submitting a written withdrawal request to the State, signed by the bidder or an authorized agent. A bidder may thereafter submit a new bid prior to the bid submission deadline. Bids may not be withdrawn without cause subsequent to bid submission deadline.
- xiii. The awarding agency may modify the IFB prior to the date fixed for submission of bids by the issuance of an addendum to all parties who received a bid package.
- xiv. The awarding agency reserves the right to reject all bids. The agency is not required to award an agreement.
- xv. Before submitting a response to this solicitation, bidders should review, correct all errors and confirm compliance with the IFB requirements.
- xvi. Where applicable, bidder should carefully examine work sites and specifications. Bidder shall investigate conditions, character, and quality of surface or subsurface materials or obstacles that might be encountered. No additions or increases to the agreement amount will be made due to a lack of careful examination of work sites and specifications.
- xvii. The State does not accept alternate contract language from a prospective Contractor. A bid with such language will be considered a counter proposal and will be rejected. The State's General Terms and Conditions (GTC) are not negotiable. The GTC may be viewed at Internet site <https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-of-Legal-Services-Resources-List-Folder/Standard-Contract-Language>.
- xviii. No oral understanding or agreement shall be binding on either party.
- xix. Bidder must complete and submit to the awarding agency Payee Data Record, STD 204, Attachment 8, to determine if the Contractor is subject to state income tax withholding pursuant to California Revenue and Taxation Code Sections 18662 and 26131. This form can be found on the Internet at <https://www.documents.dgs.ca.gov/dgs/FMC/PDF/Std204.pdf>. No payment shall be made unless a completed STD 204 has been returned to the awarding agency.
- xx. Bidder must sign and submit to the awarding agency, Contractor Certification Clauses (CCC), Attachment 9, which can be found on the Internet at: <https://www.dgs.ca.gov/-/media/Divisions/OLS/Resources/CCC-042017.pdf>.

t. Bid Opening

- i. Bid openings may be held virtually on Microsoft Teams.
- ii. To attend the bid opening, contact Joy Lubic at Joy.Lubic@cmd.ca.gov in advance to request a Microsoft Teams meeting invitation. Requests submitted on the day of the bid opening may not be received or processed in time to allow participation.

u. Evaluation and Selection

- i. After the time of bid opening, each bid will be checked for the presence or absence of required information in conformance with the submission requirements of this IFB.
- ii. The State will evaluate each bid to determine its responsiveness to the published requirements.
- iii. Bids that contain false or misleading statements, or which provide references, which do not support an attribute or condition claimed by the bidder, may be rejected.
- iv. Award if made, will be to the lowest responsive responsible bidder.
- v. The State reserves the right to require the apparent lowest responsive and responsible bidder to participate in a bid verification meeting prior to award of the contract. The purpose of this meeting is to review and confirm the bidder's pricing, scope understanding, and compliance with all bid requirements. Failure or refusal to participate in the bid verification meeting, or inability to satisfactorily verify the bid, may result in the bid being deemed non-responsive and rejected.
- vi. In the event of tie bids, the award will be determined by a coin toss. The coin toss will be held in the State Agency's headquarters area office. This is a public event, which the bidders will be invited to attend. The selection of the Contractor will be at the sole discretion of the State.

v. Award and Protest

- i. When the evaluation has been completed and a contractor has been selected, the awarding agency shall post a notice of intent to award in a place accessible by the general public, including any Internet site identified in the IFB within 5 to 10 business days after the bid opening date.
- ii. State Contracting Manual Volume 1, 6.03 Protest Exclusions: F - The contract award is for a type of contract not subject to the protest procedures. This category includes public works contracts awarded under the State Contract Act (PCC §10100 et seq.); contracts for professional architecture or engineering services under GC § 4525; contracts awarded under GC §§ 14838.5 and 14838.7.

w. Disposition of Bids

- i. Upon bid opening, all documents submitted in response to this IFB will become the property of the State of California and will be regarded as public records under the

California Public Records Act (Government Code Section 6250 et seq.) and subject to review by the public.

x. Standard Conditions of Service

- i. After award of the Agreement and execution of the Agreement, should the Contractor fail to commence work within five (5) working days after notification of the starting date, or suspend work for a period of five (5) continuous working days after work has begun, CMD may provide five (5) calendar days written notice, posted at the job site or mailed to the Contractor, to timely prosecute and complete the work or the Agreement may be terminated and liquidated damages assessed for administrative costs for re-bidding the work or awarding the work to another Contractor. In addition, that Contractor shall be liable to CMD for the difference between the Contractor's bid price and the actual cost of performing the work by the second low bidder or by another Contractor.
- ii. All performance under the Agreement shall be completed on or before the termination date of the Agreement.

y. Antitrust Provisions

- i. The Contractor offers and agrees and will require all of his other subcontractors and suppliers to agree to assign to the awarding body all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 USC section 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 subcontract. The assignment made by the contractor and all additional assignments made by the subcontractors and suppliers shall be deemed to have been made and will become effective at the time the awarding body tenders final payment to the Contractor without further acknowledgment or the necessity of tendering to the awarding body any written assignments.
 - ii. If an awarding body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Government Code Sections 4550-4554, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, on demand, recover from the public body any portion of the recovery, including treble damages, and attributable overcharges that were paid by the assignor but were not paid by the public body as a part of the bid price, less the expenses incurred in obtaining that portion of the recovery. On demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under Government Code Sections 4550-4554 if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action.
- z.** If the bidder is awarded the Agreement and refuses to sign the Agreement presented for signature within 10 business days of receipt, (not including Saturdays, Sundays, and legal holidays) and manner required, the bidder will be liable to CMD for actual damages resulting to CMD therefrom or 10 percent (10%) of the amount bid, whichever is less.

aa. Loss Leader usage is prohibited in this solicitation: It is unlawful for any person engaged in business within this State to sell or use any article or product as a "loss leader" as defined in California Business and Professions Code Section 17030. "Loss Leader" means any article or product sold at less than cost: a) where the purpose is to induce, promote or encourage the purchase of other merchandise; or b) where the effect is a tendency or capacity to mislead or deceive purchasers of prospective purchasers; or c) where the effect is to divert trade from or otherwise injure competitors.

bb. No oral understanding or agreement shall be binding on either party.

4. Special Programs

a. Disabled Veteran Business Enterprise (DVBE) Program Requirement

i. DVBE Participation Program Requirement Does Not Apply to this IFB:

1. The required DVBE participation goal for this IFB does not apply. The resultant Agreement is financed with State funds and subject to Public Contract Code Section 10115 et seq., Military and Veterans Code Section 999 et seq., and Title 2, California Code of Regulations, Sections 1896.60 (2 CCR Section 1896.60) et seq., that provides contracting opportunities for qualified DVBEs certified by the DGS. The DVBE Incentive Program may also apply.
2. Bidder shall complete and submit the Bid/Bidder Certification Sheet Attachment 2; Bidder Declaration (GSPD-05-105), Attachment 5, and, as applicable, the Disabled Veteran Business Enterprise Declarations (DGS PD 843), Attachment 4. Bidder shall complete or collect DGS PD 843(s) when the following situations occur:
 - a.** Bidder is DVBE (prime) Contractor.
 - b.** Bidder subcontracts with any DVBE firm. Bidder collects and submits with its bid package a completed and signed DGS PD 843 from each of the DVBE subcontractor(s) listed on the GSPD-05-105.
3. Failure to provide required DVBE information will result in the bid being rejected as non-responsive. For each certified DVBE subcontractor listed on the Bidder Declaration, GSPD-05-105, the bidder may submit a copy of the quotes from each DVBE as Attachment 5, "Quotes from SB/DVBE Subcontractors", as proof of commitment.
4. Additional references: <https://www.dgs.ca.gov/PD-OSDS>.

ii. DVBE Incentive Program

1. The DVBE Incentive Program applies to this solicitation. It is separate from the DVBE Participation Program and was established in Military and Veterans Code Sections 999 et seq., and Title 2, California of Regulations, Sections 1896.99 (2 CCR Section 1896.99) et seq., to encourage bidders to partner with DVBE subcontractors. A dollar cap of \$100,000 is set for all combined incentives and preferences. The incentive is used only for evaluation purposes

to arrive at the successful bidder and does not alter the amounts of the actual bid. Any responsive and responsible bidder with the confirmed DVBE participation per the Tables in paragraph 3 below is eligible to receive the incentive. Bidders who are not responsive and responsible regardless of the amount of DVBE participation are not eligible to receive the incentive.

2. CMD will apply an incentive to bids proposing the utilization of DGS certified DVBE firms identified on the Bidder Declaration (GSPD-05-105). Information provided on the GSPD-05-105 shall be verified by CMD prior to the award of the Agreement. The incentive amount is equal to a percentage of the lowest responsive and responsible bid based on the amount of DVBE participation in the bid being evaluated per the Tables below.
3. Tables for IFB (Low Price Method)

Required 5%Goal

Verified DVBE Participation	DVBE Incentive Amount
7.00% or more	5%
6.50% - 6.99%	4%
6.00% - 6.49%	3%
5.50% - 5.99%	2%
5.01% - 5.49%	1%

4. When applying the DVBE Incentive, an NSB shall not displace an award to a DGS Certified Small Business.
5. Additional information: <https://www.dgs.ca.gov/PD-OSDS>.

b. Small Business (SB) or Microbusiness (MB) Preference

- i. Government Code Section 14835 et seq. requires that a five percent (5%) preference be given to contractors who qualify as a certified SB or MB. References to a SB shall also include MB. The rules and regulations of this law, including the definition of a SB for the delivery of services, are contained in Title 2, California Code of Regulations, Section 1896 (2 CCR Section 1896) et seq.
- ii. To claim the SB preference, your firm must have its principal place of business located in California and be certified by the California Department of General Services (DGS), Office of Small Business and DVBE Services (OSDS). The preference amount may not exceed fifty thousand dollars (\$50,000) for any bid. If prospective Contractor is claiming the five percent (5%) SB preference, complete Section 14 of the Bid/Bidder Certification Sheet Attachment 2.
- iii. Pursuant to Government Code Section 14838 and 2 CCR Section 1896, if a bidder is not a certified SB, but wishes to be eligible for the five percent (5%) non-small business (NSB) preference, the bidder must subcontract at least twenty five percent (25%) of its net bid price to one or more certified SBs. If bidder is claiming the five percent (5%) NSB preference, complete the Bidder Declaration, GSPD-05-105, which can be downloaded at <https://www.documents.dgs.ca.gov/dgs/fmc/GS/PD/GSPD05-105.pdf>. Bidder shall list the names of all certified SB firms being claimed for credit on the

GSPD-05-105 form. For each certified SB subcontractor listed, the bidder shall submit a copy of the quotes from each SB (on the SB's company letterhead) as Attachment 5, "Quotes from SB/ DVBE Subcontractors."

1. This preference shall not be awarded to a noncompliant bidder and shall not be used to achieve any applicable minimum requirements.
2. Certified SB bidder(s) shall have precedence over NSB bidders in the application of SB preference(s).
3. SB preferences may not be applied to any bid deemed non-responsive with the solicitation instructions or from a non-responsible bidder.
4. Questions regarding the certification approval process or SB program should be directed to OSDS at the contact information found on their website.
5. Additional references are at <https://www.dgs.ca.gov/PD-OSDS>.

c. Commercially Useful Function

- i. It is the law. All California-certified Small Businesses (SB) and Disabled Veteran Business Enterprise (DVBEs) doing business with the state must perform a Commercially Useful Function (CUF). Performing CUF is a critical requirement for all California-certified firms - SB and DVBE - that do business with the state (Government Code Section 14837 and Military and Veterans Code Section 999).
- ii. More information can be found on Department of General Services website: <https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Commercially-Useful-Function-for-Certified-Firms>.

d. CMD Advocates

CMD Small Business and Disabled Veteran Business Enterprise Advocates are available to answer questions regarding the SB/DVBE Programs and Incentives and to help identify possible SB/DVBE vendors. CMD ADVOCATES: Advocate@cmd.ca.gov.

5. Executive Order N-6-22 – Russia Sanctions

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. By submitting a bid or proposal, Contractor represents that it is not a target of Economic Sanctions. Should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for rejection of the Contractor's bid/proposal any time prior to contract execution, or, if determined after contract execution, shall be grounds for termination by the State.

6. Required Attachments (Attachments 1 – 12):

Attachment 1 – Required Attachment Check List

Bidder's Company Name:

A complete bid or bid package will consist of the items identified below.

<u>Attachment</u>	<u>Attachment Name/Description</u>
_____ Attachment 1	Required Attachment Checklist
_____ Attachment 2	Bid/Bidder Certification Sheet
_____ Attachment 3	Rate Sheet
_____ Attachment 4	Disabled Veteran Business Enterprise Declarations (DGS PD 843) * https://www.documents.dgs.ca.gov/dgs/fmc/gsp/pd/pd_843.pdf
_____ Attachment 5	Bidder Declaration (GSPD-05-105) * https://www.documents.dgs.ca.gov/dgs/fmc/GS/PD/GSPD05-105.pdf
_____ Attachment 6	Darfur Contracting Act Certification
_____ Attachment 7	Iran Contracting Act Verification Form * https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/SCM/SCM-Link-Docs/Iran-Contracting-Act.pdf
_____ Attachment 8	Payee Data Record (STD 204) https://www.documents.dgs.ca.gov/dgs/FMC/PDF/Std204.pdf
_____ Attachment 9	Contractor Certification Clauses (CCC 04/2017) https://www.dgs.ca.gov/-/media/Divisions/OLS/Resources/CCC-042017.pdf
_____ Attachment 10	California Civil Rights Laws Attachment * https://www.documents.dgs.ca.gov/dgs/FMC/DGS/OLS004.pdf
_____ Attachment 11	Non-Collusion Affidavit
_____ Additional Required Information:	The Prime Bidder must be either an individual or firm currently licensed to do business in California. 1. The Prime Bidder has a business license or incorporation papers for their respective State showing that their company is in good standing in that state, if the Prime Bidder's base of operation is located outside the State of California. 2. The Prime Bidder and their subcontractors shall possess required license(s) issued by the California Contractors State Licensing Board (CSLB) and be registered with the Department of Industrial Relations (DIR). 3. <u>Prime Bidder shall provide a Statement of Qualifications (SOQ) or summary of relevant project experience that details previous experience planning and/or implementing riparian or wetland habitat restoration projects at the time of bid submittal.</u>

* If applicable

Attachment 2 – Bid/Bidder Certification Sheet

This Bid/Bidder Certification Sheet must be signed and returned along with all the "required attachments" as an entire package in duplicate with original signatures/electronic signature. The bid must be transmitted in accordance with IFB instructions.

- A. Our all-inclusive bid is submitted as detailed in **Attachment 3, Rate Sheet**.
 B. All required attachments are included with this certification sheet.
 C. The signature affixed hereon and dated certifies compliance with all the requirements of this bid document. The signature below authorizes the verification of this certification.

An Unsigned Bid/Bidder Certification Sheet May Be Cause for Rejection

1. Company Name	2. Telephone Number ()	2a. Fax Number ()
3. Address		
Email Address		
Indicate your organization type:		
4. ☐ Sole Proprietorship	5. ☐ Partnership	6. ☐ Corporation
6a. ☐ L.L.C. Limited Liability Corporation		
Indicate the applicable employee and/or corporation number:		
7. Federal Employee ID No. (FEIN)		8. California Corporation No.
9. Indicate applicable license and/or certification information:		
10. Bidder's Name (Print)		11. Title
12. Signature		13. Date:
14. Are you certified with the Department of General Services, Office of Small Business and DVBE Certification as:		
California Small Business Enterprise Yes ☐ No ☐ If yes, enter certification number:		Disabled Veteran Business Enterprise Yes ☐ No ☐ If yes, enter certification number:
NOTE: A copy of your Certification is required to be included if either of the above items is checked "Yes". Date application was submitted to OSBCR, if an application is pending:		

Attachment 2 – Completion Instructions for Bid/Bidder Certification Sheet

Complete the numbered items on the Bid/Bidder Certification Sheet by following the instructions below.

Item Numbers	Instructions
1, 2, 2a, 3	Must be completed. These items are self-explanatory.
4	Check if your firm is a sole proprietorship. A sole proprietorship is a form of business in which one (1) person owns all the assets of the business in contrast to a partnership and corporation. The sole proprietor is solely liable for all the debts of the business.
5	Check if your firm is a partnership. A partnership is a voluntary agreement between two (2) or more competent persons to place their money, effects, labor, and skill, or some or all of them in lawful commerce or business, with the understanding that there shall be a proportional sharing of the profits and losses between them. An association of two (2) or more persons to carry on, as co-owners, a business for profit.
6, 6a	Check if your firm is a corporation. A corporation is an artificial person or legal entity created by or under the authority of the laws of a state or nation, composed, in some rare instances, of a single person and his successors, being the incumbents of a particular office, but ordinarily consisting of an association of numerous individuals. Or a Limited Liability Corporation.
7	Enter your federal employee tax identification number.
8	Enter your corporation number assigned by the California Secretary of State's Office. This information is used for checking if a corporation is in good standing and qualified to conduct business in California.
9	Complete, if applicable, by indicating the type of license and/or certification that your firm possesses and that is required for the type of services being procured.
10, 11, 12, 13	Must be completed. These items are self-explanatory.
14	If certified as a California Small Business, place a check in the "Yes" box, and enter your certification number on the line. If certified as a Disabled Veterans Business Enterprise, place a check in the "Yes" box and enter your service code on the line. If you are not certified to one (1) or both, place a check in the "No" box. If your certification is pending, enter the date your application was submitted to OSBCR.

Attachment 3 – Rate Sheet

Contractor agrees to provide to CMD **Mitigation Implementation Planning and Agency Permitting** services, as described herein:

Contractor shall provide all materials, labor, bonds, licenses, insurance, equipment, tools, permits, taxes, transportation, and fees to complete the emergency mitigation planning as detailed in the Scope of Work.

Description of Services	Total
Mitigation Implementation Planning and Agency Permitting (Base Project All-inclusive Cost)	\$
Total Lump Sum (Written out)	

In the event of a discrepancy between the written bid amount and the numerical (dollar) bid amount, the written amount shall govern and be considered the official bid amount.

****The above listed cost MUST match the Total Price below.**

****The Contractor MUST provide the following cost breakdown.**

COST PROPOSAL — BID SCHEDULE

Camp San Luis Obispo

Mitigation Implementation Planning and Agency Permitting

California Military Department — Environmental (F&I) · Firm-Fixed-Price

Instructions to Bidder: Enter a unit price for every line item. For Item 9, enter your estimated number of additional site visits (SOW Task 2.C) and extend at the per-visit price — this line is unit-priced because visits may occur more than once; do not price it as “one-time.” Responses to CDFW RFIs and review of the Draft LSAA are included in the Item 8 lump sum and shall not be priced separately. Items 11–12 are for any additional Bidder-identified services; fully describe each entry or mark “N/A.” All line items, including agency fees, roll up to the Total Firm-Fixed Price.

ITEM	TYPE OF SERVICES	SERVICE CHARGE (UNIT PRICE)	×	QTY / DURATION	=	EXTENDED TOTAL
PLANNING & DOCUMENT DELIVERABLES (Firm-Fixed, One-Time)						
1	Task 1 – Pre-Project Coordination Meeting / Work Schedule	\$ <i>lump sum</i>	×	1 <i>One-time</i>	=	\$
2	Task 2 – Project Review & Initial Site Visit	\$ <i>lump sum</i>	×	1 <i>One-time</i>	=	\$
3	Task 3 – Draft Invasive Plant Control Plan	\$ <i>lump sum</i>	×	1 <i>One-time</i>	=	\$
4	Task 4 – Final Invasive Plant Control Plan	\$ <i>lump sum</i>	×	1 <i>One-time</i>	=	\$
5	Task 5 – Draft Mitigation Implementation Plan	\$ <i>lump sum</i>	×	1 <i>One-time</i>	=	\$
6	Task 6 – Final Mitigation Implementation Plan	\$ <i>lump sum</i>	×	1 <i>One-time</i>	=	\$

ITEM	TYPE OF SERVICES	SERVICE CHARGE (UNIT PRICE)	×	QTY / DURATION	=	EXTENDED TOTAL
7	Task 7 – Draft LSA Notification	\$ <i>lump sum</i>	×	1 <i>One-time</i>	=	\$
8	Task 8 – Final LSA Notification & EPIMS Submittal	\$ <i>lump sum</i>	×	1 <i>One-time (incl. all RFI responses & LSAA review)</i>	=	\$
MULTI-OCCURRENCE ITEM (Unit-Priced — Bidder adjusts QTY; not “one-time”)						
9	Task 2.C – Additional Site Visits	\$ <i>per site visit</i>	×	_____ visits <i>(Bidder's estimated no.)</i>	=	\$
AGENCY FEES (Included in Firm-Fixed Price — Not Separately Reimbursed)						
10	CDFW LSA Notification Fee	\$ <i>per fee schedule</i>	×	1 <i>One-time</i>	=	\$
BIDDER-IDENTIFIED ITEMS (Describe fully — enter “N/A” if unused)						
11	Bidder-Identified Item: _____ <i>Description of service and basis of cost:</i> _____	\$	×	_____ <i>(unit / qty)</i>	=	\$
12	Bidder-Identified Item: _____ <i>Description of service and basis of cost:</i> _____	\$	×	_____ <i>(unit / qty)</i>	=	\$
TOTAL FIRM-FIXED PRICE (Items 1–12)						= \$

Submitted by: _____ Date: _____
(Signature Required)

Contact Name / Title:	
Company Name:	
Company Address:	
Telephone Number:	
Fax Number:	
E-Mail Address:	

The total costs indicated above will be used solely for computing the cost as a fair and equitable formula to determine the low bidder and is not binding on the contracting agency. However, the actual costs quoted above by the bidder shall be binding for the term of the Agreement. Small Business and Disabled Veteran Business Enterprise incentives will also be applied to determine the lowest bid.

Addendum Acknowledgement (Please initial for Addenda published on Cal eProcure)

Addendum #1 _____	Addendum #4 _____	Addendum #7 _____
Addendum #2 _____	Addendum #5 _____	Addendum #8 _____
Addendum #3 _____	Addendum #6 _____	Addendum #9 _____

Failure to acknowledge the published addendum on Cal eProcure may result in the bid being deemed non-responsive.

Attachment 4 – Disabled Veteran Business Enterprise Declarations (DGS PD 843)

Bidders who are disabled veteran (DV) owner(s) and DV manager(s) of a Disabled Veteran Business Enterprise must complete Disabled Veteran Business Enterprise Declarations (DGS PD 843) when a DVBE Contractor or subcontractor will provide materials, supplies, services or equipment and include it with the bid response.

The DGS PD 843 Disabled Veteran Business Enterprise Declarations form can be found at:
https://www.documents.dgs.ca.gov/dgs/fmc/gp/pd/pd_843.pdf

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Attachment 5 – Bidder Declaration Form (GSPD-05-105)

All bidders must complete the Bidder Declaration Form (GSPD-05-105) and include it with the bid response.

The Bidder Declaration Form can be found at:

<https://www.documents.dgs.ca.gov/dgs/fmc/GS/PD/GSPD05-105.pdf>

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Attachment 6 – Darfur Contracting Act Certification

Pursuant to Public Contract Code section 10478, if a bidder or proposer currently or within the previous three years has had business activities or other operations outside of the United States, it must certify that it is not a "scrutinized" company as defined in Public Contract Code section 10476.

Therefore, to be eligible to submit a bid or proposal, please complete only one of the following three paragraphs (via initials for Paragraph # 1 or Paragraph # 2, or via initials and certification for Paragraph # 3):

1. _____ We do not currently have, or we have not had within the previous three
Initials years, business activities or other operations outside of the United States.

OR

2. _____ We are a scrutinized company as defined in Public Contract Code section
Initials 10476, but we have received written permission from the Department of General Services (DGS) to submit a bid or proposal pursuant to Public Contract Code section 10477(b). A copy of the written permission from DGS is included with our bid or proposal.

OR

3. _____ We currently have, or we have had within the previous three years,
Initials business activities or other operations outside of the United States, but
+ certification we certify below that we are not a scrutinized company as defined in
below Public Contract Code section 10476.

CERTIFICATION For# 3.

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective proposer/bidder to the clause listed above in # 3. This certification is made under the laws of the State of California.

<i>Proposer/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County and State of</i>	

YOUR BID OR PROPOSAL WILL BE DISQUALIFIED UNLESS YOUR BID OR PROPOSAL INCLUDES THIS FORM WITH EITHER PARAGRAPH # 1 OR# 2 INITIALED OR PARAGRAPH# 3 INITIALED AND CERTIFIED.

Attachment 7 – Iran Contracting Act Verification Form

Bidders must complete the Iran Contracting Act Verification Form Attachment and include it with the bid response.

The Iran Contracting Act Verification Form Attachment is available at the following website:

<https://www.dgs.ca.gov/-/media/Divisions/PD/PTCS/OPPL/SCM/SCM-Link-Docs/Iran-Contracting-Act.pdf>

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Attachment 8 – Payee Data Record (STD 204)

All bidders must complete the Payee Data Record (STD 204) and include it with the bid response.

The Payee Data Record (STD 204) is available at the following website:

<https://www.documents.dgs.ca.gov/dgs/FMC/PDF/Std204.pdf>

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Attachment 9 – Contractor Certification Clauses (CCC 04/2017)

All bidders must complete the Contractor Certification Clauses form (CCC 04/2017) and include it with the bid response.

The Contractor Certification Clauses Form (CCC 04/2017) is available at the following website:

<https://www.dgs.ca.gov/-/media/Divisions/OLS/Resources/CCC-042017.pdf>

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Attachment 10 – California Civil Rights Laws Attachment

All bidders must complete the California Civil Rights Laws Attachment and include it with the bid response.

The California Civil Rights Laws Attachment is available at the following website:

<https://www.documents.dgs.ca.gov/dgs/FMC/DGS/OLS004.pdf>

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Attachment 11 – Non-Collusion Affidavit

**TO BE EXECUTED BY BIDDER AND
SUBMITTED WITH BID FOR PUBLIC WORKS**

STATE OF CALIFORNIA

County of _____

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____, at _____, _____.
Date City State

Signature of Bidder

Attachment 12 – Sample Standard Agreement

[Reset Form](#)[Print Form](#)

SCO ID: 8940-XXXXX

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

XXXXX

PURCHASING AUTHORITY NUMBER (If Applicable)

MIL - 8940

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

CONTRACTING AGENCY NAME

California Military Department

CONTRACTOR NAME

2. The term of this Agreement is:

START DATE

Month XX, 20XX

THROUGH END DATE

Month XX, 20XX

3. The maximum amount of this Agreement is:

Written Amount (\$XXX,XXX.XX)

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

Exhibits	Title	Pages
Exhibit A	Scope of Work	XX
Exhibit B	Budget Detail and Payment Provisions	XX
Exhibit C *	General Terms and Conditions (02/2025)	*
+ - Exhibit D	General Conditions of Public Works Contract	XX
+ - Exhibit E	Special Contract Provisions	XX
+ - Exhibit F	Insurance Liability Section	XX
+ - Attachment 1	Project Manual	XX
+ - Attachment 2	Plans/Drawings	XX
+ - Attachment 3	Rate Sheet	XX
+ - Attachment 4	Bidder Declaration Form (GSPD-05-105)	XX

Items shown with an asterisk (), are hereby incorporated by reference and made part of this agreement as if attached hereto.**These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>***IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.****CONTRACTOR**

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

CONTRACTOR BUSINESS ADDRESS

CITY

STATE

ZIP

PRINTED NAME OF PERSON SIGNING

TITLE

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED



Scope of Work

Camp San Luis Obispo

Mitigation Implementation Planning and Agency Permitting

Corrective mitigation for the 2023–2024 emergency repair projects

CALIFORNIA MILITARY DEPARTMENT

July 2026

SOW Created By: Paige Farrell — CMD Environmental (F&I)

Contract Manager (CM): Paige Farrell — CMD Environmental (F&I)



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I. INTRODUCTION AND BACKGROUND

The California Military Department (CMD) implemented two emergency drainage repair projects on Camp San Luis Obispo in 2023 and 2024. Project activities occurred along Dairy and Chorro Creeks and a Chorro Creek tributary. Emergency authorizations were issued by the Central Coast Regional Water Quality Control Board (RWQCB) and the United States Army Corps of Engineers (USACE).

2023 project activities occurred in two separate locations: 1. an unnamed tributary to Chorro Creek (“spillway”) and 2. Dairy/Chorro Creeks. Project activities in the tributary (“spillway”) included vegetation clearing, dewatering, and grading of approximately 2000 linear feet of drainage. Project activities in Dairy/Chorro Creeks included vegetation removal, HDPE tarp installation, and installation of rock slope protection along approximately 700 linear feet of 30-40 foot-tall creek banks.

2024 project activities included grading of the previously cleared section of unnamed tributary (“spillway north”) and grading and clearing of an additional 1,680 feet of downstream drainage (“spillway south”). 2024 project activities also involved removal of 145 native and non-native trees. Project activities exceeded what was authorized in the permits, resulting in two Notices of Violation from the RWQCB, a Notice of Non-compliance from USACE, and a Letter of Alleged Take of California Red-legged Frog (*Rana draytonii*; CRLF) from the United States Fish and Wildlife Service (USFWS). A detailed project description and evaluation of 2023 and 2024 projects impacts is provided in the *2023 CMD Camp San Luis Obispo Emergency Repair Project - Project Completion Report (PCR)* and the *2024 CMD Camp San Luis Obispo Emergency Sediment Debris Removal Project - PCR*.

As required by the RWQCB and USACE emergency authorizations, Notices of Violation, Notice of Non-Compliance, and USFWS letter, mitigation plans were prepared to offset impacts to jurisdictional waterways and listed species. Two separate mitigation plans were submitted and approved by the RWQCB in 2025: the *2023 CMD Camp San Luis Obispo Emergency Repair Project Habitat Mitigation and Monitoring Plan (HMMP)* and the *2024 CMD Camp San Luis Obispo Emergency Sediment Debris Removal Project HMMP*. HMMPs were also reviewed and approved by the USACE and USFWS. Details regarding temporary and permanent project impacts and related mitigation strategies can be found in the 2023 and 2024 HMMPs.

The Central Coast Water Board has approved the HMMP as meeting the requirement for the restoration and mitigation technical report. However, because the HMMP as written lacks the detail necessary for a construction contractor to implement the mitigation, this scope of work develops it into a construction-ready, implementable package that addresses the next phase of the Notices of Violation.

The total mitigation area required for the 2023 project is **4.85 acres** and the total mitigation area required for the 2024 emergency projects is **5.45 acres (10.29 acres total)**. Total acreage is spread throughout four different mitigation areas on CSLO (Figures 1-4).

Regulatory Drivers — The Four Notices

This section consolidates, as the stated basis for scope, the four regulatory actions arising from the 2023–2024 emergency work. They sit on three enforcement tracks, so a single state-permit scope cannot close all of them:



- **RWQCB Notice of Violation #1 — Unauthorized Discharge (Aug 2, 2024).** Orders, under California Water Code (CWC) §13267, a restoration & mitigation technical report acceptable to the Water Board Executive Officer; directs CMD to obtain Waste Discharge Requirements (WDRs) or Clean Water Act (CWA) §401 certification before any new disturbance; and notes an unpaid \$2,985 application fee and construction-stormwater/turbidity deficiencies. (Attachment 2a)
- **RWQCB Notice of Violation #2 — Failure to Report (Dec 18, 2024).** Cites failure to submit the CWC §13267 technical report and an acceptable final Notice of Completion report; both must be final, include all appendices, and carry a signed certified statement of accuracy (Attachment 2b).
- **USACE Notice of Non-Compliance — DA Permit SPL-2024-00243-AJS (Aug 19, 2024).** Requires the outstanding RGP-63 post-project completion report; directs corrective measures in a revised HMMP per USACE SPD guidelines addressing all 2023 and 2024 impacts; and requires additional Endangered Species Act (ESA) consultation with USFWS and National Marine Fisheries Service (NMFS) (Attachment 2c).
- **USFWS Letter — Alleged Unauthorized Take of CRLF (Oct 15, 2024).** Documents take (12 CRLF captured; ~170 steelhead relocated); requires formal ESA §7 consultation and compensatory mitigation per USFWS ESA Compensatory Mitigation Policy (501 FW 3); directs that take-causing activities cease until consultation is complete; and requests a report of the September 2024 activities (Attachment 2d).

II. OBJECTIVES

The HMMPs provide the framework for the emergency mitigation project, but some aspects of the plans need to be further developed for successful project implementation. In addition, a California Department of Fish and Wildlife (CDFW) Lake and Streambed Alteration Agreement (LSAA) is also required prior to project implementation. This Scope of Work (SOW) outlines tasks to finalize emergency mitigation project planning, to include:

- A. Development of an Invasive Plant Control Plan
 - B. Development of a Mitigation Implementation Plan
 - C. Submittal and approval of a CDFW Lake and Streambed Alteration (LSA) Notification
- Work within jurisdictional waterways also requires regulatory permitting, including the CDFW Lake and Streambed Alteration Agreement under California Fish and Game Code §1602. Some of these permitting requirements arise from the regulatory framework governing jurisdictional waters and are not enumerated in the Notices of Violation.

Scope of Work and Project Limits

This SOW requires the contractor to complete the emergency mitigation planning by finalizing the Invasive Plant Control Plan and Mitigation Implementation Plan, advancing the Water Board-approved HMMP into a construction-ready package, and obtaining the CDFW Lake and Streambed Alteration Agreement authorization under California Fish and Game Code §1602.



The four notices (Attachment 2a-d) identify 18 corrective actions summarized in Attachment 1. The restoration and mitigation technical report requirement has already been satisfied through the Water Board-approved HMMP. The work described in this SOW will provide the planning and permitting necessary to implement the mitigation and support the restoration requirements, including the five-year restoration commitment. The remaining corrective actions will be addressed under separate efforts and are not included in this SOW. The services described in this SOW are performed in connection with project development and permit processing in order to comply with federal and state environmental laws, and constitute the project-development and permitting phase of the planned CSLO mitigation restoration construction — a public work of improvement. The deliverables of this SOW will be developed into the construction bid documents for that public work.

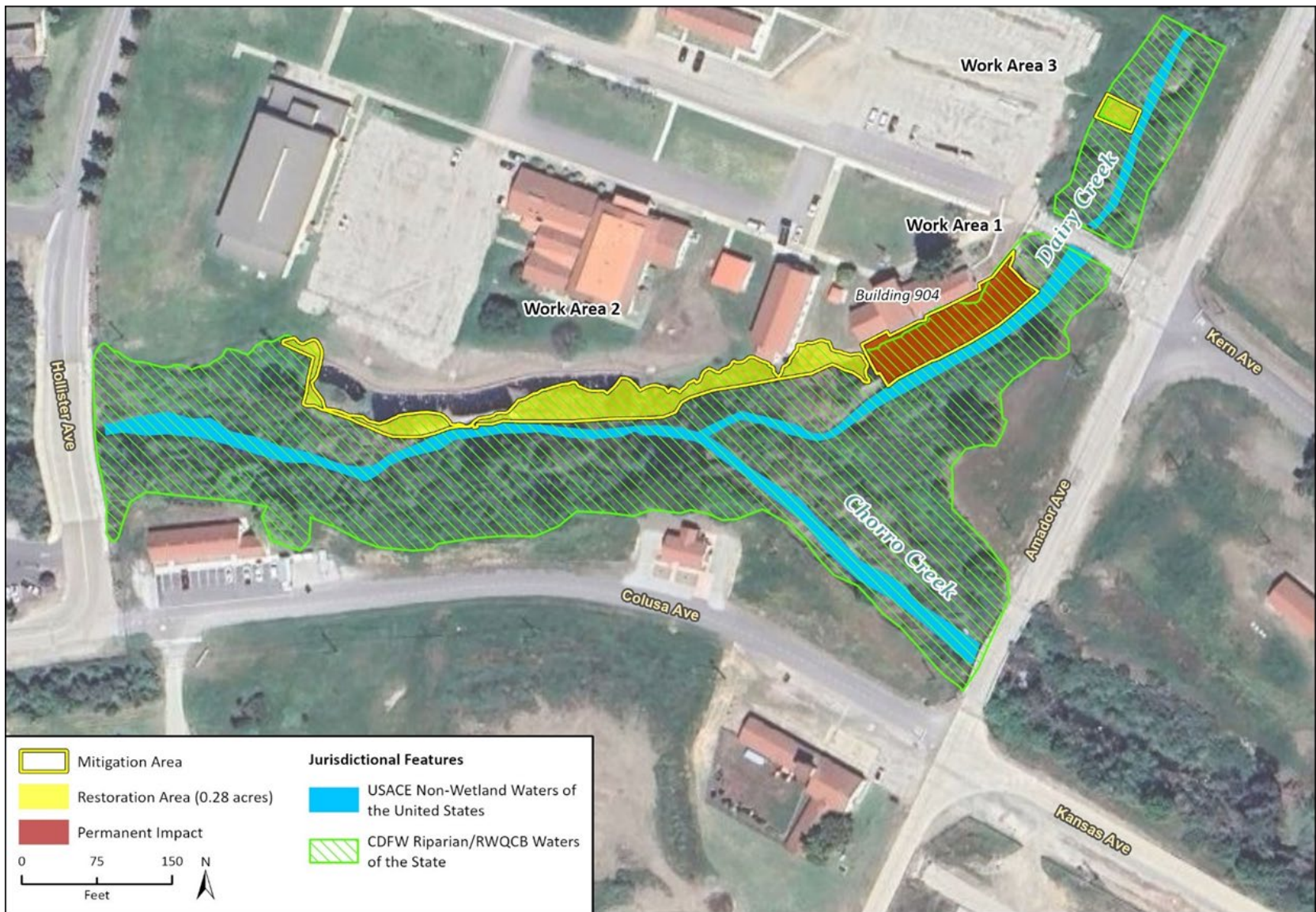
III. PROJECT AREA

CSLO is located on the central coast of California, midway between Los Angeles and San Francisco, on Highway 1, approximately five miles northwest of the City of San Luis Obispo, and eight miles southeast of Morro Bay (Figure 1). CSLO encompasses 5,612 acres, of which 622 acres are developed. The remainder of the installation is used for training, livestock grazing, agricultural out-leases, and limited recreational activities. CSLO is one of two primary training sites for the California Army National Guard. CSLO is owned by the California Military Department and operated by the California Army National Guard (CA ARNG).

The mitigation area is comprised of four different locations on the installation. A detailed description of each site and their past and current conditions can be found in the 2023 and 2024 HMMPs. A summary and location of each area is provided in Table 1, below, and in Figures 1-4.

**Table 1. Mitigation Site Summary**

Site ID	Site Location	Existing Conditions	Size (ac)
Area 1	900 Slope	- Steep, 30-40 foot tall creek bank - Jute netting and straw wattles remain in place - Creek bank vegetated with annual grasses and weedy vegetation	0.28
Area 2	Spillway North	- Channelized drainage - Willows and native wetland vegetation starting to re-establish in the channel - Drainage banks and surrounding upland areas exhibit over 90% invasive weedy species	4.56
Area 3	Spillway South	- Willows and native wetland vegetation starting to re-establish in the channel - Drainage banks and surrounding upland areas exhibit over 90% invasive weedy species	5.0
Area 4	Eucalyptus Removal Area/Walnut Orchard	- Large eucalyptus stumps re-sprouting - Old walnut trees exist in mitigation area - Weedy species cover approximately 30% of restoration area	0.45
TOTAL			10.29



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24-15646 Bio
Fig 3 Project Impacts 900 Restoration

Figure 1. Mitigation Area 1 (900 Slope Area) Map



Figure 1. *Mitigation Area 1 (900 Slope Area) Site Picture*



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24-13646-BIO
Fig 4 Project Impacts Spillway Restoration

Figure 2. Mitigation Area 2 (Spillway North) Map



Figure 2. *Mitigation Area 2 (Spillway North) Site Picture*



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Additional imagery provided by Wallace Group Engineering, 2024

24-15780-B10
HMMP Mitigation Area
Page 1 of 2

Figure 3. Mitigation Area 3 (Spillway South) Map



Figure 3. *Mitigation Area 3 (Spillway South) Site Picture*

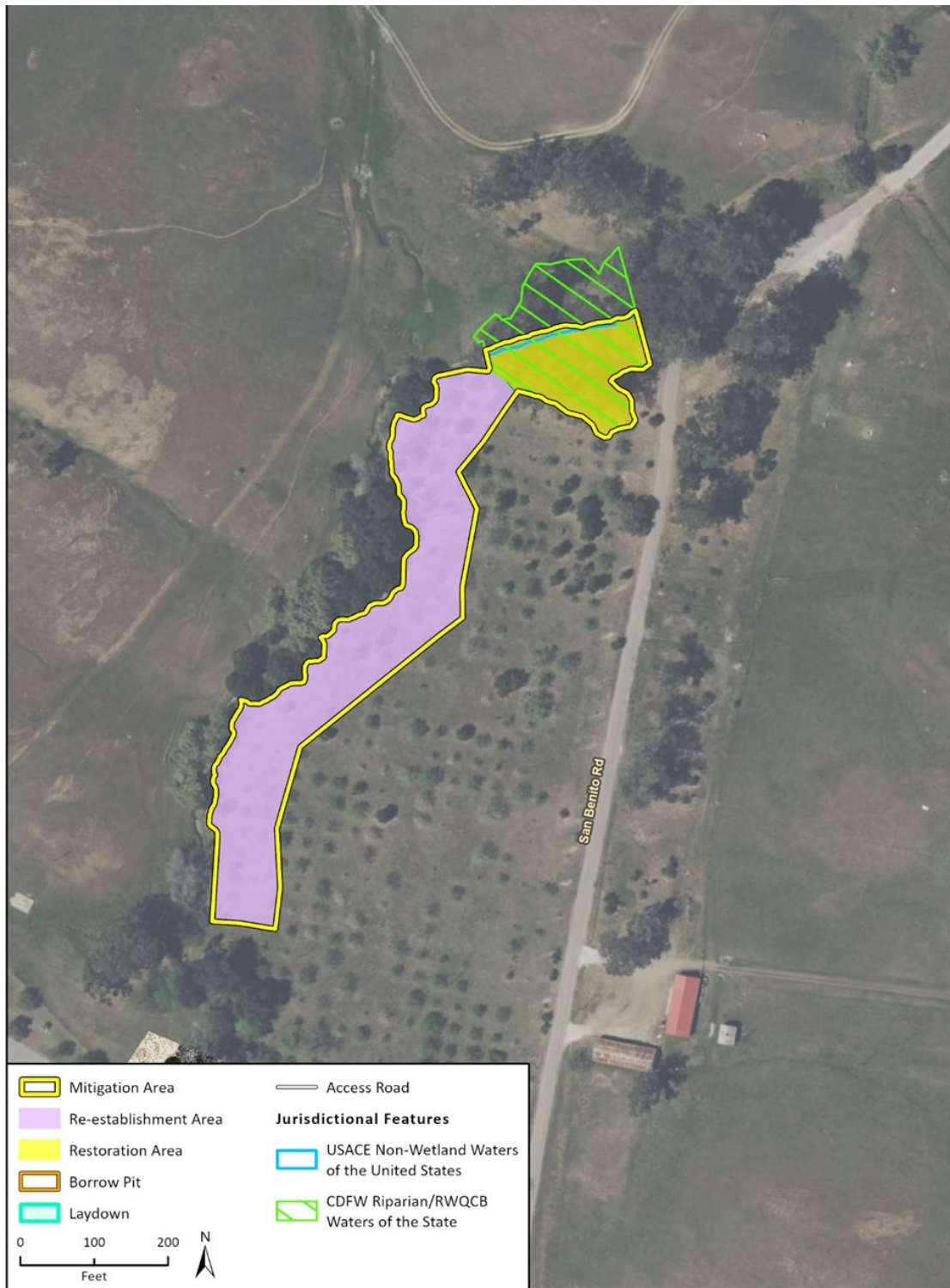


Figure 4. Mitigation Area 4 (Eucalyptus/Walnut Orchard) Map



Figure 4. *Mitigation Area 4 (Eucalyptus/Walnut Orchard) Site Picture*

IV. TASKS

Task 1: Pre-project Coordination Meeting/Work Schedule

- A. The Contractor shall participate in a Pre-Project Coordination Meeting with the CMD Contract Manager (CM) and submit a proposed Work Schedule for completing all tasks identified in this SOW. If requested by the CM, the Contractor shall revise the Work Schedule until it is mutually acceptable to both parties in writing.
- B. **Deliverables/Schedule:**
 - 1. The Contractor will coordinate and attend the Pre-Project Coordination meeting with the CM within seven (7) days of the Notice to Proceed (NTP) for the contract.
 - 2. The proposed Work Schedule for each task in this SOW shall be submitted to the CM by email within 15 calendar days of the Coordination Meeting.

Task 2: Project Review and Site Visits

- A.** The Contractor shall review the 2023 and 2024 HMMPs to familiarize themselves with proposed project activities and identify any information gaps or items requiring field verification (i.e. water source locations, irrigation type, site access/feasibility, equipment used, etc.) that will be required as part of successful project implementation. The Contractor shall identify and compile all information gaps and required field verification items and submit the list to the CM no later than 30 calendar days after the Pre-Project Coordination Meeting (Task 1).
- B.** The Contractor shall conduct a site visit no later than 15 calendar days of submitting list of information gaps/field verification needs to evaluate current conditions and address project implementation needs. Information obtained from the site visit will be used to complete the Mitigation Implementation Plan and LSA Notification. The site visit will include representatives from CSLO Department of Public Works (DPW) and CMD Environmental. During the site visit(s), the Contractor will:
 - 1. Evaluate site suitability for proposed plantings
 - 2. Evaluate invasive plant species type and density at each mitigation area
 - 3. Map the project areas with a Global Positioning System (GPS)
 - 4. Take photos of project areas to document pre-project conditions
 - 5. Take necessary measurements for irrigation and fencelines
 - 6. Identify appropriate water sources
- C.** It is anticipated that additional site visits will be required to evaluate site conditions. The Contractor will provide an estimated number of additional site visits and the costs of these visits in their bid.
- D. Deliverables/Schedule:**
 - 1. Based on review of the 2023 and 2024 HMMPs, the Contractor shall submit a list of information gaps/field verification items to the CM no later than 30 calendar days after the Pre-Project Coordination Meeting (Task 1).
 - 2. The Contractor shall conduct the site visit no later than 15 calendar days of submitting list of field verification needs.

Task 3: Draft Invasive Plant Control Plan

- A.** The mitigation sites are heavily infested with invasive plants and will require significant effort to eradicate. The Contractor shall assess the level and type of invasive species at the mitigation sites and prepare a Draft Invasive Plant Control Plan for the project that considers the plant species, type of control methods, and timing of control methods (initial and ongoing efforts) for each mitigation area. The Draft Invasive Plant Control Plan will be produced as a single document that addresses invasive plant treatments at all four mitigation areas.
- B.** The Draft Invasive Plant Control Plan shall conform to the California Army National Guard (CA ARNG) Integrated Pest Management Plan (IPMP). The IPMP focuses on the use of alternatives to chemical treatments (e.g., preventative, mechanical and manual plant removal methods). Herbicide treatments may be used but cannot be the sole method of control; alternate, non-chemical methods must be analyzed prior to the use of herbicides.

- C. The Draft Invasive Plant Control Plan shall address strategies for initial removal/control of existing invasive species and ongoing control once the mitigation plantings are installed. The plan will focus on an integrated approach to invasive plant control and incorporate a combination of mechanical, physical, and chemical control methods. The Draft Invasive Plant Control Plan will include:
1. Identification of invasive plant species and level of infestation at each mitigation area
 2. Summary of potential threat of invasive infestation and impacts on successful habitat restoration
 3. Brief summary of each invasive species' biology and effective methods of control
 4. Discussion of types of control methods and timing of control
 5. Detailed prescription of most effective invasive plant abatement methods per mitigation area prior to planting native plants (site preparation)
 6. Detailed prescription of most effective invasive plant control maintenance methods throughout the duration of the project (years 1-5)
 7. Discussion of alternative control methods
 8. Discussion of control method constraints (i.e. weather conditions, wind speed, seasonality, etc)
 9. Cost estimates for prescribed invasive plant control activities
- D. **Deliverables/Schedule:**
1. The Contractor shall submit via email the Draft Invasive Plant Control Plan (Microsoft Word and PDF format) to the CM no later than 30 calendar days of completion of Task 2. The CMD will review and submit comments via track changes no later than 30 calendar days of receiving the Draft Invasive Plant Control Plan.

Task 4: Final Invasive Plant Control Plan

- A. No later than 30 calendar days after receipt of CMD's comments, the Contractor shall submit a Final Invasive Plant Control Plan, responding to and considering comments by the CMD. The approved Final Invasive Plant Control Plan will be incorporated into the Mitigation Implementation Plan and the CDFW LSA Notification (permit application).
- B. **Deliverables/Schedule:**
1. The Contractor shall submit the Final Invasive Plant Control Plan, via email in Word and PDF, to the CM no later than 30 calendar days of receipt of CMD comments on the draft plan. The CMD will have 15 calendar days for review and approval of the Final Invasive Plant Control Plan.

Task 5: Draft Mitigation Implementation Plan

- A. The Contractor shall compile information from the 2023 and 2024 HMMPs, site visit(s), and Invasive Plant Control Plan and prepare a Draft Mitigation Implementation Plan. The implementation plan will describe all aspects of the project and will serve as the guiding document for project implementation.
- B. The Contractor will provide mapping of all mitigation areas to include a planting map specific for each site. The planting maps shall detail the plant species and stock type/sizes, planting locations and layout, and irrigation and fence types/locations for each mitigation area. The maps shall be approved in writing by the CM prior to incorporation into the Draft Mitigation Implementation Plan.

- C. The Draft Mitigation Implementation Plan will provide clear instructions on all phases of the project including site preparation, planting, and long-term maintenance. The Plan will consider anticipated future re-planting to ensure survivorship requirements are being met. The Plan should also consider potential pest (i.e. gopher, ground squirrel) impacts and prescribe measures to address pest damage. The plan will include detailed drawings, maps, and photos of pre-project conditions. All maps must be completed utilizing Geographic Information System (GIS) software or Computer-Aided Design and Drafting (CADD) software. This plan shall clearly identify all methods and materials needed for the project. Specifically, the Draft Mitigation Implementation Plan shall include details on the following:
- Approved planting maps
 - Approved Invasive Plant Control Plan
 - Amount, type, and location of fencing
 - Irrigation details and water source and irrigation schedule
 - Amendment and mulch placement
 - Utility conflicts (e.g., overhead/underground electrical, gas, water, etc.)
 - Implementation schedule for all phases of the Mitigation Implementation Plan
 - Estimated costs for implementing all phases of the overall Mitigation Implementation Plan (planting, fencing, irrigation, invasive plant control, long-term maintenance and monitoring, etc.). Estimated costs shall be itemized with quantities, units of measure, and unit costs so that they may serve as the basis of the engineer's estimate for the follow-on public works construction solicitation
 - Erosion and sediment control and dewatering details, at a level of specificity sufficient to support preparation of a Stormwater Pollution Prevention Plan (SWPPP) by a Qualified SWPPP Developer (QSD) for the follow-on construction contract. Any grading, drainage, or erosion-control design constituting the practice of civil engineering shall be prepared under the responsible charge of a Professional Engineer licensed by the State of California.

Deliverables/Schedule:

1. The Contractor shall submit planting maps for each mitigation area to the CM for review and approval no later than 15 calendar days after the completion of Task 4. The CMD will have 15 calendar days to approve the plans.
2. The Contractor shall submit via email the Draft Mitigation Implementation Plan (Microsoft Word and PDF format) to the CM no later than 30 calendar days from CMD approval of the Planting Plans. The CMD will review and submit comments via track changes within 30 calendar days of receiving the Draft Implementation Plan.

Task 6: Final Mitigation Implementation Plan

- A. The Contractor shall submit a Final Mitigation Implementation Plan, responding to and considering comments by the CMD no later than 30 calendar days after receipt of CMD's comments. The approved Final Mitigation Implementation Plan will be incorporated into the CDFW LSA Notification and will be used to develop a SOW for project construction. To support conversion to a public works solicitation, the Final Mitigation Implementation Plan shall be organized so that it can be developed directly into construction bid documents, including plans, technical specifications, and a bid item schedule with estimated quantities and units of measure.

Deliverables/Schedule:

1. The Contractor shall submit the Final Mitigation Implementation Plan via email in Word and PDF format, to the CM no later than 30 calendar days after receipt of CMD comments on the Draft Mitigation Implementation Plan. The CMD will have 15 calendar days for review and approval of the Final Mitigation Implementation Plan.
 2. The Contractor shall provide digital photographs (JPEG format) of the project site, including but not limited to invasive plant species, treatment areas, access routes, existing vegetation, drainage features, and other environmental conditions relevant to implementation of the Mitigation Implementation Plan. The photographs shall be suitable for cross-referencing with GIS mapping products and shall serve as baseline documentation to support project planning, implementation, regulatory coordination, and future construction activities. Task 7: Draft Lake and Streambed Alteration Notification
- A. Upon approval of the Final Mitigation Implementation Plan, the Contractor shall prepare a Draft LSA Notification for submittal to CDFW. The Notification will include a project description as detailed in the Final Mitigation Implementation Plan. The Contractor shall coordinate with CMD Environmental staff to ensure natural and cultural resources are addressed consistent with the CEQA, ESA, NHPA Section 106/SHPO, and Tribal consultation requirements described in Paragraph C.
 - B. The Contractor shall provide the GPS field mapping and GIS mapping and data products required to support the LSA Notification, including maps of the project area, mitigation areas, and proposed streambed alteration activities.
 - C. The CMD Environmental office will manage the necessary California Environmental Quality Act (CEQA), Endangered Species Act (ESA), State Historic Preservation Office (SHPO), and Tribal consultation documents required as part of the Notification submittal and are not required as part of this SOW.
 - D. The Contractor shall prepare a draft LSA Notification in an editable format (Microsoft Word or PDF) that will be reviewed by the CMD prior to entering information into the CDFW permitting portal.
 - E. **Deliverables/Schedule:**
 1. The Contractor shall submit via email the Draft LSA Notification (Microsoft Word or PDF format) to the CM no later than 30 calendar days after completion of Task 6. The CMD will provide comments back to the Contractor within 30 calendar days.

Task 8: Final Lake and Streambed Alteration Notification

- A. The Contractor shall prepare the Final LSA Notification and submit it to the CM no later than 15 calendar days of receiving CMD comments, CMD will conduct a final review within 5 calendar days of the submittal.
- B. Upon approval of the Final Mitigation Implementation Plan, CMD shall issue a formal written designation identifying the Contractor as CMD's authorized representative for the limited purpose of preparing and submitting the Lake and Streambed Alteration (LSA) Notification through the California Department of Fish and Wildlife's Environmental Permit Information Management System (EPIMS). This designation is limited to permit processing activities and does not authorize the Contractor to act on behalf of CMD for any other purpose unless expressly authorized in writing. The Contractor shall also be responsible for submitting the applicable notification fee in accordance with the current CDFW fee schedule. The Contractor will be responsible for responding to any CDFW requests for information

(RFI) and reviewing and commenting on the Draft LSAA provided by CDFW. All agency responses shall be reviewed, approved, and coordinated with the CM. The CMD anticipates up to two (2) RFIs and two (2) rounds of Draft LSAA review. This task, and the Contractor's performance under this SOW, will be considered complete when the Contractor has submitted the Final LSA Notification to CDFW through the EPIMS portal and has responded to CDFW's RFIs and provided comments on the Draft LSAA as set forth above. Issuance of the final Lake and Streambed Alteration Agreement (LSAA) by CDFW is a discretionary regulatory action outside the control of the Contractor and CMD and is not a condition of contract completion.

C. Deliverables/Schedule:

1. The Contractor shall submit a final LSA Notification (Microsoft Word or PDF format) for CMD approval no later than 15 calendar days after receiving CMD comments on the Draft LSA Notification.
2. Once the Final LSA Notification is approved, the Contractor shall submit the LSA Notification via the CDFW permitting portal (EPIMS).
3. The Contractor will be responsible for responding to any CDFW RFIs no later than 15 calendar days after receiving the RFI. All responses will be reviewed and approved by the CM in writing prior to submission.
4. Once issued, the Contractor will coordinate with the CM to review and comment on the Draft LSAA. The Contractor will provide comments on the Draft LSAA no later than 15 calendar days after draft LSAA issuance.

Task and Timeline Summary

Task	Timeline	Cumulative Elapsed Time from NTP (approx.)
1. Pre-project Coordination Meeting/Work Schedule	No later than 7 calendar days after the NTP. A work schedule will be submitted No later than 15 calendar days after the Coordination Meeting.	≈ Day 7 (meeting) → Day 22 (work schedule). ~0.7 month elapsed
2. Project Review and Site Visit	List of items requiring field verification will be submitted no later than 30 calendar days after the Coordination Meeting. Site visit to occur no later than 15 calendar days after submitting list of field verification needs.	≈ Day 37 (info-gap list) → Day 52 (site visit) → Day 67 (site memo). ~1.2–2.2 months elapsed
3. Draft Invasive Plant Control Plan	No later than 30 calendar days after completion of Task 2. (CMD is permitted 30 calendar days for review)	≈ Day 97 (draft) → Day 127 (through CMD review). ~3.2–4.2 months elapsed.
4. Final Invasive Plant Control Plan	No later than 30 calendar days after receiving CMD comments on the Draft Invasive Plant Control Plan. (CMD is	≈ Day 157 (final) → Day 172 (through CMD approval). ~5.2–5.7 months elapsed.

Task	Timeline	Cumulative Elapsed Time from NTP (approx.)
	permitted 15 calendar days for review and approval)	
5. Draft Mitigation Implementation Plan	Planting maps will be submitted no later than 15 calendar days after completion of Task 4. (CMD will be permitted 15 calendar days to review) Draft Mitigation Implementation Plan will be submitted within 30 calendar days of CMD approval of planting maps. (CMD will be permitted 30 days for review)	≈ Day 187 (maps approved) → Day 217 (draft) → Day 247 (through CMD review). ~6.1–8.1 months elapsed.
6. Final Mitigation Implementation Plan	No later than 30 calendar days after receiving CMD comments on the Draft Mitigation Implementation Plan	≈ Day 277 (final) → Day 292 (through CMD approval). ~9.1–9.6 months elapsed — end of the sequential critical path.
7. Draft LSA Notification	No later than 30 calendar days after completion of Task 6. (CMD will be permitted 30 calendar days for review)	≈ Day 307 (draft) → Day 337 (through CMD review). ~10.1–11.1 months.
8. Final LSA Notification	No later than 15 calendar days after receiving CMD comments. CDFW RFI responses due within 15 calendar days of receipt.	≈ Day 352 (final notification); concludes within month 12 (under one year).

V. CONTRACTOR QUALIFICATIONS

1. The Contractor shall have experience planning and overseeing riparian and wetland ecological restoration. The Contractor must be familiar with habitat restoration techniques, CDFW permit preparation, and local flora and fauna.
2. The restoration and mitigation deliverables shall be prepared by personnel qualified in fluvial (channel and stream) geomorphology, biology, stream restoration, habitat restoration, and native revegetation, with the restoration lead having no less than five (5) years of documented experience designing successful restoration projects within coastal California.
3. The Contractor shall have demonstrated experience preparing site-specific invasive-plant control prescriptions using an integrated pest management approach consistent with the CA ARNG Integrated Pest Management Plan (IPMP).
4. The Contractor shall provide a Statement of Qualifications (SOQ) or summary of relevant project experience that details previous experience planning and/or implementing riparian or wetland habitat restoration projects at the time of bid submittal, including evidence of the required experience for coastal restoration projects reference in Section II and Section V, Paragraph 2 of this SOW.

5. The Contractor shall have experience with GIS or CADD software and the ability to complete the planting, irrigation, and utility-conflict maps, mitigation-area maps, GPS field mapping, and GIS data products required by this SOW, and to perform quality control on data meeting National Guard Bureau data quality control requirements.

VI. MATERIALS AND LABOR

1. CMD will provide the following information and materials:
 - A. Environmental documents and consultations, emergency permits, biological survey data, management plans, installation information, maps, GIS layers, and any other relevant supporting information.
 - B. Assistance in scheduling project activities with CSLO Operations to gain access to non-restricted parts of the installation.
2. The Contractor shall provide the following labor and materials:
 - A. All personnel, labor, materials, tools, equipment, insurance, and supporting documentation not available from the CMD necessary to carry out the project as defined in this SOW.
 - B. The Contractor shall provide all its own transportation, meals, and lodging necessary to carry out the tasks defined in the SOW. These costs are not reimbursable by the CMD.

VII. GENERAL REQUIREMENTS

1. **Laws and Regulations:** Work shall be accomplished in accordance with all terms and conditions of this contract, CSLO regulations, and all applicable local, state, and federal laws, regulations, and ordinances.
2. **Safety:** It is the Contractor's responsibility to ensure that all project personnel and/or subcontractors conduct their activities in a manner that ensures the safety of field crew members and other people and that avoids damage to vehicles, existing structures, natural resources, livestock or any other resources or property.
3. **Risks:** The Contractor shall ensure, before beginning field work, that all project personnel and/or subcontractors under its direction and control are fully trained and equipped to take the necessary personal protective measures to reduce risks in working on this project, including attending the mandatory trainings listed in Section VII, Paragraph 4. Safety risks include, but are not limited to, potential exposure to hanta virus, Lyme disease, rabies, bubonic plague and other diseases carried by mammals and/or their fleas, snake bite, poison oak, valley fever, heat exhaustion, heat stroke, traffic accidents and other accidents.
4. **Environmental and UXO Briefing:** Prior to implementing any field work, all field crew members dispatched by the Contractor or its subcontractors to work on the project site shall attend a mandatory briefing provided by a CMD biologist regarding the protective measures required for sensitive species. There is also the potential for encountering unexploded ordinances (UXOs) while conducting field work. A UXO briefing will be provided to all field crew members dispatched by the Contractor or its subcontractors to work on the project site by CSLO Range Control prior to commencement of field

work. Evidence of attendance for these mandatory trainings shall be submitted by the Contractor to the CM for review and approval.

5. **Non-Interference with Military Operations:** The Contractor shall not interfere with military training operations and shall remain outside all restricted areas.
6. **Final, Certified Submittals:** All deliverables intended for submittal to a regulatory agency shall be final (non-draft), complete with the certifications required by this SOW and all appendices and in searchable PDF format.
7. **Review Cycles and Acceptance:** Each plan deliverable (Tasks 3–6) includes one Draft and one Final incorporating a single consolidated set of CMD comments; review cycles beyond that shall be authorized by the formal contract amendment process. A deliverable is “approved” when it conforms to the applicable HMMP requirements and agency submittal requirements, as determined by the CM in writing.
8. **Government-Furnished Information and Reviews:** CMD will provide required information, reviews, site-visit participation, and CMD-managed CEQA/ESA/SHPO/Tribal documents within the timeframes herein. Delays attributable to CMD or to regulatory agencies shall not count against the Contractor’s schedule or be borne as Contractor cost; the period of performance and affected milestones shall be equitably adjusted.
9. **Agency Fees:** **With the exception of the outstanding \$2,985 RWQCB application fee identified in Section I from the RWQCB Notice of Violation,** all regulatory agency fees required to perform this SOW, including the CDFW Lake and Streambed Alteration notification fee, are the responsibility of the Contractor and shall be paid by the Contractor in accordance with the applicable published agency fee schedule. The Contractor shall estimate and include all such fees in its fixed-price offer. This is a firm-fixed-price contract: once the Contractor’s price is accepted it will not be adjusted, and CMD will not pay any amount above the accepted price even if the Contractor’s actual costs — including the actual agency fees assessed — exceed the Contractor’s estimate. Agency fees are not separately reimbursed by CMD.
10. **Regulatory Agency Timelines:** Completion of agency review and issuance of permits, authorizations, and agreements (including the CDFW LSAA) depends on regulatory agency schedules and is outside the control of the Contractor and CMD. Delay attributable to regulatory agency review or issuance shall not constitute a default or breach by either party, shall not be borne as Contractor cost, and shall not entitle the Contractor to any increase in the firm-fixed price. Where such delay would extend performance beyond the period of service, the period of service and affected milestones shall be equitably adjusted as to time only, at no additional cost to CMD, and the contract shall not lapse or terminate solely because agency action extends beyond twelve (12) months.
11. **Procurement Classification:** This SOW procures environmental services performed in connection with project development and permit processing in order to comply with federal and state environmental laws, in support of the Camp San Luis Obispo mitigation restoration project, a public work of improvement. These services will be competitively solicited and awarded in accordance with the solicitation issued by the CMD Procurement and Contracting Officer. This SOW is not itself an agreement for the erection, construction, alteration, repair, or improvement of a public structure or other public improvement; the follow-on mitigation construction contract will constitute the public work and will be procured separately, subject to prevailing wage, contractor licensing, bonding, and competitive bidding requirements. This classification is subject to CMD Deputy Construction and

Facilities Management Office (CFMO) review and legal concurrence. The California Contractors State Licensing Board (CSLB) contractor's license classification required for the follow-on construction contract (anticipated Class A General Engineering and/or C-27 Landscaping) will be stated in those construction bid documents pursuant to Public Contract Code section 3300; no CSLB contractor's license classification is required for this SOW.

- 12. Prevailing Wage — Covered Preconstruction Field Work:** Under Labor Code section 1720(a)(1), "construction" includes work performed during the design, site assessment, and other preconstruction phases of construction, including inspection and land surveying work. Field mapping, surveying, and site assessment tasks performed under this SOW in support of the future mitigation construction project may therefore constitute public work for prevailing wage purposes. To the extent any task under this SOW is covered work, the Contractor and its subcontractors shall be registered with the Department of Industrial Relations (Labor Code section 1725.5), shall pay not less than the applicable general prevailing wage rates, and shall keep and furnish certified payroll records (Labor Code section 1776).

VIII. PERIOD OF SERVICE

The overall period of service shall begin upon execution of the contract and extend for a period not to exceed 12 months. The period of service may be equitably extended as to time only, at no additional cost to CMD, to accommodate delays in regulatory agency review or issuance that are outside the control of the Contractor and CMD, consistent with the General Requirements of this SOW.

IX. ATTACHMENTS

- 1. Attachment 1 – Compliance Tasking Crosswalk**
- 2. Attachment 2 – Combined Regulatory Notices**
 - a.** RWQCB Notice Of Violation (NOV) #1 — Notice of Violation, Unauthorized Discharge (Aug 2, 2024)
 - b.** RWQCB NOV #2 — Notice of Violation, Failure to Report (Dec 18, 2024)
 - c.** USACE Notice of Non-Compliance — Notice of Non-Compliance, DA Permit SPL-2024-00243-AJS (Aug 19, 2024)
 - d.** USFWS letter — Alleged Unauthorized Take of CRLF (Oct 15, 2024)

Attachment 1 — Compliance Tasking Crosswalk

This crosswalk lists every requirement from the four notices and how each is addressed. It reflects that the Water Board–approved HMMP satisfies the restoration and mitigation technical report requirement, and that this SOW performs the planning and permitting needed to make the mitigation implementable.

ID	Notice Requirement	Notice	In This SOW?	Handled By / When
N1-01	§13267 restoration & mitigation technical report	NOV #1	Met (HMMP)	Met — Water Board–approved HMMP accepted as the technical report
N1-02	Obtain WDRs or CWA §401 before disturbance	NOV #1	No	Not required for this SOW; at implementation if pursued
N1-03	Pay outstanding \$2,985 RWQCB fee	NOV #1	No	CMD administrative
N1-04	Construction-stormwater + SWPPP (≥1 acre)	NOV #1	No	Future construction contract
N1-05	Implement restoration & mitigation (build)	NOV #1	In this SOW	This SOW plans & permits it; construction under a separate contract
N1-06	Turbidity BMPs, dewatering monitoring/reporting	NOV #1	No	Future construction contract
N2-01	Final Notice of Completion + Attachment C	NOV #2	No	CMD + consultant (confirm PCR)
U-01	RGP-63 post-project completion report	USACE	No	CMD + consultant (confirm PCR)
U-02	Revised HMMP per USACE SPD guidelines	USACE	Met (HMMP)	Met — HMMP reviewed/approved by USACE and USFWS
U-03	30-day response to USACE	USACE	No	CMD government-to-government
U-04	Additional ESA consultation (USFWS + NMFS)	USACE	No	CMD-led
F-01	Formal ESA §7 consultation (CRLF/FYLF; steelhead)	USFWS	No	CMD Conservation Pgm Mgr-led
F-02	501 FW 3 compensatory mitigation	USFWS	No	CMD-led
F-03	Cease take until §7 complete	USFWS	No	CMD compliance control — ongoing
F-04	September 2024 activities report (timeline+map)	USFWS	No	CMD + GIS Support
F-05	USFWS coordination meeting	USFWS	No	CMD Conservation Pgm Mgr

ID	Notice Requirement	Notice	In This SOW?	Handled By / When
X-01	Final, certified agency submittals	All	In this SOW	This SOW — General Requirements
X-02	RGP-63 biological special conditions (implementation)	USACE/USFWS	No	Future construction contract

Attachment 2 — Combined Regulatory Notices

- a. RWQCB Notice Of Violation (NOV) #1 — Notice of Violation, Unauthorized Discharge (Aug 2, 2024)
- b. RWQCB NOV #2 — Notice of Violation, Failure to Report (Dec 18, 2024)
- c. USACE Notice of Non-Compliance — Notice of Non-Compliance, DA Permit SPL-2024-00243-AJS (Aug 19, 2024)
- d. USFWS letter — Alleged Unauthorized Take of CRLF (Oct 15, 2024)

Central Coast Regional Water Quality Control Board

August 2, 2024

David Ruiz
California Army National Guard
California Military Department
10 Sonoma Avenue
Post Operations Building 738
San Luis Obispo, CA 93405
Email: David.ruiz@cmd.ca.gov

VIA CERTIFIED AND ELECTRONIC MAIL
Certified Mail No. 7022 3330 0002 1258 9508

Dear David Ruiz:

NOTICE OF VIOLATION FOR UNAUTHORIZED DISCHARGE OF WASTE TO AN UNNAMED TRIBUTARY TO CHORRO CREEK AND REQUIREMENT TO SUBMIT TECHNICAL REPORT, CALIFORNIA ARMY NATIONAL GUARD, CAMP SAN LUIS OBISPO, SAN LUIS OBISPO COUNTY

The California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) is a state regulatory agency with the responsibility for protecting the quality of the waters of the state within its area of jurisdiction. The Central Coast Water Board has authority to require submission of information, direct action, establish regulations, levy penalties, and bring legal action when necessary to protect water quality.

The Central Coast Water Board has evidence of unauthorized activities in an unnamed tributary to Chorro Creek in San Luis Obispo County at Camp San Luis Obispo. The unauthorized activities are potential violations of Water Quality Order WQ 2023-0095-DWQ, *Clean Water Act Section 401 Water Quality Certification for Regional General Permit 63 for Emergency Repair and Protection Activities* (General Order);¹ the California Water Code; the federal Clean Water Act; and the Central Coast Water Board's *Water Quality Control Plan for the Central Coastal Basin* (Basin Plan).² This notice of violation describes alleged violations, summarizes potential monetary liability, provides direction on corrective actions, and requires the California Army National Guard to submit a technical report.

¹ https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/2023/2-RGP%2063-Certification%20MainBody.pdf

²

https://www.waterboards.ca.gov/centralcoast/publications_forms/publications/basin_plan/docs/2019_basin_plan_r3_complete_webaccess.pdf

Summary

On March 26, 2024, the California Army National Guard submitted a Notice of Intent to the Central Coast Water Board to enroll the Camp San Luis Obispo Emergency Sediment Removal Project (Project) under the General Order. On April 2, 2024, in response to discussions regarding the scope of the Project, David Ruiz stated in an email to Central Coast Water Board staff Kathleen Gonzalez: "The contractor is responsible for providing all the necessary information to meet all regulatory agencies' requirements and answering your questions. If the contractor needs information from CSLO based on your RFIs, he will run that through my office." On April 5, 2024, the contractor Colby Boggs of Rincon Consultants, Inc. provided an email with an attachment with the filename *Answers to Kathleen and Antal's Questions final*, which stated: "A map with more precise locations of where the work is going to occur is attached to show where vegetation clearing is to occur; note that sediment removal is to occur throughout the entire work area" and "the additional intent is to remove trees and other vegetation within the identified hydraulic choke points (see the attached map) [...]." The attached map identified seven specific locations of "debris dams" where vegetation removal was to occur. The same document also stated: "channel dimensions post-action will be approximately five feet deep, 10 feet wide at the top of bank, and five feet wide at the ordinary high water mark." In accordance and consistent with this submitted information, the Central Coast Water Board issued a Notice of Applicability (NOA) on April 15, 2024, limiting authorization "to above-ground removal of dead and down trees and accumulated debris wracks, along with selective above-ground tree removal at the identified debris dam locations and along the channel centerline to minimize blockages."

On May 17, 2024, Central Coast Water Board staff inspected the Project site. During this site inspection, Central Coast Water Board staff observed and documented the following activities at the Project site:

1. Complete vegetation removal from the bed and banks of the unnamed tributary in areas where no vegetation clearing was proposed by California Army National Guard or authorized in the NOA. Complete removal of vegetation within the unnamed tributary occurred from the crossing of Santa Cruz Road to approximately 1,000 feet upstream.
2. Sediment removal was not limited to what was proposed and authorized in the NOA. Channel dimensions post-action substantially exceeded the proposed depth of five feet and width of 10 feet at top of bank.
3. Boulders and rock were placed in the unnamed tributary immediately downstream of its crossing with Kern Avenue. This activity was not proposed or authorized in the NOA.
4. Land disturbing activities exceeded one acre in size and California Army National Guard staff confirmed that coverage under Order WQ 2022-0057-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit for*

Stormwater Discharges Associated with Construction and Land Disturbance Activities, had not been obtained.³

In addition to findings made during the site inspection, Central Coast Water Board staff also determined during review of reports that monitoring and reporting was not conducted in compliance with General Order conditions and that project activities exceeded water quality standards. Also, Central Coast Water Board staff does not have record of receiving the application fee of \$2,985 from the California Army National Guard. The fee is still due.

Alleged Violations

1. General Order section VI.A.6 requires that enrollees “must, at all times, fully comply with engineering plans, specifications, and technical reports submitted with the Notice of Intent and all subsequent submittals required as part of this Order.” In conducting vegetation and sediment removal in excess of that identified in the document titled *Answers to Kathleen and Antal’s Questions final*, California Army National Guard did not comply with engineering plans, specifications, and technical reports submitted with the Notice of Intent. California Army National Guard’s vegetation and sediment removal conducted in exceedance of the amounts identified in its submitted documents is a violation of General Order section VI.A.6.
2. The placement of boulders and rock in the unnamed tributary constitutes a discharge of fill material to waters of the United States. Section 13376 of the California Water Code requires any person discharging fill material, or proposing to discharge fill material, to waters of the United States to file a report of waste discharge. In addition, California Water Code section 13376 prohibits the discharge of fill material to waters of the United States except as authorized by waste discharge requirements. Federal Clean Water Act section 301 also prohibits the discharge of fill material to waters of the United States without a permit. The California Army National Guard did not submit a report of waste discharge or obtain waste discharge requirements from the Central Coast Water Board for the placement of boulders and rock in the unnamed tributary. Conducting these activities in waters of the United States without submittal of a report of waste discharge and issuance of waste discharge requirements is a violation of California Water Code section 13376 and Clean Water Act section 301.
3. Placement of the boulders and rock in the unnamed tributary is a violation of Basin Plan prohibition 4.8.5.1, which prohibits the unauthorized “discharge or threatened discharge of sand, silt, clay, bark, slash, sawdust, or other organic or earthen materials into any waters of the State from soil disturbance activities and

³ https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2022/wqo_2022-0057-dwq.pdf

in quantities deleterious to fish, wildlife, and other beneficial uses.” The boulders and rock discharged to the unnamed tributary are deleterious to beneficial uses because it has filled portions of the stream, reducing the overall area of the stream that provides beneficial uses. In addition, the boulders and rock have degraded fresh water and wildlife habitat in the stream by burying vegetation and streambed geomorphic structures, reducing aquatic life and wildlife opportunities for foraging and cover.

4. The clearing of vegetation and excavation and grading of sediment in the unnamed tributary constitute a discharge of waste to waters of the state. Central Coast Water Board staff observed and documented vegetative debris, loose sediment, and turbid water resulting from unauthorized work in the unnamed tributary. California Water Code section 13264 prohibits the discharge of waste to waters of the state except as authorized by waste discharge requirements. California Army National Guard did not obtain waste discharge requirements from the Central Coast Water Board for all waste discharged to the unnamed tributary. Conducting these activities in waters of the state without issuance of waste discharge requirements is a violation of California Water Code section 13264.
5. California Army National Guard did not have coverage under Order WQ 2022-0057-DWQ, *National Pollutant Discharge Elimination System General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities*, for construction stormwater discharges when construction began on or about April 18, 2024. Permit coverage for construction stormwater discharges was also not in place at the time of the Central Coast Water Board staff site visit on May 17, 2024. If the Project were an emergency, enrollment would have been required within 30 days of commencement of construction (approximately May 18, 2024). The California Military Department did not obtain coverage under Order WQ 2022-0057-DWQ for the Project until June 13, 2024. Section 13376 of the California Water Code requires any person discharging pollutants, or proposing to discharge pollutants, to waters of the United States to file a report of waste discharge. In addition, California Water Code section 13376 prohibits the discharge of pollutants to waters of the United States except as authorized by waste discharge requirements. Federal Clean Water Act section 301 also prohibits the discharge of pollutants to waters of the United States without a permit. The California Army National Guard did not submit a report of waste discharge or obtain waste discharge requirements from the Central Coast Water Board prior to discharging construction stormwater pollutants to the unnamed tributary. Conducting these activities in waters of the United States without submittal of a report of waste discharge and issuance of waste discharge requirements is a violation of California Water Code section 13376 and Clean Water Act section 301.
6. Water quality monitoring and reporting was not conducted in compliance with requirement number 6 in the NOA to “keep a daily log of visual turbidity monitoring with photos of the dewatering inlet and outlet and submit the daily

logs to the Central Coast Water Board every Wednesday during project construction.” General Order condition VI.F.1 authorizes water quality monitoring to be set forth in the NOA if surface water is present. On April 24, 2024, Central Coast Water Board staff contacted the California Army National Guard for an update on construction commencement and referenced requirement number 6 of the NOA. On April 25, 2024, the California Army National Guard informed Central Coast Water Board staff that dewatering started on April 18, 2024, and provided daily logs for activities from April 18, 2024, to April 24, 2024. Daily photos of the dewatering inlet and outlet, but the submittal only included photos of the inlet for three days of project activities, with no photos of the outlet. The next weekly submittal was due on May 1, 2024. The daily logs were submitted late on May 2, 2024. Descriptions of visual turbidity monitoring results in these first two submittals were not sufficient to determine if the Project activities had caused elevated turbidity in the unnamed tributary. The logs due May 15, 2024 were not submitted until May 16, 2024, and logs due May 29, 2024 were not submitted until May 31, 2024. Therefore, the California Army National Guard did not comply with requirement number 6 of the NOA, in violation of General Order condition VI.F.1.

7. General Order section VI.A.5 requires that permitted actions “must not cause a violation of any applicable water quality standards, including impairment of designated beneficial uses for receiving waters as adopted in the Basin Plans by any applicable Regional Water Board or any applicable State Water Board water quality control plan or policy.” Further, construction condition VI.C.5 of the General Order requires that “Water diversion activities must not result in the degradation of beneficial uses or exceedances of water quality objectives of any of the receiving waters.” The Basin Plan objectives for turbidity limit the increase in turbidity due to controllable water quality factors to the following: 1) where natural turbidity is between 0 and 50 nephelometric turbidity units (NTU), increases shall not exceed 20 percent; 2) where natural turbidity is between 50 and 100 NTU, increases shall not exceed 10 NTU; and 3) where natural turbidity is greater than 100 NTU, increases shall not exceed 10 percent. Turbidity monitoring for the release of project diversion/dewatering dams was submitted on June 4, 2024. The monitoring report indicates that prior to the May 17, 2024 dam release, natural turbidity measured upstream of the project area was 14 NTU, and during the release, downstream turbidity was measured as high as 300 NTU. Prior to the May 30, 2024 dam release, natural turbidity measured upstream of the project area was 50 NTU, and during the release, downstream turbidity was measured as high as 450 NTU. The project activities therefore caused increases in turbidity in exceedance of applicable water quality objectives in violation of General Order sections VI.A.5 and VI.C.5.

Required Corrective Actions

California Army National Guard must take corrective action to address alleged violations 1-4 as soon as possible. To address the alleged violations, California Army National Guard can: 1) implement restoration and compensatory mitigation to restore beneficial

uses of waters of the state and fully mitigate all direct and indirect impacts to waters of the state and 2) obtain all required authorizations for all corrective restoration and compensatory mitigation activities.

To avoid further unauthorized discharges during any restoration and compensatory mitigation implementation in waters of the state or waters of the United States, pursuant to Water Code sections 13260 and 13376, California Army National Guard must apply for and obtain waste discharge requirements or Clean Water Act section 401 certification from the Central Coast Water Board prior to any new disturbance or restoration and compensatory mitigation activity.

California Water Code Section 13267 Order for Technical Report

California Water Code section 13267 authorizes the Central Coast Water Board to require any person or entity who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within the region to furnish, under penalty of perjury, technical or monitoring reports when necessary to investigate the quality of any waters of the state.

Pursuant to California Water Code section 13267, for the purposes of investigating the above-referenced violations, assessing compliance and threat to water quality, and determining recommendations for further enforcement action, the Central Coast Water Board requires California Army National Guard to submit a technical report containing the following information within **60 days of the issuance of this letter**:

- A. A restoration and mitigation plan (Plan) of technical quality acceptable to the Central Coast Water Board Executive Officer. The Plan shall be designed to restore the size, quality, functions, values, and beneficial uses of waters of the state that have been impacted by Project activities. The Plan shall also be designed to mitigate for temporal and permanent losses in the size, quality, functions, values, and beneficial uses of waters of the state at the Site. The Plan shall be prepared by personnel qualified in geomorphology, biology, stream restoration, and habitat restoration. For the purposes of this technical report order, a qualified person is one with no less than five years of experience designing successful restoration projects within coastal California. The Plan shall include, but not be limited to, the following:
 1. Identification of parties responsible for restoration and for monitoring and maintenance of the restoration site.
 2. A detailed description of the pre-project conditions of the unnamed tributary that includes:
 - a. Identification of the location, size, and habitat type of waters of the state and riparian areas that were directly and indirectly impacted.
 - b. Identification and description of the quality, functions, values, and beneficial uses of the waters of the state and riparian areas that were directly and indirectly impacted.

3. A detailed description of the goals of the restoration and other mitigation, including, but not limited to:
 - a. A detailed description of the types of habitat (waterbody type and plant communities) that will be restored, and for other mitigation, identification of the types of habitats that will be established, re-established, restored, or enhanced.
 - b. A detailed description of the quality, functions, values, and beneficial uses of the restoration and other mitigation sites and how it will replace lost or otherwise impacted quality, functions, values, and beneficial uses of waters of the state, including temporal loss.
4. A detailed description of the restoration and other mitigation sites, including, but not limited to:
 - a. Identification of the location of the restoration and other mitigation sites.
 - b. Identification of the size (acres and linear feet) of restoration and other mitigation sites.
 - c. Ownership status of the restoration and other mitigation sites.
 - d. Present and proposed uses of all restoration and other mitigation sites, including adjacent areas.
 - e. Existing quality, functions, values, and beneficial uses of the restoration and other mitigation sites.
 - f. Existing soil conditions of the restoration and other mitigation sites.
 - g. Existing surface water and groundwater hydrology of the restoration and other mitigation sites, including how and when the sites will draw and hold water and depth to groundwater.
 - h. Hydrologic connectivity to a permanent water source for the restoration and other mitigation sites.
5. Detailed descriptions of (1) all restoration to be conducted for impacted areas and (2) the other mitigation to be implemented to offset impacts to unrestored areas and to account for the temporal loss of quality, functions, values, and beneficial uses of waters of the state, including the following:
 - a. Identification of the time schedule for restoration and other mitigation activities, including grading, initial planting and other installation, planting and installation completion, submittal of "as-built" documents, monitoring, maintenance, and reporting.
 - b. A detailed description of proposed methods to be used for the restoration and other mitigation sites, including, but not limited to:
 - i. Identification of the types of mitigation to be implemented: establishment, re-establishment, restoration, or enhancement.
 - ii. A figure showing the planting palettes, seeding plans, and other design elements for the restoration and other mitigation sites.
 - iii. Plans for any grading and other design elements.
 - iv. A detailed description of the steps that will be taken and methods that will be used to restore impacted areas of the unnamed tributary.
 - v. A detailed description of the steps that will be taken and methods that will be used to implement any other mitigation.
 - c. Irrigation plans to be implemented until plants become established.

- d. A description of interim and final restoration and mitigation performance success criteria, including percent survival of plantings, health and vigor of plantings, percent cover of vegetation, control of invasive plants, and site stability.
- e. Quantitative demonstration that the restoration and mitigation will offset all impacts to the quality, functions, values, and beneficial uses of waters of the state and riparian areas resulting from the Project.
- f. A detailed description of erosion control measures to be implemented at the restoration and other mitigation site(s).
- g. Identification of maintenance and monitoring activities and duration for the restoration and other mitigation site(s).

The Central Coast Water Board requires the technical report to ensure that alleged violations are adequately corrected and that impacts to waters of the state are restored or mitigated. The evidence supporting this requirement for a technical report is discussed above. The burden, including costs, of the report bears a reasonable relationship to its need and the benefits to be obtained. The report is required to obtain information that is necessary to fully delineate the extent of actual and potential adverse impacts to water quality and beneficial uses caused by the discharges, determine compliance with water quality objectives and prohibitions in the Basin Plan, and identify corrective actions. The cost bears a reasonable relationship to the benefits because of the harm to beneficial uses that these discharges have caused. More detailed information is available in the Central Coast Water Board's public file on this matter.

Based on information available to Central Coast Water Board staff, including relevant professional experience, preparation of the technical report will require a combination of professionals including registered professional geologists and engineers. It is estimated that the preparation of the technical report will take approximately 60-80 hours to complete, and using an average hourly rate of \$190, the estimated cost to prepare the technical report is \$11,400-\$15,200. After consideration of these factors, staff has determined that the burden, including costs, of submitting the technical report bears reasonable relationship to the need for the report and the benefits to be obtained from the report.

California Army National Guard must submit the technical report in a searchable Portable Document Format (PDF) to Kathleen Gonzalez at Kathleen.Gonzalez@waterboards.ca.gov and centralcoast@waterboards.ca.gov.

Documents less than 50 MB must be sent via electronic mail and include "Submittal of Required Documents" in the subject line of the e-mail. Documents that are 50 MB or larger must be transferred to a disk and mailed to:

Central Coast Water Board
Attention: Kathleen Gonzalez
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

Failure to provide this information may subject California Army National Guard to enforcement action by the Central Coast Water Board, including issuance of an order under California Water Code section 13304 and imposition of civil liability.

Any person aggrieved by this Central Coast Water Board order for a technical report may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 et seq. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final falls on a Saturday, Sunday, or state holiday (including mandatory furlough days), the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found at the following address or will be provided upon request:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

Potential Enforcement Actions

The alleged violations cited above may subject California Army National Guard to enforcement by the Central Coast Water Board for every day the violations continue. California Army National Guard must correct the violations as soon as possible. California Army National Guard's receipt of this notice of violation does not preclude the Central Coast Water Board from taking further enforcement action for the alleged violations cited in this notice of violation, and the Central Coast Water Board reserves the right to take any enforcement action authorized by law. In making its determination of whether and how to proceed with further enforcement action, the Central Coast Water Board will consider the information submitted in response to this notice of violation, the time it takes to correct the identified violations, and the adequacy of the corrections and actions taken.

California Water Code section 13350 provides that any person who, in violation of a Basin Plan prohibition issued by a regional board, discharges waste, or causes or permits waste to be deposited where it is discharged, is subject to administrative civil liability of up to \$10 per gallon of waste discharged or up to \$5,000 per day of violation. If the Central Coast Water Board elects to refer the matter to the Attorney General, the superior court may impose civil liability for up to \$15,000 per day, or \$20 per gallon of waste discharged, for each violation.

California Water Code section 13385 provides that any person who violates any waste discharge requirements or dredged or fill material permit is subject to administrative civil liability of up to \$10,000 per day of violation. If the Central Coast Water Board elects to refer the matter to the Attorney General, the superior court may impose civil liability for up to \$25,000 per day for each violation.

California Water Code section 13385 provides that any person who violates Clean Water Act section 301 and/or California Water Code section 13376 is subject to

administrative civil liability of up to \$10,000 per day of violation, and up to \$10 per gallon of waste discharged but not cleaned up over 1,000 gallons. If the Central Coast Water Board elects to refer the matter to the Attorney General, the superior court may impose civil liability for up to \$25,000 per day for each violation, and up to \$25 per gallon of waste discharged but not cleaned up over 1,000 gallons.

California Water Code section 13268 provides that failure to submit the information required by subdivision (b) of 13267 by the specified compliance date, or falsifying any information provided therein, is a misdemeanor and may result in civil liability. Noncompliance may subject you to civil liability in the amount of up to \$1,000 for each day of violation.

Compliance with the technical report order is not a substitute for compliance with other applicable laws. Central Coast Water Board staff's recommendations for further enforcement will depend on the California Army National Guard's response to this notice of violation and technical report order requirement. The Central Coast Water Board may also require cleanup or abatement of the effects of the unauthorized activities pursuant to California Water Code section 13304. The Central Coast Water Board reserves the right to take any enforcement action authorized by law.

If you have questions about this letter, please contact Kathleen Gonzalez at Kathleen.Gonzalez@waterboards.ca.gov or Phil Hammer at Phillip.Hammer@waterboards.ca.gov.

Sincerely,

for Thea S. Tryon
Assistant Executive Officer

cc:

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Central Coast Regional Water Quality Control Board

December 18, 2024

California Army National Guard
California Military Department
David Ruiz
10 Sonoma Avenue
Post Operations Building 738
San Luis Obispo, CA 93405
Email: David.ruiz@cmd.ca.gov

VIA CERTIFIED AND ELECTRONIC MAIL
No. 7020 1810 0002 0767 9947

Dear David Ruiz:

ENFORCEMENT PROGRAM: CALIFORNIA ARMY NATIONAL GUARD, CAMP SAN LUIS OBISPO, SAN LUIS OBISPO COUNTY - NOTICE OF VIOLATION FOR FAILURE TO REPORT, CAMP SAN LUIS OBISPO EMERGENCY SEDIMENT REMOVAL PROJECT (WDID 34024WQ11)

The California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) is a state regulatory agency with the responsibility for protecting the quality of the waters of the state within its area of jurisdiction. The Central Coast Water Board has authority to require submission of information, direct action, establish regulations, levy penalties, and bring legal action when necessary to protect water quality.

The Central Coast Water Board has not received required reports from the California Army National Guard for the Camp San Luis Obispo Emergency Sediment Removal Project (Project). Failure to submit the required reports are potential violations of the California Water Code and Water Quality Order WQ 2023-0095-DWQ, *Clean Water Act Section 401 Water Quality Certification for Regional General Permit 63 for Emergency Repair and Protection Activities* (General Order).¹ This notice of violation describes alleged violations, summarizes potential monetary liability, and provides direction on corrective actions.

Summary

On March 26, 2024, the California Army National Guard submitted a Notice of Intent to the Central Coast Water Board to enroll the Project under the General Order. On March

¹ https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/2023/2-RGP%2063-Certification%20MainBody.pdf

28, 2024, Central Coast Water Board staff requested supplemental information from the California Army National Guard regarding the General Order enrollment, and on April 5, 2024, the Central Coast Water Board received the requested information from the California Army National Guard. In response, the Central Coast Water Board issued a Notice of Applicability (WDID 34024WQ11) enrolling the Project under the General Order on April 11, 2024.

On August 2, 2024, the Central Coast Water Board issued a Notice of Violation to the California Army National Guard for conducting unauthorized activities in waters of the state not covered by the Notice of Applicability and other violations. Pursuant to California Water Code section 13267, the California Army National Guard was required to submit a technical report by October 1, 2024. In an email dated October 3, 2024, the Central Coast Water Board reiterated the technical report was due on October 1, 2024, and that the report was late.

In addition, section VI.G.2.b of the General Order requires the California Army National Guard to submit a Notice of Completion report within 45 days of completion of project actions. The California Army National Guard has reported Project actions were completed on May 30, 2024. As such, the Notice of Completion report was due July 14, 2024. On October 2, 2024, the California Army National Guard submitted a draft document titled "Project Completion Report" that was incomplete and inadmissible. Draft submissions are not acceptable or admissible Notice of Completion reports. The purpose of Notice of Completion reports is to demonstrate compliance with General Order requirements, which cannot be achieved if the document is draft and potentially incorrect or subject to change. Moreover, all submittals required by the General Order must include a signed certified statement of accuracy (General Order Attachment C), which is not applicable to draft documents and was not included in the draft "Project Completion Report" that was submitted. The submitted draft "Project Completion Report" was also missing its Appendices A-F. In an email dated October 3, 2024, Central Coast Water Board staff informed the California Army National Guard that the draft "Project Completion Report" was inadmissible and that a final Notice of Completion report was overdue.

Alleged Violations

1. Pursuant to California Water Code section 13267, for the purposes of investigating violations, assessing compliance and threat to water quality, and determining recommendations for further enforcement action, the Central Coast Water Board required California Army National Guard to submit a technical report by October 1, 2024. As of the date of this Notice of Violation, the Central Coast Water Board has not received the required technical report. Failure to submit the required technical report is a violation of California Water Code section 13267.
2. Pursuant to section VI.G.2.b of the General Order, California Army National Guard was required to submit a Notice of Completion report by July 14, 2024. As of the date of this Notice of Violation, the Central Coast Water Board has not received an acceptable final Notice of Completion report. Failure to submit an

acceptable final required Notice of Completion report is a violation of General Order section VI.G.2.b.

Required Corrective Actions

California Army National Guard must take action to correct the alleged violations as soon as possible. To correct the alleged violations, California Army National Guard can submit the required reports.

Potential Enforcement Actions

The alleged violations cited above may subject California Army National Guard to enforcement by the Central Coast Water Board for every day the violations continue.

California Water Code section 13268 provides that failure to submit technical or monitoring program reports required by subdivision (b) of California Water Code section 13267 by the specified compliance date, or falsifying any information provided therein, is a misdemeanor and may result in administrative civil liability of up to \$1,000 for each day of violation.

California Water Code section 13385 provides that any person who violates any water quality certification issued pursuant to California Water Code section 13160 or monitoring and reporting requirement established pursuant to California Water Code section 13383, is subject to administrative civil liability of up to \$10,000 per day of violation. If the Central Coast Water Board elects to refer the matter to the Attorney General, the superior court may impose civil liability for up to \$25,000 per day for each violation.

California Army National Guard's receipt of this notice of violation does not preclude the Central Coast Water Board from taking further enforcement action for the alleged violations cited in this notice of violation, and the Central Coast Water Board reserves the right to take any enforcement action authorized by law. In making its determination of whether and how to proceed with further enforcement action, the Central Coast Water Board will consider the information submitted in response to this notice of violation, the time it takes to correct the identified violations, and the adequacy of the corrections and actions taken. The Central Coast Water Board may also require cleanup and abatement of the effects of the unauthorized activities pursuant to California Water Code section 13304.

If you have questions about this letter, please contact Kathleen Gonzalez at Kathleen.Gonzalez@waterboards.ca.gov or Phil Hammer at Phillip.Hammer@waterboards.ca.gov.

Sincerely,

Thea S. Tryon
Assistant Executive Officer

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DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS LOS ANGELES DISTRICT
60 SOUTH CALIFORNIA STREET, SUITE 201
VENTURA, CA 93001-2598

August 19, 2024

SUBJECT: Notice of Non-Compliance

Major David Ruiz
Interim Base Operations Manager
Camp San Luis Obispo
Post Operations Building 738, 10 Sonoma Avenue
San Luis Obispo, California 93405-7605

Dear Major Ruiz:

It has come to my attention that you have exceeded the impacts authorized in your Department of the Army (DA) Permit SPL-2024-00243-AJS, Camp San Luis Obispo Emergency Channel Clearing. The authorized project is located in an unnamed tributary to Chorro Creek, at Camp San Luis Obispo, San Luis Obispo County, California (Latitude 35.325843°, Longitude -120.708925°).

Based on notes and site photographs taken during a May 17, 2024, site meeting with staff from the U.S. Fish and Wildlife Service, Central Coast Regional Water Quality Control Board and California Department of Fish and Wildlife that have been provided to the Corps, the work carried out within the unnamed tributary to Chorro Creek exceeded what was authorized by our verification letter under Regional General Permit No. 63 for repair and protection activities in emergency situations (RGP63, copy enclosed).

Specifically, the approximately 800-linear-foot downstream reach of the project area (activity 2 in our enclosed verification letter) wherein only selective above-ground clearing of debris jams was authorized was completely cleared and recontoured. Additionally, excavated channel dimensions in upstream areas approved for sediment removal appear to exceed what was described and authorized. Finally, ungrouted rock has been added to the channel near the Kern Avenue crossing, which was not included in the project plans or Corps authorization. The August 2, 2024, Notice of Violation issued by the Central Coast Regional Water Quality Control Board also notes several instances of non-compliance with their associated General Order, the terms and conditions of which are incorporated by reference into the Corps' RGP and therefore also represent instances of non-compliance with our verification.

Additionally, we have not received a final project completion report as required by the conditions RGP-63. The report is required within 45 days of project completion and must document the construction activities, impacts to waters of the U.S., compliance with all terms and conditions and photo log documenting pre- and post-project conditions among other requirements.

Based on interim reporting provided to the Corps, substantial take of federally listed threatened species, specifically California red-legged frog (*Rana draytonii*) and South-Central California costal steelhead trout (*Oncorhynchus mykiss*), also occurred as a result of the channel work. Although potential effects to these species were anticipated and required biological monitors were present during construction to minimize adverse effects, the extent of take resulting from relocation of approximately 170 steelhead and numerous red-legged frogs underscores the importance of the affected channel areas to these species, associated aquatic functions, and by extension the significance of the unauthorized impacts. Additional consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service will be required to address these adverse impacts.

To resolve this matter I may initiate actions to suspend, revoke, modify your permit and could also pursue administrative penalties. However, I believe this matter can still be resolved amicably. Within the next 30 days, please provide me at the address in the letterhead any relevant information you have relating to this matter, and evidence you are actively seeking to comply with the aforementioned permit conditions including corrective measures to remedy the unauthorized impacts. Failure to comply with this request may result in my initiation of one or more of the enforcement actions stated above.

Corrective measures should be addressed in a revised version of the draft Habitat Mitigation and Monitoring Plan (HMMP) that was submitted in association with an earlier RGP-63 verification (Corps file no. SPL-2023-00095) for activities on Chorro Creek and portions of the recent emergency project area. The HMMP should address all impacts authorized by the 2023 and 2024 RGPs, and be prepared in accordance with the Corps South Pacific Division's Regional Compensatory Mitigation and Monitoring Guidelines, available at the following link:

<http://www.spd.usace.army.mil/Missions/Regulatory/PublicNoticesandReferences/tabid/10390/Article/558934/final-regional-compensatory-mitigation-and-monitoring-guidelines.aspx>. Specific requirements of the plan may be informed by additional consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service to ensure it adequately addresses effects to federally listed species.

If you have any questions regarding this matter, contact me at (805) 585-2147 or via email at Antal.J.Szijj@usace.army.mil.

I am forwarding copies of this letter to: U.S. Fish and Wildlife Service, National Marine Fisheries Service, Central Coast Regional Water Quality Control Board and California Department of Fish and Wildlife.

Sincerely,

A handwritten signature in black ink, appearing to read 'Antal Szijj', with a stylized flourish at the end.

Antal Szijj
Team Lead
Ventura Field Office
North Coast Branch

Enclosures



United States Department of the Interior

U.S. FISH AND WILDLIFE SERVICE

Ecological Services
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, California 93003



IN REPLY REFER TO:
2024-0075994

October 15, 2024

Lieutenant Colonel Brian Wintzer
Garrison Commander
California Military Department
Camp San Luis Obispo
San Luis Obispo, California 93405

Subject: Alleged Unauthorized Take of California Red-Legged Frog in an Unnamed
Tributary to Chorro Creek at Camp San Luis Obispo

Lieutenant Colonel Wintzer:

The U.S. Fish and Wildlife Service (Service) has recently become aware of ground disturbing activities and large-scale sediment and vegetation removal on lands that are owned and managed by the California Army National Guard at Camp San Luis Obispo in San Luis Obispo County. The ground disturbing activities resulted in the destruction of stream features that had documented presence of the federally threatened California red-legged frog (*Rana draytonii*) and served as breeding habitat. It is our understanding that along with destruction of the stream, at least 5 acres of surrounding upland habitat that was known to be occupied by the species was also destroyed.

The Service is responsible for administering the Endangered Species Act of 1973 as amended (Act). Section 9 of the Act prohibits the taking of any federally listed endangered wildlife species; by regulation, this prohibition also applies to certain wildlife species federally listed as threatened. "Take" as defined under the Act means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct." "Harm" means an act which actually kills or injures wildlife, which may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. 50 C.F.R. 17.3. The Act provides for civil and criminal penalties for the unlawful taking of listed wildlife species. Take incidental to otherwise lawful actions may be authorized by the Service in two ways: through interagency consultation for projects with Federal involvement pursuant to section 7 of the Act, or through the issuance of an incidental take permit under section 10(a)(1)(B) of the Act.

On April 11, 2024, the Army Corps of Engineers (Corps) requested informal emergency consultation with the Service on their proposed issuance of a Regional General Permit 63, Repair and Protection Activities in Emergency Situations, to the applicant Camp San Luis Obispo. Camp San Luis Obispo requested the Corp's emergency approval to clear accumulated sediment

and debris from approximately 3,000 linear feet of an unnamed tributary to Chorro Creek, with excavation of sediment proposed within the upper portion of the project area extending 1,000 linear feet beyond the Kern Avenue crossing. Beyond that point, selective debris and woody vegetation removal was proposed in the centerline of the creek, with native riparian trees along the banks remaining in place. The unnamed tributary to Chorro Creek and the surrounding upland habitat were intact at the time of the emergency consultation request and was considered occupied California red-legged frog breeding, aquatic, and upland habitat as documented in annual California red-legged frog survey reports submitted by Camp San Luis Obispo, aerial imagery, and the 2015 Programmatic Biological Opinion for Multiple Activities at Camp San Luis Obispo (Service File 08EVEN00-2012-F-0115). The Service responded to the Corps on April 12, 2024, with recommendations to minimize the effects of the emergency response on the California red-legged frog present and the potentially present federally endangered South Coast Distinct Population Segment of the foothill yellow-legged frog (*Rana boylei*) (Service File 2024-0075994).

On May 1, 2024, the Service was notified by the California Department of Fish and Wildlife (CDFW) that the extent of work conducted by Camp San Luis Obispo exceeded the scope of the work included in the Corps' Regional General Permit 63 (Corps File Number SPL-2024-00243-AJS). Additionally, the Service learned take in the form of capture had been documented for at least 12 California red-legged frogs and approximately 170 Southern California steelhead distinct population segment (*Oncorhynchus mykiss*) during work activities.

The Service conducted a site visit on May 17, 2024, alongside CDFW, the Central Coast Water Quality Control Board, and Camp San Luis Obispo personnel, including Lieutenant Colonel Annabelle Andrade. During the visit, Service biologists observed and recorded the impacts from the ground disturbing activities, largescale upland vegetation removal, and the permanent fill and removal of a stream offshoot that had documented California red-legged frogs in it. Camp San Luis Obispo personnel and Service biologists discussed formal consultation pursuant to section 7 of the Act and compensatory mitigation to offset the permanent and temporary impacts of California red-legged frog habitat in accordance with the Service's Endangered Species Act Compensatory Mitigation Policy (Compensatory Mitigation Policy Appendix 1, 501 FW 3, May 2023). Camp San Luis Obispo personnel agreed to coordinate with the Service on appropriate compensatory mitigation for California red-legged frogs.

On August 19, 2024, the Corps sent Camp San Luis Obispo a Notice of Non-Compliance for exceeding the impacts authorized in their Regional General Permit 63 (Corps File Number SPL-2024-00243-AJS) and Camp San Luis Obispo's failure to provide post project reports. In their Notice of Non-Compliance, the Corps stated additional consultation with the Service and the National Marine Fisheries Service is required to address adverse impacts to listed species. At this time, the Service assumed that Camp San Luis Obispo finished construction work as their Regional General Permit 63 specified all work must be completed by May 30, 2024.

On September 9, 2024, the Service was notified that Camp San Luis Obispo was conducting ongoing work beyond the completion deadline in their Regional General Permit 63 (Corps File

Number SPL-2024-00243-AJS) and thus outside of the scope of work included in the emergency consultation at Camp San Luis Obispo. This work was described as additional tree removal, vegetation removal, and tree trimming within occupied California red-legged frog habitat. On September 11, 2024, the Service was notified that Camp San Luis Obispo was conducting additional work outside the project area included in the emergency consultation within the lower portion of the unnamed tributary of Chorro Creek which contains upland and in-stream occupied California red-legged frog breeding habitat. On September 16, 2024 the Service, Corp, CDFW, and Waterboard met with Camp SLO to discuss these reports of ongoing activities and visit the site to determine where work was taking place. While the full extent of the activities was not determined during the site visit, it was clear that the activities had continued to take place after the Regional General Permit 63 and that Camp SLO was conducting activities outside of any incidental take exemption within occupied California red-legged frog habitat. The Service and other agencies requested a detailed report of these activities including a timeline of when they took place and a map of where activities have occurred.

In light of the documented take (capture of California red-legged frog) that occurred prior to our May 17, 2024 site visit, the notice of non-compliance from the Corp, and the continued activities within occupied California red-legged frog aquatic and upland habitat that has a high likelihood of causing additional take due to harm, we have discussed the matter with our Office of Law Enforcement Office. Rather than immediately pursue and enforcement investigation, they agreed to allow us to seek a solution with Camp SLO by working cooperatively to offset the impacts that have occurred because of their actions. In addition to offsetting these recent impacts, all activities that are likely to cause additional take should cease until consultation with the Service has been completed because any unexempted take would be an additional violation of sections 4(d) or 9 of the Act.

We suggest that the Service and Camp San Luis Obispo set up a meeting to discuss how best to offset the impacts to California red-legged frogs and its habitat. If Camp San Luis Obispo is interested in pursuing this approach, please contact Joseph Brandt and Abigail Sanford of my staff to schedule a meeting. Please be prepared at the meeting to discuss specific ways in which Camp San Luis Obispo would propose to resolve this matter through actions that would benefit and conserve the California red-legged frog.

Thank you for your attention.

Sincerely,

Stephen P. Henry
Field Office Supervisor

cc:

Manisa Kung, Special Agent in Charge, U.S. Fish and Wildlife Service

Kerry O'Hara, Supervisory Attorney-Adviser, Department of the Interior

Antal Szijj, Team Lead, U.S. Army Corps of Engineers, Los Angeles District

Dan Lawson, Branch Chief, National Marine Fisheries Service

Matt McGoogan, Fish Biologist, National Marine Fisheries Service

Brittany Struck, National Resource Management Specialist, National Marine Fisheries Service

Mark Capelli, Steelhead Recovery Coordinator, National Marine Fisheries Service

Julie Vance, Regional Manager, California Department of Fish and Wildlife

Nicole Tatum, Warden, California Department of Fish and Wildlife

Tal Starostintzki-Malonek, Environmental Scientist, California Department of Fish and Wildlife

Thea Tryon, Assistant Executive Officer, Central Coast Water Board

Phillip Hammer, Senior Environmental Scientist, Central Coast Water Board

Kathleen Gonzalez, Environmental Scientist, Central Coast Water Board

EXHIBIT B
(Budget Detail and Payment Provisions)

1. INVOICING AND PAYMENT

- a. For services satisfactorily completed in accordance with the terms and conditions stated herein, and upon receipt and approval of the invoice(s), the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the specified as follows: attached hereto as Attachment 3 – Rate Sheet and made a part of this Agreement.
- b. Contractor shall submit, in arrears, not more frequently than once a month, and no less than quarterly, an invoice to CMD for cost incurred pursuant to the agreement. In addition, each invoice shall contain the following information:
- c. Each Invoice shall include:
 - i. The agreement number 131007
 - ii. The dates or time-period which the invoiced costs were incurred.
 - iii. Description of service, quantity, rate, and total for the current invoice.
 - iv. Certified Small Business or DVBE #, if applicable.
- d. Invoice(s) shall be submitted electronically to J8-PWR@cmd.ca.gov.
- e. Contractor shall submit a copy of the Prime Contractor's [DVBE Subcontracting Report form \(STD 817\)](#) for verification by CMD Project Manager with final invoice.
- f. Contractor agrees to certify on Prime Contractor's Certification DVBE Subcontractor Report, Form STD 817, that DVBE subcontractor participation under this agreement is in compliance with the goals specified at the time of award of contract or with any subsequent amendment. If for this Contract the Contractor made a commitment to achieve the DVBE participation goal, the Department will withhold \$10,000.00 from the final payment, or the full final payment if less than \$10,000.00, until the Contractor complies with the certification requirements of Military and Veterans Code Section 999.5. A Contractor that fails to comply with the certification requirement shall, after notice, be allowed to cure the defect. Notwithstanding any other law, if, after at least 15 calendar days but not more than 30 calendar days from the date of notice, the prime contractor refuses to comply with the certification requirements, the department shall permanently deduct \$10,000.00 from the final payment, or the full payment if less than \$10,000.00. The Contractor shall provide proof of payment for the work performed by the DVBE subcontractor(s) upon Department's request.

2. BUDGET CONTINGENCY CLAUSE

- a. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- b. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State or offer an agreement amendment to Contractor to reflect the reduced amount.

3. CONTRACTS FUNDED IN WHOLE/IN PART BY THE FEDERAL GOVERNMENT

- a. It is mutually understood between the parties that this contract may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which 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 the State by the United States Government for each Fiscal Year of the agreement for the purposes of this program. In addition, this contract is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms, or funding of this contract in any manner.
- c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this contract shall be amended to reflect any reduction in funds.
- d. The department has the option to void the contract under the 30-day cancellation clause or to amend the contract to reflect any reduction of funds.

4. PROMPT PAYMENT CLAUSE

- a. Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.
- b. Pursuant to Public Contract Code Section 10262, Contractor shall pay its Subcontractor(s) within seven (7) calendar days from receipt of each payment made to Contractor by CMD.
- c. Failure of Contractor adhering to Public Contract Code Section 10262 may result in termination of this Agreement per Public Contract Code Section 10253 and disciplinary action by the Contractors State License Board may be implemented.
- d. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this clause.

END OF EXHIBIT B

EXHIBIT D
(General Conditions of Public Works Contract)

1. GENERAL

The following general conditions apply to Standard Agreements and informal Contracts alike. They refer briefly to provisions of the State of California Labor Code, Business and Professions Code, and the State Contract Act, all provisions of which are applicable in full.

2. BIDDING REQUIREMENTS AND CONDITIONS

- a. Examination of Plans, Specifications and Site of the Work:
 - i. Contractor's Responsibility: The bidder shall carefully examine the work site and the plans and specifications. The bidder shall investigate and become satisfied with the site conditions to be encountered, the character, quality and quantity of surface, and subsurface materials or other obstacles to be overcome, the work to be performed, materials to be furnished, and as to all requirements of the proposal, plans, and specifications of the contract hereinafter referred to as the "Work".
 - ii. Responsibility for Utilities: The Contractor shall be responsible for payment of all costs of the work required by the existence or proximity of utilities encountered in performing the work, including without limitation, repair of any damage and or exploratory excavation required. If during the course of the work the Contractor encounters utility installations which are not shown or indicated in the plans or in the specifications, or which are found in a location substantially different from that shown in the contract documents, the contractor must promptly notify the State in writing.
- b. Discrepancies or Errors: If omissions or discrepancies are found in the plan and specifications prior to the date of bid opening, bidders are required to submit a written request for clarification to the State. Any clarification will be given in the form of addendum to all bidders if time permits. Otherwise, in figuring the work, bidders shall consider that any discrepancies or conflict between drawings and specifications shall be governed by Article 5-E.
- c. Proposal Forms: The Military Department will furnish to each bidder a standard proposal form (rate sheet) which, when filled out and executed, shall be submitted as the bid. Bids not presented on forms so furnished may be disregarded. All proposals shall give the prices proposed, both in writing and figures, and shall be signed by the bidder or a duly authorized representative, with his address. Proposals made by an individual, shall include the bidder's name and post office/ mailing address; if made by partnership, the name and post office/ mailing address of the partnership, and the signature of one or more partners must be shown: if made by a corporation, the proposal shall show the name of the state of incorporation, the name of the corporation and the title of the person who signs on behalf of the corporation along with evidence of authority to sign.
- d. List of Subcontractors: Each bid shall have listed therein the name and address of each subcontractor to whom the bidder proposes to subcontract portions of the work in an amount in excess of one-half of one percent (1/2 of 1%) of the total bid, in accordance with Chapter 2, Division 5, Title 1, of the Government Code.
- e. Rejection of Irregular Proposals: Proposals may be rejected if they show any alterations of form, additions not called for, conditional bids, incomplete bids, erasures, or irregularities of any kind.
- f. Withdrawal of Proposals: Any bid may be withdrawn at any time prior to the time fixed in the public notice for the opening of bids, provided that a request in writing, executed by the bidder or his

duly authorized representative, for the withdrawal of such bid is filed with the Military Department by e-mail. The withdrawal of a bid shall not prejudice the right of a bidder to file a new bid within the time specified. This article does not authorize the withdrawal of any bid after the time fixed in the public notice for the opening of bids.

- g. Public Opening of Proposals: Proposals will be opened publicly and read at the time and place indicated in the Invitation for Bidders. Bidders or their authorized agents and the general public are invited to be present.
- h. Competitive Bidding:
 - i. If more than one proposal is offered by an individual, partnership, corporation, association, or any combination thereof, under the same or different names, all such proposals may be rejected. A party who has quoted prices on materials or work to a bidder as a supplier or subcontractor is not thereby disqualified from quoting prices to other bidders.
 - ii. All bidders are put on notice that any collusive agreement fixing the prices to be bid so as to control or affect the awarding of this contract is in violation of the competitive bidding requirements of the State Contract Act and may render void any contract let under such circumstances.

3. AWARDS AND EXECUTION OF CONTRACT

- a. Award of Contract: The right is reserved to reject any and all proposals. The award of the contract, if awarded, will be to the lowest responsible bidder whose proposal complies with all the requirements prescribed. If the lowest responsible bidder refuses or fails to execute the contract, the Military Department may award the contract to the second lowest responsible bidder. If the second lowest responsible bidder refuses or fails to execute the contract, the Military Department may award the contract to the third lowest responsible bidder and so on and so forth. The Military Department will make the award of the contract on the date of the determination of the successful bidder.
- b. Execution of Contract:
 - i. The contract shall be signed by the successful bidder and returned within 10 business days of receipt, not including Saturdays, Sundays, and legal holidays, together with the contract bonds. No contract shall be binding upon the State until the contractor receives a fully executed contract signed and approved by the Military Department.
 - ii. Contractor shall not begin work without the Notice to Proceed. If the contractor begins work prior to contract approval and receipt of the "Notice to Proceed", the contractor's sole remedy shall be to seek payment by filing with the Victim Compensation Board. The state has no legal obligation to the contractor until the contract is approved and "Notice to Proceed" has been issued.
- c. Failure to Execute Contract: Failure to sign a contract and file acceptable bonds as provided herein within the required time mentioned above in paragraph C-1, shall be just cause for the annulment of the award. If the successful bidder refuses or fails to sign the contract, the Military Department may award the contract to second lowest responsible bidder. If the second lowest responsible bidder refuses or fails to execute the contract, the Military Department may award the contract to the third lowest bidder. Bidder who refuses to execute the contract may be held liable for additional costs to the State and/or claims against any bid bond.

- d. When submittals are required for a project, the Government shall absorb the cost of review for the original submittal request and one re-submission for each submittal. For any additional reviews the contractor will be charged for the Project Manager's and Architect/Engineer's review time at a cost of \$100.00 per hour. Payment will be due as determined in the sole discretion by the Procurement and Contracting Officer and will not be prorated in less than one-hour increments.
- e. When Request for Information (RFI)s are submitted on a project, the Government shall absorb the cost of review for the original RFI and one clarification. For any additional RFIs regarding the same or similar issue, the contractor will be charged for the Project Manager's and Architect/Engineer's review time at a cost of \$100.00 per hour. Payment will be due as determined in the sole discretion by the Procurement and Contracting Officer and will not be prorated in less than one-hour increments.
- f. Americans With Disabilities Act (ADA): By signing the contract, the Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.

4. LEGAL, RELATIONS, AND RESPONSIBILITY

- a. Regulations and Protection:
 - i. The contractor shall keep informed of and comply with and cause all of his agents and employees to observe and comply with all prevailing Federal and State laws, and all rules and regulations issued made pursuant to said Federal and State laws, which in any way affect the conduct of the work of this contract.
 - ii. The contractor shall obtain and pay for all permits and licenses required for excavating or other work on or in public streets, road or sidewalks, and shall comply with all laws in connection therewith. If any conflict arises between provisions of the plans and specifications and any such law the contractor shall notify the State at once in writing. The contractor shall protect and indemnify and defend the State or any of its officers, agents, and servants against any claim or liability arising from or based on the violation of any such law or regulation by the contractor or its agents or employees.
 - iii. Neither the State nor the contractor is subject to municipal, county, or district laws, rules or regulations pertaining to building permits or regulating the design or construction of buildings upon State property.
 - iv. The contractor shall be responsible for and provide and maintain all proper temporary walks, roads, guards, railings, lights, warning signs, and take precaution at all times to avoid injury or damage to any person or any property, and upon completion of the work, or at proper times as directed by the PM, shall restore the premises and adjacent property to proper condition.
 - v. The contractor shall protect adjoining property and nearby buildings, including State buildings, State roads, and public streets or roads, from dust, dirt, debris, or other nuisance arising out of the contractor's operations or storage practices. Sprinkling or other effective methods acceptable to the State shall control dust.
 - vi. No advertising by the contractor will be permitted in or about the work except by written order of the State.

b. Laws to be Observed:

- i. Labor Discrimination: Attention is directed to Section 1735 of the Labor Code, which reads as follows: "No discrimination shall be made in the employment of persons upon public works because of race, color, or religion of such persons and every contractor for public works violating this section is subject to all the penalties for violation of this chapter".
- ii. Labor Code Certifications:
 1. The contractor certifies "I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code and I will comply with such provisions before commencing the performance of the work of this contract."
 2. It is hereby mutually agreed that the contractor shall forfeit to the state a penalty of fifty dollars for each calendar day, or portion thereof, for each worker paid by him or her, or subcontractor under him or her, less than the prevailing wage so stipulated and in addition the contractor further agree to pay to each worker the difference between the actual amount paid for each calendar day, or portion thereof, and the stipulated prevailing wage rate for the same. This provision shall not apply to properly, registered apprentices.
 3. It is further agreed that the maximum hours a worker is to be employed is limited to eight hours a day and 40 hours a week and the contractor shall forfeit, as a penalty to the state, twenty-five dollars for each worker employed in the execution of the contract for each calendar day during which a worker is required or permitted to labor more than eight hours in any calendar day or more than 40 hours in any calendar week, in violation of Labor Code Sections 1810-1815, inclusive. Work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half times the basic rate of pay, as provided in Labor Code Section 1815.
 4. The wage rates set forth are the minimum that may be paid by the contractor. Nothing herein contained shall be construed as preventing the contractor from paying more than the minimum rates set forth. No extra compensation whatsoever will be allowed by the State due to inability of the contractor to hire labor at the minimum rates, nor for any necessity for payment by the contractor of subsistence, travel time, overtime, or other added compensations, all of which possibilities are elements to be considered and ascertained to the contractor's own satisfaction in preparing his bid.
 5. Travel and subsistence payments shall be paid to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Labor Code Section 1773.8.
 6. Each contractor and subcontractor shall comply with the Labor Code section 1776 regarding record keeping.
 7. In accordance with the provisions of Section 1773 of the Labor Code, the Director of the Department of Industrial Relations has ascertained the generally prevailing rate of wages applicable to the County in which the work is to be done on this

contract. Included therein are employer payments for health and welfare, vacation, pension, apprenticeship or other authorized training programs, and similar purposes. Holidays shall be as defined in the collective bargaining agreement applicable to the classification(s) employed on the project.

8. Copies of the General Prevailing Wage rate for the applicable labor classification(s) are available at the web site for the State of California, Department of Industrial Relations-Division of Labor Statistics and Research at www.dir.ca.gov/DLSR.
 9. By signing the contract, the contractor swears under penalty of perjury that no more than one final un-appealable finding of contempt of court by a federal court has been issued against the contractor with the immediately preceding two-year period because of the contractor's failure to comply with an order of a federal court which orders the contractor to comply with an order of the Nation Labor Relations Board.
 10. Properly registered apprentices may be employed in the prosecution of the work. Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed and shall be employed only at the work of the craft or trade to which he or she is registered. The contractor and each subcontractor must comply with the requirements of Labor Code Section 1777.5 and any related regulations regarding the employment of registered apprentices.
- iii. Registration of Contractors: All businesses or individuals, who construct, offer to construct, or alter any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the California Contractors State License Board (CSLB) if the total cost (labor and materials) of one or more contracts on the project is \$1,000.00 or more. Contractors, including subcontractors, specialty contractors, and persons engaged in the business of home improvement must be licensed before submitting bids. Licenses may be issued to individuals, partnerships, corporations, or joint ventures.
 - iv. Responsibility for Damage: Neither the State of California, The Adjutant General, nor any officer or employee of the Military Department shall be accountable in any manner, for any loss or damage that may happen to the work or any part thereof, or for any of the materials or other things used or employed in performing the work, or for injury to any person or persons, either worker or the public, for damage to property from any cause which might have been prevented by the contractor, or any contractor's employee against all of which injuries or damages to persons and property the contractor having control over such work must properly guard. The contractor shall be responsible for any liability imposed by law for any damage to any person or property resulting from defects or obstructions or from any cause whatsoever during the progress of the work or at any time before the completion and final acceptance. The contractor shall indemnify and save harmless the State of California, the Adjutant General, and all officers and employees of the Military Department from all units or actions of every name, kind and description, brought for, or on account of any injuries or damages received or sustained by any person or persons, by or from the contractor, or any contractor's employee or agents, in the construction of the work or by or in consequence of any negligence in guarding the same, in improper materials used in its construction, or by or on account of any act or omission of the contractor or contractor's agents.
 - v. Occupancy by the State Prior to Acceptance:

1. The State reserves the right to occupy all or any part of the project prior to completion of the entire contract, upon written notice to the contractor. In such event, the contractor will be relieved of responsibility for any injury or damage to such part as may result from such occupancy and use by the State.
2. Such occupancy does not constitute waiver of any rights or acceptance by the State either of the complete work or of any portion thereof, nor will it relieve the contractor of full responsibility for correcting defective work or materials found at any time before the formal written acceptance of the entire contract or during the full guaranty period after such acceptance, as specified in Article 7C.

vi. Contractor's Responsibility for Work:

1. Until the written acceptance of the Work, the contractor shall have the charge and care thereof and shall bear the risk of injury or damage to any part of the work by the action of the elements or from any other cause whether arising from execution or from the non-execution of the work.
2. The contractor shall immediately rebuild, repair, restore, and make good all injuries or damages to any portion of the work occasioned by any of the above causes before its completion and acceptance and shall bear the expense thereof. In case of suspension of work any cause whatsoever, the contractor shall be responsible for the work as above specified and shall also be responsible for all materials, and shall properly store them if necessary, and shall provide suitable drainage and erect temporary structures when necessary.

vii. No Personal Liability: Neither the Adjutant General, nor any other officer or authorized employees of the Military Department shall be personally responsible as an individual for any liability arising under the contract.

viii. Fair Employment Practices:

1. The contractor will not willfully discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color religion, ancestry, sex, age, or national origin. Such action shall include, but not be limited to, the following: Employment upgrading, transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the awarding authority setting forth the provisions of this Fair Employment Practices Section.
2. The contractor will send to each labor union or representative of workers with which there is an existing collective bargaining agreement or other contract. A Notice to Labor Unions, to be provided by the awarding authority, advising the said labor union or worker's representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
3. The contractor will permit access to its record of employment, employment advertisements, application forms, and other pertinent data and records by the Fair Employment Practices Commission, the awarding authority or any other

appropriate agency of the State of California designated by the awarding authority, for the purposes of investigation to ascertain compliance with the Fair Employment Practices section of this contract.

4. A finding of willful violation of the Fair Employment Practices section of this contract or of the Fair Employment Practices Act shall be regarded by the awarding authority as a basis for determining that the contractor is not a "responsible bidder" as to any future contracts for which such contractor may submit bids for revoking the contractor's pre-qualification rating, if any, and for refusing to establish, re-establish or renew a prequalification rating for the contractor.
5. The awarding authority shall deem a finding of willful violation of the Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practice Commission that it has investigated and determined that the contractor has violated the Fair Employment Practices Act and has issued an order under Labor Code Section 1426 or obtained an injunction under Labor Code Section 1429.
6. Upon receipt of such written notice from the Fair Employment Practices Commission, the awarding authority shall notify the contractor that unless they demonstrate to the satisfaction of the awarding authority within a stated period of time that the violation has been corrected, the contractor's pre-qualification rating will be revoked at the expiration of such period.
7. The contractor agrees, that should the awarding authority determine that the contractor has not complied with the Fair Employment Practices section of this contract, then pursuant to Labor Code Section 1735 and 1775, the contractor shall, as a penalty to the awarding authority, forfeit, for each calendar day or portion thereof, for each person who was denied employment as a result of such noncompliance, the penalties provided in the Labor Code for violation of prevailing wage rates. Such monies may be recovered from the contractor. The awarding authority may deduct any such damages from any monies due the contractor from the State of California.
8. Nothing contained in this Fair Employment Practices Section shall be construed in any manner or fashion so as to prevent the awarding authority of the State of California from pursuing any other remedies that may be available at law.
9. Nothing contained in this Fair Employment Practices Section shall be construed in any manner or fashion so as to require or permit the hiring of an employee not permitted by the National Labor Relations Act.
10. Standards for Affirmative Compliance:
 - a. Prior to award of the contract, the contractor shall certify to the awarding authority that the contractor has or will meet the following standards for affirmative compliance, which shall be evaluated in each case by the awarding authority.
 - b. The contractor shall provide evidence, as required by the awarding authority, that the contractor has notified all supervisors, foremen and other personnel officers in writing of the content of the anti-discrimination clause and their responsibilities under it.

- c. The contractor shall provide evidence, as required by the awarding authority, that he/she has notified all sources of employee referrals (including unions, employment agencies, advertisements, Department of Employment) of content of the anti-discrimination clause.
 - d. Personally, or through an authorized representative(s), the contractor shall, through negotiations with the unions with whom he/she has agreements, attempt to develop an agreement, which will:
 - i. Spell out responsibilities for non-discrimination in hiring, referral, upgrading and training.
 - ii. Otherwise implement an affirmative anti-discrimination program in terms of the union's specific areas of skill and geography, to the end that qualified minority workers will be available and given an equal opportunity for employment.
 - e. The contractor shall notify the contracting agency of opposition to the anti-discrimination clause by individuals, firms or organizations during the period of its pre-qualification.
11. Employment of undocumented aliens: No state agency or department, as defined in Public Contract Code § 10357, that is subject to this code, shall award a public works contract to a bidder or contractor, nor shall a bidder or contractor be eligible to bid for or receive a public works contract, who has, in the preceding five years, been convicted of violating a state or federal law regarding the employment of undocumented aliens. See Public Contract Code § 6101.
12. Antitrust Claims: The contractor offers and agrees and will of his/her other subcontractors and suppliers to agree to assign to the awarding body all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 USC § 15) or under the Cartwright Act (Chapter 2 [commencing with § 16700] of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, services, or materials pursuant to the public works contract or subcontract. The assignment made by the contractor and all additional assignments made by the subcontractors or suppliers shall be deemed to have been made and will become effective at the time the awarding body tenders final payment to the contractor without further acknowledgment or the necessity of tendering to the awarding body any written assignments.
13. If an awarding body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Government Code sections 4550-4554, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, on demand, recover from the public body any portion of the recovery, including treble damages and attributable overcharges that were paid by the assignor but were not paid by the public body as a part of the bid price, less the expenses incurred on obtaining that portion of the recovery. On demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under Government sections 4550-4554 if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action

14. The contractor will include the provisions of the foregoing paragraphs 1 through 13 in every subcontract, so that such provisions will be binding upon each subcontractor.

ix. Workers Compensation

1. The contractor will be required to secure the payment of compensation to his employees in accordance with provisions of Labor Code Section 3700.
2. Travel and subsistence payments shall be paid to each worker needed to execute the work, as such travel and subsistence payments as defined in the applicable collective bargaining agreements tiled in accordance with Labor Code Section 1773.8.
3. Patents: The contractor shall assume all costs arising from the use of patented materials, equipment, devices, or processes used on or incorporated in the work, and agrees to indemnify and save harmless the State of California, The Adjutant General, and all duly authorized representatives, from all suits at law, or actions of every nature for, or on account of the use of any patented materials, equipment, devices, or processes.

x. CONFLICT OF INTEREST

1. Current State Employees:

- a. No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest, and which is sponsored or funded by any State Agency, unless the employment, activity, or enterprise is required as a condition of regular State employment.
- b. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State Agency to provide goods or services.

2. Former State employees:

- a. For the two-year period from the date, he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State Agency.
- b. For twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service. (PCC 10410 and 10411 et seq.)

5. PERFORMANCE, PROSECUTION AND PROGRESS OF WORK

- a. The Prime Contractor shall perform on the site, and with its own organization, work equivalent to at least twenty percent (20%) of the total amount of work to be performed under the contract. The

Prime Contractor shall provide at all times sufficient competent labor, materials, and equipment to properly carry on the work and to ensure completion within the time agreed.

b. Limitation on Work Site and Premises:

- i. The "work site" or "job site" is defined as the area of actual construction and the areas immediately adjacent thereto, as shown on the plans or as specified. The "Premises" is defined as the area of State-owned property which surrounds the job site, limited by the property lines thereat. In some cases, the premises may coincide with the job site.
- ii. The contractor shall limit construction operations to the work site unless otherwise shown on the plans or specifications. The contractor shall perform no operations of any nature over or on the premises except such operations as are specifically authorized in the plans or specifications, or as otherwise authorized in writing by the Military Department.
- c. Accident Prevention: Precautions shall be exercised at all times for the protection of persons (including employees) and property. The contractor shall install adequate safety guards and protective devices for any and all equipment and machinery, whether used in the work or permanently installed as part of the work. The contractor shall comply with all applicable laws relating to safety precautions, including the safety regulations of the Division of Industrial Safety, Department of Industrial Relations, of the State of California.
- d. Interpretation of Contract Requirements: The contract documents are intended to be consistent, and to describe and to provide for a complete scope of work. Any requirement occurring in one document is binding as though occurring in all the contract documents. However, in the event of conflict or discrepancies therein, then the priorities stated below shall govern:
 - i. Addendum: An Addendum shall govern over all other contract documents. Subsequent addendum's issued shall govern over prior addendum's only to the extent specified.
- e. Specifications and Drawings: The contractor shall keep on the work site a copy of the drawings, specifications and any amendments and/or RFI responses and shall at all times give the Procurement and Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of differences between drawings and specifications, the specifications shall govern. In any case of difference in the figures, in the drawings, or in specifications, the matter shall be promptly submitted to the Procurement and Contracting Officer who shall promptly make a determination in writing. Any adjustment by the contractor without this determination shall be at the contractor's sole risk and expense. The Procurement and Contracting Officer shall furnish from time to time such detail drawing and other information, as he/she may consider necessary, unless otherwise provided.
- f. Clarification and Additional Instructions: Should any discrepancies, omission or apparent errors, be found in the contract documents, or should any question arise concerning interpretation or clarification of the contract documents, or if it appears that the work to be done or any matters relative thereto are not sufficiently detailed or explained in the contract documents, then, before proceeding with the work affected, the contractor shall immediately notify the Military Department in writing through the Project Manager and request interpretation, clarification or furnishing of additional detailed instructions concerning the work. All such questions shall be resolved within a reasonable time by the Military Department, whose decision thereon shall become final. Should the contractor proceed with the work affected without giving such notice and time for Military Department response, the contractor may be required by the Military Department to then remove and replace or adjust said work at the contractor's sole cost and expense. The contractor shall be responsible for any damage, defect or added cost resulting from this action.

g. Product and Standards:

- i. Product Designation: When descriptive catalogue designations, including product brand name, or model number are referred to in the contract documents, such designations shall be considered as being those found in industry publications of current issue at date of first IFB.
 - ii. Standards Incorporated by Reference: When standards of the State or Federal Government, trade societies, or trade associations are referred to in the contract documents by specific date of issue, these shall be considered a part of this contract. When such references do not bear a date of issue, the current published edition at date of first invitation to bid shall be considered as part of this contract.
- h. Materials, Articles, and Equipment: Materials, articles and equipment furnished shall be new. When the contract documents indicate or require that materials, articles, or equipment are to be furnished but the quality or kind thereof is not specified, shown or indicated, the contractor shall furnish materials, article, or equipment at least equal to the class or quality of similar materials, articles, and equipment which are specified, shown or otherwise indicated. No-claim for additional compensation based on the State's failure to specify or indicate the class, type or quality of materials, articles or equipment will be recognized in any event, unless the contractor makes a clear showing that the contractor could not determine the class, type or quality of materials, articles, and/or equipment.
- i. Socio-Economic Programs: (Buy Clean California Act (MM19-01))
- i. Beginning January 1, 2019, awarding authorities will request successful bidders for public works contracts to submit current facility-specific Environmental Product Declarations (EPDs) for all eligible materials.
 - ii. Awarding authorities are those identified in PCC § 3501 (a) and state agencies granted authority to work on public works projects under MM 18-01. Eligible materials subject to the EPD requirement are structural steel, carbon steel rebar, flat glass, and mineral wool board insulation.
 - iii. Project bid specifications must require that facility specific EPDs are compliant to ISO 14025 and applicable Product Category Rules located on the Department of General Services (DGS) Buy Clean California Act website.
- j. Submittal of Shop Drawings and Product Data: The contractor shall submit to the State one (1) electronic and one (1) hard copy of shop drawings and product data for all work for which submittals are specifically required, an electronic copy will be returned to the contractor. All submittals shall be fully identified as to project, agency, locations, work order, contract numbers, and the contractor's firm name. Shop drawings for construction means drawings, submitted to the State by the construction contractor, subcontractor, or any lower tier subcontractor pursuant to a construct, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (i.e., form, fit, and attachment details) of materials or equipment. The State may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.
- k. Brand or Trade Names and Alternatives: For convenience in designation on the plans or in the specifications, certain materials, articles, or equipment may be designated by a brand or a trade name of the manufacturer together with catalogue designation or other identifying information. Such designation is for descriptive purposes only and does not mean that a particular product has any preference, or that an approved alternative product may not be used. The use of an alternative

material, article, or equipment, which is of equal quality and of the required characteristics for the purpose intended, will be permitted if approved by the State in writing. Contractor shall be allowed a period of 35 days after award of the contract in which to submit data substantiating a request for substitution of an equal item, which determination will be by the sole discretion of the Procurement and Contracting Officer.

I. Conduct of Work:

- i. The State reserves the right to do other work in connection with the project or adjacent thereto by contract or otherwise, and the contractor shall at all times conduct its work so as to impose no hardship on the State or others engaged in the work, nor to cause any unreasonable delay or hindrance thereto.
- ii. The contractor shall indemnify, defend, and hold the State harmless for any claims against the State arising from the Contractor's failure to conduct adjust, correct, and coordinate its work with the work of others engaged in the work.
- iii. All construction equipment, including tools, plant, temporary construction elevators, hoist, scaffolding, false work, forms, and centering required for prosecution of the work of this contract, and all labor, power, and signals required for the installation, operation, and maintenance of such equipment shall be provided by the contractor. The contractor shall obtain all necessary measurements for the work and shall check dimensions, levels, and construction lay out and supervise the construction, for correctness of all of which he shall be responsible. Where work of one trade joins or is on other work, there shall be no discrepancy when same is completed. In engaging work with other materials, marring or damaging some will not be permitted. Should improper work of any trade be covered by another and such improper work results in damage or defects, the whole work affected shall be made good without additional cost to the State. The contractor must anticipate relation of all parts of the work and at the proper time furnish and set anchorage, blocking, or bedding as required.
- iv. Materials, articles, and equipment shall be furnished in ample quantities and at such times as to insure uninterrupted progress of the work. They shall be so stored and protected to ensure the preservation of their quality, appearance, and suitability for the work. When stored they shall be so located as to facilitate prompt inspection, and so as to avoid interference with the work of others. The CMD may accommodate the storage of material, but in no event shall the CMD have an obligation to do so. In the event material are stored on site it shall be the contractor's sole responsibility for security of said materials and contractor shall not be compensated for materials except as provided below.
- m. Inspection of Records: The contractor agrees that the California Military Department, or the Bureau of Audits or its designated representative, shall have an absolute right of access to all of the contractor's records, files, documents, accounts, and financial affairs as deemed necessary for the purposes of conducting an audit to determine compliance with terms and conditions of this contract. The contractor shall provide the auditor(s) with any relevant information requested without unnecessary delay and, on reasonable notice, permit access to its premises during normal business hours for the purpose of interviewing staff and inspecting and copying such books, records, accounts, and other material as warranted to conduct the audit. The contractor further agrees to maintain such records for a period of three years after final payment is made on this contract or three years after resolution of all issues that may arise as a result of any litigation, claim, negotiation, or audit related to the contract, whichever is later. The state agrees to treat as confidential any proprietary information obtained as a part of any such audit.
- n. Samples and Tests:

- i. Whenever the contract documents require tests of materials, articles, equipment or other work, the contractor at its expense shall perform all such tests under the supervision of and provide the results to the Military Department. However, the State may test any portion of the work, at its option, any time during the progress of the work, and shall pay the cost thereof. Unless otherwise directed, all samples for testing will be taken by the Project Manager from the material, articles or equipment delivered, or from work performed, and test will be under the supervision of, or directed by, and at such places as may be convenient to the State.
 - ii. Materials, articles, and equipment requiring tests shall be delivered in ample time before intended use to allow for testing, and none may be used/installed before receipt of written approval by the State. Samples that are of value after testing or review shall remain the property of the State.
- o. Rejection: Should any portion of the work done, or any materials delivered fail to comply with requirements of the contract, such work or materials shall be rejected and shall immediately be made satisfactory to the State by the contractor, at no additional expense to the State. Any materials that are rejected shall immediately be removed from the premises at the contractor's expense.
- p. Preservation and Cleaning: The contractor having control of the work site shall clean up the work at the end of each day as it progresses. At frequent intervals and at all times when directed, the contractor shall remove and dispose of accumulations of old forms, rubbish, and debris of all kinds. At the completion of the project, the entire work site including the surrounding premises shall be cleared of tools, false work, equipment, rubbish, etc., and ready for acceptance.
- q. Labor:
 - i. The contractor shall observe strictly that each and every kind of work shall be performed by worker, laborers, or mechanics specially skilled in the class of work required and that workmanship shall be of the best, regardless of the quality of material. Prior to commencement of any work, contractor shall furnish as photographic identification of all staff proposed to work on the site, organized by company or as directed by the Project Manager. Identification shall be provided in electronic copy with a hard copy in a binder for retainage on the site by the appropriate on-site POC. As directed by the Project Manager at the job start meeting on a daily basis the contractor shall make available to the on-site POC a list of staff working on any given day.
 - ii. Any agent or employee of the contractor who the State deems incompetent or disorderly shall be promptly removed from the work by the contractor upon written notice from the State and shall not be re-employed on the contract worker premises.
- r. Subcontracting:
 - i. This contract is subject to the provisions of Chapter 2, Division 5, Title 1, commencing with Section 4100 of the Government Code, which prohibits the subcontracting of the whole or any part of this contract to subcontractors other than those named in the contractor's original proposal.
 - ii. The contractor shall be responsible for all work performed under this contract, and no subcontractor will be recognized as such. All persons engaged in the work will be considered as employees of the contractor.

- iii. The contractor shall give personal attention to the fulfillment of this contract and shall keep the work under its control. When any subcontractor fails to prosecute a portion of the work in a manner satisfactory to the State, the contractor shall remove such subcontractor immediately upon written request of the State and shall not thereafter be employed on the work.
- iv. Although the specification sections of this contract may be arranged according to various trades general grouping of work, the contractor is not obligated to sublet the work in such manner. The State will not arbitrate disputes among subcontractors or between the contractor and one or more subcontractors concerning responsibility for performing any part of the work.
 - 1. Substitutions of SBs and DVBEs
 - a. DVBE Subcontractors shall be used per the California Code of Regulations (CCR), Title 2, Section 1896.70 unless a substitution is approved in writing by CMD. A DVBE Subcontractor shall be replaced by another DVBE to perform the work originally stated. The substitution shall maintain, at minimum, the level of participation goal stated in the bid. CCR Title 2, Section 1896.73.
 - b. SB Subcontractor shall be replaced per regulations set by CCR Title 2, Section 1896.10.
 - c. Contractor shall simultaneously notify the CMD SB/DVBE Advocate at Advocate@cmd.ca.gov.
- s. Time of Work and Damage:
 - i. The State will designate the starting day of the contract on which the contractor shall immediately begin and diligently coordinate the work to completion. The period of performance start date will be the job start meeting date which the Contractor and the Project Manager shall conduct within 7 days after receipt of the fully executed contract.
 - ii. By signing the job start letter, the contractor obligates himself to perform the work completely and satisfactorily on or before the expiration date to be determined from the number of working days stated in the agreement or by stipulated date of completion, plus such days as may be subsequently allowed by the State through amendments.
 - iii. The contractor shall not be assessed with liquidated damages nor the cost of engineering the inspection during any delay in the completion of the work caused by acts of God, fire, flood, epidemics, quarantine restrictions, freight embargo. Contractor shall notify the State in writing of the causes of delay within five (5) days from the beginning of any such delay.
- t. Project Management
 - i. Contractors may be required to fully participate in the utilization of the CMD Project Management Software commonly referred to as Procore, which specific requirements are further outlined in the contract. This participation shall include but is not limited to Submittals, Daily Logs, Contract Management, RFI's, Drawings, Addenda's, Bulletins, ASI's, Transmittals, Inspections, Inspection Requests, Observations, Punch Lists, As-Built's, Photos, Specifications and any Other Documents that are necessary and pertinent to the efficient and complete performance of the proposed project.

6. CHANGES IN THE WORK

a. Requests for Changes:

- i. The State reserves the right to order in writing, changes, alterations, omissions, or additions in the plans and specifications, at any time prior to the formal completion and acceptance of the work without in any way voiding the contract, and the contractor must comply with such order. The contractor may also request changes in the work.
- ii. Any change or deviation from the contract plans and specifications made without authority in writing from the Military Department's Procurement and Contracting Officer in the form of an amendment to the original contract will be the sole responsibility of the contractor. Except where otherwise expressly provided in these articles, no such changes shall be made nor adjustment in compensation recognized unless the contractor receives an executed contract amendment prior to making the changes. In cases whereby State property will be damaged during the stoppage of work, the contractor may proceed on a written commitment by the Military Department's Procurement and Contracting Officer.
- iii. The contractor shall be entitled to additional compensation for any change requiring labor, materials, or equipment over and above that originally required for the contract work, while any such change resulting in lesser quantities thereof shall entitle the State to a reduction in the contract price.
- iv. Changed work shall be performed completely and in accordance with the original contract drawings and specifications except for the deviations specifically called for by the change order. Materials used on changed work shall be as specified in the original contract documents insofar as they do not conflict with the conditions set forth in the change order. All changed work will be prosecuted by the contractor with due diligence, and with an efficiency of labor and equipment at least equal to that exercised as to the rest of the work of the contract. All changed work shall be warrantied as stipulated in 7D.

b. Changed Work, Time Adjustments:

- i. For any change in the work, the contractor shall be entitled only to such adjustment in time for which completion of the entire work is delayed due to performance of the changed work. Each estimate for a change in the work submitted by the contractor shall state the amount of extra time that he considers should be allowed for making the requested change. Failure to request extra time when submitting such estimates shall constitute a waiver of the right to subsequently claim any adjustment in the time for final completion based upon such changed work.
- ii. If agreement is reached as to the adjustment in compensation for the performance of changed work, but agreement is not reached as to the time adjustment for such work, then the contractor shall proceed with the work at the agreed price, reserving to the contractor the right to further pursue his claim for the time adjustment.
- iii. Contractor hereby agrees that compensation for any change work shall be marked up by the Prime contractor no more than 5% for any subcontractor work and no more than 15% for any self-performed work.

- c. Supplementary Agreements: As to certain changes in the basic scope of the work, a supplementary agreement shall be executed at the option of the State, such agreement to be executed in the manner of the original agreement, to which the change shall be attached and

become a part. The bonds required by Article 3B shall be furnished with such supplementary agreement, covering any increased amount of the contract due to the change.

7. ACCEPTANCE AND PAYMENTS

- a. Acceptance: The contracted work shall be accepted by the Military Department when the project is completed in accordance with the contract documents, to the full satisfaction of the California Military Department.
- b. Progress Payments: Military Department policy provides that public works projects which allow the contractor 30 working days or more to complete and are estimated to exceed \$30,000.00 in value are eligible for progress payments. The contractor may request progress payments during performance of the contracted work. If authorized by the Military Department Procurement and Contracting Officer, progress payments shall not exceed 95% of the value of the completed work unless otherwise stipulated in 23B.
- c. Final Payment: Final payment will not be made to the contractor until such time as all punch list items have been completed and the Military Department is in receipt of all expressed manufacturer's warranties compliance with section 23 and the Project Manager has accepted all required administrative documents. Upon written acceptance of the contractor's work by the Military Department, the Project Manager shall complete a Contract/Contractor Evaluation Form (Office of Adjutant General Form 4) and forward to the Military Department Contracting Section for final review and approval. Approved Contract/Contractor Evaluation Forms shall be forwarded to the Military Department Accounts Payable Section where the Contract/Contractor Evaluation Form and the contractor's invoice shall be processed for payment.
- d. Guarantee:
 - i. The contractor hereby unconditionally guarantees that the Work will be done in accordance with the requirements of the contract, and further guarantees the work of the contract to be and remain free of defects in workmanship and materials for a minimum period of one year from the date of acceptance of the contract, unless a longer guarantee period is specifically called for elsewhere in the contract documents. The date of the completed Work shall be defined as the date said Work is accepted in writing by the PM and this date shall be the start of the contractor's warranty period. The contractor hereby agrees to repair or replace any and all work, together with any other adjacent work which may be displaced in so doing, that may prove to be not in accordance with the requirements of the contract or that may be defective in its workmanship or material within the guarantee period specified, without any expense or obligation whatsoever to the State of California, ordinary wear and tear and unusual abuse or neglect excepted.
 - ii. Contract bonds will remain in full force and effect during the guarantee period. Contractor shall not be relieved of this bond requirement whatsoever.

8. LIQUIDATED DAMAGES

- a. The Military Department will designate the starting date of the contract on which the contractor shall immediately begin and thereafter diligently prosecute the work to completion. The Contractor obligates himself/herself to complete the work within the number of working days or on the fixed date established by the Military Department.
- b. The parties agree that if the work is not completed and accepted by the Military Department within the time established by the contract document and mutually agreed to by the contractor and the Project Manager prior to the start of work and any time extension agreed to in writing by the

Military Department, additional costs will be incurred by the Military Department. These costs include the hourly time spent each day by the Project Manager, Project Engineer, Procurement and Contracting Officer, and the Judge Advocate General.

- c. The contractor agrees to compensate the Military Department \$1,360.00 per calendar day for each and every day's delay in finishing the work beyond the time prescribed. If the contractor fails to pay such liquidated damage the Military Department shall have the unilateral authority to and will deduct the amount thereof from any money due or that may become due the contractor under this contract.

9. WORKING HOURS

- a. The work site shall be available for contractor's activities for 8 hours per day Monday through Friday, work hours shall be 8 am to 4 pm, however at the sole discretion of the Project Manager actual work schedule may be adjusted. The site will not be available for contractor's activities on weekends, or on State or Federal holidays.

10. CONTRACTS FUNDED IN WHOLE/IN PART BY FEDERAL GOVERNMENT

- a. It is mutually understood between the parties that this contract may have been executed before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the contract were executed after that determination was made.
- b. This contract is valid and enforceable only if the United States Government makes sufficient funds available to the State for each fiscal year of the contract. In addition, this contract is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress, which may affect the provisions, terms or funding of this contract in any manner.
- c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this contract shall be amended to reflect any reduction in funds.
- d. The department has the option to void the contract under the "30-day" cancellation clause or to amend the contract to reflect any reduction of funds.

11. STANDARD CALIFORNIA NON-DISCRIMINATION CLAUSE-CONSTRUCTION CONTRACT SPECIFICATIONS (Government Code, Section 12990): See the last two pages of this Section.

12. FORCED, CONVICT, AND INDENTURED LABOR

Contractor certifies, by submitting a bid, that no foreign-made equipment, materials, or supplies furnished to the State pursuant to the contract/agreement will be produced in whole or in part by forced labor, convict labor, or indentured labor. The contractor agrees to comply with the requirements of Public Contract Code, Section 6108.

PART 11 FEDERAL STATUTES, RULES, AND REGULATIONS

13. RELATIONSHIP OF THE FEDERAL GOVERNMENT

This contract may be funded in part by the Federal Government. The Federal Government is not a party to this contract, as a condition to receiving and expending Federal funds, there are certain rights of Federal inspection, Federal approval of contract changes and modifications, and Federal approval of settlements or dispute actions that the Federal Government will exercise prior to authorization of Federal funds. Therefore, no inspection or acceptance, change, modification, settlement, dispute claim payment,

or dispute action will be considered binding until the required Federal approval is obtained. The chief, National Guard Bureau, or its designated representative, is the approval authority. This paragraph does not abrogate any rights conferred on the Federal Government by law or other clause required due to the use of Federal funding.

14. CHANGES AND EXTRAS

The Procurement and Contracting Officer may at any time, in writing and without notice to the sureties; order extras or make changes in the drawings and/or specifications of this contract, providing such extras or changes are within the general scope thereof. If any such extra or change causes an increase or decrease in the amount due under this contract, or in the time required for its performance, an equitable adjustment shall be made, and the contract shall be modified in writing. Federal Funding support for any change or extra is subject to prior approval by the Chief, National Guard Bureau, or his duly authorized representative. Any claim of the contractor for adjustment under this clause must be asserted in writing within 30 days after the date of receipt by the contractor of the notification extra or change. Provided, however, that the Procurement and Contracting Officer, decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to the date of the final settlement of the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in the Clause 19 hereof entitled DISPUTES. Nothing provided in this clause, however, shall excuse the contractor from diligently proceeding with the prosecution of the work as changed. Except as otherwise herein provided, no charge for any extra work or material will be allowed.

15. CHANGED CONDITIONS

The Contractor shall promptly, and before such conditions are disturbed, notify the Procurement and Contracting Officer in writing of (1) subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract. The Procurement and Contracting Officer shall promptly investigate the conditions, and if he/she finds that such conditions do so materially differ and cause an increase or decrease in the cost of (or the time required for), performance of this contract, an equitable adjustment shall be made, and the contract modified in writing. Federal funding support to any change or extra is subject prior approval by the chief, National Guard Bureau, or his duly authorized representative. Any claim of the contractor for adjustment hereunder shall not be allowed unless he has given notice as required above. The Procurement and Contracting Officer, however, may if he determines the facts so justify, consider and adjust any such claim asserted before the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in Clause 19 hereof entitled Disputes.

16. SUPENSION OF WORK

- a. The Procurement and Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Procurement and Contracting Officer determines appropriate for the convenience of the Government.
- b. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted
 - i. by an act of the Procurement and Contracting Officer in the administration of this contract, or
 - ii. by the Procurement and Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any

increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

- c. A claim under this clause shall not be allowed
 - i. for any costs incurred more than 20 days before the Contractor shall have notified the Procurement and Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and
 - ii. unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

17. STOP WORK ORDER

- a. The Procurement and Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Procurement and Contracting Officer shall either—
 - i. Cancel the stop-work order; or
 - ii. Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- b. If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Procurement and Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—
 - i. The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
 - ii. The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Procurement and Contracting Officer decides the facts justify the action, the Procurement and Contracting Officer may receive and act upon a proposal submitted at any time before final payment under this contract.
- c. If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Procurement and Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

- d. If a stop-work order is not canceled and the work covered by the order is terminated for default, the Procurement and Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.

18. CHANGES

(a) The Procurement and Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes— (1) In the specifications (including drawings and designs); (2) In the method or manner of performance of the work; (3) In the Government-furnished facilities, equipment, materials, services, or site; or (4) Directing acceleration in the performance of the work. (b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Procurement and Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Procurement and Contracting Officer written notice stating (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a change order. (c) Except as provided in this clause, no order, statement, or conduct of the Procurement and Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment. (d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Procurement and Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications. (e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Procurement and Contracting Officer a written statement describing the general nature and amount of proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) above. (f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

19. DISPUTES

Except as otherwise specifically provided in this contract, any dispute concerning a question of fact arising under this contract, which is not disposed of by mutual agreement, shall be decided by the California Military Department Procurement and Contracting Officer (PCO), who shall reduce any decision to writing and send a copy to the contractor by certified mail-return receipt requested, to the address shown herein. The contractor shall have the right to appeal the PCO's decision, which must be exercised within thirty (30) days of service of the PCO's written decision. The contractor's appeal must be in writing to the California Military Department Director, The Adjutant General of California (TAG). TAG, at their discretion, may grant the appeal and conduct a hearing pursuant to the Administrative Procedures Act or refer the appeal to the Office of Administrative Hearings (OAH). If a decision is made to use the services of OAH, each side shall equally share OAH costs. If TAG denies the appeal or if no action is taken on the appeal within thirty (30) days of CMD's receipt of the appeal, CMD shall issue a Notice of Right to Sue to contractor. An individual at the rank of Colonel (O-6) or above may be designated by TAG to resolve appeals under this contract. Pending final decision of a dispute hereunder, the contractor shall proceed diligently with the performance of the contract and in accordance with the Procurement and Contracting Officer's decision.

20. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

- (a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Procurement and Contracting Officer determines that a termination is in the Government's interest. The Procurement and Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.
- (b) After receipt of a Notice of Termination, and except as directed by the Procurement and Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
- (1) Stop work as specified in the notice.
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
 - (3) Terminate all subcontracts to the extent they relate to the work terminated.
 - (4) Assign to the Government, as directed by the Procurement and Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by the Procurement and Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
 - (6) As directed by the Procurement and Contracting Officer, transfer title and deliver to the Government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.
 - (7) Complete performance of the work not terminated.
 - (8) Take any action that may be necessary, or that the Procurement and Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
 - (9) Use its best efforts to sell, as directed or authorized by the Procurement and Contracting Officer, any property of the types referred to in subparagraph (6) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Procurement and Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Procurement and Contracting Officer.
- (c) After expiration of the plant clearance period which means the period beginning on the effective date of contract completion or termination and ending 90 days (or such longer period as may be agreed to) after receipt by the Procurement and Contracting Officer of acceptable inventory schedules for each property classification. The Contractor may submit to the Procurement and Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Procurement and Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Procurement and Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (d) After termination, the Contractor shall submit a final termination settlement proposal to the Procurement and Contracting Officer in the form and with the certification prescribed by the Procurement and Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Procurement and Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Procurement and Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Procurement and Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- (e) Subject to paragraph (d) above, the Contractor and the Procurement and Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may

include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) or paragraph (f) below, exclusive of costs shown in subparagraph (f)(3) below, may not exceed the total contract price as reduced by (a) the number of payments previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. Paragraph (f) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(f) If the Contractor and the Procurement and Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Procurement and Contracting Officer shall pay the Contractor the amounts determined by the Procurement and Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (e) above:

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) above) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of—

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (f)(1) above;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (i) above; and

(iii) A sum, as profit on subdivision (i) above, determined by the Procurement and Contracting Officer is in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Procurement and Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including—

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(g) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Procurement and Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (f) above, the fair value, as determined by the Procurement and Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer. (h) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Procurement and Contracting Officer under paragraph (d), (f), or (k), except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) or (k), and failed to request a time extension, there is no right of appeal. If the Procurement and Contracting Officer has made a determination of the amount due under paragraph (d), (f), or (k), the Government shall pay the Contractor (1) the amount determined by the Procurement and Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(i) In arriving at the amount due the Contractor under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract.

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(k) If the termination is partial, the Contractor may file a proposal with the Procurement and Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Procurement and Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Procurement and Contracting Officer.

(l) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract if the Procurement and Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the State of California. Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Procurement and Contracting Officer because of the circumstances.

(m) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Procurement and Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

21. DEFAULT FIXED-PRICE CONSTRUCTION

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if-

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include-

- (i) Acts of God or of the public enemy,
- (ii) Acts of the Government in either its sovereign or contractual capacity,
- (iii) Acts of another Contractor in the performance of a contract with the Government,
- (iv) Fires,
- (v) Floods,
- (vi) Epidemics,
- (vii) Quarantine restrictions,
- (viii) Strikes,
- (ix) Freight embargoes,
- (x) Unusually severe weather, or

(xi) Delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Procurement and Contracting Officer), notifies the Procurement and Contracting Officer in writing of the causes of delay. The Procurement and Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Procurement and Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Procurement and Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

(d) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

22. TERMINATION FOR DEFAULT-DAMAGES OR DELAY-TIME EXTENSIONS

- a. If the contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, the State may, by written notice to the 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 the State may take over the work and prosecute the same to completion, by contract or otherwise, and the contractor and his sureties shall be liable to the State for any excess cost occasioned the State thereby, and for liquidated damages for delay, as fixed in the specifications or accompanying papers, until such reasonable time as may be required for final completion of the work; or if liquidated damages are not so fixed, any actual damages occasioned by such delay. If the contractor's right to proceed is so terminated, the State 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 therefore necessary.
- b. If the State does not terminate the right of the contractor to proceed, as provided in subparagraph (A) hereof, the contractor shall continue the work, in which event he and his sureties shall be liable to the State, in the amount set forth in the specifications or accompanying papers, for the fixed, agreed, liquidated damages for each calendar day of delay until the work is completed or accepted: or if liquidated damages are not so fixed, any actual damages occasioned by such delay.
- c. The right of the contractor to proceed shall not be terminated, as provided in subparagraph (A) hereof, not the contractor charged with liquidated or actual damages, as provided in subparagraph (B), because of any delays in the completion of the work due to causes beyond his control which could not reasonably have been anticipated and were without his fault or negligence, including, but not restricted to, acts of God, acts of the public enemy, acts of the Government or the State (either in its sovereign or contractual capacity), acts of another contractor in the performance of a contract with the State quarantine restrictions, strikes, freight embargoes, or unusually severe weather; or, delays of subcontractors or suppliers due to such unforeseeable causes beyond the control and without the fault or negligence of both the contractor and such subcontractors or suppliers at any tier; provided, that the contractor shall, within 10 days after the beginning of any such delay, unless the Procurement and Contracting Officer shall grant a further period of time prior to the date of final settlement of the contract, notify the Procurement and Contracting Officer in writing of the causes of delay. The Procurement and Contracting Officer shall ascertain the facts as to the extent of the delay and decide whether or not to extend the time for completing the work. When in the Procurement and Contracting Officer's judgment, the findings of fact justify such an extension, and Procurement and Contracting Officer's findings of fact thereon shall be final and conclusive on the parties hereto, subject only to appeal as provided in the DISPUTES clause hereof.

23. PAYMENTS TO CONTRACTORS

- a. Unless otherwise provided in the specifications, partial payments may be made as the work progresses at the end of each calendar month, or as soon thereafter as practicable, on work completed and approved by the Procurement and Contracting Officer. The Military Department shall make partial payments on materials only once they have been installed not just delivered to the work site.

- b. In making such partial payments there shall be retained five (5) percent on the estimated amount until final completion and acceptance of all work covered by the contract. Provided, however that on completion and acceptance of any separated building, public work, or other division of the contract on which the price is stated separately in the contract, payment may be made in full, including the retained percentage therein, less authorized deductions. The retainage on partial payments of Federal funds shall be determined by the United States Property and Fiscal Officer (USPFO) of the State in conformance with the Defense Acquisition Regulations (DAR).
- c. All material and work covered by partial payments made shall thereupon become the sole property of the State, but this provision shall not be construed as relieving the contractor from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work, nor as a waiver of the right of the State to require the fulfillment of all of the terms of the contract or such time as the Military Department accepts the entire Work as defined in the contract.
- d. Upon completion and acceptance of all Work required hereunder, and after the contractor shall have furnished the State with a release of all claims against the State arising under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the contractor from the operation of the release, in stated amount to be set forth therein, the amount due the contractor under this contract will be paid upon the presentation of a properly executed and duly certified voucher. If the contractor's claim to amounts payable under the contract has been assigned under the Assignment of Claims Act of 1940, as amended (41 U.S.C, 15), a release may also be required of the assignee at the option of the Procurement and Contracting Officer or USPFO of the State.

24. MATERIAL AND WORKMANSHIP

Unless otherwise specifically provided for in the specification, all equipment, materials, and articles incorporated in the work covered by this contract are to be new and of the most suitable grade of their respective kinds for the purpose intended and all workmanship shall be first class. Where equipment, materials, or articles are referred to in the specifications as "equal to" any particular standard, the Procurement and Contracting Officer shall solely decide the question of equality. The contractor shall furnish to the Procurement and Contracting Officer for approval the name of the manufacturer of machinery, mechanical and other equipment, which is contemplated to be incorporated in the work, together with the performance capacities and other pertinent information. When required by the specifications, or when called for by the Procurement and Contracting Officer, the contractor shall furnish to the Procurement and Contracting Officer for approval full information concerning the materials or articles, which is contemplated for incorporation in the work. Samples of materials shall be submitted for approval when so directed. Machinery, equipment, materials, and articles installed or used without such approval shall be at the risk of subsequent rejection. The Procurement and Contracting Officer may in writing require the contractor to remove from the work site such employee as the Procurement and Contracting Officer deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work site is deemed by the Procurement and Contracting Officer to be contrary to the public interest.

25. INSPECTION

- a. Except as otherwise provided in subparagraph (D) hereof, all material and workmanship shall be subject to inspection, examination, and testing by representatives of the Procurement and Contracting Officer at any and all times during manufacture and/or construction (and at any and all places where such manufacture and/or construction are carried on). The State shall have the right to reject defective material and workmanship or require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be replaced with proper material

without charge and the contractor shall promptly segregate and remove rejected material from the premises. No extension of the contract will be granted for rejected work. If the contractor fails to proceed at once with the replacement of rejected material and/or the correction of defective workmanship, the State may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost thereof to the contractor, or the State may terminate the right of the contractor to proceed as provided in Clause 17 of this contract, the contractor and surety being liable for any damage to the same extent as provided in said Clause 17 for termination.

- b. The contractor shall furnish promptly, without additional charge, all reasonable facilities, labor and materials necessary for the safe and convenient inspections and tests that may be required by the Procurement and Contracting Officer or by the USPFO of the State. All inspections and tests by the State shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be as described in the specifications. The contractor will be charged with any additional cost of the inspection when material and workmanship is not ready at the time inspection is requested by the contractor. Compensation shall be in full day increments and no less than that stipulated in 8 C above.
- c. Should it be considered necessary or advisable by the State, or by the representatives of the Chief, National Guard Bureau, at any time before final acceptance of the entire work to make an examination of the work already completed, by removing or tearing out same, the contractor shall on request promptly furnish all necessary facilities, labor, and material to accomplish such inspection. If such work is found to be defective or non-conforming in any material respect due to the fault of the contractor or a subcontractor, the contractor shall bear all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, an equitable adjustment shall be made in the contract price to compensate the contractor for the additional services involved in such examination and reconstruction: and, if completion of the work has been delayed thereby, the contractor shall, in addition, be granted a suitable extension of time. Federal funding support of the cost for examination and replacement of satisfactorily completed work that requires removal or that is damaged due to inspection requirements is subject to prior approval by the Chief, National Guard Bureau, or a duly authorized representative.
- d. In the sole discretion of the Military Department inspection of material and finished articles to be incorporated in the work at the site shall be made at the place of production, manufacture, or shipment, whenever the quantity justifies it, unless otherwise stated in the specifications; and such inspection and acceptance shall be in writing, and unless otherwise stated in the specifications, shall be final, except as regards latent defects, departures from specific requirements of the contract and the specifications and drawings made a part thereof, damage or loss in transit, fraud, or such gross mistakes as amount to fraud. Subject to the requirement contained in the preceding sentence, the inspection of material and workmanship for final acceptance as a whole or in part, shall be made at the site. Nothing contained in this paragraph (D) shall in any way restrict the State's rights under any warranty or guarantee.

26. SUPERINTENDENT BY CONTRACTOR

The Job Superintendent must be present anytime work is being performed on the job site. The Job Site Superintendent must be appointed in writing and must have full authority to act on behalf of the prime contractor.

27. UTILITY PERMITS AND RESPONSIBILITY FOR WORK

The contractor shall, without additional expense to the State, obtain all licenses and permits required for the prosecution of the work and pay all charges related to the connection of utility services to existing systems. The contractor shall be responsible for all damages to persons or property that occurs as a

result of his/her fault or negligence in connection with the prosecution of the work. The contractor shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The contractor shall also be responsible for all materials delivered and work performed until completion and final acceptance, except for any completed unit thereof which therefore may have been finally accepted.

28. OTHER CONTRACTS

The State may undertake or award other contracts for additional work in or around the work areas and the contractor shall fully cooperate with such other contractors and State employees and carefully fit its own work to such additional work as may be directed by the Procurement and Contracting Officer. The contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by State employees.

29. ADDITIONAL BOND SECURITY

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the State, or if any such surety shall fail to furnish reports as to the contractor's financial condition from time to time as requested by the State, the contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the State or of persons supplying labor or materials in the prosecution of the work contemplated by the contract.

30. COVENANT AGAINST CONTINGENT FEES

The contractor warrants 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 the contractor for the purpose of securing business. For breach or violation of this warranty the State shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

31. OFFICIALS TO BENEFIT

No member of or delegate to Congress, State Legislation or resident commissioner or State official or employee shall be admitted to any share or part of this contract, or to any benefit that may arise from it; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

32. CONVICT LABOR

In connection with the performance of work under this contract, the contractor agrees not to employ any person undergoing sentence of imprisonment, as provided by Public Law 89-176, September 10, 1965 (18 USC 4082 (c) (2)) and executive order 11755, December 29, 1973.

33. GRATUITIES

- a. The State may, by written notice to the contractor, terminate the right of the contractor to proceed under this contract if it is found, after notice and hearing, by the Secretary or Governor or the duly authorized representative of either, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the contractor, or any agent or representative of the contractor, to any officer or employee of the State with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance, of such contract: Provided, that the existence of the facts upon which

the Secretary or Governor or the duly authorized representative of either makes such findings shall be in issue and may be reviewed in any competent court.

- b. In the event this contract is terminated as provided in paragraph (A) hereof, the State shall be entitled (1) to pursue the same remedies against the contractor as it could pursue in the event of breach of the contract by the contractor, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary or Governor or the duly authorized representative of either) which shall be not less than 3 nor more than 10 times the costs incurred by the contractor in providing any such gratuities to any such officer or employee.
- c. The rights and remedies of the State provided in this Clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

34. COPELAND ("ANTI-KICKBACK") ACT NON-REBATE OF WAGES

The regulations of the Secretary of Labor applicable to contractors and subcontractors (29 CFR, Part 3), made pursuant to the Copeland Act, as amended (40 U.S.C. 276c) and to aid in the enforcement of the Anti-Kickback Act (18 U.S.C. 874) are made a part of this contract by reference. The contractor will comply with these regulations and any amendments or modifications thereof and the prime contractor will be responsible for the submission of affidavits required of subcontractors. The foregoing shall apply except as the Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions.

35. WITHHOLDING OF FUNDS

- a. The Procurement and Contracting Officer may withhold or cause to be withheld from the State prime contractor so much of the accrued payment or advances as may be considered necessary (i) to pay laborers and mechanics, including apprentices, trainees, watchmen, and guards, employed by the contractor or any subcontractor on the work the full amount of wages required by the contract, and (ii) to satisfy any liability of the contractor and any subcontractor for liquidated damages under paragraph (B) of the Clause entitled Contract Work Hours and Safety Standards Act - Overtime Compensation.
- b. If the contractor or any subcontractor fails to pay any laborer, mechanic, apprentice, trainee, watchman, or guard employed or working on the site of the work, all or part of the wages required by the contract, the Procurement and Contracting Officer may, after written notice to the State prime contractor, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

36. DISPUTES CONCERNING LABOR STANDARDS

Disputes arising out of the labor standards provisions of this contract shall be subject to the Disputes Clause except to the extent such disputes involve the meaning of classification or wage rates contained in the wage determination decision of the Secretary of Labor or the applicability of the labor provisions of this contract which questions shall be referred to the Secretary of Labor in accordance with the procedures of the Department of Labor.

37. SUBCONTRACTS-TERMINATION

The contractor agrees to insert the clauses hereof entitled Prevailing Wage - Labor Code Sections 1775 to 1780 inclusive, provide access to the Payrolls and Basic Records by the Fair Employment Practice Commission, Copeland ("Anti-Kickback") Act-Non-Rebate of Wages, Withholding of Funds and Subcontracts-Termination physically in all subcontracts and the contractor further agrees that a breach

of any of the requirements of these Clauses may be grounds for termination of this contract. The term "contractor" as used in such clauses in any subcontract shall be deemed to refer to the subcontractor except in the phrase "prime contractor."

38. EQUAL OPPORTUNITY (See paragraphs 4, B 2 and G 1 through 13; Standard California Nondiscrimination Construction Contract Specifications (GOV. Code Section 12990))

39. CERTIFICATION OF NON-SEGREGATED FACILITIES

(Applicable to contracts, subcontracts, and to agreements with applicants who are themselves performing Federally assisted construction contracts, exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause). By the submission of this bid, the bidder, offeror, applicant, or subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause in the Contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause: that he will retain such certifications in his files" and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES: A certification of Non-segregated Facilities must be submitted prior to award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

40. CLEAN AIR AND WATER

(Applicable only if the contract exceeds \$100,000, or the Procurement and Contracting Officer has determined that orders under an indefinite quantity contract in any one year will exceed \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1 857c-8(c)(1)) or the Federal Water Pollution Control Act (33 U.S.C 1 31 9(c)) and is listed by EPA, or the contract is not otherwise exempt.)

- a. The bidder or offeror certifies as follows:
 - i. Any facility to be utilized in the performance of this proposed contract is (), is not (), listed on the Environmental Protection Agency List of Violating Facilities:
 - ii. The bidder/offeror will promptly notify the Procurement and Contracting Officer, prior to award, or the receipt of any communication from the Director, Office of Federal Activities,

U.S. Environment Protection Agency, indicating that any facility which is proposes for use for during the performance of the contract is under consideration to be listed on the EPA List Violating Facilities: and

- iii. The bidder/offeror will include substantially this solicitation certification, including this paragraph (iii), in every nonexempt subcontract.
- b. The terms used in this clause have the following meanings:
- i. The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604).
 - ii. The Term "Water Act" means the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).
 - iii. The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1875c-5(d)), an approved implementation procedure or plan under section 111(c) or section 111(d), respectively, of the Air Act 942 U.S.C. 1875c-6(c) or (d)), or an approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 1875c-7(d)).
 - iv. The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standard or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharge by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).
 - v. The term "compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an air or water pollution control agency in accordance with the requirement of the Air Act or Water Act and regulations issued pursuant thereto.
 - vi. The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft location, or site of operations, owned, leased, or supervised by a contractor, subcontractor, to be utilized in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be facility except where the Director, Office of Federal Activities, environmental Protection Agency, determines that independent facilities are co-located in one geographical area.
 - vii. The term "nonexempt contract or subcontract" means a contract or subcontract of more than \$100,000 which is not otherwise exempted pursuant to the EPA regulations implementing the Air Act and Water Act (40 CFR 15.5), as further implemented in ASP R 1 -2302.4 or in FPR 1-1.230204 (whichever is applicable) and the procedures of the Department awarding the contract.

41. AUDIT BY DEPARTMENT OF DEFENSE

- a. The contractor will permit access to the contractor's records of employment, employment advertisements, application forms, and other pertinent data and records by the National Guard Bureau Representative, the awarding authority or any other appropriate agency of the State of California designated by the awarding authority, for the purposes of investigation to ascertain compliance with the Fair Employment Practices section of this contract. In addition to employment records, the Contractor will permit access to the following documentation:
- b. Examination of Cost: If this is a cost reimbursement type, incentive, time and materials, labor hour, or price re-determinable contract, or any combination thereof, the contractor shall maintain, and the Procurement and Contracting Officer or his representatives shall have the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. Such right of examination shall include inspection at all reasonable times of the contractor's plants, or such parts thereof, as may be engaged in the performance of this contract.
- c. Cost and Pricing Data. If the contractor submitted cost or pricing data in connection with the pricing of this contract or any change or modification thereto, unless such pricing was based on adequate price competition, established catalog of market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the Procurement and Contracting Officer or his representatives who are employees of the State of California (or representatives listed above) shall have the right to examine all books, records, documents and other data of the contractor related to the negotiation, pricing or performance of such contract, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted
- d. Reports. If the contractor is required to furnish Contractor Cost Data Reports (CCDR) Contract Fund Status Reports (CFSR), or Cost Performance Reports (CPR) the Procurement and Contracting Officer or his representatives shall have the right to examine books, records, other documents, and supporting materials, for the purpose of evaluating (i) the effectiveness of the contractor's policies and procedures to produce data compatible with the objectives of these reports, and (ii) the data reported.
- e. Availability. The materials described in (B), and (C) above shall be made available at the office of the contractor, at all reasonable times, for inspection, audit, or reproduction, until the expiration of three (3) years from the date of final payment under this contract.
- f. The contractor shall insert a clause containing all the provisions of this Clause, including this paragraph (D), in all subcontracts hereunder, except altered as necessary for proper identification of the contracting parties and the Procurement and Contracting Officer under the State prime contract.

42. SUBCONTRACTOR COST OR PRICING DATA-PRICE ADJUSTMENT

The contractor shall require subcontractors to certify that to the best of their knowledge and belief the cost and pricing data submitted is accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract change of modification.

43. BUY AMERICAN ACT

- a. Agreement: In accordance with the Buy American Act (41 U.S.C. 10a-10d) the contractor agrees that only domestic construction material will be used (by the contractor, subcontractor, and suppliers) in the performance of this contract, except for non-domestic construction material listed in the "Non-domestic Construction Materials" clause, if any, of this contract.

- b. Domestic Construction Material: "Construction material" means any article, material, or supply brought to the construction site for incorporation in the building or work. A non-manufactured construction material is a "domestic construction material" if it has been mined or produced in the United States. A manufactured construction material is a "domestic construction material" if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. "Component" means any article, material, or supply directly incorporated in a construction material.
- c. Domestic Component: A component shall be considered to have been "mined, produced, or manufactured in the United States" (regardless of its source in fact) if the article, material, or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the government to be not mined, produced, or manufactured in the United States in sufficient and reasonable available commercial quantities and of satisfactory quality.
- d. Submittals that are not in compliance with the Buy American Act and provided to the government for approval are invalid and hereby rejected. If the government or its representative inadvertently approves a submittal and materials are installed and finished, the contractor is still "At Fault". Contractors may not be paid for work, rework or material acquisition for materials installed that do not comply with the Buy American Act, even if they were approved by the government. *Exception: The government may issue an exception however that exception must specifically address this paragraph and release the specified unauthorized material into the contract on a case-by-case basis. An exception will be granted for each piece of material not by phase, trade or the entire project itself.

44. BUY CLEAN CALIFORNIA ACT

In accordance with the Buy Clean California Act, Contractors shall submit current facility-specific Environmental Product Declarations (EPDs) for all eligible materials and ensure EPDs are compliant to ISO 14025 and applicable Product Category Rules located on the Department of General Services (DGS) Buy Clean California Act website located at: <https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Buy-Clean-California-Act>. Contractors shall collect the data on all structural steel (hot-rolled sections, hollow structural sections, and plate), carbon steel rebar, flat glass, and mineral wool board insulation. The data will be submitted using the attached form the excel sheet you attached, name it and attach it and required as part of the projects close out documents.

45. DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

- a. The term "Procurement and Contracting Officer" means the person executing this contract on behalf of the State and any other officer or civilian employee who is properly designated Procurement and Contracting Officer (PCO) and the term includes, except as otherwise provided in this contract, the authorized representative of a Procurement and Contracting Officer acting within the limits of his authority.
- b. The term "Government" means the United States and any Department head thereof,
- c. The term "State" means the State, Commonwealth, or Territory, which is the party to this contract.

- d. The term "Governor" means the Governor of the State or a duly appointed representative (other than the Procurement and Contracting Officer).
- e. The term "USPFO" means the United States Property and Fiscal Officer assigned to the State

46. SITE INVESTIGATION

The contractor acknowledges that the contractor has investigated and is satisfied as to the conditions affecting the work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads, and uncertainties of weather, river stages, tides, or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the work. The contractor further acknowledges that it is satisfied as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the State, as well as from information presented by the drawings and specifications made a part of this contract. Any failure by the contractor be acquainted with the available information will not relieve the contractor from responsibility for estimating properly the difficulty of cost of successfully performing the work. The State assumes no responsibility for any conclusions or interpretations made by the contractor on the basis of the information made available by the State.

47. PROTECTION OF EXISTING VEGETATION, STRUCTURES, UTILITIES, AND IMPROVEMENTS

- a. The contractor will preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the site of work which is not to be removed and which does not unreasonably interfere with the construction work. Care will be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place. Any limbs or branches of trees broken during such operations or by the careless operation of equipment, or by workmen, shall be trimmed with a clean cut and painted with an approved tree pruning compound as directed by the Procurement and Contracting Officer.
- b. The contractor will protect from damage all existing improvements or utilities at or near the site of the work, the location of which to be made known to him/her and will repair or restore any damage to such facilities resulting from failure to comply with the requirements of this contract or the failure to exercise reasonable care in the performance of the work. If the contractor fails or refuses to repair any such damage promptly, the Procurement and Contracting Officer may have the necessary work performed and charge the cost thereof to the contractor.

48. OPERATIONS AND STORAGE AREAS

- a. All operations of the contractor (including storage of materials) upon State premises shall be confined to areas authorized or approved by the Procurement and Contracting Officer. The contractor shall hold and save the State, its officers, and agents free and harmless from liability of any nature occasioned by his operations.
- b. Temporary building (storage sheds, shops, offices, etc.) may be erected by the contractor only with the approval of the Procurement and Contracting Officer and shall be bunt with labor and materials furnished by the contractor without expense to the State. Such temporary buildings and utilities shall remain the property of the contractor and shall be removed by the contractor at the contractor's expense upon the completion of work. With the written consent of the Procurement and Contracting Officer, such buildings and utilities may be abandoned and need not be removed.
- c. The contractor shall, under regulations prescribed by the Procurement and Contracting Officer, use only established roadways or construct and use such temporary roadways as may be

authorized by the Procurement and Contracting Officer. Where materials are transported in the prosecution of the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State or local law or regulation. When it is necessary to cross curbing or sidewalks, the contractor shall provide protection against damage and any damaged roads, curbing, or sidewalks shall be repaired by or at the expense of the contractor.

49. MODIFICATION PROPOSALS-PRICE BREAKDOWN

The contractor, in connection with any proposal he/she makes for a contract modification, shall furnish a price breakdown, itemized as required by the Procurement and Contracting Officer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor equipment, subcontract, and overhead cost, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification shall also be furnished. The proposal, together with the price breakdown and time extension Justification, shall be furnished by the date specified by the Procurement and Contracting Officer.

50. CLEANING UP

The contractor shall at all times keep the construction area, including storage areas used by him, free from accumulations of waste material or rubbish and prior to completion of the work remove any rubbish from the premises and all tools, scaffolding, equipment, and materials not the property of the State. Upon completion of the construction the contractor shall leave the work and premises in a clean, neat, and workmanlike condition satisfactory to the Procurement and Contracting Officer.

51. INSPECTIONS

The work will be conducted under the general direction of the Procurement and Contracting Officer and is subject to inspection by his appointed inspectors to ensure strict compliance with the terms of the contract. No inspector is authorized to change any provision of the specifications without written authorization of the Procurement and Contracting Officer, nor shall the presence or absence of an inspector relieve the contractor from any requirement of the contract.

52. RECYCLING CERTIFICATION

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

53. CHILD SUPPORT COMPLIANCE ACT

For any contract in excess of \$100,000.00, the contractor acknowledges in accordance with, that:

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

- b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

54. BIOBASED PRODUCT CERTIFICATION

As required by the Farm Security and Rural Investment Act of 2002 and the Energy Policy Act of 2005 (7 U.S.C.8102(c)(3)), the offeror certifies, by signing this offer, that biobased products (within categories of products listed by the United States Department of Agriculture in 7 CFR part 3201,subpart B) to be used or delivered in the performance of the contract, other than biobased products that are not purchased by the offeror as a direct result of this contract, will comply with the applicable specifications or other contractual requirements.

55. AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS

(a) In the performance of this contract, the contractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA)-designated items unless— (1) The product cannot be acquired (i) Competitively within a time frame providing for compliance with the contract performance schedule; (ii) Meeting contract performance requirements; or (iii) At a reasonable price. (2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 3201.3(e)). For example, all USDA-designated items are exempt from the preferred procurement requirement for the following: (i) Spacecraft system and launch support equipment. (ii) Military equipment, i.e., a product or system designed or procured for combat or combat-related missions. (b) Information about this requirement and these products is available at <http://www.biopreferred.gov>. (c) In the performance of this contract, the Contractor shall— (1) Report to <http://www.sam.gov>, with a copy to the Procurement and Contracting Officer, on the product types and dollar value of any USDA-designated biobased products purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30; and (2) Submit this report no later than— (i) October 31 of each year during contract performance and (ii) At the end of contract performance.

56. HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

(a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract). (b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract. (c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous. (d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered non-responsible and ineligible for award. (e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Procurement and Contracting Officer and resubmit the data. (f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property. (g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses

and permits) in connection with hazardous material. (h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows: (1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to— (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials; (ii) Obtain medical treatment for those affected by the material; and (iii) Have others use, duplicate, and disclose the data for the Government for these purposes. (2) To use, duplicate, and disclose data furnished under this clause, in accordance with paragraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data. (3) The Government is not precluded from using similar or identical data acquired from other sources.

57. RECOVERED MATERIAL CERTIFICATION

As required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(c)(3)(A)(i)), the offeror certifies, by signing this offer, that the percentage of recovered materials content for EPA-designated items to be delivered or used in the performance of the contract will be at least the amount required by the applicable contract specifications or other contractual requirements.

58. POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION

- a. Definitions. As used in this clause— "Toxic chemical" means a chemical or chemical category listed in 40 CFR 372.65.
- b. Federal facilities are required to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050), and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).
- c. The Contractor shall provide all information needed by the Federal facility to comply with the following:
 - i. The emergency planning reporting requirements of Section 302 of EPCRA.
 - ii. The emergency notice requirements of Section 304 of EPCRA.
 - iii. The list of Material Safety Data Sheets, required by Section 311 of EPCRA.
 - iv. The emergency and hazardous chemical inventory forms of Section 312 of EPCRA.
 - v. The toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA.
 - vi. The toxic chemical and hazardous substance release and use reduction goals of section 2(e) of Executive Order 13423 and of Executive Order 13514.

59. ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-ESIGNATED ITEMS

"Postconsumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material." "Recovered material" means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process. (b) The Contractor, on completion of this contract, shall— (1) Estimate the percentage of the total recovered material content for EPA-designated item(s) delivered and/or used in contract

performance, including, if applicable, the percentage of post-consumer material and (2) Submit this estimate to the Project Manager.

60. WASTE REDUCTION PROGRAM

“Recycling” means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion. “Waste prevention” means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials. “Waste reduction” means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products. (b) Consistent with the requirements of section 3(e) of Executive Order 13423, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor’s programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.) and implementing regulations (40 CFR Part 247).

61. OZONE-DEPLETING SUBSTANCES

“Ozone-depleting substance,” as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as— (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydrochlorofluorocarbons. (b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

WARNING:

Contains (or manufactured with, if applicable) * _____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere. * The Contractor shall insert the name of the substance(s).

62. REFRIGERATION EQUIPMENT AND AIR CONDITIONERS

The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

63. ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS

As used in this clause— “Energy-efficient product”— (1) Means a product that— (i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or (ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy’s Federal Energy Management Program. (2) The term “product” does not include any energy consuming product or system designed or procured for combat or combat-related missions (42 U.S.C. 8259b). (b) The Contractor shall ensure that energy-consuming products are energy efficient products (i.e., ENERGY STAR® products or FEMP-designated products) at the time of contract award, for products that are— (1) Delivered; (2) Acquired by the Contractor for use in performing services at a Federally-controlled facility; (3) Furnished by the Contractor for use by the Government; or (4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance. (c) The requirements of paragraph (b) apply to the Contractor (including any subcontractor) unless— (1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or (2) Otherwise approved in writing by the Procurement and Contracting Officer. (d) Information about these products is available for— (1) ENERGY STAR® at <http://www.energystar.gov/products>; and (2) FEMP at http://www1.eere.energy.gov/femp/procurement/eeep_requirements.html.

64. IEEE 1680 STANDARD FOR THE ENVIRONMENTAL ASSESSMENTAL ASSESSMENT OF PERSONAL COMPUTER PRODUCTS

“Computer monitor” means a video display unit used with a computer. “Desktop computer” means a computer designed for use on a desk or table. “Notebook computer” means a portable-style or lap top style computer system. “Personal computer product” means a notebook computer, a desktop computer, or a computer monitor, and any peripheral equipment that is integral to the operation of such items. For example, the desktop computer together with the keyboard, the mouse, and the power cord would be a personal computer product. Printers, copiers, and fax machines are not included in peripheral equipment, as used in this definition. (b) Under this contract, the Contractor shall deliver, furnish for Government use, or furnish for contractor use at a Government-owned facility, only personal computer products that at the time of submission of proposals were EPEAT Bronze registered or higher. Bronze is the first level discussed in Clause 1.4 of the IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products. (c) For information about the standard, see www.epeat.net.

65. AFFIRMATIVE PROCUREMENT OF EPA-DESIGNATED ITEMS IN SERVICE AND CONSTRUCTION CONTRACTS

(a) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired; (1) Competitively within a timeframe providing for compliance with the contract performance schedule; (2) Meeting contract performance requirements; or (3) At a reasonable price. (b) Information about this requirement is available at EPA’s Comprehensive Procurement Guidelines web site <http://www.epa.gov/cpg/>. The list of EPA-designated items is available at <http://www.epa.gov/cpg/products.htm>.

66. COMPLIANCE WITH ENVIRONMENTAL MANAGEMENT SYSTEMS

- a. The Contractor’s work under this contract shall conform with all operational controls identified in the applicable agency or facility Environmental Management Systems and provide monitoring and measurement information necessary for the Government to address environmental performance relative to the goals of the Environmental Management Systems.
- b. Bidders must comply with the Buy Clean California Act (BCCA) (Public Contract Code Sections 3500-3505), which states the Department of General Services (DGS), in consultation with the California Air Resources Board (CARB), is required to establish and publish the maximum acceptable Global Warming Potential (GWP) limit for four eligible materials. The BCCA targets carbon emissions associated with the production of structural steel (hot-rolled sections, hollow structural sections, and plate), concrete reinforcing steel, flat glass, and mineral wool board insulation. When used in public works projects, these eligible materials must have a GWP that does not exceed the limit set by DGS.
- c. Contractor agrees to recognize the mandatory standards and policies relating to BCCA and will provide GWP limit compliance of eligible materials using Environmental Products Declarations (EPDs). Maximum acceptable GWP limits were established on January 1, 2022 and can be found in the GWP Limits section Buy Clean California Act.

67. SUSPENSION AND DISBARMENT

By entering in this contract your firm and its principals certifies that it has not been suspended or disbarred from any Federal contracts and does not appear on the Excluded Parties List System (EPLS). In addition, your company certifies that all your organization’s subcontractors and its principals have not been

suspended or disbarred from any Federal contracts and does not appear on the Excluded Parties List System (EPLS).

68. EXPATRIATE CORPORATIONS

Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Section 10286 and 10286.1 and is eligible to contract with the State.

69. EXECUTIVE ORDER N-6-22 – RUSSIA SANCTIONS

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

END OF EXHIBIT D

EXHIBIT E
(Special Contract Provisions)

1. Prior to any performance by the Contractor, evidence of insurance must be returned to the California Military Department with the signed contracts. Refer to Exhibit F, for further information regarding State of California insurance requirements.
2. Contractor acknowledges the contract will be signed and returned within 10 business days. No contract will be binding upon the State until the Contractor receives a fully executed contract that is signed and approved by the Military Department.
3. Contractor shall contact the Project Manager (PM) to schedule the job start meeting. The period of performance start date will be the job start meeting date in which the Contractor and the PM shall conduct within 7 days after receipt of the fully executed contract and issuance of the Notice to Proceed.
4. When required, the Contractor shall furnish the California Military Department with a payment bond in the full amount of the agreement, executed by a California-admitted surety (CCP § 995.311.) insurer utilizing the bond form provided by the State. Form can be downloaded here: <https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std807.pdf>.

Payment Bond can be emailed to: PWC@cmd.ca.gov
Subject Line = 131007 | Payment Bond

5. When required, the Contractor shall furnish the California Military Department with a performance bond in the full amount of the agreement, executed by a California-admitted surety (CCP § 995.311.) insurer utilizing a bond form provided by the surety.

Performance Bond can be emailed to: PWC@cmd.ca.gov
Subject Line = 131007 | Performance Bond

- a. Bonds must identify the owner as:
California Military Department
10601 Bear Hollow Drive
Rancho Cordova, California 95670-6350

6. Contractor shall provide the California Military Department with all material submittals specified in the Technical Specifications of this contract within ten (10) working days after the job start meeting date. Thirty-five (35) days will be allowed for submission of data substantiating a request for substitution of an "equal" item.

CONTRACTOR QUALIFICATIONS

The Contractor meets all requirements listed on the SOW under section Contractor Qualifications. Subcontractor(s) may not be added or substituted without the California Military Department Procurement and Contracting Officer (PCO) approval.

END OF EXHIBIT E

EXHIBIT F
(Insurance Liability Section)

Basic Insurance Requirement:

1. General Provisions Applying to All Policies

- a. Coverage term – Coverage needs to be in force for the complete term of the contract. If insurance expires during the term of the contract, a new certificate must be received by the State at least ten (10) days prior to the expiration of this insurance. Any new insurance must still comply with the original terms of the contract.
- b. Policy Cancellation of Termination and Notice of Non-Renewal – Contractor shall provide to the State within five (5) business days following receipt by contractor a copy of any cancellation or non-renewal of insurance required by this contract. In the event the contractor fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this contract upon the occurrence of such event, subject to the provisions of this Contract.
- c. Deductible – Contractor is responsible for any deductible or self-insured retention contained within their insurance program.
- d. Primary Clause – Any required insurance contained in the Contract shall be primary, and not excess or contributory to any other insurance carried by the State.
- e. Insurance Carrier Required Rating – All insurance companies must carry a rating acceptable to the Office of Risk and Insurance Management. If the contractor is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required.
- f. Endorsements – Any required endorsement must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.
- g. Inadequate Insurance – Inadequate of lack of insurance does not negate the contractor's obligations under the Contract.

2. Insurance Requirements

- a. Commercial General Liability – Contractor shall maintain general liability on an occurrence form with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage liability. The policy must include coverage for liabilities arising out of premises operations, independent contractors, products/completed operations, personal & advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability. The policy must include:

Military Department, State of California, its officers, agents, and employees are included as additional insured, but only with respect to work performed under this contract.

This endorsement must be supplied under form acceptable to the Office of Risk and Insurance Management.

In the case of Contractor's utilization of subcontractors to complete the contracted scope of work, contractors shall include all subcontractors as insureds under Contractor's insurance or supply evidence of insurance to the State equal to policies, coverage and limits required of Contractor.

- b. Automobile Liability - Contractor shall maintain motor vehicle liability with limits not less than \$1,000,000 combined single limit per accident.

The same additional insured designation and endorsement required for general liability is to be provided for this coverage.

- c. Workers' Compensation and Employers' Liability – Contractor shall maintain statutory workers' compensation and employers' liability for all its employees who will be engaged in the performance of the contract. Employers' liability limits of \$1,000,000 are required.

When is performed on State owned or controlled property the workers' compensation policy shall contain a waiver of subrogation in favor of the State. The waiver of subrogation endorsement shall be provided.

3. Terms of Policy (breakdown in accordance with the above requirements):

- a. Minimum limit of coverage of the policy shall be:

- (1) Vehicle Liability (BI & PD): \$1,000,000 per occurrence
- (2) Public Liability: \$1,000,000 per occurrence / \$2,000,000 Aggregate
- (3) Workers Compensation: Statutory

- b. State shall not be responsible for premiums or assessments on the policy.

- c. The Military Department, The State of California, its officers, agents, and employees are included as additional insured, but only with respect to work performed under this contract.

- d. The Certificate Holder section of the COI shall include the following language:

California Military Department
10601 Bear Hollow Drive
Rancho Cordova, California 95670-6350
Reference: Agreement Number 131007

NOTE: THE ENDORSEMENT SHEET MUST INCLUDE THE LANGUAGE AS WRITTEN IN PARAGRAPH c. ABOVE.

Certificate of Insurance can be emailed to: PWC@cmd.ca.gov
Subject Line = 131007 | Insurance Certificate

The above certifications must be provided to the Military Department upon request of the Military Department's Procurement and Contracting Officer and emailed to the address above.

END OF EXHIBIT F