

COUNTY OF TULARE
AGREEMENT FOR ENVIRONMENTAL MITIGATION SERVICES
M348 SOUTH FORK KAWEAH RIVER BRIDGE REPLACEMENT PROJECT

This **AGREEMENT** is entered into as of June 29, 2021, between **SEQUOIA RIVERLANDS TRUST** (hereinafter called "CONTRACTOR"), a California non-profit public benefit corporation, and the **COUNTY OF TULARE** (hereinafter called "COUNTY"), a political subdivision of the State of California, jointly referred to as the "Parties."

- A. **WHEREAS**, the COUNTY is required to provide off-site mitigation for riparian habitat impacts of the M348 South Fork Kaweah River Bridge Replacement Project (the "Project") as described in Chapter 2 of the July 2019 M348 South Fork Kaweah River Bridge Replacement Project Final Revegetation Plan (the "Plan") prepared for the COUNTY by Dokken Engineering, and attached as Exhibit A; and
- B. **WHEREAS**, the California Department of Fish and Wildlife (CDFW) has authorized the COUNTY to accomplish the required off-site riparian mitigation by compensating for permanent loss of trees within riparian habitat by planting locally native species within the Homer Ranch Preserve owned by CONTRACTOR in Tulare County, California; and
- C. **WHEREAS**, CONTRACTOR is a publicly supported, California tax-exempt nonprofit organization qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code, whose primary mission is to inspire love and lasting protection for important lands in California's heartland and the southern Sierra Nevada and San Joaquin Valley by working to conserve it for the prosperity and enjoyment of future generations; CONTRACTOR is accredited by the Land Trust Alliance, and is approved by the California Department of Fish and Wildlife to hold mitigation lands under Government Code Section 65965-65968 as amended.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **TERM:** This Agreement becomes effective as of June 29, 2021 and expires at 11:59 PM on June 28, 2029 unless earlier terminated as provided below, or unless the Parties extend the term by a written amendment to this Agreement.

2. CONTRACTOR HEREBY AGREES TO:

- A. Provide a designated restoration site (hereinafter referred to as "Restoration Area") located along the banks of Dry Creek within the permanently protected 1,819-acre Homer Ranch Preserve, in accordance with Chapter 3, and illustrated in Figure 5 and Figure 11, of the Plan; and
- B. Restore native riparian habitat within the Restoration Area and provide supplemental water (as needed) for up to three years, in accordance with Chapter 3 of the Plan; and
- C. Manage, monitor, and maintain the restoration plantings for a period of five (5) years, in accordance with Section 5.1 of the Plan, or potentially longer if corrective actions are required under Section 5.1.3; and

- D. Submit annual monitoring reports during the term of this AGREEMENT to the COUNTY by November 30 of each year, and to CDFW by December 31 of each year, for a minimum period of five (5) years in accordance with Section 5.2 of the Plan; and
- E. Promptly invoice the COUNTY, upon execution of this AGREEMENT, for the lump sum specified in Section 3(a) of this AGREEMENT; and
- F. Submit periodic (quarterly at a minimum) payment requests to the COUNTY during the maintenance and monitoring period for payment from COUNTY in accordance with Section 3(b) of this AGREEMENT.

3. COUNTY HEREBY AGREES TO:

- A. Pay CONTRACTOR a lump sum of \$26,204.32 within 30 days of receiving an invoice from CONTRACTOR. This lump sum payment is compensation for designing and installing plantings and related infrastructure in the Restoration Area.
- B. Make progress payments to CONTRACTOR as follows, for maintaining and monitoring the Restoration Area during the period between initial installation (of plantings and infrastructure) and agency confirmation that the success criteria for offsite riparian mitigation have been achieved (an estimated period of five years). Contractor shall obtain written approval in advance from Tulare County for any changes in scope of services.
- C. Payments made to CONTRACTOR during the initial 5 year period shall not exceed a total of \$109,243.43 (including the amount paid under 2(a) above), as detailed in **Exhibit B**, provided there is no change from the requirements currently specified in the Plan that necessitate an increased scope of services; and provided that extraordinary circumstances beyond CONTRACTOR's control, such as extended drought or severe vandalism, do not prevent CONTRACTOR from meeting the success criteria within five (5) years of initial installation. Contractor will not be required to do any work that is not paid for.
- D. COUNTY shall be responsible for obtaining agency confirmation from CDFW that the success criteria have been met and for delivering written notice of said agency confirmations to CONTRACTOR in a timely manner.

4. NON-TRANSFERABILITY: The Restoration Area shall be non-transferable and non-assignable, except if the transferee is an entity qualified to hold mitigation lands under Government Code Section 65965-65968 as amended and expressly assumes all CONTRACTOR's obligations under this Agreement. CONTRACTOR will give notice to COUNTY 60 days prior to any such transfer or assignment. The Restoration Area shall not be used as compensatory mitigation for any other project or purpose, except as set forth herein.

5. OTHER PROVISIONS:

- A. No additional compensation will be paid to the CONTRACTOR, unless there is a change in the scope of the work or the scope of the project. In the instance of a change in the scope of the work or the scope of the project, adjustment to the fee will be negotiated between the CONTRACTOR and COUNTY. Adjustment in the fee will not be effective until authorized by a written amendment to this Agreement which has been approved by the COUNTY.

- B. CONTRACTOR shall not commence performance of work or services until this Agreement has been approved by COUNTY, and a notification to proceed has been issued. No payment will be made for any work performed prior to COUNTY approval of this Agreement.
- C. CONTRACTOR will be reimbursed, as promptly as fiscal procedures will permit, upon receipt by COUNTY'S Contract Administrator of itemized invoices in triplicate. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONTRACTOR is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the Cost Proposal and shall reference this Agreement number and project title. Final invoice must contain the final cost and all credits due COUNTY that include any equipment purchased under the provisions of Exhibit E of this Agreement. The final invoice should be submitted within 60 calendar days after completion of CONTRACTOR'S work. Invoices shall be emailed to RMA-AP@tularecounty.ca.gov AND JVivian@tularecounty.ca.gov. All invoices should include Project Manager and Board Agreement Number (5-digit number).
6. **INSURANCE:** Before approval of this Agreement by COUNTY, CONTRACTOR must file with the Clerk of the Board of Supervisors, evidence of the required insurance as set forth in the attached **Exhibit C**.
7. **GENERAL AGREEMENT TERMS AND CONDITIONS:** COUNTY'S "General Agreement Terms and Conditions" are hereby incorporated by reference and made a part of this Agreement as if fully set forth herein. COUNTY'S "General Agreement Terms and Conditions" can be viewed at:
<http://tularecountycounsel.org/default/index.cfm/public-information/>
8. **ADDITIONAL EXHIBITS:** CONTRACTOR shall comply with the terms and conditions of the Exhibits listed below and identified with a checked box, which are by this reference made a part of this Agreement.

<input checked="" type="checkbox"/>	Exhibit A	Final Revegetation Plan
<input checked="" type="checkbox"/>	Exhibit B	Project Cost
<input checked="" type="checkbox"/>	Exhibit C	Insurance Requirements
<input checked="" type="checkbox"/>	Exhibit D	Federal-Aid Contract Language for Construction Contracts
<input checked="" type="checkbox"/>	Exhibit E	Provisions Federal Aid Construction Contracts (FHWA-1273 – Revised May 1, 2012)
<input checked="" type="checkbox"/>	Exhibit F	Title VI Assurances (Appendices A-E)
<input checked="" type="checkbox"/>	Exhibit G	Construction Contract DBE Commitment (Exhibit 15-G)

9. NOTICES:

- A. Except as may be otherwise required by law, any notice to be given must be written and must be either personally delivered, sent by facsimile transmission, or sent by first class mail, postage pre-paid and addressed as follows:

COUNTY:

Tulare County Resource Management Agency
Attention: Jason K. Vivian, Contract Administrator
5961 South Mooney Boulevard
Visalia, CA 93277

With a Copy to:

COUNTY ADMINISTRATIVE OFFICER
2800 W. Burrel Ave.
Visalia, CA 93291

Phone No.: (559) 624-7000
Fax No.: (559) 730-2653

Phone No.: (559) 636-5000
Fax No.: (559) 733-6318

CONTRACTOR:

Sequoia Riverlands Trust
Attn: Jonathan W. Vaughn
427 South Garden Street
Visalia, CA 93277

Phone No.: 559-738-0211 x 125
Email: jonathan@sequoiariverlands.org

- B. Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail will be deemed received on the fifth calendar day after the date of mailing. Either Party may change the above address by giving written notice under this section.
- C. **AUTHORITY:** CONTRACTOR represents and warrants to COUNTY that the individual(s) signing this Agreement on its behalf are duly authorized and have legal capacity to sign this Agreement and bind CONTRACTOR to its terms. CONTRACTOR acknowledges that COUNTY has relied upon this representation and warranty in entering into this Agreement.

10. ORDER OF PRECEDENCE: Notwithstanding anything to the contrary in this Agreement, including the COUNTY'S "General Agreement Terms and Conditions" incorporated by reference, and the attached Exhibits, because the services to be provided under this Agreement are at least partially federally-funded, the provisions of the attached Exhibit E shall prevail over any inconsistent provisions herein.

11. COUNTERPARTS: The Parties may sign this Agreement in counterparts, each of which is an original and all of which taken together, form one single document.

[THIS SPACE LEFT BLANK INTENTIONALLY; SIGNATURES FOLLOW ON NEXT PAGE]

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

SEQUOIA RIVERLANDS TRUST

Date: 6/8/21

By [Signature]

Print Name Robert Scott Spear

Title Acting Executive Director

Date: _____

By _____

Print Name _____

Title _____

[Pursuant to Corporations Code section 313, County policy requires that contracts with a **Corporation** be signed by both (1) the chairman of the Board of Directors, the president or any vice-president (or another officer having general, operational responsibilities), and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer (or another officer having recordkeeping or financial responsibilities), unless the contract is accompanied by a certified copy of a resolution of the corporation's Board of Directors authorizing the execution of the contract. Similarly, pursuant to California Corporations Code section 17703.01, County policy requires that contracts with a **Limited Liability Company** be signed by at least two managers, unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one manager.]

COUNTY OF TULARE

Date: 6/29/2021

By [Signature]
Chair, Board of Supervisors

ATTEST: JASON T. BRITT
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

Date: 6/29/2021

By [Signature]
Deputy Clerk

Approved as to Form
County Counsel

Date: June 9, 2021

By [Signature]
Deputy

Matter # 2021450

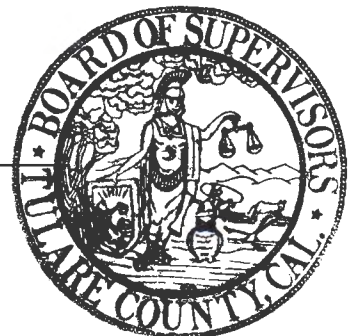


Exhibit A

Final Revegetation Plan

[Attached On Following Page]

M348 South Fork Kaweah River Bridge Replacement Project Revegetation Plan



Prepared by:

Dokken Engineering
110 Blue Ravine Road, Suite 200
Folsom, CA 95630

Prepared for:

Tulare County Resource Management Agency
5961 South Mooney Boulevard
Visalia, California 93277

And

Sequoia Riverlands Trust
427 S. Garden Street
Visalia, California 93277

July 2019

Summary

Tulare County (County), in cooperation with the California Department of Transportation (Caltrans), proposes to replace the existing M348 South Fork Kaweah River Bridge (Bridge No. 46C0195) with a single lane bridge structure to provide improved safety and operations on the facility. The bridge is located approximately 10 miles southeast of the community of Three Rivers along Road M348 within Tulare County, California.

Jurisdictional waters of the U.S. and state are located within the project area, and construction of the project is anticipated to have temporary impacts to the waters of the U.S. and temporary and permanent impacts to montane riparian habitat under jurisdiction of the California Department of Fish and Wildlife (CDFW). The project has been designed to minimize temporary and permanent impacts to jurisdictional waters to the maximum extent practicable. Prior to construction, regulatory permits would be obtained from USACE, CDFW, and RWQCB. Project mitigation measures and Best Management Practices (BMPs) would be incorporated into the design to minimize construction impacts to jurisdictional waters within the Project and regional water quality.

As mitigation for impacts to CDFW riparian habitat, the County will compensate for permanent loss of six (6) trees within riparian habitat by planting locally native species at an off-site restoration site. Off-site restoration efforts will occur within the Sequoia Riverlands Trust (SRT) Homer Ranch Preserve. Located approximately 17 miles from the Project site, this 1,819-acre nature preserve includes California buckeye (*Aesculus californica*), valley oak (*Quercus lobata*), interior live oak (*Quercus wislizeni*), western sycamore (*Platanus racemosa*), Oregon ash (*Fraxinus latifolia*), western redbud (*Cercis occidentalis*), blue elderberry (*Sambucus cerulea*), Fremont cottonwood (*Populus fremontii*), and willows (*Salix spp*).

This Revegetation Plan provides a description of the off-site restoration site, including current biological conditions, topography, soils, and present and proposed land use in the vicinity. Additionally, the Revegetation Plan provides plant installation guidelines, installation methods, post restoration maintenance, and long-term monitoring with success criteria.

Table of Contents

Chapter 1.	Project Description.....	1
1.1.	Project Description	1
1.1.1.	Purpose	3
1.1.2.	Need	3
Chapter 2.	Project Impacts	7
2.1.	Mitigation for Impacts to Jurisdictional Waters and Sensitive Habitats	9
Chapter 3.	Off-Site Restoration Plan	10
3.1.	Description of the Restoration Site	10
3.1.1.	Current Biological Conditions	10
3.1.1.	Topography.....	10
3.1.2.	Soils	10
3.1.3.	Present and Proposed Land Use.....	10
3.2.	Assurances.....	10
3.2.1.	Ownership and Protection	10
3.2.2.	Financial Assurances.....	11
3.3.	Plant Installation Guidelines	16
3.3.1.	Installation Methods.....	16
3.3.2.	Planting densities.....	17
Chapter 4.	Post Restoration Maintenance Plan	19
4.1.	Invasive Species Control Plan.....	19
4.2.	Herbivory Protection	19
4.3.	Access Restriction	19
Chapter 5.	Monitoring and Reporting	20
5.1.	Long Term Monitoring	20
5.1.1.	Success Criteria.....	20
5.1.2.	Monitoring	20
5.1.3.	Corrective Actions.....	20
5.2.	Annual Status Report	21
Chapter 6.	References	22

Tables

Table 1: Project Effects to Tree Species.....	7
Table 2: Mitigation Ratios and Required Plantings	9
Table 3: Proposed Plantings.....	17

Figures

Figure 1. Project Vicinity	4
Figure 2. Project Location	5
Figure 3. Project Features	6
Figure 4. Tree Survey and Removal	8
Figure 5. Planting Area at Homer Ranch Preserve.....	12
Figure 6. View from south end of planting area facing north	13
Figure 7. View from south end of planting area facing south	13
Figure 8. View from middle of planting area facing north.....	14
Figure 9. View from middle of planting area facing south	14
Figure 10. View from outside northern part of planting area facing south	15
Figure 11. Tree Planting Configuration	18

Abbreviations

Caltrans	California Department of Transportation
CDFW	California Department of Fish and Wildlife
County	Tulare County
DBH	diameter breast height
NRCS	Natural Resources Conservation Service
SAA	Streambed Alteration Agreement
SRT	Sequoia Riverlands Trust

Chapter 1. Project Description

1.1. Project Description

The County of Tulare, in cooperation with Caltrans, proposes to replace the existing M348 South Fork Kaweah River Bridge (Bridge No. 46C0195) with a single lane bridge structure to provide improved safety and operations on the facility.

The bridge is located approximately 10 miles southeast of the community of Three Rivers along Road M348 within Tulare County, California. The existing M348 South Fork Kaweah River Bridge was constructed in 1952 and is not eligible for the National Register of Historic Places. Currently, the existing 82-foot long by 12-foot wide Bailey Truss Bridge is used by one local resident, access to the South Fork Campground, and forestry vehicles. The bridge qualifies for replacement funding because it has a sufficiency rating of 44.9 and is flagged as Functionally Obsolete. Improvements are needed to provide improved safety and operations on the facility. Tulare County is proposing to replace the bridge with a single lane bridge approximately 95 feet long by 18 feet wide. Aesthetic treatments are being considered to help the new bridge match its natural surroundings. Improvements to the approaches along Road M348 on each side of the bridge will take place as part of the bridge replacement project.

This project is included in the Fiscal Years 2018/2019 Federal Transportation Improvement Program (FTIP) and is funded through Caltrans Local Assistance.

The existing M348 South Fork Kaweah River Bridge will be removed and replaced with a single lane structure with a clear width of 15ft. The new structure will be a steel girder bridge with cast-in-place or precast deck. The contractor will utilize temporary supports in the river bed to erect the bridge. Placement of the temporary supports will require a river diversion. The project will involve a modification or alteration of the riverbed with the installation of rock slope protection to protect the bridge embankments.

The new bridge will be designed to fit within the site constraints and in accordance with AASHTO's Load and Resistance Factor Design Bridge Design Specifications and Caltrans' Seismic Design Criteria. Aesthetic treatments will be incorporated to help the new bridge match its natural surroundings.

The new horizontal alignment will be offset upstream from the existing bridge to maintain traffic during construction. In order to tie the existing roadway into the new bridge, the project will complete improvements extending to approximately 202 feet west of the bridge and 179 feet east of the bridge. The deck elevation of the new bridge will be approximately 2 feet higher than the existing bridge.

Excavators, dozers, cranes, dump trucks, concrete trucks, and concrete pumps will be required to construct the new bridge.

There are existing overhead electric and communications utility lines north of the bridge that will be relocated. Close coordination with the local utility companies will be carried out in order to manage the temporary and/or permanent relocation of these utilities.

Temporary construction easements are needed throughout the project area as construction staging would take place within County right-of-way and adjacent privately owned parcels. Permanent right-of-way acquisitions are necessary.

Construction within the South Fork Kaweah River would be limited to temporary ground disturbance associated with construction activities and minimal permanent fills as a result of the installation of the Bridge foundation and rock slope protection to prevent erosion.

Construction is anticipated to begin in October of 2019 and depending on weather is anticipated to take approximately 12 months. The road will remain open throughout construction with the exception of small windows in the middle of the week.

The following is a step by step process to be followed by the Contractor:

Step 1 – Clear & Grub: Upon mobilizing the Contractor will clear the area for the new roadway. This will include removal of approximately six trees that are within Montane Riparian habitat. The Tree Impact plan sheet can be found in Appendix A.

Step 2 – Retaining Wall Placement: Retaining walls on both sides of the river are to be constructed. The walls will be approximately 95 and 75 feet long on the north and south sides respectively. Both walls are to be soil nail walls, which utilizes top down construction methods. Because of which there will be minimal ground disturbance. It is estimated that there will be 200 cubic yards of excavation.

Step 3 – Water Diversion: The flows of the South Fork of the Kaweah River fluctuate throughout the year and are largely influenced by snow melt within the water shed. In wet years the flows are bigger with large flows lasting deeper into the year.

A CDFW approved stream diversion plan will be implemented. The first step would be placement of the plastic sheeting, then placing gravel/sandbags on top of the sheeting. Due to the large cobbles/rocks at the site, the sand/gravel bags will be utilized to form a flat surface that the temporary railing can be placed on. The depth of the sand/gravel bags will vary in depth from zero three feet, and will be spread over 20 feet in total width. Once a flat surface is achieved, the temporary railing will be placed on the folded over plastic sheeting on the sand/gravel bags. The linear length of stream that will be temporarily impacted by the installation and operation of the water diversion structure is 127'. The River Diversion Plan sheet can be found in Appendix A.

The diversion will consist of K-railing placed on sand/gravel bags and no material from the riverbed will be displaced. The diversion will not be placed closer than 25 feet from the end of bridge/beginning of bridge (approximately 15 feet from the toe of the footing/cut).

Step 4 – Footing Excavation: The footings are to be 12 feet wide by 22.5 feet long. They will need to excavate approximately 12 feet deep at both abutments.

The total excavation for both abutments will be approximately 175 cubic yards.

Step 5 – Pile Placement: Both abutment footings will be supported by 6 CIDH piles. The average length of the piles is 27 feet.

Step 6 – Footing Placement: Each footing will consist of placement of 30 cubic yards of concrete. Depending on the time of year and the ground water elevation a seal course may be required to keep water out.

Step 7 - Abutment Placement: Each abutment will consist of approximately 60 cubic yards of concrete.

Step 8 – Girder Erection: The girders will be erected in one of two ways. The first way is to utilize the existing bridge and a small road closure. The girders would be placed across the existing bridge, bolted together and then erected into place. The second method would be to utilize temporary supports in the riverbed. The girders would be placed onto the temporary supports and the new abutments and then bolted together. Then the temporary supports would be removed.

The temporary supports would consist of timber bearing pads, steel or timber columns and steel or timber caps.

Step 9 – Bridge Deck Placement: A prefabricated steel girder bridge will be placed. Temporary supports will be placed in the river bed to erect the bridge. There will be no falsework. If cast-in-place or precast concrete is utilized for the deck, then the formwork will be supported off of the girders.

Step 10 – Rock Slope Protection: Class 8 Rock Slope Protection (RSP) will be placed in front of and on the sides of both abutments. This is depicted on the Contour Grading and RSP sheet shown in Appendix A.

Approximately 230 cubic yards of RSP will be placed. The RSP sheet will have the following dimensions:

- Length = 48.5' on both sides
- Width = 18' on the west
- Width = 21' on the east
- Depth of RSP = 4'
- Average RSP Diameter = 36"
- Average RSP Weight = 2,200 pounds

Step 11 – Existing Bridge Removal: The existing superstructure will be removed in pieces. After the superstructure is removed the existing abutments will be removed. The same water diversion noted above will be in place for this operation. It is anticipated that 60 cubic yards of concrete will be removed.

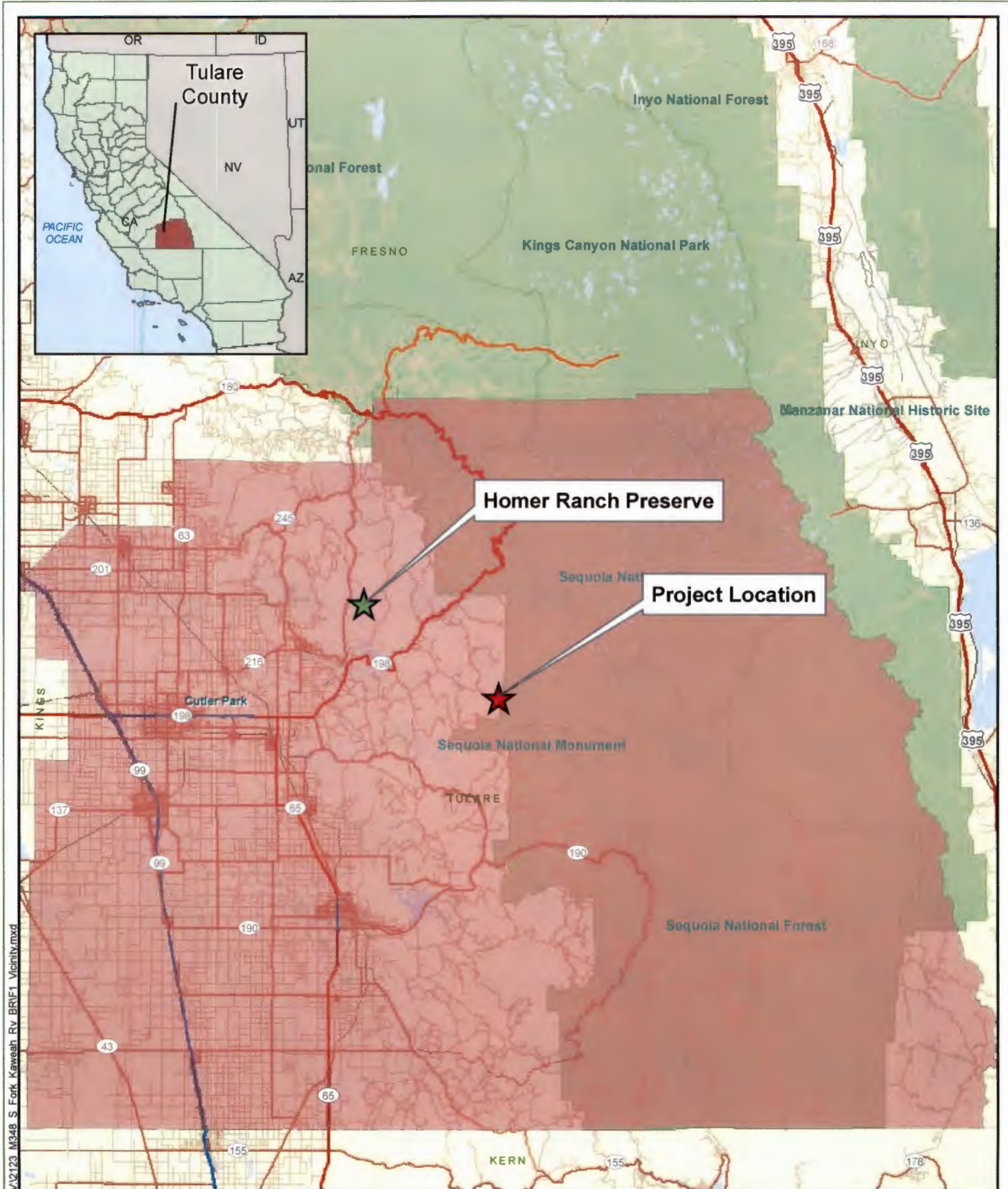
1.1.1. Purpose

The purpose of the project is to:

- Provide a structure that meets current design standards
- Improve the safety and operation of the facility

1.1.2. Need

Road M348, South Fork Drive is regularly used by a resident, recreational, and forestry vehicles with average daily traffic of approximately 25 vehicles (Bridge Inspection Report dated 07/02/2014). The bridge was built in 1952, and has an operating load rating of 30.5 metric tons. The bridge is currently flagged as Functionally Obsolete due substandard deck geometry and approach roadway width. Improvements are needed meet current design standards and to provide improved safety and operations of the facility.



Source: ESRI 2008; Dokken Engineering 7/25/2019; Created By: kchen



0 5 10 15
Miles

FIGURE 1

Project Vicinity

Federal Project # BRLO 5946(114)
M348 South Fork Kaweah River Bridge Replacement Project
Tulare County, California



0 0.25 0.5
Miles

FIGURE 2

Project Location

Federal Project # BRLO 5946(114)
M348 South Fork Kaweah River Bridge Replacement Project
Tulare County, California

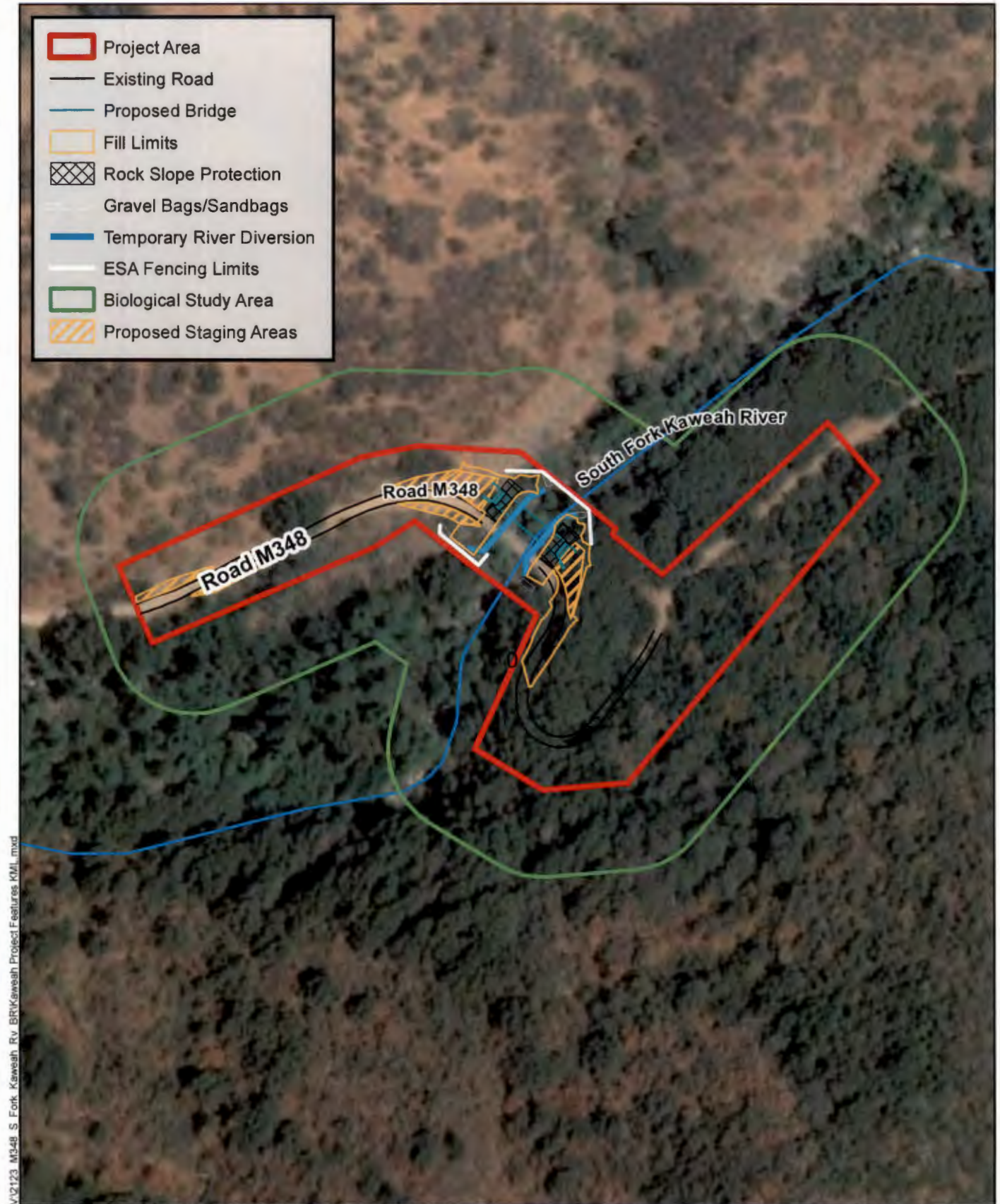


FIGURE 3
Project Features

Federal Project # (BRLO) 5946(114)
M348 South Fork Kaweah River Bridge Replacement Project
Tulare County, California

Chapter 2. Project Impacts

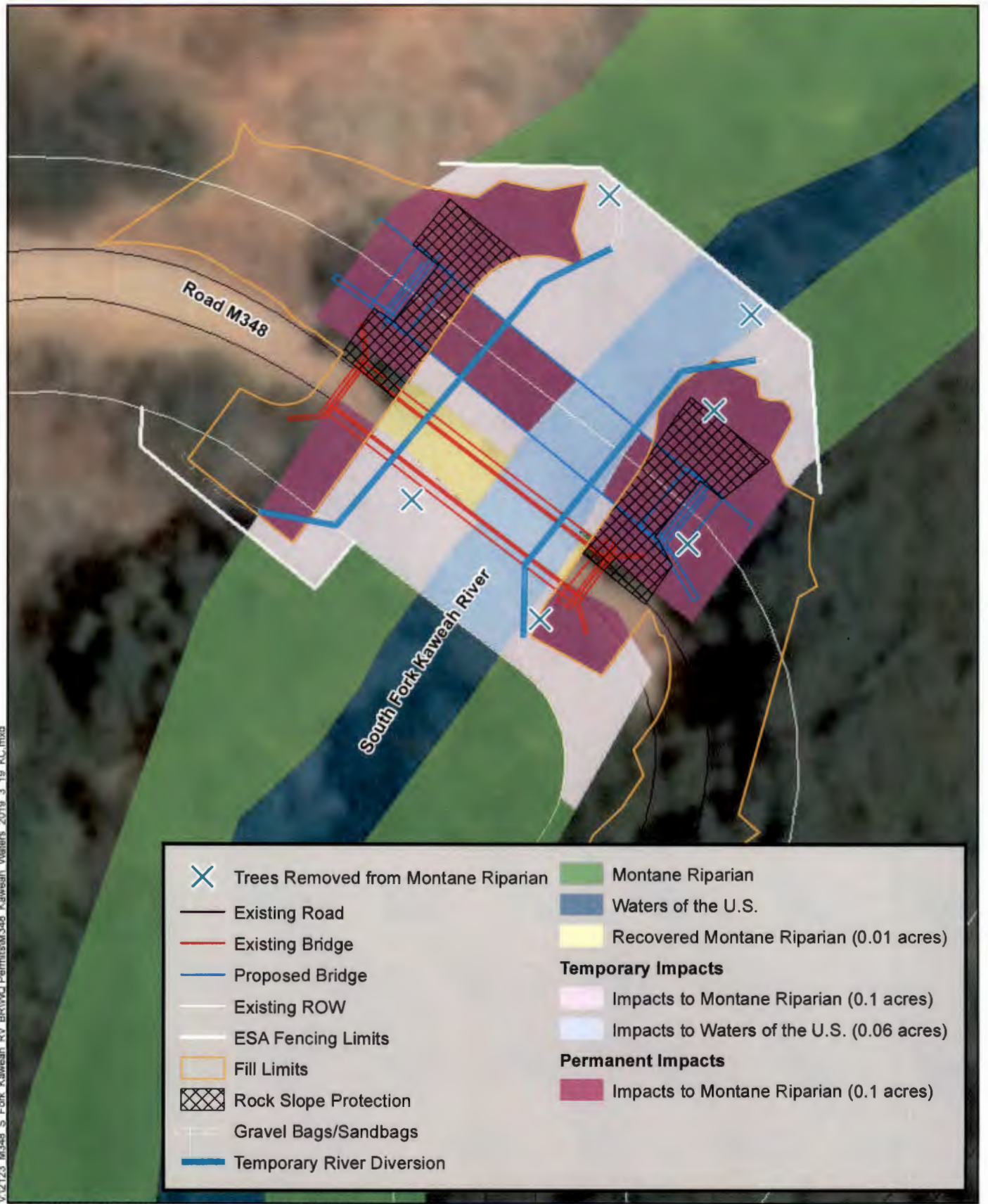
The project will result in temporary effects to jurisdictional waters and both permanent and temporary impacts to riparian habitat under the jurisdiction of CDFW. Permanent effects include areas that will permanently be altered by deposition of fill material, down cutting and road realignment resulting from the new bridge deck. Temporarily affected areas include all construction work areas outside of permanent effects that will be re-contoured to preconstruction conditions and re-vegetated after construction.

Permanent impacts within montane riparian would include the removal of 6 trees between 15" and 24" in diameter breast height (DBH). Below Table 1 describes the species and size of the impacted trees, and Figure 4 displays the location of the trees to be removed.

Table 1: Project Effects to Tree Species

Common Name	Scientific Name	Trunk DBH
California buckeye/ Canyon Live Oak	<i>Aesculus californica</i> / <i>Quercus chrysolepis</i>	15" - 24"

V:\2123 M348 S Fork Kaweah Rv BRWQ Permits\M348 Kaweah Waters 2019_3_19 KC.mxd



Source: ESRI World Street Maps Online, Dokken Engineering 7/24/2019, Created By: kchen

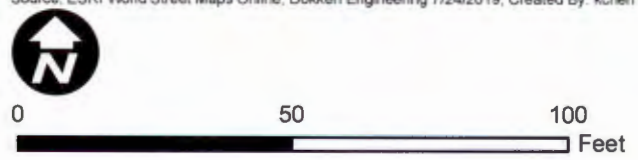


FIGURE 4
Trees To Be Removed
Federal Project # (BRLO) 5946(114)
M348 South Fork Kaweah River Bridge Replacement Project
Tulare County, California

2.1. Mitigation for Impacts to Jurisdictional Waters and Sensitive Habitats

Pursuant the CDFW SAA (Notification No. 1600-2019-0080-R4), the County will compensate for loss of 6 trees by planting native species at an off-site restoration site. The County will provide mitigation planting at a 3:1 ratio for trees with a DBH of between 15" to 24". Mitigation ratios and necessary compensatory plantings are listed in Table 2 below. A description of offsite mitigation area is included in Chapter 3.

Table 2: Mitigation Ratios and Required Plantings

Common Name	Scientific Name	Trunk DBH	Mitigation Ratio	Required Plantings
California buckeye/ Canyon Live Oak	<i>Aesculus californica</i> / <i>Quercus chrysolepis</i>	15" - 24"	3:1	18

Chapter 3. Off-Site Restoration Plan

3.1. Description of the Restoration Site

Off-site restoration efforts will occur within the Sequoia Riverlands Trust (SRT) Homer Ranch Preserve. Located approximately 17 miles from the Project site (See Figure 1), this 1,819-acre nature preserve includes California buckeye (*Aesculus californica*), valley oak (*Quercus lobata*), interior live oak (*Quercus wislizeni*), western sycamore (*Platanus racemosa*), Oregon ash (*Fraxinus latifolia*), western redbud (*Cercis occidentalis*), blue elderberry (*Sambucus cerulea*), Fremont cottonwood (*Populus fremontii*), and willows (*Salix spp*). Off-site restoration efforts were chosen for the Project because of the steep grade of the banks adjacent to the bridge. The steep grade would not be suitable for planting and long-term restoration and maintenance efforts, so an agreement was made to prepare restoration efforts at an off-site location.

The specific location of the restoration site within the Homer Ranch Preserve has been designated by SRT and is located along the banks of Dry Creek (Figure 5). The total area being planted is approximately 72,027 square feet (715 linear feet). Figures 6 through 10 show views of the planting area.

3.1.1. Current Biological Conditions

Dry Creek supports California buckeye (*Aesculus californica*), valley oak (*Quercus lobata*), interior live oak (*Quercus wislizeni*), western sycamore (*Platanus racemosa*), Oregon ash (*Fraxinus latifolia*), western redbud (*Cercis occidentalis*), blue elderberry (*Sambucus cerulea*), Fremont cottonwood (*Populus fremontii*), sandbar willow (*Salix exigua*), Goodding's willow (*Salix gooddingii*), red willow (*Salix laevigata*), and arroyo willow (*Salix lasiolepis*). The creek carries seasonal flows during the winter and spring and a small amount of seasonal runoff in the summer.

3.1.1. Topography

The topography of the restoration site is generally flat gently sloping down into the creek corridor with slopes averaging 0-5%. Elevation ranges between 657 and 667 feet above mean sea level.

3.1.2. Soils

Soils within the restoration site consist mostly of *Tujunga sand* (97.5%), and *Wyman loam*, 2 to 5% slopes (2.5%). Tujunga sand is a somewhat excessively drained, while Wyman loam is classified as well drained loam. Water table depth is greater than 80 inches (NRCS 2019).

3.1.3. Present and Proposed Land Use

Current land use surrounding the Homer Ranch Preserve consists of rangelands and rural homesteads. By working with neighbors and the local community, SRT has developed a long-term conservation plan that includes grazing as a management tool.

3.2. Assurances

3.2.1. Ownership and Protection

The Homer Preserve is currently owned and operated by SRT. The land is covered under a Grant Agreement, and SRT (or any other owner of the lands in the future) is obligated to the terms and conditions of the Grant Agreement, including the permanent protection of the property's natural resources.

3.2.2. Financial Assurances

The County is prepared to execute a financial agreement with SRT for the completion of the restoration efforts within the Homer Ranch and the 5-year monitoring and reports pursuant the CDFW SAA for the project. The agreement will be in place prior to the completion of construction.

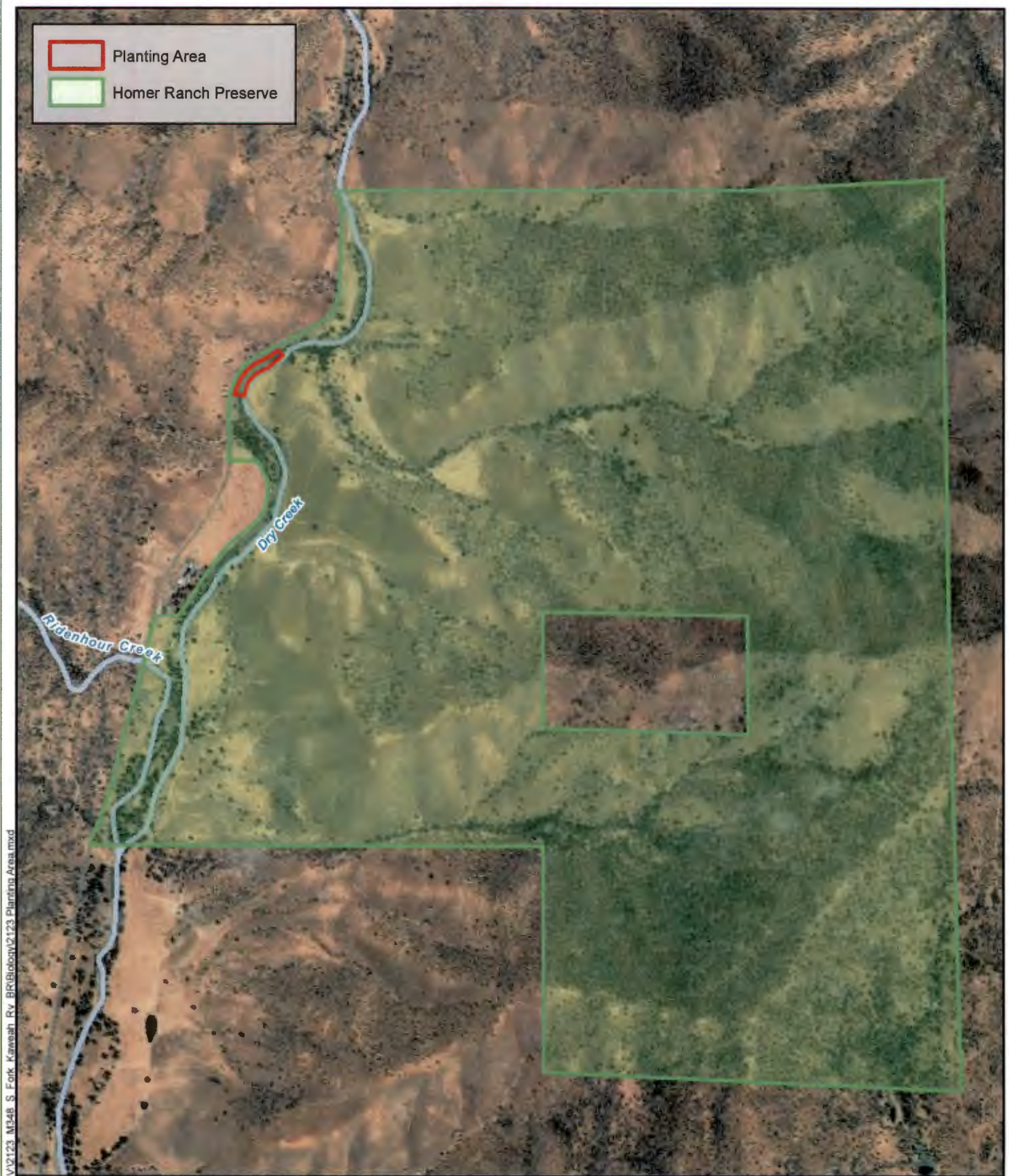


FIGURE 5
Planting Area at Homer Ranch Preserve
 Federal Project # BRLO 5946(114)
 M348 South Fork Kaweah River Bridge Replacement Project
 Tulare County, California

Figure 6. View from south end of planting area facing north



Figure 7. View from south end of planting area facing south



Figure 8. View from middle of planting area facing north



Figure 9. View from middle of planting area facing south



Figure 10. View from outside northern part of planting area facing south



3.3. Plant Installation Guidelines

Only locally native species may be utilized in mitigation projects. The restoration site is planned to be planted as designated through the SAA. SRT has proposed the collection of acorns, cuttings, and growing small container plants from native species known to occur in the vicinity of the restoration site. These would include valley oak (*Quercus lobata*), western sycamore (*Platanus racemosa*), Goodding's willow (*Salix gooddingii*), Fremont cottonwood (*Populus fremontii*). As a last resort, if the plants cannot be sourced locally, they will be acquired from a nearby nursery. The nearest nursery providing these species is approximately 50 miles northwest of the Project site.

Initial plantings would be scheduled for October-January, with mortality replacement plantings occurring year-round if precipitation/streamflow is sufficient. The preferred method, directed from SRT, is direct-planted acorns for oaks and cuttings for willow during the initial plantings, which would be supplemented with plants grown at the SRT nursery from the same type of propagules as the initial plantings as reserved for mortality replacement. Supplemental water may be used for up to three years; however, the methods at this location would primarily rely on seasonal water flow, rather than irrigation. Below is a description of installation methods for both container plants and direct-planted acorns and cuttings.

3.3.1. Installation Methods

Container plants should be installed by first digging a hole 2 times deeper than the container and 3 times as wide as the container. Plants would then be carefully removed from containers to prevent excess damage to the root structure. If the plant was root bound in the container, the root ball would be loosened by hand or trimmed to encourage roots to grow laterally away from the root ball. Plants should be placed with the main stem vertical and the top of the root crown level with original ground and backfilled. Soil should be lightly compacted to provide structural support for the tree. A small moat approximately 4-6 inches deep should be formed around each plant to allow water to pond and percolate into the soil without running off.

Container plants for sycamores and cottonwoods should be installed by first digging a hole 2 times deeper than the container and 3 times as wide as the container. Plants should then be carefully removed from containers to prevent excess damage to the root structure. If the plant was root bound in the container, the root ball should be loosened by hand or trimmed to encourage roots to grow laterally away from the root ball. Plants should be placed with the main stem vertical and the top of the root crown level with original ground and backfilled. Soil should be lightly compacted to provide structural support for the tree. A small moat approximately 4-6 inches deep should be formed around each plant to allow water to pond and percolate into the soil without running off.

Oaks may alternately be directly seeded with the use of locally sourced acorns at a mitigation site. Planting would consist of digging a shallow hole approximately 2-4 inches deep, placing acorns, and backfilling. Approximately 3 to 5 acorns would then be placed per hole. Seeding locations should be identified with marking flags to prevent accidental kill during invasive species control. Direct seeding should only be done in winter when natural rain cycles would keep soils moist for several months.

Willows may be alternatively propagated from cuttings. Cuttings must be taken from healthy disease-free plants and should be taken from a variety of individuals to preserve genetic diversity. Cuttings should be taken during winter when willows are dormant. Cuttings should be 3 to 5 feet

long and between 1/2-inch and 3 inches in diameter. Cutting material must not be too woody and must have visible buds. Cuttings may be used immediately or stored in a bucket of cool water for up to 3 days or stored in a refrigerated room for up to 1 week. Cuttings should be installed with 3/4 of the cuttings buried underground and 1/4 exposed. If cuttings are hammered into the ground, the damaged top portion should be trimmed.

At installation, oaks, sycamores, and cottonwoods will be protected by cylinders of 1/2-inch mesh aviary netting that extend below ground and plastic tree shelters aboveground to protect against gophers (*Thomomys bottae*) and other herbivorous small mammals. Willows will be protected by above ground cylinders only. Wood mulch would be applied around each planting (leaving a 6-inch gap between mulch and root collar) to suppress weed competition, retain water, enrich soil organic matter, moderate soil temperature, and facilitate locating each individual during monitoring efforts. More mulch would be added as necessary.

3.3.2. Planting densities

The success criteria discussed in Section 5.1.1. specify a 75% survival rate and successful establishment of trees planted after five (5) years. As discussed in section 2.1, mitigation plantings for the impact to 6 trees requires the planting of eighteen (18) native trees. For a 75% survival rate of the required mitigation ratio plantings, 14 native trees would be required to survive to complete mitigation requirements. Table 3 below lists the number of required plantings, number of trees required by success criteria, and the proposed planting densities provided by SRT, at the restoration site for up to 3 years.

Table 3. Proposed Plantings

Species	Required Plantings	Success Criteria (75%)	Proposed Plantings Densities
<i>Quercus lobata</i>	6	5	20 ft on center
<i>Salix gooddingii</i>	4	3	10 ft on center
<i>Platanus racemosa</i>	4	3	15 ft on center
<i>Populus fremontii</i>	4	3	15 ft on center

Approximate planting distribution is shown in Figure 11. SRT's preferred method would be to rely on seasonal water flow, rather than irrigation within the restoration site. Plantings of acorns/cuttings, or local nursery trees would follow the proposed planting densities as listed in Table 3. To account for expected levels of die off, approximately 3 to 5 plantings of each tree will occur at each of the 18 planting sites shown in Figure 11.

V:\2123 M348 S Fork Kaweah Ry BRWD Permits\F6 Tree Planting Configuration_KC.mxd

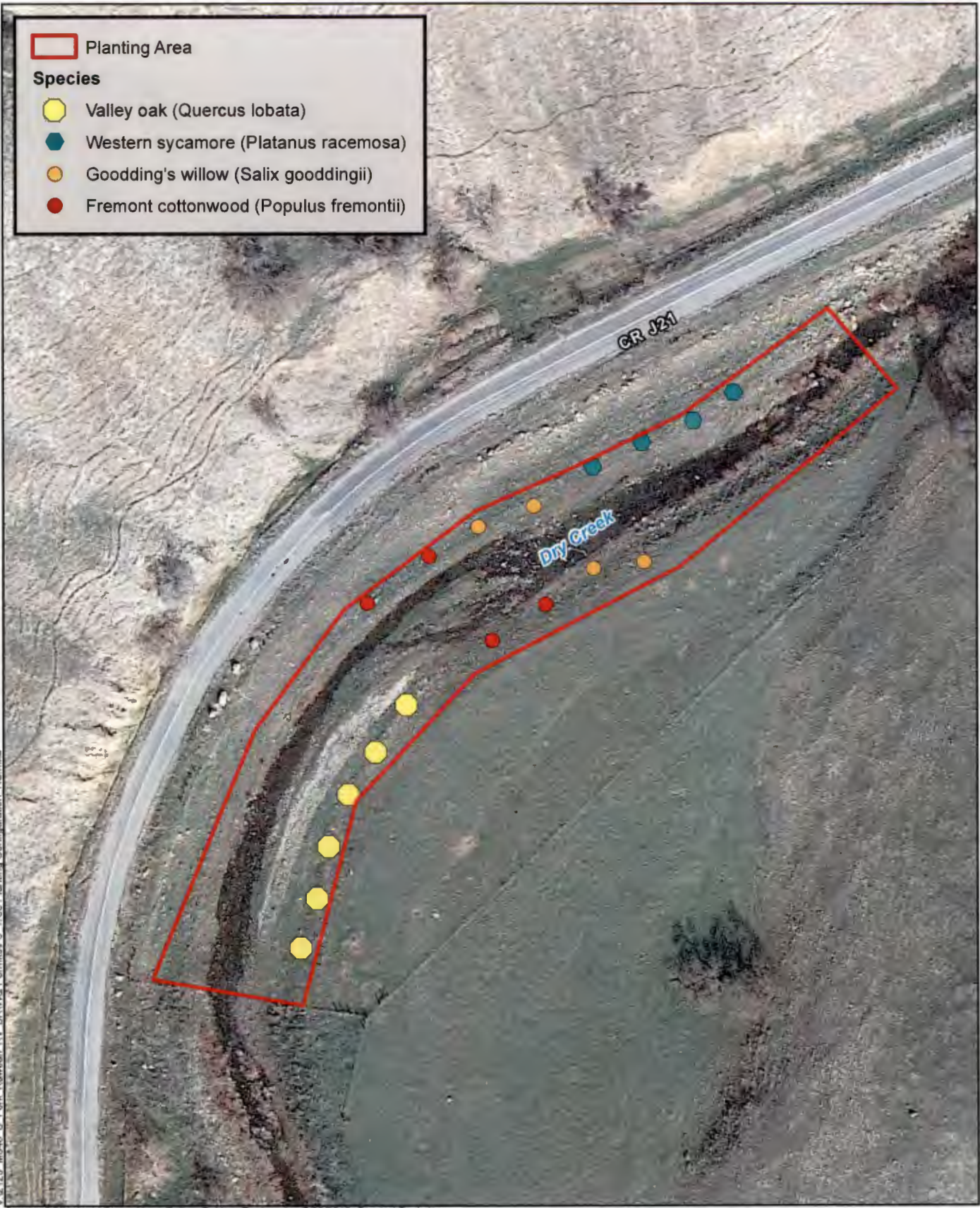


FIGURE 11
Tree Planting Configuration
Federal Project # (BRLO) 5946(114)
M348 South Fork Kaweah River Bridge Replacement Project
Tulare County, California

Chapter 4. Post Restoration Maintenance Plan

4.1. Invasive Species Control Plan

The Project Area may be invaded by invasive herbaceous and woody species. Invasive species control methods will vary depending on the target species and site conditions. As discussed in section 3.3.1 above, wood mulch would be applied to the planting locations to suppress weed competition. More mulch would be added as necessary, with weeds in the immediate vicinity of each plant hand pulled, or if necessary, treated with foliar application of post-emergent herbicide while the trees are dormant. Other plants categorized as “invasive” by the California Invasive Plant Council or “noxious” by the California Department of Food and Agriculture will be controlled by chemical, manual, or mechanical means as appropriate if they are within or nearby the restoration site. If chemical control is used, chemical applications must be registered for aquatic use given the proximity to the waterway (Dry Creek) and all pertinent state and federal laws would be followed.

Invasive species removal interval will depend on the selected method and site conditions and will be determined by SRT staff on a case by case basis.

4.2. Herbivory Protection

Installed container plants must be protected from deer, rabbits and other herbivores while they are establishing. As discussed in Section 3.3.1, oaks, sycamores, and cottonwoods are planned to be protected from herbivorous mammals by cylinders of 1/2-inch mesh aviary netting that extend below ground and plastic tree shelters aboveground. Willows will be protected by plastic tree shelters aboveground only. In addition, the restoration site may be provided a perimeter fencing to exclude deer, rabbit, and other herbivores.

4.3. Access Restriction

Currently, Homer Ranch Preserve is not open to the public on a regular basis. However, SRT does hold special events and interpretative education classes. Any special events or educational classes within the restoration site would be supervised by SRT staff. The Homer Ranch Preserve is also utilized for cattle grazing. To exclude any impact from cattle, the restoration site would be fenced to exclude cattle. Should CDFW or County want to visit the restoration site, SRT will assist with arranging a visit.

Chapter 5. Monitoring and Reporting

5.1. Long Term Monitoring

SRT will monitor the long-term success of the Project for 5 years following completion of the planting effort. The Site will be measured against set success criteria to determine if corrective actions are necessary to achieve the restoration goals.

5.1.1. Success Criteria

Success criteria for the M348 South Fork Kaweah River Bridge Replacement Project, requires a 75% success rate of required trees planted after five (5) years. The CDFW SAA requires the compensatory planting of eighteen (18) native trees. Of the required 18 trees, a 75% successful establishment would be calculated as fourteen (14) native trees. With the successful establishment of the 14 fourteen trees at the end of five years, the M348 South Fork Kaweah River Bridge Replacement Project compensatory mitigation requirements would be deemed complete.

5.1.2. Monitoring

At a minimum, the site will be monitored by SRT quarterly to maintain the site, remove invasive species, and provide any remedial actions necessary to meet the successful establishment criterion.

5.1.3. Corrective Actions

If the success criteria is not met, or are not on a trajectory to be met, one or more of the following corrective actions will be taken:

- Supplemental Planting;
- Supplemental Watering;
- Supplemental Weed Control;
- Wildlife Fencing; and/or,
- Erosion Control.

Additional corrective actions may be implemented based on the recommendation of the monitoring biologist/ecologist or regulatory agency. If at any point during the 5-year establishment period, the number of surviving oaks is less than 14, remedial actions are required to continue to meet the success criteria in Section 5.1.1, a new 5-year monitoring and reporting period shall begin.

5.2. Annual Status Report

For a minimum of five (5) years, SRT shall submit Annual Monitoring Reports to CDFW by December 31 of each year following planting documenting monitoring activity and the success of plantings in becoming established, including photo documentation. Annual reports shall describe any remedial actions required to meet the success criterion, such as subsequent plantings. Any substantial remedial plantings shall start a new five-year monitoring and reporting period to document the successful establishment of those plantings. CDFW shall review Annual Reports and after the Year 5 post-planting shall determine whether establishment requirements have been met.

Chapter 6. References

- Calflora, 2019 Calflora Online database. Available at: <http://www.calflora.org/> (accessed 7/24/2019).
- Cal-IPC 2019 California Invasive Plant Council – California Invasive Plant Inventory Database. Available at: <http://www.cal-ipc.org/ip/inventory/> (accessed 7/24/2019).
- CDFW 2019 Streambed Alteration Agreement. Notification No. 1600-2019-0080-R4. M348 South Fork Kaweah River Bridge Replacement – Tulare County.
- CDWR 2019 California Department of Water Resources – Best Available Maps. Available at: <http://gis.bam.water.ca.gov/bam/> (accessed 7/24/2019).
- NRCS 2019 Natural Resources Conservation Service – Web Soil Survey. Available at: <https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm> (accessed 7/24/2019).



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4593
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



December 30, 2019

Reed Schenke
County of Tulare
5961 South Mooney Boulevard
Visalia, California 93227

Subject: Notification of Lake or Streambed Alteration No. 1600-2019-0080-R4
M348 South Fork Kaweah River Bridge Replacement Project
South Fork Kaweah River – Tulare County

Dear Mr. Schenke:

The California Department of Fish and Wildlife (Department) received your Notification of Lake or Streambed Alteration (Notification) on April 11, 2019, and following the submittal of subsequent information, the Notification was deemed complete on August 29, 2019. The Department had until October 28, 2019 to submit a draft Lake or Streambed Alteration Agreement (Agreement) to you or inform you that an Agreement is not required. The Department did not meet that date. As a result, by law and as conveyed to your representative by email on October 30, 2019, you may complete the project described in your Notification without an Agreement.

Please note that pursuant to Fish and Game Code section 1602(a)(4)(D), if you proceed with this project, it must be the same as described and conducted in the same manner as specified in the Notification and any modifications to that Notification received by the Department in writing prior to October 28, 2019. This includes completing the project within the proposed term and seasonal work period and implementing all avoidance and mitigation measures to protect fish and wildlife resources specified in the Notification and all attachments to the Notification. If the term proposed in your Notification will expire, authorization by operation of law without an Agreement will no longer be possible, because an operation of law authorization may not be extended. Please contact the Department as soon as possible if you will not be able to implement your project as described in the Notification, including the project term. Beginning or completing a project that differs in any way from the one described in the Notification may constitute a violation of Fish and Game Code section 1602.

As proposed in the Notification, the Project will consist of activities related to the replacement of an existing single-lane bridge structure along Road M348 and over the South Fork Kaweah River, in Tulare County. The existing 82-foot long and 12-foot wide Bailey Truss Bridge will be replaced with a 95-foot long and 18-foot wide steel girder bridge with cast-in-place or precast deck. Temporary supports during construction will require diversion of river flow, and rock slope protection will be installed to protect the bridge embankments. All Project activities will be completed according to the details

Conserving California's Wildlife Since 1870

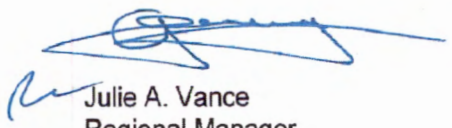
provided in the Notification and subsequent additions or changes to the Notification. The Project will require approximately 240 work days and will be completed by August 31, 2024.

Also note that while you are entitled to complete the project without an Agreement, you are still responsible for complying with other applicable local, State, and federal laws. These include, but are not limited to, Fish and Game Code sections 2080 *et seq.* (species listed as threatened or endangered, or a candidate for listing under the California Endangered Species Act); section 1908 (rare native plants); sections 3511, 4700, 5050, and 5515 (fully protected species); section 3503 (bird nests and eggs); section 3503.5 (birds of prey); section 5650 (water pollution); section 5652 (refuse disposal into water); section 5901 (fish passage); section 5937 (sufficient water for fish); and section 5948 (obstruction of stream).

Finally, if you decide to proceed with your project without an Agreement, you must have a copy of this letter and your Notification with all attachments available at all times at the work site.

If you have any questions regarding this matter, you may contact the Lake and Streambed Alteration Program, at (559) 243-4593 or R4LSA@wildlife.ca.gov.

Sincerely,



Julie A. Vance
Regional Manager

Exhibit B

Project Cost

[Attached On Following Page]

Sequoia Riverlands Trust: Quote for Offsite Mitigation Services for M348 over Kaweah River Bridge Replacement

ITEM	Project Planning & Coordination	Site Prep / Install at Homer Ranch Preserve	Site Maintenance & Monitoring	TOTAL	COMMENTS
SRT Personnel					
Executive Director	\$545.72	\$0.00	\$2,728.60	\$3,274.32	Assists with project design and planning, cost estimating, etc
Director of Stewardship	\$1,146.36	\$0.00	\$2,865.90	\$4,012.26	
Director of Land Acquisitions	\$1,398.78	\$0.00	\$388.55	\$1,787.33	
Director of Mitigation and Land Management	\$544.96	\$817.44	\$681.20	\$2,043.60	Project planning, fence repair, cattle management
Land Steward/ Project Manager	\$2,542.00	\$3,177.50	\$25,420.00	\$31,139.50	Qualified biologist, project manager, oversees field work, performs monitoring and maintenance
Volunteer Coordination and Oversight	\$239.60	\$2,396.00	\$3,594.00	\$6,229.60	Coordinates, manages, and oversees volunteers
Field Technicians	\$257.36	\$1,029.44	\$14,476.50	\$15,763.30	Plant installation and monitoring, hand-watering
Conservation Project Manager	\$294.30	\$0.00	\$1,471.50	\$1,765.80	GIS mapping, annual reporting
Financial Managers	\$474.72	\$0.00	\$3,560.40	\$4,035.12	Finance Director & Assistant -- contracting, project cost accounting, billing, payments
TOTALS	\$7,443.80	\$7,420.38	\$55,186.65	\$70,050.83	
Contract Service Expenses					
Fencing, biological consultation	\$0.00	\$5,000.00	\$6,000.00	\$11,000.00	Cattle exclusion fence and access gates (site prep), any necessary outside biological consultation or soil surveying (Site maintenance and monitoring)
Materials & Supplies					
Portion of ArcGIS subscription	\$50.00	\$0.00	\$250.00	\$300.00	ESRI subscription for monitoring and mapping
Nursery plants	\$0.00	\$420.00	\$420.00	\$840.00	Mortality replacement at \$10/plant, includes nursery labor and supplies
Supplies	\$0.00	\$1,000.00	\$2,000.00	\$3,000.00	wood chip mulch, plant protection, gas/oil for weed trimmers and power equipment, fence repair
Equipment Maintenance	\$0.00	\$0.00	\$900.00	\$900.00	maintain weed trimmers and other power equipment
Mileage	\$161.28	\$161.00	\$3,870.72	\$4,193.00	\$0.56/mile (48 miles round-trip), 2 trips/month *Note: actual IRS reimbursement rate will be used for invoicing
Administrative (Indirect Charge) -	\$765.51	\$1,400.14	\$6,862.74	\$9,028.38	
TOTALS	\$8,420.59	\$15,401.52	\$75,490.11	\$99,312.21	
10% Contingency					\$9,931.22
TOTAL					\$109,243.43
<i>Lump Sum Payment Due When Mitigation Services Agreement Is Executed (including contingency)</i>					\$26,204.32
<i>Not to Exceed Amount for Monitoring & Maintenance Period (including contingency)</i>					\$83,039.12

Exhibit C

Insurance Requirements

[Attached On Following Page]

Exhibit C

PROFESSIONAL SERVICES CONTRACTS **INSURANCE REQUIREMENTS**

CONTRACTOR shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CONTRACTOR, his agents, representatives, employees and subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance

1. Coverage at least as broad as Commercial General Liability, Insurance Services Office Commercial General Liability coverage occurrence form GC 00 01, with limits no less than \$1,000,000 per occurrence including products and completed operations, property damage, bodily injury and personal & advertising injury. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability of \$1,000,000 per occurrence including any auto or, if the CONTRACTOR has no owned autos, hired and non-owned auto coverage. If an annual aggregate applies it must be no less than \$2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions) insurance appropriate to the CONTRACTOR's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

B. Specific Provisions of the Certificate

1. If the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
2. CONTRACTOR must submit endorsements to the General Liability reflecting the following provisions:
 - a. *The COUNTY, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects liability arising out of work or operations performed by or on behalf of the CONTRACTOR including material, parts, or equipment furnished in connection with such work or operations.*
 - b. *For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.*
 - c. *CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of CONTRACTOR may acquire against the county by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.*

d. Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled, except after written notice has been provided to the COUNTY.

3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONTRACTOR, its employees, agents and subcontractors. CONTRACTOR waives all rights against the COUNTY and its officers, agents, officials, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.

C. Deductibles and Self-Insured Retentions

Deductibles and Self-insured retentions must be declared and any deductible or self-insured retention that exceeds \$100,000 will be reviewed by the COUNTY Risk Manager for approval.

D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A-VII and a Standard & Poor's Rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.

E. Verification of Coverage

Prior to approval of this Agreement by the COUNTY, the CONTRACTOR shall file with the submitting department, certificates of insurance with original endorsements effecting coverage in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.

WAIVERS:

I represent and attest that I am a person authorized to make representations on behalf of the CONTRACTOR, and represent the following:

(mark X if applicable)

☐ Automobile Exemption: I certify that _____ does not own nor use vehicles in the performance of the agreement for which this insurance requirement is attached.

☐ Workers' Compensation Exemption: I certify that _____ is not required to carry workers' compensation coverage or has filed an exemption with the State of California as required by law.

I acknowledge and represent that we have met the insurance requirements listed above.

Print Name Robert Scott Spear Date: 6/8/21

Contractor Name Sequoia Riverlands Trust

Signature 

Exhibit D

Federal-Aid Contract Language for Construction Contracts

[Attached On Following Page]

1. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

The contractor, subrecipient or subcontractor shall take necessary and reasonable steps to ensure that DBEs have opportunity to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, the Agency shows a contract goal for DBEs. The prime contractor shall make work available to DBEs and select work parts consistent with available DBE subcontractors and suppliers.

The prime contractor shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal.

It is the prime contractor's responsibility to verify that the DBE firm is certified as DBE at date of bid opening and document the record by printing out the California Unified Certification Program (CUCP) data for each DBE firm. A list of DBEs certified by the CUCP can be found [here](#).

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

Credit for materials or supplies the prime contractor purchases from DBEs counts towards the goal in the following manner:

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

The prime contractor receives credit towards the goal if they employ a DBE trucking company that performs a commercially useful function as defined in 49 CFR 26.55(d)(1) as follows:

- The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.
- The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.
- The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.
- A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

a. Nondiscrimination Statement

The contractor, subrecipient or subcontractor will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the Local Agency components of the DBE Program Plan, the contractor, subrecipient or subcontractor will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

b. Contract Assurance

Under 49 CFR 26.13(b):

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

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. Prompt Progress Payment

The prime contractor or subcontractor shall pay to any subcontractor, not later than **seven days** after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, the prime contractor or subcontractor may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subcontractor, of 2 percent of the amount due per month for every month that payment is not made.

In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subcontractors.

d. Prompt Payment of Withheld Funds to Subcontractors

The Agency may hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the Agency, of the contract work, and pay retainage to the prime contractor based on these acceptances. The Agency shall designate one of the methods below in the contract to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor. The Agency shall include either Method 1, Method 2, or Method 3 below and delete the other two.

Method 1: No retainage will be held by the Agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the Agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code and Section 10262 of the California Public Contract Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Method 2: No retainage will be held by the Agency from progress payments due to the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the Agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code and Section 10262 of the California Public Contract Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Method 3: The Agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the Agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within seven (7) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the Agency. Any delay or postponement of payment may take place only for good cause and with the Agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code and Section 10262 of the California Public Contract Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Any violation of these provisions shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified therein. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

e. Termination and Substitution of DBE Subcontractors

The prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains the Agency's written consent. The prime contractor shall not terminate or substitute a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without prior written authorization from the Agency. Unless the Agency's prior written consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 15-G Construction Contract DBE Commitment form, included in the Bid.

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

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

The prime contractor shall notify the original DBE of the intent to use other forces or material sources and provide the reasons, allowing the DBE 5 days to respond to the notice and advise the prime contractor and the Agency of the reasons why the use of other forces or sources of materials should not occur.

The prime contractor's request to use other forces or material sources must include:

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

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

f. Commitment and Utilization

Note: In the Agency's reports of DBE participation to Caltrans, the Agency must display both commitments and attainments.

The Agency's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization.

The bidder shall submit the Exhibit 15-G Construction Contract DBE Commitment, included in the Bid book. This exhibit is the bidder's DBE commitment form. If the form is not submitted with the bid, the bidder must remove the form from the Bid book before submitting their bid.

The bidder shall complete and sign Exhibit 15-G Construction Contract DBE Commitment included in the contract documents regardless of whether DBE participation is reported. The bidder shall provide written confirmation from each DBE that the DBE is participating in the Contract. A copy of a DBE's quote serves as written confirmation. If a DBE is participating as a joint venture partner, the bidder shall submit a copy of the joint venture agreement.

If the DBE Commitment form, Exhibit 15-G, is not submitted with the bid, it must be completed and submitted by all bidders to the Agency within five (5) days of bid opening. If the bidder does not submit the DBE Commitment form within the specified time, the Agency will find the bidder's bid nonresponsive.

The prime contractor shall use each DBE subcontractor as listed on Exhibit 12-B Bidder's List of Subcontractors (DBE and Non-DBE), and Exhibit 15-G Construction Contract DBE Commitment form unless they receive authorization for a substitution.

The Agency shall request the prime contractor to:

1. Notify the Resident Engineer or Inspector of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
 - Name and business address of each 1st-tier subcontractor
 - Name and business address of each DBE subcontractor, DBE vendor, and DBE trucking company, regardless of tier
 - Date of payment and total amount paid to each business (see Exhibit 9-F Monthly Disadvantaged Business Enterprise Payment)

If the prime contractor is a DBE contractor, they shall include the date of work performed by their own forces and the corresponding value of the work.

Before the 15th of each month, the prime contractor shall submit a Monthly DBE Trucking Verification (LAPM Exhibit 16-Z1) form.

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

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

g. DBE RUNNING TALLY OF ATTAINMENTS

After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime contractor/consultant shall complete and email the Exhibit 9- F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to the Agency.

- 2. CONTRACT AWARD** If the Agency awards the contract, the award is made to the lowest responsible and responsive bidder.

3. CONTRACTOR LICENSE

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

4. BEGINNING OF WORK, TIME OF COMPLETION AND LIQUIDATED DAMAGES

The Contractor shall begin work within 15 calendar days after the issuance of the Notice to Proceed.

This work shall be diligently prosecuted to completion before the expiration of _____ WORKING DAYS beginning on the fifteenth calendar day after the date shown on the Notice to Proceed.

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

5. BUY AMERICA

Furnish steel and iron materials to be incorporated into the work with certificates of compliance and certified mill test reports. Mill test reports must indicate where the steel and iron were melted and manufactured. Steel and iron materials must be produced in the U.S. except:

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

Production includes:

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

6. QUALITY ASSURANCE

The Local Agency uses a Quality Assurance Program (QAP) to ensure a material is produced to comply with the Contract. The Local Agency may examine the records and reports of tests the prime contractor performs if they are available at the job site. Schedule work to allow time for QAP.

7. PROMPT PAYMENT FROM THE AGENCY TO THE CONTRACTORS

The Agency shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract. If the Agency fails to pay promptly, the Agency shall pay interest to the contractor, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. Upon receipt of a payment request, the Agency shall act in accordance with both of the following:

1. Each payment request shall be reviewed by the Agency as soon as practicable after receipt for the purpose of determining that it is a proper payment request.
2. Any payment request determined not to be a proper payment request suitable for payment shall be returned to the contractor as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

8. FEMALE AND MINORITY GOALS

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

The nationwide goal for female utilization is 6.9 percent.

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

MINORITY UTILIZATION GOALS

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

178	Stockton-Modesto, CA:	
	SMSA Counties:	
	5170 Modesto, CA	12.3
	CA Stanislaus	
179	8120 Stockton, CA	24.3
	CA San Joaquin	
	Non-SMSA Counties	19.8
	CA Alpine; CA Amador; CA Calaveras; CA Mariposa; CA Merced; CA Tuolumne	
179	Fresno-Bakersfield, CA	
	SMSA Counties:	
	0680 Bakersfield, CA	19.1
	CA Kern	
	2840 Fresno, CA	26.1
	CA Fresno	
180	Non-SMSA Counties:	23.6
	CA Kings; CA Madera; CA Tulare	
180	Los Angeles, CA:	
	SMSA Counties:	
	0360 Anaheim-Santa Ana-Garden Grove, CA	11.9
	CA Orange	
	4480 Los Angeles-Long Beach, CA	28.3
	CA Los Angeles	
	6000 Oxnard-Simi Valley-Ventura, CA	21.5
	CA Ventura	
	6780 Riverside-San Bernardino-Ontario, CA	19.0
	CA Riverside; CA San Bernardino	
	7480 Santa Barbara-Santa Maria-Lompoc, CA	19.7
	CA Santa Barbara	
181	Non-SMSA Counties	24.6
	CA Inyo; CA Mono; CA San Luis Obispo	
181	San Diego, CA:	
	SMSA Counties	
	7320 San Diego, CA	16.9
	CA San Diego	
181	Non-SMSA Counties	18.2
	CA Imperial	

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

9. TITLE VI ASSURANCES

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

- a. Compliance with Regulations: CONTRACTOR shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.

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

CONTRACTOR shall take such action with respect to any sub-agreement or procurement as the California Department of Transportation or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONTRACTOR may request the California Department of Transportation enter into such litigation to protect the interests of the State, and, in addition, CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

Exhibit E

Provisions Federal-Aid Construction Contracts

(FHWA-1273 Revised May 1, 2012)

[Attached On Following Page]

FHWA-1273 – Revised May 1, 2012

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

- I. General
- II. Nondiscrimination
- III. No segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Government wide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

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

I. GENERAL

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

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

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

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.
4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

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

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

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

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

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

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

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

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

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

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

- a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
- b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
- c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.
- d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
- e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

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

- a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.
- b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

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

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

- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

- a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.
- b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).
- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

FHWA-1273 – Revised May 1, 2012

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

- a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
- b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
- c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.
- d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

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

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

- a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.
- b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

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

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

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

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

- (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
 - (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
 - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.
- b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

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

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

FHWA-1273 -- Revised May 1, 2012

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

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

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

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (ii) The classification is utilized in the area by the construction industry; and
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

FHWA-1273 – Revised May 1, 2012

2. Withholding

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

3. Payrolls and basic records

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

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and

current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

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

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

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

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

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

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

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

FHWA-1273 -- Revised May 1, 2012

4. Apprentices and trainees**a. Apprentices (programs of the USDOL).**

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

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

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

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

b. Trainees (programs of the USDOL).

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

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

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

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

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.**d. Apprentices and Trainees (programs of the U.S. DOT).**

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

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

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

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

FHWA-1273 – Revised May 1, 2012

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

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

10. Certification of eligibility.

- a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).
- a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:
 - (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
 - (2) the prime contractor remains responsible for the quality of the work of the leased employees;
 - (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
 - (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.
- b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.
4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.
5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

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

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

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

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

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

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

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

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

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

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

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

FHWA-1273 -- Revised May 1, 2012

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

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

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause or default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered

transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.
 - i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 - j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
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2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

- a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
 - (2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and
 - (4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

FHWA-1273 – Revised May 1, 2012

2. Instructions for Certification - Lower Tier Participants:

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

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and normally possessed by a prudent person in the ordinary course of business dealings.

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

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

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed information of participant is not required to exceed that which is \$100,000 and that all such recipients shall certify and disclose accordingly.

Exhibit F

Title VI Assurances

(Appendices A-E)

[Attached On Following Page]

APPENDIX A

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

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, age, sex, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitation for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, national origin, age, sex, or disability.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 1. withholding payments to the contractor under the contract until the contractor complies; and/or
 2. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the California Department of Transportation will accept title to the lands and maintain the project constructed thereon in accordance with Title 23 U.S.C., the regulations for the administration of the preceding statute, and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the California Department of Transportation all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the California Department of Transportation and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the California Department of Transportation, its successors and assigns.

The California Department of Transportation, in consideration of the conveyance of said lands and interest in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the California Department of Transportation will use the lands and interests in lands and interest in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said lands, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the California Department of Transportation pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
 - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, the California Department of Transportation will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*

C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the California Department of Transportation will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the California Department of Transportation and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE.ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by the California Department of Transportation pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishings of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits or, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.) in the event of breach of any of the above of the above Non-discrimination covenants, the California Department of Transportation will have the right to terminate the (license, permits, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the California Department of Transportation will there upon revert to and vest in and become the absolute property of the California Department of Transportation and its assigns.

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities, including, but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations 49 C.F.R. parts 37 and 38;

- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq*).

Exhibit G
Construction Contract DBE Commitment
(Exhibit 15-G)

[Attached On Following Page]

EXHIBIT 15-G CONSTRUCTION CONTRACT DBE COMMITMENT

1. Local Agency: County of Tulare 2. Contract DBE Goal: 0 %
3. Project Description: Off-site revegetation and habitat restoration for the M348 South Fork Kaweah River Bridge Project
4. Project Location: Sequoia Riverlands Trust, Homer Ranch Preserve located approximately 17 miles from the Bridge Project Site
5. Bidder's Name: Sequoia Riverlands Trust 6. Prime Certified DBE: ☐ 7. Bid Amount: \$ 109,243.43
8. Total Dollar Amount for **ALL** Subcontractors: \$ 0.00 9. Total Number of **ALL** Subcontractors: 0

10. Bid Item Number	11. Description of Work, Service, or Materials Supplied	12. DBE Certification Number	13. DBE Contact Information (Must be certified on the date bids are opened)	14. DBE Dollar Amount
				\$ 0.00
Local Agency to Complete this Section upon Execution of Award			15. TOTAL CLAIMED DBE PARTICIPATION	\$ 0.00
21. Local Agency Contract Number: <u>TBD</u> 22. Federal-Aid Project Number: <u>BRLO (189)</u> 23. Bid Opening Date: <u>N/A - Sole Source - PIF</u> 24. Contract Award Date: <u>N/A - Sole Source - PIF</u> 25. Award Amount: <u>\$ 109,243.43</u>				0.00 %
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate. <u>Juan Carmona</u> 06/9/2021 26. Local Agency Representative's Signature 27. Date <u>Juan Carmona</u> 559-624-7149 28. Local Agency Representative's Name 29. Phone <u>Contract Administrator</u> 30. Local Agency Representative's Title			IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Names of the First Tier DBE Subcontractors and their respective item(s) of work listed above must be consistent, where applicable with the names and items of the work in the "Subcontractor List" submitted with your bid. Written confirmation of each listed DBE is required. <u>Robert Scott Spear</u> 6/8/21 16. Preparer's Signature 17. Date <u>Robert Scott Spear</u> 559-738-0211 18. Preparer's Name 19. Phone <u>Acting Executive Director, SRT</u> 20. Preparer's Title	

DISTRIBUTION: 1. Original – Local Agency
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.
 3. Include additional copy with award package.

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS – CONSTRUCTION CONTRACT DBE COMMITMENT**CONTRACTOR SECTION**

- 1. Local Agency** - Enter the name of the local agency that is administering the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project Location** - Enter the project location(s) as it appears on the project advertisement.
- 4. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
- 5. Bidder's Name** - Enter the contractor's firm name.
- 6. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
- 7. Bid Amount** - Enter the total contract bid dollar amount for the prime contractor.
- 8. Total Dollar Amount for ALL Subcontractors** – Enter the total dollar amount for all subcontracted contractors. SUM = (DBEs + all Non-DBEs). Do not include the prime contractor information in this count.
- 9. Total number of ALL subcontractors** – Enter the total number of all subcontracted contractors. SUM = (DBEs + all Non-DBEs). Do not include the prime contractor information in this count.
- 10. Bid Item Number** - Enter bid item number for work, services, or materials supplied to be provided.
- 11. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime contractor's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 12. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
- 13. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted contractors. Also, enter the prime contractor's name and phone number, if the prime is a DBE.
- 14. DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime contractor if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
- 15. Total Claimed DBE Participation - \$:** Enter the total dollar amounts entered in the "DBE Dollar Amount" column. **%:** Enter the total DBE participation claimed ("Total Claimed DBE Participation Dollars" divided by item "Bid Amount"). If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
- 16. Preparer's Signature** - The person completing the DBE commitment form on behalf of the contractor's firm must sign their name.
- 17. Date** - Enter the date the DBE commitment form is signed by the contractor's preparer.
- 18. Preparer's Name** - Enter the name of the person preparing and signing the contractor's DBE commitment form.
- 19. Phone** - Enter the area code and phone number of the person signing the contractor's DBE commitment form.
- 20. Preparer's Title** - Enter the position/title of the person signing the contractor's DBE commitment form.

LOCAL AGENCY SECTION

- 21. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 22. Federal-Aid Project Number** - Enter the Federal-Aid Project Number(s).
- 23. Bid Opening Date** - Enter the date contract bids were opened.
- 24. Contract Award Date** - Enter the date the contract was executed.
- 25. Award Amount** – Enter the contract award amount as stated in the executed contract.
- 26. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Contractor Section of this form is complete and accurate.
- 27. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 28. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the contractor's DBE commitment form.
- 29. Phone** - Enter the area code and phone number of the person signing the contractor's DBE commitment form.

30. Local Agency Representative Title - Enter the position/title of the Local Agency Representative certifying the contractor's DBE commitment form.