

**STANDARD AGREEMENT**

STD 213 (Rev 06/03)

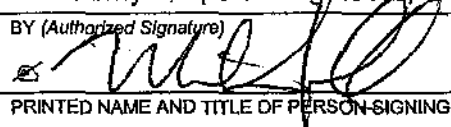
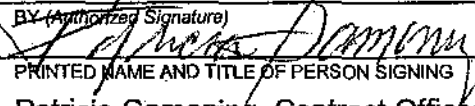
SEP 17 2010

AGREEMENT NUMBER  
43A0275 TO 002  
REGISTRATION NUMBER

- This Agreement is entered into between the State Agency and the Contractor named below:  
 STATE AGENCY'S NAME: **California Department of Transportation (hereinafter known as Department or Caltrans)**  
 CONTRACTOR'S NAME: **U.S. Army Corps of Engineers, Sacramento District (USACE) (hereinafter also known as Contractor)**
- The term of this Agreement is: **July 16, 2010** or upon DGS approval, through **September 30, 2012** whichever is later
- The maximum amount of this Agreement is: **\$1,258,657.86**  
 One Million Two Hundred Fifty Eight Thousand Six Hundred Fifty Seven Dollars and Eighty Six Cents
- The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

The entire Memorandum of Agreement is contained on the following 35 pages.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

<b>CONTRACTOR</b>		California Department of General Services Use Only  <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">           APPROVED            SEP - 9 2010         </div> DEPT OF GENERAL SERVICES
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) <b>U.S. Army Corps of Engineers, Sacramento District (USACE)</b>		
BY (Authorized Signature) 	DATE SIGNED (Do not type) <b>20 Aug 10</b>	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Michael S. Jewell</b>		
ADDRESS <b>USACOE-Sacramento District office 1325 "J" Street Sacramento, CA 95814-2922</b>		
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME <b>Department of Transportation</b>		
BY (Authorized Signature) 	DATE SIGNED (Do not type) <b>8-23-10</b>	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Patricia Gamoning, Contract Officer</b>		<input type="checkbox"/> Exempt per:
ADDRESS: <b>1727 30<sup>th</sup> Street Sacramento, CA 95816</b>		



**MEMORANDUM OF AGREEMENT  
BETWEEN  
CALIFORNIA DEPARTMENT OF TRANSPORTATION  
AND  
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT**

THIS MEMORANDUM OF AGREEMENT ("MOA") is entered into as of this 16<sup>th</sup> day of July 2010, between the California Department of Transportation (hereinafter the "Caltrans") and the Department of the Army, represented by the United States Army Corps of Engineers, Sacramento District (hereinafter the "Corps"), collectively referred to as "the Parties."

**RECITALS**

WHEREAS, the Corps has jurisdiction over certain activities occurring in waters of the United States, including wetlands; and

WHEREAS, Section 214 of the Federal Water Resources Development Act of 2000, Public Law 106-541 ("WRDA 2000"), as amended by Public Law 111-120, provides as follows:

(a) In general. - The Secretary [of the Army], after public notice, may accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits under the jurisdiction of the Department of the Army.

(b) Effect on permitting. - In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decision-making with respect to permits, either substantively or procedurally.

(c) Duration of authority. - The authority provided under this section shall be in effect from December 31, 2009 through December 31, 2010; and

WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out Section 214 of the WRDA 2000 to the Chief of Engineers and his delegated representatives; and

WHEREAS, the Chief of Engineers, by memorandum dated March 29, 2004, as modified October 1, 2008, has authorized the District and Division Engineers of the Corps to accept and expend funds contributed by non-Federal entities subject to certain limitations; and

WHEREAS, Caltrans is a non-Federal public entity and requires expedited and priority review of certain projects by the Corps; and

WHEREAS, the Corps has indicated that it is not able, without additional resources, to expedite the evaluation of Caltrans projects; and

WHEREAS, Caltrans believes it is in the best interests of the taxpayers of the State of California to provide funds to the Corps to streamline and expedite Corps environmental review under

section 404 of the Clean Water Act ("CWA") and/or section 10 of the Rivers and Harbors Act ("RHA") for Caltrans-designated priority projects; and

WHEREAS, Caltrans and the Corps have entered into Standard Agreement 43A0275 ("Standard Agreement") attached as **Appendix A**, and incorporated by this reference, through which Caltrans is providing funding to the Corps; and

WHEREAS, this MOA establishes the responsibilities and operating procedures of the Parties with respect to priority reviews and other activities covered in the Standard Agreement; and

WHEREAS, this MOA is intended to: (1) enable the Parties to fully consider, address, and protect environmental resources early in the development of proposed transportation actions; (2) avoid conflicts late in project development through close coordination during early transportation planning and development stages; (3) provide sufficient information to the Corps for timely analysis of project effects and to assist Caltrans in developing appropriate mitigation measures; (4) maximize the effective use of limited Corps personnel resources by focusing attention on projects that would most affect aquatic resources; (5) provide a mechanism for expediting project coordination when necessary; and (6) provide procedures for resolving disputes in this resource partnering effort.

NOW, THEREFORE, the Parties agree as follows:

## AGREEMENT

### Article I. - PURPOSE AND AUTHORITIES

A. This MOA is entered into by the Parties for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the acceptance and expenditure of funds contributed by Caltrans to provide expedited permit evaluation-related services for Caltrans-designated priority projects under the jurisdiction of the Corps. This MOA is not intended as the exclusive means of obtaining review of Caltrans' projects. This MOA is a vehicle by which Caltrans will obtain expedited permit evaluation-related services outside of the ordinary Corps review process.

B. The Corps enters into this MOA pursuant to the authority granted under section 214 WRDA 2000, as amended. Caltrans enters into this MOA pursuant to authority granted under state law.

### Article II. - SCOPE OF WORK

A. Caltrans will provide funds to the Corps to expedite permit evaluation related services for Caltrans-designated priority projects under the jurisdiction of the Corps. The Corps' regulatory program is funded as a Congressionally appropriated line item in the annual Federal budget. Funds received from Caltrans will be added to the Corps' regulatory budget in accordance with the provisions of section 214 of WRDA 2000.

The Corps will provide staffing resources exclusively dedicated to expediting permit evaluation related services, as described in Article II.D., below, for Caltrans-designated priority projects and/or other programmatic efforts to support efficient decision-making related to Caltrans' CWA section 404 and/or RHA section 10 permitting needs.

B. The Corps will establish a separate internal financial account to track receipt and expenditure of the funds associated with its review of permit applications submitted by Caltrans. Corps regulatory personnel will charge their time and expenses against the account when they perform work to either expedite evaluation of permit applications designated by Caltrans as a priority or undertake other programmatic efforts to support efficient decision-making related to Caltrans' CWA section 404 and/or RHA section 10 permitting needs. Corps regulatory personnel will focus on the work as prioritized by Caltrans, and if no or few projects are designated by Caltrans as a priority, Corps personnel will then work on other programmatic efforts for Caltrans.

C. Funds contributed by Caltrans hereunder will be expended by the Corps to defray the costs of regulatory staff (including salary, associated benefits, overhead and travel expenses) and other costs in order to expedite the evaluation of priority permit applications designated by Caltrans. Such activities will include, but not be limited to, the following: jurisdictional determinations; site visits; travel; federal register preparation; public notice preparation and distribution; public hearings; preparation of correspondence; public interest review; preparation and review of environmental documentation; meetings with Caltrans and resource agencies; and any other permit evaluation related responsibilities that may be mutually agreed upon.

D. The Corps may expend Caltrans funds to hire contractors to perform select duties, including but not limited to site visits; preparing and providing technical materials, including environmental documentation; GIS-related services; and meeting coordination for the purpose of augmenting the resources available to the Corps for expediting priority projects and activities designated by the Caltrans. If such expenditures, when combined with the costs of the regulatory staff specified in Article II.D, require funding in excess of the amount available under the Standard Agreement and/or this MOA, then said contractors shall not be hired by the Corps until and unless additional funds are provided by Caltrans and the Parties execute a written amendment to the Standard Agreement and/or this MOA, as appropriate.

E. The Corps will *not* expend Caltrans funds for costs associated with the review of Regulatory Project Managers' work by supervisors or other persons or elements of the Corps in the decision-making chain of command. However, if a supervisor is performing staff work and not supervisory oversight, funds may be used. The Corps will *not* expend funds contributed by Caltrans to defray the costs of activities related to the Corps' enforcement functions, but *may* use Caltrans funds to defray costs of activities related to compliance functions.

F. If the funds provided by Caltrans are expended and not replenished, any remaining priority permit applications will be handled like those of any permit applicant, in a manner decided by the assigned Regulatory Project Manager and his or her supervisor.

### Article III. - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the Parties, each party will appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on specific actions or issues. Each party will issue a letter to the other designating the Principal Representative for each party within fifteen (15) days of MOA execution. The Principal Representative for each party may be changed upon written notification to the other party.

### Article IV. - RESPONSIBILITIES OF THE PARTIES

A. Caltrans will provide adequate resources, though the Standard Agreement and this MOA, to fund additional Corps staff for the purpose of timely review of designated priority projects and other identified activities. To facilitate the Corps' reviews and activities, Caltrans will:

1. Identify individual projects and other activities requiring priority involvement by the Corps under this MOA. A list and accompanying statement of priority will be provided at an initial meeting between the Parties. The Parties will review the list and revise it as necessary at quarterly meetings described below.
2. Actively engage Corps personnel in early coordination, consultation, scoping, planning, and development of Caltrans designated priority projects through various means, including, but not limited to; pre-application meetings, field visits, conference calls, video teleconferencing, and electronic correspondence. Additional pre-application meetings and field reviews should be scheduled as needed. Early coordination, consultation, scoping and planning meetings will be used to discuss the project, avoidance and minimization measures, milestones, schedule, and any other issues that will ensure the Corps' timely review.
3. Provide adequate information regarding projects and other specific activities to initiate permit evaluation. Information required for the Corps to deem a permit application complete thereby allowing initiation of the permit review process can be found in Corps regulations at 33 C.F.R. §§ 325.1(d), 325.3(a), and in General Condition 27 of the Nationwide Permit Program as published in the Federal Register (72 Fed. Reg. 11194, dated March 12, 2007). Nationwide permit requests shall be submitted using the Corps' South Pacific Division's Pre-Construction Notification Form, as appropriate. Upon request, Caltrans shall provide additional information necessary to complete the application and/or pre-construction notification. If additional information [33 C.F.R. § 325.1(e) or General Condition 27 ] is requested by the Corps, Caltrans shall provide such additional information necessary to ensure the Corps can effectively accomplish the required review (see Appendix D for a list of recommended additional information to be submitted with the application/pre-construction notification to assist the Corps in expediting the permit evaluation process).
4. In consultation with the Corps, establish realistic schedules for the Corps' involvement in designated priority projects. Work closely with the Corps to resolve workload conflicts and adjust project priorities and schedules in order to make optimal use of available Regulatory Program staff resources. If overlaps or conflicts occur in the schedules for

designated priority projects, Caltrans will work with the Corps to resolve such overlaps or schedule conflicts.

5. Request meetings in writing to the Corps by mail or e-mail. Meeting requests must provide sufficient lead-time for scheduling and establishing travel authorizations. Such requests must include an agenda that clearly characterizes what is expected from the Corps' participation and the desired outcome of the meeting. Written materials attached to the request must contain sufficient information to enable the Corps staff to prepare for, and actively participate in the meeting.

6. Request the Corps' participation in the National Environmental Policy Act/CWA Section 404 integration process in writing, in accordance with the April 2006 Memorandum of Understanding titled *National Environmental Policy Act and Clean Water Act Section 404 Integration Process for Federal Aid Surface Transportation Projects in California* ("Integration MOU").

7. Identify one lead representative from each of the Caltrans district offices to attend the quarterly coordination meetings with the Corps either in person, via telephone, or videoconference and to serve as the Caltrans representative for coordination of permit-related activities for designated priority project.

8. Coordinate quarterly meetings between the Corps and the Caltrans Districts and headquarters.

9. Participate, to the extent allowable and at Caltrans' own expense, in Corps sponsored training.

B. The Corps shall supplement or reassign its existing Regulatory Program personnel, which currently reviews Caltrans projects on a routine basis, with qualified personnel within projected funding levels provided by Caltrans pursuant to the Standard Agreement. The Corps shall use the funds provided to defray the costs of salaries and associated benefits and to reimburse travel expenses in order to:

1. Participate actively with Caltrans and other federal, state, and local agencies in pre-application coordination, consultation, scoping, planning, and development of Caltrans projects by attending pre-application meetings and field reviews, when requested, and identifying critical issues, key decision points, and potential conflicts as early as possible. Additional pre-application meetings and field reviews should be scheduled as needed. Participation includes sharing, when appropriate, the most current regulatory and aquatic resources information. The level of participation will be determined by the project's relative priority as identified on the project list provided by Caltrans pursuant to paragraph IV.A.1. above.

2. Participate in State and regional level transportation planning meetings, their related activities, and the review of the environmental elements of any planning documents, as requested. The level of participation will be determined by the project's relative priority as identified on the project list provided by Caltrans pursuant to paragraph IV.A.1. above.

3. As appropriate, use a coordinated process as required under section 6002 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users, the Integration MOU or another mutually agreed upon process to develop and review draft and final environmental impact statements and other environmental documents, and provide timely agency comments.
4. Participate actively in the development of programmatic approaches to address CWA and other environmental issues and prepare for emergency situations.
5. Attend appropriate training sponsored by Caltrans and/or Federal Highway Administration (FHWA).
6. Follow the process established by and comply with the terms of the Integration MOU upon request by Caltrans submitted in accordance with paragraph IV.A.6. above.
7. Consult with Caltrans regarding an adjustment of priorities if the current and/or projected workload of projects and activities exceeds the Corps' ability to provide the services specified herein or negotiate additional funding in accordance with paragraph VI.E.
8. In accordance with the Standard Agreement, Exhibit D, paragraph 2, provide quarterly progress reports to Caltrans documenting all pending Caltrans permit applications and all permit decisions completed during the quarter for Caltrans projects. For the list of completed actions, the processing time for each permit application will also be included. In addition, these progress reports shall include a summary of expenditures under this MOA, for the period covered by the progress report and cumulatively for both the current federal fiscal year and for the life of the MOA.
9. At the conclusion of services under this MOA, provide a final statement of expenditures for the MOA in accordance with the Standard Agreement, Exhibit B, paragraph 3.G. including a summary report of progress made under this MOA to Caltrans. This summary report will be submitted no later than November 30, 2012, or in the event the Parties terminate the MOA prior to that date, within sixty (60) days of the date of termination. The summary report will also identify any recommendations for improving consultation and coordination among the Parties. To avoid duplicative reporting, the Corps may use the final statement of expenditures and summary report to meet its quarterly progress reporting requirement for the final quarter of the period covered by this MOA.
10. Meet with staff and management representatives from Caltrans on a quarterly or other mutually agreed upon schedule to review commitments, collaborate on issues, remedy outstanding concerns, consider revisions to the provisions of this MOA, and to monitor activities under this MOA in accordance with the performance measures identified in **Appendix B** to this MOA. Representatives from the FHWA and/or other agencies may also be invited, if appropriate and agreed to by the Parties.

C. Performance Measures

1. The Parties have agreed to a set of performance measures for the purpose of evaluating activities under this MOA and the Standard Agreement. These performance measures are included as Appendix B to this MOA and incorporated herein by reference.

2. These performance measures may be revised by mutual agreement of the Parties without necessitating a formal amendment to this MOA or the Standard Agreement. Maximum payable under this MOA shall not exceed \$1,258,657.00

Article V. - FUNDING

A. Within 30 days of execution of this MOA, Caltrans shall pay the anticipated costs expected to be incurred through September 30, 2010, at the level specified in the Corps' budget estimate, which is included as **Appendix C** to this MOA and incorporated herein by reference.

B. The Corps' budget estimate will be revised to reflect costs for subsequent years that this agreement remains in effect by mutual agreement of the Parties without necessitating a formal revision or amendment to this MOA or the Standard Agreement, provided the revisions do not result in an increase in the total funding amount specified in the Standard Agreement.

C. No later than September 1, 2010, and annually thereafter for each year that this agreement remains in effect, the Corps will provide Caltrans with an invoice and updated budget estimate that provides an estimate of costs for the next federal fiscal year, including any proposed changes in the level of staffing. Revisions agreed to by the Parties will be incorporated into a revised budget estimate.

D. Prior to incurring any expenditure, Caltrans will make an annual lump sum payment to the Corps. Upon receipt of the Corps' invoice and updated budget estimate and in accordance with normal Caltrans payment procedures, Caltrans will make an annual lump sum payment, in advance, of the total amount specified in the invoice and updated budget estimate.

E. If the Corps' actual costs for providing the agreed upon level of service will exceed the amount of funds available, it will promptly notify Caltrans of the amount of funds needed to defray the costs. Caltrans will either initiate an amendment to this MOA to increase the funding amount, or agree to a reduced level of service.

F. Caltrans may elect to extend the services of the Corps beyond Federal fiscal year 2012, subject to: 1) Article V.H below, 2) additional funding by Caltrans, and 3) written amendment to the Standard Agreement and this MOA.

G. The Corps will expedite the evaluation of permit applications as specified in the Standard Agreement and this MOA only after funds have been transferred to the Corps. Payments by Caltrans are to be made via electronic funds transfer. Questions concerning this procedure can be directed to:

Karen Bates



U.S. Army Corps of Engineers  
Finance Center  
5722 Integrity Drive  
Millington, Tennessee 38054-5005

H. The Corps will neither accept nor expend funds under this MOA after December 31, 2010, unless Federal law extends or makes permanent the Corps' authority under Section 214 of the WRDA 2000 to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits.

#### Article VI. - APPLICABLE LAWS

The applicable statutes, regulations, policies, directives, and procedures of the United States will govern this MOA and all documents and actions pursuant to it. Unless otherwise required by law, all expediting of permit applications undertaken by the Corps will be governed by Corps regulations, policies and procedures.

#### Article VII. - DISPUTE RESOLUTION

In the event of a dispute, the Parties agree to use their best efforts to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties. The Parties agree that, in the event such measures fail to resolve the dispute, they shall proceed in accordance with the Standard Agreement, Exhibit C, paragraph C.4. It is further agreed that in the event there is a conflict between a provision of this MOA and the Standard Agreement, the Standard Agreement is controlling (to the maximum extent permitted by law).

#### Article VIII. - PUBLIC INFORMATION

A. Justification and explanation of Caltrans programs or projects before other agencies, departments and offices will not be the responsibility of the Corps. The Corps may provide, upon request from Caltrans, any assistance necessary to support justification or explanations of activities conducted under this MOA. In general, the Corps is responsible only for public information regarding Corps regulatory activities. Caltrans will give the Corps advance notice before making formal, official statements regarding Corps activities funded under this MOA.

B. The Corps shall comply with the requirements of the Standard Agreement in the event it receives a request under the Freedom of Information Act for information designated by Caltrans as confidential. The Corps shall immediately notify the Caltrans Principle Representative upon receipt of any such request and will forward a copy of the request to the Caltrans Principle Representative.

#### Article IX. - MISCELLANEOUS

A. Other Relationships or Obligations

1. This MOA will not affect any pre-existing or independent relationships or obligations between the Parties.

2. The Corps' participation in this MOA does not imply endorsement of Caltrans projects nor does it diminish, modify, or otherwise affect Corps statutory or regulatory authorities.

#### B. Survival

Under the provisions of Section 214 of the WRDA 2000 as extended, no funds may be expended pursuant to this MOA after December 31, 2010. However, if prior to this date, this statutory authority is extended, then provisions of this MOA shall remain in force until the sunset of section 214 of WRDA 2000, as further extended, or the expiration date as provided in this MOA, whichever is earlier.

#### C. Severability

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by law and regulation.

### Article X. - AMENDMENT, MODIFICATION AND TERMINATION

A. This MOA may be modified or amended only by written, mutual agreement of the Parties. Either party reserves the right to terminate this MOA without cause upon thirty (30) days written notice to the other party, or sooner by mutual written agreement, or immediately in the event of a material breach. In the event of termination, Caltrans will continue to be responsible for all costs incurred by the Corps in performing expedited environmental permit review services up to the time of notice and for the costs of closing out or transferring any ongoing contracts in support of the provision of services by the Corps under this MOA.

B. Upon termination or expiration of the MOA, the Corps shall immediately provide Caltrans with a final statement of expenditures. The Corps agrees to remit to Caltrans the unexpended balance of the advance payment within sixty (60) calendar days after the final statement of expenditures, if so requested by Caltrans, and subject to the availability of funds. Funds may be provided to Caltrans either by check or electronic funds transfer.

### Article XI. - EFFECTIVE DATE AND DURATION

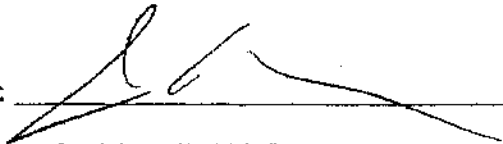
This MOA will become effective on the date of signature by the last Party, and approval by Department of General Services. This MOA shall remain in force until whichever of these events occurs first: 1) December 31, 2010, unless the sunset clause of section 214 of WRDA 2000 is extended or section 214 is made permanent, in which case the MOA will remain in effect for the duration of the statutory extension but not to exceed the time period specified in the Standard Agreement, whichever date is earlier; or 2) the MOA is terminated pursuant to Article X; or 3) the Standard Agreement expires or is terminated pursuant to its terms.

Article XII. - INTEGRATION

This MOA, including any documents incorporated by reference or attachments thereto, constitute the entire agreement between the Parties. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

IN WITNESS WHEREOF, this MOA is executed as of the date stated in the introductory clause by the California Department of Transportation acting by and through its authorized officer, the Chief, Division of Environmental Analysis and by the U.S. Army Corps of Engineers, through its authorized officer.


CALIFORNIA DEPARTMENT OF TRANSPORTATION

By: 

Jay Norvell, Chief  
Division of Environmental Analysis  
California Department of Transportation

Date: 16 July 2010

U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT

By:  LTC DDL

Thomas C. Chapman, P.E.  
Colonel, US Army  
District Commander

Date: 14 July 2010

**Appendix A: Standard Agreement 43A0275**

STATE OF CALIFORNIA  
**STANDARD AGREEMENT**  
 STD 213 (Rev 04/09)

AGREEMENT NUMBER <b>43A0275</b>
REGISTRATION NUMBER

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

STATE AGENCY'S NAME

**California Department of Transportation (Caltrans)**

CONTRACTOR'S NAME

**U.S. Army Corps of Engineers (USACE)**

2. The term of this **February 15, 2010** or to **September 30, 2012**  
 upon DGS approval, whichever is later

Agreement is:

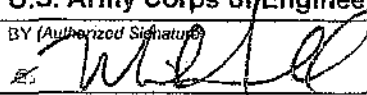
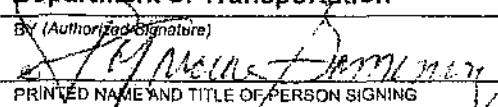
3. The maximum amount of this Agreement is: **\$ 4,500,000.00**  
**Four Million, Five Hundred Thousand Dollars. and No Cents**

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

<b>Exhibit A</b> – Scope of Work	3 Pages
<b>Exhibit B</b> – Budget Detail and Payment Provisions	3 Pages
<b>Exhibit C</b> – General Terms and Conditions	2 Pages
<b>Exhibit D</b> – Special Terms and Conditions	4 Pages
<b>Attachment 1</b> – Rates for Services	1 Page
<b>Attachment 2</b> – Caltrans Districts and U.S. Army Corps of Engineers Districts	1 Page
<b>Attachment 3</b> – Sample MOA Format	1 Page

Items shown with an Asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto. *These documents can be viewed at <http://www.pls.dgs.ca.gov/Standard+Language/default.htm>*

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		California Department of General Services Use Only
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) <b>U.S. Army Corps of Engineers (USACE)</b>		
BY (Authorized Signature) 	DATE SIGNED (Do not type) <b>2-3-10</b>	MAR - 8 2010
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Michael Jewell, Chief, Regulatory Division Sacramento District</b>		
ADDRESS Sacramento District Office ATTN: Regulatory Division 1325 J Street Sacramento, CA 95814-2922		
STATE OF CALIFORNIA		
AGENCY NAME <b>Department of Transportation</b>		<input type="checkbox"/> Exempt per:
BY (Authorized Signature) 	DATE SIGNED (Do not type) <b>2-4-10</b>	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Patricia Gamoning, Contract Officer</b>		
ADDRESS 1727 30 <sup>th</sup> Street, MS-65 Sacramento, CA 95816		

**EXHIBIT A**  
**Standard Agreement**

**SCOPE OF WORK**

1. The U.S. Army Corps of Engineers is hereinafter referred to as "USACE" and the California Department of Transportation is hereinafter referred to as "Caltrans". The term "Agreement" refers to this Standard Agreement. The term "MOA" refers to subsequent Memoranda of Agreement developed in accordance with Exhibit A, paragraph 5.E.
2. Section 214 of the Federal Water Resources Development Act of 2000, Public Law 106-541 ("WRDA 2000"), as amended by Public Law 111-120, authorizes USACE to "accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits under the jurisdiction of the Department of the Army." Pursuant to Section 214 of WRDA 2000, the USACE agrees to provide the following services:

The work to be performed under the Agreement shall be in accordance with the Scope of Work, **Attachment 1** and subsequent MOAs. If there is any conflict between an MOA or Attachment 1, and this Agreement, this Agreement shall take precedence.

3. This Agreement will commence on February 15, 2010 or upon approval by the Department of General Services (DGS), whichever is later and no work shall begin before that time. This Agreement is of no effect unless approved by DGS. USACE shall not receive payment for work performed prior to approval of the Agreement and before receipt of notice to proceed by the Contract Manager. This Agreement shall expire on September 30, 2012. The services shall be provided during working hours, Monday through Friday, except holidays. The parties may amend this agreement as permitted by law.
4. All inquiries during the term of this Agreement will be directed to the project representatives listed below:

<b>Department of Transportation – Contract Manager</b>	<b>Contractor: U.S. Army Corps of Engineers</b>
Section/Unit: Division of Environmental Analysis	Section/Unit: Sacramento District Office
Contract Manager: Shawna Pampinella	Project Manager: Michael S. Jewell
Address: P.O. Box 942874	Address: 1325 "J" Street
Sacramento, CA 94274-0001	Sacramento, CA, 95814-2922
Phone: (916) 653-8056	Phone: (916) 557-6605
FAX: (916) 653-7757	FAX: (916) 557-6877
E-mail: <a href="mailto:Shawna.Pampinella@dot.ca.gov">Shawna.Pampinella@dot.ca.gov</a>	E-mail: <a href="mailto:Michael.S.Jewell@usace.army.mil">Michael.S.Jewell@usace.army.mil</a>

The project representatives during the term of this Agreement may be changed by advance written notice without the necessity of an amendment to the Agreement.

**EXHIBIT A**  
**Standard Agreement**

5. Detailed description of work to be performed and duties of all the parties.
  - A. The USACE shall provide environmental technical assistance, oversight and coordination services to the Caltrans regarding projects subject to USACE jurisdiction in California.
  - B. The services to be provided by the USACE also shall be performed in accordance with the National Environmental Policy Act (NEPA) of 1969 (as amended); the Clean Water Act of 1977 (as amended); Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977), and other applicable federal statutes, regulations, and policies.
  - C. USACE shall provide the environmental services to Caltrans on an "on-call" basis. Specific services to be provided will be identified in (MOAs) with individual USACE Districts in California. Specific services to be provided may include, but are not necessarily limited to:
    - (1) Participation in Caltrans transportation planning and project development activities, including planning, scoping, Project Development Team (PDT) meetings, and field reviews.
    - (2) Review of Federal, State and Local transportation agencies' transportation projects.
    - (3) Processing permit applications; participation in State/Regional planning activities.
    - (4) Participation in the NEPA 404 Integration Process.
    - (5) Review of environmental documents.
    - (6) Development of programmatic agreements.
  - D. The services provided by USACE under this Agreement shall be performed by appropriately qualified USACE staff.
  - E. Memoranda of Agreement
    - (1) Under the Agreement, Memoranda of Agreement (MOAs) may be executed with individual USACE Districts in California, to assign services identified above for items identified in this section. The jurisdictions of those offices are depicted in **Attachment 2**.
    - (2) To enable USACE to plan its annual budget, any MOA that provides resources to USACE for coordination, consultation and review services shall have a period

**EXHIBIT A**  
**Standard Agreement**

of performance that coincides with the federal fiscal year (October 1<sup>st</sup>-September 30<sup>th</sup>). Such MOAs may be for one (1) or more federal fiscal years; however, no MOA will be written that extends beyond the expiration date of this Agreement.

- (3) MOAs may also be executed for a discrete project or task. The period of performance for such MOAs will be based on the project schedule, and need not be correlated with the federal fiscal year.
- (4) MOAs do not supersede the Agreement and may not be used to amend this Agreement or include terms beyond the scope of this Agreement
- (5) All MOAs must include a Scope of Work and itemized budget estimate and identify the total annual cost for each federal fiscal year. The itemized budget estimate must include identification of personnel, hourly rates, indirect labor costs, estimated hours or work, and travel costs related to the MOA scope of work.
- (6) MOAs may, but are not required to, include the information and follow the format specified in the attached example MOA, **Attachment 3**.



**EXHIBIT B**  
**Standard Agreement**

**BUDGET DETAIL AND PAYMENT PROVISIONS**

**1. Budget Contingency Clause**

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

**2. Rates**

Rates for these services under this Agreement may be found on **Attachment 1** of this document.

**3. Allowable Costs and Payments**

- A. The USACE's proposed rates and the allowability of all items included in the rates will be audited consistent with the audit provisions in Exhibit D, paragraph 5.
- B. Actual costs incurred by USACE in performance of work under this Agreement (including labor costs, employee benefits, Federal travel allowance, and other direct costs, as itemized in the budget estimate for each MOA), shall not exceed the amount of **\$4,500,000.00**. Furthermore, actual costs shall not exceed the estimated wage rates and other estimated costs set forth in the USACE's Rates for Services (**Attachment 1**) without prior written agreement between Caltrans and USACE.
- C. Unless otherwise specified in an individual MOA or agreed to in writing by the Caltrans' Contract Manager herein referred to as Contract Manager, USACE shall provide the Contract Manager with a quarterly statement of expenditures for each MOA that details expenditures for the quarter, and cumulatively for both the current federal fiscal year and for the life of the Agreement. The quarterly statement for each MOA shall identify actual costs for salaries, travel, other direct costs and indirect costs by individual. Unless otherwise specified in the MOA, the quarterly statement shall be mailed to the Contract Manager at the following address:

**EXHIBIT B**  
**Standard Agreement**

Department of Transportation  
Division of Environmental Analysis – MS 27  
Attention: Shawna Pampinella  
P.O. Box 942874  
Sacramento, CA 94274-0001

- D. For each executed MOA, upon receipt of the USACE's invoice with attached budget estimate, Caltrans will make an advance payment to the USACE in accordance with the following:
- 1) If the period of performance is one (1) year or less, the payment will be for the total amount specified in the MOA.
  - 2) If the period of performance is more than one (1) year, Caltrans will make an annual payment in accordance with the payment schedule identified in the MOA, which shall not exceed the estimated cost for one (1) year for that MOA.
- E. The total amount payable by Caltrans for an individual MOA, and any subsequent amendments, shall not exceed the amount agreed to in the MOA, or in such amendments. Changes to MOA provisions require a written amendment to the MOA by the USACE and Caltrans.
- F. The total amount payable by Caltrans, for all MOA's resulting from the Agreement, shall not exceed **\$4,500,000.00**. It is understood and agreed that this total is an estimate, and that the actual amount of work requested by Caltrans may be less. There is no guarantee, either expressed or implied, as to the actual dollar amount that will be authorized under the Agreement through MOAs. In no event shall MOAs be issued that will exceed this maximum amount.
- G. At the conclusion of services under each MOA, USACE shall provide Caltrans with a final statement of expenditures for the MOA within sixty (60) calendar days of the MOA termination or expiration date. If there is an unexpended balance, Caltrans may request that the amount be applied to another MOA, or that the balance be remitted to Caltrans. USACE agrees to remit to Caltrans the unexpended balance of the advance payment within thirty (30) calendar days after the final statement of expenditures, if so requested by Caltrans.
- H. At the conclusion of this Agreement, USACE agrees to remit to Caltrans any unexpended balance of the advance payment within 60 days of Agreement termination or expiration.
- I. All invoices with attached budget estimates, quarterly statements, and final statements of expenditures shall be submitted in triplicate to:

**EXHIBIT B**  
**Standard Agreement**

Department of Transportation  
Division of Environmental Analysis – MS 27  
Attention: Shawna Pampinella  
P.O. Box 942874  
Sacramento, CA 94274-0001

- J. All invoices with attached budget estimates, quarterly statements, and final statements of expenditures shall be itemized in accordance with Attachment 2, USACE Estimated Salary Rates, and shall include dates of service, Agreement number, MOA date classifications of employees and hours of work, fringe benefit charges, and itemized travel, supply and equipment expenses. Travel, supply and equipment costs must be necessary and directly related to the scope of services for the MOA(s) for which such costs are being charged to be eligible for reimbursement under this Agreement.

**4. Cost Principles**

- A. Allowable costs issued under this Agreement must be necessary, reasonable, and allocable. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.
- B. Costs which are prohibited under State or Federal laws and regulations are not allowable under this Agreement.
- C. Allowable costs must be accorded consistent treatment. A cost may not be assigned as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated as an indirect cost.
- D. Allowable costs must be adequately documented.
- E. To the extent not prohibited by federal law, rules, or regulations, any costs for which payment has been made to USACE that are determined by subsequent audit to be unallowable under this Agreement may be subject to repayment by USACE to Caltrans.

**EXHIBIT C**  
**Standard Agreement**

**GENERAL TERMS AND CONDITIONS**

**1. Approval**

This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. USACE may not commence performance until such approval has been obtained.

**2. Amendment**

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

**3. Assignment**

This Agreement is not assignable by the USACE, either in whole or in part, without the consent of the Caltrans in the form of a formal written amendment approved by Department of General Services.

**4. Disputes**

A. To the extent not inconsistent with Federal law, rules, and regulations, any dispute concerning a question of fact arising under this Agreement that is not disposed of by mutual agreement shall be decided by the Caltrans' Contract Officer, who may consider any written or verbal evidence submitted by the USACE. The decision of the Contract Officer, issued in writing shall be the final decision of Caltrans.

B. Neither the pendency of a dispute nor its consideration by the Contract Officer will excuse the USACE from full and timely performance in accordance with the terms of the Agreement.

C. Any disputes arising under individual MOAs shall be resolved in accordance with the terms of the individual MOA.

**5. Independent Contractor**

USACE, and the agents and employees of USACE, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of Caltrans.

**EXHIBIT C  
Standard Agreement**

**6. Timeliness**

Time is of the essence in this Agreement.

**7. Compensation**

The consideration to be paid USACE, as provided herein, shall be in compensation for all of USACE's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

**8. Child Support Compliance Act**

USACE will comply with any applicable federal Child Support Compliance Act.

**9. Unenforceable Provision**

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

**EXHIBIT D**  
**Standard Agreement**

**SPECIAL TERMS AND CONDITIONS**

**1. Evaluation of Contractor**

Performance of the USACE under this Agreement will be evaluated. The evaluation shall be prepared on Contract/USACE Evaluation Sheet (STD 4), and maintained in the Office file, and the Department of General Services, Office of Legal Services, if it is negative and over \$5,000.

**2. Subcontractors**

The USACE shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted.

**3. Contractor's Reports and/or Meetings**

- A. In accordance with Exhibit B, paragraph 3, the USACE shall submit progress reports at least quarterly to allow the Contract Manager to determine if the USACE is performing to expectations and to afford occasions for identifying difficulties or issues that must be addressed. These progress reports shall include a list of projects reviewed and other coordination activities undertaken by USACE for the period covered by the progress report. In addition, these progress reports shall include a summary of expenditures under this Agreement, for the period covered by the progress report and cumulatively for both the current federal fiscal year and for the life of the Agreement.
- B. The USACE shall meet with the Contract Manager as needed to discuss progress on the Agreement.
- C. The USACE shall meet quarterly with the Contract Manager and representatives of the Caltrans Districts to review the status of projects and permits, discuss project priorities, and provide guidance to Caltrans staff on regulatory issues and requirements.
- D. Prior to completion of services under the Agreement, the USACE shall meet with the Contract Manager to review a summary of the USACE's environmental coordination and other activities under this Agreement. The USACE shall also provide recommendations for future coordination between Caltrans and USACE.

**4. Termination**

- A. Either party reserves the right to terminate this Agreement without cause upon thirty (30) days written notice to the other party or immediately in the event of material breach..

**EXHIBIT D**  
**Standard Agreement**

- B. In the event that the total Agreement amount is expended prior to the expiration date, Caltrans may, at its discretion, terminate this contract with 30 days notice to USACE.
- C. Notwithstanding Exhibit A, paragraph 3, in the event Congress does not pass a bill extending the duration of the authority under WRDA 2000 beyond December 31, 2010, this agreement shall automatically terminate and USACE shall not be obligated to perform any additional services under this Agreement. In the event of such termination, USACE shall immediately provide a final statement of expenditures in accordance with Exhibit B, paragraph 3.
- D. Either party reserves the right to terminate any individual MOA without cause upon thirty (30) days written notice to the other party, or sooner by mutual written agreement, or immediately in the event of a material breach. In the event of termination, USACE shall immediately provide a final statement of expenditures detailing all expenditures incurred up to the date of termination. If money is due to USACE under the MOA, USACE will be paid for any reasonably incurred non-cancellable, non-refundable costs up to the date of termination. If there is an unexpended balance, Caltrans may request that the amount be applied to another MOA, or that the balance be remitted to Caltrans. USACE agrees to immediately remit to Caltrans the unexpended balance of the advance payment within thirty (30) calendar days after the final statement of expenditures, if so requested by Caltrans.

**5. Retention of Records/Audits**

- A. To the extent not inconsistent with Federal law, rules and regulations, USACE shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. USACE shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years after the date of final payment under the Agreement, unless a longer period of records retention is stipulated. Caltrans, the Bureau of State Audits, the Department of General Services, or their designated representative, shall have the right to review and to copy any records and supporting documentation pertaining to the performance of the Agreement. USACE agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews, upon request to USACE, which such request will not be unreasonably denied, of any employees who might reasonably have information related to such records.
- B. Audit Review Procedures
  - 1. To the extent not inconsistent with federal law, rules and regulations, any dispute concerning a question of fact arising under an interim or post audit of this

**EXHIBIT D**  
**Standard Agreement**

Agreement that is not disposed of by agreement may be reviewed by the Chairperson of the Audit Review Committee (ARC). The ARC will consist of the Deputy Director, Audits & Investigations (Chairperson); Deputy Director of the functional Program area; the Chief Counsel, Legal Division, or their designated alternates; and if the Caltrans chooses, two representatives of the Caltrans' choosing, from private industry. The two representatives from private industry will be advisory in nature only and will not have voting rights. Additional members or their alternates may serve on the ARC.

2. Not later than thirty (30) days after issuance of the final audit report, the USACE may request a review by the ARC of unresolved audit issues. The request for review will be submitted in writing to the Chairperson of the ARC. The request must contain detailed information of the factors involved in the dispute as well as justifications for reversal. A meeting by the ARC will be scheduled if the Chairperson concurs that further review is warranted. After the meeting, the ARC will make recommendations to the appropriate Chief Deputy Director. The Chief Deputy Director will make the final decision for the Caltrans. The final decision will be made within three (3) months of receipt of the notification of dispute.
3. Neither the pendency of a dispute nor its consideration by Caltrans will excuse the USACE from full and timely performance, in accordance with the terms of this Agreement.

**6. Confidential Information – Except as required under the Freedom of Information Act, (5 U.S.C. §552 as amended by Public Law No. 104-231):**

- A. All financial, statistical, personal, technical, or other data and information relative to the Caltrans' operations, which is designated confidential by the Caltrans and made available to the USACE in order to carry out this Agreement, shall be protected by USACE from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion or public hearing held by the Caltrans relating to this Agreement shall not authorize the USACE to further disclose such information or disseminate the same on any other occasion.
- C. The USACE shall not comment publicly to the press or any other media regarding this Agreement or the Caltrans' actions on the same, except to the Caltrans' staff, USACE's own personnel involved in the performance of this Agreement, at public hearings, or in response to questions from a Legislative committee.
- D. The USACE shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this Agreement without prior review of the contents thereof by the Caltrans' and receipt of the Caltrans' written permission.



**EXHIBIT D**  
**Standard Agreement**

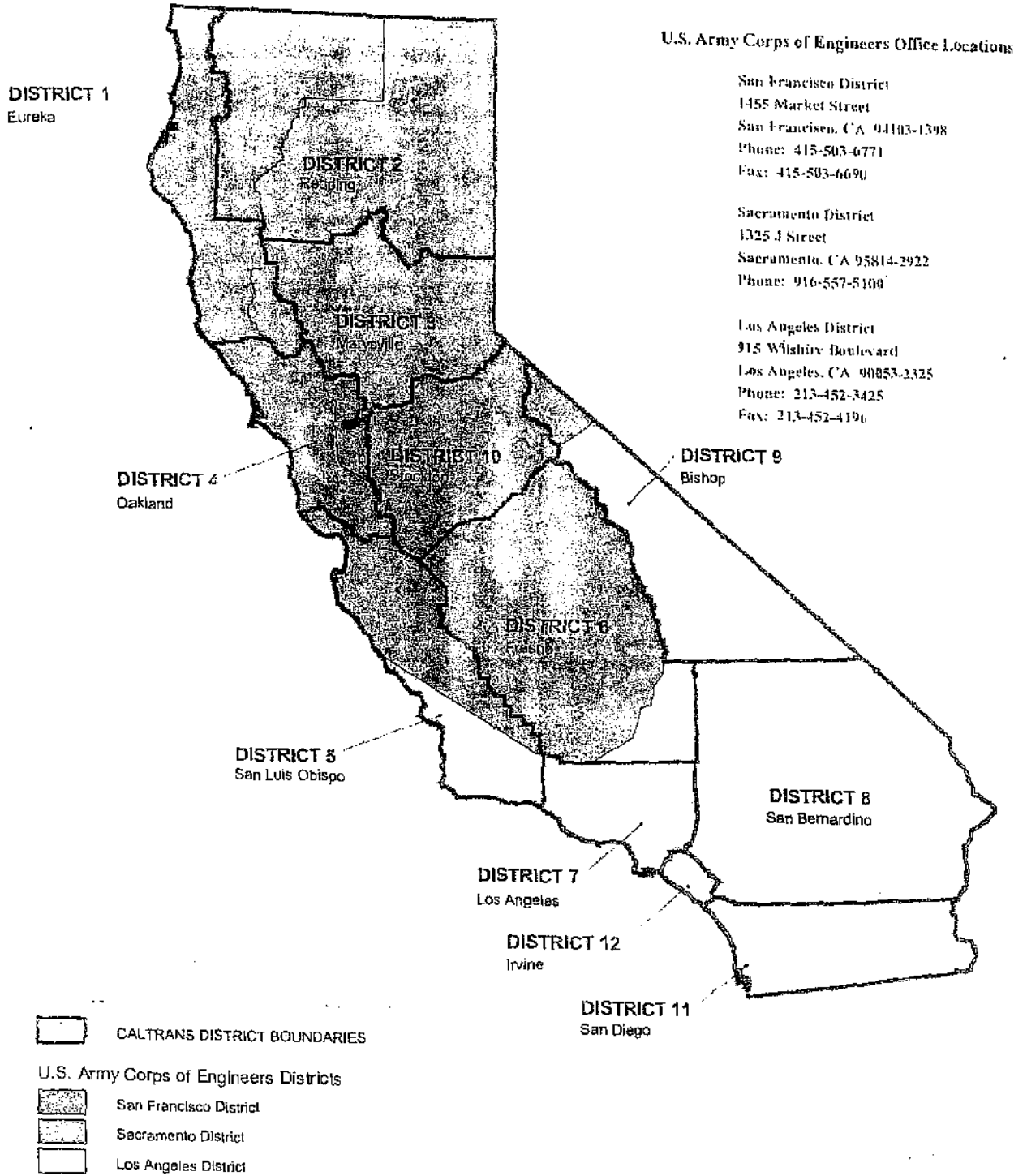
- E. All information related to the construction estimate is confidential and shall not be disclosed by the USACE to any entity, other than the Caltrans.
- F. Should the USACE receive a FOIA request regarding information designated as confidential by Caltrans, USACE shall immediately notify the Caltrans Contract Manager of such request and forward a copy of the request to the Caltrans Contract Manager.

**7. Caltrans-Owned Data - Integrity and Security**

- A. To the extent not inconsistent with Federal law, USACE shall comply with the following requirements to ensure the preservation, security, and integrity of Caltrans-owned data on portable computing devices and portable electronic storage media:
  - 1. Encrypt all Caltrans-owned data stored on portable computing devices and portable electronic storage media using government-certified Advanced Encryption Standard (AES) cipher algorithm with a 256-bit or 128-bit encryption key to protect California Caltrans data stored on every sector of a hard drive, including temp files, cached data, hibernation files, and even unused disk space. Data encryption shall use cryptographic technology that has been tested and approved against exacting standards, such as FIPS 140-2 Security Requirements for Cryptographic Modules.
  - 2. Encrypt, as described above, all Caltrans-owned data transmitted from one computing device or storage medium to another.
  - 3. Maintain confidentiality of all Caltrans-owned data by limiting data sharing to those individuals contracted to provide services on behalf of the Caltrans, and limit use of Caltrans information assets for Caltrans purposes only.
  - 4. Install and maintain current anti-virus software, security patches, and upgrades on all computing devices used during the course of the Agreement.
  - 5. Notify the Contract Manager immediately of any actual or attempted violations of security of Caltrans-owned data, including lost or stolen computing devices, files, or portable electronic storage media containing Caltrans-owned data.
  - 6. Advise the owner of the Caltrans-owned data, the agency Information Security Officer, and the agency Chief Information Officer of vulnerabilities that may present a threat to the security of State-owned data and of specific means of protecting that Caltrans-owned data.
- B. USACE shall use the Caltrans-owned data only for Caltrans purposes under this Agreement.
- C. USACE shall not transfer Caltrans-owned data to any computing system, mobile device, or desktop computer without first establishing the specifications for information integrity and security as established for the original data file(s). (State Administrative Manual (SAM) section 5335.1).

U.S. Army Corps of Engineers - Sacramento District			
	Federal FY 2010	Federal FY 2011	Federal FY 2012
<b>YD-02 - Regulatory Proj Manager</b>		** assumes est 5% COLA	** assumes est 5% COLA
Basic Hourly Rate	\$ 42.26	\$ 44.37	\$ 46.59
Daily Rate ( hourly *8 hours)	\$ 338.08	\$ 354.98	\$ 372.73
Effective Daily Rate ((w/benefits at 1.53%)	\$ 517.26	\$ 543.12	\$ 570.28
Overhead (Departmental 38.48% and 26.39%)	\$ 335.56	\$ 352.33	\$ 369.95
<b>Total Daily Rate (Effective Daily Rate + Overhead)</b>	<b>\$ 852.81</b>	<b>\$ 895.45</b>	<b>\$ 940.23</b>
<b>YD-01 - Regulatory Proj Manager</b>			
Basic Hourly Rate	\$ 25.36	\$ 26.62	\$ 28.74
Daily Rate ( hourly *8 hours)	\$ 202.80	\$ 212.94	\$ 223.59
Effective Daily Rate ((w/benefits at 1.53%)	\$ 310.28	\$ 325.79	\$ 342.08
Overhead (Departmental 38.48% and 26.39%)	\$ 201.28	\$ 211.34	\$ 221.91
<b>Total Daily Rate (Effective Daily Rate + Overhead)</b>	<b>\$ 511.56</b>	<b>\$ 537.13</b>	<b>\$ 563.99</b>
<b>YP-1 Student Trainee (Biology)</b>			
Basic Hourly Rate	\$ 14.07	14.77	15.51
Daily Rate ( hourly *8 hours)	\$ 112.56	118.19	124.1
Effective Daily Rate ((w/benefits at 1.53%)	\$ 172.22	180.83	189.87
Overhead (Departmental 38.48% and 26.39%)	\$ 111.72	117.31	123.18
<b>Total Daily Rate (Effective Daily Rate + Overhead)</b>	<b>\$ 283.94</b>	<b>\$ 298.14</b>	<b>\$ 313.05</b>
* Rates for YD provided as an example. Actual cost to be based on federal pay scales for the level of employee working under the contract; these are t			
** Actual costs to be based on federal pay scales in effect at the time. <a href="http://www.opm.gov/oqa/09tables/index.asp">http://www.opm.gov/oqa/09tables/index.asp</a>			

## Caltrans District and U.S. Army Corps of Engineers Districts



***Example Memorandum of Agreement Format***

- I. Purpose and Authorities**
- II. Scope**
- III. Responsibilities of the Parties**  
*Identify responsibilities of each party, including, as appropriate:*
  - Staffing requirements
  - Consultation and review procedures
  - Project coordination
  - Priority project and activities
  - Performance Measures
- IV. Cost Estimate**
- V. Applicable Laws**
- VI. Dispute Resolution for Permit Actions**
- VII. Amendment, Modification, Termination of MOA**
- VIII. Period of Performance**
- IX. Project Coordinators and Interagency Communications**
- X. Signatures**

## Appendix B: Performance Measures

### **I. Background and Purpose**

The following performance standards and measures have been established for this MOA. Caltrans' Principle Representative will work with the Caltrans districts to review and evaluate the Corps' performance on a quarterly basis. The Corps' performance will be compared with the agreed-upon performance measures; inadequate performance may lead to re-evaluation of the MOA and Standard Agreement.

### **II. Document/Project Reviews**

- A. Substance of Comments: Comments provided by the Corps on applications and documents submitted by Caltrans should provide as much technical assistance, expertise and guidance as possible and should be in keeping with the highest of environmental standards. Comments should be justifiable and consistent with issues.
- B. Timeliness: The following standards apply to the Corps' review of applications, documents and responses to requests for comments and/or concurrence:
  1. The target turnaround time for reaching a decision on "reporting" nationwide permits (NWP) shall be 20 working days upon receipt of a complete pre-construction notification package. The 20-day time period is considered met if the Corps issues a Deny Without Prejudice for authorizations requiring a CWA Section 401 Water Quality Certification and/or a Consistency Certification pursuant to the Coastal Zone Management Act (CZMA). This target turnaround time does not apply for reporting NWPs that require Endangered Species Act consultation and/or National Historic Preservation Act coordination. For Standard Individual Permits (SIPs) the target turnaround time is 120 working days upon receipt of a complete application package. The 120-day time period is considered met if the Corps issues a Provisional Permit for authorizations requiring a CWA Section 401 Water Quality Certification and/or Consistency Certification pursuant to the CZMA. In addition, the target turnaround time does not apply to SIPs that require Endangered Species Act consultation, National Historic Preservation Act coordination, permit/approval from the Corps other than a Department of the Army CWA Section 404 or RHA section 10 permit, and/or preparation of an Environmental Impact Statement.
  2. All mandatory reviews, written responses, concurrences, agreements and recommendations will be provided within statutory or otherwise agreed-to timeframes (e.g., response to Integration MOU requests for concurrence or agreement).

3. Evaluation of the Corps' timeliness will be based on review of a random selection of projects and comments provided by customer service surveys conducted by Caltrans. Rating of timeliness will use a scale such as: Outstanding (95-100% on time); Commendable (85-94% on time); Satisfactory (75-84% on time); and Needs Improvement (less than 75% on time).

### III. Technical Assistance/Programmatic Activities

- A. Project Meetings: Corps personnel should attend or otherwise actively participate in, and/or facilitate priority project meetings requiring their input or expertise. These meetings will be identified and mutually agreed to as early as possible so as to make most efficient use of staff time. In the event that such a priority project meeting must be missed, the Corps should coordinate with the host to determine if assistance can be provided by other means. It is understood and agreed that meetings should not be used as a means to solicit the Corps to do the basic environmental work expected of Caltrans. Holding meetings to present supporting materials and information and resolve environmental issues, as well as to review work accomplished, is acceptable but must be balanced so as to ensure that substantive issues will be addressed.
- B. Pre-application Meetings and Field Reviews: Corps personnel will make every effort to participate in pre-application meetings and field reviews with Caltrans personnel. If such requests for pre-application meetings and/or field reviews conflicts with meeting deadlines for other priority projects, Corps staff will notify Caltrans of this as early as possible so that alternative arrangements can be made. Additional pre-application meetings and field reviews should be scheduled as needed.
- C. Standards: The Corps' participation and attendance in field reviews/meetings, will be rated by Caltrans as follows: Outstanding (active participation in 90% of agreed to meetings); Commendable (active participation in 80% of agreed to meetings); and Satisfactory (active participation in 75% of agreed to meetings). Further evaluation and corrective actions, which both parties agree upon, may be needed if attendance and participation fall below 75%. The Corps is expected to participate in 100% of the quarterly MOA status meetings held in accordance with Article IV.B(11) of the MOA.
- D. Programmatic Activities: Caltrans and the Corps shall participate in the development of programmatic approaches as time allows. At the Corps' discretion, funds not otherwise expended on priority project evaluation/processing may be used for programmatic activities involving Caltrans.

### IV. Reporting

Article IV.B(9) of the MOA requires the Corps to submit quarterly progress reports to Caltrans. 100% compliance with these requirements is expected. These will begin the month after the MOA is signed by all Parties and approval by Department of

General Services. The Corps will also work with Caltrans to examine baseline information regarding previous review activities. This information may be used for comparison and evaluation of new efforts under this MOA as well as to adjust performance measures where necessary.

**Appendix C: Corps' Budget Estimate**



U.S. Army Corps of Engineers - Sacramento District			
FY 10-12 Budget for Caltrans Contract			
	Federal FY 2010	Federal FY 2011	Federal FY 2012
<b>GS-12 Step 6- Regulatory Proj Manager</b>		** assumes est 4% COLA	** assumes est 4% COLA
Basic Hourly Rate	\$ 41.17	\$ 42.82	\$ 44.53
Daily Rate ( hourly *8 hours)	\$ 329.36	\$ 342.53	\$ 356.24
Effective Daily Rate ((w/benefits at 1.53%)	\$ 503.92	\$ 524.08	\$ 545.04
Overhead Indirect & Gen. Over head(35.94% + 24.22%)	\$ 303.16	\$ 315.29	\$ 327.90
<b>Total Daily Rate (Effective Daily Rate + Overhead</b>	<b>\$ 807.08</b>	<b>\$ 839.36</b>	<b>\$ 872.94</b>
<b>Yearly equals 222 days &amp; Monthly equals 18.5 days</b>	<b>\$179,171.76</b>	<b>\$186,337.92</b>	<b>\$193,792.68</b>
<b>GS-11 Step 6- Regulatory Proj Manager</b>			
Basic Hourly Rate	\$ 34.35	\$ 36.72	\$ 37.14
Daily Rate ( hourly *8 hours)	\$ 274.80	\$ 285.79	\$ 297.22
Effective Daily Rate ((w/benefits at 1.53%)	\$ 420.44	\$ 437.26	\$ 454.75
Overhead Indirect & Gen.Over head(35.94%+24.22%)	\$ 252.93	\$ 263.05	\$ 273.57
<b>Total Daily Rate (Effective Daily Rate + Overhead</b>	<b>\$ 673.37</b>	<b>\$ 700.30</b>	<b>\$ 728.32</b>
<b>Yearly equals 222 days &amp; Monthly equals 18.5 days</b>	<b>\$149,488.14</b>	<b>\$155,466.60</b>	<b>\$161,687.04</b>
<b>GS-5 Step 3 Student Trainee (Biology)</b>			
Basic Hourly Rate	\$ 17.13	\$ 17.82	\$ 18.53
Daily Rate ( hourly *8 hours)	\$ 137.04	\$ 142.52	\$ 148.22
Effective Daily Rate ((w/benefits at 1.53%)	\$ 209.67	\$ 218.06	\$ 226.78
Overhead Indirect & Gen.Overhead (35.94% +24.22%)	\$ 126.14	\$ 131.19	\$ 136.43
<b>Total Daily Rate (Effective Daily Rate + Overhead</b>	<b>\$ 335.81</b>	<b>\$ 349.24</b>	<b>\$ 363.21</b>
<b>Yearly equals 222 days &amp; Monthly equals 18.5 days</b>	<b>\$74,549.82</b>	<b>77,531.28</b>	<b>\$80,632.62</b>
<b>Total Cost per Year</b>	<b>\$403,209.72</b>	<b>\$419,335.80</b>	<b>\$436,112.34</b>
* Rates for YD provided as an example. Actual cost to be based on federal pay scales for the level of employee working under the contract			
** Actual costs to be based on federal pay scales in effect at the time.			
<b>Total Contract Cost FY10-12 \$1,258,657.86</b>			
Federal FY Starts Oct. 1 & Ends Sept 30 of each year			

**Appendix D: Recommended Additional Information**

It is recommended Caltrans submit the following additional information with its application/pre-construction notification to help expedite the permit evaluation process:

For Pre-Construction Notifications (PCNs):

- A preliminary field assessment of functions and services by indicating whether the feature exhibits medium to high hydrologic, water quality, and habitat integrity; whether the feature is important to associated or adjacent critical habitat, protected species, or public or protected open spaces.
- Detailed description of project activities by providing:
  - Description and plans detailing temporary impacts including: grading, clearing and grubbing, and water diversion activities; location of construction staging areas, access areas, and borrow and storage sites; and the duration of these activities.
  - Descriptions and plans detailing permanent impacts including: location, size, and depth of structures or fill material; quantity and composition of fill material; changes in topography and vegetation;
  - Description and/or plans of operational or long term activities. The impacts must be clearly depicted and accurately characterized by providing a detailed description and quantification (in estimated acres of impacts) of the project temporary, permanent, and cumulative impacts on special aquatic sites and other waters of the U.S., including the type of impact (e.g., habitat removal, fragmentation, introduction of exotic species) and its magnitude. These effects must be evaluated at the appropriate local or regional context.
  - Description of avoidance and minimization measures in design should be well documented and quantified in terms of acres of impacts avoided associated with each avoidance or minimization measure.
- Detailed (rapid assessment or better) assessment of the functions and services of special aquatic sites and other waters of the U.S. is necessary to provide adequate analysis of impacts. The assessment should determine which functions are performed by the wetland/waters, the services of those functions, and how the project will affect the continued performance of the identified functions. The precise assessment methodology for characterizing the functions and services of aquatic resources should be determined in close consultation with the Corps.
- Documentation which includes the consideration of temporary, permanent, and cumulative impacts on biological resources, including federally listed endangered and threatened species and designated critical habitat, or on cultural resources, including sites listed on the National Register of Historic Places or National Historic Landmark. Provide copies of associated environmental assessments, including a Biological Assessment, Cultural Resources Survey, and any applicable NEPA corespondance/concurrence received from participating agencies.

- A compensatory mitigation plan designed to offset permanent losses of waters of the U.S., including a statement describing how temporary losses of waters of the U.S. will be minimized to the maximum extent practicable; or, justification explaining why compensatory mitigation should not be required.
  - Any compensatory mitigation proposed should be based on the watershed approach and should comply with the final Mitigation Rule issued by the EPA and the Corps on April 10, 2008, and any Corps-issued Habitat Mitigation and Monitoring Guidelines.
  - A description of any compensatory mitigation proposed should specify amount, type, and location of compensatory mitigation, including any out-of-kind compensation, or indicate the intention to use an approved mitigation bank or in-lieu fee program.
  - If mitigation proposal includes project activities to create, restore, enhance waters of the U.S. and aquatic ecosystems, a draft Mitigation and Monitoring Plan shall be submitted which includes information required by the Mitigation Rule and Regulatory Guidance Letter (RGL) 08-03.

For Standard Individual Permits (SIPs):

- Detailed descriptions, with engineering layouts on aerials and cross sections, of project alternatives, including the preferred project alternative.
- Brief discussion of the reasons for considering but eliminating alternatives from further detailed study. An alternative is practicable if it is available and capable of feasible implementation after taking into consideration cost, existing technology, and logistics in light of the overall project purpose.
- Baseline environmental evaluation:
  - A preliminary field assessment of functions and services by indicating whether the feature exhibits medium to high hydrologic, water quality, and habitat integrity; whether the feature is important to associated or adjacent critical habitat, protected species, or public or protected open spaces.
  - Maps that include other relevant data such the 100-year floodplain, biological reserves or preserves, wildlife crossings, and habitat conservation planning core and linkage areas.
- Detailed description of project activities by providing:
  - Description and plans detailing temporary impacts including: grading, clearing and grubbing, and water diversion activities; location of construction staging areas, access areas, and borrow and storage sites; and the duration of these activities.
  - Descriptions and plans detailing permanent impacts including: location, size, and depth of structures or fill material; quantity and composition of fill material; changes in topography and vegetation;
  - Description and/or plans of operational or long term activities. The impacts must be clearly depicted and accurately characterized by providing a detailed

description and quantification (in estimated acres of impacts) of the project temporary, permanent, and cumulative impacts on special aquatic sites and other waters of the U.S., including the type of impact (e.g., habitat removal, fragmentation, introduction of exotic species) and its magnitude. These effects must be evaluated at the appropriate local or regional context.

- Description of avoidance and minimization measures in design should be well documented and quantified in terms of acres of impacts avoided associated with each avoidance or minimization measure.
- Detailed (rapid assessment or better) assessment of the functions and services of special aquatic sites and other waters of the U.S. is necessary to provide adequate analysis of impacts. The assessment should determine which functions are performed by the wetland/waters, the services of those functions, and how the project will affect the continued performance of the identified functions. The precise assessment methodology for characterizing the functions and services of aquatic resources should be determined in close consultation with the Corps.
- Documentation which includes the consideration of temporary, permanent, and cumulative impacts on biological resources, including federally listed endangered and threatened species and designated critical habitat, or on cultural resources, including sites listed on the National Register of Historic Places or National Historic Landmark. Provide copies of associated environmental assessments, including a Biological Assessment, Cultural Resources Survey, and any applicable NEPA corespondance/concurrence received from participating agencies.
- A compensatory mitigation plan designed to offset permanent losses of waters of the U.S., including a statement describing how temporary losses of waters of the U.S. will be minimized to the maximum extent practicable; or, justification explaining why compensatory mitigation should not be required.
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  - A description of any compensatory mitigation proposed should specify amount, type, and location of compensatory mitigation, including any out-of-kind compensation, or indicate the intention to use an approved mitigation bank or in-lieu fee program.
  - If mitigation proposal includes project activities to create, restore, enhance waters of the U.S. and aquatic ecosystems, a draft Mitigation and Monitoring Plan shall be submitted which includes the information required in the Mitigation Rule and RGL 08-03.

**DEPARTMENT OF TRANSPORTATION**  
ADMINISTRATION  
DIVISION OF PROCUREMENT AND CONTRACTS MS-65  
1727 30<sup>th</sup> STREET  
SACRAMENTO, CA 95816-7006  
PHONE (916) 227- 6839  
FAX (916) 227-6155  
TTY (800) 735-0193 or (916) 227-2857  
INTERNET <http://caltrans-opac.ca.gov>

**RECEIVED**

AUG 30 2012

REGULATORY DIVISION  
LOS ANGELES OFFICE*Flex your power!  
Be energy efficient!*

August 8, 2012

**Contract No. 43A0275TO001 A01**

**U.S. Army Corps of Engineers, Los Angeles District**  
Attn: David J. Castanon, Chief, Regulatory Division  
USACOE-Los Angeles District  
915 Wilshire Blvd  
Los Angeles, CA 90017-3401

Dear Contractor:

A fully executed copy of the above-referenced Contract is enclosed for your files. You are not authorized to commence work until you have been notified by the State's designated Contract Manager to begin work. The Contract Manager is not authorized to approve payment for any work or services performed prior to contract approval. Nor is the Contract Manager authorized to change the terms of the contract without an approved contract amendment.

**All invoices are to be submitted to the Contract Manager in triplicate:**

- with the above Contract Number placed next to your firm's name,
- with your Address and Phone Number preprinted on the invoice in the format shown in the contract, if appropriate,
- with All Documentation required to prove costs, and
- with Any Additional Information required by the terms of the contract.

You are encouraged to pay your suppliers and subcontractors in a timely manner. You are also reminded that, unless stipulated otherwise in the contract, you must pay your suppliers and subcontractors prior to requesting any reimbursement, if applicable, from the State.

**A fully approved contract or additional amendment is required to:**

- **extend** the term of the contract.
- **change** the description or scope of work.
- **allow** any additional costs to be incurred which would exceed the cost limit set in the contract.

A minimum of 30-60 days should be allowed for processing a contract amendment.

All questions regarding invoices, documentation supporting invoices, payments, and services are to be directed to **Jeniffer Gillies, at 916-653-6976**

Sincerely,

A handwritten signature in cursive script that reads "Nicole Stasio".

Nicole Stasio  
Contract Analyst

cc: Contract Manager

Enc.: Contract No. 43A0275 TO001 A01

STATE OF CALIFORNIA  
**STANDARD AGREEMENT AMENDMENT**  
 STD. 213 A (Rev 6/03)

CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 1 Pages



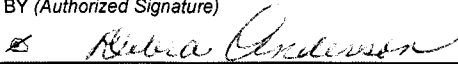
AGREEMENT NUMBER <b>43A0275- T.O. 001</b>	AMENDMENT NUMBER <b>A01</b>
REGISTRATION NUMBER:	

- This Agreement is entered into between the State Agency and Contractor named below:  
 STATE AGENCY'S NAME  
**Department of Transportation (Caltrans)**  
 CONTRACTOR'S NAME  
**U.S. Army Corps of Engineers, Los Angeles District (USACE)**
- The term of this Agreement is: **May 17, 2010** or upon DGS approval, through **September 30, 2014** whichever is later
- The maximum amount of this Agreement after this amendment is: **\$ 1,919,229.17**  
**One Million Nine Hundred Nineteen Thousand Two Hundred Twenty Nine Dollars and Seventeen Cents**
- The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

**The entire Amendment 1 is contained on the following page, which is incorporated herein by this reference.**

All other terms and conditions of the original agreement and any amendments shall remain in full force and effect.

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**

CONTRACTOR		CALIFORNIA Department of General Services Use Only
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.) <b>U.S. Army Corps of Engineers, Los Angeles</b>		
BY (Authorized Signature) 	DATE SIGNED (Do not type) <b>8-3-12</b>	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>David J. Castanon, Chief, Regulatory Division</b>		<input type="checkbox"/> Exempt per:  
ADDRESS <b>USACOE- Los Angeles District 915 Wilshire Blvd. Los Angeles, CA 90017-3401</b>		
STATE OF CALIFORNIA		
AGENCY NAME <b>Department of Transportation</b>		
BY (Authorized Signature) 	DATE SIGNED (Do not type) <b>8/7/12</b>	
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Debra Anderson, Contract Officer</b>		
ADDRESS <b>Division of Procurement and Contracts 1727 30<sup>th</sup> Street, MS #65, Sacramento, CA, 95816</b>		

**Article V, XI, & IV  
Interagency Agreement**

**This Task Order amendment is needed to extend the original contract for two years, add additional funds to the total budget and amend Scope of Work.**

**MOA, Article V Funding, Article IX, Effective Date and Duration and Article IV Responsibilities of the Parties, are being revised to the following.**

The parties hereto mutually agree to amend Contract No.43A0275 T.O. 001, as follows:

**MOA, Article V, Funding, is amended to now read as follows:**

Within 30 days of execution of this MOA, Caltrans shall pay the anticipated costs expected to be incurred through **September 30, 2014** at the level specified in the Corps' budget estimate, which is included as **Appendix C** to this MOA and incorporated herein by reference. Maximum payable under this MOA shall not exceed **\$1,919,229.17**.

**MOA, Article XI, Effective Date and Duration, is amended to now read as follows:**

This MOA will become effective on the date of signature by the last Party, and approval by Department of General Services. This MOA shall remain in force until whichever of this events occurs first: 1) **September 30, 2014**, unless the sunset clause of section 214 of WRDA 2000 is extended or section 214 is made permanent, in which case the MOA will remain in effect for the duration of the statutory extension but not to exceed the time period specified in the Standard Agreement, whichever date is earlier; or 2) the MOA is terminated pursuant to **Article X**; or 3) the Standard Agreement expires or is terminated pursuant to its terms.

**MOA, Article IV, Section B, Number 9, Responsibilities of the Parties is now amended to read as follows:**

9. In accordance with the Standard Agreement, **Exhibit D, paragraph 2**, provide quarterly progress reports to Caltrans documenting all pending Caltrans permit applications and all permit decisions completed during the quarter for Caltrans projects. For the list of completed actions, the processing time for each permit application will also be included. In addition, these progress reports shall include a summary of expenditures under this MOA, for the period covered by the progress report and cumulatively for both the current federal fiscal year and for the life of the MOA. **Article IV.B (9)** of the MOA requires the Corps to submit quarterly progress reports to Caltrans. 100% compliance with these requirements is expected. These will begin the month after the MOA is signed by all Parties and approval by Department of General Services. The quarterly reports will be due on the following dates, for each full quarter that this agreement is active:

January 31	for Q1 (October – December)
April 30	for Q2 (January – March)
July 31	for Q3 (April – June)
October 31	for Q4 (July – September)

The Corps will also work with Caltrans to examine baseline information regarding previous review activities. This information may be used for comparison and evaluation of new efforts under this MOA as well as to adjust performance measures where necessary.