

1. Invoicing and Payment

- A. For services satisfactorily rendered and approved by the Caltrans District Equipment Manager, and upon receipt and approval of the invoices, Caltrans agrees to compensate Contractor in accordance with the Bid Proposal, Attachment 1, and these Special Terms and Conditions. Incomplete or disputed invoices shall be returned to Contractor, unpaid, for correction.
- B. For services satisfactorily rendered and approved by the Caltrans District Equipment Manager, and upon receipt and approval of the invoices, Caltrans agrees to compensate Contractor in accordance with the **Bid Proposal, Attachment 1**, and these Special Terms and Conditions. Incomplete or disputed invoices shall be returned to Contractor, unpaid, for correction.
- C. Invoices shall be itemized in accordance with **Attachment 1** and shall include the Agreement Number, dates of services, location of service and shall be signed and submitted in triplicate not more frequently than monthly in arrears to the Caltrans District Equipment Manager listed in **Section 7, Page 1 of the 3015A Operated Equipment Rental Agreement 3015A** (Agreement).

2. Budget Contingency Clause

- A. It is mutually understood between the parties that the Agreement may have been written before ascertaining the availability of congressional or legislative appropriation of funds, for the mutual benefit of both parties in order to avoid program and fiscal delays that would occur if the Agreement were executed after that determination was made Caltrans reserves the right to terminate this Agreement without cause upon 30 days written notice to Contractor or immediately in the event of default or material breach by Contractor.
- B. The Agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government or the California State Legislature for the purpose of this program. In addition, the Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress or the State Legislature that may affect the provisions, terms or funding of this Agreement in any manner.
- C. It is mutually agreed that if the Congress or the State Legislature does not appropriate sufficient funds for the program, the Agreement shall be amended to reflect any reduction in funds.
- D. Pursuant to Government Code (GC), Section 927.13, no late payment penalty shall accrue during any time period for which there is no Budget Act in effect, nor on any payment or refund that is the result of a federally mandated program or that is directly dependent upon the receipt of federal funds by a state agency.
- E. Caltrans has the option to terminate the Agreement under the 30-day termination clause or to amend the Agreement to reflect any reduction of funds.

3. Prompt Payment Clause

- A. Payment will be made in accordance with, and within the time specified in, Government Code, Chapter 4.5, commencing with Section 927 and all agreements must comply with California Public Contract Code Sections 10262 and 10262.5.

- B. Pursuant to California Public Contract Code Section 10262, Contractor shall pay its Subcontractor(s) within seven (7) calendar days from receipt of each payment made to Contractor by Caltrans.
- C. Failure of Contractor adhering to the California Public Contract Code Section 10262 may result in termination of this Agreement per California Public Contract Code Section 10253 and disciplinary action by Contractors State License Board may be implemented
- D. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this clause.

4. Cost Limitation

- A. Total amount of this Agreement shall not exceed the amount listed in **Section 3**, on page one of the Agreement.
- B. It is understood and agreed that this total is an estimate and that Caltrans will pay only for those services actually rendered as authorized by the Caltrans District Equipment Manager or designee.

5. Rate

Contractor shall be reimbursed for work performed under the Agreement at the bid rates quoted on the **Bid Proposal, Attachment 1**.

6. Costs Included in Bid Rates

- A. The cost of employer payments to or on behalf of employees, subsistence, travel, compensation insurance premiums, unemployment contributions, social security taxes, Agreement bond premiums, and any other taxes or assessments INCLUDING SALES AND USE TAXES required by law or otherwise shall be included in the Agreement rates and no additional allowance will be made thereof, unless separate payment provision should specifically so provide.
- B. If Agreement is over \$15,000, Contractor shall make travel and subsistence payments to each worker in compliance with Labor Code Sections 1773.1 and 1773.9. Travel and subsistence requirements are available on the [Department of Industrial Relations website](#).

7. Operated Equipment

- A. Rental will be paid for the actual time equipment is operated on the job or moved between job sites, as shown on Caltrans' "Record of Rented Equipment" signed by both Caltrans and Contractor's representatives. No payment will be made for time lost due to unfavorable weather or other conditions not within the control of Caltrans. No payment will be made for time of breakdown or repairs when the down time exceeds 30 minutes.
- B. The "labor surcharge" will be that set forth in the Caltrans publication titled, "Labor Surcharge and Equipment Rental Rates," in effect when the contract is advertised for bid.

- C. The term “wages” as used on this sheet is the total hourly wage rate found on the applicable general prevailing wage determination issued by the Director of the Department of Industrial Relations (DIR). This total hourly wage rate includes the basic hourly rate established by the Director pursuant to Labor Code Section 1773 and employer payments as set forth in Labor Code Section 1773.1. General prevailing wage determinations establish both straight time and overtime total hourly wage rates.
- D. Overtime is defined as time worked in excess of eight (8) hours during any day or shift (except Saturdays, Sundays, or holidays) or during hours defined as overtime in the collective bargaining agreement on file with DIR. Holidays are those recognized in the applicable collective bargaining agreement.
- E. When Contractor is ordered by Caltrans to work overtime or on Saturdays, Sundays, or holidays, an additional payment will be made to Contractor in the amount of the difference between the total hourly straight time wage rate and the total hourly overtime wage rate, plus the labor surcharge during those hours.
- F. When equipment is idle for more than 30 minutes during any work day and Contractor is ordered by Caltrans to have such equipment with operator present at the job site for immediate work, such idle time will be paid as standby time. The rate to be paid for standby time will be based on the right of way delay factor from the Labor Surcharge and Equipment Rental Rate book published by Caltrans, plus wages for employees, plus labor surcharge. It is agreed that the un-operated rate is the fully operated rate bid less the wages paid.
- G. When the operator is ordered to report to the jobsite, but is not ordered to standby, Contractor will be reimbursed for any wages actually paid for “show-up,” “partial shift,” or other “on-the-job” time paid in compliance with the applicable collective bargaining agreement. No labor surcharge will be provided for this reimbursement.

8. Payroll Records (Required if Agreement is in excess of \$15,000)

- A. Contractor and each Subcontractor shall comply with the following provisions. Contractor shall be responsible for compliance by their Subcontractors.
 - 1) Each Contractor and Subcontractor shall keep accurate payroll records and supporting documents as mandated by Section 1776 of the California Labor Code and as defined in Section 16000 of Title 8 of the California Code of Regulations, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or Subcontractor in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - a) The information contained in the payroll record is true and correct.
 - b) The employer has complied with the requirements of California Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

- 2) The payroll records enumerated under paragraph (1) above shall be certified. The certified payrolls and records related to employee wages, fringe benefits, payroll tax and deductions shall be available for inspection and copying by Caltrans representative at all reasonable hours at the principal office of Contractor.
 - a) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
 - b) A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of Caltrans', the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of DIR. Certified payrolls submitted to Caltrans, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by Contractor.
 - 3) The public shall not be given access to certified payroll records by Contractor. Contractor is required to forward any requests for certified payrolls to the District Equipment Manager by both facsimile and regular mail on the business day following receipt of the request. Each Contractor shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within 10 days after receipt of a written request.
 - 4) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by Caltrans shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of Contractor awarded the Agreement or performing the Agreement shall not be marked or obliterated.
 - 5) Contractor shall inform Caltrans of the location of the records enumerated under paragraph (1) above, including the street address, city, and county, and shall, within five (5) working days, provide a notice of a change of location and address.
 - 6) Contractor or Subcontractor shall have 10 days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event Contractor or Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to Caltrans, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by Caltrans from payments then due. A Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a Subcontractor to comply with this section.
- B. The penalties specified in paragraph 6 above for noncompliance with the provisions of said Section 1776 will be deducted from any monies due or which may become due to Contractor. Penalties assessed for failure to submit certified payrolls are forfeitures and not retentions that will be returned to Contractor.
- C. Payrolls shall contain the full name, address and social security number of each employee, the correct work classification (including apprentices, if applicable), rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. The employee's address and social security number need only appear on the first payroll on which his name

appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or employer's agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the Agreement. The "Statement of Compliance" shall be on forms furnished by Caltrans or on any form with identical wording. Any payroll that does not include the required "Statement of Compliance" will be deemed inadequate and unacceptable. Contractor shall be responsible for the submission of copies of payrolls of all Subcontractors.

- D. Contractor and each Subcontractor shall preserve their payroll records for a period of three (3) years from the date of completion of the Agreement.
- E. Contractor shall submit a certified copy of all payroll records for verification by Caltrans District Equipment Manager and/or Designee with each invoice. When progress payments are called for, Contractor shall submit a certified copy of all payroll records for verification for the work completed to date with each invoice. Delinquent or inadequate certified payrolls or other required documents will result in the withholding of payment until such documents are submitted by Contractor.
- F. Contractor shall pay any employee actually engaged in the moving and handling of goods being relocated under the Agreement no less than the prevailing wage rate.
- G. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this clause.

9. Penalty (Required if Agreement is in excess of \$15,000)

- A. Contractor and any Subcontractor under Contractor shall comply with Labor Code Sections 1774 and 1775. In accordance with said Section 1775, Contractor shall forfeit, as a penalty to Caltrans, not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates for such work or craft in which such worker is employed for any public work done under the contract by him or her, or by any Subcontractor under him/her, in violation of the provisions of the Labor Code and, in particular, Labor Code Sections 1775 to 1780, inclusively.
- B. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of Contractor or Subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of Contractor or Subcontractor in meeting his or her prevailing wage obligations, or a Contractor's willful failure to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if Contractor or Subcontractor had knowledge of the obligations under the Labor Code. Any Contractor that executes and receives a copy of this Agreement is deemed to have knowledge of his or her obligations regarding the Labor Code's prevailing wage requirements. In addition to the penalty and pursuant to Labor Code Section 1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Contractor or Subcontractor.
- C. If a worker employed by a Subcontractor on a public works project is not paid the general prevailing per diem wages by the Subcontractor, the Prime Contractor of the project is not liable

for any penalties described above unless the Prime Contractor had knowledge of that failure of the Subcontractor to pay the specified prevailing rate of wages to those workers or unless the Prime Contractor fails to comply with all of the following requirements:

- 1) The Agreement executed between Contractor and the Subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1775.5, 1776, 1813 and 1815 of the Labor Code.
 - 2) Contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the Subcontractor to the employees by periodic review of the certified payroll records of the Subcontractor.
 - 3) Upon becoming aware of the failure of the Subcontractor to pay his or her workers the specific prevailing rate of wage, Contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited, to retaining sufficient funds due the Subcontractor for work performed on the public works project.
 - 4) Prior to making final payment to the Subcontractor for work performed on the public works project, Contractor shall obtain an affidavit signed under penalty of perjury for the Subcontractor that the Subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.
- D. Pursuant to Labor Code Section 1775, Caltrans shall notify Contractor on a public works project within 15 days of receipt of a complaint that a Subcontractor has failed to pay workers the general prevailing rate of per diem wages.
- E. If Caltrans determines that employees of a Subcontractor were not paid the general prevailing rate of per diem wages and if Caltrans did not retain sufficient money under the contract to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, Contractor shall withhold an amount of moneys due the Subcontractor sufficient to pay those employees the general prevailing rate of per diem wages if requested by Caltrans.
- F. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this clause.

10. State General Prevailing Wage Rates (Required if Agreement is in excess of \$15,000)

- A. Contractor agrees to comply with all the applicable provisions of the Labor Code including, those provisions requiring the payment of not less than the general prevailing rate of wages. Contractor further agrees to the penalties and forfeitures provided in said Code in the event a violation of any of the provisions occurs in the execution of this Agreement.
- B. Pursuant to Labor Code Section 1771.5, not less than the general prevailing wage rate of per diem wages and the general prevailing rate of per diem wages for holiday and overtime work for work of a similar character in the county in which the work is to be performed shall be paid to all workers employed on this Agreement, if the Agreement is for:
 - 1) More than \$25,000 for public works construction, or

- 2) More than \$15,000 for the alteration, demolition, installation, repair, or maintenance of public works.
- C. Any subcontract entered into as a result of the Agreement shall contain all the provisions of this clause.

11. State Prevailing Wage Rate Determinations (Required if Agreement is in excess of \$15,000)

- A. The General Prevailing Wage Rate Determinations applicable to the project are available and on file with Caltrans Regional/District Labor Compliance Office. These wage rate determinations are made a specific part of this contract by reference pursuant to Labor Code Section 1773.2. Any special wage rate determinations applicable to this project are attached.
- B. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the [Department of Industrial Relations Internet website](#). After award of the Agreement, and prior to commencing work, all applicable General Prevailing Wage Rate Determinations are to be obtained by Contractor from Caltrans District/Regional Labor Compliance Officer. These wage rate determinations are to be posted by Contractor at the job site in accordance with Section 1773.2 of the California Labor Code.
- C. Questions pertaining to predetermined wage rates should be directed to [Caltrans Regional or District Labor Compliance Office](#). A list of local Labor Compliance Offices can be found at the Caltrans Labor Compliance website.

12. Hours of Labor

- A. Eight (8) hours labor constitutes a legal day's work. Contractor shall forfeit, as a penalty to the State of California, twenty-five dollars (\$25.00) for each worker employed in the execution of the Agreement by Contractor or any Subcontractor under Contractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the Labor Code, and in particular Sections 1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half times the basic rate of pay, as provided in Section 1815.
- B. Any subcontract entered into as a result of the Agreement shall contain all the provisions of this clause.

13. Employment of Apprentices

- A. Where the prime Agreement is \$30,000 or more, Contractor and any Subcontractors under him or her shall comply with all applicable requirements of Labor Code Sections 1777.5, 1777.6, and 1777.7 in the employment of apprentices.
- B. Contractors and Subcontractors are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, Contractors and Subcontractors are advised to contact the State Division of Apprenticeship Standards, PO Box 420603, San Francisco, California 94142- 0603, or one of its branch offices, for additional information

regarding the employment of apprentices and for the specific journey-to-apprentice ratios for the contract work. The Prime Contractor is responsible for all Subcontractors' compliance with these requirements. Penalties for failure to comply with apprenticeship requirements are specified in Labor Code Section 1777.7.

- C. Any subcontract entered into as a result of this contract shall contain all the provisions of this article.

14. Settlement of Disputes

- A. Any dispute concerning a question of fact arising under the Agreement that is not disposed of by Agreement shall be decided by the Caltrans Contract Officer, who may consider any written or verbal evidence submitted by Contractor. The decision of the Caltrans Contract Officer, issued in writing, shall be Caltrans' final decision on the dispute.
- B. Neither the pendency of a dispute nor its consideration by the Caltrans Contract Officer will excuse Contractor from full and timely performance in accordance with the terms of the Agreement.

15. Termination

- A. If, after award and execution of the Agreement, Contractor's performance is unsatisfactory, the Agreement may be terminated for default. Additionally, Contractor may be liable to Caltrans for damages including the difference between Contractor's original bid price and the actual cost of performing the work by another Contractor. Default is defined as Contractor failing to perform services required by the Agreement in a satisfactory manner.
- B. Caltrans reserves the right to terminate this Agreement without cause upon 30 days written notice to Contractor or immediately in the event of default or material breach by Contractor.
- C. The State may terminate this Agreement immediately for good cause. The term "good cause" may be defined as "impossibility of performance" or "frustration of purpose", but does not include material breach, default, or termination without cause. In this instance, the Agreement termination shall be effective as of the date indicated on the State's notification to Contractor.
- D. In the event that the total Agreement amount is expended prior to the expiration date, Caltrans may, at its discretion, terminate this Agreement with 30 days' notice to Contractor.

16. Subcontractors

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any Subcontractors, and no subcontract shall relieve Contractor of his/her responsibilities and obligations hereunder. Contractor agrees to be as fully responsible to the State for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Contractor. Contractor's obligation to pay its Subcontractors is an independent obligation from the State's obligation to make payments to Contractor.
- B. Contractor shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted except for Subcontractors listed on the **Bidder Declaration, GSPD-05-105, Attachment 2**.

- C. Any substitution of Subcontractors must be approved in writing by the State's District Equipment Manager in advance of assigning work to a substitute Subcontractor.

17. Retention of Records/Audits

- A. For the purpose of determining compliance with Government Code Section 8546.7, Contractor and Subcontractors 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. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement. Caltrans, the State Auditor, Federal Highway Administration (FHWA), or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to Contractor's books, records, and documents that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.
- B. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this article.

18. Disabled Veterans Business Enterprise (DVBE) Participation (Without Goals)

Caltrans has established no goals for the DVBE participation for this Agreement. However, Contractor shall be fully informed respecting the California Public Contract Code Section 10115 et seq., which is incorporated by reference. Contractor is urged to obtain DVBE Subcontractor participation should clearly defined portions of the work become available.

19. Laws to be Observed

Contractor shall keep fully informed of all existing and future State and Federal laws and county, and municipal ordinances and regulations which in any manner affect those engaged or employed in the work, the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Contractor shall at all times observe and comply with and shall cause all agents and employees to observe and comply with all such existing and future laws, ordinances, regulations, orders, and decrees of bodies or tribunals having any jurisdiction or authority over the Agreement. Contractor shall protect and indemnify the State of California and all officers and employees thereof connected with the work against any claim, injury, or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by Contractor, its Subcontractor(s), or an employee(s). If any discrepancy or inconsistency is discovered in the plans, drawings, specification, or Agreement for the work in relation to any such law, ordinance, regulation, order, or decree, Contractor shall immediately report the same to the Caltrans Contract Manager in writing.

20. Specific Legal References

Any reference to specific statutes, regulations, or other legal authority in this Agreement shall not relieve Contractor from the responsibility of complying with all existing and future laws, ordinances, regulations, orders, and decrees of bodies or tribunals having any jurisdiction or authority over the Agreement.

21. Force Majeure

Neither party shall be liable to the other for any delay in, or failure of, performance, nor shall any such delay in, or failure of, performance constitute default, if such delay or failure is [directly or indirectly] caused by “Force Majeure” without the fault, intentional act or negligence of the Contractor. As used in this section, “Force Majeure” shall include, but shall not be limited to, acts of God, fire, flood, earthquake, other natural disaster, nuclear accident, strike, lockout, riot, freight embargo, interruption in service by a regulated utility, or governmental statutes or regulations superimposed after the fact.

22. Equipment Indemnification

- A. Contractor shall indemnify Caltrans for any claims against Caltrans for loss or damage to Contractor’s property or equipment during its use under this Agreement and shall at Contractor’s own expense maintain such fire, theft, liability, or other insurance as deemed necessary for this protection. Contractor assumes all responsibility which may be imposed by law for property damage or personal injuries caused by defective equipment furnished under this Agreement or by operations of Contractor or Contractor’s employees under this Agreement.
- B. Any subcontract entered into as a result of this Agreement shall contain all the provisions of this clause.

23. Non-Solicitation

Contractor warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained or contracted by Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

24. Interfacing with Pedestrian and Vehicular Traffic

Pursuant to the authority contained in Section 591 of the Vehicle Code, Caltrans has determined that within such areas as are within the limits of the project and are open to public traffic, Contractor shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14 and 15 of the Vehicle Code. Contractor shall take all necessary precautions for safe operations of Contractor’s equipment and the protection of the public from injury and damage from such property.

25. Operation and Maintenance

- A. Contractor shall at its own expense maintain the equipment and its appurtenances in good repair and operative condition and replace any equipment not in good mechanical condition.
- B. Contractor shall furnish all fuel and lubricants and all repairs including labor, material, parts, and other items at its own expense.
- C. The State will not be responsible for the wear and tear on the equipment or its appurtenances.
- D. The equipment is to be operated only by employees of Contractor.

26. Use Tax

- A. If the equipment to be rented is in substantially the same form as when it was acquired by Contractor, and if Contractor has paid the sales or use tax on the purchase price of the equipment, then the California sales or use tax (Revenue and Taxation Code Sections 6010 and 6023) will not apply to the work to be done under this Agreement.
- B. If the equipment is not in substantially the same form as required or if Contractor has not previously paid sales tax, then said sales tax applies to the equipment rental rate.
- C. If use tax applies to this equipment rental Agreement:
 - 1) The bidder shall include the amount of the tax in his/her bid.
 - 2) The tax should be applied only to the portion of the fully operated rental rate that is attributable to the equipment itself.
 - 3) Invoices shall separately itemize the amount of the tax.
 - 4) Invoices shall state the serial number of Contractor's seller's permit or certificate of registration-use tax.
- D. In case of doubt concerning the applicability of the tax, the bidder should refer any questions to an office of the California Department of Tax and Fee for determination.

27. Insurance—General Provisions Required in all Insurance Policies

- A. Deductible: Contractor is responsible for any deductible or self-insured retention contained within the insurance program.
- B. Coverage Term: Coverage must be in force for the complete term of this Agreement. If insurance expires during the term of this Agreement, a new certificate must be received by the Caltrans District Equipment Manager at least ten (10) days prior to the expiration of the insurance. Any new insurance must continue to comply with the original terms of the Agreement.
- C. Policy Cancellation or Termination and Notice of Non-Renewal: Contractor shall provide, to the Caltrans District Equipment Manager within five (5) business days, following receipt by Contractor, a copy of any cancellation or non-renewal of insurance required by this Agreement. In the event Contractor fails to keep, in effect at all times, the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.
- D. Primary Clause: Any required insurance contained in the Agreement shall be primary, and not excess or contributory, to any other insurance carried by the State.
- E. Inadequate Insurance: Inadequate or lack of insurance does not negate Contractor's obligations under this Agreement.
- F. Endorsements: Any required endorsements requested by the State must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.

- G. Insurance Carrier Required Rating: All insurance companies must carry a rating acceptable to the [Department of General Services, Office of Risk and Insurance Management \(ORIM\)](#). If Contractor is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required. Department of General Services, ORIM website.
- H. Contractor shall include all of its Subcontractors as insureds under Contractor's insurance or supply evidence of insurance to the State equal to the policies, coverages, and limits required of Contractor.
- I. The State will not be responsible for any premiums or assessments on the policy.

28. Insurance Requirements

A. Commercial General Liability

- 1) Contractor shall maintain general liability for bodily injury and property damage liability. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured Agreement. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to Contractor's limit of liability. The policy must include:

“Caltrans, State of California, its officers, agents, and employees are included as additional insured but only with respect to work performed for the State of California under this Agreement. The additional insured endorsement must accompany the certificate of insurance.”

- 2) This endorsement must be supplied under form acceptable to the Department of General Services, Office of Risk and Insurance Management.

B. Automobile Liability

Contractor shall maintain motor vehicle liability with limits not less than \$1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired and non-owned motor vehicles. The same additional insured designation and endorsement required for general liability is to be provided for this coverage.

C. Workers' Compensation and Employer's Liability

Contractor shall maintain statutory worker's compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Agreement. When work is performed on State owned or controlled property the workers' compensation policy shall contain a waiver of subrogation in favor of the State. The waiver of subrogation endorsement shall be provided to the Caltrans District Equipment Manager.

D. Satisfying a Self-Insured Retention (SIR)

All insurance required by this contract must allow, but not require, the State to pay any SIR and/or act as Contractor's agent in satisfying any SIR. The choice to pay any SIR and/or act as Contractor's agent in satisfying any SIR is at the State's discretion. If the State chooses to pay any SIR and/or act as Contractor's agent in satisfying any SIR, Contractor shall reimburse the State for the same.

E. Available Coverages/Limits

In the event the insurance coverages obtained by Contractor is broader in scope than, and/or the limits are higher than, those required under the contract, all such broader coverage and/or higher limits available to Contractor shall also be available and applicable to the State.

29. Motor Carrier Permit Requirements (If applicable)

- A. Contractor must have a valid Motor Carrier Permit(s) (MCP) issued from the Department of Motor Vehicles (DMV) for its services as a Motor Carrier of Property under this Agreement. Contractor shall pay any required fees necessary to obtain and maintain in good standing the required MCP(s).
- B. The MCP(s) required for Contractor's Motor Carriers of Property under California Vehicle Code Sections 34601 and 34620 shall be on file with Contractor for the duration of this Agreement. Upon request of the Caltrans District Equipment Manager or his/her designee, Contractor must immediately provide to Caltrans a copy of the required MCP(s).

30. Licenses and Permits

- A. Contractor shall be properly licensed in accordance with the laws of the State of California and shall possess a C-12 Earthwork and Paving Contractor license.
- B. Contractor shall be an individual or firm licensed to do business in California and shall obtain at its expense all license(s) and permit(s) required by law for accomplishing any work required in connection with this Agreement.
- C. If Contractor is headquartered within the State of California, Contractor must have a business license or equivalent from the city/county in which it is headquartered. If Contractor is a corporation or other business entity (apart from a sole proprietorship or general partnership), Contractor must be registered and active/in good standing with the California Secretary of State.
- D. If Contractor is headquartered outside the State of California, Contractor submit to Caltrans a copy of its business license or equivalent. If Contractor is a foreign corporation or other business entity (apart from a sole proprietorship or general partnership), then Contractor must be registered and active/in good standing with the California Secretary of State.
- E. In the event any license(s) and/or permit(s) expire at any time during the term of this Agreement, Contractor agrees to provide Caltrans Contract Manager a copy of the renewed license(s) and/or permit(s) within 30 days following the expiration date. In the event Contractor fails to keep in effect at all times all required license(s) and permit(s), Caltrans may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

31. Licensed Contractor Standards for Quality of Work

- A. Licensed Contractors must observe professional standards for quality of work or the California Contractors State License Board (CSLB) will invoke disciplinary action.
- B. Notice is hereby given that certain actions by a Contractor, including, but not limited to the following, constitute grounds for disciplinary action by the CSLB once Caltrans has notified the license board of all violations:

- 1) A willful departure from plans and specifications or disregard of trade standards for good and workmanlike construction in any material respect that might prejudice Caltrans, owner of the property upon which you perform work (Bus. & Prof. Code, 7109).
 - 2) The failure to observe and comply with all the applicable labor laws (Bus. & Prof. Code Section 7110).
 - 3) Material failure to complete this Agreement (Bus. & Prof. Code 7113).
- C. Should Caltrans determine that the work or materials provided vary materially from the specifications, or, that defective work when completed was not performed in a workmanlike manner, then Contractor warrants that it shall perform all necessary repairs, replacement and corrections needed to restore the property according to the Agreement plans and specifications, all at no further or additional cost to Caltrans.

32. Prohibition of Delinquent Taxpayers

California Public Contract Code Section 10295.4 prohibits the State from entering into an Agreement for goods or services with any taxpayer, whose name appears on either list maintained by the California Department of Tax and Fee or the Franchise Tax Board pursuant to Revenue Taxation Code Sections 7063 and 19195, respectively, of the 500 largest tax delinquencies. California Public Contract Code Section 10295.4 provides no exceptions to these prohibitions.

33. Debarment and Suspension Certification

- A. Contractor's signature affixed herein upon the Agreement shall constitute a certification under penalty of perjury under the laws of the State of California, that Contractor or any person associated therewith in the capacity of owner, partner, director, officer, or manager:
- 1) is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
 - 2) has not been suspended, debarred, voluntarily excluded, or determined ineligible by any Federal agency within the past three (3) years;
 - 3) does not have a proposed debarment pending; and
 - 4) has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to Caltrans. Exceptions will not necessarily result in denial of recommendation for award but will be considered in determining bidder responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.

34. ADA Compliance

All entities that provide electronic or information technology or related services that will be posted online by the California Department of Transportation must be in compliance with GC Sections 7405 and 11135 and the Web Content Accessibility Guidelines (WCAG) 2.0 or subsequent version, published by the Web Accessibility Initiative of the World Wide Web Consortium at a minimum Level AA success. All entities will respond to and resolve any complaints/deficiencies regarding accessibility brought to their attention.