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Contract Number

20-1031

SAP Number

4400015429



## San Bernardino County Flood Control District

<b>Department Contract Representative</b>	<u>Melissa Walker</u>
<b>Telephone Number</b>	<u>909-387-8040</u>
<b>Contractor</b>	<u>Bacon/Wagner Excavating, Inc.</u>
<b>Contractor Representative</b>	<u>Dan Wagner</u>
<b>Telephone Number</b>	<u>909-645-4075</u>
<b>Contract Term</b>	<u>October 27, 2020 thru June 30, 2025</u>
<b>Original Contract Amount</b>	<u>\$1,250,000</u>
<b>Amendment Amount</b>	<u></u>
<b>Total Contract Amount</b>	<u>\$1,250,000</u>
<b>Cost Center</b>	<u>1970002518</u>

### IT IS HEREBY AGREED AS FOLLOWS:

**WHEREAS**, the San Bernardino County Flood Control District (District) is required to maintain the District roads and on-call storm maintenance services are needed to perform said maintenance; and

**WHEREAS**, District desires that Bacon/Wagner Excavating, Inc. (Contractor) provide on-call storm maintenance services to various sites within the District, and Contractor agrees to provide on-call storm maintenance services as desired by District, and as set forth below; and

**WHEREAS**, District issued "Request for Qualifications (RFQ) PWG 121-ADMIN-3914 "On-call Storm Maintenance Services" and Contractor responded to said RFQ by submitting a proposal; and

**WHEREAS**, District found Contractor qualified to provide said services under the terms of the RFQ and therefore desires such services be provided by the Contractor and the Contractor agrees to provide On-call Storm Maintenance Services as set forth below under the Scope of Work, Section E; and

**WHEREAS**, Contractor is aware that District reserves the right to award contracts as well as work to multiple contractors or no particular contractor, as it deems to be in the best interest of District.

**NOW, THEREFORE**, the District and Contractor mutually agree to the following terms and conditions:

## **A. CONTRACTOR RESPONSIBILITIES**

### **A.1 Contractor is responsible for:**

1. Adhering to all requirements of this Contract and the RFQ from which this contract resulted, and the Request For Bid (RFB).
2. Maintaining a current email address and fax, and telephone number with the District. **Failure to do so may result in loss of bid opportunities on jobs.**
3. Providing the District with a name and telephone number of a single point of contact for questions regarding services. Contractor must supply the District with an emergency 24-hour contact and telephone number.
4. Notifying the District in writing, of any change in mailing address within ten (10) business days of the change.
5. Providing the District with the names, titles and signatures of all employees authorized to sign RFBs.
6. Responding to bids, whether providing prices or declining, within the required time frame specified in the RFB, upon receipt of mailed, faxed, or emailed RFB from the District. **Failure to respond in the required time frame is considered a "Non-Responsive" bid.**
7. Providing the bid in the format specified in the RFB and this Agreement, with the signatures of an authorized signer. The bid price must include all labor, equipment, and supplies, licenses and permits required to perform Contractor obligations under an accepted job assignment.
8. Obtaining and maintaining valid and applicable licenses and permits at the time of bid and during any time work is performed pursuant to a Contract with the District.
9. Registering with the Department of Industrial Relations (DIR) for compliance with SB 854 Prevailing Wage Requirements.
10. Warranting all services provided for one (1) year.
11. Providing the District with the following completed signed items:
  - On-call Storm Maintenance Services Schedule (Appendix A)
  - Current Insurance Certificate (as per Section G)
12. The Contractor certifies that neither it nor its principals, or other key decision makers, or subcontractors is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency or on the Federal Government Excluded Parties List System ([www.epls.gov](http://www.epls.gov)). Contractor agrees that this Certification is a continuing certification throughout the term of the Contract. As a result, Contractor agrees to inform the District in writing within one (1) business day.

**A.2** Contractor reserves the right to cancel this contract, for any reason, with a sixty (60) day written notice of cancellation.

## **B. GENERAL CONTRACT TERMS**

### **B.1 Recitals**

The recitals set forth above are true and correct and incorporated herein by this reference.

### **B.2 Contract Amendments**

Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and District.

### **B.3 Contract Assignability**

Without the prior written consent of the District, the Contract is not assignable by Contractor either in whole or in part.

**B.4 Contract Exclusivity**

This is not an exclusive Contract. The District reserves the right to enter into a contract with other contractors for the same or similar services. The District does not guarantee or represent that the Contractor will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Contract.

**B.5 Attorney's Fees and Costs**

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

**B.6 Background Checks for Contractor Personnel**

Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (b) do not use legal or illegal substances in any manner which will impact their ability to provide Services to the District; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the District and not in violation of applicable law, Contractor shall conduct a background check, at Contractor's sole expense, on all its personnel providing Services. If requested by the District, Contractor shall provide the results of the background check of each individual to the District. Such background check shall be in the form generally used by Contractor in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Contractor personnel who do not meet the District's hiring criteria, in District's sole discretion, shall not be assigned to work on District property or Services, and District shall have the right, at its sole option, to refuse access to any Contract personnel to any District facility.

**B.7 Change of Address**

Contractor shall notify the District in writing, of any change in mailing address within ten (10) business days of the change.

**B.8 Choice of Law**

This Contract shall be governed by and construed according to the laws of the State of California.

**B.9 Compliance with District Policy**

In performing the Services and while at any District facilities, Contractor personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the District regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the District; and (d) abide by all laws applicable to the District facilities and the provision of the Services, and all amendments and modifications to each of the documents listed in subsections (b), (c), and (d) (collectively, "District Policies"). District Policies, and additions or modifications thereto, may be communicated orally or in writing to Contractor or Contractor personnel or may be made available to Contractor or Contractor personnel by conspicuous posting at a District facility, electronic posting, or other means generally used by District to disseminate such information to its employees or contractors. Contractor shall be responsible for the promulgation and distribution of District Policies to Contractor personnel to the extent necessary and appropriate.

District shall have the right to require Contractor's employees, agents, representatives and subcontractors to exhibit identification credentials issued by District in order to exercise any right of access under this Contract.

**B.10 Reserved**

**B.11 Primary Point of Contact**

Contractor will designate an individual to serve as the primary point of contact for the Contract. Contractor or designee must respond to District inquiries within two (2) business days. Contractor shall not change the primary contact without written acknowledgement to the District. Contractor will also designate a back-up point of contact in the event the primary contact is not available.

**B.12 Additional Terms and Conditions of the San Bernardino County Flood Control District:**

All of the San Bernardino County Flood Control District's revenues as defined below, have been pledged to secure the payment of the principal and interest on certain bonds and refunding bonds ("Bonds") issued by the San Bernardino County Flood Control District in May 2007. The pledge constitutes a first lien on the revenues for the payment of the Bonds. Any payments under this Agreement are subject to the prior pledge of revenues described above. San Bernardino County Flood Control District payments pursuant to this Agreement will be made to the extent there are sufficient funds available after payment of the Bonds. For purposes of this paragraph, "revenues" shall mean all income and revenue received by the San Bernardino County Flood Control District from the operation or ownership of the flood and storm water control and conservation facilities ("Flood Control System") of the San Bernardino County Flood Control District (including but not limited to, all real and personal property, or any interest therein, and all additions, improvements, betterments and extensions thereto), determined in accordance with Generally Accepted Accounting Principles, including all ad valorem property taxes received by the San Bernardino County Flood Control District pursuant to Article XIII A of the Constitution of the State of California and Section 95 et seq. of the California Revenue and Taxation Code, all rents, royalties and license and permit fees and charges received by the San Bernardino County Flood Control District, investment income and all other money howsoever derived by the San Bernardino County Flood Control District from the operation or ownership of the Flood Control System or arising from the Flood Control System, but excluding (a) ad valorem property taxes levied to pay any voter approved general obligation indebtedness of the San Bernardino County Flood Control District, (b) assessments levied pursuant to Section 43-7 or Section 43-26.9 of the San Bernardino County Flood Control Act (Cal. Water Code App. Sect. 43-1 et seq.), and (c) grants, advances or contributions in aid of construction, except to the extent such grants are unrestricted and available for any expenditure of the San Bernardino County Flood Control District

**B.13 District Representative**

The *Chief Flood Control Engineer* or his/her designee shall represent the District in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by Contractor. If this contract was initially approved by the San Bernardino County Flood Control District Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

**B.14 Damage to District Property**

Contractor shall repair, or cause to be repaired, at its own cost, all damages to District vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or its employees or agents. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Contractor fails to make timely repairs, the District may make any necessary repairs. The Contractor, as determined by the District, shall repay all costs incurred by the District for such repairs, by cash payment upon demand, or District may deduct such costs from any amounts due to the Contractor from the District, as determined at the District's sole discretion.

**B. 15 Debarment and Suspension**

Contractor certifies that neither it nor its principals or subcontracts is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation

in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Contractor further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

**B.16 Drug and Alcohol Free Workplace**

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, the Contractor agrees that the Contractor and the Contractor's employees, while performing service for the District, on District property, or while using District equipment:

**B.16.1** Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.

**B.16.2** Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.

**B.16.3** Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Contractor shall inform all employees that are performing service for the District on District property, or using District equipment, of the District's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the District.

The District may terminate for default or breach of this Contract and any other Contract the Contractor has with the District, if the Contractor or Contractor's employees are determined by the District not to be in compliance with above.

**B.17 Duration of Terms**

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

**B.18 Employment Discrimination**

During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and District laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

**B.19 Environmental Requirements**

In accordance with District Policy 11-08, the District prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The District requires Contractor to use recycled paper for any printed or photocopied material created as a result of this Contract. Contractor is also required to use both sides of paper sheets for reports submitted to the District whenever practicable.

To assist the District in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Contractor must be able to annually report the District's environmentally preferable purchases. Contractor must also be able to report on environmentally preferable goods and materials used in the provision of their service to the District, utilizing a District approved form.

**B.20 Improper Influence**

Contractor shall make all reasonable efforts to ensure that no District officer or employee, whose position in the District enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

**B.21 Improper Consideration**

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the District in an attempt to secure favorable treatment regarding this Contract.

The District, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the District with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

Contractor shall immediately report any attempt by a District officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or the District Administrative Office. In the event of a termination under this provision, the District is entitled to pursue any available legal remedies.

**B.22 Informal Dispute Resolution**

In the event the District determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

**B.23 Legality and Severability**

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

**B.24 Licenses, Permits and/or Certifications**

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, District, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Contractor will notify District immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

Have a valid contractor's State of California A license or C-8 or C-12 (if applicable). Please note that a specific license may be required for a particular project. Contractors must maintain the

valid applicable license at the time it bids on a project and during the entire time of performance under the Contract.

**B.25 Material Misstatement/Misrepresentation**

If during the course of the administration of this Contract, the District determines that Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the District, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the District is entitled to pursue any available legal remedies.

**B.26 Mutual Covenants**

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

**B.27 Nondisclosure**

Contractor shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the District to Contractor or an agent of Contractor or otherwise made available to Contractor or Contractor's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Contractor or an agent of Contractor in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

**B.28 Notice of Delays**

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

**B.29 Ownership of Documents**

All documents, data, products, graphics, computer programs and reports prepared by Contractor pursuant to the Contract shall be considered property of the District upon payment for services (and products, if applicable). All such items shall be delivered to District at the completion of work under the Contract, subject to the requirements of Section B-General Contract Terms. Unless otherwise directed by District, Contractor may retain copies of such items.

**B.30 Participation Clause**

The District desires that Municipalities, School Districts, and other Tax Districts within the county of San Bernardino requiring the same services provided herein may at their option and through the District Purchasing agent, avail themselves of this Contract. Upon notice, in writing, the Contractor agrees to the extension of the terms of a resultant contract with such governmental bodies as though they have been expressly identified in this bid, with the provisions that:

**B.30.1** Such governmental body does not have and will not have in force any other contract for like purchases.

**B.30.2** Such governmental body does not have under consideration for award any other bids or quotations for like purchases.

Such governmental body shall make purchases directly through and to the Contractor. The District will not be liable for any such purchase made between the Contractor and another governmental body who avails themselves of this contract.



**B.31 Air, Water Pollution Control, Safety and Health**

Contractor shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

**B.32 Records**

Contractor shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract.

All records relating to the Contractor's personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

**B.33 Relationship of the Parties**

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

**B.34 Release of Information**

No news releases, advertisements, public announcements or photographs arising out of the Contract or Contractor's relationship with District may be made or used without prior written approval of the District.

**B.35 Representation of the District**

In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the District.

**B.36 Strict Performance**

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

**B.37 Subcontracting**

Contractor shall obtain District's written consent, which District may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the Services to District. At District's request, Contractor shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the District, resumes of proposed subcontractor personnel. Contractor shall remain directly responsible to District for its subcontractors and shall indemnify District for the actions or omissions of its subcontractors under the terms and conditions specified in Section G. All approved subcontractors shall be subject to the provisions of this Contract applicable to Contractor Personnel.

For any subcontractor, Contractor shall:

- B.37.1** Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and



- B.37.2** Ensure that the subcontractor follows District's reporting formats and procedures as specified by District.
- B.37.3** Include in the subcontractor's subcontract substantially similar terms as are provided in Sections B. Contractor Responsibilities and C. General Contract Requirements.

Upon expiration or termination of this Contract for any reason, District will have the right to enter into direct Contracts with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct Contracts with District.

**B. 38 Subpoena**

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Goods or Services provided under this Contract is served upon Contractor or District, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and District further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for District.

**B.39 Termination for Convenience**

The District and the Contractor each reserve the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Contractor for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Contractor shall promptly discontinue services unless the notice directs otherwise. Contractor shall deliver promptly to District and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

**B.40 Time of the Essence**

Time is of the essence in performance of this Contract and of each of its provisions.

**B.41 Venue**

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino District, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, District of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, District of San Bernardino, San Bernardino District.

**B.42 Conflict of Interest**

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the District. Contractor shall make a reasonable effort to prevent employees, Contractor, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the District determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the District and such conflict may constitute grounds for termination of the

Contract. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

**B.43 Former District Administrative Officials**

Contractor agrees to provide, or has already provided information on former District administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former District administrative officials who terminated District employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "District administrative official" is defined as a member of the Board of Supervisors or such officer's staff, District Executive Officer or member of such officer's staff, District department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

**B.44 Disclosure of Criminal and Civil Procedures**

The District reserves the right to request the information described herein from the Contractor. Failure to provide the information may result in a termination of the Contract. The District also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Contractor also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Contractor will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Contractor will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the District. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

**B.45 Copyright**

District shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the San Bernardino County Flood Control District as the funding agency and Contractor as the creator of the publication. No such materials, or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the

express written consent of District. Copies of all educational and training materials, curricula, audio/visual aids, printer material, and periodicals, assembled pursuant to this Contract must be filed with the District prior to publication.

**B.46 Artwork, Proofs and Negatives**

All artwork, proofs, and/or negatives in either print or digital format for anything produced under the terms of this Contract are the property of the District. These items must be returned to the District within ten (10) days, upon written notification to the Contractor. In the event of a failure to return the documents, the District is entitled to pursue any available legal remedies. In addition, the Contractor will be barred from all future solicitations, for a period of at least six (6) months.

**B.47 Iran Contracting Act**

IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code section 2204(a), the Contractor certifies that at the time the Contract is signed, the Contractor signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

Contractors are cautioned that making a false certification may subject the Contractor to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.

**B.48 Prevailing Wage Laws**

By its execution of this Contract, Contractor certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Section 1720 of the California Labor Code states in part: "For purposes of this paragraph, 'construction' includes work performed during the design, site assessment, feasibility study, and other preconstruction phases of construction including, but not limited to, inspection and land surveying work..." If the Services/Scope of Work are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor will also adhere to any other applicable requirements, including but not limited to, those regarding the employment of apprentices, travel and subsistence pay, retention and inspection of payroll records, workers compensation and forfeiture of penalties prescribed in the Labor Code for violations. Contractor shall defend, indemnify and hold the District, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with Prevailing Wage Laws. See Attachment A, which is attached and incorporated by reference, for additional information regarding Prevailing Wage Laws. Contractor shall comply with all applicable terms and conditions in Attachment A. The applicable general prevailing wage determinations are on file with the District and are available to any interested party on request. Contractor shall post a copy of the applicable prevailing wage determinations at the job site.

**B. 49. PUBLIC CONTRACT CODE**

If the work is a public works project and is provided by a contractor as defined in the following sections of the Public Contract Code, claims shall be filed by the Contractor and processed by the District as provided for in Public Contract Code section 9204 (which is a new law and applies

to all public works contracts entered on or after January 1, 2017), as well as Public Contract Code sections 20104, 20104.2, 20104.4 and 20104.6 (if applicable). The entire text of Public Contract Code sections 9204, 20104, 20104.2, 20104.4 and 20104.6 is incorporated herein and is identified in the attached Attachment B. Please note that pursuant to Public Contract Code section 9204(c)(1), a "claim" means the following:

a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following: (A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project. (B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled. (C) Payment of an amount that is disputed by the public entity.

**C. TERM OF CONTRACT**

This Contract is effective as of October 27, 2020 and expires June 30, 2025 but may be terminated earlier in accordance with provisions of this Contract.

**D. DISTRICT RESPONSIBILITIES**

**D.1** The District, through its Chief Flood Control Engineer (hereinafter "Director"), or the Director's designee, is responsible for providing the Contractor with a central point of contact to facilitate the terms of the Contract. At the time of Contract commencement, the central point of contact is:  
**San Bernardino County Flood Control District**

**Attn: Melissa Walker  
825 East Third Street, Room 120  
San Bernardino, CA 92415-0835  
Fax (909) 387-80-50**

**D.2** The District, through its Director, or the Director's designee, reserves the right to:

1. Select the next lowest bidder until the District's requirements are met, if the preceding Contractor is unable to provide the service as needed.
2. Postpone jobs if in the best interest of the District.
3. Reject services that do not meet job specifications.
4. Cancel award of bid, prior to performance of service, if District requirements change.
5. Negotiate or solicit competitive proposal from any company on new technology, products and services as they become available and of application or economic benefit as determined by the District.
6. Accept bids any time during this contract from vendors currently under contract and not currently under contract.
7. Issue Addenda or Amendments to RFQ PWG 121-ADMIN-3914.
8. To immediately dismiss a contractor from a job if work is found to be deficient in any manner.
9. To invoice Contractor for all costs incurred by the District, including assessed fines and or penalties, for Contractor's incorrect, late, or non-performance of obligations under an accepted job assignment. These costs may be offset from any amounts due the Contractor under this Agreement or otherwise.
10. To assess liquidated damages in the amount of \$500.00 against Contractor for each and every calendar days delay in finishing the work in excess of the number of working days identified in the RFB.
11. To hold in retention up to 5% of the total value of work performed and any other amount authorized in Public Contract Code section 7201.

The retention will be held for 30 days following completion of the project. Contractor shall invoice District for release of the retained amount.

The District shall not retain any monies due the Contractor if unconditional releases and waivers from all subcontractors and a certification from the Contractor stating that said subcontractors are the only subcontractors performing work on the project are submitted upon invoice.

The actual required retention amount shall be established at the time of Bid.

Contractor may avail himself/herself to Public Contract Code section 22300 which allows substitute securities to be deposited in lieu of retention payments withheld to insure performance.

12. To require at the time of bid on an individual project, that the Contractor file a performance bond with and approved by the District Director or the Director's designee, in a penal sum equal to one hundred percent (100%) of the contract price.
13. To require at the time of bid on an individual project, a specific State of California Contractor's License.
14. Depending on the funding source for the work, require Contractor to comply with any other federal, state, District or municipal law, regulation and/or contractual requirement, including, but not limited to, the laws, regulations and/or requirements of the State Department of Transportation (Caltrans), the Federal Highway Administration (FHWA), the California Emergency Management Agency (Cal EMA) or the Federal Emergency Management Agency (FEMA).
15. To require at the time of bid proof of active registration with the Department of Industrial Relations.

## **E. SCOPE OF WORK**

**E.1** Contractor shall provide On-call Storm Maintenance Services to the District. For the purpose of this Agreement, the term "On-call Storm Maintenance Services" includes the clearing, removal and disposal of debris of any type, the placement and installation of products to prevent erosion and/or displacement of sediment onto District roads and into District flood control facilities, and snow removal services. In the event of emergencies, rapid mobilization and performance of the work described herein is required. The applicable service schedule is incorporated into this Agreement and identified in Appendix A:

- On-call Storm Maintenance Service Schedule
1. Debris Control Services include, but are not limited to:
    - a. Cleaning of culverts, drains, pipes, etc.
    - b. Debris removal.
    - c. Debris removal may include the possible screening and separation of the debris; the removal of large rock and boulders; pumping water, mud, and other organic materials from basins, stream beds, channels, culverts, etc.; and the use of various types of heavy equipment.
    - d. Appropriate testing and disposal of any hazardous and non-hazardous materials found.
    - e. Trash, waste, or chipped debris and transporting the waste to landfills, including all associated hauling costs and fees.

2. Erosion and Sediment Control Services include, but are not limited to:
  - a. Installation of barriers.
  - b. Repair of damage which may include bridges, cement work, asphalt work, road and flood control facilities.
  - c. Slope stabilization.
  - d. Tree removal and stump grinding.
3. Routine Maintenance:
  - a. Any damage to a flood facility including storm drain and culvert repair.
  - b. Concrete invert repair.
  - c. Channel wall repair.
  - d. Levee repair.
  - e. Any other type of work on a flood control facility that would require a specialized repair that is beyond the scope of repairs that are performed by District forces.
4. Snow Removal Services include, but are not limited to:
  - a. Routine and emergency snowplowing.
  - b. Post-storm clean-up including the widening of roadways and intersections.
  - c. Cindering operations.
  - d. Snow clearing.

**APPENDIX A** specifies the type of services and service areas Contractor may bid as jobs are scheduled.

## **E.2 Service Requirements**

1. All equipment shall be of good commercial quality, in good working order, meet CAL-OSHA safety and insurance certification requirements, Vehicle Code and air quality regulations, and is subject to District approval.
2. All equipment shall arrive at jobsite safety inspected, in good working order and ready to perform.
3. Contractor's employees, agents, or representatives, charged with performing Contractor obligations under an accepted job assignment must be trained in their assigned tasks and in the operation and safe handling of the required equipment and materials. Work performed for the District shall be in a good and professional manner, subject to the reasonable satisfaction of the District, and subject to the provision herein.
4. Contractor's employees, agents, or representatives must wear safety and protective gear according to CAL-OSHA standards and any applicable laws.
5. Contractor shall be responsible for all required traffic control, including, but not limited to: signs, flagging, arrow/message boards, equipment crossings, and supervision of Contractor's personnel.
6. Contractor shall be responsible for any required notification to Dig Alert (telephone number is 811), as well as compliance with Government Code section 4216.
7. Beginning of work and time of completion. The Contractor shall begin work within the timeframe specified on the RFB and shall diligently prosecute the work to completion before the expiration of the time limit specified after the first working day in the RFB.
8. Contractor shall comply with all provisions of the Labor Code and shall not pay less than prevailing wage. (For more information on the Prevailing Wage Laws, see Section B.48 prevailing wage and Attachment A of this Agreement).
9. For all projects over \$25,000, file a payment bond with and approved by the Director, or the Director's designee, in accordance with Civil Code section 9550, in a penal sum equal to one hundred percent (100%) of the contract price on an individual project. Contractor may avail himself to Public Contract Code section 22300 which allows substitute securities to be deposited in lieu of retention payments withheld to insure performance.
10. File a performance bond with and approved by the Director, or the Director's designee, for the faithful performance of the Contract in a penal sum equal to one hundred percent (100%) of

- the contract price on an individual project (if required by the District on an individual project; such requirement will be noted in the RFB issued by the District).
11. Complete Attachment C (if applicable) to report Environmentally Preferable Goods and Services per District Policy 11-08.

### **E.3 Emergency Service Requirements**

1. The District desire to utilize Contractors to provide emergency on-call Storm Maintenance Services as a result of storm events or for other reasons. Emergency calls may occur at any given time. The Contractor may be assigned work via telephone from a District-authorized representative. Emergency work shall begin within two (2) hours of the initial District telephone call, this includes the transportation, chaining-up and setting up equipment. This would also apply to weekends and holidays.
2. The Contractor shall be required to provide a twenty-four (24) hour emergency phone number and name of contact individuals upon award of contract. Should the contact persons or their phone numbers change during the course of the contract, those changes shall be submitted to the District within two (2) working days.
3. In addition to complying with the terms and conditions described in this RFQ, the Contractor shall be required to provide all necessary traffic control during the course of emergency work. Should the work involve any high voltage power lines or any utility lines, the Contractor shall be required to notify the responsible utility company.
4. Contractor or his representative shall promptly notify the District and/or the Districts upon discovery of problems or events that cause limitation or stoppage to the performance of Contractor's duties. (i.e. parked vehicles, downed trees, excessive ice on roadways, equipment failure, damage, etc.)
5. Contractor shall be responsible for the fueling and maintenance of his equipment at his expense. Equipment shall be serviced and ready for use.
6. Emergency response work rates shall be negotiated at time of contact, rates should include: all labor, equipment, services, materials, supplies, permits and de/mobilization fees.

## **F. FISCAL PROVISIONS**

- F.1** The maximum amount of payment under this Contract shall not exceed \$1,250,000 and shall be subject to availability of other funds to the District. The consideration to be paid to Contractor, as provided herein, shall be in full payment for all Contractor's services and expenses incurred in the performance hereof, including travel and per diem.
- F.2** For work performed and described in Public Contract Code section 20104.50, standard payment terms shall be 30 days, upon receipt of invoice; otherwise for all other work standard payment terms shall be 60 days, upon receipt of invoice.
- F.3** The District, through the Director, or the Director's designee, reserves the right to accept or reject any or all bids if the District determines it is in its own best interest to do so. The District will notify all Contractors, in writing, if all bids are rejected.
- F.4** On-call Storm Maintenance Services and areas governed by and for the term of this Contract are defined in APPENDIX A.
- F.5** Contractor shall provide District itemized monthly invoices, in arrears, for services performed under this Agreement within twenty (20) days of the end of the previous month. Invoice must



reflect both purchase order number and applicable proposal number to initiate payment. Invoices are to be sent to the ordering department.

- F.6** Contractor shall accept all payments from District via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by District required to process EFT payments.
- F.7** District is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The District shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the District pursuant to the Contract.
- F.8** Costs for services under the terms of this Contract shall be incurred during the contract period except as approved by District. Contractor shall not use current year funds to pay prior or future year obligations.
- F.9** Funds made available under this Contract shall not supplant any federal, state or any governmental funds intended for services of the same nature as this Contract. Contractor shall not claim reimbursement or payment from District for, or apply sums received from District with respect to that portion of its obligations that have been paid by another source of revenue. Contractor agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the District.
- F.10** Contractor shall adhere to the District's Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this Contract and for which reimbursement is sought from the District. In addition, Contractor is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.
- F.11** Project will be awarded as needed per the following process, (except for emergencies described in F.11.13):
- F.11.1** At the time a job is scheduled for performance, the Director or the Director's designee, shall mail, fax, or email a Request for Bid (RFB) form to all Contractors authorized to provide the service required for the specific jobs as the need arises.
- F.11.2** The RFB form will:
- (1) Identify the requesting District employee by name and position title.
  - (2) Give specifications for the job being bid.
  - (3) Give the date, time, and location for the work to be performed.
  - (4) Specify the bid submission deadline, date and time.
  - (5) Identify any job walk requirement.
  - (6) Give a fax number and/or an email address to which to respond.
  - (7) State where a performance bond is required (and amount).
- F.11.3** The price bid at the time of the job is scheduled for performance shall include all labor, equipment, services, materials, and supplies, and permits required to perform Contractor obligations under an accepted job assignment.
- F.11.4** Bids shall be submitted to the District by email or fax number identified in the RFB. Contractors shall submit bid responses before the deadline noted on the RFB.
- F.11.5** Bids that are not responsive to the RFB may be rejected.

- F.11.6** Bids must include a fully executed non-collusion declaration in the form identified in Public Contract Code section 7106.
- F.11.7** If Bidder intends to subcontract any of the work, Bidder shall provide in the bid the name, the location of the place of business, the California Contractor's State license number, and the Department of Industrial Relations Registration Number for each subcontractor who will provide the services to the Bidder in excess of one-half of 1 percent of the Bidder's total bid or \$10,000, whichever is greater.
- F.11.8** The District will award the project to the lowest responsive and responsible bidder. Conditions other than price are sometimes important and will be considered when necessary. Such conditions will be identified in the Request for Bid.
- F.11.9** A Bid acceptance form shall be faxed or emailed to the successful bidder. The successful bidder shall sign the Bid Acceptance and submit it to the contact noted on the Acceptance within twenty-four (24) hours, unless otherwise directed. A bid summary will be faxed or emailed to all participating Contractors on the bid.
- F.11.10** A Bid Summary will be faxed or emailed to all participating Contractors on the bid identifying the Contractor and bid amount selected within a reasonable time of the bid submission deadline.
- F.11.11** Contractors in default of their Contract or an accepted job assignment, as determined by the District, may:
- 1) Be disallowed from bidding on subsequent job assignments for a period of time.
  - 2) Have award of other accepted job assignments revoked.
  - 3) Have the On-call Storm Maintenance Service contract terminated as set forth herein.
- F.11.12** Any bidder submitting a bid may file a protest of the District's proposed award of the project, provided that each and all of the following are complied with:
- 1) The bid protest is in writing.
  - 2) The bid protest is submitted to and received by the Department of Public Works, 825 East Third Street, Room 207, before 4:00PM of the third business day following the bid opening or issuance of the Bid Summary, whichever is later. Failure to timely submit a written protest shall constitute grounds for the District's denial of the bid protest without consideration of the grounds stated in the bid protest waived of the right to protest. Untimely protests will not be accepted or considered.
  - 3) The written bid protest shall set forth, in detail, all grounds for the bid protest (including without limitations all facts, supporting documentation, legal authorities' required and the legal basis for such relief. Any grounds not set forth in the bid protest shall be deemed waived. All factual contentions must be supported by competent, admissible and credible evidence. Any bid protest not conforming to the foregoing shall be rejected as invalid.

If a valid protest is timely filed and complies with the above requirements, the Director shall review and evaluate the bid protest. All Contractors, including the protesting bidder, shall have three (3) business days to respond to the District and to provide any information requested by the District. The District shall respond to the protesting bidder and state the District's findings regarding the bid protest. The District Director's decision shall be final.

- F.11.13** For emergency projects, District reserves the right to contact any contractor or vendor, including Contractor, directly in order to promptly respond to such

emergency and protect life and property. Price will be negotiated at the time of contact.

The District desire to utilize Contractors to provide emergency on-call storm maintenance services as a result of storm events or for other reasons. Emergency calls may occur at any given time. The Contractor may be assigned work via telephone from a District- authorized representative. Emergency work shall begin within two (2) hours of the initial District telephone call. All work will be in compliance with the terms and conditions of this Agreement.

The Contractor shall provide a twenty-four (24) hour emergency phone number and name of contact individuals upon award of contract. Should the contact persons or their phone numbers change during the course of the contract, those changes shall be submitted to the District within two (2) working days.

Contractor shall be required to provide all necessary traffic control during the course of emergency work. Should the work involve any high voltage power lines or any utility lines, the Contractor shall be required to notify the responsible utility company.

**F.12 Payment Terms**

**F.12.1** Invoices shall be submitted in the appropriate format to:

**San Bernardino County Flood Control  
District  
Attn: Administrative Services  
825 East Third Street, Room 207  
San Bernardino, CA 92415-0835**

**F.12.2** For settlement, an invoice must include the following information:

- a. The name of Contractor and complete remittance address.
- b. The contract number, bid number, job number, or Purchase Order number.
- c. A unique numbered identifier (invoice number).
- d. An itemized list of services and dates of work performed.

**F.12.3** Supporting tickets signed by District staff. Stand-by time must be documented on the tickets and original invoice in order to be paid. Contractor shall forfeit payment for stand-by time not recorded on tickets and submitted on invoices prior to District's payment disbursement to Contractor.

**F.12.4** Copies of certified payroll records.

**F.13** Both the District and the Contractor agree to comply with any and all applicable laws and regulations, including, but not limited to, the Public Contract Code provisions identified in Attachment B, if applicable.

**G. INDEMNIFICATION AND INSURANCE REQUIREMENTS**

**G.1 Indemnification**

The Contractor agrees to indemnify, defend (with counsel reasonably approved by District) and hold harmless the District and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the District on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault

of indemnities. The Contractor indemnification obligation applies to the District's "active" as well as "passive" negligence but does not apply to the District's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

**G.2 Additional Insured**

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the District and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the District to vicarious liability but shall allow coverage for the District to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

**G.3 Waiver of Subrogation Rights**

The Contractor shall require the carriers of required coverages to waive all rights of subrogation against the District, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the District.

**G.4 Policies Primary and Non-Contributory**

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the District.

**G.5 Severability of Interests**

The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the District or between the District and any other insured or additional insured under the policy.

**G.6 Proof of Coverage**

The Contractor shall furnish Certificates of Insurance to the District Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the District, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

**G.7 Acceptability of Insurance Carrier**

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

**G.8 Deductibles and Self-Insured Retention**

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

**G.9 Failure to Procure Coverage**

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the District has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any

premiums paid by the District will be promptly reimbursed by the Contractor or District payments to the Contractor will be reduced to pay for District purchased insurance.

**G.10 Insurance Review**

Insurance requirements are subject to periodic review by the District. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the District. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the District, inflation, or any other item reasonably related to the District's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the District to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the District.

- G.11** The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

- G.11.1** Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this contract.

If Contractor has no employees, it may certify or warrant to the District that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the District's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

- G.11.2** Commercial/General Liability Insurance – The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
- a. Premises operations and mobile equipment.
  - b. Products and completed operations.

- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

**G.11.3** Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

**G.11.4** Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

**G.11.5 Environmental Contracts**

a. Environmental Liability Insurance with a combined single limit of not less than five million (\$5,000,000) per claim or occurrence and a separate aggregate for the contract project. The required additional insured endorsement shall protect the District without any restrictions.

b. If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

**H. RIGHT TO MONITOR AND AUDIT**

**H.1** The District, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Contractor in the delivery of services provided under this Contract. Contractor shall give full cooperation, in any auditing or monitoring conducted. Contractor shall cooperate with the District in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the District.

**H.2** All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by District representatives for a period of three years after final payment under this Contract or until all pending District, State and Federal audits are completed, whichever is later.

**I. CORRECTION OF PERFORMANCE DEFICIENCIES**

**I.1** Failure by Contractor to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.

**I.2** In the event of a non-cured breach, District may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

- a. Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of District; and/or
- b. Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery; and/or
- c. Withhold funds pending duration of the breach; and/or
- d. Offset against any monies billed by Contractor but yet unpaid by District those monies disallowed pursuant to Item "b" of this paragraph; and/or
- e. Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor. In the event of such termination, the District may proceed with the work in any manner deemed proper by the District. The cost to the District shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.

**J. NOTICES**

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

*San Bernardino County Flood Control District  
Attn: Procurement Support Section  
825 E. Third Street, Room 207  
San Bernardino, CA 92415*

*Bacon/Wagner Excavating, Inc.  
P.O. Box 409  
Running Springs, CA 92382*

Notice shall be deemed communicated two (2) District working days from the time of mailing if mailed as provided in this paragraph.

**K. ENTIRE CONTRACT**

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will. The Parties agree that this Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which together shall constitute one and the same instrument, and that a photocopy or facsimile may serve as an original. If this Agreement is executed in counterparts, no signatory hereto shall be bound until both the parties have fully executed a counterpart of this Agreement. The Parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF, or other email transmission), which signature shall be binding on the party whose name is contained therein. Each Party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.



**IN WITNESS WHEREOF**, the San Bernardino County Flood Control District and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

▶ *Curt Hagman*  
Curt Hagman, Chairman, Board of Supervisors

Dated: OCT 27 2020

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

By *Lynna Mortell*  
Lynna Mortell  
Clerk of the Board  
Deputy



*Bacon/Wagner Excavating Inc*  
(Print or type name of corporation, company, contractor, etc.)

By ▶ *Joseph Daniel Wagner*  
(Authorized signature - sign in blue ink)

Name *Joseph Daniel Wagner*  
(Print or type name of person signing contract)

Title *President*  
(Print or Type)

Dated: *OCT 14 2020*

Address *P.O. Box 409*  
*Running Spring Ca 92382*

**FOR DISTRICT USE ONLY**

Approved as to Legal Form

▶ **SEE ATTACHED**  
Sophie A. Akins, Deputy District Counsel

Date \_\_\_\_\_

Reviewed for Contract Compliance

▶ *Andy Silao*  
Andy Silao, Public Engineer

Date *10-15-2020*

Reviewed/Approved by District

▶ *Brendon Biggs*  
Brendon Biggs, Chief Flood Control Engineer

Date *10-19-2020*

IN WITNESS WHEREOF, the San Bernardino County Flood Control District and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

▶  
Curt Hagman, Chairman, Board of Supervisors

Dated: \_\_\_\_\_  
SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Lynna Monell  
Clerk of the Board

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

Bacon/Wagner Excavating Inc  
(Print or type name of corporation, company, contractor, etc.)

By ▶ [Signature]  
(Authorized signature - sign in blue ink)

Name Joseph Daniel Wagner  
(Print or type name of person signing contract)

Title President  
(Print or Type)

Dated: Oct 14 2020

Address P.O. Box 409  
Running Spring Ca 92382

**FOR DISTRICT USE ONLY**

Approved as to Legal Form  
▶ Sophie Akins  
Sophie A. Akins, Deputy District Counsel  
Date October 15, 2020

Reviewed for Contract Compliance  
▶ \_\_\_\_\_  
Andy Silao, Public Engineer  
Date \_\_\_\_\_

Reviewed/Approved by District  
▶ \_\_\_\_\_  
Brendon Biggs, Chief Flood Control Engineer  
Date \_\_\_\_\_

**APPENDIX A  
ON-CALL STORM MAINTENANCE  
SERVICE SCHEDULES**

		<b>Service Areas</b>				
		Noted communities are generalized locations				
		<b>Foothills</b> (San Gabriel, San Bernardino, Highland, Redlands, Ranch Cucamonga)	<b>High Desert</b> (Apple Valley, Baker, Barstow, Hesperia, Victorville, Wrightwood)	<b>Low Desert</b> (Big River, Needles, Trona, 29 Palms, Yucca Valley)	<b>Mountains</b> (Big Bear, Blue Jay, Crestline, Running Springs)	<b>Valley</b> (Chino, Fontana, East Valley, -San Bernardino, Yucaipa)
<b>S E R V I C E S</b>	Slope Stabilization	X	X	X	X	X
	Installation of Barriers	X	X	X	X	X
	Repair of Damaged: Asphalt Work Bridge Work Concrete Work	X	X	X	X	X
	Flood Control Facilities	X	X	X	X	X
	Cleaning Culverts, Drains, Pipes. Etc.	X	X	X	X	X
	Debris Removal	X	X	X	X	X
	Tree Removal	X	X	X	X	X
	Stump Grinding	X	X	X	X	X
	Disposal	X	X	X	X	X
	Permits (as needed)	X	X	X	X	X
	Snow Removal				X	
	Traffic Control	X	X	X	X	X
	Underground Service Alert, SC (as needed)	X	X	X	X	X

Explanations:

  
Authorized Signature

*Joseph Daniel Wagner*  
Print Name

07/14/2020  
Date

## ATTACHMENT A PREVAILING WAGE REQUIREMENTS

**A. All or a portion of the Scope of Work in the Contract requires the payment of prevailing wages and compliance with the following requirements:**

**1. Determination of Prevailing Rates:**

Pursuant to Labor Code sections 1770, et seq., the District has obtained from the Director of the Department of Industrial Relations (DIR) pursuant to the California Labor Code, the general prevailing rates of per diem wages and the prevailing rates for holiday and overtime work in the locality in which the Scope of Work is to be performed. Copies of said rates are on file with the District, will be made available for inspection during regular business hours, may be included elsewhere in the specifications for the Scope of Work, and are also available online at [www.dir.ca.gov](http://www.dir.ca.gov). The wage rate for any classification not listed, but which may be required to execute the Scope of Work, shall be commensurate and in accord with specified rates for similar or comparable classifications for those performing similar or comparable duties. In accordance with Labor Code section 1773.2, the Contractor shall post, at appropriate and conspicuous locations on the job site, a schedule showing all applicable prevailing wage rates and shall comply with the requirements of Labor Code sections 1773, et seq.

**2. Payment of Prevailing Rates**

Each worker of the Contractor, or any subcontractor, engaged in the Scope of Work, shall be paid not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor, and such worker.

**3. Prevailing Rate Penalty**

The Contractor shall, as a penalty, forfeit two hundred dollars (\$200.00) to the District for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the DIR for such work or craft in which such worker is employed by the Contractor or by any subcontractor in connection with the Scope of Work. Pursuant to California Labor Code section 1775, the difference between such 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 the Contractor.

**4. Ineligible Contractors:**

Pursuant to the provisions of Labor Code section 1777.1, the Labor Commissioner publishes and distributes a list of contractors ineligible to perform work as a contractor or subcontractor on a public works project. This list of debarred contractors is available from the DIR website at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>. Any contract entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the District. The Contractor shall be responsible for the payment of wages to workers as a debarred subcontractor who has been allowed to work on the Scope of Work.

**5. Payroll Records:**

a. Pursuant to California Labor Code section 1776, the Contractor and each subcontractor, shall keep accurate certified payroll records, 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 them in connection with the Scope of Work. The payroll records enumerated herein shall be verified by a written declaration made under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor or subcontractor has complied with the requirements of the California Labor Code sections 1771, 1811, and 1815 for any Scope of Work performed by his or her employees. The payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

- i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request;
- ii. A certified copy of all payroll records shall be made available for inspection or furnished upon request to the District, the Division of Labor Standards Enforcement of the DIR;
- iii. A certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to the District or the Division of Labor Standards Enforcement, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, subcontractor and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor;

- iv. The Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; and
  - v. Copies provided to the public, by the District or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any subcontractor, performing a part of the Scope of Work shall not be marked or obliterated. The Contractor shall inform the District of the location of payroll records, including the street address, city and District and shall, within five (5) working days, provide a notice of a change of location and address.
- b. The Contractor shall have ten (10) days from receipt of the written notice specifying in what respects the Contractor must comply with the above requirements. In the event Contractor does not comply with the requirements of this section within the ten (10) day period, the Contractor shall, as a penalty to the District, forfeit one-hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalty shall be withheld from any portion of the payments then due or to become due to the Contractor.
- 6. Limits on Hours of Work:**  
Pursuant to California Labor Code section 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code section 1811, the time of service of any worker employed at any time by the Contractor or by a subcontractor, upon the Scope of Work or upon any part of the Scope of Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as provided for under Labor Code section 1815. Notwithstanding the foregoing provisions, work performed by employees of Contractor or any subcontractor, 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 at not less than one and one-half (1½) times the basic rate of pay.
- 7. Penalty for Excess Hours:**  
The Contractor shall pay to the District a penalty of twenty-five dollars (\$25.00) for each worker employed on the Scope of Work by the Contractor or any subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.
- 8. Senate Bill 854 (Chapter 28, Statutes of 2014) and Senate Bill 96 (Chapter 28, Statutes of 2017) Requirements:**
- a. Contractor shall comply with Senate Bill 854 and Senate Bill 96. The requirements include, but are not limited to, the following:
    - i. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5, with limited exceptions from this requirements for bid purposes only as allowed under Labor Code section 1771.1(a).
    - ii. No contractor or subcontractor may be awarded a contract for public work or perform work on a public works project unless registered with the DIR pursuant to Labor Code section 1725.5.
    - iii. This project is subject to compliance monitoring and enforcement by the DIR.
    - iv. As required by the DIR, Contractor is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the DIR.
    - v. Contractors and all subcontractors must submit certified payroll records online to the Labor Commissioner for all public works projects.
      - 1) The certified payroll must be submitted at least monthly to the Labor Commissioner.
      - 2) The District reserves the right to require Contractor and all subcontractors to submit certified payroll records more frequently than monthly to the Labor Commissioner.
      - 3) The certified payroll records must be in a format prescribed by the Labor Commissioner.
    - vi. Registration with the DIR and the submission of certified payroll records to the Labor Commissioner are not required if the public works project is \$25,000 or less when the project is for construction, alteration, demolition, installation or repair work, or if the public works project is \$15,000 or less when the project is for maintenance work.
  - b. Labor Code section 1725.5 states the following:
 

"A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of

any public work contract that is subject to the requirements of this chapter. For the purposes of this section, "contractor" includes a subcontractor as defined by Section 1722.1.

(a) To qualify for registration under this section, a contractor shall do all of the following:

(1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars (\$400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.

(B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.

(2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:

(A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.

(B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

(E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:

(i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.

(ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars (\$2,000).

(b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:

(1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.

(2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work



as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2).

(e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, to any contract for public work, as defined in this chapter, executed on or after April 1, 2015, and to any work performed under a contract for public work on or after January 1, 2018, regardless of when the contract for public work was executed.

(f) This section does not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work.”

c. Labor Code section 1771.1 states the following:

“(a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor’s current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(g) If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars (\$100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars (\$8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(h)(1) In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars (\$100) for each day the unregistered lower tier subcontractor performs work in violation of the registration requirement, not to exceed an aggregate penalty of ten thousand dollars (\$10,000).

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner’s ability to monitor and enforce compliance with the requirements of this chapter.



(3) A higher tiered public works contractor or subcontractor shall not be liable for penalties assessed pursuant to paragraph (1) if the lower tier subcontractor's performance is in violation of the requirements of Section 1725.5 due to the revocation of a previously approved registration.

(4) A subcontractor shall not be liable for any penalties assessed against a higher tiered public works contractor or subcontractor pursuant to paragraph (1). A higher tiered public works contractor or subcontractor may not require a lower tiered subcontractor to indemnify or otherwise be liable for any penalties pursuant to paragraph (1).

(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties pursuant to subdivision (g) and subparagraph (B) of paragraph (1) of subdivision (h). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(j)(1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered contractor or unregistered subcontractor is registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work.

(2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:

(A) Manual delivery of the order to the contractor or subcontractor personally.

(B) Leaving signed copies of the order with the person who is apparently in charge at the site of the public work and by thereafter mailing copies of the order by first class mail, postage prepaid to the contractor or subcontractor at one of the following:

(i) The address of the contractor or subcontractor on file with either the Secretary of State or the Contractors' State License Board.

(ii) If the contractor or subcontractor has no address on file with the Secretary of State or the Contractors' State License Board, the address of the site of the public work.

(3) The stop order shall be effective immediately upon service and shall be subject to appeal by the party contracting with the unregistered contractor or subcontractor, by the unregistered contractor or subcontractor, or both. The appeal, hearing, and any further review of the hearing decision shall be governed by the procedures, time limits, and other requirements specified in subdivision (a) of Section 238.1.

(4) Any employee of an unregistered contractor or subcontractor who is affected by a work stoppage ordered by the commissioner pursuant to this subdivision shall be paid at his or her regular hourly prevailing wage rate by that employer for any hours the employee would have worked but for the work stoppage, not to exceed 10 days.

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty of a misdemeanor punishable by imprisonment in District jail not exceeding 60 days or by a fine not exceeding ten thousand dollars (\$10,000), or both.

(l) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015. This section shall also apply to the performance of any public work, as defined in this chapter, on or after January 1, 2018, regardless of when the contract for public work was entered.

(m) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(n) This section shall not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work."

d. Labor Code section 1771.4 states the following:

"a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:

(A) At least monthly or more frequently if specified in the contract with the awarding body.

(B) In a format prescribed by the Labor Commissioner.

(4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not required to furnish the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776 for at least three years after completion of the work.

(5) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.

(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) if either of the following occurs:

(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.

(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.

(d) The requirements of paragraph (3) of subdivision (a) shall apply to all contracts for public work, whether new or ongoing, on or after January 1, 2016.”

## **B. STATE PUBLIC WORKS APPRENTICESHIP REQUIREMENTS**

### **1. State Public Works Apprenticeship Requirements:**

a. The Contractor is responsible for compliance with Labor Code section 1777.5 and the California Code of Regulations, title 8, sections 230 – 230.2 for all apprenticeable occupations (denoted with “#” symbol next to craft name in DIR Prevailing Wage Determination), whether employed by the Contractor, subcontractor, vendor or consultant. Included in these requirements is (1) the Contractor’s requirement to provide notification (i.e. DAS-140) to the appropriate apprenticeship committees; (2) pay training fund contributions for each apprenticeable hour employed on the Contract; and (3) utilize apprentices in a minimum ratio of not less than one apprentice hour for each five journeyman hours by completion of Contract work (unless an exception is granted in accordance with Labor Code section 1777.5) or request for the dispatch of apprentices.

b. Any apprentices employed to perform any of the Scope of Work shall be paid the standard wage to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code section 3077, who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code sections 3070 et seq. are eligible to be employed for the Scope of Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

### **2. Compliance with California Labor Code section 1777.5 requires all public works contractors to:**

a. Submit Contract Award Information (DAS-140):

i. Although there are a few exemptions (identified below), all Contractors, regardless of union affiliation, must submit contract award information when performing on a California public works project.

ii. The DAS-140 is a notification “announcement” of the Contractor’s participation on a public works project—*it is not a request for the dispatch of an apprentice.*

- iii. Contractors shall submit the contract award information (you may use form DAS 140) within 10 days of the execution of the prime contract or subcontract, but in no event later than the first day in which the Contractor has workers employed on the public work.
  - iv. Contractors who are already approved to train apprentices (i.e. check "Box 1" on the DAS-140) shall only be required to submit the form to their approved program.
  - v. Contractors who are NOT approved to train apprentices (i.e. those that check either "Box 2" or "Box 3" on the DAS-140) shall submit the DAS-140 TO EACH of the apprenticeship program sponsors in the area of your public works project. For a listing of apprenticeship programs see <http://www.dir.ca.gov/Databases/das/pwaddrstart.asp>.
- b. **Employ Registered Apprentices**
- i. Labor Code section 1777.5 requires that a contractor performing work in an "apprenticeable" craft must employ one (1) hour of apprentice work for every five (5) hours performed by a journeyman. This ratio shall be met prior to the Contractor's completion of work on the project. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.
  - ii. All Contractors who do not fall within an exemption category (see below) must request for dispatch of an apprentice from an apprenticeship program (for each apprenticeable craft or trade) by giving the program actual notice of at least 72 hours (business days only) before the date on which apprentices are required.
  - iii. Contractors may use the "DAS-142" form for making a request for the dispatch of an apprentice.
  - iv. Contractors who are participating in an approved apprenticeship training program and who did not receive sufficient number of apprentices from their initial request must request dispatch of apprentices from ALL OTHER apprenticeship committees in the project area in order to fulfill this requirement.
  - v. Contractor should maintain and submit proof (when requested) of its DAS-142 submittal to the apprenticeship committees (e.g. fax transmittal confirmation). A Contractor has met its requirement to employ apprentices only after it has successfully made a dispatch request to all apprenticeship programs in the project area.
  - vi. Only "registered" apprentices may be paid the prevailing apprentice rates and must, at all times work under the supervision of a Journeyman (Cal. Code Regs., tit 8, § 230.1).
- c. **Make Training Fund Contributions**
- i. Contractors performing in apprenticeable crafts on public works projects, must make training fund contributions in the amount established in the prevailing wage rate publication for journeymen and apprentices.
  - ii. Contractors may use the "CAC-2" form for submittal of their training fund contributions.
  - iii. Contractors who do not submit their training fund contributions to an approved apprenticeship training program must submit their contributions to the California Apprenticeship Council (CAC), PO Box 420603, San Francisco, CA 94142-0603.
  - iv. Training fund contributions to the CAC are due and payable on the 15th day of the month for work performed during the preceding month.
  - v. The "training" contribution amount identified on the prevailing wage determination shall not be paid to the worker, unless the worker falls within one of the exemption categories listed below.
- 3. Exemptions to Apprenticeship Requirements:**
- a. The following are exempt from having to comply with California apprenticeship requirements. These types of contractors do not need to submit a DAS-140, DAS-142, make training fund contributions, or utilize apprentices:
    - i. When the Contractor holds a sole proprietor license ("Owner-Operator") and no workers were employed by the Contractor. In other words, the contractor performed the entire work from start to finish and worked alone.
    - ii. Contractors performing in non-apprenticeable crafts. "Apprenticeable" crafts are denoted with a pound symbol "#" in front of the craft name on the prevailing wage determination.
    - iii. When the Contractor has a direct contract with the Public Agency that is under \$30,000.
    - iv. When the project is 100% federally-funded and the funding of the project does not contain any city, District, and/or state monies (unless the project is administered by a state agency in which case the apprenticeship requirements apply).

- v. When the project is a private project not covered by the definition of public works as found in Labor Code section 1720.

**4. Exemption from Apprenticeship Ratios:**

- a. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Section when it finds that any one of the following conditions are met:
  - i. Unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%); or
  - ii. The number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen; or
  - iii. The Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis; or
  - iv. If assignment of an apprentice to any work performed under the Contract Documents would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.
- b. When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

**5. Contractor's Compliance:**

- a. The responsibility of compliance with this Section for all Apprenticeable Trades or Crafts is solely and exclusively that of the Contractor. All decisions of the Joint Apprenticeship Committee(s) under this Section are subject to the provisions of California Labor Code section 3081 and penalties are pursuant to Labor Code section 1777.7 and the determination of the Labor Commissioner.

**ATTACHMENT B**  
**PUBLIC CONTRACT CODE RESOLUTION OF CONSTRUCTION CLAIMS**  
**SECTIONS 9204 20104, 20104.2, 20104.4, 20104.6 AND 20104.50**

**9204**

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3) (A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, District, including a charter District, city and District, including a charter city and District, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2) (A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed



rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

#### **20104.**

(a)(1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with [Section 10240](#)) of Chapter 1 of Part 2.

(b)(1) "Public work" means "public works contract" as defined in Section 1101 but does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

**20104.2** For any claim subject to this article, the following requirements apply:

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(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b)(1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c)(1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

**20104.4** The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b)(1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.10) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or District funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

#### **20104.6**

(a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

### **ARTICLE 1.7**

Modification; Performance, Payment

#### **20104.50**

(a) (1) It is the intent of the Legislature in enacting this section to require all local governments to pay their contractors on time so that these contractors can meet their own obligations. In requiring prompt payment by all local governments, the Legislature hereby finds and declares that the prompt payment of outstanding receipts is not merely a municipal affair, but is, instead, a matter of statewide concern.

(2) It is the intent of the Legislature in enacting this article to fully occupy the field of public policy relating to the prompt payment of local governments' outstanding receipts. The Legislature finds and declares that all government officials, including those in local government, must set a standard of prompt payment that any business in the private sector which may contract for services should look towards for guidance.

(b) Any local agency which fails to make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure.

(c) Upon receipt of a payment request, each local agency shall act in accordance with both of the following:

(1) Each payment request shall be reviewed by the local agency as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.

(2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to the contractor as soon as practicable, but not later than seven days, after receipt. A request returned pursuant

to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

(d) The number of days available to a local agency to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which a local agency exceeds the seven-day return requirement set forth in paragraph (2) of subdivision (c).

(e) For purposes of this article:

(1) A "local agency" includes, but is not limited to, a city, including a charter city, a District, and a city and District, and is any public entity subject to this part.

(2) A "progress payment" includes all payments due contractors, except that portion of the final payment designated by the contract as retention earnings.

(3) A payment request shall be considered properly executed if funds are available for payment of the payment request, and payment is not delayed due to an audit inquiry by the financial officer of the local agency.

(f) Each local agency shall require that this article, or a summary thereof, be set forth in the terms of any contract subject to this article.



EXAMPLES OF GREEN ATTRIBUTES	EXAMPLES OF CERTIFICATION AND/OR ACCREDITATION
Biobased	Certified Approved Product (AP) Non-Toxic
Biodegradable	Ecologo Certified
Carcinogen-free	Energy Star
Chlorofluorocarbon (CFC)-free	Electronic Product Environmental Assessment Tool (EPEAT) program
Compostable	Forest Stewardship Council Certified
Energy efficiency	Green Seal Certified
Lead-free	Greenguard Certified
Less hazardous	Scientific Certification Systems (SCS)
Low toxicity	
Mercury-free	
Persistent bioaccumulative toxin (PBT)-free	
Rapidly renewable	
Rechargeable	
Recyclable	
Recycled content	
Reduced greenhouse gas emissions	
Reduced packaging	
Refill/refillable	
Remanufactured/refurbished	
Renewable materials	
Responsible forestry	
Upgradeable	
Water efficiency	