



Contract Number

N/A

SAP Number

Public Works

Department Contract Representative
Telephone Number

Sameh Basta
909-387-8040

Contractor
Contractor Representative
Telephone Number
Contract Term
Cost Center

Upon execution through June 30, 2027

WHEREAS, San Bernardino County (hereafter "County") is required to maintain the County road system and flood control facilities and Road Materials are needed to perform said maintenance; and

WHEREAS, the County desires that the Contractor provide the Road Materials either freight-on-board (FOB) or delivered to various sites within the County, and the Contractor agrees to provide the Road Materials as desired by the County, as set forth below; and

WHEREAS, the Contractor is aware that the County reserves the right to award contracts to multiple vendors or to no particular vendor, as it deems to be in the best interest of the County,

NOW THEREFORE, the Contractor and the County mutually agree to the following terms and conditions.

I. COUNTY RESPONSIBILITIES

- A. County, through its Director of the Department of Public Works (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
Department of Public Works
Attn: Sameh Basta
825 East Third Street, Room 120
San Bernardino, CA 92415-0835

- B. The County, through its Director, or the Director's designees, reserves the right to:
1. Select the next lowest bidder until the County's requirements are met if the preceding Contractor is unable to provide the materials or services as needed.
 2. Postpone jobs if in the best interest of the County.
 3. Reject material/services that do not meet job specifications.
 4. Sample and/or test materials. If the County administered test results in a product failure, the County will select the next acceptable bidder.
 5. Prior to delivery of Road Materials, reschedule delivery for any reason.
 6. Cancel award of bid for any reason, but not less than seven (7) days prior to scheduled delivery of the materials.
 7. Negotiate or solicit competitive proposal from any company on new technology, products and services as they become available and of application or economic benefits as determined by the County.
 8. Dismiss a Contractor from the remaining work on a project in the event the Contractor does not deliver Road Materials in a satisfactory manner or perform in a timely manner.
 9. Accept bids any time during this contract from vendors currently under contract and not currently under contract.
 10. Issue Addenda or Amendments to this Contract.
 11. To invoice Contractor for all costs incurred by the County, or collect against the bond of surety, for Contractor's incorrect, late, or non-performance of obligations under an accepted job assignment. These costs may also be offset from any amounts due the Contractor under this Contract or otherwise.

II. CONTRACTOR RESPONSIBILITIES

- A. The Contractor shall have the following responsibilities:
1. Adhering to all requirements of this Contract, the RFQ from which this Contract resulted, and the Request for Bid (RFB). All of the terms and conditions of the RFQ and the RFB are hereby incorporated into this Contract by this reference.
 2. Maintaining a current, telephone number, and email address with the County. **Failure to do so may result in the loss of bid opportunities on jobs.**
 3. Providing the County with a name and telephone number of a single point of contact for questions regarding materials or services. Contractor must supply the County with an emergency 24-hour contact and telephone number.
 4. Notifying the County in writing, of any change in mailing address within ten (10) business days of the change.
 5. Providing the County with the names, titles and signatures of all employees authorized to sign RFB. Only bids signed by authorized individual will be considered valid bids.
 6. Responding to the RFB, whether providing prices or declining, within the required time frame specified in the RFB, upon receipt of e-mailed RFB form from the County. **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 with the signature of an authorized signer (referred to in this Section). The bid price must include all labor, equipment, materials and supplies, licenses and permits required to perform Contractor obligations under an accepted job assignment. Taxes shall be excluded from Contractor's bid price.
 8. Providing the County with the following completed signed items:
 - a. Road Materials Product Specification forms (Exhibits D-1 through D-8)
 - b. Current Insurance Certification (as per Section V.B.2)
 9. The Contractor agrees to comply with any and all applicable laws and regulations, including, but not limited to, the Public Contract Code provisions identified in Exhibit C, if applicable.
 10. Contractor reserves the right to cancel this Contract, for any reason, with a sixty (60) calendar days' written notice of cancellation.
 11. Road Materials and areas governed by and for this term of this Contract are defined in Exhibit D-1 through D-8.
- B. Contractor reserves the right to cancel this Contract, for any reason, with a sixty (60) day written notice of cancellation.

III. SCOPE OF WORK

A. Background

Contractor will provide Road Materials to the County as described in the RFQ and the RFB at the County's discretion and as such projects are scheduled. For the purpose of this Contract, the term "Road Materials" shall include, but is not limited to, aggregate, asphalt, concrete, asphalt emulsions, blast slag, crack sealant, Portland cement concrete, rip rap, volcanic cinders and dust control/dirt stabilization. The product forms are attached to this Contract, as noted:

Aggregate Product Specifications
Asphalt Concrete Product Specifications
Asphalt Emulsions Product Specifications
Crack Sealant Product Specifications
Portland Cement Concrete Product Specifications
Volcanic Cinders Product Specifications
Dust Control/Dirt Road Stabilization Specifications
Glass Beads Specifications

RFQ Attachments D-1 through D-8, Road Materials Product Specifications forms, attached to this Contract as Exhibit D-1 through D-8 and incorporated herein by this reference; designate the material types Contractor is willing to provide for the term of the contract. Delivered material pricing is not required at this time.

B. Material Requirements

Contractor must meet the following requirements:

1. All materials shall meet the latest edition of the Caltrans Standard Specifications.
2. All materials shall be subject to testing. Testing shall conform to all related specifications defined by County at a later date or at the time of bid.
3. All materials, excluding soil control/dirt road stabilization materials, shall have a one (1) year warranty. Upon proof of material failure determined to be Contractor's fault, Contractor shall

replace materials, or reimburse the County for costs incurred for materials replacement and installation.

4. Free time on delivery shall be as follows:

Material	Free Time
Asphalt	30 minutes
Bulk Liquid	60 minutes
Rock	30 minutes
Rip Rap	10 minutes

Material delivery time shall be recorded on the delivery ticket as follows:

Arrival (on site)	hh:mm
Begin (delivery)	hh:mm
Departure (delivery complete)	hh:mm
Standby time (after free time deduction)	Hours and/or minutes
Standby Equipment	Equipment name and model number

5. Standby time shall be paid in accordance with current Caltrans, "Labor Surcharge and Equipment Rental Rates" in effect at the time the service is performed. This document can be found on the State of California Department of Transportation website.

C. Equipment 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 County 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 County shall be in a good and professional manner, subject to the reasonable satisfaction of the County, and subject to the provisions 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 811), as well as compliance with Government Code section 4216.
7. The Contractor shall begin work within the timeframe specified on the RFB and shall diligently perform 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 the requirements identified in Section V, Paragraph A.44 entitled "Prevailing Wage Requirements".
9. Contractor shall complete Exhibit B (if applicable) to report Environmentally Preferable Goods and Services per County Policy 11-08.

IV. FISCAL PROVISIONS

A. Contract Term

This Contract is effective upon approval from the Board and expires June 30, 2027, but may be terminated earlier in accordance with provisions of this Contract, unless terminated earlier as provided in Section V, Paragraphs A.36 and A.37 or permitted by the provisions of this Contract.

B. Contract Amount

1. The maximum amount of reimbursement/payment under this Contract shall be subject to availability of funds to the County. 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
2. The County, through the Director, or the Director's designee, reserves the right to accept or reject any or all bids if the County determines it is in its own best interest to do so. The County will notify all Contractors, in writing, if all bids are rejected.
3. Conditions other than price are important and will be taken into account when necessary. The County reserves the option to make award(s) as it deems to be in the best interest of the County.

C. Road Materials Product Specification Forms

Road Materials and areas governed by and for the term of this Contract are defined in Exhibit D Road Materials Schedules D-1 through D-8.

D. The Bid Process

1. Except for emergency projects, at the time a job (all maintenance projects and public projects, where the public project amount does not exceed the amount provided in Public Contract Code section 22032(a)) is scheduled for performance:
 - a. The County, through the Director, or the Director's designee, shall email an RFB form to all Contractors authorized to provide the material or service for the specific job as need arises.
 - b. The RFB form will:
 - i. Identify the requesting County employee by name and position title.
 - ii. Give specifications for the job/ project.
 - iii. Give the date, time, and location for the work to be performed.
 - iv. Specify the bid submission deadline, date and time.
 - v. Identify any job walk requirement(s).
 - vi. Give an email address to which to respond.
 - vii. State where a performance bond is required (and amount).
 - c. Contractors shall submit bid responses before the deadline noted on the RFB.
 - d. Bids may be submitted as follows:
 - i. Email to the contact person specified on the RFB.
 - ii. Bids must include a fully executed non-collusion declaration in the form identified in Public Contract Code section 7106.
 - iii. Bids that are not responsive to the RFB may be rejected.
 - e. The Department will award the project to the lowest responsive and responsible bidder (subject to the County's Local Preference policy described below) and notify all bidders, via fax or email, of the Contractor and bid amount selected within five (5) working days of the bid submission deadline. However, conditions other than price are sometimes important and will be taken into account when necessary. Such conditions will be identified in the RFB. Except for emergency projects, all maintenance projects and public projects, where the public project amount does not exceed the amount provided in Public Contract Code section 22032(a), will be subject to the County's Local Preference Policy. More specifically the County has adopted a preference for Vendors whose principal place of business is located within the boundaries of the County. A five percent (5%) preference may be applied prior to approval of the purchase or acquisition of services, equipment,

goods or supplies. For purpose of the application of the local preference policy (County Policy 11-12). "principal place of business" is defined as the Vendor's main office (or headquarters) or a major regional office. A "major regional office" is defined as a business location apart from the Vendor's main office (or headquarters) which:

- i. Has been issued a business license, if required, and has been established and opened for a minimum of six (6) months prior to the date that the approval authority authorized the circulation of an LOS/RFQ/Quote for any Contract, or purchase order to which it responds; and
- ii. Can demonstrate on-going business activity in the field of endeavor on which the Contractor is proposing, from that office during the preceding six months; and
- iii. Has a minimum of twenty-five percent (25%) of the Contractor's full-time management employees and twenty-five percent (25%) of its full-time regular employees working from the San Bernardino County location(s).

The County's Local Preference Policy means for example. If two Contractors are responding to a RFB or bid(s) and services and ability to meet County's needs are equal, County staff must determine if one of the Contractors is a local contractor. If one of the Contractor is a local Contractor, and its quoted price or cost for services, equipment, goods or supplies does not exceed five percent (5%) of the Contractor's quoted price or cost, unless it is determined that an exemption applies, staff should recommend the local Contractor for the contract award.

- f. A Bid Acceptance form shall be emailed to the successful bidder.
- g. The successful bidder shall sign the Bid Acceptance and submit it to the contact noted on the RFB normally within one (1) business day, unless otherwise directed or during emergencies where a reasonable turnaround time will be specified.
- h. A Bid Summary will be faxed to all participating contractors on the bid.
- i. Contractors in default of their Contract or an accepted job assignment, as determined by the County, may:
 - i. Be disallowed from bidding on subsequent job assignments for a period of time.
 - ii. Have award of other accepted job assignments revoked.
 - iii. Have the Road Materials Contract cancelled.
- j. Any bidder submitting a bid may file a protest of the County's proposed award of the project, provided that each and all of the following are complied with:
 - i. The bid protest is in writing.
 - ii. 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 County'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.
 - iii. 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 bidders, including the protesting bidder, shall have three (3) business days to respond to the Department and to provide any information requested by the Department. The Department shall respond to the protesting bidder and state the Department's findings regarding the bid protest. The Director's decision shall be final.

2. For emergency projects, County 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.

E. Payment Terms

1. Itemized monthly invoices, in arrears, and in a format acceptable to the County for Services performed under this Contract shall be submitted in the appropriate format to:

**Department of Public Works
Attn: Administrative Services
825 East Third Street, Room 207
San Bernardino, CA 92415-0835
DPWBillpay@dpw.sbcounty.gov**

2. For settlement, an invoice must include the following information:
 - a. The name of Contractor and complete remittance address.
 - b. The contract number, Purchase Order number or bid number.
 - c. A unique number identified (invoice number).
 - d. An itemized list of Road Materials and dates of delivery.
 - e. If required by law, Contractor shall submit certified payroll for employees charged with performing Contractor obligations under an accepted job assignment weekly and upon invoice.
 - f. Supporting tickets signed by County 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 County's payment disbursement to Contractor.
3. For work performed and described in Public Contracts Code section 20104.50, standard payment terms shall be 30 days, upon receipt of invoices; otherwise for all other work, standard payment terms shall be 60 days upon receipt of invoice or resolution of any billing disputes. No late penalties shall be charged or paid on payments that exceed the net 60-day minimum.
4. Contractor shall accept all payments from County via electronic funds transfers (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 County required to process EFT payments.

F. Public Contract Code Resolution of Construction Claims

Both the County and Contractor agree to comply with the Public Contract Code provisions identified in Exhibit C, if applicable.

G. County Rights and Responsibilities

County, through its Director, or the Director's designee, reserves the right to:

1. Accept or reject any or all bids if the County determines it is in its own best interest to do so. The County will notify all contractors, in writing, if all bids are rejected.
2. Take conditions other than price into account when necessary. The County reserves the option to make award(s) as it deems to be in the best interest of the County.
3. Select the next lowest bidder until the County's requirements are met, if the preceding Contractor is unable to provide the services as needed.
4. Postpone jobs if in the best interest of the County.
5. Reject materials that do not meet job specifications.
6. Cancel award of bid, prior to delivery of material, if County requirements change.

7. To reject material or equipment not meeting specifications requested on the RFB. It is the contractor's responsibility to contact the County prior to submitting a bid to verify the requirements and determine if material(s) or equipment is equivalent to the requested item. Material(s) or equipment that arrives on the job not meeting specifications will be rejected at the Contractor's expense.
8. To invoice Contractor for all costs incurred by the County, 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 Contract or otherwise
9. Negotiate or solicit competitive proposal from any company on new technology, products and services as they become available and of application or economic benefits as determined by the County.
10. Immediately dismiss a Contractor from a job if work is found to be deficient in any manner or exercise any rights described in this Contract.
11. Dismiss a Contractor from the remaining work on a project in the event the Contractor does not perform services in a satisfactory manner or perform in a timely manner.
12. Accept bids any time during this Contract from Contractors currently under contract and not currently under contract.
13. Issue Addenda or Amendments to this Contract.
14. Assess liquidated damages in the amount of \$500.00 against Contractor for each and every calendar day's delay in finishing the work in excess of the number of working days prescribed in the Request for Bid.
15. 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 for release of the retained amount.

County 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.

16. Require Contractor on all projects over \$25,000, to file a payment bond with and approved by the County 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.
17. Require Contractor to file a performance bond as directed by the Director, or the Director's designee, in a Request for Bid in a penal sum equal to one hundred percent (100%) of the contract price.
18. To require at the time of bid on an individual project, a specific State of California Contractor's License.

19. To require Contractor to be registered with the Department of Industrial Relations (DIR) as required by S.B. 854 (Chapter 28, Statutes of 2014) to bid and work on an individual public works project (as defined under the Labor Code) when the Contractor does not qualify as a “bona fide materials supplier” (See Williams v. SnSands Corp. (2007) 156 Cal.App.4th 742, 752, citing O. G. Sansone Co. v. Department of Transportation (1976) 55 Cal.App.3d 434, 442-444.) In such instances, Contractor shall possess a valid DIR registration at the time of bid and while performing the work, and shall comply with the Prevailing Wage Requirements described in Section V, Paragraph A.44.
20. Depending on the funding source for the work, require Contractor to comply with any other federal, state, County 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 Governor’s Office of Emergency Services (Cal OES) or the Federal Emergency Management Agency (FEMA).
21. County 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 County shall only pay for any State or local sales or use taxes on the Services rendered or equipment and/or parts supplied to the County pursuant to the Contract.
22. Costs for Services under the terms of this Contract shall be incurred during the Contract period except as approved by County. Contractor shall not use current year funds to pay prior or future year obligations.
23. In the event the Contractor receives payment for services under this Contract which is later disallowed by the County, the Contractor shall promptly refund the disallowed amount to the County on request, or at its option, the County may offset the amount disallowed from any payment due to the Contractor under any contract with the County.
24. The County agrees to comply with any and all applicable laws and regulations, including, but not limited to, the Public Contract Code provisions identified in Exhibit C, if applicable.

V. TERMS AND CONDITIONS

A. General

1. 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 County.

2. Contract Assignability

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

3. Contract Exclusivity

This is not an exclusive Contract. The County reserves the right to enter into a Contract with other Contractors for the same or similar Services. The County 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.

4. Attorney Fees and Costs

If any legal action is instituted to enforce any party’s rights hereunder, each party shall bear its own costs and attorneys’ 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 the Indemnification and Insurance Requirements.

5. 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 County; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the County and not in violation of applicable law, Contractor shall conduct a background check, at Contractor's sole expense, on all its personnel providing. If requested by the County, Contractor shall provide the results of the background check of each individual to verify that the individual meets Contractor's standards for employment. 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 County's hiring criteria, in County's sole discretion, shall not be assigned to work on County property or Services, and County shall have the right, at its sole option, to refuse access to any Contractor personnel to any County facility.

6. Change of Address

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

7. Choice of Law

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

8. Compliance with County Policy

In performing the Services and while at any County facilities, Contractor personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County 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 County; and (d) abide by all laws applicable to the County facilities and the provision of the Services, and all additions and modifications to each of subsections (b), (c), and (d) (collectively, "County Policies"). County 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 County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. Contractor shall be responsible for the promulgation and distribution of County Policies to Contractor personnel to the extent necessary and appropriate.

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

9. Reserved

10. Primary Point of Contact

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

11. County Representative

The Director of Public Works or his/her designee shall represent the County 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 Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

12. Damage to County Property

Contractor shall repair, or cause to be repaired, at its own cost, all damage to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or employees or agents of the Contractor. 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 County may make any necessary repairs. For such repairs, the Contractor, shall repay all costs incurred by the County, by cash payment upon demand or County may deduct such costs from any amounts due to the Contractor from the County, as determined at County's sole discretion

13. Debarment and Suspension

The 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.

14. 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, Contractor agrees that the Contractor and the Contractor's employees, while performing service for the County, on County property, or while using County equipment:

- a. Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- b. Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- c. 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.

Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the County'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 County.

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

15. 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.

16. 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 VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

17. Environmental Requirements

In accordance with County Policy 11-08, the County 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 County 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 County whenever practicable.

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

18. Improper Influence

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

19. 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 County in an attempt to secure favorable treatment regarding this Contract.

The County, by written notice, may immediately terminate any Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County 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 County 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 to the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

20. Informal Dispute Resolution

In the event the County 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. Except as otherwise provided in this Contract, any dispute concerning a question of fact regarding a provision of this Contract which is not disposed of by Contract shall be decided by the Director of Public Works who shall furnish the decision to the Contractor in writing.

21. 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.

22. Licenses, Permits, and/or Certifications

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by Federal, State, County, 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 County immediately of loss or suspension of any such licenses, permits, and/or certifications. Failure to maintain required licenses, permits, and certifications may result in immediate termination of this Contract.

23. Material Misstatement/Misrepresentation

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

24. 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".

25. 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 County 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.

26. 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.

27. 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 County upon payment for services (and product, if applicable). All such items shall be delivered to County at the completion of work under the Contract. Unless otherwise directed by County, Contractor may retain copies of such items.

28. Participation Clause

The County desires that Municipalities, School Districts, and other Tax Districts within the San Bernardino County requiring the same services provided herein may at their option and through the County 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:

- a. Such governmental body does not have and will not have in force any other contract for like purchases.

- b. 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 County will not be liable for any such purchase made between the Contractor and another governmental body who avails themselves of this contract.

29. 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.

30. 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.

31. Release of Information

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

32. Representation of the County

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

33. 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.

34. Subcontracting

Contractor agrees not to enter into any subcontracting Contracts for work contemplated under the Contract without first obtaining written approval from the County. Any subcontractor shall be subject to the same terms and conditions as Contractor. Contractor shall be fully responsible for the performance and payments of any subcontractor's contract.

Contractor shall obtain County's written consent, which County 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 County. At County'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 County, resumes of proposed subcontractor personnel. Contractor shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Paragraph B of this Section V. All approved subcontractors shall be subject to the provision of this contract applicable to Contractor Personnel, including removal pursuant to subsection A.5 of this Section V.

For any subcontractor, Contractor shall:

- 34.1** Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and
- 34.2** Ensure that the subcontractor follows County's reporting formats and procedures as specified by County; and

34.3 Include in the subcontractor's subcontract substantially similar terms as are provided in Section III, Scope of Work.

Upon expiration or termination of this Contract for any reason, County 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 County.

35. 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 County, 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 County 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 County.

36. Termination for Convenience

The County may, by written notice stating the extent and effective date, terminate any resulting order for convenience in whole or in part, at any time. The County shall pay the Contractor as full compensation for performance until such termination:

- a. The unit or pro rata price for the delivered and accepted portion.
- b. A reasonable amount, as costs of termination, not otherwise recoverable from other sources by the Contractor as approved by the County, with respect to the undelivered or unaccepted portion of the order, provided compensation hereunder shall in no event exceed the total price.
- c. In no event shall the County be liable for any loss of profits on the resulting order or portion thereof so terminated.
- d. The rights and remedies of County provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under resulting order.

37. Termination for Default

The County may, by written notice of default to the Contractor, terminate any resulting order in whole or in part should the Contractor fail to make satisfactory progress, fail to deliver within time specified therein or fail to deliver in strict conformance to specifications and requirements set forth therein. In the event of such termination, the County reserves the right to purchase or obtain the supplies or services elsewhere, and the defaulting Contractor shall be liable for the difference between the prices set forth in the terminated order and the actual cost thereof to the County. The prevailing market price shall be considered the fair repurchase price.

- a. If, after notice of termination of any resulting order under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued for convenience as set forth below.
- b. The rights and remedies of County provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under resulting order.

38. Changes

The Director of Public Works may at any time, by written order, make changes within the general scope of this Contract, in the definition of services to be performed, and the time (i.e., hours of

the day, days of the week, etc.) and place of performance thereof. Such changes will become effective not less than 30 days after notice of such changes are provided to Contractor. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this Contract, whether changed or not changed by any such order, the parties shall negotiate an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change; provided however, that if the Director of Public Works decides that the facts justify such action, the Director of Public Works may receive and act upon any such claim asserted at any time prior to final payment under this Contract. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Director of Public Works shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". If no Contract can be reached on the changes, at the County's option the Contractor may continue to proceed with the Contract without the changes becoming effective, or the County may terminate the Contract for convenience in accordance with the applicable provisions in this Contract.

39. Time of the Essence

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

40. Venue

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, 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, San Bernardino County, 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, San Bernardino County, San Bernardino District.

41. Reserved

42. Artwork, Proofs and Negatives

All artwork, proofs and/or negatives in either print or digital format for this product are the property of the County. These items must be returned to the County within ten (10) calendar days, upon written notification to the Contractor. In the event Contractor fails to return the documents, the County 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.

43. Reserved

44. 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 and 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 County, 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 Exhibit 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 Exhibit A and the applicable general prevailing wage determinations.

45. Notice

Any notice or notices required or permitted to be given pursuant to this Contract may be personally served on the other party by the party giving such notice, or may be served by certified mail, return receipt requested, to the addresses set forth herein.

46. Contract Administration

The Director of Public Works is the designated Contracting Officer and is the only County official authorized to make any changes to this Contract.

The County has designated the following individual as the Contracting Officer's Representative (COR):

Department of Public Works
Attn: Hope Edwards
825 E. Third Street, Room 207
San Bernardino, CA 92415
(909)387-7863
DPWProcurement@dpw.sbcounty.gov

When necessary, the COR will chair contractor progress meetings and will coordinate the County's contract administrative functions. The COR is designated to receive Contractor invoices for payment, audit and inspect records, inspect Contractor Services, and provide other technical guidance as required. The COR is not authorized to change any terms and conditions of the Contract. Changes to the scope of work will be made only by the Purchasing Agent and/or the Contracting Officer in accordance with the change provisions above.

47. Executive Order N-6-22 Russia Sanctions

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine (<https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>), as well as any sanctions imposed under state law (<https://www.dgs.ca.gov/OLS/Ukraine-Russia>). The EO directs state agencies and their contractors (including by agreement or receipt of a grant) to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should it be determined that Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. Contractor shall be provided advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the County.

48. Political Contributions

Contractor has disclosed to the County using Exhibit E, whether it has made any campaign contributions of more than \$250 to any member of the Board of Supervisors or County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the earlier of: (1) the date of the submission of Contractor's proposal to

the County, or (2) 12 months before the date this Contract was approved by the Purchasing Department. Contractor acknowledges that under Government Code section 84308, Contractor is prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or County elected officer for 12 months after the County's consideration of the Contract.

In the event of a proposed amendment to this Contract, the Contractor will provide the County a written statement disclosing any campaign contribution(s) of more than \$250 to any member of the Board of Supervisors or other County elected officer within the preceding 12 months of the date of the proposed amendment.

Campaign contributions include those made by any agent/person/entity on behalf of the Contractor or by a parent, subsidiary or otherwise related business entity of Contractor.

B. Indemnification and Insurance Requirements

1. Indemnification

Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers (Indemnitees) 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 County 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 Indemnitees. The Contractor indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

Additional Insured

All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional insureds 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 County to vicarious liability but shall allow coverage for the County 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.

Waiver of Subrogation Rights

The Contractor shall require the carriers of the required coverages to waive all rights of subrogation against the County, 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 County.

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 County.

Severability of Interests

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 County or between the County and any other insured or additional insured under the policy.

Proof of Coverage

Contractor shall furnish Certificates of Insurance to the County 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 Department, 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, 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.

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".

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.

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 County 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 County will be promptly reimbursed by the Contractor or County payments to the Contractor(s)/Applicant(s) will be reduced to pay for County purchased insurance.

Insurance Review

Insurance requirements are subject to periodic review by the County. 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 interest of the County. In addition, if 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 these 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 County, inflation, or any other item reasonably related to the County'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 County 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 County.

2. Insurance Specifications

Contractor agrees to provide insurance set forth in accordance with the requirements herein. If 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 any way 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:

Workers' Compensation/Employers 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 two hundred and fifty thousand dollar (\$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 County 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 County'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.

Commercial/General Liability Insurance

Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of 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

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 Contractor is transporting one or more non-employee passengers in performance of 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 Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

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.

Environmental Liability Insurance

- 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 County 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.

C. Right to Monitor and Audit

1. Right to Monitor

The County, State and Federal governments shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have the 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 County in the implementation, monitoring and evaluation of this Contract and comply with any and all reporting requirements established by the County. Contractor shall repay to County within thirty (30) days of receipt of audit findings any reimbursements made by County to Contractor that are determined by subsequent audit to be unallowable pursuant to the terms of this Contract or by law.

2. 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 Contract.

All records relating to the Contractor's personnel, Contractors, Subcontractors, Service/Scope of Work and expenses pertaining to this Contract shall be kept in 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.

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

3. Cost or Pricing Data

If the Contractor submitted cost or pricing data in connection with the pricing of this Contract or any change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities of the general public, or prices set by law or regulation, the Director of Public Works or his/her representatives who are employees of the County or its agent shall have the right to examine all books, records, documents and other data of the Contractor related to the negotiation pricing or performance of such contract, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted.

4. The Contractor shall insert a clause containing all the provisions of this entire Section V.C in all subcontracts hereunder except altered as necessary for proper identification of the contracting parties and the contracting officer under the County's prime contract.

D. Supply of Materials and Goods

1. Assignment of Rights, Title and Interest

In submitting a Proposal to a public purchasing body, the Contractor offers and agrees that if the Proposal is accepted, it will assign to the County all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 1 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale to the

County pursuant to the Proposal. Such assignment shall be made and become effective at the time the County tenders final payment to the Vendor.

2. **CAL OSHA**

As applicable, all items furnished under this RFQ shall meet or exceed the standards established by the California Occupational Safety and Health Act of 1973 and current amendments thereto, provided the end use of the item is for the purpose for which the item is intended.

3. **Delivery**

As stated in Section V.A.39, time is of the essence in performance of this Contract and of each of its provisions. The Contract and/or purchase order is subject to termination for failure to deliver on time. The acceptance by County of late performance with or without objection or reservation shall not waive the right to claim damage for such breach nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by the Contractor.

4. **Inspection**

All items or services are subject to final inspection and acceptance at designation by the County. Such final inspection shall be made within a reasonable time after delivery.

5. **Title**

Title to the material and supplies purchased shall pass directly from Contractor to County upon delivery to the County destination, subject to the right of County to reject upon inspection, unless other arrangements have been made with the County in writing in advance.

6. **Variations in Specifications**

The County reserves the right to waive a variation in specification if, in the opinion of the County, such variation does not materially change the item or its performance within parameters acceptable to the County.

7. **Availability of Funding**

The maximum amount of reimbursement/payment under this Contract shall be subject to availability of funds to the County.

8. **Inspection of Materials/Supplies**

All performance (which includes materials, supplies and equipment furnished or utilized in the performance of this Contract) shall be subject to inspection and test by the County at all times during the term of the Contract and/or purchase order. The Contractor shall provide adequate cooperation to any inspector assigned by the County to permit the inspector to determine the Contractor's conformity with these specifications and the adequacy of the services being contractually provided. All inspection by the County shall be made in such a manner as not to unduly interfere with Contractor performance.

9. **Contractor Representation**

Unless the Contractor expressly states otherwise in its Bid, where functional requirements are expressly stated as part of the requirements of this solicitation, the Contractor, by responding, represents that in its opinion the materials and/or system proposed is capable of meeting those requirements. In the event of any inconsistency between the functional specifications and the detailed specifications contained in the solicitation, the former will control.

10. **Warranty**

Contractor agrees that the equipment or supplies to be furnished shall be covered by the most favorable commercial warranties the Contractor gives to any customer for the same or substantially similar equipment or supplies and that the rights and remedies so provided are in addition to and do not limit any rights afforded to County.

11. Product Identification and Labeling

Each package shall be identified with manufacturer's label, which shall conform to the requirements of the Fair Packaging and Labeling Act and Section 12604 of the California Business and Professions Code.

12. Ordering

County shall issue a contract/purchase order containing all applicable requirements to Contractor. Contractor shall complete delivery of items ordered to destinations set forth in the contract/purchase order. Each contract/purchase order shipment shall be accompanied by a delivery confirmation or bill of lading itemizing all materials, goods, supplies or equipment shipped. Partial shipments are acceptable.

13. Flammability and Toxicity

Materials furnished under this Contract must meet or exceed minimum California State Fire Marshal's standard for flammability and toxicity for institutional fabrics. Contractor shall provide evidence of the California Fire Marshal's test results and approval number.

14. Right to Acquire Equipment, Goods, Materials, or Supplies

Nothing in this Contract shall prohibit the County from acquiring the same type or equivalent equipment, goods, materials, or supplies from other sources, when deemed by the County to be in its best interest.

E. Correction of Performance Deficiencies

1. In the event of a problem or potential problem that could impact the quality or quantity of work, Services, or the level of performance under this Contract, Contractor shall notify the County within one (1) working day, in writing and by telephone.
2. 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.
3. Contractor's Primary Contact and County Representative shall attempt in good faith to promptly resolve any dispute, controversy or claim arising out of this Contract. If these representatives are unable to resolve a dispute, controversy or claim with ten (10) days after the initial request for a meeting, then the dispute shall be submitted to an executive-level performance review.

If the Primary Contact and County Representative are not successful in resolving the dispute, negotiations shall be conducted by the Chief Executive Officer, or designee and the highest level executive for Contractor. If these representatives are unable to resolve the dispute within ten (10) days after the representatives have commenced negotiations, or 20 days have passed since the initial request for negotiations at this level, the Parties may agree in writing to submit the dispute to mediation.

4. In the event of a non-cured breach, County 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 County;
 - b. Withhold funds pending duration of the breach;
 - c. Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery;
 - d. Offset against any monies billed by Contractor but yet unpaid by the County;
 - e. Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor. In the event of such termination, the County may proceed with the work in any manner deemed proper by the County. The cost to the County 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.

5. Unless a remedy is specifically designated as exclusive, no remedy conferred by any of the specific provision of the Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either Party shall not constitute a waiver of the right to pursue other available remedies.

VI. CONCLUSION

- A. This Contract incorporates by reference the terms of Exhibit A - Prevailing Wage Requirements, Exhibit B - Report of Environmentally Preferable Goods and Services, Exhibit C - Public Contract Resolution of Claims, Exhibit D-1 through D-8 - Road Material Schedules, Exhibit E – Senate Bill 1439 Contractor Information Report, the Request for Qualifications Road Materials PWG 125-OPERA-5744, the RFBs, the bids submitted by the Contractor, and the Bid Acceptance forms.
- B. This Contract is the full and complete document describing services and materials to be rendered by Contractors to County including all covenants, conditions and benefits. This Contract, including all appendices and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive Contract between the parties hereto. Any prior Contract, 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.
- C. The signatures of the parties affixed to this Contract affirm that they are fully authorized to commit and bind their respective institutions to the terms and conditions set forth in this document. This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Contract. The parties shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF or other mail 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 Contract upon request.
- D. In event of conflict between the provisions of this Contract, the Request for Qualifications Road Materials PWG 125-OPERA-5744, the RFB, the bid submitted by Contractor, and the Bid Acceptance forms, the provisions of this Contract shall control.
- E. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF, or other mail 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 Contractor has caused this Contract to be subscribed in its behalf by its duly authorized officers, the day, month and year written.

SAN BERNARDINO COUNTY

► _____
Leo Gomez, Purchasing Manager

Dated: _____

(Print or type name of corporation, company, contractor, etc.)

By ► _____
(Authorized signature - sign in blue ink)

Name _____
(Print or type name of person signing contract)

Title _____
(Print or Type)

Dated: _____

Address _____

Approved as to Legal Form
► _____ Aaron Gest, Deputy County Counsel
Date _____

EXHIBIT 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 County 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 County, 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. 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 County 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 County. 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 County, 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 County or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to the County 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 County 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 County of the location of payroll records, including the street address, city and county 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 County, 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 County 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 (submitted on or after March 1, 2015) 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 (awarded on or after April 1, 2015) 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 new public works projects issued on or after April 1, 2015, and for all public works projects, new or ongoing, on or after January 1, 2016.
 - 1) The certified payroll must be submitted at least monthly to the Labor Commissioner.
 - 2) The County 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 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 county 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 Contract 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 Contracts 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 Contracts 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, county, 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.

EXHIBIT B- REPORT OF ENVIRONMENTALLY PREFERABLE GOODS AND SERVICES

County of San Bernardino

Green Purchasing Report from _____ (Vendor)

Account No. _____

MM/DD/YYYY to MM/DD/YYYY

[illegible]

EXAMPLES OF GREEN ATTRIBUTES	EXAMPLES OF CERTIFICATION AND/OR ACCREDITATION
Biobased Biodegradable Carcinogen-free Chlorofluorocarbon (CFC)-free Compostable Energy efficiency Lead-free Less hazardous 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	Certified Approved Product (AP) Non-Toxic Ecologo Certified Energy Star Electronic Product Environmental Assessment Tool (EPEAT) program Forest Stewardship Council Certified Green Seal Certified Greenguard Certified Scientific Certification Systems (SCS)

EXHIBIT C- 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, county, including a charter county, city and county, including a charter city and county, 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 Contract, 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:

(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)

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual Contract 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 Contract 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 county 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 county, and a city and county, 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.

EXHIBIT D
Road Materials Schedules
D-1 THROUGH D-8

D-1 AGGREGATE PRODUCT SPECIFICATION

Vendor Name: _____

Please check all that apply: (Pricing is not required at this time)

Aggregate Materials	Unit of Measure	Deliver to Site	Material FOB
Class 2 Aggregate Base (Section 26-1)	Ton	☐	☐
Class 2 Aggregate subbase (Section 25-1)	Ton	☐	☐
1-1/2" Rock (Section 68 Permeable Material)	Ton	☐	☐
Rock-Rip Rap 1/4ton (Rock Slope Protection Class V per section 72-2)	Ton	☐	
Rock-Rip Rap 1/2ton (Rock Slope Protection Class VII per section 72-2)	Ton	☐	
Rock-Rip Rap 1 ton (Rock Slope Protection Class VIII per section 72-2)	Ton	☐	
Rock-Rip Rap 2 ton (Rock Slope Protection Class IX per section 72-2)	Ton	☐	
Sand	Ton	☐	☐

By Signing below I certify that all Aggregate bases shall conform to the grading and quality requirements in Section 26 of the most current Caltrans Standard Specifications.

Please check all that apply: (Pricing is nt required at this time.)

Chip Seal Aggregate	Unit of Measure	Deliver to Site	Material FOB
Chip Seal Aggregate 3/8" (Per Section 37-2)	Ton	☐	☐
Chip Seal Aggregate 5/16" (Per Section 37-2)	Ton	☐	☐
Chip Seal Aggregate 1/4" (Per Section 37-2)	Ton	☐	☐
RAP Material, 3/8"	Ton	☐	☐
RAP Material, 5/16"	Ton	☐	☐

By signing below I certify that all Chip Seal Screening shall conform to the most current Caltrans Standard Specifications.

☐ **Opt out of receiving bid notifications for this material.**

Authorized Representative Signature: _____ **Date:** _____

Print Name: _____

D-2 ASPHALT CONCRETE PRODUCT SPECIFICATION

Vendor Name: _____

Please check all that apply: (Pricing is not required at this time)

Materials		Unit of Measure	Deliver to Site	Comments
Asphalt Bag Mix (QPR 2000 or equivalent)		Tons	☐	
Type A Hot Mix Asphalt (Per Section 39-2)	PG-64-10	Tons	☐	
	PG 64-16	Tons	☐	
	PG 70-10	Tons	☐	
Type A Warm Mix Asphalt (Per Section 39-2)	PG-64-10	Tons	☐	
	PG 64-16	Tons	☐	
	PG 70-10	Tons	☐	
SC 3000	3/8" Regular	Tons	☐	
	1/2" Regular	Tons	☐	
SC 800	3/8" Regular	Tons	☐	
Sheet Mix		Tons	☐	
Slurry Seal	Type 1	Tons	☐	
	Type II	Tons	☐	
	Type II w/ Latex	Tons	☐	
	Type II Rubberized Emulsion Aggregate	Tons	☐	
	Type III Rubberized Emulsion Aggregate	Tons	☐	

By signing below I certify that all Asphalt Concrete mixes and Asphalt binders shall conform to the requirements of the most current Caltrans Standard Specifications.

☐ **Opt out of receiving bid notifications for this material.**

Authorized Representative Signature: _____ **Date:** _____

Print Name: _____

D-3 ASPHALT EMULSIONS PRODUCT SPECIFICATIONS

Vendor Name: _____

Please check all that apply: (Pricing is not required at this time)

Materials	Unit of Measure	Deliver to Site
CQS1h	Gallons	☐
CRS-2	Gallons	☐
CRS-2H	Gallons	☐
CSS-1	Gallons	☐
CSS-1H	Gallons	☐
CQS-1H	Gallons	☐
PMCRS-2H	Gallons	☐
PMRE (with polymer modifier and rejuvenating agent)	Gallons	☐
LMCRS-2H	Gallons	☐
SC800 Liquid (Section 93, Liquid Asphalts)	Gallons	☐
SS1h	Gallons	☐
SS1h (Bucket, 5 Gallons)	Gallons	☐
SS1h/CSS1h+2.5% latex	Gallons	☐
SSC1H	Gallons	☐
Dilution Water	Gallons	☐
Other:		☐

By signing below I certify that all Asphalt Emulsions shall conform to the requirements in the most current Caltrans Standard Specifications.

☐ **Opt out of receiving bid notifications for this material.**

Authorized Representative Signature: _____ **Date:** _____

Print Name: _____

D-4 CRACK SEALANT PRODUCT SPECIFICATION

Vendor Name: _____

Asphalt Concrete Pavement (Flexible Pavement) Crack Treatment Material (PDF) :
<https://dot.ca.gov/-/media/dot-media/programs/engineering/documents/mets/asphalt-concrete-pavement-crack-treatment-a11y.pdf>

Only products on this list will be accepted.

Please check all that apply: (Pricing is not required at this time)

Manufacturer	Product	Application	Expiration Date	Deliver to Site	
				Barstow	San Bernardino
Crafco, Inc.	Deery 220CA	Type 1	05/2023	☐	☐
Maxwell Products	Elastoflex CA	Type 1	05/2023	☐	☐
Crafco, Inc.	Polyflex CA Type 1,2	Type 1	05/2023	☐	☐
Right Pointe Company	RP PLS A	Type 1	10/2021	☐	☐
Adventus Materials	Pavement Camoseal	Type 1	07/2024	☐	☐
Crafco, Inc.	Polyflex CA Type 1,2	Type 2	05/2023	☐	☐
Crafco, Inc.	Deery 200CA	Type 2	05/2023	☐	☐
Maxwell Products	Elastoflex CA	Type 2	05/2023	☐	☐
Adventus Materials	Pavement Camoseal	Type 2	07/2024	☐	☐
Maxwell Products, Inc.	Nuvo CS C	Type 2	11/2024	☐	☐
Crafco, Inc.	Polyflex CA Type 3	Type 3	05/2023	☐	☐
Crafco, Inc.	Deery 180CA	Type 3	03/2023	☐	☐
Maxwell Products	Elastoflex CA	Type 3	05/2023	☐	☐
Right Pointe Company	RP 5078 B	Type 3	10/2021	☐	☐
RW Materials, LLC	RW 306 CS3	Type 3	05/2024	☐	☐
Maxwell Products, Inc.	Nuvo CS C	Type 3	11/2024	☐	☐

Manufacturer	Product	Application	Expiration Date	Deliver to Site	
				Barstow	San Bernardino
Adventus Materials	Pavement Camoseal	Type 3	07/2024	☐	☐
Crafco, Inc.	Polyflex CA Type 4	Type 4	05/2023	☐	☐
Crafco, Inc.	Deery 103GLCA	Type 4	05/2023	☐	☐
Maxwell Products	Elastoflex CA Type 4	Type 4	05/2023	☐	☐
RW Materials, LLC	RW 306 CS4	Type 4	10/2024	☐	☐
Adventus Materials	Pavement Camoseal	Type 4	07/2024	☐	☐
Crafco, Inc.	Roadsaver CA Type 5	Type 5	05/2023	☐	☐
Maxwell Products	Elastoflex CA Type 5	Type 5	05/2023	☐	☐
Right Pointe Company	RP 3405	Type 5	10/2021	☐	☐

To obtain Caltrans approval for a product not on this approved list as an “equal” please follow the “Authorized Materials Lists (AML)” at: <https://dot.ca.gov/programs/engineering-services/authorized-materials-lists>

☐ Opt out of receiving bid notifications for this material.

Authorized Representative Signature: _____ **Date:** _____

Print Name: _____

D-5 PORTLAND CEMENT CONCRETE PRODUCT SPECIFICATION

Vendor Name: _____

Please check all that apply: (Pricing is not required at this time)

Materials	Unit of Measure	FOB	Service Areas (Deliver to Site)				
			Barstow	Chino	Ontario	San Bernardino	Victorville
Standard Mix							
3/8" rock 6 sack	CY	☐	☐	☐	☐	☐	☐
1/2" rock 6 sack	CY	☐	☐	☐	☐	☐	☐
3/4" rock 6 sack	CY	☐	☐	☐	☐	☐	☐
3/8" rock 7 sack	CY	☐	☐	☐	☐	☐	☐
1/2" rock 7 sack	CY	☐	☐	☐	☐	☐	☐
3/4" rock 7 sack	CY	☐	☐	☐	☐	☐	☐
Slurry Mix							
2 sack	CY	☐	☐	☐	☐	☐	☐
3 sack	CY	☐	☐	☐	☐	☐	☐
5 sack	CY	☐	☐	☐	☐	☐	☐
Pump Mix-Pea Gravel 6 sack	CY	☐	☐	☐	☐	☐	☐

By signing below I certify that all Portland Cement Concrete shall conform to the requirements in Section 90 of the most current Caltrans Standard Specifications.

☐ **Opt out of receiving bid notifications for this material.**

Authorized Representative Signature: _____ **Date:** _____

Print Name: _____

D-6 VOLCANIC CINDERS PRODUCT SPECIFICATIONS

Vendor Name: _____

Please check all that apply: (Pricing is not required at this time)

Service Areas (Delivery within 10 miles of city limits)	Unit of Measure	#2, 5/16" Volcanic Cinders Red & Black Mix		#6, 3/8" Volcanic Cinders Red & Black Mix		Ice Slicer
		Pump Truck	Truck & Trailer	Pump Truck	Truck & Trailer	
Angeles Oaks	Tons	☐	☐	☐	☐	☐
Big Bear	Tons	☐	☐	☐	☐	☐
Blue Jay	Tons	☐	☐	☐	☐	☐
Crestline	Tons	☐	☐	☐	☐	☐
Fontana	Tons	☐	☐	☐	☐	☐
Forest Falls	Tons	☐	☐	☐	☐	☐
Joshua Tree	Tons	☐	☐	☐	☐	☐
Mt. Baldy	Tons	☐	☐	☐	☐	☐
Running Springs	Tons	☐	☐	☐	☐	☐
Yucaipa	Tons	☐	☐	☐	☐	☐
Wrightwood	Tons	☐	☐	☐	☐	☐

Note: San Bernardino County reserves the right to request delivery of products to additional sites, quotes will be request for those areas.

☐ **Opt out of receiving bid notifications for this material.**

Authorized Representative Signature: _____ **Date:** _____

Print Name: _____

D-7 DUST CONTROL/DIRT STABILIZATION PRODUCT SPECIFICATIONS

Vendor Name: _____

Please check all that apply: (Pricing is not required at this time)

Product Name	Dust Palliative (Y/N)	Soil Stabilizer (Y/N)	Optimum Soil Type**	Warranty Period	Erosion Resistant (Y/N)	Base Compound*

****List if applicable to more than 1 soil type.**

By signing below I certify that all dust control/dirt stabilization materials will conform to the requirements of the most current Caltrans Standard Specifications.

☐ Opt out of receiving bid notifications for this material.

Authorized Representative Signature: _____ Date: _____

Print Name: _____

D-8 GLASS BEADS

Vendor Name: _____

Please check all that apply: (Pricing is not required at this time)

Item Description	Bags 50 lbs.	Drums 550 lbs.
Glass Beads: AASHTO M247 Drop on Pavement Marking Spheres	☐	☐

By signing below I certify that all glass beads meet or exceed minimum California Department of Transportation (CALTRANS) specifications found in Section 84 of the Latest Edition of the CALTRANS STANDARD SPECIFICATIONS.

☐ Opt out of receiving bid notifications for this material.

Authorized Representative Signature: _____ **Date:** _____

Print Name: _____



Exhibit E

Senate Bill 1439

Contractor Information Report

DEFINITIONS

Actively supporting the matter: (a) Communicate directly, either in person or in writing, with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] with the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

Agent: A third-party individual or firm who is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsidary relationship but meets one of the following criteria:

- (1) One business entity has a controlling ownership interest in the other business entity;
- (2) there is shared management and control between the entities; or
- (3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

Parent-Subsidiary Relationship: A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

Contractors must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.

1. Name of Contractor: _____

2. Is the entity listed in Question No.1 a nonprofit organization under Internal Revenue Code section 501(c)(3)?
 Yes ☐ If yes, skip Question Nos. 3-4 and go to Question No. 5
 No ☐

3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, if the individual actively supports the matter and has a financial interest in the decision: _____

4. If the entity identified in Question No.1 is a corporation held by 35 or less shareholders, and not publicly traded ("closed corporation"), identify the major shareholder(s): _____

5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above):

Company Name	Relationship

6. Name of agent(s) of Contractor:

Company Name	Agent(s)	Date Agent Retained (if less than 12 months prior)

7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district.

Company Name	Subcontractor(s):	Principal and/or Agent(s):

8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name

9. Was a campaign contribution, of more than \$250, made to any member of the San Bernardino County Board of Supervisors or other County elected officer on or after January 1, 2023, by any of the individuals or entities listed in Question Nos. 1-8?

No ☐ If **no**, please skip Question No. 10.

Yes ☐ If **yes**, please continue to complete this form.

10. Name of Board of Supervisor Member or other County elected officer: _____

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.

By signing the Contract, Contractor certifies that the statements made herein are true and correct. Contractor understands that the individuals and entities listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer while award of this Contract is being considered and for 12 months after a final decision by the County.