



**Contract Number**

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**SAP Number**

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## San Bernardino County Flood Control District

<b>Department Contract Representative</b>	Sameh Basta
<b>Telephone Number</b>	909-387-8040
<b>Contractor</b>	Ellis Fence Co
<b>Contractor Representative</b>	Bradley Ellis
<b>Telephone Number</b>	(760) 256-3270
<b>Contract Term</b>	January 1, 2024-January 31, 2028
<b>Original Contract Amount</b>	\$2,000,000
<b>Amendment Amount</b>	
<b>Total Contract Amount</b>	\$2,000,000
<b>Cost Center</b>	1970002510

**IT IS HEREBY AGREED AS FOLLOWS:**

**WHEREAS**, San Bernardino County Flood Control District (District) desires to establish a list of pre-qualified on-call Public Works Maintenance Services; and

**WHEREAS**, the District issued a "Request for Qualifications (RFQ) PWG 123-OPERA-4896 On-call Public Works Maintenance Services" and contractor responded to RFQ by submitting a proposal; and

**WHEREAS**, the District finds Contractor qualified to provide on-call public works maintenance services; and

**WHEREAS**, the District desires that such services be provided by Contractor and Contractor agrees to perform these services as set forth below;

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

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

**A. DEFINITIONS**

**A.1** Board: The San Bernardino County Flood Control District Board of Supervisors.

**A.2** Contract: The Contract between the District and the Proposer resulting from the award issued pursuant to this RFQ to the successful Proposer.

- A.3 Contractor: Any individual, company, firm, corporation, partnership or other organization to whom a contract award is made by the District.
- A.4 District : The “District” or “San Bernardino County Flood Control District” shall refer to District.
- A.5 Foothills: Locations in District that are within the general vicinity of the San Gabriel foothills, San Bernardino, Highland, Redlands, and Rancho Cucamonga.
- A.6 Public Works Maintenance Services: Includes, but not be limited to, concrete work, crack sealing services, traffic control and flagging services, traffic stripping and pavement marking services, hazardous waste removal services, weed abatement services, asphalt repair and maintenance services, fence installation service, and guardrail repair services.
- A.7 High Desert: Locations in District that are in the general vicinity of Big Bear, Blue Jay, Crestline, and Running Springs
- A.8 Low Desert: Locations in District that are within the general vicinity of Big River, Needles, Trona, Twenty-Nine Palms, and Yucca Valley.
- A.9 Mountains: Locations in District that are within the general vicinity of Apple Valley, Baker, Barstow, Hesperia, Victorville, and Wrightwood.
- A.10 Purchasing Agent: The Director of the District Purchasing Department.
- A.11 Services: The requested services described in this Contract.
- A.12 Subcontractor: An individual, company, firm, corporation, partnership or other organization, not in the employment of or owned by Contractor who is performing services on behalf of Contractor under the Contract or under a separate contract with or on behalf of Contractor.
- A.13 Valley: Locations in District that are within the general vicinity of the eastern valley region of Chino, Fontana, East Valley-San Bernardino, and Yucaipa.

## B. CONTRACTOR RESPONSIBILITIES

The Contractor shall have the following responsibilities:

- B.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.
- B.2 Maintaining a current fax, telephone number, and email address with the District. **Failure to do so may result in the loss of bid opportunities on jobs.**
- B.3 Providing the District with a name and telephone number of a single point of contact for questions regarding materials or services. Contractor must supply the District with an emergency 24-hour contact and telephone number.
- B.4 Notifying the District in writing, of any change in mailing address within ten (10) business days of the change.
- B.5 Providing the District with the names, titles and signatures of all employees authorized to sign RFB. Only bids signed by authorized individual will be considered valid bids
- B.6 Responding to the bid, whether providing prices or declining, within the required time frame specified in the RFB, upon receipt of faxed or e-mailed RFB form from the District. **Failure to respond in the required time frame is considered a “Non-Responsive” bid.**

- B.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.
- B.8** Warrant all services provided for one (1) year.
- B.9** Providing the District with the following completed signed items:
  - Public Works Maintenance Services Schedules (Attachment D)
  - Current Insurance Certification (as per Section G)
- B.10** Bids must include a fully executed non-collusion declaration in the form identified in Public Contracts Code Section 7106.
- B.11** 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 Attachment B, if applicable.
- B.12** Contractor reserves the right to cancel this Contract, for any reason, with a sixty (60) calendar days' written notice of cancellation.
- B.13** Public Works Maintenance Services and areas governed by and for this term of this Contract are defined in Attachment C Scope of Work.

## **C. GENERAL CONTRACT REQUIREMENTS**

### **C.1 Recitals**

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

### **C.2 Contract Amendments**

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

### **C.3 Contract Assignability**

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

### **C.4 Contract Exclusivity**

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

### **C.5 Attorney's Fees and Costs**

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

### **C.6 Background Checks for Contractor Personnel**

Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (d) do not use legal or illegal substances in any manner which will impact their ability to provide Services to the District; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the District and

not in violation of applicable law, Contractor shall conduct a background check, at Contractor's sole expense, on all its personnel providing Services. If requested by the District, Contractor shall provide the results of the background check of each individual to the District. Such background check shall be in the form generally used by Contractor in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Contractor personnel who do not meet the District's hiring criteria, in District's sole discretion, shall not be assigned to work on District property or Services, and District shall have the right, at its sole option, to refuse access to any Contract personnel to any District facility.

**C.7 Change of Address**

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

**C.8 Choice of Law**

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

**C.9 Compliance with District Policy**

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

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

**C.10 Reserved**

**C.11 Primary Point of Contact**

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

**C.12 District Representative**

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

**C.13 Damage to District Property**

Contractor shall repair, or cause to be repaired, at its own cost, all damages to District vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or its employees

or agents. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

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

**C. 14 Debarment and Suspension**

Contractor certifies that neither it nor its principals or subcontracts is presently debarred, 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.

**C.15 Drug and Alcohol Free Workplace**

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

- C.15.1** Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- C.15.2** Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- C.15.3** Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

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

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

**C.16 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.

**C.17 Employment Discrimination**

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

relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

**C.18 Environmental Requirements**

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

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

**C.19 Improper Influence**

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

**C.20 Improper Consideration**

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

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

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

**C.21 Informal Dispute Resolution**

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

**C.22 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.

**C.23 Licenses, Permits and/or Certifications**

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

Obtaining and maintaining valid and applicable license and permits at the time of bid and during any time work is performed pursuant to a Contract with the District. In terms of the contractors and business license, Contractor shall have a valid State of California A license or C-8 or C-12 (if applicable) and business license (if applicable) in the Contractor's own name. A specific license may also be required for a particular project. Contractor must maintain the valid applicable license at the time it bids on a project and during the entire time of performance under the Contract.

**C.24 Material Misstatement/Misrepresentation**

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

**C.25 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".

**C.26 Nondisclosure**

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

**C.27 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.

**C.28 Ownership of Documents**

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

**C.29 Participation Clause**

The District desires that Municipalities, School Districts, and other Tax Districts within the District requiring the same services provided herein may at their option and through the District Purchasing agent, avail themselves of this Contract. Upon notice, in writing, the Contractor

agrees to the extension of the terms of a resultant contract with such governmental bodies as though they have been expressly identified in this bid, with the provisions that:

**C.29.1** Such governmental body does not have and will not have in force any other contract for like purchases.

**C.29.2** Such governmental body does not have under consideration for award any other bids or quotations for like purchases.

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

**C.30 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.

**C.31 Records**

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

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

**C.32 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.

**C.33 Release of Information**

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

**C.34 Representation of the District**

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

**C.35 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.

**C.36 Subcontracting**

Contractor shall obtain District's written consent, which District may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply



any part of the Services to District. At District's request, Contractor shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the District, resumes of proposed subcontractor personnel. Contractor shall remain directly responsible to District for its subcontractors and shall indemnify District for the actions or omissions of its subcontractors under the terms and conditions specified in Section G. All approved subcontractors shall be subject to the provisions of this Contract applicable to Contractor Personnel.

For any subcontractor, Contractor shall:

- 36.1** Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and
- 36.2** Ensure that the subcontractor follows District's reporting formats and procedures as specified by District.
- 36.3** Include in the subcontractor's subcontract substantially similar terms as are provided in Sections B. Contractor Responsibilities and C. General Contract Requirements.

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

### **C.37 Subpoena**

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

### **C.38 Termination for Convenience**

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

### **C.39 Time of the Essence**

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

### **C.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.

#### **C.41 Conflict of Interest**

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the District. Contractor shall make a reasonable effort to prevent employees, Contractor, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the District determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the District and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

#### **C.42 Former District Administrative Officials**

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

#### **C.43 Disclosure of Criminal and Civil Procedures**

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

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

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

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

#### **C.44 Copyright**

District shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the District as the funding agency and Contractor as the creator of the publication. No such materials, or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of District. Copies of all educational and training materials, curricula, audio/visual aids, printer material, and periodicals, assembled pursuant to this Contract must be filed with the District prior to publication.

#### **C.45 Artwork, Proofs and Negatives**

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

#### **C.46 Iran Contracting Act**

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

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

#### **C.47 Prevailing Wage Laws**

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

applicable terms and conditions in Attachment A. The applicable general prevailing wage determinations are on file with the District and are available to any interested party on request. Contractor shall post a copy of the applicable prevailing wage determinations at the job site.

**C. 48 Reserved**

**C. 49 Reserved**

**C. 50 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 District.

**C. 51 Political Contributions**

Contractor has disclosed to the District using Attachment E – Senate Bill 1439 Contractor Information Report, whether it has made any campaign contributions of more than \$250 to any member of the Board of Supervisors or other 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 District, or (2) 12 months before the date this Contract was approved by the Board of Supervisors. 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 other County elected officer for 12 months after the District's consideration of the Contract.

In the event of a proposed amendment to this Contract, the Contractor will provide the District 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.

**D. TERM OF CONTRACT**

This Contract is effective as of January 1, 2024 and expires January 31, 2028 but may be terminated earlier in accordance with provisions of this Contract.

**E. DISTRICT RESPONSIBILITIES**

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

**San Bernardino County Flood Control District  
Department of Public Works  
Attn: Sameh Basta  
825 East Third Street, Room 120**

- E.2** The District, through its Director, or the Director's designees, reserves the right to:
- 1) Accept or reject any or all bids if the District determines it is in its own best interest to do so. The District will notify all contractors, in writing, if all bids are rejected.
  - 2) Take conditions other than price into account when necessary. The District reserves the option to make award(s) as it deems to be in the best interest of the District.
  - 3) Select the next lowest bidder until the District'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 District.
  - 5) Reject services that do not meet job specifications.
  - 6) Cancel award of bid, prior to performance of service, if District requirements change.
  - 7) To reject equipment not meeting specifications requested on the RFB. It is the contractor's responsibility to contact the District prior to submitting a bid to verify the requirements and determine if equipment is equivalent to the requested item. Equipment that arrives on the job not meeting specifications will be rejected at the Proposer's expense.
  - 8) To invoice Contractor for all costs incurred by the District, including assessed fines and or penalties, for Contractor's incorrect, late, or non-performance of obligations under an accepted job assignment. These costs may be offset from any amounts due the Contractor under this Agreement or otherwise.
  - 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 District.
  - 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) To invoice Contractor for all costs incurred by the District, 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.
  - 15) Invoice Contractor for all costs incurred by District, including assessed fines and or penalties, for Contractor's incorrect, late, or non-performance of obligations under an accepted job assignment. These costs may be offset from any amounts due the Contractor under this Contract or otherwise.

- 16) Assess liquidated damages in the amount of \$500.00 against Contractor for each and every calendar days delay in finishing the work in excess of the number of working days prescribed in the Request for Bid.
- 17) 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.

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

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

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

Require Contractor on all projects over \$25,000, to file a payment bond with and approved by the District 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.

- 18) 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.
- 19) Depending on the funding source for the work, require Contractor to comply with any other federal, state, District or municipal law, regulation and/or contractual requirement, including, but not limited to, the laws, regulations and/or requirements of the State Department of Transportation (Caltrans), the Federal Highway Administration (FHWA), the California Governor's Office of Emergency Services (Cal OES) or the Federal Emergency Management Agency (FEMA).
- 20) The District agrees to comply with any and all applicable laws and regulations, including, but not limited to, the Public Contract Code provisions identified in Attachment B, if applicable.

## **F. FISCAL PROVISIONS**

**F.1** The maximum amount of *payment* under this Contract shall not exceed \$2,000,000 and shall be subject to availability of other funds to the District. The consideration to be paid to Contractor, as provided herein, shall be in full payment for all Contractor's services and expenses incurred in the performance hereof, including travel and per diem.

### **F.2** The Bid Process

Except for emergency projects, at the time a job (all maintenance projects and public projects not exceeding the amount identified in Public Contract Code section 22032(a) is scheduled for performance:

- 1) The District, through the Director, or the Director's designee, shall mail, fax, or email an RFB form to all Contractors authorized to provide the material or service for the specific job as need arises.
- 2) The RFB form will:
  - a. Identify the requesting District employee by name and position title.
  - b. Give specifications for the job/ project.

- c. Give the date, time, and location for the work to be performed.
  - d. Specify the bid submission deadline, date and time.
  - e. Identify any job walk requirement(s).
  - f. Give a fax number and/or email address to which to respond.
  - g. State where a performance bond is required (and amount).
- 3) Contractors shall submit bid responses before the deadline noted on the RFB.
- 4) If Contractor intends to subcontract any of the work, Contractor shall provide in the bid, name, the location of the place of business, and the California contractor's license number, and Department of Industrial Relations registration number of each subcontractor who will provide the equipment to Contractor in excess of one-half of one (1) percent of Contractor's total bid or \$10,000, whichever is greater.
- 5) Bids may be submitted as follows:
- a) Facsimile or email to the contact person specified on the RFB.
  - b) Submitted in person must be in a sealed packaged with bid number on package to the contact person on the RFB.
  - c) Bids must include a fully executed non-collusion declaration in the form identified in Public Contract Code Section 7106.
  - d) Bids that are not responsive to the RFB may be rejected.
- 6) The Department will award the project to the lowest responsive and responsible bidder (subject to the District'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 Request for Bid. Except for emergency projects, all maintenance projects and public projects not exceeding the amount identified in Public Contract Code section 22032(a) will be subject to the District's Local Preference Policy. More specifically the District has adopted a preference for Vendors whose principal place of business is located within the boundaries of the District. 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 (District 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 a LOS/RFQ/Quote for any contract, agreement, 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, form 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 District location(s).
- The District's Local Preference Policy means for example. If two Contractors are responding to an RFB or bid(s) and services and ability to meet District's needs are equal, District 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.
- 7) A Bid Acceptance form shall be emailed to the successful bidder.

- 8) 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 were a reasonable turnaround time will be specified.
  - 9) A Bid Summary will be emailed to all participating Contractors on the bid.
  - 10) Contractors in default of their Contract or an accepted job assignment, as determined by the District, may:
    - Be disallowed from bidding on subsequent job assignments for a period of time.
    - Have award of other accepted job assignments revoked.
    - Have the Heavy Equipment Rental Services Contract cancelled.
  - 11) Any bidder submitting a bid may file a protest of the District's proposed award of the project, provided that each and all of the following are complied with:
    - a. The bid protest is in writing.
    - b. The bid protest is submitted to and received by the Department of Public Works, 825 East Third Street, Room 207, before 4:00PM of the third business day following the bid opening or issuance of the Bid Summary, whichever is later. Failure to timely submit a written protest shall constitute grounds for the District's denial of the bid protest without consideration of the grounds stated in the bid protest waived of the right to protest. Untimely protests will not be accepted or considered.
    - c. 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.
    - d. If a valid protest is timely filed and complies with the above requirements, the Department Director shall review and evaluate the bid protest. All Contractors, 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 Department Director's decision shall be final.
  - 12) For emergency projects, District reserves the right to contact any contractor or Contractor(s), including non-contracted vendors, directly to promptly respond to such emergency and protect life and property. Emergency response work rates shall be negotiated at time of contact, rates should include: all labor, equipment, services, materials, supplies, permits and de/mobilization fees.
- F.3** Contractor shall accept all payments from District via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by District required to process EFT payments.
- F.4** District is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The District shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the District pursuant to the Contract.
- F.5** Costs for services under the terms of this Contract shall be incurred during the contract period except as approved by District. Contractor shall not use current year funds to pay prior or future year obligations.



**F.6** Funds made available under this Contract shall not supplant any federal, state or any governmental funds intended for services of the same nature as this Contract. Contractor shall not claim reimbursement or payment from District for, or apply sums received from District with respect to that portion of its obligations that have been paid by another source of revenue. Contractor agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the District.

**F.7** Contractor shall adhere to the District's Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this Contract and for which reimbursement is sought from the District. In addition, Contractor is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

**F.8** Payment Terms

1. Invoices 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**

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

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 payment terms shall be net **60 calendar days, upon receipt of invoice, or the 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 District 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 District required to process EFT payments.

**G. INDEMNIFICATION AND INSURANCE REQUIREMENTS**

**G.1 Indemnification**

The Contractor agrees to indemnify, defend (with counsel reasonably approved by District) and hold harmless the District and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the District on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. The Contractor indemnification obligation applies to the District's "active" as well as "passive" negligence but does not apply to the District's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

**G.2 Additional Insured**

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

**G.3 Waiver of Subrogation Rights**

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

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

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

**G.5 Severability of Interests**

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

**G.6 Proof of Coverage**

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

**G.7 Acceptability of Insurance Carrier**

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

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

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

**G.9 Failure to Procure Coverage**

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the District has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the District will be promptly reimbursed by the Contractor or District payments to the Contractor will be reduced to pay for District purchased insurance.

**G.10 Insurance Review**

Insurance requirements are subject to periodic review by the District. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**G.11.5** **RESERVED**

**G.11.6** **Environmental Contracts**

- a. Environmental Liability Insurance with a combined single limit of not less than five million (\$5,000,000) per claim or occurrence and a separate aggregate for the contract project. The required additional insured endorsement shall protect the District without any restrictions.
- b. If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

**G.11.7** **RESERVED**

## **H. RIGHT TO MONITOR AND AUDIT**

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

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

## **I. CORRECTION OF PERFORMANCE DEFICIENCIES**

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

- I.2** In the event of a non-cured breach, District may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- a. Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of District; and/or
  - b. Discontinue reimbursement to Contractor for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery; and/or
  - c. Withhold funds pending duration of the breach; and/or
  - d. Offset against any monies billed by Contractor but yet unpaid by District those monies disallowed pursuant to Item "b" of this paragraph; and/or
  - e. Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor. In the event of such termination, the District may proceed with the work in any manner deemed proper by the District. The cost to the District shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.

**J. NOTICES**

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

*San Bernardino County Flood Control District*  
*Department of Public Works*  
825 E. Third Street, Room 207  
San Bernardino, CA 92415

*Ellis Fence Co*  
*28633 US Highway 58*  
Barstow, CA 92311

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

**K. ENTIRE AGREEMENT**

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

**L. ELECTRONIC SIGNATURES**

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

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

Ellis Fence Co

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

►  
\_\_\_\_\_  
Dawn Rowe, Chair, Board of Supervisors

By ► \_\_\_\_\_  
*(Authorized signature - sign in blue ink)*

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

Name \_\_\_\_\_  
*(Print or type name of person signing contract)*

Lynna Monell  
Clerk of the Board of Supervisors

Title \_\_\_\_\_  
*(Print or Type)*

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

Dated: \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

**FOR DISTRICT USE ONLY**

Approved as to Legal Form ► Sophie A. Curtis, Deputy County Counsel Date _____	Reviewed for Contract Compliance ► Andy Silao, P.E. Date _____	Reviewed/Approved by District ► Brendon Biggs, Chief Flood Control Engineer Date _____
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## ATTACHMENT A

### PREVAILING WAGE REQUIREMENTS

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

**1. Determination of Prevailing Rates:**

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

**2. Payment of Prevailing Rates**

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

**3. Prevailing Rate Penalty**

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

**4. Ineligible Contractors:**

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

**5. Payroll Records:**

a. Pursuant to California Labor Code section 1776, the Contractor and each subcontractor, shall keep accurate certified payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the Scope of Work. The payroll records enumerated herein shall be verified by a written declaration made under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor or subcontractor has complied with the requirements of the California Labor Code sections 1771, 1811, and 1815 for any Scope of Work performed by his or her employees. The payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

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

- iv. The Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; and
  - v. Copies provided to the public, by the District or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any subcontractor, performing a part of the Scope of Work shall not be marked or obliterated. The Contractor shall inform the District of the location of payroll records, including the street address, city and 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 District, forfeit one-hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalty shall be withheld from any portion of the payments then due or to become due to the Contractor.

**6. Limits on Hours of Work:**

Pursuant to California Labor Code section 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code section 1811, the time of service of any worker employed at any time by the Contractor or by a subcontractor, upon the Scope of Work or upon any part of the Scope of Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as provided for under Labor Code section 1815. Notwithstanding the foregoing provisions, work performed by employees of Contractor or any subcontractor, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

**7. Penalty for Excess Hours:**

The Contractor shall pay to the District a penalty of twenty-five dollars (\$25.00) for each worker employed on the Scope of Work by the Contractor or any subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

**8. Senate Bill 854 (Chapter 28, Statutes of 2014) and Senate Bill 96 (Chapter 28, Statutes of 2017) Requirements:**

- a. Contractor shall comply with Senate Bill 854 and Senate Bill 96. The requirements include, but are not limited to, the following:
- i. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5, with limited exceptions from this requirements for bid purposes only as allowed under Labor Code section 1771.1(a).
  - ii. No contractor or subcontractor may be awarded a contract for public work or perform work on a public works project unless registered with the DIR pursuant to Labor Code section 1725.5.
  - iii. This project is subject to compliance monitoring and enforcement by the DIR.
  - iv. As required by the DIR, Contractor is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the DIR.
  - v. Contractors and all subcontractors must submit certified payroll records online to the Labor Commissioner for all public works projects.
    - 1) The certified payroll must be submitted at least monthly to the Labor Commissioner.
    - 2) The District reserves the right to require Contractor and all subcontractors to submit certified payroll records more frequently than monthly to the Labor Commissioner.
    - 3) The certified payroll records must be in a format prescribed by the Labor Commissioner.
  - vi. Registration with the DIR and the submission of certified payroll records to the Labor Commissioner are not required if the public works project is \$25,000 or less when the project is for construction, alteration, demolition, installation or repair work, or if the public works project is \$15,000 or less when the project is for maintenance work.

- b. Labor Code section 1725.5 states the following:

"A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, "contractor" includes a subcontractor as defined by Section 1722.1.



- (a) To qualify for registration under this section, a contractor shall do all of the following:
- (1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars (\$400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.
  - (B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.
  - (2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:
    - (A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.
    - (B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.
    - (C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.
    - (D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.
    - (E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:
      - (i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.
      - (ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars (\$2,000).
- (b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.
- (c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.
- (d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:
  - (1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.
  - (2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

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

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

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

c. Labor Code section 1771.1 states the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty of a misdemeanor punishable by imprisonment in 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 agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.
- (c) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.
- (d) The requirements of paragraph (3) of subdivision (a) shall apply to all contracts for public work, whether new or ongoing, on or after January 1, 2016.”

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

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

- a. The Contractor is responsible for compliance with Labor Code section 1777.5 and the California Code of Regulations, title 8, sections 230 – 230.2 for all apprenticeable occupations (denoted with “#” symbol next to craft name in DIR Prevailing Wage Determination), whether employed by the Contractor, subcontractor, vendor or consultant. Included in these requirements is (1) the Contractor’s requirement to provide notification (i.e. DAS-140) to the appropriate apprenticeship committees; (2) pay training fund contributions for each apprenticeable hour employed on the Contract; and (3) utilize apprentices in a minimum ratio of not less than one apprentice hour for each five journeyman hours by completion of Contract work (unless an exception is granted in accordance with Labor Code section 1777.5) or request for the dispatch of apprentices.
- b. Any apprentices employed to perform any of the Scope of Work shall be paid the standard wage to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code section 3077, who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code sections 3070 et seq. are eligible to be employed for the Scope of Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

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

- a. Submit Contract Award Information (DAS-140):
  - i. Although there are a few exemptions (identified below), all Contractors, regardless of union affiliation, must submit contract award information when performing on a California public works project.
  - ii. The DAS-140 is a notification “announcement” of the Contractor’s participation on a public works project—*it is not a request for the dispatch of an apprentice.*
  - iii. Contractors shall submit the contract award information (you may use form DAS 140) within 10 days of the execution of the prime contract or subcontract, but in no event later than the first day in which the Contractor has workers employed on the public work.
  - iv. Contractors who are already approved to train apprentices (i.e. check “Box 1” on the DAS-140) shall only be required to submit the form to their approved program.
  - v. Contractors who are NOT approved to train apprentices (i.e. those that check either “Box 2” or “Box 3” on the DAS-140) shall submit the DAS-140 TO EACH of the apprenticeship program sponsors in the area of your public works project. For a listing of apprenticeship programs see

<http://www.dir.ca.gov/Databases/das/pwaddrstart.asp>.

b. Employ Registered Apprentices

- i. Labor Code section 1777.5 requires that a contractor performing work in an “apprenticeable” craft must employ one (1) hour of apprentice work for every five (5) hours performed by a journeyman. This ratio shall be met prior to the Contractor’s completion of work on the project. “Apprenticeable” crafts are denoted with a pound symbol “#” in front of the craft name on the prevailing wage determination.
- ii. All Contractors who do not fall within an exemption category (see below) must request for dispatch of an apprentice from an apprenticeship program (for each apprenticeable craft or trade) by giving the program actual notice of at least 72 hours (business days only) before the date on which apprentices are required.
- iii. Contractors may use the “DAS-142” form for making a request for the dispatch of an apprentice.
- iv. Contractors who are participating in an approved apprenticeship training program and who did not receive sufficient number of apprentices from their initial request must request dispatch of apprentices from ALL OTHER apprenticeship committees in the project area in order to fulfill this requirement.
- v. Contractor should maintain and submit proof (when requested) of its DAS-142 submittal to the apprenticeship committees (e.g. fax transmittal confirmation). A Contractor has met its requirement to employ apprentices only after it has successfully made a dispatch request to all apprenticeship programs in the project area.
- vi. Only “registered” apprentices may be paid the prevailing apprentice rates and must, at all times work under the supervision of a Journeyman (Cal. Code Regs., tit 8, § 230.1).

c. Make Training Fund Contributions

- i. Contractors performing in apprenticeable crafts on public works projects, must make training fund contributions in the amount established in the prevailing wage rate publication for journeymen and apprentices.
- ii. Contractors may use the “CAC-2” form for submittal of their training fund contributions.
- iii. Contractors who do not submit their training fund contributions to an approved apprenticeship training program must submit their contributions to the California Apprenticeship Council (CAC), PO Box 420603, San Francisco, CA 94142-0603.
- iv. Training fund contributions to the CAC are due and payable on the 15th day of the month for work performed during the preceding month.
- v. The “training” contribution amount identified on the prevailing wage determination shall not be paid to the worker, unless the worker falls within one of the exemption categories listed below.

**3. Exemptions to Apprenticeship Requirements:**

a. The following are exempt from having to comply with California apprenticeship requirements. These types of contractors do not need to submit a DAS-140, DAS-142, make training fund contributions, or utilize apprentices:

- i. When the Contractor holds a sole proprietor license (“Owner-Operator”) and no workers were employed by the Contractor. In other words, the contractor performed the entire work from start to finish and worked alone.
- ii. Contractors performing in non-apprenticeable crafts. “Apprenticeable” crafts are denoted with a pound symbol “#” in front of the craft name on the prevailing wage determination.
- iii. When the Contractor has a direct contract with the Public Agency that is under \$30,000.
- iv. When the project is 100% federally-funded and the funding of the project does not contain any city, 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.

## ATTACHMENT B

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

#### 9204

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

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

(c) For purposes of this section:

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

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

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

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

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

(3) (A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, 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 agreement, extend the time period provided in this subdivision.

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

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

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

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

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

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

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

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

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim,



or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

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

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

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

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

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

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

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

#### **20104.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ATTACHMENT C SCOPE OF WORK

### A. SCOPE OR WORK

Contractors will provide Public Works Maintenance Services to the District as described in this Contract and the Request for Bids as jobs are scheduled for performance. For the purpose of this Contract, the term "Public Works Maintenance Services" shall include, but not be limited to, concrete work, crack filling services, traffic control and flagging, traffic striping services, and hazardous waste removal. In the event of emergencies, rapid mobilization and performance of the work described herein is required.

#### 1. Concrete Work Services include, but are not limited to:

- a. Removal and/or furnishing and installation of curb and gutter, extruded curbing, D-curbing, sidewalks, driveway entrances and ramps, ADA sidewall ramps, concrete pavement, concrete drainage swales and ditches, storm drainage structures and all incidental work associated with such items.
- b. Sidewalk grinding and cold planing for removal of hazardous uneven joints.
- c. The Contractor will be required to perform other duties related to the on-going maintenance of the public streets and the right-of-way. Appropriate clean-up equipment and supplies must be provided by the contractor for each job.
- d. Equipment used in the performance of the work required by this section of the specification shall be subject to approval by the District and shall be maintained in satisfactory working conditions at all times.
- e. The Contractor shall provide all labor, materials and equipment necessary for concrete projects.

#### 2. Crack Filling Services include, but are not limited to:

Cracking filling services consists of furnishing all labor, equipment and materials necessary to perform all operations in connection with the cleaning and sealing of construction and random cracks in bituminous concrete pavements, including vegetation removal and sterilization of cracks, where necessary.

##### a. Preparation and placement:

1. Debris, Vegetation and Moisture Removal: Cracks must be clean and dry before treating. Before treating, blast cracks with an air compressor and wand with a minimum pressure of 90 psi, air blasting equipment must be equipped with moisture and oil traps. In certain locations a vacuum system will be required during air blasting to meet the AQMD requirements for the area.
2. Hot Applied Sealant: Sealant shall be delivered to the pavement cracks through a high-pressure hose line and applicator shoe. Diameter of the applicator shoe is not to exceed 3.5 inches.
  - o No product shall be applied until joints and cracks requiring treatment have been cleaned, inspected and approved. Product manufacturer's heating and application instructions shall be followed.
  - o If the pavement temperature is below 40 degrees F or is there is evidence of moisture in the crack, use a hot air lance immediately before applying crack treatment. The hot air lance must not apply flame directly on the pavement. The product temperature shall meet the manufacturer's recommendations.

- All cracks ¼” to 2” wide will be sealed using the appropriate Caltrans approved materials for the climate region where the material is being applied. The product shall be applied in the crack or joint reservoir uniformly from bottom to top and filled without formation of entrapped air or voids. Many joint and crack walls in concrete pavements have weakened or spalled surfaces. The crack or joint shall be slightly overfilled then leveled with a 3 inch (7.6 cm) sealing disk or V-shaped squeegee to create a neat overband extending ± 1 inch (2.5 cm) on each side of the crack or joint for surface strength and waterproofing.
- All crack seal material shall be squeegeed flush to prevent a rough ride or bleeding through future seal coats.
- When traffic requires immediate use of the roadway, apply sand or the manufacturer’s recommended detackifying agent to tacky crack treatment material on the traveled way.

b. Crack Sealing Equipment:

1. Air Compressor: Air compressors shall be capable of furnishing not less than 100 cubic feet of air per minute at not less than 90 lbs. per square inch pressure at the nozzle. The compressor shall be equipped with traps that will maintain the compressed air free of oil and water.
2. Manually operated, gas powered air-broom or self-propelled sweeper designed especially for use in cleaning highway and airfield pavements shall be used to remove debris, dirt and dust from the cracks.
3. Melter: The unit used to melt or maintain the crack sealant compound at the recommended application temperature shall be the indirect fired type. It shall be equipped with a remote heat exchanger and hot oil circulation pump capable of maintaining a consistent temperature of the heat transfer oil. The heat transfer oil shall be circulated to all sides and the bottom of the vat containing the crack sealant compound making a continuous loop back to the heat exchanger and having a flash point of not less than 600 degrees F. The melter shall be equipped with a satisfactory means of agitating the crack sealant at all times. This may be accomplished by continuous stirring with mechanically operated paddles and/or by a circulating gear pump attached to the melter. The melter must be equipped with a thermostatic control calibrated between 200 degrees Fahrenheit and 550 degrees Fahrenheit and must be capable of pumping an 8% fiber content blend.

**3. Traffic Control & Flagging Services includes, but is not limited to:**

- a. Temporary traffic control services and the necessary temporary traffic control devices, personnel (i.e., flaggers) and related equipment generally consistent of the following categories:
  - Work Zone traffic control setup
  - Job site flagging
  - Lane closure
  - Road closure
  - Installation of barriers, traffic control devices, delineators and signage.
  - Vehicle, bicycle and pedestrian detours
  - Special event traffic control
  - Emergency events
- b. Contractor(s) is required to provide, at their expense, full personal protective equipment (PPE) and accessories to all traffic control personnel utilized during work for the District. PPE will include as a minimum: hard hats, ANSI Class II or higher clothing or vests, proper footwear, hearing protection and safety glasses.

- c. All signs, cones, and other traffic control devices will meet or exceed the latest versions of the following federal, state, and local requirements for color, size, language, retro reflectivity and crashworthiness.
- d. Manual on Uniform Traffic Control Devices (MUTCD)
- e. National Cooperative Highway Research Program (NCHRP) report 350
- f. American Association of State Highway and Transportation Officials (AASHTO) Road Design
- g. California State Department of Transportation (Caltrans) Standard Specifications
- h. American Traffic Safety Services Association (ATSSA)
- i. All vehicles involved in the distribution or pick up of traffic control devices shall have, at a minimum, a yellow flashing light visible in all directions to provide warning to approaching motorists and will be considered incidental to the work being performed and shall not have separate compensation.
- j. All materials shall be clearly marked with the contractor's name and phone number.
- k. Variable message sign control panels will be locked with a contractor supplied padlock.
- l. Contractor shall monitor traffic control setups at least daily to ensure presence of devices and replaced damaged or missing traffic control devices.

**4. Traffic Striping and Pavement Markings Services includes but is not limited to:**

- a. All striping and markings shall conform to the Caltrans Standard Plans, latest edition, and Caltrans Standard Specifications, Section 84, "Traffic Stripes and Pavement Markings," and Section 85, "Pavement Markers," latest edition, unless otherwise specified by the District.
- b. This Contract will consist of furnishing and placement of hot applied thermoplastic and paint reflective pavement markings in the form of crosswalks, stop legends, limit lines and arrows. These markings shall be installed at the locations specified on a call-out basis by the District.
- c. The Contractor shall furnish all material, services, labor and equipment necessary for the required pavement preparation, layout and completion of the pavement marking installation. The installed material shall be plainly visible to the motorist both day and night. Nighttime visibility shall be by a retro- reflection, induced by ordinary automobile headlights.
- d. These special provisions set minimum requirements on material characteristics of the pavement marking products, requirements concerning application, and contractor warranties to secure acceptable performances. In general, the work is related to pavement markings and traffic signage.
  - 1. All traffic lines shall conform to the State of California Standard Plans (latest edition) and Standard Specifications (latest edition), and these provisions.
  - 2. All crosswalks, turn arrows, stop yield bars and messages and all other pavement legends shall be installed in paint or thermoplastic.
  - 3. The equipment used by the Contractor shall be well maintained, neatly painted and meet all District standards. The paint striping machine shall conform to the specifications in the California MUTCD.
  - 4. All pavement markings that are to be removed must be removed by wet sandblasting technique, or by meeting the latest requirements by the regulating pollution control agency. No "blacking out" or temporary covering will be allowed without prior approval by the District.
  - 5. Contractor shall install traffic striping, markings, arrows and messages pursuant to the plans where provided. All work and materials shall conform to the requirements of the California MUTCD and to the Caltrans Standard Plans, latest edition, and Caltrans Standard Specifications, Section 84, "Traffic Stripes and Pavement Markings," and Section 85, "Pavement Markers," latest edition.

6. Contractor shall furnish and install traffic delineation using paint "Cat tracking", temporary marking tape, or other approved media on the same working day as existing stripes are lost, including bicycle lanes, in locations consistent with the striping plans. If temporary marking tape is used, all tape shall be removed prior to installation of permanent line striping.
7. Contractor shall apply paint prior to installing raised pavement markers. Raised pavement markers shall be placed on the newly painted line. Contractor shall furnish and install raised pavement markings not sooner than seven (7) calendar days and not later than fifteen (15) calendar days following traffic striping pursuant to the striping plans.
8. All stencil work for the pavement markings must meet Standard Metric Stencils and match the stencils the District is currently using.

**5. Hazardous Waste Removal Services includes, but is not limited to:**

- a. Hazardous Waste Removal Services includes, but is not limited to, remediation, collection, storage, handling, packaging, documentation, transportation, transfer, and disposal of hazardous wastes obtained from four separate sources:
  1. Abandoned hazardous waste discovered in the public right-of-way that is collected and transported to County Yards by County and District personnel and stored until retrieved by the contractor for proper disposal.
  2. Hazardous waste generated through daily operations by the Public Works Department.
  3. Accidental spills or discharge in the public right-of-way or District-owned property which requires contractor's emergency response to clean and remediate as determined by the District.
  4. Biohazardous Waste Removal.
    - a. Remove and disposal of debris including makeshift shelters.
    - b. Safely remove and decontaminate all biohazards including feces, urine, vomit, blood, and spoiled food.
    - c. Remove and properly dispose of all sharps, illegal drugs, and paraphernalia.
    - d. Infectious disease decontamination including but not limited to: Hepatitis A, HIV, MRSA, C. Diff, Tuberculosis.

**6. Weed Abatement Services includes, but is not limited to:**

- a. Work to be performed on Flood Control District parcels and easements. Work also to be performed on Transportation Roadways, shoulders and road right-of-way.
  - Work typically entails manual labor to remove vegetation, weeds, bushes, small trees less than 3" diameter, trash and debris.
  - Work may include manual labor utilizing weed trimmers or other power tools typical of weed abatements.
  - Work may entail disposal of vegetation, trash and debris to County Landfill or other contract vegetation disposal businesses.
  - Work may entail stacking of vegetation, trash, and debris piles to be removed by District Personal at a later date.
  - Some projects may include brush chippers, skid steer loaders, dump trucks, brush trucks, crew transportation vehicles or small wheel loaders for removal.
- b. Work will include a minimum of a 8 hr. day and estimates should include the following:
  - Labor charges per worker per hour
  - Equipment charges per equipment per hour
  - Disposal invoices should be invoiced and provided at time of District invoicing.



**7. Asphalt Maintenance & Repair Services includes, but is not limited to:**

a. Services:

- Pothole repairs, complete patch and/or skin patch
- Trench subsidence repairs (may involve removal, compaction and replacement)
- Trench permanent base course and overlay paving.
- Repairs to roads, parking lots, and driveways, caused by storm damage, vehicular/heavy equipment damage, ground shift, underground water main bursts, erosion, etc.; e) Repair or replacement of asphalt dikes and berms.
- Grooving, grinding, and pulverizing of existing asphalt.
- Drainage culvert repairs or replacements. Repairs may include replacement of corrugated metal pipe (various diameters), installation of HDPE pipe (new or replacement) and replacement of headwalls constructed of concrete or cement block. Culvert work may also involve replacement of CMP/HDPE and/or overside drains (per Cal Trans Standard)
- Grading and paving new sections of roadways, parking lots and driveways.
- Applying asphalt overlays to roads; j) Application of rubberized crack sealing, including "sanding" with silica sand
- Removal and proper disposal of damaged asphalt, grindings, concrete and other spoils and debris
- Road striping including lane/fog line, stencil and limit lines, in standard two coat reflective paint; and
- Other asphalt pavement repairs or related as deemed necessary by the County and the District.

b. Service Requirements:

- Contractor shall haul away and properly dispose of any excess and waste construction or demolition materials generated at the job site. These materials can include grindings, broken asphalt and concrete, dirt and culverts. Each job site is expected to be cleaned and left in an acceptable condition at the conclusion of the work
- Contractor shall provide appropriate materials, equipment and labor to perform traffic control procedures at the job site for the full duration of each job. Contractor will be responsible for providing its own traffic control plan per accepted jurisdictional practices. Use of the most current WATCH manual(s) is highly encouraged and recommended.
- Contractor shall be required to perform concrete repairs that may be associated with the primary asphalt repairs. The concrete repairs could include portions of curbs and gutters, driveway aprons, cross gutters, sidewalks, manhole aprons and culvert headwalls.
- Contractor shall be required to perform soil compaction to applicable compaction standards, where required, and provide written certified compaction test results.

**8. Fence Installation Services includes, but is not limited to:**

- a. Install, repair, replace and maintain fencing and other related services. All work shall comply with California State Department of Transportation (Caltrans) standards and guidelines, unless specified by the County or District.

**9. Guardrail Repair and Maintenance Services includes, but is not limited to:**

- a. Install, repair, replace and maintain guardrail and related services. All work shall comply with California State Department of Transportation (Caltrans) standards and guidelines, unless specified by the County or District.

**ATTACHMENT D  
PUBLIC WORKS MAINTENANCE SERVICES SCHEDULE**

**Contractor Name:** Ellis Fence Co

Please check all the services and service areas available for work. No Pricing is required at this time.

<b>Services:</b>	<b>Foothills</b>	<b>High Desert</b>	<b>Low Desert</b>	<b>Mountains</b>	<b>Valley</b>
Concrete Work	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Crack Sealing Services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Traffic Control & Flagging Services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Traffic Stripping and Pavement Markings Removal Services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hazardous Waste Removal Services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Weed Abatement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pavement Maintenance and Repair Services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fence Installation Services	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Guardrail Repair Services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Representative Signature:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

# **ATTACHMENT 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: Ellis Fence Co

2. Name of Principal (i.e., CEO/President) of Contractor, if the individual actively supports the matter and has a financial interest in the decision:

Bradley Ellis

3. Name of agent of Contractor:

Company Name	Agent(s)

4. Name of any known lobbyist(s) who actively supports or opposes this matter:

Company Name	Contact

5. 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):

6. Is the entity listed in Question No.1 a nonprofit organization under Internal Revenue Code section 501(c)(3)?

Yes

No

7. Name of any known individuals/companies who are not listed in Questions 1-5, 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

8. 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. 1-7?

No  If **no**, please skip Question No. 9 and sign and date this form.

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

9. 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/County elected officer 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. 1-7 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 District.