



Contract Number

13-941 A-3

SAP Number

Real Estate Services Department

Department Contract Representative	Terry W. Thompson, Director
Telephone Number	(909) 387-5252
Contractor	Perricomm3, LLC
Contractor Representative	James D. Franklin, Managing Member
Telephone Number	(562) 436-2209
Contract Term	5/1/2014 – 4/30/2029
Original Contract Amount	\$ 683,676.00
Amendment Amount	\$1,933,206.00
Total Contract Amount	\$2,616,882.00
Cost Center	930054100
GRC/PROJ/JOB No.	65003249
Internal Order No.	

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the County of San Bernardino ("COUNTY"), as tenant, and Perricomm3, LLC ("LANDLORD"), as landlord, have previously entered into Lease Agreement, Contract No. 13-941 dated November 19, 2013, as amended by the First Amendment dated April 22, 2014 and the Second Amendment dated October 17, 2017 (collectively, the "Lease"), wherein LANDLORD leases certain premises, comprising approximately 4,082 square feet of office space at 248 S. Sierra Way, Units D & E, San Bernardino and approximately 15,000 square feet of vacant land at 111 Cluster Street, San Bernardino, to the COUNTY, which Lease is scheduled to expire on April 30, 2024; and,

WHEREAS, the COUNTY and LANDLORD now desire to amend the Lease to reflect (i) an expansion of the leased premises by approximately 30,483 square feet as follows: add approximately 2,750 square feet of warehouse space, identified as Units B & C at 248 S. Sierra Way for a total, after expansion, of approximately 6,832 square feet of space, identified as Units B through E at 248 S. Sierra Way and add approximately 27,733 square feet of vacant land at 111 Cluster Street for a total, after expansion, of approximately 42,733 square feet of space at 111 Cluster Street; (ii) LANDLORD's performance of certain improvements as set forth herein; (iii) a negotiated early extension of the lease term for the expanded premises for five-years through April 30, 2029; (iv) an adjustment to the rent schedule and iv) an amendment of certain other terms of the Lease as set forth in this amendment ("Third Amendment").

NOW, THEREFORE, in consideration of mutual covenants and conditions, the parties hereto agree the Lease is amended as follows:

1. Effective November 1, 2019, DELETE in its entirety the existing **Paragraph 2, PREMISES LEASED**, and SUBSTITUTE therefore the following as a new **Paragraph 2, PREMISES LEASED**; and DELETE in its entirety all existing exhibits referenced as **EXHIBIT "A" and "EXHIBIT AA"** and SUBSTITUTE therefore the attached **EXHIBIT "A", PREMISES**:

2. **PREMISES LEASED:**

A. LANDLORD leases to COUNTY and COUNTY leases from LANDLORD (i) certain premises comprising approximately 6,832 square feet of office and warehouse space, identified as Units B through E ("Sierra Premises"), located in the building on real property ("Building") at 248 S. Sierra Way, San Bernardino, CA 92415 ("Sierra Property"), and (ii) certain premises comprising approximately 42,733 square feet of vacant land within a fenced yard ("Cluster Premises"), located on real property at 111 Cluster Street, San Bernardino, CA 92415 ("Cluster Property"). Unless otherwise specified, the term "Premises" as used herein shall collectively mean the Cluster Premises and the Sierra Premises. Unless otherwise specified, the term "Property" shall collectively mean the Cluster Property and the Sierra Property. The Premises is more particularly depicted in Exhibit "A", Premises, attached hereto and incorporated herein by reference. The parties hereby agree that the Premises shall not be re-measured at any time during the term of the Lease, including any extensions thereof.

B. Along with the Premises, LANDLORD grants to COUNTY, at no additional cost, the right to the non-exclusive use of approximately thirteen (13) parking spaces, including two (2) handicapped parking spaces, in the parking lot located on the Property, and the right of ingress and egress to the Premises, and the parking lot at the Building and the exclusive use of the 111 Cluster Street lot. The term "Property" as used in this Lease shall include the parking lot at the Property and the Cluster lot.

C. The parties agree that, notwithstanding anything to the contrary in the Lease, LANDLORD's obligations in Paragraph 11, HEALTH, SAFETY, AND FIRE REQUIREMENTS, and in Paragraph 13, MAINTENANCE shall apply as to the entire Property and not as to only the Premises.

2. Effective November 1, 2019, EXTEND the term of the Lease as provided in **Paragraph 3, TERM**, from May 1, 2024 through April 30, 2029 (the "First Extended Term").

3. Effective November 1, 2019, DELETE in its entirety the existing **Paragraph 4, RENT**, and SUBSTITUTE therefore the following as a new **Paragraph 4, RENT**:

4. **RENT:**

A. Subject to LANDLORD's completion of the Improvements pursuant to Paragraph 41, LANDLORD IMPROVEMENTS, the issuance, if applicable, of a final certificate of occupancy by all relevant governmental authorities, and COUNTY's acceptance of the Improvements for COUNTY's use (but such acceptance shall not waive any defects or defaults) (collectively, the "Required Condition"), COUNTY shall pay to LANDLORD the following monthly rental payments for the Premises in arrears not later than the last day of each month, during the duration of the existing term, continuing through the First Extended Term, based on approximately 6,832 square feet of the Sierra Premises (the Cluster Premises is leased at no additional cost for the duration of the term, including any extensions hereof) and the monthly amortized improvement payments for a portion of the Sierra Improvements Paragraph 41.B, which is not subject to an annual increase, as the rent per month (which includes, but is not limited to the cost of janitorial services) and the amortized improvement payment per month are more specifically reflected and included in the amounts set forth below:

Remainder of Existing Term:

Lease Year	Rent (per month) for Premises		Amortized Amount of Portion of Sierra Improvements (per month)		Total Payment (per month)
November 1, 2019 thru April 30, 2020	\$8,745.00	+	\$780.00	=	\$9,525.00
May 1, 2020 thru April 30, 2021	\$8,950.00	+	\$780.00	=	\$9,730.00
May 1, 2021 thru April 30, 2022	\$9,155.00	+	\$780.00	=	\$9,935.00
May 1, 2022 thru April 30, 2023	\$9,360.00	+	\$780.00	=	\$10,140.00
May 1, 2023 thru April 30, 2024	\$9,565.00	+	\$780.00	=	\$10,345.00

First Extended Term:

Lease Year	Rent (per month) for Premises		Amortized Amount for Portion of Sierra Improvements (per month)		Total Payment (per month)
May 1, 2024 thru April 30, 2025	\$9,906.00	+	\$780.00	=	\$10,686.00
May 1, 2025 thru April 30, 2026	\$10,180.00	+	\$780.00	=	\$10,960.00
May 1, 2026 thru April 30, 2027	\$10,521.00	+	\$780.00	=	\$11,301.00
May 1, 2027 thru April 30, 2028	\$10,795.00	+	\$780.00	=	\$11,575.00
May 1, 2028 thru April 30, 2029	\$11,136.00	+	\$780.00	=	\$11,916.00

B. Rent for any partial month shall be prorated based on the actual number of days of the month. LANDLORD shall accept all rent and other payments from COUNTY under this Lease via electronic funds transfer (EFT) directly deposited into the LANDLORD's designated checking or other bank account. LANDLORD shall promptly comply with directions and accurately complete forms provided by COUNTY required to process EFT payments.

4. Effective November 1, 2019, DELETE in its entirety the existing **Paragraph 25, NOTICES**, and SUBSTITUTE therefore the following as a new **Paragraph 25, NOTICES**:

25. NOTICES:

A. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party, including but not limited to notices required under the California unlawful detainer statutes or any other person, shall be in writing and either served personally or sent by postage prepaid, first-class United States mail, certified or registered, return receipt requested. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notices shall be deemed delivered upon the earlier of: (i) actual receipt; or (ii) the date of delivery or refusal of the addressee to accept delivery if such notice is sent by postage pre-paid, first-class United States mail, certified or registered, return receipt requested.

LANDLORD'S Address: Perricomm3, LLC
31 Watercress
Irvine, CA 92603

COUNTY'S Address: County of San Bernardino
Real Estate Services Department
385 North Arrowhead Avenue, Third Floor
San Bernardino, CA 92415-0180

B. If, at any time after the execution of this Third Amendment, LANDLORD intends to transfer its ownership interest (whether controlling or non-controlling) in the Property to a third party, LANDLORD shall notify COUNTY of such transfer at least fifteen (15) COUNTY working days prior to completion of such transfer. In the event of a transfer of controlling interest in the Property, LANDLORD and the new owner shall provide COUNTY with evidence of completion of transfer in which case, the new owner and COUNTY shall document by written amendment said change of ownership. In addition, the new owner shall, within five (5) days of acquiring the Property, provide COUNTY with evidence that it has obtained insurance in compliance with **Paragraph 18, INSURANCE REQUIREMENTS AND SPECIFICATIONS**. The COUNTY's RESD Director shall have the authority, on behalf of COUNTY, to execute a COUNTY standard amendment to this Lease with any new LANDLORD solely for the purposes of reflecting any changes in the legal ownership of the Property and to update the LANDLORD's notice address in the Lease. The new LANDLORD acknowledges and agrees execution of such COUNTY standard amendment is a pre-requisite for Rents under this Lease to be paid to the new LANDLORD.

5 Effective November 1, 2019, DELETE in its entirety the existing **Paragraph 41, LANDLORD'S IMPROVEMENTS**, and SUBSTITUTE therefore the following as a new **Paragraph 41, LANDLORD IMPROVEMENTS**; ADD Exhibits A-1, A-2, and A-3, and DELETE in its entirety the existing **EXHIBIT "F", PREVAILING WAGE REQUIREMENTS** and SUBSTITUTE therefore the attached **EXHIBIT "F", PREVAILING WAGE REQUIREMENTS**:

41. **LANDLORD IMPROVEMENTS:**

A. LANDLORD, at its sole cost and expense but subject to reimbursement as set forth in this Third Amendment, agrees to make certain improvements to the Cluster Premises as more specifically set forth in **Exhibit "A-1", Improvement Specifications for Cluster Premises and Exhibit "A-3", Improvement Specifications to the Premises** (as applicable to the Cluster Premises) ("Cluster Improvements") and certain improvements to the Sierra Premises as more specifically set forth in **Exhibit "A-2", Improvement Specifications for Sierra Premises and Exhibit "A-3", Improvement Specifications to the Premises** (as applicable to the Sierra Premises) ("Sierra Improvements"). Unless otherwise specified, the term "Improvements" shall collectively mean the Cluster Improvements and the Sierra Improvements. The Improvements shall be delivered in the Required Condition on or before November 1, 2019.

B. Within ninety (90) days after the Improvements have been delivered by LANDLORD in the Required Condition, LANDLORD shall submit itemized invoices and proof of payment the LANDLORD's vendor was paid for all of the Improvements. COUNTY shall reimburse LANDLORD for the Improvements as follows: (i) for the Cluster Improvements – an amount not to exceed Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00), which shall be paid within sixty (60) days after COUNTY approves the invoices, and any costs incurred by LANDLORD in excess of such amount, other than by approved Change Order or a formal amendment, shall be the sole obligation of LANDLORD without reimbursement by COUNTY; and (ii) for the Sierra Improvements – an amount not to exceed Five Hundred Fifty Five Thousand Nine Hundred Twenty Dollars (\$555,920.00), provided that the first Eighty Eight Thousand Nine Hundred Twenty and 00/100 Dollars (\$88,920.00) of approved invoices shall be amortized in the monthly rent payable pursuant to Paragraph 4, RENT, and thereafter, an amount not to exceed Four Hundred Sixty Seven Thousand and 00/100 Dollars (\$467,000.00) shall be paid by COUNTY within sixty (60) days after COUNTY approves the invoices and any costs incurred by LANDLORD in excess of such amount, other than by approved Change Order or a formal amendment, shall be the sole obligation of LANDLORD without reimbursement by COUNTY

(1) During construction of the improvements set forth in this Paragraph 41, LANDLORD IMPROVEMENTS, if COUNTY's authorized representative requests any new work not currently identified in Exhibit "A-1", Cluster Site Improvements, Exhibit "A-2", Premises Improvements and Exhibit "A-3", Additional Improvements, this proposed new work will be classified as a **Change Order** and COUNTY shall provide LANDLORD with proposed new specifications. LANDLORD will work with its vendors to provide pricing prior to commencing any proposed Change Order work. Upon COUNTY approving the costs for the proposed Change Order work, the parties will execute a written Change Order documenting the agreed specifications, costs, and timing for the additional work. LANDLORD will thereafter contract direct with its vendor to commence

and complete the agreed Change Order work. Upon LANDLORD's vendor completing all approved Change Order work and delivery of the Change Order work in the Required Condition, LANDLORD shall provide to COUNTY itemized invoices and proof of payment the LANDLORD's vendor was paid for all Change Order work and COUNTY will reimburse LANDLORD within ninety (90) days thereafter. LANDLORD will be entitled to a ten percent (10%) administrative fee in addition to the cost of any Change Order work. COUNTY's authorized representative may process one or more Change Orders in accordance with this paragraph, provided that any proposed Change Order(s) that cause the cumulative total of all approved Change Orders to exceed Twenty Five Thousand and 00/100 Dollars (\$25,000.00) shall only be approved by a formal amendment to the Lease that is mutually executed by the parties.

C. LANDLORD understands and agrees that from the time that this Third Amendment is executed through the completion of the Improvements in the Required Condition, LANDLORD shall not assign or transfer a controlling interest in the Premises to a third party, without COUNTY's prior review and approval.

(1) LANDLORD understands and agrees to provide to COUNTY all documents and relevant information concerning any proposed transfer. COUNTY will have ten (10) COUNTY working days after receiving all such documents and information to complete its review. Upon COUNTY approval of an assignment or transfer, the parties shall immediately execute an amendment to this Lease stating the change of ownership of the Premises.

D. Except for approved Change Orders, LANDLORD understands and agrees not to make any modifications to the plans and specifications for the Improvements as set forth in this Third Amendment, without first obtaining approval in the form of an amendment to this Lease. Any changes to these plans and specifications, without first acquiring said approval, will be at the expense of the LANDLORD and not the COUNTY.

E. LANDLORD shall comply with the California Public Contract Code Sections 22000 through 22045 regarding bidding procedures and Labor Code Sections 1720.2 and 1770 et seq. regarding general prevailing wages, including the provisions set forth in Exhibit "F" attached hereto and incorporated herein by reference. LANDLORD shall indemnify, defend (with counsel reasonably approved by COUNTY), and hold harmless COUNTY and its officers, employees, and agents from any and all claims, actions, losses, damages, and/or liability arising out of or related to the obligations set forth in this subparagraph. The LANDLORD's indemnity obligations shall survive the COUNTY's tenancy, and shall not be limited by the existence or availability of insurance.

G. LANDLORD, at its sole expense, must provide all site plans (including elevations of the building and details of the exterior finish), space design plans, construction plans and provide such plans to COUNTY on a compact disc-recordable (CD-R) in file format compatible with MS-DOS and AutoCAD 2002 software (.dwg file extension). LANDLORD agrees and understands that it will promptly commence the construction of the Improvements on the Premises immediately following execution of this Third Amendment. The Improvements shall be constructed in accordance with **Paragraph 11, HEALTH, SAFETY, AND FIRE CODE REQUIREMENTS.**

H. LANDLORD and COUNTY agree that the Improvements shall be delivered in the Required Condition by **November 1, 2019**. In the event that the Cluster Improvements are not delivered in the Required Condition by November 1, 2019, COUNTY shall have no obligation to pay for any portion of such improvements pursuant to Paragraph 41.B until the date the Cluster Improvements are delivered to COUNTY in the Required Condition. In the event that the Sierra Improvements are not delivered in the Required Condition by November 1, 2019, COUNTY shall have no obligation to pay for the amortized amount for a portion of the Sierra Improvements as set forth in Paragraph 4.A and once the Sierra Improvements are delivered in the Required Condition, the parties shall enter into an amendment to the Lease to provide an adjusted amortization schedule based on such delivery date. Notwithstanding the date that the Cluster Improvements or the Sierra Improvements are delivered to the COUNTY in the Required Condition, COUNTY shall continue to pay the monthly rent for the Premises in accordance with Paragraph 4.A.

I. LANDLORD agrees to provide the COUNTY a written progress report every thirty (30) days. The report shall contain up-date information of construction progress and notification of any permit approval. LANDLORD shall immediately notify COUNTY of any delays to the November 1, 2019 date.

6. All other provisions and terms of the Lease shall remain the same and are hereby incorporated by reference. In the event of any conflict between the Lease and this Third Amendment, the terms of this Third Amendment shall control.

END OF THIRD AMENDMENT.

COUNTY OF SAN BERNARDINO

PERRICOMM3, LLC

►

Curt Hagman, Chairman, Board of Supervisors

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

Laura H. Welch
Clerk of the Board of Supervisors
of the County of San Bernardino

By _____
Deputy

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

Name James D. Franklin

Title Managing Member

Dated: _____

Address 31 Watercress
Irvine, CA 92603

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
► Agnes Cheng, Deputy County Counsel	► _____	► Jim Miller, Real Property Manager, RESD
Date _____	Date _____	Date _____

EXHIBIT "A" PREMISES



EXHIBIT "A-1" DEPICTION OF CLUSTER PREMISES IMPROVEMENTS

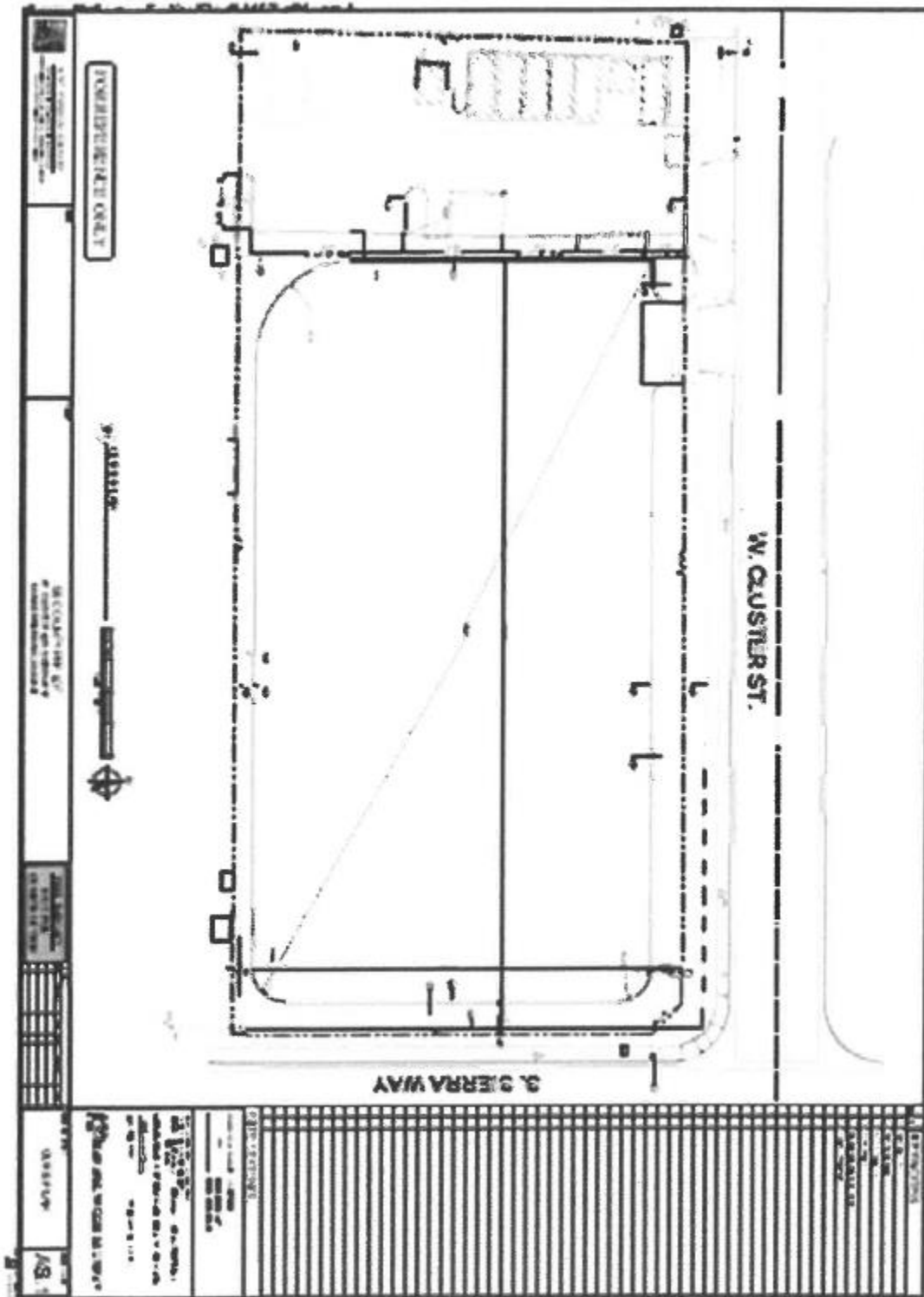


EXHIBIT "A-2" DEPICTION OF SIERRA PREMISES IMPROVEMENTS

248 S Sierra Way.pdf

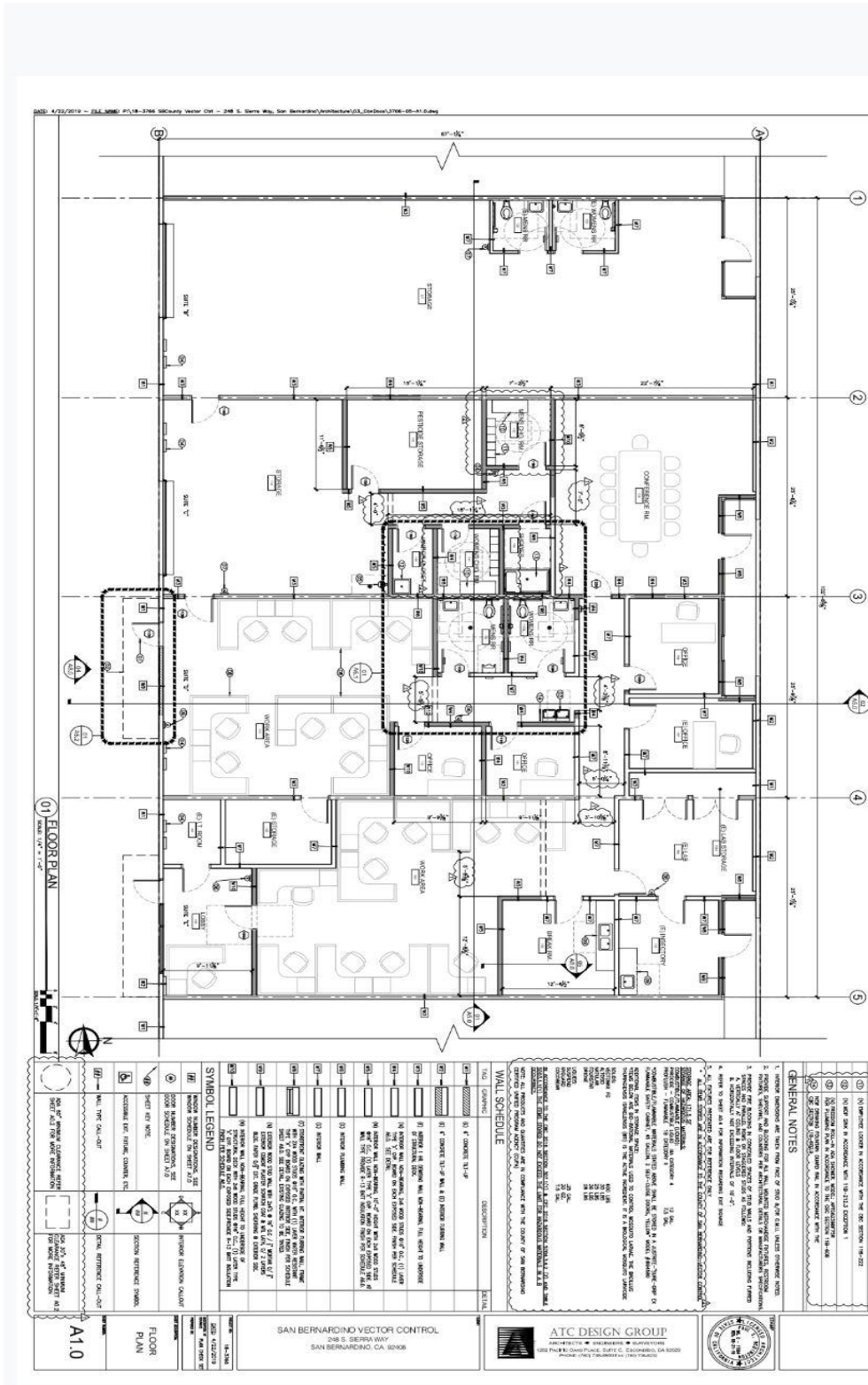


EXHIBIT "A-3" IMPROVEMENT SPECIFICATIONS FOR CLUSTER PREMISES AND SIERRA PREMISES

Perricom3, LLC

TI Cost & Payment Breakdown

Cluster Lot Improvement

Plans and Engineer	30,000.00
Plan Check	1,500.00
Permit and Fees	2,200.00
Concrete/Asphalt	168,000.00
Landscaping and Irrigation	15,000.00
BMP Basin Material	4,400.00
Surveying	3,400.00
Street Sweeping	3,000.00
Erosion Control	2,500.00
Containing Morning and Reset	3,000.00
Supervision and General	10,000.00
Project Management	7,000.00
Total	250,000.00

Proposal Scope of Work for Vector Tenant Improvement

Plans/Engineering	28,000.00
Demolition of Carpet, Tile, Roll up door and walls – per plan	35,000.00
Framing	20,000.00
Plumbing	80,000.00
Electrical per Plan – Pages E-1	78,000.00
HVAC	62,000.00
Drywall	43,000.00
Doors, ADA Signage, FRP,	41,000.00
Paint approximately 19,000 SF of walls and new lids. Exterior cement to replace storefront	51,000.00
Flooring per Plan	42,000.00
Concrete Surface	3,920.00
Awning and Miscellaneous	15,000.00
General Conditions – Temporary Toilets, progressive and final cleaning, job site Superintendent	28,000.00
Content Manipulation as needed, set up and take down temporary plastic barriers to isolate construction work from tenant occupied	14,000.00
Project Management	15,000.00
Total	555,920.00

Grand Total \$ 805,920.00

Payment Method:

Lot Payment:	250,000.00
Vector Improvement:	467,000.00
Amortized in Lease:	88,920.00
Total:	\$ 805,920.00

EXHIBIT "F"

PREVAILING WAGE REQUIREMENTS

A. All or a portion of the Improvements in the Lease requires the payment of prevailing wages and compliance with the following requirements in this exhibit. As used in this exhibit, the term "Contractor" shall include Landlord and Landlord's contractors and/or subcontractors and the term "Improvements" shall include the Improvements to be performed by Landlord pursuant to the Lease.

1. Determination of Prevailing Rates:

Pursuant to Labor Code sections 1770, et seq., the County has obtained from the Director of the Department of Industrial Relations (DIR) pursuant to the California Labor Code, the general prevailing rates of per diem wages and the prevailing rates for holiday and overtime work in the locality in which the Improvements is to be performed. Copies of said rates are on file with the County, will be made available for inspection during regular business hours, may be included elsewhere in the specifications for the Improvements, and are also available online at www.dir.ca.gov. The wage rate for any classification not listed, but which may be required to execute the Improvements, 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 Improvements, shall be paid not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor, and such worker.

3. Prevailing Rate Penalty

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

4. Ineligible Contractors:

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

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 Improvements. 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 Improvements performed by his or her employees. The payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

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

- the Contractor, subcontractor and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor;
- iv. The Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; and
 - v. Copies provided to the public, by the County or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any subcontractor, performing a part of the Improvements shall not be marked or obliterated. The Contractor shall inform the County of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address.
- b. The Contractor shall have ten (10) days from receipt of the written notice specifying in what respects the Contractor must comply with the above requirements. In the event Contractor does not comply with the requirements of this section within the ten (10) day period, the Contractor shall, as a penalty to the County, forfeit one-hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalty shall be withheld from any portion of the payments then due or to become due to the Contractor.

6. Limits on Hours of Work:

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

7. Penalty for Excess Hours:

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

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

- a. Contractor shall comply with Senate Bill 854 and Senate Bill 96. The requirements include, but are not limited to, the following:
- i. No contractor or subcontractor may be listed on a bid proposal (submitted on or after March 1, 2015) for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5, with limited exceptions from this requirements for bid purposes only as allowed under Labor Code section 1771.1(a).
 - ii. No contractor or subcontractor may be awarded a contract for public work or perform work on a public works project (awarded on or after April 1, 2015) unless registered with the DIR pursuant to Labor Code section 1725.5.
 - iii. This project is subject to compliance monitoring and enforcement by the DIR.
 - iv. As required by the DIR, Contractor is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the DIR.
 - v. Contractors and all subcontractors must submit certified payroll records online to the Labor Commissioner for all new public works projects issued on or after April 1, 2015, and for all public works projects, new or ongoing, on or after January 1, 2016.
 - 1) The certified payroll must be submitted at least monthly to the Labor Commissioner.
 - 2) The County reserves the right to require Contractor and all subcontractors to submit certified payroll records more frequently than monthly to the Labor Commissioner.
 - 3) The certified payroll records must be in a format prescribed by the Labor Commissioner.
 - vi. Registration with the DIR and the submission of certified payroll records to the Labor Commissioner are not required if the public works project is \$25,000 or less when the project is for construction, alteration, demolition, installation or repair work, or if the public works project is \$15,000 or less when the project is for maintenance work.

- b. Labor Code section 1725.5 states the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Labor Code section 1771.1 states the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Any employee of an unregistered contractor or subcontractor who is affected by a work stoppage ordered by the commissioner pursuant to this subdivision shall be paid at his or her regular hourly prevailing wage 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 Improvements 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 Improvements. 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.