



ORIGINAL

Contract Number

20-545

SAP Number

Real Estate Services Department

Department Contract Representative Richard Ayala, Contracts Analyst
Telephone Number (909) 387-5111

Contractor County Service Area 70
Contractor Representative Steve Samaras, Division Manager
Telephone Number (760) 962-1515
Contract Term July 1, 2020 to June 30, 2025
Original Contract Amount \$2,422,947.87
Amendment Amount _____
Total Contract Amount \$2,422,947.87
Cost Center 7777001000

Briefly describe the general nature of the contract:

The MOU will allow CSA 70 to continue to provide operations and maintenance of County-owned water systems for RESD. The RESD fund is responsible for providing water system operations and maintenance services to the Glen Helen and Gilbert Street complex County-owned water systems. The State Water Resources Control Board (SWRCB) requires professionally licensed operators to provide water distribution systems operation, maintenance and management services. RESD does not have certified staff to provide this service; however, CSA 70 has staff with the required licensing to provide the service for RESD.

FOR COUNTY USE ONLY

Approved as to Legal Form

► SEE SIGNATURE PAGE

County Counsel

Date _____

Reviewed for Contract Compliance

►

Date _____

Reviewed/Approved by Department

►

Date _____

MEMORANDUM OF UNDERSTANDING (MOU)

BETWEEN

COUNTY SERVICE AREA 70

AND

THE COUNTY OF SAN BERNARDINO

WHEREAS, COUNTY SERVICE AREA 70 ("CSA 70") has qualified State Water Resources Control Board (SWRCB), professionally licensed operators who are able to provide Water Distribution Systems Operation, Maintenance, and Management Services;

WHEREAS, the COUNTY OF SAN BERNARDINO ("COUNTY"), through the Real Estate Services Department ("RESD") has domestic Water Distribution Systems ("Water Distribution Systems") located at Glen Helen Regional Park, San Bernardino County Juvenile Hall, and San Bernardino County Behavior Health Center ("GH/JH/BH") which require a SWRCB certified operator to operate; and

WHEREAS, CSA 70 has sufficient available staff with the appropriate licensing in water distribution and treatment issued by the SWRCB, and has extensive experience in the operation, maintenance, and management of public water distribution systems in the vicinity of the GH/JH/BH Water Distribution Systems.

NOW THEREFORE, CSA 70 and COUNTY mutually agree to the following terms and conditions:

I. CSA 70 SERVICE RESPONSIBILITIES

- A. CONDUCT** - CSA 70 shall perform for RESD, in a good and workmanlike manner subject to the reasonable satisfaction of RESD, the GH/JH/BH Water Distribution System operation, maintenance, and management services as set forth in this MOU. All activities shall be conducted in a manner that complies with federal, state and local laws, rules and regulations.
- B. SUPERVISION** - To effectuate the provisions of this MOU, CSA 70's supervisory personnel shall regularly inspect the premises, the work done by CSA 70's personnel, and will exercise complete authority over all such employees. CSA 70 shall immediately remove any employee whose conduct or workmanship is unsatisfactory to RESD. Conduct which is unsatisfactory shall include, but is not limited to, an employee exhibiting drunken behavior and/or consuming alcoholic beverages or illicit drugs, violations of safety and/or security standards, interference with RESD tenants, and interference with RESD operations and/or other activities while engaged in providing services specified in this MOU.

- C. **EMERGENCY** - CSA 70 shall supply RESD with a copy of its Emergency Notification Plan that includes any emergency call out telephone numbers. CSA 70 will provide service on a 24-hour-per-day, 7-day-per-week basis. CSA 70's emergency on site response time will be two (2) hours or less. This information shall remain current at all times and shall be updated as necessary, but not less than every six (6) months.
- D. **EMPLOYEES** - All CSA 70 employees providing services pursuant to this MOU must have minimum licensing to meet federal, state and local requirements for water distribution and treatment operations services. All CSA 70 employees assigned to the GH/JH/BH Water Distribution Systems will provide services pursuant to this MOU and shall be trained in their assigned tasks, be able to analyze and resolve water distribution and treatment problems, address and resolve operational service issues in a safe manner, and provide written recommendations and reports. CSA 70 shall ensure that assigned staff is trained in the safe handling of equipment and chemicals. CSA 70 shall ensure that all equipment is checked for operational safety. CSA 70 employees shall wear personal protective equipment in compliance with CAL-OSHA standards.
- E. **SERVICES AND REPORTS** - CSA 70 shall provide the necessary communications and completed reports to RESD, the County of San Bernardino Environmental Health Services (EHS), the regulatory water agency, the SWRCB, the Federal or California Environmental Protection Agency, and any other agencies required by applicable federal, state or local laws, rules and regulations.

CSA 70 shall maintain GH/JH/BH Water Distribution Systems within their current design and operational capabilities and shall ensure compliance with all Permit and Regulatory Requirements. The responsibility for procuring and maintaining all required GH/JH/BH water facility permits, licenses, and certifications shall be born solely by RESD; CSA 70 shall act in an advisory capacity only. In the event that the GH/JH/BH Water Distribution Systems do not comply with Permit or Regulatory Requirements, CSA 70 shall notify RESD in writing with recommendations outlining the proposed corrective action. CSA 70 shall inform RESD of any Permit and/or Regulatory Requirements that are unable to be met and the corresponding justification. Any Permit and/or Regulatory Requirements that CSA 70 submits in writing that cannot possibly be met, or that result from a Force Majeure, shall not result in a breach of this Agreement. CSA 70 shall not be held liable for Permit and/or Regulatory non-compliance issues that result from a Force Majeure. Force Majeure shall mean any of the following events, which materially and adversely affect CSA 70's obligations hereunder and which event could not have been avoided or prevented by due diligence and use of reasonable efforts by CSA 70: earthquake, fire, flood, epidemic, blockade, rebellion, war, terrorism, riot, act of sabotage, or civil commotion; industry-wide labor strike which has a material adverse impact on the GH/JH/BH Water Distribution Systems; discovery of any archaeological, paleontological or cultural resources; spill of hazardous substances by a third party at or near the GH/JH/BH Water Distribution Systems which is required to be reported to the Federal or California Environmental Protection Agency, Toxic

Substances Control; discovery at, near, or on the GH/JH/BH Water Distribution Systems of any species listed as "threatened" or "endangered" under the Federal or California Endangered Species Act.

CSA 70 shall furnish all necessary Material Safety Data Sheets (MSDS).

CSA 70 shall inspect the GH/JH/BH Water Distribution Systems as required, and maintain logs with the following information:

1. Water/Well meter readings
2. All hour meter readings
3. All dates and times of readings

CSA 70 shall be qualified to maintain all other GH/JH/BH Water Distribution Systems' components. CSA 70 shall maintain the GH/JH/BH Water Distribution Systems' components in accordance with best management business practices and standards.

CSA 70 shall provide maintenance reports and labor costs for annual GH/JH/BH Water Distribution Systems maintenance and appurtenance costs for all GH/JH/BH Water Distribution Systems' components including but not limited to the following:

1. Water distribution system (water main pipelines)
2. Water treatment and appurtenances (chlorine delivery systems)
3. Water wells, pumps, and appurtenances
4. Water storage tanks

CSA 70 shall ensure that the resulting water from these sources shall comply with all State and Federal laws and regulations.

- F. JOB STANDARDS** - All work performed by CSA 70 shall meet or exceed all applicable safety and environmental regulations. Workmanship shall be in the best management standard practices of the trade. Reasonable care will be taken while performing tasks in and around County property and CSA 70 shall repair any damage caused by CSA 70 in an appropriate and timely manner at no cost to RESD. The work area shall be clean and free of debris continuously throughout the workday.
- G. JOB SITE** - Work shall not impede business, create a nuisance, or endanger County of San Bernardino employees and/or the public. CSA 70 shall take into consideration that during the course of the MOU, RESD personnel and/or other contractors may conduct other activities and operations at GH/JH/BH within and/or adjacent to the GH/JH/BH Water Distribution Systems' vicinity.
- H. LAWS and REGULATIONS** - CSA 70 shall be responsible for complying with all applicable federal and State of California statutes, codes and regulations including CAL-OSHA, and the United States Environmental Protection Agency (EPA), as related to the GH/JH/BH Water Distribution Systems and treatment facilities. CSA

70 shall also keep RESD apprised of all new laws and regulations affecting the GH/JH/BH Water Distribution Systems' requirements and provide all necessary reports and estimated costs needed for future capital improvements.

- I. **EQUIPMENT** - All equipment shall be of good commercial quality and shall be subject to the approval of RESD. All CSA 70 equipment and tools stored in COUNTY owned areas are to be clearly identified as CSA 70 owned equipment and stored in appropriate storage containers.
- J. **OPERATION QUALIFICATIONS** – CSA 70 shall provide operators for the GH/JH/BH Water Distribution Systems with the appropriate level of operator licensing as required by the SWRCB.
- K. **COMMUNICATION** - CSA 70 must be able to communicate with RESD and other concerned County of San Bernardino Departments, and be able to reasonably predict possible GH/JH/BH Water Distribution Systems' emergencies to maintain regulatory compliance.
- L. **SAMPLES** - CSA 70 shall collect all necessary water samples required and transport to a lab for analyses. Costs for water sampling have been included in the operation, maintenance and management service cost as outlined in **EXHIBIT A**. CSA 70 shall collect water samples in compliance with the SWRCB. RESD shall reimburse CSA 70 for all sampling costs additional to, or that exceed, this amount.
- M. **MAINTENANCE OF GROUNDS** – CSA 70 shall maintain the GH/JH/BH Water Distribution Systems' buildings/facilities in accordance with this MOU.
- N. **MAINTENANCE OF RESD** – CSA 70 shall appropriately maintain all GH/JH/BH Water Distribution Systems' components and provide system preventive maintenance. If CSA 70 fails to perform preventive maintenance, which results in equipment failure, CSA 70 shall make necessary repairs in a timely manner at no cost to RESD.
- O. **TRAINING** – CSA 70 shall have the ability to provide safety and product training to on-site RESD personnel.

CSA 70 staff working in designated County facilities known to contain asbestos shall complete asbestos awareness training in accordance with California Code of Regulations (CCR) Title 8, Section 5208 and 1529. Training shall be consistent with EPA training requirements for local education agency maintenance staff as set forth in Code 40 of Federal Regulations CFR 763.92 (a)(1).

CSA 70 shall provide all necessary safety and product training at no additional cost to RESD.

- P. **CHEMICALS** – As outlined in **EXHIBIT A**, all GH/JH/BH Water Distribution Systems' chemical costs have been included in the operations, maintenance, and

management service costs. RESD shall reimburse CSA 70 for all chemical costs additional to, or that exceed, this amount.

- Q. PAGERS** – CSA 70 shall provide pagers to its employees assigned to the GH/JH/BH Water Distribution Systems, and shall become familiar with any existing emergency page-out telemetry service currently in use at the GH/JH/BH Water Distribution Systems.
- R. ADDING/DELETING EQUIPMENT** – RESD has the right to add or delete water distribution and treatment equipment and/or appurtenances that will be serviced by CSA 70. The Director of RESD is authorized to delete equipment from the list of equipment serviced by CSA 70 by notifying CSA 70 in writing of the equipment that will be deleted from service. CSA 70 agrees that payment to CSA 70 will be reduced by the amount charged by CSA 70 to service the deleted piece(s) of equipment and/or appurtenances. If RESD desires to add equipment to be serviced by CSA 70, the parties will negotiate a fee for service for the additional equipment and an amendment will be signed by CSA 70, and approved by the governing Boards of CSA 70 and COUNTY.
- S. ADDITIONAL SERVICES** – CSA 70 shall provide a guaranteed labor rate to provide additional services and repairs not listed in this MOU, to the GH/JH/BH Water Distribution Systems. The Employee Productive Hourly Rate Schedule shall be used to establish a guaranteed labor rate. The Employee Productive Hourly Rate Schedule is adjusted annually and approved by the Board of Supervisors.

II. CSA 70 GENERAL RESPONSIBILITIES

- A. INDEPENDENT CAPACITY** - In the performance of this MOU, CSA 70, its agents and its employees, shall act in an independent capacity and not as officers, employees, or agents of COUNTY.
- B. ASSIGNABILITY** - Without the prior written consent of COUNTY, this MOU is not assignable by CSA 70 either in whole or in part.
- C. SUBCONTRACTING** - CSA 70 shall inform the Director of RESD of any subcontracting agreements for work contemplated under this MOU. Any subcontractor shall be subject to the same terms and conditions as CSA 70. CSA 70 shall be fully responsible for the performance and payment of any subcontractor's contract. RESD shall be fully responsible for reimbursement to CSA 70 for all CSA 70's subcontractor's work. RESD shall have the right to consent or to deny the use of subcontractors for work being contemplated under this MOU.
- D. LICENSES, PERMITS AND CERTIFICATIONS** - CSA 70 shall ensure that it has all necessary SWRCB operator certifications and any other licenses, permits and certifications required by federal, state, or county laws, ordinances, rules and regulations. CSA 70 shall maintain these licenses, permits and certifications in

effect for the duration of this MOU. CSA 70 will notify RESD immediately of loss or suspension of any such license, permit or certification. Failure to maintain the required licenses, permits or certifications may result in immediate termination of this MOU.

- E. LABOR LAWS** - CSA 70 shall strictly adhere to the applicable provisions of the Labor Code regarding the employment of apprentices; minimum wages; travel and subsistence pay; retention and inspection of payroll records; workers compensation; and, payment of wages. CSA 70 shall forfeit to COUNTY the penalties prescribed in the Labor Code for violations.

By its execution of this Agreement, CSA 70 certifies that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Section 1720 of the California Labor Code states in part: "For purposes of this paragraph, 'construction' includes work performed during the design and preconstruction phase of construction including, but not limited to, inspection and land surveying work". If the Scope of Work is 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, CSA 70 agrees to fully comply with such Prevailing Wage Laws. CSA 70 shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Scope of Work available to interested parties upon request, and shall post copies at CSA 70's principal place of business and at the project site. CSA 70 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. CSA 70 shall defend, indemnify and hold COUNTY, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with Prevailing Wage Laws (Exhibit B).

- F. PRIMARY CONTACT** - CSA 70 shall designate an individual to serve as the primary point of contact pursuant to this MOU within seven (7) days of award of this contract. CSA 70 or its designee must respond to RESD non-emergency inquiries within two (2) business days. CSA 70 shall not change the primary contact without written acknowledgement to RESD.

In the event that a problem or potential problem occurs, impacting the quality or quantity of work, or the level of performance under this MOU, CSA 70 shall notify RESD within one (1) working days, in writing, and by telephone to RESD.

- G. RELEASE OF INFORMATION** - No news releases, advertisements, public announcements, or photographs arising out of this MOU or CSA 70's relationship with RESD may be made or used without prior written approval of RESD.
- H. RECORDS** - CSA 70 shall maintain all records and books pertaining to the delivery of services under this MOU and demonstrate accountability for MOU performance. Said records shall be kept and maintained within CSA 70. RESD staff shall have the right, upon reasonable notice and at reasonable hours of business, to examine and inspect such records and books.
- I. RIGHT TO MONITOR AND AUDIT** - COUNTY shall have absolute right to review and audit all records, books, papers, documents, minutes, and other pertinent items as requested, and shall have the absolute right to monitor the performance of CSA 70 in the delivery of services provided under this MOU. CSA 70 shall give full cooperation with all auditing and/or monitoring conducted. CSA 70 shall cooperate with COUNTY in the implementation, monitoring, and evaluation of this MOU and comply with any and all reporting requirements established by COUNTY, RESD, EHS, Area Watermaster, SWRCB, and the EPA. In the event that RESD determines that CSA 70's performance of its duties or other terms of this MOU are deficient in any manner, RESD shall notify CSA 70 of such deficiency in writing or orally, provided written confirmation is given five (5) days thereafter. CSA 70 shall remedy any deficiency within forty- eight (48) hours of such notification, or COUNTY, at its option, may terminate this MOU immediately upon written notice, or remedy deficiency and offset the cost thereof from any amounts due to CSA 70 under this MOU or otherwise.
- J. AVAILABILITY OF RECORDS** - All records pertaining to services delivered, and all fiscal, statistical, and management books and records shall be available for examination and audit by COUNTY representatives for a period of three (3) years after final payment under this MOU or until all pending County, State and Federal audits are completed, whichever is later.
- K. TERMINATION**

a. General Obligations

CSA 70 shall accomplish a complete transition of the services being terminated from CSA 70 and any Subcontractors to RESD, or to any replacement provider designated by RESD, without any interruption of or adverse impact on the services or any other services provided by third parties (the "Termination"). CSA 70 shall fully cooperate with RESD and any new service provider and otherwise promptly take all steps, including, but not limited to providing all requested information, required to assist RESD in effecting a complete Termination. CSA 70 shall provide all information regarding the services or as otherwise needed for Termination, including data conversion, files, interface specifications, training staff assuming responsibility, and related professional services. CSA 70 shall provide for the prompt and orderly conclusion of all work, as RESD may direct, including completion or partial completion of projects, documentation of work in process,

and other measures to assure an orderly transition to RESD or RESD designee. All services related to Termination shall be performed by CSA 70 at no additional cost to RESD beyond what RESD would pay for the services absent the performance of the Termination services. CSA 70's obligation to provide the services shall not cease until the Termination is satisfactory to RESD, including the performance by CSA 70 of all asset-transfers and other obligations of CSA 70 provided in this Paragraph has been completed.

b. Termination Process

The Termination process shall begin on any of the following dates: (i) the date RESD notifies CSA 70 that no funds or insufficient funds have been appropriated so that the term shall be terminated pursuant to the MOU; (ii) the date designated by RESD not earlier than sixty (60) days prior to the end of any initial or extended term that RESD has not elected to extend pursuant to the MOU; or (iii) the date any Termination Notice is delivered, if RESD elects to terminate any or all of the services pursuant to the MOU. CSA 70's obligation to perform services, and RESD's obligation to pay for services, shall expire: (A) when funds appropriated for payment under this MOU are exhausted; (B) at the end of the initial or extended term set forth in this MOU; or (C) on the Termination Date, pursuant to this MOU (with the applicable date on which CSA 70's obligation to perform the services expires being referred to herein as the "Expiration Date"); provided, however, that CSA 70 shall remain obligated to provide Termination services for up to twelve (12) months after any such Expiration Date for the applicable services. CSA 70 and RESD shall discuss in good faith a plan for determining the nature and extent of CSA 70's Termination obligations and for the transfer of services in process provided, however, that CSA 70's obligation under this MOU to provide all services necessary for Termination shall not be lessened in any respect. CSA 70 shall be required to perform its Termination obligations on an expedited basis, as determined by RESD, if RESD terminates the term pursuant to the MOU. RESD shall pay CSA 70 for Termination services to include, but not limited to, staff productive hourly rate, Board approved vehicle/equipment rates, all materials at cost, plus an indirect administrative cost of thirty-three percent (33%).

c. Specific Obligations

The Termination shall include the performance of the following specific obligations:

i. No Interruption or Adverse Impact

CSA 70 shall cooperate with RESD and all of RESD's other service providers to ensure a smooth transition at the time of Termination, with no interruption of services, no adverse impact on the provision of services or RESD activities, no interruption of any services provided by third parties, and no adverse impact on the provision of services provided by third parties.

ii. Third-Party Authorizations

Without limiting the obligations of CSA 70 pursuant to any other clause herein, CSA 70 shall, subject to the terms of any third-party contracts, procure at no charge to COUNTY any third-party authorizations necessary to grant COUNTY the use and benefit of any third-party contracts between CSA 70 and third-party contractors used to provide the services, pending their assignment to COUNTY.

iii. Return, Transfer and Removal of Assets

a. CSA 70 shall return to RESD all COUNTY assets in CSA 70's possession.

b. COUNTY shall be entitled to purchase at net book value those CSA 70 assets used for the provision of services to COUNTY, other than those assets expressly identified by the Parties from time to time as Shared Resources, such CSA 70 assets as RESD may select. CSA 70 shall promptly remove from COUNTY premises, or the site of the work being performed by CSA 70 for COUNTY, any CSA 70 assets that COUNTY, or its designee, chooses not to purchase under this provision.

iv. Transfer of Leases, Licenses, and Contracts

CSA 70, at its expense, shall convey or assign to COUNTY or its designee, such leases, licenses, and other contracts used by CSA 70, COUNTY, or any other Person in connection with the services, as COUNTY may select, when such leases, licenses, and other contracts have no other use by CSA 70. CSA 70's obligation described herein shall include CSA 70's performance of all obligations under such leases, licenses, and other contracts to be performed by it with respect to periods prior to the date of conveyance or assignment and CSA 70 shall reimburse COUNTY for any losses resulting from any claim that CSA 70 did not perform any such obligations.

v. Delivery of Documentation

CSA 70 shall deliver to RESD or its designee, at RESD' request, all documentation and data related to RESD that is held by CSA 70, and CSA 70 shall destroy all copies thereof not turned over to RESD, at no charge to RESD. Notwithstanding the foregoing, CSA 70 may retain one (1) copy of the documentation and data for archival purposes or warranty support.

III. RESD RESPONSIBILITIES

- a. RESD shall provide to CSA 70 any and all reports, plans, maps or other documentation and data regarding the conditions, configuration, and construction of the GH/JH/BH Water Distribution Systems.
- b. RESD is responsible for the current condition of the GH/JH/BH Water Distribution Systems as of the commencement of this MOU, and makes no claim that CSA 70 is liable for the cost of any upgrades, repairs, or reconstruction required due to conditions present or past.

IV. INDEMNIFICATION

CSA 70 agrees to indemnify, defend (with counsel reasonably approved by FACILITES) and hold harmless COUNTY and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this MOU from any cause whatsoever, including CSA 70's acts, errors or omissions and for any costs or expenses incurred by COUNTY on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. CSA 70's indemnification obligation applies to COUNTY'S "active" as well as "passive" negligence but does not apply to COUNTY'S "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

COUNTY agrees to indemnify, defend (with counsel reasonably approved by CSA 70) and hold harmless CSA 70 and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this MOU from any cause whatsoever, including COUNTY'S acts, errors or omissions and for any costs or expenses incurred by CSA 70 on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. COUNTY'S indemnification obligation applies to CSA 70's "active" as well as "passive" negligence but does not apply to CSA 70's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

In the event both parties are found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the Agreement, the parties shall indemnify the other to the extent of its comparative fault. In the event of litigation arising from this Agreement, each party to the Agreement shall bear its own costs, including attorney fees.

- V. INSURANCE COVERAGE** – COUNTY and CSA 70 are authorized self-insured public entities for purposed of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against

liabilities arising out of the performance of the terms, conditions or obligations of this agreement.

VI. FISCAL PROVISIONS

- A.** The maximum amount of reimbursement under this MOU is \$2,422,947.87 (as described in **EXHIBIT A** which is attached and incorporated by reference) for the period of **July 1, 2020** through **June 30, 2025** for the management, operation, and maintenance of the GH/JH/BH Water Distribution Systems and shall be subject to the availability of funds of RESD. The consideration to be paid to CSA 70, as provided herein, shall be in full payment for all of CSA 70's services and expenses incurred in the performance hereof, including employee productive hourly rate, equipment, vehicles, materials, administrative costs, and travel.
- B.** CSA 70 shall submit invoices to RESD for services rendered on a quarterly basis, in arrears, for costs incurred to perform management, operations, and maintenance duties for RESD GH/JH/BH Water Distribution Systems as described in this MOU. An indirect administrative cost of thirty-three percent (33%) shall be included in all invoices, excluding administrative personnel. Costs are fixed for the term of this MOU. RESD has included a three percent (3%) annual increase on Operations and Maintenance costs to cover increasing costs that may occur during the term of the service agreement. All invoicing shall be based upon actual costs of service and labor at the current Board of Supervisors approved rates, but not to exceed the amounts listed in **Exhibit A**. Any future CSA 70 employee salary/benefit increases, and CSA 70 equipment fee increases, are subject to Board of Supervisors' approval. Upon receipt of invoices, RESD shall submit payment to CSA 70 within forty-five (45) days. Payment will occur via an internal transfer processed by RESD.
- C.** Invoices submitted by CSA 70 shall include a breakdown of services performed and the date that the services were performed. Invoices shall be in a format approved by RESD.
- D.** Compensation may be reduced or withheld in the event that CSA 70 fails to comply with the provisions of this MOU, or does not perform services in accordance with the terms of this MOU.

VII. TERM

This MOU is effective as of July 1, 2020 and expires on June 30, 2025, but may be terminated earlier in accordance with provisions of Section VIII of this MOU. This MOU may be renewed or extended through amendment by mutual agreement of the Parties and approved by the governing bodies of both Parties.

VIII. EARLY TERMINATION

- A. This MOU may be terminated without cause upon ninety (90) days written notice by either party. The Director of RESD is authorized to exercise RESD rights with respect to any termination of this MOU. Director of Special Districts is authorized to terminate this MOU on behalf of CSA 70.
- B. CSA 70 will only be reimbursed for costs and un-cancellable obligations incurred prior to the date of termination. CSA 70 will not be reimbursed for costs incurred after the date of termination.
- C. If during the term of this MOU, RESD funds, appropriated for the purposes of this MOU, are reduced or eliminated, RESD may immediately terminate this MOU upon written notice to CSA 70.

IX. GENERAL PROVISIONS

- A. No waiver of any of the provisions of the MOU documents shall be effective unless it is made in writing which refers to provisions so waived and which is executed by the Parties. No course of dealing and no delay or failure of a Party in exercising any right under any MOU document shall affect any other of future exercise of that right or any exercise of any other right. A Party shall not be precluded from exercising a right by its having partially exercised that right or its having previously abandoned or discontinued steps to enforce that right.
- B. Any alterations, variations, modifications, or waivers of provisions of this MOU, unless specifically allowed in this MOU, shall be valid only when they have been reduced to writing, duly signed and approved by the Authorized Representatives of both parties as an amendment to this MOU. No oral understanding or agreement not incorporated herein shall be binding on any of the Parties hereto.
- C. If any legal action is instituted to enforce any party's rights in the MOU, each party shall bear its own costs and attorneys' fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorneys' fees directly arising from a third-party legal action against a party hereto and payable under Section IV, **Indemnification** or Section V, **Insurance**.
- D. 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, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

- E. Time is of the essence in performance of this MOU and of each of its provisions.
- F. This MOU shall be governed by and construed according to the laws of the State of California.

X. NOTICES

Notices to be given between Parties hereto shall be in writing and served personally and/or deposited in the United States mail, first class, postage prepaid, and addressed to:

SPECIAL DISTRICTS DEPARTMENT

Attention: Luther Snoke, Interim Director
222 W. Hospitality Lane, 2nd Floor
San Bernardino, CA 92415-0450

REAL ESTATE SERVICES DEPARTMENT

Attention: Terry Thompson, Director
385 N. Arrowhead Ave.
San Bernardino, CA 92415-0055

Contact persons from each department shall be designated for coordination of daily operations, security access and general ongoing activities. Any change in point of contact may be made via email, fax or other written correspondence. The contact persons are as follows, until otherwise amended in writing:

SPECIAL DISTRICTS DEPARTMENT

Steve Samaras, Division Manager
Tel. (760) 962-1515

REAL ESTATE SERVICES DEPARTMENT

Richard Ayala, Contracts Analyst
Tel. (909) 387-5111

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XI. CONCLUSION

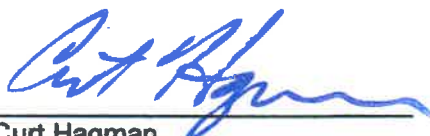
This MOU, consisting of fourteen (14) pages and Exhibits A and B is the full and complete document describing services to be rendered by CSA 70 to RESD including all covenants, conditions and benefits.

XII. EXECUTION OF MOU

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 email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request

IN WITNESS WHEREOF, the Parties have executed this MOU:

COUNTY OF SAN BERNARDINO.


Curt Hagman
Chairman, Board of Supervisors

JUN 23 2020

Date

APPROVED AS TO LEGAL FORM
FOR REAL ESTATE SERVICES
DEPARTMENT


Katherine M. Hardy
Deputy County Counsel

6/15/20
Date

SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD
LYNNA MONELL
Clerk of the Board of Supervisors
of the County of San Bernardino

By _____



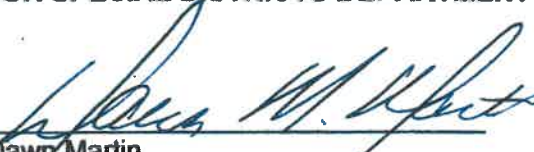
COUNTY SERVICE AREA 70


Curt Hagman
Chairman, Board of Supervisors

JUN 23 2020

Date

APPROVED AS TO LEGAL FORM
FOR SPECIAL DISTRICTS DEPARTMENT


Dawn Martin
Deputy County Counsel

6/15/20
Date

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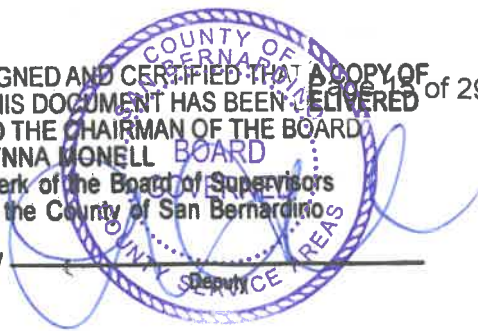


Exhibit A

Estimated Cost by Fiscal Year

Fiscal Year	Operations and Maintenance	Emergency Repair	Estimated Annual Cost
2020-21	\$ 390,449.21	\$ 70,000.00	\$ 460,449.21
2021-22	\$ 402,162.68	\$ 70,000.00	\$ 472,162.68
2022-23	\$ 414,227.57	\$ 70,000.00	\$ 484,227.57
2023-24	\$ 426,654.39	\$ 70,000.00	\$ 496,654.39
2024-25	\$ 439,454.02	\$ 70,000.00	\$ 509,454.02
Totals:	\$ 2,072,947.87	\$ 350,000.00	\$ 2,422,947.87

Exhibit B

PREVAILING WAGE REQUIREMENTS

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

1. Determination of Prevailing Rates:

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

2. Payment of Prevailing Rates

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

3. Prevailing Rate Penalty

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

4. Ineligible Contractors:

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

Contractor shall be responsible for the payment of wages to workers as a debarred subcontractor who has been allowed to work on the Scope of Work.

5. Payroll Records:

- a. Pursuant to California Labor Code section 1776, the Contractor and each subcontractor, shall keep accurate certified payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by them in connection with the Scope of Work. The payroll records enumerated herein shall be verified by a written declaration made under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor or subcontractor has complied with the requirements of the California Labor Code sections 1771, 1811, and 1815 for any Scope of Work performed by his or her employees. The payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
 - i. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request;
 - ii. A certified copy of all payroll records shall be made available for inspection or furnished upon request to the County, the Division of Labor Standards Enforcement of the DIR;
 - iii. A certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the County or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to the County or the Division of Labor Standards Enforcement, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, subcontractor and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor;
 - iv. The Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; and
 - v. Copies provided to the public, by the County or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any subcontractor, performing a part of the Scope of Work shall not be marked or obliterated. The Contractor shall inform the County of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change of location and address.

- b. The Contractor shall have ten (10) days from receipt of the written notice specifying in what respects the Contractor must comply with the above requirements. In the event Contractor does not comply with the requirements of this section within the ten (10) day period, the Contractor shall, as a penalty to the County, forfeit one-hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalty shall be withheld from any portion of the payments then due or to become due to the Contractor.

6. Limits on Hours of Work:

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

7. Penalty for Excess Hours:

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

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

- a. Contractor shall comply with Senate Bill 854 and Senate Bill 96. The requirements include, but are not limited to, the following:
 - i. No contractor or subcontractor may be listed on a bid proposal 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 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 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.