

**CITY OF ORANGE  
DEPARTMENT OF PUBLIC WORKS – WATER DIVISION**



**REQUEST FOR PROPOSAL  
for  
WELL MAINTENANCE AND REPAIRS  
PROPOSAL No. 22-23.40**



April 2023

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## **I. REQUEST FOR PROPOSAL FOR WELL MAINTENANCE AND REPAIRS**

The City of Orange Public Works Department Water Division hereby requests Proposals for providing comprehensive well maintenance and repair services for City wells, pumps, and electric motors. This Request for Proposals (RFP) describes the Project Background, the Project Schedule, the required Proposal Format, the Selection Criteria, and the Administrative Requirements for the Project Design. Attachments and appendices to this RFP include, the Department of Public Works Consultant Checklist and a Sample Consultant Services Agreement.

Nothing contained in this Request for Proposal shall create any contractual relationship between the proposer and the City. The City accepts no financial responsibility for costs incurred by any proposer regarding this Request for Proposal.

## **II. PROPOSAL SUBMITTAL**

Consultant’s proposal and a separate cost proposal (4 sets) must be **submitted by 4:00 pm, May 18, 2023** (Thursday). All proposals should be delivered to the City of Orange, Public Works Department – Water Division 189 S. Water Street, Orange, CA 92866, to the attention of Mr. Tuan Cao.

### Schedule of Events:

- April 27, 2023 .....Issuance of Request for Proposal/Post on City’s website
- May 8, 2023 .....Question Cut off at 4:00 pm
- May 18, 2023 .....Proposal due by 4:00 pm
- June 13, 2022 .....City Council/Manager Approval of Contract Agreement
- July 1, 2023.....Issuance of Notice to Proceed

## **III. PROJECT DESCRIPTION**

This project is to provide Annual Maintenance and Repair Services for the City of Orange- Water Division’s (City) wells, pumps, and electric motor assemblies, on an on-call, as-needed, time-and-material basis for a period of three years with the option for two additional single year extensions. The City’s intent is to enter into contract with one to two Contractors for the provision of these services on an as-needed basis. The contractor shall be licensed (C-57) Well Drilling Contractor in the State of California. The City expects that the total contract value of the one-or-two Purchase Orders to be issued will be less than \$500,000 per year. The initial term of the contract will cover three (3) fiscal years and may be renewed for two (2) additional one-year options should the parties mutually agree. All performance pursuant to these contracts shall be on an “on-call” or “as-needed” basis. Any tasking shall be initiated solely by the City. Further, execution of a contract by the City does not in any way guarantee that any tasking or request for on-call services will be issued to any party. Moreover, execution of a contract by the City shall not entitle the other party to any form of payment or compensation from the City without first having issued tasking or request for services from the contractor.

Through this Maintenance Services Contract, the City wishes to have the Well Contractor (with C-57 license) mobilize in less than 72 hours and perform work as requested by the City. Some services may include, but are not limited to, repair, removal, installation, rehabilitation, replacement of pumps, motors,

well columns, base plates, lube assembly, etc., and the furnishing of parts and labor in conjunction with such work. All work and general conditions shall be performed in accordance with the current Standard Specifications for Public Works Construction (the Green Book), the California State Water Resources Control Board, the American Water Works Association (AWWA) Standards, and the National Electrical Manufacturers Association (NEMA) Standards.

#### **IV. SCOPE OF WORK**

Although the City is attempting to identify the limits and services required, this should not necessarily limit the firm in the development of a scope it believes is necessary to meet the City's goals and objectives:

The Contractor shall furnish all material, labor, equipment, and supervision to perform the maintenance and repair as requested by the City. The Contractor shall perform such work in a thorough and professional manner.

The Contractor shall secure the well site and its equipment at all-time throughout the duration of work. The Contractor is also responsible for discharging of treated water after rehabilitation of well into an appropriate drainage system in a manner that complies with NDPES regulations and permits.

Currently, the City's water system consists of 11 operational wells; specifically compose of 1 submersible Byron Jackson (BJ) pump and 10 water-lube pumps and motors. The contractors need to be aware that currently the City's water-lube pumps use a proprietary "Water Flush" bearing lubrication system. The successful contractor(s) will need to maintain and repair this system, as needed, with the same components. Equivalent components will not be accepted and would exclude the contractor from working on the wells and would constitute a breach of contract. The contractors also need to be a certified BJ dealer/installer in order to work on the submersible BJ pumps and motors.

All wells are powered by electric motors ranging from 200 hp to 500 hp. The contractors are required to service these motors periodically at the City's request. These services include but are not limited to removal of motor, clean, dip, bake, rewind, balance, voltage testing, replace bearings, re-installation, and start-up.

The City also has the need to rehabilitate the existing wells when there is a decrease in capacity, bacteriological problem, or other well production issue. The contractors are required to provide appropriate tools, equipment, materials, and personnel to successfully complete the cleaning and disinfection of the wells. Prior to commencement of work, the contractor and the City shall discuss, review, and evaluate well records to recommend possible treatment methods depending on the condition of each well. The contractor shall submit to the City a detail proposal including the type of treatment, chemical uses, quantity, duration, man-hours, and cost for final approval.

#### **V. PROPOSAL REQUIREMENTS**

The preparation of the proposal, including visits to the site prior to submittal of the proposal, shall be at the expense of the Proposers. All prices and notations must be typewritten or written in ink. Any markings in pencil shall not form part of the proposal and shall be disregarded by the City. Any changes or corrections in the proposal must be initialed in ink by the person signing the proposal. No telephonic or telegraphic proposals are acceptable.

Each Proposer is responsible for examining this Notice Inviting Proposals and submitting its proposal complete and in conformance with these instructions.

Nothing contained in this Request for Proposal shall create any contractual relationship between the proposer and the City. The City accepts no financial responsibility for costs incurred by any proposer regarding this Request for Proposal.

Although the City requires no specific format, this section is intended to provide guidelines to the firm regarding features that the City will look for and expect to be included in the proposal.

## **1. Content & Format**

The City requests that proposals submitted be organized and presented in a neat and logical format and are relevant to these services. Firm's proposals shall be clear, accurate, and comprehensive. Excessive or irrelevant material will not be favorably received. The proposal should include the following:

- Transmittal/offer letter signed by an individual authorized to act on behalf of the firm
- Page numbering
- Index/Table of Contents
- Pictures of facility and equipment, charts, and graphic exhibits.
- Statement of Qualifications, Experience, and Reference
- Brief resumes of key staff
- Team Organization
- Fee Schedule

## **2. Statement of Qualifications, Experience, and Reference**

The information provided in this section should describe the qualifications of the firm and key staff in performing projects within the past five years that are similar in scope and size to demonstrate competence to perform these services. The projects listed should be those that the key staffs named for this project were responsible for performing.

- Names of key staff that participated on named projects and their specific responsibilities
- The client's name, contact person, addresses, and telephone numbers
- The Contractor shall list the name, address, and phone number of all subcontractors that will perform specific work on the project
- A brief description of type and extent of services provided
- Completion dates (estimated, if not yet completed)
- Total costs of the projects
- List of qualified technical and support personnel
- List of competent and experienced service personnel to service the well and pump assemblies
- List of rigs, equipment, etc., owned by the contractor and availability to fulfill the scope of work in this RFP
- Proof or ability of contractor to provide specified Water Flush bearing parts (or name of subcontractor that will perform this portion of work)
- Proof of Byron Jackson Certified Dealer/Installer (or plan to have a certified installer/dealer present to monitor and certify that the installation was performed per the required factory specifications for this equipment)

There should be included in the section “Brief resumes of key personnel” who will provide these services demonstrating their qualifications and experience. Resumes should highlight education, relevant experience, licenses, and specific responsibilities for services described.

### **3. Team Organization**

The purpose of this section is to describe the organization of the project team including subcontractor and key staff. A project manager shall be assigned to be the prime contact and be responsible for coordinating all activities with the City. An organization diagram shall be submitted showing all key team members and illustrating the relationship between the City, the project manager, key staff, and subcontractor.

There also should be a brief description of the role and responsibilities of all key staff and subcontractor identified in the team organization. A general methodology of how the contractor would proceed upon receiving a work request from the City should also be included in this section.

### **4. Fee Proposal**

All Firms shall provide complete cost and billing schedules of current hourly billing rates for each of the specialized skill, material, and support services. This fee schedule shall remain in effective for the first twelve (12) months of the contract.

A work program together with a breakdown of labor hours by employee billing classification together with the cost of non-labor and sub-contractor services shall be included with the fee proposal. The labor breakdown shall be compiled based upon a listing of work tasks that correlates with the firm’s defined scope of work for the project proposal. This information will be used by the City staff to evaluate and compare the reasonableness of the fee schedule and may be used in determining the total cost for proposed work.

The firms will be ranked and the City shall select the one or two top ranked firms, at the sole discretion of the City, and enter into contracts for the on-call, as-needed services described above.

The firm shall prepare progress billings, reflective of the project schedule and the scope of work completed, by line item and description.

## **VI. GENERAL REQUIREMENTS**

- a. If the proposal is submitted by a corporation, it must be signed on behalf of the corporation by the following combination of corporate officers: (i) the Chairman of the Board, the President, or any Vice President, on the one hand, AND (ii) the Secretary, an Assistant Secretary, the Chief Financial Officer or an Assistant Treasurer, on the other hand. If the proposal is submitted by a corporation under the signature of only one corporate officer or representative or with a different combination of the foregoing corporate officers, it must be accompanied by the original of a Secretary’s Certificate, to which is attached a corporate resolution duly authorizing the named individual to consummate the transaction contemplated by the proposal for and on behalf of the corporation.
- b. If the proposal is submitted by a sole proprietorship, the owner's signature is acceptable.
- c. If the proposal is submitted by a partnership, the signature of the managing general partner or the general partner(s) authorized to bind the partnership to such transactions must appear on the proposal.

- d. If the proposal is submitted by a limited liability company and such company operates through officers, it must be signed by at least two duly elected or appointed officers, as follows: the chairman of the board, the president or any vice president, AND any secretary, assistant secretary, the chief financial officers, or any assistant treasurer.
- e. If the proposal is submitted by a limited liability company that operates through a manager or managers, it must be signed by at least two such managers or by one manager if the limited liability company operates with the existence of only one manager.
- f. Proposals may be rejected if the proper documentation is not provided.
- g. All proposals must be signed.
- h. Each Proposer shall carefully examine the documents and project site(s) to become fully informed regarding all existing and expected conditions and matters which could affect performance, cost, or time of the work in any way.
- i. If any person contemplating submitting a proposal is in doubt as to the true meaning of any part of the plans, specifications, or other proposed contract documents, or finds discrepancies in, or omissions from, the drawing or specifications, he/she shall request, in writing, for an interpretation or correction thereof. The person submitting such a request shall do so no later than seven (7) calendar days prior to proposal due date. Submit to Mr. Tuan Cao. All such interpretations of the contract documents will be made only by Addenda duly issued and a copy of each such Addendum will be mailed or delivered to each person receiving a set of contract documents at his/her last address of record. The City will not be responsible for any other explanations or interpretations of the contract documents.
- j. The City of Orange is not responsible for oral statements made by any of their employees or agents concerning this Invitation to Proposal. If a Proposer requires specific information, it must request that it be supplied in writing by the City of Orange.
- k. Prevailing Wages
  - l. Notice is hereby given that in accordance with California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, title 8, Section 16000, et seq., (“Prevailing Wage Laws”), the Firm is required to pay not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work or services pursuant to this Agreement are performed and not less than the general prevailing rate of per diem wages for holiday and overtime work. In that regard, the Director of the Department of Industrial Relations of the State of California is required to and has determined such general prevailing rates of per diem wages. Copies of the State prevailing wage rates and the latest revisions thereto are available on the Internet at [www.dir.ca.gov](http://www.dir.ca.gov). Firm shall fully comply with all applicable federal and state labor laws (including, without limitation, if applicable, the Prevailing Wage Laws).

## **VII. TERM OF CONTRACT**

### **1. Term of Contract**

The initial term of the contract to be awarded pursuant to this solicitation for proposals will cover three (3) fiscal years, commencing on or about July 1, 2023 and expiring on the last day of June 2026 (the “Expiration

Date”); provided, however, that the City will have the right to extend the term of the contract for the following extensions and upon the following terms:

- Extension (the “First Extension Term”) commencing on July 1, 2026 and terminating on June 30, 2027);
- Extension (the “Second Extension Term”) commencing on July 1, 2027 and terminating on June 30, 2028; and

The City shall give written notice to the Contractor of the City’s intention to exercise each Extension (if at all) no later than thirty (30) days prior to the end of the Expiration Date or the then expiring Extension; provided, however, that the City’s notice of its intention to extend the term of the Contract for each Extension shall be expressly conditioned upon and subject to the approval by the City Council, in its sole and absolute discretion, of an amount sufficient to pay the compensation set forth herein for each Extension as part of its annual budget approval process prior to the beginning of each Extension. While the parties acknowledge that the City is required to give its notice of intention to extend the term of the Contract not later than thirty (30) days prior to the date that the initial term or then current Extension would otherwise end, it is possible that the City Council’s approval of its annual budget and appropriation of funds for the Extension in question may occur thereafter. Accordingly, if the City Council declines to approve and appropriate funds sufficient to pay the amount of compensation set forth herein for an Extension, the Contract shall terminate and be of no further force and effect as of the expiration of the initial term or the then current Extension. Moreover, in the event the City gives the Contractor written notice exercising an Extension and the City Council decides to appropriate funds sufficient to pay the amount of compensation for the Extension in question after the Contractor has performed services under the Extension, the Contractor will be equitably compensated for all services performed under any portion of an Extension through the date of termination of the Contract.

## **2. Award of Contract**

The award of contract, if awarded, will be to the most qualified proposal that complies with all requirements of this Notice Inviting Proposals. The award of contract, if made, shall be made within ninety (90) days after the opening of the proposals. Bids shall be valid for 90 days after the bid date.

Prior to the award of any work hereunder and before any work can commence, the City and the successful proposer will enter into a written contract substantially in the form attached hereto as Sample Contract with such changes therein as the City’s Attorney may deem necessary and appropriate. Proposers responding to this Notice Inviting Proposals are strongly advised to review all of the terms and conditions of the contract attached hereto and will be held to comply with all of such terms and conditions.

Proof of insurance is not required to be submitted with your proposal but will be required prior to the City's award of the contract in accordance with the terms of the written contract attached hereto.

## **3. Contract Payment**

The Contractor will be paid for satisfactory work performed under the Contract once the project is completed. The Contractor shall submit a detailed invoice and all reports required in the Contract for work performed.

- a) This invoice shall be in accordance with the contract unit prices and shall become the basis for payment.
- b) This invoice shall be subject to review and approval by the City's Representative.



- c) All submitted invoices shall be paid within thirty (30) days of approval by the City.
- d) Any charges in the invoice not approved by the City's Representative shall not be paid by the City.

**VIII. SELECTION CRITERIA**

The City will form a review committee to review submitted Proposals and Cost Proposals based upon Qualification Based Selection for professional services. The Proposals will be reviewed first and will make up 100% of the Proposal's total score. After completion of the Technical Proposal review, the Cost Proposals will be opened. The City may establish a short list of firms to be interviewed or may select a consultant based upon written proposals. The proposals will be evaluated based on the responsiveness to the RFP using the following grading criteria and weighted values (numbers to the right):

I.	Project Team and Key Personnel	(25)
	<ul style="list-style-type: none"> <li>• Overall team expertise and qualifications</li> <li>• Qualifications of key personnel including specific required knowledge, licenses, etc</li> <li>• Commitment to make staff available for the project</li> </ul>	
II.	Relevant Experience and Capability	(25)
	<ul style="list-style-type: none"> <li>• Specific related firm experience</li> <li>• Specific related experience of key personnel</li> <li>• Capability to perform necessary tasks in a safely manner, resolve problems, warranty, timeliness of repairs, and maintain a full-service shop with necessary equipment required for well rehabilitation and treatment projects</li> </ul>	
III.	Quality of Proposal	(25)
	<ul style="list-style-type: none"> <li>• Understanding of project and objectives</li> <li>• Methods of approaching project completion</li> <li>• Compliance with proposal requirements</li> </ul>	
IV.	Reference Check Results	(15)
V.	Rationality of fire's fee schedule	(10)
<b>Total</b>		<b>(100)</b>

**City staff (staff) will rank the responsive firms and will negotiate a contract with one or two top ranked firms, at the sole discretion of the City. Should staff be unable to negotiate a satisfactory contract with one or more of those firms, staff will terminate negotiations and may continue the negotiation process with the next most qualified firm in order of their evaluation ranking until an agreement is reached with the number of firms desired by the City.**

Please refrain from making any verbal inquires or requests for a formal debriefing related to the subject RFP until the City of Orange completes the ongoing contract process.

If necessary, the City may elect to hold oral presentations. Upon review and ranking of the written proposals, based upon the above selection criteria, the City may request the top ranked Companies to conduct an oral presentation/interview. If conducted, these presentations/interviews will be held on or about the week of May 30, 2023.

## **APPENDIX A**

[Behind this sheet]

- Contract Agreement (Sample)
- Performance Bond and Payment Bond (Sample)
- Insurance Checklist

## CONTRACT

*[Insert name of the project (Bid No. \_\_\_ - \_\_\_)]*

**THIS CONTRACT** (the "Contract") is made and entered into as of \_\_\_\_\_, 20\_\_ ("Effective Date") by and between the CITY OF ORANGE, a municipal corporation ("City"), and **[insert Contractor's legal name and type of entity]** ("Contractor"), who agree as follows.

### ARTICLE 1 Work Performed

**a.** For and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by City, **[optional: and under the conditions expressed in the two (2) bonds presented to City with this Contract and incorporated herein by this reference,]** Contractor hereby agrees to and shall do all the work and furnish all the labor, materials, tools and equipment, except such as are mentioned in the specifications to be furnished by City to Contractor, necessary to complete in good workmanship and substantial manner the work (the "Work") described in:

(1) the Construction Plans for **[insert description]** (Drawing W-**[insert #]**) prepared for City by **[insert name]**, approved by the "Engineer" (as defined herein below) on **[insert date]**, 2019, and consisting of sheets numbered 1 through **[insert #]**, inclusive (the "Plans");

(2) The latest edition of the "City of Orange Standard Plans and Specifications" (the "Orange Book") with the term "Engineer," as used in the Orange Book and in this Contract, to specifically include the City Engineer (or designee);

(3) The "Standard Specifications for Public Works Construction" (the "Greenbook"), and all amendments thereto, except the definition of "Subcontractor" in Section 1.2 (General – Terms and Definitions) of Part 1 (General Provisions) of the Greenbook, which is hereby amended in its entirety to read as follows: "Subcontractor – An individual, firm, or corporation having a direct contract with the Contractor for the performance of a part of the Work;"

(4) The "City of Orange Standard Special Provisions";

(5) The Standard Plans; and

(6) Contractor's Bid Proposal, which is on file with City's Department of Public Works.

**b.** Contractor acknowledges that it has received the Plans from City and that a complete copy of the Plans are in its possession and are hereby specifically referred to and by such reference made a part hereof. The Orange Book, Greenbook and City of Orange Standard Special Provisions and Standard Plans are on file with City's Public Works Director and are hereby

specifically referred to and by such reference made a part hereof. A copy of the Special Provisions and Standard Plans will also be kept on file with the City Clerk. Contractor hereby acknowledges that it has read, reviewed and understands the Plans, the Orange Book, the Greenbook, the Special Provisions, the Standard Plans, and the Encroachment Permit as they relate to the Work, all of which documents shall be referred to herein collectively as the “Plans and Specifications.”

**c.** Contractor acknowledges the provisions of Chapter 8.28 of the Orange Municipal Code which requires, among other things, that Contractor utilize City’s exclusive solid waste hauler for the rental of bins for trash and debris removal and imposes mandatory recycling requirements for self-hauled construction and demolition waste. The terms and conditions set forth in this Contract shall control over any terms and conditions in the Plans and Specifications to the contrary.

**d.** The Work shall be performed in conformity with the Plans and Specifications and the Bid Proposal and all applicable laws, including any and all applicable federal and state labor laws and standards and applicable prevailing wage requirements and any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment.

**e.** Unless and until otherwise notified in writing by City’s Public Works Director, City’s **[insert title], [insert name]** (“Authorized City Representative”), shall be the person to whom Contractor will report for the performance of the Work hereunder. It is understood that Contractor’s performance hereunder shall be under the direction and supervision of the Authorized City Representative or such other person as City’s Public Works Director may designate from time to time, that Contractor shall coordinate the Work hereunder with the Authorized City Representative to the extent required by the Authorized City Representative, and that all performances required hereunder by Contractor shall be performed to the satisfaction of the Authorized City Representative or City’s Public Works Director.

**f.** It is expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and Contractor’s Bid Proposal, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said Bid Proposal conflicting herewith.

**[Optional: g.** Contractor agrees that it has an obligation to reset all permanent survey markers as stated in the Orange Book, Part 4, Section 400-2, “Permanent Survey Markers,” and obtain the approval for pre- and post-construction centerline tie sheets and Corner Records from the County of Orange and deliver said approved documents to City as soon as they are received. This obligation extends to any of its subcontractors that have performed work in this regard. This subsection survives completion of the Work, the Notice of Completion, and final payment and shall be an enforceable obligation until fulfilled.]

## **ARTICLE 2**

### **Commencement of Work**

Contractor shall commence the Work provided for in this Contract within fifteen (15) days



- First Extension (the “First Extension Term”) commencing **[insert date]**, and terminating **[insert date]**, in an annual amount not to exceed **[insert amount]** DOLLARS and **[##]/100** (**[\$insert amount]**) without the prior written authorization of City; **[or: Compensation for the First Extension Term, including contingencies, shall be upon the same terms and conditions as the Initial Contract.]**
- Second Extension (the “Second Extension Term”) commencing **[insert date]**, and terminating **[insert date]**, in an annual amount not to exceed **[insert amount]** DOLLARS and **[##]/100** (**[\$insert amount]**) without the prior written authorization of City. **[or: Compensation for the Second Extension Term, including contingencies, shall be upon the same terms and conditions as the Initial Contract.]**

e. The City Manager is hereby authorized on behalf of City to give written notice to Contractor of City’s intention to exercise each Extension (if at all) no later than thirty (30) days prior to the Expiration Date of the then-current term; provided, however, that City’s notice of its intention to extend the term of this Contract for each Extension shall be expressly conditioned upon and subject to the approval by the City Council, in its sole and absolute discretion, of an amount sufficient to pay the compensation set forth herein for each Extension as part of its annual budget approval process prior to the beginning of each Extension. While the parties acknowledge that City is required to give its notice of intention to extend the term of this Contract not later than thirty (30) days prior to the Expiration Date of then-current term, it is possible that the City Council’s approval of its annual budget and appropriation of funds for the Extension in question may occur thereafter. Accordingly, if the City Council fails to approve and appropriate funds sufficient to pay the amount of compensation set forth herein for an Extension, this Contract shall terminate and be of no further force and effect as of the expiration of the then-current term. Notwithstanding anything in this provision to the contrary, in the event City gives Contractor written notice exercising an Extension and City receives notice that appropriation of funds for the Extension in question are not available after Contractor has performed services under the Extension, City agrees that Contractor will be equitably compensated for all services performed under any portion of an Extension through the date of termination of the Contract. Except as specifically set forth herein, the terms and conditions of each Extension will be the same as the Initial Contract.

f. Any Extension, if properly exercised, shall be memorialized in the form of an amendment to this Contract. The City Manager is hereby authorized to approve and execute amendments to this Contract reflecting the exercise of each Extension and the amount of compensation (including the amount of funds to be made available for additional work or services) payable to Contractor for each respective Extension.

#### **ARTICLE 4** **Licenses**

Contractor represents that it and any subcontractors it may engage, possess any and all licenses which are required under state or federal law to perform the Work contemplated by this

Contract and that Contractor and subcontractors shall maintain all appropriate licenses, including a City of Orange business license, at its cost, during the performance of this Contract.

## **ARTICLE 5 Guarantees**

**a.** Contractor guarantees the construction and installation of all Work included in the Plans and Specifications for which Contractor has been awarded this Contract.

**b.** Should any of the materials or equipment installed pursuant to this Contract prove defective or should the Work as a whole prove defective, due to faulty equipment, workmanship, materials furnished or methods of installations, or should said Work or any part thereof fail to function properly, as designed, due to any of the above causes within twelve (12) months after the date on which said Work is accepted by City, Contractor shall make repairs and furnish such materials and equipment as are necessary to be furnished and installed within fifteen (15) calendar days after the receipt of a demand from City.

**c.** Said Work will be deemed defective within the meaning of this guarantee in the event that it fails to function as originally intended either by the Plans and Specifications of this Contract or by the manufacturer(s) of the equipment incorporated into the Work.

**d.** In the event repairs are not made within fifteen (15) calendar days after Contractor's receipt of a demand from City, City shall have the unqualified option to make any needed repairs or replacements itself or by any other contractor. Contractor shall reimburse City, upon demand, for all expenses incurred in restoring said Work to the condition contemplated in this Contract, including the cost of any equipment or materials replaced.

**e.** It is understood that emergency repairs may, by necessity, be made by City. Therefore, when defective equipment, materials or workmanship result in emergency repairs by City, Contractor shall reimburse City, upon demand, for all expenses incurred. Emergency repairs will be deemed as those repairs determined by City's Director of Public Works to be necessary due to an immediate detriment to the health, safety, welfare or convenience of the residents of City.

## **ARTICLE 6 Water Quality**

**a.** The Santa Ana Regional Water Quality Control Board ("RWQCB") has issued National Pollutant Discharge Elimination System ("NPDES") Permit No. R8-2009-0030 (the "Permit"), which governs storm water and non-storm water discharges resulting from municipal activities performed by City or its contractors. In order to comply with the Permit requirements, the County of Orange has prepared a Drainage Area Management Plan ("DAMP"), containing Model Maintenance Procedures with Best Management Practices ("BMPs") that City and its contractors must adhere to. The Model Maintenance Procedures contain pollution prevention and source control techniques to minimize the impact of those activities upon dry-weather urban runoff, storm water runoff, and receiving water quality. Examples include: wash water from



cleaning of sidewalks or parking lots must be collected and disposed of in the sewer or landscaped areas.

**b.** The Permit, the DAMP and the Model Maintenance Procedures are on file in the office of City's Director of Public Works. Contractor hereby acknowledges that it has read, reviewed and understands the Permit, the DAMP and the Model Maintenance Procedures, as they relate to the Work and hereby shall perform the Work in conformance therewith.

## **ARTICLE 7**

### **Independent Contractor; Contractor not Agent**

**a.** At all times during the term of this Contract, Contractor shall be an independent contractor and not an employee of City. City shall have the right to control Contractor only insofar as the result of Contractor's services rendered pursuant to this Contract. City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Contract. Contractor shall, at its sole cost and expense, furnish all facilities, materials and equipment which may be required for furnishing services pursuant to this Contract. Contractor shall be solely responsible for, and shall indemnify, defend and save City harmless from all matters relating to the payment of its subcontractors, agents and employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever. Contractor acknowledges that Contractor and any subcontractors, agents or employees employed by Contractor shall not, under any circumstances, be considered employees of City, and that they shall not be entitled to any of the benefits or rights afforded employees of City, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits.

**b.** Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, to bind City to any obligation whatsoever.

## **ARTICLE 8**

### **Public Work; Prevailing Wage**

**a.** The Work which is the subject of this Contract is a "public work," as that term is defined in Section 1720 of the California Labor Code, for which prevailing wages must be paid. To the extent Contractor's employees will perform any work that falls within any of the classifications for which the Department of Labor Relations of the State of California promulgates prevailing wage determinations, Contractor hereby agrees that Contractor, and any subcontractor under it, shall pay not less than the specified prevailing rates of wages to all such workers. The general prevailing wage determinations for crafts can be located on the website of the Department of Industrial Relations ([www.dir.ca.gov/DLSR](http://www.dir.ca.gov/DLSR)). Additionally, to perform work under this Contract, Contractor must meet all State registration requirements and criteria, including project compliance monitoring.

**b.** Attached hereto as Attachment No. 1 and incorporated herein by this reference is a copy of the provisions of Sections 1725.5, 1771, 1771.1, 1771.4, 1775, 1776, 1777.5, 1813 and 1815 of the California Labor Code. Contractor hereby acknowledges that it has read, reviewed and understands those provisions of the Labor Code and shall prosecute and complete the Work under this Contract in strict compliance with all of those terms and provisions.

**c.** Contractor shall secure the payment of compensation to its employees in accordance with the provisions of Section 3700 of the California Labor Code. Accordingly, and as required by Section 1861 of the California Labor Code, Contractor hereby certifies as follows:

“I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

**d.** Contractor shall indemnify, protect, defend and hold harmless City and its officers, employees, contractors and agents, with counsel reasonably acceptable to City, from and against any and all loss, liability, damage, claim, cost, expense, and/or “increased costs” (including reasonable attorney’s fees, court and litigation costs, and fees of expert witnesses) which result or arise in any way from the noncompliance by Contractor of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, the requirement to pay state prevailing wages). It is agreed by the parties that, in connection with the construction of the Work which is the subject of this Contract, Contractor shall bear all risks of payment or non-payment of state prevailing wages. “Increased costs” as used in this paragraph shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time. The foregoing indemnity shall survive termination of this Contract.

## **ARTICLE 9**

### **Equal Employment Opportunity**

During the performance of this Contract, Contractor agrees as follows:

**a.** Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, mental or physical disability, or any other basis prohibited by applicable law. Contractor shall ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, mental or physical disability, or any other basis prohibited by applicable law. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. Contractor shall post in conspicuous places, available to employees and applicants for employment, a notice setting forth provisions of this non-discrimination clause.

**b.** Contractor shall, in all solicitations and advertisements for employees placed by, or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, mental or physical disability, or any other basis prohibited by applicable law.

**c.** Contractor shall cause the foregoing paragraphs (a) and (b) to be inserted in all subcontracts for any Work covered by this Contract, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

## **ARTICLE 10 Conflicts of Interest**

Contractor agrees that it shall not make, participate in the making, or in any way attempt to use its position as a contractor to influence any decision of City in which Contractor knows or has reason to know that Contractor, its officers, partners, or employees have a financial interest as defined in Section 87103 of the Government Code.

## **ARTICLE 11 Indemnity**

Contractor shall defend, indemnify and hold harmless City and its officers, officials, agents, and employees from and against:

**a.** Any and all claims, liabilities, losses, damages, penalties, costs or expenses (including reasonable attorneys' fees and court costs) which City may directly or indirectly sustain or suffer arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or the property of any person which shall occur on or adjacent to the real property which is the subject of this Contract, or in connection with performance of this Contract which may be directly or indirectly caused by the acts or omissions of Contractor or its officers, employees, contractors or agents, or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of a hazardous waste or substance. Contractor shall not be responsible for (and such indemnity shall not apply to) any willful misconduct, negligence or breach of this Contract by City or its officers, officials, agents, and employees. The foregoing indemnity shall survive termination of this Contract.

**b.** Any and all claims under workers' compensation acts and other employee benefit acts with respect to Contractor's employees or Contractor's subcontractor's employees arising out of Contractor's Work under this Contract, including any and all claims under any law pertaining to Contractor's status as an independent contractor.

## **ARTICLE 12 Insurance**

**a.** Contractor shall procure and maintain for the duration of this Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder and the results of that Work by Contractor, its agents,

representatives, employees or subcontractors. Any umbrella liability insurance that is provided as part of the general or automobile liability minimums set forth below shall be maintained for the duration of the Contract.

**b.** Contractor shall maintain the following minimum amount of insurance: the greater of either the limits set forth in (1) through (4), below; or all of the insurance coverage and/or limits carried by or available to Contractor.

- |                           |             |                                                                                                                                                                                                                                                                                                                                        |
|---------------------------|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1) General Liability     | \$2,000,000 | per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. |
| (2) Automobile Liability  | \$1,000,000 | per accident for bodily injury and property damage.                                                                                                                                                                                                                                                                                    |
| (3) Workers' Compensation |             | as required by the State of California.                                                                                                                                                                                                                                                                                                |
| (4) Employer's Liability  | \$1,000,000 | per accident for bodily injury or disease.                                                                                                                                                                                                                                                                                             |

**c.** Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits which are applicable to a given loss shall be available to City. No representation is made that the minimum insurance requirements of this Contract are sufficient to cover the obligations of Contractor under this Contract.

**d.** Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to City, its officers, officials, agents and employees; or Contractor shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

**e.** Each policy of general liability and automotive liability insurance shall contain, or be endorsed to contain, the following provisions:

(1) City, its officers, officials, agents, and employees are declared to be additional insureds under the terms of the policy, with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Contractor (any auto), and with respect to liability arising out of Work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such Work or operations. A policy endorsement to that effect shall be provided to City along with the certificate of insurance. In lieu of an endorsement, City will accept a copy of the policy(ies) which evidences that City is an

additional insured as a contracting party. The minimum coverage required by Subsection 12.b, above, shall apply to City as an additional insured.

(2) For any claims related to this Contract, Contractor's insurance coverage shall be primary insurance with respect to City, its officers, officials, agents and employees. Any insurance or self-insurance maintained by City, its officers, officials, agents and employees shall be excess of Contractor's insurance and shall not contribute with it.

(3) Coverage shall not be canceled, except after thirty (30) days' prior written notice has been provided to City.

**f.** Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Article 12. The endorsements shall be on forms acceptable to City. All certificates and endorsements are to be received and approved by City before the Work commences. However, failure to do so shall not operate as a waiver of these insurance requirements. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

**g.** All insurance procured and maintained by Contractor shall be issued by insurers admitted to conduct the pertinent line of insurance business in California and having a rating of Grade A or better and Class VII or better by the latest edition of Best Key Rating Guide.

**h.** Contractor shall immediately notify City if any required insurance lapses or is otherwise modified and cease performance of this Contract unless otherwise directed by City. In such a case, City may procure insurance or self-insure the risk and charge Contractor for such costs and any and all damages resulting therefrom by way of set-off from any sums owed Contractor.

**i.** Contractor agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, Contractor shall look solely to its insurance for recovery. Contractor hereby grants to City, on behalf of any insurer providing insurance to either Contractor or City with respect to the services of Contractor herein, a waiver of any right to subrogation which any such insurer may acquire against City by virtue of the payment of any loss under such insurance. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all Work performed by Contractor, its employees, agents and subcontractors. Contractor shall obtain any other endorsement that may be necessary to effect this waiver of subrogation.

**j.** Contractor shall require and verify that all subcontractors maintain insurance meeting all of the requirements stated herein.

### **ARTICLE 13 Termination**

City, acting through its City Manager or designee, reserves the right to terminate this Contract for any reason by giving five (5) days' written notice of intent to terminate to Contractor. Upon receipt of notice, Contractor shall immediately cease work, unless the notice provides

otherwise. Should City terminate this Contract, City shall pay Contractor for services satisfactorily provided and all allowable reimbursements incurred to the date of termination in compliance with this Contract, unless such termination shall be for cause, in which event City may withhold any disputed compensation. City shall not be liable for any claim of lost profits.

**ARTICLE 14**  
**Maintenance and Inspection of Records**

In accordance with generally accepted accounting principles, Contractor and its subcontractors shall maintain reasonably full and complete books, documents, papers, accounting records and other information (collectively, the “records”) pertaining to the costs of and completion of services performed under this Contract. During the term of this Contract and for a period of three (3) years after termination or completion of this Contract, City shall have the right to inspect and/or audit Contractor's records pertaining to the performance of this Contract at Contractor's office. Contractor shall make available all such records for inspection or audit at its offices during normal business hours and upon three (3) days’ notice from City, and copies thereof shall be furnished if requested.

**ARTICLE 15**  
**Compliance with Laws**

**a.** Contractor shall be knowledgeable of and comply with all local, state and federal laws pertaining to the subject matter hereof or in any way regulating the activities undertaken by Contractor or any subcontractor hereunder.

**b.** Contractor represents and warrants that it:

(1) Has complied and shall at all times during the term of this Contract comply, in all respects, with all immigration laws, regulations, statutes, rules, codes, and orders, including, without limitation, the Immigration Reform and Control Act of 1986 (IRCA); and

(2) Has not and will not knowingly employ any individual to perform services under this Contract who is ineligible to work in the United States or under the terms of this Contract; and

(3) Has properly maintained, and shall at all times during the term of this Contract properly maintain, all related employment documentation records including, without limitation, the completion and maintenance of the Form I-9 for each of Contractor’s employees; and

(4) Has responded, and shall at all times during the term of this Contract respond, in a timely fashion to any government inspection requests relating to immigration law compliance and/or Form I-9 compliance and/or worksite enforcement by the Department of Homeland Security, the Department of Labor, or the Social Security Administration.

c. Contractor shall require all subcontractors and/or subconsultants to make the same representations and warranties required by this Article 15 when hired to perform services under this Contract.

d. Contractor shall, upon request of City, provide a list of all employees working under this Contract and shall provide, to the reasonable satisfaction of City, verification that all such employees are eligible to work in the United States. All costs associated with such verification shall be borne by Contractor. Once such request has been made, Contractor may not change employees working under this Contract without written notice to City, accompanied by the verification required herein for such employees. Contractor shall require all subcontractors and/or sub-consultants to make the same verification when hired to perform services under this Contract.

e. If Contractor, or a subcontractor or subconsultant, knowingly employs an employee providing Work under this Contract who is not authorized to work in the United States, and/or fails to follow federal laws to determine the status of such employee, such shall constitute a material breach of this Contract and may be cause for immediate termination of this Contract by City.

f. Contractor shall indemnify and hold City, its officials and employees harmless for, of and from any loss, including but not limited to fines, penalties and corrective measures, City may sustain by reason of Contractor's failure to comply with said laws, rules and regulations in connection with the performance of this Contract.

## **ARTICLE 16**

### **Governing Law and Venue**

This Contract shall be construed in accordance with and governed by the laws of the State of California and Contractor shall submit to the jurisdiction of California courts. Venue for any dispute arising under this Contract shall be in Orange County, California.

## **ARTICLE 17**

### **Integration and Amendment**

a. This Contract constitutes the entire agreement of the parties. No other agreement, oral or written, pertaining to the Work to be performed under this Contract shall be of any force or effect unless it is in writing and signed by both parties. Any Work performed which is inconsistent with or in violation of the provisions of this Contract shall not be compensated.

b. Amendments to this Contract must be in writing and signed by both parties. **[For contracts approved by the City Council:** The City Manager is authorized to execute amendments to this Contract up to the amounts specified in Chapter 3.08 of the Orange Municipal Code.]

## **ARTICLE 18**

### **Notice**

Except as otherwise provided herein, all notices required under this Contract shall be in writing and delivered personally, by e-mail, or by first class mail, postage prepaid, to each party at the address listed below. Either party may change the notice address by notifying the other party in writing. Notices shall be deemed received upon receipt of same or within three (3) days of deposit in the U.S. Mail, whichever is earlier. Notices sent by e-mail shall be deemed received on the date of the e-mail transmission.

“CONTRACTOR”

“CITY”

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

City of Orange  
300 E. Chapman Avenue  
Orange, CA 92866-1591

Attn: \_\_\_\_\_

Attn: \_\_\_\_\_

Telephone:  
E-Mail:

Telephone:  
E-Mail:

#### **ARTICLE 19 Claim Resolution**

City and Contractor agree that the claim resolution process applicable to any claim by Contractor in connection with the Work provided herein shall be subject to the procedures set forth in California Public Contract Code Section 9204, attached hereto as Attachment No. 2, and incorporated herein by this reference.

#### **ARTICLE 20 Counterparts**

This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures transmitted via facsimile and electronic mail shall have the same effect as original signatures.

**[Remainder of page intentionally left blank; signatures on next page]**



**“CITY”**

CITY OF ORANGE, a municipal corporation

By: \_\_\_\_\_  
Mark A. Murphy  
Mayor of the City of Orange

CONTRACT, BONDS AND INSURANCE  
APPROVED BY:

ATTEST:

\_\_\_\_\_  
(Senior Assistant) City Attorney

\_\_\_\_\_  
Pamela Coleman, City Clerk

**“CONTRACTOR”**

***If a CORPORATION, insert full name of corporation:*** \_\_\_\_\_

***[Note: Signature of Chairman of the Board, President or Vice President is required]***

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

***[Note: Signature of Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer is also required]***

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

***If a GENERAL PARTNERSHIP, insert full name of partnership:***

***[Note: Signature of Managing General Partner is required]***

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

***If a LIMITED PARTNERSHIP, insert full name of partnership:***

***[Note: Signature of Managing General Partner is required]***

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

***If a LIMITED LIABILITY COMPANY,  
insert full name of company:***

***[Note: Signature of Managing Member  
or Person(s) Authorized to bind LLC is  
(are) required]***

\_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

***If a SOLE PROPRIETORSHIP, insert full name  
of owner and any fictitious business name:***

\_\_\_\_\_,  
doing business as \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## ATTACHMENT NO. 1

### CALIFORNIA LABOR CODE SECTIONS 1725.5, 1771, 1771.1, 1771.4, 1775, 1776, 1777.5, 1813 and 1815

#### **Section 1725.5. Registration of contractors; mandatory registration; qualifications and application; fees; exempt contractors**

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.

### **Section 1771. Payment of general prevailing rate**

Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

**Section 1771.1. Registration as a contractor or subcontractor required prior to bid submission; exceptions; violations; penalties**

(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.

#### **Section 1771.4. Additional requirements when bidding and awarding public works contracts**

(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.

### **Section 1775. Penalties for violations**

(a)(1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

(2)(A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

(B)(i) The penalty may not be less than forty dollars (\$40) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) The penalty may not be less than eighty dollars (\$80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

(C) If the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor



or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

(D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

(E) The difference between the 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 or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of this section and Sections 1771, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

**Section 1776. Payroll records; retention; inspection; redacted information; agencies entitled to receive nonredacted copies of certified records; noncompliance penalties; rules**

(a) Each contractor and subcontractor shall keep accurate 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 him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract and the Division of Labor Standards Enforcement of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.

(c) Unless required to be furnished directly to the Labor Commissioner in accordance with paragraph (3) of subdivision (a) of Section 1771.4, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

(f)(1) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number.

(2) An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subdivision.

(g) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(h) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100) 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, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(i) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(j) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

**Section 1777.5. Employment of registered apprentices; wages; standards; number; apprenticeable craft or trade; exemptions; contributions; compliance program**

(a)(1) This chapter does not prevent the employment upon public works of properly registered apprentices who are active participants in an approved apprenticeship program.

(2) For purposes of this chapter, “apprenticeship program” means a program under the jurisdiction of the California Apprenticeship Council established pursuant to Section 3070.

(b)(1) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(2) Unless otherwise provided by a collective bargaining agreement, when a contractor requests the dispatch of an apprentice pursuant to this section to perform work on a public works project and requires the apprentice to fill out an application or undergo testing, training, an examination, or other preemployment process as a condition of employment, the apprentice shall be paid for the time spent on the required preemployment activity, including travel time to and from the required activity, if any, at the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered. Unless otherwise provided by a collective bargaining agreement, a contractor is not required to compensate an apprentice for the time spent on preemployment activities if the apprentice is required to take a preemployment drug or alcohol test and he or she fails to pass that test.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written

apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

- (1) The apprenticeship standards and apprentice agreements under which he or she is training.
- (2) The rules and regulations of the California Apprenticeship Council.

(d) If the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Before commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body, if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program supplying apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates if the contractor agrees to be bound by those standards. However, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. When an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Administrator

of Apprenticeship, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section who has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or who has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Administrator of Apprenticeship may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association 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 is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(l) If an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m)(1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2)(A) At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Department of Industrial Relations for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The grant funds shall be distributed as follows:

(i) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(ii) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and county for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices from that county registered in each program.

(iii) All training contributions not distributed under clauses (i) and (ii) shall be used to defray the future expenses of the Department of Industrial Relations for the administration and enforcement of apprenticeship and preapprenticeship standards and requirements under this code.

(B) An apprenticeship program shall only be eligible to receive grant funds pursuant to this subdivision if the apprenticeship program agrees, prior to the receipt of any grant funds, to keep adequate records that document the expenditure of grant funds and to make all records available to the Department of Industrial Relations so that the Department of Industrial Relations is able to verify that grant funds were used solely for training apprentices. For purposes of this subparagraph, adequate records include, but are not limited to, invoices, receipts, and canceled checks that account for the expenditure of grant funds. This subparagraph shall not be deemed to require an apprenticeship program to provide the Department of Industrial Relations with more documentation than is necessary to verify the appropriate expenditure of grant funds made pursuant to this subdivision.

(C) The Department of Industrial Relations shall verify that grants made pursuant to this subdivision are used solely to fund training apprentices. If an apprenticeship program is unable to demonstrate how grant funds are expended or if an apprenticeship program is found to be using grant funds for purposes other than training apprentices, then the apprenticeship program shall not be eligible to receive any future grant pursuant to this subdivision and the Department of Industrial Relations may initiate the process to rescind the registration of the apprenticeship program.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Upon appropriation by the Legislature, all moneys in the Apprenticeship Training Contribution Fund shall be used for the purpose of carrying out this subdivision and to pay the expenses of the Department of Industrial Relations.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000).

(p) An awarding body that implements an approved labor compliance program in accordance with subdivision (b) of Section 1771.5 may, with the approval of the director, assist in the enforcement of this section under the terms and conditions prescribed by the director.

### **Section 1813. Forfeiture for violations; contract stipulation; report of violations**

The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty- five dollars (\$25) for each worker employed in the execution of

the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

### **Section 1815. Overtime**

Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 ½ times the basic rate of pay.

## ATTACHMENT NO. 2

### CALIFORNIA PUBLIC CONTRACT CODE SECTION 9204

#### **Section 9204. Legislative findings and declarations regarding timely and complete payment of contractors for public works projects; claims process (Eff: January 1, 2017)**

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

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

(c) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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



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

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

(vii) The High-Speed Rail Authority.

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

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

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

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

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

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

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

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

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

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

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

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

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

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

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

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

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

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

(i) This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

**CALIFORNIA PUBLIC WORKS  
PERFORMANCE BOND**

**TO WHOM IT MAY CONCERN:**

WE, \_\_\_\_\_ (CONTRACTOR) as Principal, and  
\_\_\_\_\_ (SURETY), a Corporation organized and existing under  
the laws of the State of \_\_\_\_\_ and authorized to transact business in the State of California, as  
Surety, are held and firmly bound unto the **CITY OF ORANGE**, hereinafter called the Obligee, in the sum of  
\_\_\_\_\_ for the payment as described herein, and we each of  
us bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by this  
Performance Bond.

**WHEREAS**, the Principal is required to furnish this Performance Bond to the Obligee, guaranteeing the faithful  
performance of a Contract to do and perform the following work:

**Bid No. 22-23.40 WELL MAINTENANCE AND REPAIRS**

a copy of which Contract is or may be attached hereto, and is hereby referred to and made a part hereof.

**THE CONDITION OF THE ABOVE OBLIGATION IS SUCH** that if the Principal shall well and truly  
perform the work contracted to be performed under said Contract, then this obligation is null and void. Otherwise  
this obligation shall remain in full force and effect. The Surety hereby stipulates and agrees that no change,  
extension of time, alteration or addition to the terms of the Contract, or the work to be performed thereunder, or  
the specifications accompanying the same shall otherwise affect the obligations on this Performance Bond, and it  
does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract  
or to the work or to the specifications.

**SIGNED AND SEALED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
**CONTRACTOR**

BY: \_\_\_\_\_  
**SECRETARY/TREASURER**

BY: \_\_\_\_\_  
**PRESIDENT/VICE PRESIDENT**

\_\_\_\_\_  
**NAME OF SURETY**

BY: \_\_\_\_\_  
**ATTORNEY-IN-FACT**

BY: \_\_\_\_\_  
**APPROVED AS TO FORM: CITY ATTORNEY**

**NOTARY ACKNOWLEDGEMENTS ATTACHED**

**CALIFORNIA PUBLIC WORKS  
PAYMENT BOND**  
*[Required for public works projects over \$25,000]*

**TO WHOM IT MAY CONCERN:**

**WE,** \_\_\_\_\_ (**CONTRACTOR**) as Principal, and \_\_\_\_\_ (**SURETY**), a Corporation organized and existing under the laws of the State of \_\_\_\_\_ and authorized to transact business in the State of California, as Surety, are held and firmly bound unto the **CITY OF ORANGE**, hereinafter called the Obligee, in the sum of \_\_\_\_\_ for the payment as described herein, and we each of us bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by this Payment Bond.

**WHEREAS**, the Principal is required to furnish this Payment Bond to the Obligee, guaranteeing the payment of claims of laborers, mechanics, material suppliers and any other persons, as provided by the law in connection with a Contract to do and perform the following work:

**Bid No. 22-23.40 WELL MAINTENANCE AND REPAIRS**

a copy of which Contract is or may be attached hereto, and is hereby referred to and made a part hereof.

**THE CONDITION OF THE ABOVE OBLIGATION IS SUCH** that if the Principal or its subcontractors, shall fail to pay any person named in California Civil Code § 9100, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any person named in Civil Code § 9100, or any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and its subcontractors pursuant to Unemployment Insurance Code § 13020, with respect to such work and labor, the Surety will pay for the same in an aggregate amount not exceeding the sum specified in this Payment Bond, and also, in case suit is brought upon this Payment Bond, a reasonable attorney’s fee, to be fixed by the court in accordance with Civil Code § 9564.

**THIS PAYMENT BOND** shall inure to the benefit of any person named in Civil Code § 9100 so as to give a right of action to such person or his/her assigns in any suit brought upon this Payment Bond.

**SIGNED AND SEALED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
**CONTRACTOR**

BY: \_\_\_\_\_  
**SECRETARY/TREASURER**

BY: \_\_\_\_\_  
**PRESIDENT/VICE PRESIDENT**

\_\_\_\_\_  
**NAME OF SURETY**

BY: \_\_\_\_\_  
**ATTORNEY-IN-FACT**

BY: \_\_\_\_\_  
**APPROVED AS TO FORM: CITY ATTORNEY**

CITY OF ORANGE  
Consultant Checklist

*Consultants must return the indicated documents to Public Works/Community Development for approval by the City.*

1. BONDS:

- Performance Bond in amount NOT less than 100% of contract.
- Payment Bond in amount NOT less than 100% of contract.

2. SIGNATURES: *(signatures on bond(s) must be original and notarized)*

- Corporation - Two signatures needed: (1) the Chairman of the Board, President or Vice President and (2) the Secretary, CFO, Treasurer, Assistant Secretary or Assistant Treasurer. If only one corporate officer exists or one corporate officer holds more than one corporate office, please so indicate.
- General Partner (for limited partnerships)
- All Partners (for general partnership)
- Individual (for sole owner)

Submit proof of **ALL** insurance(s). Final execution of the contract and commencement of work will not occur **UNTIL ALL DOCUMENTS** have been received by Public Works/Community Development and approved by the City Attorney.

3. INSURANCES: amount may change to suit circumstance - *(Consultant to initial change)*

- Workers Compensation
- Commercial general liability:
  - \$1 million per occurrence
  - \$\_\_\_\_\_ million per occurrence
- Automobile liability covering any auto, combined single limit of:
  - \$1 million per occurrence
  - \$\_\_\_\_\_ million per occurrence
- Professional liability (errors/omissions):
  - \$1 million per claim
  - \$\_\_\_\_\_ million per claim

Insurance certificates **MUST INCLUDE** the following provisions:

- 30-day prior written notice by mail in the event of expiration, termination or modification of any insurance coverage.
- All insurance shall be primary and not contributing to any other insurance.
- City will be named as additional insured under the commercial general liability and automobile liability policies and separate endorsements to that effect are provided.
- \_\_\_\_\_  
also to be named as insured or additional insured under all policies.
- All insurance maintained by Consultant shall be issued by companies admitted to conduct the pertinent line of insurance in the State of California and having a rating of Grade A or better and Class VII or better by the latest edition of Best Key Rating Guide.

RETURN CHECKLIST AND ALL REQUIRED DOCUMENTS TO PUBLIC WORKS/COMMUNITY DEVELOPMENT