



Date: XX/XX/XXXX

ATTN.: XXX
COMPANY NAME
ADDRESS
ADDRESS

Enclosed please find our Master Purchase Order (the “MPO”) for your company’s signature. The purpose of the MPO is twofold: (1) it places your company on our Approved Vendors List for all future work with Bay Cities Paving & Grading, Inc.; and (2) it will serve as the master agreement for all projects on which Bay Cities Paving & Grading, Inc. engages your company. Use of the MPO will diminish the administrative and legal burden of having both parties negotiate and execute a new, separate agreement for each project. A simple two-page Purchase Order form will be executed for each project on which Bay Cities Paving & Grading, Inc. engages your company.

Please note that we will not accept any changes to the terms and conditions contained in the MPO. Instead, any changes to the terms and conditions of the MPO can be accomplished through the Purchase Order Form on a project-by-project basis. If you have any requested revisions, please make them by adding comments to the appropriate sections of the MPO. Please keep in mind, we cannot always accommodate requests to change the terms and conditions of the MPO, even on a project basis. Please note also that your company cannot begin work on a Bay Cities Paving & Grading, Inc. project without an MPO executed by a duly authorized representative of your company and Bay Cities Paving & Grading, Inc.

EACH PERSON SIGNING THIS AGREEMENT HEREBY REPRESENTS AND WARRANTS THAT HE OR SHE IS THE DULY AUTHORIZED REPRESENTATIVE OF THE RESPECTIVE ENTITY DESIGNATED BELOW, AND IS FULLY EMPOWERED TO EXECUTE THIS AGREEMENT ON ITS BEHALF.

In order to expedite the contracting process, we further request that you do the following:

1. Please provide a Certificate of Insurance and Additional Insured Endorsement as stated in Section VII of the MPO, which should show coverage for “All California Operations” and/or “All Operations Under the Master Purchase Order” as dated.

Please return the signed original MPO and insurance certificate(s) to my attention as soon as possible, preferably via email at solgin@baycities.us

If you would like a copy of the fully executed MPO please provide your email address below:

_____.

We welcome the opportunity to include you on our Approved Vendors List and look forward to a successful business relationship. If you have any questions, please contact the undersigned. If you have any questions or concerns please contact Shawna Olgin at 510-772-1270.

Sincerely,
Bay Cities Paving & Grading, Inc.

Shawna Olgin
Contract & Risk Manager

HQ
1450 CIVIC CT. BLDG B #400
CONCORD, CA 94520

MAIL
PO BOX 6227
CONCORD CA, 94524-6227

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Master Purchase Order

This **Master Purchase Order** (the “Agreement”) is entered into this day 11th of November, 2024 (the “Effective Date”) by and between **Bay Cities Paving & Grading, Inc.** hereinafter called “Buyer”, whose address is 1450 Civic Court, Building B #400, Concord, CA 94520 and **XXXX**, hereinafter called “Vendor”, whose address is **XXXX**.

Buyer and Vendor enter into this Agreement with the intent and understanding that it will serve as a Master Purchase Order for all purchases and services for which Buyer engages Vendor. A Purchase Order form will be executed by both parties that will incorporate this Agreement by reference. The parties agree that this Agreement will govern all purchases and services for which a Purchase Order form is issued.

The Agreement consists of the Purchase Order Agreement, these General Terms and Conditions including the Prime Contract Documents. The Prime Contract Documents include, but are not limited to the specifications, plans and other relevant documents for the project, including the contract between Owner and Buyer and any other documents enumerated therein, (together referred to as the “Agreement”). In the event that Buyer's contract is with the direct contractor or a subcontractor, not Owner, then the term "Prime Contract" shall refer to and include not only all of documents comprising the agreement between the direct contractor and the Owner, as well as all of the documents comprising Buyer's own contract in connection with the Project.

NOW, THEREFORE, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, Buyer and Vendor agree as follows:

1. PRODUCTS, MATERIALS OR SERVICES TO BE PROVIDED. Vendor shall furnish the products, materials or services described in the Purchase Order at the price and quantity set forth opposite each item within the times stated. Unless otherwise provided in the Purchase Order form, Vendor agrees to obtain and pay for all permits and licenses made necessary by or related to the Purchase Order form, including DIR registration on State and local public works projects.

2. CHANGES AND RIGHT TO TERMINATE. Changes will be binding on Buyer only if in writing and signed by the Buyer.

(a) Buyer, for its convenience, may by written change order make any change, including, without limitation, additions or deductions in quantities ordered, changes in the specifications or drawings, changes in the time of delivery, or termination. Buyer may terminate or suspend at its convenience all or any portion of this order not shipped as of the date of termination or suspension of the order. In the event of any change or termination, there shall be an equitable price adjustment by Buyer. If Vendor maintains that Buyer's adjustment is not equitable, the price change shall be negotiated. In the event the parties cannot agree, the final determination shall be made in accordance with the dispute resolution provision of this Agreement. However, if unit prices have been designated as to materials maintained in the normal course of Vendor's business as standard stock, such unit prices shall control all price adjustments for quantity changes. No change or termination shall relieve Buyer or Vendor of any of its respective obligations as to any material shipped prior to Vendor's receipt of the change, termination or suspension order. Any claim for adjustment by Vendor hereunder must be asserted in writing within ten (10) days from the date the change or termination is ordered.



(b) If the Owner shall order the Buyer to change, adjust, substitute, add to, delete from, suspend, or terminate the work included in this order, Vendor shall comply with Owner's order and the price or time of performance hereunder shall be adjusted only as allowed by Owner.

(c) In the event of a termination for default, Buyer may, in addition to all other rights and remedies, purchase substitute items or services elsewhere and hold Vendor liable for any and all excess costs incurred, including attorney's, experts' and consultants' fees actually incurred, and other legal costs.

(d) In the event that any termination other than for convenience is later determined to have been without cause or improper, Vendor's sole remedy shall be to have the termination converted to a termination for convenience, and Vendor's recovery shall be limited in accordance with the terms of subparagraph (a).

3. DEFAULT. If Vendor fails to perform any of its obligations hereunder, Buyer shall be entitled to all remedies provided by law. If Vendor becomes insolvent or makes an assignment for the benefit of creditors, or files or becomes subject to receivership or reorganization or bankruptcy proceedings, or becomes involved in labor difficulties, which in Buyer's opinion threaten Vendor's ability to perform in a timely manner, Buyer may, in addition to any other rights or remedies it may have hereunder or at law, terminate the purchase order upon written notice to Vendor; such termination shall be deemed a termination for default. Buyer's failure to notify Vendor of a rejection of nonconforming materials or to specify with particularity any defect in nonconforming materials after rejection or acceptance thereof will not bar Buyer from pursuing any remedies for breach which it may otherwise have.

Upon the appointment of a receiver for Vendor or upon Vendor making an assignment for the benefit of creditors, or if Vendor seeks protection under the Bankruptcy Code or commits any other act of insolvency, Buyer may, absent any applicable legal limitation, terminate this Agreement upon giving forty-eight (48) hours written notice, by certified mail, to Vendor and its surety, if any. If an order for relief is entered under the Bankruptcy Code with respect to Vendor, Buyer may terminate this Agreement upon giving forty-eight (48) hours written notice, by certified mail, to Vendor, its trustee, and its surety, if any, unless Vendor, the surety, or the trustee:

- a. promptly cures all defaults;
- b. provides adequate assurance of future performance;
- c. compensates Buyer for actual pecuniary loss resulting from such defaults; and
- d. assumes the obligations of Vendor within statutory time limits.

If Vendor is not performing in accordance with the schedule of work at the time of entering an order for relief or at any subsequent time, Buyer, while awaiting the decision of Vendor or its trustee to reject or to accept this Agreement and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies as are reasonably necessary to maintain the schedule or work.

Buyer may offset against any sums due or to become due Vendor all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, reasonable overhead, profit and actual attorney's fees incurred as a



result of Vendor's non-performance. Vendor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance that otherwise might be owed to Vendor.

4. PAYMENT. The price specified in the Purchase Order shall, unless otherwise expressly excluded, include all taxes and duties of any kind levied by federal, state, municipal, or other governmental authorities, which either party is required to pay with respect to the production, sale, use or shipment of the materials covered by this agreement, all charges for packing, loading, unloading and shipping and services. Vendor further agrees to provide waivers and releases, as well as other evidence of payment to such persons, including without limitation, payroll affidavits, certified payroll or other documentation demonstrating that Vendor has paid for all labor, equipment, materials, services, or other charges in any way relating to this Agreement, including prevailing wage, if applicable. Vendor hereby agrees to indemnify, defend and hold harmless Buyer with respect to any and all liability arising out of or related to the payment of such taxes or duties. Vendor's invoice shall set forth the items delivered to the project site, the date of delivery, the unit cost and total costs of the items invoiced and services to be rendered. Provided all other conditions hereof have been satisfied, there are no grounds for withholding payment, Buyer, at its own election may exchange early payment for a two percent (2%) discount on amounts approved for billing. Should one or more contracts now or hereafter exist between the parties hereto concerning one or more construction projects, then a breach by Vendor of any contract may, at the option of the Buyer, be considered a breach of all contracts. In such event, Buyer may terminate any or all of the contracts so breached or may withhold monies due or to become due on such contracts and apply the monies withheld toward payment of any damages suffered on that or any other contract.

5. DELIVERY. Time is of the essence. Delivery shall be made FOB Jobsite. Title and risk of loss will transfer from Vendor to Buyer only after delivery has been made and a reasonable time for inspection allowed; unless Vendor is performing installation or services, in which case title and risk of loss will transfer following completion of installation and acceptance of installation or services by Buyer and Owner or Owner's representative, if required. If no delivery date is specified on the face of this order, all deliveries of materials shall conform to the date or dates specified orally or in writing from time to time by Buyer's representative. Should delivery for any reason fail to be timely, Vendor shall be liable for all damages suffered by Buyer as a result of such failure, including, without limitation, any liquidated damages provided for under the Prime Contract. In no event shall Vendor be entitled to an extension beyond that allowed to Buyer under the terms of the Prime Contract.

6. INSPECTION. Buyer shall have the right to inspect and test the products and materials at Vendor's plant any time prior to shipment, at no additional cost to Buyer, and to conduct additional acceptance inspections within a reasonable time after arrival at the job site. The making or failure to make any inspection of, or payment for or acceptance of, the materials or services shall not impair Buyer's right to later reject nonconforming materials or services, or to avail itself of any other remedy to which Buyer may be entitled, notwithstanding Buyer's knowledge of the nonconformity, its substantiality, or the ease of its discovery. Vendor shall be liable for all inspection, reshipment and return costs on nonconforming materials.

7. WARRANTIES. Vendor hereby represents and warrants to Buyer that the products, services and materials provided by Vendor shall be: (a) free from all material defects in workmanship, materials and design; (b) of merchantable quality and fit and appropriate for their intended purpose; (c) manufactured in accordance with the specifications contained in the Prime Contract, or submittals based on the specifications contained in the Prime Contract; provided however, that if Vendor submits something different from the Prime Contract specifications it



shall nonetheless still be responsible for any deviation from the original plans and specifications despite the approved submittal, unless clearly spelled out as follows: *“Please Note: This Submittal is a deviation from the original Plans and Specifications”* and approved by Owner in writing, and, (d) complete in all respects necessary to make them fully functional if installed in accordance with the contract documents, or the manufacturers recommendations, if no reference to the contract documents is required. All warranties implied by law and usage of trade are incorporated into this Agreement and shall apply to products, materials and services supplied by Vendor, including, but not limited to, the implied warranties of title and non-infringement. In the event that Vendor delivers any products, materials or performs any services that do not conform to the warranties contained herein, Vendor shall, at the sole discretion of Buyer, repair, replace or refund Buyer for such non-conforming products, materials or services, and reimburse Buyer for all associated and related costs incurred as a result of the repair or the replacement plus an additional fifteen percent (15%) of the sums incurred or paid by Buyer. Such warranties shall remain in effect until one (1) year following the Final Notice of Completion for the Project. Buyer's remedies pursuant to this paragraph are in addition to, and not a limitation on, all other remedies provided by law and equity.

8. INDEMNITY. With the exception that this Section 8 shall in no event be construed to require indemnification by Vendor to a greater extent than permitted under the public policy of the State of California, Vendor shall indemnify, protect, defend and save harmless Owner and Buyer, including their officers, agents, directors, partners, members, employees, affiliates, parents and subsidiaries, and each of them, of and from any and all claims, demands, causes of action, damages, costs, expenses, actual attorney's fees, losses or liabilities, in law or equity, of every kind and nature whatsoever, and/or actions, proceedings, or investigations by governmental authorities (“Claims”) arising out of or in connection with Vendor's operations to be performed under this Agreement, Vendor's alleged or actual actions or omissions, Vendor's completed work, and/or Vendor's presence at the Project site.

The indemnification provisions of this Agreement shall extend to Claims occurring after this Agreement is terminated or has been fully performed as well as while it is in force. Such indemnity provisions apply regardless of any active and/or passive negligent act or omission of Owner or Buyer or of any other person to be indemnified hereunder. To the extent that and only if Section 2782 of the California Civil Code applies to this Agreement, Vendor shall not be obligated under this Agreement to indemnify Owner or Buyer from Claims arising from the sole negligence or willful misconduct of Owner or Buyer or of any other person to be indemnified hereunder, or for defects in design furnished by such persons. If this Purchase Order is subject to the Section 2782.05 of the Civil Code, this Section 13.0 shall apply to the greatest extent permitted by law, but no greater, and Buyer shall be entitled to all of the rights and remedies available under Section 2782.05, by contract and/or under applicable law. The duty to defend shall apply, and Vendor shall be required to furnish a defense, notwithstanding that there has not yet been an adjudication or finding of liability on the part of Vendor or any person to be indemnified.

All work covered by this Agreement done at the site or in preparing or delivering materials or equipment, or any or all of them, to the site shall be at the risk of Vendor exclusively until the completed work is accepted by Buyer and Owner.

9. INSURANCE. Vendor acknowledges and agrees to maintain the following insurance coverage: (a) workers' compensation insurance as required by law if performing work on the project site ; (b) commercial general liability insurance covering bodily injury and property damages for \$1,000,000 per occurrence and \$2,000,000 general aggregate; (c) automobile liability covering owned, non-owned and hired coverage with limits of liability of not less



than \$1,000,000 per occurrence (Combined single limit for bodily injury and property damage), if performing work on the project site; and (d) other insurance coverage as required by law, required by Buyer, or pursuant to the Prime Contract. Buyer, its officers, directors and employees, and Owner, and Prime Contractor (if Buyer is a subcontractor on the Project) shall be named as additional insureds under the Commercial General Liability policy and Excess Liability policy and such insurance afforded the additional insureds shall apply as primary insurance. All insurance requirements are in the attached Exhibit A.

10. DISPUTE RESOLUTION. In the event of a dispute arising out of or related to this Agreement, such dispute shall be first attempted to be resolved through mediation. If mediation is unsuccessful, said dispute, at Buyer's discretion shall be brought to arbitration according to the AAA Construction Industry Arbitration Rules; or in a court of law in the Superior Court for the State of California, Contra Costa County, and Vendor expressly consents to the exclusive personal jurisdiction of such court. The prevailing party in any action shall be entitled to recover costs and reasonable attorneys' fees.

11. MISCELLANEOUS.

(a) INDEPENDENT CONTRACTORS. Buyer and Vendor are independent contractors and nothing in this Agreement shall be construed to mean or imply any other relationship, including an employment, agency, partnership or joint venture relationship.

(b) READY MIX CONCRETE. Section 1720.9 of the Labor Code (AB 219) requires that any person or entity that engages in "the hauling and delivery of ready-mixed concrete" must (1) comply with prevailing wage laws, including payment of prevailing wages and the submission of certified payroll reports; (2) register with the Department of Industrial Relations, even if the person or entity is not a licensed contractor; and (3) with the submission of certified payroll reports, provide a written time record that shall be certified by each driver. Vendor agrees strictly to comply with these requirements, and Vendor's failure to comply shall constitute a material breach. In particular, and without limitation, Vendor agrees to comply with Division 2, Part 7, Chapter 1 of the California Labor Code, Section 1720 et seq.

(c) CALIFORNIA LABOR CODE SECTION 218.7. Vendor shall defend, indemnify and hold harmless Buyer against any claims for unpaid wages, fringe or other benefit payments or contributions, including interest and penalties, by or on behalf of any employee or alleged employee of Vendor or of any sub-vendor of any tier. Vendor shall insert this provision into each of its sub-agreements.

(d) LABOR COMPLIANCE. Vendor acknowledges that it has conducted its own independent investigation of the wage rates to be paid and whether its performance will be subject to prevailing wage requirements or the requirements of the Davis-Bacon Act and that it has not relied upon any statements or representations by Buyer with respect to such matters. Vendor agrees that price to be paid under this Purchase Order shall be deemed to be full compensation for compliance with such laws, regulations, or requirements, including payment of all applicable wage rates, and that no additional compensation will be owed to Vendor in the event that Vendor is required thereunder to pay higher wages or incur additional costs that Vendor contends that it did not anticipate. If Vendor is subject to DIR Registration requirements, Vendor shall maintain its registration in full force and effect at all times.



Within three (3) days of Contractor's request, and regardless of whether a project is public or private, Vendor shall submit certified payroll records for itself and for any of its subcontractors, of any tier, as well as any additional documentation or information that may be needed to verify that Vendor and all of its subcontractors, regardless of tier, have paid all wages, benefits, contributions, apprenticeship council payments, and/or amounts owed to unions or trust funds. Vendor shall defend, hold harmless, and/or indemnify Contractor and its sureties from any claim arising from the actual or alleged failure of Vendor or any of its subcontractors, regardless of tier, to have paid all wages, benefits, contributions, apprenticeship council payments, and/or amounts owed to unions or trust funds. Vendor shall incorporate the foregoing requirements into all of its subagreements for the project and shall likewise require all lower tier subagreements to incorporate this requirement. Vendor further agrees to cooperate fully in any effort by Buyer to verify compliance with labor laws and regulations, including requirements under the Davis-Bacon Act or the California Labor Code. Such cooperation shall include, without limitation, furnishing copies and originals of records and providing access to employees or witnesses for interviews and statements. In addition to and without derogation of any other rights that Buyer may enjoy, Buyer may withhold sufficient funds to protect Buyer against any claims related to labor requirements, including without limitation, requirements under the Davis-Bacon Act or the California Labor Code.

On all projects subject to state or local prevailing wage requirements, Vendor shall comply with any applicable California prevailing wage laws. With respect to such projects, the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 are attached and incorporated. As a condition precedent to final payment on any public or private project, Vendor agrees to provide an affidavit signed under penalty of perjury that certifies that Vendor paid all wages, fringe or other benefit payments or contributions due to its employees or and to any labor trust fund. Vendor shall comply, and shall cause any of its subcontractors and independent contractors (regardless of tier) to comply, with all statutes, regulations, orders, court decisions, and other laws relating to classification of individuals as employees or independent contractors, including without limitation and as applicable, Labor Code Section 2775 et seq. (AB 5) and *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal. 5th 903 (2018).

If Vendor, or its subcontractors and independent contractors (regardless of tier), utilize subcontractors who are natural persons who are not compensated and otherwise treated as employees, Vendor shall ensure that any such person qualifies as an independent contractor and (i) is hired pursuant to a written contract; (ii) is licensed by the Contractors State License Board and performs work only within the scope of that license; (iii) has a business license and has registered for business taxes, if the person is domiciled in a jurisdiction that requires such a license and/or registration; (iv) maintains a business location that is separate from the company that has hired it; (v) has authority to hire and fire other persons who provide and/or assist in providing the services in question; (vi) has financial responsibility for errors and omissions in connection with the labor or services provided, as evidenced by insurance, indemnity obligations, bonds, and/or warranties; and (vii) is customarily engaged in an independently established business of the same nature as that involved with the work performed by such person.

Vendor shall fully document its compliance with applicable law relating to the classification of natural persons as independent contractors and shall cause its subcontractors and independent contractors (regardless of tier) to document their compliance. At Contractor's request, Vendor and its subcontractors and independent contractors (regardless of tier) shall execute and furnish written declarations under penalty of perjury, in a form satisfactory to Contractor, that establish their compliance with applicable laws, including without limitation, those relating to the classification of natural persons as independent contractors. Contractor shall be entitled to audit whether or not there



has been compliance by Vendor and its subcontractors and independent contractors (regardless of tier) with the requirements of this Purchase Order. Upon request, Vendor shall provide documentation demonstrating compliance with laws regarding the classification of individuals as independent contractors or employees, including without limitation, copies of payroll records and checks, as well as itemized statements furnished to employees in accordance with Labor Code Section 226.

(e) ASSIGNMENT. This Agreement and the performance obligations contained herein shall not be assigned by Vendor without the express written consent of Buyer, which consent Buyer may not unreasonably withhold. Any assignment in violation of this Section X is null and void. This Agreement shall inure to the benefit of any permitted assignees.

(f) CHOICE OF LAW. This Agreement and the rights of all parties hereunder, shall be construed under and governed by the laws of the State of California as such laws apply to contracts entered into and performed in the State of California by residents of the State of California. All rights, obligations and remedies contained in UCC Article 2 shall apply to and govern this Agreement without need for further reference.

(g) BOND. Vendor, upon request, shall furnish to Buyer a supply bond in amount, form and substance and with a surety or sureties satisfactory to Buyer. Buyer will pay the cost of such bond up to two percent (2%) of the total Agreement amount. Vendor's failure to furnish within three (3) days of demand such supply bond is a default under this Agreement.

(h) REMEDIES. The remedies contained in this Agreement and by law shall be cumulative. If Vendor fails to perform any of its obligations hereunder, Buyer shall be entitled to all remedies provided in law and in equity. If Vendor comes insolvent or makes an assignment for the benefit of creditors, or files or becomes subject to receivership or reorganization or bankruptcy proceedings, or becomes involved in labor difficulties, which in Buyer's opinion threaten Vendor's ability to perform in a timely manner, Buyer may, in addition to any other rights or remedies it may have hereunder or at law, terminate the purchase order upon written notice to Vendor; such termination shall be deemed a termination for default. Buyer's failure to notify Vendor of a rejection or nonconforming materials or services, or to specify with particularity any defect in nonconforming materials or services, after rejection or acceptance thereof will not bar Buyer from pursuing any remedies for breach of contract which it may otherwise have.

(i) SEVERABILITY. If any term or condition contained in this Agreement or any subsection hereof shall be deemed by a court of competent jurisdiction to be held illegal or unenforceable, such illegality or unenforceability shall not affect any other terms and conditions contained in this Agreement, and such illegal or unenforceable terms and conditions shall be interpreted so that it can be enforced to the greatest extent permitted by law or stricken from the Agreement without impacting the enforceability of any other terms and conditions contained herein.

(j) SURVIVAL. Whenever Buyer is not the ultimate consumer of the materials, all rights, benefits and remedies conferred upon Buyer hereunder shall accrue and be available to and are for the express benefit of any successors in interest to the products and materials, including the ultimate consumer of the materials. Sections I, VI, VII, IX and X shall survive the expiration or termination of this Agreement.



(k) COMPLETE AGREEMENT. This Agreement merges and integrates all other prior and contemporaneous discussions, inquiries, proposals and agreements, whether oral or written, concerning the subject matter of this Agreement and constitutes the entire agreement between the parties. Vendor's acceptance is expressly limited to the exact terms of this purchase order (Commercial Code Section 2207). This Agreement cannot be modified, changed or amended except in writing signed by the duly authorized representatives of Buyer and Vendor.

Vendor: _____ Buyer: Bay Cities Paving & Grading, Inc.

Signature: _____ Signature: _____

Name/Title: _____ Name/Title: Ben L. Rodriguez, Jr.
CEO/President

Date: _____ Date: _____

Address: _____ Address: 1450 Civic Court, Bldg B #400
Concord, CA 94520

DIR no.: _____ DIR no.: _____

License no.: _____ License #: 238650

Phone: _____ Phone: 925-687-6666

Fax: _____ Fax: 925-687-2122



Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) During the performance of this contract, the contractor agrees as follows:

(1) The contractor (Buyer) will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor (Buyer) will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action 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. The contractor (Buyer) agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor (Buyer) will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor (Buyer) will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's (Buyer's) legal duty to furnish information.

(4) The contractor (Buyer) will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor (Buyer) will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor (Buyer) will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's (Buyer's) non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and



remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor (Buyer) will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor (Buyer) will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, however, that in the event the contractor (Buyer) becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor (Buyer) may request the United States to enter into such litigation to protect the interests of the United States.

EXHIBIT B Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815

§ 1771. Requirement of prevailing local rate for work under contract 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.

§ 1775. Forfeiture for paying less than prevailing wage rates; Amount of penalty; Payments to workers; Liability of prime contractor; Notification of complaint

(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 Page 18 of 23 Current as of 11.2024 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.

§ 1776. Payroll record of wages paid; Inspection; Forms; Effect of noncompliance; Penalties

(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 the contractor or subcontractor 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 that person's 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 the employee's 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. Page 19 of 23 Current as of 11.2024 (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) (1) 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.

(2) Copies of electronic certified payroll records shall not satisfy payroll records requests made by Taft-Hartley trust funds and joint labor management committees. Any copy of records requested by, and made available for inspection by or furnished to, a Taft-Hartley trust fund or joint labor-management committee 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.

(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, the contractor or subcontractor 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 this to be inserted in the contract stipulations to effectuate Page 20 of 23 Current as of 11.2024 this section.



(j) The director shall adopt rules consistent with the California Public Records Act (Division 10 (commencing with Section 7920.000) 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.

§ 1777.5. Employment of apprentices on public works.

(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 Page 21 of 23 Current as of 11.2024 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 Page 22 of 23 Current as of 11.2024 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 Page 23 of 23 Current as of 11.2024 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.



§ 1813. Penalty when workman required to work excess hours; Stipulation in contract; Cognizance and report of violation.

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.

§ 1815. Work performed in excess of specified hour limitations; Compensation.

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 1½ times the basic rate of pay.