

CAMBRIA COMMUNITY SERVICES DISTRICT
SHORT FORM PUBLIC WORKS CONTRACT

ELECTRIC VEHICLE CHARGING STATON RELOCATION PROJECT

THIS AGREEMENT, made and entered into this _____ day of September, 2023, by and between the **CAMBRIA COMMUNITY SERVICES DISTRICT**, a special district, hereinafter designated District, party of the first part, and **THOMA ELECTRIC, INC.**, hereinafter designated as Contractor, party of the second part,

WITNESSETH: That the parties hereto do mutually agree as follows:

ARTICLE I. For and in consideration of the payments and agreements hereinafter mentioned to be made and performed by District, Contractor agrees with District to furnish all materials, equipment and labor and construct facilities for District, and to perform and complete in a good and workmanlike manner all the work pertaining thereto shown on the plans and described in the specifications hereto attached and as generally described hereinbelow (the “project” or “work”), and to furnish at his own proper cost and expense all tools, equipment, labor, and materials necessary therefore, except such materials as in the said specifications are stipulated to be furnished by District, and to do everything required by this Contract and the said specifications and plans, and the requirements of the Engineer under them, to wit:

PROJECT DESCRIPTION:

Contractor shall satisfactorily perform all services as described in Contractor’s proposal dated August 25, 2023, attached hereto as Exhibit “A” and incorporated herein by reference.

COMMENCEMENT OF WORK AND TIME LIMITS:

The Contractor shall commence Work on the Project as of the effective date of this agreement and shall diligently prosecute the completion of said Project. Prior to commencing work, Contractor shall sign and return a copy of this Contract and any document hereto; provide proof of insurance as required herein; and, meet and confer with the Utility Manager and wastewater plant staff at least one (1) day in advance. **ALL WORK MUST BE COMPLETED WITHIN 180 CALENDAR DAYS FROM ISSUANCE OF A NOTICE TO PROCEED BY THE DISTRICT**

PAYMENT SCHCEDULE:

District shall pay Contractor in accordance with the provisions of Exhibit A, in an amount not to exceed \$24,831.

A five percent (5%) retention shall be withheld from any partial payment requests.

This Contract is subject to the provisions of Article 1.7 (commencing at Section 20104.50) of Division 2, Part 3 of the Public Contract Code regarding prompt payment of contractors by local governments. Article 1.7 mandates certain procedures for the payment of undisputed and properly submitted payment requests within 30 days after receipt, for the review of payment requests, for notice to Contractor of improper payment requests, and provides for the payment of interest on progress payment requests which are not timely made in accordance with that Article. This Agreement hereby incorporates the provisions of Article 1.7 as though fully set forth herein.

ARTICLE II. For furnishing all said equipment, materials and labor, performing demolition as required, and doing all the work contemplated and embraced in this Contract; and for all loss and damage arising out of the nature of the work aforesaid, or from the action of the elements or from any unforeseen difficulties which may arise or be encountered in the prosecution of the work until its acceptance by District, and for all risks of every description connected with the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of work, except such as in the said specifications are expressly stipulated to be borne by District; and for well and faithfully completing the work and the whole thereof, in the manner shown and described in the said plans and specifications and in accordance with the requirements of the Utility Manager under them, District will pay and Contractor shall receive as full compensation therefore the amounts for such work as described above.

ARTICLE III. District hereby promises and agrees with said Contractor to employ, and does hereby employ, said Contractor to provide the materials and to do the work according to the terms and conditions herein contained and referred to, for the prices aforesaid, and hereby contracts to pay the same at the time, in the manner and upon the conditions set forth in the specifications; and the said parties for themselves, their heirs, executors, administrators, successors, and assigns, do hereby agree to full performance of the covenants herein contained.

ARTICLE IV. the following contract documents (if checked) are hereby incorporated in and made a part of this Contract as though set forth in full:

- 1. Statement of Prevailing Wages;
- 2. Bond for Faithful Performance;
- 3. Bond for Materials and Laborers;
- 4. Standard Specifications;
- 5. Special Provisions;
- 6. Construction Specifications and Standard Details;
Supplemental Conditions (See Exhibit _____)

ARTICLE V. If checked above, Contractor shall forthwith furnish in triplicate, a faithful performance bond in an amount equal to 100% of the contract price and a labor and materials bond in an amount equal to 100% of the contract price, both bonds to be written by a surety company acceptable to District and in the form prescribed by law.

ARTICLE VI. Materials: Should any of the materials or equipment prove defective or should the work prove defective due to faulty workmanship, material furnished or methods of installation, or should the work or any part thereof fail to operate properly as originally intended and in accordance with the drawings, typical details, and specifications, due to any of the above causes, all within twelve (12) months after date on which the work called for in this Contract is accepted by District, the undersigned agrees to reimburse District, upon demand, for its expenses incurred in restoring said work to the condition contemplated in said project, including the cost of any such equipment or materials replaced and the cost of removing and replacing any work necessary to make such replacement or repairs, or, upon demand by District, to replace any such materials

and to repair said work completely without cost to District so that said work will function successfully as originally contemplated.

District shall have the unqualified option to make any needed replacement or repairs itself or to have such replacements or repairs done by the undersigned. In the event District elects to have said work performed by the undersigned, the undersigned agrees that the repairs shall be made and such materials as are necessary shall be furnished and installed within a reasonable time after the receipt of demand from District. If the undersigned shall fail or refuse to comply with his obligations under this guaranty, District shall be entitled to all costs and expenses, including attorney's fees, reasonably incurred by reason of the said failure or refusal.

ARTICLE VII. If Contractor should be adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he or any of his subcontractors should persistently violate any of the provisions of the Contract, or if he should disregard laws, ordinances or the instructions of the Engineer, then District may, upon certificate of the Engineer when sufficient cause exists to justify such action, serve written notice upon Contractor and his surety (if applicable) of its intention to terminate the Contract, such notice to contain the reasons for such intention to terminate the Contract, and unless, within five (5) days after the serving of such notice, such violations shall cease and satisfactory arrangements for correction thereof be made, the Contract shall, upon the expiration of said five (5) days, cease and terminate.

In the event of any such termination, District shall immediately serve written notice thereof upon the surety (if applicable) and Contractor, and the surety shall have the right to take over and perform the Contract, provided, however, that if the surety, within ten (10) days after the serving upon it of notice of termination, does not give District written notice of its intention to take over and perform the Contract or does not commence performance thereof within the ten (10) days stated above from the date of the serving of such notice, District may take over the work and prosecute the same to completion by Contract or by any other method it may deem advisable, for the account and at the expense of Contractor, and Contractor and his surety shall be liable to District for any excess cost occasioned District thereby, and in such event District may, without liability for so doing, take possession of and utilize in completing the work such materials, appliances, plans and other property belonging to Contractor as may be on the site of the work and necessary therefore. In such case Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Contract price shall exceed the expenses of finishing the work, including compensation for additional managerial and administration services, such excess shall be paid Contractor. If such expense shall exceed such unpaid balance, Contractor shall pay the difference to District. The expense incurred by District, as herein provided, and damage incurred through Contractor's default, shall be certified by the Utility Manager.

ARTICLE VIII. The Contractor shall indemnify, defend, and hold harmless the District, and its officers, officials, employees and agents, from and against any and all claims asserted, liability, loss, damage, expense, costs (including without limitation costs and fee of litigation) of every nature arising of, directly or indirectly, or in connection with this Contract or the acts or omissions of Contractor, Contractor's Subcontractors, employees, representatives, agents and invitees including, but not limited to, performance of the work hereunder or failure to comply with any of the obligations contained herein, except such loss or damage which was caused by the established proven sole negligence or willful misconduct of District, its officers, officials,

employees and agents. Said indemnification and hold harmless provisions shall be in full force and effect regardless of whether or not there shall be insurance policies covering and applicable to such liability, loss, damage, expense or cost.

The Contractor agrees that the use of any and all public streets and improvements which are part of or subject to this Contract shall be at all times, prior to the final acceptance by the District, the sole and exclusive risk of the Contractor. The Contractor further specifically agrees that he shall indemnify and hold District free of any liability for any accident, loss, or damage to the work, which is the subject of this Contract prior to its completion and acceptance by the District.

ARTICLE IX. Reserved.

ARTICLE X. It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the bid or proposal (if one) therefore, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said bid or proposal conflicting herewith.

ARTICLE XI. Time is of the essence of this contract and failure to comply with this provision shall be a material breach of this contract.

ARTICLE XII. If any part of this contract is held invalid by a court of competent jurisdiction, the balance shall retain its full force and effect.

ARTICLE XIII. Maintenance of required insurance coverage is a material element of this contract and failure to maintain or renew coverage or to provide evidence of renewal shall be a material breach of this contract. Contractor shall execute and provide the attached Certificate of Workers Compensation Insurance.

ARTICLE XIV. Additional Provisions Required by Law. Each and every provision of law and clause required by law to be inserted in this Contract, including but not limited to the following statutorily required provisions, shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

The following statutorily required provisions hereby apply to this contract:

Record Audit. In accordance with Government Code, Section 8546.7, records of both the City and the Contractor shall be subject to examination and audit by the Auditor General for a period of three (3) years after final payment.

Retention of Securities. Public Contract Code Section 22300 permits the substitution of securities for any monies withheld by a public agency to ensure performance under a contract, at the request and expense of the Contractor.

Claims. In accordance with the requirements of Public Contract Code Section 9204(e), a copy of Public Contract Code Section 9204 is attached hereto and made a part hereof.

IN WITNESS WHEREOF: The parties hereto have caused this Contract to be executed the day and year first above written.

**CAMBRIA COMMUNITY SERVICES
DISTRICT**

THOMA ELECTRIC, INC.

MATTHEW MCELHENIE, General Manager

By: _____

ATTEST:

Its: _____

Date: _____

HALEY DODSON,
Confidential Administrative Assistant

APPROVED AS TO FORM:

TIMOTHY J. CARMEL, District Counsel

STATEMENT OF PREVAILING WAGES

In accordance with California Labor Code Section 1725.5, Contractors and Subcontractors (as defined by California Labor Code Section 1722.1) bidding on or engaging in the performance of any Public Works contracts in California shall be registered with the Department of Industrial Relation.

In accordance with California Labor Code Section 1770 and 1773, the District has determined that prevailing wage rates apply to this project. Copies of the prevailing rates of per diem wages applicable to this Contract are available from the California Division of Labor Statistics and Research at <https://www.dir.ca.gov/Public-Works/Prevailing-Wage.html> or 455 Golden Gate Ave. 9th Floor, San Francisco, CA 94102. Any employee whose type of work is not covered by any of the classified wage rates shall be paid not less than the rate of wage listed for the classification which most nearly corresponds to the type of work performed.

Pursuant to California Labor Code Section 1775, the Contractor shall forfeit no more than \$200 per calendar day, or portion of a day, for each worker paid less than the prevailing rates for such work or craft, and the penalty shall be imposed and distributed pursuant to Section 1775.

The following Labor Code sections are hereby referenced and made a part of this Agreement:

1. Section 1775 - Penalty for Failure to Comply with Prevailing Wage Rates.
2. Section 1777.5 - Apprenticeship Requirements.
3. Section 1813 - Penalty for Failure to Pay Overtime.
4. Sections 1810 and 1811 - Working Hour Restrictions.
5. Section 1776 - Payroll Records.
6. Section 1773.8 - Travel and Subsistence Pay.

The District will not recognize any claims for additional compensation because of the payment of the wages set forth in the Contract.

In accordance with the requirements of Labor Code Section 1771.4(a)(1), this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations

In accordance with the provisions of the California Labor Code, contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.17 of the California Labor Code. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid or may have been paid to a debarred subcontractor by a contractor on the Project shall be returned to the Agency. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

-- END OF STATEMENT OF PREVAILING WAGES --

STANDARD SPECIFICATIONS

A. General: The work embraced herein shall be done in accordance with the applicable provisions of the most recently issued California Building Code, "Green Book" Standard Specifications for Public Works Construction, hereinafter referred to as Standard Specifications, the District's Standard Plans, hereinafter referred to as "Standard Plans", insofar as the same may apply, and in accordance with the following Standard Provisions.

The following provisions are hereby added to the Standard Specifications:

- i. Section 5 – Utilities, subpart 5-1: All potholes must be filled in the same day, unless otherwise allowed by the Utility Manager. Surrounding areas shall be restored to their original condition.

B. Definition of Terms: Whenever the following terms are used in the Standard Specifications, they shall be understood to mean the following:

"Owner" or "Agency":	Cambria Community Services District
"Board":	Cambria Community Services District Board of Directors
"Defective Work":	The term "defective work" shall include work that does not conform to the contract specifications.
"Utility Manager"	The Utility Manager, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties entrusted to them.

Other terms appearing in the Standard Specifications shall be given the intent and meaning specified therein.

C. Description of the Work: The work shall consist of furnishing and supplying labor, materials, tools, equipment, transportation, and services necessary to complete the subject project as described in the project plans.

D. Control of Work: The Utility Manager shall decide all questions, which may arise as to quality of work, acceptability of materials, and conduct of the work, including, but not limited to, coordination and changes in plans, superintendence of work, control of equipment, and inspection of work. Any person employed who is found by any District representative to be incompetent, intemperate, troublesome, disorderly, or otherwise objectionable or who fails or refuses to perform work properly and acceptably, shall be immediately removed from the Project upon request, by the Contractor, and shall not again be employed on the Project.

E. Construction Schedule: The contractor shall provide the Utility Manager with a detailed schedule outlining the procedure and approved by the Utility Manager prior to performing any work other than preliminary matters such as ordering materials and setting up staging areas. Extensions of the contract period due to delays that do not affect the critical path will not be allowed, if the delay can be accommodated within available float time.

F. Guaranty: The Contractor shall guarantee all materials, equipment furnished, and work performed for a period of one (1) year from the date of final completion. The Contractor warrants

and guarantees for a period of one (1) year from the date of final acceptance of the system that the completed system is free from all defects due to faulty materials or workmanship and the Contractor shall promptly make such corrections as may be necessary by reasons of such defects including the repairs of any damages to other parts of the system resulting from such defects. The District will give notice of observed defects with reasonable promptness. In the event that the Contractor fails to make such repairs, adjustments, or other work that may be necessary by such defects the District may do so and charge the Contractor the cost thereby incurred, as well as an administrative fee of an additional twenty 20% of the cost thereby incurred by the District.

G. Contract Changes: When changes in work are required or initiated by the Contractor or the Cambria Community Services District, the procedures in Section 3 of the Standard Specifications shall govern.

H. Existing Utilities: The Contractor shall be responsible for contacting all utility companies and/or utility districts as to location and/or relocation of existing utilities prior to construction. The Contractor shall contact Underground Service Alert [USA], telephone 1-800-642-2444, a minimum of ten (10) days prior to any excavation. The District assumes no responsibility for the completeness or accuracy of the delineation of any underground utilities, or the existence of other buried objects or utilities which are not shown on the Plans. The Contractor is solely responsible for any damage to underground or above ground utilities, which may be incurred as a result of any work performed by him under this Contract, regardless of the fact that the utilities' existence was known or unknown.

I. Prosecution, Progress and Acceptance of the Work: The Contractor's prosecution, progress and acceptance of the work shall be in accordance with Section 6 of the Standard Specifications and these Special Provisions.

J. Traffic, Access and Signage: Traffic control, if any, shall be in accordance with Section 7-10 of the Standard Specifications. The Contractor shall furnish, place and maintain such devices necessary to provide safe passage for the traveling public through the construction sites, as well as for the safeguard of workers. The Contractor shall furnish, place and maintain such devices in accordance with the most recent "California Manual on Uniform Traffic Control Devices" published by the State of California, Department of Transportation (Caltrans). The provisions shall not relieve the Contractor from the responsibility to provide such additional devices as are necessary for public safety. The Contractor shall furnish, place, maintain and remove all signage needed for maintaining public safety and controlling traffic.

K. Insurance Requirements and Indemnification:

i. General: The Contractor shall procure and maintain for the duration of the 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, by the Contractor, his agents, representatives, employees or Subcontractors.

ii. Minimum Scope of Insurance: Coverage shall be at least as broad as:

- a. ISO CGL coverage ("Occurrence," Form CG-0001).
- b. ISO CGL Endorsement Form (ISO CG 20 10 11 85).
- c. ISO Form No. CA-0001 (ED. 1/78), covering Automobile Liability, Code 1, "Any Auto," and endorsement CA-0025.

- d. Worker's Compensation Insurance as required by the State of California;
- e. Course of Construction insurance covering for all risks of loss.

iii. Minimum Limits of Insurance: The Contractor shall maintain limits no less than:

General Liability: \$1,000,000 combined single limit 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;

Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and

Worker's Compensation: As required by the State of California.

iv. Other Insurance Provisions: The policies are to contain, or to be endorsed to contain, the following provisions:

GENERAL LIABILITY AND AUTOMOBILE LIABILITY COVERAGE:

- a. The District, its officials, employees, agents and volunteers; are to be covered as insured as respects liability arising out of activities performed by or on behalf of the Contractor, including but not limited to blanket contractual liability, broad form property damage, explosion, collapse and underground hazard coverage, products and completed operations of the Contractor, or premises owned, leased or used by the Contractor, or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the District, its officials, employees or volunteers, and shall protect them from claims for personal injury, death or property damage suffered by third persons or by officers, agents and employees of Contractor and arising out of or in connection with the work which is the subject of this Contract.
- b. The Contractor's insurance coverage shall be primary insurance as respects the District, its officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the District, its officials, employees, agents or volunteers; shall be in excess of the Contractor's insurance, and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the District, its officials, employees, agents or volunteers.
- d. Coverage shall state that the Contractor's insurance shall apply separately to each insured against who claim is made or suit is brought, except with respect to the limits of the insurer's liability.

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY COVERAGE:

- a. The insurer shall agree to waive all rights of subrogation against the District, its officials, employees, agents, and volunteers for losses arising from work performed by the Contractor for the District.

ALL COVERAGE:

- a. Each insurance policy required by this Section shall be in effect on the date the work is commenced and shall expire no sooner than one (1) year after the date on which the work is accepted by the District. Each insurance policy required by this Section shall be endorsed using ISO Form (CG 20 10 11 85) to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days prior written notice by Certified Mail, Return Receipt Requested has been given to the District.
- b. Insurance is to be placed with insurers with a Best Rating of no less than A-V and who are admitted to write policies in the State of California and contribute to the state guaranty fund.
- c. Contractors shall furnish the District with certificates of insurance and with original endorsements affecting coverage required by this Section (actual policy). The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by the District and are to be received and approved in writing by the District before work commences. The District reserves the right to require complete, certified copies of all insurance policies, including endorsements affecting the coverage required by these Special Provisions at any time.
- d. The Contractor shall include all Subcontractors as named insured under his policies, or shall furnish separate certificates and endorsements for each Subcontractor. All coverage for Subcontractors shall be subject to all of the requirements stated herein.
- e. The Contractor shall indemnify, defend, and hold harmless the District, and its officers, officials, employees and agents, from and against any and all claims asserted, liability, loss, damage, expense, costs (including without limitation costs and fee of litigation) of every nature arising of, directly or indirectly, or in connection with this Contract or the acts or omissions of Contractor, contractor's subcontractors, employees, representatives, agents and invitees including, but not limited to, performance of the work hereunder or failure to comply with any of the obligations contained herein, except such loss or damage which was caused by the established active negligence of District or the established sole negligence or willful misconduct of District, its officers, officials, employees and agents. Said indemnification and hold harmless provisions shall be in full force and effect regardless of whether or not there

shall be insurance policies covering and applicable to such liability, loss, damage, expense or cost. The Contractor agrees that the use of any and all public streets and improvements which are part of or subject to this Contract shall be at all times, prior to the final acceptance by the District, the sole and exclusive risk of the Contractor. The Contractor further specifically agrees that he shall indemnify and hold the District free of any liability for any accident, loss, or damage to the work, which is the subject of this Contract prior to its completion and acceptance by the District.

L. Non-Discrimination: While this Contract is in effect, the Contractor shall comply with all provisions of the California Labor Code Section 1735, as amended, regarding non-discrimination practices and equal employment opportunity.

M. Permits and Taxes: Unless otherwise provided in Contract documents, the Contractor shall obtain, and pay for, all construction permits, licenses or other permits necessary to complete the project and shall be responsible for all governmental charges, inspection fees, utility connection charges, and sales and use taxes.

N. Notices: Any notices from one party to the other with respect to this Contract shall be mailed, faxed, e-mailed, or delivered as shown on the signature block on the Contract.

O. Effectiveness: This Contract shall be effective only when signed by both parties to the Contract.

P. Waiver: The waiver of any breach of any condition, covenant, term, or provision of this Contract by any party to this Contract shall not be deemed to be a waiver of any preceding or subsequent breach under the Contract, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

Q. Authorizations: All officers and individuals executing, this and other documents on behalf of the respective parties do hereby certify and warrant that they have the capacity and have been duly authorized to so execute said documents on behalf of the entity so indicated. Each signatory shall also indemnify the other party to this Contract, and hold them harmless, from any and all damages, costs, attorneys' fees, and other expenses, if the signatory is not so authorized.

R. Severability: If any term, provision, covenant, or condition of this Contract shall be or become illegal, invalid, null, void, unenforceable, or against public policy, in whole or in part, or shall be held by any court of competent jurisdiction to be illegal, invalid, null, or void, or against public policy, the term, provision, covenant, or condition shall be deemed severable, and the remaining provisions of this Contract shall remain in full force and effect and shall not be affected, impaired, or invalidated. The term, provision, covenant, or condition that is so invalidated, voided, or held to be unenforceable shall be modified or changed by the Parties to the extent possible to carry out the intentions and directives set forth in this Contract.

S. Entire Agreement: This Contract constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the Contract and supersedes all prior and contemporaneous agreements, promises, representations, warranties, understandings, or undertakings by either of the Parties, either oral or written, of any character or nature. No party has been induced to enter into this Contract by, nor is any party relying on, any representation or warranty outside those expressly set forth in this Contract.

T. Attorney's Fees. In any litigation, arbitration, or other proceeding in law or equity by which one party to the Contract seeks to enforce its contract rights under the Contract, to resolve an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Contract, to seek a declaration of any rights or obligations under this Contract, or to interpret the provisions of this Contract, the prevailing party shall be entitled to recover from the losing party actual attorneys' fees incurred to resolve the dispute and to enforce the final judgment, award, decision, or order and such fees, costs; or expenses shall be in addition to any other relief to which the prevailing party may be entitled.

-- END OF STANDARD SPECIFICATIONS --

CALIFORNIA PUBLIC CONTRACT CODE – PCC § 9204

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

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

(c) For purposes of this section:

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

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

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

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

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

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

(B) “Public entity” shall not include the following:

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

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

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

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

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

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

(vii) The High-Speed Rail Authority.

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

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

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

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

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

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

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

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and

made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

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

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

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

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

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

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

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

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

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

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

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

-- END CALIFORNIA PUBLIC CONTRACT CODE – PCC § 9204 --

Exhibit "A" Contractor's Proposal