

Labor Commissioner, State of California
Department of Industrial Relations
Division of Labor Standards Enforcement
Bureau of Field Enforcement- Public Works
TEL: (562) 522-1707

Gavin Newsom, Governor



DATE:
November 9, 2021

In Reply Refer to Case No:
40-69561-621

CIVIL WAGE AND PENALTY ASSESSMENT

Awarding Body CITY OF HIGHLAND	Work Performed in County of SAN BERNARDINO	
Project Name HILLVIEW NEIGHBORHOOD STREET & STORM DRAIN IMPROVEMENTS, PHASE I	Project No. Bid No. 2018-10	DIR Project ID No. 272862
Prime Contractor GARRETT J GENTRY GENERAL ENGINEERING INCORPORATED	CSLB License No. 991354	Contractor Registration (PWC) No. 1000045135
Subcontractor(s) 0	CSLB License No.	Contractor Registration (PWC) No.
Second or Third-tier Subcontractor, if applicable	CSLB License No.	Contractor Registration (PWC) No.

After an investigation concerning the payment of wages to workers employed in the execution of the contract for the above-named public works project, compliance with the apprenticeship standards found in Labor Code section 1777.5, or compliance with the registration requirements set forth in Labor Code section 1725.5, the Labor Commissioner has determined that violations of the California Labor Code have been committed by the contractor and/or subcontractor(s) identified above. In accordance with Labor Code section 1741, the Labor Commissioner hereby issues this Civil Wage and Penalty Assessment.

TOTAL ASSESSMENT:	<u>\$168,013.04</u>
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The nature of the violations of the Labor Code and the basis for the assessment are as follows:

Wage Violations: Violation of Labor Code Sections 1771, 1774: Failure to pay required wage to all workers; Failure to pay all employer payments as reported; penalties are assessed at \$60 per day, representing a reduction from \$200 per day; Violations of Section 1815: Failure to pay Overtime for work performed in excess of 8 hours per day and 40 hours per week.

The attached Audit Summary further details the basis for this Assessment and itemizes the calculation of wages and penalties due under Labor Code sections 1775 and 1813, if applicable.

The Labor Commissioner has determined the total amount of wages due is: \$63,633.04

The Labor Commissioner has determined the amount of penalties assessed under Labor Code section 1775 is: \$75,420.00

The Labor Commissioner has determined the amount of penalties assessed under Labor Code section 1813 is: \$18,100.00

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STATE LABOR COMMISSIONER

By

Michael Gautier

Deputy Labor Commissioner

Apprenticeship Violations: Violation of Labor Code Section 1777.5: Failure to submit contract award information
for all crafts as required ; penalties are assessed at \$30 per day representing a reduction from \$100 per day.

The Labor Commissioner has determined the amount of
penalties assessed under Labor Code section 1777.7 is:

\$10,860.00

Labor Code Section 1776 Violations:

The Labor Commissioner has determined the amount of penalties assessed under Labor Code section 1776(h) against
is: \$0.00

Public Works Contractor Registration Violations:

The Labor Commissioner has determined the amount of penalties assessed under Labor Code section 1771.1 against

General contractor is: \$0.00

Subcontractor is: \$0.00

Second-tier subcontractor is: \$0.00

Third-tier subcontractor, if applicable is: \$0.00

Please refer to page 6 for specific withholding obligations pertaining to these amounts.

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Notice of Right to Obtain Review - Formal Hearing

In accordance with Labor Code section 1742, an affected contractor or subcontractor may obtain review of this Civil Wage and Penalty Assessment by transmitting a written request to the office of the Labor Commissioner that appears below within 60 days after service of the assessment.

To obtain a hearing, a written Request for Review must be transmitted to the following address:

Labor Commissioner - State of California
Civil Wage and Penalty Assessment Review Office
PO Box 32889
Long Beach, CA 90832

A Request for Review either shall clearly identify the Civil Wage and Penalty Assessment from which review is sought, including the date of the assessment, or it shall include a copy of the assessment as an attachment, and shall also set forth the basis upon which the assessment is being contested. In accordance with Labor Code section 1742, the contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Commissioner at the hearing within 20 days of the Labor Commissioner's receipt of the written Request for Review.

Failure by a contractor or subcontractor to submit a timely Request for Review will result in a final order which shall be binding on the contractor and subcontractor, and which shall also be binding, with respect to the amount due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. Labor Code section 1743.

In accordance with Labor Code section 1742(d), a certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the State against the person assessed in the amount shown on the certified order.

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Payment of Civil Wage and Penalty Assessment

Payment of the assessed wages and/or penalties, including interest on all due and unpaid wages pursuant to Labor Code section 1741(b), must be made by check or money order payable to the Division of Labor Standards Enforcement and mailed to the following address along with a copy of this Civil Wage and Penalty Assessment:

State of California - Department of Industrial Relations
Division of Labor Standards Enforcement - Cashiering Unit
2031 Howe Avenue, Suite 100
Sacramento, CA 95825-0196

Opportunity for Settlement Meeting

In accordance with Labor Code section 1742.1(c), the Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of this Civil Wage and Penalty Assessment, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking a hearing as set forth under the heading Notice of Right to Obtain Review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. This opportunity to timely request an informal settlement meeting is in addition to the right to obtain a formal hearing, and a settlement meeting may be requested even if a written Request for Review has already been made.

Requesting a settlement meeting, however, does not extend the 60-day period during which a formal hearing may be requested.

A written request to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding this assessment must be transmitted to Michael Gautier at the following address:

State of California - Department of Industrial Relations
Division of Labor Standards Enforcement - Public Works Unit
464 W Fourth Street, Room 348
San Bernardino, CA 92401

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Liquidated Damages

In accordance with Labor Code section 1742.1(a), after 60 days following the service of this Civil Wage and Penalty Assessment, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages in an amount equal to the wages, or portion that still remain unpaid. If the assessment subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid.

Notwithstanding the above, in accordance with Labor Code section 1742.1(b), there shall be no liability for liquidated damages if the full amount of the assessment or notice, including penalties, has been deposited with the Department of Industrial Relations, within 60 days following service of the Assessment or Notice, for the Department to hold in escrow pending administrative and judicial review. The Department shall release such funds, plus any interest earned, at the conclusion of all administrative and judicial review to the persons and entities who are found to be entitled to such funds.

The full amount of the assessment that should be deposited is:

\$168,013.04

Deposits must be made by check or money order payable to the Department of Industrial Relations with a cover letter and a copy of the Civil Wage and Penalty Assessment and mailed to:

Department of Industrial Relations
Attention Cashiering Unit
P.O. Box 420603
San Francisco, CA 94142

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Statutory Withholding Obligations

1. Awarding Body Withholding Obligations

In accordance with Labor Code section 1727(a), before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom all amounts required to satisfy this Civil Wage and Penalty Assessment. The amount required to satisfy this Civil Wage and Penalty Assessment shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

The amount which must be withheld and retained by the awarding body pursuant to this Civil Wage and Penalty Assessment is:

Wages Due:	\$63,633.04
Training Funds Due:	\$0.00
Penalties Due Under Labor Code section 1775:	\$75,420.00
Penalties Due Under Labor Code section 1813:	\$18,100.00
Penalties Due Under Labor Code section 1777.7:	\$10,860.00
Penalties Due Under Labor Code section 1776(h):	\$0.00
Penalties Due Under Labor Code section 1771.1:	\$0.00
Total Withholding Amount:	\$168,013.04

2. Prime Contractor Withholding Obligations:

In accordance with Labor Code section 1727(b), if the awarding body has not retained sufficient money under the contract to satisfy this Civil Wage and Penalty Assessment based on a subcontractor's violations, the contractor shall, upon the request of the Labor Commissioner, withhold sufficient money due the subcontractor under the contract to satisfy the assessment and transfer the money to the awarding body. This amount shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

☒ If this box is checked, the Labor Commissioner hereby requests that the prime contractor withhold the following amount from money due the subcontractor and transfer the money to the awarding body to satisfy this assessment:

Wages Due:	\$63,633.04
Training Funds Due:	\$0.00
Penalties Due Under Labor Code section 1775:	\$75,420.00
Penalties Due Under Labor Code section 1813:	\$18,100.00
Penalties Due Under Labor Code section 1777.7:	\$10,860.00
Penalties Due Under Labor Code section 1776(h):	\$0.00
Penalties Due Under Labor Code section 1771.1:	\$0.00
Total Withholding Amount:	\$168,013.04

Distribution:
Awarding Body
Surety(s) on Bond
Prime Contractor
Subcontractor(s)