



# SUBCONTRACT (CA)

(Long Form Subcontract Between General Contractor & Subcontractor)

This Subcontract is entered into on Subcontract Date Here at Escondido, California by and between **JR FILANC CONSTRUCTION COMPANY, INC.** (“Contractor”), with its principal office at 740 North Andreason Drive, Escondido, CA 92029 and the following subcontractor (“Subcontractor”):

**SUBCONTRACTOR NAME HERE**

**SUBCONTRACT NO. Enter SC # Here**

Subcontractor Address #1

Subcontractor Address #2

Subcontractor Phone

Contractor has entered into a contract (“Contract”) with the following Owner (“Owner”):

Owner Name

Owner Address #1

Owner Address #2

To perform certain construction work, (“The Project”) as defined in the Subcontract Documents, at the project location known as:

Project Name Here FCC Project # XXXXX

Project Address #1 Here

Project Address #2 Here

Contractor desires to subcontract some of the Project work, as defined in Exhibit “B”, to the Subcontractor per the terms and conditions and for compensation to be calculated as described in this Subcontract. A brief description of the scope of work of this Subcontract is as follows:

Enter a brief Description of the Subcontracted Work Here

**NOTE:** This Subcontract is based on the Associated General Contractors, San Diego Standard Form Subcontract. With permission, Contractor has modified this document to fit its business and project needs and subcontracting policies. Subcontractor should read the entire document. This Subcontract has important legal and insurance consequences. Consultation with an attorney and insurance consultant is encouraged prior to its execution.

No handwritten, or typewritten modifications made to this document after its first printing by Contractor shall be considered valid or accepted unless the initials of both the Contractor and Subcontractor signing parties are affixed on the margin near to the modification(s).

# SUBCONTRACT

## TABLE OF ARTICLES

ARTICLE 1	SUBCONTRACT PRICE
ARTICLE 2	SUBCONTRACT DOCUMENTS
ARTICLE 3	SCOPE OF SUBCONTRACT WORK
ARTICLE 4	SURETY BONDING
ARTICLE 5	PERFORMANCE OF WORK
ARTICLE 6	SUBCONTRACT INTERPRETATION
ARTICLE 7	CONTRACTOR'S OBLIGATIONS
ARTICLE 8	SUBCONTRACTOR'S OBLIGATIONS
ARTICLE 9	LABOR RELATIONS
ARTICLE 10	INSURANCE
ARTICLE 11	INDEMNIFICATION
ARTICLE 12	CHANGES
ARTICLE 13	DELAYS
ARTICLE 14	CLAIMS
ARTICLE 15	DISPUTE RESOLUTION
ARTICLE 16	PAYMENT
ARTICLE 17	RECOURSE BY CONTRACTOR
ARTICLE 18	TERMINATION
ARTICLE 19	SUSPENSION OF WORK
ARTICLE 20	ASSIGNMENT OF SUBCONTRACT
ARTICLE 21	GENERAL PROVISIONS

## ATTACHMENTS TO THIS SUBCONTRACT

EXHIBIT A	SUBCONTRACT DOCUMENTS
EXHIBIT B	SUBCONTRACTOR SCOPE OF WORK.
EXHIBIT C	TEMPORARY FACILITIES
EXHIBIT D	SAFETY PROCEDURES
EXHIBIT E	INSURANCE REQUIREMENTS
EXHIBIT F	FILANC BILLING REQUIREMENTS
EXHIBIT G	LABOR REQUIREMENTS
FEDERAL EXHIBIT FAR FLOW DOWN CLAUSES (FEDERAL SUBCONTRACTS ONLY)	

The titles given to the Articles and paragraphs of this Subcontract are for ease of reference only and shall not be relied upon or cited for any other purpose. All attachments to this Subcontract are incorporated herein by their reference.

**ARTICLE 1  
SUBCONTRACT PRICE**

1.1 As full compensation for satisfactory performance of the Subcontract, Contractor agrees to pay Subcontractor **the firm fixed-price** of **Enter Fixed Price Here** Dollars (\$\_\_\_\_\_), subject to all provisions of the Subcontract including additions and deductions as provided for in the Subcontract.

**ARTICLE 2  
SUBCONTRACT DOCUMENTS**

2.1 The Subcontract Documents consist of the following:

See **Exhibit “A”** – Subcontract Documents

2.2 Subcontractor certifies and agrees that it has visited the location of the job site and is fully familiar with all of the terms, conditions and obligations of the Subcontract Documents, and the conditions under which the work is to be performed, and that it enters into this Subcontract based upon its investigation of all such matters and is in no way relying upon any opinions or representations of Contractor. It is further agreed that the Contract is incorporated into this Subcontract with the same force and effect as if it was set forth in full, and that Subcontractor is bound to Contractor in the same manner and to the same extent that Contractor is bound to Owner by all terms of the Contract as they relate in any way, directly or indirectly, to the work covered by this Subcontract, and Subcontractor shall ensure that its subcontractors are likewise bound to such terms of the Contract.

2.3 Upon written request by Subcontractor, Contractor shall provide to Subcontractor one copy of all portions of the Contract in the Contractor’s possession, from which Contractor may redact information Contractor deems confidential including pricing. Upon written request by its subcontractors and suppliers, Subcontractor similarly shall make one copy of applicable portions of the Subcontract Documents available to its subcontractors and suppliers.

2.4 Nothing in the Subcontract shall be construed to create a contractual relationship between persons or entities other than Contractor and Subcontractor.

**ARTICLE 3  
SCOPE OF SUBCONTRACT WORK**

3.1 Independent Contractor – Subcontractor shall provide all labor, materials, equipment and services necessary or incidental to perform its work as an “independent contractor,” in accordance with the Subcontract Documents.

3.2 Subcontract Work – Subcontractor shall perform the following scope of work:

See **Exhibit “B”** – Subcontractor Scope of Work

3.3 Temporary Services – Contractor will provide to Subcontractor the following temporary services at the project site during the performance of this Subcontract at no charge to Subcontractor:

See **Exhibit “C”** – Temporary Facilities

Subcontractor will provide, at its own expense, all other necessary temporary services for the completion of its work.

#### **ARTICLE 4 SURETY BONDING**

4.1 Copy of Contractor Bonds – Subcontractor is entitled to receive from Contractor, upon written request, copies of any payment and performance bonds furnished by Contractor for the project.

4.2 Subcontractor Bonds – Subcontractor surety bond requirements, if any, are as follows:

Subcontractor Performance and Payment Bond

Required       Not Required       To Be Determined Before Work Start

4.2.1 Upon Contractor’s request prior to the start of Subcontractor’s work, Subcontractor shall provide to Contractor documentation demonstrating the financial health and related project experience of the Subcontractor, including recent financial statements and other documentation to allow Contractor to decide whether or not bonds will be required of the Subcontractor. If the Subcontractor refuses to cooperate with such reasonable requests, then Contractor shall have the right to require performance and payment bonds as described in this Section and the premiums for such bonds are to be deemed included in the Subcontract Price.

4.2.2 If a performance or payment bond, or both, are required of Subcontractor, such bonds shall name Contractor as Obligee, (and others as Co-Obligee if required in the contract documents) be in the full amount of the Subcontract Price, and shall be in a form and by a surety acceptable to Contractor. If the premiums for such bonds are notably and expressly excluded from the Subcontract Price, then Contractor shall reimburse Subcontractor for the cost of such premiums, without markup.

4.2.3 In the event Subcontractor shall fail to provide any required bonds within 10 days of Contractor’s written notification to do so, Contractor may terminate this Subcontract for cause. All costs and expenses incurred by Contractor as a result of such a termination shall be paid by Subcontractor in accordance with the termination for cause article of the Subcontract.

4.2.4 No change, directive, clarification or communication regarding this Subcontract, whether made in the manner specified in the Subcontract or not, shall release or exonerate, in whole or in part, any surety on any bond given in connection with this Subcontract and neither Owner nor Contractor shall be under any obligation to notify the surety or sureties of any change, directive, clarification or communication with Subcontractor.

## ARTICLE 5 PERFORMANCE OF WORK

5.1 Schedule of Work – Subcontractor shall provide its work within the time allocated in the progress schedule (“Schedule”) which shall be prepared by the Contractor and which may be modified or revised from time to time by Contractor to coordinate and sequence the remaining work. The Subcontractor shall cooperate with the Contractor throughout the project sequence and plan for the Subcontractor’s work however, the duration of time established for Subcontractor’s work may not be lengthened without the mutual consent of the Contractor and the Subcontractor. At the request of the Contractor, the Subcontractor shall provide a proposed schedule for its work in P6 or other electronic CPM format.

5.1.1 Subcontract Start Work Date – Subcontractor shall start its work within 48 hours of being notified by Contractor that its work shall commence. If Subcontractor starts work prior to the execution of this Subcontract, all terms and conditions of this Subcontract shall apply to such work retroactively.

5.1.2 Subcontractor shall prepare and obtain approval as required by the Contract for all shop drawings, details, samples; shall perform any required Subcontractor testing; and do all other things necessary and incidental to the prosecution of the Subcontract in order to comply with the progress schedule. Subcontractor shall coordinate the work covered by this Subcontract with Contractor and all other subcontractors with whom Subcontractor must interface for the proper completion of Subcontractor’s work in accordance with the Schedule.

5.1.3 Contractor shall have the right to determine and, if necessary, change the time, order and priority in which the various portions of the work shall be performed and all other matters relative to the orderly performance of Subcontractor’s work in accordance with the Schedule. Subcontractor shall be reasonably notified of all subsequent changes and additional details to the progress schedule. Both Contractor and Subcontractor shall be bound by the updated progress schedule.

5.1.4 If in the reasonable opinion of the Contractor, Subcontractor fails or will fail to maintain progress of its work according to the progress schedule, Contractor may demand and Subcontractor shall increase crew sizes, work overtime, and take other measures as necessary to maintain the progress required by the progress schedule at no additional cost to Contractor. Failure by the Subcontractor to recover such progress shall be grounds for default under this Agreement.

5.1.5 If Subcontractor is delayed in the performance of its work, through actions or inactions of Contractor, Owner, Engineer, or other Subcontractor, the sole remedy for such delay shall be an extension of time to complete the work for the amount of time that the Subcontractor was delayed. Subcontractor shall not be entitled to damages, costs, expenses or additional compensation related to or as a consequence of such delays, unless Contractor recovers such compensation from the Owner or other party on Subcontractor’s behalf.

5.2 Subcontract Performance – Subcontractor shall use its best care, skill and diligence in supervising, directing and performing its work. Subcontractor shall have responsibility and control over the performance of its work, including the construction methods, techniques, means and sequences for coordinating and completing the various portions of its work.

5.3 Use of Contractor’s Equipment – Subcontractor, its agents, employees, subcontractors or suppliers shall use Contractor's equipment only with the express written permission of Contractor's designated

representative and in accordance with Contractor's terms and conditions for such use. If Subcontractor uses any such Equipment or temporary facilities, (with or without express written permission) it assumes all risk of damage, injury or loss and shall fully defend and indemnify Contractor from any and all claims of such damage, injury or loss regardless of cause.

5.4 Time is of The Essence – Time is of the essence for both parties in performing this Subcontract, and they mutually agree to ensure the performance of their respective work and the work of their subcontractors and suppliers so that the entire project may be completed in accordance with the Contract and the updated progress schedule.

## ARTICLE 6 SUBCONTRACT INTERPRETATION

6.1 Inconsistencies and Omissions – Subcontractor shall promptly and carefully review all of the Subcontract Documents, including any modifications or updates to the Subcontract documents issued throughout the project. Should inconsistencies, errors or omissions appear in the Contract, it shall be the duty of Subcontractor to so notify Contractor in writing within the earlier of three (3) working days of Subcontractor's discovery, or at least one (1) business day prior to the time required of Contractor under the Contract. Upon receipt of such notice, Contractor shall inform Subcontractor as to the measures to be taken and Subcontractor shall comply with Contractor's instructions. If Subcontractor performs work that it knows or should know is contrary to any applicable laws, statutes, ordinances, building codes, rules or regulations without notice to Contractor and advance approval by appropriate authorities, including Contractor, then Subcontractor shall assume full responsibility for such work and shall bear all associated costs, charges, fees and expenses necessarily incurred to remedy the violation(s).

6.2 Disputes Over Responsibility For Performance – Subcontractor agrees that in the event a dispute should occur between Subcontractor and another subcontractor or Contractor as to who has the responsibility to perform a particular item of work or repair damage to any particular item of work, the determination of such responsibility to perform the work shall be made by Contractor.

6.3 Law and Effect – The Subcontract shall be governed by the law of the State in which the project is located.

6.4 Severability and Waiver – The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision. The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of the Subcontract, or to exercise any right provided to it, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

6.5 Recoverable Fees and Costs – In any dispute or proceeding arising from or related to the Subcontract, or to recover on a surety bond or insurance policy furnished by Subcontractor, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, charges, and expenses (including expert fees and testing) expended or incurred.

6.6 Titles – The titles given to the Articles and paragraphs of the Subcontract, and the order of their placement, are for ease of reference only and shall not be relied upon or cited for any other purpose.

6.7 Entire Agreement – The Subcontract is solely for the benefit of the signatories and represents the entire and integrated agreement between the parties and, unless specifically stated otherwise, supersedes all prior negotiations, representations, proposals, quotes or agreements, either written or oral.

6.8 Waiver of Any Breach – Waiver of any breach, alleged breach, provision, covenant or condition of the Subcontract by Contractor shall not be construed as a waiver of the same or any other provision of the Subcontract on any other occasion, nor shall such waiver serve as an estoppel of any other right Contractor may have. Should any provision in the Subcontract, or its attachments, be held or declared void or invalid, all other provisions shall remain in full force and effect.

## ARTICLE 7 CONTRACTOR'S OBLIGATIONS

7.1 Authorized Representative – Contractor shall designate one or more persons who shall be Contractor's authorized representative(s) on-site and off-site. Such authorized representative(s) shall be the only person(s) Subcontractor shall look to for instructions, orders and/or directions, except in an emergency.

7.2 Timely Communications – Contractor shall, with reasonable promptness, transmit to the appropriate parties all submittals, transmittals and written approvals relating to Subcontractor's work. Communications by and with Subcontractor's subcontractors and suppliers shall be through Subcontractor.

7.3 Owner Ability to Pay – Subcontractor shall have the right to review with Contractor all information that Contractor has obtained relative to Owner's financial ability to pay for the Contract work.

## ARTICLE 8 SUBCONTRACTOR'S OBLIGATIONS

8.1 Responsibilities – Subcontractor shall furnish and pay for all labor, materials, equipment, service permits, taxes, licenses and fees necessary or incidental to perform its work as described in Exhibit B. If requested at any time by Contractor, Subcontractor shall provide to Contractor a list of its proposed subcontractors and suppliers.

8.2 Compliance with Laws, Rules, Ordinances and Regulations – Subcontractor shall, at its sole cost and expense, and without increase in the Subcontract Price, comply with all laws, statutes, ordinances, rules, regulations, building codes, erosion control plans, air quality management plans, storm water pollution prevention plans, recycling plans; and orders and directives of all public authorities including federal, state and local governments, and all utility services and other agencies having jurisdiction over the work or project, and all noise ordinances or limitations imposed by municipalities or Owner, pay all manufacturers' taxes, sales taxes, use taxes, and all federal and state taxes, insurance and contribution for Social Security and unemployment which are measured by wages, salaries or other remunerations paid to Subcontractor's employees, whether levied under existing or subsequently enacted laws, rules or regulations.

8.2.1 Subcontractor shall give adequate notices to all required parties pertaining to Subcontractor's work and secure and pay for all permits, fees, licenses, assessments, and inspections necessary to complete its work in accordance with the Subcontract Documents.

8.2.2 Subcontractor shall be compensated for additional costs resulting from laws, ordinances, rules, regulations and taxes enacted after the date of the Contract only to the extent such additional costs are paid to Contractor by Owner.

### 8.3 Site Visitation and Proceeding with Work

8.3.1 Subcontractor acknowledges that it has visited the project site and visually inspected the general and local conditions which could affect its work. Any failure of Subcontractor to ascertain, from a visual inspection of the site, the general and local conditions which could affect its work will not relieve Subcontractor from its responsibility to properly complete its work without change in the Subcontract Price.

8.3.2 By signing this Subcontract, Subcontractor represents and warrants that it does not know of nor does it suspect any design errors or omissions in the Subcontract Documents and that it does not know of nor does it suspect any site conditions that would cause delays in Subcontractor's performance of its work or that would cause an increase in the Subcontract price or duration of Subcontract work.

8.3.3 Before starting each portion of its work, Subcontractor shall carefully study and compare the various Subcontract Documents and other documents relative to that portion of its work, shall take field measurements of any existing conditions related to that portion of its work and shall observe any conditions at the site affecting it. Any errors, inconsistencies or omissions discovered or suspected by subcontractor shall be reported promptly in writing to Contractor as a request for information in such form as Contractor or Owner may require

8.3.4 If part of Subcontractor's work depends for proper execution or results upon construction or operations by Owner, Contractor or a separate subcontractor, Subcontractor shall, prior to proceeding with that portion of its work, promptly report in writing to Contractor any apparent or expected discrepancies or defects in such other construction or operations that would render it unsuitable for the proper execution and required results of Subcontractor's work. Failure of Subcontractor to provide this report shall constitute an acknowledgment that such others' completed or partially completed construction or operations are fit to receive Subcontractor's work.

8.4 Shop Drawings, Samples, Product Data and Manufacturers' Literature – Subcontractor shall promptly submit to Contractor for approval all shop drawings, samples, product data, manufacturers' literature and similar submittals ("Submittals") required by the Contract. Subcontractor shall be responsible to Contractor for the accuracy and conformity of its submittals to the Contract requirements. Subcontractor shall prepare and deliver its submittals to Contractor in a manner consistent with the progress schedule and in such time and sequence so as not to delay Contractor or others in the performance of the Contract work, or fifteen (15) working days prior to when Contractor must provide Submittals to Owner as defined on the Project Schedule, whichever is earlier. The approval of any Subcontractor Submittal shall not be deemed to authorize deviations, substitutions or changes in the requirements of the Subcontract Documents unless express written approval is obtained from Contractor and Owner authorizing such deviation, substitution or change. In the event the Contract does not contain submittal requirements pertaining to Subcontractor's work, Subcontractor agrees upon request to submit to Contractor for approval within 5 days any Submittal as may reasonably be requested. Quantity of Submittals required are two more than is required by the Contract, and in the format(s) as required by the Contract.

8.4.1 Contractor, Owner and Engineer are entitled to rely on the accuracy and completeness of any professional certifications required by the Subcontract Documents concerning the performance criteria of systems, equipment or materials, including all calculations and any governing performance requirements.

8.5 Coordination and Cooperation – Subcontractor shall:

- (a) cooperate with Contractor and all others whose work may interface with Subcontractor's work;
- (b) specifically note and immediately notify Contractor of any interference with Subcontractor's work; and
- (c) participate in the preparation of coordination drawings and work schedules involving Subcontractor's work.

8.6 Authorized Representative – Subcontractor shall designate in writing one or more competent contractor-approved persons who shall be the authorized Subcontractor representative(s) on-site and off-site. Such authorized representative(s) shall be the only person(s) to whom Contractor shall issue instructions, orders or directions, except in an emergency.

8.7 Communications – Subcontractor communications by and with Owner, Engineer, separate contractors and/or other subcontractors and suppliers of Contractor, regardless of tier, shall be through Contractor. No party, other than Contractor as provided herein, including Owner and Engineer shall be authorized to direct, change or modify any requirement of the Subcontract Documents. If Subcontractor receives such direction from any party other than Contractor, it shall immediately confer with the Contractor for clarification in writing.

8.8 Tests, Inspections and Approvals – Subcontractor shall coordinate and notify Contractor of all required tests, inspections and approvals of Subcontractor's work so as not to delay the performance of the work. Subcontractor shall schedule and provide proper written notice to all required parties of such tests, inspections and approvals.

8.9 Workmanship – Every part of Subcontractor's work shall be executed in accordance with the Subcontract Documents in the best and most workmanlike manner. All materials needed by Subcontractor shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the work and shall be new except such materials as may be expressly provided in the Subcontract Documents to be otherwise.

8.10 Materials or Equipment Furnished by Others – In the event the scope of Subcontractor's work includes installation of materials or equipment furnished by others, it shall be the responsibility of Subcontractor to inventory, examine, store, protect and install the items, with such skill and care as to ensure a satisfactory and proper installation. Subcontractor shall promptly notify Contractor in writing of any defective materials or equipment.

8.11 Substitutions – No substitutions shall be made by Subcontractor unless permitted in the Subcontract Documents and only then upon Subcontractor first receiving all approvals required under the Subcontract Documents for substitutions. If Subcontractor initiates a substitution, deviation or change in the work which

affects the scope of the work or the expense of other trades, Subcontractor shall be liable for all resulting expenses.

8.12 Warranty – Subcontractor warrants all materials and workmanship and agrees to replace at its sole cost and expense, and to the satisfaction of Owner and Contractor, any materials or workmanship that are defective, non-conforming or improperly installed, and defends and indemnifies Contractor from and against any liability, loss or damage arising from or relating to such materials and installation through the period of Subcontractor's performance and for a period of one year from final completion of the Contract. If the period of warranty is specified in excess of one year by the Contract, Subcontractor shall be bound for the longer period specified. As a convenience for the Contractor and the Owner, Subcontractor shall execute a separate written warranty in a form acceptable to the Owner and Contractor reciting the terms of this warranty requirement. In the event of a conflict between this paragraph and any separately executed written warranty, the strictest interpretation in favor of the Contractor and Owner shall prevail.

8.13 Uncovering of Work – If required in writing by Contractor, Subcontractor must uncover any portion of its work which has been covered. All costs associated with the uncovering and related work shall be borne as follows:

- (a) If the work was covered in violation of the Subcontract Documents or contrary to a written directive issued to Subcontractor by Contractor, the uncovering, any corrective work and restoration shall be at Subcontractor's expense.
- (b) If the work was not covered in violation of the Subcontract Documents or contrary to a written directive issued to Subcontractor by Contractor, the Subcontract shall be adjusted by change order for all costs of uncovering and restoring any work which proves to be installed in accordance with the Subcontract Documents.
- (c) If any uncovered work does not comply with the Subcontract Documents and Subcontractor is responsible for the nonconforming condition, Subcontractor shall be responsible for all costs of uncovering, correcting and restoring the work so as to make it conform to the Subcontract Documents.

8.14 Correction of Work – Subcontractor is required to correct within 3 days of notice any of its work rejected by Contractor or Owner for failing to comply with the Subcontract Documents whether observed prior to the commencement of the warranty period(s) or during the warranty period(s). Subcontractor shall correct at its own cost and bear the expense of additional services for any nonconforming work for which it is responsible and shall remain responsible even after the warranty period for fraud, misrepresentation or latent defects.

8.15 Cleanup – Subcontractor shall follow Contractor's cleanup directions, and:

- (a) at all times keep the building and premises free from debris resulting from Subcontractor's work;
- (b) broom or rake clean each work area prior to discontinuing work in each area; and

- (c) Subcontractor's work shall not be considered complete until Subcontractor removes from the site all temporary structures, debris and waste incident to its operation and cleans all surfaces, fixtures, equipment, etc., relative to the performance of its work.

If Subcontractor fails to immediately commence compliance with the above cleanup duties after written notification from Contractor of noncompliance, Contractor may implement appropriate cleanup measures without further notice and deduct the resulting costs from any amounts due or to become due Subcontractor under the Subcontract.

#### 8.16 Safety

See **Exhibit "D"** – Safety Procedures

8.17 Delegation or Subcontracting of Duties – Subcontractor is prohibited from delegating, transferring, conveying, subcontracting, relinquishing or otherwise disposing of the whole or any part of its duties under this Subcontract without the prior written approval of Contractor, which shall not be unreasonably withheld. Prior to commencement of any delegated work, Subcontractor shall inform contractor in writing of any proposed subcontractor to whom such work will be delegated, and Contractor shall inform Subcontractor within three (3) working days of any objection.

Subcontractor shall incorporate all terms of this Subcontract in any subcontracts or purchase orders with its subcontractors and suppliers.

8.18 Duty to Proceed – In the event of any dispute or controversy with Contractor, another subcontractor or other third party involved with the project, Subcontractor shall not cause or permit any delay or cessation of its work or cause delay or disruption to the work of any other subcontractor or Contractor on the project, but shall proceed with performance of its work pending resolution of such dispute or controversy. Contractor shall continue to make payments in accordance with the Subcontract.

8.19 Force Account Work – When directed in writing by Contractor, Subcontractor shall perform such additional work as directed by Contractor and Contractor shall pay to Subcontractor the actual costs of such directed work plus Subcontractor's overhead and profit at a combined rate specified in the Contract documents, which shall not exceed 15%.

8.20 Workers – Contractor may order the removal from the job of any workers the Contractor finds disruptive, incompetent, in violation of safety requirements/programs or otherwise detrimental to the successful completion of the project.

8.21 Contractor Expending Money – Whenever any money is expended or costs or expenses are incurred by Contractor on behalf of or on account of Subcontractor, which amounts Subcontractor should have paid, and for which amounts Subcontractor is required to reimburse Contractor, or if Contractor continues or completes the work after default by Subcontractor, Subcontractor shall pay to Contractor interest at the rate of 10% per annum from the time said money is expended or said costs or expenses are incurred until those amounts are repaid to Contractor by Subcontractor. Nothing contained in this provision or Subcontract shall be construed as requiring Contractor to make any such expenditure, advance any such money, or incur any such expenses. In the event that the balance of the monies due pursuant to this Subcontract are insufficient to

cover Contractor's damages or exposure, then Contractor shall have the right to offset against monies owed Subcontractor on other projects, if any.

8.22 Protection of the Work – Subcontractor shall secure and protect the work done pursuant to this Subcontract until final acceptance by Contractor and Owner.

8.23 Subcontractor Daily Report – Subcontractor shall prepare each day that it works on the project site a subcontractor daily report that records a) the number of Subcontractor employees, by trade classification and hours worked; b) a listing of all sub-subcontractors that worked on the project during the day, and a description of the work performed; c) any material or equipment deliveries to the site; d) a record of work accomplished by area of the project; e) a listing of any safety concerns observed, or accidents or incidents that occurred during the day; f) a listing of any issues that are interfering with the Subcontractor's performance of the work; g) any other data requested by the Superintendent. The subcontractor daily report must be completed and submitted to the Contractor's superintendent on the next workday. It is preferred that the subcontractor daily reports are submitted in electronic form, by e-mail or upload to the project's project management system.

8.24 Prohibited Jobsite Materials – At no time, shall the Subcontractor allow on the project site any alcohol, illegal drugs, drug paraphernalia, weapons, pornography, gambling materials, or other items not required for the proper performance of the work.

8.25 Prohibited Jobsite Activities – At no time, shall the Subcontractor allow any behavior by any of its employees, sub subcontractors, or vendors which is detrimental to the progress of the work and/or offensive to others including, gambling, cat calling, name calling, lewd gestures, hazing, teasing, harassment, or any other such disruptive behavior. This policy is to ensure maximum efficiency of the work and to protect other jobsite workers as well as third parties such as neighbors, and passers-by from unwanted harassment.

8.26 Initial Subcontract Compliance Items – Immediately upon the execution of this Subcontract Agreement Subcontractor shall submit to the Contractor the following initial subcontract compliance items. Contractor's receipt and acceptance of these items is a prerequisite to the Subcontractor's performance of work at the jobsite and its right to be paid for any work performed under this Subcontract:

- a. A copy of this executed Subcontract Agreement
- b. A copy of the subcontractor's current contractor's license status (CSLB Web Page Status is OK)
- c. The Performance and Payment Bond, if required in Article 4.2
- d. Certificate(s) of Insurance and all required endorsements evidencing Subcontractor's compliance with the insurance requirements included in Article 10 and Exhibit "E".
- e. It's proposed Schedule of Values described in Article 16.1 and Exhibit "F"

8.27 Procore Requirements - Procore is a cloud-based construction management software, and serves as a centralized hub, housing all project information for every team member. The Subcontractor shall utilize Procore's project management and collaboration system to access all project documentation. Subcontractor shall have responsibility to regularly check and review updated documents as they are added including, but not limited to, all schedule updates, three-week look ahead schedules and meeting minutes. Subcontractor shall promptly notify Contractor of any discovered discrepancies. Subcontractor shall set-up credentials, complete applicable role- based training course(s) and obtain certification(s). It is recommended that Subcontractor download Procore's free mobile application to utilize on any web-based connected mobile device or tablet. Failure by Subcontractor to stay informed and up to date on project updates, via Procore,

will not relieve Subcontractor from its responsibilities under this Agreement and the Contract Documents. Contractor shall not be responsible for Subcontractor's negligence. If required by Contractor, Subcontractor shall prepare and submit various items through Procore, including but not limited to RFIs, CCOs, submittals, and other communications. All of Contractor's Procore data, technical information, documents and other records remain the exclusive property of Contractor. Subcontractor shall not use the data nor download information for any use other than the furtherance of the legitimate needs of the project.

## ARTICLE 9 LABOR RELATIONS

9.1 General Provisions – Employment of labor by Subcontractor shall be affected under conditions which are satisfactory to Contractor. Subcontractor shall keep a representative at the job site during all times when Subcontractor's work is in progress, and such representative shall be authorized to represent Subcontractor as to all phases of the work. Prior to commencement of the work, Subcontractor shall notify Contractor in writing who Subcontractor's representative is to be, and in the event of any change of representative Subcontractor shall notify Contractor who the new representative is to be prior to such change becoming effective.

9.1.1 Subcontractor acknowledges that Contractor has entered into labor agreements with certain labor unions covering work at its construction job sites in certain counties as follows:

	CA <u>San Diego</u>	CA <u>11 S Counties</u>	CA <u>46 Northern</u>	AZ <u>All</u>
• Carpenters	X	X	X	X
• Millwrights	X	X	X	X
• Laborers	X	X	X	
• Cement Finishers		X		

If requested by Subcontractor, Contractor shall provide copies of all such labor agreements to Subcontractor. Subcontractor agrees to comply with all of the terms and conditions of those labor agreements set forth above. Subcontractor agrees, at its own expense, upon request of Contractor, to take all lawful steps to secure a binding and final determination of any jurisdictional dispute by the National Labor Relations Board.

9.1.2 Subcontractor will require all of its subcontractors and their subcontractors performing job site work to comply with the labor agreements specified above, and labor agreements which are binding upon them.

9.1.3 Subcontractor will defend, indemnify and hold Contractor harmless from and against any liability, loss, damage, cost, claims, awards, judgments, fines, expenses, including litigation expenses, reasonable attorneys' fees and any other costs which may be incurred by Contractor resulting from Subcontractor's failure to comply with the above requirements.

9.2 Reserved Gate Usage – Subcontractor shall notify in writing and assign its employees, materialmen and suppliers to such gates or entrances as may be established for their use by Contractor and in accordance with such conditions and at such times as may be imposed by Contractor. Strict compliance with Contractor's gate usage procedures shall be required by Subcontractor who shall be responsible for such gate usage by its employees, materialmen, suppliers, subcontractors, and their materialmen and suppliers.

9.3 Work Stoppages – Work stoppages (including sympathy strikes) or any other stoppage of work by employees performing work on, or delivering supplies or materials to, the job site shall not excuse any delay of Subcontractor in the proper performance of its work, regardless of whether the strike or other stoppage of work is attributed to union action or the action of an individual employee.

9.4 Prevailing Wage Laws – If the project is covered by a Federal or State prevailing wage decision, Subcontractor shall fully comply with all requirements of such prevailing wage laws and regulations. Subcontractor represents that it is familiar with such requirements and is fully prepared to administratively and practically comply with all such requirements (as defined in the regulations) including but not limited to:

- The proper classification of work performed and working rules for such classifications;
- The calculation and payment of prevailing wages and benefits.
- The proper timekeeping, recording and reporting of certified payrolls
- The proper apprentice training requirements, including journeymen to apprentice ratios.
- Sign and return Labor Law Requirements Form and Final Affidavit when due. **See Exhibit “G”**
- Progress or final payment may be withheld for failure to comply with these requirements.

9.4.1 Contractor shall provide to Subcontractor additional written materials it receives regarding the application of prevailing wages for the project.

9.4.2 Subcontractor shall fully indemnify and defend Contractor from and against any penalties, interest, fines, or withholdings it incurs as a result of Subcontractor’s alleged or actual failure to comply with this Section. Contractor may withhold any such amounts from payments owed to Subcontractor.

9.4.3 If Subcontractor subcontracts any of its work to another sub-subcontractor it shall be liable for and shall ensure that such sub-subcontractor also complies with any such prevailing wage regulations.

9.5 Default – Should Subcontractor default in the proper performance of its work, for reasons specified in this provision, Contractor may, as its option, terminate the Subcontract for cause in accordance with the termination for cause provision.

## **ARTICLE 10 INSURANCE**

10.1 Subcontractor's Insurance – Subcontractor shall carry for the benefit of the Owner and Contractor and other Indemnitees as defined below, all insurance as required in **Exhibit “E”** - Insurance. Additionally, proof of such insurance, in a form acceptable to Contractor, shall be provided to Contractor prior to Subcontractor’s mobilization to the project site. Payment may be withheld by Contractor until all insurance requirements have been met by the Subcontractor. Subcontractor shall ensure that each of its subcontractors or suppliers who enter onto the Project sight shall have the same types and coverages and additional insureds as is required for Subcontractor under this Subcontract.

10.2 Other Insurance By Subcontractor – Contractor makes no representation that the limits or kinds of insurance listed in **Exhibit “E”** are adequate for the Subcontractor’s purposes. Subcontractor shall carry any other insurance that it deems necessary for the proper operation of its business and may carry limits above those specified in the Subcontract Documents and Contract.

10.3 Cancellation, Renewal or Modification – Subcontractor shall maintain in effect all insurance coverage required under the Subcontract at Subcontractor's sole expense and with insurance companies rated as required by Owner but no less than a Best rating of A- or better. All insurance policies shall contain a provision that the coverages afforded shall not be canceled or not renewed, nor restrictive modifications added, until at least thirty (30) calendar days' prior written notice has been given to Contractor. Insurance renewal shall be submitted by Subcontractor no later than date of expiration of such insurance policy. In the event Subcontractor fails to obtain or maintain any insurance coverage required under the Subcontract, including that which is required of Subcontractor's subcontractors, Contractor may, but shall not be obligated to, purchase such coverage and charge its expense to Subcontractor, or terminate the Subcontract for cause in accordance with the termination for cause provision of the Subcontract.

10.4 Builders Risk Insurance – Builder's Risk Insurance

- Is provided by Contractor  
 Is provided by Owner  
 Is not provided by Contractor or Owner

If Builder's Risk Insurance is provided by Contractor or Owner, upon written request by Subcontractor, Contractor shall provide Subcontractor with a copy of the Builder's Risk policy of insurance.

10.4.1 If Builder's Risk Insurance is provided by Owner or Contractor, then Contractor and Subcontractor waive all rights against each other and Owner, Engineer, Engineer's consultants and agents or employees of any of them, separate contractors, and all other subcontractors for loss or damage to the extent covered by Builder's Risk, except such rights as they may have to the proceeds of such insurance. However, this waiver shall not extend to the acts or omissions of Engineer, Engineer's consultants, and the agents or employees of any of them.

## ARTICLE 11 INDEMNIFICATION

11.1 General Indemnity – All work covered by the Subcontract done at the site of construction or in preparing or delivering materials or equipment, or any or all of them, to or from the site shall be at the risk of Subcontractor exclusively. To the fullest extent permitted by law, Subcontractor shall, indemnify, hold harmless and defend Contractor, Owner, and all others to whom Contractor is obligated to defend and indemnify under the Contract ("Indemnitees") from and against any and all allegations, losses, claims, actions, demands, damages, liabilities, or expenses (including costs, expenses and attorneys' fees) ("Claims"), arising from or relating to the work, operations or activities of the Subcontractor, anyone directly or indirectly employed by Subcontractor, its subcontractors or suppliers of any tier, or anyone for whose acts Subcontractor may be liable, including, but not limited to Claims related to (1) the death of or bodily injury to persons, (2) injury to or destruction of property, both real and personal, (3) design defects (if design originated by Subcontractor), (4) product defects, or (5) liquidated damages assessed against the Contractor to the extent caused by the Subcontractor failure to perform its work in accordance with the Schedule. Subcontractor's duty to defend and indemnify shall include all damages caused or alleged to be caused in whole or in part by any negligent act or omission of: (a) Subcontractor; (b) anyone directly or indirectly employed by Subcontractor; (c) anyone for whose acts Subcontractor may be liable; or (d) Contractor. However, Subcontractor shall not be obligated to indemnify or defend any Indemnitee with respect to the sole or active negligence, or willful misconduct, of that Indemnitee. With respect to any defense obligation

owed by Subcontractor to Contractor, Subcontractor shall comply with Civil Code section 2782.05, subdivision (e), upon receipt of a written tender of claim by Contractor.

11.1.1 To the extent Paragraph 11.1, or any part of Paragraph 11.1, is found as a matter of law to be void or unenforceable, the contrary terms shall be deemed stricken and the balance of the paragraph shall be enforceable to the fullest extent permitted by law.

11.2 Indemnification for Noncompliance With Laws – Subcontractor shall fully defend, indemnify and hold Contractor harmless from all Claims and citations attributable to any acts or omissions by Subcontractor which constitute a failure to comply with any laws, rules, ordinances and / or regulations of any governmental entity or agency.

11.3 Intellectual Property Rights – Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented or protected materials in Subcontractor’s work. Subcontractor shall defend and indemnify the Indemnitees against all suits or claims for infringement of any patent or other intellectual property rights related to or arising out of Subcontractor’s work, which may be brought against an Indemnitee, and shall be liable to any Indemnitee for all loss, including all costs, expenses and attorneys' fees in any such suit or claim.

## ARTICLE 12 CHANGES

12.1 Performance – Subcontractor shall proceed with all written directions issued by Contractor so as not to delay the work. Subcontractor shall adhere strictly to the Subcontract Documents unless directed otherwise in writing. Subcontractor shall not make any changes to the work set forth in the Subcontract Documents, either as additions or deletions, without the written direction of Contractor.

12.2 Incorporating Changes – All provisions of this Subcontract shall apply to any changes or extras in a like manner and to the same extent as though said changes or extras were incorporated in the Subcontract.

12.3 Types of Changes – Changes can be initiated by a) the Owner or Engineer, b) a Governmental authority, c) the Contractor. However, Subcontractor shall not proceed with any such changes unless directed to proceed in writing only by the Contractor. Such written direction may include the methodology for calculating the cost and time impact of the change, if any. No Change Order is created until a formal Change Order is executed in accordance with this Section.

12.4 Change Orders – When a change occurs, and the parties agree on the cost and time impacts of the change, a “Change Order” shall be executed by both parties to document the change to this Subcontract. Subcontractor may not bill for change order work until such change order is executed by both parties. Additionally, if Subcontractor makes a claim as provided elsewhere in this Subcontract, any agreement between the Contractor and Subcontractor to resolve the claim shall be included in a “Change Order”

12.5 Notification of Additional Costs or Time – Subcontractor shall provide written notification to Contractor within 3 days if a written direction or other event or occurrence could result in additional costs or time of performance so that Contractor has sufficient time to take actions to minimize any additional costs or time, and has sufficient time to provide notification to Owner in accordance with the Contract. In the event Subcontractor fails to provide notice as provided herein, then Subcontractor shall be deemed to have waived its right to seek additional compensation or time due to any such written direction, event or other occurrence.

12.6 Submission of Cost Proposals and Requests For Time Extensions – Subcontractor shall submit its cost proposal(s) in sufficient time for Contractor to comply with any submission requirements of Owner. All such cost proposals shall itemize, in a form acceptable to Contractor, any change in costs or time for performance which result from any written direction issued by Contractor or other event or occurrence.

12.7 Change Order Pricing – When a change does occur, Subcontractor shall apply pricing estimates for the impact of the Change which are commercially reasonable and not inflated. Subcontractor markup for overhead and profit shall not exceed the markup allowed under the Contract, or 15% in the absence of any specified rates. Subcontractor shall provide in its proposal, all assumptions, quantities, estimates and unit prices figured to calculate the impact. At the request of Contractor, Subcontractor shall meet with Contractor to review the calculations and agree on the change order amount. Change Order pricing may be based on any of the methods described below.

12.7.1 Lump Sum Agreement between the parties.

12.7.2 Application of Unit Prices as described in this Subcontract.

12.7.3 Application of Alternate Pricing as described in this Subcontract.

12.7.4 Time and Materials Costs – If a change order is to be calculated on a Time and Materials Basis, then the Subcontractor must comply with the following requirements to calculate such value:

A) Subcontractor must keep daily records of all work performed relating to the Change. Such records shall include the names of all workers who worked on the Change, the hours worked by such workers, the materials and equipment consumed. The Daily record shall be signed by the Contractor's representative at the end of each workday to confirm Contractor's agreement with the hours worked and the materials and equipment consumed.

B) Subcontractor shall provide pricing for all labor, materials equipment and tools used in the performance of the Change work at its actual costs for same. The Subcontractor may include a reasonable allowance for payroll taxes and insurance.

C) Subcontractor must provide backup for all costs if requested by Contractor.

D) Notwithstanding the foregoing, Subcontractor shall not include any item of cost that is not authorized under the Contract.

12.8 Reduction in Work – If a change is made that reduces the work of the Subcontractor, the Subcontractor shall provide a credit for the fair value of the work.

12.9 Dispute of Change Order Pricing – In the event the Contractor and Subcontractor cannot agree on a pricing method for a change, the Time and Materials method shall be used by the parties.

12.10 Cost Proposal Negotiations – For changes that are to be funded by the Owner, rather than the Contractor, the Contractor will not approve Subcontractor's pricing or time impacts until the Owner has also approved the same. At Subcontractor's request, it shall be invited to attend and participate in all negotiations with Owner or others that relate to settlement or resolution of its cost proposals. At Contractor's request,

Subcontractor shall attend and participate in negotiations with Owner or others that relate to settlement or resolution of Subcontractor's cost proposals.

## **ARTICLE 13 DELAYS**

13.1 Excusable Delays – An Excusable Delay is one which is caused by circumstances or events beyond the control and without the fault or negligence of Contractor or Subcontractor, and which is recognized by the Contract as “excusable” that is, a delay for which the contract time is extended, whether or not compensation by Owner is allowed. To the extent Excusable Delays occur and affect Contractor's and/or Subcontractor's ability to complete their work in accordance with the updated progress schedule, the affected party's time for performance shall be extended, but only to the extent such extensions are allowed by Owner.

13.2 Subcontractor Caused Delays – Subcontractor Caused Delays are delays caused by the failure of Subcontractor, or any party for which Subcontractor is responsible, to perform any portion of its work in accordance with the updated progress schedule. Subcontractor shall take immediate action to recover from any Subcontractor Caused Delays, including working extra shifts, providing additional workers, and overtime work in an effort to recover and maintain the schedule. Failure to maintain the updated progress schedule or to recover from a Subcontractor Caused Delay when directed by Contractor, is considered a default of this Subcontract.

If Subcontractor Caused Delays cause delay and/or disruption to the Contract work, Subcontractor shall be liable for all costs and damages sustained by Contractor and for which Contractor may be liable to Owner and any other party, including consequential damages and liquidated damages. If Subcontractor Caused Delays are only one of multiple causes for delay to the Contract work, Subcontractor shall be liable for its proportionate share of any resulting costs and damages.

13.3 Contractor Caused Delays – Contractor Caused Delays are delays caused by the failure of Contractor, or any party for which Contractor is responsible, to perform any portion of its work in accordance with the updated progress schedule due to events or occurrences that are under the reasonable control of Contractor. If a Contractor Caused Delay is the sole cause of an actual delay and/or disruption to Subcontractor's work that cannot be avoided by Subcontractor by use of commercially reasonable means, Subcontractor shall, as its sole remedy, be entitled to a time extension equal to the impact of the Contractor Caused Delay.

13.4 Disputed Delays – If Subcontractor disputes the determination of the cause of any delay and wishes to pursue that dispute, it must comply with the Claims article of the Subcontract.

## **ARTICLE 14 CLAIMS**

14.1 Claim – A claim is a written demand by Subcontractor seeking an adjustment in the Subcontract Price and/or time, or the recovery of withheld disputed funds.

14.2 Notification of Claims – Subcontractor shall provide written notification to Contractor of any claims so that Contractor has sufficient time to take actions to minimize any additional costs or time, and has sufficient time to provide notification to Owner in accordance with the Contract, but in no event later than 5

days after the occurrence of the event giving rise to the Claim. In the event Subcontractor fails to provide notice as provided herein, then Subcontractor shall be deemed to have waived its right to such claim.

14.3 Submission of Claims – Subcontractor shall submit its claims in sufficient time for Contractor to comply with any submission requirements of Owner. All such claims shall itemize, in a form acceptable to Contractor, any additional costs or time for performance being sought by Subcontractor. In the event Subcontractor fails to timely submit its itemized claim as provided herein, and such failure results in Contractor being barred from submitting the itemized claim to Owner, then Subcontractor shall be deemed to have waived its right to pursue such claim.

14.4 Claims with Owner – To the extent Contractor determines Subcontractor's claim is one for which Owner may be liable, the following procedure shall apply:

- (a) Contractor will present Subcontractor's claim to Owner per the Contract requirements. The determination of such submission will be conveyed in writing to Subcontractor and such decision shall be final unless Subcontractor notifies Contractor in writing of its desire to proceed further in sufficient time for Contractor to comply with any notification or submission requirements to Owner.
- (b) Upon receipt of Subcontractor's notice to proceed further, at Contractor's option, Subcontractor's claim may be further pursued with Owner. In such event, Contractor may allow Subcontractor to act in its own behalf and with its own consultants/attorneys at Subcontractor's cost to continue the required process and any subsequent administrative proceeding or litigation. If Contractor does not allow Subcontractor to act in its own behalf or it is procedurally impermissible for Subcontractor to proceed in its own behalf, and Contractor elects to allow the continued pursuit of Subcontractor's claim, then at the written request of Subcontractor, Contractor will proceed with the dispute on condition that Subcontractor pay to Contractor all of its actual costs arising out of such process, including but not limited to attorneys' fees, court costs and the costs of Contractor's personnel employed in pursuing the case against Owner.
- (c) If Contractor elects to not allow further pursuit of Subcontractor's claim against Owner, and Subcontractor disputes such decision, Subcontractor may pursue its claim pursuant to the Disputes Resolution Article of the Subcontract.
- (d) Nothing shall prevent Contractor from accepting a contract modification from Owner which preserves the rights of Subcontractor.
- (e) If because of Subcontractor's claim, Owner withholds any sums due Contractor, then Subcontractor shall pay to Contractor interest on the amounts so withheld at the rate of 10 percent per annum.

## **ARTICLE 15 DISPUTE RESOLUTION**

15.1 Dispute – To the extent Subcontractor submits a claim which Contractor determines is one for which Owner may not be liable, or is one which Contractor elects to not allow Subcontractor to further pursue with Owner, or to the extent Contractor has a claim against Subcontractor which is contested by the Subcontractor, (all of which shall be categorized as a “Dispute”), the following procedures shall apply:

15.1.1 Informal Dispute Resolution - If the dispute cannot be settled through direct discussions between the Contractor and Subcontractor’s assigned project personnel, either party may make a written demand that the dispute be “elevated” in accordance with this paragraph for review and discussion of the Company’s principals for an informal dispute resolution process. When such demand is made, the senior most officer (or owner) of the Contractor and the senior most officer (or owner) of the Subcontractor shall meet within 30 calendar days in a face-to-face meeting to discuss and attempt to resolve the matter. During the meeting, the parties may agree to any ground rules, procedures, additional meetings, time extensions, or any other dispute resolution process that suits their needs, as long as the agreement is mutual. The parties are each encouraged to consider alternatives to resolve the dispute including hiring a competent mediator to help the parties towards a solution, before proceeding with formal litigation.

In the interest of resolving disputes quickly and minimizing costs and disruption to the project, and to the parties, this first meeting shall be a condition precedent to the filing of any legal action or other formal dispute resolution process to resolve the dispute, except that litigation may be commenced in order to preserve any statutes of limitation that may relate to the dispute, and either party may petition or motion the court to stay such litigation pending the parties’ compliance with this dispute resolution process. In the event that a party petitions or motions the court for such a stay, the other party irrevocably waives its right to object or oppose any such petition or motion.

Any settlement of a dispute shall be documented in writing and signed by both parties and shall be include in a formal Change Order to the Subcontract Agreement.

15.1.2 Formal Dispute Resolution. In the event that the informal dispute resolution process does not result in a settlement of the dispute, either party may commence a formal dispute resolution process. If any such specific process is defined by or required by the Contract and such process applies to the subject dispute, then such process shall be followed. In the absence of such pre-defined formal dispute resolution process, then litigation shall be the required method of dispute resolution between Contractor and Subcontractor. The laws of the State in which the project is located shall apply to any disputes and litigation may only be commenced in the state or federal courts of the County in which the project is located, and the parties hereby submit to such jurisdiction.

15.1.3 The requirement for the Informal Dispute Resolution Process and Mediation are material terms of the Subcontract and may be enforced by an action, petition or motion for specific performance in a state or federal court in the jurisdiction for the County in which the project is located, and the parties hereby submit to such jurisdiction.

15.2 Participation In Proceedings – If Contractor receives a claim from any other party and Contractor determines Subcontractor may be liable, in whole or in part, for such claim, Subcontractor shall participate in the dispute resolution process with Contractor and such other party. To the extent practical, Contractor will not agree to binding arbitration or any other form of resolution with the other party without Subcontractor’s consent. If, however, Contractor could not have determined, by reasonable diligence, that Subcontractor may be liable for the other party’s claim before binding arbitration or any other form of resolution was already

agreed upon, Subcontractor shall participate in that arbitration or other form of resolution and shall be bound by the decision rendered in that proceeding.

## **ARTICLE 16 PAYMENT**

16.1 Schedule of Values – Within 10 days of Contractor's request (or a lesser time if required under the Contract), Subcontractor shall prepare and submit to Contractor a Schedule of Values which breaks down Subcontractor's work into individual activities. Each activity contained in the Schedule of Values shall be assigned a monetary price such that the total of all such items shall equal the Subcontract Price. The Schedule of Values shall be prepared in a form (See Exhibit "F") and in such detail as may be required by Owner and/or Contractor.

16.2 Payment and Verification – Subcontractor is required to pay for all labor, materials and equipment used in the performance of Subcontractor's work through the most current period applicable to progress payments received from Contractor. Contractor may require reasonable evidence to show that all obligations relating to Subcontractor's work are current through all payments received from Contractor before releasing any payment due for Subcontractor's work.

16.3 Progress Payment Applications – Subcontractor's applications for payment shall be itemized and in accordance with Subcontractor's Schedule of Values and any other substantiating data as required in the Contract for Contractor's payment applications. Subcontract payment applications may include amounts for Subcontract change orders which have been fully executed by Subcontractor and Contractor. Subcontractor cannot include in its payment applications any amounts for changes which have not been fully executed by Subcontractor and Contractor, or for disputed work.

16.4 Stored Materials and Equipment – If allowed by Owner, applications for payment may include materials and equipment not incorporated into Subcontractor's work but suitably stored on or off the site. Approval of payment applications for materials and equipment stored on or off the site shall be conditioned on: (1) submission by Subcontractor of bills of sale and applicable insurance or such other procedures satisfactory to Owner and Contractor to establish the proper valuation and protection of the stored materials and equipment; (2) Owner's and/or Contractor's title to such materials and equipment; (3) Consent of Subcontractor's surety; (4) Segregated and secured storage facilities in the US only; (5) Right for the Contractor and Owner to inspect stored materials at any time; and (6) any other documents or procedures to protect Owner's and Contractor's interests, including during the transportation of such items to the site by Subcontractor.

16.5 Time for Submission of Application – Subcontractor's progress payment application shall be submitted to Contractor in sufficient time for Contractor to include it in Contractor's payment request to Owner, or the last day of the calendar month which is being billed, whichever is earlier. Contractor shall incorporate the amount of Subcontractor's progress payment application approved by Owner into Contractor's payment application to Owner for the same period. If requested by Subcontractor, Contractor shall inform Subcontractor of Owner's changes to Subcontractor's percentages of completion reflected on Subcontractor's payment application and/or other adjustments affecting Subcontractor.

16.6 Lien Waivers – Subcontractor shall provide, in a form satisfactory to Owner and Contractor, lien or claim waivers in the amount of the application for payment from Subcontractor, and its subcontractors,

materialmen and suppliers for the completed work. Contractor may refuse to pay Subcontractor if Subcontractor fails to provide such waivers. If such waivers are conditional upon payment, Contractor may choose to make payment by issuance of joint checks to Subcontractor and its subcontractors, materialmen and suppliers. Subcontractor shall not be required to sign an unconditional waiver of lien or claim prior to receiving payment, or in an amount in excess of what it has been paid.

16.7 Application Reduction, Rejection or Nullification – Contractor may reduce or reject a Subcontractor payment application or nullify a previously approved Subcontractor payment application, in whole or in part, as may reasonably be necessary to protect Contractor from loss or damage based upon:

- (a) Subcontractor's failure to perform its work as required by the Subcontract Documents;
- (b) Loss or damage to Owner, Contractor or others to whom Contractor may be liable arising out of or relating to the Subcontract and caused by Subcontractor or its lower tier subcontractors or suppliers;
- (c) Subcontractor's failure to properly pay for labor, materials, equipment or supplies furnished in connection with its work;
- (d) Rejected, nonconforming or defective work which has not been corrected;
- (e) Reasonable evidence of delay in performance of Subcontractor's work such that the work will not be completed within the time allotted by the updated progress schedule, and that the unpaid balance of the Subcontract Price is insufficient to offset the liquidated damages or actual damages that may be sustained by Contractor as a result of the anticipated delay caused by Subcontractor;
- (f) Reasonable evidence demonstrating that the unpaid balance of the Subcontract Price is insufficient to cover the cost to complete Subcontractor's work;
- (g) Third party claims against Subcontractor or reasonable evidence demonstrating that third party claims are likely to be filed. Subcontractor can eliminate this basis by furnishing Contractor with adequate security in the form of a surety bond, letter of credit or other collateral or commitment which is sufficient to discharge such claims if established;
- (h) Owner's reduction, rejection or nullification of any part of a payment application;
- (i) Subcontractors failure to submit Submittals and O&Ms in a timely manner per the Contract Documents;
- (j) Subcontractors failure to provide "As Builts" with the monthly pay request;
- (k) Subcontractor's failure to attend weekly planning meetings if required;
- (l) Subcontractor's failure to submit certified payroll in a timely manner; or

- (i) Any other failure to comply with the terms and conditions of the Subcontract Documents.

Contractor shall give written notice to Subcontractor, at the time of reducing, disapproving or nullifying an application for payment, of the specific reasons for Contractor's action. When the above reasons for reducing, disapproving or nullifying an application for payment are removed, payment will be made for amounts previously withheld.

16.8 Retention – Contractor shall withhold from Subcontractor progress billings retention at a rate of 5 percent.

16.9 Payment Not Acceptance – Payment to Subcontractor does not constitute or imply acceptance of any portion of Subcontractor's work.

16.10 Final Payment Application – Contractor is required to incorporate Subcontractor's application for final payment into Contractor's next application for payment to the Owner only after the following occur:

- (a) acceptance of Subcontractor's work by Contractor and Owner;
- (b) if requested by Contractor, evidence acceptable to Contractor that all payrolls, bills for materials and equipment, and other indebtedness connected with Subcontractor's work have been fully paid, or will be fully paid by issuance of joint checks in return for unconditional releases;
- (c) if requested by Contractor, consent of Subcontractor's surety to final payment;
- (d) satisfaction of close-out procedures as may be required by the Subcontract Documents; and
- (e) if requested by Contractor, releases and waivers of liens, stop notices, bond rights, or any rights against Contractor, its surety or Owner, effective upon payment, to the extent and in such form as may be designated by Contractor.

16.11 Effect of Final Payment – Acceptance of final payment by Subcontractor shall constitute a waiver of claims by Subcontractor, except for claims reserved in a final conditional release.

## **ARTICLE 17 RECOURSE BY CONTRACTOR**

17.1 Failure of Performance – If Subcontractor refuses or fails to fully and timely perform its obligations pursuant to the Subcontract, Contractor may, after two (2) working days written notice to Subcontractor, commence with correction of such failure, and without prejudice to any other rights or remedies, provide the most expeditious correction of the failure by whatever means Contractor deems appropriate and charge the resulting costs to Subcontractor. A failure to fully and timely perform shall include but not be limited to:

- Failure to correct defective work
- Failing to supply enough properly skilled workers or proper materials
- Failing to maintain performance in accordance with the updated progress schedule
- Disregarding laws, ordinances, rules, regulations or orders of any authority having jurisdiction

- Failing to make prompt payment to its workers, benefit funds, subcontractors or suppliers,
- Failure to hold harmless Contractor and Owner from claims of workers, benefit funds, subcontractors and suppliers of any tier working under this Subcontract
- Failure to follow prevailing wage and other State and Federal labor requirements.
- Failure to follow Contractor's safety directives
- Subcontractor becomes insolvent
- Subcontractor placed into receivership
- Subcontractor files a petition for relief in Bankruptcy Court
- Or otherwise failing or refusing to comply with any other provision of the Subcontract.

In the event of an emergency affecting the safety of persons or property, Contractor may immediately proceed to commence correction of such failure without first giving two (2) working days' written notice to Subcontractor but shall give prompt written notice of such action to Subcontractor.

## **ARTICLE 18 TERMINATION**

18.1 Termination For Cause – If Subcontractor fails to perform any of its Subcontract obligations, Contractor may, after seven (7) calendar days written notification and in addition to any other remedies, terminate the Subcontract. A separate written notice of termination shall be issued by Contractor to Subcontractor at the time the Subcontract is terminated. If such a termination occurs, Contractor shall have the right to take and use any materials, equipment, appliances or tools furnished by, belonging or delivered to Subcontractor and located at the project for the purpose of completing any remaining Subcontractor work. Subcontractor may not enter the site for any purpose and may not recover any property, materials, or equipment until released by Contractor.

In the event the Subcontract is terminated for cause, Subcontractor shall not be entitled to receive any further payment until the Contract work is completed. If Contractor's Expense to complete Subcontractor's work exceeds the amount unpaid under the Subcontract, Subcontractor shall promptly pay the excess amount to Contractor. The "Expense" incurred by Contractor shall include Contractor's costs for completing the work, including overhead, profit and attorneys' fees, and any damages incurred by Contractor by reason of Subcontractor's default.

18.2 Termination by Owner – If Owner terminates the Contract, or any part which includes any portion of Subcontractor's work, Contractor shall notify Subcontractor in writing and Subcontractor shall immediately stop the performance of the terminated work, follow Contractor's instructions regarding any shutdown and termination procedures, and mitigate all costs.

18.2.1 Contractor's liability to Subcontractor for any damages incurred or claims resulting from Owner termination for convenience shall be limited to the amount allowed under the Contract or the amount Owner is determined to be liable to Contractor for Subcontractor's damages. Contractor's liability to Subcontractor for Owner's termination of Contractor for cause shall be determined pursuant to the Claims and Disputes Resolution Articles of the Subcontract.

18.3 Termination By Contractor – Contractor shall have the right to terminate this Subcontract for convenience. Contractor shall notify Subcontractor in writing and Subcontractor shall immediately stop the performance of the terminated work, follow Contractor's instructions regarding any shutdown and termination procedures, and mitigate all costs.

18.3.1 Contractor's liability to Subcontractor resulting from termination for convenience shall be equal to the Subcontract Price prorated to the percentage of completion of the work properly performed and accepted by Contractor prior to termination, plus any demobilization reflected on Subcontractor's schedule of values, plus restocking or cancellation costs actually incurred by Subcontractor from its material suppliers, if any. In the event Subcontractor anticipates incurring restocking or cancellation charges for any materials, Subcontractor shall provide Contractor the opportunity to purchase any such materials at Subcontractor's cost instead of returning or cancelling such materials.

## **ARTICLE 19 SUSPENSION OF WORK**

19.1 Contractor may order Subcontractor in writing to suspend all or any part of Subcontractor's work for such period of time as Contractor deems appropriate. Contractor's liability to Subcontractor for any delay or disruption resulting from such suspension shall be determined pursuant to the Claims and Disputes Resolution Articles of the Subcontract. If the suspension is directed or caused by Owner, Contractor's liability to Subcontractor shall be limited to the amount Owner is determined to be liable to Contractor for Subcontractor's damages.

## **ARTICLE 20 ASSIGNMENT OF SUBCONTRACT**

20.1 Subcontractor shall not, without written consent of Contractor, assign its rights in the Subcontract to others, including factoring of any amounts to become due to the Subcontractor and any attempt to assign this Subcontract without such written consent shall be null and void. This Subcontract may be assigned by Contractor to its bonding company or the Owner without the consent of the Subcontractor.

## **ARTICLE 21 GENERAL PROVISIONS**

21.1 Lien Free Project – At all times, Subcontractor shall defend, indemnify and hold harmless Owner, Lender and Contractor from and against all liens, stop payment notices, and payment bond claims, resulting from Subcontractor's performance of its work hereunder. Any such liens, stop payment notices, or payment bond claims shall be immediately removed and resolved, or bonded around to Owner's, Lender's and Contractor's satisfaction. Any and all costs sustained by Contractor due to Subcontractor's failure to immediately remove, resolve or bond around such liens, including the cost of paying the claim, shall be backcharged against amounts earned by Subcontractor. This paragraph shall not be held to prevent Subcontractor itself (but not its laborers, and material and equipment suppliers, and sub-subcontractors) from filing a lien, stop payment notice, or bond claim in the event of Contractor's default of its payment obligations hereunder.

21.2 Stop Work by Subcontractor – Subcontractor shall not have any right to stop work or terminate this Agreement except as provided in this Paragraph.

21.2.1 Subcontractor shall not have a right to stop work under this Agreement unless Contractor is in default of this Agreement by failing to pay Subcontractor within 7 days after Contractor has received payment from Owner for work that was properly performed and billed by Subcontractor, and for which Subcontractor has completed all requirements that entitle it to receive such payment. Subcontractor may terminate this Agreement by giving 10 days advance written notice to Contractor if such non-payment continues for 180 days after the Subcontractor stops work, unless contractor cures the non-payment within the 10-day notice period.

21.2.2 Subcontractor shall not have the right to stop work for payments not yet made because of change orders that have not yet been executed or any amounts in dispute. All such issues shall be resolved as provided elsewhere in this Agreement.

21.2.3 Notice Required – If Subcontractor wishes to exercise its right to stop work it shall give 7 days' advance written notice to Contractor citing the condition giving rise to the stop work right and allowing Contractor the ability to cure such conditions, or provide a written reason allowed under this Agreement for non-payment.

21.2.4 Stop Work Effective Date – If Contractor has not cured the noticed condition, or provided a written reason allowed under this Agreement for non-payment within the 7-day period, or given a written reason why Subcontractor's claim is invalid, then Subcontractor shall have the right to stop work until such noticed conditions are cured or written reason allowed under the Agreement is provided.

21.2.5 Restarting Work – As soon as Contractor makes payment to Subcontractor or provides a written reason allowed under this Agreement why payment is not being made, Subcontractor shall immediately recommence work.

21.2.6 Extra Costs – Extra costs, if any, associated with stopping work may be submitted to Contractor as a claim for change order within 10 days of restarting and handled as provided in Article 14.

21.3 No Oral Agreements – Neither party is relying on any oral or other agreement which is not included in the written Subcontract Documents.

21.4 Close Out Submittals – As early as possible, and no later than upon completion of its onsite work, Subcontractor shall submit all as-builts, owner's manuals, operating manuals, labor and materials warranties, and provide all required training, spare parts, and attic stock, and any other such close out materials documents required by the Subcontract Documents. All such submissions must be acknowledged as received and accepted by the Owner before the submission is considered complete. Failure by Subcontractor to make timely close-out submittals may delay any remaining payments including final payment.

21.5 Quality Assurance – Subcontractor shall take proactive steps to ensure that all work performed will be of the quality and workmanship intended by the Subcontract Documents. Certain steps shall include, but not be limited to:

A. Complete and Timely Subcontract Document Review.

Subcontractor shall immediately upon receipt, carefully review the Subcontract Documents for completeness and conformance with appropriate industry standard design, codes and construction techniques. If any errors, ambiguity or concerns arise from the Subcontractor's review of the Contract documents, the Subcontractor shall immediately provide to Contractor a written request for information (RFI) to clarify and answer the error, ambiguity or concern. Each separate issue shall be submitted in a separate RFI, and shall be submitted to Contractor well in advance of the construction of the affected area so that Contractor may obtain a proper response from the appropriate design professional before the issue can affect the progress of the job.

Subcontractor shall not knowingly proceed with erroneous, ambiguous or non-compliant work without such written direction, and if it does, it shall be liable for all costs associated with correcting the work, including any resulting damage caused therewith.

The same duty to carefully review documents prior to construction shall apply to all subsequent distributions of design and contract documents after the initial contract documents.

**B. Submittal and Shop Drawing Process**

Subcontractor shall not proceed with the installation of any material or product until and unless it has received a formal approved submittal for the work.

**C. Use Only Approved Materials**

The subcontractor shall ensure that only approved materials are utilized on the project. The subcontractor's internal procedures must ensure that the Subcontractor's field representative is aware of the products approved for the project and that this person checks that only approved products are installed.

**D. Follow Manufacturer Recommendations**

Subcontractor shall ensure that all materials and products are installed and utilized in complete accordance with the manufacturer's recommendations

**E. Quality Crafts-persons**

Subcontractor shall assign quality crafts-persons experienced in the trade to the project who are capable of properly installing the materials as required by the contract documents. Apprentices and trainees shall always be carefully supervised by an experienced crafts-person.

**F. Quality Supervision**

Subcontractor shall provide onsite Quality Supervision of its work force every day. The onsite supervisor shall be fully conversant in the English language and fully capable of communicating with Subcontractor's field crews. The supervisor shall be fully qualified to understand the written plans and specifications and safety directives and given full authority to resolve field construction conflicts that may arise.

**G. Written Reporting to Contractor**

Subcontractor shall report to Contractor Superintendent in writing any problems immediately. Subcontractor shall not rely on verbal communication for resolving construction issues.

**H. Daily Reporting Requirement**

Subcontractor shall provide a Subcontractor Daily Report to Contractor Superintendent every day using the Contractor Daily Report Form, or a Subcontractor form approved by Contractor.

Any failure by Subcontractor to properly follow these minimum guidelines in its own internal quality assurance procedures and efforts shall cause the Subcontractor to be responsible for all costs sustained by Contractor that would have been avoided but for such Subcontractor's failure.

21.6 Cost Escalation – This is a lump-sum, fixed price agreement and Subcontractor agrees that it has contemplated and assumes the risk of any escalation in material, labor, taxes and other costs affecting Subcontractor's Scope Work under this Subcontract.

21.7 Signage & Publicity – This Agreement shall be confidential and not disclosed to any party other than what is necessary to carry out the obligations herein. Subcontractor shall post no signage at the Project site nor produce any media publicity of the project without first obtaining the written permission of Contractor and, if required, of Owner. All signage shall be subject to this paragraph including signs/logos painted on or affixed to the sides of trailers and other equipment.

21.8 Federal Projects – If the Project is on property owned or controlled by the US Federal Government or if the US Federal Government is providing funding for any part of the Project and therefore, the Project is deemed to be covered by federal law, then the Subcontractor agrees that it shall fully comply with all requirements for contracting and subcontracting on Federal projects. Subcontractor shall provide in a timely manner all reporting and monitoring and regulatory requirements described in the Federal Acquisition Regulations (FAR) applicable to the project and to the Subcontractor. All FAR requirements included in the Contract are hereby included in this Subcontract by reference and Subcontractor shall be deemed bound to Contractor to the same extent that Contractor is bound to the Owner. Please refer to the attached **Federal Exhibit – FAR Flow Down Clauses**.

21.9 DBE/MBE/WBE/DVBE/UDBE/SBE Requirements – Subcontractor hereby acknowledges that it is thoroughly familiar with all DBE/MBE/WBE/DVBE/UDBE/SBE requirements relating to the Project if there are any such requirements contained in or referred to in the Contract Documents. If Subcontractor claims status as a DBE/MBE/WBE/DVBE/UDBE/SBE, Subcontractor shall fully comply with all requirements relating thereto, including but not limited to, maintaining necessary certifications so as to ensure that one hundred percent of the work, materials, equipment and services provided by Subcontractor is counted as DBE/MBE/WBE/DVBE/UDBE/SBE participation. If any of Subcontractor's suppliers or subcontractors of a tier, claims status as, has been designated as or is required to be a DBE/MBE/WBE/DVBE/UDBE/SBE, Subcontractor shall ensure that each such supplier or subcontractor meets all applicable requirements relating thereto. If Subcontractor has represented or indicated to Contractor, in this Agreement, the bid proposal Subcontractor submitted to Contractor, or otherwise, that Subcontractor (or any of its subcontractors or suppliers of any tier) will or can provide any amount of DBE/MBE/WBE/DVBE/UDBE/SBE participation, Subcontractor shall ensure that amount of DBE/MBE/WBE/DVBE/UDBE/SBE participation is actually provided in full compliance with all applicable requirements. Any breach of any of the provisions of this Section shall be deemed a material breach of this Agreement.

--- End of Section, Signature Page follows ---

**SIGNATURE PAGE**

**Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P. O. Box 26000, Sacramento, California 95826.**

**Representation By Subcontractor**

**Subcontractor warrants that it and all its subcontractors are properly licensed by the Contractors' State License Board of the State of California with the proper license classifications for performance of its work. Subcontractor further warrants that its license is and will remain current, active and in good standing all times during performance of its work.**

**This Subcontract has important legal and insurance consequences. Consultation with an attorney and insurance consultant is encouraged with respect to its completion or modification.**

The parties have executed this Subcontract for themselves, their heirs, executors, successors, administrators and assigns at the place and on the day and year first written above.

SUBCONTRACTOR

CONTRACTOR

Firm: \_\_\_\_\_

Firm: JR Filanc Construction Company, Inc.

\_\_\_\_\_  
Signature Date\_\_\_\_\_  
Signature Date\_\_\_\_\_  
Name Title\_\_\_\_\_  
Name Title

State Contractor's License # \_\_\_\_\_

CA Contractor's License #134877

AZ Contractor's License # ROC088901, ROC216888, ROC227062

Federal Tax I.D. # \_\_\_\_\_

State of Incorporation \_\_\_\_\_

DIR# \_\_\_\_\_

Legal Entity Form (Check One):

- Individual  
 Sole Proprietorship  
 Partnership  
 LLC  
 Corporation



EXHIBIT "A"  
SUBCONTRACT DOCUMENTS

The Subcontract Documents shall include:

1. The executed Subcontract between Contractor and Subcontractor, including all listed Attachments, which are incorporated into the Subcontract by this reference as if fully set forth therein.
2. The Contract, consisting of the entire and integrated agreement between Owner and Contractor, as more particularly though not exclusively specified in the following:
  - (a) General, Special, Supplementary and other Conditions, reference standards or provisions of any nature;
  - (b) Geotechnical Manual/Specifications prepared by Enter Engineer dated Date Here.
  - (c) Specifications, including the Complete Project Manual/Specifications prepared by Enter Engineer dated Date Here.
  - (d) Addenda as follows:
    - a. Number \_\_\_ prepared by Enter Engineer dated Date Here
    - b. Number \_\_\_ prepared by Enter Engineer dated Date Here
  - (e) Plans and Drawings prepared by Enter Engineer Here.

3. Other Documents as follows:

All of the above documents are available from the Contractor at its Office and/or at the Project Site and can be electronically transmitted upon request.

Note that in the case of conflicts in any of the provisions of the above documents, Subcontractor shall immediately inform Contractor of the discrepancy and the Contractor shall determine which of the conflicts will prevail. Subcontractor shall be deemed to have included in its Subcontract Price, the provision or provisions which afford Contractor and Owner the greatest protection and/or the largest quantity or highest quality of materials and/or services.

END EXHIBIT "A"

EXHIBIT "B"  
SUBCONTRACTOR SCOPE OF WORK

1. Subcontractor shall provide all (ENTER TRADE DESCRIPTION HERE) work, per the Subcontract Documents, including, but not limited to, all work specified in, ancillary to, or contemplated by specification sections
  - a. (ENTER APPLICABLE SPECIFICATION SECTIONS HERE)
  - b.
  - c.
  - d.
  
2. SPECIFIC INCLUSIONS - Without limiting the generality of the above, but to highlight certain scope-of-work items for the benefit of the parties the following work items are INCLUDED in the "Subcontractor's Scope Of Work":
  - a. Labor (union where required), including fringe benefits, taxes, insurances
  - b. Materials, including sales and use taxes, freight, delivery, handling and storage
  - c. Equipment, including sales and use taxes, freight, delivery, handling and storage
  - d. Services
  - e. Hoisting
  - f. Tools
  - g. Temporary Provisions
  - h. Supervision
  - i. Applicable Taxes
  - j. All required Bonds and Insurance
  - k. Licenses
  - l. Submittals and Close Out Documents including O&M Manuals
  - m. Permits (but not building permit)
  - n. Calculations as required
  - o. Tests and Inspections
  - p. Daily Cleanup of its own work
  - q. Removal of spoils and debris resulting from its own work, including trenching, excavation and demolition.
  - r. Materials & Equipment Delivery and Onsite Storage
  - s. Material & Equipment Identification Tagging
  - t. Equipment Training
  - u. Spare Parts
  - v. Attic Stock
  - w. Retention at 10%
  - x. Other
  - y. Other
  - z. Other
  - aa. Etc.,
  
3. Owner shall be entitled to provide and pay for an independent testing laboratory. If Subcontractor's work fails a test or inspection, then Subcontractor shall be responsible for

uncovering and reworking any failed work, plus the cost of the re-inspection of the corrected Work until it passes.

4. Subcontractor shall furnish Contractor per the progress schedule and well prior to Substantial Completion of the Project all necessary "CLOSE OUT DOCUMENTS." Close-out Documents include warranties, guarantee, attic stock of materials, manuals, instructions, maintenance recommendations (in writing) and as-built record drawings, plus all other items required of the Contractor under the Contract. Subcontractor shall furnish two more than is required by the Contract, but no less three (3) sets of all the above documents.

5. "The following QUALIFICATIONS or CLARIFICATIONS shall apply to the "Subcontractor's Scope of Work":

- a)
- b)

6. The following is specifically EXCLUDED from "Subcontractor's Scope Of Work":

- a)
- b)

7. The following ALTERNATES (if any) shall be included in this Subcontract.

- a)
- b)

8. The following ALLOWANCES (if any) shall be included in this Subcontract.

- a)
- b)

9. The following UNIT PRICES shall be included in the Subcontract

- a)
- b)

END EXHIBIT "B"

EXHIBIT "C"  
TEMPORARY FACILITIES

Unless otherwise noted below, all temporary facilities, equipment and general conditions items shall be the responsibility of the Subcontractor.

1. Office Trailer – The office trailer (and copy machine, fax machine, etc.) will be for Contractor's, the Owner's, and Engineer's use only.
2. Telephone Subcontractor shall be responsible for its own telephone communications.
3. Drinking Water Subcontractor shall be responsible to supply adequate drinking water for its personnel.
4. Jobsite Security There will be no security guard service for this project. Contractor shall not be responsible for theft, vandalism, burglary, damage, and other losses to Subcontractor's (and its employees') property and equipment at the jobsite at any time. Subcontractor shall plan for any additional security needs it may require.
5. Parking Onsite parking will not be provided by the Contractor for Subcontractor's use. Contractor assumes no responsibility or liability for construction personnel vehicles wherever they park.
6. Portable Toilets Portable sanitary facilities will be provided by Contractor for the use of all subcontractors. Facilities in Contractor's office trailer, if any, are not available for Subcontractor's use.
7. Trash Receptacle/Dumpster Subcontractor shall employ its own means of moving trash from the jobsite on a daily basis.
8. Temporary Power Temporary power will be provided to the jobsite by Contractor. Distribution will also be provided by Contractor predetermined locations. Subcontractor shall be responsible for distribution of power from that point.
9. Temporary Lighting – Contractor will provide temporary lighting.
10. Water Service Temporary water service will be provided by Contractor. All distribution from the points of connection shall be Subcontractor's responsibility.
11. Scaffolding Scaffolding will not be provided by Contractor. Subcontractor shall plan accordingly.
12. Hoisting Hoisting will not be provided by Contractor. Subcontractor shall plan accordingly.

13. Deliveries and Traffic Control Subcontractor shall coordinate all deliveries and traffic control (including street markers and barricades) with Contractor. Contractor will assist wherever possible but any extra expenses and personnel are the responsibility of Subcontractor.
14. On-site Storage/Lay Down Area - Due to the constricted and dynamic nature of any jobsite, all on-site storage of equipment and materials must be authorized and coordinated with Contractor's Superintendent. If the equipment/material should require relocation at any time, Subcontractor shall be responsible to immediately relocate it at no additional costs to Contractor.
15. Layout – Subcontractor shall provide all layout for its own work, if applicable.
16. Cleanup At the end of every workday, every Subcontractor shall be responsible to leave their work area clean and free of debris. Within 24 hours of a written notice by Contractor of an area that requires cleanup (for which the Subcontractor is responsible in the Contractor's reasonable opinion), Subcontractor shall cause the area to be cleaned. If Subcontractor fails to respond to such notice then Contractor may cause the area to be cleaned and back-charge the Subcontractor for any costs associated therewith.

END EXHIBIT “C”

EXHIBIT "D"  
SAFETY PROCEDURES

1. Safety – Subcontractor is responsible for prevention of accidents arising from or relating to its work. Subcontractor is responsible for the safe performance of its work by Subcontractors' employees. Subcontractor shall establish its own safety program implementing safety measures, policies and standards conforming to those required by governmental authorities having jurisdiction and by Contractor and Owner.
2. Subcontractor shall comply fully with all federal, state and local laws, orders, citations, rules, regulations, standards and statutes affecting or relating to the Subcontract or its performance.
3. Subcontractor shall comply with the accident prevention and safety program of Owner and Contractor, including attendance at any required safety meetings held by Contractor or Owner, or their agents. Establishment of a safety program by Contractor shall not relieve Subcontractor of its own safety responsibilities.
4. Subcontractor shall notify Contractor immediately following an accident or incident involving an injury or a "near miss" and promptly confirm the notice in writing. A detailed written report shall be furnished to Contractor by Subcontractor.
5. Subcontractor shall indemnify and hold Contractor harmless from all fines, penalties or costs of abatement imposed on Contractor as a result of safety violations caused by Subcontractor's failure to comply with applicable safety requirements.
6. Subcontractor shall notify Contractor of any unsafe condition it discovers or observes and shall stop work until informed by Contractor that it may resume work.
7. Should Subcontractor encounter any hazardous substances at the site which are potentially harmful to persons or property, Subcontractor shall take all steps required by the Subcontract Documents and by law to protect persons and property from injury or damage, including stopping Subcontractor's work in the affected area(s) and promptly notifying Contractor in writing of the conditions encountered at the site. Should Subcontractor be required to stop work in any area of the project as a result of hazardous substances located at the site, Subcontractor shall not resume work in the affected area(s) until the hazardous substances have been removed or made harmless, all necessary approvals to resume work are obtained and Contractor gives Subcontractor written direction to resume work.
8. All Material Safety Data Sheets (MSDS), plans, submittals or other such documents required by law or the Subcontract Documents pertaining to all materials or substances used or consumed in the performance of Subcontractor's work shall be submitted to Contractor by Subcontractor. Subcontractor shall comply with all safety requirements and recommendations as published in such documents. Any such MSDS, plans or submittals obtained by Contractor from other subcontractors or sources shall be made available to Subcontractor by Contractor at the Project Site. Electronic maintenance of MSDS data is acceptable if compliant with regulations.

9. Subcontractor shall maintain a written Illness and Injury Prevention Program (IIPP) as required by regulations and law and shall submit to Contractor's field representative prior to its commencement of work.

10. Subcontractor shall carefully plan each phase of its work to consider safety risks of various means and methods and shall develop a specific safety work analysis plan to ensure safe outcomes for its workers and others on the project.

END EXHIBIT "D"

EXHIBIT "E"  
INSURANCE REQUIREMENTS

The requirements of this Exhibit "E" are in addition to and supplementary to Article 10 of the Subcontract Agreement.

10.1 Subcontractor's Insurance – Prior to start of its work, and for the benefit of the Owner and Contractor and the other Indemnitees, Subcontractor shall procure for its work and maintain in force the following types and limits of insurance unless additional types and higher limits are required of Contractor under the Contract, in in such cases, Subcontractor shall procure and maintain such additional types and higher limits:

10.1.1 Workers' Compensation Insurance, Employer's Liability Insurance,

- |    |                       |                                 |
|----|-----------------------|---------------------------------|
| A. | Combined Single Limit | \$1 million for each occurrence |
| B. | Waiver of Subrogation |                                 |

10.1.2 Comprehensive Automobile Liability Insurance,

- |   |   |  |
|---|---|--|
| A | Combined Single Limit<br>Bodily Injury and<br>Property Damage                 | \$1 million for each occurrence                                |
| B | Bodily Injury   | \$1 million for each person<br>\$1 million for each occurrence |
| C | Property Damage   | \$1 million for each occurrence                                |
| D | Hired/Rented/Non-Owned Coverage   |  |
| E | Provide Endorsement Naming Indemnitees as Additional Insured per Article 10.2 |  |

10.1.3 Comprehensive or Commercial General Liability Insurance on an occurrence basis only,

- |    |   |                                 |
|----|---|---------------------------------|
| A  | Each Occurrence Limit   | \$1 million for each occurrence |
| B  | General Aggregate   | \$2 million                     |
| C  | Products/Completed Operations Aggregate   | \$2 million                     |
|    | Subcontractor shall provide completed operations coverage and maintain the same in full force for the duration of Subcontractor's work.   |                                 |
| D  | Personal and Advertising Injury Limit   | \$1 million for each occurrence |
| E  | Subcontractor's insurance shall include contractual liability insurance covering Subcontractor's obligations under the Subcontract, including all indemnification provisions included in the Subcontract. |                                 |
| F  | Provide Endorsement Naming Indemnitees as Additional Insured per Article 10.2   |                                 |
| G  | Provide Primary and Non-Contributory Endorsement  |                                 |
| H. | Waiver of Subrogation   |                                 |

10.1.4 Pollution Liability Insurance. With limits of \$1 million or higher.

10.1.5 Professional Liability Insurance. With limits of \$1 million or higher.

10.1.6 Excess/Umbrella Insurance. Subcontractor shall purchase and maintain following-form excess/umbrella insurance with limits of *at least* **\$5,000,000** to “go over” the Workers Compensation/Employers Liability, Automobile Liability and Commercial General Liability primary policies listed above.

10.1.7 Any additional types of insurance and coverages as required by the Contract.

10.2 Indemnitees. Contractor and Owner and any other Indemnitees listed in the Contract or required by the Owner. A list of required other indemnitees will be provided to Subcontractor.

Owner Information  
Owner Name Here  
Owner Address Here  
Owner Address Here

Contractor Information (Certificate Holder)  
J. R. Filanc Construction Company, Inc.  
740 N. Andreasen Drive  
Escondido, CA 92029

Re: Job #XXXX – Job Name Here Located At \_\_\_\_\_

10.3 Certificates of Insurance – Prior to starting its work on the Project, Subcontractor shall provide one or more Certificates of Insurance, and proper endorsement pages, in a form required by Contractor evidencing that Subcontractor fully complies with all requirements of Article 10 and this Exhibit “E” and any other insurance provisions in the Contract. All required “Additional Insured” policy endorsements must be physically attached to the Certificates of Insurance. Failure of the Subcontractor to comply with this requirement shall be a default under the Subcontract and no payments will be made hereunder, until the Subcontractor has fully complied with this requirement.

10.4 Additional Insured Endorsements – Subcontractor shall provide separate endorsements to the policies as required above to name the Indemnitees as additional insureds under the policies. The Additional Insured endorsement shall not exclude the “Completed Operations” exposure (or be limited only to “Ongoing Operations”)

END EXHIBIT “E”

EXHIBIT "F"  
SUBCONTRACTOR BILLING REQUIREMENTS

- Subcontractor Billings due to Contractor on the 25<sup>th</sup> of the month for work to be completed through the end of the month. Subcontractor shall use billing forms to be provided by Contractor's accounting department.
- Subcontractor shall use a "percent complete" method of billing using Contractor's MS-Excel schedule of values and cover sheet form which will be provided to Subcontractor. Subcontractor shall bill based on upon the total percentage of completion of each line item as of the end of the month, unless another method is agreed to by the Contractor.
- No billings allowed for work not included in the Subcontract, or approved Change Orders.
- All invoices must be accompanied by a conditional lien release using a statutory form provided by Contractor.
- Subcontractor shall provide an unconditional lien release using statutory forms provided by Contractor immediately after receipt of payment from the Contractor.
- All invoices are to be submitted electronically to [Invoices@Filanc.com](mailto:Invoices@Filanc.com) (No correspondence)
- All subcontractor billings are reviewed and approved by Contractor's Project Manager and are subject to adjustment. Subcontractor will be notified if any adjustments are made.
- Project Manager or Owner may require supporting backup to verify and approve billings.
- Anticipated payment cycle is 30 days based on payments from owner to Contractor.
- 5% Retention will be withheld, unless the Contract provides for a lower percentage.
- Sub-Subcontractors and Material Suppliers – If the Subcontractor utilizes sub-subcontractors and/or material suppliers for part of the work, the Subcontractor shall ensure that all payments are made to such lower tier vendors. The subcontractor shall provide lien releases from every such lower tier vendor to evidence the status of payment. It is preferred that the subcontractor provide unconditional lien releases from lower tier vendors evidencing payment has been made for the billing period. In the alternative, if subcontractor provides conditional lien releases from lower tier vendors, then the Contractor may issue payment to the Subcontractor and that lower tier vendor by joint check in the amount of the conditional lien release.
- Compliance Withholding – The Subcontractor shall be responsible to ensure that all Initial Compliance items and also all ongoing compliance items such as certified payroll reporting and insurance renewals, etc. are kept current, or payment could be withheld.

END EXHIBIT "F"

## EXHIBIT "G" LABOR COMPLIANCE REQUIREMENTS - CALIFORNIA

As an employer working the State of California, the Subcontractor shall carefully observe and follow all Federal and State laws governing the employment of workers. Similarly, the Subcontractor shall ensure that any Sub-subcontractors who work under the Subcontractor also shall follow all applicable Federal and State employment laws.

### Public Works Law

In addition to employment laws affecting all employers, there are additional rules and regulations that affect employers working on Public Works Construction contracts. Subcontractor, and its Sub-subcontractors are directed to California Labor Code Sections 1720-1815 which are partially included in this exhibit for convenience. It shall be the responsibility for the Subcontractor and its Sub-Subcontractors to fully comply with all such requirements.

### Subcontractor Registration with the DIR

Subcontractor shall at all times during the performance of this Subcontract maintain a valid Public Works Contractor Registration with the CA Department of Industrial Relations pursuant to Labor Code 1725.5 and 1771.1. See <https://efiling.dir.ca.gov/PWCR/> for more information.

### Employment of Apprentices

Subcontractor shall employ apprentices in compliance with the Public Works Law.

### Payment of Prevailing Wages

Subcontractor shall pay all its employees in compliance with the Public Works Law. See the State of California's website for the latest prevailing wage decisions: <http://www.dir.ca.gov/OPRL/dprevagedetermination.htm>

### Certified Payroll Recordkeeping and Reporting and Compliance Monitoring

Subcontractor and all Sub-Subcontractors working under the Subcontractor, shall keep payroll records in compliance with the Public Works Law and shall report all payroll data in compliance with the Law. This shall include both physical records reporting and electronic reporting as required. If the Owner has employed a "Labor Compliance Program" as provided under the Public Works Law, Subcontractor, and all Sub-Subcontractors, shall comply with the monitoring requirements of the Program. Similarly, in its role as the Prime Contractor, the Contractor is required to collect, monitor and verify Subcontractor's, and all Sub-Subcontractor's, compliance records + with the Public Works laws. Therefore, Subcontractor shall submit the following to the Contractor for themselves and for each of their Sub-Subcontractors. Detailed instructions and forms are available from the Contractor's Project Accountant.

#### Items to Submit Before First Weekly Payroll

- List of Trades and/or Crafts to be used on the Project (FCC CPR #001)
- Authorized Signatory for Certified Payroll Reporting (FCC CPR #002)
- Authorization for Payroll Deductions for Each Employee (FCC CPR #003)
- DAS 140 – Public Works Contract Award Information - confirmation of receipt from each program.
- DAS 142 – Request for Dispatch of an Apprentice as required
- Apprenticeship Certification for Each Apprentice Employed on the Project
- Fringe Benefit Statement Including Each Trade Package

#### Items to Submit Immediately After Each Weekly Payroll

- PDF Version of Consecutively Numbered Weekly Payroll Report (DOL Form WH-347 or equal) Or- if no payroll occurred during a work week, then a Statement of Non-Performance for the week.
- A copy of the DIR confirmation of receipt of electronic submission of the eCPR for the week.

#### Items to Submit Monthly

- Evidence of payment of Apprenticeship Training Contributions and Union Trust Funds, as required.

#### Items to Submit Immediately After the Final Payroll is Reported

- Final Affidavit of Compliance With California Prevailing Wage Law

Sample Forms

Attached to this Exhibit are sample forms which are provided for the convenience of the Subcontractor in their efforts to comply with the Public Works reporting requirements. These forms are examples only and are not certified to be current and are subject to change but are provided to assist in reducing the effort for the Subcontractor.

Payment Withholding

Contractor shall have the right to withhold payment of part or all of Subcontractor's payment requests if any of the required reporting is not properly and timely submitted and/or if the Contractor is notified of any penalties or assessments by the State DIR under the Public Works Laws.

Final Payment

Prior to making final payment Subcontractor shall be required to sign an affidavit under the penalty of perjury that the Subcontractor has paid all wages and all amounts due under California Public Works Laws.

Davis Bacon Requirements

In addition to the Public Works Laws defined above, some California Public Works projects are subject to Federal prevailing wage requirements, known as "Davis-Bacon" requirements. If such requirements do apply to this project a "Davis-Bacon Requirements Attachment" will be included as an additional Exhibit to this Subcontract. In any case where the requirements of the Public Works Laws and the Davis-Bacon Requirements may be in conflict, the more restrictive, or more expensive, or the more favorable requirement on behalf of the worker shall apply.

**Selected Sections Copied from the California Labor Code as of October 30, 2016**

*(See CA website current law for subsequent changes and any additional sections)*

**LABOR CODE****DIVISION 2. EMPLOYMENT REGULATION AND SUPERVISION [200 - 2699.5]**

*( Division 2 enacted by Stats. 1937, Ch. 90. )*

**PART 7. PUBLIC WORKS AND PUBLIC AGENCIES [1720 - 1964]**

*( Part 7 enacted by Stats. 1937, Ch. 90. )*

**CHAPTER 1. Public Works [1720 - 1861]**

*( Chapter 1 enacted by Stats. 1937, Ch. 90. )*

**ARTICLE 1. Scope and Operation [1720 - 1743]**

*( Article 1 enacted by Stats. 1937, Ch. 90. )*

**1720. (DEFINITION OF PUBLIC WORKS)**

(a) As used in this chapter, "public works" means:

- (1) Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this paragraph, "construction" includes work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, and work performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite. For purposes of this paragraph, "installation" includes, but is not limited to, the assembly and disassembly of freestanding and affixed modular office systems.
- (2) Work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type. "Public work" does not include the operation of the irrigation or drainage system of any irrigation or reclamation district, except as used in Section 1778 relating to retaining wages.
- (3) Street, sewer, or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district thereof, whether the political subdivision or district operates under a freeholder's charter or not.
- (4) The laying of carpet done under a building lease-maintenance contract and paid for out of public funds.
- (5) The laying of carpet in a public building done under contract and paid for in whole or in part out of public funds.
- (6) Public transportation demonstration projects authorized pursuant to Section 143 of the Streets and Highways Code.

(7) (A) Infrastructure project grants from the California Advanced Services Fund pursuant to Section 281 of the Public Utilities Code.

(B) For purposes of this paragraph, the Public Utilities Commission is not the awarding body or the body awarding the contract, as defined in Section 1722.

(b) For purposes of this section, “paid for in whole or in part out of public funds” means all of the following:

(1) The payment of money or the equivalent of money by the state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer.

(2) Performance of construction work by the state or political subdivision in execution of the project.

(3) Transfer by the state or political subdivision of an asset of value for less than fair market price.

(4) Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven by the state or political subdivision.

(5) Money loaned by the state or political subdivision that is to be repaid on a contingent basis.

(6) Credits that are applied by the state or political subdivision against repayment obligations to the state or political subdivision.

(c) Notwithstanding subdivision (b):

(1) Private residential projects built on private property are not subject to the requirements of this chapter unless the projects are built pursuant to an agreement with a state agency, redevelopment agency, or local public housing authority.

(2) If the state or a political subdivision requires a private developer to perform construction, alteration, demolition, installation, or repair work on a public work of improvement as a condition of regulatory approval of an otherwise private development project, and the state or political subdivision contributes no more money, or the equivalent of money, to the overall project than is required to perform this public improvement work, and the state or political subdivision maintains no proprietary interest in the overall project, then only the public improvement work shall thereby become subject to this chapter.

(3) If the state or a political subdivision reimburses a private developer for costs that would normally be borne by the public, or provides directly or indirectly a public subsidy to a private development project that is de minimis in the context of the project, an otherwise private development project shall not thereby become subject to the requirements of this chapter.

(4) The construction or rehabilitation of affordable housing units for low- or moderate-income persons pursuant to paragraph (5) or (7) of subdivision (e) of Section 33334.2 of the Health and Safety Code that are paid for solely with moneys from the Low and Moderate Income Housing Fund established pursuant to Section 33334.3 of the Health and Safety Code or that are paid for by a combination of private funds and funds available pursuant to Section 33334.2 or 33334.3 of the Health and Safety Code do not constitute a project that is paid for in whole or in part out of public funds.

(5) Unless otherwise required by a public funding program, the construction or rehabilitation of privately-owned residential projects is not subject to the requirements of this chapter if one or more of the following conditions are met:

(A) The project is a self-help housing project in which no fewer than 500 hours of construction work associated with the homes are to be performed by the home buyers.

(B) The project consists of rehabilitation or expansion work associated with a facility operated on a not-for-profit basis as temporary or transitional housing for homeless persons with a total project cost of less than twenty-five thousand dollars (\$25,000).

(C) Assistance is provided to a household as either mortgage assistance, down payment assistance, or for the rehabilitation of a single-family home.

(D) The project consists of new construction, expansion, or rehabilitation work associated with a facility developed by a nonprofit organization to be operated on a not-for-profit basis to provide emergency or transitional shelter and ancillary services and assistance to homeless adults and children. The nonprofit organization operating the project shall provide, at no profit, not less than 50 percent of the total project cost from nonpublic sources, excluding real property that is transferred or leased. Total project cost includes the value of donated labor, materials, architectural, and engineering services.

(E) The public participation in the project that would otherwise meet the criteria of subdivision (b) is public funding in the form of below-market interest rate loans for a project in which occupancy of at least 40 percent of the units is restricted for at least 20 years, by deed or regulatory agreement, to individuals or families earning no more than 80 percent of the area median income.

(d) Notwithstanding any provision of this section to the contrary, the following projects shall not, solely by reason of this section, be subject to the requirements of this chapter:

(1) Qualified residential rental projects, as defined by Section 142(d) of the Internal Revenue Code, financed in whole or in part through the issuance of bonds that receive allocation of a portion of the state ceiling pursuant to Chapter 11.8 (commencing with Section 8869.80) of Division 1 of Title 2 of the Government Code on or before December 31, 2003.

(2) Single-family residential projects financed in whole or in part through the issuance of qualified mortgage revenue bonds or qualified veterans' mortgage bonds, as defined by Section 143 of the Internal Revenue Code, or with mortgage credit certificates under a Qualified Mortgage Credit Certificate Program, as defined by Section 25 of the Internal Revenue Code, that receive allocation of a portion of the state ceiling pursuant to Chapter 11.8 (commencing with Section 8869.80) of Division 1 of Title 2 of the Government Code on or before December 31, 2003.

(3) Low-income housing projects that are allocated federal or state low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code, Chapter 3.6 (commencing with Section 50199.4) of Part 1 of Division 31 of the Health and Safety Code, or Section 12206, 17058, or 23610.5 of the Revenue and Taxation Code, on or before December 31, 2003.

(e) Notwithstanding paragraph (1) of subdivision (a), construction, alteration, demolition, installation, or repair work on the electric transmission system located in California constitutes a public works project for the purposes of this chapter.

(f) If a statute, other than this section, or a regulation, other than a regulation adopted pursuant to this section, or an ordinance or a contract applies this chapter to a project, the exclusions set forth in subdivision (d) do not apply to that project.

(g) For purposes of this section, references to the Internal Revenue Code mean the Internal Revenue Code of 1986, as amended, and include the corresponding predecessor sections of the Internal Revenue Code of 1954, as amended.

(h) The amendments made to this section by either Chapter 938 of the Statutes of 2001 or the act adding this subdivision shall not be construed to preempt local ordinances requiring the payment of prevailing wages on housing projects.

*(Amended by Stats. 2015, Ch. 547, Sec. 4. Effective January 1, 2016.)*

#### **1725.5. (CONTRACTOR REGISTRATION)**

A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, "contractor" includes a subcontractor as defined by Section 1722.1.

(a) To qualify for registration under this section, a contractor shall do all of the following:

(1) Beginning July 1, 2014, register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of three hundred dollars (\$300) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.

(2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:

(A) Workers' Compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.

(B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

(E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:

- (i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.
- (ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars (\$2,000).
- (b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.
- (c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.
- (d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:
  - (1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.
  - (2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.
  - (3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2) of this subdivision.
- (e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work, as defined in this chapter, entered into on or after April 1, 2015.  
(Added by Stats. 2014, Ch. 28, Sec. 62. Effective June 20, 2014.)

#### **1771. (PAYMENT OF A GENERAL PREVAILING WAGE)**

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.

(Amended by Stats. 1981, Ch. 449, Sec. 1.)

#### **1771.1. (CONTRACTOR REGISTRATION REQUIRED)**

- (a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.
- (b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.
- (c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:
  - (1) The subcontractor is registered prior to the bid opening.
  - (2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.
  - (3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.
- (d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(g) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015.

*(Added by Stats. 2014, Ch. 28, Sec. 63. Effective June 20, 2014.)*

### **1775. (PENALTIES FOR VIOLATIONS)**

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

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

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

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

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

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

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

(C) If the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

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

(E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

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

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

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

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

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

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

*(Amended by Stats. 2011, Ch. 677, Sec. 1. Effective January 1, 2012.)*

**1776. (PAYROLL RECORDS; RETENTION, INSPECTION, RULES & REGULATIONS)**

(a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section. *(Amended by Stats. 2014, Ch. 28, Sec. 71. Effective June 20, 2014.)*

#### **1777.5. (EMPLOYMENT OF APPRENTICES)**

(a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) 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.

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

(f) The apprenticeship program that can supply 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 where the contractor agrees to be bound by those standards, but, 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. Where 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) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1 to 5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

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

(2) 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 funds shall be distributed as follows:

(A) 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.

(B) 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.

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Department of Industrial Relations for the administration and enforcement of apprenticeship standards and requirements under this code.

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

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

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

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

*(Amended by Stats. 2014, Ch. 890, Sec. 1. Effective January 1, 2015.)*

**1813. (FORFEITURE FOR VIOLATIONS)**

The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract and shall report them to the Division of Labor Standards Enforcement.

*(Amended (as added by Stats. 1997, Ch. 757, Sec. 6) by Stats. 2002, Ch. 28, Sec. 3. Effective January 1, 2003.)*

**1815. (OVERTIME)**

Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1<sup>1</sup>/<sub>2</sub> times the basic rate of pay.

*(Amended by Stats. 1963, Ch. 964.)*

END EXHIBIT "G"

Attachment G1  
Sample Certified Payroll Documents

CALIFORNIA PROJECTS

## LIST OF TRADES and/or CRAFTS

---

**Project # :** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

**Prime Contractor:** \_\_\_\_\_

**Company Name** \_\_\_\_\_

**Sub-Contractor:** \_\_\_\_\_

**Company Name** \_\_\_\_\_

**Contact:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone #:** \_\_\_\_\_

**Fax#:** \_\_\_\_\_

**E-mail:** \_\_\_\_\_

Trade or Craft	Prevailing Wage Classification	Determination Number	Page #	Federal or State

# AUTHORIZED SIGNATORY

For Certified Payroll Reporting

Project Name: \_\_\_\_\_

Job Number: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Date: \_\_\_\_\_

This correspondence is to affirm that the person(s) indentified below have the authority under penalty of perjury to so affirm, that the records are originals or are full, true, and correct copies of the original and depict truly, fully and correctly, the craft or type of work performed, hours and days worked, and the amounts by category listed, disbursed by way of cash, check, or in whatever form or manner to each person by job classification and/or skill pursuant to a public works contract. **To affirm signatory authorization, or to delegate signatory authorization, the person identified below must be owners or officers of the company. If delegating signatory authorization, both names must appear and remain current.**

\_\_\_\_\_  
Print Name of Authorized Signatory Owner/Officer

\_\_\_\_\_  
Print Name of Approved Authorized Signatory

\_\_\_\_\_  
Signature of Authorized Signatory

\_\_\_\_\_  
Signature of Authorized Signatory

\_\_\_\_\_  
Title of Authorized Signatory

\_\_\_\_\_  
Title of Authorized Signatory

*If authorization changes resubmit form with original signature*

# AUTHORIZATION FOR PAYROLL DEDUCTION

---

Project Name:

Bid Number:

Employee Name:

I hereby authorize,

\_\_\_\_\_  
(Name of Company)

to deduct the following from my payroll check:

Amount of deduction:

\_\_\_\_\_

Start of deduction:

\_\_\_\_\_

Frequency of deduction:

\_\_\_\_\_

Termination of deduction:

\_\_\_\_\_

Reason(s) for deduction:

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

\_\_\_\_\_  
*Employee's Signature*

\_\_\_\_\_  
*Date*

## PUBLIC WORKS CONTRACT AWARD INFORMATION

Contract award information must be sent to your Apprenticeship Committee if you are approved to train. If you are not approved to train, you must send the information (which may be this form) to ALL applicable Apprenticeship Committees in your craft or trade in the area of the site of the public work. Go to: <http://www.dir.ca.gov/das/PublicWorksForms.htm> for information about programs in your area and trade. You may also consult your local Division of Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards.

**Do not send this form to the Division of Apprenticeship Standards.**

NAME OF YOUR COMPANY	CONTRACTOR'S STATE LICENSE NO
MAILING ADDRESS- NUMBER & STREET, CITY, ZIP CODE	AREA CODE & TELEPHONE NO.
NAME & ADDRESS OF PUBLIC WORKS PROJECT	DATE YOUR CONTRACT EXECUTED
	DATE OF EXPECTED OR ACTUAL START OF PROJECT
NAME & ADDRESS OF PUBLIC AGENCY AWARDED CONTRACT	ESTIMATED NUMBER OF JOURNEYMEN HOURS
	OCCUPATION OF APPRENTICE
THIS FORM IS BEING SENT TO: (NAME & ADDRESS OF APPRENTICESHIP PROGRAM(S))	ESTIMATED NUMBER OF APPRENTICE HOURS
	APPROXIMATE DATES TO BE EMPLOYED

***This is not a request for dispatch of apprentices.***

*Contractors must make a separate request for actual dispatch, in accordance with Section 230.1(a) California Code of Regulations*

*Check One Of The Boxes Below*

1.  We are already approved to train apprentices by the \_\_\_\_\_  
Apprenticeship Committee. We will employ and train under their Standards.      Enter name of the Committee
  
2.  We will comply with the standards of \_\_\_\_\_  
Apprenticeship Committee for the duration of this job only.      Enter name of the Committee
  
3.  We will employ and train apprentices in accordance with the California Apprenticeship Council regulations, including § 230.1 (c) which requires that apprentices employed on public projects can only be assigned to perform work of the craft or trade to which the apprentice is registered and that the apprentices must at all times work with or under the direct supervision of journeyman/men.

*Signature* \_\_\_\_\_ *Date* \_\_\_\_\_

*Typed Name* \_\_\_\_\_

*Title* \_\_\_\_\_

**State of California - Department of Industrial Relations DIVISION  
OF APPRENTICESHIP STANDARDS**



# REQUEST FOR DISPATCH OF AN APPRENTICE – DAS 142 FORM

**DO NOT SEND THIS FORM TO DAS**

You may use this form to request dispatch of an apprentice from the Apprenticeship Committee in the craft or trade in the area of the public work. Go to: <http://www.dir.ca.gov/DAS/PublicWorksForms.htm> for information about programs in your area and trade. You may also consult your local Division Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards. **Except for projects with less than 40 hours of journeyman work, you must request and employ apprentices in no less than 8 hour increments.**

<b>Date:</b> _____	<b>Contractor Requesting Dispatch:</b>
<b>To Applicable Apprenticeship Committee:</b>	<b>Name:</b> _____
<b>Name:</b> _____	<b>Address:</b> _____
<b>Address:</b> _____	_____
_____	<b>License No.</b> _____
<b>Tel. No.</b> _____ <b>Fax No.</b> _____	<b>Tel. No.</b> _____ <b>Fax No.</b> _____

**Project Information:**

**Contract No.** \_\_\_\_\_

**Name of the Project:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Dispatch Request Information:**

**Number of Apprentice(s) Needed:** \_\_\_\_\_ **Craft or Trade:** \_\_\_\_\_

**Date Apprentice(s) to Report:** \_\_\_\_\_ (72 hrs. notice required) **Time to Report:** \_\_\_\_\_

**Name of Person to Report to:** \_\_\_\_\_

**Address to Report to:** \_\_\_\_\_

\_\_\_\_\_

*You may use this form to make your written request for the dispatch of an apprentice. Requests for dispatch must be in writing and submitted at least 72 hours in advance (excluding weekends and holidays) via first class mail, fax or email. **Proof of submission may be required.** Please take note of California Code of Regulations, Title 8, § 230.1 (a) for all applicable requirements regarding apprenticeship requests and/or visit <http://www.dir.ca.gov/DAS/DASApprenticesOnPublicWorksSummaryOfRequirements.htm>*

DAS 142 (Revised 12/11)



# Fringe Benefit Statement

COMPANY INFORMATION			
Company Name			Date
Street Address		Suite/Unit #	
City	State	Zip	
License Number	Issuing State(s)	Classification	Expriation

CONTRACT INFORMATION	
Project Name/Number	Contract Number

In order that the proper Fringe Benefit rates can be verified for checking payrolls or applied to force account work on the above contract, the hourly rates for Fringe Benefits, subsistence and/or travel on the allowance payment made for employees on the various classes of work are tabulated below. THIS FORM MUST BE COMPLETED AND SUBMITTED WITH THE FIRST CERTIFIED PAYROLL, OR WHEN THERE HAVE BEEN ANY CHANGES.

CLASSIFICATION	FRINGE BENEFIT HOURLY AMOUNT	NAME AND ADDRESS OF PLAN, FUND OR PROGRAM
Effective Date	Vacation      \$ _____	
	Health & Welfare      \$ _____	
	Pension      \$ _____	
Subsistence and/or Travel Pay	Apprentice/ Training      \$ _____	
	Other      \$ _____	
\$ _____		

CLASSIFICATION	FRINGE BENEFIT HOURLY AMOUNT	NAME AND ADDRESS OF PLAN, FUND OR PROGRAM
Effective Date	Vacation      \$ _____	
	Health & Welfare      \$ _____	
	Pension      \$ _____	
Subsistence and/or Travel Pay	Apprentice/ Training      \$ _____	
	Other      \$ _____	
\$ _____		

SIGNATURE	
I hereby certify that fringe benefits are paid to the approved Plans, Funds, or Programs as listed above.	
Print Name	Title/Position
Authorized Signature	Date

**PAYROLL**

(For Contractor's Optional Use; See Instructions at [www.dol.gov/esa/whd/forms/wh347instr.htm](http://www.dol.gov/esa/whd/forms/wh347instr.htm))



Rev. Dec. 2008

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

OMB No.: 1215-0149  
 Expires: 12/31/2011

NAME OF CONTRACTOR		OR SUBCONTRACTOR		ADDRESS															
PAYROLL NO.		FOR WEEK ENDING				PROJECT AND LOCATION						PROJECT OR CONTRACT NO.							
(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT OR ST.	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK
				HOURS WORKED EACH DAY	FICA	WITH- HOLDING TAX		OTHER	TOTAL DEDUCTIONS										
			O										/						
			S										/						
			O										/						
			S										/						
			O										/						
			S										/						
			O										/						
			S										/						
			O										/						
			S										/						

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

**Public Burden Statement**

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

Date \_\_\_\_\_

I, \_\_\_\_\_  
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

\_\_\_\_\_ on the  
(Contractor or Subcontractor)

\_\_\_\_\_;  
(Building or Work)

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and ending the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
all persons employed on said project have been paid the full weekly wages earned, that no rebates have  
been or will be made either directly or indirectly to or on behalf of said

\_\_\_\_\_ from the full  
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly  
from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part  
3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948,  
63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

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

(2) That any payrolls otherwise under this contract required to be submitted for the above period are  
correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the  
applicable wage rates contained in any wage determination incorporated into the contract; that the  
classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide  
apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of  
Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a  
State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

— in addition to the basic hourly wage rates paid to each laborer or mechanic listed in  
the above referenced payroll, payments of fringe benefits as listed in the contract  
have been or will be made to appropriate programs for the benefit of such  
employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

— Each laborer or mechanic listed in the above referenced payroll has been paid,  
as indicated on the payroll, an amount not less than the sum of the applicable  
basic hourly wage rate plus the amount of the required fringe benefits as listed  
in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE
----------------	-----------

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR  
SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE  
31 OF THE UNITED STATES CODE.

# STATEMENT OF NON-PERFORMANCE PAYROLL FORM

Payroll Report No. \_\_\_\_\_

I, \_\_\_\_\_, hereby certify under penalty of perjury  
*(Name of Authorized Person)*  
no person(s) employed by \_\_\_\_\_ performed  
*(Name of Prime / Subcontractor)*  
work on the construction project known as \_\_\_\_\_  
*(Project Name / Title)*  
for the payroll period commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_  
and ending on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_.

\_\_\_\_\_  
*SIGNATURE OF AUTHORIZED PERSON*

\_\_\_\_\_  
*TITLE / POSITION*

\_\_\_\_\_  
*NAME OF AUTHORIZED PERSON*

\_\_\_\_\_  
*DATE*

**AFFIDAVIT OF COMPLIANCE WITH CALIFORNIA PREVAILING WAGE LAW, CALIFORNIA LABOR CODE SECTIONS 1720-1815**

1. I am \_\_\_\_\_ the \_\_\_\_\_  
(Print Name) (Position Held)

of \_\_\_\_\_, a subcontractor to \_\_\_\_\_  
(Subcontractor Name) (Contractor Name)

On the job of \_\_\_\_\_ I am familiar with the payroll practices of Subcontractor on the  
(Project Name)

Project. One of my duties and responsibilities is to ensure that Subcontractor complies with the California Prevailing Wage Law, California Labor Code sections 1720 through 1815 on the Project. I make this sworn statement pursuant to California Labor Code Sections 1775, subdivision (b)(4), and subdivision (d)(4).

- 2 I have reviewed the payroll practices and the payroll records for Subcontractor on the Project. Subcontractor has paid the specified prevailing rate of wages to each of its employees on the Project as required by the Prevailing Wage Law, and has paid any amounts due such employees under California Labor Code section 1813. subcontractor has employed the required number of Apprentices on the Project.
- 3 I have also reviewed the payroll practices of each Subcontractor's lower-tiered Subcontractors on the Project. Each of Subcontractor's lower-tiered Subcontractors has paid the specified prevailing rate of wages to its employees, has paid any amount due such employees under California Labor Code section 1813, has employed the required amount of Apprentices on the Project, and has provided Subcontractor with an affidavit that complies with California Labor Code sections 1775, subdivision (b)(4), and 1777.7, subdivision (d)(4).
- 4 I understand that Contractor is relying upon the truth of the contents of this sworn statement in making final payment to Subcontractor for work performed on the Project, and may suffer damages if my sworn representations were not true.
- 5 This statement is submitted in accordance with California Labor Code section 1777.5(e).

I, \_\_\_\_\_, the undersigned, as the \_\_\_\_\_  
(Name) (Position)

of \_\_\_\_\_ which worked as a Contractor/Subcontractor on the  
(Company Name)

\_\_\_\_\_ Project. On this contract, for the craft  
(Project Name)

\_\_\_\_\_, the total number of journeyman hours was \_\_\_\_\_, and the total  
(Apprenticeable Craft)

Number of apprenticeship hours was \_\_\_\_\_ establishing an apprentice/journeyman ratio in hours of  
\_\_\_\_\_ to \_\_\_\_\_.

**Please check here  if apprentice committee(s) either denied or failed to respond to request for apprentices, and therefore all workers were classified as journeyman.**

***I declare under penalty of perjury that the foregoing is true and correct.***

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_