



**SUBCONTRACT AGREEMENT**

This SUBCONTRACT AGREEMENT (the "Agreement") is made and entered into on \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") by and between: D H SLATER & SON INC, a California corporation (California Contractors License Number 453735), whose address is 3753 Morehead Avenue, Chico, California 95928 (the "Contractor") and \_\_\_\_\_, [*insert entity designation*] (California Contractors License Number \_\_\_\_\_), whose address is: \_\_\_\_\_, California, for the performance of certain work by Subcontractor on that construction project known as \_\_\_\_\_, which is located at: \_\_\_\_\_ and more commonly identified by County Assessor's Parcel Number \_\_\_\_\_ (the "Project"), with respect to the following agreed facts:

- A. On or about \_\_\_\_\_, 20\_\_\_\_, Contractor and Owner entered into that certain prime construction contract (the "Prime Contract") for the construction of the Project by Contractor.
- B. The "Owner" of the Project is: \_\_\_\_\_, whose address is: \_\_\_\_\_.
- C. The "Architect" for the Project is: \_\_\_\_\_, whose address is: \_\_\_\_\_.
- D. The "Lender" for the Project is: \_\_\_\_\_, whose address is: \_\_\_\_\_.

**NOW, THEREFORE**, for good and valuable consideration, the receipt, sufficiency, and adequacy of which is hereby acknowledged, Contractor and Subcontractor (collectively referred to as the "Parties" and singularly as a "Party") agree as follows:

1. Scope of Work: In accordance with the terms and conditions set forth in this Agreement and the Contract Documents (defined herein, below), Subcontractor agrees to furnish all labor, materials, equipment, and other facilities required to fully perform the work identified in, or reasonably inferable from, sections \_\_\_\_\_ of the Project Specifications to complete the \_\_\_\_\_ for the Project, in accordance with the Scope of Work set forth in "**EXHIBIT A**," attached hereto and incorporated herein by this reference (the "Work"). In the event of any dispute between Contractor and Subcontractor as to the scope of Subcontractor's Work, Subcontractor shall not stop the Work, but will prosecute the work diligently to completion, and the dispute shall be submitted for resolution in accordance with this Agreement.

a. If Subcontractor's bid or proposal is attached to, or made a part of this Agreement, in the event of any conflict between this Agreement and Subcontractor's bid or proposal, this Agreement shall prevail and provide the controlling terms, covenants, and conditions pursuant to which the Work shall be performed and completed by Subcontractor.

b. Pursuant to the terms, covenants, and conditions set forth in this Agreement including, but not limited to Sections 3.f., 3.h., and 7.d of the General & Special Terms And Conditions, attached to this Agreement as **EXHIBIT B**, and incorporated herein by this reference, Subcontractor understands, acknowledges, and agrees that Subcontractor's performance of any work without first having received a Contract Change Order or Construction

Change Directive for the performance of change or extra work, or the failure to timely follow the procedures required for the submission of claims for changed work or extra work in accordance with this Agreement, shall constitute an agreement by Subcontractor that Subcontractor shall not be paid for any such changed work or extra work or claims related thereto.

2. Contract Sum. As compensation for the diligent and full performance of the Subcontractor's Work under this Agreement, Subcontractor shall be paid the sum of: \_\_\_\_\_ (\$ \_\_\_\_\_; the "Contract Sum"), subject to additions and deductions for changes in Subcontractor's Work as may be directed in writing by Contractor, and paid in accordance with **Section 3** of the General & Special Terms and Conditions (**EXHIBIT B**).

3. Contract Documents:

a. As used in this Agreement the term "Contract Documents" shall mean, refer to and include the Project plans, drawings, and specifications prepared by the Architect including, but not limited to, any and all terms, conditions, special conditions, general conditions, requirements, standard specifications, ordinances, rules, regulations, codes, standards, or statutes set forth in the plans and specifications, attached to the Plans and Specifications, or incorporated therein by reference (collectively, the "Plans and Specifications") the Prime Contract between the Contractor and the Owner including, but not limited to, any and all special conditions, general conditions, requirements, specifications, ordinances, rules, regulations, codes, standards, or statutes set forth therein or incorporated therein by reference, and this Agreement including, but not limited to, any and all addenda, contract change orders, and construction change directives entered into or given pursuant to this Agreement, and all other terms, general conditions, special conditions, general conditions, requirements, specifications, ordinances, rules, regulations, codes, standards, or statutes set forth in, attached to, or incorporated herein by reference. The Contract Documents are incorporated into this Agreement by reference and where reference is made herein to either or both this "Agreement" or the "Contract Documents", reference to one shall include the other.

b. If Subcontractor's bid or proposal is attached to this Agreement, such attachment is for informational purposes only. It is agreed that Subcontractor bid or proposal is not incorporated into this Agreement by reference and, in the event of any difference, conflict, disagreement, addition, or omission in or between the scope of work set forth in Subcontractor's bid or proposal and this Agreement, Contractor and Subcontractor agree that such difference, conflict, disagreement, addition, or omission has been resolved prior to entering into this Agreement and, therefore, the terms, covenants, and conditions and the Scope of Work set forth in this Agreement shall prevail and control the duties, obligations, rights, and remedies of the Parties.

4. Inurement. Subcontractor agrees that Subcontractor and Subcontractor's subcontractors and suppliers shall be bound to Contractor in the same manner and to the same extent as Contractor is bound to Owner under the Contract Documents to the extent of the Work and procedures provided for in this Agreement, and that where in the Prime Contract and other Contract Documents reference is made to Contractor, and the Work, obligations, or specifications therein pertains to Subcontractor's trade, craft, or type of work, then such Work or specification shall be interpreted to apply to Subcontractor instead of Contractor.

5. Representations of Subcontractor. Subcontractor certifies that Subcontractor has carefully reviewed the Plans and Specifications and that Subcontractor is fully familiar with all of the details, requirements, terms, and conditions of the Contract Documents, the location of the job site, and the conditions under which Subcontractor's Work shall be performed. Subcontractor further certifies that Subcontractor enters into this Agreement based upon Subcontractor's investigation of all such matters and not in reliance on any opinions or representations of Contractor, Owner, Architect, or anyone acting on their behalf.

6. Integration. This Agreement embodies the entire agreement and understanding between the Parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof. No course of prior

dealing between the Parties, no usage of the trade, and no parole or extrinsic evidence of any nature shall be used or be relevant to supplement, explain, or modify any term used herein. Each Party represents and warrants to the other Party that it is not relying upon any other Party for advice. This Agreement is a product of negotiation and preparation by and among each Party and its attorneys. Therefore, each Party expressly waives the provisions of Civil Code section 1654 and acknowledges and agrees that this Agreement should not be deemed prepared or drafted by one Party or the other and shall be construed accordingly.

7. Incorporation by Reference. The recital set forth in paragraphs A., B., C., and D., above, all exhibits and attachments to this Agreement, and the Contract Documents are hereby incorporated into this Agreement by reference as though set forth herein in their entirety.

8. Time. Time is of the essence of this Agreement. The Subcontractor's Work shall be performed diligently and in accordance with this Agreement and in particular Section 4 of the General & Special Terms and Conditions (**EXHIBIT B**). Contractor's schedule for the Project is:  attached hereto as "**EXHIBIT C**" and incorporated herein by reference; or  shall be attached to this Agreement as "**EXHIBIT C**" at such time as said schedule is completed in Contractor's sole discretion. 9.

Attorney's Fees. In the event the Parties become involved in litigation, arbitration, or judicial reference as provided in this Agreement with each other in which the services of an attorney or other experts are reasonably required, the prevailing Party shall be fully compensated for the cost of its participation in such proceedings, including the cost incurred for attorney's fees and expert's fees. Unless judgment goes by default, the attorney's fee award shall not be computed in accordance with any court schedule, but shall be such as to fully reimburse the prevailing Party for all attorney's fees and expert's fees, and costs actually incurred in good faith, regardless of the size of a judgment, it being the intention of the Parties to fully compensate for all attorney's fees and expert's fees paid or incurred in good faith.

10. Authority. Each person executing this Agreement represents and warrants that the execution of this Agreement has been duly authorized by the party on whose behalf the person is executing the Agreement and that such person has the actual authority to execute this Agreement on behalf of such party.

**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 (4) YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN TEN (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.**

IN WITNESS WHEREOF, and having read and understood all of the terms and conditions of this Agreement in consultation with its legal counsel, each Party hereto has caused this Agreement to be executed as of the day and year set forth above.

*(Signatures Continued on Following Page)*

**CONTRACTOR**

**SUBCONTRACTOR**

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

D H SLATER & SON INC., a California corporation  
(License No. 453735)

COMPANY NAME, (*insert entity designation*)  
License No.: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_, President  
Print Name of Signer

\_\_\_\_\_, President  
Print Name of Signer

## TABLE OF EXHIBITS AND ATTACHMENTS

**EXHIBIT A:** SCOPE OF WORK

**EXHIBIT B:** GENERAL & SPECIAL TERMS AND CONDITIONS

**EXHIBIT C:** PROJECT SCHEDULE

**EXHIBIT D:** INSURANCE REQUIREMENTS

**EXHIBIT E:** REQUIRED USE FORMS: FOR FORM ONLY- DO NOT SIGN

FORM ONLY SUBCONTRACT CHANGE ORDER

(UNLESS ORDERED BY OWNER)

FORM ONLY SUBCONTRACT CONSTRUCTION CHANGE DIRECTIVE

(UNLESS ORDERED BY OWNER)

REQUEST FOR INFORMATION (UNLESS ORDERED BY OWNER)

CERTIFICATION OF CLAIM CALIFORNIA FALSE CLAIMS ACT

**EXHIBIT F:** FOR PREVAILING WAGE PROJECTS

PREVAILING WAGE SPECIAL PROVISIONS

SELECTED PROVISIONS: California Labor Code Sections

1771, 1775, 1776, 1777.5, 1813, and 1815

AFFIDAVIT OF COMPLIANCE

## **EXHIBIT A**

### **SCOPE OF WORK**

Subcontractor shall fully execute the Subcontractor's Work described in or reasonably inferable from the Contract Documents including, but not limited to, the plans, drawings, and specifications for the Project except as specifically indicated in the Contract Documents to be the responsibility of others.

Subcontractor's Scope of Work shall be performed in accordance with the following sections of the project Specifications, and such other Specifications Sections as may be listed in, referred to, or incorporated into these sections by reference:

- 1.
- 2.
- 3.

Contractor and Subcontractor agree that the following exceptions and exclusions apply to Subcontractor's Scope of Work:

- 1.
- 2.
- 3.

If Subcontractor's bid or proposal is attached to this Agreement, such attachment is for informational purposes. Subcontractor's bid or proposal shall not be incorporated into this Agreement by reference. In the event of any difference, conflict, disagreement, addition, or omission in or between the work identified in Subcontractor's bid or proposal and this Agreement, Contractor and Subcontractor agree that such difference, conflict, disagreement, addition, or omission has been resolved prior to entering into this Agreement and, therefore, the terms, covenants, and conditions and the Scope of Work set forth in this Agreement shall prevail and control the duties, obligations, rights, and remedies of the Parties.

## **EXHIBIT B**

### **GENERAL & SPECIAL TERMS AND CONDITIONS**

1. Incorporation into Subcontract Agreement. This document titled "General & Special Terms And Conditions" is attached to and incorporated into that certain Subcontract Agreement between D H SLATER & SON INC., and the Subcontractor identified on page 1 of the Agreement to which this documents is attached (the "Agreement"). In the event of a conflict between the terms and conditions set forth herein and the terms and conditions set forth in the Agreement, the terms and conditions set forth in the Agreement shall prevail and control the rights and remedies of the Parties.
2. Defined Terms. The capitalized or defined terms set forth in the Agreement shall have the same meaning and intent in this document as in the Agreement.
3. Payment Schedule.
  - a. Contractor agrees to pay to Subcontractor in monthly progress payments of ninety percent (95%) of labor and materials which have been placed in position during the particular billing period, with funds received by Contractor from Owner for work performed by Subcontractor as reflected in Contractor's applications for payment. Such monthly progress payments shall be made not less than seven (7) days after receipt of payment from the Owner by Contractor.
  - b. Subject to the provisions of **Section 3.d.**, below, Contractor agrees to make final payment to Subcontractor, with funds received by Contractor from Owner, for the full performance of Subcontractor's Work. Final payment to Subcontractor shall be made seven (7) days after the entire work required by the Prime Contract has been fully completed in conformity with the Contract Documents and has been delivered to and accepted by Owner, Architect, and Contractor.
  - c. As an express condition precedent to the making of any payment to the Subcontractor, Subcontractor shall furnish to the Contractor payroll affidavits, payment receipts, vouchers, and releases of claims for labor, material, and from Subcontractor and Subcontractor's subcontractors performing work or furnishing materials under this Agreement, and such other forms, documents, and certifications that Contractor deems necessary before the release of payment, all in form satisfactory to Contractor (the "Payment Documents"). It is agreed that no payment hereunder shall be made, except at Contractor's option, unless and until all of the Payment Documents have been timely furnished by Subcontractor to the Contractor. The Contractor, at its option, may make any payment due hereunder by check made payable jointly to Subcontractor and any of its subcontractors, suppliers, or materials suppliers who have performed work or furnished materials under this Agreement. Any payment made hereunder prior to completion and acceptance of the work, as referred to above, shall not be construed as evidence of acceptance or acknowledgement of completion of any part of Subcontractor's Work.
  - d. As an express condition proceeding to the making of final payment to Subcontractor for the full performance of Subcontractor's Work pursuant to **Section 3.c.**, above, all of the following shall have occurred or been fully performed by Subcontractor:
    - (1) Subcontractor has delivered to Contractor all Payment Documents including, but not limited to, final payroll reports, affidavits, certificates, and all documents required under the Prime Contract for the closeout of the Project; and
    - (2) Subcontractor has delivered to Contractor the fully signed and dated forms of the statutory Conditional Waiver And Release Of Claims On Progress Payment and the Unconditional Waiver And Release Of Claims On Final Payment, one for each payment received by Subcontractor including the final payment, and for all

payments received by Subcontractor's employees, subcontractors, and suppliers performing work or furnishing services, materials, or equipment to the Project; and

(3) Subcontractor shall have submitted with each request for payment by Subcontractor a written False Claim Act Certificate in the form attached to this Agreement, by Subcontractor under penalty of perjury under the laws of the State of California, that each of Subcontractor's requests for payment, notices of potential claim, or claims is valid and accurate.

e. If Owner or other responsible party delays making payment to Contractor from which payment to Subcontractor is to be made, Contractor and its sureties shall have a reasonable time to make payment to Subcontractor. "Reasonable Time" shall be determined according to the relevant circumstances, but in no event shall the Reasonable Time be less than the time Contractor, Contractor's sureties, and Subcontractor require to pursue to conclusion their legal remedies against Owner, or other responsible party, to obtain payment including, but not limited to, stop notice and mechanics lien remedies.

f. If Subcontractor asserts a claim which involves, in whole or in part, acts or omissions which are the responsibility of the Owner or another party, including, but not limited to, any one, all, or a combination of claims for failure to pay, an extension of time, delay damages, or extra work, all such claims shall be submitted in strict accordance with: (1) **Section 6** of this Agreement, (2) the Contract Documents, (3) the Standard Specifications (including, without limitation, those sections of the Standard Specifications that address the measurement and payment of work, notices of potential claim, final payment, and claims), (4) all other provisions set forth elsewhere in this Agreement and the Contract Documents, and (5) all provisions pertaining to the California False Claims Act. Subcontractor's failure to timely follow the procedures required for the submission of claims for changed work or extra work in accordance with this Agreement, shall constitute an agreement by Subcontractor that Subcontractor shall not be paid for any such claimed changed work or extra work.

g. If Subcontractor asserts a claim in accordance with this Agreement which involves, in whole or in part, acts or omissions which are the responsibility of the Owner or another party, including, but not limited to, any one, all, or a combination of claims for failure to pay, an extension of time, delay damages, and/or extra work, Contractor will present the Subcontractor's claim to the Owner or other responsible party. The Subcontractor shall cooperate fully with the Contractor in all steps taken in connection with prosecuting such a claim and shall hold harmless and reimburse Contractor for all expenses, including legal expenses, incurred by Contractor which arise out of Contractor's submission of Subcontractor's claim to the Owner or other responsible party. Subcontractor shall be bound by an adjudication or award in any proceeding resolving such a claim.

h. Contractor and Subcontractor, and each of them, understand, acknowledge, and agree that in accordance with California Business and Professions Code section 7108.5 and Public Contract Code Section 10262.5, in the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the Contractor to the Subcontractor, the Contractor may withhold no more than 150 percent of the disputed amount. In the event of such withholding, Subcontractor shall nonetheless continue the diligent performance of Subcontractor's Work without delay.

i. All payments by Contractor under this Agreement shall be subject to final audit and adjustment by Contractor or Owner, or both. If there is or has been any overpayment of amounts to Subcontractor, Subcontractor shall immediately, upon written demand by Contractor to Subcontractor, repay to Contractor the total amount of said overpayment or overpayments and, if Subcontractor fails to do so, Contractor shall be entitled to recover from Subcontractor the total amount of said overpayment or overpayments, plus interest thereon at the rate of ten (10) percent per annum.



j. Contractor may deduct or offset from any payments to Subcontractor under this Agreement, any sums of money owed by Subcontractor to Contractor arising out of the performance of this Agreement or any other agreement, on this and any other project, or related to any other event or transaction, whether or not related to, or arising out of, this Agreement or this Project.

4. Contractor's Construction Schedule.

a. Subcontractor shall prosecute Subcontractor's Work in a prompt and diligent manner in accordance with the Contractor's Project Schedule and without delaying or hindering Contractor's work, the work of other contractors or subcontractors, or the timely completion of the entire Project within the time allowed under the Prime Contract. Subcontractor shall coordinate Subcontractor's Work with that of all other contractors, subcontractors, and Contractor in a manner that will facilitate the efficient completion of the entire work of the Project. In the event Subcontractor fails to maintain Subcontractor's part of the Project Schedule, Subcontractor shall, without additional compensation, accelerate Subcontractor's Work as Contractor may direct until Subcontractor's Work is in compliance with the Project Schedule.

b. All shop drawings, product submittals, and product literature that Subcontractor is required to provide under the Contract Documents (the "Submittals") shall be reviewed by Subcontractor for proper form, quantity, and accuracy, and submitted by Subcontractor in such time to ensure that the Submittals are approved in sufficient time so that Subcontractor may order all materials, and do all things required of Subcontractor, to fully comply with the Project Schedule. Subcontractor agrees that Subcontractor shall in all instances respond promptly to Contractor's requests and should Subcontractor fail to timely respond to Contractor, or fails to obtain approval for the Submittals, order its materials, or perform Subcontractor's Work in accordance with the Project Schedule, Subcontractor shall be responsible for all damages suffered and extra costs incurred by Contractor as a result of such delay.

c. The Contractor shall have complete control of the premises on which the work of the Project is to be performed and shall have the right to decide the time and order in which various portions of the work shall be performed and the relative priority of Subcontractor's Work, the work of the Project and other subcontractors, and, in general, all other matters pertaining to the timely and orderly conduct of Subcontractor's Work on the Project. Should Subcontractor be delayed in the prosecution or completion of Subcontractor's Work by the act, neglect, or default of Owner, Architect, or Contractor, or should Subcontractor be delayed waiting for materials, if required by this Agreement to be furnished by Owner or Contractor, or by damage caused by fire or other casualty for which Subcontractor is not responsible, or by the combined action of the workmen, in no way caused by or resulting from fault or collusion on the part of Subcontractor, or in the event of a lock-out by Contractor, then the time fixed by Contractor for the completion of Subcontractor's Work may be extended by the number of days Subcontractor can demonstrate to the satisfaction of Contractor and Owner that Subcontractor has thus been delayed, but no allowance or extension of time shall be made unless Subcontractor notifies Contractor within forty-eight (48) hours of the commencement of such delay and Subcontractor timely submits its claim in accordance with this Agreement. Under no circumstances shall the time of completion be extended to a date which will prevent Contractor from completing the work of the entire Project within the time allowed Contractor by Owner for such completion.

d. No claims for additional compensation or damages for delays, whether caused in whole or in part by any conduct on the part of Contractor, including, but not limited to, conduct amounting to a breach of this Agreement, or delays by other subcontractors or Owner, shall be recoverable from Contractor, and the above-mentioned extension of time for completion shall be the sole remedy of Subcontractor; provided, however, in the event Contractor obtains additional compensation from Owner on account of such delays, Subcontractor shall be entitled, subject to **Section 6** and **Section 7**, below, to such portion of the additional compensation so received by Contractor from Owner as is equitable under all of the circumstances.

5. Changes in the Work.

a. Subcontractor shall make any and all changes in Subcontractor's Work including the performance of extra work and work directed by construction change directive (collectively, "Changed Work") as directed by Contractor in writing. Neither the performance of any Changed Work, nor Contractor's written direction to Subcontract to perform the Changed Work shall invalidate this Agreement or any bond produced by Subcontractor under this Agreement.

b. Subject to the provisions of **Section 5.a.**, above, upon the authorized performance Changed Work by the Subcontractor pursuant written direction from the Contractor, the Contract Sum and, provide Subcontractor demonstrates to Contractor and Owner that an extension of time is necessary, the Contract Time may be adjusted by appropriate additions and deductions.

(1) Unless Subcontractor is directed by Contractor to perform Changed Work on a time-and-materials basis, Contractor and Subcontractor agree that any adjustment in the Contract Sum and Subcontractor's time of performance shall be agreed upon by Contractor and Subcontractor before Subcontractor begins the performance of any Changed Work.

c. If Contractor and Subcontractor cannot agree on the amount of the addition or deletion to the Contract Sum or the Subcontractor's time, or if Subcontractor is directed to perform Changed Work on a time-and-materials basis, Subcontractor shall nonetheless timely and diligently perform the Changed Work identified in Contractor's written direction.

(1) Should Owner or the Contractor elect to have any Changed Work performed on a time-and-material basis in lieu of lump sum proposal or unit prices, and Contractor so notifies Subcontractor in writing, the Subcontractor shall perform such Changed Work at Subcontractor's actual direct cost of labor, materials, suppliers, subcontractors, and rental equipment (not including charges for administration, clerical expense, supervision or superintendence of any nature whatever, including foremen, or the cost, use, or rental of hand tools, vehicles, or office facilities), plus a markup of ten (10) percent on the direct costs for Subcontractor's overhead and profit. The allowed markup for overhead and profit shall be inclusive of any and all costs and expenses including, but not limited to, all overhead of whatever kind or nature, and all supervision, management, administration, estimating or other costs.

(3) Subcontractor shall submit to the Contractor, or the Contractor's representative for review and signing, daily time and material tickets. These tickets will include the identification number assigned to the particular Changed Work, the location and description of the work, the classification of labor employed including workers' names and social security numbers, the hours worked, the material used, the size and description of all equipment utilized and the number of hours of actual operation (standby time is not permitted), and any other information ordered by the Contractor.

(4) The Contractor or the Contractor's representative shall be under no obligation to sign any daily time and material ticket unless such ticket is fully and accurately completed to the satisfaction of the Contractor or the Contractor's representative. The time and materials tickets shall not be valid, and Subcontractor shall not be entitled to payment for any such tickets unless each ticket is signed by the Contractor or the Contractor's representative.

(5) If Subcontractor procures the performance of Changed Work by others rather than its own employees, the Subcontractor shall not be entitled to greater payment than that to which it would have been entitled if it had itself furnished the labor and materials required in connection with the Changed Work performed in accordance with this provision.

d. Subcontractor shall not make any changes to Subcontractor's Work or the work of the Project, or in any way cause or allow Subcontractor's Work to deviate from the Contract Documents without written direction from Contractor. If Subcontractor makes any changes in Subcontractor's Work without written direction from Contractor, such change constitutes an agreement by Subcontractor that Subcontractor will not be paid for that changed work, even if Subcontractor received verbal direction from Contractor or any form of direction, written or otherwise, from Owner or any other person or entity. In addition Subcontractor shall be liable for any and all losses, costs, expenses, damages, and liability of any nature whatsoever associated with, or in any way arising out of, any such change it makes to Subcontractor's Work without written direction from Contractor.

e. If a dispute arises between Contractor and Subcontractor as to the performance of Changed Work or whether particular work is a change in Subcontractor's Work, Subcontractor shall timely perform the disputed work and may give written notice of a claim for additional compensation for that work in accordance **Section 6** of this Agreement. Subcontractor's failure to give written notice of any claim within the times required in this Agreement shall constitute an agreement by Subcontractor that Subcontractor will not be paid for the disputed work.

6. Claims.

a. Subject to the provisions of **Section 6.d.**, below, in the event Subcontractor submits a claim under this Agreement, Subcontractor agrees to timely comply with any claims certification or documentation requirements set forth in this Agreement and the Contract Documents or required by applicable law. As a condition precedent to the validity of any claim for an increase in the Contract Sum and the Contract Time submitted by Subcontractor, Subcontractor shall have first delivered to Contractor written notice of the particular conditions and any potential claim arising out of, or related to, the said conditions ("notice of potential claim"), no more than five (5) calendar days after Subcontractor's first observance of the condition or conditions.

b. Subcontractor acknowledges that Subcontractor has read, is familiar with, and fully understands the provisions of the California False Claims Act (California Government Code §12650, et seq.; the "False Claims Act"). Submission by Subcontractor time sufficient for Contractor to process its requests and claims with the Owner under the Prime Contract, of any payment request or claim (as the term "claim" is defined in the False Claims Act) to Contractor in connection with the Project shall constitute a representation by Subcontractor to Contractor that each such submission is not in any respect in violation of the False Claims Act. Subcontractor further agrees that Subcontractor shall not engage in any conduct or action related to any such claim that violates any provisions of the California False Claims Act.

(1) In the event Subcontractor demand or request that Contractor submit or "pass through" a claim prepared by Subcontractor, Subcontractor shall, to the greatest extent permitted under California law, protect, defend (with legal counsel reasonably acceptable to Contractor) and hold harmless Contractor from and against any action, cause of action, claim, administrative proceeding, citation, fine, losses and liabilities related to or arising as a consequence of, the claim submitted by Contractor and Subcontractors demand or request.

(2) Subcontractor acknowledge and agrees that Subcontractor's compliance with this claims certification requirement is a condition precedent to any obligation Contractor otherwise may have to review the claim, make any payment on the claim, or to give, submit, deliver, pass through, or forward Subcontractor's claim to Owner.

(3) With each claim submitted by Subcontractor to Contractor, Subcontractor shall submit to Contractor a written False Claim Act Certificate in the form attached to this Agreement, under penalty of perjury under the laws of the State of California, that each of Subcontractor's claims is valid and accurate.

c. Upon the proper submission of a claim asserted by Subcontractor in accordance with the Contract Documents and **Section 6.d.**, below, and upon Contractor's receipt from Subcontractor of Subcontractor's

certification under the False Claims Act. Contractor will present Subcontractor's claim to the Owner or other responsible party. The Subcontractor shall cooperate fully with the Contractor in all steps taken in connection with prosecuting such a claim and shall hold harmless and reimburse Contractor for all expenses, including Contractor's costs and expenses including, without limitation, attorney's fees, expert's fees, and other costs incurred by Contractor, which arise out of Contractor's submission of Subcontractor's claim to the Owner or other responsible party. Subcontractor shall be bound by an adjudication or award in any proceeding resolving such a claim.

d. Subcontractor hereby acknowledges and agrees to be bound by the time requirements set forth in this Agreement and the Contract Documents for the submission of notices, notice of potential claims, claims, and documentation in support of potential claims and claims including, but not limited to, Subcontractor's obligation to provide claim certifications, false claims certifications, supporting invoices, daily work reports, certified payroll, and force account supporting documents (all collectively referred to herein as the "Claim Documentation").

(1) Subcontractor covenants and agrees that, as an express condition precedent to Contractor's obligation under this Agreement or elsewhere to accept, distribute, pass through, or submit any Claim Documentation under the Contract Documents to the Owner, ***Subcontractor shall have first placed all of Subcontractor's Claim Documentation in Contractor's actual possession no less than five (5) working days before any Claim Documentation – including notice of potential claim – are to be submitted under the Contractor Documents to the Owner or the Owner's designated representative.*** If Subcontractor fails to provide Subcontractor's Claim Documentation to Contractor in the manner or in the time required under the Contract Documents, and within the time set forth herein, such failure shall constitute an agreement by Subcontractor that Subcontractor will not be paid for any of the work that is the subject of Subcontractor's Claim Documentation, even if Subcontractor received verbal or written direction from Contractor or any form of direction, written or otherwise, from the Owner or any other person or entity.

e. No change, alteration, or modification to, or deviation from, this Agreement, the Contract Documents, the Prime Contract, the plans, or the specifications, whether or not made in the manner provided in this **Section 6**, shall release or exonerate, in whole or in part, any bond or any surety on any bond given in connection with this Agreement, and no notice is required to be given to such surety of any such change, alteration, modification, or deviation.

7. Damages Cause by Delays. If Subcontractor should default in performance of Subcontractor's Work, or should otherwise commit any act which causes delay to the Contractor, any other Subcontractor, or the Prime Contract work, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages and liquidated damages, sustained by Contractor, or for which Contractor may be liable to Owner or any other party because of Subcontractor's default.

8. Bonding of Subcontractor. Concurrently with the execution of this Agreement, Subcontractor shall, if required by Contractor, execute a labor and material bond and performance bond, in an amount equal to one hundred percent (100%) of the Contract Sum. Said bonds shall be executed by a corporate surety acceptable to Contractor and shall be in a form satisfactory to Contractor. Subcontractor shall pay the premium on said bonds unless otherwise provided herein or in the Contract Documents.

9. Third Party Claims and Liens.

a. In case any demand, action, suit, claim, including stop payment notices and mechanics lien claims (collectively referred to in this **Section 9** as the "Liens") is asserted for labor performed, or materials or equipment used, on or furnished to the Project, Subcontractor shall pay and satisfy all such Liens as may be established by a court of competent jurisdiction. Subcontractor agrees, within ten (10) days after written demand to cause the effect of any such Liens to be removed from the premises by Owner or Contractor, and in the event Subcontractor shall

fail to so do, Contractor is authorized to use in Contractor's sole discretion whatever means Contractor may deem appropriate to cause said Liens to be removed or dismissed and the cost thereof, together with actual attorney's fees, expert's fees, and costs, shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may litigate any such Liens provided Subcontractor causes the effect thereof to be removed, promptly in advance, from the premises, Owner and Contractor and shall further do such things as may be necessary to cause Owner not to withhold any monies due to Contractor from Owner by reason of such Liens.

b. It is understood and agreed that the full complete and faithful performance of this Agreement on the part of Subcontractor (including the payment of any obligations due from Subcontractor to Contractor, and any amounts due to labor or materialmen furnishing labor or material for said work) is a condition precedent to Subcontractor's right to receive payment for the work performed, and any monies paid by Contractor to Subcontractor under the terms of this Agreement shall be impressed with a trust in favor of labor and materialmen furnishing labor and material to Subcontractor on the work herein subcontracted.

10. Inspection of the Project.

a. Subcontractor shall at all times furnish to Owner or Contractor, or both, and their respective representatives, safe and ample facilities for inspecting materials at the site of construction, shops, factories, or any place of business of Subcontractor and its subcontractors and materialmen where materials under this Agreement may be in course of preparation, process, manufacture, or treatment. Subcontractor shall furnish to Contractor as often as required by Contractor, full reports of the progress of the work at any place where materials under this Agreement may be in the course of preparation or manufacture. Such reports shall show the progress of such preparation and manufacture in such details as may be required by Contractor, including, but not limited to, any plans, drawings, or diagrams in the course of preparation.

b. The Owner and Contractor, and their respective representatives shall, at all times, have access to the Subcontractor's Work whenever the Subcontractor's Work is in progress.

c. If the Contract Documents, or any laws, ordinances, or any public authority or authorities require any of Subcontractor's Work to be tested and approved, Subcontractor shall give Contractor and the Architect timely notice of its readiness for inspection, the location of the inspection, and of the date and time fixed for the inspection.

d. If all or a portion of Subcontractor's Work, which is to be inspected before being covered, has been covered prior to the inspection thereof, the Architect may request to see such work and it shall be uncovered by the Subcontractor, at Subcontractor's cost and expense.

11. Materials and Work Furnished by Others. In the event the Subcontractor's Work includes installation of materials or equipment furnished by others or work to be performed in areas to be constructed or prepared by others, it shall be the responsibility of Subcontractor to examine and accept, at the time of delivery or first access, the items so provided and thereupon handle, store and install the items with such skill and care as to insure a satisfactory completion of Subcontractor's Work. Use of such items or commencement of work by Subcontractor in such areas shall be deemed to constitute acceptance thereof by Subcontractor. Loss or damage due to acts of Subcontractor including, without limitation, delays to the completion of the Project arising out of delays by Subcontractor or Subcontractor's subcontractors or suppliers in the performance of Subcontractor's Work, shall be charged to the account of Subcontractor and deducted from monies otherwise due under this Agreement.

12. Protection of the Work. Subcontractor shall effectively secure and protect Subcontractor's Work done hereunder and hereby assumes full responsibility for the condition thereof until final acceptance by Architect, Owner, and Contractor. Subcontractor further agrees to provide such protection as is necessary to protect Subcontractor's

Work and the workmen of Contractor, Owner, and other subcontractors from Subcontractor's operations. Subcontractor shall be liable for any loss or damage to any work in place or to any equipment and materials on the job site caused by Subcontractor or Subcontractor's agents, employees, or guests.

13. Labor Relations.

a. 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, in writing, identify Subcontractor's representative to Contractor, and in the event of any change of representative, Subcontractor shall notify Contractor in writing who the new representative is to be prior to such change becoming effective. Subcontractor agrees to be bound by any and all actions or agreements of Subcontractor's representative.

b. Subcontractor acknowledges that Contractor has not entered into any labor agreements covering work at its construction job sites, shop or office with any labor unions, or apprenticeship training programs and, should there be picketing on Contractor's job site, and Contractor establishes a reserved gate for Subcontractor's purpose, it shall be the obligation of Subcontractor to continue the proper performance of its work without interruption or delay.

c. If picketing occurs on the Project, and Contractor establishes a reserved gate for Subcontractor's use, Subcontractor shall continue performance of the Subcontractor's Work without interruption or delay.

d. Subcontractor shall comply with all equal employment opportunity and affirmative action requirements promulgated by any governmental authority, including, without limitation, the requirements of the Civil Rights Act of 1964.

e. Subcontractor shall comply with, and agrees to be bound by, all applicable Federal, State and local laws and regulations, including, but not limited to, all Fair Labor Standards Act provisions and California Labor Code provisions covering the work.

f. On projects requiring the payment of prevailing wages:

(1) The provisions, statutory references, and documents set forth in "**EXHIBIT F**" shall be attached hereto and incorporated herein by this reference.

(2) Subcontractor shall submit Subcontractor's certified payroll reports to Contractor no later than three (3) working days after the last day of each week during which Subcontractor performed any work on the Project.

(3) Subcontractor shall require all of its subcontractors and all other subcontractors of a lower tier performing work on the Project of the type covered by any of the Labor Agreements (or additional labor agreements with affiliated unions) to agree to all provisions of this **Section 13**.

(4) Subcontractor shall comply with all Federal, State and local laws, regulations and ordinances pertaining to the employment of labor, including without limitation, the Fair Labor Standards Act and the California Labor Code (collectively the "Labor Provisions") including, but not limited to, the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815, copies of which are attached hereto as **EXHIBIT F**. Subcontractor agrees to comply with all of the Labor Provisions applicable to the performance of Subcontractor's Work. Subcontractor covenants and agrees to protect, defend (with legal counsel selected by Contractor and paid by Subcontractor) indemnify and hold Contractor harmless from and against any claims, actions, causes of actions, violations, fines liabilities, proceedings, or damages arising out of Subcontractor's failure to comply with the Labor Provisions.

14. Assurance of Performance.

a. This Agreement imposes an obligation on Subcontractor that Contractor's expectation of receiving due performance from Subcontractor will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of Subcontractor, or Subcontractor's subcontractors, suppliers agents, successors, or assigns, Contractor may, in Contractor's absolute discretion, in writing demand adequate assurance of due performance and, until Contractor receives such assurance, may suspend any performance due Subcontractor including, but not limited to, making payment to Subcontractor for work performed before or after the date of demand.

b. For the purposes of this provision, the term "reasonable grounds" shall mean and refer to any action or inaction of Subcontractor, or Subcontractor's subcontractors, suppliers, agents, employees, officers, directors, successors, or assigns which, in any way, indicates that Subcontractor may be unable to fulfill Subcontractor's obligations under this Agreement including, but not limited to, any default of Subcontractor under this Agreement, Subcontractor's failure to adequately man the project or perform the work of the project in accordance with Contractor's schedule, or Subcontractor's express or implied repudiation of the Agreement or any of its terms including, without limitation, Subcontractor's obligations to timely pay its employees, subcontractors, suppliers and union and union trust funds, and Subcontractor's obligation to fully and completely defend and indemnify Contractor and Contractor's employees, officers, directors, agents, successors, or assigns.

c. Acceptance of any performance or the making of any payment by Contractor shall not prejudice Contractor's right to demand and receive adequate assurance of future performance.

d. After receipt of a demand as provided herein from Contractor, Subcontractor's failure to provide within a reasonable time not exceeding fifteen (15) days such assurance of due performance as is adequate in the sole, subjective, and absolute discretion of Contractor is a repudiation of this Agreement.

e. Notwithstanding any provision of this Agreement to the contrary, this entire provision regarding adequate assurance of performance shall:

(1) Survive this Agreement, whether or not this Agreement is terminated for cause or convenience;

(2) Survive the completion of the project upon which the work of Subcontractor is performed, in whole or in part; and

(3) Survive and apply to any subsequent agreement or judgment between Contractor and Subcontractor including, without limitation:

(a) Any accord or agreement in settlement of disputed claims, including claims against the Owner of the project, whether prepared informally or as a result of mediation; and

(b) Any judgment, whether entered as a result of judicial proceeding, reference, or arbitration.

f. In the event Subcontractor fails to provide Contractor adequate assurance of performance which is acceptable to Contractor, in Contractor's sole subjective and absolute discretion, Contractor and Subcontractor agree that such failure constitutes a material breach of this Agreement and Contractor may, at its option:

(1) Continue under the terms of the Agreement, without waiving any of Contractor's other rights and remedies under the Agreement including, without limitation, Contractor's right to terminate this Agreement for convenience or cause, or recover damages from Subcontractor;

(2) Treat the failure as a material breach of the Agreement, terminate Subcontractor's right

to perform the work under this Agreement, and avail it of the remedies provided under this Agreement for such breach, including the recovery of its damages from Subcontractor;

(3) Employ any other remedies under this Agreement to ensure the timely and successful completion of Subcontractor's work.

15. Failure to Perform.

a. Assurance of Performance. The Contractor shall be entitled to receive from Subcontractor adequate assurance of Subcontractor's ability to complete Subcontractor's Work in accordance with the Contract Documents as provided in **Section 14**, which assurance may be accepted or rejected by the Contractor in the Contractor's sole and absolute discretion.

b. Notice to Cure. If Subcontractor at any time refuses or neglects to supply enough properly skilled workers, equipment, or materials, or fails to properly and diligently prosecute Subcontractor's Work, or fails to make prompt payment to Subcontractor's workers, sub-subcontractors, or suppliers, or becomes delinquent with respect to contributions or payments required to be made to any health and welfare, pension, vacation, apprenticeship, or other employee benefit program or trust, or materially breaches any provision of this Agreement, and fails within forty-eight (48) hours after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then Contractor, without prejudice to any of Contractor's rights or remedies, shall have the right to any or all of the following remedies:

(1) Contractor may supply such number of workers and quantity of materials, equipment, and other facilities as Contractor deems necessary for the completion of Subcontractor's Work, or any part thereof, which Subcontractor has failed to complete or perform, and charge the cost thereof to Subcontractor, who shall be liable for the payment of the same including reasonable overhead, profit, and actual attorney's fees, expert's fees, and costs incurred as a result of Subcontractor's failure of performance;

(2) Contractor may contract with one or more additional contractors to perform such part of Subcontractor's Work as Contractor shall determine will provide the most expeditious completion of the total work and charge the entire cost thereof to Subcontractor, including but not limited to, Contractor's reasonable overhead and profit and all attorney's fees, expert's fees, and costs;

(3) Contractor may withhold payment of any monies due Subcontractor pending corrective action to the extent required by, and to the satisfaction of, Contractor and Contractor may deduct or offset from any payments to Subcontractor any amounts owed to Contractor by Subcontractor arising out of the performance of this Agreement or any other agreement, event or transaction, whether or not related to this Agreement, the Project, or Subcontractor's Work; and

(4) In the event of any conduct by Subcontractor, or any person or entity acting on Subcontractor's behalf including, but not limited to, Subcontractor's agents, employee's, subcontractors, or suppliers, affecting the safety of persons or property on or near the Project, Contractor may exercise any or all of the remedies set out in this **Section 15** without giving prior notice to Subcontractor.

c. Termination for Default: If Subcontractor fails to commence and satisfactorily continue correction of an event of default as set out in **Section 15.a.** within forty-eight (48) hours after receipt by Subcontractor of the notice issued under **Section 15.a.**, then Contractor may, without further notice, terminate Subcontractor's right to perform under this Agreement and use any materials, implements, equipment, appliances, or tools furnished by, or belonging to, Subcontractor to complete Subcontractor's Work without any further notice or compensation to Subcontractor for such use. Contractor also may furnish those materials and equipment, and employ such workers or subcontractors as Contractor deems necessary to maintain the orderly progress of the work.



(1) In the event that Contractor terminates Subcontractor's right to perform Subcontractor's Work, Subcontractor shall be entitled to no further payment until the balance of Subcontractor's Work has been completed. At that time, all of the costs incurred by Contractor in performing Subcontractor's Work, including a markup of ten percent (10%) for overhead and profit on such costs, plus actual attorney's fees, expert's fees, and costs as provided above, shall be deducted from any monies due, or to become due, to Subcontractor. Subcontractor shall be liable for the payment to the Contractor of any amount by which such costs, plus overhead, profit, attorney's fees, expert's fees, and costs may exceed the unpaid balance of the Contract Sum.

d. Termination for Convenience: Contractor may, at any time and for any reason, terminate Subcontractor's services and work at Contractor's convenience. Cancellation shall be by service of written notice to Subcontractor's place of business.

(1) Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, (a) immediately discontinue Subcontractor's Work and the placing of orders for materials, facilities, and supplies in connection with the performance of this Agreement, (b) provide Contractor a complete list of all subcontractors and suppliers in any way connected with the performance of Subcontractor's Work (including the business names, addresses, and telephone numbers of each, and description of the work to be performed and materials to be supplied, and if requested (c) make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Contractor, or at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived therefrom. Subcontractor shall thereafter do only such work as may be necessary to preserve and protect Subcontractor's Work already in progress and to protect material and equipment on the Project site or in transit thereto.

(2) Upon such termination, Subcontractor shall be entitled to payment of only the following amounts: (a) the actual cost of Subcontractor's Work completed in conformity with this Agreement (not unit price or lump sum pricing); plus, (b) such other costs actually incurred by Subcontractor as are permitted by the Prime Contract and approved by Owner; plus, (c) ten percent (10%) of the cost of the portion of Subcontractor's Work referred to in this subparagraph for Subcontractor's overhead and profit.

(3) There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Subcontractor prior to the date of the termination of this Agreement. Subcontractor shall not be entitled to any claim, claim of lien, stop notice, or remedy against Contractor or Owner for any additional compensation or damages in the event of such termination and payment.

e. Grounds for Withholding Payment: Contractor may withhold, or on account of subsequently discovered evidence, nullify the whole or part of any payment to Subcontractor to the extent necessary to protect Contractor from loss, including costs, attorneys' fees, and expert's fees on account of (1) defective work not remedied; (2) claims filed or reasonable evidence indicating the probable filing of a claim; (3) failure of Subcontractor to make payments promptly or properly to its subcontractors or for material, labor or fringe benefits; (4) a determination by Contractor, in Contractor's sole, independent, and subjective discretion that Subcontractor's Work cannot be completed for the balance of the Contract Sum then unpaid; (5) damage to another subcontractor; (6) penalties assessed against Contractor or Subcontractor for failure of Subcontractor to comply with State, Federal or local laws and regulations; (7) any material breach of this Agreement by Subcontractor; or (8) any other grounds for withholding payment allowed by State or Federal law, or as otherwise provided in this Agreement. When the above matters are rectified, such amounts as then due and owing shall be paid or credited to Subcontractor, less costs incurred by Contractor as a result of Subcontractor's performance, or lack thereof, including, but not limited to, attorney's fees, expert's fees, and costs.

f. Bankruptcy:

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

- (a) Promptly cures all defaults; and
- (b) Provides adequate assurance of future performance; and
- (c) Compensates Contractor for actual pecuniary loss resulting from such defaults; and
- (d) Assumes the obligations of Subcontractor within the statutory time limits.

(2) Interim Remedies: If Subcontractor is not performing in accordance with the Project Schedule at the time of entering an order for relief, or at any subsequent time, Contractor, while awaiting the decision of Subcontractor or its trustee to reject or to accept this Agreement and provide adequate assurance of its ability to perform hereunder, may avail itself of any or all of the remedies specified in **Section 15.a.** as are reasonably necessary to maintain Contractor's Project Schedule.

(a) Contractor may, in addition, offset against any sums due or to become due Subcontractor all costs incurred in pursuing any of the remedies provided to Contractor under this Agreement, including, but not limited to, reasonable overhead, profit and actual attorney's fees and expert's fees incurred as a result of Subcontractor's non-performance and Contractor may deduct or offset from any payments to Subcontractor any amounts owed to Contractor by Subcontractor arising out of the performance of this Agreement or any other agreement, event or transaction, whether or not related to this Agreement, the Project or Subcontractor's Work. Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Contract Sum.

g. Excuse. Any act or omission of Contractor, which Subcontractor might claim as an excuse for Subcontractor's own failure to perform shall be deemed waived by Subcontractor unless Subcontractor shall notify Contractor of Subcontractor's intention to assert such excuse within ten (10) days after the occurrence of any such act or omission. Subcontractor has reviewed the Agreement with legal counsel or had adequate opportunity to do so. Subcontractor agrees that this Agreement is a product of negotiation by and among the parties and that the Agreement should not be deemed prepared or drafted by one party or the other and that this Agreement shall be construed accordingly. Therefore, Subcontractor waives any right it might have to assert the provisions of California Civil Code section 1654 against Contractor.

16. Indemnification.

a. With the exception that this **Section 16** shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the laws or public policy of the State of California, Subcontractor shall protect, defend (with attorneys selected by Contractor and paid by Subcontractor), indemnify and save harmless Owner and Contractor, including their officers, agents, employees, attorneys, affiliates, parents, surety, and subsidiaries, and each of them, of and from any and all liens, claims (including, but not limited to, claims of any one, all, or a combination of Subcontractor's subcontractors, any suppliers and sub-suppliers, and claims for unpaid labor by anyone who performed work at any tier or level for Subcontractor or any of Subcontractor's

subcontractors or suppliers), demands, actions, causes of action, damages, suit, administrative proceedings, costs, expenses, actual attorney's fees, expert's fees, losses or liabilities, in law or in equity, of every kind and nature whatsoever (these matters are hereinafter in this **Section 16** referred to as "Actions") arising out of, in connection with, or in any reasonable way related to Subcontractor's Work under this Agreement, including but not limited to, any one, all, or a combination of the following:

(1) Personal injury, including, but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to, any employees or agents of Subcontractor, Owner, Contractor, or any other subcontractor, and damage to property of anyone (including loss of use thereof), caused or alleged to be caused in whole or in part by any negligent act or omission of Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable regardless of whether such personal injury or damage is caused by a party indemnified hereunder.

(2) Penalties imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance, or statute, caused by the action or inaction of Subcontractor.

(3) Infringement of any patent rights which may be brought against the Contractor or Owner arising out of Subcontractor's Work.

(4) Claims and liens for labor performed or materials used or furnished to be used on the Project, including all incidental or consequential damages resulting to Contractor, Contractor's surety, or Owner from such claims or liens.

(5) Subcontractor's failure to fulfill the covenants set forth in **Section 13** (Labor Relations), above.

(6) Failure of Subcontractor to comply with the provisions of **Section 17** (Insurance).

(7) Any violation or infraction by Subcontractor of any law, order, citation, rule regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees, including, but not limited to, the use of Contractor's or other's equipment, hoist, elevators, or scaffolds.

The indemnification provisions of (1) through (7) above shall extend to Actions occurring after this Agreement is terminated as well as while it is in force. Such indemnity provisions shall apply regardless of any active or passive negligent act or omission of Owner or Contractor or their agents or employees. Subcontractor, however, shall not be obligated under this Agreement to indemnify Owner or Contractor for Actions arising from the sole negligence or willful misconduct of Owner or Contractor or their agents, employees, or independent contractors who are directly responsible to Owner or Contractor, or for defects in design furnished by such persons.

b. Subcontractor shall, at Subcontractor's own cost, expense, and risk:

(1) Defend (with legal counsel approved by Contractor and paid by Subcontractor) any one, all, or a combination of the Actions (as defined in **Section 16.a**) that may be brought or instituted by third persons, including, but not limited to, governmental agencies or employees of Subcontractor, against Contractor, Contractor's surety, or Owner or the agents or employees or any of them;

(2) Pay and satisfy any judgment or decree that may be rendered against Contractor, Contractor's surety, or Owner or their agents or employees, or any of them arising out of any such Actions; and

(3) Reimburse Contractor, Contractor's surety, or Owner or their agents or employees for any and all legal expenses incurred by any of them in connection herewith or in enforcing the indemnity provisions of this **Section 16**.

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

d. The indemnities set forth in this **Section 16** shall not be limited by the insurance requirements set forth in **Section 17**, below.

17. Insurance: Before performing work or conducting any activities at the site of the Project, Subcontractor shall comply with all of the insurance provisions set forth in **EXHIBIT D**, attached hereto and incorporated herein by this reference. The commencement by Subcontractor of any of Subcontractor's Work on, or in connection with, the Project shall constitute a representation by Subcontractor that it has fully complied with the requirements of this Agreement and, specifically, the provisions of this **Section 17** and **EXHIBIT D**.

a. Waiver of Subrogation. Contractor and Subcontractor waive all rights against each other and against all other subcontractors and Owner for loss or damage to the extent reimbursed by Builder's Risk or any other property or equipment insurance applicable to the work, except such rights as they may have to the proceeds of such insurance. If the policies of insurance referred to in the Subcontract Agreement require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

b. Certificate of Insurance. The form of the certificate of insurance acceptable to Contractor, which includes all additional insured and waiver of subrogation endorsements, shall be provided by Subcontractor and mailed by the insurer directly to D H SLATER & SON INC within three (3) calendar days of the Effective Date of this Agreement

18. Dispute Resolution.

a. Disputes Under Prime Contract. Any dispute resolution procedure in the Prime Contract shall be deemed incorporated in this Agreement, and shall apply to any disputes arising hereunder, except disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the Prime Contract, and those which have been waived by the making or acceptance of final payment. Subject to Subcontractor's compliance with all applicable laws including, but not limited to, those relating to false claims and the submission of Claim Documentation, Contractor's sole obligation is to present claims timely delivered by Subcontractor to Contractor, and in the form provided under this Agreement, to the Owner under such procedure and, subject to the other provisions of this Agreement, to pay to Subcontractor the proportionate part of any sums paid by the Owner to which Subcontractor is entitled. In the event the Owner and Contractor engage in any form of dispute resolution procedure under the Prime Contract including, but not limited to, litigation, arbitration, judicial reference, or administrative proceeding as to claims, disputes, actions, or causes of action between the Owner and Contract, all disputes between Contractor and Subcontract, or of any type, kind, or nature, arising out of, or related to, the Project shall be heard in the same dispute resolution procedure (the "Consolidated Procedure").

b. Negotiations. Subject to the Prime Contract dispute resolution procedures under **Section 18.c.**, and as for disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the Prime Contract, promptly upon notification by the Subcontractor of a dispute, the Contractor and Subcontractor shall meet to informally resolve such dispute. In the event that no resolution is achieved, the parties, prior to the initiation of any action or proceeding under this **Section 18**, shall make a good faith effort to resolve the dispute by negotiation between representatives with decision-making power, who, to the extent possible, shall not have had substantive involvement in the matters of the dispute, unless the parties otherwise agree. To facilitate the negotiation, the parties agree either to fashion a procedure themselves or seek the assistance of a person or organization experienced in alternative dispute resolution procedures, such as mediation or other similar procedures.

c. Judicial Reference. In the event of a dispute between the parties to this Agreement, that is not resolved informally, the parties hereby agree to proceed pursuant to the judicial reference provisions set forth in this **Section 18**. With the exception of disputes arising under the Prime Contract in **Section 18.a.**, above, Contractor and Subcontractor hereby agree that any and every dispute between Contractor and Subcontractor that is based upon, arising out of, or in any way relating to, this Agreement including, but not limited to (1) disputes arising out of or related to any modification, change order, directive, or amendment to this Agreement and (2) any breach, conduct, acts or omissions of Contractor or Subcontractor or any of their respective directors, officers, employees, agents, subsubcontractors, suppliers, or any other person, persons, entity, or entities affiliated with or representing the Contractor or Subcontractor (in each of the foregoing cases whether sounding in contract or tort or otherwise (separately and collectively referred to in this **Section 18** as a “Dispute”), shall be submitted to general judicial reference pursuant to California Code of Civil Procedure (“CCP”) Sections 638 and 640 through 645.1, or any of their successor statutes of the same affect. The Parties to this Agreement hereby acknowledge and agree that, except as provided in **Section 18.a.**, disputes arising under this Agreement shall be heard by a court of competent jurisdiction located in Butte County, California. All matters related to this Agreement shall be decided in accordance with the laws of the State of California.

(1) The Judicial Referee (the “Referee”) appointed to oversee the judicial reference proceeding shall be a retired judge or justice, or an attorney licensed to practice law in the State of California with no less than eight (8) years of construction litigation experience, selected by mutual written agreement of the parties to the Dispute. If the parties to the Dispute do not agree to the selection of a retired judge or justice, or an attorney licensed to practice law in the State of California with no less than eight (8) years of construction litigation experience to serve as the Referee, within twenty (20) days of a written request to do so by any party to the Dispute, then upon request of any such party, the Referee shall be selected by the Presiding Judge of the Court (or by its representative), who shall apply the same qualification standards to the selection of the Referee. A request for appointment of a Referee may be heard on an ex parte or expedited basis, it being agreed that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP section 170.6, each party to the Dispute shall have one (1) peremptory challenge to the Referee selected by the Presiding Judge of the Court (or its representative).

(2) Time is of the essence in conducting the judicial reference proceedings. Accordingly, the Referee shall be requested, subject to change in the time periods specified herein for good cause shown, to (1) set the matter for a status and trial-setting conference within fifteen (15) days after the date of selection of the Referee, (2) if practicable, try all issues of law or fact within one hundred twenty (120) days after the date of the trial-setting conference, and (3) report a statement of decision within twenty (20) days after the matter has been heard and submitted for decision.

(3) Except as expressly set forth in this Agreement, the Referee shall determine the manner in which the judicial reference proceeding is conducted including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the judicial reference proceeding; provided, however, that all discovery shall be performed in accordance with the California Civil Discovery Act applicable to unlimited civil cases. The time for discovery may be shortened by agreement of the Parties and order issued by the Referee.

(4) The Referee shall be required to determine all issues in accordance with existing case law and the statutory laws of the State of California. The rules of evidence applicable to proceedings at law in the State of California will be applicable to the judicial reference proceeding. The Referee shall be empowered to enter equitable as well as legal relief, enter equitable orders that will be binding on the parties to the Dispute, and rule on any motion which would be authorized in a trial in the Court, including without limitation motions for summary judgment or summary adjudication. The Referee shall issue a decision at the close of the judicial reference proceeding which disposes of all Disputes that are the subject of the judicial reference. Pursuant to CCP section 644,

such decision shall be entered by the Court as a judgment or an order in the same manner as if the action had been tried by the Court and any such decision will be final, binding, and conclusive. The parties to the Dispute shall have the right to: (a) findings of fact, (b) conclusions of laws, (c) a written statement of decision, (d) appeal from the final judgment or order or from any appealable decision or order entered by the Referee, and (e) move for a new trial or a different judgment, which new trial, if granted, shall also be conducted by a judicial reference proceeding pursuant to this **Section 18**. Unless the Referred awards attorney's fees and costs to the prevailing party, all parties to the Dispute will equally share the cost of the Referee and the court reporter at the judicial reference proceedings.

d. Continuation of the Work and Payment. Unless otherwise agreed in writing, Subcontractor shall carry on the work and maintain Contractor's Project Schedule pending the judicial reference proceeding, and if so, Contractor shall continue to make payments in accordance with this Agreement.

e. Consolidated Procedure. Notwithstanding any provision of the Contract Documents to the contrary, Contractor shall not be obligated to resolve any dispute through, or participate in, any arbitration proceeding unless Contractor is required to do so under **Section 18.a.**, above. The claims and disputes of Owner, Contractor, Subcontractor, Subcontractor's subcontractors or suppliers, and other subcontractors, and suppliers involving a common question of fact or law as to the Project shall be heard in the same dispute resolution procedure set forth under **Section 18.a.**, above, in the Consolidated Procedure. In this event, it shall be the responsibility of Subcontractor to prepare and present Subcontractor's case in the Consolidated Procedure. Subcontractor shall be bound by the result of the Consolidated Procedure to the same degree as the Contractor. Subcontractor agrees to enter into written agreements with all of Subcontractor's subcontractors and suppliers, which agreement shall incorporate the dispute resolution procedures set forth in this **Section 18** and, should Subcontractor fail or refuse to do so, Subcontractor agrees to bear the costs, including attorney's fees, expert's fees and costs of suit in any dispute not heard in the Consolidated Procedure, irrespective of whether Subcontractor is the prevailing party.

f. No Limitation of Rights or Remedies. This **Section** shall not be deemed a limitation of any rights or remedies which Subcontractor may have under any federal or state mechanics' lien laws or under any applicable labor and material payment bonds unless such rights or remedies are expressly waived by it.

CONTRACTOR AND SUBCONTRACTOR ACKNOWLEDGE AND AGREE THAT ALL DISPUTES RESOLVED UNDER THIS JUDICIAL REFERENCE PROVISION WILL BE DECIDED BY A REFEREE AND NOT BY A JUDGE, JURY, OR ARBITRATOR. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR OWN CHOOSING, BOTH CONTRACTOR AND SUBCONTRACTOR KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, AGREE THAT THESE DISPUTE RESOLUTION PROVISIONS SHALL APPLY TO ANY AND ALL DISPUTES ARISING OUT OF, OR RELATED TO, THIS AGREEMENT. EXCEPT FOR DISPUTE RESOLUTION ARISING UNDER THE PRIME CONTRACT, CONTRACTOR AND SUBCONTRACTOR AGREE THAT THIS **SECTION 18** AND THE AGREEMENT TO RESOLVE DISPUTES THROUGH JUDICIAL REFERENCE MAY BE PLEADED AS A COMPLETE DEFENSE TO ANY ACTION TO COMPEL A PARTY OR THE PARTIES TO RESOLVE THE DISPUTE OR DISPUTES BY ARBITRATION.

**Contractor's Initials:** \_\_\_\_\_

**Subcontractor's Initials:** \_\_\_\_\_

19. Safety Practices. Subcontractor shall comply fully with all laws, orders, citations, rules, regulations, standards and statutes with respect to occupational health and safety, the handling and storage of hazardous materials, accident prevention, safety equipment and practices including the accident prevention and safety program of Owner and Contractor. Subcontractor shall conduct inspections to determine safe working conditions and equipment exist and accepts sole responsibility for providing a safe place to work for its employees and for employees of its subcontractors and suppliers of material and equipment, for adequacy of and required use of all safety equipment

and for full compliance with the aforesaid laws, orders, citation, rules, regulations, standards, and statutes. Subcontractor's failure to strictly comply with all safety rules, regulations, and requirements of Contractor, shall be a material breach of this Agreement, and Subcontractor's right to continue Subcontractor's Work on the Project may, at the election of Contractor, be terminated immediately and without the notice in accordance with **Section 15**, above.

20. Workmanship and Warranty. Subcontractor warrants to Owner, Architect and Contractor that every part of the work herein described shall be executed in strict accordance with this Agreement and the Contract Documents and in the most sound, workmanlike, and substantial manner. All workmanship shall be of the best of its several kinds, and all materials used in the work herein described shall be furnished in ample quantities to facilitate the proper and expeditious execution of the work, and shall be new and the best of their respective kinds, except such materials as may be expressly provided in the Contract Documents to be otherwise. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Subcontractor guarantees all materials and workmanship and agrees to replace at Subcontractor's sole cost and expense, and to the satisfaction of Contractor, any and all materials adjudged defective or improperly installed as well as guarantee the Owner and Contractor against liability, loss or damage arising from said installation during a period of one year from completion and acceptance of the work covered by the Prime Contract between Owner and Contractor. If, however, the period of guarantee in the Prime Contract is stipulated in excess of one (1) year by the Contract Documents, Subcontractor shall be bound during the longer period stipulated therein. The guarantee provided under this **Section 20** shall not be, and shall not be construed as, a waiver, release, or limitation of Subcontractor's liability for patent or latent conditions that arise within the statute of limitations set forth under CCP Sections 337.1 and 337.15.

21. Assignment.

a. Contractor and Subcontractor each understand, acknowledge, and agree that Subcontractor's Work under this Agreement is personal to Contractor and that the assignment, transfer, encumbrance, or subletting by Subcontractor of (1) all or any portion of Subcontractor's Work, (2) all or any portion of the payment to be received by Subcontractor from Contractor for the performance of Subcontractor's Work, or (3) any other right or interest under this Agreement to any other person, persons, entity, or entities will substantially and materially impair Subcontractor's ability to perform Subcontractor's Work and Contractor's ability to ensure the performance of Subcontractor's Work, to the detriment of both Subcontractor and Contractor. Therefore, and as a material inducement for Contractor to enter into this Agreement with Subcontractor, Subcontractor covenants and agrees that Subcontractor shall not, without the prior written consent of Contractor, which may be withheld by Contractor in Contractor's sole, subjective, and absolute discretion, sell, transfer, assign, delegate, hypothecate, divest, novate, encumber, or sublet (1) all or any portion of Subcontractor's Work, (2) all or any portion of the payment to be received by Subcontractor from Contractor for the performance of Subcontractor's Work, or (3) any other right or interest under this Agreement to any other person, persons, entity, or entities.

b. Contractor and Subcontractor further covenant and agree that any sale, transfer, assignment, delegation, hypothecation, divestiture, novation, encumbrance, subletting, or any attempt to do any one, all, or a combination of the foregoing, whether intentionally or unintentionally, voluntarily or involuntarily, of (1) all or any portion of Subcontractor's Work, (2) all or any portion of the payment to be received by Subcontractor from Contractor for the performance of Subcontractor's Work, or (3) any other right or interest under this Agreement to any other person, persons, entity, or entities, any such sale, transfer, delegation, encumbrance, or subletting shall be null, void, and unenforceable and a material breach and event of default by Subcontractor under this Agreement.

c. Notwithstanding the foregoing provisions of this **Section 21**, the Subcontractor may enter into a written agreement or agreements with its subcontractor or subcontractors to perform portions of the Subcontractor's

work of this Project provided Subcontractor provides written notice to Contractor within twenty (20) calendar days of the signing of each such agreement or agreements.

22. Independent Contractor. Subcontractor is an independent contractor that is duly licensed under the laws of the State of California. At Subcontractor's sole cost and expense, and without increase in the Contract Sum, Subcontractor shall comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the work; obtain all necessary permits and licenses therefore, pay all manufacturers' taxes, sales taxes, use taxes, processing taxes, and all federal and state taxes, insurance and contributions 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. Subcontractor, upon request, shall furnish evidence satisfactory to Contractor that any or all of the foregoing obligations have been fulfilled. In the event of any dispute related to the Subcontractor's independent contractor status, Subcontractor agrees, to the full extent permitted under California law, to protect, defend (with legal counsel reasonably acceptable to Contractor and paid by Subcontractor), indemnify, and hold Contractor harmless from and against any claims, actions, causes of action, fees, fines, penalties, administrative actions and decisions, and all losses and liabilities related thereto and arising therefrom.

23. Clean-up. At all times during the course of construction, Subcontractor shall perform Subcontractor's Work so as to maintain the site of the Project in a clean, safe, and orderly condition. At no time will the Subcontractor store any hazardous waste materials or substances at or on the Project site. Upon completion of Subcontractor's Work under this Agreement, Subcontractor shall immediately remove from the site of the Project all hazardous substances, hazardous products, hazardous materials, temporary structures, debris and waste incidental to subcontractor's operation and, thereafter, clean all areas used, utilized, affected, or involved in the performance of Subcontractor's Work on the Project during the performance of Subcontractor's Work and, in cleaning all such areas, Subcontractor shall, without exception, comply with all local, state, or federal ordinances, statutes, regulations, standards, and codes including, without limitation, all requirements of the federal and California Occupational Safety and Health Administration

24. Character of Workers. If, in the sole and subjective opinion of any one, all, or a combination of the Contractor, the Architect, or the Owner, anyone employed by Subcontractor on the Project is deemed to be unfit for its duties, or find that any one, all, or a combination of any of Subcontractor's employees, agents, or subcontractors acts in an unsafe, unprofessional, or unacceptable manner, Subcontractor shall immediately upon reasonable notice remove said employee, agent, or subcontractor from the Project, and said employee, agent, or subcontractor shall not again be allowed to work on the Project without prior written permission from Contractor. Similarly, should any superintendent or foreman be deemed incompetent or unfaithful in the execution of the Subcontractor's Work, Subcontractor shall remove said employee forthwith from the Project and Subcontractor shall not employ that employee thereafter on any part of the Project.

25. Notice. Any notice permitted or required under this Agreement shall be in writing and shall be delivered during normal business hours or mailed first class mail, postage prepaid (return receipt requested). If notice is given to Contractor or Subcontractor, it shall be sent to the postal address shown on the first page of this Agreement, or to such other address as either party may designate for itself by written notice to the other. Notice shall be effective upon personal delivery, or five (5) days after the date of mailing. Notice may be given by facsimile provided that a report generated by the facsimile that the notice was sent and received by the recipient, shall be kept and maintained with the subject notice. Notice by facsimile shall be effective as of the date transmitted by the sender to the recipient. Notice by electronic message (Email) is not permitted.

26. Binding Effect. This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the Parties, but nothing in this **Section 26** shall be construed as a consent



by Contractor to any assignment of this Agreement or any interest therein by Subcontractor except as provided in **Section 21** of this lease.

27. Severability. If any provision of this Agreement is determined to be illegal or unenforceable for any reason, the same shall be severed from this Agreement and the remainder of this Agreement shall be given full force and effect; provided, however, that in no event shall the severance of any provision of this Agreement foreclose the Contractor's right to recover from Subcontractor any damages suffered by Contractor arising out of the Subcontractor's breach of the Agreement.

28. Counterpart Signatures. This Agreement may be executed in any number of counterparts; each such counterpart, when executed by all Parties, shall be deemed to constitute one and the same instrument and shall be deemed an original hereof. A facsimile transmission (FAX) or an electronic signature through a secured document signing portal (e.g., DocuSign) will be treated the same as an original for the purpose of the Agreement. The original of the fully signed Purchase Agreement shall be retained by Contractor.

29. Waiver. The Waiver by one party of the performance of any covenant, condition, or promise of the other party shall not invalidate this Agreement, nor shall it be construed to be a waiver by such party of any other covenant, condition, or promise contained in this Agreement. The waiver of either or both parties of the time for performing any act shall not be construed as a waiver of any other act required to be performed at a later date.

30. Order of Precedence. In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement duly signed by the Parties; (b) this Agreement; (c) specifications and addenda issued prior to the execution of this Agreement or signed by both Parties; (d) information designated as a Contract Document; (e) other documents listed in this Agreement. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency. In the event of any conflict between this Agreement and any attachment to this Agreement, the Agreement shall be the controlling document and shall be construed to set forth the rights and remedies of the Parties.

31. Headings and Titles. Captions and section headings, have been set forth in the Agreement and in these General & Special Terms And Conditions for convenience only and are not to be used in construing this the Agreement or any of the documents attached to, or incorporated into, the Agreement.

### **SPECIAL TERMS AND CONDITIONS**

1. Subcontractor covenants and agrees that Subcontractor, and Subcontractor's employees, agents, officers, directors, managers, and Subcontractor's subcontractors shall fully observe all safety regulations and standards imposed under California and federal law. The use of personal protective equipment at all times while on the Project site including, but not limited to, hard hats, colored warning garments, proper eye protection, proper footwear, lanyards, and ladder braces is mandatory.

2. Subcontractor shall comply with the requirements of Section 5194, Title 8 of the California Administrative Code entitled Hazard Communication and Section 3203 entitled Injury & Illness Prevention Program.

3. Subcontractor shall provide Contractor, prior to the commencement of any of Subcontractor's Work, Subcontractor's approved Injury And Illness Prevention Program ("IIPP"), a copy of Subcontractor's current California Contractor's License, Materials Safety Data Sheets, and Subcontractor's "Fringe Benefit Statement."

4. Subcontractor shall comply with all the requirements of Contractor's approved Storm Water Pollution Prevention Plan ("SWPPP"). If Subcontractor's operations damage, disturb, or alter any of Contractor's SWPPP in place measures, then it shall be the responsibility of Subcontractor to repair the damage, disturbance, or alteration and ensure the in place measure or measures are restored and in full compliance with Contractor's SWPPP.

5. Subcontractor shall furnish Contractor with Certified Payroll Reports, in duplicate, on a weekly basis and each Certified Payroll Report, and all other documents pertaining to the Project shall reference Contractor's job number for the subject Project.

6. The Contractor shall comply with, and give notices required by, applicable Laws bearing on safety of persons or property or their protection from damage, injury, or loss, including all Cal/OSHA standards and COVID Rules. Contractor hereby accepts full responsibility and liability for the training of its employees as to all precautionary measures necessary to protect such employees during both routine and emergency situations on the site, including all COVID related measures.

**EXHIBIT C**

PROJECT SCHEDULE

## **EXHIBIT D**

### INSURANCE REQUIREMENTS

Throughout the entire term of the Contract, the Subcontractor shall maintain insurance on all of its operations covering the risks assumed by the Subcontractor, in the master subcontract agreement, during the progress of the work, and continuing until the end of the warranty period, insurance acceptable to Contractor and meeting the following requirements:

#### **Commercial General Liability Insurance**

All Insurance Companies should have an A- Rating or better as Assigned by A.M. Best Company. Risk Retention Groups are not acceptable

All policies should be written on Occurrence Form. Claims Made form is not acceptable. No policy shall contain a "Sunset Clause Endorsement" or use a "manifestation" policy form that limits product / completed operations coverage without prior written consent of contractor.

General liability limits shall be required as follows:

Commercial General Liability:	General Aggregate Limit:	\$2,000,000
	Products Comp/Ops Aggr:	\$2,000,000
	Personal & Advertising Injury:	\$1,000,000
	Each Occurrence:	\$1,000,000

General Liability Limits shall apply on a "Per Project Aggregate" basis.

All commercial general liability policies shall include the following coverages:

- i. Premises & Operations
- ii. Product Completed Operations
- iii. Contractual Liability
- iv. Broad Form Property Damage
- v. Explosion Collapse and Underground Hazard
- vi. Personal Injury Liability

Additional Insured Endorsement: A separate endorsement shall be attached to all certificates of insurance naming the Contractor, Owner, and any other entities as identified in the subcontract agreement as additional insured. If possible the certificate shall state "for all California operations." The endorsement supplied shall be the CG 2010 11/85 endorsement when available, or an alternative form acceptable to contractor.

Primary & Non-Contributory Clause: There must be a provision stating that such insurance afforded by the policy shall be primary and shall not contribute with the insurance carried by the additional insured. The primary and non-contributory wording may be added to the endorsement, or a separate endorsement can be attached to the certificate of insurance.

30-Day Notice of Cancellation: 30 day cancellation is required. The wording "will endeavor to..." "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" should be crossed out.

Waiver of Subrogation: There must be a clause or endorsement attached to the General Liability certificate waiving all rights of recovery against Contractor, Owner, and any other entities identified in the subcontract agreement.

**Workers Compensation:** Requires:

- Bodily injury limits as required by statute
- \$1,000,000 Employers Liability Limit, and
- 30-days notice of cancellation

A Waiver of Subrogation endorsement is required to be attached to the workers compensation insurance certificate favoring Contractor, Owner, and any other parties identified in the subcontract agreement.

**Automobile Liability:**

All owned, non-owned and hired vehicles are required to have commercial auto liability. Any of the following three types of auto policies are acceptable and the appropriate boxes must be checked on the insurance certificate:

“Any Auto”

“All owned, hired and non-owned autos”

“Scheduled, hired and non-owned autos”

All auto coverage is required to be written with \$1,000,000 combined single limit and must include coverage for bodily injury and property damage.

All auto policies must require 30-days written notice of cancellation.

**Aircraft Liability:**

If Subcontractor or its lower tier subcontractors use any owned, chartered, leased or hired aircraft of any type in the performance of this Subcontract, they shall maintain aircraft liability insurance in an amount of not less than \$2,000,000 per occurrence, including passenger liability. The policy shall include an Additional Insured Endorsement naming Contractor and Owner and any other entities identified in the Subcontract as additional insured.

**Professional Liability / Errors and Omissions Insurance /Design/Build**

If Subcontractor, or Consultant is providing design/build services, surveying, testing, consulting, engineering or any other professional services as part of their scope of work, Subcontractor is required to provide evidence of Professional Liability Insurance meeting the following criteria:

- \$1,000,000 liability limits
- 30-days written notice of cancellation
- Policy may not have a self-insured retention exceeding \$25,000 without written consent of Contractor.

Subcontractor, or Consultant, shall furnish to Contractor and Owner a certificate of insurance evidencing such coverage. This insurance shall be maintained for not less than the duration of the project. Retroactive date of such coverage must be on or before the date Subcontractor, or Consultant began offering professional services.

***Any deviation from the following insurance requirements shall require a written explanation from subcontractor's broker explaining what requirements the underwriting carrier will not allow in regard to contractor's certificate of insurance requirements.***

**EXHIBIT E**

REQUIRED USE FORMS: FOR FORM ONLY- DO NOT SIGN

FORM ONLY SUBCONTRACT CHANGE ORDER

FORM ONLY SUBCONTRACT CONSTRUCTION CHANGE DIRECTIVE

REQUEST FOR INFORMATION

CERTIFICATION OF CLAIM CALIFORNIA FALSE CLAIMS ACT

**EXHIBIT F**

SPECIAL PROVISIONS FOR PREVAILING WAGE PROJECTS

## ANNEX A

### PREVAILING WAGE SPECIAL PROVISIONS

**Section A-** The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees of the subcontractor by periodic review of the certified payroll records of the subcontractor.

**Section B-** Failure of the subcontractor to pay its employees the specified prevailing rate of wages, the contractor shall take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed.

**Section C** -Prior to making the final payment to the subcontractor for work performed. The contractor shall obtain a signed and notarized affidavit signed under the penalty of perjury, stating that the subcontractor has paid the specified general prevailing rate of per diem wages to its employees and any amounts due pursuant to section 1813.

**Section D-** Subcontractor shall maintain full compliance with all requirements of the California Labor Code.

**Section E-** The following sections of the California Labor Code are referenced specifically herein, full compliance with all requirements of the California Labor Code is required by the Subcontractor.



## ANNEX B

### SELECTED SECTIONS OF THE CALIFORNIA LABOR CODE California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815

**1771.** 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.)*

**1775.** (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 its 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 its 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. (AB 551) Effective January 1, 2012.)*

**1776.** (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 its 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 its 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. (SB 854) Effective June 20, 2014.)*

**1777.5.** (a) (1) This chapter does not prevent the employment upon public works of properly registered apprentices who are active participants in an approved apprenticeship program.

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

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

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

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

(1) The apprenticeship standards and apprentice agreements under which he or she is training.

(2) The rules and regulations of the California Apprenticeship Council.

(d) If the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public

work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

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

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

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

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

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

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of its 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 its life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

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

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

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

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

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

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

(B) An apprenticeship program shall only be eligible to receive grant funds pursuant to this subdivision if the apprenticeship program agrees, prior to the receipt of any grant funds, to keep adequate records

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

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

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

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

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

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

### **ARTICLE 3. Working Hours**

**1813.** The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

**1815.** 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 1/2 times the basic rate of pay.

**ANNEX C**  
**AFFIDAVIT OF COMPLIANCE**