



C O N S T R U C T I O N

Date: XX/XX/XXXX
Subcontractor Federal ID No. «SubTaxID»
Subcontract #: «SL»
Cost Code: XXXX

SUBCONTRACT AGREEMENT

This Agreement is entered into on this day _____ of 20____, between Direct Contractor,

GSE Construction Co., Inc.
6950 Preston Ave.
Livermore, CA 94551
Tel: 925-447-0292
Fax: 925-447-0962

hereinafter called the "Contractor," and

«FirmName»
«FirmAddress»
«FirmCity», «FirmState» «FirmZip»
Tel: «FirmPhone»
Fax: «FirmFax»

hereinafter called "Subcontractor". This Agreement is for the following project:

«udProjectName»
«JobShipAddress»
«JobShipCity», «JobShipState» «JobShipZip»

hereinafter called the Project.

Whereas the Direct Contractor has entered into a Direct Contract dated _«StartMonth»_, with:

«CustomerName»
«CustomerAddress»
«CustomerAddress2»
«CustomerCity», «CustomerState» «CustomerZip»

hereinafter called Owner.

WHEREAS copies of the Direct Contract-Owner agreement are on file in the office of the Contractor and have been examined by the Subcontractor.

The lender, if any, for this Project is (specify branch address):

«FirmName»
«FirmAddress»
«FirmCity», «FirmState» «FirmZip»
Tel: «FirmPhone»
Fax: «FirmFax»

If the information above is not completed, there is no known lender.

NOW THEREFORE it is agreed:

SECTION 1. ENTIRE AGREEMENT; SCOPE OF WORK

Subcontractor agrees to furnish all labor, services, materials, supervision, installation, cartage, hoisting, supplies, insurance, equipment, scaffolding, tools, and other facilities of every kind and description for prompt and efficient execution of the following described work (“the “Work”):

«udScopeOfWork»

Provide «udNumofSubmittalsReq» sets of submittals for Subcontractor Work. All submittals are required by «udSubmittalsReqBy».

The phrase “Contract Documents” as used herein is defined to mean this Agreement and Exhibits A (Insurance Requirements), [LIST OTHER EXHIBITS] thereto, and any other attachments referenced therein; and the agreement between Direct Contractor and Owner, including the plans, specifications, general conditions, special provisions drawings, specifications, addenda, amendments, modifications, exhibits, and all other documents forming or by reference made a part thereof (“Direct Contract”). This Agreement, and all of the foregoing documents, shall be considered a part of this Agreement by reference thereto, and Subcontractor agrees to be bound to the Direct Contract by the terms and provisions thereof, in the same manner that Direct Contractor is bound to Owner.

Subcontractor certifies and agrees that it is fully familiar with all of the terms of this Agreement, including the Contract Documents, all of which Subcontractor acknowledges have been made available to it, the location of the job site, and the conditions under which the Work is to be performed and that it enters into this Agreement based upon its own investigation of all such matters and is not relying on any opinions or representations of Direct Contractor. This Agreement is a fully integrated agreement and represents the entire agreement between Direct Contractor and Subcontractor, and supersedes any prior oral or written agreements or representations. The Contract Documents are incorporated in this Agreement by reference, and Subcontractor agrees to bind its subcontractors and suppliers to the

Contract Documents insofar as they relate in any way, directly or indirectly, to the Work covered by this Agreement. Where, in the Contract Documents, reference is made to "Contractor", and the Work or specifications therein pertain to Subcontractor's trade, craft or type of work, such work or specifications shall be interpreted to apply to Subcontractor instead of to Direct Contractor. The parties intend that all terms of this Agreement be considered as complementary. However, in the event of a conflict between or among the terms of this Agreement or the Contract Documents, the higher standard or greater responsibility for Subcontractor shall prevail. In the event of a conflict between this Agreement or the Contract Documents on the one hand, and the laws applicable to this Agreement, the Agreement and the Contract Documents shall be enforceable to the maximum extent permitted by applicable law.

This Agreement includes, without limitation, the following addenda:

«udAddenda».

The following alternates are included in this Agreement:

«udAltNotes»

The following additional provisions are included in this Agreement:

«udInclusionsNotes»

The following are excluded from this Agreement.

«udExclusionsNotes»

SECTION 2. PAYMENT

- (a) Direct Contractor agrees to pay Subcontractor for the performance of this Agreement, as specified, herein, the sum of: «**TotalOrigSLProject**» subject to additions and deductions for changes agreed upon or determined, as hereinafter provided.

By the 22th of each month, Subcontractor must deliver to Direct Contractor's office at the Project an application for payment, on Direct Contractor's application form, Exhibit __ hereto. Subcontractor's application should be based upon the Subcontractor's Work performed and materials and equipment in place up the day just prior to submittal of the application for payment, and should in no event forecast billing beyond the 25th of the month. Subcontractor acknowledges that timely submission of applications for payment is a critical aspect of payment hereunder and is material consideration on Direct Contractor's part in entering into this Agreement. Applications received after the 12th of the month will not become due and payable until the following pay period, subject to all other conditions precedent to payment being satisfied, including those stated in this Agreement and the Contract Documents. Direct Contractor agrees to pay to Subcontractor monthly

progress payments on account of Work actually and satisfactorily completed by Subcontractor, in sums equal to _____ percent (___%) of the labor, equipment, services and materials that have been placed in position, as reflected in Direct Contractor's application for payment and as approved by Owner. The foregoing percentage shall be ninety percent (90%) unless otherwise stated under this Agreement or required by applicable law. Payment shall be made from funds received from Owner within seven (7) days of receipt of such funds paid on account of Subcontractor's Work, provided all other conditions hereof have been satisfied and there are no grounds for withholding.

As a condition to payment, Subcontractor agrees to provide waivers and releases for itself and its subcontractors and suppliers regardless of tier, as well as other evidence of payment to such persons, in a form satisfactory to Direct Contractor, including without limitation, payroll affidavits, receipts, vouchers or other documentation, demonstrating that Subcontractor has paid for all labor, equipment, materials, services, taxes or other charges in any way relating to Subcontractor's Work and obligations in connection with the Project. Upon complete performance of this Agreement by Subcontractor, and after the entire work required by the Direct Contract has been fully completed in conformity with the Contract Documents and has been delivered to and accepted by the Owner, Architect, and Direct Contractor, Direct Contractor will make final payment to Subcontractor of the balance due him under this Agreement from funds paid in final payment for work under the Direct Contract, by Owner, or other responsible party, within seven (7) days in the case of a public work of improvement, and ten (10) days in the case of a private work of improvement, with funds received by Direct Contractor from Owner in final payment for work under the Direct Contract. Subcontractor agrees to furnish, if and when required by Direct Contractor, payroll affidavits, receipts, vouchers, releases of claims for labor, and material, and agrees to furnish same from its subcontractors and suppliers performing work or furnishing materials under this Agreement, all in form satisfactory to Direct Contractor, and it is agreed that no payment hereunder shall be made, except at Direct Contractor's option, until and unless such documents have been furnished. Direct Contractor, at its option, may make any payment due hereunder by check made payable jointly to Subcontractor and any of its subcontractors and/or 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.

If Owner or other responsible party delays in making any payment to Direct Contractor from which payment to Subcontractor is to be made, Direct Contractor and its sureties shall have a reasonable time to make payment to Subcontractor. "Reasonable time" shall be determined according to relevant circumstances, but in no event shall be less than the time Direct Contractor, Direct 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) mechanic's lien remedies.

To the greatest extent permitted by law, Subcontractor assumes the risk of Owner's or Direct Contractor's insolvency or other inability to pay, and understands and agrees that Subcontractor shall be paid only when Direct Contractor is paid for Subcontractor's work.

- (b) Payments made to Subcontractor shall be deemed to be held in trust for benefit of Direct Contractor and of all persons who furnished labor, equipment, and materials for or on behalf of Subcontractor, as well as for the benefit of trust funds and apprenticeship programs owed money in connection

with the Project by Subcontractor or its lower tier subcontractors. In addition to any other rights and remedies that it may have, Direct Contractor shall be entitled to pursue a claim for breach of fiduciary duty against Subcontractor in the event that Subcontractor violates its obligations with respect to funds paid to it. Without derogation to any other rights and remedies, Direct Contractor shall be entitled to set off against any amounts owed to Subcontractor any debts, claims, demands, liabilities or other sums owed to Direct Contractor by Subcontractor, including those that arise from other projects or contracts or that are contingent or not yet accrued.

SECTION 3. BONDING

If requested by Direct Contractor, Subcontractor shall furnish a Performance and Payment Bonds in an amount equal to the full subcontract price. Direct Contractor agrees to pay for the cost of the bond, provided, however, that Subcontractor shall be responsible for payment of any costs in excess of two percent of such bond. Such bonds shall be furnished by a Surety satisfactory to Direct Contractor. Reasonable premiums for such bonds, not to exceed two percent (2%), shall be paid by Direct Contractor upon receipt of an invoice from the Surety.

SECTION 4. CHANGES

Subcontractor shall make no changes in the Work described in the Contract Documents and this Agreement except as directed by Direct Contractor in writing. Such change or written direction shall not invalidate this Agreement. Direct Contractor is authorized to make changes in the Work, including deletion, additions, and other modifications.

Allowance for extra work and deductions for omissions shall be by mutual written agreement between Direct Contractor and Subcontractor or determined in accordance with procedures specified in the Direct Contract. The requested change in Subcontractor's price must be submitted to Direct Contractor for review within the earlier of three (3) working days of the written order, or within such time as may be required for Direct Contractor to provide timely information to the Owner in accordance with the requirements of the Direct Contract. Failure to provide such pricing within the time specified shall result in a waiver of claims and in nonpayment. Direct Contractor shall not be held liable to Subcontractor for any extra labor, materials, or equipment furnished without such written order.

If necessary, the Contract Price and the time for Subcontractor's performance shall be adjusted by appropriate additions or deductions mutually agreed upon before the Subcontractor performs the changed work. Subcontractor shall supply Direct Contractor with all documentation necessary to substantiate the amount of the addition to or deduction from the price or time. If Direct Contractor and Subcontractor cannot agree on the amount of the addition or deletion, Subcontractor shall nonetheless timely perform the Work as changed by Direct Contractor's written direction. Once Subcontractor receives Direct Contractor's written direction, Subcontractor is solely responsible for timely performance of the Work as changed by the written direction.

Payment for changed Work shall be made in accordance with Section 2.

If Subcontractor makes any changes in the Work described in Section 1 without written direction from Direct Contractor, such change constitutes an agreement by Subcontractor that it will not be paid for that changed Work, even if it received verbal direction from Direct 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, and liability of any nature whatsoever associated with or in any way arising out of any such change it makes without written direction from Direct Contractor. If a dispute arises between Direct Contractor and Subcontractor about whether particular Work is a change in the Work described in Section 1, Subcontractor shall timely perform the disputed Work. If Subcontractor intends to submit a claim for the disputed Work, it shall give prompt written notice to Direct Contractor before proceeding with the Work. In addition, Subcontractor shall submit its written claim for additional compensation for that work within ten (10) days after such work is performed in sufficient detail for Direct Contractor to make an evaluation of the merits of the claim. Subcontractor's failure to either give the written notice before proceeding with the Work or to submit the written claim within the ten (10) days constitutes an agreement by it that it will not be paid for the disputed Work.

No change, alteration, or modification to or deviation from this Agreement, the Contract Documents, including the Direct contract, plans, or specifications, whether made in the manner provided in this section or not, 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.

Daily tags must be submitted to and signed by Direct Contractor for all extra work on the day the extra work is performed. Subcontractor agrees that its failure to do so shall result in and constitutes a waiver of claims, and that no payment shall be due for such work.\

If, in order to expedite the completion of the Project, Direct Contractor directs Subcontractor to work overtime, a second shift, and/or to work Saturdays, Sundays or on legal holidays (hereinafter collectively referred to as "overtime"), for reasons other than Subcontractor's failure to fulfill its obligations under the Contract Documents, Subcontractor shall work such overtime and it is understood that Direct Contractor shall pay to Subcontractor only the premium portion (the differential between the actual rate and regular rate) of the overtime. Time slips covering overtime must be reviewed in writing and signed daily by Direct Contractor as a condition precedent to payment by Direct Contractor to Subcontractor for such work. Direct Contractor's review and signature on such time slips shall be an acknowledgement of hours worked, but shall not be an acknowledgement that the Subcontractor is entitled to be paid for overtime premium. No overhead or profit is to be charged by, or allowed to, Subcontractor for overtime. If, in Direct Contractor's sole discretion, Subcontractor is behind schedule in the Work and/or delays or interferes with the progress of other Work necessary to complete the Project on schedule, or otherwise fails to fulfill its obligations under the Contract Documents, then, if directed by Direct Contractor, Subcontractor shall use overtime and/or increase its manpower, as deemed necessary by Direct Contractor, to expedite the progress of the Work, and the total cost and expense thereof shall be borne entirely by Subcontractor.

SECTION 5. PROSECUTION OF THE WORK

(a) **Time is of the essence.** Subcontractor shall prosecute the Work undertaken in a prompt and diligent manner, in strict accordance with the Direct Contractor's directives and Direct Contractor's schedule, revised if necessary, as the work progresses, including, without limitation, whenever such Work, or part of it, becomes available, or at such other time(s) as Direct Contractor may direct, and so as to promote the general progress of the entire construction, and shall not by delay or otherwise interfere with or hinder the work of Direct Contractor or any other subcontractor. Subcontractor shall comply with Direct Contractor's schedule, and should Subcontractor fail to complete the Work within the time specified in the contract schedule, Subcontractor agrees to reimburse Direct

Contractor for any and all liquidated or actual damages that may be assessed against and collected from Direct Contractor which are attributable to or caused by Subcontractor's failure to perform the Work required by this Agreement within the time fixed or in the manner provided for herein, and in addition, agrees to pay to Direct Contractor such other additional damages as Direct Contractor may sustain by reason of such delay by Subcontractor. The payment of such damages shall not release Subcontractor from its obligation to otherwise fully perform this Agreement. Subcontractor shall coordinate the Work covered by this Agreement with that of all other contractors, subcontractors, and/or suppliers and of Direct Contractor, in a manner that will facilitate the efficient completion of the entire work. Direct Contractor shall have the right to decide the time and order in which various portions of the work shall be installed and the relative priority of the Work of Subcontractor and other subcontractors, and, in general, all other matters pertaining to the timely and orderly conduct of the Work of Subcontractor on the premises. Subcontractor acknowledges that it will have to perform Work in areas occupied by other forces, and that it will have to perform its Work in a sequence or manner to accommodate and facilitate the progress of the work as a whole, rather than in the manner most efficient or desirable for Subcontractor. Subcontractor's price is based upon Direct Contractor exercising the rights indicated in this Section 5 and upon Subcontractor having planned to perform its Work under such circumstances. Subcontractor shall meet all milestone dates as set forth in the Contract Documents, and any revisions thereto. Subcontractor's failure to meet milestone completion dates shall be a material breach of this Agreement.

- (b) In the event that Subcontractor fails to comply or becomes disabled from complying with the provisions herein as to character or time of performance, and the failure is not corrected within two working days after written request by Direct Contractor to Subcontractor, Direct Contractor, by subcontract or otherwise, may without prejudice to any other right or remedy, take over and complete the performance of this Agreement at the expense of Subcontractor, or without taking over the Work, may furnish the necessary materials and/or employ the workmen necessary to remedy the situation at the expense of Subcontractor. If Direct Contractor takes over the Work pursuant to this paragraph it is specifically agreed that Direct Contractor may take possession of the premises and of all materials, tools and equipment of Subcontractor at the site for the purpose of completing the Work covered by this Subcontract.
- (c) It is agreed that the Subcontractor shall be considered as disabled from so complying whenever a petition in Bankruptcy or for the appointment of a receiver is filed against him. 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, Direct Contractor may, absent any applicable legal limitation, terminate this Agreement upon giving two (2) working days written notice, by certified mail or overnight delivery express mail, to Subcontractor and its surety, if any. If an order for relief is entered under the Bankruptcy Code with respect to Subcontractor, Direct Contractor may terminate this Agreement upon giving forty-eight (48) hours written notice, by certified or overnight delivery express mail, to Subcontractor, its trustee, and its surety, if any, unless Subcontractor, the surety, or the trustee:
 - i) promptly cures all defaults and provides adequate assurance of future performance;
 - ii) compensates Direct Contractor for actual pecuniary loss resulting from such defaults; and
 - iii) assumes the obligations of Subcontractor within statutory time limits.

If Subcontractor is not performing in accordance with the schedule of work at the time of entering an order for relief or at any subsequent time, Direct 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 such remedies under this section as are reasonably necessary to maintain the schedule or work. Direct Contractor may offset against any sums due or to become due Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, reasonable overhead, profit and actual attorney's fees incurred as a result of Subcontractor's non-performance. Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Contract Price.

- (d) Subcontractor shall keep, on the site during the progress of the Work, a competent superintendent who shall be the authorized representative of Subcontractor. Directions and communications to him from Direct Contractor in connection with the Work shall be treated as directions and communications to Subcontractor.
- (e) Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by or in any way related to operations performed under this Agreement. Subcontractor shall provide its own dumpster for the removal of debris. If Subcontractor does not comply with this requirement, Direct Contractor, on 24 hours' notice, may complete the cleanup work and back charge Subcontractor.

SECTION 6. DELAYS

- (a) If Subcontractor is delayed in the prosecution or completion of the Work by the act, neglect or default of Owner, Architect or Direct Contractor, or if Subcontractor is delayed waiting for materials required by this Contract to be furnished by Owner or Direct 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 Direct Contractor, then the time herein fixed for the completion of the Work shall be extended the number of days that Subcontractor has thus been delayed, but no allowance or extension shall be made unless a claim therefore is presented in writing to Direct Contractor within three business days of the commencement of such delay or two business days prior to the time that Direct Contractor must give notice to Owner, whichever is sooner, and under no circumstances shall the time of completion be extended to a date which will prevent Direct Contractor from completing the entire project within the time allowed Direct Contractor by Owner for such completion. If and only to the extent that Section 7102 of the Public Contract Code requires as a matter of public policy that subcontractor be compensated for delays: (1) recovery shall be permitted only for those circumstances recognized under the Contract Documents as compensable delays; (2) recovery shall only be allowed for those delays that are unreasonable under the circumstances involved and not within the contemplation of the parties, in light of the nature of the project, industry custom and practice, and other relevant factors; (3) recovery may only be had for those items of costs permitted under the Direct Contract, plus those additional items of costs, if any, that under Section 7102 of the Public Contract Code, requires be paid; (4) Subcontractor is bound by and must comply with all provisions of the Direct Contract and Subcontract (and any portions thereof) that are not in conflict with Section 7102, including provisions concerning notice and certification of claims with respect to compliance with the False

Claims Act. For purposes of Section 6, a claim that Section 7102 of the Public Contract requires be permitted, where the foregoing conditions have been satisfied, shall be referred to as an "Authorized 7102 Claim."

- (b) Except for an Authorized 7102 Claim, Subcontractor's sole remedy for delay, disruption or suspension shall be an extension of time, and Subcontractor shall not be entitled to recover additional compensation or damages for delays, disruption or suspension, including without limitation, claims for any productivity losses, efficiency losses, increased supervisory costs, home office overhead, extended job site overhead, disruption costs, "ripple effect" costs, trade stacking, compression, acceleration, consequential damages, damages of any other type, lost profits, lost opportunity costs, or similar damages or costs, however denominated, as well as any other monetary relief, for any delay, disruption or suspension of the Work (collectively, "Impact Costs And Consequential Damages"). Except for Authorized 7102 Claims, Subcontractor waives any Claim for Impact Costs and Consequential Damages. However, in the event Direct Contractor obtains additional compensation from Owner on account of delays that otherwise would be noncompensable under this Section 6, Subcontractor shall be entitled to such portion of the additional compensation so received by Direct Contractor from Owner as is equitable under all of the circumstances. In the event that Direct Contractor prosecutes a claim against Owner for additional compensation for any delay, Subcontractor shall cooperate fully with Direct Contractor in the prosecution thereof and shall pay costs and expenses incurred in connection therewith, including actual attorney's fees, to the extent that said claim is made by Direct Contractor at the request of Subcontractor. Nothing in this Section 6 shall be deemed to authorize recovery for Impact Costs And Consequential Damages or to waive Direct Contractor's right to recovery from Owner for such damages.
- (c) No allowance for an extension of time, for any cause whatever, shall be claimed by Subcontractor unless Subcontractor shall have made written request upon Direct Contractor, for such extension within two working days after the cause of such extension occurred, or if the Direct Contract provides for a shorter period, within sufficient time to permit Direct Contractor to give notice to the Owner within the time allowed by the Direct Contract for such notice.
- (d) No allowance of an extension of time shall, in any event, be made to Subcontractor for delay by Subcontractor in preparing drawings or in securing approval of the Architect or Engineer thereto when such drawings are not properly prepared or when Subcontractor by the exercise of reasonable diligence and judgment could have anticipated and avoided the delay.

SECTION 7. COMMUNICATIONS

All communications between Subcontractor and the Architect, Engineer or Owner with respect to the Work shall be transmitted through Direct Contractor.

SECTION 8. INSURANCE

Subcontractor and its lower tier subcontractors and suppliers shall comply with the insurance requirements and provisions stated in this Section 8. Direct Contractor's delay or failure to enforce in a timely manner any of the provisions of this Agreement, including with respect to insurance, shall not act as a waiver of any of these provisions at a later date in the performance of this Agreement.

Subcontractor shall, at its expense, procure and maintain insurance on all of its operations, with companies acceptable to Direct Contractor, as follows:

Workers' Compensation and Employer's Liability Insurance. Workers' Compensation insurance shall be provided as required by any applicable law or regulation. Employer's Liability insurance shall be provided in amounts not less than:

- \$1,000,000 each accident for bodily injury by accident
- \$1,000,000 policy limit for bodily injury by disease
- \$1,000,000 each employee for bodily injury by disease

If there is an exposure of injury to Subcontractor's employees under the U.S. Longshoreman and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

A waiver of subrogation endorsement must be obtained and provided, and the following coverages must be noted on any evidence of insurance: workers' compensation -statutory; employer's liability; excess liability (to the extent required by Owner or the Contract Documents). Renewal certificates shall be provided at the end of the policy period.

General Liability Insurance. Subcontractor shall carry primary Commercial General Liability insurance covering all operations by or on behalf of Subcontractor providing insurance for bodily injury and property damage liability for the limits of liability indicated below and including, but not limited to, coverage for:

- (1) premises and operations;
- (2) products and completed operations will be maintained for three years following project completion;
- (3) contractual liability insuring tort obligations assumed by Subcontractor in this Contract;
- (4) broad form property damage (including completed operations);
- (5) explosion, collapse and underground hazards (including subsidence and any other earth movement); and
- (6) personal injury liability.

The limits of liability shall be not less than the amounts required of Subcontractor under the Contract Documents, but in no event less than:

- \$1,000,000 each occurrence (combined single limit for bodily injury and property damage);
- \$1,000,000 for personal injury liability;
- \$2,000,000 aggregate for products-completed operations;
- \$2,000,000 general aggregate.

The general aggregate limit shall apply separately to Subcontractor's work under this Contract. If either defense costs are included in the General Aggregate limit or if the General Aggregate limit does not apply separately to this project, then the required General Aggregate limit is to be \$5,000,000.

Direct Contractor, its officers, directors and employees, and Owner shall be named as additional insureds under the Commercial General Liability policy and Excess Liability policy and such insurance afforded the additional insureds shall apply as primary insurance. Any other insurance maintained by Direct Contractor or Owner shall not be called upon to contribute with this insurance.

Coverage for the Direct Contractor, its officers, directors and employees and the Owner as additional insureds shall be provided by an endorsement providing coverage at least as broad as Additional Insured (Form B) endorsement form CG 2010 1185 as published by the Insurance Services Office (ISO) (or equivalent). Coverage for additional insureds must include all of the coverages required under items 1-6 above, including products/completed operations coverage for the additional insureds. Additional insured endorsement will be provided for three years following project completion.

Subcontractor on behalf of itself and its insurers waives all rights against Direct Contractor and any construction manager, including subrogation rights, for loss, liability, costs, expense or damage to the extent such loss or damage is covered by insurance.

Claims Made/Self Insurance Provisions. Subcontractor shall not provide general liability insurance under any Claims Made General Liability form without the express prior written consent of Direct Contractor. Any self-insurance program providing coverage in excess of \$25,000 per occurrence requires the prior written consent of Direct Contractor.

Automobile Liability Insurance. Subcontractor shall carry automobile liability insurance, including coverage for all owned, hired, and non-owned automobiles. The limits of liability shall be not less than \$1,000,000 combined single limit each accident for bodily injury and property damage. Coverage shall not be provided on a "modified occurrence" or a "claims made" basis. Coverage shall be provided on Accord (01/95 or later). Direct Contractor, its officers, directors and employees, and Owner shall be named as additional insureds under the policies required by this paragraph.

Additional Requirements. All insurance under this provision (including, but not limited to, general liability, automobile liability, and workers' compensation and employer's liability insurance, shall be provided by a California admitted carrier with an A.M. Best's Rating of A- or better, financial capacity VII or greater (except for State Fund of California for workers' compensation coverage). General liability insurance shall be written on a form at least as broad as ISO occurrence form CG 0001; Automobile Liability Insurance shall be provided pursuant to a coverage form at least as broad as ISO form CA 0001. Direct Contractor reserves the right, in its sole and subjective discretion, to reject an insurer and require Subcontractor to obtain policies from another insurer.

Certificates of insurance, as evidence of the insurance required by this Contract and including the required "additional insured" endorsement(s) shall be furnished by Subcontractor to Direct Contractor no later than thirty (30) days prior to the time that Subcontractor first performs any work in connection with the Project or enters into this Agreement, whichever is earlier. Certificates shall set forth deductible amounts applicable to each policy and all exclusions or limitations not set forth in ISO Commercial General Liability Form CG 00 01. The Direct Contractor may allow deductible provisions if Subcontractor is willing to increase retentions accordingly. Standard ISO Form CG 0001 exclusions will

also be allowed. Allowance of any additional exclusions or coverage limiting endorsements is at the discretion of the Direct Contractor and Subcontractor's bid shall be subject to upward adjustment to compensate for the existence of such exclusions.

Subcontractor's insurance and additional insured coverage shall not include the following exclusions or provisions: cross-suits and/or cross-insureds exclusion of coverage, mold/water damage/earth movement exclusions, requirements by the insurer that subcontractors or suppliers maintain insurance or agree to defend or indemnify Direct Contractor or owner. Subcontractor shall cause its policies to be amended or endorsed to remove any such exclusions, provisions, or limitations.

Notation on an "Acord" form is NOT acceptable as evidence of compliance with requirements, including without limitation, requirements with respect to additional insureds, notice of cancellation, completed operations, etc.

Regardless of the allowance of exclusions, coverage limitations or deductibles by the Subcontractor, Subcontractor shall be responsible for any deductible amount or any loss arising out of coverage denials by its insurance carrier(s). Certificates of insurance shall provide that there will be no cancellation or reduction of coverage without first giving thirty (30) days prior written notice to Direct Contractor. Any acceptance of insurance certificates by Direct Contractor shall in no way limit or relieve Subcontractor of its duties and responsibilities under this Agreement, including the duty to defend, indemnify, and hold harmless Owner.

Subcontractor shall take such steps as are necessary to assure Subcontractor's compliance with its obligations. Should any insurance policy lapse or be cancelled during the contract period, Subcontractor shall, prior to the effective expiration or cancellation date, furnish the Direct Contractor with evidence of renewal or replacement of the policy. Failure to continuously satisfy insurance requirements as herein provided is a material breach of contract. In the event Subcontractor fails to maintain any insurance coverage required, Direct Contractor may, but is not required to, maintain such coverage and charge the expense to Subcontractor or terminate this contract.

Any acceptance of insurance certificates by Direct Contractor shall in no way limit or relieve Subcontractor of its duties and responsibilities under this Contract including the duty to indemnify, defend and hold harmless Direct Contractor and other persons as set forth in the Contract Documents.

No work shall be performed by Subcontractor at the project site until certificates and endorsements have been furnished and approved. Payment may be withheld, at the option of the Direct Contractor, until required coverage has been obtained, and certificates and endorsements have been furnished, or if upon receipt of a cancellation notice on a policy, until withdrawal of the notice or the reinstatement of the cancelled policy.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Subcontractor for liability in excess of such coverage nor shall it preclude the Direct Contractor from taking such other actions as is available to it under any other provision of the contract or law. If higher limits or other forms of insurance are required in the Contract Documents, Subcontractor will comply with such requirements.

Additional insured endorsements shall be obtained and furnished to Direct Contractor up to and through the end of the limitations periods under Code of Civil Procedure Section 337.15, and shall

include all coverage required hereunder, including completed operations coverage. Failure by Direct Contractor to request such endorsements or to give notice of their not having been filed shall not waive this requirement.

Subcontractor shall not provide any liability coverage under a “wasting” policy or other form of policy that reduces the amount of coverage, in whole or in part, by amounts expended on defense of claims.

The following additional requirements shall also be satisfied:

- (a) **Hazardous Materials.** If Subcontractor and/or its subcontractors or suppliers, regardless of tier, perform remediation of hazardous materials or if their operations create an exposure to hazardous materials as those terms are defined in federal, state or local law, Subcontractor and its subcontractors and suppliers must obtain a “Contractor’s Pollution Liability” policy with limits not less than \$1,000,000 per occurrence and not less than \$2,000,000 aggregate for Bodily Injury, Personal Injury and Property Damage, naming Direct Contractor as an additional insured. If Subcontractor or its subcontractors or suppliers haul hazardous material (including, without limitation, waste), the policy must extend pollution coverage to the transportation of hazardous materials or pollutants by waste hauling vehicles. If Subcontractor is subject to the Motor Carrier Act of 1980, the Motor Carrier Act endorsement MCS-90 must be obtained and attached to the policy.
- (b) **Professional Liability.** If Subcontractor (or its subcontractors or suppliers, regardless of tier) performs any design/build work or services, or any other services of a professional nature, such as those requiring an engineering or architectural license, it shall obtain a Professional Liability Insurance Policy. Design/build work includes, without limitation, design/build work with respect to mechanical, electrical, structural, plumbing and fire sprinkler systems. Professional liability insurance shall be for a minimum of \$1 million, or such greater amount as Direct Contractor may require. Evidence of coverage in the form of a Certificate of Insurance shall be provided prior to the start of the project. Subcontractor shall obtain coverage for a minimum of three years following completion of the project, either through continued purchase of policies for such years or through purchase of an extended reporting period. If Owner or Direct Contractor elects to purchase a project design policy, Subcontractor’s policy shall be endorsed to indicate that Subcontractor’s policy shall provide coverage once the project design policy has been exhausted.
- (c) **Riggers Liability.** Should Subcontractor’s work involve the moving, lifting, lowering, rigging, or hoisting of property or equipment, Subcontractor shall carry Rigger’s Liability Insurance to insure against physical loss or damage to the property or equipment.
- (d) **Cargo Insurance (Required for Truckers).** If Subcontractor provides trucking or similar transportation services, it shall obtain and maintain all risk coverage including shift of load and unidentified trailers. Limit should be no less than \$250,000 with a \$2,500 deductible.
- (e) **Aircraft Liability.** If Subcontractor (or its sub-contractors or suppliers, regardless of tier) use any owned, leased, chartered or hired aircraft of any type in the performance of this contract, they shall maintain aircraft liability insurance in an amount of not less than \$10,000,000 per occurrence, including Passenger Liability.

- (f) **Work Near Railroads.** If Subcontractor (including any lower tier subcontractor or supplier) performs any work or conducts any operations within fifty feet of any railroad (including any light rail, fixed rail or other rail system), Subcontractor shall obtain an endorsement of its Commercial General Liability Policy to delete any exclusion, including the "Contractual Liability" exclusion, for work performed within fifty feet of a railroad. A copy of such endorsement shall be provided to Direct Contractor prior to any work or operations by Subcontractor within fifty feet of any railroad. In addition, if required by any railroad, the Owner, or the Contract Documents, or any permit or license, Subcontractor shall obtain an endorsement adding the railroad owner or other parties as additional insureds.
- (g) **Equipment and Property Coverage.** Subcontractor shall procure and maintain at its own expense property and equipment insurance for Subcontractor's tools, equipment, temporary structures, work in progress, work in transit and/or in temporary storage, as well as those of its lower tier subcontractors and suppliers. If builder's risk insurance is not provided by Owner or Direct Contractor, Subcontractor shall purchase and maintain installation floater coverage written to cover all risks of physical loss except those specifically excluded in the policy, and shall insure at least against the perils of fire and extended coverage, theft, vandalism, malicious mischief, and collapse. This insurance shall be written in an amount to provide full protection for Subcontractor's work and equipment. This insurance shall apply on a replacement cost basis. Any deductible shall be the full responsibility of Subcontractor. If builder's risk insurance purchased by Owner(s) or Direct Contractor provides coverage for Subcontractor for loss or damage to Subcontractor's work, Subcontractor shall be responsible for the insurance policy deductible amount applicable to damage to Subcontractor's work and/or damage to other work caused by Subcontractor.
- (h) **Waiver of Subrogation.** Subcontractor waives all rights against Direct Contractor and any construction manager for loss, liability, costs, expense or damage to the extent reimbursed by any insurance applicable to the work, except such rights as they may have to the proceeds of such insurance. If any applicable policies of insurance referred to in this Section 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.
- (i) **Requirements for Sub-subcontractors, Vendors, and Suppliers.** Subcontractor shall ensure that all tiers of its subcontractors, vendors and suppliers shall maintain insurance in like form and amounts, shall comply with the additional insured requirements as set forth above, shall waive subrogation as set forth above, shall otherwise comply with all requirements of this Section 8, and shall provide Direct Contractor with evidence of insurance prior to commencing work.

SECTION 9. INDEMNIFICATION AND DEFENSE OBLIGATIONS

To the greatest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless Direct Contractor, Owner, and Owner's architect and engineer, and any of their respective directors, officers, agents, employees, parents, affiliates, subsidiaries, partners, and representatives, and any other persons or entities designated by any of them (collectively, the "Indemnitees") from and against all causes of action, penalties, assessments, fines, actions by governmental authorities, demands, liabilities, claims, damages, costs, losses and expenses, including but not limited to attorney's fees, consultant fees, and other legal costs ("Claims"), which arise out of or are in any way related (i) to this Agreement; (ii) to actual or alleged actions or omissions by Subcontractor or any of its subcontractors, suppliers, vendors, employees, or persons for whom it is responsible, or (iii) Subcontractor's presence at the

Project site and/or its Work. Notwithstanding the foregoing, if any of the Contract Documents impose more stringent defense, indemnity, contribution or hold harmless obligations than are set forth herein, then the more stringent provisions shall apply, and Subcontractor shall owe the same defense, indemnity, contribution, and hold harmless obligations to Direct Contractor as Direct Contractor owes to Owner. Subcontractor's duty to defend Indemnitees shall apply, and Subcontractor shall be required to furnish a defense, notwithstanding that there has not yet been a determination, adjudication or finding of liability or fault on the part of Subcontractor or any party or person to be indemnified.

To the greatest extent permitted by law, the obligations of this Section 9 shall apply regardless of whether the Claims were caused in part or contributed to by Indemnitees; however, obligations specified above shall not extend to: (a) Claims that arise out of, pertain to, relate to the active negligence or willful misconduct of Direct Contractor, of a subcontractor to Direct Contractor, a construction manager who is an Indemnitee, or any of their other agents, other servants, or other independent contractors who are responsible to them (b) to defects in design furnished by the Indemnitee, or (c) to the extent Claims do not arise out of the scope of work of Subcontractor. Items (a) through (c) in the preceding sentence shall be referred to in this provision as "Indemnity Limitations." Upon written tender by any Indemnitee, including Direct Contractor, of a Claim, Subcontractor shall:

Defend the claim with counsel of its choice, who is reasonably qualified and experienced in such matters and does not have a conflict of interest in representing the tendering party, and Subcontractor shall maintain control of the defense for any claim or portion of claim to which the defense obligation applies. If Subcontractor elects to defend under this subparagraph (a), Subcontractor shall provide written notice of the election to the tendering party a reasonable time period following receipt of the written tender, and in no event later than 30 days following that receipt. Subject only to the limitations set forth above, the defense provided by Subcontractor shall be a complete defense of tendering party of all Claims or portions thereof to the extent alleged to be caused by Subcontractor, including any vicarious liability claims the tendering party resulting from Subcontractor's scope of work, but not including claims resulting from the scope of work, actions, or omissions of the tendering party, or any other party. Any vicarious liability imposed upon the tendering party for Claims caused by Subcontractor electing to defend under this paragraph shall be directly enforceable against Subcontractor. Subcontractor shall promptly provide the tendering party with all information, documentation, or evidence, if any, relating to any assertion by Subcontractor that another party is responsible for the tendered Claim.

Pay, within 30 days of receipt of an invoice from the tendering party, no more than a reasonable allocated share of the tendering party's defense fees and costs, on an ongoing basis during the pendency of the claim, subject to reallocation consistent with the limitations set forth above, and including any amounts reallocated upon final resolution of Claim, either by settlement or judgment. The tendering party shall allocate a share to itself to the extent a Claim is alleged to be caused by its work, actions, or omissions, and a share to each subcontractor to the extent that the Claim is alleged to be caused by Subcontractor's work, actions, or omissions, regardless of whether the party seeking a defense from Subcontractor actually tenders the claim to any particular subcontractor, and regardless of whether that Subcontractor is participating in the defense. Any amounts not collected from any particular subcontractor may not be collected from any other subcontractor.

Notwithstanding any other provision of law, if Subcontractor fails timely and adequately to perform its obligations under subparagraph (a), the party tendering the Claim shall have the right to recover from Subcontractor for any resulting compensatory damages, consequential damages, reasonable attorney's

fees, consultant fees, and other legal costs. If Subcontractor fails to timely perform its obligations under subparagraph (b), the party tendering the Claim shall have the right to recover from Subcontractor for any resulting compensatory damages, interest on defense and indemnity costs, from the date incurred, at the rate set forth in subdivision (g) of former Civil Code Section 3260 (now recodified at Civil Code Section 8818), consequential damages, and reasonable attorney's fees incurred to recover these amounts. The party tendering the Claim shall bear the burden of proof to establish both Subcontractor's failure to perform under either subparagraph (a) or (b), and any resulting damages. In addition to the foregoing remedies, and without limitation or derogation of them, Subcontractor agrees to pay liquidated damages of \$100 per each day that Subcontractor fails to perform its obligations under either subparagraph (a) or (b), which are intended to compensate the tendering party for loss of reputation, administrative costs, and other losses that are difficult to quantify and that are not adequately compensated under this provision and Section 2782.05 of the Civil Code. Subcontractor agrees that the sum of \$100 per day constitutes a reasonable estimate of such damages or losses.

The obligations under this Section 9 are in no way limited or relieved by Subcontractor having obtained insurance, by the Insurance or other provisions of this Agreement, and/or to the extent permitted by law, by the provisions of any workers compensation law, regulation or arrangement. The obligations of Section 9 shall survive the expiration or termination of this Agreement, as well as Subcontractor's completion of its other obligations.

If and only if a claim for defense or indemnity relates to a project that is governed by California Civil Code Sections 895 et seq. and Direct Contractor is determined to be a "Builder" for purposes of California Civil Code Section 2782(d), then as to claims of construction defects ("Defect Claims") only, the foregoing indemnity is modified such that Subcontractor is not obligated to indemnify Owner to the extent that such Defect Claims arise out of, pertain to, or relate to the negligence of the Owner, or the Owner's other agents, other servants, or other independent contractors who are directly responsible to Owner, or for defects in design furnished by those persons, or to the extent the Defect Claims do not arise out of, pertain to, or relate to the scope of work covered by this Agreement; however, Subcontractor shall nevertheless be obligated to defend Owner and Direct Contractor from any such Defect Claims, within five (5) days of obtaining knowledge of any such Defect Claims, subject to reallocation after final resolution of the claims pursuant to Civil Code Section 2782(d). Indemnity and defense obligations not affected or restricted by Civil Code Section 2782(d) or (e), such as for property damage not caused by construction defects or other matters not involving Defect Claims, shall not be limited, impaired or modified by the foregoing sentence, and such indemnity and defense obligations shall remain in full force and effect.

SECTION 10. LIENS AND CLAIMS

Subcontractor shall, as and when requested, furnish evidence satisfactory to Direct Contractor and the Owner that claims for labor and materials furnished by Subcontractor in connection with performance of this Subcontract have been paid, including payroll taxes and employee benefits. Subcontractor shall furnish Direct Contractor releases of bond rights and lien rights by persons who have furnished labor, materials or other things in the performance of this Subcontract, it being agreed that payment of money otherwise due Subcontractor need not be made by Direct Contractor until such releases are furnished. Subcontractor shall take all necessary steps to ensure that no claims, liens, lawsuits, stop payment notices, or other liens are asserted in connection with the Project by any of its subcontractors or suppliers (regardless of tier), its or their employees, trust funds, taxing authorities or other creditors, and pursuant to the duties set forth herein shall fully defend, hold harmless and indemnify Owner and

Direct Contractor against all such claims at Subcontractor's sole expense. At Subcontractor's sole expense, upon Direct Contractor's request, Subcontractor shall within a reasonable period not to exceed five (5) calendar days, bond around any stop payment notices or liens, so that the job and any funding therefor shall remain free from encumbrances and liens, and Subcontractor shall take such other and further steps as may be necessary to remove the effect of any liens, stop payment notices or claims from the Project or any funds for the Project.

SECTION 11. DEFAULT

- (a) If Subcontractor fails to supply sufficient qualified workers and/or proper materials, or fails to prosecute its work diligently and properly, or fails to make prompt payment to its workers, sub-subcontractors or suppliers, or becomes delinquent with respect to contributions or payments to any benefit, apprenticeship or other employee program or trust, or fails to provide adequate assurances, or is otherwise guilty of a material breach of a provision of this Agreement or the law, 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, and to complete the cure of such default within the time period stated in Direct Contractor's default notice, then Direct Contractor, without prejudice to any rights or remedies, shall have the right to any or all of the following remedies:
- i. supply such workers and quantity of materials, equipment and other facilities as Direct Contractor deems necessary to complete Subcontractor's work;
 - ii. contract with other contractors to perform such part of Subcontractor's work as Direct Contractor shall deem appropriate;
 - iii. terminate Subcontractor's right to perform and use any materials, equipment, or tools furnished by or belonging to Subcontractor work without any further compensation to Subcontractor for such use; and
 - iv. withhold payment of any monies due Subcontractor pending corrective action; provided, however, that Direct Contractor may withhold payment without giving such notice to the greatest extent permitted by law.

In such an event, Direct Contractor shall be entitled to recover from Subcontractor, backcharge against Subcontractor, and/or set off against amounts owed to Subcontractor, the actual direct and indirect costs that Direct Contractor has incurred (including attorney's fees and litigation costs) plus markup of fifteen percent (15%) for overhead and ten percent (10%) for profit. In an emergency, Direct Contractor may proceed as above without notice. In addition to any other remedies available, upon written notice Direct Contractor shall be entitled to perform using its own or other forces those cleanup duties that Subcontractor has failed to perform, to remedy safety deficiencies, or otherwise to remedy Subcontractor's failure to have complied with requirements of this Agreement or directives by Direct Contractor. To secure performance by Subcontractor and the prompt payment of any funds expended by Direct Contractor, Direct Contractor shall have a lien upon all materials, tools, appliances, and equipment of Subcontractor at the Project or used in connection with Subcontractor's work.

- (b) Recourse Against Direct Contractor. If Direct Contractor wrongfully terminates Subcontractor, Direct Contractor shall be liable to Subcontractor for the costs Direct Contractor would have paid if Direct Contractor would have terminated Subcontractor for convenience pursuant to Section 12 hereof. Subcontractor expressly understands and agrees that its remedy hereunder shall be exclusive, and expressly waives any and all other rights and remedies which it may have whether at law or in equity. Nothing hereunder shall be construed to prevent Direct Contractor from withholding monies from Subcontractor under other provisions of this Agreement.

SECTION 12. TERMINATION FOR CONVENIENCE.

On written notice, Direct Contractor may terminate all or part of this Agreement or Subcontractor's work for Direct Contractor's convenience. Upon such termination, Subcontractor shall be entitled to: (1) the reasonable cost of the work completed in conformity with this Agreement; plus, (2) such other reasonable costs actually incurred by Subcontractor as are permitted by the Direct Contract and approved by Owner; plus (3) fifteen percent (15%) of the cost of the work referred to in item (1) for overhead and profit. The foregoing amounts shall be reduced by a reasonable and appropriate amount if Subcontractor would have suffered a loss on the Project. There shall be deducted from the foregoing sums the amount of any payments made to Subcontractor. Subcontractor shall not be entitled to lost profits on work not performed or any claim or claim of lien against Direct Contractor or Owner for any additional compensation or damages in the event of such termination. The amount recoverable under a convenience termination shall not exceed the Contract Price. In the event that any termination other than for convenience is later determined to have been without cause or improper, Subcontractor's remedy shall be to have the termination converted to a termination for convenience, and Subcontractor's recovery shall be limited in accordance with the terms of this Section 12. Upon any termination, whether for cause or convenience, Direct Contractor shall have the right to take immediate possession of, utilize for any purpose, inspect, and copy any and all of Subcontractor's documents or information related to the project, and the obligations of Subcontractor and rights and remedies of Direct Contractor that would continue after substantial completion in the absence of a termination, including without limitation, Subcontractor's duties with regard to indemnity, payment of creditors, compliance with laws, insurance, warranty, and defective work, shall remain in full force and effect.

SECTION 13. POSSESSION PRIOR TO COMPLETION

Whenever it may be useful or necessary for Direct Contractor to do so, Direct Contractor shall be permitted to occupy and/or use any portion of the Work which has been partially or fully completed by Subcontractor before final inspection and acceptance thereof by the Owner, but such use and/or occupation shall not relieve Subcontractor of its guarantee of said Work nor of its obligation to make good at its own expense any defects in material and/or workmanship which may occur or develop prior to Contractor's release from responsibility to the Owner.

SECTION 14. OTHER CONTRACTS

It is understood and agreed that the Work provided for in this Agreement constitutes only a part of the work being performed for the Owner by Direct Contractor and other subcontractors. Subcontractor, therefore, agrees to perform the Work called for in this Agreement in such a manner that Subcontractor will not injure, damage or delay any work performed by Direct Contractor or other subcontractors or suppliers, and Subcontractor further agrees to pay or reimburse Direct Contractor for any additional costs, damage or delay that may be caused to such other work of Direct Contractor, subcontractors or suppliers, by Subcontractor or its agents or employees. Subcontractor shall participate in the

preparation of coordinated drawings, the review of existing drawings, contract or otherwise, and/or the review and/or preparation of other information as may be necessary to specifically note and advise Direct Contractor of potential conflicts between the work of Subcontractor and that of Direct Contractor, other subcontractors or the Owner's own forces.

SECTION 15. LABOR COMPLIANCE

Subcontractor and all lower tier subcontractors shall comply with and perform all work covered by any collective bargaining agreement(s) to which Direct Contractor is a party or which otherwise may be applicable to the Project, under the terms of said agreement(s) and shall become signatory to the applicable agreement(s) as a condition of performing work. In addition, Subcontractor and its subcontractors, suppliers, vendors, and employees shall comply with the terms of any Project Labor Agreement that may apply to the Project. Should Direct Contractor at its sole discretion establish a reserved gate system on the Project, Subcontractor agrees that its employees, subcontractors, and suppliers will use the reserve gate(s) designated for them by Direct Contractor.

Subcontractor hereby expressly agrees that all of the provisions of the applicable labor agreements are incorporated into this Agreement as if they were set forth in their entirety. Subcontractor agrees to comply with all of the terms and conditions of those labor agreements as if it were a party to said agreements including signatory status if required. Subcontractor further agrees to pay the wage rates, make the required trust fund payments into the respective labor trust funds, and observe the hours and all other terms and conditions set forth in the respective labor agreements. Subcontractor agrees to comply with the terms and provisions of said agreements setting forth the grievance and arbitration provisions. Furthermore, Subcontractor agrees to comply with the terms and provisions of said agreements setting forth the jurisdiction and scope of work therein for resolution of jurisdictional disputes. In the absence of any such procedure or if such procedure fails to promptly resolve the jurisdictional dispute, Subcontractor agrees, at its own cost and expense and upon request by Direct Contractor, to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board.

Subcontractor acknowledges that terms and conditions of the labor agreements with the unions listed below may require that Subcontractor comply with additional labor agreements. Subcontractor agrees to bind and require all of its subcontractors, regardless of tier, to agree to all of the requirements under this Section 15.

[INSERT UNIONS WITH WHICH GSE HAS LABOR AGREEMENTS]

SECTION 16. COMPLIANCE WITH LAWS AND SAFETY REQUIREMENTS

- (a) Subcontractor agrees to fully comply with all Federal, State and local laws, ordinances and regulations.
- (b) At its sole expense, Subcontractor shall investigate and comply with, and agrees to be bound by, all applicable laws and regulations, including without limitation, laws regarding licensing of contractors, the Fair Labor Standards Act, the Americans with Disability Act, the federal Family and Medical Leave Act, federal, state and local family rights and medical leave laws, civil rights and fair employment laws, the California Labor Code, Proposition 65, laws concerning wages and benefits to be paid, and all other construction, environmental, workplace and safety laws. Subcontractor

accepts exclusive liability for compliance with such laws, including the Federal Social Security Act with respect to its employees, sales and use tax laws, and any other laws and regulations.

- (c) Subcontractor shall also comply, at its sole expense, with all DBE, MBE, UDBE, WBE, DVBE, LBE, local hiring and similar requirements pertaining to the Project. In the event of a termination as a result of any misrepresentation of facts relating to Subcontractor's status as a DBE, MBE, UDBE, WBE, DVBE, and/or LBE, Subcontractor shall not be entitled to any compensation not already paid.
- (d) Subcontractor acknowledges that it has conducted its own independent investigation of the wage rates to be paid and whether its Work will be subject to prevailing wage requirements or the requirements of the Davis-Bacon Act and that it has not relied upon any statements or representations by Direct Contractor with respect to such matters. Subcontractor agrees that the Subcontract Price shall be deemed to be full compensation for compliance with such laws, regulations, or requirements, including payment of all applicable wage rates, and that no additional compensation will be owed to Subcontractor in the event that Subcontractor is required thereunder to pay higher wages or incur additional costs that Subcontractor contends that it did not anticipate.
- (e) Upon request, Subcontractor shall submit certified payroll records to Direct Contractor no later than three (3) working days after Direct Contractor's request and further agrees to cooperate fully in any effort by Direct Contractor to verify compliance with labor laws and regulations, including requirements under the Davis-Bacon Act or the California Labor Code. Such cooperation shall include, without limitation, furnishing copies and originals of records and providing access to employees or witnesses for interviews and statements. In addition to and without derogation of any other rights that Direct Contractor may enjoy, Direct Contractor may withhold sufficient funds to protect Direct Contractor against any claims related to labor requirements, including without limitation, requirements under the Davis-Bacon Act or the California Labor Code.
- (f) On all projects subject to state or local prevailing wage requirements, Subcontractor shall comply with any applicable California prevailing wage laws. With respect to such projects, the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 are attached as Exhibit A and incorporated herein. On such projects, as a condition precedent to final payment, Subcontractor agrees, if requested in writing by Direct Contractor, to provide an affidavit signed by Subcontractor under penalty of perjury, stating that Subcontractor has paid the specified general prevailing rate of per diem wages to its employees on the project and any amounts due.
- (g) that complies with the terms of Labor Code Section 1775(b)(4).
- (h) At its sole expense, Subcontractor shall institute and maintain a reasonable and adequate safety program that fully complies with the law, and shall fully cooperate with and adhere to any safety program or requirements of Direct Contractor and/or Owner. All personnel of Subcontractor, its subcontractors, and suppliers shall wear hard hats, safety vests, and any other necessary safety equipment, while visiting or working at a construction site. Subcontractor shall provide material data sheets and other submittals or items necessary to comply with applicable laws. Subcontractor agrees to obtain and pay for all permits, licenses and official inspections necessary for proper completion of its Work.
- (i) If hazardous or toxic substances, of a type of which an employer is required by law to notify its employees, are being used on the site by Subcontractor, its subcontractors or anyone directly or

indirectly employed by them, Subcontractor shall, prior to exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to Direct Contractor in sufficient detail and time to permit compliance with such laws by Direct Contractor, other subcontractors and employers on the site.

- (j) Subcontractor acknowledges that the EPA and California regulatory authorities have mandated certain requirements for permits under the National Pollutant Discharge Elimination System (NPDES), including Storm Water Pollution Prevention Plan (SWPPP) requirements. Subcontractor has undertaken its own independent and thorough investigation of all such matters, including without limitation, a thorough review of all requirements under the Contract Documents and/or that are imposed by any permits that apply to the Project, and Subcontractor warrants that it is not relying upon any statements or representations by Direct Contractor or Owner with respect to such matters. Subcontractor agrees, at its sole cost, to conform to any and all requirements of any environmental, air and water pollution statutes, regulations and measures, and/or permits, including NPDES permits, and Subcontractor also shall conform to any and all SWPPP requirements applicable to the Project, as further set forth in this Agreement and the Contract Documents. For example, on projects subject to the California Standard Specifications, such as Caltrans projects, Subcontractor's attention is directed to **California Standard Specifications Sections 13.1.01 through 13-10.03, "Water Pollution", and Sections 14-1.01 through 14.204, "Environmental Stewardship"**, and on all projects, to any special provisions or other contract provisions concerning NPDES, Department of Fish & Game, and other permits, air and water pollution statutes, regulations, and measures, and SWPPP requirements, and Subcontractor at its own cost agrees to comply fully therewith.
- (k) Subcontractor shall comply with all provisions of "Proposition 65" (California State Drinking Water Act of 1986, California statutes) which shall include, but not be limited to, posting in a timely manner of any required notices. Subcontractor shall not use or bring on to the Project any of the chemicals or compounds listed by the California State Attorney General from time to time, including any chemicals or compounds added after the effective date of this Agreement under the provisions of Proposition 65 (the List) without delivering a clear written notice, at the time submittals are written, to Direct Contractor and Owner informing them of the dates and locations where such items shall be delivered, used, or stored. Notwithstanding anything to the contrary contained or indicated herein or in any of the Contract Documents or anywhere else, Subcontractor shall not incorporate into the work, or allow to be incorporated into the work, any of the listed items on such list without specific advanced written notice having first been delivered to Direct Contractor prior to Subcontractor becoming actually contractually obligated to purchase or take delivery thereof from its suppliers, and then only to the extent Direct Contractor gives clear written approval of the uses proposed in the notice. The notice shall contain clear descriptions of the type, amount, uses, locations, and content of such items incorporated into or used in said work.
- (l) Subcontractor shall be responsible for holding weekly safety toolbox meetings as required by law on its own time at its own expense. If requested, records of such meetings shall be submitted to Direct Contractor. Failure to provide such minutes may be reason for withholding payment for the work performed.
- (m) Hardhats and appropriate safety clothing and equipment are required on the Project site.

SECTION 17. CALTRANS A&B PROJECTS

NOT USED.

SECTION 18. PROTECTION OF THE WORK

Subcontractor shall effectually secure and protect the Work done hereunder and assumes full responsibility and risk of all loss or damage to its Work, material, or equipment until final acceptance by Architect, Owner and Direct Contractor. Subcontractor further agrees to provide such protection as necessary to protect the Work and the workmen of Direct Contractor, Owner and other subcontractors from its operations.

Subcontractor shall be liable for any loss or damage to work in place or to any equipment and materials on the job site caused by it or its agents, employees or guests.

If Subcontractor installs items provided by others or performs Work in areas to be constructed or prepared by others, Subcontractor shall carefully inspect and shall accept, at the time of delivery or first access, the items so provided and the work by others. Failure to conduct an inspection or to give notice of any discrepancies or problems shall be deemed to constitute acceptance by Subcontractor of the items or work of others. Loss or damage due to acts of Subcontractor shall be charged to Subcontractor. Subcontractor is responsible for all damages or losses it causes to others or to work, equipment, or property of others.

SECTION 19. ALTERNATIVE DISPUTE RESOLUTION

Any dispute resolution procedure in the Contract Documents shall be deemed incorporated in this Agreement, and shall apply to any disputes arising hereunder that involve the Direct Contractor or Owner, including, without limitation, such as "pass through" claims. Subcontractor shall cooperate in such procedures and shall participate in them when requested. Any claims not involving the Direct Contractor or Owner may be resolved, at Direct Contractor's sole option, through binding arbitration administered by a provider to be determined by Direct Contractor, under Judicial Arbitration and Mediation Service or American Arbitration Association Construction Industry Rules in effect as of the date of any arbitration demand made by Direct Contractor.

Prior to the filing of any lawsuit or demand for arbitration, the parties shall meet informally to attempt to resolve the dispute and, if requested by Direct Contractor, shall participate in non-binding mediation, with each party to bear its own fees and costs.

The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

Notwithstanding any dispute, and to the greatest extent permitted by law, Subcontractor agrees to continue with its performance and maintain the schedule of work pending resolution of any and all disputes, including disputes regarding payment or whether work is within Subcontractor's scope. The foregoing sentence constitutes an advance waiver by Subcontractor, to the greatest extent permitted by law, of any actual or alleged right to stop work, rescind, or abandon the Project.

Subcontractor, and its subcontractors and suppliers (regardless of tier), agree upon request by Direct Contractor to join in and be bound by proceedings involving Direct Contractor, including those involving

Owner or other parties. It shall be the responsibility of Subcontractor to prepare Direct Contractor's case, to the extent the proceedings are related to this Agreement.

Nothing herein shall be deemed to waive rights or remedies that by law may not be waived.

SECTION 20. WAIVER OF ATTORNEY'S FEES

Notwithstanding any other provision of this Agreement, the Contract Documents or applicable law, neither Subcontractor nor Direct Contractor shall be permitted to recover attorney's fees or costs in any dispute or litigation and Subcontractor expressly waives the right to recover attorney's fees and costs from Direct Contractor and from Direct Contractor's sureties except where the same is permitted to be recovered under the first sentence of this Section 20. This waiver of the right to fees and costs, to the extent permitted by law, shall be effective as to statutory rights such as those afforded by Civil Code Section 9564 et seq. This provision shall not limit, impair or waive Direct Contractor's rights to be defended by, to be indemnified by, to be held harmless by, to receive contribution from, and to receive the benefits of insurance furnished by Subcontractor or any other persons, with regard to attorney's fees, expert costs and other expenses. In the event that a court were to find that this provision would allow an award of fees even when the conditions under the first sentence of this Section 20 were not satisfied, then this Agreement shall be reformed to eliminate and waive any right to fees from either party or its sureties, except where such a waiver would violate public policy.

SECTION 21. INDEPENDENT CONTRACTOR; TAXES

Subcontractor is an independent contractor and shall, at its sole cost and expense, and without increase in the Contract Price, 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 remuneration's paid to Subcontractor's employees, whether levied under existing or subsequently enacted laws, rules or regulations. Subcontractor upon request shall furnish evidence satisfactory to Direct Contractor that any or all of the foregoing obligations have been fulfilled.

SECTION 22. EQUAL OPPORTUNITY / AFFIRMATIVE ACTION

- (a) If the Direct Contract contains any provision which prohibits discrimination on the basis of race, color, religion, sex, or national origin, hereinafter referred to as Equal Opportunity, or if any law, regulation or order has any application thereto and is applicable to this Subcontract, then Subcontractor hereby agrees to comply with such provision, law, regulation or order.
- (b) Subcontractor hereby acknowledges that Direct Contractor is an Equal Opportunity Employer / Affirmative Action, and is bound by the clauses and conditions identified in Executive order 11246, as amended by, the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, 38 USC 4212, and Section 503 of the Rehabilitation Act of 1973, as amended, and their implementing regulations and which by this clause are incorporated herein.

SECTION 23. ARCHITECT-ENGINEER

The words "Architect or Engineer" as used herein refer to the person appointed by the Owner to supervise the work of Direct Contractor on behalf of the Owner.

SECTION 24. ASSIGNMENT

Without first giving written notice and then obtaining Direct Contractor's written consent, Subcontractor shall not assign, hypothecate, transfer or sublet: (1) any portion or part of the work required or the obligations hereunder; (2) payments to Subcontractor; or (3) any cause of action related to this Agreement. Subcontractor acknowledges and stipulates that its performance constitutes a unique and personal obligation. Any assignment, hypothecation, transfer, or subletting by Subcontractor without Direct Contractor's written consent shall be void and invalid, notwithstanding actual or constructive knowledge by Direct Contractor of the purported assignment, hypothecation, transfer or subletting.

SECTION 25. PRIOR UNDERSTANDING OR REPRESENTATIONS

The Direct Contractor assumes no responsibility for any understanding or representations made by any of its directors, officers, employees, or agents prior to the execution of this Agreement, unless such understanding or representations by Direct Contractor are expressly stated in this Agreement. The terms and conditions of this Agreement shall take precedence over any conflicting conditions or statements.

SECTION 26. ADDITIONAL PROVISIONS

Layout: Direct Contractor shall establish principal axis lines and levels, and Subcontractor shall lay out and shall be strictly responsible for the accuracy of Subcontractor's Work. Subcontractor shall exercise prudence so that actual final conditions and details shall result in perfect alignment of finished surfaces.

Provisions for Inspections: Subcontractor at all times shall furnish to Direct Contractor, Owner, and any representatives of them, safe and ample facilities for inspecting materials and work at the site of construction, shops, factories, yards or any other places of business of Subcontractor, its subcontractors or suppliers, wherever materials under this Agreement may be in the course of preparation, processing, manufacture, painting or treatment. Subcontractor shall furnish to Direct Contractor, as often as Direct Contractor requires, full reports of the progress of the Work at any place materials may be in the course of construction, treatment or manufacture. Such reports shall show the progress of such construction, treatment, and manufacture in such detail as may be required by Direct Contractor, including but not limited to, any plans, drawings, or diagrams in the course of preparation.

IN WITNESS WHEREOF, the parties hereto have executed this Subcontract by its proper officers or duly authorized agents.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS STATE LICENSE BOARD, WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CA 95826.

DIRECT CONTRACTOR

SUBCONTRACTOR

By: _____
Title: _____

G.S.E. CONSTRUCTION COMPANY, INC.
DATE:
CONTR. LICENSE 401498

By: _____
Title: _____

«FirmName»
DATE:
CONTR. LICENSE No. _____

EXHIBIT A

Attachment for California Prevailing Wage Projects 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.

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

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

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

1776. (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

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

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

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

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

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract

and the Division of Labor Standards Enforcement of the Department of Industrial Relations.

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

(c) 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.

1777.5 (a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

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

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

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

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

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates

the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

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

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

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

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

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Administrator of Apprenticeship may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

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

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

(2) At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training

contributions received by the council under this subdivision, less the expenses of the Department of Industrial Relations for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

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

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

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

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

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

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

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

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 11/2 times the basic rate of pay.

EXHIBIT B

DOCUMENTS TO BE RETURNED WITH EXECUTED SUBCONTRACT

1. Certificates of Liability Insurance
2. Certificates of Workers Compensation Insurance
3. Certificates of Commercial Auto Insurance
4. Federal ID number or Social Security Number. This is required under Section 6041A of the Internal Revenue Code. Space is provided in the left upper corner of the Subcontract Agreement.
5. Submittals as required by the Plans and Specifications. Please provide us with SIX copies of each.
6. Breakdown of your Subcontract Price. This breakdown will serve as the basis for progress payments.
7. Sample of Subcontractor's Safety Toolbox Meeting form to be used during this project. Please refer to SECTION 16-SAFETY of the Subcontract Agreement.
8. Copy of your contractor's license.
9. Payment and Performance Bonds, if not waived in Section 24.
10. Completed Copy of DAS Form 140 (Attached to this Subcontract Agreement)
11. Proof of Local City Business License if required by the Owner.

