

ITEM #

SUBCONTRACT PROPOSAL AND AGREEMENT

THIS AGREEMENT is made by and between Contractor: **Midstate Construction Corporation** ("Contractor") and Subcontractor: ("Subcontractor")

PROJECT DESCRIPTION

Project: ("Project")
Project Address:
Owner: ("Owner")
Owner Address:

SECTION 1 SCOPE OF WORK AND CONTRACT PRICE

Subcontractor agrees to furnish all labor, services, materials, installation, cartage, hoisting, supplies, insurance, equipment, scaffolding, tools, and other facilities of every kind and description for prompt and efficient execution of work described herein and required to complete:

For the project in strict accordance with this Agreement, including Exhibit A, "Specific Inclusions, Qualifications and Exclusions"; Exhibit B, "Schedule"; Exhibit C, "Contract Document List", and, if applicable, Exhibit D ("Indemnity Requirements - Residential Projects") and as applicable Labor Code Sections for State and Local Prevailing Wage Projects ("State and Local Public Works Projects").

CONTRACT PRICE

Contractor agrees to pay Subcontractor as consideration for the strict performance of its work, the sum of

in accordance with the terms of Section 3, Payment Terms.

SIGNATURES

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.

Subcontractor agrees that there are no understandings or conditions, written or oral, excepting those set forth by the Contract Documents and this Agreement, including Sections 1 thru 28 on pages 1 thru 25 hereof all of which Subcontractor has read thoroughly and acknowledges are a part of this Agreement. Subcontractor shall return this Agreement to Contractor, fully executed by Subcontractor, within seven (7) calendar days of receipt. Subcontractor's failure to execute and return this Agreement within the time specified shall constitute acceptance of this Agreement by Subcontractor.

IN WITNESS WHEREOF: The parties hereto have executed this Agreement for themselves, their heirs, executors, successors, administrators, and assignees on the dates indicated below:

Midstate Construction Corporation

Address:
1180 Holm Road Suite A
Petaluma, CA 94954
Contact:
Phone: 707-762-3200 **Fax:** 707-762-0700

Address:

Contact:
Phone: Fax:
CSLB#: Exp:
DIR#: Exp:

By: _____
Date: _____

By: _____ **Title:** _____
Signature
Date: _____

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SECTION 2 ENTIRE CONTRACT

The phrase "Contract Documents" is defined to mean the plans, specifications, all general and special conditions, drawings, specifications, addenda, bulletins, amendments, modifications, and all other contract documents forming, by reference made a part of or attached to Contractor's contract with Owner (the "prime contract"), including without limitation those listed in Exhibit C to this Subcontract Proposal and Agreement.

Subcontractor certifies that it is fully familiar with all of the terms of 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 investigation of all such matters and is not relying on any opinions or representation of Contractor.

This Agreement represents the entire agreement between 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, its subcontractors and suppliers will be and are bound by the Contract Documents insofar as they relate in any way, directly or indirectly, to the work covered by this Agreement. Subcontractor agrees to be bound to Contractor in the same manner and to the same extent as Contractor is bound to Owner under the Contract Documents, including, but not limited to, all applicable terms and provisions thereof. 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 Contractor. The parties intend that all terms of this Agreement shall be considered to be complementary. However, in the event of a conflict between or among the terms of this Agreement and/or the Contract Documents, the provision requiring the stricter or greater duty on the part of Subcontractor shall prevail.

SECTION 3 PAYMENT TERMS

Contractor agrees to make payment in the following manner:

Contractor agrees to pay to Subcontractor Ninety Percent (90%) of the value of the work actually and satisfactorily completed by Subcontractor through the last day of each month as monthly progress payments for labor and materials which have been placed in position in strict accordance with the Contract Documents, with funds received by Contractor from Owner for work performed by Subcontractor as reflected in Contractor's applications for payment and approved by the Owner, provided Subcontractor has furnished in writing an application for said payment by the 25th day of the month in which the work was performed. Such monthly progress payments shall be made seven (7) days after receipt of payment from the Owner by Contractor. Final payment to Subcontractor shall be made ten (10) days after the entire work required by the prime contract has been fully completed in conformity with the Contract Documents and has been delivered to and accepted by Owner, Architect, and Contractor, with funds received by Contractor from Owner in final payment for work under the prime contract. Subcontractor shall submit to Contractor a schedule of values for approval within two (2) weeks of the receipt of this Agreement. Subcontractor agrees to submit pay requests on Contractor's pay request form with Subcontractor's invoice. Subcontractor agrees to furnish, if and when required by 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 a form satisfactory to Contractor. It is agreed that no payment hereunder shall be made, except at Contractor's option, until and unless such documents have been furnished. Contractor, at its option, may make any payment due hereunder by check made payable jointly to Subcontractor and any of its subcontractors and 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 Contractor from which payment to Subcontractor is to be made, Contractor and its sureties shall have a reasonable time to make payment to Subcontractor. "Reasonable time" shall be determined according to relevant circumstances, but in no event shall be less than the time Contractor, Contractor's sureties, and Subcontractor require to pursue to conclusion their legal remedies against Owner or other responsible party to obtain payment, including (but not limited to) mechanic's lien remedies. If Subcontractor asserts a claim which involves, in whole or in part, acts or omissions which are the responsibility of the Owner or another party, including but not limited to claims for failure to pay, an extension of time, delay damages, or extra work, Contractor will present Subcontractor's claim to the Owner or other responsible party provided such claim is presented to the Contractor in writing by Subcontractor within ten (10) calendar days of the date of the claimed act or omission of the Owner or other party. Subcontractor shall cooperate fully with the Contractor at its sole expense in all steps taken in connection with prosecuting such a claim and shall hold harmless and reimburse the Contractor for all expenses, including legal expense, incurred by Contractor which arise out of Contractor's submission of Subcontractor's claim to Owner or other responsible party. Subcontractor shall be bound by any adjudication or award in any action or proceeding resolving such a claim. Contractor may deduct from any amounts due or to become due to Subcontractor any sum or sums owing by Subcontractor to Contractor, regardless of whether the sums owed arise out of the Project; and, in the event of the assertion by other parties of any claim or lien against Contractor or Contractor's Surety or the construction site arising out of Subcontractor's performance of this Agreement, Contractor shall have the right, to retain out of any payments due or to become due to Subcontractor, an amount sufficient to completely protect Contractor from any and all loss, damage or expense therefrom until the situation has been remedied or adjusted by Subcontractor to the satisfaction of Contractor. If at any time Contractor shall determine that Subcontractor's financial condition has become unstable or unsatisfactory, Subcontractor shall furnish additional security satisfactory to Contractor within three (3) days after written demand therefore is mailed or delivered to Subcontractor, and, in default of furnishing said additional security, Contractor shall have the option to cancel this Agreement or to initiate such other action as Contractor may deem necessary for the protection or preservation of its interests and/or the prevention of delay in the efficient and orderly progress of work on the Project, including but not limited to that portion of the work to be performed by Subcontractor hereunder. In the event of such cancellation, the rights of Contractor shall be the same as if Subcontractor had willfully refused to further perform the work of this Agreement. Funds paid to Subcontractor shall be impressed with a trust in favor of persons who have provided labor, equipment, materials and services.

Subcontractor shall prepare, maintain, and submit as-built information in a timely manner as may be required by Contractor. Subcontractor agrees to update as-built information on a monthly basis and submit to Contractor for review as a condition of monthly progress payments.

Prior to release of final monthly progress payment, Subcontractor shall provide complete close out information, warranties, product data, and as-builts as may be required. All costs associated with as-built drawings and close out information shall be borne by the Subcontractor.

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SECTION 4 CHANGES IN THE WORK

Contractor may, at any time by written order of Contractor's authorized representative, make deletions, additions, or other modifications to the work to be performed and materials to be furnished under this Agreement, and Subcontractor shall immediately proceed with the performance of this Agreement as so changed. Subcontractor shall make no changes in the work described in the Contract Documents and this Agreement except as directed by Contractor in writing. Such change or written direction shall not invalidate this Agreement.

If necessary, the Contract Price stated in Section 1 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 Contractor with all documentation necessary to substantiate the amount of the addition to or deduction from the price or time. Where cost proposals are required for changes in the work, Subcontractor agrees to furnish costs with required breakdowns (labor breakdowns shall include hours) plus allowable markup as defined in the prime contract. In no event shall the Subcontractor's mark-up exceed 15% for overhead and profit on any additional work. Subcontractor further agrees to provide an equitable markup on credit proposals for deleted work. Subcontractor agrees to furnish written proposals to the Contractor in accordance with the following schedule:

- (a) Changes to work in progress or on hold pending change approval shall be submitted within one (1) business day of change notification.
- (b) Changes to work scheduled to begin within one (1) week shall be submitted within three (3) business days of change notification.
- (c) All other changes shall be submitted within seven (7) calendar days of change notification.

In the event Subcontractor fails to comply with the above submittal requirement, Contractor at its sole option may prepare and submit to the Owner an estimate for the value of change in question, and Subcontractor agrees to be bound to the cost submitted by the Contractor for this change. A disagreement between Contractor and Subcontractor as to (i) an increase or decrease in the subcontract price or (ii) whether the work is within Subcontractor's scope shall not relieve Subcontractor from immediately proceeding with the performance of the Subcontract as modified, changed or amended. If a dispute arises between Contractor and Subcontractor about whether particular work is a change in the work described in Section 1, Subcontractor shall, upon receipt of Contractor's written directive, timely perform the disputed work. Notwithstanding any dispute about modifications, additions, or deletions to Subcontractor's work or whether the work is within Subcontractor's scope, 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 such disputes. The foregoing sentence constitutes an advance waiver by Subcontractor of any actual or alleged right to stop work, rescind, or abandon the project. If Subcontractor intends to submit a claim for the disputed work, it shall give prompt written notice to 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 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 Subcontractor that it will not be paid for the disputed work and a conclusive defense to any claim by Subcontractor. If Subcontractor makes any changes in the work described in Section 1 without written direction from 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 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 Contractor. No change, alteration, or modification to or deviation from this Agreement, the Contract Documents, prime 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.

SECTION 5 RECOURSE OF CONTRACTOR**5.1 Failure of Performance**

5.1.1 Right to Adequate Assurance. When reasonable grounds for insecurity arise with respect to Subcontractor's performance, Contractor may in writing demand adequate assurance of due performance. Subcontractor's failure to provide, within forty-eight (48) hours of the demand such assurance of due performance as is adequate under the circumstances of the particular case, is a default under Section 5.1.2 of this Agreement.

5.1.2 Notice to Cure. If Subcontractor at any time refuses or neglects to supply enough properly skilled workers and proper materials, or fails to properly and diligently prosecute the work covered by this Agreement, or fails to make prompt payment to its workers, sub-subcontractors or suppliers, or becomes delinquent with respect to contributions or payments required to be made to any health and welfare, pension, vacation, apprenticeship or other employee benefit program or trust, or fails to provide adequate assurance pursuant to Section 5.1.1, or is otherwise guilty of a material breach of a provision of this Agreement, and fails within forty-eight (48) hours after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, and to complete the cure of such default within the time period stated in Contractor's default notice, then Contractor, without prejudice to any rights or remedies, shall have the right to any or all of the following remedies:

(a) Supply such number of workers and quantity of materials, equipment and other facilities as Contractor deems necessary for the completion of Subcontractor's work, or any part thereof which Subcontractor has failed to complete or perform, and charge the cost thereof to Subcontractor, who shall be liable for the payment of same including fifteen percent (15%) overhead and profit fee, and actual attorney's fees incurred as a result of Subcontractor's failure of performance;

(b) Contract with one or more additional contractors to perform such part of Subcontractor's work as Contractor shall determine will provide the most expeditious completion of the total work and charge the cost thereof to Subcontractor including fifteen percent (15%) overhead and profit fee; and

(c) Withhold payment of any monies due Subcontractor pending corrective action to the extent required by and to the satisfaction of Contractor. In the event of an emergency affecting the safety of persons or property, Contractor may proceed per (a), (b) and (c) above without notice.

In addition to any other remedies Contractor may have, upon written notice, 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

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have complied with requirements of this Agreement or with directives by Contractor. In such an event, Contractor shall be entitled to recover from Subcontractor, back-charge against Subcontractor, and/or set-off against amounts owed to Subcontractor, the actual direct and indirect costs that Contractor has incurred (including attorney's fees, consultant fees, and other legal costs) plus markup of fifteen percent (15%).

5.1.3 Termination for Default. If Subcontractor fails to commence and satisfactorily continue correction of a default within forty-eight (48) hours after receipt by Subcontractor of the notice issued under Section 5.1.2, and/or fails to complete the cure of such default within the time period stated in Contractor's default notice, then Contractor may terminate Subcontractor's right to perform under this Agreement and use any materials, implements, equipment, appliances or tools furnished by or belonging to Subcontractor's work without any further compensation to Subcontractor for such use. As a cumulative remedy, Contractor may, at Subcontractor's expense, also furnish those materials and equipment, and/or employ such workers or subcontractors, as Contractor deems necessary to maintain the orderly progress of the work.

In such case, Subcontractor shall be entitled to no further payment until the balance of Subcontractor's work has been completed. At that time, all of the costs incurred by Contractor in performing Subcontractor's work, including a markup of fifteen percent (15%) for overhead and profit on such expenses, plus actual attorney's and consultant fees and other legal costs arising from Subcontractor's default as provided above, shall be deducted from any monies due or to become due Subcontractor. Subcontractor shall be liable for the payment of any amount by which such expenses may exceed the unpaid balance of the Contract Price.

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

Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Contractor or, at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived therefrom. Subcontractor shall thereafter do only such work as may be necessary to preserve and protect the work already in progress and to protect material and equipment on the job site or in transit thereto.

Upon such termination, Subcontractor shall be entitled to payment in accordance with Section 3 only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Subcontractor as are permitted by the prime contract and approved by Owner; plus (3) fifteen percent (15%) of the cost of the work referred to in item (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Subcontractor prior to the date of the termination of this Agreement. In no event shall payment due hereunder exceed the amount due for approved units of work or percentage of completion. Subcontractor shall not be entitled to any claim or claim of lien against Contractor or Owner for any additional compensation or damages in the event of such termination and payment.

In the event that any termination, other than one for convenience, is later determined to have been improper or without cause, Subcontractor's sole 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 Section 5.1.4 hereof. Subcontractor 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 Contractor from withholding monies from Subcontractor under other provisions of this Agreement.

5.1.5 Grounds for Withholding Payment. Contractor may reduce or withhold payments, in whole or in part, reject a Subcontractor payment application, nullify a previously approved Subcontractor payment application, in whole or in part, to the extent necessary to protect Contractor from loss, including costs and actual attorney's and consultant fees, and litigation costs, on account of (1) defective work not remedied; (2) claims filed or reasonable evidence indicating probable filing of claim; (3) failure of Subcontractor to make payments properly to its subcontractors or for material, labor or fringe benefits; (4) a reasonable doubt that this Agreement can be completed for the balance then unpaid; (5) damage to another subcontractor; (6) penalties assessed against Contractor or Subcontractor for failure of Subcontractor to comply with state, federal or local laws and regulations; or (7) any other ground for withholding payment allowed by state or federal law, or as otherwise provided in this Agreement. When the above matters are rectified, such amounts as then due and owing shall be paid or credited to Subcontractor. In addition, and without limiting any of its other rights and remedies, Contractor shall be entitled to withhold and to setoff against any amounts owed to Subcontractor any liabilities or amounts owed to Contractor by Subcontractor (including, to the extent permitted by law, those that relate to or arise from other projects); Subcontractor agrees to and accepts any such setoff as full payment under this Agreement and for purposes of mechanics' lien, stop payment notice, and bond statutes and remedies.

5.1.6 Satisfactory Performance. Subcontractor's superintendent, foreman, and other employees at all times shall be satisfactory to Contractor and shall conduct themselves in a safe and competent manner. If a superintendent, foreman, or other employee is unsatisfactory to Contractor, in its subjective discretion, then upon written notice Subcontractor shall promptly replace such person; provided, however, that Contractor is not obligated to exercise this right to require replacement of personnel and does not assume any obligations under the law other than those that otherwise would exist in the absence of this provision.

5.2 Bankruptcy.

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

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

5.2.2 Interim Remedies. 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, 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

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maintain the schedule of work.

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, fifteen percent (15%) overhead and profit fee, and actual attorney's and consultant fees, and other litigation costs 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.

SECTION 6 TIME AND SCHEDULING OF WORK

Time is of the essence of this Agreement. Subcontractor shall conform to Contractor's progress schedule and all revisions or changes made thereto. Subcontractor shall prosecute its work in a prompt and diligent manner without delaying or hindering Contractor's work or the work of other contractors or subcontractors. Subcontractor shall coordinate the work covered by this Agreement with that of all other contractors, subcontractors and suppliers and of the Contractor, in a manner that will facilitate the efficient completion of the entire work. In the event Subcontractor fails to maintain its part of the Contractor's schedule, it shall, without additional compensation, accelerate the work as Contractor may direct until Subcontractor's work is in accordance with Contractor's schedule. Contractor shall have complete control of the premises on which the work is to be performed and 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.

If Subcontractor is delayed in the prosecution or completion of the work by the act, neglect or default of Owner, Architect or Contractor, or if Subcontractor is delayed waiting for materials, if required by this Contract to be furnished by Owner or Contractor, or by damage caused by fire or other casualty for which Subcontractor is not responsible, or by the combined action of the workmen, in no way caused by or resulting from fault or collusion on the part of the Subcontractor, or in the event of a lock-out by 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 Contractor within three (3) business days of the commencement of such delay, and under no circumstances shall the time of completion be extended to a date which will prevent Contractor from completing the entire project within the time allowed Contractor by Owner for such completion.

If a progress schedule is furnished by Contractor to Subcontractor, it shall be solely for Contractor's benefit; however, Subcontractor must be ready to perform at the times indicated in the progress schedule. The Contractor makes no representation that it will be ready for the Subcontractor at the times indicated in said schedule regardless of whether delays may be occasioned by circumstance within the control of the Contractor.

No claims for additional compensation or damages for delays, whether caused in whole or in part by any conduct on the part of Contractor, including, but not limited to, conduct amounting to a breach of this Agreement, or delays by other subcontractors or Owner, shall be recoverable from Contractor, and the above-mentioned extension of time for completion shall be the sole remedy of Subcontractor, provided, however, that in the event Contractor obtains additional compensation from Owner on account of such delays, Subcontractors shall be entitled to such portion of the additional compensation so received by Contractor from Owner as is equitable under all of the circumstances. In the event that Contractor prosecutes a claim against Owner for additional compensation for any delay, Subcontractor shall cooperate fully with Contractor in the prosecution thereof and shall pay costs and expenses incurred in connection therewith, including actual attorney's fees, consultant fees, and other legal costs, to the extent that said claim is made by Contractor at the request of Subcontractor.

Subcontractor shall prepare and obtain approval as required by the Contract Documents for all shop drawings, details, samples, and do all other things necessary and incidental to the prosecution of its work in conformance with this Agreement. No allowance of an extension of time shall in any event be made to the Subcontractor for delay by the Subcontractor in preparing drawings or in securing approval of the Owner's Representative thereto when such drawings are not properly prepared or when the Subcontractor by the exercise of reasonable diligence and judgment could have anticipated and avoided the delay.

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 and desirable for the Subcontractor. Subcontractor's price is based upon the foregoing, as well as Contractor exercising the rights indicated in Section 6, as well as those indicated above, and upon Subcontractor having planned to perform its work under such circumstances. Milestone or completion dates of segments of Subcontractor's work within the overall schedule shall be met. Failure to meet such milestone or completion dates shall be considered a breach of contract. To the greatest extent permitted by law, Subcontractor's sole remedy for delay, disruption or suspension of the work, including without limitation any delay, disruption or suspension caused by the fault or negligence of Owner, Contractor (or any agent or representative thereof), or from any other cause whatsoever, shall be an extension of the time for performance. Subcontractor shall not be entitled to, and hereby waives any and all 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 to the extent of such sums as may be recovered on Subcontractor's account from Owner. Subcontractor further waives any and all claims against Contractor for damages or additional compensation which is related to, caused or contributed to by delay and/or disruption of Subcontractor's performance, or by any act, omission, or other conduct causing or contributing any Impact Costs and Consequential Damages (including negligent conduct on the part of Contractor or any other person). If Subcontractor wishes to seek compensation for Impact Costs and Consequential Damages of any kind, or for any other increase in the Contract Sum, it must give the Contractor written notice no later than ten (10) days after the beginning of the underlying cause thereof, or such shorter period of time as may be provided by this Agreement, including, without limitation, the Contract Documents. Failure to provide such written notice shall be a waiver of, and a conclusive defense to, any claim by Subcontractor. The requirement to give such notice in no way shall be deemed to authorize or provide entitlement to recovery for Impact Costs and Consequential Damages or for any other form of relief which may be sought by Subcontractor.

It is further specifically agreed by the parties hereto that no claim, dispute or controversy shall interfere with the progress and performance of work required to be performed under this Subcontract and that Subcontractor shall proceed as directed in writing by Contractor. Notwithstanding any dispute, and to the greatest extent permitted by law, Subcontractor agrees to continue with its performance and maintain

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the schedule of work pending resolution of any and all disputes, including disputes regarding payment, or whether the work is within Subcontractor's scope. The foregoing sentence constitutes an advance waiver by Subcontractor of any actual or alleged right to stop work, rescind, or abandon the project. The failure of Subcontractor to comply with the provisions of this paragraph shall be deemed a breach of this Subcontract entitling Contractor to all remedies available in the event of Subcontractor's breach.

Unless specifically authorized by Contractor, Subcontractor shall maintain the same working hours at the job site as determined and worked by Contractor.

SECTION 7 DAMAGES CAUSED BY DELAYS

If Subcontractor should default in performance of the work described in Section 1 or should otherwise commit any act which causes delay to the prime contract work, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages and liquidated damages, and other costs, liabilities, losses, expenses, or damages sustained by Contractor, or for which Contractor may be liable to Owner or any other party because of Subcontractor's default.

SECTION 8 BONDING OF SUBCONTRACTOR

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

SECTION 9 INSURANCE

Subcontractor and its subcontractors and suppliers (regardless of tier) shall comply with the following insurance requirements and provisions:

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

9.2 Worker's 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.

9.3 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:

- premises and operations
- products and completed operations will be maintained for four years following project completion. contractual liability insuring tort obligations assumed by Subcontractor in this Contract
- broad form property damage (including completed operations)
- explosion, collapse and underground hazards (including subsidence and any other earth movement) 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:

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

The general aggregate limit shall apply separately to Subcontractor's work under this Contract. For subcontracts in excess of \$250,000 an additional \$5,000,000 Excess Liability Insurance policy shall be maintained over the General Liability coverage that shall, at a minimum, include coverage for the exposures set forth above.

Contractor, including officers, directors, agents and employees, and Owner, including officers, directors, agents and employees, and all other additional insureds noted in "Sample Insurance Certificate" 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 Contractor or Owner shall not be called upon to contribute with this insurance.

Coverage for the 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), a combination of 20 10 10 01 and CG 20 37 10 01; or equivalent. Additional insured endorsement will be provided for four years following project completion.

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

9.5 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. Contractor and Owner shall be named as additional insureds.

9.6 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. Contractor reserves the right, in its sole and subjective discretion, to reject an insurer and require Subcontractor to obtain policies from another insurer.

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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 Contractor. Subcontractor's insurance and additional insured coverage shall not include the following exclusions or provisions: cross-suits and/or cross-insureds exclusion of coverage, wildfires, virus, communicable disease, mold, water damage and/or earth movement exclusions, requirements by the insurer that subcontractors or suppliers maintain insurance or agree to defend or indemnify Contractor or Owner, and/or residential or condominium exclusions, provisions, or limitations where the effect thereof would be to eliminate or limit coverage. Subcontractor shall cause its policies to be amended or endorsed to remove any such exclusions, provisions or limitations.

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 his insurance carrier(s). Certificates of insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) day's prior written notice to Contractor.

Subcontractor shall take such steps as are necessary to assure Subcontractor's compliance with its obligations. Should any insurance policy lapse or be canceled during the contract period, Subcontractor shall, prior to the effective expiration or cancellation date, furnish the 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, Contractor may, but is not required to, maintain such coverage and charge the expense to Subcontractor or terminate this contract for default.

Any acceptance of insurance certificates or endorsements by Contractor shall in no way limit or relieve Subcontractor of its duties and responsibilities under this Contract including the duty to indemnify and hold harmless Contractor.

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 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.

Subcontractor shall not provide any liability coverage (including auto coverage) under a claim made, "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.

Subcontractor shall also satisfy the following additional requirements:

9.6.1 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 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.

9.6.2 Professional Liability. If Subcontractor (or its subcontractors or suppliers, regardless of tier) performs any design/build work or services, 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. 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 (3) 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 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.

9.6.3 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.

9.6.4 Aircraft Liability. If Subcontractor (or its subcontractors 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. Evidence of coverage in the form of a certificate of insurance shall be provided prior to the start of the Project.

9.6.5 Work Near Railroads. If Subcontractor (including any lower tier subcontractor or supplier) performs any work or conducts any operations within fifty feet (50) 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 (50) of a railroad. A copy of such endorsement shall be provided to Contractor prior to any work or operations by Subcontractor within fifty feet (50) of any railroad. Subcontractor shall also provide any other insurance coverage required by any owner or operator of any rail system.

9.6.6 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. If builders' risk insurance is not provided by Owner or 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.

9.6.7 Waiver of Subrogation. Contractor and Subcontractor waive all rights against each other for loss 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.

9.6.8 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, and shall provide Contractor with evidence of insurance prior to commencing work.

9.6.9 Wrap-Up or OCIP Insurance (1) If there is no Wrap-Up or Owner Controlled Insurance Program ("OCIP") for the project, all

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provisions of this Attachment shall apply; (2) if there is Wrap-up or OCIP coverage, the provisions of this Attachment shall apply only to the extent the OCIP does not provide such coverage and thus the provisions of this Attachment shall require coverage in addition to the coverage provided by the OCIP. For example, and without limitation, if the OCIP does not cover off-site activities or workers compensation, then Subcontractor shall furnish all required insurance with respect to offsite activities and shall also maintain workers compensation coverage, all in accordance with the provisions of this Agreement, including this Section. Subcontractor shall at no additional cost to Contractor comply with all requirements and provisions of any such Wrap-up or OCIP coverage, including any applicable manual or provisions concerning the furnishing of credits, as if such requirements and provisions were incorporated herein.

OCIP or Wrap Policy Disclosures

[Check Box if applicable: []]

In accordance with Civil Code Section 2782.96, Contractor provides the following disclosures concerning a wrap-up insurance policy or other consolidated insurance program for a public works project or any other project other than a residential construction project as defined by Civil Code Section 895 et seq.:

Total amount or method of calculation of any credit or compensation for premium required from Subcontractor or another participant (fill in one):

[] \$_ or

[] Per Exhibit , attached hereto.

Policy limits: \$_ .

Known exclusions: .

Period/length of time policy is to remain in effect: .

Upon written request, once Contractor itself obtains a copy of the Wrap-Up policy, a copy of the Wrap-Up policy may be inspected and copies by any person or company covered by the policy. If a policy is not yet available, upon written request, a person or company covered by the Wrap-Up policy shall be provided a copy of the insurance binder or declaration of coverage. Any person or company receiving a copy of the Wrap-Up policy, binder, or declaration ("participant") agrees not to disclose it to third parties other than the participant's insurance broker or attorney, unless required to provide or disclose it by law. Any participant who provides a copy of the Wrap-Up policy, binder or declaration to his, her or its insurance broker or attorney shall require the insurance broker or attorney not to disclose it unless required to do so by law.

9.7 Failure of Contractor to enforce in a timely manner any of the provisions of this Section shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of this Contract.

SECTION 10 INDEMNIFICATION

10.1 To the greatest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless 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) to 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, at a minimum, shall owe the same defense, indemnity, contribution, and hold harmless obligations to Contractor as 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. Subcontractor's obligation to defend, indemnify and hold harmless under this

Section 10 shall comprise, without limitation, Claims for:

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

10.1.3 Penalties, fees and costs imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance or statute, caused by the action or inaction of Subcontractor;

10.1.4 Infringement of any patent rights, which may be brought against the Contractor or Owner arising out of Subcontractor's work;

10.1.5 Liens (see Section 22) for labor performed or materials used or furnished to be used on the job, including all incidental or consequential damages resulting to Contractor or Owner from such claims or liens;

10.1.6 Subcontractor's failure to fulfill the covenants set forth in each subpart of Section 13, Labor Relations;

10.1.7 Failure of Subcontractor to comply with the Provisions of Section 9.1, Casualty Insurance;

10.1.8 Any violation or infraction by Subcontractor of any law, order, citation, rule, regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees, including, but not limited to, the use of Contractor's or others' equipment, hoist, elevators, or scaffolds (See Section 9 and 25).

10.2 To the greatest extent permitted by law, the obligations of this Section 10 shall apply regardless of whether or not 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 Contractor, of a Subcontractor to 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. Upon written tender by any Indemnitee, including Contractor, of a Claim, Subcontractor shall either:

10.2.1 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

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the defense obligation applies. If Subcontractor elects to defend under this Section 10.2.1, 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 thirty (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 against the tendering party resulting from Subcontractor's scope of work, but not including claims resulting either from the scope of work, actions, or omissions of the tendering party or from scope of work, actions, or omissions of 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; or.

10.2.2 Pay, within thirty (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.

10.2.3 Notwithstanding any other provision of law, if Subcontractor fails timely and adequately to perform its obligations under Section 10.2.1, the party tendering the Claim shall have the right to recover from Subcontractor for any resulting compensatory damages, consequential damages, reasonable statutory attorney's fees pursuant to Civil Code Section 2782.05, consultant fees, and other legal costs. If Subcontractor fails to timely perform its obligations under Section 10.2.2, 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 statutory attorney's fees pursuant to Civil Code Section 2782.05. The party tendering the Claim shall bear the burden of proof to establish both Subcontractor's failure to perform under either Section 10.2.1 or 10.2.2, 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 Section 10.2.1 or 10.2.2, 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.

10.2.4 The obligations under this Section 10 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 10 shall survive the expiration or termination of this Agreement, as well as Subcontractor's completion of its other obligations.

10.3 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 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 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.

10.4 Notwithstanding the foregoing or any other provision of this Agreement, if the "Claim" for which indemnity or defense is sought is in connection with a residential building project subject to the provisions of Section 2782(d) of the Civil Code and constitutes a "claim of construction defect" as defined by Section 2782(d) of the Civil Code, then the provisions of Exhibit D hereto shall apply.

10.5 Risk of Loss Subcontractor shall effectually secure and protect the work done hereunder and assume full responsibility and risk of loss for the condition thereof until final acceptance by Architect, Owner and Contractor. Subcontractor further agrees to provide such protection as necessary to protect the work and the workmen of 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.

SECTION 11 OCCUPANCY PRIOR TO COMPLETION

Whenever it may be useful or necessary to the Contractor to do so, the Contractor shall be permitted to occupy and/or use any portion of the work which has been either partially or fully completed by the Subcontractor before final inspection and acceptance thereof by the Owner, but such use and/or occupancy shall not relieve the Subcontractor of its guarantee of said work and materials nor of its obligation to make good, at its own expense, any defect in materials and workmanship which may occur or develop prior to Contractor's release from responsibility by the Owner. Provided, however, the Subcontractor shall not be responsible for the maintenance of such portion of the work as may be used and/or occupied by the Contractor, nor for any damage thereto that is due to or caused by the negligence of the Contractor during such period of use. Subcontractor agrees further that, if it shall cause any stains, blemishes, imperfections, marks or damage of any sort whatsoever, whether to its work or to the work of Contractor or to the work of another subcontractor, it will immediately remedy the damage so caused to the satisfaction of Contractor.

SECTION 12 PROTECTION OF WORK

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 Contractor and other subcontractors. Subcontractor, therefore, agrees to perform the work called for in this Agreement in such a manner that it will not injure or damage any other work performed by Contractor or any other Subcontractor, and further agrees to pay Contractor for any

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damage that may be caused to such other work by Subcontractor or by its agents or employees.

In the event the scope of work includes installation of materials or equipment furnished by others or work to be performed in areas to be constructed or prepared by others, it shall be the responsibility of Subcontractor to carefully examine and accept, at the time of delivery or first access, the items so provided and thereupon handle, store and install the items with such skill and care as to ensure a satisfactory completion of the work by Subcontractor. Commencement of work in such areas shall be deemed to constitute acceptance thereof by Subcontractor. Failure to conduct an inspection or to give notice of any discrepancies or problems shall be deemed to constitute acceptance by Subcontractor of items of work of others. Loss or damage due to acts of Subcontractor shall be charged to the account of Subcontractor and deducted from monies otherwise due under this Agreement. Subcontractor shall effectually secure and protect the work done hereunder and assume full responsibility for the condition thereof until final acceptance by Architect, Owner and Contractor. Subcontractor is responsible for all damages or losses it causes to others or to work, equipment or property of others. If Subcontractor removes existing protection to perform work under this Agreement, Subcontractor agrees to restore this protection to its original condition. 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.

SECTION 13 LABOR RELATIONS

13.1 Picketing. Should there be picketing on Contractor's job site, it shall be the obligation of Subcontractor to continue the proper performance of its work without interruption or delay. If Subcontractor is the target of a picket at the jobsite, Subcontractor shall bear the cost of establishing and maintaining a dual-gate system.

13.2 DBE/MBE/WBE. Subcontractor hereby acknowledges that it is thoroughly familiar with all DBE/MBE/WBE requirements pertaining to the project. If the Subcontractor claims status as a DBE/MBE/WBE, the Subcontractor shall take all steps necessary and shall make all necessary records available to the Contractor and the Owner to assure that Subcontractor is in compliance with such requirements. In the event that any subcontractor or supplier of the Subcontractor is designated as or is required to be a DBE/MBE/WBE, Subcontractor agrees to be responsible for insuring that said sub-subcontractor or supplier meets all applicable requirements. Subcontractor acknowledges that Contractor is relying upon Subcontractor's representations regarding the validity of Subcontractor's status, if any, as a DBE/MBE/WBE, and that misrepresentation of the status of Subcontractor or any of its sub-subcontractors or material suppliers is a material breach of this Agreement and grounds for immediate termination. In the event of termination as the result of material misrepresentation of the status of the Subcontractor as a DBE/MBE/WBE, Subcontractor shall not be entitled to any compensation not already paid and shall be responsible for all costs exceeding the unpaid balance for Subcontractor's scope of work.

13.3 Labor Laws and Regulations. Subcontractor shall comply with and agrees to be bound by all applicable federal, state and local laws and regulations, including, but not limited to, all provisions of the Fair Labor Standards Act, the Americans with Disabilities Act, the federal Family and Medical Leave Act, the California Labor Code, the California Fair Employment and Housing Act, and the California Family Rights Act. Upon request, Subcontractor shall submit certified payroll records to contractor no later than three (3) working days after labor has been paid.

13.4 Compliance with Wage and Hour Requirements. Within three (3) days of Contractor's request, and regardless of whether a project is public or private, Subcontractor shall submit certified payroll records for itself and for any of its subcontractors, of any tier, as well as any additional documentation or information that may be needed to verify that Subcontractor and all of its subcontractors, regardless of tier, have paid all wages, benefits, contributions, apprenticeship council payments, and/or amounts owed to unions or trust funds. Subcontractor acknowledges that it is aware of the requirements of Labor Code Section 218.7 (AB 1701) and agrees to comply fully with its requirements, and in accordance with the indemnity provisions of this Agreement, Subcontractor shall defend, hold harmless, and/or indemnify Contractor and its sureties from any claim arising from the actual or alleged failure of Subcontractor or any of its subcontractors, regardless of tier, to have paid all wages, benefits, contributions, apprenticeship council payments, and/or amounts owed to unions or trust funds. Subcontractor shall incorporate the foregoing requirements into all of its subcontracts for the Project and shall likewise require all lower tier subcontracts to incorporate this requirement. Subcontractor further agrees to cooperate fully in any effort by 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 Contractor may enjoy, Contractor may withhold sufficient funds to protect Contractor against any claims related to labor requirements, including without limitation, requirements under the Davis-Bacon Act or the California Labor Code.

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 and incorporated. On such projects, as a condition precedent to final payment, Subcontractor agrees to provide an affidavit that complies with the terms of Labor Code Section 1775(b)(4).

Section 1720.9 of the Labor Code (AB 219) requires that any person or entity that engages in "the hauling and delivery of ready-mixed concrete" in connection with a public project must: (1) comply with prevailing wage laws, including payment of prevailing wages and the submission of certified payroll reports; and (2) register with the Department of Industrial Relations, even if the person or entity is not a licensed contractor; and (3) with the submission of certified payroll reports, provide a written time record that shall be certified by each driver. Subcontractor agrees strictly to comply with these requirements, and Subcontractor's failure to comply shall constitute a material breach. In particular, and without limitation, Subcontractor agrees to comply with Division 2, Part 7, Chapter 1 of the California Labor Code, Section 1720 et seq.

Subcontractor acknowledges that it (a) 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 (b) has not relied upon any statements or representations by 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. In addition to and without derogation to any other rights that Contractor may enjoy, Contractor may withhold sufficient funds to protect Contractor against any claims related to labor requirements, including without limitation, requirements under the Davis-Bacon Act or the California Labor Code. Subcontractor agrees that the amounts set forth as the Subcontract Price

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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.

Subcontractor shall comply, and shall cause any of its subcontractors and independent contractors (regardless of tier) to comply, with all statutes, regulations, orders, court decisions, and other laws relating to classification of individuals as employees or independent contractors, including without limitation and as applicable, Labor Code Section 2750.3 (AB 5) and *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal. 5th 903 (2018). If Subcontractor, or its subcontractors and independent contractors (regardless of tier), utilize subcontractors who are natural persons who are not compensated and otherwise treated as employees, Subcontractor shall ensure that any such person qualifies as an independent contractor and (i) is hired pursuant to a written contract; (ii) is licensed by the Contractors State License Board and performs work only within the scope of that license; (iii) has a business license and has registered for business taxes, if the person is domiciled in a jurisdiction that requires such a license and/or registration; (iv) maintains a business location that is separate from the company that has hired it; (v) has authority to hire and fire other persons who provide and/or assist in providing the services in question; (vi) has financial responsibility for errors and omissions in connection with the labor or services provided, as evidenced by insurance, indemnity obligations, bonds, and/or warranties; and (vii) is customarily engaged in an independently established business of the same nature as that involved with the work performed by such person.

If Subcontractor, or its subcontractors and independent contractors (regardless of tier), directly or indirectly obtain construction trucking services, as defined by Labor Code Section 2750.3, from natural persons who are not compensated and otherwise treated as employees, Subcontractor shall ensure that any such person providing the construction trucking services qualifies as an independent contractor and (i) is hired pursuant to a written contract; (ii) is a business entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation; (iii) has registered with the Department of Industrial Relations as a public works contractor; (iv) utilizes his or her own employees to perform the construction trucking services, unless the person is a sole proprietor who operates his or her own truck to perform all of the work required by his or her contract and holds a valid motor carrier permit issued by the Department of Motor Vehicles; (v) negotiates and contracts with, and is compensated directly by, a licensed contractor; (vi) has a business license and has registered for business taxes, if the person is domiciled in a jurisdiction that requires such a license and/or registration; (vii) maintains a business location that is separate from the company that has hired him or her; (viii) has authority to hire and fire other persons who provide and/or assist in providing the services in question; (ix) has financial responsibility for errors and omissions in connection with the labor or services provided, as evidenced by insurance, indemnity obligations, bonds, and/or warranties; and (x) is customarily engaged in an independently established business of the same nature as that involved with the work performed by any such person.

Subcontractor shall fully document its compliance with applicable law relating to the classification of natural persons as independent contractors and shall cause its subcontractors and independent contractors (regardless of tier) to document their compliance. At Contractor's request, Subcontractor and its subcontractors and independent contractors (regardless of tier) shall execute and furnish written declarations under penalty of perjury, in a form satisfactory to Contractor, that establish their compliance with applicable laws, including without limitation, those relating to the classification of natural persons as independent contractors. Contractor shall be entitled to audit whether or not there has been compliance by Subcontractor and its subcontractors and independent contractors (regardless of tier) with the requirements of this Section 13.

SECTION 14 ASSIGNMENT OF CONTRACT

Subcontractor shall not, without written consent of Contractor, assign, transfer, or sublet any portion or part of this Agreement, the proceeds from this Agreement, or the work required by this Agreement, nor assign any payment hereunder to others. Any purported assignment by Subcontractor without Contractor's written consent, even where Contractor may be aware of or on notice of the purported assignment, shall be void and ineffective.

SECTION 15 COMPLIANCE WITH ALL LAWS AND SAFETY PRACTICES

Subcontractor shall comply fully with all laws, orders, citations, rules, regulations, standards and statutes affecting or relating to this Agreement or its performance, including but not limited to those with respect to occupational health and safety, the handling and storage of hazardous materials, accident prevention, safety equipment and practices including the accident prevention and safety program of Owner and Contractor. If, at any time, Subcontractor violates OSHA standards or performs its work in an unsafe manner, Contractor has the option of either requiring that Subcontractor cease work until the unsafe practice is corrected to Contractor's satisfaction or providing the required safety measures at Subcontractor's cost. Subcontractor shall conduct inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for providing a safe place to work for its employees of its subcontractors and suppliers of material and equipment, for adequacy of and required use of all safety equipment and for full compliance with the aforesaid laws, orders, citations, rules, regulations, standards and statutes.

Suitable clothing and footwear will be worn at all times. Personal protection equipment (hardhats, safety vests, eye protection, gloves, earplugs, and other necessary garments and devices) shall be worn at all times necessitated by good safety practice. The use of music systems is prohibited on the jobsite. Smoking is not allowed inside the building. Smoking will be allowed outside of building in an area designated by Contractor. Subcontractor shall supply Contractor with all forklift certifications for all their operators of forklifts at the jobsite. These certifications are to be given to Contractor's Superintendent before Subcontractor starts work at the jobsite.

At its sole expense, Subcontractor shall institute and maintain a reasonable and adequate safety program to the extent in full compliance applicable law. Subcontractor at its sole expense shall fully cooperate with and adhere to any safety program or requirements of Contractor, whether such program is a stand-alone program or is a program modified to conform to Owner's safety program. All personnel of Subcontractor, its subcontractors and suppliers are required to wear hard hats, safety vests, and any other necessary safety garments or devices, visiting or working at a construction site in any way related to this Agreement. Failure to comply with safety requirements may result in termination under this Agreement.

At its sole expense, Subcontractor will comply with all provisions of "Proposition 65" (California State Drinking Water Act of 1986 and California statutes) which shall include, but not be limited to, posting any required notices. Subcontractor shall not use or bring on to the project any of the chemical compounds listed by the California State Attorney General from time to time under the provisions of Proposition 65 (the List) without delivering a clear written notice, at the time submittals are written, to Contractor and Owner informing them of the dates and

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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 purchase orders or anywhere else, Subcontractor shall not incorporate into the work, or allow to be incorporated into the work, any of the items on such list without specific advanced written notice having first been delivered to Contractor prior to Subcontractor becoming actually contractually obligated to purchase or take delivery thereof from its suppliers, and then only to the extent the 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. Subcontractor expressly acknowledges and agrees that it shall indemnify and hold harmless Contractor and the Owner from any and all claims, demands, suits, or liability of whatsoever nature by reason of the use or possession of the items set forth on the list on the subject project, including, without limitation, attorney's fees, consultant fees, and other legal costs arising from such use or possession.

Subcontractor shall comply with all patent, copyright, or other intellectual property laws or requirements that may be applicable to its work, labor, equipment, materials and services, and shall pay all royalties and license fees that may be necessary. Pursuant to Section 10, Subcontractor shall defend, indemnify and hold harmless Owner, Contractor, and their respective agents against all Claims for actual or alleged violation or infringement of any patent, copyright, or other intellectual property laws or similar requirements in any way related Subcontractor's work.

Subcontractor acknowledges that the EPA and California regulatory authorities, including without limitation, the State and Regional Water Quality Control Boards, 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 Contractor or Owner with respect to such matters. Subcontractor and its tiered subcontractors or suppliers agree, at Subcontractor's 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. 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.

SECTION 16 SUBMITTALS

When drawings, plans, specifications, samples or detail work shall be required by this Agreement, or shall otherwise be required by Contractor to be submitted by Subcontractor, whether on account of work required to be done hereunder or on account of changes in work, Subcontractor agrees promptly to supply the same to Contractor's main office. Subcontractor agrees to prepare and submit all required submittals, shop drawings, product data and samples within fourteen (14) days of the receipt of this Agreement and prior to the ordering or fabricating said materials unless otherwise noted in this Agreement. Subcontractor agrees to make re-submittals within five (5) days. Subcontractor agrees to submit within fourteen (14) days of receipt of this Agreement, a schedule of all materials, fabrications, and equipment with a delivery lead time of more than five (5) days for Contractor's use in scheduling the work. Failure to submit this schedule constitutes confirmation that there are no lead time deliveries greater than five (5) days. The time periods specified in this Section 16 for Subcontractor's compliance shall be earlier if required elsewhere in the Contract Documents.

In the event any or all of said drawings, plans, specifications, samples or detail work shall be submitted by Contractor to Owner's Architect or Engineer for review, it is specifically understood that such review shall relate solely to general conformity with the job plans and that such review shall not be construed as an approval in detail of conformity of such drawings, plans, specifications, samples or detail work with the design drawings or specifications of the project. In the event that any such drawings, plans, specifications, samples or detail work as submitted by Subcontractor, whether or not they shall be approved by Owner's Architect or Engineer, shall deviate from or be inconsistent with any particular design drawings or the specifications of the project, and in the further event that any such deviations or inconsistencies shall impose upon Contractor any expense because of delays or extra work or otherwise, Subcontractor agrees to hold Contractor harmless from and to indemnify Contractor for all losses, costs, expenses, liabilities and damages, including consequential damages, liquidated damages, and other costs, liabilities, losses, expenses or damages sustained by Contractor, including, without limitation, attorney's fees, consultant costs, and other legal costs arising from Subcontractor's deviations or inconsistencies, or other wrongful act, or for which Contractor may be liable to Owner or any other party because of Subcontractor failure to adhere to this Section 16, in whole or in part. It is further agreed that should any such expense be imposed upon Contractor, Contractor may, at its option, withhold from Subcontractor, in whole or in part, or nullify any payments due or to become due to Subcontractor in an amount sufficient fully to reimburse Contractor for any such expense. The provisions of this paragraph are in addition to and not in lieu of the remedies provided Contractor by Section 3 or Section 5 of this Agreement.

Subcontractor shall furnish a "Material Safety Data Sheet" for all materials furnished by Subcontractor.

SECTION 17 LAYOUT & SUPERVISION

Unless otherwise stated elsewhere in this Agreement, Contractor will set survey stakes as Contractor determines to be necessary to establish the lines and grades for the completion of the work specified in Section 1. Subcontractor shall give Contractor not less than two (2) working days' written notice in advance of the commencement of the operations of Subcontractor which require such stakes. Such stakes shall be carefully preserved by Subcontractor. If such stakes are destroyed or damaged, they will be replaced within two (2) days of Contractor's notification. Subcontractor will be charged with the cost of such replacement if, in Contractor's judgment, the stakes were carelessly or willfully destroyed or damaged by Subcontractor's operations or were destroyed, damaged or removed by third parties during a delay in the commencement of Subcontractor's operations.

Subcontractor agrees to perform all layout work required to complete work in this Agreement, including layout and verification of proper placement of work installed by others for the performance of work in this Agreement. Subcontractor agrees to verify the adequacy of the substrate over which the subcontractor will be covering such substrate. If the substrate is not adequate, subcontractor will notify contractor prior to beginning work.

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Subcontractor agrees to properly staff, equip and supervise the project so as to maintain the production schedule and quality control requirements established for the project. Subcontractor shall keep a representative at the job site during all times when Subcontractor's work is in progress, and such representative shall be authorized to represent and bind Subcontractor as to all phases of the work and shall be capable of communicating in the English language. Prior to commencement of the work, Subcontractor and Contractor shall agree on the identity of Subcontractor's representative. Subcontractor's representative shall be replaced only with Contractor's consent.

SECTION 18 NOTICE

Written notice, where required by the terms of this Agreement, may be accomplished by personal delivery of said notice or by use of the United States Mail or any standard form of communication including but not limited to FAX or E-mail. The written notice shall become effective upon the date stated therein, or, if no such date is stated, upon the expiration of the third day following the date upon which the delivery is completed.

Personal delivery is complete when the notice is delivered to the Subcontractor or its representative at the project or at the office address of the Subcontractor appearing in this Subcontract. The Subcontractor shall at all times during its work on this project have a representative authorized to receive written notices present on the project site during all normal working hours. In the absence of such a representative, personal delivery is complete when the notice is delivered to any of Subcontractor's supervisors or workmen.

SECTION 19 CLEAN-UP

At all times during the course of construction, Subcontractor shall perform its work so as to maintain the site in a clean, safe and orderly condition, as determined by Contractor. Subcontractor agrees to remove all unused materials and all equipment, utilities and facilities furnished by Subcontractor, to clean up all refuse and debris, and to leave the premises clean, orderly and in good condition. Upon completion of the work under this Agreement, Subcontractor shall remove from the site all hazardous materials, temporary structures, debris and waste incident to its operation and clean all surfaces, fixtures, and equipment, affected by the performance of Subcontractors' scope of work. Subcontractor shall not clean equipment or tools over any storm drains.

Subcontractor is responsible for cleanup of debris generated by his operations and removal of same from the jobsite as directed by the Contractor. Debris boxes, if required, will be the responsibility of the Subcontractor unless specifically excluded in Exhibit A. Contractor will notify Subcontractor of designated cleanup days. Subcontractor shall be charged for any cleanup/disposal performed by Contractor (necessitated by Subcontractor's failure to properly execute this cleanup when required) at Contractor's standard hourly rates for a laborer.

SECTION 20 WAIVER OF BREACH

Waiver by Contractor of any breach hereof by Subcontractor shall not constitute a waiver of any subsequent breach of the same or any other provision hereof. If any provision of this Agreement, or any part thereof, shall at any time be held to be invalid, in whole or in part, under any applicable Federal, State, Municipal or other law, ruling or regulation, then such provision shall remain in effect to the extent permitted, and the remaining provisions hereof shall remain in full force and effect.

SECTION 21 DISPUTE RESOLUTION PROCEDURE**21.1 Preliminary Dispute Resolution Procedure and Agreement to Arbitrate**

21.1.1 Disputes under Prime Contract. Any dispute resolution procedure in the prime contract shall be deemed incorporated in this Agreement, and shall apply to any disputes arising hereunder, except disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the prime contract, those which have been waived by the making or acceptance of final payment, and questions regarding the licensure of the Subcontractor. Subject to compliance with all applicable laws, including but not limited to those relating to false claims, dispute and claim certifications, and cost and pricing data requirements, Contractor's sole obligation is to present any timely-filed claims by Subcontractor to Owner under such procedure and, subject to the other provisions of this Agreement, to pay to Subcontractor the proportionate part of any sums paid by the Owner to which Subcontractor is entitled.

21.1.2 Settlement Negotiations. Subject to prime contract disputes under Section 21.1.1, and as for disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the prime contract, promptly upon notification by the Subcontractor of a dispute, the Contractor and Subcontractor shall meet to informally resolve such dispute. In the event that no resolution is achieved, the parties, prior to the initiation of any action or proceeding under this section, shall make a good faith effort to resolve the dispute by negotiation between representatives with decision-making power, who, to the extent possible, shall not have had substantive involvement in the matters of the dispute, unless the parties otherwise agree. To facilitate the negotiation, the parties agree either to fashion a procedure themselves or seek the assistance of a person or organization experienced in alternative dispute resolution procedures such as mediation, mini-trial or other similar procedures.

If the parties are unable to reach an Agreement through settlement negotiations and in the absence of an agreement on the manner in which alternate dispute resolution is to be accomplished, the parties shall submit their disputes to a neutral third-party construction mediator. The mediation shall be nonbinding and shall be conducted as follows. Contractor shall propose a list of three mediators, from which Subcontractor within five working days of receipt of the list shall select the proposed mediator. The mediation shall be scheduled for a date within sixty (60) days of Contractor's proposal of the candidates for mediator, unless Contractor agrees to a longer period before mediation. The cost of the mediation shall be shared pro rata.

21.2 Arbitration Procedures. In the event the prime contract contains an arbitration provision or for disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the prime contract, the following shall apply:

21.2.1 Notice of Demand. For arbitration under the prime contract, notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and shall conform to the requirements of the arbitration provision set forth in the prime contract. For claims not involving the acts, omissions or otherwise the responsibility of the Owner under the prime contract, the parties hereto shall submit any and all disputes arising under or relating to the terms and conditions of the Subcontract to arbitration in accordance with the Construction Industry Rules of the American Arbitration Association. Notwithstanding the foregoing, the arbitrator(s) shall be furnished by and the arbitration shall be administered by Judicial Arbitration and Mediation Services ("JAMS"), unless the parties mutually agree to another service provider. In either case, the demand for arbitration shall be made within a reasonable time after written notice of the claim, dispute or other matter in question has been given, and in no event shall it be made after the date when the institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the statute of limitations.

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21.2.2. Award. 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.

21.2.3. Work Continuation and Payment. 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. This Agreement constitutes an advance waiver by Subcontractor of any actual or alleged right to stop work, rescind, or abandon the project.

21.2.4. Consolidated Arbitration Proceedings. To the extent not prohibited by their contracts with others, the claims and disputes of Owner, Contractor, Subcontractor and other subcontractors and/or suppliers involving a common question of fact or law shall be heard by the same arbitrator(s) in a single proceeding. In this event, it shall be the responsibility of Subcontractor at its sole expense to prepare and present Contractor's case, to the extent the proceedings are related to this Agreement. Should Contractor enter into arbitration with the Owner or others regarding matters relating to this Agreement, Subcontractor shall be bound by the result of the arbitration to the same degree as the Contractor.

21.2.5. No Limitation of Rights or Remedies. This Section shall not be deemed a limitation of any rights or remedies which Subcontractor may have under any federal or state mechanic's lien laws or under any applicable labor and material payment bonds unless such rights or remedies are expressly waived by it. Nothing in the preceding sentence shall preclude Contractor from obtaining a stay of a lawsuit by Subcontractor pending the conclusion of litigation or other alternate dispute resolution proceedings.

SECTION 22 LIENS

In case suit is brought on any claim or lien for labor performed or materials used on or furnished to the project, Subcontractor shall pay and satisfy any such lien or judgment as may be established by the decision or the court in said suit. Subcontractor agrees, within ten (10) days after written demand, to cause the effect of any such suit or lien to be removed from the premises, and in the event Subcontractor shall fail so to do, Contractor is authorized to use whatever means in its discretion it may deem appropriate to cause said lien or suit to be removed or dismissed and the cost thereof, together with actual attorney's fees, shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may litigate any such lien or suit provided it causes the effect thereof to be removed, promptly in advance, from the premises, and shall further do such things as may be necessary to cause Owner not to withhold any monies due to Contractor from Owner by reason of such liens or suits.

It is understood and agreed that the full and faithful performance of this Agreement on the part of Subcontractor (including the payment of any obligations due from Subcontractor to Contractor, and any amounts due to persons or entities furnishing labor or material for said work) is a condition precedent to Subcontractor's right to receive payment for the work performed. Payments made to Subcontractor shall be deemed to be held in trust for benefit of 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 to the extent of contributions or other payments required to be made in connection with the project. In addition to any other rights and remedies that it may have, 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 of any other rights and remedies, Contractor shall be entitled to set off against any amounts owed to Subcontractor any debts, claims, demands, liabilities or other sums owed to Contractor by Subcontractor, including those that arise from other projects or contracts or that are contingent or not yet accrued.

SECTION 23 PROVISIONS FOR INSPECTION

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

SECTION 24 WARRANTY

Subcontractor warrants to Owner and Contractor that all materials furnished shall be new unless otherwise specified and that all work under this Agreement shall be performed in a good and workmanlike manner, shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty provided in this Section shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

Subcontractor warrants and guarantees the work and materials covered by this Agreement and agrees to make good, at Subcontractor's own expense, any defect in the materials or workmanship, including the restoration of work of Contractor or other Subcontractors that has been affected thereby and further agrees that 1) on demand of Contractor, Subcontractor will furnish and pay for a maintenance bond to indemnify Contractor for any loss that may be caused by breach of said warranty and guarantee; and, on demand, Subcontractor shall furnish and pay for all written guarantees and/or maintenance bonds required by the Contract Documents and/or specifications in connection with said Subcontractor's work; 2) unless and until Contractor is released from responsibility by Owner, Contractor may withhold payment from Subcontractor such sums as, at Contractor's sole discretion, are necessary to indemnify Contractor for any loss that may be caused by breach of said warranty or guarantee.

SECTION 25 USE OF CONTRACTOR'S EQUIPMENT

In the event Subcontractor shall use Contractor's equipment, materials, labor, supplies or facilities, Subcontractor shall reimburse Contractor at a predetermined rate, except as provided in Section 5.1.2. or as otherwise stated herein. Further, Subcontractor assumes all responsibility for physical damage to such equipment, materials, labor, supplies, or facilities used by Subcontractor or its agents, employees, or permittees. In the event that Contractor's employees are used by Subcontractor, Subcontractor shall have full responsibility for all acts or omissions of Contractor's employees with regard to Subcontractor's use or employment of them. Subcontractor accepts any and all of Contractor's equipment, materials, labor, supplies or facilities as furnished.

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SECTION 26 INDEPENDENT CONTRACTOR

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 Contractor that any or all of the foregoing obligations have been fulfilled.

SECTION 27 WAIVER OF ATTORNEY'S FEES

Notwithstanding any other provision of this Agreement or applicable law, or any provisions of the Contract Documents that may be incorporated, neither Subcontractor nor Contractor shall be permitted to recover attorney's fees or costs of suit in any dispute or litigation. Subcontractor expressly waives the right to recover attorney's and consultant fees, and other legal expenses, from Owner, Contractor and from Contractor's sureties. This waiver of the right to fees and costs, to the greatest extent permitted by law, shall be effective as to statutory rights such as those afforded by Civil Code Sections 8558 or 9550 through 9566. This provision shall not limit, impair or waive Contractor's rights to be defended by, to be indemnified by, to be held harmless by, to receive contribution from Subcontractor, and to receive the benefits of insurance furnished by Subcontractor or any other persons, with respect to attorney's and consultant fees, costs and other legal expenses. No arbitrator or referee shall have jurisdiction to award fees, costs or expenses waived by this provision, but if for any reason this waiver of fees and costs is found to be invalid or unenforceable, then Contractor and its sureties shall be afforded the same rights as Subcontractor with regard to attorney's and consultant fees, costs and other legal expenses.

SECTION 28 SPECIAL PROVISIONS

28.1 Public Projects (28.1.1 through 28.1.2 shall apply only on contracts for public works of improvement)

Progress Payments and Retention: Notwithstanding any other provision of this Agreement, on any public work of improvement: (1) the percentage to be withheld as retention from progress payments shall not exceed the percentage permitted by law; and (2) the time for disbursement of retention shall be no later than seven (7) days after payment of retention to Contractor by Owner, provided that all other conditions to release of retention to Subcontractor have been satisfied. Nothing herein shall waive, limit or impair Contractor's rights to withhold payment under any basis authorized under this Agreement or applicable law, including without limitation, for disputed items, unpaid subcontractors, suppliers, workers or trust funds, damage to work of others, etc.

28.1.1 Delays Subject to the Provisions of Section 7102 of the Public Contract Code: If and to the extent that Section 7102 of the Public Contract Code requires 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 prime contract, plus those additional items of costs, if any, that Section 7102 of the Public Contract requires be paid; (4) Subcontractor is bound by and must comply with all provisions of the prime 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 5, a claim that Section 7102 of the Public Contract requires be permitted, which is made in connection with a state or local public works project, and as to which all four of the foregoing conditions in the previous sentence have been satisfied, shall be referred to as an "Authorized 7102 Claim."

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 compensation or damages for delays or for Impact Costs and Consequential Damages. Except for an Authorized 7102 Claim, Subcontractor waives any claim for Impact Costs and Consequential Damages.

28.1.2 Insurance Endorsements. Nothing in this Agreement shall require endorsements that conflict with the provisions of Insurance Code Section 11508.04.

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**Attachment for California Prevailing Wage Projects
Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815**

§ 1771. Requirement of prevailing local rate for work under contract

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. Forfeiture for paying less than prevailing wage rates; Amount of penalty; Payments to workers; Liability of prime contractor; Notification of complaint

(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

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(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. Payroll record of wages paid; Inspection; Forms; Effect of noncompliance; Penalties

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the

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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. Employment of apprentices on public works

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

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

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

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

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

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

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

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

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

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

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

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio.

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The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. When an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Administrator of Apprenticeship, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

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

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of 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) If an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

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

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

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

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

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

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

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

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(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. Penalty when workman required to work excess hours; Stipulation in contract; Cognizance and report of violation

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. Work performed in excess of specified hour limitations; Compensation

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 1½ times the basic rate of pay.

CERTIFICATE OF INSURANCE

ISSUE DATE:

10/5/2022

PRODUCER:

WOODRUFF-SAWYER & Co.
88 ROWLAND WAY, SUITE 180
NOVATO, CALIFORNIA (415) 878-2460

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER OTHER COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY LETTER A	Neverfail Insurance Company
COMPANY LETTER B	Neverfail Indemnity Company
COMPANY LETTER C	
COMPANY LETTER D	
COMPANY LETTER E	

INSURED:

Excellent Subcontractors, Inc.
123 Main Street
Your Town, USA 12345

COVERAGES AND LIMITS

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO. LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFF. DATE	POLICY EXP. DATE	DESCRIPTION	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMM. GENERAL LIAB. <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCURRENCE <input checked="" type="checkbox"/> PER PROJECT AGGREGATE <input checked="" type="checkbox"/> Coverage Form ISO CG 0001	12345	01/01/2022	12/31/2024	GENERAL AGGREGATE PROD-COMP/OP AGG. PERS & ADV. INJURY EACH OCCURRENCE FIRE DAMAGE (One Fire) MEDICAL EXPENSE (One Person)	2,000,000 2,000,000 2,000,000 2,000,000 50,000 5,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> GARAGE LIABILITY	678910	01/01/2022	12/31/2024	COMBINED SINGLE LIMIT BODILY INJURY (Per Person) BODILY INJURY (Per Accident) PROPERTY DAMAGE	1,000,000
	EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM	Applies to all Subcontracts Over \$250,000 Limits may be higher depending on specific project			EACH OCCURRENCE AGGREGATE	5,000,000 5,000,000
B	WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY	1112131415	01/01/22	12/31/2024	<input checked="" type="checkbox"/> STATUTORY LIMITS EACH ACCIDENT DISEASE - POLICY LIMIT DISEASE - EACH EMPLOYEE	1,000,000 1,000,000 1,000,000
	OTHER INSURANCE Pollution Liability Professional Liability	IF APPLICABLE			Each Occurrence / Aggregate Each Occurrence / Aggregate	2,000,000 1,000,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS:

Job No. _____ – Project Name and Project Address

See attached CG 2010 (11/85 ed.) for Additional Insured and Primary Wording

*Subject to 10 days notice of cancellation for non-payment of premium

The following are all required if applicable to the project: Riggers Liability, Aircraft Liability, Work within 50' of railroad tracks – Copy of GL endorsement deleting the exclusion for this work under the policy

NAME AND ADDRESS OF CERTIFICATE HOLDER:

Midstate Construction Corporation
1180 Holm Road
Petaluma, CA 94954

This is a sample and is intended only as a guide.
Please insert your specific data.

CANCELLATION:

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

AUTHORIZED REPRESENTATIVE:

POLICY NUMBER: 12345
NAMED INSURED: Excellent Subcontractors, Inc.

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED — OWNERS, LESSEES OR CONTRACTORS (FORM B)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

- 1. Midstate Construction Corporation, its officers, directors and employees, and agents**
- 2. Owner**
- 3. Lender**
- 4. Other**

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

PRIMARY WORDING

The insurance provided by this endorsement with the additional insured named in the schedule is primary. Other insurance afforded to the additional insured shall apply as excess of and not contribute with the insurance afforded by this endorsement.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard." This waiver applies only to the person or organization shown in the Schedule above.

POLICY NUMBER: 12345
Excellent Subcontractors, Inc.

COMMERCIAL AUTO

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following: AUTO

DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM MOTOR
CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Name(s) Of Person(s) Or Organization(s):

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

POLICY NUMBER: 12345
NAMED INSURED: Excellent Subcontractors, Inc.

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement modifies insurance provided under the following:

WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization shown in the Schedule. This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

SCHEDULE

NAME OF PERSON OR ORGANIZATION:

Midstate Construction Corporation, its directors, officers and employees