

**WESTERN WATER CONSTRUCTORS, INC.**  
**707 AVIATION BLVD.**  
**SANTA ROSA, CA 95403**  
**Contractor's License No. 188068**  
**Tel: (707) 540-9640 Fax: (707) 540-9641**

**SUBCONTRACT AGREEMENT**

**THIS SUBCONTRACT AGREEMENT** (hereinafter the "Agreement") is made this [Date] day of [Month, Year] by and between Western Water Constructors, Inc., a California corporation (hereinafter the "Contractor") and [Subcontractor Name] (hereinafter the "Subcontractor"), with its principal place of business at [Subcontractor Address]

**Owner Name and Address:** [ ]

**Lender Name and Branch Address (if applicable):** [ ]

**WITNESSETH:**

**WHEREAS**, Contractor and [Owner Name] (hereinafter the "Owner") have entered into a contract dated [Date Month Year] (hereinafter the "Prime Contract") for the construction, improvement and/or installation of [Project Description] (hereinafter the "Project") according to the Plans prepared by [Engineer Name] described herein, the terms of which are incorporated by reference and specifically made a part hereof; and

**WHEREAS**, Contractor desires to subcontract certain work specified in the Contract Documents, and Subcontractor desires to perform said work at the prices and upon the terms and conditions hereinafter expressed.

**NOW, THEREFORE**, in consideration of the mutual agreements expressed herein, the parties agree as follows:

**1. CONTRACT DOCUMENTS**

The contract documents for this Agreement shall consist of this Agreement, Exhibits A, B and C, and any other exhibits thereto; the Prime Contract, including the Conditions of the Contract between the Owner and Contractor (General, Supplementary and any other Conditions); all Drawings, Plans and Specifications, Addenda, Amendments, Bulletins, Change Orders, schedules, all Work Authorizations and modifications thereto; together with any other documents forming the Prime Contract between the Contractor and the Owner, all of which are incorporated into this Agreement ("Contract Documents"). Subcontractor agrees to be bound to Contractor in the same manner and to the same extent that Contractor is bound to Owner by the Contract Documents, to the extent applicable to Subcontractor's work. In addition to any other rights and remedies it may have, Contractor shall have the same rights and remedies with respect to Subcontractor that Owner has with respect to Contractor. Where, in the Contract Documents, reference is made to Contractor, and the work or specifications therein pertain to Subcontractor's trade, craft, type of work, or scope, such work or specifications shall be interpreted to apply to Subcontractor instead of Contractor, and supersedes any prior oral or written agreements or representations. The Contract Documents are available for inspection during normal business hours in Contractor's offices by the Subcontractor upon its reasonable written request. Subcontractor warrants and represents that it has been provided a reasonable opportunity to review adequately all of the Contract Documents prior to the execution hereof.

**2. SCOPE OF WORK**

Subcontractor shall perform, furnish and pay for all work, supervision, labor, materials, equipment, tools, applicable taxes, freight, insurance, and all other things necessary, required, incident or related to the construction, improvement, installation and completion of all work listed in **Exhibit C** (hereinafter the "Work"), including but by no means limited to all cutting, blocking, patching, and cleaning, all in strict accordance with the terms and provisions of the Contract Documents and all to the satisfaction of Contractor, the Owner and the Architect/Engineer. All Work covered by this Agreement shall be performed in a skillful and workmanlike manner and, unless otherwise expressly provided in the Contract Documents, with materials and equipment being

both new and of the best kind and grade for the purpose intended.

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 the Contractor and other subcontractors. The 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 the Contractor or any other Subcontractor, and further agrees to pay the Contractor for damage that may be caused to such other work by the Subcontractor or by its agents or employees.

### **3. SUBCONTRACT PRICE**

Contractor agrees to pay Subcontractor for satisfactory performance of the Work, subject to additions and deductions by approved change order or provisions of the Contract Documents and in accordance with Section 5 hereof., the Subcontract Price listed in Exhibit C

**For progress payment(s), Subcontractor's services must be complete; material/equipment must be delivered to the Project; Subcontractor's invoice must be received in Contractor's home office by the 20th of the month; and invoice must be approved by Western Water Constructors, Inc.'s project manager, as further set forth in Section 5.3.**

### **4. PERFORMANCE AND PAYMENT BONDS**

4.1 If bonds are noted as being required in Exhibit C, then immediately upon receipt of this Agreement, Subcontractor shall furnish to Contractor labor and material performance and payment bonds, using ConsensusDocs<sup>®</sup> 706 and 707 issued from a surety acceptable to Owner and Contractor, in the full amount of this Agreement; such surety must be listed on the Department of the Treasury's listing of certified companies and have an A.M. Best rating of A- VI or better. Western Water Constructors, Inc. will pay the bond premium up to 1-1/2 percent. The Bonds shall (1) incorporate this Agreement by reference; and (2) provide that the surety shall be fully bound to all changes and/or modifications to this Agreement without prior notice thereof. Subcontractor's failure to deliver satisfactory bonds within ten (10) calendar days after demand by Contractor shall be deemed a material breach of this Agreement. Subcontractor shall not be entitled to payment from Contractor for Work hereunder before the submission of bonds which comply fully with the requirements hereof.

4.2 Additional Security. If Subcontractor has not been required to furnish bonds, Contractor may, at any time, instruct Subcontractor, in writing, to provide such bonds within ten (10) calendar days, in a form and from a surety acceptable to Owner and Contractor, in an amount up to the then current full value this Agreement, such surety must be listed on the Department of the Treasury's listing of certified companies and have an A.M. Best rating of A- VI or better. Contractor will reimburse Subcontractor the amount of the bond cost. In the event Subcontractor cannot provide such bonds, or such other security as Contractor deems appropriate, Contractor may, in its sole discretion, terminate the Subcontractor under Article 16 hereof or, if applicable, Article 17 hereof.

### **5. PAYMENT**

5.1 Progress Payments. Progress payments shall be due Subcontractor in the amount of 90% of the actually and satisfactorily completed Work in place which Contractor, the Owner and the Architect/Engineer have approved for payment and for which Owner has actually paid to the Contractor, however the percentage of the retention proceeds withheld shall not exceed the percentage specified in the contract between Owner and the Contractor. For the purpose of determining progress payments, Subcontractor shall furnish Contractor, before submitting its first application for progress payment, a Schedule of Values satisfactory to Contractor and Owner, if required by the Contract Documents. If Contractor disapproves of or does not receive a copy of Subcontractor's Schedule of Values within ten (10) calendar days after demand of same by Contractor, Contractor may establish a reasonable breakdown which shall serve as the basis for all progress payments hereunder. Contractor estimates the value of closeout documents (i.e. O&Ms, warranty documents, startup documents, testing documents, and training documents) to be worth 10% of the contract amount which shall be separately shown on the Schedule of Values. Regardless of whether closeout documents are separately shown on the Schedule of Values, Subcontractor shall only be paid the aforementioned value for closeout documents when that work is complete and approved by the Owner.

5.2 Stored Materials. Unless otherwise provided in the Contract Documents, Subcontractor shall be paid

its progress payments in the amount of 90% of the value of stored materials which Contractor and the Owner have previously approved in writing and for which the Owner has actually paid to the Contractor, however the percentage of the retention proceeds withheld shall not exceed the percentage specified in the contract between Owner and the Contractor. Approval of payment for such stored items on or off site shall be based on submission by Subcontractor of evidence, including, but not limited to, bills of sale and insurance, satisfactory to Contractor and Owner, to protect fully Owner's and Contractor's interest in such materials and equipment, including transport to the site. Under no circumstances shall the risk of loss pass to Contractor or the Owner until such materials or other Work are actually incorporated into the Project.

5.3 Time of Payment. Subcontractor shall submit monthly progress payment applications and accompanying lien releases in accordance with Article 5.5 of this Agreement, in a form satisfactory to Contractor no later than the **20th** day of each month for Work performed up to and including the last day of the pay period, indicating Work completed and, to the extent allowed under Section 5.2, materials suitably stored during the preceding payment period; otherwise, no progress payment can be requisitioned by Subcontractor for that month. Notwithstanding any provisions in the Contractor's agreement with the Owner, progress payments shall be made by Contractor to Subcontractor within seven (7) calendar days of Contractor's actual receipt of payment from the Owner for Subcontractor's Work. The Subcontractor understands and agrees that the acceptance of any progress payments by the Subcontractor shall constitute a full and complete release of Contractor, Owner, Architect/Engineer, and the Project from any other liability, except retainage, due to any reason, arising or incurred prior to or during the payment period, unless specifically excepted to in writing by the Subcontractor prior to accepting payment from Contractor.

5.4 Right to Withhold Payment. Payment hereunder is subject to Contractor's withholding an amount reasonably necessary, in Contractor's sole discretion, to fully protect and insure itself against any actual or potential liability directly or indirectly relating to this Agreement. Alternatively, if the Contractor deems it necessary, in its sole discretion, Contractor may (a) withhold payment hereunder to assure payment of the Subcontractor's unpaid obligations; (b) demand as a condition precedent to payment that each unpaid obligation of Subcontractor be satisfied, and that an affidavit be furnished from each party to whom the Subcontractor owes money indicating that no other monies are due and owing to them except for the designated amount covered by the particular payment in question; (c) pay any and all persons, including but not limited to, any labor organizations or pension, welfare or other similar funds, who have not received payment due from Subcontractor in connection with this Agreement, whether or not a lien or bond claim has been filed; or (4) make payment in the form of joint checks payable to Subcontractor and any unpaid sub-subcontractor or supplier. Notwithstanding the foregoing, Subcontractor's sub-subcontractors and suppliers are not third-party beneficiaries of this Agreement and Contractor has no obligation to retain monies on their behalf. If Contractor is required to pay or indemnify any person or entity by reason of any of the foregoing, Subcontractor and its surety, if any, shall immediately reimburse Contractor for the full amount of such costs and expenses, including reasonable attorney's and consultants' fees, and interest thereon at the Prime Rate then published in the Wall Street Journal. Subcontractor and its surety, if any, shall also immediately reimburse Contractor for any amounts paid under Contractor's payment bond in connection with this Agreement, or other Contractor payments relating to a failure of Subcontractor to make payment, and shall defend, indemnify and hold Contractor harmless from any other claims and/or costs associated therewith, including reasonable attorney's and consultants' fees, and interest as previously specified herein. A similar subparagraph to this subparagraph shall be included in Subcontractor's sub-subcontracts and purchase orders.

5.5 Conditional and Unconditional Waivers And Releases, Affidavits, and Certified Payroll Reports. Each Payment Application must be accompanied by original waivers and releases executed by Subcontractor and its subcontractors and suppliers including each of those (a) listed upon subcontractor's affidavit of suppliers, if any is provided; (b) who have filed a Preliminary Notice or (c) who are otherwise known to have provided labor, equipment or services to the Project as part of Subcontractor's work (hereinafter collectively referred to as "Releasor(s)"), as follows: **For Progress Payment Applications:** (1) Conditional Waivers and Releases Upon Progress Payments for the period covered by the Payment Application for each Releasor excepting only those (a) who have provided Unconditional Waivers and Releases Upon Progress Payments through the period covered by the payment application or (b) who have provided Unconditional Waivers and Releases Upon Final Payment for the Project, (2) Unconditional Waivers and Releases upon Progress Payments from each Releasor on whose behalf a previous progress payment was made, through the period covered by the previous payment excepting only those who have provided Unconditional Waivers and Releases Upon Final Payment for the Project. Subcontractor shall also furnish to Contractor, if required, in a form satisfactory to Contractor and the Owner, claim waivers, affidavits, receipts, vouchers, releases of claims for labor, and material, and agrees to furnish same from its subcontractors or suppliers performing work or furnishing materials under this Agreement, all in a form satisfactory to Contractor and Owner, and it is agreed that no payment hereunder shall be made, except at Contractor's option, until and unless such documents have been furnished.. Subcontractor shall also submit, in duplicate, on a weekly basis, certified payroll reports in a form satisfactory to Contractor and Owner and, contemporaneously with the submission of its first certified

payroll report, Subcontractor shall submit a written, detailed breakdown of all fringe benefits together with the name and address of the trustees of any and all pension, health or other plans relating thereto. When required by the Contract Documents, Subcontractor shall also submit monthly utilization reports. It is expressly agreed that receipt by Contractor of such waivers, releases, affidavits, receipts, vouchers, certified payroll reports, and identification of trustees shall be a condition precedent to payment by Contractor to Subcontractor, irrespective of any obligations imposed upon Contractor by Owner under the payment provisions of the Prime Contract. Subcontractor warrants that all such releases shall be executed by the duly authorized agent of the furnishing party.

5.6 Payment Not Acceptance. No payment, including final payment, shall be evidence of satisfactory performance of Work under this Agreement, either in whole or in part, and no payment shall be construed to constitute or imply acceptance of defective or incomplete work, and Subcontractor shall remain responsible and liable for its performance being in strict accordance with the Contract Documents.

5.7 Transfer of Title. All materials and work covered by progress payments received by Subcontractor shall become the property of Contractor or, if the Contract Documents so provide, the property of Owner. This provision does not affect Subcontractor's sole responsibility and liability for all such materials and work until final acceptance by Owner.

5.8 Final Payment. Final Payment, subject to withholdings permitted hereunder, shall be made by Contractor to Subcontractor within seven (7) days of Contractor's receipt of Owner's payment in the case of public works, and ten (10) days of Contractor's receipt of Owner's payment in the case of private works projects, but only after each of the following conditions precedent to final payment have been fully satisfied: (a) Subcontractor's Work, including any close-out requirements (such as furnishing operation and maintenance manuals, as-built or warranty information and a final waiver and release) required by the Contract Documents or Contractor, has been completed and approved in writing by Contractor, the Owner and the Architect/Engineer; (b) submission by Subcontractor to Contractor of written evidence satisfactory to Contractor that Subcontractor has satisfied all payrolls, bills for labor, materials and equipment, and all known indebtedness arising out of or related to Subcontractor's Work hereunder, including all applicable taxes and labor-related costs; (c) written consent of surety, if any, to final payment; (d) the entire Project is certified in writing as complete by Owner and the Architect/Engineer; and (e) Contractor has received payment in full, including retention, from Owner for all work performed by Subcontractor. To the greatest extent permitted by law, Subcontractor expressly waives all rights of action against Contractor for final payment until the aforementioned conditions precedent to final payment hereunder are fully met.

5.9 Right of Offset. To the extent permitted by law, Contractor may withhold or offset amounts otherwise due between the parties on any other Project to compensate Contractor for costs and expenses Contractor has incurred, or may incur, for which Subcontractor may be responsible. Subcontractor accepts any such setoff as full payment under this Agreement and for purposes of mechanics' lien, stop payment notice, and bond statutes and claims.

5.10 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 payment be due later than applicable law would permit.

## 6. SCHEDULE OF WORK

6.1 Progress and Performance. Subcontractor shall proceed with the Work in a prompt and diligent manner, in strict accordance with Contractor's directives and Contractor's schedule, revised if necessary, as the work progresses. **TIME IS OF THE ESSENCE.** Subcontractor shall not be entitled under any circumstances to additional compensation from Contractor for compliance with schedule revisions or for delay and/or disruption to the schedule and/or progress of Work hereunder, except solely to the extent that the Contract Documents entitle Contractor to additional compensation and such reimbursement is actually received by Contractor from Owner. If requested by Contractor, Subcontractor shall submit to Contractor a detailed schedule for performance of its Work hereunder, in a form acceptable to Contractor, which shall enable the Contractor to comply with its obligations under the Contract Documents and this paragraph. Contractor may, at its sole discretion, direct Subcontractor to make reasonable modifications and revisions to said schedule. Subcontractor shall coordinate its Work with the work of the Contractor, other subcontractors, and Owner's other contractors, if any, to prevent or mitigate delays or interferences in the completion of any part or all of the Project. Contractor shall have the right to decide the time, order and priority in which various portions of the Work shall be performed.

6.2 Anticipated Conditions; Delays. 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 desirable for Subcontractor. Subcontractor's price is based upon Contractor exercising the rights indicated in Sections 5 and 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 sums that actually 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. 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 to furnish entitlement for recovery for Impact Costs and Consequential Damages or for any other form of relief which may be sought by Subcontractor

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

## **7. SUBCONTRACTOR'S LIABILITY; RISK OF LOSS**

7.1 Subcontractor shall be liable to Contractor for all direct and indirect costs Contractor incurs as a result of Subcontractor's failure to perform all or any portion of this Agreement in strict accordance with its terms. Subcontractor's failure to perform shall include the failure of its suppliers and/or subcontractors of any tier to perform. Subcontractor's liability shall also include, but shall by no means be limited to: (a) damages and other delay and disruption-related costs payable or incurred by Contractor to Owner by reason of Subcontractor's performance, or lack thereof, under this Agreement; (b) Contractor's increased performance costs, such as extended field and home office overhead and acceleration costs (including costs incurred to supplement Subcontractor's work force) resulting from unexcused Subcontractor-caused delays, disruptions or improper Subcontract Work; (c) warranty and rework costs; (d) liability to third parties, including other subcontractors of Contractor; and (e) excess costs of procurement. Nothing in Article 7 shall be construed to limit Subcontractor's liability to Contractor under any other terms or conditions of this Agreement or the Contract Documents.

7.2 All Work performed by or on behalf of Subcontractor at the Project, or in preparing or delivering materials or equipment to the Project, shall be at the risk of Subcontractor exclusively until the completed Work is accepted by Contractor.

## **8. INSPECTION, STORAGE AND APPROVALS**

Subcontractor shall provide at its own place of business, at the places of business of its subcontractors and suppliers, and at the Project, sufficient, safe and proper facilities for the inspection of Subcontractor's Work by Contractor, Owner, Architect/Engineer or any other authorized representative. Subcontractor shall be responsible for the receipt, delivery, unloading, storage, warehousing, protection, insurance and all other risks of loss relating to any materials or equipment it is to furnish, install, provide or have provided to it under this Agreement. It is Subcontractor's obligation, upon direction by Contractor, to take all necessary steps with respect to Subcontractor's Work hereunder to obtain all required approvals necessary under this Agreement including, but not limited to, the timely delivery of samples, tests and reports, guarantees, drawings, manuals, certificates, details, warranties and inspection certificates.

## **9. CORRECTION OF DEFECTIVE WORK**

Subcontractor shall, at its sole costs and expense, promptly replace or correct any work or materials which Contractor, Owner and/or Architect shall reject as failing to conform to the requirements of the Contract Documents. Contractor may, at Contractor's option, provide Subcontractor with a written, dated Deficiency List as notice of such rejection. If Subcontractor does not repair or replace said work within five (5) calendar days, or within such time as Contractor may specify, Contractor shall have the right to do so and Subcontractor shall be liable to Contractor for all direct and indirect costs associated therewith. If, in the opinion of Contractor, it is not expedient to correct or replace all or any part of rejected Work or materials, then Contractor, at its option, may deduct from the payments due, or to become due, to Subcontractor, such amounts as, in Contractor's judgment, will represent (a) the difference between the fair value of the rejected Work and materials and the value thereof if same was completed in accordance with the Contract Documents, or (b) the costs of correction, whichever is higher. Subcontractor's remedy for wrongful rejection of Work by Owner and/or Architect/Engineer shall be limited to Contractor's remedy and actual recovery from Owner under the Contract Documents. If wrongful rejection is solely by the Contractor, then Contractor shall only be liable to Subcontractor for the increased costs directly caused by its wrongful rejection. Unless otherwise agreed in writing, the use of all or any part of the Project by the Owner or Contractor prior to final acceptance of the Project shall not constitute acceptance of the Work. Subcontractor shall promptly perform any and all punch list work submitted to it by Contractor, Owner and/or the Architect/Engineer at its sole cost and expense.

## **10. SUBMITTALS**

Subcontractor shall timely prepare and submit to Contractor all information including, but not limited to, shop drawings, manufacturer's literature, samples, material lists and operation and maintenance manuals as may be necessary to describe completely the details and construction of its Work under the Contract Documents. Such submittals shall be made in sufficient time and in the number of copies required so as not to delay or hinder the progress of work at the Project and shall meet the time requirements as outlined in the project specifications. Within fourteen (14) calendar days of execution of this Agreement, Subcontractor shall prepare and submit to the Contractor the Subcontractor's Submittal Log. Subcontractor's Submittal Log is to outline all the Subcontractor's planned project submittals, including the expected submission dates and durations for each submittal's corresponding equipment/material. Subcontractor's Submittal Log shall be itemized by spec section and subsection for clarity. Any deviation from the requirements of the Contract Documents shall be clearly identified on the front of all submittals, and so stated in a separate written correspondence from Subcontractor to Contractor. Review and approval of such shop drawings or other information by Contractor, Owner and/or Architect/Engineer shall not relieve Subcontractor of its obligation to perform the Work in strict accordance with the Contract Documents, nor of its responsibility for the proper matching and fitting of its work with contiguous work. Incomplete submittals will be returned without review. If the required number of copies are not submitted by the subcontractor and Western Water Constructors has to make additional copies, Western Water Constructors reserves the right to backcharge the subcontractor for time and material costs to make the number of additional submittal copies required. In the event that resubmittals are required, such resubmittals shall be provided by Subcontractor to Contractor promptly, but in no event later than within two (2) week of return by Contractor. Contractor reserves the right to back charge Subcontractor if Submittals are deficient, do not conform to the contract specifications or require unnecessary resubmitting. If requested by Contractor, Subcontractor shall furnish periodic progress reports on the status of its Work including information on the status of materials and equipment required under the Contract Documents which may be in the course of preparation or manufacture. Failure of Subcontractor to provide such information within three (3) calendar days shall be deemed a material breach of this Agreement.

In addition to requirements of the Contract Documents and those set forth herein, all submittals shall include:

- a. A copy of the applicable section(s), with addendum updates included as appropriate, with each paragraph check-marked to indicate specification compliance or marked to indicate requested deviations from specification requirements.
  1. A check mark shall denote full compliance with a paragraph as a whole.
  2. If deviations from the specifications are indicated, and therefore requested by the Subcontractor, each deviation shall be underlined and denoted by a number in the margin to the right of the identified paragraph, referenced to a detailed written explanation of the reasons for requesting the deviation. The Engineer is the final authority for determining acceptability of requested deviations. The remaining portions of the paragraph not underlined will signify compliance on the part of the Subcontractor with the specifications.
  3. Where required, partial submittals shall include similar markups. Each paragraph outside of Subcontractor's scope or necessary to be addressed under separate cover shall be underlined and denoted by a number in the margin to the right of the identified paragraph, referenced to an appropriate explanation of the reason for exclusion.
- b. Failure to include a copy of the marked-up specification sections, along with justification(s) for any requested deviations to the specification requirements, with the submittal shall be sufficient cause for rejection of the entire submittal with no further consideration.
- c. Any deviation from the contract documents not specifically requested and clearly identified, although accepted through oversight, may be rejected at any stage of the Work. The Subcontractor shall, at their own expense, reconstruct all work affected by the later rejection of a contract deviation that was not specifically called-out and explained for review and acceptance by the Engineer as detailed above.

All deliverables, including but not limited to electronic and hard-copy submittals, as required by the Owner, shall be provided in accordance with the requirements set forth herein and the Deliverables Schedule in Exhibit C.

## **11. CLEANUP**

Subcontractor shall, on a daily basis and at its own expense, clean and remove from the Project entirely, all rubbish and debris resulting from the performance of its Work. On a daily basis, in each area of the Project, Subcontractor shall perform such cleaning as may be reasonably required to leave said area in broom clean condition or as otherwise directed by Contractor. Such clean-up and removal shall be performed in a manner so as not to delay or disrupt the progress of the Project or the work of other trades. If Subcontractor fails to adhere to this requirement, Contractor may, after twenty-four (24) hours notice to Subcontractor, perform such work and the cost thereof shall be charged against Subcontractor and deducted from amounts then due or to become due to Subcontractor hereunder.

## **12. CHANGES AND CLAIMS**

12.1 Changes. Contractor may, either unilaterally or by direction of Owner and without notice to sureties, make changes in the Work covered by this Agreement at any time. No alteration, addition, omission or change shall be made in the Work, or method or manner of performance of same, by Subcontractor except upon written directive from Contractor, and Subcontractor shall perform the Work, as changed, without delay. If Subcontractor does not submit a detailed price quotation to Contractor within the earlier of seven (7) calendar days or within the time necessary for Contractor to furnish such information to the Owner under the Prime Contract, for changes requested by Contractor and/or Owner, Contractor may (a) use its best estimate of the proposed change as it affects Subcontractor in its quotation to Owner or otherwise, which estimate shall be the maximum amount due Subcontractor for such work; or (b) retain another Subcontractor to perform the work. It is expressly understood that Subcontractor shall in no event be entitled to, nor shall it receive, any compensation or allowance for any change in an amount greater than that which Contractor actually receives from the Owner with respect to Owner-directed changes, less a reasonable deduction for work performed by Contractor, as well as for Contractor's overhead and profit. There shall be no other monetary or time allowance, direct or indirect, to Subcontractor other than what is specifically written in the Change Order regardless of whether the Change Order is directed by the Owner or Contractor, including but not limited to, delays, disruptions, accelerations, suspensions, escalations, impact or other cost factors.

Ordinary field modifications which do not substantially increase Subcontractor's cost of performance shall be performed without any price adjustment. Where unit prices are stipulated in the Contract Documents, all adjustments, whether

increases or decreases, shall be made in accordance with said units. Said units shall be deemed to include all general and administrative expenses, overhead, profit, supervision, extended performance cost factors, and all other direct and indirect expenses. If Contractor elects the option to direct the changed work to be performed by Subcontractor on a time and materials basis, Subcontractor shall prepare daily time and material invoices which shall be submitted to Contractor on a daily basis. Said daily time and material invoices shall include only direct out-of-pocket material and labor costs with a maximum total markup of the lesser of 10 percent or the markup specified in the Prime Contract, which markup shall be deemed to be full and complete compensation to Subcontractor for all general and administrative expenses, overhead, supervision and profit, and any other direct or indirect costs arising out of or relating in any way to such change. No payment shall be made by Contractor to Subcontractor for holiday or other nonworking time. All Change Order work and work performed on a time and materials basis is subject to audit by Contractor and/or the Owner at any time during the course of Work hereunder and for a period of not less than three (3) years from the date of final completion of the Project.

12.2 Claims. Any claims for adjustment in price, time or other Agreement provisions shall be submitted to Contractor in writing within ten (10) calendar days of the occurrence giving rise to such claim or within sufficient time for Contractor to submit claims to Owner in accordance with the Contract Documents, whichever time occurs earlier. If directed by Contractor, Subcontractor shall certify the completeness and accuracy of its claim as a condition precedent to consideration of said claim by Contractor or Owner.

12.3 Claims Relating to Owner. If Subcontractor submits a claim arising out of or relating to problems caused by or which are the responsibility of the Owner and/or Architect/Engineer, Subcontractor expressly agrees to be bound to Contractor to the same extent that Contractor is bound to Owner by the terms of the Contract Documents and by any and all decisions or determinations made by a Court or by the party or board so authorized in the Contract Documents to decide disputes between Contractor and Owner, whether or not Subcontractor is a party to such proceedings, and shall be entitled only to its proportionate share of any actual recovery obtained by Contractor from Owner, less overhead and profit to Contractor and less Contractor's and legal and consultant fees in handling said matter. Contractor agrees to present to Owner, in Contractor's name, and, if necessary, to invoke the disputes provision of the Contract Documents, claims of Subcontractor for extras and equitable adjustments, timely submitted, whenever the Contract Documents permit Contractor to do so, and Contractor reasonably believes such claim is valid. Subcontractor agrees to furnish all documents, statements, witnesses and other information required by Contractor or Owner for investigating and presenting Subcontractor's claims. Contractor has final authority to settle all claims submitted to Owner. The Subcontractor shall post whatever security may be reasonably required by Contractor to cover Contractor's anticipated costs and expenses prior to and as a condition precedent to Contractor's proceeding on Subcontractor's behalf.

12.4 Claims Relating to Contractor. As a condition precedent to any action against Contractor or its surety, Subcontractor agrees to exhaust through Contractor the remedies available under the Contract Documents, including suit for breach of contract and/or equitable adjustment against Owner through Contractor. If Subcontractor has a claim or dispute which relates to problems caused solely by the Contractor, Subcontractor may, after compliance with the conditions precedent set forth in this paragraph, proceed in accordance with Section 25 hereof.

12.5 Owner Damages. If Owner assesses liquidated or actual damages against Contractor, then Contractor may assess against Subcontractor the portion of Owner's damages that represent Subcontractor's share of the responsibility. The amount of such assessment for Owner damages shall not exceed the amount assessed against Contractor plus the portion of the total costs and expenses, including attorney's and consultants' fees, Contractor incurs in defending against Owner's claim for damages. This provision shall be applicable whether or not Subcontractor actually completes its Work, and specifically includes, but by no means is limited to, abandonment of the Work by Subcontractor.

12.6 Price Adjustments. Unless provided for in the Prime Contract there shall be no adjustments to the Contract Price for material price fluctuations, labor increases, surcharges, or other "escalation" adjustments, or for increases in costs or changes in prices as a result of the imposition of or changes in tariffs or taxes.

12.7 Duty of Continued Performance. To the greatest extent permitted by law and notwithstanding any dispute, including without limitation, a dispute concerning work scope or the performance of changed work, or regarding payment, Subcontractor agrees to continue with its performance, including with respect to directed changes, and to maintain the schedule of work, pending resolution of any and all disputes. The foregoing sentence constitutes an election of remedies and an advance waiver by Subcontractor of any actual or alleged right



to stop work, rescind, or abandon the Project.

### **13. LAWS, PERMITS, LICENSES, FEES, AND PATENTS**

13.1 Compliance. Subcontractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the performance of its Work on the Project. Unless specifically agreed to in writing by the Contractor, Subcontractor shall secure and pay for all permits and Governmental fees, licenses, and arrange inspections necessary for the proper execution and completion of Subcontractor's Work. Subcontractor shall strictly comply with all Federal, State, local and municipal tax laws, Social Security Acts, Unemployment Compensation Acts, and Workers' or Workmen's Compensation Acts insofar as applicable to the performance of this Agreement. Subcontractor expressly represents and warrants that at the time of execution of this Agreement and throughout the duration of Subcontractor's Work hereunder, Subcontractor is and shall continue to be duly licensed and authorized to operate under the laws where the Project is located.

13.2 Hazardous Materials or Asbestos. If Subcontractor encounters asbestos, or encounters or uses any regulated substance under The Toxic Substance Control Act, Resource Conservation and Recovery Act, and The Comprehensive Environmental Response, Compensation, and Liability Act, or any equivalent state, local or municipal law, Subcontractor shall comply fully with such statutes and related regulations and provide all required notices thereunder. Subcontractor also agrees to submit Material Safety Data Sheets, as prescribed by applicable federal, state or local laws or regulations, for all hazardous materials.

13.3 Hold Harmless. To the fullest extent permitted by law, Subcontractor agrees to indemnify, defend and hold harmless Contractor and Owner against the payment of any and all losses, costs, expenses, contributions, taxes, or premiums which may become due or payable under Federal, State local, or municipal laws, rules, regulations, statutes, ordinances and directives arising directly or indirectly out of Subcontractor's failure to comply with the laws and requirements outlined in Section 13.1 or 13.2 above, including any interest or penalties. Subcontractor expressly waives any and all claims for additional compensation because of any increase in taxes, contributions or premiums unless Contractor actually receives payments from Owner for such increases actually incurred by Subcontractor.

13.4 Patents and Royalties. Subcontractor agrees to pay all royalties and license fees owed by reason of performance of this Agreement. To the fullest extent permitted by law, Subcontractor agrees to indemnify, defend and hold harmless Contractor and Owner against all suits or claims for infringement of any patent rights due to the inclusion of patented materials in the Subcontractor's Work, and for any and all loss, including costs and expenses on account thereof, which Contractor may suffer.

13.5 San Francisco LBE. If the Project falls under San Francisco's Local Business Enterprise Utilization and Non-Discrimination in Contracting Ordinance, then that ordinance is hereby incorporated by reference and shall apply to this Agreement.

### **14. HEALTH AND SAFETY**

14.1 Responsibility of Subcontractor. As relates to the Subcontractor's Work, Subcontractor is responsible for the safety of the general public and workers engaged on or in the vicinity of the Project. Subcontractor agrees to comply with all Federal, State, municipal and local laws, ordinances, rules, regulations, codes, standards, orders, notices, and requirements concerning safety, as shall be applicable to the Work, including, but not limited to, the Federal Occupational Safety and Health Act of 1970 ("OSHA"), as amended, and all standards, rules, regulations and orders which have been or shall be adopted or issued thereunder, and, to the extent applicable by law, with any state counterpart to OSHA which has been formerly approved by the Federal Government, and all standards, rules, regulations and orders which have been or shall be adopted or issued thereunder, and with the safety standards Contractor establishes during the progress of the Work (a copy of Contractor's safety program is available upon request), including a non-smoking policy on the Project. Subcontractor understands and agrees to provide and maintain at the Project a written Injury and Illness Prevention Program. Elements of the Injury and Illness Prevention Program shall include; Code of Safe Practices, Hazard Communication, Material Safety Data Sheets, Emergency Plan, Respirator Program, Lockout Program, Fall Protection Program, Confined Space Entry Program, Competent Person—Trenching and Excavation Program, Training Records, Job Site Inspections and Storage and Disposal of Hazardous Materials/Waste. Subcontractor understands and agrees that hard-hats, safety glasses and any personal protective equipment mandated by regulation shall be worn by all of its employees representatives at all times such persons are at the Project.

14.2 Stoppages Ordered by Contractor. When so ordered by Contractor, Subcontractor shall stop any part of the Work which Contractor deems unsafe until corrective measures, satisfactory to Contractor, have been taken, and Subcontractor agrees that it shall not have nor make any claim for damages growing out of such stoppages. Should Subcontractor neglect to take such corrective measures as the Contractor deems necessary, Contractor may do so at the sole cost and expense of Subcontractor and may deduct the cost thereof from any payments due to become due to Subcontractor hereunder. Failure on the part of Contractor to stop unsafe practices shall not be deemed an acceptance or acquiescence by Contractor of Subcontractor's means or methods of construction and shall in no way relieve Subcontractor of its responsibility hereunder.

14.3 Notice of Accident. In the event of any accident or injury at the Project site involving Subcontractor's employees or agents or third parties, Subcontractor shall, within two (2) calendar days of such accident or injury, furnish Contractor a written statement describing the time, location, circumstances, and identity of persons involved in any such occurrence.

## **15. REPRESENTATIONS, INTERPRETATION, AND INVESTIGATION**

15.1 Representations and Investigation. Subcontractor represents that it is and will remain properly licensed and fully qualified to perform this Agreement. Subcontractor acknowledges that prior to the execution of this Agreement it has, by its own independent investigation, ascertained and/or verified (1) the full extent and character of the Work required by Contract Documents; (2) the conditions involved in performing the Work; (3) the obligations and conditions of the Contract Documents; and (4) all information furnished by Contractor or others and satisfied itself as to the correctness and accuracy of that information. Any failure by the Subcontractor to independently investigate and become fully informed will not release Subcontractor from its responsibilities under this Agreement. Subcontractor agrees that it will not make any claim or demand upon Contractor based upon or arising out of any misunderstanding or misconception on its part of the provisions, conditions and requirements of the Contract Documents. Any information given or statements made to Subcontractor by Contractor or others as to the nature or characteristics of the Work included herein, or as to the particular details relating to Subcontractor's Work, shall not reduce the Work or obligations of Subcontractor under this Subcontract. Subcontractor shall be required to do all things and be bound by all rulings of Owner and its Architect/Engineer to the same extent and degree as Contractor is bound thereto. Subcontractor shall furnish a competent representative who is to be kept constantly on the project to represent Subcontractor, to supervise the work being performed by Subcontractor, and to represent Subcontractor for the purpose of receiving notices, orders and instructions. Any notice, order or instruction given or delivered to such representative shall be deemed to have been given or delivered to Subcontractor.

15.2 Interpretation. The parties intend that all terms of this Agreement be considered as complementary. However, in the event of a conflict between or among the terms of this Agreement or the Contract Documents, the higher standard or greater responsibility for Subcontractor shall prevail.

15.3 Inconsistencies and Omissions. Should inconsistencies or omissions appear in the Contract Documents, the Subcontractor shall notify Contractor and identify the inconsistency or omission, in writing, within three (3) working days of the Subcontractor's discovery thereof. Upon receipt of Subcontractor's notice, Contractor shall instruct the Subcontractor as to the measures to be taken, if any, and the Subcontractor shall comply with Contractor's instructions. Subcontractor shall not have any claim against the Owner, Architect and/or Contractor for such inconsistencies or omissions which it fails to bring promptly to the attention of Contractor in the manner prescribed herein.

15.4 Field Measurements. Subcontractor, before proceeding with any Work under this Agreement, shall accurately check and verify all previous and surrounding work done by others and determine the correctness of same. The failure of Subcontractor to detect and disclose any existing discrepancies or non-conformities and report same to Contractor, in writing, before commencing its Work shall relieve Contractor of any and all responsibility for same, and Subcontractor shall be solely responsible and liable for all resulting damages, costs and expenses arising as a result of such discrepancies and non-conformities which should have been discovered by Subcontractor. Notwithstanding the dimensions given on the plans, specifications and other Contract Documents, it shall be the obligation and responsibility of the Subcontractor to take such measurements as will ensure the proper matching and fitting of the Work covered by this Agreement and contiguous work.

## **16. TERMINATION FOR CONVENIENCE**

Contractor shall have the right to terminate this Agreement, without cause, for convenience, when Contractor determines that it is in its own best interests to so terminate the Agreement. If this Agreement is terminated for convenience,

Subcontractor shall comply with all of Contractor's termination instructions and shall be entitled to receive payment for Work actually and properly performed to and including the date of such termination, together with a reasonable overhead and profit in connection with such Work, except that if Contractor's Contract with Owner is also terminated for convenience, termination settlement and costs to Subcontractor shall be as provided in the Contract Documents, and in any amount proportional to the amount actually received by Contractor from Owner for Subcontractor's Work. Subcontractor shall not be entitled to any recovery of profit or unabsorbed overhead in connection with work not actually performed.

## **17. SUBCONTRACTOR'S FAILURE OR INABILITY TO PERFORM**

17.1 Causes for Termination. If, in the opinion of Contractor, Subcontractor shall at any time: (1) refuse or fail to provide sufficient properly skilled workmen or materials of the proper quality, (2) fail in any material respect to prosecute the Work according to the current schedule, (3) fail to follow the Contractor's written direction, (4) cause, by any action or omission, the stoppage or delay of, or interference with, the work of Contractor or of any other builder or subcontractor, (5) submit a false or misleading lien or claim waiver, (6) fail to make payment to Subcontractor's employees, a sub-subcontractor, and/or a supplier, or (7) otherwise fail to strictly comply with all provisions of this Agreement and the Contract Documents, then, after Contractor has provided Subcontractor three (3) calendar days written notice of such condition, unless Subcontractor shall, to the Contractor's satisfaction, either eliminate or undertake diligent efforts to alleviate the condition specified in such notice within three (3) calendar days, Contractor may, at its option:

a. without voiding the other provisions of this Agreement and without notice to Subcontractor's sureties, take such steps as Contractor deems necessary to overcome the condition, including but not limited to performing the Subcontractor's Work by itself or through others, in which case the Subcontractor shall be liable to Contractor for all direct and consequential costs associated therewith, plus interest thereon at the then existing Prime Rate set forth in the Wall Street Journal;

b. terminate the Agreement for default; or

c. seek specific performance of Subcontractor's obligations hereunder, it being agreed by Subcontractor that specific performance may be necessary to avoid irreparable harm to Contractor and/or Owner.

17.2 Demand for Assurance. In the event Contractor becomes concerned about Subcontractor's ability to continue performance hereunder, Contractor may demand written assurances from Subcontractor or its successors in interest that this Agreement will be performed in strict accordance with its terms. Subcontractor shall provide Contractor in writing with a specific plan of action for overcoming those problems and deficiencies alleged by Contractor and demonstrate to Contractor's satisfaction that Subcontractor will perform fully its obligations under this Agreement. Failure of Subcontractor to comply with such a demand by Contractor within three (3) calendar days of receipt of the demand shall entitle Contractor to terminate Subcontractor for default.

17.3 Contractor's Rights Upon Termination for Default. In the event of termination for default under Section 17.1 or 17.2 above, Contractor may, at its option: (1) enter on the premises and take possession, for the purpose of completing any Work, of all materials and equipment of Subcontractor, (2) require Subcontractor to assign Contractor any or all of Subcontractor's sub-subcontracts and/or purchase orders involving the Work or (3) either itself or through others complete the Work by whatever method Contractor may deem expedient. In case of termination for default, Subcontractor shall not be entitled to receive any further payment from Contractor until the Work shall be fully completed and accepted by the Owner. At such time, if the unpaid balance hereunder exceeds the costs and expenses, including reasonable attorney's and consultants' fees, incurred by Contractor to complete the Work, such excess shall be paid by Contractor to Subcontractor. If such costs and expenses incurred by Contractor shall exceed such unpaid balance hereunder, then Subcontractor and its surety shall pay Contractor the difference thereof.

17.4 Recourse Against Contractor. If Contractor wrongfully terminates Subcontractor, Contractor shall be liable to Subcontractor for the costs Contractor would have paid if Contractor would have terminated Subcontractor for convenience pursuant to Article 16 hereof. Subcontractor expressly understands and agrees that its remedy hereunder shall be exclusive, and expressly waives any and all other rights and remedies which it may have whether at law or in equity. Nothing hereunder shall be construed to prevent Contractor from withholding monies from Subcontractor under other provisions of this Agreement.

## **18. GUARANTY AND WARRANTY**

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

18.2 Term. Subcontractor warrants its Work for the same period as Contractor warrants the work to the Owner under the Contract Documents. If the Contract Documents do not state a specific warranty period, the Subcontractor warrants its Work for a period of one year from the date of final acceptance by Owner of the entire Project. Nothing herein shall be construed to limit the time for commencing an action against Subcontractor for any breaches of this Agreement, including latent defects which may exist in the Work.

## **19. INSURANCE**

Subcontractor and its lower-tier subcontractors and suppliers shall comply with the insurance requirements and provisions of Exhibit A, which is incorporated herein.

## **20. INDEMNITY AND DEFENSE OBLIGATIONS**

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, sureties, 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 and costs ("Claims"), which arise out of or are in any way related to: (i) this Agreement; (ii) actual or alleged actions or omissions by Subcontractor or any of its subcontractors, suppliers, vendors, employees, or persons for whom it is responsible; or (iii) Subcontractor's presence at the Project site and/or its Work. Notwithstanding the foregoing, if any of the Contract Documents impose more stringent defense, indemnity, contribution or hold harmless obligations than are set forth herein, then to the extent permitted by law, the more stringent provisions shall apply, and Subcontractor 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. To the greatest extent permitted by law, the obligations of this Section 20 shall apply regardless of whether the Claims were caused in part or contributed to by Indemnitees and/or their active fault; however, obligations specified above shall not apply to the extent the Claims: (a) arise out of, pertain to, or 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) arise out of, pertain to, or relate to defects in design furnished by 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; or (c) do not arise out of the scope of work of Subcontractor. Upon written tender of a Claim by any Indemnitee, Subcontractor shall:

- (1) Defend the Claim with counsel who are qualified and experienced in such matters and do not have a conflict of interest. If Subcontractor elects to defend under this subparagraph (1), Subcontractor shall provide written notice of the election to the tendering party within a reasonable time period, and in no event later than 30 days following receipt of the tender of the Claim. Subject only to the limitations set forth above, the defense provided by Subcontractor shall be a complete defense of tendering party as to all Claims or portions thereof to the extent alleged to be caused by Subcontractor, including any vicarious liability Claims the tendering party may have, resulting from Subcontractor's scope of work, but not including Claims resulting from the scope of work, actions, or omissions of the tendering party, or any other party. Any vicarious liability imposed upon the tendering party for Claims caused by Subcontractor electing to defend under this subparagraph (1) 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 alternatively,

- (2) Pay, within 30 days of receipt of an invoice from the tendering party, no more than a reasonable allocated share of the tendering party's defense fees and costs, on an ongoing basis during the pendency of the Claim, subject to reallocation consistent with the limitations set forth above upon final resolution of the Claim.

In addition to the remedies provided for in Civil Code Section 2782.05, and without limitation or derogation of them, Subcontractor agrees to pay liquidated damages of \$250 per each day that Subcontractor fails to perform its obligations under either subparagraphs (1) or (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 \$250 per day constitutes a reasonable estimate of such damages or losses. The obligations under this Section 20 are in no way limited or relieved by Subcontractor's 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. In addition, the obligations of this Section 20 shall survive the expiration or termination of this Agreement, as well as Subcontractor's completion of its other obligations.

## **21. LABOR RELATIONS**

21.1 Subcontractor shall keep a competent English-speaking representative at the job site during all times when Subcontractor's work is in progress. The representative shall be authorized to represent Subcontractor as to all phases of the Work. Prior to commencement of the Work, Subcontractor shall notify Contractor in writing who Subcontractor's representative is to be, and in the event of any change, Subcontractor shall notify Contractor in writing who the new representative is and receive Contractor's approval of this change prior to such change becoming effective. Subcontractor and its subcontractors or suppliers shall remove from the Project anyone engaged in Work required under this Agreement whose employment may be objected to by Contractor or Owner.

21.2 Subcontractor shall comply with all equal employment opportunity and affirmative action requirements promulgated by any government authority, including, without limitation, the requirements of the Civil Rights Act of 1964 as amended, Presidential Executive Orders (such as 11246), Section 503 of the Rehabilitation Act of 1973 as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 as amended (VEVRAA), the American with Disabilities Act of 1990 as amended (ADA), Code of Federal Regulations Title 41 Chapter 60 (41 CFR 60), the Family and Medical Leave act of 1993 as amended (FMLA) and the California Fair Employment and Housing Act as amended (FEHA). Subcontractor shall not discriminate against any employee or employment applicant because of race, sex, color, creed, national origin or, unless legally justified, disability, and shall comply fully with the Contract Documents with respect to the participation of small, disadvantaged, minority, and/or women-owned businesses. Subcontractor shall allow access to its books, records, and accounts by representatives of Contractor or Owner for purposes of investigations to ascertain compliance with the provisions of this Section. These requirements shall be in addition to any similar Equal Employment Opportunity provisions in the Contract Documents. If Subcontractor fails to comply with the Equal Employment Opportunity and Affirmative Action provisions of this Agreement, Subcontractor may be terminated for default as specified under Section 17 of this Agreement.

21.3 Subcontractor shall comply with all Federal and State immigration laws, including having valid I-9's for its employees and using E-Verify when required by law.

21.4 Subcontractor shall comply with and agrees to be bound by all applicable Federal, State and local laws and regulations, including, by not limited to, all Fair Labor Standards Act provisions and California Labor Code provisions covering the Work or the Project. Upon request, Subcontractor agrees to submit certified payroll reports to Contractor no later than three (3) working days after labor has been paid.

21.5 If a reserved-gate system is established at the job site, Subcontractor agrees that it will: (1) continue proper performance of its work without interruption or delay; (2) ensure that its employees, visitors and suppliers enter and exit the gate designated for Subcontractor; and (3) comply with all of Contractor's instructions. If Subcontractor fails to comply with this paragraph, Contractor may provide twenty-four (24) hour notice to Subcontractor to correct the problem and/or supply workers to the job. If thereafter, Subcontractor fails to correct the deficiency and diligently perform the Work, Contractor may, at its sole option, elect to have another person, firm or subcontractor temporarily or permanently replace Subcontractor and perform the Work to the satisfaction of Contractor. Subcontractor shall be liable for all costs, delays and/or decreases in value as further provided in this

Agreement.

21.6 If any workers performing work covered by this Agreement engage in a strike, sympathy strike, or other work stoppage due to picketing or a labor dispute of any kind, Contractor may, without prejudice to any other remedies it may have, after twenty-four (24) hours' written notice to Subcontractor, (a) provide any such labor and deduct the cost thereof from any monies then due or thereafter to become due Subcontractor or (b) terminate the Subcontractor's right to proceed with the Work, and proceed as provided in Section 17.

21.7 Prevailing Wage Requirements for Firms Delivering or Removing Material from Jobsites. It is the Subcontractor's responsibility to pay prevailing wages, if applicable, for fabrication, delivery or installation of material and /or equipment supplied on this project.

21.8 Contractor has entered into labor agreements covering work at its jobsites with the following unions: Laborers – Northern California District Council of Laborers. Subcontractor shall, to the extent permissible under applicable laws, comply with all of the provisions of Contractor's collective bargaining agreements as if it were a party to said agreements, including signatory status, if required. Subcontractor agrees that all of the provisions of the applicable labor agreements are incorporated into this Agreement as if they were set forth in their entirety. Subcontractor agrees to pay the wage rates, make the required trust fund payments into the respective labor trust funds, and to observe the hours and all other terms and conditions set forth in the applicable labor agreements. Subcontractor agrees to comply with the terms and provisions of said agreements setting forth the grievance and arbitration procedure and jurisdiction and scope of work therein for resolution of jurisdictional disputes. If necessary, Subcontractor agrees, at its own cost, to secure a final and binding determination of any jurisdictional dispute by the National Labor Relations Board. Subcontractor further promises and agrees that it will bind and require all of its subcontractors and their subcontractors performing jobsite work of the type covered by the Laborers agreement to agree to all of the promises and undertakings contained in this Section 21, to the same effect as herein provided with respect to Subcontractor. Subcontractor shall pay when due all contributions, allowances, and other payments, required by the labor agreements now or hereinafter in force. Subcontractor shall comply with any additional union agreements as may be required by the Laborers agreements.

21.9 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" must: (1) comply with prevailing wage laws, including payment of prevailing wages and the submission of certified payroll reports; (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.

21.10 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 2781 (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 and 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 2781, 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.

## **22. ASSIGNMENT AND SUBCONTRACTING**

22.1 Assignment. Subcontractor agrees that it will not transfer, assign or delegate the Subcontract or any payment due thereunder, without prior written consent of Contractor. Any assignment without such consent shall be of no force or effect with respect to any of Contractor's obligations hereunder.

22.2 Tier Subcontractors and Suppliers. Subcontractor agrees that all tier subcontractors and tier suppliers will be subject to all terms and conditions of the Contract Documents. Contractor's consent to any subletting by Subcontractor of portions of the Work shall not be deemed to create any contractual relationship between the Contractor and any subcontractor, sub-subcontractor or supplier of Subcontractor to whom the Work or any portion thereof is sublet.

## **23. PRIVACY**

Until Subcontractor Work under this Agreement is fully completed and final payment is made, Subcontractor shall not, without the written consent of Contractor, perform any work directly for Owner or the Owner's tenants. Subcontractor agrees that all Work on this Project shall be handled and processed by Contractor and that Subcontractor shall not communicate directly with the Owner or the Owner's representatives without Contractor's knowledge and consent.

## **24. LIENS AND ENCUMBRANCES**

24.1 If at any time there shall be evidence of any claim, lien or stop payment notice for which, if established, Contractor or Owner might become liable, or which should, in any event, be charged to Subcontractor, Contractor shall have the right: (1) to require Subcontractor to have same discharged, by posting a bond with the appropriate authorities, or otherwise, within five (5) days of notice; or (2) to retain, out of any payment due or thereafter to become due, an amount sufficient to indemnify the parties against said lien or claim, including bond premiums and attorney's fees, and to apply the same in such manner as Contractor deems necessary to secure protection and/or satisfy such claims and liens. Should there be an insufficient unpaid balance under this Agreement to cover the costs incurred by Contractor and/or Owner in discharging such a lien or claim, Subcontractor and its surety shall immediately reimburse Contractor and/or Owner the difference between the payments due Subcontractor and the costs incurred. Prior to final payment, Subcontractor shall provide Contractor a release of liens and claims for all Work performed under this Agreement, as well as any other evidence Contractor and/or Owner may require to demonstrate that there are no other liens

or claims whatsoever outstanding with respect to Work and/or the Subcontractor's performance hereunder.

24.2 Subcontractor understands and agrees 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 labor or material suppliers furnishing labor or material for the Work) is a condition precedent to Subcontractor's right to receive payment for the work performed, and any monies paid by Contractor to Subcontractor under the terms of this Agreement shall be held in trust in favor of persons or entities furnishing labor, equipment, materials and services to Subcontractor, or its tier subcontractors, suppliers, and vendors for work covered by this Agreement, including apprenticeship programs or benefit trust funds.

## **25. ALTERNATIVE DISPUTE RESOLUTION**

25.1 Any dispute resolution procedure in the prime contract shall be deemed incorporated in this Agreement, and shall apply to any disputes arising hereunder that involve the Owner, such as "pass through" claims. Subcontractor shall cooperate in such procedures and shall participate in them when requested. Any claims not involving the Owner shall, at the Contractor's sole option, be resolved through binding arbitration under JAMS rules in effect as of the date of any arbitration demand made by Contractor.

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

25.3 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.

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

25.5 Subcontractor, and its subcontractors and suppliers (regardless of tier), agree upon request by Contractor to join in and be bound by proceedings involving Contractor, including those involving Owner or other parties. It shall be the responsibility of Subcontractor to prepare Contractor's case, to the extent the proceedings are related to this Agreement.

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

## **26. ATTORNEY'S AND CONSULTANTS' FEES**

26.1 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 fees and costs of suit from Owner, Contractor and from Contractor's sureties. This waiver of the right to fees and costs shall be and shall be effective as to statutory rights such as those afforded by Civil Code Sections 9550 through 9566 to the greatest extent permitted by law, but no greater. 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 fees, expert costs and other expenses.

## **27. NOTICE**

All notices which may or are required to be given by either party to the other shall be in writing and shall be deemed received, (a) the day of hand delivery; (b) the day of receipt of a facsimile, (c) three (3) business days after sending by United States Mail, postage prepaid, or (d) the date of transmission by e-mail to the address established in Section 40.

## **28. TOXIC MATERIALS**



Subcontractor shall not use, discharge, or bring onto the jobsite any toxic materials in violation of applicable law, and shall not, under any circumstances, dispose or permit the disposal of toxic materials and/or toxic material containers on site or in debris bins provided by Contractor. Subcontractor shall indemnify, defend and hold harmless Contractor against all costs, expenses and damages arising from the breach of this provision. Toxic materials include, but are not limited to, paints, stains, solvents, fuels, glues (including PVC glue, wood glues, etc.), all flooring material compounds, plumbers putty, etc.

**29. ADVERTISING**

Subcontractor shall not place any signs, billboards or posters on any portion of the site, building, property or fences (temporary or permanent) surrounding the same, except upon prior written permission received from Contractor, and then only of a size, material, color and type and at a location approved by Contractor.

**30. SUB-SUBCONTRACTS**

Subcontractor hereby agrees to incorporate into any subcontracts or purchase orders it has with any other party all those provisions required by law to be incorporated therein, and all those provisions of this Agreement which affect the rights of Contractor. This Agreement shall neither create a contractual relationship between Contractor and Subcontractor's subcontractors or suppliers, nor between Subcontractor and the Owner or Architect/Engineer. Subcontractor further agrees to provide promptly to Contractor a written list of all of its sub-subcontractors and suppliers, together with a statement of all amounts paid to date, due and payable, or claimed to be due and payable to all those so identified, upon Contractor's request for same.

**31. SEVERABILITY AND WAIVER**

The partial or complete invalidity or any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to assist, in any one or more instances upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or rights as respects further performance.

**32. COMPLETE AGREEMENT**

32.1 This Agreement is not to be considered a counter offer to, or a rejection of, any proposal by Subcontractor.

32.2 This Agreement is solely for the benefit of signatories hereto, represents the entire and integrated agreement between the parties hereto, and supersedes all prior negotiations, representations, or agreements either written or oral. No other agreements, representations, warranties, or other matters, oral or written, shall bind the parties. If Subcontractor's proposal and/or quote is attached to or referenced in this Agreement, the terms of this Agreement shall prevail in the event of any conflict between the documents.

32.3 This Agreement contains all covenants, stipulations and provisions agreed upon by the parties hereto. No agent or representative of either party has authority to make, and the parties shall not be liable for, any statement, representation, promise or agreement not set forth herein.

32.4 Subcontractor represents that it has carefully examined all of the documents comprising the Prime Contract and is familiar with the terms and conditions thereof, and has fully acquainted itself with all obstructions, subsurface and other conditions relevant to the Work, the site of the Work and its surroundings, and assumes the risk of any variances between the actual conditions and the conditions shown or represented in Contract Documents, including this Agreement; that it has made all investigations essential to a full understanding of the difficulties which may be encountered in performing the Work; and that anything in the Prime Contract, this Agreement, or in any representations, statements of information made or furnished by Contractor or Owner notwithstanding, Subcontractor will complete the Work for the compensation stated in this Agreement, and assume full and complete responsibility for all conditions relating to the Work, the site of the Work or its surroundings and all risks in connection therewith.

**33. GOVERNING LAW**

Unless otherwise set forth herein or expressly required by law, the validity, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Unless otherwise required by law, the Subcontractor hereby expressly accepts and consents to exclusive jurisdiction in Santa Rosa, Sonoma County, California.

**34. TITLES**

The titles to the sections of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

**35. INDEPENDENT CONTRACTOR**

Subcontractor is an independent contractor and shall, at its sole cost and expense, and without increase in the Subcontract Price, comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the Work; obtain all necessary permits and licenses for the Work, pay all manufacturers' taxes, sales taxes, use taxes, processing taxes, and all federal and state taxes, insurance and contributions for social security and unemployment which are measured by wages, salaries, or other remunerations paid to Subcontractor's employees, whether levied under existing or subsequently enacted laws, rules or regulations. Subcontractor certifies that it has a valid California State Contractor's License, including the proper classification(s), to do the Work, and that the license is current, active, and in good standing. 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). 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 35. Subcontractor, upon request, shall furnish evidence satisfactory to Contractor that any or all of the foregoing obligations have been fulfilled.

**36. USE OF CONTRACTOR'S EQUIPMENT**

If Subcontractor uses any equipment, materials, labor, supplies or facilities owned, leased, or furnished by Contractor, Subcontractor shall reimburse Contractor at market rates. Further, Subcontractor assumes all responsibility for, and shall indemnify Contractor against, claims, actions, liabilities, expenses, and physical damage arising out of or in connection with such use by Subcontractor or its agents, employees, or permittees. If 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 direction of them. Subcontractor accepts any and all of Contractor's equipment, materials, labor, supplies or facilities as furnished. Subcontractor will only be allowed to use Contractor's equipment, materials, labor, supplies, or facilities if approved in writing by Contractor.

**37. SPECIAL LABOR CODE PROVISIONS**

37.1 The provisions of the California Labor Code, including but not limited to sections 1771, 1775, 1776, 1777.5, 1813 and 1815 which are attached hereto as Exhibit B, are incorporated into this Subcontract. Subcontractor agrees to comply with all of the above-reference provisions applicable to the performance of its Work on the Project described in this Subcontract.

37.2 Prior to receiving final payment for Work performed on this Project, Subcontractor must sign and deliver to Contractor an affidavit, stating under penalty of perjury that Subcontractor has paid the specified general prevailing rate of per diem wage to all of Subcontractor's employees on the Project and any amounts due pursuant to section 1813.

37.3 Subcontractor agrees to indemnify and hold Contractor harmless from any fines, forfeitures, damages, liabilities, losses, penalties, assessments, attorney's fees, costs and any other expenses arising out of, or connected in any way to, Subcontractor's alleged or actual failure to comply with the above-referenced California Labor Code provisions.

### **38. AMERICAN SOURCING PROVISIONS**

Subcontractor acknowledges and understands that this project may be funded with money provided pursuant to the federal American Recovery and Reinvestment Act of 2009 (ARRA), the Clean Water State Revolving Fund (CWSRF), the Drinking Water State Revolving Fund (DWSRF), or the Infrastructure Investment and Jobs Act of 2021 (IIJA), including its Build America, Buy America Act (BABA) provisions. These laws and regulations include "Buy America(n)" and American Iron and Steel (AIS) requirements applicable to federally funded infrastructure projects.

Subcontractor represents and warrants that it has reviewed and understands the applicable "Buy America(n)" requirements of this Project and the Contract Documents, including but not limited to: The AIS requirements under ARRA, CWSRF, and DWSRF programs; The BABA requirements, which mandate that all iron, steel, manufactured products, and construction materials used in federally funded infrastructure projects must be produced in the United States, as further defined by applicable guidance and implementing regulations from the Office of Management and Budget (OMB) and other relevant agencies.

Subcontractor warrants and agrees that if this project is subject to ARRA, AIS, BABA, or any other "Buy America(n)" requirements, then all iron, steel, manufactured products, and construction materials being furnished by Subcontractor for incorporation into the project will be (or have been) produced in the United States in compliance with applicable regulations, rules, guidance, or standards. This obligation shall apply unless and to the extent that the applicable funding agency has formally approved a waiver of such requirements.

Furthermore, Subcontractor agrees to provide, at no additional cost to Contractor, any verified information, certifications, origin statements, or other documentation necessary to demonstrate compliance with these sourcing requirements or support any requested waiver thereof, upon request by Contractor or any agency having jurisdiction.

Notwithstanding any other provisions of the Agreement, and without limiting the generality of the indemnity obligations in Section 20, Subcontractor shall indemnify and defend Contractor and Owner, and each of their respective officers, employees, successors, assigns, sureties and agents, from and against any and all losses, liabilities, damages, claims, demands, causes of action, civil penalties, criminal penalties, fines, costs or other expenses (including actual attorney's fees and expert witness fees) incurred by or imposed on Contractor or other indemnified party arising out of or connected with Subcontractor's failure to comply with the provisions of this Section 38. Subcontractor, however, shall not be obligated under this Agreement to indemnify any indemnified party to the extent the loss or expense arises from the sole negligence or willful misconduct of such indemnified party.

In connection with Subcontractor's defense obligation under this Section 38, Subcontractor shall give the indemnified parties copies of documents served in any legal proceeding (including any mediation or arbitration) and shall keep the indemnified parties apprised as to the status of such legal proceeding. If Subcontractor fails to defend diligently any such legal proceeding with counsel reasonably satisfactory to Contractor, Contractor shall have the right (but no obligation) to defend the same at Subcontractor's expense. Subcontractor shall not settle any such legal proceeding without Contractor's prior written consent (unless the effect of such settlement shall be to release Contractor and the other indemnified parties from all liability whatsoever with respect to such legal proceeding, without cost or contribution).

The provisions of this Section 38 survive the expiration or termination of this Agreement.

Subcontractor shall include the substance of this Section 38 in all subcontracts, purchase orders or other agreements that may be impacted by "Buy America(n)" and American Iron and Steel (AIS) requirements.

### **39. DESIGN BUILD PROVISIONS**

39.1 The provisions of this Section 39 apply to any work that is "design build" in nature. Subcontractor acknowledges that Contractor is relying upon Subcontractor to perform all necessary design services and coordination for Subcontractor's Work to comprise a completely operational system or systems, integrated with the other components of the Project, meeting the Owner's requirements. Subcontractor shall procure all design services in connection with its work from licensed, independent professionals retained by Subcontractor, or shall furnish all such design services utilizing properly qualified and licensed employees of Subcontractor. If the person providing the design services for Subcontractor is an independent design

professional, the services shall be provided pursuant to a written agreement acceptable to Contractor, which shall be in substantial conformity with Contractor's standard agreement for design professionals. Subcontractor shall notify Contractor in writing if it intends to change the person or persons providing design services. Contractor reserves the right to object to the persons or employees that Subcontractor intends to utilize for design services, in which case Subcontractor at its sole cost shall utilize other persons, acceptable to Contractor, for such services.

39.2 **Design Phase Services.** Subcontractor shall evaluate the Owner's program and other available information and provide in writing for the Contractor's review and approval a preliminary schedule and cost estimate for Subcontractor's Work. The schedule and estimate shall be updated periodically as required by this Agreement, and it shall be the responsibility of Subcontractor to adhere to approved schedules and estimates. Subcontractor shall prepare, for written approval by the Contractor and Owner, schematic design documents consisting of drawings illustrating the basic components of the design of the Subcontractor's Work and their relationship to other Project elements. Three printed sets and one reproducible set of these documents, at a minimum, shall be provided to Contractor. Following completion of the schematic design documents, Subcontractor shall update the preliminary schedule and estimate for the Contractor's review and estimate.

Based upon the approved schematic design documents, Subcontractor shall prepare, for approval by the Contractor and Owner, design development documents consisting of further definition of design elements, including drawings, outline specifications, and other documents to fix and describe the size and character of the Subcontractor's Work, including the relationship to other Project elements. Three printed sets and one reproducible set of these documents, at a minimum, shall be provided to Contractor. Following completion of the design development documents, Subcontractor shall review and update the schedule and estimate for Contractor's review and approval.

Based upon the approved design development documents, Subcontractor shall prepare for approval by Contractor, Owner, and governmental and/or other entities, including revisions necessary to secure needed approvals, construction documents setting forth in detail the requirements for construction of Subcontractor's Work. These documents shall consist of drawings and specifications that comply in all respects with codes, laws, regulations, and standards of good practice to be in effect as of the time that the work is to be performed. Three printed sets and one reproducible set of these documents, at a minimum, shall be provided to Contractor.

39.3 **Construction Phase Services.** The following provisions, in addition to those set forth elsewhere in the Subcontract, govern Subcontractor's work during the Construction Phase. Subcontractor shall be responsible to Contractor for the accuracy and conformity with the Contract Documents of shop drawings, samples and other submittals that pertain to Subcontractor's work. Approval of submittals shall not be deemed to authorize deviations or substitutions. Subcontractor shall coordinate its Work with that of Contractor, other subcontractors, and all other persons at the Project site, to ensure that the completed project provides a fully functional, operational system(s) that conform to Owners' design program. Subcontractor shall cooperate with Contractor, other subcontractors, and all other persons at the Project site.

39.4 **Ownership of Documents and Work Product.** Copies or originals of all data collected by Subcontractor in relation to work associated with this Agreement, and all documents prepared in connection with the Project, shall be provided to Contractor and to Owner. Data collected, stored, and/or provided shall be in a form acceptable to Contractor. All data, designs, drawings, reports, drafts, work products, maps, records and other documents reproduced, prepared or caused to be prepared by Subcontractor pursuant to or in connection with this Subcontract shall be the exclusive property of Contractor, who shall own the copyright and all other intellectual property rights in connection therewith, and who shall be entitled to make full use thereof; all such items shall be considered to be works for hire. All such documents and items shall be delivered and/or returned to Contractor upon request.

**40. SIGNATURE BLOCK**

**IN WITNESS WHEREOF**, the parties, by their duly authorized representatives, have hereunto executed this Subcontract, on the day and year above written. The signers have read and fully understood the Agreement and all of its terms.



WESTERN WATER CONSTRUCTORS, INC.

Subcontractor

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

License No.: \_\_\_\_\_

License No.: \_\_\_\_\_

Exp. Date: \_\_\_\_\_

Exp. Date: \_\_\_\_\_

Email address to use for  
Notice when required  
by this Agreement, and  
Notice is emailed: \_\_\_\_\_

Email address to use for  
Notice when required  
by this Agreement, and  
Notice is emailed: \_\_\_\_\_

TO: [JOSH.MCGARVA@WESTERNWATER.COM](mailto:JOSH.MCGARVA@WESTERNWATER.COM)  
CC: [KEN.KREISCHER@WESTERNWATER.COM](mailto:KEN.KREISCHER@WESTERNWATER.COM)

**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.**

## EXHIBIT A

### INSURANCE REQUIREMENTS

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

**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.

**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, property damage, personal and advertising liability for the limits of liability indicated below and including but not limited to coverage for:

- (1) premises and operations;
- (2) products and completed operations through statue of repose;
- (3) contractual liability insuring tort obligations assumed by Subcontractor in this Contract;
- (4) broad form property damage (including completed operations);
- (5) explosion, collapse and underground hazards (including subsidence and any other earth movement);
- (6) personal injury liability and advertising injury liability;
- (7) electronic data liability;
- (8) if operations are within 50 feet of a railroad, any contractual liability exclusion applying to work within 50 feet of a railroad will be deleted.

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

\$1,000,000 each occurrence

\$1,000,000 for personal injury liability and advertising injury, any one person or organization

\$2,000,000 aggregate for products-completed operations

\$2,000,000 general aggregate

The general aggregate limit shall apply separately to Subcontractor's work under this Contract. For subcontracts in excess of \$1,000,000 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 in items 1-8 above.

Contractor, its officers, directors and employees, Owner, and all entities required to be included as additional insureds in the Prime Contract shall be named as additional insureds under the Commercial General Liability policy

and Excess Liability policies 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) or alternatively, a combination of 20 10 10 01 and CG 20 37 10 01; or equivalent. Evidence of coverage along with the additional insured endorsement must be provided for four years following project completion; however, coverage including the additional insured endorsement will remain in place through the statute of repose.

**Claims Made Forms, Defense, and Retention Provisions:**

Subcontractor shall not provide Commercial General Liability insurance under a Claims Made or Modified Claims Made Policy without the express prior written consent of Contractor. Commercial General Liability policies which reduce the limits of insurance for defense coverage are also not acceptable without the prior written consent of Contractor. Any Self Insured Retention or Deductible over \$25,000 per occurrence requires the prior written consent of the Contractor.

**Automobile Liability Insurance.** Subcontractor shall carry automobile liability insurance, including coverage for all owned, hired and non-owned automobiles. The limits of liability shall be not less than \$1,000,000 combined single limit each accident for bodily injury and property damage. Contractor and Owner shall be named as additional insureds.

**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 carrier licensed or authorized to do business in California 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.

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 with its bid. Certificates shall set forth deductible and/or retention amounts applicable to each policy.

Subcontractor's insurance and additional insured coverage shall not include the following exclusions or provisions: cross-suits and/or cross-insureds exclusion of coverage, mold, water damage and/or earth movement exclusions, residential or condominium exclusions, provisions, or limitations where the effect thereof would be to eliminate or limit coverage for the project in question, and/or requirements by the insurer that subcontractors or suppliers maintain insurance or agree to defend or indemnify Contractor or Owner. 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. Subcontractor must provide 30 days prior written notice to Contractor should any of the insurance policies be cancelled or required coverage be reduced. Should direct notice of cancellation be available from the carrier to the Contractor, it must be provided.

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.

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 also satisfy the following additional requirements:

- (a) **Contractor's Pollution Liability (CPL).** 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 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. If Subcontractor or Lower Tier Subcontractor or Supplier delivers, deposits, disposes of waste or materials at a non-owned disposal site or treatment facility, the Contractor's Pollution Liability coverage must extend to those non-owned disposal sites and treatment facilities. If CPL coverage is provided on a claims made basis, any retroactive date must be declared and must be on or before the start of the work.
- (b) **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 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. Any retroactive date must be declared and must be on or before the start of the work.
- (c) **Riggers Liability.** Should Subcontractor's work involve the moving, lifting, lowering, rigging or hoisting of property or equipment, Subcontractor shall carry Rigger's Liability Insurance to insure against physical loss or damage to the property or equipment with a limit of not less than \$5,000,000 per occurrence and \$5,000,000 aggregate.
- (d) **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, including drones, 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.
- (e) **Equipment and Property Coverage.** Subcontractor shall procure and maintain at its own expense property and equipment insurance for Subcontractor's tools, equipment, temporary structures. If builder's risk insurance purchased by Owner or Contractor provides coverage for Subcontractor for loss or damage of Subcontractor's Work, Subcontractor shall be responsible for the insurance policy deductible amount applicable to damage to Subcontractor's Work and/or damage to other work caused by Subcontractor.

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 and shall insure at least against the perils



of fire, flood, earth movement 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 including temporary structures, work in progress, work in transit and/or temporary storage. This insurance shall apply on a replacement cost basis. Any deductible shall be the full responsibility of Subcontractor.

- (f) **Waiver of Subrogation** Each policy of liability insurance shall include a waiver of subrogation in favor of Contractor and Owner and all additional insured parties, and shall be endorsed to recite the name of the Project and the location of the Project site. If the Subcontractor's liability policies do not contain the standard ISO separation of insureds condition, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.
- (g) **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 Exhibit A, and shall provide Contractor with evidence of insurance prior to commencing work.
- (h) **Wrap-Up or OCIP Insurance** (1) If there is no Wrap-Up or Owner Controlled Insurance Program ("OCIP") for the Project, all 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

## **EXHIBIT B**

**Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815**

**(Applies to State and Local Public Works Projects Only Unless Otherwise Indicated)**

### **SUBCONTRACT ADDENDUM FOR PUBLIC WORKS PROJECTS**

In accordance with California Labor Code Section 1725.5, all public works contractors and subcontractors must be registered with the Department of Industrial Relations beginning July 1, 2015. The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public works, as defined in Chapter 1, Public Works, Article 1 Scope and Operation, entered into on or after April 1, 2015.

Contractors may register on line at:

<https://efiling.dir.ca.gov/PWCR/ActionServlet?action=displayPWCRegistrationForm>

This public works project is subject to compliance monitoring and enforcement by the Department of Industrial Relations pursuant to Labor Code 1771.4.

The Subcontractor shall comply with the above statutes and specifically agrees to:

- a. Provide the contractor with a DIR Public Works Registration Number that has been assigned to the Subcontractor.
- b. Maintain accurate payroll records, pursuant to Labor Code §1776, and furnish such records directly to the Labor Commissioner in the following manner:
  - (1) At least monthly or more frequently if specified in the contract with the awarding body.
  - (2) In a format prescribed by the Labor Commissioner.
- c. Notify any lower-tier subcontractor to your company on this project of its obligation to register and comply with the requirements set forth in the above- referenced statutes.

Specifically, the Subcontractor agrees to:

- a. Pay all workers 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.
- b. Pay all workers not less than the general prevailing rate of per diem wages for holiday and overtime work as provided in this chapter.
- c. Adhere to the compliance measures outlined in Labor Code §1775(b) for any second tier Subcontractor that the subcontractor chooses to use on this project.

- d. Submit DAS 140, Public Works Contract Award Information to the appropriate apprenticeship committee(s) prior to the beginning of work, and DAS 142 requesting dispatch of apprentices. Provide proof of submission to prime contractor.
- e. Submit certified payroll to the contractor within three (3) working days after wages have been paid. In addition, when applicable and required, submit certified payroll records to California Department of Industrial Relations (DIR) through DIR's Electronic Certified Payroll Reporting (eCPR) system.
- f. Submit to the contractor within three (3) working days of a written request all payroll records outlined in the notice and defined by the California Code of Regulations §16000, "Payroll Records."
- g. Comply with all apprenticeship requirements pursuant to Labor Code §1777.5.
- h. Prior to receiving final payment for work performed on this project, shall sign an affidavit under penalty of perjury that the Subcontractor has paid the specified general prevailing rate of per diem wages for the proper craft needed to fulfill the obligations of the subcontract and has complied with the laws and regulations regarding the use of apprentices.
- i. Indemnify, hold harmless and defend the contractor for any violations of the below-referenced California Code of Regulations and Labor Code provisions brought against the contractor due to the subcontractor's failure to comply with said provisions.

The following California Labor Code are incorporated into this Agreement. The Subcontractor agrees to comply with all of these Labor Code Sections applicable to the performance of its work on this project.

**California Labor Code Provisions**  
**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 1813.

(b) 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 the contractor or subcontractor 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 that person's 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 the employee's 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.

(c) (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.

(d) 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.

(e) 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, the contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

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

(g) The director shall adopt rules consistent with the California Public Records Act (Division 10 (commencing with Section 7920.000) 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.

(a) 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.

(b) 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).

(c) 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.

(d) 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.

(e) 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.

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

not less than one apprentice for each five journeymen in a craft or trade classification.

(a) 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).

(b) 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.

(c) 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.

(d) If an exemption is granted pursuant to subdivision (d) 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.

(B) 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.

(1) 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.

(m) 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.

(n) 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).

(o) 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.

## EXHIBIT C

### SCOPE OF WORK DESCRIPTION

**Subcontract Price:**

[Amount in words] Dollars (\$Amount in numbers)

**Performance and payment bonds:**

If this box is checked, performance and payment bonds are required from Subcontractor in accordance with Section 4 of the Agreement.

**Specification Sections:**

[Enter applicable spec sections]

**Scope:**

[Enter scope description or items from Sub's proposal quote as needed]

**Clarifications:**

[Enter inclusions/exclusions from Sub's proposal quote as needed]

**Deliverables Schedule:**

Description	Delivery Dates	Per Day Liquidated Damages If Late
Schedule of Values		

**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: See Exhibit \_\_\_\_\_, attached hereto.
  
- 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