

# LONG FORM STANDARD SUBCONTRACT

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THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS USE OR MODIFICATION. SOME CONSTRUCTION PRIME CONTRACTS MAY REQUIRE THE USE OF SPECIALIZED PROVISIONS NOT INCLUDED IN THIS FORM.



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Form AGCC-03

Revised 1/18

# LONG FORM STANDARD SUBCONTRACT

This "Subcontract" is made at \_\_\_\_\_,

as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between:

## CONTRACTOR

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone/Email \_\_\_\_\_

and

## SUBCONTRACTOR

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone/Email \_\_\_\_\_

On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, Contractor entered into a "Prime Contract" with:

## OWNER

Name \_\_\_\_\_

Address \_\_\_\_\_

to construct the Project described in Section 1. The Project is financed by:

## CONSTRUCTION LENDER (if applicable)

Name \_\_\_\_\_

Address \_\_\_\_\_

The Project is to be constructed in accordance with the Prime Contract and the plans and specifications. Said plans and specifications have been prepared by or on behalf of

## ARCHITECT/ENGINEER

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone/Email \_\_\_\_\_

**SECTION 1. ENTIRE CONTRACT**

**Contract Documents.** The phrase "Contract Documents" is defined to mean this Subcontract, including any and all addenda and attachments hereto, and, the plans, specifications and other contract documents attached to or incorporated into the Prime Contract, including:

\_\_\_\_\_

\_\_\_\_\_

for the "Project" known as \_\_\_\_\_

and located at \_\_\_\_\_.

Subcontractor certifies that it is fully familiar with all of the terms of the Prime Contract, the location of the job site, and the conditions under which the Work is to be performed and that it enters into this Subcontract based upon its investigation of all such matters and is not relying on any opinions or representations of Contractor. This Subcontract represents the entire agreement between Contractor and Subcontractor, and supersedes any prior oral or written agreements or representations. The Prime Contract is incorporated in this Subcontract by reference, insofar as it relates in any way, directly or indirectly, to the Work. Subcontractor agrees to be bound to Contractor in the same manner and to the same extent as Contractor is bound to Owner under the Prime Contract, including, but not limited to, all applicable terms and provisions thereof. Where, in the Prime Contract, reference is made to Contractor, and the work or specifications therein pertain to Subcontractor's trade, craft or type of work, such work or specifications shall be interpreted to apply to Subcontractor instead of to Contractor.

**SECTION 2. SCOPE**

Subcontractor agrees to furnish all labor, materials, equipment and other facilities required to complete the following "Work":

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

for the Project in accordance with the Contract Documents and as more particularly specified in:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

In the event of any dispute between Contractor and Subcontractor over the scope of the Work under the Contract Documents, Subcontractor will not stop Work but will prosecute the Work diligently to completion as directed by Contractor, and the dispute will be submitted for resolution in accordance with Section 17.

**SECTION 3. SUBCONTRACT PRICE**

Contractor agrees to pay Subcontractor for the strict performance of the Work the sum of: \_\_\_\_\_

\_\_\_\_\_ \$ (\_\_\_\_\_)

or as set out in Section 26, subject to additions and deductions for changes in the Work as may be directed in writing by Contractor, and to make payment in accordance with Section 4.

**SECTION 4. PAYMENT SCHEDULE/RETENTION**

Contractor agrees to pay Subcontractor, in monthly progress payments, for labor and materials which have been placed in position by Subcontractor, with funds received by Contractor from Owner for Work performed by Subcontractor, as reflected in Contractor's applications for payment to Owner. Such monthly progress payments shall be made by Contractor within seven (7) days after receipt of payment from Owner. Final payment to Subcontractor shall be made after the Project has been fully completed in conformity with the Contract Documents and has been delivered to and accepted by Owner and Architect, with funds received by Contractor from Owner in final payment. Subcontractor agrees to furnish, if and when required by Contractor, payroll affidavits, receipts, vouchers, releases of claims for labor and material, and agrees to furnish same from its subcontractors, suppliers and/or material suppliers performing Work or furnishing materials under this Subcontract, all in form satisfactory to Contractor, and it is agreed that no payment hereunder shall be made, except at Contractor's option, until and unless such documents have been furnished. Contractor, at its option, may make any payment due hereunder by check made payable jointly to Subcontractor and of its subcontractors and/or suppliers who have performed Work or furnished materials under this Subcontract. Any payment made hereunder prior to completion and acceptance of the Project, as referred to above, shall not be construed as evidence of acceptance or acknowledgement of completion of any part of the Work, or waiver of any Contractor's rights.

Contractor's monthly progress payments to Subcontractor shall be subject to retention as follows (select one of the following options):

If the Project is a private work of improvement, Contractor shall be entitled to retain \_\_\_\_\_ percent (\_\_\_\_%) of the value of all Work included in any monthly progress payment to Subcontractor. This amount retained shall be paid with the final payment to Subcontractor.

If the Project is a public work of improvement, and if Contractor requested performance and payment bonds from Subcontractor in the solicitation for bids and Subcontractor failed or refuse to provide such bonds, then Contractor shall be entitled to retain \_\_\_\_\_ percent (\_\_\_\_%) of the value of all Work included in any monthly progress payment to Subcontractor. This amount retained shall be paid with the final payment to Subcontractor.

If the Project is a public work of improvement, and if Contractor did not request performance and payment bonds from Subcontractor in the solicitation for bids, then Contractor shall be entitled to retain only that percentage specified in the Prime Contract of the value of all Work included in any monthly progress payment to Subcontractor. This amount retained shall be paid with the final payment to Subcontractor.

If the Project is a public work of improvement, and if Contractor requested performance and payment bonds from Subcontractor in the solicitation for bids and Subcontractor provided such bonds, then Contractor shall be entitled to retain only that percentage specified in the Prime Contract of the value of all Work included in any monthly progress payment to Subcontractor. This amount retained shall be paid with the final payment to Subcontractor.

Contractor may withhold all or part of any payments claimed by Subcontractor, or, on account of subsequently discovered evidence, may nullify all or part of and any amounts previously paid, for any of the following reasons:

- (1) defective Work not remedied;
- (2) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to Contractor is provided by Subcontractor;
- (3) failure of the Subcontractor to make payments properly for labor, materials or equipment to its subcontractors and/or suppliers performing Work or furnishing materials under this Subcontract;
- (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Subcontract Price;
- (5) damage to the Owner, Contractor, or another subcontractor caused or alleged to be caused by Subcontractor;
- (6) reasonable evidence that the Work may not be completed within the time required by this Subcontract;
- (7) reasonable evidence that the unpaid balance of the Subcontract Price will not be adequate to cover any liquidated or delay damages for which Subcontractor is responsible;
- (8) repeated failure to carry out the Work in accordance with the Contract Documents;
- (9) penalties assessed against Contractor or Subcontractor for failure of Subcontractor, or its subcontractors or suppliers, to comply with state, federal or local laws and regulations;
- (10) failure by Subcontractor to submit insurance certificates and endorsements as required by Section 16, or failure by Subcontractor to maintain all required insurance; or
- (11) failure by Subcontractor to submit required warranties, guarantees, as-built drawings and other documents required by the Contract Documents.

Any amounts so withheld or nullified shall be considered not due to Subcontractor under this Subcontract. When Subcontractor remedies any of the above reasons for withholding, Contractor shall pay within seven (7) days the amount previously withheld for that reason.

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

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

## **SECTION 5. TIME**

Time is of the essence of this Subcontract. Subcontractor shall provide Contractor with scheduling information and a proposed schedule for performance of the Work in a form acceptable to Contractor. Subcontractor shall conform to Contractor's progress schedule and all revisions or changes made thereto. Subcontractor shall prosecute the Work in a prompt and diligent manner in accordance with Contractor's progress schedule without delaying or hindering Contractor's work or the work of other contractors or subcontractors. Subcontractor shall coordinate the Work with that of Contractor and all other contractors, subcontractors, and/or material suppliers, in a manner that will facilitate the efficient completion of the entire Project. In the event Subcontractor fails to maintain its part of the Contractor's schedule, it shall, without additional compensation, accelerate the Work as Contractor may direct until the Work is in accordance with such schedule. Contractor shall have the right to decide the time and order in which various portions of the Project shall be installed and the relative priority of the Work, and, in general, all other matters pertaining to the timely and orderly conduct of the work required to complete the Project. Should Subcontractor be delayed in the prosecution or completion of the Work by the act, neglect or default of Owner, Architect or Contractor, or should Subcontractor be delayed waiting for materials, if required to be furnished by Owner or Contractor, or by damage caused by fire or other casualty for which Subcontractor is not responsible, or by the combined action of the workmen,

in no way caused by or resulting from fault or collusion on the part of Subcontractor, then the time herein fixed for the completion of the Work shall be extended the number of days that Subcontractor has been delayed, but no allowance or extension shall be made unless a claim therefor is presented in writing to Contractor within 48 hours of the commencement of such delay, and under no circumstances shall the time of completion be extended to a date which will prevent Contractor from completing the entire Project within the time allowed Contractor by Owner for such completion.

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

## **SECTION 6. CHANGES IN THE WORK**

Subcontractor shall make any and all changes in the Work as directed by Contractor in writing. Such changes shall not invalidate this Subcontract.

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

Payment for changed Work shall be made in accordance with Section 4.

If a dispute arises between Contractor and Subcontractor about whether particular Work is a change in the Work, or if Contractor and Subcontractor are unable to agree on an appropriate adjustment for changed Work, Subcontractor shall timely perform the disputed Work, upon receiving written direction from Contractor. If Subcontractor intends to submit a claim for the disputed Work, it shall give prompt written notice to Contractor before proceeding with the Work. In addition, Subcontractor shall submit its written claim for additional compensation for that Work within ten (10) days after such Work is performed, in sufficient detail for Contractor to make an evaluation of the merits of the claim. Subcontractor's failure either to give the written notice before proceeding with the disputed Work or to submit the written claim within the ten (10) days after performance constitutes an agreement by it that it will not be paid for the disputed Work.

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

The modification in the Subcontract Price and/or the time for performance stated in a Subcontract Change Order shall unequivocally comprise the total price and time adjustment due or owed by Contractor to Subcontractor for the Work and changes defined therein, and shall represent full and final compensation for all increases or decreases in direct, indirect and consequential costs, overhead, profit and time required to perform the entire Work under this Subcontract arising directly or indirectly from the Work and changes defined therein, including additional and/or extended overheads, delay, acceleration, loss of momentum and cumulative impacts on all other Work.

## **SECTION 7. DAMAGES CAUSED BY DELAYS**

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

## **SECTION 8. BONDING OF SUBCONTRACTOR**

Concurrently with the execution of this Subcontract, or at any time during performance of the Work by Subcontractor and upon 10 days advance written notice to Subcontractor, Subcontractor shall, if required by Contractor, execute a labor and material bond and a performance bond, each in an amount equal to one hundred percent (100%) of the Subcontract Price. Said bonds shall be executed by a corporate surety acceptable to Contractor and shall be in a form satisfactory to Contractor. Contractor shall pay the premium on said bonds unless otherwise provided herein or in the Contract Documents.

## **SECTION 9. CLAIMS & LIENS**

If any suit is brought, or if any claim or lien is recorded or served, for labor performed or materials used on or furnished to the Project under this Subcontract, Subcontractor shall pay and satisfy any such claim, lien or judgment. Subcontractor agrees within ten (10) days after written demand to cause the effect of any such suit, claim or lien to be removed from the premises, and in the event Subcontractor shall fail so to do, Contractor is authorized to use whatever means it may deem appropriate to cause said claim, lien or suit to be removed or dismissed and the cost thereof, together with actual attorneys' fees, shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may contest any such claim, lien or suit provided it causes the effect thereof to be removed, promptly in advance, from the premises, and shall further take such actions as may be necessary to cause Owner not to withhold any monies due to Contractor from Owner by reason of such claims, liens or suits.

It is understood and agreed that the full and faithful performance of this Subcontract on the part of Subcontractor (including payment of any obligations due from the Subcontractor to Contractor and payment of 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 Subcontract shall be impressed with a trust in favor of labor and material suppliers furnishing labor and materials to Subcontractor for the Work.

## **SECTION 10. PROVISIONS FOR INSPECTION**

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

## **SECTION 11. MATERIALS AND WORK FURNISHED BY OTHERS**

In the event the Work includes installation of materials or equipment furnished by others or Work to be performed in areas to be constructed or prepared by others, it shall be the responsibility of Subcontractor to examine and accept, at the time of delivery or first access, the items so provided and thereupon handle, store and install the items with such skill and care as to insure a satisfactory completion of the Work. Use of such items or commencement of Work by Subcontractor in such areas shall be deemed to constitute acceptance thereof by Subcontractor. Loss or damage due to acts of Subcontractor shall be charged to the account of Subcontractor and deducted from monies otherwise due under this Subcontract.

## **SECTION 12. PROTECTION OF WORK**

Subcontractor shall effectually secure and protect the Work and assume full responsibility for the condition thereof until final acceptance by Architect/Engineer, Owner and Contractor. Subcontractor further agrees to provide such protection as is necessary to protect the work and the workers of Contractor, Owner and other subcontractors from Subcontractor's operations.

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

## **SECTION 13. LABOR RELATIONS**

**13.1** Subcontractor shall keep a representative at the job site during all times when the Work is in progress, and such representative shall be authorized to represent and bind Subcontractor as to all phases of the Work. Prior to commencement of the Work, Subcontractor shall provide Contractor with contact information for Subcontractor's representative, and in the event of any change of representative, Subcontractor shall provide Contractor with contact information for the new representative, prior to the change becoming effective.

Subcontractor agrees to be bound and to comply with all the terms and conditions of the labor agreements listed in Section 25 to the same degree and extent as if Subcontractor were a party to those agreements, including payments into the employee benefit trust funds required by the labor agreements listed in Section 25, and including Subcontractor's submission to, and Subcontractor's compliance with, the arbitration and other dispute resolution requirements of the labor agreements listed in Section 25. Subcontractor agrees to comply with the terms and provisions contained in such agreements for resolution of jurisdictional disputes. In the absence of any such procedure, or if such procedure fails to promptly resolve any jurisdictional dispute, Subcontractor agrees, at its own cost and expense, upon request of Contractor, to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board.

Subcontractor acknowledges that terms and conditions of the labor agreements listed in Section 25 may require that Subcontractor comply with additional labor agreements with unions affiliated with the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) but not listed in Section 25. If the terms and conditions of the listed labor agreements so require, Subcontractor shall perform the Work pursuant to all terms and conditions of the labor agreement with a union affiliated with the AFL-CIO.

Should there be picketing on the job site, and Contractor establishes a reserved gate for Subcontractor's use, Subcontractor shall continue the proper performance of the Work without interruption or delay.

Subcontractor further promises and agrees that it will bind and require all of its subcontractors and their subcontractors performing any Work of the type covered by any of the labor agreements listed below to agree to all of the foregoing promises and undertakings, to the same effect as herein provided.

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

**13.3 Compliance with Laws.**



**13.3.1** Subcontractor shall comply with and agrees to be bound by all applicable federal, state and local laws and regulations, including, but not limited to, all provisions of the Fair Labor Standards Act, the Americans With Disabilities Act, the federal Family and Medical Leave Act, the California Labor Code, the California Fair Employment and Housing Act, and the California Family Rights Act. Subcontractor shall be solely responsible for providing its employees with the timely and accurate payment of any wages, salaries, fringe or other benefits, other compensation or contributions, or expense reimbursement in accordance with all federal, state and/or local laws, including without limitation, the Fair Labor Standards Act, as amended, (29 U.S.C. 201, et seq.), the California Labor Code and Industrial Welfare Commission wage orders. Similarly, Subcontractor shall be solely responsible for any insurance and taxes, including health insurance, taxes, FICA, and other governmental levies related to the salaries, wages, benefits and/or other compensation provided to its employees.

Subcontractor, and any lower tier subcontractors of Subcontractor, shall provide to Contractor within five (5) business days of Contractor's written request, (i) daily reports identifying all personnel who worked on the Project and the hours worked; and/or (ii) all payroll records which contain the information set forth in subdivision (a) of Section 226, and which are payroll records as contemplated by Section 1174 of its employees who are providing labor on the project. Such records include, without limitation, time cards and time sheets, cancelled checks, electronic fund transfers to employees, cash receipts, trust fund reporting forms, and records reflecting work performed by employees of the Subcontractor or the lower tier subcontractor on the project and payment of wages, benefits or contributions for such work. The payroll records 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. The payroll records must contain information sufficient to apprise the Contractor of the Subcontractor's, or lower tier subcontractor's, payment status in making fringe or other benefit payments or contributions to a third party on the employee's behalf.

Subcontractor shall provide written notice to Contractor of the award of any work within the scope of the Agreement to any independent contractor or subcontractor of any tier within five (5) business days of the award of such work, which notice shall state the project name, name and address of the independent contractor or subcontractor, name of the subcontractor with whom each lower tier subcontractor is under contract, anticipated start date, duration, and estimated journeymen and apprenticeship hours, and contact information for its lower tier subcontractors on the project.

Subcontractor's obligation to provide information required by this section is a material term of this Agreement. Subcontractor's failure to provide such information timely shall be deemed a material breach of this Agreement, and Contractor shall be entitled to all remedies for breach of contract including but not limited to termination of Subcontractor's right to proceed under the Agreement and the right to withhold all sums owed to Subcontractor under this Agreement until such information is provided to Contractor.

**13.3.2** For all public works contracts subject to the payment of prevailing wages under California Labor Code section 1720 et seq., Subcontractor shall comply with and agrees to be bound by California Labor Code sections 1725.5, 1771.1, and 1771.4, and acknowledges that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. California Labor Code section 1771.1(a) provides that a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of California Public Contract Code section 4104, or engage in the performance of any contract for public work unless currently registered and qualified to perform public work pursuant to Section 1725.5. Subcontractor represents that as of the date of execution of this Agreement, Subcontractor is registered and qualified to perform public work pursuant to California Labor Code section 1725.5 and that attached hereto as Exhibit "B" is confirmation of Subcontractor's current registration status. Subcontractor shall maintain its registration and qualification pursuant to California Labor Code section 1725.5 at all times during the performance of the Work. Pursuant to California Labor Code section 1771.4, Subcontractor further represents that at all times during performance of the Work, it will submit on a monthly

basis – or more frequently, if specified in the contract with the awarding body – certified payroll records to the California Labor Commissioner in a format prescribed by the California Labor Commissioner.

Attached hereto as Exhibit "A" are the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815. These provisions are incorporated by reference into this Subcontract when payment of prevailing wages is required by contract or law, and Subcontractor agrees to comply with these provisions and all interpretations thereof by the Director of the Department of Industrial Relations insofar as they are applicable to Subcontractor. Upon request, Subcontractor shall submit certified payroll records to Contractor no later than three (3) working days after labor has been paid. Prior to receiving final payment for Work performed on the Project, when payment of prevailing wages is required by contract or law, Subcontractor shall sign an affidavit under penalty of perjury that Subcontractor has paid the specified general prevailing rate of per diem wages to its employees for the proper craft needed to fulfill the obligations of this Subcontract and all amounts due pursuant to Labor Code section 1813.

**13.3.3.** Subcontractor further promises and agrees that it will bind and require all of its sub- subcontractors and their subcontractors performing any Work under this Subcontract to agree to all of the foregoing promises and undertakings contained in Sections 13.3.1 and 13.3.2, to the same effect as herein provided.

**13.4**  If box is checked, Contractor has entered into the Southern California Laborers Master Labor Agreement, effective July 1, 2015 to June 30, 2018, and Subcontractor agrees to all of the following promises and undertakings contained in this Section 13.4.

Subcontractor acknowledges that Contractor has entered into the following labor agreements covering work at the construction jobsite with the Southern California District Council of Laborers and its affiliated Local Unions: Southern California Laborers Master Labor Agreement, effective July 1, 2015 to June 30, 2018 ("Master Labor Agreement"). The Subcontractor acknowledges and agrees that a copy of the Master Labor Agreement is available to Subcontractor.

Subcontractor agrees that it is bound to and shall comply with all of the terms and conditions of the Master Labor Agreement referenced above, including wages, trust fund contributions, working rules, the grievance/arbitration procedure and any other mechanism for the resolution of dispute contained in the Master Labor Agreement, on all covered work performed in the geographic area of the Master Labor Agreement, whether or not the work is performed for the Contractor.

Subcontractor further agrees to bind all its subcontractors performing job site work of the type covered by the Master Labor Agreement referenced above to become bound and comply with all of the terms and conditions of the Master Labor Agreement.

Subcontractor acknowledges that the Southern California District Council of Laborers and its affiliated Local Unions, and the Construction Laborers Trust Funds for Southern California are the intended third party beneficiaries of this contractual provision and may enforce this provision directly against Subcontractor.

## **SECTION 14. RECOURSE BY CONTRACTOR**

### **14.1 Suspension.**

**14.1.1 Suspension by Owner for Convenience.** Should Owner, for its convenience, suspend the entire Project or any part which includes the Work, and such suspension is not due to any act or omission of Contractor, or any other person or entity for whose acts or omissions Contractor may be liable, Contractor shall notify Subcontractor in writing and, upon receiving notification, Subcontractor shall immediately suspend the Work. Subcontractor, after receipt of Contractor's notice, shall notify Contractor in writing in sufficient time to permit Contractor to provide timely notice to Owner in accordance with the Prime Contract of the effect of such order upon the Work. To the extent provided in the Prime Contract and to the extent Contractor recovers such on Subcontractor's behalf, the Subcontract Price and the time for performance shall be equitably adjusted by Subcontract Change Order for the cost

and delay resulting from any such suspension. Contractor agrees to cooperate with Subcontractor, at Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension and to permit Subcontractor to prosecute the claim, in the name of Contractor, for the use and benefit of Subcontractor.

**14.1.2 Suspension by Contractor.** The Contractor may, for its convenience, order Subcontractor in writing to suspend all or any part of the Work for such period of time as Contractor determines is appropriate. Phased work or interruptions of the Work for short periods of time shall not be considered a suspension. Subcontractor, after receipt of Contractor's written order, shall notify Contractor in writing the effect of such order upon the Work. The Subcontract Price and/or the time for performance shall be adjusted by Subcontract Change Order for any increase in the price or time of performance of the Work caused by such suspension. No claim under this Section shall be allowed for any costs incurred more than fourteen (14) days prior to Subcontractor's written notice to Contractor. Neither the Subcontract Price nor the time for performance shall be adjusted for any suspension, to the extent that the suspension is due in whole or in part to the fault or negligence of Subcontractor or otherwise the responsibility of Subcontractor. If and to the extent the suspension is due to a cause for which Subcontractor would have been entitled only to a time extension under this Subcontract, the Subcontract Price shall not be adjusted.

## **14.2 Failure of Performance.**

**14.2.1 Right to Adequate Assurance.** When reasonable grounds for insecurity arise with respect to Subcontractor's performance, Contractor may in writing demand adequate assurance of due performance. Subcontractor's failure to provide within ten (10) days of the demand such assurance of due performance as is adequate under the circumstances of the particular case is a default under Section 14.2.2.

**14.2.2 Notice to Cure.** If Subcontractor at any time refuses or neglects to supply enough properly skilled workers and proper materials, or fails to properly and diligently prosecute the Work, or fails to make prompt payment to its workers, sub-subcontractors or suppliers, or becomes delinquent with respect to contributions or payments required to be made to any health and welfare, pension, vacation, apprenticeship or other employee benefit program or trust, or fails to provide adequate assurance pursuant to Section 14.2.1, or is otherwise guilty of a material breach of a provision of this Subcontract, and fails within forty-eight (48) hours after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then Contractor, without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

- (a) supply such number of workers and quantity of materials, equipment and other facilities as Contractor deems necessary for completion of the Work or any part thereof which Subcontractor has failed to complete or perform, and charge the cost thereof to Subcontractor, who shall be liable for the payment of that cost and a markup of fifteen percent (15%) for overhead and profit, plus actual attorneys' fees incurred as a result of Subcontractor's failure of performance;
- (b) contract with one or more additional contractors to perform such part of the Work as Contractor shall determine will provide the most expeditious completion of the entire Project and charge the cost thereof to Subcontractor, who shall be liable for the payment of that cost and a markup of fifteen percent (15%) for overhead and profit, plus actual attorneys' fees incurred as a result of Subcontractor's failure of performance; and
- (c) withhold payment of any monies due Subcontractor pending corrective action to the extent required by and to the satisfaction of Contractor.

In the event of an emergency affecting the safety of persons or property, Contractor may proceed as above without notice to Subcontractor.

**14.2.3 Termination for Default.** If Subcontractor fails to commence and satisfactorily continue correction of a default within forty-eight (48) hours after receipt by Subcontractor of a notice issued under Section 14.2.2, then Contractor may terminate Subcontractor's right to perform under this Subcontract and use any materials, implements, equipment, appliances or tools furnished by or belonging to Subcontractor to complete the Work without any further

compensation to Subcontractor for such use. Contractor also may furnish those materials and equipment, and/or employ such workers or subcontractors as Contractor deems necessary to maintain the orderly progress of the Project.

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

**14.2.4 Termination for Convenience.** Contractor may, for its convenience at any time and for any reason, terminate Subcontractor's performance of the Work. Cancellation shall be by service of written notice to Subcontractor's place of business.

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

Subcontractor's remedy for termination under this subsection shall be limited to the following: (1) payment of that portion of the Subcontract Price due for all Work properly completed in conformity with this Subcontract prior to termination; (2) payment for the cost of material and equipment ordered for the Work, which has been delivered to Subcontractor, or which Subcontractor is liable to accept delivery: this material and equipment shall become the property of (and be at the risk of) Contractor when paid for by Contractor, and Subcontractor shall place the same at Contractor's disposal; and, (3) payment for other close-out costs and liabilities properly and reasonably incurred by Subcontractor related to the Work. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Subcontractor prior to the date of the termination of this Subcontract. In no event shall payment due hereunder exceed the amount due for approved units of Work or percentage of completion. Subcontractor shall not be entitled to any claim or lien against Contractor or Owner for any additional compensation or damages, such as but not limited to loss of anticipated profits, unallocated overhead or consequential damages in the event of such termination and payment.

### **14.3 Bankruptcy.**

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

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

**14.3.2 Interim Remedies.** If Subcontractor is not performing in accordance with the Contractor's schedule at the time of entering an order for relief, or at any subsequent time, Contractor, while awaiting the decision of Subcontractor or its trustee to reject or to accept this Subcontract and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under this Section as are reasonably necessary to maintain the Contractor's schedule.

Contractor may offset against any sums due or to become due Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, and reasonable overhead, profit and actual attorneys' fees incurred as a result of Subcontractor's non-performance. Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Price.

## **SECTION 15. INDEMNIFICATION**

**15.1 Subcontractor's Indemnification and Defense of Contractor.** With the exception that this Section 15.1 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the statutes or public policy of the State of California, Subcontractor shall defend, indemnify, and save harmless Contractor, including its officers, directors, partners, joint venturers, agents, employees, affiliates, parents and subsidiaries, and each of them, of and from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity, of every kind and nature whatsoever ("Claims") arising out of or in connection with Subcontractor's obligations under this Subcontract. Subcontractor's duties under this Section 15.1 shall apply to Claims for, but not limited to:

- (a) Personal injury, including, but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to, any employees or agents of Subcontractor, Owner, Contractor, or any other subcontractor and/or damage to property of anyone (including loss of use thereof) caused or alleged to be caused in whole or in part by any act or omission of Subcontractor, its employees, agents, sub-subcontractors and others for whom Subcontractor is responsible.
- (b) Damages and penalties imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance or statute, caused by the action or inaction of Subcontractor.
- (c) Infringement of any patent rights which may be brought against the Contractor arising out of the Work.
- (d) Claims and liens (see Section 9) for labor performed or materials used or furnished to be used in performance of the Work, including all incidental or consequential damages resulting to Contractor from such claims or liens.
- (e) Subcontractor's failure to fulfill the covenants set forth in each subpart of Section 13.
- (f) Failure of Subcontractor to comply with the provisions of Section 16.
- (g) Any violation or infraction by Subcontractor of any law, order, citation, rule, regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees, including, but not limited to, the use of Contractor's or others' equipment, hoists, elevators, or scaffolds (see Sections 18 and 20).
- (h) Any failure or alleged failure to comply with the terms of this Subcontract or the Contract Documents.

The indemnification requirements of this Section 15.1 shall extend to Claims occurring after this Subcontract is terminated as well as while it is in force. Such indemnity provisions apply to the fullest extent permitted by law, regardless of any passively negligent act or omission of Contractor, or its agents or employees. Subcontractor, however, shall not be obligated to indemnify Contractor for Claims arising from the active negligence, sole negligence, or willful misconduct of Contractor, or its agents, employees or independent contractors who are directly responsible to Contractor, or for defects in design furnished by such persons, or for Claims that do not arise out of the Work.

Except as otherwise provided by the statutes or public policy of the State of California, Subcontractor's obligations under this Section do not affect, and are not affected by, the insurance required of Subcontractor pursuant to Section 16.

With respect to Claims by an employee of Subcontractor, anyone directly or indirectly employed by Subcontractor or anyone for whose acts it may be liable, the indemnification obligation under this Section shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

Subcontractor shall promptly pay and satisfy any judgment or decree that may be rendered against Contractor or its agents or employees, or any of them, arising out of any Claim covered by this Section 15.

## 15.2 Defense of Claims.

- (a) With respect to any Claims against Contractor as to which Subcontractor owes to Contractor a defense obligation, Subcontractor, having considered its options available at law, hereby elects to proceed under California Civil Code Sections 2782(e)(2) and/or 2782.05(e)(2), and further agrees that upon final resolution of any such Claim, any reimbursement for defense fees and costs previously paid by Subcontractor shall be governed by such provisions of the California Civil Code and the provisions of Section 17.
- (b) Subcontractor shall, at Subcontractor's own cost, expense and risk, defend (with counsel designated by Contractor) all Claims as defined in Section 15.1 that may be brought or instituted by third persons, including, but not limited to, governmental agencies or employees of Subcontractor, against Contractor, subject to the provisions of Civil Code Sections 2782(e)(2) and/or 2782.05(e)(2).
- (c) Subcontractor shall reimburse Contractor or its agents or employees for any and all legal expense incurred by any of them in connection herewith or in enforcing the indemnity granted in this Section 15.

**15.3 Risk of Loss.** All Work done at the site or in preparing or delivering materials or equipment, or any or all of them, to the site shall be at the risk of Subcontractor exclusively until the completed Work is accepted by Contractor and Owner. The parties recognize that the waiver of subrogation provision of Section 16.10 and the builder's risk insurance provision of Section 16.12 may reduce the risk of loss and property damage indemnification obligations of Subcontractor.

**15.4 Subcontractor's Indemnification and Defense of Owner and Others.** With the exception that this Section 15.4 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the statutes or public policy of the State of California, Subcontractor shall defend, indemnify, and save harmless Owner, including its officers, directors, partners, joint venturers, agents, employees, affiliates, parents and subsidiaries, and each of them, as well as any other persons that Contractor is required to indemnify and defend under the Contract Documents, of and from any and all Claims, to the same extent that Contractor is required to defend and/or indemnify Owner and such other persons, but only with respect to Claims arising out of or in connection with Subcontractor's performance under this Subcontract.

**15.5 Sub-subcontractor Indemnity.** Subcontractor shall ensure that its sub-subcontractors of every tier also fully indemnify and defend Contractor, Owner and any other persons that Contractor is required to indemnify and defend under the Contract Documents, to the same extent that Contractor is required to indemnify and defend such persons.

**15.6 Construction of Section.** Notwithstanding any of the provisions of this Section 15, if it is finally determined by a court of competent jurisdiction that any of such provisions are void or unenforceable under governing law, then such provisions shall be deemed stricken from this Subcontract and the remaining provisions shall remain in full force and effect and shall be construed to provide for the maximum defense and indemnification obligation by Subcontractor permitted by law.

## **SECTION 16. INSURANCE**

**16.1 Subcontractor's Insurance.** Before commencing the Work, and as a condition of any payment due under this Subcontract, Subcontractor shall, at its own expense, procure and maintain insurance on all of its operations under this Subcontract whether the operations are by the Subcontractor or by anyone for whose acts Subcontractor may be liable. Insurance companies must be authorized to do business in the State of California and be A.M. Best's rated A-VII or better. Such coverage shall be acceptable to Contractor, which acceptance shall not be unreasonably withheld, and shall include coverage as follows:

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

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

If there is an exposure of injury to Subcontractor's employees under the U. S. Longshore 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 as set forth in Section 26.

(b) Commercial General Liability Insurance. Subcontractor shall carry primary Commercial General Liability insurance (Insurance Services Office, Form CG 00 01) covering all operations by or on behalf of Subcontractor providing insurance for bodily injury, personal injury, and property damage for the limits of liability indicated below including but not limited to coverage for:

- (1) Premises and Operations
- (2) Products and Completed Operations
- (3) Contractual Liability including Subcontractor's bodily injury and property damage indemnity obligations assumed in Section 15
- (4) Explosion, Collapse and Underground Hazards (Including Subsidence and Any Other Earth Movement)
- (5) Personal Injury Liability
- (6) Liability of Independent Contractors
- (7) Construction means, methods, techniques, sequences and procedures including safety and field supervision

Items 1-7 above shall not be subject to any of the following limiting or exclusionary endorsements:

- subsidence or earth movement
- prior acts or prior work
- action over - precluding indemnity for passive acts of Contractor contributing to injury of a Subcontractor's employee
- contractual limitation – eliminating cover for assumed liability
- supervisory or inspection service limitation
- insured vs. insured cross suits
- clauses terminating coverage after a designated period of time
- residential or habitational limitation if the Work includes residential or habitational work
- classification limitation limiting coverage for work to be performed
- defense inside limits provision
- sub-subcontractor insurance coverage exclusions for failure to satisfy coverage conditions
- any limitation on any insured's right to satisfy any deductible or self-insured retention

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

\$1,000,000 Each Occurrence (Combined Single Limit for Bodily Injury and Property Damage)  
\$1,000,000 for Personal Injury Liability  
\$2,000,000 Aggregate for Products-Completed Operations  
\$2,000,000 General Aggregate

The general aggregate limit shall apply separately to the Work.

(c) 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.

(d) **Excess Liability Insurance.** A \$3,000,000 Excess Liability Insurance policy shall be maintained over the General Liability, Pollution, and Automobile Liability coverage. Such Excess coverage shall, at a minimum, include the items set forth in Paragraph (b) 1-7 above, and the insurance for such items shall not be subject to any of the limiting or exclusionary policy provisions or endorsements specified in Paragraph (b). Higher limits of liability may be required, and any such requirement is set forth in Section 26.

(e) If the Work is to be performed within fifty (50) feet of any railroad, Subcontractor's Commercial General Liability policy shall be endorsed to delete the exclusion for work performed within fifty (50) feet of a railroad.

(f) If performance of the Work includes a risk of causing disturbance or release of hazardous materials, Subcontractor shall maintain pollution liability insurance for bodily injury, property damage and environmental damage resulting from pollution (including respirable crystalline silica and other naturally occurring substances) and related cleanup costs, arising out of or related to the Work by the Subcontractor, his agents, representatives, employees, or subcontractors of any tier. Such pollution liability coverage shall have limits of \$1,000,000 per occurrence, \$2,000,000 aggregate, and shall be maintained for a minimum of five (5) years after completion of the work, including the disposal of hazardous material.

**16.2 Duration of Insurance.** Subcontractor shall maintain all insurance required by this Section 16 at all times during the performance of the Work, and for such longer periods as set forth in the Contract Documents. In addition, Subcontractor shall maintain primary and excess products liability and completed operations coverage for at least four years following completion of the Project and its acceptance by Owner. Certificates of Insurance requirements set forth in Section 16.6 apply on an annual basis.

**16.3 Additional Insured Requirement.** Owner, and Contractor, and any other entity which Contractor is required to name as an additional insured under the Prime Contract shall be named as additional insureds under the Commercial General Liability and pollution policies required by this Section 16, and such insurance afforded the additional insureds shall apply as primary insurance. Any other insurance maintained by Owner or Contractor shall be excess insurance and shall not be called upon to contribute to Subcontractor's primary or excess insurance carrier's duty to defend or indemnify unless required by law. The excess insurance required above shall also afford additional insured protection to Owner, and Contractor and any other entity which Contractor is required to name as an additional insured under the Prime Contract. Such additional insurance coverage shall be provided by Subcontractor at no additional cost or expense to Contractor.

The primary additional insured insurance coverage required by this Section shall be provided by Insurance Services Office, Additional Insured Endorsement Forms CG 20 10 and CG 20 37, or equivalent, providing coverage for ongoing and completed operations. The duty to provide such additional insured coverage is independent of the defense and indemnity obligations set forth in Section 15. This Section 16.3 shall, in no event, be construed to require that additional insured insurance coverage be provided to a greater extent than permitted under the statutes or public policy of the State of California.

Subcontractor shall name Owner and any other entity which Contractor is required to name as an additional insured under the Prime Contract as an additional insured to the same extent and using the same forms that Contractor is required to designate Owner and such other persons, but only with respect to Claims arising out of or in connection with Subcontractor's obligations under this Subcontract.

**16.4 Sub-subcontractor Insurance.** Subcontractor shall ensure that its sub-subcontractors of every tier also carry insurance with the limits of liability specified above. Contractor may require written proof that the requisite insurance is being carried. Such written proof shall be furnished to Contractor within ten (10) days after such request has been made. Any such insurance coverage required of sub-subcontractors shall name Owner and Contractor as additional insureds, in the same manner as required by Section 16.3, at no additional cost or expense to Contractor.

**16.5 Supplementary Liability Provisions.**



- (a) Subcontractor shall not provide general liability insurance under any Claims Made or Modified Occurrence General Liability form without the express written consent of Contractor.
- (b) Any self-insurance program providing coverage in excess of \$25,000 per occurrence requires the express written consent of Contractor.
- (c) The Contractor may allow deductible provisions and/or self-insured retentions of more than \$25,000 per occurrence if Subcontractor is willing to post security, guaranteeing payment of losses and defense expenses for a period of one year after the Project is completed.
- (d) Standard ISO Form CG 00 01 exclusions will be allowed. Allowance of any additional exclusions or coverage-limiting endorsements is at the discretion of the Contractor.
- (e) If the Work is of a substantial maritime nature, special maritime coverages such as Longshore and Harbor Workers, Jones Act and Protection and Indemnity coverage shall be required as set forth in Section 26.
- (f) If consolidated wrap-up type liability and excess coverage is adopted for the Project, then such wrap-up program liability requirements, including builder's risk programs, are set forth in Section 26.
- (g) If the Work includes design/build work or services, Subcontractor shall obtain Professional Liability coverage as set forth in Section 26.
- (h) Increased Limits of Liability, if any, are set forth in Section 26.
- (i) If the Work involves the moving, lifting, lowering, rigging or hoisting of property and/or equipment, Subcontractor shall obtain Rigger's Liability coverage to insure against loss or damage to such property or equipment.
- (j) If Subcontractor or its subcontractors or suppliers use any owned, leased, borrowed, chartered or hired aircraft of any type in the performance of the Work, then Aircraft Liability coverage shall be maintained, as set forth in Section 26.
- (k) If the Work involves the remediation of, or creates an exposure to, any hazardous materials, Subcontractor shall maintain Contractor's Pollution Liability coverage, as set forth in Section 26.

**16.6 Certificates of Insurance.** As evidence of the insurance required by this Subcontract, certificates of insurance, including the required additional insured and other endorsements, shall be furnished to Contractor prior to the performance of any Work. Delivery of such certificates and endorsements shall be a condition of any payment due under this Subcontract. Certificates shall set forth deductible amounts in excess of \$5,000 applicable to each policy. Contractor has the right to require agent-certified copies of any of the required policies. If such request is made, such policies shall be emailed to Contractor within ten (10) days. Receipt by Contractor of any certificate of insurance or additional insured endorsement which does not comply with the requirements of this Section 16 shall not act as a waiver to enforcement of such requirements at a later date.

**16.7 Responsibility for Deductible.** Regardless of the consent to exclusions, coverage limitations or deductibles by Contractor, Subcontractor shall be responsible for any deductible amount or any loss arising out of coverage denials by its insurance carrier(s).

**16.8 Maintenance/Cancellation of Insurance.** Contractor may take whatever actions are necessary to assure Subcontractor's compliance with its obligations under this Section 16. Should any insurance policy lapse or be canceled during the performance of the Work, or thereafter, 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 the insurance requirements herein is a material breach of this Subcontract. In the event Subcontractor fails

to maintain any of the insurance coverage required, Contractor may, but is not required to, maintain such coverage and charge the expense to Subcontractor. There will be no cancellation or reduction of coverage of any required insurance without an unqualified, thirty (30) day, prior written notice to Contractor. Such notice may be sent by Subcontractor's insurance carrier, insurance broker, or Subcontractor.

**16.9 Subcontractor's Duties.** Any acceptance of insurance certificates by Contractor shall in no way limit or relieve Subcontractor of its duties and responsibilities under this Subcontract including the duty to defend, indemnify and hold harmless Contractor, Owner and others persons as set forth in Section 15. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Subcontractor from liability in excess of such coverage nor shall it preclude Contractor from taking such other actions as are available to it under any other provision of this Subcontract or by law.

**16.10 Waiver of Subrogation.** Subcontractor waives all rights against Contractor, Owner, all other subcontractors, and their agents, officers, directors and employees, for recovery of damages to the extent such damages are covered by the Commercial General Liability and Workers' Compensation insurance required of Subcontractor. Contractor and Subcontractor waive all rights against each other and against all other subcontractors and Owner for loss or damage to property to the extent covered by any other insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance. If any applicable policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent. Copies of General Liability and Worker's Compensation endorsements shall be provided to Contractor along with the certificates of insurance required by Section 16.6.

**16.11 Owner's Property Insurance.** Property insurance is to be provided on the completed Project by Owner, through a policy or policies other than those insuring the Project during the construction period.

**16.12 Builder's Risk Insurance.** Select one of the following options:

Builder's Risk insurance is provided for the Project. Such insurance shall apply to any of Owner's or Contractor's property in the care, custody or control of Subcontractor. Subcontractor shall be responsible for the first \$5,000 of insurance policy deductible amount applicable to damage to the Work and/or damage to other work caused by Subcontractor.

Builder's Risk insurance is not provided for the Project. The extent of Builders Risk or other property insurance available to Subcontractor (if any) during the course of construction is specified in Section 26.

**16.13 Supplementary Insurance.** If not provided by Builder's Risk coverage, Subcontractor shall maintain in full force and effect property insurance for all equipment, and property obtained by or for Subcontractor which is to become a part of the Work during installation and while such equipment and property is stored at the jobsite, at temporary locations, or while in transit to the Project from such temporary locations. Subcontractor shall also be responsible for insuring Subcontractor's owned, rented or borrowed equipment. Once the Work is accepted by Contractor, Owner or Contractor shall provide Project insurance and appropriate waivers of subrogation shall apply.

## **SECTION 17. DISPUTE RESOLUTION PROCEDURE**

### **17.1 Preliminary Dispute Resolution Procedure and Agreement to Arbitrate**

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

**17.1.2 Settlement Negotiations.** Subject to Prime Contract dispute resolution procedures under Section 17.1.1, and as to disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the Prime Contract, promptly upon notification by the Subcontractor of a dispute, the Contractor and Subcontractor shall meet to informally resolve such dispute. In the event that no resolution is achieved, the parties, prior to the initiation of any action or proceeding under this Section, shall make a good faith effort to resolve the dispute by negotiation between representatives with decision-making power, who, to the extent possible, shall not have had substantive involvement in the matters of the dispute, unless the parties otherwise agree. To facilitate the negotiation, the parties agree either to fashion a procedure themselves or seek the assistance of a person or organization experienced in alternative dispute resolution procedures, such as mediation or other similar procedures.

**17.2 Arbitration Procedures.** In the event the Prime Contract contains an arbitration provision or for disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the Prime Contract, or allocation issues pertaining to Section 15.2(a) which were resolved by the trier of fact in any underlying litigation or binding dispute resolution, the following shall apply:

**17.2.1 Notice of Demand.** For arbitration under the Prime Contract, notice of the demand for arbitration shall be filed in writing with the other party to this Subcontract and shall conform to the requirements of the arbitration provision set forth in the Prime Contract. For claims not involving the acts or omission or otherwise the responsibility of the Owner under the Prime Contract, the parties hereto shall submit any and all disputes arising under or relating to the terms and conditions of this Subcontract to arbitration in accordance with the Construction Industry Rules of the American Arbitration Association then in effect. In either case, the demand for arbitration shall be made within a reasonable time after written notice of the claim, dispute or other matter in question has been given, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim dispute or other matter in question would be barred by the applicable statute of limitations.

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

**17.2.3 Work Continuation and Payment.** Unless otherwise agreed in writing, Subcontractor shall carry on the Work and maintain the Contractor's schedule pending arbitration, and if so, Contractor shall continue to make payments in accordance with this Subcontract.

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

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

#### **SECTION 18. COMPLIANCE WITH ALL LAWS AND SAFETY PRACTICES**

Subcontractor shall ascertain the applicability of, and shall timely and fully comply with all laws, orders, citations, rules, regulations, standards and statutes affecting or relating to this Subcontract or its performance, including but not limited to those with respect to occupational health and safety, the handling and storage of hazardous materials, accident prevention, use of safety equipment, and safety practices, including the accident prevention and safety programs of Owner and Contractor. Subcontractor's safety obligations include but are not limited to the safe handling of silica and other potentially hazardous materials.

Subcontractor shall conduct regular inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for providing a safe place to work for its employees and for employees of its subcontractors and suppliers of material and equipment, for adequacy of and required use of all safety equipment and for full compliance with the aforesaid laws, orders, citations, rules, regulations, standards, statutes and programs.

If Contractor determines, in its sole discretion, that Subcontractor's activities are unsafe or that Subcontractor's safety record is unacceptable, Contractor may suspend performance of the Work until such matters are corrected, or may declare Subcontractor to be in default under Section 14.2.2.

#### **SECTION 19. WARRANTY**

Subcontractor warrants to Owner and Contractor that all materials and equipment furnished shall be new unless otherwise specified and that all Work shall be performed in a good and workmanlike manner, shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty provided in this Section 19 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

#### **SECTION 20. USE OF CONTRACTOR'S EQUIPMENT**

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

#### **SECTION 21. ASSIGNMENT OF CONTRACT**

Subcontractor shall not, without the prior written consent of Contractor, assign, transfer or sublet any portion or part of the Work, nor assign any payment hereunder to others.

#### **SECTION 22. 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 therefor, pay all manufacturers' taxes, sales taxes, use taxes, processing taxes, and all federal and state taxes, insurance and contributions for social security and unemployment which are measured by wages, salaries, or other remunerations paid to Subcontractor's employees, whether levied under existing or subsequently enacted laws, rules or regulations. Subcontractor, upon request, shall furnish evidence satisfactory to Contractor that any or all of the foregoing obligations have been fulfilled.

**SECTION 23. CLEAN-UP**

At all times during the course of construction, Subcontractor shall perform the Work so as to maintain the Project site in a clean, safe and orderly condition. Upon completion of the Work, Subcontractor shall remove from the site all hazardous materials, temporary structures, debris and waste incident to its operation and clean all surfaces, fixtures, equipment, etc., affected by the performance of the Work.

**SECTION 24. ATTORNEYS' FEES**

In the event the parties become involved in litigation or arbitration with each other arising out of this Subcontract or other performance thereof in which the services of an attorney or other expert are reasonably required, the prevailing party shall be fully compensated for the cost of its participation in such proceedings, including the cost incurred for attorneys' fees and experts' fees. Such attorneys' fee award shall not be computed in accordance with any court schedule, but shall be such as to fully reimburse all attorneys' fees actually incurred in good faith, regardless of the size of a judgment, it being the intention of the parties to fully compensate for all attorneys' fees and experts fees paid or incurred in good faith. In the case of a dispute under the Prime Contract dispute resolution provisions, Subcontractor shall be entitled to such attorneys' fees and other costs as may be provided for under the Prime Contract.

**SECTION 25. LABOR AGREEMENTS**

The Contractor is signatory to the following labor agreements covering work on this Project:

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**SECTION 26. SPECIAL PROVISIONS:**

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTOR'S 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 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.

WHEREFORE, this Subcontract is executed by Contractor and Subcontractor on the dates set forth above their signatures below.

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

CONTRACTOR:

SUBCONTRACTOR:

\_\_\_\_\_

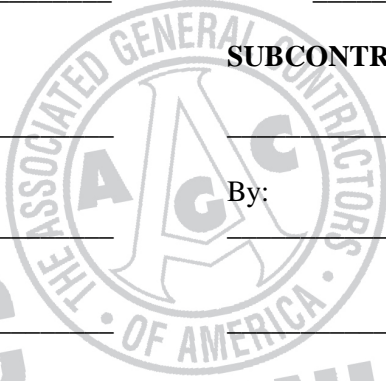
By:

By:

\_\_\_\_\_ (SIGNATURE) \_\_\_\_\_ (SIGNATURE)

\_\_\_\_\_ (NAME & TITLE) \_\_\_\_\_ (NAME & TITLE)

\_\_\_\_\_ (CONTRACTOR'S LICENSE NO.) \_\_\_\_\_ (CONTRACTOR'S LICENSE NO.)



AGC CALIFORNIA SAMPLE

## EXHIBIT "A"

### **REQUIRED CALIFORNIA LABOR CODE SECTIONS**

#### **§1771.**

Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

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

#### **§1775.**

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

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

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

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

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

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

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

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

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

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

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision

(a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

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

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

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

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

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

*(Amended by Stats. 2011, Ch. 677, Sec. 1. (AB 551) Effective January 1, 2012.)*

#### **§1776.**

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

*(Amended by Stats. 2014, Ch. 28, Sec. 71. (SB 854) Effective June 20, 2014.)*

#### **§1777.5.**

(a) This chapter does not prevent the employment of properly registered apprentices upon public works.

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

(2) Unless otherwise provided by a collective bargaining agreement, when a contractor requests the dispatch of an apprentice pursuant to this section to perform work on a public works project and requires the apprentice to fill out an application or undergo testing, training, an examination, or other preemployment process as a condition of

employment, the apprentice shall be paid for the time spent on the required preemployment activity, including travel time to and from the required activity, if any, at the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered. Unless otherwise provided by a collective bargaining agreement, a contractor is not required to compensate an apprentice for the time spent on preemployment activities if the apprentice is required to take a preemployment drug or alcohol test and he or she fails to pass that test.

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

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

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

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

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

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

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

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

apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) An apprenticeship program shall only be eligible to receive grant funds pursuant to this subdivision if the apprenticeship program agrees, prior to the receipt of any grant funds, to keep adequate records that document the expenditure of grant funds and to make all records available to the Department of Industrial Relations so that the

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

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

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

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

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

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

*(Amended by Stats. 2017, Ch. 553, Sec. 1. (AB 581) Effective January 1, 2018.)*

### **§1813.**

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

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

### **§1815.**

Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1½ times the basic rate of pay.

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

**EXHIBIT "B"**

**PROOF OF REGISTRATION UNDER CALIFORNIA LABOR CODE SECTION 1725.5**

