



**SUBCONTRACT AGREEMENT**

**Date**  
**Vendor Number:**  
**Job Number:**  
**Subcontract Number**

**THIS SUBCONTRACT** made on by and between:

**SUBCONTRACTOR**

and

**CONTRACTOR**

Phone:  
Telecopier:

Phone:  
Telecopier:

**RECITALS**

On or about, Contractor entered into a contract, hereafter called Prime Contract, with:

**OWNER**

N/A

hereafter called Owner, to perform construction work consisting of:

**PROJECT**

hereafter called the Project, in accordance with the terms and provisions of the Prime Contract, including the plans and specifications prepared by:

**ENGINEER/ARCHITECT**

hereafter called Engineer, and/or hereafter called Architect, and also including all general and special conditions, addenda and other documents forming or by reference made a part of the Prime Contract, all of which are hereafter collectively called the Contract Documents.

**AGREEMENTS**

**SECTION 1 - ENTIRE SUBCONTRACT**

Subcontractor certifies that he is fully familiar with all of the Contract Documents, the job site, and the conditions under which work is to be performed, that he enters into this Subcontract based upon his own investigation of all such matters, and that he is in no way relying upon the opinions or representations of Contractor. The Contract Documents are incorporated in this Subcontract by reference. Subcontractor is bound to Contractor in the same manner and to the same extent as Contractor is bound to Owner under the Contract Documents with respect to the work provided for in this Subcontract, and where in the Contract Documents reference is made to Contractor and the provision pertains to Subcontractor's trade, craft or type of work, then such provision shall be interpreted to apply to Subcontractor instead of Contractor. In the event of any conflict between this Subcontract and any of the Contract Documents, this Subcontract shall control. This Subcontract represents the entire agreement between Contractor and Subcontractor relating to the Project.

**SECTION 2 - SUBCONTRACT SCOPE OF WORK AND PRICE**

Subcontractor agrees to furnish all work, labor, services, materials, equipment and supervision required for the prompt and efficient completion of the following items of work, hereafter the Work, in strict accordance with this Subcontract and the Contract Documents, including all work necessary or incidental thereto:

<u>Owner Item</u>	<u>Item</u>	<u>Description</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total</u>
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Contractor agrees to pay Subcontractor for the strict performance of the Work, the sum(s) stated above, hereafter the Subcontract Price, subject to final determination of quantities where unit prices apply and to additions and deductions for changes in the Work as provided herein. Payments shall be in accordance with the schedule set forth in Section 3. If payment for any of the Work is based on a unit price, Subcontractor agrees to be bound by Owner's measurement of the quantity of work. If Owner does not measure the work, Subcontractor agrees to be bound by Contractor's measurement. The above prices include all applicable sales, use, franchise, excise and other taxes which may now or hereafter be levied.

**SECTION 3 - PAYMENT**

Contractor agrees to pay Subcontractor in monthly progress payments of ninety (90) percent of the value of the Work which has been completed and for which payment has been made by Owner to Contractor. The remaining ten (10) percent shall be retained by Contractor for not less than thirty-five days after the entire work required by the Prime Contract has been fully completed in conformity with the Contract Documents and has been delivered and accepted by Owner, Engineer and/or Architect and Contractor, and until Contractor has received final payment from Owner. Any payments by Contractor under this Subcontract shall be subject to final audit and adjustment. Subcontractor shall immediately reimburse Contractor if there is any overpayment. Contractor may deduct or offset from any payments to Subcontractor any amounts owed to Contractor (or to Teichert Aggregates, Teichert Readymix, Teichert Precast or A. Teichert & Son, Inc. doing business under any other name) by Subcontractor arising out of the performance of this Subcontract or any other agreement, event or transaction, whether or not related to this Subcontract. Subcontractor shall furnish to Contractor California statutory conditional and unconditional waiver and release forms, payroll affidavits, receipts, vouchers, and releases of claims for work, labor, services, material and equipment furnished under or in connection with this Subcontract, all in a form satisfactory to Contractor. No payment shall be made, except at Contractor's option, unless such documentation has been furnished. Any payment made without such documentation shall not be construed as a waiver of Contractor's right to require such documentation prior to further payments. Any payment made prior to final completion and acceptance of the Work shall not be construed as acceptance of any part of the Work.

The full and faithful performance of this Subcontract, including payment of any amounts owed by Subcontractor to any persons furnishing work, labor, services, material or equipment, or for union trust fund payments, is a condition precedent to Subcontractor's right to receive any progress payment or final payment. Any monies paid to Subcontractor under this Subcontract shall be deemed and treated as trust funds which shall not be diverted by Subcontractor for other purposes until such obligations have been discharged. Contractor reserves the right to make payment by joint check or by direct check to Subcontractor's material suppliers, subcontractors and any person or firm who has or asserts a right of action against Contractor or Contractor's surety or who has or asserts lien or stop notice rights in connection with the Project.

If Owner or any other person responsible for providing construction funds delays in making payment to Contractor from which payment to Subcontractor is to be made, Contractor 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 and Subcontractor require to pursue to conclusion their legal remedies against Owner and/or any other person responsible for providing construction funds to obtain payment, including but not limited to mechanic's lien remedies.

**SECTION 4 - SUBCONTRACT TIME**

Time is of the essence of this Subcontract. Subcontractor shall prosecute the Work in a prompt and diligent manner whenever the Work or any part of it becomes available or at such other time or times as Contractor may direct. Subcontractor shall endeavor to promote the general progress of the entire construction and shall not, by delay or otherwise, interfere with or hinder the work of Contractor or any other subcontractor.

**SECTION 5 - BONDS**

Upon execution of this Subcontract and prior to commencement of the Work, Subcontractor shall execute and furnish to Contractor a payment bond and a performance bond, each in an amount equal to 100 percent of the subcontract price set forth in Section 2 above. The bonds shall be written by a surety insurance company admitted in California on the bond form provided by Contractor. The bonds shall not restrict or adversely affect Contractor's rights to offset or deduct from payments to Subcontractor as provided in Section 3 above. Notwithstanding any other term or provision of this Subcontract, Contractor shall not be required to make any payments to Subcontractor until such bonds have been furnished.

**SECTION 6 - SPECIAL PROVISIONS**

The Additional Provisions contained in the following Attachments:

- Attachment "A" General Subcontract Provisions
- Attachment "B" Insurance Requirements
- Attachment "C" Labor Code Provisions
- Attachment "D" Subcontractor Affidavit
- Attachment "E" Subcontractor Safety Addendum
- Attachment "F" Special Provisions

All notices permitted or required under this Subcontract shall be in writing and may be accomplished by any of the following methods: first class, regular mail of the United States Post Office; Federal Express priority overnight delivery service; any standard form of telegraphic service; or by telecopier to the telecopier number stated herein. Any such notice shall be deemed received and effective as follows: if by regular mail, on the third business day after deposit in the mail; if by Federal Express, on the next business day after deposit with Federal Express; if by telegraphic service, upon receipt; and if by telecopier, upon successful completion of telecopier transmission.

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

**SUBCONTRACTOR**

**CONTRACTOR**

By: \_\_\_\_\_  
Name/Title

\_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Corporation \_\_\_\_\_  
 Partnership \_\_\_\_\_  
 Proprietorship \_\_\_\_\_

Contractor's License No. \_\_\_\_\_  
 Tax Identification No. \_\_\_\_\_  
 Business License No. \_\_\_\_\_

California State Contractor's License #8

**ATTACHMENT A**  
**GENERAL SUBCONTRACT PROVISIONS**

**A. SCHEDULE/DELAY** - Subcontractor shall submit to Contractor progress schedules for the Work and shall cooperate in the preparation of progress schedules when requested. If a progress schedule is furnished by Contractor to Subcontractor, Subcontractor must be ready to perform at the times indicated in the schedule. However, Contractor makes no representation that it will be ready for Subcontractor at the times indicated in the schedule, and the schedule shall be solely for Contractor's benefit. If Contractor shall deem it necessary, Subcontractor, at his own expense and on demand of Contractor, shall provide additional work forces, overtime and additional shifts and shall expedite the furnishing of materials so as to meet the progress schedule. Subcontractor agrees to reimburse Contractor for any and all liquidated damages that may be assessed against Contractor by Owner which are attributable to or caused in whole or in part by Subcontractor's failure to perform the Work as provided herein. In addition, Subcontractor agrees to pay Contractor such other and additional damages as Contractor may sustain by reason of any delay by Subcontractor. Payment of such damages by Subcontractor shall not release Subcontractor from its obligation to otherwise fully perform this Subcontract. Upon written request by Contractor at any time, Subcontractor shall furnish to Contractor such evidence as Contractor may require relating to Subcontractor's ability to perform and complete this Subcontract in a timely manner.

If Subcontractor is delayed in the prosecution or completion of the Work by the act, neglect or default of Owner, Engineer or Architect, or of Contractor, or should Subcontractor be delayed waiting for materials, if required by this Subcontract to be furnished by Owner or Contractor, or by damage caused by fire or other casualty for which Subcontractor is not responsible, or in the event of a lock-out by Contractor, then the time for completion of the Work shall be extended by the number of days that Subcontractor has thus been delayed. However, no extension of time shall be made unless written notice of the delay is presented to Contractor within 48 hours of the commencement of the delay. Under no circumstances shall the time for completion of the Work be extended in an amount which will prevent Contractor from completing the Project within the time that Owner allows Contractor for such completion.

No claims for additional compensation or damages for delays, whether by Contractor or delays by other subcontractors, Owner, Engineer or Architect, will be allowed by Contractor. The sole remedy for delays of Subcontractor shall be an extension of time for completion of the Work. However if and only if Contractor obtains compensation from Owner on account of a delay, Subcontractor shall be entitled to such portion of the additional compensation received by Contractor from Owner for the delay as is equitable under all of the circumstances. In no event shall Subcontractor be entitled to any amount in excess of that received by Contractor from Owner. Nothing herein contained shall require Contractor to make any claim against Owner for delays relating to the Work. The failure of Contractor to make or prosecute any such claim against Owner shall not entitle Subcontractor to any claim against Contractor.

**B. CHANGES AND EXTRA WORK** - Contractor, without invalidating this Subcontract, may order changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other changes. The Subcontract Price and the time for performance of the Work shall be adjusted accordingly. However, Subcontractor shall adhere strictly to the Contract Documents unless a change is authorized by Contractor in writing. Prior to commencement of any changed or revised work, Subcontractor shall submit to Contractor a written claim for adjustment to the Subcontract Price and the time for performance of the Work. Any such claim shall be submitted promptly and in a manner consistent with the requirements of the Contract Documents.

If Subcontractor claims that performance of any work entitles him to additional compensation or to an extension of the time for performance of the Work, Subcontractor shall submit a request for such compensation or time prior to undertaking that work. If Contractor refuses to grant the requested compensation or time, Subcontractor shall perform the work and shall submit any claim for additional compensation or extension of the time for performance of the Work within ten (10) days after the work is performed. If Subcontractor fails to submit a claim as required herein, Subcontractor shall be deemed to have abandoned that claim.

No claim, dispute or controversy shall interfere with the progress or performance of the Work, including any claim for extra or changed work. Subcontractor shall proceed with the Work as directed by Contractor, diligently prosecute the Work to completion, and then submit any dispute for resolution in accordance with the dispute provisions of this Subcontract. Failure to so proceed shall amount to a default under Section D of this Subcontract.

No change or revision to the Work shall release or exonerate, in whole or in part, any surety on any bond given in connection with this Subcontract. Neither Contractor nor Owner shall be under any obligation to notify the surety or sureties of any such change.

**C. LIENS** - Subcontractor shall defend, indemnify and hold Contractor and Owner harmless from and against: (1) any and all claims, liability, loss, damage, costs or expenses, including reasonable attorney's fees, awards and judgments, arising by reason of any claims, liens, stop notices or bond claims for work, labor, services, material or equipment used or furnished to be used on the Project, or union trust fund payments, arising from or relating to Subcontractor's work on the Project, and (2) all incidental or consequential damages resulting to Contractor or Owner from such claims, liens, stop notices or bond claims. Within ten (10) days after written demand by Contractor, Subcontractor shall cause the effect of any suit, stop notice or lien to be removed from the Project. If Subcontractor fails to do so, Contractor may use whatever means it deems appropriate to cause the suit, stop notice or lien to be removed or dismissed. Any and all resulting cost and expense, including Contractor's reasonable attorneys' fees, shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may litigate any such suit, stop notice or lien provided he first causes its effect to be removed from the Project and does such other things as may be necessary to cause Owner not to withhold any monies due to Contractor by reason of such suits, stop notice or lien.

**D. DEFAULT/RECOURSE BY CONTRACTOR** - If Subcontractor at any time refuses or neglects to supply a sufficient number of properly skilled workers or a sufficient quantity of materials of proper quality, or is the subject of bankruptcy or receivership proceedings, or commits any act of insolvency, or makes an assignment for the benefit of creditors without Contractor's consent, or fails to make prompt payment to persons furnishing work, labor, services, material or equipment, or fails in any respect to properly and diligently prosecute the Work, 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 fulfill any of the provisions of Section I of this Subcontract, or otherwise fails to timely and fully perform any of his obligations under this Subcontract, Subcontractor shall be in default. If Subcontractor fails to cure the default within forty-eight (48) hours after Contractor provides written notice of the default or if Subcontractor fails to diligently pursue to completion any cure agreed to by Contractor, then without further notice of any kind, Contractor at its option, may: (1) provide any work, labor, materials and equipment that Contractor in its sole discretion deems necessary under the circumstances and deduct the cost thereof from any money then due or thereafter to become due to Subcontractor; or (2) terminate Subcontractor's right to proceed with the Work. If Contractor elects to terminate Subcontractor's right to proceed, Contractor shall have the right to enter any of Subcontractor's facilities or locations on the Project, and for the purpose of completing the Work, take possession of all materials, tools and appliances of Subcontractor, and may employ any other person or persons to finish the Work and provide needed materials. In case of such termination, Subcontractor shall not be entitled to receive any further payment under this Subcontract until the work undertaken by Contractor in the Prime Contract is completely furnished and paid for by Owner. At that time, if the unpaid balance of the Subcontract Price exceeds the expenses incurred by Contractor in finishing the Work, the excess shall be paid by Contractor to Subcontractor. If such expense exceeds the unpaid balance, then Subcontractor shall promptly pay to Contractor the amount by which such expense exceeds the unpaid balance. Expenses incurred by Contractor in finishing the Work shall include expenses incurred by Contractor for furnishing the materials, for finishing the Work, for attorneys' fees and for any damages sustained by Contractor by reason of Subcontractor's default, plus a markup of 15% for overhead and administration on any such expenses. Contractor shall have a lien upon any materials, tools and appliances of Subcontractor which Contractor has taken possession of, to secure the payment of any amounts due under this provision.

**E. WITHHOLD AND OFFSET** - Contractor may withhold, or on account of subsequently discovered evidence nullify, the whole or a part of any payment otherwise due under this Subcontract to such extent as may reasonably appear necessary to protect Contractor from loss, including costs and attorneys' fees on account of (1) defective work not remedied; (2) claims filed or reasonable evidence indicating probable filing of claim; (3) failure of Subcontractor to make payments properly to his subcontractors or for material, labor, equipment or union trust fund benefits; (4) a reasonable doubt that this Subcontract can be completed for the balance then unpaid; (5) damage to another subcontractor; or (6) failure to achieve sufficient progress with the subcontract work to meet the schedule for such work, or timely completion of the Project; or (7) any failure by Subcontractor to fully comply with all applicable safety rules, regulations and policies relating to the Project. When the above grounds are removed, such amounts as are then due and owing shall be paid or credited to Subcontractor.

**F. SUSPENSION OR TERMINATION OF PRIME CONTRACT** - If for any reason the Prime Contract is suspended or terminated prior to completion of the Project, Subcontractor shall be entitled to payment only for that part of the Work which Subcontractor has actually completed and for which Contractor has received payment from Owner. However, if Contractor receives additional compensation or damages from Owner on account of such suspension or termination, Subcontractor shall be entitled to receive from Contractor that part of the additional compensation or damages which is equitable under the circumstances. This provision shall not require Contractor to make any claim against Owner for additional compensation or damages in the event of suspension or termination, and failure of Contractor to prosecute such a claim against Owner shall not entitle Subcontractor to any claim for additional compensation or damages against Contractor or Owner.

**G. TERMINATION FOR CONVENIENCE** - Contractor reserves the absolute right to terminate this Subcontract. In the event of termination without cause, hereafter "Termination for Convenience," Subcontractor shall be entitled to payment, in any amount not to exceed the Subcontract Price, calculated as follows: (1) the direct, actual cost of that part of the Work actually completed by Subcontractor in accordance with the Contract Documents; plus (2) other reasonable costs actually incurred by Subcontractor in connection with the Work (excluding legal and accounting fees, if any); plus (3) fifteen percent of costs referred to in subpart (1) above for overhead and profit; minus (4) the amount of any payments made to Subcontractor prior to the date of the Termination for Convenience. Subcontractor shall not be entitled to any claim or claim of lien against Contractor, Owner or the Project for any additional compensation or damages in the event of Termination for Convenience and payment in accordance with this provision. Termination for Convenience shall occur and be effective upon written notice from Contractor to Subcontractor of such termination. Upon receipt of written notice of Termination for Convenience, Subcontractor shall immediately discontinue the Work and endeavor to cancel all existing orders and contracts on terms satisfactory to Contractor, or at Contractor's option, assign such orders and contracts to Contractor.

If this Subcontract is terminated by Contractor for default under Section D, above, and if it is later determined that the default termination was wrongful, such default termination automatically shall be converted to and treated as a Termination for Convenience under this Section G. In such event, Subcontractor shall be entitled to receive only the amounts payable under this Section G for a Termination for Convenience and Subcontractor specifically waives any claim for any other amounts or damages, including any claim for consequential damages.

**H. SUBCONTRACTOR'S REPRESENTATIVE** - Subcontractor shall keep a representative at the job site during all times when the work is in progress. This representative shall be authorized to represent Subcontractor as to all aspects of the Work and this Subcontract. Prior to commencement of the Work, Subcontractor shall notify Contractor in writing of the name, work telephone number and home telephone number of Subcontractor's representative. If Subcontractor elects to change his representative, Subcontractor shall notify Contractor in writing of the name and telephone numbers of the new representative. No such change shall become effective until receipt by Contractor of this written notice.

**I. LABOR AND EMPLOYMENT RELATIONS** - Subcontractor acknowledges that Contractor has entered into labor agreements covering work at Contractor's construction job sites with the following labor unions: Carpenters 46 Northern California Counties Conference Board; District Council of Plasterers and Cement Masons of Northern California Local Unions No. 300 and 400; Operating Engineers Local Union No. 3 of the International Union of Operating Engineers, AFL-CIO; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America Local Unions No. 94, 137, 150, 287, 315, 386, 431, 439, 490, 533, 624, 853, 890, and 912; and Northern California District Council of Laborers of the Laborers' International Union of North America Local No. 67, 73, 139, 185, 261, 270, 291, 294, 297, 304, 324, 326, 389, and 1130, (All of these labor agreements are hereafter collectively referred to as "the Labor Agreements.") Subcontractor expressly agrees that all of the provisions of the Labor Agreements which are applicable to Subcontractor are incorporated into this Subcontract as if they were set forth in full in this Subcontract. Subcontractor agrees to comply with the terms and conditions of the Labor Agreements to the same degree and extent as if Subcontractor were a party to those agreements, including trust fund payments into the trust funds required by the Labor Agreements, and including Subcontractor's submission to, and Subcontractor's compliance with, the arbitration and other dispute resolution requirements of the Labor Agreements. Subcontractor in particular agrees to comply with the terms and provisions of the Labor Agreements setting forth the jurisdiction and the scope of work claimed by each of such crafts and the procedure contained therein 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 his own cost and expense, upon request of Contractor, to take any and all lawful steps to secure a binding and final determination of the jurisdictional dispute by the National Labor Relations Board.

Subcontractor acknowledges that the Labor Agreements may require that Subcontractor comply with additional labor agreements with unions affiliated with the AFL-CIO but not listed. When the terms and conditions of the Labor Agreements so require, Subcontractor shall perform its jobsite work pursuant to all terms and conditions of an appropriate labor agreement with a union affiliated with the AFL-CIO.

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

Subcontractor shall require all of his subcontractors and his subcontractors' subcontractors performing work on the Project of the type covered by any of the Labor Agreements (or the additional labor agreements with affiliated unions) to agree to all of the provisions of this Section I.

Subcontractor also shall comply with all Federal, State and local laws, regulations and ordinances pertaining to the employment of labor, including without limitation the Fair Labor Standards Act and the California Labor Code. In addition, a copy of the provisions of California Labor Code sections 1771, 1775, 1776, 1777.5, 1813 and 1815 is specifically included in this Subcontract.

**J. WARRANTIES** - All materials and work furnished by Subcontractor shall strictly comply with all requirements of the Contract Documents, be of good and workmanlike quality and free from defects, and shall be subject to inspection and approval by Contractor. Defective or nonconforming materials or work shall, at Contractor's option, immediately upon discovery be repaired or replaced at Subcontractor's sole expense, to the satisfaction of Contractor and Owner. The cost to repair any adjacent work or materials disturbed or damaged during or as a result of any such corrective work also shall be paid by Subcontractor. All corrective work and materials are guaranteed by Subcontractor in the same manner. No inspection, failure of inspection, or payment to Subcontractor shall be deemed a waiver of any of the rights or obligations, otherwise arising under this Section J, and nothing in this section shall exclude or limit any warranties implied by law. If Subcontractor fails or refuses, within seven days after written demand by Contractor, to correct any defective or nonconforming materials or work, Contractor may, without further notice or demand cause such defective or nonconforming materials or work to be repaired or replaced by others. Subcontractor shall immediately reimburse Contractor for the cost of such repair or replacement. These warranties shall not reduce and are in addition to Subcontractor's liability under any other provisions of the Contract Documents, under applicable state law, or for latent defects.

**K. PROVISIONS FOR INSPECTION** - Subcontractor shall at all times furnish to Contractor, Owner, Engineer and/or Architect, and their representatives safe and ample facilities for inspecting work and materials at the Project and at any shops, factories, or other places of business of Subcontractor and his subcontractors and material suppliers where work or materials under this Subcontract may be in the course of preparation or manufacture. Subcontractor also shall furnish to Contractor, as often as requested by Contractor, a full report of the progress of the Work at any place where work or materials under this Subcontract may be in the course of preparation or manufacture. The reports shall show the progress of preparation or manufacture in such detail as may be requested by Contractor.

**L. MATERIALS AND WORK FURNISHED BY OTHERS** - If 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, Subcontractor shall examine and accept, at the time of delivery or first access, the items or areas so provided and shall thereafter handle, store and install the items, and protect the areas, with the skills and care required to insure 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.

**M. PROTECTION OF WORK** - Subcontractor shall secure, protect and assume full responsibility for the Work at all times prior to final acceptance by Engineer or Architect, Owner and Contractor. Subcontractor also shall protect the work and 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/or materials on the Project caused by Subcontractor or his agents, employees, subcontractors, material suppliers or guests.

**N. INSURANCE** - Subcontractor shall maintain insurance on all of his operations during the progress of the Work, with insurance companies admitted in California, on forms acceptable to Contractor, for the minimum insurance coverages shown on Attachment B:

**O. INDEMNIFICATION** -

1. All work covered by this Subcontract done at the Project or in preparing or delivering materials or equipment, or any or all of them, to the Project shall be at the risk of Subcontractor exclusively until the Work is completed and accepted by Contractor

2. With the exception that this Section O shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the public policy of the State of California, Subcontractor shall defend, indemnify and save harmless Owner and Contractor, including their officers, directors, shareholders, agents, employees, affiliates, parents and subsidiaries, and each of them (hereinafter "the Indemnified Parties"), of and from any and all claims, demands, causes of action, penalties, citations, damages, costs, expenses, attorneys' fees, losses or liability, of every kind and nature whatsoever ("Claims") arising out of or in connection with, or allegedly arising out of or in connection with, Subcontractor's operations to be performed under this Subcontractor 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 or anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable regardless of whether such personal injury or damage is caused by a party indemnified hereunder.

b. Penalties or fines 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. Claims for infringement of any patent rights which may be brought against any of the Indemnified Parties arising out the Work.

d. Claims liens, stop notices and bond claims for work, labor, services, material or equipment used or furnished to be used on the Project, including all incidental or consequential damages resulting to any of the Indemnified Parties from such claims, liens, stop notices and bond claims.

e. Claims arising from or relating to any failure by Subcontractor to comply with any term or provision of the Subcontract or of the Contract Documents.

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

3. The indemnity obligation set forth in this Section O shall not be limited by the insurance requirements set forth in Section N, above.

**P. USE OF CONTRACTOR'S EQUIPMENT.** If Subcontractor uses Contractor's equipment, materials, labor, supplies or facilities, Subcontractor shall reimburse Contractor at Contractor's customary rates for such items. Further, Subcontractor assumes all responsibility for, and shall hold Contractor harmless from, any claims actions demands damages, liabilities or expenses, including attorney's fees, resulting from the use of such equipment, materials, labor, supplies or facilities by Subcontractor or his agents, employees or permittees. If Contractor's employees are used by Subcontractor, Subcontractor shall have full responsibility for all acts or omissions, whether actively or passively negligent, of Contractor's employees with regard to such operations. Subcontractor accepts any and all of Contractor's equipment, materials, labor, supplies or facilities as furnished, and Contractor shall not be liable for its active or passive failure to inspect, service or maintain the same.

**Q. CLEANUP** - At all times during the course on construction, Subcontractor shall perform the Work so as to maintain the Project in a clean, safe and orderly condition. Upon completion of the Work, Subcontractor shall remove from the Project all temporary structures, debris and waste incidental to his operation and shall clean all surfaces, fixtures, equipment, and facilities of the Work. Contractor may order Subcontractor to clean up his area of work at any time Contractor deems such action necessary. If Subcontractor fails to perform cleanup within two (2) days after notification from Contractor to do so, Contractor may proceed with that cleanup in any reasonable manner, and the cost thereof shall be charged to Subcontractor and deducted from any monies due under this Subcontract. If Contractor is unable to determine which subcontractor is responsible for the cleanup, Contractor may apportion the cost of such cleanup in any manner it determines to be equitable.

**R. ASSIGNMENT OF CONTRACT** - Subcontractor shall not, without written consent of Contractor, assign, transfer or sublet all or any portion or part of the Work, or assign any payments hereunder to others. Contractor may assign or transfer the whole or part of this Subcontract, and its rights hereunder, to any corporation, individual, partnership, or limited liability company.

**S. INDEPENDENT CONTRACTOR** - Subcontractor is an independent contractor and shall, at his sole cost and expense, comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the Work; obtain all permits and licenses necessary for the Work; and 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.

**T. EXCUSE** - Any act or omission of Contractor which Subcontractor might claim as an excuse for his own failure to perform shall be deemed waived by Subcontractor unless he shall notify Contractor of his intention to assert such excuse within ten (10) days after the occurrence of any such act or omission. Subcontractor also waives any right he might have to assert against Contractor the provisions of California Civil Code Section 1654, relative to the interpretation of ambiguities of contract provisions against the party who caused the uncertainty to exist.

**U. DISPUTE RESOLUTION - ATTORNEYS' FEES -**

1. Contractor and Subcontractor shall not be obligated to resolve disputes arising under this Subcontract by arbitration, unless (i) the Prime Contract has an arbitration provision; and (ii) a particular dispute between Contractor and Subcontractor involves issues of fact or law which Contractor is required to arbitrate under the terms of the Prime Contract. If arbitration is required under the terms of this provision, the same arbitrator(s) utilized to resolve the dispute between Owner and Contractor shall be utilized to resolve the dispute under this provision.

2. If Contractor and Owner or others arbitrate matters relating to this Subcontract, Subcontractor shall be required, at the request of Contractor, to prepare and present Contractor's case, at Subcontractor's expense, to the extent the proceedings relate to this Subcontract.

3. In the event of any dispute or claim between Contractor and Owner which directly or indirectly involves the Work, or in the event of any dispute or claim between Contractor and Subcontractor concerning additional compensation or an extension of time under the Contract Documents, Subcontractor agrees to be bound to Contractor and Contractor agrees to be bound to Subcontractor to the same extent that Contractor is bound to Owner by the terms of the Contract Documents and by all decisions, finding or determinations made thereunder by the person so authorized in the Contract Documents, or by any arbitrator, agency or court of competent jurisdiction, whether or not Subcontractor is a party to the proceedings before such person, arbitrator, agency or court. If any dispute or claim is prosecuted or defended by Contractor, and Subcontractor is not directly a party or litigant, Subcontractor agrees to cooperate fully with Contractor and to furnish all documents, statements, witnesses and other information required by Contractor for such purpose, and shall pay or reimburse Contractor for all expenses and costs, including reasonable attorneys' fees incurred in connection therewith, to the extent of Subcontractor's interest in such claim or dispute, and Subcontractor shall be bound by any settlement of which he has notice and which is made by Contractor in good faith. It is expressly understood and agreed in connection with the determination of such claims or disputes that, as to any and all work done and agreed to be done by Subcontractor, and as to any and all materials or services furnished or agreed to be furnished by Subcontractor, and as to any and all damages, if any, incurred by Subcontractor in connection with the Project, Contractor shall never be liable to Subcontractor to any greater extent than Owner is liable to Contractor.

4. If either Contractor or Subcontractor institutes any legal proceedings against the other party, or against the surety of such party, in connection with any dispute or matter arising under this subcontract, including but not limited to proceedings in any state, federal or bankruptcy court, the party which prevails in the proceedings shall be entitled to recover from the other its costs and reasonable attorneys' fees which shall be determined by the court, board or arbitrators, where applicable, and be included in the judgment or decision. Any legal proceedings shall be brought in Sacramento County where Contractor maintains its principal office.

5. Subcontractor agrees to timely comply with any claims certification or documentation requirements contained in the Contract Documents or required by applicable law. Subcontractor acknowledges that it has read and is familiar with the provisions of the False Claims Act (California Government Code §12650 et seq.). Submission by Subcontractor of any claim (as the term "claim" is defined in False Claims Act) to Contractor in connection with the Project shall constitute a representation by Subcontractor to Contractor that any such claim is not in any respect in violation of the False Claims Act. Subcontractor further agrees that no action of Subcontractor relating to any such claim shall violate any provision of the False Claims Act. In its sole discretion, Contractor may require Subcontractor to certify under penalty of perjury the validity and accuracy of any claim which Subcontractor wishes to submit to Contractor or Owner. The claims certification shall be in a form satisfactory to Contractor. Subcontractor's compliance with this claims certification requirement shall be a condition precedent to any obligation Contractor otherwise may have to review the claim, make any payment on the claim, or to forward the claim to Owner.

6. If Subcontractor submits any claim which by its nature is a pass through claim, i.e., a claim which if meritorious ultimately must be paid by Owner rather than Contractor, Contractor may, in its sole discretion, require Subcontractor to enter into a pass through agreement, whereby Contractor authorizes Subcontractor to prosecute the claim in Contractor's name and Subcontractor agrees that the recovery which it obtains on the claim will be limited to the amount, if any, it receives from Owner. The terms of any such pass through agreement shall be satisfactory to Contractor. Subcontractor shall reimburse Contractor for any reasonable attorneys' fees incurred by Contractor in connection with the preparation of the pass through agreement or on account of the claim being prosecuted by Subcontractor in Contractor's name. Further, Subcontractor shall defend and indemnify Contractor from and against any cross-claim or counterclaim brought by Owner against Contractor on account of the claim being pursued by Subcontractor.

7. No claim, dispute or controversy shall interfere with the progress and performance of the Work, and in all instances Subcontractor shall proceed with the Work as directed by Contractor. Any failure of Subcontractor to comply herewith and to proceed with the Work shall automatically be deemed a breach of the subcontract, which shall entitle Contractor to all appropriate remedies, including those enumerated in Section D of this Subcontract.

**V. SAFETY AND ENVIRONMENTAL AND EQUAL EMPLOYMENT OPPORTUNITY REGULATIONS** - Subcontractor shall, at his expense, conform to all safety policies and requirements of Contractor and Owner. Subcontractor also shall, at his expense, conform to all safety, environmental, hazardous materials, disadvantaged business, affirmative action, non-discrimination and equal employment opportunity regulations or requirements promulgated by any federal, state or local governmental authority which are in any manner applicable to this Subcontract or the Work.

**W. WAIVER - SAVINGS CLAUSE** - Waiver by Contractor of any breach of this Subcontract by Subcontractor shall not constitute a waiver of any subsequent breach of the same or any other provisions of this Subcontract. If any provision of this Subcontract, or any part thereof, shall at any time be held to be invalid, in whole or in part, under any applicable federal, state, local or other law, ruling or regulation, then such provision shall remain in effect to the extent permitted and the remaining provisions of this Subcontract shall remain in full force and effect.

**X. REFERENCES** - Words used in this Subcontract in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter, and the singular number includes the plural and the plural the singular.

**Y. INSOLVENCY** -

1. In the event Subcontractor becomes the debtor in a case under Title 11 U.S.C., the Bankruptcy Code, when some performance by Subcontractor is due under this Subcontract, Contractor is entitled to seek on an expedited basis an order of the bankruptcy court requiring assumption or rejection of the subcontract. Adequate assurance of future performance, within the meaning of 11 U.S.C §365, requires each of the following:

- a. Subcontractor as debtor-in-possession or its trustee continues to provide and pay for, on a timely basis, all labor, equipment, materials and tools required to complete the Work in accordance with this Subcontract;
- b. Subcontractor continues to provide an adequate force of skilled workers to complete the Work in accordance with all requirements of this Subcontract.
- c. Subcontractor continues to provide Contractor with scheduling information and continues to perform the Work in conformance with Contractor's progress schedule and all revision or changes made thereto;
- d. Subcontractor keeps current all payments for sales, consumer and use taxes and payments required by all union contracts; obtains and pays for all necessary permits, fees, licenses and inspections; and pays for and maintains in full force and effect all insurance policies required by this Subcontract;
- e. Subcontractor continues to remain solely responsible for its construction means, methods, techniques, sequences and procedures;
- f. Subcontractor continues to comply with the provisions of Section I of this Subcontract;
- g. Subcontractor continues to furnish and pay for all temporary services and facilities required by this Subcontract;
- h. Subcontractor continues to arrange for timely procurement of materials and equipment, and to furnish competent and knowledgeable staff and superintendents; and
- i. Subcontractor shall provide Contractor with weekly reports, signed under penalty of perjury, documenting that all required payments are current.

2. It is expressly agreed that if this Subcontract is rejected, the provisions of this subcontract with respect to DEFAULT/RECOURSE BY CONTRACTOR, Section D, shall be applicable to the fullest extent permitted by law.

Contractor may recover against any sums due or to become due Subcontractor all costs incurred in pursuing any of the remedies provided hereunder including but not limited to reasonable overhead, profit and actual attorneys' fees incurred as a result of Subcontractor's non-performance.

Subcontractor shall be liable for the payment of any amount by which such cost may exceed the unpaid balance of the Subcontract Price.

3. Because time is of the essence, in the event of rejection of this Subcontract, the rejection order shall also provide Contractor with immediate termination of the automatic stay to use materials, implements, equipment, appliances or tools, furnished by or belonging to Subcontractor, to complete the Work. In the event the Bankruptcy Court's rejection order does not so provide or the rejection occurs by operation of law, Contractor is entitled to obtain an order terminating the automatic stay on ex parte application, without notice to Subcontractor, for cause based upon the rejection.

4. Contractor reserves all rights and remedies possessed by or available to Contractor by law as against Subcontractor, its sureties, and insurers, including without limitation, rights of set-off, to retain moneys, to amend or modify this Subcontract, and reserves all remedies otherwise available at law.

**Z. EQUAL EMPLOYMENT OPPORTUNITY** - Subcontractor is hereby notified that Contractor is committed to comply with all applicable equal employment opportunity (EEO) laws. Contractor is a federal construction contractor and as such has both an EEO Policy and an EEO Program.

It is the policy of Contractor that it does not discriminate in any condition of employment because of race, color, national origin/ancestry, gender, religion, sexual orientation, marital status, disability, medical condition (including general characteristics), protected veteran status, age, physical or mental disability, gender identity, or any other characteristic prohibited by applicable federal, state or local laws. This includes practices and procedures in connection with recruitment, advertising or solicitation for employment, hiring, placement, promotion, transfer, demotion, compensation, selection for training, and action during employment, layoff or termination.

Contractor has an EEO Program that implements the specific EEO standards as required and permitted by applicable law. Contractor is committed to take affirmative action to ensure equal employment opportunity and make good faith efforts to achieve our participation goals.

Those subcontractors to Contractor which are covered "federal subcontractors" must comply with Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended.

## ATTACHMENT B

### INSURANCE REQUIREMENTS

**INSURANCE** - Subcontractor shall maintain insurance on all of his operations during the progress of the Work, with insurance companies admitted in California, on forms acceptable to Contractor, for the following minimum insurance coverages which shall include:

1. Worker's Compensation
  - a. Statutory limits, as required by law.
  - b. Employer's liability
    - i. \$1,000,000 by accident
    - ii. \$1,000,000 by disease - policy limit
    - iii. \$1,000,000 by disease - each employee

**Waiver of Right of Recovery Endorsement** in favor of Teichert, Inc., A. Teichert & Son, Inc. ,, Owner's Name, and any others, as required by Prime Contract.

2. Commercial General Liability
  - a. On an Occurrence Basis - "claims made" is unacceptable
    - i. \$1,000,000 Each Occurrence, Bodily Injury and Property Damage, combined single limit
    - ii. \$2,000,000 General Aggregate
    - iii. \$2,000,000 Products & Completed Operations Aggregate
    - iv. \$2,000,000 Personal & Advertising Liability Aggregate
    - v. \$2,000,000 Per Project Aggregate
  - b. CGL policy form shall be ISO CG 00 01 11 88, or equivalent
  - c. Subcontractor's deductible or self-insured retention shall be no greater than \$10,000 per occurrence.
  - d. CGL coverage to include:
    - i. Premises operations and mobile equipment liability
    - ii. Completed operations and products liability
    - iii. Contractual liability insuring the obligations of Subcontractor's obligations assumed in this subcontract
    - iv. Independent contractor's contingent liability (OCP)
    - v. Coverage for explosion, collapse, subsidence, and underground property damage
    - vi. Broad form property damage
    - vii. Personal injury
    - viii. Severability of interest

3. Automobile
  - a. \$1,000,000 Per Accident, Bodily Injury and Property Damage, combined single limit.
  - b. Liability shall be for "Any Auto"
  - c. Coverage to include "Hired" and Non-Owned autos

4. Excess Liability
  - a. On an Occurrence Basis - "claims made" is unacceptable
  - b. \$1,000,000 Each Occurrence, Bodily Injury and Property Damage, combined single limit
  - c. \$1,000,000 Aggregate

5. Higher Limits Required By Contract

a. If higher limits or other forms of insurance are required in the Contract Documents or by Owner or Contractor, Subcontractor shall comply with such requirements.

6. Such policy or policies shall be endorsed to name Teichert, Inc., its subsidiaries and affiliates and their shareholders, directors, officers, employees and agents, Contractor, Owner's Name, and Owner's construction manager, if any, as additional insureds, and shall stipulate that the insurance afforded to Contractor and Owner shall be primary insurance, and that any insurance carried by Contractor and Owner shall be excess and non contributory with Subcontractor's insurance. Use **Additional Insured Endorsement** CG 20 10 11 85, or equivalent.

7. Certificates of insurance shall be furnished by Subcontractor to Contractor before any work is commenced hereunder by Subcontractor. The certificates shall provide that there will be no cancellation, reduction or modification of coverage without 30 days' prior written notice to Contractor.

8. All such insurance coverages shall remain in effect until expiration of Contractor's warranty to Owner. In addition, completed operations and product liability coverage under an occurrence form policy shall remain in effect for the full term, including extensions, of Subcontractor's general completed operations and products coverage and the cancellation notice provision contained herein shall remain in effect during the coverage.

Claims made policies, including modified occurrence forms, are not acceptable.

9. If Subcontractor does not comply with the requirements of this Attachment B, Contractor may, at its option, provide insurance coverage to protect Owner and Contractor and charge Subcontractor for the cost of that insurance. If Contractor elects to provide such insurance, this shall in no way limit or relieve Subcontractor of the duties and responsibilities assumed by it in this Subcontract.

10. If Subcontractor or his subcontractors use any owned, chartered, leased or hired aircraft of any type in the performance of this Subcontract, they shall maintain aircraft liability insurance in an amount of not less than \$2,000,000 per occurrence, including passenger liability.

**ATTACHMENT C**  
**LABOR CODE PROVISIONS**

The following provisions are included in this Subcontract pursuant to Labor Code § 1775:

1771. Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works. This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

1775. (a) (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars (\$50) 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 ten dollars (\$10) 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 twenty dollars (\$20) 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 thirty dollars (\$30) 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) When 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 Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

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

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

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

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

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

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

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

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

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

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

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).

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

(e) 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, the Division of Apprenticeship Standards, 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 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 name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fees and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

(f) 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.

(g) 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).

(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 twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the

Division of Apprenticeship Standards or 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) All training contributions not distributed under subparagraphs

(A) and (B) shall be used to defray the future expenses of the Division of Apprenticeship Standards.

(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. Notwithstanding Section 13340 of the Government Code, all money in the Apprenticeship Training Contribution Fund is hereby continuously appropriated for the purpose of carrying out this subdivision and to pay the expenses of the Division of Apprenticeship Standards.

(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) All decisions of an apprenticeship program under this section are subject to Section 3081.

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

1815. Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.

**ATTACHMENT D**  
**Subcontractor Affidavit**

I \_\_\_\_\_ declare under penalty of perjury under the laws of  
(Affidavit's name)

the State of California that:

1. I am the \_\_\_\_\_ of \_\_\_\_\_  
and  
(Officer, Owner, Partner) (Company)

I am responsible for the payment of persons employed by  
\_\_\_\_\_  
(Company)  
who performed work on the \_\_\_\_\_.  
(Project)

2. During all payroll periods from \_\_\_\_\_ through  
\_\_\_\_\_, all persons employed by \_\_\_\_\_  
on this project have at all times been paid the specified general prevailing-rate of per diem  
wages and any amounts due pursuant to California Labor Code Section 1318.

Executed and sworn to this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_  
(day) (month) (year)

\_\_\_\_\_  
(Officer, Owner, Partner)

## ATTACHMENT E

### Subcontractor Safety Addendum

Jobsite safety is of extreme importance. Subcontractor must at all times comply with all applicable federal, state, and local safety rules and regulations. Subcontractor must take those actions necessary to ensure that it is familiar with safety and health policies and requirements of Contractor, and Owner and agrees to abide by said policies and requirements. Subcontractor must also take all steps necessary to ensure that all persons or firms working under or for Subcontractor in connection with the Project equally comply with all applicable safety rules, regulations and policies, as set forth directly above.

Prior to starting any work on the Project, Subcontractor must provide a copy of Subcontractor's current Injury/Illness Prevention Program, i.e., your company's written safety program to Contractor and any other written programs relevant to Subcontractor's work, for example, a fall protection plan, hazard communication plan, etc.

Contractor requires comprehensive enforcement of all applicable safety rules, regulations, standards and policies by Subcontractor.

Use of personal protective equipment (hard hats, colored warning garments, proper eye protection, proper footwear, etc.) is mandatory at all times. If Subcontractor or any person or firm working under or for Subcontractor in connection with the Project fails to use or enforce the use of appropriate personal protective equipment at all times, or otherwise fails to fully comply with all applicable safety rules, regulations and policies. Contractor may, at its option do any of the following:

1. Require the immediate removal from the jobsite of any person found to be without appropriate personal protective equipment, and/or who may be otherwise failing to fully comply with all applicable safety rules, regulations and policies.
2. Provide missing personal protective equipment to Subcontractor and backcharge Subcontractor the existing cost for the equipment which Subcontractor agrees to immediately pay.
3. Charge Subcontractor an amount equal to \$200 per day, for otherwise failing to comply with all applicable safety rules, regulations and policies; and/or withhold a reasonable portion of progress payments to Subcontractor in an amount necessary to ensure Subcontractor's full and complete compliance.
4. Subcontractor shall comply with the requirements of Section 5194, Title 8, California Code of Regulations entitled Hazard Communications and 3203 entitled Injury and Illness Prevention Program.
5. Prior to the start of work, Subcontractor is to furnish Contractor with a copy of the written safety program and Injury and Illness Prevention Program.
6. Subcontractor shall comply with all environmental requirements, dust control requirements and air quality emissions controls or restrictions (including exhaust opacity) applicable to the Project, including those applicable by law, those contained in applicable permits and those included in any Storm Water Pollution Prevention Plan (SWPPP) for the Project.

In the event Contractor receives a citation(s) from the Division of Occupational Safety and Health alleging a violation of a safety regulation or standard as a result of the actions of a Subcontractor, acting as an "exposing" or "creating" employer, as defined in Labor Code § 6400, Subcontractor agrees to promptly pay to Contractor reasonable expenses and costs incurred in defending such citation(s) and penalty with the California Occupational Safety and Health Appeals Board.

Subcontractor acknowledges and agrees that Contractor has the rights and remedies stated above which are fair and reasonable and further acknowledges and agrees that no action taken by Contractor to assert or enforce any of these rights or remedies shall excuse Subcontractor from full, safe, and timely performance of its subcontract obligations.

## ATTACHMENT F

### Special Provisions

#### PROVISIONS:

- \* Subcontract bonds are required as outlined in Section 5 above. The enclosed bond forms must be utilized. Teichert Construction will pay actual bond premium up to two percent (2%).
- \* Subcontractor is required to furnish lien releases monthly. Lien releases from lower tier subcontractors/suppliers who have filed preliminary lien notices are also required to be included in the monthly Subcontractor billing package.
- \* Certificate of Insurance is required per Attachment B, Insurance Requirements, attached and made a part of this subcontract. TEICHERT CONSTRUCTION, ITS SUBSIDIARIES AND AFFILIATES AND THEIR SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS, CONTRACTOR, OWNER, AND OWNER'S CONSTRUCTION MANAGER, IF ANY, TO BE NAMED ADDITIONALLY INSURED. WAIVER OF RIGHT OF RECOVERY ENDORSEMENT NAMING TEICHERT CONSTRUCTION, CONTRACTOR, OWNER AND ANY OTHERS, AS REQUIRED BY PRIME CONTRACT MUST BE ATTACHED TO CERTIFICATE OF INSURANCE.
- \* Subcontractor to furnish Contractor with a copy of their California Contractor's License.
- \* Subcontractor to furnish Contractor with a copy of their Business License for the City/County where project is located.
- \* Subcontractor to furnish Contractor with a copy of their written safety program and Injury & Illness Prevention Program (IPP). See Attachment "E" attached and made a part of this Subcontract Agreement.
- \* Subcontractor shall comply with the requirements of Section 5194, Title 8 of the California Administrative Code entitled Hazard Communication, and 3203 entitled Injury & Illness Prevention Program.
- \* Subcontractor shall be bound to Contractor to the same extent that the Contractor is bound to the Owner by all terms and provisions of the prime contract, including the arbitration provision.
- \* Subcontractor shall comply with all environmental requirements, dust control requirements, and air quality emissions controls or restrictions (including exhaust opacity) applicable to the Project, including those applicable by law, those contained in applicable permits, and those included in any Storm Water Pollution Prevention Plan (SWPPP) for the Project.

#### AGENCY PROVISIONS:

- \* This is a Prevailing Wage Project. Please see Attachment "C", "Labor Code Provisions", attached and made a part of this Subcontract Agreement.
- \* Fill out and return the attached "Notice of Materials to Be Used"
- \* Subcontractor to furnish Contractor with Certified Payroll Reports, in duplicate, on a weekly basis. Failure to comply with this provision will result in penalties as described in the general contract. Please reference Contractor job number on all documents.
- \* Subcontractor to furnish Contractor with a "Fringe Benefit Statement" with subcontract agreement.
- \* In accordance with Section 6-2 of the Special Provisions, Subcontractor shall make every effort to comply with the training provisions of the Prime Contract.
- \* Subcontractor shall comply with the applicable laws and regulations regarding the required number of Apprentices to be employed.
- \* Section 14, Federal Requirement for Federal Aid Construction Projects (Executive Order 11246) is attached and made a part of this subcontract.
- \* Payment for Mobilization, shall be as per Section 11 of the Standard Specifications, as applied to Subcontractor's portion of the work and upon receipt of payment for this item from the Owner.

#### JOB SPECIFIC PROVISIONS:

**SUBCONTRACT PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS, That we \_\_\_\_\_  
as Principal, and \_\_\_\_\_ as Surety, are held and firmly bound unto  
\_\_\_\_\_ as Oblige, in the penal sum of  
Dollars (\_\_\_\_\_) lawful money of the United States, for the payment of which sum well and truly to be made, we  
bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE OBLIGATION IS SUCH, That Whereas, the Principal entered into a certain agreement which is  
incorporated by reference and made a part hereof, with the Oblige dated \_\_\_\_\_,  
for \_\_\_\_\_ being part of the work covered by a contract dated on or  
about \_\_\_\_\_, between \_\_\_\_\_  
hereinafter called Owner, and the said Oblige for \_\_\_\_\_  
which contract and the specifications and general conditions thereof are hereby incorporated herein and shall be deemed a  
part hereof as fully as if set out herein.

NOW, THEREFORE, if the said Principal shall fully indemnify and save harmless the Oblige from all loss, liability, costs,  
damages, penalty, attorney's fees or expense which Oblige may incur by reason of failure to well and truly keep and  
perform each, every and all of the terms and conditions of said agreement on the part of the said Principal to be kept and  
performed, including, but not limited to, completion within the time specified of all work covered by said agreement,  
performance of all obligations, and guarantees of the Oblige relating to such work under the contract with the Owner, then  
this obligation shall be of no effect, but otherwise it shall remain in full force and effect.

It is a condition hereof that any change, alteration, modification or amendment of any nature whatsoever that may be made  
in the terms of said agreement, any change in the character or scope of the work to be performed, or the method of  
performance, under said agreement, or modification of said agreement or in the time for completion thereof, any change in  
the manner, time or amount of payment as provided therein, any change of any nature whatsoever that may be made in the  
terms of the contract between the said Oblige and the Owner or any change that may be made in the performance of the  
work under said agreement by the Principal, assented to by the Oblige, whether made under express agreement or not,  
may be made without notice to the Surety and without affecting the obligations of the Surety on this bond and without  
requiring the consent of the Surety, and no such change or changes shall release the Surety from any of its obligations  
hereunder, the Surety hereby consenting to and waiving notice of any such change, alteration, modification or amendment.

It is a further condition hereof that no one other than the named Oblige and the successors, administrators, or assigns of  
the Oblige shall have any right of action under this bond.

IN WITNESS WHEREOF, the said Principal and Surety have hereunto set their hands and seals this  
\_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

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

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

**SUBCONTRACT PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS, That we \_\_\_\_\_  
as Principal, and \_\_\_\_\_ as Surety, are held and firmly bound unto  
\_\_\_\_\_ as Oblige, in the penal sum of  
Dollars (\_\_\_\_\_) lawful money of the United States, for the payment of which sum well and truly to be made, we  
bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE OBLIGATION IS SUCH, That Whereas, the Principal entered into a certain agreement which is  
incorporated by reference and made a part hereof, with the Oblige dated \_\_\_\_\_,  
for \_\_\_\_\_ being part of the work covered by a contract dated on or  
about \_\_\_\_\_, between \_\_\_\_\_  
hereinafter called Owner, and the said Oblige for \_\_\_\_\_  
which contract and the specifications and general conditions thereof are hereby incorporated herein and shall be deemed a  
part hereof as fully as if set out herein.

NOW, THEREFORE, if the said Principal shall pay promptly and in full the claims of all persons, firms or corporations,  
performing labor or furnishing equipment, materials, or supplies incurred in connection with the contract to be performed  
and under said agreement, and shall indemnify and save harmless the Oblige from all loss, liability, costs, damages,  
penalty, attorney's fees or expenses for all taxes, insurance premiums, any and all applicable contributions, allowances or  
other payments or deductions, however termed, required by statute or union labor agreement, including voluntary payment  
thereof by the Oblige necessary to insure orderly prosecution of work or other items or services used in, upon or for or  
incurred in connection with the contract to be performed and under said agreement, then this obligation shall be of no effect,  
but otherwise it shall remain in full force and effect.

It is a condition hereof that any change, alteration, modification or amendment of any nature whatsoever that may be made  
in the terms of said agreement, any change in the character or scope of the work to be performed, or the method of  
performance, under said agreement or modification of said agreement or in the time for completion thereof, any change in  
the manner, time or amount of payment as provided therein, any change of any nature whatsoever that may be made in the  
terms of the contract between the said Oblige and the Owner or any change that may be made in the performance of the  
work under said agreement by the Principal, assented to by the Oblige, whether made under express agreement or not,  
may be made without notice to the Surety and without affecting the obligations of the Surety on this bond and without  
requiring the consent of the Surety, and no such change or changes shall release the Surety from any of its obligations  
hereunder, the Surety hereby consenting to and waiving notice of any such change, alteration, modification or amendment.

Subject to the priority of the named Oblige with respect to recovery up to the penal sum of this bond, persons who have  
supplied or furnished labor, material, machinery, equipment or supplies to the Principal for use in the prosecution of the  
work provided for in said contract shall have a direct right of action against said Principal and Surety under this bond.

IN WITNESS WHEREOF, the said Principal and Surety have hereunto set their hands and seals this  
\_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

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

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