



This agreement (Subcontract) is entered into on below.

by and between ( ) and (Subcontractor) with respect to the construction project described

**SUBCONTRACTOR**

and

**Date**

**Vendor Number:**

**Job Number:**

**Subcontract Number:**

Phone:

Fax:

**Contract Documents Remittance Address**

400 Sunrise Ave, Suite 300

Roseville, CA 95661

Phone: (916) 757-6400

Fax: (916) 757-6499

**All Job Related Documents Remittance Address:**

Phone: Fax:

**PROJECT**

**PROJECT OWNER**

**PROJECT PRIME CONTRACTOR**

*For Informational Purposes Only*  
**CONSTRUCTION LENDER**  
N/A

**PROJECT OWNER**

**PROJECT ENGINEER/ARCHITECT**

Owner has entered into a Prime Contract with dated

If is not the Prime Contractor, has entered into a subcontract with the , dated

The Prime Contract and all general and special conditions, addenda, plans, specifications, addenda and other documents forming or by reference made a part of the Prime Contract, together with subcontract with the Prime Contractor, if is not the Prime Contractor, are hereinafter referred to collectively as 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 . The Contract Documents are incorporated in this Subcontract by reference. Subcontractor is bound to in the same manner and to the same extent as 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 Prime Contractor or 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 . In the event of any conflict between this Subcontract and any of the Contract Documents, this Subcontract shall control. This Subcontract, including any Attachments, exhibits, and addendums hereto, represents the entire agreement between and Subcontractor relating to the Project, supersedes all other prior or contemporaneous oral or written understandings and agreements of the parties relating to the Project, and is expressly limited to the terms, conditions, and covenants stated or incorporated by reference herein. Any additional or different terms stated, offered, or proposed by Subcontractor (whether in a quote, proposal, or otherwise) are objected to and are hereby rejected. Any modification of this Subcontract will be effective only if it is in a writing signed by authorized management level representatives of each party. If is not the Prime Contractor for the Project, then reference in this Subcontract to Owner shall be deemed to include Prime Contractor as the Owner.

**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>Phase</u>	<u>Description</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total</u>
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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 measurement. The above prices include all applicable sales, use, franchise, excise and other taxes which may now or hereafter be levied.

**SECTION 3 - PAYMENT**

agrees to pay Subcontractor in monthly progress payments of percent of the value of the Work which has been completed and for which payment has been made to . The remaining percent shall be retained by 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 , and until has received final payment from Owner. Any payments by under this Subcontract shall be subject to final audit and adjustment. Subcontractor shall immediately reimburse if there is any overpayment. may deduct or offset from any payments to Subcontractor any amounts owed to (or to Teichert Aggregates, Teichert Readymix 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 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 . No payment shall be made, except at option, unless such documentation has been furnished. Any payment made without such documentation shall not be construed as a waiver of 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. 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 or 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 from which payment to Subcontractor is to be made, 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 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 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 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 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 . The bonds shall not restrict or adversely affect rights to offset or deduct from payments to Subcontractor as provided in Section 3 above. Notwithstanding any other term or provision of this Subcontract, shall not be required to make any payments to Subcontractor until such bonds have been furnished.

**SECTION 5 - BONDS**

Subcontract bonds are not required, see Attachment A for Job Specific Requirements.

**SECTION 6 - ADDITIONAL PROVISIONS**

The following Attachments are hereby incorporated into this Subcontract:

- Attachment "A" Special Provisions
- Attachment "B" General Subcontract Provisions
- Attachment "C" Insurance Requirements
- Attachment "D" Subcontractor Safety Addendum

The following Attachments are hereby incorporated by reference into this Subcontract where so indicated:

-Attachment "E" California Public Works Provisions	_____	Incorporated	X	Not Incorporated
-Attachment "F" Labor Code Provisions	_____	Incorporated	X	Not Incorporated
-Attachment "G" Subcontractor Affidavit	_____	Incorporated	X	Not Incorporated
-Attachment "H" Required Contract Provisions - Federal Aid Construction Contracts	_____	Incorporated	X	Not Incorporated
-Attachment "I" Supplemental Terms and Conditions for Contracts Using ARRA Funds	_____	Incorporated	X	Not Incorporated
-Attachment "J" Federal Project Provisions	_____	Incorporated	X	Not Incorporated
-Attachment "K" Subcontractor Union Checklist	X	Incorporated	_____	Not Incorporated

All notices permitted or required under this Subcontract shall be in writing and may be accomplished by any of the following methods: personal delivery; first class mail of the United States Post Office; priority overnight delivery service; telecopier to the telecopier number stated on the first page of this Subcontract; or by electronic mail. Any such notice shall be deemed received and effective as follows: if by personal delivery, on the date delivered; if by regular mail, on the third business day after deposit in the mail; if by priority overnight delivery service, on the next business day after scheduled pickup; if by telecopier, upon successful completion of telecopier transmission; and if by electronic mail on the date successfully received to the recipients' email address. Delivery by electronic mail shall not be deemed effective if the sender receives an automatic reply indicating that the transmission was not effective or that the intended recipient was out of the office. All notices to Contractor must be directed to Contractor's regional manager, project manager, or project superintendent.

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**

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

By: \_\_\_\_\_  
David A. Swartz  
Executive Vice President

Date \_\_\_\_\_

Date \_\_\_\_\_

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

Contractor's License No. \_\_\_\_\_  
Tax Identification No. \_\_\_\_\_  
Business License No. \_\_\_\_\_  
DIR # \_\_\_\_\_ Expiration Date \_\_\_\_\_

**ATTACHMENT A - SPECIAL PROVISIONS**

**CONTRACTOR PROVISIONS:**

- and Subcontractor agree that the following special provisions modify the Subcontract as follows.
- \*Subcontract bonds are required as outlined in Section 5 above. The enclosed bond forms must be utilized. Contractor will pay actual bond premium up to two percent (2%). If bonds are waived by the Contractor, the Contractor will hold 10% retention from Subcontractor.
- \*Subcontract bonds are not required. Lien releases will be required in lieu of bonds.
- \*Subcontractor will be required to list all sub-tier subcontractors, suppliers and rental companies to be used by them. Any unlisted sub-tier subcontractors, suppliers and rental companies shall not exceed \$5,000 in Aggregate. If any changes, Subcontractor shall notify Teichert, in writing, prior to usage/substitution
- \*Certified Payrolls are to be furnished even if not required by the Owner.
- \*Prior to any payment, a Release or Acknowledgement from Union Trust Funds are required.
- \*Lien waivers are required from all sub-tiered subcontractors, suppliers and rental companies listed as well as any preliminary notices received will require lien waivers.
- \*Any Conditional Waivers shown unpaid balances due sub-tier subcontractors, employees, union trust funds, suppliers and equipment rental companies shall be joint checked.
- \*Retention of 10% will be held until the expiration of all bond and stop notice rights.
  
- \*Subcontractor is required to furnish statutory lien releases monthly including lien releases from lower tier subcontractors/suppliers, to be included in the monthly Subcontractor billing package.
- \*Subcontractor must submit a payment request, along with your lien release, by the 15th of each month for the period ending the 20th of each month.
- \*Subcontractor must submit an invoice for retention.
- \*Subcontractor to furnish Contractor with a copy of its California Contractor's License.
- \*Subcontractor to furnish Contractor with a copy of its Business License for the City/County where project is located.
- \*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 Owner by all terms and provisions of the Prime Contract, including any arbitration provision. Notices from Subcontractor shall be reasonable under the circumstances and not in contravention to the notice requirements under the Prime Contract.
- \*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
- \*DEWR billings MUST be submitted to Caltrans by the 15th of each month to get on the current month's pay estimate, therefore, they must be in Contractor's office by the 10th of each month.

**JOB SPECIFIC PROVISIONS:**

\_\_\_\_\_  
Subcontractor's  
Initials

\_\_\_\_\_  
Teichert's  
Initials

## **ATTACHMENT B - GENERAL SUBCONTRACT PROVISIONS**

A. **SCHEDULE/DELAY** Subcontractor shall submit to progress schedules for the Work and shall cooperate in the preparation of progress schedules when requested. Subcontractor must be ready to perform at the times indicated in any reasonable progress schedule presented by . If shall deem it necessary, Subcontractor shall provide additional work forces, overtime and additional shifts and shall expedite the furnishing of materials so as to meet the progress schedule. Subcontractor shall bear the cost of such additional efforts to the extent that they are necessitated by delays which are the responsibility of Subcontractor. Subcontractor further agrees to reimburse for any and all liquidated damages that may be assessed against by Owner which are attributable to or caused in whole or in part by Subcontractor's unexcused failure to perform the Work as provided herein. In addition, Subcontractor agrees to pay such other and additional damages as may sustain by reason of any unexcused 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 at any time, Subcontractor shall furnish to such evidence as 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 , or should Subcontractor be delayed waiting for materials, if required by this Subcontract to be furnished by Owner or , or by damage caused by fire or other casualty for which Subcontractor is not responsible, or in the event of a lock, 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 within two (2) business days 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 from completing the Project within the time that Owner allows for such completion.

Subcontractor's sole remedy for delays which are caused by or otherwise the responsibility of Owner shall be an extension of time for completion of the Work. However if and only if obtains compensation from Owner on account of any such delay, Subcontractor shall be entitled to such portion of the additional compensation received by 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 from Owner. Nothing herein contained shall require to make any claim against Owner for delays relating to the Work. The failure of to make or prosecute any such claim against Owner shall not entitle Subcontractor to any claim against .

B. **CHANGES AND EXTRA WORK** , 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 in writing. Prior to commencement of any changed or revised work, Subcontractor shall submit to 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 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 , 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 Attachment.

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 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 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 or Owner from such claims, liens, stop notices or bond claims. Within ten (10) days after written demand by , Subcontractor shall cause the effect of any suit, stop notice or lien to be removed from the Project. If Subcontractor fails to do so, 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 reasonable attorneys' fees, shall be immediately due and payable to 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 by reason of such suits, stop notice or lien.

D. **DEFAULT/RECOURSE BY** 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 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 provides written notice of the default or if Subcontractor fails to diligently pursue to completion any cure agreed to by , then without further notice of any kind, at its option, may: (1) provide any work, labor, materials and equipment that 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 elects to terminate Subcontractor's right to proceed, 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 is completely furnished and paid for by Owner. At that time, if the unpaid balance of the Subcontract Price exceeds the expenses incurred by in finishing the Work, the excess shall be paid by to Subcontractor. If such expense exceeds the unpaid balance, then Subcontractor shall promptly pay to the amount by which such expense exceeds the unpaid balance. Expenses incurred by in finishing the Work shall include expenses incurred by for furnishing the materials, for finishing the Work, for attorneys' fees and for any damages sustained by by reason of Subcontractor's default, plus a markup of 15% for overhead and administration on any such expenses. shall have a lien upon any materials, tools and appliances of Subcontractor which has taken possession of, to secure the payment of any amounts due under this provision.

E. **WITHHOLD AND OFFSET** 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 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, or subcontract if is not the Prime Contractor, 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 has received payment from Owner. However, if receives additional compensation or damages from Owner on account of such suspension or termination, Subcontractor shall be entitled to receive from that part of the additional compensation or damages which is equitable under the circumstances. This provision shall not require to make any claim against Owner for additional compensation or damages in the event of suspension or termination, and failure of to prosecute such a claim against Owner shall not entitle Subcontractor to any claim for additional compensation or damages against or Owner.

G. **TERMINATION FOR CONVENIENCE** 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) a markup 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. The markup percent shall be 15% or the amount permitted by the prime contract, whichever is less. Subcontractor shall not be entitled to any claim or claim of lien against , 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 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 , or at option, assign such orders and contracts to .

If this Subcontract is terminated by 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 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 in writing of the name and telephone numbers of the new representative. No such change shall become effective until receipt by of this written notice.

I. LABOR AND EMPLOYMENT RELATIONS Subcontractor acknowledges that has entered into labor agreements covering work at 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 , 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 establishes a reserved gate for Subcontractor's use, Subcontractor shall continue performance of the Work without interruption or delay.

Subcontractor shall require all of its subcontractors and its 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.

H. LABOR AND EMPLOYMENT RELATIONS - It is understood that Subcontractor has entered into labor agreements with labor unions, and Subcontractor hereby agrees to comply with each and all of the terms and conditions of such agreement or agreements applicable to the Work herein undertaken. Subcontractor agrees that if any portion of the work covered herein is subcontracted, Subcontractor shall require its sub-subcontractors and subtier-subcontractors to agree in writing to comply with any such labor agreement or agreements applicable to the Work herein undertaken.

Subcontractor shall cooperate fully with Contractor in the conduct of all labor relations affecting the work under this subcontract. Subcontractor shall remove or cause to have removed from the Project any employee or employees who are considered unsatisfactory by the Contractor. Subcontractor shall notify Contractor immediately of any threatened strike or other labor disturbance or disruption. In the event work covered by this subcontract is affected by any labor disruption, Subcontractor shall immediately take all actions legally available to immediately affect a resolution to such disruption. Failure to take prompt legal action by Subcontractor to enforce its rights under the law or under its labor agreements, if any, shall be a material default of this subcontract and Subcontractor shall be subject to damages and/or termination for default.

Subcontractor warrants and agrees that with respect to any of the Work covered by the Subcontract which is to be performed at the site of construction, its employees performing the Work are and shall be covered by an appropriate current labor agreement with the appropriate union, or subordinate body, affiliated with the Building and Construction Trades Department. Subcontractor promises to require any of its sub-subcontractors and subtier-subcontractors to make to the subcontractor a warranty and agreement in writing identical to the foregoing. Subcontractor shall comply with the Original Contract requirements regarding the employment of apprentices. Subcontractor shall pay all penalties assessed Contractor because of Subcontractor's non-compliance even after final Contract payment. Subcontractor shall immediately reimburse Contractor.

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 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 by reference.

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 . Defective or nonconforming materials or work shall, at option, immediately upon discovery be repaired or replaced at Subcontractor's sole expense, to the satisfaction of 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 , to correct any defective or nonconforming materials or work, 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 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 , 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 its 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 , as often as requested by , 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 .

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 . Subcontractor also shall protect the work and workers of , 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 its agents, employees, subcontractors, material suppliers or guests.

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

O. **INDEMNIFICATION**

All work covered by this Agreement done at the Project shall be at the risk of Subcontractor exclusively until the Work is completed and accepted by Contractor.

1. To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold 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, damages, costs, expenses, actual attorneys' fees, losses or liability, in law or in equity, of every kind and nature whatsoever ("Claims") arising out of or in connection with any act or omission of Subcontractor's operations to be performed under this Agreement 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.
  - b. Penalties or fines imposed, or damages incurred, on account of any 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 of 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 this Agreement and the Contract Documents.
  - f. Subcontractor's failure to fulfill the covenants set forth in Labor Relations.  
The indemnification provisions herein, including without limitations of (a) through (f) above shall extend to Claims occurring after this Agreement is terminated as well as while it is in force. Such indemnity provisions apply to the fullest extent permitted by law, regardless of any passively negligent act or omission of the Indemnified Parties. Subcontractor, however, shall not be obligated under this Agreement to indemnify Owner or Contractor for Claims arising from the active negligence, 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.
2. Except as otherwise provided by the statutes or public policy of the State of California, Subcontractor's indemnity obligations set forth in this Section shall not be limited by the insurance requirements set forth in Section 5.03 below.
3. Subcontractor shall:
  - a. At Subcontractor's own cost, expense and risk, defend (with independent counsel reasonably acceptable to Contractor) all Claims as defined by this Section that may be brought or instituted by third parties, including, but not limited to, governmental agencies or employees of Subcontractor against the Indemnified Parties.
  - b. With respect to any Claims as to which Subcontractor owes a defense obligation pursuant to this Agreement. Subcontractor hereby elects to proceed under California Civil Code sections 2782(e)(2) and 2782.05(e)(2), and further agrees that upon final resolution of any such Claim, any reimbursement for defense fees and costs previously paid by Subcontractor shall be governed by such provision of the California Civil Code.
  - c. Pay and satisfy any judgment, award, fine, penalty, or decree that may be rendered against the Indemnified Parties arising out of such Claim; and
  - d. Reimburse the Indemnified Parties for any and all legal expenses incurred by any of them in connection herewith or in enforcing the indemnity granted in this Section.
4. Notwithstanding any of the provisions of this Section, if it is finally determined by a court of competent jurisdiction that any of such provisions are void and unenforceable under governing law, then such provisions shall be deemed stricken from the Agreement and the remaining provisions shall remain in full force and effect and shall be construed to provide for the maximum defense and indemnification obligation by Subcontractor permitted by law.

P. **USE OF EQUIPMENT.** If Subcontractor uses equipment, materials, labor, supplies or facilities, Subcontractor shall reimburse at customary rates for such items. Further, Subcontractor assumes all responsibility for, and shall hold 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 its agents, employees or permittees. If employees are used by Subcontractor, Subcontractor shall have full responsibility for all acts or omissions, whether actively or passively negligent, of employees with regard to such operations. Subcontractor accepts any and all of equipment, materials, labor, supplies or facilities as furnished, and 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 its operation and shall clean all surfaces, fixtures, equipment, and facilities of the Work. may order Subcontractor to clean up its area of work at any time deems such action necessary. If Subcontractor fails to perform cleanup within two (2) business days after notification from to do so, 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 is unable to determine which subcontractor is responsible for the cleanup, 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 , assign, transfer or sublet all or any portion or part of the Work, or assign any payments hereunder to others. 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 its 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 that any or all of the foregoing obligations have been fulfilled.

T. EXCUSE Any act or omission of which Subcontractor might claim as an excuse for its own failure to perform shall be deemed waived by Subcontractor unless it shall notify of its intention to assert such excuse within ten (10) days after the occurrence of any such act or omission. Subcontractor also waives any right it might have to assert against 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

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

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

3. In the event of any dispute or claim between and Owner which directly or indirectly involves the Work, or in the event of any dispute or claim between and Subcontractor concerning additional compensation or an extension of time under the Contract Documents, Subcontractor agrees to be bound to and agrees to be bound to Subcontractor to the same extent that 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, provided Subcontractor is given reasonable notice of such proceedings. If any dispute or claim is prosecuted or defended by , and Subcontractor is not directly a party or litigant, Subcontractor agrees to cooperate fully with and to furnish all documents, statements, witnesses and other information required by for such purpose, and shall pay or reimburse for all expenses and costs, including reasonable attorneys' fees incurred at the request of or on behalf of Subcontractor in connection therewith. 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, shall never be liable to Subcontractor to any greater extent than Owner is liable to .

4. 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 , may, in its sole discretion, require Subcontractor to enter into a pass through agreement, whereby authorizes Subcontractor to prosecute the claim in 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 . Subcontractor shall reimburse for any reasonable attorneys' fees incurred by in connection with the preparation of the pass through agreement or on account of the claim being prosecuted by Subcontractor in name. Further, Subcontractor shall defend and indemnify from and against any cross claim or counterclaim brought by Owner against on account of the claim being pursued by Subcontractor.

5. 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 . 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 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 its expense, conform to all safety policies and requirements of and Owner. Subcontractor also shall, at its 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 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, 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 with scheduling information and continues to perform the Work in conformance with 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 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 , 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 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 Courts rejection order does not so provide or the rejection occurs by operation of law, 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. reserves all rights and remedies possessed by or available to 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 is committed to comply with all applicable equal employment opportunity (EEO) laws. is a federal construction contractor and as such has both an EEO Policy and an EEO Program.

It is the policy of 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.

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

Those subcontractors to 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 C - INSURANCE REQUIREMENTS

INSURANCE - Subcontractor shall maintain coverage on all of its operations with insurance companies admitted in California and rated no lower than A / VIII by AM Best, on forms acceptable to Contractor, with the following minimum insurance provisions, conditions and limits of liability:

1. Workers' Compensation  
Statutory limits, as required by law.  
Employer's liability:

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

Waiver of Right of Recovery Endorsement in favor of , , Owner, and any others, as required by Prime Contract.

2. Commercial General Liability  
On an Occurrence Basis - "claims made" is unacceptable.

\$1,000,000 Each Occurrence  
\$2,000,000 General Aggregate  
\$2,000,000 Products & Completed Operations Aggregate  
\$1,000,000 Personal & Advertising Liability  
\$2,000,000 Per Project Aggregate

CGL policy form shall be ISO CG 00 01 11 88, or equivalent  
Subcontractor's deductible or self-insured retention shall be no greater than \$10,000 per occurrence, unless approved in writing by Contractor.  
CGL coverage shall include:

Premises operations and mobile equipment liability  
Completed operations and products liability  
Contractual liability insuring the obligations of Subcontractor's obligations assumed in this subcontract  
Independent contractor's contingent liability  
Coverage for explosion, collapse, subsidence, and underground property damage  
Broad form property damage  
Personal injury  
Severability of interest

3. Automobile  
\$1,000,000 Per Accident combined single limit.

Liability coverage shall apply to Any Auto and shall include Hired and Non-Owned Autos.

4. Excess Liability  
On an Occurrence Basis - "claims made" is unacceptable.

\$1,000,000 Each Occurrence and \$1,000,000 Aggregate

5. Higher Limits Required By Prime Contract  
If higher limits or other forms of insurance are required in the Contract Documents or by Owner or Contractor, Subcontractor shall at its own cost comply with such requirements.

6. The policies described in sections 2, 3 and 4 above shall be endorsed to name its subsidiaries and affiliates and their shareholders, directors, officers, employees and agents, , Contractor, Owner, 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. Evidence of additional insured coverage for completed operations must be provided.

7. Certificates of insurance and applicable waivers and additional insured endorsements shall be furnished by Subcontractor to Contractor before any work is commenced hereunder by Subcontractor. Certificates issued without the required waivers and additional insured endorsements are incomplete. 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 and the cancellation notice provision contained herein shall remain in effect during the coverage.

9. If Subcontractor does not comply with the requirements of this Attachment, 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 any of its sub-tier Subcontractors use any owned, chartered, leased or hired aircraft of any type in the performance of this Agreement, Subcontractor or its sub-tier Subcontractors shall maintain aircraft liability insurance in an amount of not less than \$2,000,000 per occurrence, including passenger liability.

11. If Subcontractor or any of its sub-tier Subcontractors, consultants or sub-consultants provide professional services, including but not limited to design, architecture, engineering or surveying, as part of Subcontractor's work under this Agreement, Subcontractor or the sub-tier Subcontractor, consultant or sub-consultant shall provide evidence of professional liability insurance with minimum limits of liability of \$1,000,000 per claim.



## **ATTACHMENT D - 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 Contractor with a copy of Subcontractor's current Injury/Illness Prevention Program, i.e., your company's written safety program. Subcontractor shall also provide any other written programs relevant to Subcontractor's work, such as a fall protection plan, hazard communication plan, etc.

Subcontractor shall comply with and enforce all applicable safety rules, regulations, standards and policies.

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 back charge 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. Subcontractor agrees that the aforementioned sums are to be paid, not as a penalty, but as liquidated damages to reasonably compensate Contractor for increased administrative costs and other tangible and intangible costs. The rights and remedies of Contractor under this paragraph, or any other remedy provided by the Agreement, are not exclusive and do not preclude the exercise of any other rights or remedies provided by the Agreement or law.
4. 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 obligations under the Agreement.

Subcontractor shall comply with the requirements of Section 5194 of Title 8, California Code of Regulations, entitled Hazard Communication and Section 3203 of Title 8, California Code of Regulations, entitled Injury and Illness Prevention Program.

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.

Subcontractor shall comply with the USA Regional Notification Center law pursuant to Article 2 (commencing with Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the Government Code.

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) with the California Occupational Safety and Health Appeals Board, including any penalties assessed.

**ATTACHMENT E - CALIFORNIA PUBLIC WORKS PROVISIONS**

**Prevailing Wage Requirements:**

This is a Prevailing Wage Project. Please see Attachment "F", "Labor Code Provisions" and Attachment "G", "Subcontractor Affidavit."

Subcontractor shall furnish Contractor with a Fringe Benefit Statement when returning the executed Subcontract Agreement.

Subcontractor shall furnish Contractor with Certified Payroll Reports, (one copy), on a weekly basis. Failure to comply with this provision will result in penalties under the applicable Labor Code provisions.

The Subcontractor Affidavit must be completed and submitted to Contractor with Subcontractor's final submission of certified payroll reports. Final payment will not be due to Subcontractor until all of Subcontractor's Certified Payroll Reports and the completed Subcontractor Affidavit have been received by Teichert.

Please reference Contractor job number on all prevailing wage documents.

Subcontractor shall comply with all applicable laws and regulations regarding utilization of Apprentices.

Upload of Certified Payrolls to the DIR eCPR system may be required.

This agreement requires compliance with the requirements of the Public Works Chapter of the Labor Code, including AB219, Section 1720.9 of the Labor Code, Hauling & Delivery of Ready-mix Concrete On Public Works Contracts. Subcontractor is required to include the AB219 provision attachment in all of their lower tier subcontract and supplier agreements. Subcontractor must also provide Teichert with a list of their lower tier subcontractors and suppliers for this project and provide the certified payroll reports from these subcontractors/suppliers per the requirements of this agreement and Labor Code Section 1776(a).

**Claims Submission Requirements:**

Subcontractor agrees to timely comply with all 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 California False Claims Act (Government Code section 12650 et seq.) and the Federal False Claims Act (31 U.S.C. section 3729 et seq.) (hereinafter "the Acts"). Submission by Subcontractor of any claim to Contractor in connection with the Project shall constitute a representation by Subcontractor to Contractor that the claim is not in any respect in violation of the Acts. In its sole discretion, Contractor may require Subcontractor to certify under penalty of perjury the validity and accuracy of any claim. 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 or forward it to Owner.

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**Federal Aid Contract Provisions:**

If the Project is financed in whole or in part by Federal funds, all of the statutes, rules and regulations promulgated by the Federal Government and applicable to work financed in whole or in part with Federal Funds will apply to this Subcontract, including without limitation all terms, conditions and requirements stated in Attachment "H," "Required Contract Provisions for Federal Aid Construction Contracts."

Both federal and State prevailing wage requirements apply to this Project. If the minimum wage rates as determined by the United States Secretary of Labor differ from the general prevailing wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, Subcontractor must pay not less than the higher wage rate.

## ATTACHMENT F - CALIFORNIA 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 two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

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

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

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

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

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

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

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

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

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

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of 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.

## **ATTACHMENT F - CALIFORNIA LABOR CODE PROVISIONS**

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

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

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

(f) (1) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number. (2) An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subdivision.

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

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

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

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

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.

**ATTACHMENT F - CALIFORNIA LABOR CODE PROVISIONS**

(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 county for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices from that county registered in each program.

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

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

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

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

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

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

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

**ATTACHMENT G - SUBCONTRACT AFFIDAVIT**

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

the State of California that:

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

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)

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.
  - b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)
  - c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.
5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
  - b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
  - c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
  - d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.
6. **Training and Promotion:**
- a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
  - b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
  - c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
  - d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.
7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:
- a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
  - b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
  - c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.
  - d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.
8. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.
- a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
  - b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.
  - c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

**9. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

1. The number of minority and non-minority group members and women employed in each work classification on the project;
2. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
3. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
4. The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

### III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

### IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

#### 1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

#### 2. Classification:

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

1. the work to be performed by the additional classification requested is not performed by a classification in the wage determination;
2. the additional classification is utilized in the area by the construction industry;
3. the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
4. with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.



- d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary
- e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

### 3. Payment of Fringe Benefits:

- a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.
- b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

### 4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

#### a. Apprentices:

1. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.
2. The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.
3. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
4. In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

#### b. Trainees:

1. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.
2. The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
3. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.
4. In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

#### c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under a approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

## 5. Apprentices and Trainees (Programs of the U.S. DOT):

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

## 6. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

## 8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

## 9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

## V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

### 1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

### 2. Payrolls and Payroll Records:

- a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.
- b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.
- c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
- d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
  1. that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;
  2. that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;
  3. that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

- a. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.
- b. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.
- c. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:
  - a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.
  - b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.
  - c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.
2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

#### VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).
  - a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.
  - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.
4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

#### VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

#### IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. **To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:**

## NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

***"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any high-way or related project submitted for approval to the Secretary of Transportation; or***

***Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or***

***Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;***

***Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."***

### X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

### XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

#### 1. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- h. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- i. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.
- j. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- k. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

## **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions**

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
- d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## **2. Instructions for Certification - Lower Tier Covered Transactions:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
- h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

## **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## **XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
  - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**EMPLOYMENT PREFERENCE FOR APPALACHIAN CONTRACTS**

**(Applicable to Appalachian contracts only.)**

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:
  - a. To the extent that qualified persons regularly residing in the area are not available.
  - b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
  - c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph 1c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph 4 below.
2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.
3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.
4. If, within 1 week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.
5. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work

**ATTACHMENT J**  
**FEDERAL PROJECT PROVISIONS**

This is a federal public works project. The federal contracting provisions set forth and/or referenced in the Prime Contract apply to and are hereby incorporated by reference into this Subcontract. Without in any way limiting the foregoing, Subcontractor's attention is drawn to the following applicable provisions:

Prevailing wages: Federal Davis-Bacon Act prevailing wage rates and requirements apply. See Federal Acquisition Regulation 52.222-6.

Employment Eligibility Verification: The "E-Verify" requirements and procedures set forth in Federal Acquisition Regulation 52.222-54 apply to this Subcontract.

Business Ethics and Compliance: If this Subcontract has a value in excess of \$5,000,000 and a performance period of more than 120 days, the Contractor Code of Business Ethics and Conduct requirements of Federal Acquisition Regulation 52.203-13 and 52.203-14 apply, including without limitation the requirements to have and make available a written code of business ethics and conduct within 30 days after award of the Prime Contract, establish an ongoing business ethics and compliance program within 90 days after award of the Prime Contract, and display fraud hotline posters.

Prompt payment to subcontractors: Pursuant to Federal Acquisition Regulation 52.232-27 (c), the following payment provisions apply to this Subcontract:

1. Contractor will pay Subcontractor for satisfactory performance under this Subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under the Prime Contract.
2. Contractor will pay Subcontractor an interest penalty for each payment not made in accordance with the payment clause, for the period beginning the day after the required payment date and ending on the date on which payment of the amount due is made, computed at the rate of interest established by the Secretary of the Treasury and published in the Federal Register for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.
3. Subcontractor must include the above payment provisions in each of its lower-tier subcontracts and must require its subcontractors to include the same provisions in each of their lower-tier subcontracts with each lower-tier subcontractor or supplier. Provided however, these payment provisions shall not be construed to impair the right of Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions permitting withholding of retention and/or withholding in accordance with other provisions of the applicable subcontract agreement, if Contractor or the subcontractor withholding payment provides the notice to the subcontractor required by FAR 52.232-27 (g) and a copy of such notice to the Contractor Officer.

The equal employment opportunity clauses mandated by the following federal regulations also apply to this Subcontract: 41 CFR 60-1.4 (a), 41 CFR 60-250.5 (a), and 41 CFR 60-741.5 (a). Additionally, 29 CFR Part 471 pertaining to the obligations of federal contractors and subcontractors to provide notification of employee rights under federal labor laws in the form stated in 29 CFR Part 471 Appendix A Subpart A also apply to this Subcontract.

ATTACHMENT K  
SUBCONTRACTOR UNION CHECKLIST

---

**SUBCONTRACTOR'S CURRENT SIGNATORY RELATIONSHIP STATUS  
WITH THE RESPECTIVE LABOR UNIONS**

As of \_\_\_\_\_, 2020

**CRAFT UNION**

**"SUB" IS CURRENTLY SIGNATORY TO**

- |                                      |                              |                             |
|--------------------------------------|------------------------------|-----------------------------|
| <b>CEMENT MASONS</b> .....           | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <b>CARPENTERS</b> .....              | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <b>LABORERS</b> .....                | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <b>OPERATING ENGINEERS</b> .....     | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <b>TEAMSTERS, CONSTRUCTION</b> ..... | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <b>Other:</b> .....                  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <b>Other:</b> .....                  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

**NON-UNION EMPLOYER** to be processed with TEICHERT SUBCONTRACT TERMS/CONDITIONS paperwork  Yes



## SUBCONTRACTOR/SUPPLIER FORM

Subcontractor please list all sub-tier subcontractors, suppliers, and rental companies to be used on job.

**Subcontractor** \_\_\_\_\_

**Job Number /Name** \_\_\_\_\_

Supplier/Sub-Subcontractor's Name, Address, Phone Number	Supplier/Sub-Subcontractor Amount
<input type="checkbox"/> Supplier <input type="checkbox"/> Sub-Subcontractor	
<input type="checkbox"/> Supplier <input type="checkbox"/> Sub-Subcontractor	
<input type="checkbox"/> Supplier <input type="checkbox"/> Sub-Subcontractor	
<input type="checkbox"/> Supplier <input type="checkbox"/> Sub-Subcontractor	
<input type="checkbox"/> Supplier <input type="checkbox"/> Sub-Subcontractor	
<input type="checkbox"/> Supplier <input type="checkbox"/> Sub-Subcontractor	
<input type="checkbox"/> Supplier <input type="checkbox"/> Sub-Subcontractor	
<input type="checkbox"/> Supplier <input type="checkbox"/> Sub-Subcontractor	
<input type="checkbox"/> Supplier <input type="checkbox"/> Sub-Subcontractor	

BOND NO. \_\_\_\_\_

PREMIUM \_\_\_\_\_

**SUBCONTRACT PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS, That we \_\_\_\_\_  
as Principal, and \_\_\_\_\_ as Surety, are held and firmly bound unto  
\_\_\_\_\_ as Obligee, 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 Obligee dated \_\_\_\_\_,  
for \_\_\_\_\_ being part of the work covered by a contract dated on or  
about \_\_\_\_\_, between \_\_\_\_\_  
hereinafter called Owner, and the said Obligee 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 Obligee from all loss, liability, costs,  
damages, penalty, attorney's fees or expense which Obligee 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 Obligee 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 Obligee 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 Obligee, 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 Obligee and the successors, administrators, or assigns of the  
Obligee 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: \_\_\_\_\_

BOND NO. \_\_\_\_\_  
PREMIUM \_\_\_\_\_

**SUBCONTRACT PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS, That we \_\_\_\_\_  
as Principal, and \_\_\_\_\_ as Surety, are held and firmly bound unto  
\_\_\_\_\_ as Obligee, 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 Obligee dated \_\_\_\_\_,  
for \_\_\_\_\_ being part of the work covered by a contract dated on or  
about \_\_\_\_\_, between \_\_\_\_\_  
hereinafter called Owner, and the said Obligee 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 Obligee 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 Obligee 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 Obligee 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 Obligee, 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 Obligee 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: \_\_\_\_\_

BOND NO. \_\_\_\_\_

PREMIUM \_\_\_\_\_

**SUB TIER SUBCONTRACT PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS, That we \_\_\_\_\_  
as Principal, and \_\_\_\_\_ as Surety, are held and firmly bound unto  
\_\_\_\_\_ as Obligee, 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 Obligee dated \_\_\_\_\_,  
for \_\_\_\_\_ being part of the work covered by a contract dated on or  
about \_\_\_\_\_, between \_\_\_\_\_  
hereinafter called Contractor and the said Obligee for \_\_\_\_\_

\_\_\_\_\_ which is part of the work covered by a contract dated on or about \_\_\_\_\_, between Contractor and  
\_\_\_\_\_, hereinafter called Owner, which contract and the specifications and general conditions  
thereof are hereby incorporate 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 Obligee from all loss, liability, costs,  
damages, penalty, attorney's fees or expense which Obligee 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 Obligee 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 Obligee 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 Obligee, 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 Obligee and the successors, administrators, or assigns of the  
Obligee 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: \_\_\_\_\_

**SUB TIER SUBCONTRACT PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS, That we \_\_\_\_\_  
as Principal, and \_\_\_\_\_ as Surety, are held and firmly bound unto  
\_\_\_\_\_ as Obligee, 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 Obligee dated \_\_\_\_\_,  
for \_\_\_\_\_ being part of the work covered by a contract dated on or  
about \_\_\_\_\_, between \_\_\_\_\_  
hereinafter called Contractor and the said Obligee for \_\_\_\_\_

\_\_\_\_\_ which is part of the work covered by a contract dated on or about \_\_\_\_\_, between Contractor and  
\_\_\_\_\_, hereinafter called Owner, which contract and the specifications and general  
conditions thereof are hereby incorporate 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 Obligee 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 Obligee 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 Obligee 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 Obligee, 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 Obligee 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: \_\_\_\_\_

# CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

*California Civil Code Section 8132*

**NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON THE RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.**

## Identifying Information

Name of Claimant: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Job Location: \_\_\_\_\_

Owner: \_\_\_\_\_

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

## Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date of this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: \_\_\_\_\_

Amount of Check: \_\_\_\_\_

Check Payable to: \_\_\_\_\_

## Exceptions

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:  
Date(s) of waiver and release: \_\_\_\_\_  
Amount(s) of unpaid progress payment(s): \$ \_\_\_\_\_
- (4) Contract rights, including:
  - (A) a right based on rescission, abandonment, or breach of contract, and
  - (B) the right to recover compensation for work not compensated by the payment.

## Signature

Claimant's Signature: \_\_\_\_\_

Claimant's Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

rev 7/1/2012

# UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

*California Civil Code Section 8134*

**NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.**

## Identifying Information

Name of Claimant: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Job Location: \_\_\_\_\_

Owner: \_\_\_\_\_

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

## Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment:

\$ \_\_\_\_\_

## Exceptions

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) Contract rights, including:
  - (A) a right based on rescission, abandonment, or breach of contract, and
  - (B) the right to recover compensation for work not compensated by the payment.

## Signature

Claimant's Signature: \_\_\_\_\_

Claimant's Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

rev 7/1/2012

# CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

*California Civil Code Section 8136*

**NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON THE RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.**

## Identifying Information

Name of Claimant: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Job Location: \_\_\_\_\_

Owner: \_\_\_\_\_

## Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date of this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: \_\_\_\_\_

Amount of Check: \_\_\_\_\_

Check Payable to: \_\_\_\_\_

## Exceptions

This document does not affect any of the following:

Disputed claims for extras in the amount of: \$ \_\_\_\_\_

## Signature

Claimant's Signature: \_\_\_\_\_

Claimant's Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

rev 7/1/2012



# UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

*California Civil Code Section 8138*

**NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.**

## Identifying Information

Name of Claimant: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Job Location: \_\_\_\_\_

\_\_\_\_\_

Owner: \_\_\_\_\_

## Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full.

## Exceptions

This document does not affect any of the following:

Disputed claims for extras in the amount of: \$ \_\_\_\_\_

## Signature

Claimant's Signature: \_\_\_\_\_

Claimant's Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

rev 7/1/2012