



SUBCONTRACT NO. {Projects.Number}-{Contracts.ContractNumber}

SUBCONTRACT

(Long Form Subcontract Between General Contractor & Subcontractor)

This Subcontract is entered into on {Contracts.ContractDate}, at San Diego, California by and between **Barnhart, Inc.** (“Contractor”), with its principal office at **10760 Thornmint Rd., CA 92127** and {ToCompany.Name} (“Subcontractor”) with its principal office at: {ToContact.DisplayAddress}.

Contractor has entered into a contract with the following Owner:

{LegalDocInfo.Owner}
{LegalDocInfo.OwnerAddr1}
{LegalDocInfo.OwnerAddr2}

To perform certain construction work identified as:

BARNHART JOB #{Projects.Number}
{Projects.Name}
{Projects.Address}

This Subcontract has important legal and insurance consequences. Consultation with an attorney and insurance consultant is encouraged with respect to its completion or modification.

TABLE OF ARTICLES

1. SUBCONTRACT PRICE
2. SUBCONTRACT DOCUMENTS
3. SCOPE OF SUBCONTRACT WORK
4. SURETY BONDING
5. PERFORMANCE OF WORK
6. SUBCONTRACT INTERPRETATION
7. CONTRACTOR’S OBLIGATIONS
8. SUBCONTRACTOR’S OBLIGATIONS
9. LABOR RELATIONS
10. INSURANCE
11. INDEMNIFICATION
12. CHANGES
13. DELAYS
14. CLAIMS
15. DISPUTES RESOLUTION
16. PAYMENT
17. RECOURSE BY CONTRACTOR
18. TERMINATION
19. SUSPENSION OF WORK
20. ASSIGNMENT OF SUBCONTRACT

The titles given to the Articles and paragraphs of this Subcontract are for ease of reference only and shall not be relied upon or cited for any other purpose.

**ARTICLE 1
SUBCONTRACT PRICE**

1.1 As full compensation for satisfactory performance of the Subcontract, Contractor agrees to pay Subcontractor in the manner described below, subject to all provisions of the Subcontract:

(a) the firm fixed-price of (**{CONTRACTS.ORIGVALUE} "NumToText"**) **DOLLARS** (**{Contracts.OrigValue}**) subject to additions and deductions as provided for in the Subcontract; and/or

~~(b) unit prices in accordance with the attached Unit Prices and estimated quantities; and/or~~

~~(c) time and material rates and prices in accordance with the attached Labor and Material Costs; and/or~~

~~(d) other, as identified in an attachment.~~

The firm fixed-price, unit prices, time and material rates and prices and/or other identified manner of payment are referred to as the "Subcontract Price."

**ARTICLE 2
SUBCONTRACT DOCUMENTS**

2.1 The Subcontract Documents, in order of precedence, consist of the following:

2.1.1 The executed Subcontract between Contractor and Subcontractor, including Attachment Nos. **{Contracts.Exhibits}** and Labor Code Laws Addenda which are incorporated at this point as if fully set forth.

2.1.2 The Contract, consisting of the entire and integrated Agreement between Owner and Contractor, as more particularly though not exclusively specified in the General, Special, Supplementary and other Conditions, Drawings, Specifications, Addenda, reference standards or provisions of any nature.

2.2 Subcontractor certifies and agrees that it is fully familiar with all of the terms, conditions and obligations of the Subcontract Documents, the location of the job site, and the conditions under which the work is to be performed, and that it enters into this Subcontract based upon its investigation of all such matters and is in no way relying upon any opinions or representations of Contractor. It is further agreed that the Contract is incorporated into this Subcontract with the same force and effect as if it was set forth in full, and that Subcontractor and its subcontractors are bound by all terms of the Contract as they relate in any way, directly or indirectly, to the work covered by this Subcontract. Subcontractor agrees to be bound to Contractor in the same manner and to the same extent as Contractor is bound to Owner under the Contract. The Contract is defined above and includes but is not limited to the following documents:

PLANS & SPECS PREPARED BY LANGDON WILSON ARCHITECTURE PLANNING INTERIORS, ADDENDUM 1, ALTERNATE 3 (1, 2, 4, 5 NOT INCLUDED) SEE ATTACHMENT 6 FOR PLAN INDEX.

2.3 Upon written request by Subcontractor, Contractor shall provide to Subcontractor at Subcontractor's expense, one copy of all portions of the Contract in the Contractor's possession. However, neither this article nor any other shall obligate Contractor to obtain for Subcontractor copies of any portion of the Contract not in the possession of Contractor, and Subcontractor shall not be excused from performance of its work because it does not have such documents. Upon written request by its subcontractors and suppliers, Subcontractor similarly shall make one copy of applicable portions of the Subcontract Documents available to its subcontractors and suppliers. Nothing shall prohibit Subcontractor from obtaining a copy of the executed Contract from Contractor at any time after the Subcontract is executed.

2.4 Nothing in the Subcontract shall be construed to create a contractual relationship between persons or entities other than Contractor and Subcontractor.

**ARTICLE 3
SCOPE OF SUBCONTRACT WORK**

3.1 Independent Contractor – Subcontractor shall provide all labor, materials, equipment and services necessary or incidental to perform its work as an "independent contractor," in accordance with the Subcontract Documents.

3.2 Subcontract Work – Subcontractor shall perform the following scope of work:

{CONTRACTS.SCOPEOFWORK}

3.3 Temporary Services – Contractor will provide to Subcontractor the following temporary services at the project site during the performance of this Subcontract at no charge to Subcontractor:

{PROJECTS.UDF_TEMPSERVICES}

Subcontractor will provide, at its own expense, all other necessary temporary services for the completion of its work.

**ARTICLE 4
SURETY BONDING**

4.1 Copy of Contractor Bonds – Subcontractor is entitled to receive from Contractor, upon written request, copies of any payment and performance bonds furnished by Contractor for the project.

4.2 Subcontractor Bonds – Subcontractor surety bond requirements, if any, are as follows:

Subcontractor Performance And Payment Bond:

IS {Contracts.Udf_BondRequirement}

4.2.1 If a performance or payment bond, or both, are required of Subcontractor, such bonds shall name Contractor as obligee, be in the full amount of the Subcontract Price, and shall be in a form and by a surety acceptable to Contractor. The premiums for such bonds are included in the Subcontract Price.

4.2.2 In the event Subcontractor shall fail to provide any required bonds within 10 days of Contractor’s written notification to do so, Contractor may terminate this Subcontract for cause. All costs and expenses incurred by Contractor as a result of such a termination shall be paid by Subcontractor in accordance with the termination for cause article of the Subcontract.

4.2.3 No change, directive, clarification or communication regarding this Subcontract, whether made in the manner specified in the Subcontract or not, shall release or exonerate, in whole or in part, any surety on any bond given in connection with this Subcontract and neither Owner nor Contractor shall be under any obligation to notify the surety or sureties of any change, directive, clarification or communication with Subcontractor.

**ARTICLE 5
PERFORMANCE OF WORK**

5.1 Schedule of Work – Subcontractor may provide Contractor with scheduling information it proposes for its work. If the information is provided 10 days before Contractor is required to submit the schedule to Owner or to proceed with the work, Contractor will consult with Subcontractor regarding such information and, if possible, incorporate the same into the schedule to Owner.

5.1.1 Contractor shall prepare the schedule for performance of the Contract and Subcontract (“progress schedule”) and may revise and update the progress schedule as the work progresses. It shall be Subcontractor’s obligation to conform to the progress schedule, as updated by Contractor. Subcontractor shall prepare and obtain approval as required by the Contract for all shop drawings, details, samples; shall perform any required Subcontractor testing; and do all other things necessary and incidental to the prosecution of the Subcontract in order to comply with the progress schedule. Subcontractor shall coordinate the work covered by this Subcontract with Contractor and all other subcontractors with whom Subcontractor must interface for the proper and timely completion of Subcontractor’s work. Contractor shall have the right to decide the time and order in which the various portions of the work shall be installed, the priority of the work of other subcontractors, and, in general, all matters representing the timely and orderly performance of the work of Subcontractor on the project.

5.1.2 Contractor shall have the right to determine and, if necessary, change the time, order and priority in which the various portions of the work shall be performed and all other matters relative to the timely and orderly performance of Subcontractor’s work. Subcontractor shall be reasonably notified of all subsequent changes and additional details to the progress schedule. Both Contractor and Subcontractor shall be bound by the updated progress schedule.

5.2 Subcontract Performance – Subcontractor shall use its best care, skill and diligence in supervising, directing and performing its work. Subcontractor shall have responsibility and control over the performance of its work, including the construction methods, techniques, means and sequences for coordinating and completing the various portions of its work.

5.3 Use of Contractor's Equipment – Subcontractor, its agents, employees, subcontractors or suppliers shall use Contractor's equipment only with the express written permission of Contractor's designated representative and in accordance with Contractor's terms and conditions for such use.

5.4 Time is of The Essence – Time is of the essence for both parties, and they mutually agree to ensure the performance of their respective work and the work of their subcontractors and suppliers so that the entire project may be completed in accordance with the Contract and the updated progress schedule.

ARTICLE 6 SUBCONTRACT INTERPRETATION

6.1 Inconsistencies and Omissions – Should inconsistencies or omissions appear in the Contract, it shall be the duty of Subcontractor to so notify Contractor in writing within three (3) working days of Subcontractor's discovery. Upon receipt of such notice, Contractor shall inform Subcontractor as to the measures to be taken and Subcontractor shall comply with Contractor's instructions. If Subcontractor performs work knowing it to be contrary to any applicable laws, statutes, ordinances, building codes, rules or regulations without notice to Contractor and advance approval by appropriate authorities, including Contractor, then Subcontractor shall assume full responsibility for such work and shall bear all associated costs, charges, fees and expenses necessarily incurred to remedy the violation(s).

6.2 Disputes Over Responsibility For Performance – Subcontractor agrees that in the event a dispute should occur between Subcontractor and another subcontractor or Contractor as to who has the responsibility to perform a particular item of work or repair damage to any particular item of work, the determination of who shall perform the work shall be made by Contractor.

6.3 Law and Effect – The Subcontract shall be governed by the law of the State in which the project is located.

6.4 Severability and Waiver – The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision. The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of the Subcontract, or to exercise any right provided to it, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

6.5 Recoverable Fees and Costs – Should either party institute suit or demand arbitration to enforce any of the provisions of the Subcontract, to protect its interests in any manner arising under the Subcontract, or to recover on a surety bond furnished by a party to the Subcontract, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs, charges, and expenses (including expert fees and testing) expended or incurred.

6.6 Titles – The titles given to the Articles and paragraphs of the Subcontract, and the order of their placement, are for ease of reference only and shall not be relied upon or cited for any other purpose.

6.7 Entire Agreement – The Subcontract is solely for the benefit of the signatories and represents the entire and integrated agreement between the parties and, unless specifically stated otherwise, supersedes all prior negotiations, representations or agreements, either written or oral.

6.8 Waiver of Any Breach – Waiver of any breach, alleged breach, provision, covenant or condition of the Subcontract by Contractor shall not be construed as a waiver of the same or any other provision of the Subcontract on any other occasion, nor shall such waiver serve as an estoppel of any other right Contractor may have. Should any provision in the Subcontract, or its attachments, be held or declared void or invalid, all other provisions shall remain in full force and effect.

ARTICLE 7 CONTRACTOR'S OBLIGATIONS

7.1 Authorized Representative – Contractor shall designate one or more persons who shall be Contractor's authorized representative(s) on-site and off-site. Such authorized representative(s) shall be the only person(s) Subcontractor shall look to for instructions, orders and/or directions, except in an emergency.

7.2 Lay Down Areas – If available, Contractor shall allocate to Subcontractor area(s) for Subcontractor's material and equipment during performance of the Subcontract.

7.3 Timely Communications – Contractor shall, with reasonable promptness, transmit to the appropriate parties all submittals, transmittals and written approvals relating to Subcontractor's work.

Communications by and with Subcontractor's subcontractors and suppliers shall be through Subcontractor.

7.4 Backcharges For Services Rendered or Materials Furnished – Contractor agrees that backcharges for services rendered or materials furnished to Subcontractor shall not be valid unless Contractor gives Subcontractor written notice prior to the furnishing of the services and/or materials, except in an emergency affecting the safety of persons or property.

7.4.1 If requested in writing by Subcontractor, Contractor shall provide written compilations of the charges relating to such services or materials by the last day of the month following that in which the services are rendered or materials are furnished.

7.5 Layout Responsibility and Levels – Contractor shall establish principal axis lines and elevations of the structures and site. Subcontractor shall layout and be strictly responsible for the accuracy of Subcontractor's work and for any loss or damage to Contractor or others by reason of Subcontractor's failure to set out or perform its work correctly. Subcontractor shall exercise prudence so that the actual final conditions and details of its work shall result in alignment of finish surfaces.

7.6 Owner Ability to Pay – Subcontractor shall have the right to review with Contractor all information that Contractor has obtained relative to Owner's financial ability to pay for the Contract work.

ARTICLE 8 SUBCONTRACTOR'S OBLIGATIONS

8.1 Responsibilities – Subcontractor shall furnish all labor, materials, equipment and services necessary or incidental to perform its work in accordance with the Subcontract Documents. If requested by Contractor, Subcontractor shall provide to Contractor a list of its proposed subcontractors and suppliers.

8.2 Compliance with Laws, Rules, Ordinances and Regulations – Subcontractor shall, at its sole cost and expense, and without increase in the Subcontract Price, comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the work, pay all manufacturers' taxes, sales taxes, use taxes, and all federal and state taxes, insurance and contribution 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.

8.2.1 Subcontractor shall give adequate notices to all required parties pertaining to Subcontractor's work and secure and pay for all permits, fees, licenses, assessments, and inspections necessary to complete its work in accordance with the Subcontract Documents.

8.2.2 Subcontractor shall be compensated for additional costs resulting from laws, ordinances, rules, regulations and taxes enacted after the date of the Contract only to the extent such additional costs are paid to Contractor by Owner.

8.3 Site Visitation – Subcontractor acknowledges that it has visited the project site and visually inspected the general and local conditions which could affect its work. Any failure of Subcontractor to reasonably ascertain, from a visual inspection of the site, the general and local conditions which could affect its work will not relieve Subcontractor from its responsibility to properly complete its work without change in the Subcontract Price.

8.4 Shop Drawings, Samples, Product Data and Manufacturers' Literature – Subcontractor shall promptly submit to Contractor for approval all shop drawings, samples, product data, manufacturers' literature and similar submittals required by the Contract. Subcontractor shall be responsible to Contractor for the accuracy and conformity of its submittals to the Contract requirements. Subcontractor shall prepare and deliver its submittals to Contractor in a manner consistent with the progress schedule and in such time and sequence so as not to delay Contractor or others in the performance of the Contract work. The approval of any Subcontractor submittal shall not be deemed to authorize deviations, substitutions or changes in the requirements of the Subcontract Documents unless express written approval is obtained from Contractor and Owner authorizing such deviation, substitution or change. In the event the Contract does not contain submittal requirements pertaining to Subcontractor's work, Subcontractor agrees upon request to submit to Contractor in a timely fashion for approval any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required.

8.4.1 Contractor, Owner and Architect are entitled to rely on the accuracy and completeness of any professional certifications required by the Subcontract Documents concerning the performance criteria of systems, equipment or materials, including all calculations and any governing performance requirements.

8.5 Coordination and Cooperation – Subcontractor shall:

- (a) cooperate with Contractor and all others whose work may interface with Subcontractor's work;
- (b) specifically note and immediately notify Contractor of any interference with Subcontractor's work; and
- (c) participate in the preparation of coordination drawings and work schedules involving Subcontractor's work.

8.6 Authorized Representative – Subcontractor shall designate in writing one or more competent contractor-approved persons who shall be the authorized Subcontractor representative(s) on-site and off-site. Such authorized representative(s) shall be the only person(s) to whom Contractor shall issue instructions, orders or directions, except in an emergency.

8.7 Communications – Subcontractor communications by and with Owner, Architect, separate contractors and/or other subcontractors and suppliers of Contractor, regardless of tier, shall be through Contractor.

8.8 Tests, Inspections and Approvals – Subcontractor shall coordinate and notify Contractor of all required tests, inspections and approvals of Subcontractor's work so as not to delay the performance of the work. Subcontractor shall schedule and provide proper written notice to all required parties of such tests, inspections and approvals.

8.9 Workmanship – Every part of Subcontractor's work shall be executed in accordance with the Subcontract Documents in a workmanlike manner. All materials needed by Subcontractor shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the work, and shall be new except such materials as may be expressly provided in the Subcontract Documents to be otherwise.

8.10 Materials or Equipment Furnished by Others – In the event the scope of Subcontractor's work includes installation of materials or equipment furnished by others, it shall be the responsibility of Subcontractor to inventory, examine, store and install the items, with such skill and care as to ensure a satisfactory and proper installation. Subcontractor shall promptly notify Contractor in writing of any defective materials or equipment.

8.11 Substitutions – No substitutions shall be made by Subcontractor unless permitted in the Subcontract Documents and only then upon Subcontractor first receiving all approvals required under the Subcontract Documents for substitutions. If Subcontractor initiates a substitution, deviation or change in the work which affects the scope of the work or the expense of other trades, Subcontractor shall be liable for all resulting expenses.

8.12 Warranty – Subcontractor warrants all materials and workmanship and agrees to replace at its sole cost and expense, and to the satisfaction of Contractor, any materials that are defective or improperly installed, and indemnifies Contractor from and against any liability, loss or damage arising from or relating to such materials and installation through the period of Subcontractor's performance and for a period of one year from completion of the Contract. If the period of warranty is specified in excess of one year by the Contract, Subcontractor shall be bound for the longer period specified.

8.13 Uncovering of Work – If required in writing by Contractor, Subcontractor must uncover any portion of its work which has been covered. All costs associated with the uncovering and related work shall be borne as follows:

- (a) If the work was covered in violation of the Subcontract Documents or contrary to a written directive issued to Subcontractor by Contractor, the uncovering, any corrective work and restoration shall be at Subcontractor's expense.
- (b) If the work was not covered in violation of the Subcontract Documents or contrary to a written directive issued to Subcontractor by Contractor, the Subcontract shall be adjusted by change order for all costs of uncovering and restoring any work which proves to be installed in accordance with the Subcontract Documents.
- (c) If any uncovered work does not comply with the Subcontract Documents and Subcontractor is responsible for the nonconforming condition, Subcontractor shall be responsible for all costs of uncovering, correcting and restoring the work so as to make it conform to the Subcontract Documents.

8.14 Correction of Work – Subcontractor is required to correct in a timely fashion any of its work rejected by Contractor or Owner for failing to comply with the Subcontract Documents whether observed prior to the commencement of the warranty period(s) or during the warranty period(s). Subcontractor shall correct at its own cost and bear the expense of additional services for any nonconforming work for which it is responsible, and shall remain responsible even after the warranty period for fraud, misrepresentation or latent defects.

8.15 Cleanup – Subcontractor shall follow Contractor's cleanup directions, and:

- (a) at all times keep the building and premises free from debris resulting from Subcontractor's work;
- (b) broom or rake clean each work area prior to discontinuing work in each area; and
- (c) Subcontractor's work shall not be considered complete until Subcontractor removes from the site all temporary structures, debris and waste incident to its operation and cleans all surfaces, fixtures, equipment, etc., relative to the performance of its work.

If Subcontractor fails to immediately commence compliance with the above cleanup duties after written notification from Contractor of noncompliance, Contractor may implement appropriate cleanup measures without further notice and deduct the resulting costs from any amounts due or to become due Subcontractor under the Subcontract.

8.16 Safety – Subcontractor is responsible for prevention of accidents arising from or relating to its work. Subcontractor shall comply fully with all federal, state and local laws, orders, citations, rules, regulations, standards and statutes affecting or relating to the Subcontract or its performance. Subcontractor shall comply with the accident prevention and safety program of Owner and Contractor. Establishment of a safety program by Contractor shall not relieve Subcontractor of its safety responsibilities. Subcontractor shall establish its own safety program implementing safety measures, policies and standards conforming to those required by governmental authorities having jurisdiction and by Contractor and Owner. Subcontractor shall notify Contractor immediately following an accident and promptly confirm the notice in writing. A detailed written report shall be furnished to Contractor. Subcontractor shall indemnify and hold Contractor harmless from all fines, penalties or costs of abatement imposed on Contractor as a result of safety violations caused by Subcontractor's failure to comply with applicable safety requirements. Subcontractor shall notify Contractor of any unsafe condition it discovers or observes and shall stop work until informed by Contractor that it may resume work.

8.16.1 Should Subcontractor encounter any hazardous substances at the site which are potentially harmful to persons or property, Subcontractor shall take all steps required by the Subcontract Documents and by law to protect persons and property from injury or damage, including stopping Subcontractor's work in the affected area(s) and promptly notifying Contractor in writing of the conditions encountered at the site. Should Subcontractor be required to stop work in any area of the project as a result of hazardous substances located at the site, Subcontractor shall not resume work in the affected area(s) until the hazardous substances have been removed or made harmless, all necessary approvals to resume work are obtained and Contractor gives Subcontractor written direction to resume work.

8.16.2 All safety sheets, plans, submittals or other such documents required by law or the Subcontract Documents pertaining to materials or substances used or consumed in the performance of Subcontractor's work shall be submitted to Contractor by Subcontractor. Any such safety sheets, plans or submittals obtained by Contractor from other subcontractors or sources shall be made available to Subcontractor by Contractor.

8.17 Delegation or Subcontracting of Duties – Subcontractor is prohibited from delegating, transferring, conveying, subcontracting, relinquishing or otherwise disposing of the whole or any part of its duties under this Subcontract without the prior written approval of Contractor, which shall not be unreasonably withheld. Lower-tier subcontractors approved by Contractor on or before the effective date of the Subcontract may be listed below:

NONE _____

Subcontractor shall incorporate all terms of this Subcontract in any subcontracts or purchase orders with its subcontractors and suppliers.

8.18 Duty to Proceed – In the event of any dispute or controversy with Contractor, another subcontractor or other third party involved with the project, Subcontractor shall not cause or permit any delay or cessation of its work or cause delay or disruption to the work of any other subcontractor or Contractor on the project, but shall proceed with performance of its work pending resolution of such

dispute or controversy. Contractor shall continue to make payments in accordance with the Subcontract.

8.19 Force Account Work – When directed in writing by Contractor, Subcontractor shall perform such additional work as directed by Contractor and Contractor shall pay to Subcontractor the actual costs of such directed work plus Subcontractor’s overhead and profit at a combined rate of 15% of such actual costs. This provision shall not apply to Owner directed force account work or disputed work.

8.20 Workers – Contractor may order the removal from the job of any workers Contractor reasonable finds disruptive, incompetent, in violation of safety requirements/programs or otherwise detrimental to the successful completion of the project.

8.21 Contractor Expending Money – Whenever any money is expended or costs or expenses are incurred by Contractor on behalf of or on account of Subcontractor, which amounts Subcontractor should have paid, and for which amounts Subcontractor is required to reimburse Contractor, or if Contractor continues or completes the work after default by Subcontractor, Subcontractor shall pay to Contractor interest at the rate of 10% per annum from the time said money is expended or said costs or expenses are incurred until those amounts are repaid to Contractor by Subcontractor. Nothing contained in this provision or Subcontract shall be construed as requiring Contractor to make any such expenditures, advance any such money, or incur any such expenses. In the event that the balance of the monies due pursuant to this Subcontract are insufficient to cover Contractor’s damages or exposure, then Contractor shall have the right to offset against monies owed Subcontractor on other projects, if any.

8.22 Protection of the Work – Subcontractor shall secure and protect the work done pursuant to this Subcontract until final acceptance by Contractor and Owner.

ARTICLE 9 LABOR RELATIONS

9.1 General Provisions – Employment of labor by Subcontractor shall be effected under conditions which are satisfactory to Contractor. Subcontractor shall keep a representative at the job site during all times when Subcontractor’s work is in progress, and such representative shall be authorized to represent Subcontractor as to all phases of the work. Prior to commencement of the work, Subcontractor shall notify Contractor in writing who Subcontractor’s representative is to be, and in the event of any change of representative Subcontractor shall notify Contractor who the new representative is to be prior to such change becoming effective.

9.1.1 Subcontractor acknowledges that Contractor has entered into labor agreements covering work at its construction job sites with the following labor unions

NONE.

If requested by Subcontractor, Contractor shall provide copies of all such labor agreements to Subcontractor. Subcontractor agrees to comply with all of the terms and conditions of those labor agreements set forth above. Subcontractor agrees, at its own expense, upon request of Contractor, to take all lawful steps to secure a binding and final determination of any jurisdictional dispute by the National Labor Relations Board.

9.1.2 Subcontractor will require all of its subcontractors and their subcontractors performing job site work to comply with the labor agreements specified above, and labor agreements which are binding upon them.

9.1.3 Subcontractor will indemnify and hold Contractor harmless from and against any liability, loss, damage, cost, claims, awards, judgments, fines, expenses, including litigation expenses, reasonable attorneys’ fees and any other costs which may be incurred by Contractor resulting from Subcontractor’s failure to comply with the above requirements.

9.2 Reserved Gate Usage – Subcontractor shall notify in writing and assign its employees, materialmen and suppliers to such gates or entrances as may be established for their use by Contractor and in accordance with such conditions and at such times as may be imposed by Contractor. Strict compliance with Contractor’s gate usage procedures shall be required by Subcontractor who shall be responsible for such gate usage by its employees, materialmen, suppliers, subcontractors, and their materialmen and suppliers.

9.3 Staggered Days and Hours of Work and for Deliveries – Subcontractor shall schedule the work and the presence of its employees at the job site and any deliveries of supplies or materials by its materialmen and suppliers to the job site on such days, and such times and during such hours, as may be directed by Contractor. Subcontractor shall assume responsibility for such schedule compliance not only for its employees but for all its materialmen, suppliers and subcontractors, and their materialmen and suppliers.

- D. Umbrella/Excess Liability Coverage
 - 1. Per Occurrence \$5 Million
 - 2. General Aggregate \$5 Million

10.3 Cancellation, Renewal or Modification – Subcontractor shall maintain in effect all insurance coverage required under the Subcontract at Subcontractor's sole expense and with insurance companies rated as required by Owner but no less than a Best rating of A- VII or better. All insurance policies shall contain a provision that the coverages afforded shall not be canceled or not renewed, nor restrictive modifications added, until at least thirty (30) calendar days' prior written notice has been given to Contractor. Certificates of Insurance and additional insured endorsements shall be filed with Contractor prior to the commencement of Subcontractor's work. In the event Subcontractor fails to obtain or maintain any insurance coverage required under the Subcontract, Contractor may purchase such coverage and charge its expense to Subcontractor, or terminate the Subcontract for cause in accordance with the termination for cause provision of the Subcontract.

10.4 Builders Risk Insurance – Builder's Risk Insurance

{CONTRACTS.UDF_BUILDERSRISK}

If Builder's Risk Insurance is provided by Contractor or Owner, upon written request by Subcontractor, Contractor shall provide Subcontractor with a copy of the Builder's Risk policy of insurance.

10.4.1 If Builder's Risk Insurance is provided by Owner or Contractor, then Contractor and Subcontractor waive all rights against each other and Owner, Architect, Architect's consultants and agents or employees of any of them, separate contractors, and all other subcontractors for loss or damage to the extent covered by Builder's Risk, except such rights as they may have to the proceeds of such insurance. However, this waiver shall not extend to the acts or omissions of Architect, Architect's consultants, and the agents or employees of any of them.

10.5 Endorsement – If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

**ARTICLE 11
INDEMNIFICATION**

11.1 General Indemnity – All work covered by the Subcontract done at the site of construction or in preparing or delivering materials or equipment, or any or all of them, to or from the site shall be at the risk of Subcontractor exclusively. To the fullest extent permitted by law, Subcontractor shall, with respect to all work which is covered by or incidental to the Subcontract, indemnify, hold harmless and defend Contractor **and Owner (including the board of trustees, and the officers, agents, employees and volunteers of District, the state Allocation Board if applicable, the Project Inspector, the Architect, and the Architect's consultants which shall herein be collectively referred to as "Owner's Higher Tiers")** from and against any and all allegations, losses, claims, actions, demands, damages, liabilities, or expenses (including costs, expenses and attorneys' fees), arising from or relating to the death or bodily injury to persons, injury to property, design defects (if design originated by Subcontractor), or other loss, damage or expense. Subcontractor's duty to indemnify shall include all damages caused or alleged to be caused in whole or in part by any negligent act or omission, whether active or passive, of: (a) Subcontractor; (b) anyone directly or indirectly employed by Subcontractor; (c) anyone for whose acts Subcontractor may be liable; (d) Contractor; **or (e) Owner and its Higher Tiers.** Subcontractor shall not be obligated to indemnify Contractor **or Owner and its Higher Tiers** with respect to the sole negligence or willful misconduct of Contractor **or Owner and its Higher Tiers, their respective** agents, servants or subcontractors who are directly responsible to Contractor **or Owner and its Higher Tiers**, excluding Subcontractor.

~~11.1.1 However, if Owner does not require Contractor to provide a Type I indemnity to Owner (i.e., only Owner's sole negligence and willful misconduct are excluded from the indemnity), paragraph 11.1 shall not apply and Subcontractor's indemnity to Contractor shall be the same indemnity Contractor is required to provide to Owner. In such event, Subcontractor agrees to Owner's indemnity provision with the substitutions of "Contractor" for "Owner" and "Subcontractor" for "Contractor."~~

11.2 Indemnification for Noncompliance With Laws – Subcontractor shall fully indemnify and hold Contractor **and Owner and Owner's Higher Tiers** harmless from all loss, costs and expenses attributable to any acts or omissions by Subcontractor which constitute a failure to comply with any laws, rules, ordinances and / or regulations of any governmental entity or agency.

11.3 Patents – Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented materials in Subcontractor's work. Subcontractor shall defend all suits for claims for infringement of any patent rights arising out of Subcontractor's work,

which may be brought against Contractor or Owner, and shall be liable to Contractor and Owner for all loss, including all costs, expenses and attorneys' fees in any such suit.

ARTICLE 12 CHANGES

12.1 Performance – Subcontractor shall proceed with all written directions issued by Contractor so as not to delay the work. Subcontractor shall adhere strictly to the Subcontract Documents unless directed otherwise in writing. Subcontractor shall not make any changes to the work set forth in the Subcontract Documents, either as additions or deletions, without the written direction of Contractor.

12.2 Incorporating Changes – All provisions of this Subcontract shall apply to any changes or extras in a like manner and to the same extent as though said changes or extras were incorporated in the Subcontract.

12.3 Notification of Additional Costs or Time – Subcontractor shall immediately provide written notification to Contractor if a written direction could result in additional costs or time of performance so that Contractor has sufficient time to take actions to minimize any additional costs or time, and has sufficient time to provide notification to Owner in accordance with the Contract.

12.4 Submission of Cost Proposals and Requests For Time Extensions – Subcontractor shall submit its cost proposal(s) in sufficient time for Contractor to comply with any submission requirements of Owner. All such cost proposals shall itemize, in a form acceptable to Contractor, any change in costs or time for performance which result from any written direction issued by Contractor.

12.5 Cost Proposal Negotiations – At Subcontractor's request, it shall be invited to attend and participate in all negotiations with Owner or others that relate to settlement or resolution of its cost proposals. At Contractor's request, Subcontractor shall attend and participate in negotiations with Owner or others that relate to settlement or resolution of Subcontractor's cost proposals.

ARTICLE 13 DELAYS

13.1 Excusable Delays – An excusable delay is one which is caused by circumstances or events beyond the control and without the fault or negligence of Contractor or Subcontractor, and which is recognized by the Contract as "excusable," that is, a delay for which the contract time is extended but for which no compensation is allowed. To the extent excusable delays occur and affect Contractor's and/or Subcontractor's ability to complete their work in accordance with the updated progress schedule, the affected party's time for performance shall be extended, but only to the extent such extensions are allowed by Owner.

13.2 Subcontractor Caused Delays – Subcontractor caused delays are delays caused by the failure of Subcontractor, or any party for which Subcontractor is responsible, to perform any portion of its work in accordance with the updated progress schedule. If Subcontractor delays cause delay and/or disruption to the Contract work, Subcontractor shall be liable for all costs and damages sustained by Contractor or for which Contractor may be liable to Owner or any other party, including consequential damages and liquidated damages. If Subcontractor delays are only one of multiple causes for delay to the Contract work, Subcontractor shall only be liable for its proportionate share of any resulting damages.

13.3 Contractor Caused Delays – Contractor caused delays are delays caused by the failure of Contractor, or any party for which Contractor is responsible, to perform any portion of its work in accordance with the updated progress schedule. If Contractor delays cause delay and/or disruption to Subcontractor's work, Contractor shall be liable for all costs and damages sustained by Subcontractor, or for which Subcontractor may be liable to any other party, including consequential damages. If Contractor delays are only one of multiple causes for delay to Subcontractor's work, Contractor shall only be liable for its proportionate share of any resulting damages.

13.4 Concurrent Delays – Concurrent delays are delays which can be attributed to either: (a) excusable delays and Subcontractor caused delays occurring concurrently; or (b) excusable delays and Contractor caused delays occurring concurrently. To the extent any portion of a delay is concurrent delay, and affects Contractor's and/or Subcontractor's ability to complete its work in accordance with the updated progress schedule, the period of performance shall be extended but neither Contractor nor Subcontractor shall be entitled to recover any costs or damages.

13.5 Disputed Delays – If Subcontractor disputes the determination of the cause of any delay and wishes to pursue that dispute, it must comply with the Claims article of the Subcontract.

ARTICLE 14 CLAIMS

14.1 Claim – A claim is a written demand by Subcontractor seeking an adjustment in the Subcontract Price and/or time, or the recovery of withheld disputed funds.

14.2 Notification of Claims – Subcontractor shall immediately provide written notification to Contractor of any claims so that Contractor has sufficient time to take actions to minimize any additional costs or time, and has sufficient time to provide notification to Owner in accordance with the Contract.

14.3 Submission of Claims – Subcontractor shall submit its claims in sufficient time for Contractor to comply with any submission requirements of Owner. All such claims shall itemize, in a form acceptable to Contractor, any additional costs or time for performance being sought by Subcontractor.

14.4 Claims with Owner – To the extent Contractor determines Subcontractor's claim is one for which Owner may be liable, the following procedure shall apply:

- (a) Contractor will present Subcontractor's claim to Owner's first level designated representative. The decision of such representative will be conveyed in writing to Subcontractor and such decision shall be final unless Subcontractor notifies Contractor in writing of its desire to proceed further in sufficient time for Contractor to comply with any notification or submission requirements to Owner.
- (b) Upon receipt of Subcontractor's notice to proceed further, at Contractor's option, Subcontractor's claim may be further pursued with Owner. In such event, Contractor may allow Subcontractor to act in its own behalf and with its own consultants/attorneys at Subcontractor's cost to continue the required process and any subsequent administrative proceeding or litigation. If Contractor does not allow Subcontractor to act in its own behalf or it is procedurally impermissible for Subcontractor to proceed in its own behalf, and Contractor elects to allow the continued pursuit of Subcontractor's claim, then at the written request of Subcontractor, Contractor will proceed with the dispute on condition that Subcontractor pay to Contractor all of its actual costs arising out of such process, including but not limited to attorneys' fees, court costs and the costs of Contractor's personnel employed in pursuing the case against Owner.
- (c) If Contractor elects to not allow further pursuit of Subcontractor's claim against Owner, and Subcontractor disputes such decision, Subcontractor may pursue its claim pursuant to the Disputes Resolution Article of the Subcontract.
- (d) Nothing shall prevent Contractor from accepting a contract modification from Owner which preserves the rights of Subcontractor.
- (e) If because of Subcontractor's claim, Owner withholds any sums due Contractor, then Subcontractor shall pay to Contractor interest on the amounts so withheld at the rate of 10 percent per annum. If Owner withholds sums due Subcontractor as a result of a claim of Contractor, Contractor shall pay to Subcontractor interest on the amounts so withheld at the rate of 10 percent per annum.

ARTICLE 15 DISPUTES RESOLUTION

15.1 Claims Not Involving Owner – To the extent Subcontractor submits a claim which Contractor determines is one for which Owner may not be liable, or is one which Contractor elects to not allow Subcontractor to further pursue with Owner, or to the extent Contractor has a claim against Subcontractor, the following procedures shall apply and begin within 60 days of notification:

- (a) If the dispute cannot be settled through direct discussions, the parties shall attempt to settle the dispute by mediation before recourse to any other method of dispute resolution. Unless the parties agree otherwise, the mediation shall be conducted in accordance with the Construction Mediation Rules of the American Arbitration Association.
- (b) If mediation does not resolve the dispute, then the parties may agree to resolve the dispute through binding arbitration. If so, the arbitrator(s)' decision shall be enforceable in a court of law and judgment shall be entered in accordance with such decision.

- (c) If mediation does not resolve the dispute and the parties do not agree to resolution by binding arbitration, either party may proceed with any allowable resolution process.

15.2 Participation In Proceedings – If Contractor receives a claim from any other party and Contractor determines Subcontractor may be liable, in whole or in part, for such claim, Subcontractor shall participate in the disputes resolution process with Contractor and such other party. To the extent practical, Contractor will not agree to binding arbitration or any other form of resolution with the other party without Subcontractor's consent. If, however, Contractor could not have determined, by reasonable diligence, that Subcontractor may be liable for the other party's claim before binding arbitration or any other form of resolution was already agreed upon, Subcontractor shall participate in that arbitration or other form of resolution and shall be bound by the decision rendered in that proceeding.

ARTICLE 16 PAYMENT

16.1 Schedule of Values – Within 10 days of Contractor's request, Subcontractor shall prepare and submit to Contractor a Schedule of Values which breaks down Subcontractor's work into individual activities. Each activity contained in the Schedule of Values shall be assigned a monetary price such that the total of all such items shall equal the Subcontract Price. The Schedule of Values shall be prepared in such detail as may be required by Owner and/or Contractor.

16.2 Payment and Verification – Subcontractor is required to pay for all labor, materials and equipment used in the performance of Subcontractor's work through the most current period applicable to progress payments received from Contractor. Contractor may require reasonable evidence to show that all obligations relating to Subcontractor's work are current through all payments received from Contractor before releasing any payment due for Subcontractor's work.

16.3 Progress Payment Applications – Subcontractor's applications for payment shall be itemized and in accordance with Subcontractor's Schedule of Values and any other substantiating data as required in the Contract for Contractor's payment applications. Subcontract payment applications may include amounts for Subcontract change orders which have been fully executed by Subcontractor and Contractor. Subcontractor cannot include in its payment applications any amounts for changes which have not been fully executed by Subcontractor and Contractor, or for disputed work.

16.4 Stored Materials and Equipment – If allowed by Owner, applications for payment may include materials and equipment not incorporated into Subcontractor's work but suitably stored on or off the site. Approval of payment applications for materials and equipment stored on or off the site shall be conditioned on: (1) submission by Subcontractor of bills of sale and applicable insurance or such other procedures satisfactory to Owner and Contractor to establish the proper valuation and protection of the stored materials and equipment; (2) Owner's and/or Contractor's title to such materials and equipment; and (3) any other documents or procedures to protect Owner's and Contractor's interests, including during the transportation of such items to the site by Subcontractor.

16.5 Time for Submission of Application – Subcontractor's progress payment application shall be submitted to Contractor in sufficient time for Contractor to include it in Contractor's payment request to Owner. Contractor shall incorporate the amount of Subcontractor's progress payment application approved by Owner into Contractor's payment application to Owner for the same period and timely submit it to Owner. If requested by Subcontractor, Contractor shall inform Subcontractor of Owner's changes to Subcontractor's percentages of completion reflected on Subcontractor's payment application and/or other adjustments affecting Subcontractor.

16.6 Copy of Payment Request – Upon written request, Contractor shall give Subcontractor a copy of that portion of Contractor's most current application for payment reflecting the percentages approved and/or paid by Owner for Subcontractor's work performed to date.

16.7 Lien Waivers – Subcontractor shall provide, in a form satisfactory to the Owner and Contractor, lien or claim waivers in the amount of the application for payment from Subcontractor, and its subcontractors, materialmen and suppliers for the completed work. Contractor may refuse to pay Subcontractor if Subcontractor fails to provide such waivers. If such waivers are conditional upon payment, Contractor may choose to make payment by issuance of joint checks to Subcontractor and its subcontractors, materialmen and suppliers. Subcontractor shall not be required to sign an unconditional waiver of lien or claim prior to receiving payment, or in an amount in excess of what it has been paid.

16.8 Application Reduction, Rejection or Nullification – Contractor may reduce or reject a Subcontractor payment application or nullify a previously approved Subcontractor payment application, in whole or in part, as may reasonably be necessary to protect Contractor from loss or damage based upon:

- (a) Subcontractor's failure to perform its work as required by the Subcontract Documents;
- (b) Loss or damage to Owner, Contractor or others to whom Contractor may be liable arising out of or relating to the Subcontract and caused by Subcontractor or its lower tier subcontractors or suppliers;
- (c) Subcontractor's failure to properly pay for labor, materials, equipment or supplies furnished in connection with its work;
- (d) Rejected, nonconforming or defective work which has not been corrected;
- (e) Reasonable evidence of delay in performance of Subcontractor's work such that the work will not be completed within the time allotted by the updated progress schedule, and that the unpaid balance of the Subcontract Price is insufficient to offset the liquidated damages or actual damages that may be sustained by Contractor as a result of the anticipated delay caused by Subcontractor;
- (f) Reasonable evidence demonstrating that the unpaid balance of the Subcontract Price is insufficient to cover the cost to complete Subcontractor's work;
- (g) Third party claims against Subcontractor or reasonable evidence demonstrating that third party claims are likely to be filed. Subcontractor can eliminate this basis by furnishing Contractor with adequate security in the form of a surety bond, letter of credit or other collateral or commitment which is sufficient to discharge such claims if established;
- (h) Owner's reduction, rejection or nullification of any part of a payment application; or
- (i) Any other failure to comply with the terms and conditions of the Subcontract Documents.

Contractor shall give written notice to Subcontractor, at the time of reducing, disapproving or nullifying an application for payment, of the specific reasons for Contractor's action. When the above reasons for reducing, disapproving or nullifying an application for payment are removed, payment will be made for amounts previously withheld.

16.9 Retention – Contractor may withhold from Subcontractor retention up to a rate of 10 percent, or as provided by law.

16.10 Payment Not Acceptance – Payment to Subcontractor does not constitute or imply acceptance of any portion of Subcontractor's work.

16.11 Final Payment Application – Contractor is required to incorporate Subcontractor's application for final payment into Contractor's next application for payment to the Owner only after the following occur:

- (a) acceptance of Subcontractor's work by Contractor and Owner;
- (b) if requested by Contractor, evidence acceptable to Contractor that all payrolls, bills for materials and equipment, and other indebtedness connected with Subcontractor's work have been fully paid, or will be fully paid by issuance of joint checks in return for unconditional releases;
- (c) if requested by Contractor, consent of Subcontractor's surety to final payment;
- (d) satisfaction of close-out procedures as may be required by the Subcontract Documents; and
- (e) if requested by Contractor, releases and waivers of liens, stop notices, bond rights, or any rights against Contractor, its surety or Owner, effective upon payment, to the extent and in such form as may be designated by Contractor.

16.12 Effect of Final Payment – Acceptance of final payment by Subcontractor shall constitute a waiver of claims by Subcontractor, except for claims reserved in a final release.

**ARTICLE 17
RECOURSE BY CONTRACTOR**

17.1 Failure of Performance – If Subcontractor refuses or fails to fully and timely perform its obligations pursuant to the Subcontract, Contractor may, after two (2) working days written notice to Subcontractor, commence and continue satisfactory correction of such failure, and without prejudice to any other rights or remedies, provide the most expeditious correction of the failure by whatever means Contractor deems appropriate and charge the resulting costs to Subcontractor. A failure to fully and timely perform shall include but not be limited to, failing to supply enough properly skilled workers or proper materials, failing to maintain performance in accordance with the updated progress schedule, failing to make prompt payment to its workers, subcontractors or suppliers, disregarding laws, ordinances, rules, regulations or orders of any authority having jurisdiction, or otherwise failing or refusing to comply with any provision of the Subcontract. In the event of an emergency affecting the safety of persons or property, Contractor may proceed to commence and continue satisfactory correction of such failure without first giving two (2) working days' written notice to Subcontractor, but shall give prompt written notice of such action to Subcontractor.

**ARTICLE 18
TERMINATION**

18.1 Termination For Cause – If Subcontractor fails to perform any of its Subcontract obligations, Contractor may, after seven (7) calendar days written notification and in lieu of or in addition to any other remedies, terminate the Subcontract. A separate written notice of termination shall be issued by Contractor to Subcontractor at the time the Subcontract is terminated. If such a termination occurs, Contractor shall have the right to take and use any materials, equipment, appliances or tools furnished by, belonging or delivered to Subcontractor and located at the project for the purpose of completing any remaining Subcontractor work.

In the event the Subcontract is terminated for cause, Subcontractor shall not be entitled to receive any further payment until the Contract work is completed. At that time, if the amounts earned but not paid Subcontractor before the termination exceed the expenses incurred by Contractor in completing Subcontractor's work, any excess shall be paid by Contractor to Subcontractor; but, if Contractor's expense to complete Subcontractor's work exceeds the amount earned and unpaid, Subcontractor shall promptly pay the excess amount to Contractor. The expense incurred by Contractor shall include Contractor's costs for completing the work, including overhead, profit and attorneys' fees, and any damages incurred by Contractor by reason of Subcontractor's default.

18.2 Termination By Owner – If Owner terminates the Contract, or any part which includes portions of Subcontractor's work, Contractor shall notify Subcontractor in writing and Subcontractor shall immediately stop the performance of the terminated work, follow Contractor's instructions regarding any shutdown and termination procedures, and mitigate all costs. If Owner's termination partially eliminates Subcontractor's work, Contractor may terminate the Subcontract in its entirety.

18.2.1 Contractor's liability to Subcontractor for any damages incurred or claims resulting from Owner termination for convenience shall be limited to the amount Owner is determined to be liable to Contractor for Subcontractor's damages. Contractor's liability to Subcontractor for Owner's termination for cause shall be determined pursuant to the Claims and Disputes Resolution Articles of the Subcontract.

**ARTICLE 19
SUSPENSION OF WORK**

19.1 Contractor may order Subcontractor in writing to suspend all or any part of Subcontractor's work for such period of time as Contractor deems appropriate. Contractor's liability to Subcontractor for any delay or disruption resulting from such suspension shall be determined pursuant to the Claims and Disputes Resolution Articles of the Subcontract. If the suspension is directed or caused by Owner, Contractor's liability to Subcontractor shall be limited to the amount Owner is determined to be liable to Contractor for Subcontractor's damages.

**ARTICLE 20
ASSIGNMENT OF SUBCONTRACT**

20.1 Subcontractor shall not, without written consent of Contractor, assign its rights in the Subcontract to others. This Subcontract may be assigned by Contractor to its bonding company.

SIGNATURE PAGE

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.

Representation By Contractor

Contractor represents to Subcontractor that this Subcontract is the "Long Form Subcontract Between General Contractor and Subcontractor" which was developed by The Associated General Contractors of America, San Diego Chapter, Inc. Neither Contractor nor Subcontractor have modified the printed language of the standard form agreement except by strike outs, interlineations or the like which have been initialed by both parties, or by attachments which are identified and attached. Contractor and Subcontractor may rely on all other printed portions of the Subcontract as being unaltered from the form contract published by AGC San Diego. Any change to the printed language which was not initialed by both parties or set forth in an attachment shall have no force and effect on either party and both parties shall instead be bound by the unaltered printed language. This provision does not apply to the language which must be inserted into the blank spaces or to the blocks which must be checked. Those items need not be initialed by the parties.

Representation By Subcontractor

Subcontractor warrants that it is properly licensed by the Contractors' State License Board of the State of California with the proper license classifications for performance of its work. Subcontractor further warrants that its license is and will remain current, active and in good standing all times during performance of its work.

This Subcontract has important legal and insurance consequences. Consultation with an attorney and insurance consultant is encouraged with respect to its completion or modification.

The parties have executed this Subcontract for themselves, their heirs, executors, successors, administrators and assigns at the place and on the day and year first written above.

SUBCONTRACTOR

Firm: {ToCompany.Name}

By _____

Print Name/Title _____

CA Contractor's License # _____

Federal I.D. # _____

State of Incorporation _____

Partnership _____

Proprietorship

CONTRACTOR

Firm Barnhart, Inc.

By _____

{Contracts.FromSignedBy},

{Contracts.FromSignedByTitle}

CA Contractor's License # 439407

ATTACHMENT 1

The following provisions are incorporated into the Subcontract Agreement executed by the parties hereto, pursuant to Article 2.1.1.

The work referred to in Article 3.2 of the Subcontract Agreement is as follows: By way of description and not by way of limitation, the following is hereby clarified and made part of this contract:

1. **WORK INCLUDED BY SUBCONTRACTOR:**

- a. Utility requirements from Contractor provided sources, 150 feet distance. Contractor may at his option provide temporary lighting at work source. Cost of this lighting service will be prorated between subcontractors.
- b. Coordination and protection of own work with other trades.
- c. Responsibility for environmental conditions affecting own work.
- d. Layout and field measurements for own work. .
- e. Compliance with specified warranty requirements.
- f. Responsibility for storage and security of own material and/or equipment on and off jobsite property. Own work shed, storage yard or trailers and security fence if required for own storage, location of which is to be approved/coordinated with Contractor's field supervisor.
- g. Off loading, hoisting, scaffolding, ladders and moving of material and/or equipment for own work.
- h. Protection of own work and the work of the other related trades. Replace damaged areas. Do not re-use broken or damaged units.
- i. Provide parking as required for own employees, equipment, suppliers and sub-tier subcontractors if adequate parking is not available on or convenient to the jobsite.
- j. Provide one qualified superintendent or one lead foreman for duration of own work on project, including during punchlist work at completion of project.
- k. Daily cleanup of own debris and removal of same from jobsite, including dumpsters and fees as necessary. If subcontractor should fail to provide sufficient cleanup, Contractor may after a **48 hour written notice**, perform the cleanup work and assess all costs to the Subcontractors account. The cost of this clean-up effort will be prorated between subcontractors pursuant to Articles 7.4 and 8.15.
- l. Attend jobsite coordination and scheduling meetings as requested by Contractor.
- m. Field quality control for own work.
- n. Safety requirements for own work, in compliance with most recent OSHA regulations, and in cooperation with Contractors Safety Program. Flammable products must be continually stored per OSHA regulations.
- o. Necessary job manpower to comply with Contractors Schedule. Prompt correction of any deficiencies.
- p. Procurement of business license, permits, fees, etc as required for own work.
- q. Compliance with regulatory agency, trade organization, and governing bodies requirements having jurisdiction over own work.
- r. Responsible for location and protection of existing utilities within areas of own work.
- s. Subcontractors are to maintain all work activities within the limits of the construction boundary. Damage to adjacent finished surfaces will be the responsibility of this subcontractor to repair to like new condition.
- t. This is a prevailing wage project, requiring weekly-certified payroll.
- u. Sealants and caulking for own work.
- v. Firestopping at own penetrations as applies.
- w. Costs for re-testing should initial tests fail.
- x. Provide minimum 72-hour notice for staking, survey or inspection requirements.
- y. Restaking should it be required due to stakes damaged or removed by subcontractor. Protection of stakes placed for own work.
- z. Traffic control, including plans and permits as required, for own work.
- aa. Removal and disposal of own spoils.
- bb. Patching and sawcutting for own work.
- cc. Core Drilling for own work.
- dd. Provide move-on's as required to comply with Contractor's schedule.
- ee. Provide all submittals and as-built drawings for own work.
- ff. This is a prevailing wage project, requiring weekly-certified payroll, current insurance certificates, and compliance with current prevailing wage statutes.
- gg. Costs for re-testing and re-inspections should initial tests or inspections fail. Contractor shall pre-walk and complete required contract work before requesting inspection.
- hh. Provide minimum 72-hour notice for staking, survey, soils testing or inspection requirements.
- ii. Re-staking or cost of restaking should it be required due to stakes, and batterboards damaged or removed by subcontractor. Protection of stakes placed for own work.
- jj. Daily reports to be legibly, filled out completely, and submitted on a daily basis.
- kk. Subcontractor will be responsible for the cost of road clean up due to on-site deliveries and parking. Contractor may at his option, clean roadways & parking lots in areas involving more than one subcontractor trade. The cost of this clean up effort will be prorated between subcontractors pursuant to Articles 7.4 and 8.15.
- ll. Compliance with owner's "phases" for the project. Work activities may be restricted or stopped during periods of student exams, events & pick up and drop-off hours.
- mm. All hardware, fasteners, flashings for own work.
- nn. Layout and coordination with other trades to insure proper rough in. This includes furnishing shop drawings and coordinate drawings of all pertaining work items. Subcontractor is expected to be fully aware of most current schedule requirements and provide all rough opening, backing, fastening, shoring, curb layouts, and any other critical rough-in information

no later than 20 days prior to framing start for each building. Subcontractor will be responsible for all rework or added costs due to layout not being provided before work is laid out and placed.

- oo. Provide complete operations and maintenance manuals (if applicable) and as-built drawings will be updated by the 22nd day of each month as a precedent to payment requirement.
- pp. Substitutions allowed only as specified. Subcontractor must provide side-by-side comparative analysis guide and perform and provide all required research and back up for substituted item. Contractor and Architect will not accept substitutions without this documentation. Substitutions must be clearly identified and submitted separately and prior to standard submittal process.

{ContractInclusions.Description}
ContractInclusions.ItemNumber
}

2. WORK NOT INCLUDED BY SUBCONTRACTOR:

{ContractExclusions.Description}
ContractExclusions.ItemNumber
}

INITIALS:

SUBCONTRACTOR _____
{ToCompany.Name}

CONTRACTOR _____
Barnhart, Inc.

ATTACHMENT 1 (CONTINUED)

3. SUBCONTRACTOR AND CONTRACTOR FURTHER AGREE:

- a. That the work schedule is all-important and delays caused by manpower, or late equipment arrival shall be avoided. Subcontractor acknowledges that liquidated damages are payable at **{Projects.Udf_LiquidatedDamages}** per calendar day as described in Section 00800 – Special Conditions, and Contractors extended overhead is payable at \$850.00 per day. A copy of the work schedule is posted on the wall of contractor’s field office and should be referred to for current job status.
- b. By execution of this contract, the Subcontractor understands that only the Project Manager or a Corporate Officer may authorize or make any change to this contract that involves a change in contract price and that any change must be authorized in writing prior to start of any change in work. Failure to obtain written change prior to proceeding with work will result in a denial of payment for requested change.
- c. Subcontractor verifies that it operates as one of the following (check one):
 - 1. Minority Business Enterprise (MBE): _____
 - 2. Woman Business Enterprise (WBE): _____
 - 3. Small Business Enterprise (SBE): _____
(Less than \$51,000,000.00 in billings in the last three years)
 - 4. Other: _____
 - 5. None of the above: _____
- d. Subcontractor agrees that work shown on the drawings but not included in specifications or included in specifications and not shown in drawings shall be as if included or shown in both for performance purposes of this subcontract.
- e. On-site security may be provided after work hours and on weekends. Subcontractor agrees, if provided, to share in the cost of security which will be prorated between contractor and all on-site subcontractors. Cost of subcontractor’s prorated share of security to be mutually agreed and deducted from the contract amount via change order.
- f. The Subcontractor agrees to be bound by Local Affirmative Action Plan and Equal Employment Opportunity Program as they may apply.
- g. Subcontractor agrees to pay prevailing wage rates applicable for the locality in which the work is performed.
- h. Subcontractor acknowledges and agrees that issuance of joint checks shall not be deemed or construed as creating (a) privity of contract by and between Contractor and any Supplier, (b) a relation of guarantor and/or surety between Contractor and Supplier; or (c) any other obligation or liability to the Supplier from the Contractor other than as maker of the joint check. Contractor reserves the right to place a restrictive endorsement on any Joint Check by Contractor including, but not limited to the following: (1) Issuance of Joint Check does not create a payment guarantee, and (2) Each endorser of this check acknowledges payment of the full amount of the check.

4. WAIVER OF NOTICE PROVISIONS

- 1. General Contractor’s Employees Not Authorized to Waive Notice Provisions. The subcontractor hereby acknowledges and agrees that no individual employee of the General Contractor has the authority, either express, implied, or apparent, to waive the notice provisions set forth in the Subcontract with respect to the making of claims for additional compensation, time extensions, or otherwise.
- 2. Subcontractor Must Comply with Notice Provisions. Any such notice must be delivered in writing within the time required by the applicable notice provision of the Subcontract.
- 3. Written Waiver by General Contractor’s President. No notice provision may be waived except by a written waiver executed by Eric G. Stenman, the President of the General Contractor.

5. PAYMENT BY CONTRACTOR TO SUBCONTRACTOR:

In the event that the owner does not pay the prime contractor for any phase of the work for which a request, an invoice, demand, or other request for payment has been made by subcontractor to prime contractor, and in the event that there is no dispute as to the subcontractors work being completed in accordance with this subcontract, it shall be an express condition precedent to prime contractor’s obligation to make any payment to subcontractor under this subcontract that subcontractor first pursue and exhaust its mechanic’s lien, stop notice, and bond remedies, to the extent that they exist, prior to instituting an action against the prime contractor. It is expressly agreed that no monetary obligations of contractor under this subcontract, due to nonpayment by owner, shall accrue until such time as subcontractor has exhausted his remedies against the owner’s property or any payment bond recorded or otherwise that inures to the prime contractor or subcontractor, whether by suit upon a mechanic’s lien, stop notice, or payment bond. This condition precedent was bargained for by the parties and the other terms and conditions of the contract, including but not limited to price, could very well be different had this provision not been included in this subcontract. Nothing contained herein is intended to limit the subcontractor’s rights to a mechanic’s lien, stop notice or bond to the extent that such rights exist.

INITIALS:

SUBCONTRACTOR _____
{ToCompany.Name}

CONTRACTOR _____
Barnhart, Inc.

**ATTACHMENT 2
INSURANCE REQUIREMENTS**

In addition to and not in substitution of Article 10 of the Subcontract, Subcontractor agrees to obtain and maintain during the term of this Agreement, insurance protection as follows:

1. Insurance shall provide protection from claims which may arise out of or result from the Subcontractor's operations under this Subcontract, whether such operations be by subcontractor or by any subcontractor or vendor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. **"Occurrence based" form of policy is required;** "claims made" form is unacceptable. The premiums for such insurance shall be paid by the Subcontractor.
2. Worker's Compensation. As required by State law. If self insured, provide minimum \$5,000,000.00 combined single limit. Coverage will include a Waiver of Subrogation.
3. Other coverage. If subcontractor's work requires special insurance and/or bonds to comply with any utility, railroad, or governmental body or if awarding authority requires limits of liability greater than in Article 10.2 or Item 2 above, Subcontractor agrees to obtain such additional coverage at his expense.
4. The Subcontractor agrees to furnish to the Contractor prior to the commencement of work under this subcontract, copies of the insurance coverage set forth above, together with a commitment by the insurance company or companies to notify Barnhart, Inc., P.O. Box 270399, San Diego, California 92198-2399, thirty (30) days prior to the expiration, cancellation or any material change of any of the insurance policies required hereunder.
5. The Subcontractor agrees to name the Contractor, Barnhart, Inc., and their employees and agents, all as additional insured on all general liability insurance policies. Certificates of Insurance **and all Additional Insured Endorsements** shall also clearly state that **{LegalDocInfo.Owner}** board of trustees, and the officers, agents, employees and volunteers of District, the state Allocation Board if applicable, the Project Inspector, the Architect, and the Architect's consultants, individually and collectively, as additional insureds.
6. The Subcontractor agrees to include the substance of this addendum, including this paragraph, in all subcontracts. Subcontractor shall not allow any subcontractor to commence work until such subcontractor has obtained the same insurance coverage as is required of the Subcontractor hereunder
7. Certificates shall be issued specifically for the following and this description should appear on the face of the certificates.

**Project #{Projects.Number}
{Projects.Name}**

8. The words, "will endeavor to mail" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" will be eliminated from the Cancellation Section of the Certificate of Insurance.
9. Barnhart, Inc., P.O. Box 270399, San Diego, California 92198-2399 shall be named as certificate Holder.
10. A separate Additional Insured Endorsement shall be issued and attached to the Certificate of Insurance and the insurance policies. In addition, the endorsement will include wording that the subcontractors insurance is primary **as to Barnhart, Inc. and the Owner, board of trustees, and the officers, agents, employees and volunteers of District, the state Allocation Board if applicable, the Project Inspector, the Architect, and the Architect's consultants** and that the coverage provided by Barnhart, Inc. **and/or the Owner, board of trustees, and the officers, agents, employees and volunteers of District, the state Allocation Board if applicable, the Project Inspector, the Architect, and the Architect's consultants** is excess over any other applicable insurance. Subcontractor to provide additional insured endorsement form CG201011/85 or its equivalent.
11. **Subcontractor shall maintain CGL coverage for itself and all additional insureds for the duration of the Project and maintain Completed Operations coverage for itself and each additional insured for at least three (3) years after completion of the Work. Completed Operations coverage shall be maintained for at least ten (10) years if the Project is residential or habitational.**

INITIALS:

SUBCONTRACTOR _____
{ToCompany.Name}

CONTRACTOR _____
Barnhart, Inc.

ATTACHMENT 3

The following provisions are incorporated into the Subcontract Agreement executed by the parties hereto pursuant to Article 4.

The BOND PREMIUM shall be paid by Subcontractor. It is expressly agreed that Subcontractor shall obtain the surety bonds as specified in Article 4 of the Subcontract Agreement. Subcontractor is responsible for including and paying for any bond cost increases due to subsequent contract change order.

PERFORMANCE BOND

The Subcontractor shall file with the Contractor a Performance Bond on the form furnished herewith in the full amount of the Subcontract price, as security for the faithful performance of the Subcontract for the construction of the work, and to cover all guarantees against defective workmanship or materials, the Surety furnishing this bond shall be authorized to do business in the State of California, and be listed in the current Department of the Treasury Federal Register as a Company holding a Certificate of Authority as an acceptable Surety on Federal Bonds. **Balboa Insurance Company Performance Bonds will not be accepted by Barnhart, Inc.**

PAYMENT BOND

The Subcontractor shall file with the Contractor a Labor and Materials Bond on the form furnished herewith in the amount of 100 percent of the Subcontract price, as security for the payment of all persons supplying labor and materials for the construction of the work. The Surety furnishing this bond shall be authorized to do business in the State of California, and be listed in the current Department of the Treasury Federal Register as a Company holding a Certificate of Authority as an acceptable Surety on Federal Bonds. **Balboa Insurance Company Payment Bonds will not be accepted by Barnhart, Inc.**

POWER OF ATTORNEY

The Attorney-in-Fact (Resident Agent) who executes the Bonds in behalf of the Surety shall attach a notarized copy of his power-of-attorney as evidence of his authority to bond the Surety on the date of execution of the bonds.

INITIALS:

SUBCONTRACTOR _____
{ToCompany.Name}

CONTRACTOR _____
Barnhart, Inc.

ATTACHMENT 4

PERSONAL GUARANTEE AGREEMENT

Project #{Projects.Number}

For good and valuable consideration, including the awarding of a subcontract to _____ (“Subcontractor”), the undersigned individual,

_____ (“Guarantor”), personally guarantees to BARNHART, INC. (“Contractor”) the performance of Subcontractor on the project known as _____

_____ located in _____. Such guaranteed performance includes Subcontractor’s prompt and timely completion of the subcontract in compliance with the subcontract terms and conditions and the contract documents, the payment of all debts incurred by Subcontractor in the prosecution of the work pursuant to the subcontract and the payment of any costs or damages incurred by Contractor should a substitute subcontractor be engaged to complete Subcontractor’s work. The liability of Guarantor shall not be diminished by (a) the release or discharge of Subcontractor in any bankruptcy proceedings; (b) the waiver of any contract term or condition; (c) any time extensions granted to, or delays in the performance of, the Subcontractor; (d) the assignment or transfer of the Subcontract Agreement by Subcontractor; (e) any disability or other defense of Subcontractor; (f) the cessation of the liability of Subcontractor; and (g) the exercise by Contractor of any of its rights or remedies reserved under the subcontract or any termination of the subcontract. Contractor may enforce this guaranty, including obtaining judgment against Guarantor, without proceeding either first or concurrently against Subcontractor, any security received from Subcontractor, Guarantor or any other person, firm or entity, or pursuing any other remedy. Guarantor further waives notice of default of Subcontractor and waives the benefit of any statute of limitations to enforce this guaranty.

Witness my hand this _____ day of _____, 2009

[Guarantor]

[Printed Name]

Social Security Number

ADDRESS

STATE OF CALIFORNIA

COUNTY OF _____

On _____ before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person(s), or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Signature of Notary Public

[Typed or Printed Name]

Place Notary Seal Above

Commission Expires: _____

OUTSIDE OF CALIFORNIA NOTARIES, PLEASE USE FORM BELOW:

STATE OF _____

COUNTY OF _____

On _____ before me, _____, Notary Public, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person(s), or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

Signature of Notary Public

[Typed or Printed Name]

Place Notary Seal Above

Commission Expires: _____

ATTACHMENT 5

CERTIFICATION OF SAFETY TRAINING

Subcontractor shall, at its own expense, require its subcontractors, agents and / or employees to comply with all applicable safety requirements. Subcontractor hereby certifies that prior to commencement of any work under the Contract, Subcontractor's subcontractors, agents, and / or employees shall complete a basic OSHA construction training safety course, or its equivalent, that is related to the work that the Subcontractor will be performing under this contract. Upon request of the Contractor, Subcontractor shall provide certification for each employee that such training has been completed.

{ToCompany.Name}

Date

ATTACHMENT 6

SHEET	DESCRIPTION
{DwgsSpecsHeaders.Number}	{DwgsSpecsHeaders.Title}

INITIALS:

SUBCONTRACTOR _____
{ToCompany.Name}

CONTRACTOR _____
Barnhart, Inc.

LABOR CODE ADDENDUM¹

§1771. Payment of general prevailing rate

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.

§1775. Penalties for violations

(a) The contractor and any subcontractor under him or her shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by him or her or, except as provided in subdivision (b), by any subcontractor under him or her. The amount of this penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(1) 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 upon being brought to the attention of the contractor or subcontractor.

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

The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion. 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 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. Payroll records; retention; inspection; noncompliance penalties; rules and regulations

(a) Each contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, and straight time and overtime hours

¹ All statutory references in this Labor Code Addendum, unless otherwise indicated, are to the California Labor Code.

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 shall not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

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

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent disclosure of an individual's social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fee and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

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

(g) The contractor or subcontractor shall have 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 twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

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

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

§1777.5. Employment of registered apprentices; wages; standards; number; apprenticeable craft or trade; exemptions; contributions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors will 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 2003-04 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Division of Apprenticeship Standards for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

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

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

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Division of Apprentice Standards.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, all money in the Apprenticeship Training Contribution Fund is hereby continuously appropriated for the purpose of carrying out this subdivision and to pay the expenses of the Division of Apprentice Standards.

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

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

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

§1813. Forfeiture for violation; contract stipulation; report of violations

The contractor 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. Overtime

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.

Subcontractor acknowledges and the undersigned warrants Subcontractor is familiar with, and will comply with, the Labor Code requirements above.

Subcontractor Name: _____

By: _____

Name: _____

Title: _____

Dated: _____