

**A. PAYMENT**

1. Progress Payments: Contractor shall, within seven (7) days of receipt of progress payments from Owner which relate to Subcontractor's performance under this Agreement, pay to Subcontractor the difference between the agreed upon value of the work performed by Subcontractor under this Agreement for the pay period in question and the retention amount. The retention amount shall be calculated as retention percentage, as defined in Special Provisions section of this Agreement, multiplied by the agreed upon value of the work performed by Subcontractor under this Agreement for the pay period in question.
2. Final Payment: The final payment amount, including any unpaid retention, shall be paid to Subcontractor within seven (7) days after the payment of such amount by Owner to Contractor.
3. Subcontractor agrees to furnish, if and when required at any time by Contractor, payroll affidavits, receipts, vouchers, and releases of claims for labor, material and equipment, for: (1) itself and each of Subcontractor's suppliers of labor, material, and / or equipment and (2) every lower-tier subcontractor performing work and furnishing materials under this Agreement, and such lower-tier subcontractor's suppliers of labor, material, and / or equipment; all in a form satisfactory to Contractor. It is agreed that no payment hereunder shall be made, except at Contractor's option, until and unless all such payroll affidavits, receipts, vouchers, and releases of claims for labor, material and equipment, or any of them, have been furnished. Contractor shall have the right, but not the obligation, to issue joint checks to Subcontractor and any sub-subcontractors and / or suppliers. Any payment made hereunder prior to completion and acceptance of the work shall not be construed as evidence of acceptance of any part of Subcontractor's work. In the event of delayed payment or non-payment by Owner, Subcontractor agrees that its claim for payment against Contractor (and the surety on any payment bond applicable to Contractor) shall be suspended and abated, on an interest-free basis, until such time as Contractor has had the opportunity to fully exhaust all of its legal remedies for payment against Owner, Owner's property and / or any construction lender to Owner. Nothing herein shall be deemed to limit Subcontractor's separate mechanic's lien or stop notice rights against the project property or funds. With respect to both progress payments and final payment, and notwithstanding any other provision in this Attachment "B" and Subcontract Agreement, Subcontractor shall provide to Contractor, as a condition precedent to payment, any other documentary evidence credibly establishing that Subcontractor has paid (and its lower-tier subcontractors have paid) all its workers for their labor on the Project.
4. Contractor requires business related information of Subcontractor and its principals / license holders for project and risk management purposes. Subcontractor agrees to provide current operational, financial, legal and risk management information to Contractor within 10 days of such a request by Contractor. Subcontractor also consents to Contractor obtaining and / or verifying information through third party sources. Subcontractor agrees to use best efforts to notify Contractor of any material change to information previously provided within 30 days of any such material change. Subcontractor shall periodically and, when requested, provide updated information to Contractor. Untimely or incomplete information from Subcontractor shall be grounds to withhold payments until the proper information is supplied by Subcontractor. Contractor agrees to maintain all information provided by Subcontractor on a confidential basis in accordance with company policies but may disclose such information for legal, insurance or risk management purposes.
5. The Contractor will be utilizing the Textura™ CPM system for this project. The Textura system allows the Contractor to automate subcontractor invoicing and collection of lien waivers, as well as automated tracking of compliance documents and electronic payments, by inputting everything in electronic format into a third party website. Textura streamlines the entire payment application process improving process efficiency for both the Contractor and the Subcontractors. Subcontractor shall be responsible for the costs associated with Subcontractor's use of the Textura™ CPM payment management system. Subcontractor shall include a similar provision in its sub-tier subcontracts and purchase orders.

6. In an effort to streamline the payment process, Subcontractor will furnish a detailed breakdown of the Contract Price within ten (10) days of Subcontractor's receipt of this Agreement. The cost breakdown shall be itemized as directed by Contractor and shall include apportioned amounts for progressive clean-up, punch-list and close-out documentation. Upon Contractor's approval, the breakdown shall be incorporated into the Textura™ CPM system which will then be utilized throughout the project for progress billings. No other form of Subcontractor billing will be accepted. Contractor retains the right to modify the cost breakdown at any time should a reasonable doubt arise regarding the accuracy of the cost breakdown and / or the Subcontractor's ability to complete the work for the amounts then unpaid.
7. On or about the 20<sup>th</sup> day of any month within which Subcontractor has performed work for which Subcontractor is entitled to be paid, Contractor shall issue an invitation to Subcontractor to submit an Application for Payment utilizing the Textura™ CPM system. Within three (3) working days from receipt of the invitation, Subcontractor shall input their Application for Payment into the Textura™ CPM system along with such supporting detail as may be reasonably required by Contractor. The Application for Payment amount may project the work to be completed by Subcontractor through the last working day of the month unless otherwise provided in the Contract Documents. Billing percentages and amounts are subject to Owner / Contractor approval. If requested by Contractor, Subcontractor agrees to provide reasonable evidence that the Subcontractor's work can be completed for the unpaid balance of the Subcontract. Such evidence may include, but is not limited to: certified statements of accounting from material suppliers, equipment suppliers or sub-tier subcontractors; and / or copies of purchase agreements, purchase orders, or sub-tier subcontracts that relate to the project.
8. If Subcontractor does not receive an invitation to submit an Application for Payment but believes it is entitled to be paid for work performed during that month, Subcontractor shall notify Contractor's Project Manager by no later than the 25<sup>th</sup> day of that month. Should Subcontractor fail to submit an Application for Payment within three (3) days from receipt of an invitation or, fail to notify Contractor's Project Manager by the 25<sup>th</sup> day of that month, Subcontractor waives payment from Contractor for that month.
9. With each request for Application for Payment, Subcontractor shall use the Textura™ CPM system to create and electronically sign all required lien waivers corresponding to the payment requested.
10. It is Contractor's policy that all labor, material suppliers, equipment suppliers, labor organizations, and sub-tier subcontractors are paid directly by Subcontractor without the need for joint checks. Contractor will require proper conditional or unconditional releases from sub-tier subcontractors which have filed Preliminary Notices prior to a monthly progress payment, or final payment, being issued to Subcontractor. Contractor may also require proper conditional or unconditional releases from sub-tier subcontractors who have not filed Preliminary Notices prior to a monthly progress payment, or final payment, being issued to Subcontractor.
11. If approved in advance by the Owner, payments may be made on account of materials and equipment delivered and suitably stored at the project site for subsequent incorporation in the work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Subcontractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site at a bonded warehouse. The amount of materials and equipment delivered and stored at the project site shall be limited in amount to what a reasonably prudent Subcontractor would pre-purchase and shall be subject to the prior-written approval of the Owner, Contractor and Lender. The Subcontractor shall also comply with the following specific requirements:
  - a. Materials shall not be stored off site without prior-written approval of the Owner and Contractor.
  - b. Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner and the Lender, including, without limitation, recorded financing statements, UCC filings and UCC searches.

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- c. With each Application for Payment, the Subcontractor shall submit to the Contractor a written list identifying each location where materials are stored off the project site and the value of materials at each location. The Subcontractor shall procure insurance satisfactory to the Owner for materials stored off the project site in an amount not less than the total value thereof.
- d. The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the project site.
- e. The Contractor, Owner, the Owner's Representative and the Lender shall have the right to make inspection of the storage areas at any time.
- f. Such stored materials shall be (a) protected from conversion, destruction, theft and damage to the satisfaction of the Contractor, Owner, the Owner's Representative and the Lender, (b) specifically marked for use on the Project, and (c) segregated from other materials at the storage facility.

**B. SUBMITTALS**

- 1. Subcontractor shall furnish all samples, shop drawings, schedules, as-built drawings, product data, mock-ups, equipment data, warranties, catalog cuts, and / or descriptive literature as required by, and in accordance with, the Contract Documents. Complete packages shall be sent to the attention of the Contractor's Project Engineer at the Jobsite Construction Office. Submittals shall be made in a timely manner as to allow for the approval process and to prevent any delays due to lack of proper approval. All costs related to duplicating and shipping said submittals are the responsibility of the Subcontractor. Subcontractor shall provide the Contractor with applicable UPS, Federal Express or Golden State account numbers for this purpose.
  - a. All submittals requiring approval shall be certified by Subcontractor's authorized representative as fully complying with the requirements of the Contract Documents. Deviations from the requirements of the Contract Documents are strongly discouraged. Any and all proposed substitutions or variances shall be clearly identified at the time of submission.
  - b. Within one week from the Subcontract date, Subcontractor shall submit to the Contractor a complete list of all samples, shop drawings and other submittals which will require approval, showing anticipated submittal date and required lead-time after approval for ordering, fabrication and delivery of all material. Subcontractor shall promptly report to Contractor any deviation from this schedule and when requested by Contractor, shall furnish confirmation of scheduled deliveries from Subcontractor's material suppliers.
  - c. Unless specifically indicated otherwise in this Agreement, Subcontractor shall provide all required submittals, in quantities and format required by Contractor, to the Contractor within twenty-one (21) days of the date of this Agreement (with the exception of O&M manuals, close-out submittals and mockups). All submittals must be certified by the Subcontractor that all information complies with the Contract Documents prior to submission to the Contractor. Any submittal that has not been certified will be returned to the Subcontractor and any cost / scheduling impact caused by the failure to provide submittals in accordance with the project schedule will be the sole responsibility of the Subcontractor.
- 2. Subcontractor is aware that substitutions are strongly discouraged and will not be permitted without compelling reasons or benefit to Owner and Contractor. Substitutions shall be submitted no later than two (2) weeks from the date of this Agreement and must follow the procedures set forth in the project specifications. No time extension will be granted to the Subcontractor for rejected substitution requests.

**C. GENERAL**

- 1. The insurance requirements for this Agreement are as outlined in Attachment D to this Agreement.

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2. In the event any portion of Subcontractor’s work requires Subcontractor to furnish design services, Subcontractor shall engage a qualified and properly licensed professional to provide such services. Any and all such design services shall be performed well in advance of the scheduled performance of the work and with adequate time to obtain all necessary approvals from the Owner, Architect, Contractor and any authority having jurisdiction over the work. Further, Subcontractor agrees to provide Contractor with appropriate certificates of professional liability insurance as outlined herein for all such elements of design work.
3. Subcontractor shall protect all existing work which may be damaged by Subcontractor’s operations and shall not damage surrounding areas including existing elements including utilities, exterior planted areas, hardscape, streets, building elements, or interior adjoining spaces and finishes.
4. Subcontractor agrees to attend (at minimum) weekly coordination meetings with Contractor and other Subcontractors throughout the course of the project. Such coordination meetings shall be scheduled by the Contractor and Subcontractor shall provide qualified personnel that are empowered to make decisions on behalf of the Subcontractor while actively participating in the discussions and resolution of meeting issues at hand.
5. This project may implement the use of the Last Planner System™ during the construction phase. Subcontractor will be required to participate in this process. The Last Planner System™, developed by the Lean Construction Institute ([www.leanconstruction.org](http://www.leanconstruction.org)), is a structured and systematic approach to collaborative workflow planning and control that heavily involves Supervisors responsible for execution. Planning sessions will be scheduled at selected phases of the project with the following required attendees, objective and process:
  - a. Attendees: “Primary” representative is the Supervisor (Superintendent, General Foreman, or Foreman) that is responsible for execution of work. “Secondary” representatives include those possessing information necessary for effective planning, those having responsibility to support execution, as well as those wishing to gain a better understanding of how the work will flow (Project Manager, Field Engineer, Scheduler / Planner, etc.)
  - b. Objective: To develop an optimal workflow plan by combining the best available information with the experience, knowledge and expertise of those responsible for execution.
  - c. Process: The participants will collaboratively: (i) Define the Scope for the Phase. (ii) Plan the workflow “from scratch” using Post-It notes on a wall, paying particular attention to identifying handoffs between specialists and capturing logic(including lag / lead time), durations and crew sizes. (iii) Identify constraints for each activity and a plan to manage them such the work can flow according to the plan without interruption.
  - d. Preparation: Participants should obtain and familiarize themselves with the best available information as necessary to enable them to effectively participate in / make decisions and overall contribute to the process described above. .
6. Subcontractor agrees to furnish Contractor copies of Daily Progress Reports prepared by Subcontractor’s Field Foreman every work day by 8 AM for the previous day’s work. Said reports shall be delivered to Contractor’s field office, and shall provide details of Subcontractor’s work including the following:
  - a. Date
  - b. Number and Classification of Tradesman
  - c. Equipment Used
  - d. Materials Delivered
  - e. Work Performed
  - f. Location of Work Performed
  - g. Safety Issues

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Failure to provide Contractor with such reports on a daily basis will serve as grounds to withhold an appropriate sum from Subcontractor’s progress payments, until such matters are remedied to the satisfaction of the Contractor.

7. The following information is provided for Preliminary Notice purposes:

Project: XXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Owner: XXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

Original: Bernards Bros., Inc. or Bernards Builders, Inc.  
(Prime Contractor) XXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
(XXX) XXX-XXXX  
(XXX) XXX-XXXX Fax

Lender: XXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXX

- 8. Subcontractor agrees to abide by the rules regulating any “reserved gate” system(s), which may be established during the project to maintain harmonious labor relations. Subcontractor agrees to reimburse Contractor for all costs incurred if the requirements are not followed and the gate system(s) become “contaminated” by Subcontractor.
- 9. In addition to the provisions regarding progressive cleanup of Subcontractor’s work defined in other sections, Subcontractor agrees to participate in the weekly cleaning of project site utilizing a composite crew. Such participation shall include a minimum weekly level of staffing of eight (8) hours of clean up labor during intervals of Subcontractor’s work at the site if Subcontractor’s crew size is ten (10) or less. Subcontractor’s participation effort shall increase proportionately whenever the Subcontractor’s average crew size for a given week exceeds ten (10). For each additional increment of ten (10) tradesmen working onsite during the past week, Subcontractor shall provide one additional man-day to the composite clean-up crew. Failure to participate in this clean-up program will serve as grounds for Contractor to provide like staffing on Subcontractor’s behalf, and to charge Subcontractor for such expenses pursuant to the provisions of this Agreement.
- 10. Within ten (10) days from the date of this Agreement, and prior to commencing work on this project, Subcontractor shall provide Contractor with a listing of hourly rates that are proposed to be used for any changed work on this project. The list shall include the straight time rates, as well as overtime rates of all tradesmen including foremen. Rates shall be broken down to the satisfaction of the Contractor and the Owner. These rates will be checked and verified against the Industry Average Rates. Once accepted and approved by the Contractor and Owner, these rates will be used for the duration of the Project for any additive or deductive changed work. In the event Subcontractor utilizes a supplemental labor classification with an industry standard rate less than the rate accepted and approved by the Contractor and Owner, Subcontractor shall provide a supplemental labor rate submittal for approval and incorporation into the pricing for additions to the work scope.
- 11. Absent any applicable provisions in the Prime Contract which are otherwise controlling, the following percentage markups apply to Owner changed work performed or credited by Subcontractor for its overhead and profit to be added to or credited against the direct cost of a scope change. Subcontractor shall be entitled to a fifteen percent (15%) markup / reduction for changed work impacted directly by its own forces. For any scope change work performed or credited by a sub-tier subcontractor to Subcontractor, the markup / reduction applicable for overhead and profit to Subcontractor shall be five

percent (5%). All markups / reductions shall apply to the net sum of additions and credits applicable to a defined Owner scope change. No Subcontractor of any tier shall be entitled to a markup / reduction to their firm which exceeds fifteen percent (15%) of their direct cost of a scope change. For Subcontractor and sub-tier subcontractors of any tier, the change order markup / reduction shall include all incidental overhead support costs including, but not limited to, all home office overhead; personnel costs for executive management, indirect supervision, project management, estimating, scheduling, purchasing, accounting, and any other personnel not on the project site full time; general and professional liability insurance; bonds; change order processing costs; as-built impacts; warranty impacts; and small tools.

12. Subcontractor shall provide all environmental protection required for work under this Agreement in accordance with applicable Federal, State, County, and Municipal laws. Subcontractor agrees to comply with the project's Storm Water Pollution Prevention Plan (SWPPP) and implement Best Management Practices to prevent environmental damage and to handle accidental spills or discharges.
13. Subcontractor shall provide its on-site supervisory personnel with cell phones and shall provide Contractor with the cell phone numbers.
14. Subcontractor shall have a competent English speaking representative on-site at all times during its work. The Subcontractor on-site representative shall be an employee of the Subcontractor. Contractor reserves its right to have Subcontractor's representative removed from the jobsite for justification (uncooperative, inexperienced, combative, unorganized, etc.).
15. Inappropriate behavior by Subcontractor's workforce, or any of its sub-tier subcontractors, such as cat calls, offensive comments or clothing, loitering outside the work area, profanity, radios or other entertainment devices, etc., will not be tolerated. The Contractor reserves the right to have any Subcontractor or its sub-tier subcontractor employee removed permanently from the project.
16. Prior to initially performing any work at the Project site, all direct employees of Subcontractor, or employees employed by any sub-subcontractor (of any tier) to Subcontractor, are first required to view the Bernards Subcontractor Safety Orientation Video at the Project site. The safety video will address general safety regulations, policies and hazards. Subcontractor shall be responsible for scheduling the viewing of the safety video for all direct employees of Subcontractor, or employees employed by any sub-subcontractor (of any tier) to Subcontractor. If a worker is found on the Project site without first having viewed the safety video, such worker may be removed from the Project until the worker has viewed the safety video. The safety video is available in both English and Spanish languages.
17. Subcontractor agrees to attend scheduled punch list walks with representatives of Contractor, Architect and / or Owner until written acknowledgement is obtained by the authorized representative acknowledging the satisfactory correction of all items pertaining to Subcontractor's work. Subcontractor agrees to adequately staff and supervise all aspects of punch list work, diligently prosecute the work to completion, and provide a written status report to Contractor on a weekly basis regarding its progress in correcting all identified elements of work.
18. It will be the responsibility of each Subcontractor to maintain a complete set of current As-Built plans in the Contractor's on-site office or other electronically stored location designated by the Contractor. These plans shall be updated on a daily basis and prior to any backfill or covering operation. If it is determined by Contractor at the time that Subcontractor's monthly payment request is made that the as-builts are not current, the estimated value of the incomplete record documents may be withheld from progress payments until such time as these documents are accurately updated. At the completion of the project Subcontractor shall provide As-Builts to Contractor in accordance with the requirements of the Contract Documents. In the absence of any such requirement in the Contract Documents, Subcontractor shall, at a minimum, scan As-Built plans into an electronic format, copy to a CD and deliver to the Contractor.
19. Subcontractor is aware that the contract documents are complimentary. Subcontractor recognizes and acknowledges that while the documents are not complete in every detail, there is sufficient information to determine the requirements for a complete project and, as such, has included all work clearly depicted and reasonably inferable to produce a complete project for their work, consistent with the

character and quality of the design. No exclusion or limitation in the plans and specifications shall be a reason for omitting the work necessary to complete Subcontractor's work.

20. Subcontractor acknowledges that he has visited the location of the work and has familiarized himself with the conditions and made his own estimates regarding access to the work area, maintaining the condition of existing facilities, protection issues, and any difficulties or complexities that may arise in connection with the execution of this work.
21. Subcontractor is responsible for furnishing and installing the work in accordance with any and all current Federal, State and Local Laws, Regulations, Statutes and Codes, Documents, Publications and Standards. In the event of a conflict, more stringent standard shall apply.
22. Subcontractor is aware of existing geotechnical conditions (as described in the project geotechnical report and any amendments thereto), and shall make all provisions to perform its work in accordance with the requirements of the Contract Documents, the project geotechnical reports and any amendments thereto. In the event of a conflict or discrepancy between geotechnical reports and other Contract Document(s), the more stringent shall apply.
23. Subcontractor shall immediately lock in all material and equipment pricing with their vendors and sub-tier subcontractors upon execution of this Agreement. Subcontractor has made provisions for material price escalation as well as any labor increase and acknowledges no additional compensation will be granted for labor or material price escalation for the duration of this project.
24. Subcontractor shall conduct surveys, constructability reviews, site verification, layout and similar studies of the project prior to commencing its work to validate the Contract Documents and existing conditions are suitable to perform its work without cost or schedule impact. Such reviews and verification activities shall be diligently and promptly performed to accommodate resolution of any inquiries or discrepancies, submittal preparation and processing, and material procurement without impact to the construction schedule.
25. Subcontractor will participate in Pre-Installation Conferences as required for their scope of work. Further, Subcontractor will participate in the Project Quality Assurance and Quality Control Program and dedicate personnel to this effort.
26. Subcontractor's bid proposal, with any listed inclusions, exclusions and / or clarifications is superseded by this Agreement.
27. Subcontractor shall coordinate and receive all deliveries related to the work of this Agreement. Subcontractor's representative must be on-site to accept, unload, inventory and stage all materials / deliveries. Materials arriving at site without Subcontractor's representative will not be accepted by the Contractor and will not be allowed on-site. The Subcontractor shall provide all necessary receiving, freight, hoisting and rigging, distribution, and protection required for the delivery and installation of materials and equipment for the complete performance of the work. Subcontractor shall perform all loading and unloading of its materials.
28. Subcontractor shall be responsible for all safety equipment, practices and procedures related to its work as necessary to comply with any and all safety ordinances. Contractor may also direct additional safety measures to mitigate any potential danger unique to the project. In the event Subcontractor does not comply with requests for safety procedures or equipment, or if any Subcontractor employee refuses to comply with such safety procedures, such actions may result in the offending parties being permanently removed from the project.
29. Employees of this Subcontractor shall take breaks and lunches as a group in one centralized location that has been specifically designated and approved by the Contractor's Superintendent. Trash cans, bags and daily cleanup at these areas shall be the responsibility of the Subcontractor.
30. Since inclement weather is foreseeable during operations of this trade, this Subcontractor shall use its best efforts to leave the site in a condition that minimizes the effects caused by inclement weather.

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31. Subcontractor shall be responsible for maintaining their equipment, materials, and work in a neat, clean, orderly, and safe condition at all times. Contractor is not responsible for any damage, vandalism, theft or malicious mischief to Subcontractor's equipment, stored materials or installed work. This also includes Subcontractor's employee vehicles.
32. Schedule shall be in accordance with Contractor's schedule and all subsequent revisions. Subcontractor confirms that all equipment and materials will be delivered in accordance with Contractor's schedule, and that delivery dates consider adequate submittal and fabrication durations. Subcontractor acknowledges the critical nature of the project schedule and agrees to expedite any materials and equipment as needed. Subcontractor to provide cost loading information if required by Contract Documents.
33. Whenever it becomes apparent that any activity's completion date may not be met for reasons due to Subcontractor, the Subcontractor shall take some or all of the following actions at no additional cost to the Owner or the Contractor:
  - a. Increase construction manpower in such quantities as will substantially eliminate the backlog of work and put the project back on schedule.
  - b. Increase the number of working hours per shift, shifts per working day, working days per week, or the amount of construction equipment, or any combination of the foregoing which will substantially eliminate the backlog of work and put the project back on schedule.
  - c. Reschedule activities to achieve maximum practical concurrency of accomplishment of activities and put the project back on schedule.
34. Installation of work in more than one area at a time may be required. Installation in completely open areas cleared of all other trades and all stored materials cannot be guaranteed. Subcontractor is required to work closely with the Contractor to coordinate the installation of its work with the work of others. Out of sequence work may be required.
35. Subcontractor shall not change its superintendent or foreman assigned to this project without the written approval of the Contractor, unless that individual is no longer employed by the Subcontractor.
36. Subcontractor includes field measuring and coordination with other related and / or adjacent trades to ensure proper fit and function.
37. Immediately following the issuance of any worklist and / or punchlist, Subcontractor shall diligently prosecute the work to complete all items to the satisfaction of the issuing party. In no event shall the completion of such items extend beyond a period of time that would extend the completion date of the project. This includes lists prepared by the Contractor, the Owner, the Architect, and / or Consultants.
38. The Subcontractor warrants to the Owner, the Owner's Representative and Architect that materials and equipment furnished under this Agreement will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the work will be free from defects not inherent in the quality required or permitted, and that the work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner, the Owner's Representative or the Architect, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
39. All work shall be guaranteed for a period of one (1) year (unless noted otherwise in the contract documents, the more stringent applies) after the date of Substantial Completion, unless otherwise agreed upon in writing by the Owner and the Contractor. All warranties shall include equipment, materials and labor. As a condition precedent to final acceptance of the work by the Owner and prior to receiving final payment for the work by the Contractor, the Subcontractor shall warrant in writing to the Owner that it will repair or replace any or all of that portion of the work performed by such Subcontractor, together with any other work which may be displaced, damaged or marred in so doing, that may prove defective in materials or workmanship or fail to conform to Contract provisions and



requirements, all without any additional expense to the Owner or Contractor. Except as otherwise required in the Contract Documents, including requirements for the use of recycled or environmentally friendly products and materials in the work, the Subcontractor shall warrant all work in place as new work. The Subcontractor shall use its best efforts to assist the Owner and Contractor in enforcing the warranties of its sub-tier subcontractors, manufacturers and suppliers. In the event that best efforts to have sub-tier warranty work performed fail, the Subcontractor shall warrant the work and perform all warranty work itself. The warranties shall not be construed to modify or limit, in any way, any rights or actions which the Owner or Contractor may otherwise have against the Subcontractor by law or statute, or in equity. All warranties, including all equipment warranties, will inure to the benefit of the Owner and the Owner's successors and assigns.

40. All equipment warranties shall begin on the date of Substantial Completion, as defined by the Contract Documents, regardless of when the equipment was started for temporary use, testing or permanent use, unless the Owner executes a special acceptance agreement for each piece of equipment relinquished for his beneficial use.
41. Subcontractor is aware of the site constraints and limited space for stored material. Contractor may also determine at any time that stored materials will not be allowed on the project site. Subcontractor shall coordinate and deliver on-site storage materials with Contractor prior to delivery. Subcontractor shall provide the proper equipment, personnel, and traffic control required for all offloading of materials and equipment. Subcontractor shall take the appropriate measures to offload and store materials in a manner that prevents damage to the materials, damage to the adjacent improvements, and / or soiling of the materials that may result in cleaning and / or an unsuitable condition for use at the project. All locations for stockpiling of onsite materials shall be as directed by the Contractor and Subcontractor may be required to relocate its stored materials at its expense anytime during the course of the project. Subcontractor is responsible to protect and secure its stored materials.
42. Subcontractor is required to provide and pay for all necessary licenses, notices, and trade permits and shall pay all for fees and inspections necessary for the proper execution and completion of its work and the cost of same is included in the Subcontract price.
43. Subcontractor will provide traffic control for its own operations as well as that of its suppliers for any interruption of vehicular traffic. This includes, but is not limited to, traffic control plans, flagmen, barricades, and other conditions as may be required. Equipment and Material deliveries and / or pickups shall only occur as approved and permitted by the City or the County having jurisdiction and any other applicable party having jurisdiction. Deliveries shall also be coordinated with and approved by the Contractor's jobsite Superintendent.
44. Unless noted otherwise in this Agreement, temporary power will be available at centralized locations and limited to 120V / 208V single-phase power, on each floor of the building, during regular working hours. If the Subcontractor requires power in locations other than those provided, then the Subcontractor will be responsible for the associated connection and disconnection costs. Additional power required for welding, or in excess of that provided by the Contractor, shall be provided by the Subcontractor. Subcontractor shall provide all extension cords required for its work. Connections will be the Subcontractors responsibility. In addition, Contractor will provide temporary lighting in accordance with Cal OSHA standards; Subcontractor shall provide all necessary task lighting required to complete its work.
45. Subcontractor is responsible to minimize dust migration resulting from his operations including cutting, blowing, hammering, trucking, digging, drilling, etc., and must comply with all authorities having jurisdiction.
46. Subcontractor shall remove all markings from exposed concrete or other exposed surfaces used to layout work covered under this contract.
47. All material will have to be free of any and all smudges, marks, stains, space pads, debris or stain. Any dented, scratched, nicked, rusted, corroded, or otherwise damaged material caused by this Subcontractor will be replaced at no additional cost to the Contractor or the Owner.

48. Unless indicated otherwise in the Contract Documents, Subcontractor shall submit Change Order Requests no later than five (5) calendar days after the occurrence of an event giving rise to a Change Order Request. Change Order Requests shall be submitted in writing. Any Change Order Request not made in accordance with these terms shall be deemed waived by the Subcontractor
49. In addition to all other labor related requirements of this Agreement, Subcontractor agrees that if its workers are compensated on a piece-rate basis, Subcontractor shall comply with Labor Code Section 226.2 by using the “safe harbor” option to assure satisfaction of all compensation requirements for all nonproductive labor time. Subcontractor agrees to include this requirement in all sub-tier agreements with its Subcontractors (of all tiers) that include providing labor at the jobsite.

**\* \* \* OPTIONAL PROVISIONS (DELETE THIS ENTIRE RED HEADING IN FINAL VERSION) \* \* \***

50. Subcontractor is aware that onsite parking will be extremely limited, and may only be able to accommodate the Foreman’s working truck. All workers must arrange for the necessary offsite parking including the necessary timely transportation to the jobsite as needed and as required by agreements. Contractor shall take no responsibility for damage or loss to any vehicles parked in any locations regardless of their use for this Project.
51. Each Subcontractor shall be responsible for his own construction waste and debris, including the proper staging, hauling, disposal, and / or participation in recycling programs in place at the Project. Subcontractor shall coordinate the exact location of bins with Contractor’s Superintendent.
52. Subcontractor’s workforce may be required to wear identification badges and utilize parking passes during the course of construction. Subcontractor’s workforce may be subjected to drug testing and background checks prior to and during the course of the work. If drug testing and / or background checks are required by the Contract Documents Subcontractor shall bear the cost of such items for its workforce.
53. Subcontractor shall ensure only authorized project vehicles and / or delivery vehicles have access to the project site. Subcontractor will be responsible for making sure any truck leaving the Site does not track dirt onto the streets. If Subcontractor’s trucks or delivery vehicles track dirt onto the street, Subcontractor will be responsible for cleaning the street by hand or street sweeper as necessary.
54. Subcontractor is aware that this is an existing facility which will remain active and occupied during the course of construction. Subcontractor shall coordinate with the Contractor and the Owner to avoid or minimize the impact to Owners occupancy, operations and events.
55. Subcontractor is aware that this project involves post-tensioned structural concrete. As such, support anchorage for all systems, devices, signs, and components of Subcontractor’s work which require positive attachment to the post-tensioned concrete structure shall be embedded in advance of concrete placement. This procedure will ensure that no damage will occur to the cable reinforcement of the post-tensioned structure. Any drilling, coring, or other penetration performed after the placement of post-tensioned concrete shall require prior identification of the reinforcing steel via x-ray or equal means. Any costs for identification will be borne by the Subcontractor requiring such penetration to existing post tensioned concrete. Furthermore, any damage to post tensioned cables or other reinforcing steel caused by penetration will be repaired or completely replaced at the responsible Subcontractor’s cost.
56. Subcontractor will provide all layouts required for the performance of the work, using the control lines and benchmarks provided by the Contractor. This will consist of one set of primary grid lines and one elevation benchmark per floor of the building. Additional controls, points, lines, and benchmarks if required shall be the responsibility of the Subcontractor. Damage to control lines and benchmarks by the Subcontractor shall be replaced at the Subcontractor’s expense.
57. Subcontractor shall bear all costs for Subcontractor employees’ drinking water, ice and its employees parking and transport. The Contractor will provide portable toilets for use by Subcontractor’s personnel.

58. Subcontractor is aware that this Project is adjacent to residential neighbors and local businesses which will remain occupied and active during the course of construction. Subcontractor shall coordinate with Contractor and Owner to avoid or minimize the impact to the surrounding neighbor community.
59. Subcontractor will provide temporary ventilation systems, as required by OSHA or other appropriate governmental agencies, for their specific scope of work or task as required to maintain a safe environment and the project schedule. Coordinate system installation and locations with Project Superintendent.
60. Subcontractor shall coordinate and schedule all tests and inspections required by the Contract Documents in writing to the Contractor seventy-two (72) hours prior to the date of requested tests or inspections. Subcontractor shall clearly identify the area and item to be inspected with the Contractor and certify that all requested items are ready for the requested test or inspection. Subcontractor shall be responsible for all costs associated with retesting where the results of inspections, tests or other quality control services prove unsatisfactory and indicate noncompliance with Contract Document requirements, regardless of whether original test was Subcontractor's responsibility. In addition, unless indicated otherwise in the Contract Documents, Subcontractor shall be responsible for the inspector's travel expenses and / or a testing agency's additional expenses as they relate to offsite testing or inspections required by the Contract Documents that are located over fifty (50) miles away from the jobsite.
61. Subcontractor understands that smoking on the Project is not allowed.
62. The Subcontractor, as condition of final payment, will submit to the Contractor a minimum of six (6) sets of notebooks and six (6) digital data storage devices each containing clearly labeled with the Project Information and the following information:
  - a. All sub-tier subcontractor, supplier and manufacturer warranties fully executed;
  - b. The Subcontractor's warranty and all documents required in this Agreement and Exhibits, which include, but are not limited to, all plans, specifications, mass and rough grading plans, final soils reports, DRE public reports, engineering calculations, maintenance and preventative maintenance recommendations from Subcontractor and related documents;
  - c. A list of all sub-tier subcontractors and suppliers who performed work on the Project or who furnished materials for use in the Project, such list to include the name, address, telephone number and responsible person at all such entities; and
  - d. An electronic copy of items a through c above.
63. The Subcontractor shall warrant its work and provide forty-eight (48) hour call-back service, and immediate call-back service in emergency situations, for the work, equipment and materials provided by the Subcontractor for a period of a minimum of one year after completion and acceptance of the work; provided, however, such one-year warranty shall be extended where the equipment or building systems / components may be warranted for a period in excess of one year by the manufacturer. Thirty (30) calendar days prior to expiration of the one year warranty period, the Contractor will perform a Project walk-through during which the Owner and Contractor shall walk through the Project in order to list deficiencies which must be corrected before expiration of the warranty period. Subcontractor has one week to correct any deficiencies identified as Subcontractor's scope of work. If the Subcontractor cannot complete the corrections within the one year warranty period, the warranty period shall be extended for such repair items until they are completed. The Contractor may elect to complete the Subcontractor's work and backcharge the Subcontractor for all associated costs.
64. The Contactor will have a man and material hoist on the project in accordance with the project schedule for use during regular hours (at no charge to Subcontractor). It is the responsibility of the Subcontractor to arrange with the Contractor for all hoisting of material to be accomplished during normal working hours with a written 24-hour notice. Any hoisting not arranged within a 24-hour notice will remain the responsibility of the Subcontractor. Should the Contractor require Subcontractor's use of the hoist during premium time, Subcontractor shall be responsible for its own premium time. Should

the use of premium time be at the request of or due to the fault of the Subcontractor, cost for the hoist operator shall be at the Subcontractor’s expense.

- 65. Working hours are to be in accordance with the City and County of XXXX requirements, which are generally understood to be X AM until X PM, M-F. Work, which causes noise levels that disturb residents in adjacent dwellings, is subject to be directed to stop at certain times of the day.

**(Insert any other Project Specific Items Which Apply to all Subcontractors Here)**

- 66. ...
- 67. ...
- 68. ...
- 69. ...

SAMPLE

**D. PREVAILING WAGE REQUIREMENTS**

The following "PREVAILING WAGE / LABOR REQUIREMENTS" form an integral part of this Agreement:

1. All workers employed on public works projects must be paid the prevailing wage determined by the Director of the Department of Industrial Relations according to the type of work and location.
2. Contractors and subcontractors on *all* public works projects are required to submit certified payroll records (CPRs) to the Labor Commissioner unless excused from this requirement. CPRs are furnished to the Labor Commissioner online.
3. In addition to online reporting, ***Subcontractor shall submit to Contractor on a weekly basis, not more than seven days from the payroll ending date, Certified Payroll Reports (CPR) for itself and its subcontractors of every tier covering work performed on the project. Such CPR's shall be ink signed by an authorized representative of Subcontractor or its Subcontractor(s) as applicable.***
4. Subcontractor shall, if applicable, file DAS 140 form to the applicable Apprenticeship Committee within 10 days from the date of this agreement.
5. Subcontractor shall, if applicable, file DAS 142 form to the applicable Apprentice Program that can supply apprentices prior to commencing work.
6. Prior to requesting final payment from Contractor, Subcontractor shall provide Contractor with an affidavit generally in the format provided at the end of Attachment B, signed under penalty of perjury. Affidavit shall state that Subcontractor has paid the specified general prevailing wage rate as well as any amounts due pursuant to Section 1813 to his or her employees on the project, and that Subcontractor is not currently under any Labor Compliance investigations on any Public Works projects. Subcontractor shall obtain and submit to Contractor similar affidavits from each of his or her subcontractors of every tier.
7. Any additional requirements, implemented by the Owner or State will be outlined in the Project Administrative Requirements and Labor Compliance Package that will be forwarded to you.

**LABOR CODE SECTIONS:**

**1771 - PREVAILING PER DIEM WAGE REQUIRED**

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

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

**1775 - PAYMENT LESS THAN STIPULATED RATE – PENALTY**

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

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

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

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

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

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

(iii) The penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777 .1

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

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

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

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

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

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

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

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

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

#### **1776 - PAYROLL RECORDS REQUIRED**

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

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

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

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

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

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

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

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

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

(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and

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

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

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

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

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

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

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

**1777.5 - APPRENTICES -- EMPLOYMENT UPON PUBLIC WORKS**

(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.



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

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

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

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

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

(2) At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Department of Industrial relations 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.

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(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 Department of Industrial Relations for the administration and enforcement of apprenticeship standards and requirements under this code.

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

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

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

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

**1813 - WORKING HOURS VIOLATIONS -- PENALTY**

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

**1815 - OVERTIME -- COMPENSATION**

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

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**Affidavit Pursuant to California Labor Code Section 1775**

Project Name: \_\_\_\_\_

Contract No. \_\_\_\_\_

The undersigned on behalf of Subcontractor hereby certifies that Subcontractor has paid the specified general prevailing wage rate of per diem wages to his or her employees on this public work project and any amounts due pursuant to California Labor Code Section 18.13.

I declare under penalty of perjury that the forgoing is true and correct.

Subcontractor: \_\_\_\_\_

Signed: \_\_\_\_\_

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

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

**Complete and submit this form to Contractor when requesting final payment.**

**E. SKILLED AND TRAINED WORKFORCE REQUIREMENTS**

1. Subcontractor agrees to use a trained and skilled workforce pursuant to the requirements of the State of California Education Code Section 17407.5.
2. Within 10 days from the date of this Agreement, Subcontractor shall execute and submit to Contractor the **Skilled and Trained Workforce Certification** form included with the Project Administrative Requirements.
3. Subcontractor shall complete and submit to contractor with payment requests at the end of each month the **Skilled and Trained Workforce Monthly Report** using the form included with the Project Administrative Requirements.

**EDUCATION CODE SECTION 17407.5**

(a) The governing board of a school district shall not enter into an agreement pursuant to Section 17406 or 17407 with any entity unless the entity provides to the governing board of the school district an enforceable commitment that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades.

(b) For purposes of this section:

(1) "Apprenticeable occupation" means an occupation for which the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations had approved an apprenticeship program pursuant to Section 3075 of the Labor Code before January 1, 2014.

(2) "Chief" means the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) "Skilled and trained workforce" means a workforce that meets all of the following conditions:

(A) All the workers are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the chief.

(B) (i) As of January 1, 2016, at least 30 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the chief pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(ii) As of January 1, 2017, at least 30 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the chief pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(iii) As of January 1, 2018, at least 40 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the chief pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(iv) As of January 1, 2019, at least 50 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the chief pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

**Attachment “B”  
Special Provisions  
Sample Project**

**Subcontract Agreement Version B13.0  
With Prevailing Wage & Skilled-Trained Workforce  
For Lease-Lease Back**

(C) For an apprenticeable occupation in which no apprenticeship program had been approved by the chief before January 1, 1995, up to one-half of the graduation percentage requirements of subparagraph (B) may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation before the chief’s approval of an apprenticeship program for that occupation in the county in which the project is located.

(4) “Skilled journeyman” means a worker who either:

(A) Graduated from an apprenticeship program for the applicable occupation that was approved by the chief or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(B) Has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the chief.

(c) An entity’s commitment that a skilled and trained workforce will be used to perform the project or contract may be established by any of the following:

(1) (A) The entity’s agreement with the governing board of the school district that the entity and its subcontractors at every tier will comply with the requirements of this section and that the entity will provide to the governing board of the school district, on a monthly basis while the project or contract is being performed, a report demonstrating that the entity and its subcontractors are complying with the requirements of this section.

(B) If the entity fails to provide to the governing board of the school district the monthly report pursuant to subparagraph (A), the governing board of the school district shall immediately cease making payments to the entity pursuant to the instrument or agreement described in Section 17406 or 17407.

(C) The monthly report provided to the governing board of the school district pursuant to this paragraph shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), and shall be open to public inspection.

(2) If the governing board of a school district has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project or contract and that includes the requirements of this section, the entity’s agreement that it will become a party to that project labor agreement.

(3) Evidence that the entity has entered into a project labor agreement that includes the requirements of this section and that will bind the entity and all its subcontractors at every tier performing the project or contract.

**SKILLED AND TRAINED WORKFORCE CERTIFICATION**

The undersigned does hereby certify to the governing board of the District as follows:

That I am a representative of the Subcontractor currently performing work on the Project; that I am familiar with the facts herein certified; and that I am authorized and qualified to execute this certificate on behalf of Subcontractor.

Education Code section 17407.5, in pertinent part, requires the following

1. Use of a skilled and trained workforce to perform all work on the Contractor Project that falls within an apprenticeable occupation in the building and construction trades.
2. That as of January 1, 2016, at least 30 percent of the skilled journeypersons employed to perform work on the Contract or Project by the Contractor or its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations pursuant to Labor Code section 3075 or located outside California and approved for federal purposes pursuant to the apprenticeship regulation adopted by the federal Secretary of Labor.
3. That as of January 1, 2017, at least 30 percent of the skilled journeypersons employed to perform work on the Contract or Project by the Contractor or its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations pursuant to Labor Code section 3075 or located outside California and approved for federal purposes pursuant to the apprenticeship regulation adopted by the federal Secretary of Labor.
4. That as of January 1, 2018, at least 40 percent of the skilled journeypersons employed to perform work on the Contract or Project by the Contractor or its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations pursuant to Labor Code section 3075 or located outside California and approved for federal purposes pursuant to the apprenticeship regulation adopted by the federal Secretary of Labor.
5. That as of January 1, 2019, at least 50 percent of the skilled journeypersons employed to perform work on the Contract or Project by the Contractor or its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations pursuant to Labor Code section 3075 or located outside California and approved for federal purposes pursuant to the apprenticeship regulation adopted by the federal Secretary of Labor.
6. That Contractor must establish its commitment to use a skilled and trained workforce by either of the following (check which that applies):
  - Without PLA** - Using the form attached hereto, provide monthly reports to the District from the Contractor and its subcontractors demonstrating that they are complying with the requirements of Education Code section 17407.5, which shall be a public record under California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1, of the Government Code); and / or
  - With PLA** - Using the form attached to the Project Labor Agreement, provide evidence that Contractor has become a party to a Project Labor Agreement that binds all contractors and all its subcontractors at every tier performing work on the Contract or Project and that includes the requirements of Education Code section 17407.5, if entered into by the District.

7. I hereby certify that I am aware of the provisions of section 17407.5 of the Education Code and will comply with such provisions during the performance of the Work of this Contract and will bind all of my Subcontractors at every tier to comply with such provisions.

Date:

Name of Subcontractor:

Signature:

Print Name:

Title:

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SAMPLE



**SKILLED AND TRAINED WORKFORCE  
MONTHLY REPORT**

Name of Project: \_\_\_\_\_  
Name of Subcontractor: \_\_\_\_\_  
For the month of: \_\_\_\_\_

The undersigned hereby certifies that all the workers employed by the above-referenced subcontractor performing work on the Project are either skilled journeypersons, as defined in Education Code section 17407.5, or apprentices registered in an apprenticeship programs approved by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations ("Chief").

Education Code section 17407.5 defines a "Skilled Journeyperson" as a worker who either:

- A. Graduated from an apprenticeship program for the applicable occupation that was approved by the Chief or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.
- B. Has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the Chief.
  - 1. Number of Skilled Journeypersons performing work on the Project: \_\_\_\_\_
  - 2. Number of Skilled Journeypersons who are graduates of an apprenticeship program for the applicable occupation that was either approved by the chief pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor: \_\_\_\_\_

**Percentage of Skilled Journeypersons fitting the description in subparagraph A**  
(Divide Line 2 by Line 1): \_\_\_\_\_%

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_  
Name of Subcontractor: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_