

OTTO JOB # _____

SUBCONTRACT # _____

PROJECT NAME: _____

PHASE CODE(S): _____

SUBCONTRACT AGREEMENT

On or about _____, John F. Otto, Inc., dba OTTO CONSTRUCTION ("Contractor") entered into a prime contract ("Prime Contract") with _____ (hereinafter referred to as "Owner") for construction of _____ (the "Project") located at _____. This Subcontract Agreement ("Agreement") is entered into this _____ day of _____, 20____, by and between Contractor and _____ ("Subcontractor") for performance of a portion of the Project. The Project, and Subcontractor's "Work" as described in Section 2 of this Agreement, is to be performed in accordance with the Prime Contract, the Project Plans and Specifications prepared by or on behalf of ("Architect"), and the other "Contract Documents," as that term is defined in Section 1, below.

SECTION 1. ENTIRE CONTRACT

1.1 Contract Documents. The phrase "Contract Documents" is defined to mean and include:

- a) This Subcontract Agreement and all exhibits and attachments.
- b) Prime Contract, including other contract documents attached to or incorporated into the Prime Contract.
- c) Project Plans and Specifications.

Subcontractor shall physically insert in each of its subcontracts the provisions of the above listed documents and require each of its subcontractors to include each item in any lower tier subcontracts that may be made. This article shall in no instance be incorporated solely by reference. The Prime Contract shall be available for viewing and photocopying upon reasonable advance notice to Contractor.

1.2 Subcontractor's Investigation. Subcontractor certifies that it is fully familiar with all of the terms of the Contract Documents, the location of the Project site, and the conditions under which the Work is to be performed and that Subcontractor enters into this Agreement based upon its investigation of all such matters and is not relying on any opinions or representations of Contractor or any person purporting to act on Contractor's behalf, or of the Owner, or of any of their respective officers, agents, servants, or employees. This Agreement represents the entire agreement between the parties concerning the Project. Subcontractor and its subcontractors will be and are bound by the Contract Documents insofar as they relate in any way, directly or indirectly, to the Work. Subcontractor agrees to be bound to Contractor in the same manner and to the same extent as Contractor is bound to Owner under the Contract Documents, to the extent of the Work, and that where, in the Contract Documents, reference is made to Contractor, and the work or specifications therein pertains to Subcontractor's trade, craft, or type of work, then such work or specification shall be interpreted to apply to Subcontractor.

If Subcontractor discovers any apparent or actual error, omission, code compliance issue, deficiency (any of the foregoing, a "Deficiency"), Subcontractor shall, on or before the earlier of (i) five (5) days after Subcontractor first becomes aware of a Deficiency, or (ii) two (2) business days prior to the last day upon which Contractor must report a Deficiency under the Prime Contract, notify Contractor in writing of the existence or possible existence of each Deficiency in detail and take any other actions otherwise required of Contractor under the Prime Contract. If Subcontractor believes that additional cost or time is involved because of modifications to the Work as a result of one or more Deficiencies as to which Subcontractor has given notice to Contractor pursuant to this Section, then, subject to the provisions of the Prime Contract, Subcontractor may request a Change Order pursuant to Section 8.

SECTION 2. SCOPE

2.1 Subcontractor agrees to furnish all labor, materials, equipment and other facilities required to perform the Work as specifically described in Exhibit A, attached hereto and made a part of this Agreement by reference.

In the event of any dispute between Contractor and Subcontractor over the scope of Subcontractor's Work under the Contract Documents, Subcontractor will not stop work but will prosecute the Work diligently to completion, the dispute to be submitted for resolution in accordance with the provisions of Section 19.

2.2 All material, equipment, and services supplied under this Agreement shall be in strict compliance with the Plans and Specifications.

2.3 Subcontractor shall attend all meetings as requested by Contractor, including job coordination, scheduling, and safety meetings.

SECTION 3. SUBCONTRACT PRICE

Contractor agrees to pay Subcontractor for performance of the Work in strict compliance with the Contract Documents, the sum of & No/100 Dollars (\$ _____), ("the Subcontract Price") subject to adjustments for changes in the Work as may be directed in writing by Contractor, and to make payment in accordance with the Payment Schedule, Section 4. The Subcontract Price, as stated above, includes all State and local sales taxes.

SECTION 4. PAYMENT SCHEDULE

4.1 Contractor agrees to pay to Subcontractor monthly progress payments equal to ninety percent (90%) of the value of the labor, equipment and materials which have been completed and approved for payment by Owner, with funds received by Contractor from Owner. Prior to commencement of the Work, Contractor and Subcontractor shall agree on a schedule of values allocating the Subcontract Price to the various elements of the Work, which shall be the basis for payment applications. On or before the twentieth (20th) day of each month, or such other mutually agreed upon date, Subcontractor shall submit an application for payment, in a form acceptable to Contractor, setting forth the value of the Work for which payment is being sought. Contractor and Subcontractor shall review and agree upon the various percentages of completion prior to submission of the approved payment application to Contractor by the fifth (5th) of the following month, as detailed in Exhibit B to this Subcontract. Contractor shall pay Subcontractor within ten (10) days after receipt of payment from Owner.

4.2 Final payment to Subcontractor shall be made only after the entire work required by the Prime Contract has been fully completed in conformity with the Contract Documents, all operation and maintenance manuals have been submitted, all training has been conducted, and the Project and the Work have been delivered to and accepted by Owner, Architect, and Contractor. Contractor shall make final payment from funds received by Contractor from Owner in final payment for the Project, within ten (10) days after receipt from Owner.

4.3 Subcontractor agrees to furnish Contractor with California statutory waivers and releases of liens in the forms provided by statute, payroll affidavits, prevailing wage affidavits, receipts, vouchers, releases of claims for work, labor, services, material and equipment furnished under or in connection with this Agreement, all in a form reasonably satisfactory to Contractor, and it is agreed that no payment hereunder shall be made, except at Contractor's option, until and unless such documents have been furnished. Any payment made without such documentation shall not be construed as a waiver of Contractor's right to require such documentation prior to further payments.

4.4 Contractor, at its option, may make any payment due hereunder by joint check or by direct check to Subcontractor's material suppliers, subcontractors, and any person or firm who has or asserts a right of action against Contractor or Contractor's surety, or who has or asserts lien or stop notice rights in connection with the Project, or who otherwise has a claim under this Agreement. Any payment made hereunder prior to completion and acceptance of the Work, as referred to above, shall not be construed as evidence of acceptance or acknowledgment of completion of any part of the Work.

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

SECTION 5. TIME

Time is of the essence of this Agreement. Subcontractor shall provide Contractor with scheduling information and a proposed schedule for performance of the Work in a form reasonably acceptable to Contractor. Subcontractor shall conform to Contractor's progress schedule and all revisions or changes made thereto. Subcontractor shall prosecute the Work in a prompt and diligent manner in accordance with Contractor's progress schedule without delaying or hindering Contractor's work or the work of other contractors or subcontractors. However, Contractor makes no representation that it will be ready for Subcontractor at the times indicated in the printed schedule, and the schedule may be revised by Contractor as necessary. Subcontractor shall coordinate the Work with that of Contractor, and with all other contractors and subcontractors in a manner that will facilitate the efficient completion of the entire Project.

SECTION 6. PROSECUTION AND DELAYS

6.1 If Subcontractor fails to perform as required by Contractor's current schedule, Subcontractor shall, without additional compensation, accelerate the Work as Contractor may direct until Subcontractor's progress is in accordance with such schedule. Contractor shall have complete control of the premises on which the Work is to be performed and shall have the right to decide the time and order in which various portions of the Project shall be installed and the relative priority of the work of Subcontractor and other subcontractors and, in general, all other matters pertaining to the timely and orderly conduct of the work of Subcontractor on the premises.

6.2 Should Subcontractor be delayed in the prosecution or completion of the Work by the act, neglect or default of Owner, Architect or Contractor, or should Subcontractor be delayed waiting for materials, if required by this Contract to be furnished by Owner or Contractor, or by damage caused by fire or other casualty for which Subcontractor is not responsible, or by the combined action of the workers, in no way caused by or resulting from fault or collusion on the part of Subcontractor, or in the event of a lock-out by Contractor, and provided that such cause is a proper basis for a time extension claim under the Prime Contract, then the time fixed for the completion of the Work shall be extended the number of days that Subcontractor has thus been delayed, but no allowance or extension shall be made unless a claim therefor is presented in writing to Contractor within forty-eight (48) hours of the commencement of such delay, and under no circumstances shall the time of completion be extended to a date which will prevent Contractor from completing the entire Project within the time allowed Contractor under the Prime Contract.

6.3 No claims for additional compensation or damages for delays, whether caused in whole or in part by any conduct on the part of Owner, Architect or Contractor shall be recoverable from Contractor, and the above-mentioned extension of time for completion shall be Subcontractor's sole remedy. In the event that Contractor, in its sole discretion, should seek compensation from the Owner as a result of any delay, Subcontractor shall be entitled to an equitable portion of any amount recovered by Contractor, minus Subcontractor's equitable share of the cost of pursuing said claim. If Contractor prosecutes a claim against Owner for additional compensation for any delay, Subcontractor shall cooperate fully with Contractor in the prosecution thereof and shall pay costs and expenses incurred in connection therewith, including actual attorneys' fees, to the extent that said claim is made by Contractor at the request or for the benefit of Subcontractor. This provision shall not be construed to require Contractor to pursue any delay claim against Owner or any other party.

SECTION 7. SUBMITTALS

7.1 Subcontractor shall prepare and obtain timely approval for all shop drawings, submittals, details, samples, and operation and maintenance manuals ("Submittals"), and do all other things necessary and incidental to the prosecution of the Work as required by the Contract Documents and in conformance with Contractor's progress schedule. Submittals shall be made so as to afford Owner and Architect such period as is specified in the Contract Documents, to review and return the Submittal without affecting Contractor's schedule. Any required re-submittals shall be made in sufficient time so as not to delay Contractor's schedule or the performance of Contractor or any other subcontractors or material suppliers. Subcontractor shall not be entitled to a time extension, and shall be financially responsible, for

7.2 If any Submittal, whether or not approved by Owner or Architect, deviates from or is inconsistent with any aspect of the Project Plans or Specifications, and if that deviation or inconsistency is not specifically identified in the transmittal covering the particular submittal, approval of the submittal shall not constitute acceptance of the deviations shown in the submittal and Subcontractor shall still be obligated to perform the Work in accordance with the Contract Documents. Any such work shall be subject to rejection as "Defective." The provisions of this paragraph are in addition to and not in lieu of the remedies provided by law or any other provision of the Contract Documents.

SECTION 8. CHANGES IN THE WORK

8.1 Contractor, without invalidating this Subcontract, may order changes in the Work consisting of additions, deletions or other changes. If necessary, the Subcontract Price and the time for Subcontractor's performance shall be adjusted by appropriate additions or deductions mutually agreed upon in accordance with the Contract Documents. Unless otherwise specified in the Contract Documents, the value of any change order shall be limited to the actual costs incurred by Subcontractor for labor, materials, and equipment, at rates not in excess of those generally prevailing in the area where the Project is being performed, plus mark-up for overhead and profit not to exceed ten percent (10%). Equipment rental expenses shall be documented by quotes from major rental agencies verifying the prevailing rates. Subcontractor shall promptly supply Contractor with all documentation necessary to substantiate the amount of the addition to or deduction from the price or time. If Contractor and Subcontractor cannot agree on the amount of the addition or deletion, Subcontractor shall nonetheless timely perform the work as changed by Contractor's written direction. Once Subcontractor receives Contractor's written direction, Subcontractor shall timely perform the Work as changed by the written direction.

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

8.3 Subcontractor shall not make any changes in the Work or in any way cause or allow the Work to deviate from the Contract Documents without written direction from Contractor. If Subcontractor claims that performance of any work entitles it to additional compensation or to an extension of the time for performance of the Work, Subcontractor shall submit a request for such compensation or time prior to undertaking that work. If Contractor refuses to grant the requested compensation or time, Subcontractor shall perform the work and shall submit any claim for additional compensation or extension of the time for performance of the Work within ten (10) days after the work is performed or such shorter time as provided in the Contract Documents. If Subcontractor fails to submit a claim as required herein, or if Subcontractor makes any changes in the Work without written direction from Contractor, Subcontractor waives any claim for additional compensation or additional time, even if Subcontractor received verbal direction from Contractor or any form of direction, written, or otherwise, from Owner or any other person or entity. In addition, Subcontractor shall be liable for any and all losses, costs, expenses, damages, and claims of any nature whatsoever associated with or in any way arising out of any such change Subcontractor makes without written direction from Contractor.

8.4 No change, alteration, or modification to or deviation from this Agreement, the Contract Documents, the Prime Contract, the Project Plans and Specifications, whether made in the manner provided in this provision or not, shall release or exonerate, in whole or in part, any bond or a surety on any bond given in connection with this Agreement, and no notice is required to be given to such surety of any such change, alteration, modification, or deviation.

SECTION 9. DAMAGES CAUSED BY DELAYS

If Subcontractor defaults in performance of the Work or otherwise causes delay to Contractor's schedule, Subcontractor, at its own expense and on demand of Contractor, shall provide additional work forces, overtime and additional shifts, and shall expedite the furnishing of materials so as to meet the progress schedule. Subcontractor agrees to reimburse Contractor for any and all liquidated damages that may be assessed against Contractor by Owner which are attributable to or caused in whole or in part by Subcontractor's failure to perform the Work as provided herein. In addition, Subcontractor agrees to pay to Contractor such other and additional damages, including consequential damages, as Contractor may sustain by reason of any delay caused by Subcontractor, including damages paid to other subcontractors. Payment of such damages by Subcontractor shall not release Subcontractor from its obligation to otherwise fully perform this Subcontract.

SECTION 10. BONDING OF SUBCONTRACTOR

Concurrently with execution of the Agreement, Subcontractor shall, if required by Contractor, execute and deliver a labor and material payment bond and a performance bond, each in an amount equal to one hundred percent (100%) of the Subcontract Price. The Bonds shall be executed by a corporate surety and on a form reasonably acceptable to Contractor. Contractor shall reimburse Subcontractor for the actual bond premiums in an amount not to exceed two percent (2%) of the Subcontract Price. The bond premium shall be printed on the face of the bond form. Any premium expense in excess of two percent (2%) shall be paid by Subcontractor at no cost to Contractor.

SECTION 11. LIENS

11.1 Subcontractor shall defend, indemnify and hold Contractor, Owner, and Contractor's sureties harmless from and against: (1) any and all claims, liability, loss, damage, costs or expenses, including expert witness fees, reasonable attorneys' fees incurred in defense of the lien or claim, awards and judgments, arising by reason of any claims, liens, stop notices or bond claims for work, labor, services, material or equipment used or furnished to be used on the Project, or union trust fund payments, arising from or relating to Subcontractor's work on the Project, and (2) all incidental or consequential damages resulting to Contractor or Owner from such claims, liens, stop notices or bond claims.

11.2 Within ten (10) days after written demand by Contractor, Subcontractor shall cause the effect of any suit, stop notice or lien to be removed from the Project. If Subcontractor fails so to do, Contractor is authorized to use whatever means in its discretion it may deem appropriate to cause said lien to be removed or suit to be dismissed and the cost thereof, together with actual attorneys' fees incurred in defense of the lien or claim, shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may litigate any such lien or suit provided Subcontractor first causes its effect to be removed from the Project, and shall further do such things as may be necessary to cause Owner not to withhold any monies due to Contractor from Owner by reason of such liens or suits.

11.3 Subcontractor's full and faithful performance of this Agreement, including payment of any amounts owed by Subcontractor to any persons furnishing work, labor, services, material or equipment, or for union trust fund payments, is a condition precedent to Subcontractor's right to receive any progress payment or final payment. Any monies paid to Subcontractor under this Agreement shall be deemed and treated as trust funds which shall not be diverted by Subcontractor for other purposes until such obligations have been discharged.

SECTION 12. PROVISIONS FOR INSPECTION

Subcontractor shall at all times furnish to Owner, Architect, or Contractor and their representatives, safe and ample facilities for inspecting work and materials at the Project and at shops, factories or any place of business of Subcontractor and its subcontractors and material suppliers where materials under this Agreement may be in course of preparation, process, manufacture or treatment. Subcontractor shall furnish to Contractor as often as reasonably required by Contractor, full reports of the progress of the work at any place where materials under this Agreement may be in the course of preparation or manufacture. Such reports shall show the progress of such preparation and manufacture in such details as may be required by Contractor, including, but not limited to, any plans, drawings or diagrams in the course of preparation.

SECTION 13. MATERIALS AND WORK FURNISHED BY OTHERS

If the Work includes installation of materials or equipment furnished by others, or work to be performed in areas to be constructed or prepared by others, Subcontractor shall examine and accept, at the time of delivery or first access, the items so provided and thereafter handle, store and install the items with the skill and care required to ensure satisfactory completion of the Work. Subcontractor shall further, at the first opportunity, inspect all material and equipment delivered to the job site by others to be used or incorporated in the Work and give prompt notice of any defect therein. Use of such items or commencement of work by Subcontractor in such areas shall constitute acceptance thereof by Subcontractor. Subcontractor warrants, by undertaking to perform its work, that such other items are satisfactory and acceptable and waives all claims against Contractor for additional compensation or for damages resulting from any defects therein and shall indemnify and hold Contractor harmless from and against any claims, delays, damages, or costs for any repair or corrective action. Loss or damage due to acts of Subcontractor shall be charged to the account of Subcontractor and deducted from monies otherwise due under this Agreement.

SECTION 14. RESPONSIBILITY FOR WORK AND MATERIALS

14.1 Subcontractor shall store materials and equipment at the Project site only in areas agreed to by Contractor. Materials and equipment delivered and stored at the Project site shall be limited to materials and equipment required to be incorporated into the Work, and then only to the extent that site space restrictions can accommodate such storage. Materials and equipment, once delivered, shall not be removed from the site, except that any excess materials (excluding spare parts, attic stock, or other materials required by the Contract Documents) shall be removed by Subcontractor upon completion of the Work. Subcontractor shall be responsible for proper storage and for any damage, defect, deficiency, or theft of any material or equipment stored at the Project.

14.2 Subcontractor shall effectively secure and protect and assume full responsibility for the Work at all times until final acceptance by Owner, Architect and Contractor. Subcontractor shall also protect the Work and the workers of Contractor, Owner and other subcontractors from Subcontractor's operations.

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

14.4 Subcontractor agrees to perform all required cutting and patching so that it reasonably matches the existing work.

SECTION 15. LABOR RELATIONS

15.1 Subcontractor shall keep a competent English-speaking representative at the job site during all times when Subcontractor's work is in progress. The 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, Subcontractor shall notify Contractor in writing who the new representative is and receive Contractor's reasonable approval of this change prior to such change becoming effective.

15.2 Subcontractor shall comply with all equal employment opportunity and affirmative action requirements promulgated by any government authority, including, without limitation, the requirements of the Civil Rights Act of 1964.

15.3 Subcontractor acknowledges that Contractor is signatory to the labor agreements listed in Section 28. Subcontractor also acknowledges that any of its Work affected by such labor agreements shall comply with the terms and conditions of such labor agreements, as applicable, and that Subcontractor shall at all times conduct its affairs in a manner which will promote harmonious labor relations on the Project. Subcontractor shall comply, without limitation, with the arbitration and other dispute resolution requirements of the labor agreements listed in Section 28, and in particular agrees to comply with the terms and provisions of said agreements set forth in the jurisdiction and scope of work claimed by each of such crafts and the procedure contained therein for resolution of jurisdictional disputes. In the absence of any such procedure, or if such procedure fails to promptly resolve the jurisdictional dispute, Subcontractor agrees, at its own cost and expense, upon request of Contractor, to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board. Subcontractor further promises and agrees that it will bind and require all of its subcontractors and their subcontractors performing job site work of the type covered by any of the labor agreements specified in Section 28 to agree to all of the foregoing promises and undertakings.

15.4 Subcontractor shall comply with and agrees to be bound by all applicable Federal, State, and local laws, and all regulations and ordinances pertaining to the employment of labor, including, but not limited to, all Fair Labor Standards Act provisions and the California Labor Code. Upon request, Subcontractor agrees to submit certified payroll reports to Contractor in accordance with the provisions of Exhibit C, attached hereto and included in this Agreement by reference. A copy of relevant California Labor Code sections is attached to Exhibit C and included in this Agreement by reference. For all Public Works, as defined in California Labor Code section 1720, Subcontractor agrees to comply with all applicable federal, State, and/or local prevailing wage requirements, and further agrees to execute an affidavit signed under penalty of perjury in accordance with the provisions of Exhibit C and in the form referred to in Exhibit C. Subcontractor's full compliance with all applicable prevailing wage requirements and execution of the required affidavit is a condition precedent to Contractor's obligation to make payments to Subcontractor.

15.5 If a dual gate system is established at the job site, Subcontractor agrees that it will: (1) continue proper performance of its work without interruption or delay; (2) ensure that its employees, visitors and suppliers enter and exit the gate designated for Subcontractor; and (3) comply with all of Contractor's instructions. If Subcontractor fails to comply with this paragraph, Contractor may provide twenty-four (24) hour notice to Subcontractor to correct the problem and/or supply workers to the job. If thereafter, Subcontractor fails to correct the deficiency and diligently perform the Work, Contractor may, at its sole option, elect to have another person, firm or subcontractor temporarily or permanently replace Subcontractor and perform the Work to the satisfaction of Contractor. Subcontractor shall be liable for all costs, delays and/or decreases in value as further provided in this Agreement.

15.6 If any workers performing work covered by this Agreement engage in a strike, sympathy strike, or other work stoppage due to picketing or a labor dispute of any kind, Contractor may, without prejudice to any other remedies it may have, after twenty-four (24) hours' written notice to Subcontractor, (a) provide any such labor and deduct the cost thereof from any monies then due or thereafter to become due Subcontractor or (b) terminate the Subcontractor's right to proceed with the Work, and proceed as provided in Section 16.1.2.

SECTION 16. RECOURSE BY CONTRACTOR

16.1 Failure of Performance.

16.1.1 Notice to Cure. If Subcontractor at any time refuses or neglects to supply enough properly skilled workers and proper materials, or fails to begin its work hereunder when and as required by Contractor, or fails to properly and diligently prosecute the Work in accordance with the Project schedule, or fails to make prompt payment to its workers, subcontractors or suppliers, or becomes delinquent with respect to contributions or payments required to be made to any health and welfare, pension, vacation, apprenticeship or other employee benefit program or trust, or commits material breach of a provision of this Agreement, Subcontractor shall be in Default. If Subcontractor fails to cure the Default within forty-eight (48) hours after receipt of written notice of the Default, or fails to commence and continue satisfactory correction of such Default with diligence and promptness and in accordance with Contractor's direction, then Contractor, without prejudice to any rights or remedies, may:

- (a) provide any work, labor, materials, equipment and other facilities as Contractor deems necessary for the completion of the Work, or any part thereof which Subcontractor has failed to complete or perform, and charge the cost thereof, including a markup of ten percent (10%) for overhead and profit, plus actual attorneys' fees incurred as a result of Subcontractor's failure of performance;
- (b) contract with one or more contractors to perform such part of Subcontractor's Work as Contractor shall determine will provide the most expeditious completion of the Project and charge the cost thereof to Subcontractor; and
- (c) withhold payment of any monies due Subcontractor to the extent required to protect Contractor against any cost, expense, or damage caused by the Default.

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

16.1.2 Termination for Default. If Subcontractor fails to commence and satisfactorily continue correction of a Default, then Contractor may terminate Subcontractor's right to perform under this Agreement and use any materials, implements, equipment, appliances or tools furnished by or belonging to Subcontractor to complete the Work without any further compensation to Subcontractor for such use. Contractor also may furnish necessary materials and equipment, and/or employ such workers or subcontractors as Contractor deems necessary to maintain the orderly progress of the Work or the Project.

In such case, Subcontractor shall be entitled to no further payment until the Project has been completed and paid for by the Owner. At that time, all of the costs, damages and expenses incurred by Contractor in performing the Work or as a result of Subcontractor's Default, including a markup of ten percent (10%) for overhead and profit, plus actual attorneys' fees as provided above, shall be deducted from any monies due or to become due Subcontractor. Subcontractor shall be liable for the payment of any expenses which may exceed the unpaid balance of the Subcontract Price. Alternatively, if the Subcontract Price exceeds the foregoing, then the balance shall be paid to Subcontractor.

16.2 Termination for Convenience. Contractor may at any time and for any reason or no reason terminate Subcontractor's services and Work at Contractor's convenience. Cancellation shall be by service of seven (7) days' written notice to Subcontractor's place of business.

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

16.2.2 Upon a Termination for Convenience, Subcontractor shall be entitled to payment, in an amount not to exceed the Subcontract Price, only as follows: (1) the actual cost of the Work completed in conformity with this Agreement; plus (2) such other costs actually incurred by Subcontractor as are permitted by the Prime Contract and approved by Owner; plus (3) ten percent (10%) of the cost of the Work referred to in subparagraph (1) above for overhead and profit. There shall be deducted from such sums as are provided in this subparagraph the amount of any payments made to Subcontractor prior to the date of the termination of this Agreement. Subcontractor shall not be entitled to any claim or claim of lien against Contractor or Owner for any additional compensation or damages in the event of such termination and payment.

16.2.3 If this Agreement is terminated by Contractor for default under Section 16.1.2, above, and if it is later determined that the default termination was wrongful, such default termination automatically shall be converted to and treated as a Termination for Convenience under this Section 16.2. In such event, Subcontractor shall be entitled to receive only the amounts payable under this Section 16.2 for a Termination for Convenience and Subcontractor specifically waives any claim for any other amounts or damages, including any claim for consequential damages.

16.3 Grounds for Withholding Payment. Contractor may withhold, or on account of subsequently discovered evidence, nullify the whole or part of any payment to the extent necessary to protect Contractor from loss, including costs and attorneys' fees, on account of (1) defective work not remedied; (2) claims filed or reasonable evidence indicating probable filing of claim; (3) failure of Subcontractor to make payments properly to its subcontractors or for material, labor or fringe benefits; (4) a reasonable doubt that the Work can be completed for the balance then unpaid; (5) damage to another subcontractor; (6) penalties or damages threatened or assessed against Contractor or Subcontractor for failure of Subcontractor to comply with State, Federal or local laws and regulations; (7) failure of Subcontractor to provide acceptable evidence of insurance in full compliance with the requirements of Section 18 or (8) any other ground for withholding payment allowed by State or Federal law, or as otherwise provided in this Agreement. When the above matters are rectified, such amounts as then due and owing shall be paid or credited to Subcontractor. The amount withheld shall not exceed one hundred fifty percent (150%) of the estimated value of the disputed amount.

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

16.5 Bankruptcy

16.5.1 Termination Absent Cure. Upon the appointment of a receiver for Subcontractor or upon Subcontractor making an assignment for the benefit of creditors or if Subcontractor seeks protection under the Bankruptcy Code or commits any other act of insolvency, Contractor may terminate this Agreement upon giving forty-eight (48) hours' written notice, by certified mail, to Subcontractor and its surety, if any. If an order for relief is entered under the Bankruptcy Code with respect to Subcontractor, Contractor may terminate this Agreement by giving forty-eight (48)

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

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

16.5.3 Contractor may offset against any sums due or to become due Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, a markup of ten percent (10%) for overhead and profit plus actual attorneys' fees incurred as a result of Subcontractor's non-performance.

16.5.4 Subcontractor shall be liable for the payment of any amount by which such expenses may exceed the unpaid balance of the Contract Price.

SECTION 17. INDEMNIFICATION

17.1 Subcontractor's Performance. With the exception that this Section 17 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the public policy of the State of California, Subcontractor shall indemnify and save harmless Owner, Architect, Contractor, and any other party as required by the Prime Contract, including each of their officers, agents, employees, affiliates, parents and subsidiaries, and each of them ("Indemnified Parties"), from and against any and all claims, demands, causes of action, damages, costs, expenses, including expert witness fees, actual attorneys' fees, losses or liability, in law or in equity, of every kind and nature whatsoever (for the purposes of this Section 17, "Claims") arising out of or in connection with Subcontractor's operations to be performed under this Agreement including, but not limited to:

- (a) Personal injury, bodily injury, sickness, disease, or death to persons, including, but not limited to, any employees or agents of Subcontractor, Owner, Architect, Contractor, or any other subcontractor and/or damage to property of anyone (including loss of use thereof), caused or alleged to be caused in whole or in part by any negligent act or omission of Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable regardless of whether such personal injury or damage is caused by a party indemnified hereunder;
- (b) Penalties imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance or statute, caused by the action or inaction of Subcontractor;
- (c) Infringement of any patent rights which may be brought against the Indemnified Parties arising out of Subcontractor's Work;
- (d) Claims and liens for labor performed or materials used or furnished to be used on the Project, including all incidental or consequential damages resulting to Indemnified Parties from such claims or liens;
- (e) Subcontractor's failure to fulfill the covenants set forth in each subpart of Section 15, Labor Relations;
- (f) Failure of Subcontractor to comply with the provisions of Section 18, Insurance;
- (g) Any violation or infraction by Subcontractor of any law, order, citation, rule, regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees, including,

but not limited to, the use of Contractor's or other's equipment, hoist, elevators, or scaffolds (See Sections 18 and 22); or

- (h) Claims arising out of or related to Subcontractor's breach of this Agreement.

The indemnification provisions of (a) through (h) above shall extend to Claims occurring after this Agreement is terminated as well as while it is in force. Such indemnity provisions apply regardless of any active and/or passive negligent act or omission of Indemnified Parties. Subcontractor, however, shall not be obligated under this Agreement to indemnify Owner, Architect or Contractor for Claims arising from the sole negligence or willful misconduct of Owner, Architect or Contractor or their agents, employees or independent contractors who are directly responsible to Owner, Architect or Contractor, or for defects in design furnished by such persons. Subcontractor's indemnity obligations shall not be limited by the insurance required elsewhere in the Subcontract; nor shall the insurance obligations be limited by these indemnity provisions.

17.2 Subcontractor shall:

- (a) At Subcontractor's own cost, expense and risk, defend all Claims as defined in Section 17.1 that may be brought or instituted by third persons, including, but not limited to, governmental agencies or employees of Subcontractor, against Owner, Architect or Contractor or the agents or employees or any of them;
- (b) Pay and satisfy any judgment, award, fine penalty or decree that may be rendered against Owner, Architect or Contractor, or their agents or employees, or any of them, arising out of any such Claim; and
- (c) Reimburse Owner, Architect or Contractor or their agents or employees for any and all legal expenses incurred by any of them in connection herewith or in enforcing the indemnity granted in Section 17.

17.3 Risk of Loss. All Work performed at the Project, or in preparing or delivering materials or equipment to the Project, shall be at the risk of Subcontractor exclusively until the completed Work is accepted by Owner, Architect and Contractor.

SECTION 18. INSURANCE

18.1 Casualty Insurance. Subcontractor shall, at its expense, procure and maintain insurance on all of its operations, in companies licensed and qualified in California, having a minimum A.M. Best rating of A-VII, and acceptable to Contractor, and satisfying all requirements of the Prime Contract, as follows (if higher limits or different requirements are stated in the Prime Contract Documents, those requirements shall control):

18.1.1 Worker's Compensation and Employer's Liability Insurance. Worker's compensation insurance shall be provided as required by any applicable law or regulation. Employer's Liability insurance shall be provided in amounts not less than:

\$1,000,000 each accident for bodily injury by accident

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

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

If there is an exposure of injury to Subcontractor's employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act or other Federal Acts or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims. The policy shall contain a Waiver of Subrogation in favor of the Contractor and Owner and other indemnified parties.

18.1.2 General Liability Insurance. Subcontractor shall carry Commercial General Liability insurance covering all operations by or on behalf of Subcontractor providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

- (1) premises and operations;
- (2) products and completed operations;
- (3) contractual liability insuring the obligations assumed by the Subcontractor in this Agreement in a form at least as broad as ISO GC 0001;
- (4) broad form property damage (including completed operations);
- (5) explosion, collapse and underground hazards; and
- (6) personal injury liability.

18.1.2.1 Subcontractor shall carry a Commercial General Liability policy, on ISO CGL Form No. CG 00 01. The Indemnified Parties shall be named as additional insureds under the Commercial General Liability insurance, which will apply on a Primary Basis and any other insurance carried by the Indemnified Parties will be excess only and will not contribute with this insurance, whether Subcontractor's policy is a primary, excess, or umbrella policy. The Additional Insured Endorsement shall be at least as broad as ISO CGL Endorsement CG20 10 11 85 "Owners, Lessees or Contractors (Form B)." Any other endorsement must be approved in writing by Contractor. Additional Insured status must extend to both on-going and completed operations. Primary wording shall be included on the endorsement so that any other coverage available to the Additional Insured entities is excess and is not to contribute with Subcontractor's policy, specifically including any excess or umbrella policies available to Subcontractor. The policy, including any excess or umbrella policies, shall also contain a Waiver of Subrogation in favor of the Contractor, Owner, and other indemnified parties. Subcontractor shall be responsible for all premiums, deductibles, and self-insured retention. All deductibles or self-insured retentions over \$5,000 must be approved by Contractor, in writing. The insurance shall provide coverage for completed operations for all additional insureds for four (4) years following completion of the Project. Additionally, Subcontractor shall maintain commercial liability insurance with the coverages stated in this section, including products-completed operations and contractual liability, for a period of ten (10) years following completion of the Project. The insurance shall provide coverage for claims by one insured against another insured and the policies shall not contain any cross-suits exclusions, cross-liability exclusions, or insured versus insured exclusions. The policies shall not contain any classification exclusions purporting to deny coverage for any work to be performed by Subcontractor or any of its subcontractors. In the event Subcontractor's work involves abatement, removal, storage, transportation, or other exposure to hazardous materials or pollutants, Subcontractor shall procure pollution liability coverage or other insurance covering claims for bodily injury and property damage arising out of such activities. Any umbrella or excess policy shall be at least following form to the primary policies and shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.

18.1.2.2 Subcontractors Commercial General Liability policy, shall have limits of liability not less than:

\$1,000,000 each occurrence (combined single limit for bodily injury and property damage)

\$1,000,000 for personal injury liability

\$2,000,000 aggregate for products-completed operations

\$2,000,000 general aggregate

In addition, Subcontractor will carry Umbrella or Excess Liability coverage with a minimum limit of \$1,000,000 or provide a "Per Project Aggregate" endorsement (i.e. CG2503) to their General Liability Policy in lieu of excess coverage.

18.1.2.3 Special Claims Made Policy form Provisions. Subcontractor shall not provide general liability insurance under any Claims Made Commercial General Liability form, or modified occurrence form.

18.1.3 Automobile Liability Insurance. Subcontractor shall procure and maintain automobile liability insurance, including coverage for all owned, hired and non-owned automobiles. The limits of liability shall be no less than \$1,000,000 combined single limit each accident for bodily injury and property damage.

18.1.4 Certificates of insurance including copies of the Additional Insured endorsement(s), as evidence of the insurance required by this Agreement, shall be furnished by Subcontractor to Contractor before any work hereunder is commenced by Subcontractor. The certificates of insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) days' prior written notice to Contractor. The certificates of insurance shall reflect all exclusions not contained in the CG 00 01 policy form. Subcontractor shall have a continuing duty to provide evidence of current insurance coverage compliant with this Agreement.

18.1.5 Contractor may take such steps as are necessary to assure Subcontractor's compliance with its obligations under Section 18. In the event Subcontractor fails to maintain any insurance coverage required under this Agreement, Contractor may withhold payment until compliance is completed, obtain and maintain such coverage and charge the expense to Subcontractor, or terminate this Agreement. Subcontractor shall require each of its subcontractors to procure and maintain insurance of the types and in the amounts specified herein, or shall insure the activities of its subcontractors in its own policy in like amount.

18.1.6 The required insurance shall be subject to the approval of Contractor, but any acceptance of insurance certificates by Contractor shall in no way limit or relieve Subcontractor of the duties and responsibilities by it in this Agreement. If higher limits or other forms of insurance are required in the Prime Contract Documents, Subcontractor shall comply with such requirements.

18.1.7 In the event Subcontractor is performing design or engineering services under this Agreement, professional liability insurance is required with a limit of liability of not less than One Million Dollars (\$1,000,000) per occurrence or claim. Subcontractor shall require all of its subcontractors with design or engineering responsibilities to procure identical professional liability insurance.

18.2 Property Insurance.

18.2.1 Contractor and Subcontractor waive all rights against each other and against all other subcontractors and Owner for loss or damage to the extent reimbursed by Builder's Risk or any other property or equipment insurance applicable to the Project, except such rights as they may have to the proceeds of such insurance. If the policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

18.2.2 If Builder's Risk insurance purchased by Owner or Contractor provides coverage for Subcontractor for loss or damage of Subcontractor's Work, Subcontractor shall be responsible for the insurance policy deductible or self-insured retention amount applicable to damage to Subcontractor's Work and/or damage to other work caused by Subcontractor.

18.2.3 If not covered under the Builder's Risk policy of insurance or any other property or equipment insurance required by the Contract Documents, Subcontractor shall procure and maintain at its own expense property and equipment insurance for portions of Subcontractor's Work stored off the site or in transit.

18.2.4 If Owner and Contractor have not purchased Builder's Risk or equivalent insurance including the full insurable value of Subcontractor's Work, then Subcontractor may procure such insurance at its own expense as will protect the interests of Subcontractor, and its subcontractors in the Work. Such insurance shall also apply to any of Owner's or Contractor's property in the care, custody or control of Subcontractor.

18.3 Failure of Contractor to enforce in a timely manner any of the provisions of Section 18 shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of this Agreement. Any exceptions to the provisions of Section 18 must be delineated in the Contract Documents.

18.4 Subcontractor's indemnity and other obligations shall not be limited by the insurance required herein and shall survive the expiration of this Agreement and the insurance provisions of this Agreement shall likewise not be limited by the indemnity provisions of this Agreement.

SECTION 19. DISPUTE RESOLUTION

19.1 All claims, disputes or other matters in question between the parties to this Agreement which arise from or in connection with this Agreement shall be resolved as provided in this Section. A "Claim" is a request, demand or assertion by one of the parties seeking an adjustment or interpretation of contract terms, payment of money, extension of time, or other relief with respect to its obligations under the Contract Documents. The term "Claim" also includes other disputes and matters in question between the parties arising out of or relating to the Contract Documents. The responsibility to substantiate a Claim rests with the party making the Claim.

19.2 Initially, and promptly after identification of a Claim, Contractor's project manager and Subcontractor's project representative shall meet face-to-face to review and consider the Claim. This meeting shall occur at the earliest practicable date and shall be for the express purposes of: (1) exchanging and reviewing all pertinent documents and information relating to the matters and issues in dispute; (2) freely and candidly discussing each party's position; and (3) reaching agreement upon a reasonable, compromise resolution of the Claim.

19.3 If the project managers are unable to resolve the Claim and if the Claim is not one that Contractor believes should be submitted to Owner, a senior representative from Contractor and a senior representative from Subcontractor each shall review the Claim in detail and then meet face-to-face to discuss and resolve the matter. This meeting of senior management representatives shall occur no later than fifteen (15) days after the meeting of the project representatives, unless the parties both agree upon a longer period of time. The parties shall promptly designate a senior representative for purposes of this section. Either party may, if necessary, designate a different senior representative at any time during the course of the Project.

19.4 If any Claim not involving the Owner remains unresolved after the meeting of the senior management representatives or subsequent meeting(s) as agreed upon by the parties, Contractor and Subcontractor agree promptly to submit the matter to mediation by an experienced, mutually acceptable mediator. Unless the parties both agree upon a longer period of time, the mediation shall be held no later than sixty (60) days after the meeting of the senior management representatives. No later than thirty (30) days prior to the mediation date, the parties shall exchange in a cooperative and forthright manner all documents, data and information relating to the Claim, excepting only those items protected by the attorney/client or other applicable privilege. The parties shall share equally the mediator's fee for the mediation.

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

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

19.7 In the event of any dispute or Claim between Contractor and Owner which directly or indirectly involves the Work, or in the event of any dispute or Claim between Contractor and Subcontractor concerning additional compensation or an extension of time under the Contract Documents, or in the event any dispute or Claim arising hereunder involves or is alleged to involve the Owner or its representatives, then the dispute resolution procedures of the Prime Contract (which procedures are incorporated herein as if fully set forth) shall apply and Contractor shall have the right to join the Subcontractor as a party in any dispute resolution procedure (including, without limitation, alternative dispute resolution procedures, binding arbitration or other judicial or non-judicial proceeding) between the Owner and Contractor, together with such other subcontractors or parties as may be appropriate, where in the judgment of Contractor the issues in dispute are related to the work or performance of the Subcontractor. Subcontractor agrees to be bound to Contractor and Contractor agrees to be bound to Subcontractor to the same extent that Contractor is bound to Owner by the terms of the Contract Documents, and by the results of any dispute resolution procedure in the Prime Contract, and by all decisions, findings or determinations made thereunder by a person so authorized, or by any arbitrator, administrative agency or court of competent jurisdiction, whether or not Subcontractor is a party to the proceedings before such person, arbitrator, agency or court. If any dispute or Claim is prosecuted or defended by Contractor, and Subcontractor is not directly a party or litigant, Subcontractor agrees to cooperate fully with Contractor and to furnish all documents, statements, witnesses and other information required by

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

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

19.10 No Claim, dispute or controversy shall interfere with the progress and performance of the Work, and in all instances Subcontractor shall proceed with the Work as directed by Contractor. Any failure of Subcontractor to comply herewith and to proceed with the Work shall automatically be deemed a breach of this Agreement, which shall entitle Contractor to all appropriate remedies, including without limitation those enumerated in Section 16 of this Agreement.

SECTION 20. SAFETY PRACTICES

20.1 Subcontractor shall comply fully with all laws, orders, citations, rules, regulations, standards and statutes with respect to occupational health and safety, the handling and storage of hazardous materials, accident prevention, safety equipment and practices including the accident prevention and safety program of Owner and Contractor. Subcontractor shall conduct inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for providing a safe place to work for its employees and for employees of its subcontractors and suppliers of material and equipment, for adequacy of and required use of all safety equipment and for full compliance with the aforesaid laws, orders, citations, rules, regulations, standards and statutes.

20.2 Subcontractor shall comply with all safety orders given by Contractor should job site conditions require special safety requirements. All employees, suppliers and contractors who provide job site services on behalf of Subcontractor shall furnish and wear protective clothing at all times on the job site. This clothing shall include such items as hard-sole shoes, shirts and hardhats. Absolutely no personnel will be allowed on the job site without a hardhat.

20.3 Subcontractor must report immediately by telephone or messenger to Contractor all accidents whatsoever arising out of, or in connection with the performance of the Work, whether on or adjacent to the site, which cause death, personal injury or serious damage. This initial report is to be promptly followed by a written accident report and accident investigation report. Subcontractor shall also strictly follow all CAL/OSHA accident reporting requirements and follow-up accident investigations. If any claim is made by anyone against Subcontractor or any of its

SECTION 21. WARRANTY

21.1 Subcontractor warrants to Owner, Architect, and Contractor that all materials and equipment furnished shall be new unless otherwise specified and that all Work shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty provided in this Section 21 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents. The duration of this warranty shall be for the period required by the Contract Documents or the longest period permitted by the law of the State of California, whichever is longer.

21.2 Defective or nonconforming materials or work shall, at Contractor's option, immediately upon discovery be repaired or replaced at Subcontractor's sole expense, to the satisfaction of Owner, Architect, and Contractor. The cost to repair any adjacent work or materials disturbed or damaged during or as a result of any such corrective work also shall be paid by Subcontractor. All corrective work and materials are guaranteed by Subcontractor in the same manner. No inspection, failure of inspection, or payment to Subcontractor shall be deemed a waiver of any of the rights or obligations otherwise arising under this Subcontract. If Subcontractor fails or refuses, within seven (7) days after written demand by Contractor, to correct any defective or nonconforming materials or work, Contractor may, without further notice or demand, cause such defective or nonconforming materials or work to be repaired or replaced by others. Subcontractor shall immediately reimburse Contractor for the cost of such repair or replacement.

SECTION 22. USE OF CONTRACTOR'S EQUIPMENT

If Subcontractor uses any equipment, materials, labor, supplies or facilities owned, leased, or furnished by Contractor, Subcontractor shall reimburse Contractor at market rates. Further, Subcontractor assumes all responsibility for, and shall indemnify Contractor against, claims, actions, liabilities, expenses, and physical damage arising out of or in connection with such use by Subcontractor or its agents, employees, or permittees. If Contractor's employees are used by Subcontractor, Subcontractor shall have full responsibility for all acts or omissions of Contractor's employees with regard to Subcontractor's use or employment of them. Subcontractor accepts any and all of Contractor's equipment, materials, labor, supplies or facilities as furnished. Subcontractor will only be allowed to use Contractor's equipment, materials, labor, supplies, or facilities if approved in writing by Contractor.

SECTION 23. ASSIGNMENT OF CONTRACT

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

SECTION 24. INDEPENDENT CONTRACTOR

Subcontractor is an independent contractor and shall, at its sole cost and expense, and without increase in the Subcontract Price, comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the Work; obtain all necessary permits and licenses for the Work, pay all manufacturers' taxes, sales taxes, use taxes, processing taxes, and all federal and state taxes, insurance and contributions for social security and unemployment which are measured by wages, salaries, or other remunerations paid to Subcontractor's employees, whether levied under existing or subsequently enacted laws, rules or regulations. Subcontractor certifies that it has a valid California State Contractor's License, including the proper classification(s), to do the Work, and that the license is current, active, and in good standing. Subcontractor, upon request, shall furnish evidence satisfactory to Contractor that any or all of the foregoing obligations have been fulfilled.

SECTION 25. CLEAN-UP

At all times during the course of construction, Subcontractor shall perform the Work so as to maintain the site in a clean, safe and orderly condition. Contractor may direct Subcontractor to clean its work area at any time Contractor deems it necessary. Upon completion of the Work or a designated portion, Subcontractor shall remove from the site all hazardous materials, temporary structures, debris and waste incident to its operation and clean all surfaces,

fixtures, equipment, and other visible components of the Work, and comply with all requirements of the Contract Documents. If Subcontractor fails to perform periodic clean-up, or fails to perform clean-up as directed by Contractor, Contractor may, after giving Subcontractor notice and an opportunity to cure the problem, cause those areas to be cleaned, with all costs associated with this clean-up being charged to Subcontractor.

SECTION 26. EXCUSE, WAIVER

Any act or omission of Contractor which Subcontractor might claim as an excuse for its own failure to perform shall be deemed waived by Subcontractor unless it shall notify Contractor of its intention to assert such excuse within ten (10) days after the occurrence of any such act or omission. No action or failure to act by Contractor shall constitute a waiver of a right or duty afforded it under this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach, except as may be specifically agreed in writing. Subcontractor expressly waives the effect of any statutory or common law provision which construes ambiguities in a contract against the party that drafted the contract.

SECTION 27. GOVERNING LAW

This Agreement shall be governed by the laws of the State of California and is deemed entered into and executed in Sacramento, California.

SECTION 28. LABOR AGREEMENTS

Carpenters 46th Northern California Counties Conference Board and Its Affiliated District Councils and Local Unions. Expires June 30, 2012.

Northern California District Council of Laborers of the Laborers International Union of North American AFL-CIO. Expires June 30, 2012.

District Council of Plasterers and Cement Masons of Northern California. Expires June 15, 2013.

SECTION 29. NOTICES

29.1 All notices, requests, documents, approvals and other instruments made, given or delivered pursuant to and in connection with this Agreement shall be in writing. Written notice may be accomplished by personal delivery, by transmitting a copy by facsimile machine, by use of the United States mail, by use of overnight delivery service, by electronic mail ("e-mail") or any standard form of telegraphic communications. The written notice shall become effective when the notice is hand-delivered to the party or its representative at the Project or at the office address of the party appearing on the face of the Agreement, upon transmission by facsimile machine as evidenced by a facsimile confirmation (if transmitted before 5:00 p.m. at the place of delivery on a business day, otherwise on the next business day), two days after mailing by U.S. Mail, or upon the receipt of the notice as evidenced by a delivery receipt. If notice is accomplished by e-mail, the notice shall become effective when the e-mail enters an information processing system that the recipient has designated or uses for the purpose of receiving e-mail, and from which the recipient is able to retrieve the e-mail.

29.2 Upon mutual agreement of the parties, e-mail may be used as a method of Project correspondence. The parties understand and agree that e-mail correspondence is a "writing" under California evidence law, and as such, shall be interpreted with the same force of law as a conventional mailed letter or other forms of conventional written communication.

29.3 The parties may agree to conduct certain Project-related transactions by e-mail, including but not limited to, approvals, rejections, amendments to the Agreement, Change Orders, Construction Change Directives, or orders for minor changes in the Work issued by the Owner or Contractor. In the event the parties so agree, they shall execute a separate and optional agreement, the form of which will be provided by Contractor, the primary purpose of which is to authorize transactions to be conducted by electronic means. The parties shall further subscribe to a mutually agreeable authentication service for the duration of the Project, or such shorter time as the Parties may mutually agree, for the purpose of authenticating digital signatures and verifying that documents related to electronic transactions are not altered once signed. The Parties' agreement to conduct transactions by electronic means shall in no way limit the Parties from conducting such transactions at any time by conventional written means, if they so desire.

SECTION 30. LICENSE LAW

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, CA 95826.

SECTION 31. EXECUTION

By their signature below, each of the following individuals represent that they have authority to execute this Agreement and to bind the party on whose behalf their execution is made.

DATED: _____

DATED: _____

CONTRACTOR:

CONTRACTOR:

**John F. Otto, Inc. dba
OTTO CONSTRUCTION**

By: _____

By: _____

Name: J. Michael Feuz

Name: _____

Title: President

Title: _____

1717 2nd St.

Sacramento, CA 95811

(Address)

(Address)

178809 09/30/2012

(Contractor's License No.)

(Expiration Date)

(Contractor's License No.)

(Expiration Date)

EXHIBIT A
SCOPE OF WORK

Per plans and specifications dated through _____, furnish labor, material, equipment, and supervision to complete all

Including but not limited to:

Excludes:

Miscellaneous Instructions:

1. You are required to submit a copy of your company's updated and current Injury & Illness Prevention Program and a job specific safety plan to Otto Construction, as mandated by Title 8, prior to mobilizing on the jobsite. It will be reviewed as required by Construction Safety Orders, Article 3, General Subsection 1509, titled, "Injury and Illness Prevention Program."
2. See Exhibit B - General Provisions.
3. See Exhibit C - Public Works.

SAMPLE

EXHIBIT B

(Specific Project Name)

Subcontract Agreement includes but is not necessarily limited to the following:

1. Examine the conditions under which the work is to be installed from a safety and sequential stand point and notify OTTO CONSTRUCTION in writing immediately if the conditions are unsafe or detrimental to proper performance prior to beginning work. Subcontractor is not to proceed until the required correction has been accomplished or addressed.
2. All work is to comply with the rules and regulations of the governing bodies having jurisdiction.
3. Provide all required certifications, necessary licenses, permits & fees specific to your scope of work.
4. Schedule coordination is of utmost importance. Subcontractor will work closely with OTTO CONSTRUCTION, other trade subcontractors, and inspectors to coordinate all work activities and their required inspections and tests. Provide assistance in establishing and updating the project schedule as needed.
5. Subcontractor to provide OTTO CONSTRUCTION and other trade subcontractors information (drawings, diagrams, data, templates, dimensions, embedments, etc.) for the purpose of coordinating work with other trade subcontractors. Subcontractor shall coordinate all work with the work of other trades through OTTO CONSTRUCTION for proper function and sequence to avoid misinterpretation, interference, and impact.
6. Prepare coordination drawings before beginning fabrication or delivery of materials to the project. Drawings shall include, but not be limited to piping, ducts, conduit, fixtures and equipment for all utilities, and should demonstrate that such items will fit in the space available within the structure.
7. Provide daily reporting to OTTO CONSTRUCTION site personnel, including crew roster.
8. All subcontractors must have qualified superintendent or foreman on site at all times while performing any work.
9. Work shall be performed by skilled tradesmen with experience in performing Subcontractor's work.
10. One complete set of specifications and drawings will be provided by OTTO CONSTRUCTION. If additional plans or specifications are needed they are available at subcontractor's/supplier's expense.
11. Furnish submittals, shop drawings, samples and mock-ups as required.
12. All correspondence shall go through OTTO CONSTRUCTION, including but not limited to: submittals, RFI's, letters, memos, telecommunications, and e-mails. OTTO CONSTRUCTION shall be given ample notice and shall approve any contact with the architect, engineers, consultants, construction manager or government agencies.
13. Prior to starting work, all subcontractors shall attend a pre-installation meeting as required by the specifications or as requested by the construction manager or OTTO CONSTRUCTION.
14. Attend weekly coordination meetings as required.
15. Furnish two copies each of Material Safety and Data Sheets (MSDS) for all materials and products used in performance of the work.
16. Adhere to OTTO CONSTRUCTION'S safety program, including the requirement that all employees possess and wear code compliant personnel protection equipment (i.e. hardhats, boots, appropriate clothing, safety eyewear, etc.) at all times while on the project.
17. Submit a copy of your company's updated and current Injury & Illness Prevention Program and a job specific safety plan prior to mobilizing on the jobsite per contract documents.
18. Provide a schedule of values prior to the submission of first invoice.
19. Submit a draft copy of your monthly invoice by the (date) of each month to OTTO CONSTRUCTION'S Project Manager for review & approval (fax to job site or e-mail). Billings must be submitted using our format or accompanied by our Application for Payment form, for work performed through the last working day of the month being invoiced. After PM approval, forward the original invoice to our main office by the (date) of the following month. Note, no payments will be made to subcontractors until the followings items are in place:
 - a. OTTO CONSTRUCTION is in receipt of payment from the Owner
 - b. The subcontract agreement has been fully executed
 - c. Change Orders for which payment is being requested are fully executed
 - d. Acceptable certificates of insurance and endorsements are provided and current
 - e. Subcontractor and supplier lien releases are provided (each month)
 - f. Certified payroll & other public works paperwork is in compliance, if applicable
 - g. All compliance items required by this project have been submitted using the correct forms

20. Payments for materials or equipment stored on site shall be conditioned upon submission of bills of sale and Owner's approval.
21. Cost quotations for change orders shall include an itemized breakdown of labor, material, equipment and services (including all taxes). Cost quotations from lower-tier subcontractors are required.
22. Change order markups (overhead and profit) shall be per the requirements outlined in the specifications for all tiers of contractors and subcontractors. If not specifically noted in the specifications, the allowable markup shall not exceed 10%.
23. Overhead shall include preparation of all paperwork relating to the changes in the work, including field review, estimating, cost breakdowns, coordination and supervision of both office and field, trucks, gas, maintenance, small tools, incidentals, consumables, warranties and insurance.
24. OTTO CONSTRUCTION shall approve all proposed change orders, quotes and/or pricing prior to proceeding with any extra work.
25. Furnish and install structural backing required for mounting and installing own equipment prior to framing activities being performed.
26. Provide seismic calculations for mounting own work and equipment as required.
27. Subcontractor is responsible for all detailed layout from the indicated benchmark and control points to perform work.
28. Each subcontractor shall field-verify dimensions, materials, and conditions prior to beginning its work.
29. Provide hoisting, scaffolding, and unloading of materials and/or equipment for work.
30. Provide daily cleanup of work areas, and place debris in trash bins provided by OTTO CONSTRUCTION. Subcontractor shall be required to haul from the jobsite all materials and debris not normally associated with dumpster refuse, including, but not limited to material/debris type, composition, weight, and/or size at their own expense.
31. Keep parking lot and sidewalks clean from soil deposits and other debris relating to scope of work.
32. Provide traffic plans and traffic controls as required during the delivery and performance of the work. Secure street closure permits as required to perform work. Subcontractor shall provide flagman, safety signs, flashers and barricades necessary to control pedestrian and vehicular traffic.
33. Take necessary precautions to protect all existing items & work in place while performing your scope of work, until acceptance of work.
34. Provide dewatering as required for own work activities.
35. All crane and forklift picks must be coordinated in advance with the project superintendent.
36. Subcontractor is responsible for sleeving, fire stopping, fire caulking, and access panels.
37. Provide electrical cords to distribute power to own work. Temporary electrical distribution boxes will be provided by others at fixed locations.
38. Provide task lighting for work activities. OTTO CONSTRUCTION shall provide access lighting.
39. Subcontractor shall provide temporary utilities if required during shutdown periods caused by own scope of work.
40. Subcontractor shall submit to OTTO CONSTRUCTION a written request for coordination and approval prior to removing any safety barrier and/or guardrail. Subcontractor shall be responsible to provide an alternate approved means of safety precaution and/or a full time watchman for the duration that the safety barrier and/or guardrail are removed.
41. Subcontractor shall remove and replace by day's end any site perimeter fencing necessary to perform its work.
42. Subcontractors will put back in place to their original location, any SWPPP items that are moved resulting from work activities and will notify the on site superintendent of any/all damaged SWPPP items before leaving the site.
43. Furnish trench plate(s) as required, as it relates to scope of work.
44. Comply with onsite recycling/garbage program by depositing debris generated by own work activities in designated bins provided by others.
45. Perform pre-tests prior to requesting inspections.
46. Assist testing lab as required to minimize inspection time.
47. Pay for additional testing for corrective work.
48. Update as-built drawings semi-monthly at OTTO CONSTRUCTION'S onsite trailer.
49. Provide guarantees, warranties, operation & maintenance manuals, owner training (including demonstration/training of all equipment and systems operation and maintenance procedures) extra materials, and as-builts, as required.
50. Provide identification including but not limited to labels, underground line warning tape, engraved nameplates and signs as required.
51. Subcontractor shall expedite all warranty item repairs and replacements.
52. All taxes are included in contract price.

EXHIBIT C

Special Provisions for Public Works Projects

1. REPORTS

- 1.1 Subcontractor and its subcontractors shall furnish weekly Certified Payroll Reports, (1) original and (1) copy, to **Otto Construction, 1717 2nd St., Sacramento, CA 95811** or to the address furnished by the Contract Documents. These reports are due within ten (10) days of the ending of the payroll period. A statement of fringe benefits paid is due with the first certified payroll report and any time fringe benefit amounts change, if fringe benefits are paid to an approved plan, fund or program. As required by sections 1770 and following, of the California Labor Code, Contractor shall pay not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations.

Subcontractor shall execute and submit the form entitled Public Works Payroll Reporting Form (Form A1-131) and an affidavit signed under penalty of perjury confirming that Subcontractor has paid the specified general prevailing rate of per diem wages to its employees on the public works project and any amounts due pursuant to Labor Code section 1813. Form A1-131 and the form of affidavit are attached to Otto's "Labor Compliance Requirements" package. Subcontractor's full compliance with all applicable prevailing wage requirements and execution of the required affidavit and reporting form are conditions precedent to Contractor's obligation to make payments to Subcontractor. These provisions are only applicable to Public Works, as defined in Labor Code section 1720.

- 1.2 Employment Utilization Reports, if required, are due to Contractor's main office by the fifteenth (15th) day of each month for the previous month.
- 1.3 Subcontractor's payments will be withheld until required certified payroll and employment utilization reports, if required, are received and approved.
- 1.4 Subcontractor will comply with and execute all forms referenced and attached to the package entitled "Joint Apprenticeship Committee Requirements," provided by Contractor. These forms include Forms DAS 140, DAS 142, and CAC 2. Subcontractor must show proof that Form DAS 140 was properly filed and a request for dispatch of apprentices was made before starting work on the Project.

2. ATTACHMENTS AND INCORPORATED DOCUMENTS

Attached hereto and made a part of this Agreement is/are the following documents:

- (1) Attachment C-1: Subcontract Addendum for California Prevailing Wage Projects
- (2) Labor Compliance Requirements Package
- (3) Joint Apprenticeship Committee Requirements Package

Subcontractor shall physically insert in each of its subcontracts the provisions of the above-listed documents, and require each of its subcontractors to include this item in any lower-tier subcontracts that may be made. This item shall in no instance be incorporated solely by reference.

Attachment C-1

OTTO CONSTRUCTION

SUBCONTRACT ADDENDUM FOR CALIFORNIA PREVAILING WAGE PROJECTS

1. The following provisions of California Labor Code sections 1771, 1775, 1776, 1777.5, 1813 and 1815 are incorporated into this Agreement. Subcontractor agrees to comply with all of the above-reference provisions applicable to the performance of its Work on the Project described in this Agreement.
2. Prior to receiving final payment for Work performed on this Project, Subcontractor must sign and deliver to Contractor the attached affidavit, stating under penalty of perjury that Subcontractor has paid the specified general prevailing rate of per diem wage to all of Subcontractor's employees on the Project and any amounts due pursuant to section 1813.
3. Subcontractor agrees to indemnify and hold Contractor harmless from any fines, forfeitures, damages, liabilities, losses, penalties, assessments, attorneys' fees, costs and any other expenses arising out of, or connected in any way to, Subcontractor's alleged or actual failure to comply with the above-referenced California Labor Code provisions.

LABOR CODE PROVISIONS

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

1771. Requirement of prevailing local rate for work under contract.

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. Forfeiture for paying less than prevailing rate; Rights of workers.

(a)(1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars (\$ 50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

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

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

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

(B)(i) The penalty may not be less than ten dollars (\$10) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) The penalty may not be less than twenty dollars (\$20) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than thirty dollars (\$30) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

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

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

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

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

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

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

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

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

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

1776. Payroll record of wages paid; inspection; Forms; Effect of noncompliance; Penalties.

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

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

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

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

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

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

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

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

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

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

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

(g) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

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

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

1777.5. Employment of apprentices on 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1813. Penalty when workman required to work excess hours; Stipulation in contract; Cognizance and report of violations.

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. Work performed in excess of specified hour limitations; 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.



LABOR COMPLIANCE REQUIREMENTS

CERTIFIED PAYROLL

This public works project has labor compliance requirements. The following forms must be submitted to the prime contractor:

1. **FRINGE BENEFIT STATEMENT**

Required of you and your sub-tier contractors before any payment to you can be processed.

2. **CERTIFIED PAYROLL (Form A1-131)**

- Find the appropriate prevailing wage determination at: <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>
- Reports are due within **seven** calendar days after the ending date of the payroll period from each subcontractor (and their sub-tier contractors) for every payroll period after the start of work on site.
- At the completion of your work, please write "FINAL" on the last report.
- *Do not report your employees' complete social security number.* Reports should include truncated employee identification numbers, which are the final four digits of the worker's social security number.

3. **NON-PERFORMANCE PAYROLL SHEET**

Required if no labor was performed for any week.

4. **SUBCONTRACTOR FINAL AFFIDAVIT**

Required to be executed and submitted by Subcontractor prior to final payment.

For your convenience we have enclosed a master of the above forms. It is your responsibility to notify your second-tier and lower subcontractors and pass this information on to them. These forms are required before we can process your progress payments.

Please submit the above **original signed** documents to:

OTTO CONSTRUCTION
1717 – 2nd Street
Sacramento, CA 95811

FRINGE BENEFIT STATEMENT

PROJECT
NAME: _____

CONTRACT
NO.: _____

DATE: _____

I certify under penalty of perjury that fringe benefits are paid to the approved Plans, Funds, or Programs as listed below.

Classification	Fringe Benefit Hourly Amount	Name and Address of Plan, Fund, or Program
_____	Vacation \$ _____	_____
	Health & Welfare \$ _____	_____
	Pension \$ _____	_____
	Apprentice/Training \$ _____	_____
	Other \$ _____	_____
_____	Vacation \$ _____	_____
	Health & Welfare \$ _____	_____
	Pension \$ _____	_____
	Apprentice/Training \$ _____	_____
	Other \$ _____	_____
_____	Vacation \$ _____	_____
	Health & Welfare \$ _____	_____
	Pension \$ _____	_____
	Apprentice/Training \$ _____	_____
	Other \$ _____	_____

Company Name
(PLEASE PRINT)

Name and Title (PLEASE PRINT)

Signature

Report # _____

NON-PERFORMANCE
PAYROLL SHEET

Name of Prime/Sub Contractor: _____

I do hereby state that no persons were employed on the construction of project
number: _____, _____

(Project Title)

during the payroll period commencing on the _____ day of _____, 20____,
and ending the _____ day of _____, 20____.

(Signature of authorized person)

_____, 20____

(Title)

REMARKS:

UPON COMPLETION
RETURN TO:

OTTO CONSTRUCTION
1717 - 2ND St.
Sacramento, CA 95811

OTTO CONSTRUCTION

SUBCONTRACTOR FINAL AFFIDAVIT

I, _____ (Affiant's name) declare under penalty of perjury under the laws of the State of California that:

1. I am the _____ (Officer/Owner/Partner) of _____ (Company) and I am responsible for the payment of persons employed by _____ (Subcontractor) who worked on the _____ (Project).

2. During all payroll periods from _____ (first work date) through _____ (last work date), all persons employed by _____ (Subcontractor) on this Project have at all times been paid the specified general prevailing rate of per diem wages and any amounts due pursuant to California Labor Code section 1813.

Executed and sworn to this _____ (day) day of _____ (month), _____ (year).

Signature



PUBLIC WORKS PAYROLL REPORTING FORM

(1) NAME, ADDRESS AND SOCIAL SECURITY NUMBER OF EMPLOYEE		(2) NO. OF WITHHELD EMPLOYER'S CONTRIBUTIONS	(3) WORK CLASSIFICATION	(4) FOR WEEK ENDING:							(5) TOTAL HOURS	(6) HOURLY RATE OF PAY	(7) GROSS AMOUNT EARNED										(8) DEDUCTIONS, CONTRIBUTIONS AND PAYMENTS										(9) NET WGS PAID FOR WEEK		CHECK NO.															
				PAYROLL NO.:																																NAME OF CONTRACTOR: OR SUBCONTRACTOR:														
				ADDRESS:		WORKERS' COMPENSATION POLICY NO.:							PROJECT OR CONTRACT NO.:							PROJECT AND LOCATION:																														
CONTRACTOR'S LICENSE NO.:		SPECIALTY LICENSE NO.:							FICA (SOC. SEC.):							HEALTH & WELF.:							PENSION:							TOTAL DEDUCTIONS:		TOTAL DEDUCTIONS:		TOTAL DEDUCTIONS:																
SPECIALTY LICENSE NO.:		FED. TAX							FUND ADMIN							STATE TAX							TRAV. SUBS.							OTHER*							TOTAL DEDUCTIONS:							TOTAL DEDUCTIONS:		TOTAL DEDUCTIONS:				
SPECIALTY LICENSE NO.:		ALL PROJECTS							FUND ADMIN							STATE TAX							TRAV. SUBS.							OTHER*							TOTAL DEDUCTIONS:							TOTAL DEDUCTIONS:		TOTAL DEDUCTIONS:				
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CERTIFICATION **MUST** be completed (See reverse side)

*OTHER - Any other deductions, contributions and/or payments whether or not included or required by prevailing wage determinations must be separately listed. Use extra sheet(s) if necessary

NOTICE TO PUBLIC ENTITY

For Privacy Considerations

Fold back along dotted line prior to copying for release to general public (private persons).

(Paper Size then 8-1/2 x 11 inches)



I, _____, the undersigned, am the
(Name – print)

_____ with the authority to act for and on behalf of
(Position in business)

_____, certify under penalty of perjury
(Name of business and/or contractor)

that the records or copies thereof submitted and consisting of _____
(Description, number of pages)

are the originals or true, full, and correct copies of the originals which depict the payroll record(s)
of the actual disbursements by way of cash, check, or whatever form to the individual or
individuals named.

Date: _____

Signature: _____

A public entity may require a stricter and/or more extensive form of certification.



JOINT APPRENTICESHIP COMMITTEE REQUIREMENTS

California Labor Code requires all (union and non-union) contractors and subcontractors on public works construction projects to submit Form DAS 140 to the appropriate Joint Apprenticeship Committee(s) ("JAC") and pay apprenticeship training contributions per the prevailing wage to either the JAC or the California Apprenticeship Council.

For your use, we have attached an information packet from the Department of Industrial Relations, Division of Industrial Standards. It is important to follow these instructions prior to starting work:

- 1) Send the **original** DAS 140 by certified mail to the JAC for your trade.
 - (a) Search available apprenticeship programs by county and occupation at www.dir.ca.gov/DAS/das.html
 - (b) **Do not** send the form to the Division of Apprenticeship Standards.
 - (c) Obtain proof of delivery by requesting a **return receipt**.
- 2) When you receive the proof of delivery, forward copies of the **return receipt and the DAS 140** to John F. Otto, Inc.
 - (a) Wait until you have received the proof of delivery and send it with the copy of the DAS 140.
- 3) Use the DAS142 to request apprentices from your apprenticeship training committee.
- 4) If you have not paid into a training fund through union contributions, make the contributions to the California Apprenticeship Council.
 - (a) Use form CAC2 (attached).
 - (b) Send to the address at the top of the form.
 - (c) Find the correct contribution amount contained in prevailing wage information at www.dir.ca.gov/dlsr/pwd listed by location and trade.
- 5) All sub-tier contractors that you hire to perform labor on this project must also meet these requirements.

Division of Apprenticeship Standards

Apprentices on Public Work projects Summary of requirements

Compliance with California Labor Code Section 1777.5 requires all public works contractors and subcontractors to:

1. Submit contract award information.

Contractors who are not already approved to train by an apprenticeship program sponsor shall provide contract award information to all of the applicable apprenticeship committees whose geographic area of operation includes the area of the public works project. **Submit contract award information** to the apprenticeship committee for each apprenticeable craft or trade in the area of the site of the public works project that has approved the contractors, who are participants in an approved apprenticeship program, to train apprentices. (Title 8, California Code of Regulations, Section 230).

The contract award information shall be in writing and may be on a Public Works Contract Award Information form (DAS 140). The information shall be provided to the applicable apprenticeship committee within ten (10) days of the date of the execution of the prime contract or subcontract, but in no event later than the first day in which the contractor has workers employed upon the public work. (Title 8, California Code of Regulations, Section 230). **The filing of a DAS 140 is not a request for dispatch of registered apprentices.**

2. Employ registered apprentices on the Public Works project in a ratio of no less than one (1) hour of apprentice work for every five (5) hours performed by a journeyman. (Title 8, California Code of Regulations, Section 230.1)

All contractors must request dispatch of required apprentices from an Apprenticeship Program (for each apprenticeable craft or trade) by giving the Program actual notice of at least 48 hours (excluding Saturdays, Sundays and holidays) before the date on which apprentices are required. Contractors who are not already participating in an approved program and who did not receive sufficient number of apprentices from their initial request, must request dispatch of apprentices from at least one other Apprenticeship Committee, if more than one exists in the area of the public works project. (Title 8, California Code of Regulations, Section 230.1(a))

3. Make training fund contributions in the amount established in the Prevailing Wage Rate publication for journeymen and apprentices. Contractors who contribute to an apprenticeship program are entitled to a full credit in the amount of those contributions. Contractors who do not contribute to an apprenticeship program must submit their contributions to the California Apprenticeship Council, P. O. Box 420603, San Francisco, CA 94142-0603. **Training fund contributions to the Council are due and payable on the 15th day of the month for work performed during the preceding month.**

Training contributions to the Council shall be paid by check and shall be accompanied by a completed **Training Fund Contributions form (CAC-2)**, or a form containing the following information (Title 8, California Code of Regulations, Section 230.2(c)):

- (1) The name, address, and telephone number of the contractor making the contribution.
- (2) The contractor's license number.
- (3) The name and address of the public agency that awarded the contract.
- (4) The jobsite location, including the county where the work was performed.
- (5) The contract or project number.
- (6) The time period covered by the enclosed contributions.
- (7) The contribution rate and total hours worked by apprenticeable occupation.
- (8) The name of the program(s) that provided apprentices, if any.
- (9) The number of apprentice hours worked, by apprenticeable occupation and by program.

See www.dir.ca.gov for the complete regulations and Labor Code provisions. See www.dir.ca.gov/DAS/das.htm to search available apprenticeship programs by county and occupation.

PUBLIC WORKS CONTRACT AWARD INFORMATION

Contract award information must be sent to your Apprenticeship Committee if you are approved to train. If you are not approved to train, you must send the information (which may be this form) to ALL applicable Apprenticeship Committees in your craft or trade in the area of the site of the public work. Go to: <http://www.dir.ca.gov/das/PublicWorksForms.htm> for information about programs in your area and trade. You may also consult your local Division of Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards.

Do not send this form to the Division of Apprenticeship Standards.

NAME OF YOUR COMPANY	CONTRACTOR'S STATE LICENSE NO
MAILING ADDRESS- NUMBER & STREET, CITY, ZIP CODE	AREA CODE & TELEPHONE NO.
NAME & ADDRESS OF PUBLIC WORKS PROJECT	DATE YOUR CONTRACT EXECUTED
	DATE OF EXPECTED OR ACTUAL START OF PROJECT
NAME & ADDRESS OF PUBLIC AGENCY AWARDED CONTRACT	ESTIMATED NUMBER OF JOURNEYMEN HOURS
	OCCUPATION OF APPRENTICE
THIS FORM IS BEING SENT TO: (NAME & ADDRESS OF APPRENTICESHIP PROGRAM(S))	ESTIMATED NUMBER OF APPRENTICE HOURS
	APPROXIMATE DATES TO BE EMPLOYED

This is not a request for dispatch of apprentices.

Contractors must make a separate request for actual dispatch, in accordance with Section 230.1(a) California Code of Regulations

Check One Of The Boxes Below

1. We are already approved to train apprentices by the _____
Apprenticeship Committee. We will employ and train under their Standards. Enter name of the Committee

2. We will comply with the standards of _____
Apprenticeship Committee for the duration of this job only. Enter name of the Committee

3. We will employ and train apprentices in accordance with the California Apprenticeship Council regulations, including § 230.1 (c) which requires that apprentices employed on public projects can only be assigned to perform work of the craft or trade to which the apprentice is registered and that the apprentices must at all times work with or under the direct supervision of journeyman/men.

Signature _____ Date _____

Typed Name _____

Title _____

**State of California - Department of Industrial Relations DIVISION
OF APPRENTICESHIP STANDARDS**

REQUEST FOR DISPATCH OF AN APPRENTICE

Do not send this form to DAS

You may use this form to request dispatch of an apprentice from the Apprenticeship Committee in the craft or trade in the area of the public work. Go to: <http://www.dir.ca.gov/DAS/PublicWorksForms.htm> for information about programs in your area and trade. You may also consult your local Division of Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards.

Date: _____

To Applicable Apprenticeship Committee: _____

Address: _____

Telephone: _____ Fax: _____

Contractor Requesting Dispatch: _____

Address: _____

Telephone: _____ Fax: _____

Person making request: _____

Number of Apprentice(s) Needed _____ Craft or Trade _____

Date Apprentice(s) to Report: _____ (48 hours notice required)

Name of Person to Report to: _____

Address to Report to
if different from above: _____

Time to Report: _____

You may use this form, or make a verbal or written request, to ask for the dispatch of an apprentice. Please take note of California Code of Regulations, *Title 8, § 230.1 (a)* which says in part: *if in response to a written request an Apprenticeship Committee does not dispatch any apprentice to a contractor who has agreed to employ and train apprentices in accordance with either the Apprenticeship Committee's Standards or these regulations within 72 hours of such request (excluding Saturdays, Sundays and holidays) the contractor shall not be considered in violation of this section as a result of failure to employ apprentices ...*

State of California
 Department of Industrial Relations
 California Apprenticeship Council
 P. O. Box 420603
 San Francisco, CA 94142

TRAINING FUND CONTRIBUTIONS

Please use a separate **form** for each jobsite, listing the occupations for the jobsite. One **check** payable to the California Apprenticeship Council, may be submitted for all jobsites and/or occupations. Training fund contributions are **not accepted** by the California Apprenticeship Council for federal public works projects, or for non-apprenticeable occupations such as utility technicians, teamsters, etc.

**California Apprenticeship
 Council**

NAME AND ADDRESS OF CONTRACTOR/SUBCONTRACTOR MAKING CONTRIBUTION	CONTRACTOR'S LICENSE NUMBER				
	CONTRACT OR PROJECT NUMBER				
	JOBSITE LOCATION (INCLUDE COUNTY) IF APPLICABLE. GIVE NAME OF SCHOOL, HOSPITAL, BUILDING, ETC.				
NAME AND ADDRESS OF PUBLIC AGENCY AWARDING CONTRACT	PERIOD COVERED BY CONTRIBUTION (FROM-TO)				
	CLASSIFICATIONS) OF WORKERS (CARPENTER, PLUMBER, ELECTRICIAN, ETC.)	COUNTY WORK PERFORMED IN	HOURS	CONTRIBUTION RATE PER HOUR	AMOUNT
					0.00
					0.00
					0.00
					0.00
					0.00
					0.00
					0.00
				Total	\$0.00
SIGNATURE PLEASE TYPE OR PRINT YOUR NAME			DATE		
TITLE			AREA CODE & TELEPHONE NUMBER		

EXCERPTS FROM CALIFORNIA LAW RELATING TO APPRENTICES ON PUBLIC WORKS

Excerpts from the California Labor Code

1773.3. An awarding agency whose public works contract falls within the jurisdiction of Section 1777.5 shall, within five days of the award, send a copy of the award to the Division of Apprenticeship Standards. When specifically requested by a local joint apprenticeship committee, the division shall notify the local joint apprenticeship committee regarding all such awards applicable to the joint apprenticeship committee making the request. Within five days of a finding of any discrepancy regarding the ratio of apprentices to journeymen, pursuant to the certificated fixed number of apprentices to journeymen, the awarding agency shall notify the Division of Apprenticeship Standards.

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

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

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

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

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

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

"Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body.

Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

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

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

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

trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Chief of the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury.

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

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

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

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

1777.6. An employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of this code and Section 12940 of the Government Code.

1777.7. (a) (1) A contractor or subcontractor that is determined by the Chief of the Division of Apprenticeship Standards to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding one hundred dollars (\$100) for each full calendar day of noncompliance. The amount of this penalty may be reduced by the Chief if the amount of the penalty would be disproportionate to the severity of the violation. A contractor or subcontractor that knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars (\$300) for each full calendar day of noncompliance. Notwithstanding Section 1727, upon receipt of a determination that a civil penalty has been imposed by the Chief, the awarding body shall withhold the amount of the civil penalty from contract progress payments then due or to become due.

(2) In lieu of the penalty provided for in this subdivision, the Chief may, for a first-time violation and with the concurrence of an apprenticeship program described in subdivision (d), order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

(b) In the event a contractor or subcontractor is determined by the Chief to have knowingly committed a serious violation of any provision of Section 1777.5, the Chief may also deny to the contractor or subcontractor, and to its responsible officers, the right to bid on or be awarded or perform work as a subcontractor on any public works contract for a period of up to one year for the first violation and for a period of up to three years for a second or subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Chief becomes a final order of the Administrator of Apprenticeship.

(c) (1) An affected contractor, subcontractor, or responsible officer may obtain a review of the determination of the Chief imposing the debarment or civil penalty by transmitting a written request to the office of the Administrator within 30 days after service of the determination of debarment or civil penalty. A copy of this report shall also be served on the Chief. If the Administrator does not receive a timely request for review of the determination of debarment or civil penalty made by the Chief, the order shall become the final order of the Administrator.

(2) Within 20 days of the timely receipt of a request for review, the Chief shall provide the contractor, subcontractor, or responsible officer the opportunity to review any evidence the Chief may offer at the hearing. The Chief shall also promptly disclose any nonprivileged documents obtained after the 20-day time limit at a time set forth for exchange of evidence by the Administrator.

(3) Within 90 days of the timely receipt of a request for review, a hearing shall be commenced before the Administrator or an impartial hearing officer designated by the Administrator and possessing the qualifications of an administrative law judge pursuant to subdivision (b) of Section 11502 of the Government Code. The affected contractor, subcontractor, or responsible officer shall have the burden of providing evidence of compliance with Section 1777.5.

(4) Within 45 days of the conclusion of the hearing, the Administrator shall issue a written decision affirming, modifying, or dismissing the determination of debarment or civil penalty. The decision shall contain a statement of the factual and legal basis for the decision and an order. This decision shall be served on all parties and the awarding body pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party that the party has filed with the Administrator. Within 15 days of issuance of the decision, the Administrator may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

(5) An affected contractor, subcontractor, or responsible officer who has timely requested review and obtained a decision under paragraph (4) may obtain review of the decision of the Administrator by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the final decision. If no timely petition for a writ of mandate is filed, the decision shall become the final order of the Administrator. The decision of the Administrator shall be affirmed unless the petitioner shows that the Administrator abused his or her discretion. If the petitioner claims that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in light of the entire record.

(6) The Chief may certify a copy of the final order of the Administrator and file it with the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order. A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and be given the same preference allowed by the law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section. An awarding body that has withheld funds in response to a determination by the Chief imposing a penalty under this section shall, upon receipt of a certified copy of a final order of the Administrator, promptly transmit the withheld funds, up to the amount of the certified order, to the Administrator.

(d) If a subcontractor is found to have violated Section 1777.5, the prime contractor of the project is not liable for any penalties under subdivision (a), unless the prime contractor had knowledge of the subcontractor's failure to comply with the provisions of Section 1777.5 or unless the prime contractor fails to comply with any of the following requirements:

(1) The contract executed between the contractor and the subcontractor or 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 continually monitor a subcontractor's use of apprentices required to be employed on the public works project pursuant to subdivision (d) of Section 1777.5, including, but not limited to, periodic review of the certified payroll of the subcontractor.

(3) Upon becoming aware of a failure of the subcontractor to employ the required number of apprentices, the contractor shall take corrective action, including, but not limited to, retaining funds due the subcontractor for work performed on the public works project until the failure is corrected.

(4) Prior to making the final payment to the subcontractor for work performed on the public works project, the contractor shall obtain a declaration signed under penalty of perjury from the subcontractor that the subcontractor has employed the required number of apprentices on the public works project.

(e) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund if the awarding body is a state entity, or in the equivalent fund of an awarding body if the awarding body is an entity other than the state.

(f) The Chief shall consider, in setting the amount of a monetary penalty, in determining whether a violation is serious, and in determining whether and for how long a party should be debarred for violating this section, all of the following circumstances:

- (1) Whether the violation was intentional.
- (2) Whether the party has committed other violations of Section 1777.5.
- (3) Whether, upon notice of the violation, the party took steps to voluntarily remedy the violation.
- (4) Whether, and to what extent, the violation resulted in lost training opportunities for apprentices.
- (5) Whether, and to what extent, the violation otherwise harmed apprentices or apprenticeship programs.

If a party seeks review of a decision by the Chief to impose a monetary penalty or period of debarment, the Administrator shall decide de novo the appropriate penalty, by considering the same factors set forth above.

(g) The interpretation of Section 1777.5 and this section shall be in accordance with the regulations of the California Apprenticeship Council. The Administrator may adopt regulations to establish guidelines for the imposition of monetary penalties and periods of debarment and may designate precedential decisions under Section 11425.60 of the Government Code.

Excerpts from the California Code of Regulations Title 8, Chapter 2, Part 1, Article 10. Required Apprentices on Public Works Contracts

§227. Scope and Application

These regulations shall govern all actions pursuant to provisions of Division 2, Part 7, Chapter 1, Labor Code Sections 1777.5 and 1777.7.

§228. Definitions.

For the purpose of this Article 10:

- (a) ADMINISTRATOR means the Administrator of Apprenticeship or a duly authorized representative.
- (b) CHIEF means the Chief of the Division of Apprenticeship Standards or a duly authorized representative.
- (c) CONTRACTOR means a general, prime, specialty or subcontractor.

(d) COUNCIL means the California Apprenticeship Council.

(e) DAS means the Division of Apprenticeship Standards.

(f) DATE OF AGREEMENT OR CONTRACT AWARD means, whichever is earlier, the date the Public Work contract was signed by the party authorizing performance under the Public Work, or the date a Notice to Proceed was issued.

(g) WORKER means any journeyman as defined in Section 205(a) of Title 8 performing work of an apprenticeable occupation on a public works job, except a licensee who is a sole proprietor.

§229. Service Notice and Computation of Time.

(a) Except where otherwise provided for in these Regulations, all documents and notices required to be served pursuant to this Article shall be served personally, or by certified mail, or by first class mail on the party to be served or attorney or representative of Record.

(b) Service shall be prior to filing. Proof of service, by means of a written declaration under penalty of perjury stating the name(s) and address(es) of party(s) served and the date and manner of service, shall be attached to the papers filed.

(c) In computing the time within which a right may be exercised or an act is to be performed the first day shall be excluded and the last day shall be included. If the last day is a Saturday, Sunday or legal holiday, time shall be extended to the next weekday. For documents or notices served by first class mail the time for performing any act shall be extended pursuant to the Code of Civil Procedure Section 1013.

(d) A request for review which is transmitted to the Administrator within 30 days after service of the order of debarment or civil penalty will be considered timely if the request was sent to the Administrator by first class mail or facsimile with a proof of service showing the date of service was within 30 days after service of the order of debarment or civil penalty.

§230. Notification of Contract Award Information.

(a) Contractors shall provide contract award information to the apprenticeship committee for each applicable apprenticeable craft or trade in the area of the site of the public works project that has approved the contractor to train apprentices. Contractors who are not already approved to train by an apprenticeship program sponsor shall provide contract award information to all of the applicable apprenticeship committees whose geographic area of operation includes the area of the public works project. This contract award information shall be in writing and may be a DAS Form 140, Public Works Contract Award Information. The information shall be provided to the applicable apprenticeship committee within ten (10) days of the date of the execution of the prime contract or subcontract, but in no event later than the first day in which the contractor has workers employed upon the public work. Failure to provide contract award information, which is known by the awarded contractor, shall be deemed to be a continuing violation for the duration of the contract, ending when a Notice of Completion is filed by the awarding body, for the purpose of determining the accrual of penalties under Labor Code Section 1777.7. The DAS Form 140 or written notice shall include the following information, but shall not require information not enumerated in Section 230:

- (1) the contractor's name, address, telephone number and state license number;
- (2) full name and address of the public work awarding body;
- (3) the exact location of the public work site;
- (4) date of the contract award;
- (5) expected start date of the work;
- (6) estimated journeyman hours;
- (7) number of apprentices to be employed;
- (8) approximate dates apprentices will be employed;

§230.1. Employment of Apprentices on Public Works.

(a) Contractors, as defined in Section 228 to include general, prime, specialty or subcontractor, shall employ registered apprentice(s), as defined by Labor Code Section 3077, during the performance of a public work project in accordance with the required 1 hour of work performed by an apprentice for every five hours of labor performed by a journeyman, unless covered by one of the exemptions enumerated in Labor Code Section 1777.5 or this subchapter. Unless an exemption has been granted, the contractor shall employ apprentices for the number of hours computed above before the end of the contract. Contractors who are not already approved to train by an applicable joint apprenticeship committee or unilateral committee must request the dispatch of required apprentices from one of the applicable Apprenticeship Committees whose geographic area of operation includes the site of the public work by giving the committee actual notice of at least 48 hours (excluding Saturdays, Sundays and holidays) before the date on which one or more apprentices are required. However, if a non-signatory contractor declines to abide by and comply with the terms of a local committee's standards, the Apprenticeship Committee shall not be required to dispatch apprentices to such contractor. Conversely, if in response to a written request an Apprenticeship Committee does not dispatch any apprentice to a contractor who has agreed to employ and train apprentices in accordance with either the Apprenticeship Committee's Standards or these regulations within 72 hours of such request (excluding Saturdays, Sundays and holidays) the contractor shall not be considered in violation of this section as a result of failure to employ apprentices for the remainder of the project, provided that the contractor made the request in enough time to meet the above-stated ratio. If an Apprenticeship Committee dispatches fewer apprentices than the contractor requested, the contractor shall be considered in compliance if the contractor employs those apprentices who are dispatched, provided that, where there is more than one Apprenticeship Committee able and willing to unconditionally dispatch apprentices, a contractor who is not a participant in an apprenticeship program has requested dispatch from at least two committees.

(b) Apprentices employed on public works shall be paid the applicable apprentice prevailing per diem wage rate, available from DAS, and derived from the Director's survey of wages paid on public works in the geographic area of the craft or trade. DAS shall refer complaints alleging any contractor's failure to pay the proper apprentice prevailing wage rate on a public works project to the Division of Labor Standards Enforcement for investigation and appropriate action.

(c) Apprentices employed on public works can only be assigned to perform work of the craft or trade to which the apprentice is registered. Work of the craft or trade consists of job duties normally assigned to journeymen in the apprenticeable occupation. Where an employer employs apprentices under the rules and regulations of the California Apprenticeship Council, as set forth in Labor Code Section 1777.5(c)(2), apprentices employed on public works must at all times work with or under the direct supervision of journeyman/men. The on-the-job training shall be in accordance with the apprenticeship standards and apprenticeship agreement under which the apprentice is training, provided that a contractor shall not be subject to any financial or administrative obligations to a trust fund or employee benefit plan unless the contractor has so agreed.

(d) Contractors who have bid or have been awarded public works projects prior to January 1, 2000 and contractors who have bid prior to January 1, 2000 and have been awarded public works projects after January 1, 2000 shall comply with the provisions of Labor Code Section 1777.5 in effect prior to January 1, 2000, as implemented by California Apprenticeship Council regulations in effect prior to January 1, 2000.

§230.2. Payment of Apprenticeship Training Contributions to the Council.

(a) Contractors who are neither required nor wish to make apprenticeship training contributions to the applicable local training trust fund shall make their training contributions to the Council. Contractors may refer to the Director of the Department of Industrial Relations applicable prevailing wage determination for the amount owed for each hour of work performed by journeymen and apprentices in each apprenticeable occupation.

(b) Training contributions to the Council are due and payable on the 15th day of each month for work performed during the preceding month.

(c) Training contributions to the Council shall be paid by check and shall be accompanied by a completed CAC-2 Form, Training Fund Contributions, (Rev. 10/91), or the following information:

- (1) The name, address, and telephone number of the contractor making the contribution.
- (2) The contractor's license number.
- (3) The name and address of the public agency that awarded the contract.
- (4) The jobsite location, including the county where the work was performed.
- (5) The contract or project number.
- (6) The time period covered by the enclosed contributions.
- (7) The contribution rate and total hours worked by apprenticeable occupation.
- (8) The name of the program(s) that provided apprentices, if any.
- (9) The number of apprentice hours worked, by apprenticeable occupation and by program.

(d) Training fund contribution paid to the CAC and deposited by the last day of a fiscal year into the Apprenticeship Training Contribution Fund shall be distributed in accordance with this subdivision within 90 days of the end of that fiscal year. Only apprenticeship programs that have had approval under Labor Code section 3075 for the entire fiscal year and are in existence at the time of the distribution of funds shall be entitled to receive a share of the distributed contributions. Contributions shall be distributed as follows: (i) payment shall first be made to the Division of Apprenticeship Standards for its budgeted expenses to administer this subdivision in the fiscal year in which the distribution is made; (ii) where there is only one applicable apprenticeship program in the same occupation for which contributions were made whose geographic area of operation as defined in 8 C.C.R. section 205(n) includes the county in which the work was performed, those contributions will be distributed to that program less the pro rata share of expenses paid by DAS; and (iii) where there are two or more applicable apprenticeship programs in the same occupation for which contributions were made whose geographic area of operation as defined in 8 C.C.R. section 205(n) includes the county in which the work was performed, those contributions will be distributed to each such program in proportion to the total number of registered apprentices that DAS has recorded in that program on June 30 of the fiscal year for which contributions were received less the pro rata share of expenses paid by DAS. "Pro rata share of expenses" means the share of DAS expenses that bears the same ratio to the contributions to be distributed as the total DAS expenses bear to the total contributions received in the fiscal year.



SUBCONTRACTOR INSURANCE REQUIREMENTS

- Commercial General Liability Insurance with limits of \$1 million each occurrence and \$2 million aggregate. Insurance company must have an A.M. Best Co. rating of not less than A-VII.
- "Claims made" or "modified occurrence" policies are **not** acceptable.
- Per Project endorsement or excess/umbrella liability required. Project name must be referenced on the certificate.
- Waivers of Subrogation for General Liability and/or Workers' Compensation may be required, depending on the project owner's requirements.
- If your scope of work includes design, a minimum of \$1 million Professional Liability coverage is required.
- Additional Insured endorsements (**CG 2010 11 85** or **equivalent** covering **completed operations**) naming the Owner, the Architect, and General Contractor (**John F. Otto, Inc. dba Otto Construction**) under the general liability policy are to be attached to the insurance certificate.
- The following wording must be on the Additional Insured endorsement:
 - PRIMARY INSURANCE:
It is understood and agreed that this insurance is primary and any other insurance maintained by the additional insured shall be excess only and not contributing with this insurance.
 - CANCELLATION CLAUSE:
It is understood and agreed that the additional insured(s) will be given thirty (30) days written notice before any cancellation, non-renewal, expiration or reduction in coverage. Cancellation for non-payment of premium can be ten (10) days prior to the effective date. All notices will specifically refer to the above project.
- Automobile Liability Insurance to include coverage for symbol 1 (any auto), all owned, hired, and non-owned automobiles, and shall not be less than \$1 million combined BI and PD.
- Workers' Compensation as required by the State of California and Employer's Liability with limits of \$1 million.

PLEASE SEE SAMPLE ENDORSEMENTS ATTACHED

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)
4/26/10

PRODUCER Gaddy Ward & Company P.O. Box 1088 Lodi, CA 95241	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
	INSURERS AFFORDING COVERAGE
INSURED (Subcontractor's Name and Address)	INSURER A: (Insurance Carrier's Name)
	INSURER B:
	INSURER C:
	INSURER D:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

C O L U M N	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> OWNER'S & CONTRACTOR'S PROT <input checked="" type="checkbox"/> XCU HAZARDS GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC					GENERAL AGGREGATE	\$ 2,000,000
					PRODUCTS - COMP/OP AGG	\$ 2,000,000
					PERSONAL & ADV IN JURY	\$ 1,000,000
					EACH OCCURRENCE	\$ 1,000,000
					FIRE DAMAGE (Any one fire)	\$ 50,000
					MED EXP (Any one person)	\$ 5,000
AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE	\$
GARAGE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> _____ <input type="checkbox"/> _____					AUTO ONLY - EA ACCIDENT	\$
					OTHER THAN AUTO ONLY:	\$
					EACH ACCIDENT	\$
					AGGREGATE	\$
EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM					EACH OCCURRENCE	\$
					AGGREGATE	\$
WORKERS COMPENSATION AND EMPLOYER'S LIABILITY					<input checked="" type="checkbox"/> WC STATUTORY LIMITS	OTHER
					E.L. EACH ACCIDENT	\$ 1,000,000
					E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
					E.L. DISEASE EA EMPLOYEE	\$ 1,000,000
OTHER						

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

RE: (Project Description) Additional insured per attached CG 2010 11 85 endorsement.

CERTIFICATE HOLDER John F. Otto, Inc. dba Otto Construction 1717 2 nd Street Sacramento, CA 95814	ADDITIONAL INSURED: INSURED LETTER:	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, IT'S AGENTS OR REPRESENTATIVES AUTHORIZED REPRESENTATIVE
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POLICY NUMBER: (Subcontractors policy #)
INSURED: (Name of subcontractor)

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS FORM B

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization: John F. Otto Inc. dba Otto Construction
1717 2nd Street
Sacramento CA 95811
(General Contractor)

(Owner)

(Architect)

RE: (Jobsite description and location)

(If no entry appears above, information required to complete this endorsement will be shown in the Declaration as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.

Insurance is primary insurance and any other insurance maintained by the Additional Insured is excess and not contributing insurance.

It is understood and agreed that the additional insured(s) will be given thirty (30) days written notice before any cancellation, non-renewal, expiration, or reduction in coverage. Cancellation for non-payment of premium can be ten (10) days prior to the effective date. However, such notice must be registered mail. All notices will specifically refer to the above project.

(Acceptable Specimen)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED-
ENGINEERS, ARCHITECTS, OR SURVEYORS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
OWNERS & CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART

1. WHO IS INSURED (Section II) is amended to include as an insured any architect, engineer, or surveyor engaged by you but only with respect to liability arising out of your premises or “your work.”
2. The insurance with respect to such architects, engineers, or surveyors does not apply to “bodily injury,” “property damage,” “personal injury” or “advertising injury” arising out of the rendering of or the failure to render any professional services by or for you, including:
 - a. The preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; and
 - b. Supervisory, inspection, or engineering services.

Name of Person or Organization:

**John F. Otto, Inc. dba Otto Construction
1717 2nd Street
Sacramento CA 95811**

(Architect Name)

RE: (Jobsite description and location)

(Acceptable Specimen)

POLICY NUMBER: (Subcontractor policy #)
POLICY HOLDER: (Name of subcontractor)

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**AMENDMENT – AGGREGATE LIMITS OF INSURANCE
(PER PROJECT)**

This endorsement modifies insurance provided under the follow:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The General Aggregate Limit Under LIMITS OF INSURANCE (SECTION III) applies to each of your projects away from premises owned by or rented to you.

Name of Person or Organization:

**John F. Otto, Inc. dba Otto Construction
1717 2nd Street
Sacramento CA 95811**

RE: (Jobsite description and location)

(Acceptable Specimen)

POLICY NO:
INSURED;

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER RIGHTS OF
RECOVERY AGAINST OTHERS**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART**

SCHEDULE

Name of Person or Organization:

(If no entry appears above, information required to complete this endorsement will be shown in the Declaration as applicable to this endorsement.)

We waive any right of recovery we may have against the person or organization shown in the Schedule because of payments we make for injury or damage arising out of "your work" done under a contract with that person or organization. The waiver applies only to the person or organization shown in the Schedule.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT—CALIFORNIA

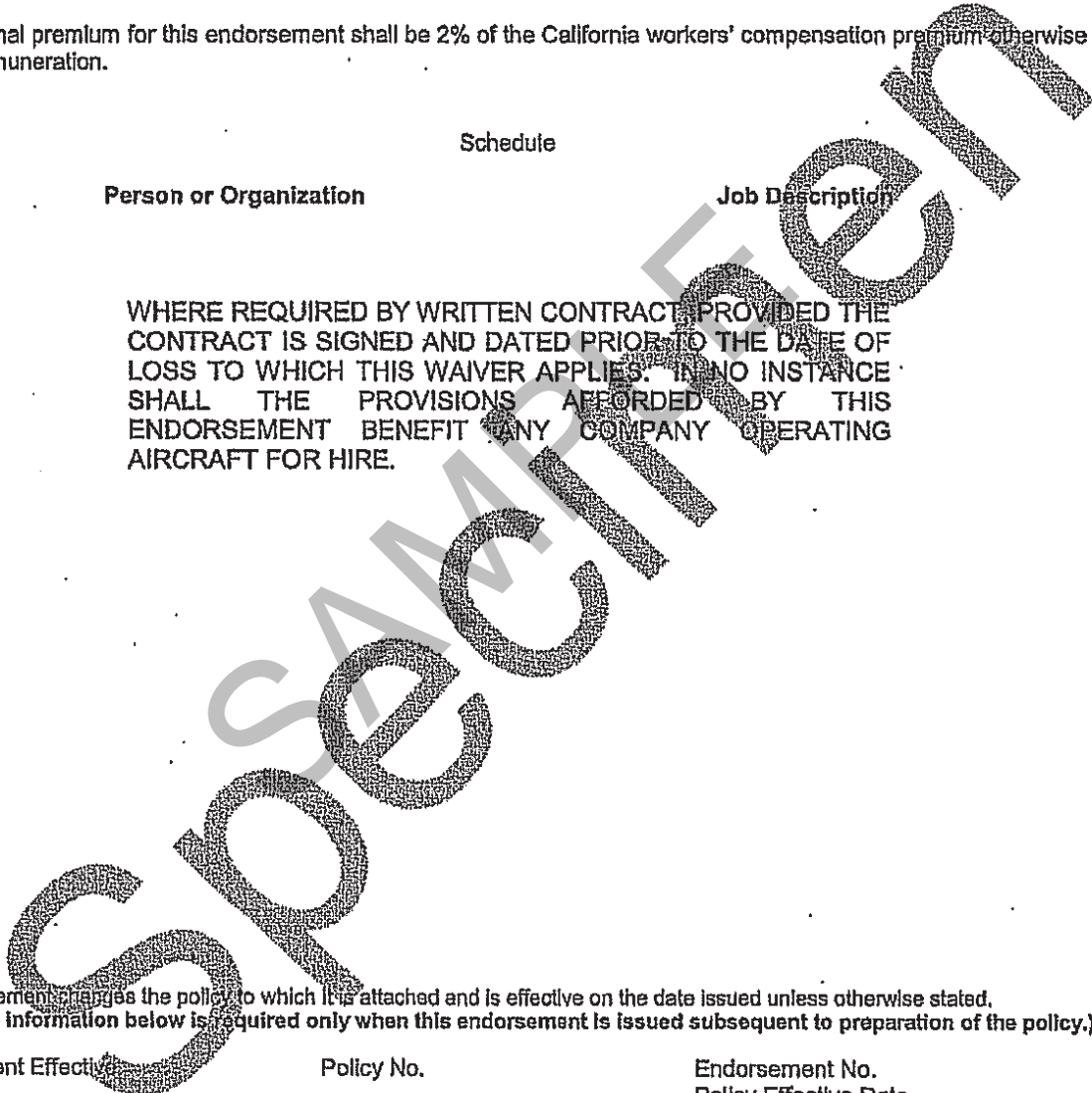
We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from US.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2% of the California workers' compensation premium otherwise due on such remuneration.

Person or Organization	Schedule	Job Description
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WHERE REQUIRED BY WRITTEN CONTRACT, PROVIDED THE CONTRACT IS SIGNED AND DATED PRIOR TO THE DATE OF LOSS TO WHICH THIS WAIVER APPLIES. IN NO INSTANCE SHALL THE PROVISIONS AFFORDED BY THIS ENDORSEMENT BENEFIT ANY COMPANY OPERATING AIRCRAFT FOR HIRE.



This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective
Insured
Insurance Company

Policy No.

Endorsement No.
Policy Effective Date

Countersigned By