

DJM CONSTRUCTION CO., INC.
California License Number 596355, A B
SUBCONTRACT AGREEMENT FOR PUBLIC WORKS

Contract No. **XXX-XXX**
DJM Cost Code No. **X-XXX**

THIS AGREEMENT is made and entered into at Anaheim, California, this **Friday, October 31, 2008** by and between DJM CONSTRUCTION CO., INC. (hereinafter referred to as "Contractor") and
Subcontractor
(hereinafter referred to as "Subcontractor") whose address is,
Address
City, State Zip Code
Phone: 000-000-0000 Fax: 000-000-0000

WITNESSETH: Contractor has entered or expects to enter into an agreement (hereinafter referred to as the "Prime Contract") with **OWNER** (hereinafter called the "Owner") for the construction of

JOB NAME (Contract No./Bid No. 0000)

(hereinafter referred to as the "Project") in accordance with plans and specifications prepared by **ARCHITECT**. If Owner and Contractor fail to enter into a Prime Contract or the Prime Contract is determined to be invalid for any reason, this agreement between Contractor and Subcontractor shall likewise be of no force or effect.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Contractor and Subcontractor have agreed as follows:

1. **DESCRIPTION OF WORK:** Subcontractor agrees to furnish at his own cost and expense all labor, materials and other essentials necessary to perform all of the work that is incident to the following portion or portions of the Prime Contract and any addenda or modifications thereto:

FURNISH AND INSTALL PER PLANS AND SPECIFICATIONS:

Specification Section(s): **Division 1 – General Requirements & Conditions**

1. **EXHIBITS "A", "B", "C" and _____ ARE INTEGRAL PARTS OF THIS CONTRACT.**

If the foregoing description of the work to be performed by Subcontractor refers to a section or sections of the Project specifications, it is understood and agreed that the reference to such section or sections has been made solely for Subcontractor's convenience in describing the obligation assumed by Subcontractor under this agreement and is not intended to limit the obligation of Subcontractor to the performance of work or the furnishing of material that is expressly described or referred to in the aforementioned section or sections. Except to the extent that Subcontractor's obligation is expressly limited in the foregoing description of the work to be performed by Subcontractor, Subcontractor shall perform all of the work that would be included in the general description of the work to be performed under the designated section or sections of the Project specifications and furnish all of the materials needed to perform such work, and Subcontractor shall perform all work and provide all materials that is reflected or called for in the Project plans that would fall within the general description of the designated section or sections of the Project specifications even though such work and materials are not specifically described in the designated section or sections of the Project specifications.

2. **SUBCONTRACTOR'S INVESTIGATIONS AND CHANGES IN AGREEMENT:** Subcontractor hereby represents that he has thoroughly examined all plans and specifications and has examined the site of the work and has ascertained for himself the conditions to be encountered. Subcontractor acknowledges that he is entering into this subcontract in reliance upon his own information and investigation and not upon statements or representations, if any, that may have been made by Contractor. Subcontractor further acknowledges that this agreement supersedes all prior written or oral agreements and/or negotiations, if any, between the parties, and that this agreement constitutes the only agreement between the parties pertaining to the work to be performed on the Project. No agent or employee of Contractor has the authority to change this agreement except by a writing signed by Contractor; providing, however, that changes in the work and contract price arising from change orders made by the Owner pursuant to right reserved in the agreement between Owner and Contractor may be made by written notice to Subcontractor.

3. **EFFECT OF PRIME CONTRACT:** To the extent that they are applicable to the work to be performed by Subcontractor under this agreement, the provisions of the Prime Contract and any plans, specifications, drawings, addenda, change orders, and other documents, wherever work appears or is referenced, forming a part of the Prime Contract are hereby incorporated into this agreement with the same force and effect as though set forth in full. Whenever reference is made in this agreement to the Prime Contract or to the contract documents, such reference shall be construed to include all documents forming a part of the Prime Contract, drawings, specifications, change orders, and all other documents forming a part of the prime contract. Subcontractor shall be bound to contractor to the same extent that contractor is bound to owner, by all terms and provisions of the prime contract, and by all decisions, rulings, and interpretations of owner or its authorized representative. Copies of the prime contract documents are available for review at contractor's office. In the event that any provision of this agreement as applied to the work of Subcontractor hereunder is found to be inconsistent with the provisions of the Prime Contract, the provisions of the Prime Contract shall prevail and shall govern the rights and obligations of the parties hereto. Notwithstanding this provision, in case of any conflict between this Subcontract Agreement and the Prime Contract, Subcontractor shall be bound by the more stringent requirement as determined by Contractor.

4. **CONTRACT PRICE:** Contractor shall pay to Subcontractor the sum of,

for the performance of all labor and the furnishing of all materials that Subcontractor is obligated to perform and furnish under this agreement. This amount (hereinafter referred to as the "Contract Price") shall be increased or decreased if any changes are made in the scope of work.

5. **PAYMENT SCHEDULE:** Payments are to be made in monthly installments for work performed the preceding month on or before ten (10) days after payment is received by Contractor from Owner, or upon completion of the project, which ever is earlier, in an amount equal to the value of work performed by Subcontractor during the preceding calendar month,

less the retention established under the prime contract; provided, however, that Subcontractor shall receive no payment until Subcontractor is in full compliance with this Agreement, and no payment in excess of 95% of Subcontractor's total contract price until Subcontractor has delivered all required as-builts, guarantees, warranties, product manuals and other close out items called for in the Prime Contract. The value of the work is to be determined by reference to the contract price herein, but shall not exceed the owner's allowance therefore for which payment has been received by Contractor. The estimate of owner, or the estimate of Contractor as to the amount of work done by Subcontractor if Owner makes no separate estimate of such work shall be binding upon Subcontractor. The retainage less any deductions permitted by this agreement, shall be paid 10 days after completion and acceptance by the owner of all work under the prime contract and after payment of said retainage to Contractor by Owner. If Owner withholds payment of any amounts to Contractor as a result of stop notices filed by Subcontractor, it is understood and agreed that Contractor's obligation to make any payment directly to Subcontractor of the amount claimed in Subcontractor's stop notice shall be suspended for as long as Subcontractor's stop notice remains in effect. If Owner fails to make any monthly installment payment to Contractor or withholds payment for reasons not attributable to subcontractor, Contractor will pay Subcontractor the amount of any progress payment that Subcontractor would otherwise been entitled to receive (less retainage) within 45 days of the end of the month when the work was performed by Subcontractor. Releases are required every month from your suppliers and/or subcontractors. A "Conditional Release" will initiate a joint check; whereas, an "Unconditional Release" indicates that you have paid your supplier/sub through the specified billing period. NOTE: All releases for amounts less than \$1,000 MUST be "Unconditional." DJM does not issue joint checks for an amount less than \$1,000.

6. **EFFECT OF PAYMENTS:** No payment made under this contract shall operate as an acceptance of any portion of the Subcontractor's work or as an admission on the part of Contractor that this contract, or any part thereof, has been complied with in case the fact shall be otherwise. Acceptance of the work shall be made by Owner in accordance with the provisions of the Prime Contract. Any contract advance from Contractor to Subcontractor, if agreed to between the parties, shall be subject to a current applicable interest rate charge which may be governed by a separate agreement between the parties herein.

7. **PAYMENTS REQUIRED OF SUBCONTRACTOR:** Before receiving any payment falling due under this agreement, Subcontractor shall furnish, if requested, evidence satisfactory to Contractor that all claims for labor, material, union health, welfare and pension fund payments, payroll taxes, and other things used by Subcontractor in the performance of this agreement have been paid. Such evidence shall be furnished upon such forms and in such manner as may be requested by Contractor, and all statements relative thereto shall be made under penalty of perjury. Subcontractor shall furnish to Contractor releases of bond rights and lien rights by persons who have furnished labor, material, or other things in the performance of this agreement, and no payment need be made by Contractor unless and until such releases are furnished. Subcontractor's work is not deemed to be complete until the work is free from all claims, encumbrances or liens and Subcontractor delivers all Unconditional Releases as required by this Agreement or as demanded by Contractor. This shall include, but is not limited to, the delivery of unaltered statutory Unconditional Releases to Contractor by Subcontractor for all persons or entities utilized by Subcontractor who may file a claim for labor and materials on the project as well as any applicable union health, welfare or pension fund obligations that may arise from work performed on behalf of Subcontractor. Contractor also has the right to demand, and Subcontractor shall be required to supply to Contractor, evidence of payroll tax deposits for labor supplied by Subcontractor on the work covered by this Subcontract Agreement. Failure to supply evidence of such payroll tax deposits shall be considered a material breach of contract by Subcontractor.

8. **RIGHT TO WITHHOLD PAYMENT:** Contractor may deduct from any amounts due or to become due to Subcontractor any sums due or to become due to Contractor from Subcontractor, whether or not said sums are in any way related to this agreement or to the Project, and apply the funds deducted toward payment of any such obligations of Subcontractor. If Subcontractor breaches any provision of this agreement, or if any person has asserted any claim, stop notice or lien arising out of Subcontractor's performance of this agreement or any other debt claimed to be owed by Subcontractor against Contractor, against the Owner, against Contractor's bond, or against any funds due or to become due to Contractor on this or any other Project, Contractor may reserve from any amounts due or to become due to Subcontractor such sums as Contractor shall deem necessary to protect Contractor from any and all loss, damage, or expense therefrom. If in the event that it appears to Contractor that the labor, material and other bills incurred in the performance of Subcontractor's Work are not being currently paid, Contractor may take such steps as it deems necessary to ensure that the money paid with any progress payment will be utilized to pay such bills. Contractor may deduct or withhold amounts due or to become due to Subcontractor regardless of whether Contractor has received said sums from Owner in the event of any nonperformance or breach by Subcontractor of any provision or obligation of this Subcontract, or in the event of the assertion by other parties of any amount owed by Subcontractor or claim or lien against the Owner, Contractor, Contractor's Surety, or the premises upon which the work was performed. Upon notice by Contractor, Subcontractor shall bond off such claim or lien to the satisfaction of Contractor within 48 hours. Payments may not be made to Subcontractor until such bond is provided. Contractor also reserves the right to make any payment to Subcontractor under this agreement in the form of checks made payable jointly to Subcontractor and to any of Subcontractor's sub-subcontractors, suppliers or other creditors if Contractor determines that this payment procedure is reasonably necessary to protect Contractor against the filing of stop notices or the assertion of claims against Contractor's bond.

9. **SUMS HELD IN TRUST BY SUBCONTRACTOR:** All sums received by Subcontractor from Contractor, or any person making payment for or on behalf of Contractor, under this agreement are received by Subcontractor in trust, and as bailee, for the express use and purpose of paying in full for all labor performed and material furnished in the performance of this agreement. No title to any payment, or any part thereof, shall vest in Subcontractor, or be used for any other purpose, until Subcontractor has first paid in full for all labor performed and materials furnished to date by all persons who may have supplied labor, material or other things used in the work of construction under this agreement.

10. **TIME SPECIFIED FOR PERFORMANCE OF SUBCONTRACTOR'S WORK – TIME IS OF THE ESSENCE:** The Subcontractor agrees that time is of the essence. Subcontractor will conform to any mutually agreed upon progress schedule established by Contractor. Subcontractor will mobilize within 24 hours of fax or e-mail notice from Contractor. Subcontractor will prosecute all work on consecutive work days until all available work is completed and accepted in writing. Subcontractor shall adjust manpower as required to conform to Contractor's progress schedule and/ or as required by Contractor. Subcontractor will commence work and demobilize, when appropriate, as necessary to accommodate all changes in Contractor's progress schedule. Subcontractor will coordinate his work with Contractor and other subcontractors so that there will be no delay or interference with other work on the Project. Subcontractor shall not be entitled to additional compensation to maintain Contractor's progress schedule. Subcontractor shall reimburse Contractor for any cost impact resulting from Subcontractor's delay in performance, failure to conform to the progress schedule established by Contractor, or failure to cooperate with Contractor or other subcontractors in the prosecution of the work. Subcontractor further agrees to complete any items of punch list work within one week of fax notice to perform such work from Contractor, and if Subcontractor fails to do so, Contractor may complete said items of work and recover the cost plus an allowance of 15% for Contractor's overhead and profit from Subcontractor.

11. **SUBCONTRACTOR PERFORMANCE DURING DISPUTE:** In the event of a dispute between the parties, Subcontractor agrees to continue performing his work pursuant to paragraph 10 above without interruption, to the same extent that Contractor is bound to continue the work under the Prime Contract. Subcontractor acknowledges and agrees that stopping work is not an acceptable remedy for disputes of any and all types arising from the performance of the work covered by this subcontract agreement. During the performance of disputed work, Subcontractor shall maintain daily time and material tickets and deliver said documentation to Contractor on a daily basis. Furthermore, Subcontractor shall notify Contractor before said disputed work is to begin and immediately notify Contractor when said work is completed. Subcontractor hereby acknowledges that this requirement is a material provision of this Agreement and should the Subcontractor fail to comply in full with this requirement, this failure shall be a basis for denial of compensation for the work performed.

12. **SUBMITTALS:** Subcontractor shall forthwith order all materials, equipment and other items which shall be required for the performance of the work hereunder and shall deliver a submittal schedule within 5 days of executing this agreement. Subcontractor shall submit to Contractor, upon Contractor's request a list of suppliers from whom Subcontractor proposes to purchase all necessary materials, equipment and other items that may be required by Subcontractor in the performance of this agreement together with documentary evidence satisfactory to Contractor indicating that all such materials, equipment and other items will be available in sufficient time to avoid delay in the prosecution of the Project as a whole. Subcontractor's failure to furnish submittals and/ or such documentary evidence within 72 hours after demand by Contractor shall constitute a breach of this agreement. Approved shop drawings or approved submittals shall not relieve subcontractor from fully complying with the requirements of the Prime Contract and Subcontract Agreement, including full compliance with the plans and specifications.

13. **PROTECTION OF WORK AND PROPERTY:** Subcontractor shall be responsible for protecting and maintaining the good condition of his work and any related equipment or materials until final acceptance of the entire Project. Subcontractor shall protect adjacent property and the work of other subcontractors from injury arising out of his work. Any default by Subcontractor under this paragraph may be remedied by Contractor, and the cost thereof shall be deducted from the subcontractor's contract.

14. **WORK CHANGES:** Subcontractor shall make no changes in the scope of work performed under this agreement, whether by way of deduction, addition, or substitution, nor shall Subcontractor perform any extra work without the prior written direction of Contractor. The parties do hereby agree that no conduct of the parties, other than a writing executed by both parties, shall be sufficient to modify the provisions of this agreement or be the basis of a claim for extra work; provided, however, that nothing continued herein shall be construed to modify the right of Contractor to eliminate any portion of the work found not necessary to the completion of the work as a whole or to make such changes as may be required by change orders made by Owner as set forth elsewhere in this agreement. Any requests for compensation for additional work which the Subcontractor contends it is entitled shall be submitted to Contractor, in writing, within the earlier of either 10 days, or 2 days before any requirement that Contractor may be required to submit said request for additional compensation to Owner pursuant to the Prime Contract, where applicable, from the date that Subcontractor is first aware of the additional work.

15. **COMMENCEMENT OF WORK:** Subcontractor hereby agrees that once it commences work, or a portion of its work, Subcontractor is expressly assuming control over said work area and any prior work performed by other parties or other subcontractors free from any patent defects. If subcontractor fails to notify Contractor of any such patent defects or substandard work in an immediate area in which Subcontractor is to perform it work, Subcontractor assumes responsibility of completing its work in a workmanlike and acceptable manner notwithstanding any prior deficient work by other parties or subcontractors and expressly waive the right to assert this claim as a defense to providing acceptable and defect free workmanship.

16. **SUBCONTRACTOR'S CLAIMS:** Contractor shall not be liable for any claim made by Subcontractor for any loss of efficiency, loss of productivity, delay, disruption or the like allegedly caused by Contractor unless Subcontractor has given written notice to Contractor of the existence of such claim or potential claim immediately upon the happening of any event giving rise to such claim or potential claim but in no case more than ten (10) calendar days after the first day on which said event occurred. If Subcontractor claims that he is entitled to any additional payment or compensation arising out of any act or omission on the part of the Owner or the Owner's representative, or in the event that Subcontractor disputes any determination made by Owner or Owner's representative, he shall, within the time allowed by the Prime Contract, prepare his claims or contentions in such written form as may be required by the provisions of the Prime Contract for presentation by Contractor to Owner. Subcontractor shall in no event be entitled to an escalation of price unless specifically approved and paid for by Owner. Subcontractor, at his own cost and expense, shall designate a person who shall be charged with presenting the claims or contentions of Subcontractor to the Owner, and such person shall, together with a representative of Contractor, act jointly as Contractor's representative in all dealings with the Owner relative to such claims or contentions. Subcontractor shall be bound by the ruling or decision of the Owner or Owner's representative upon all such matters to the same extent that Contractor is bound, and Subcontractor shall have no right to receive payment from Contractor upon any such claim or contention in any sum greater than that allowed and paid by Owner. In the event Subcontractor is not satisfied with the disposition made of his claim by Owner, and Subcontractor wishes to pursue his claim either by arbitration or by the filing of an action, Subcontractor shall have the right to request arbitration in accordance with the provisions of the Prime Contract if permissible there under, or file an action. Such arbitration or court action shall indicate the name of Contractor as the party thereto because of the lack of privity of contract between Subcontractor and Owner, but all such proceedings shall be conducted by Subcontractor with the cooperation of Contractor and at the sole cost and expense of Subcontractor. Subcontractor shall hold harmless and indemnify Contractor against all costs of arbitration, suit, attorneys' fees, and other items of expense connected with such proceedings, and Contractor shall have the right to demand that Subcontractor deposit with Contractor, as security against any loss of damage by Contractor in connection therewith, an amount which Contractor deems sufficient for such purpose. Failure of Subcontractor to post such security shall give Contractor the right to terminate any proceedings then pending upon such terms as Contractor deems proper, and Subcontractor does hereby waive any claim against Contractor by reason of such termination of proceedings. Contractor shall have the right to receive 15% of any amount allowed by Owner or recovered through arbitration or court proceedings in connection with any such claim or contention presented on behalf of Subcontractor for Contractor's overhead, bond premium, profit and work performed by Contractor in presenting the Subcontractor's claims or contentions.

Any and all outstanding issues that exist at the end of each month must be submitted by Subcontractor to Contractor in the form of a log that lists work description, a breakdown of labor and materials, the date the work commenced as well as the total cost incurred by Subcontractor to date. This log shall be submitted monthly by Subcontractor and shall specify each outstanding issues and/or claim between Subcontractor and Contractor. Failure to submit said log shall confirm all pending issues and/or claims have been resolved and shall be construed as a waiver of these issues and or claims.

17. **INSURANCE:** Subcontractor shall maintain in full force and effect at all times a policy of insurance under the worker's compensation laws of the State of California together with a comprehensive liability policy and automobile liability policy in such limits and providing such coverage as may be required by the Prime Contract. In the event that the Prime Contract does not specify limits of coverage under the comprehensive liability policy, Subcontractor shall procure a policy in such limits as are satisfactory to Contractor. Subcontractor shall furnish certificates of insurance, in triplicate, to Contractor upon execution of this agreement as evidence of the above insurance coverage and showing that Contractor and Owner have been designated as additional insureds under the comprehensive liability policy. The certificates shall provide for a 30-day notice to Contractor before cancellation of any policy.

18. **LIABILITY TO THIRD PARTIES:** Subcontractor shall defend all suits brought against Contractor, Contractor's Surety or Owner upon claims of any nature arising from injury to persons or property resulting from Subcontractor's performance of this agreement. Subcontractor will hold harmless and indemnify Contractor, Contractor's Surety and Owner against all such suits and will reimburse Contractor, upon demand, for any costs and expenses of any nature incurred by Contractor Contractor's Surety and Owner in connection therewith, including all costs and reasonable attorneys' fees.

19. **INDEMNIFICATION AND HAZARDS:** Subcontractor does hereby release, and agrees to indemnify and save Contractor harmless, from and against all claims of every nature, howsoever the same may be caused, resulting directly or indirectly from the performance of any or all work to be done under this agreement. Such release and indemnification shall extend to all claims arising from the activities of Subcontractor, Subcontractor's agents and employees, and sub-subcontractors, while engaged in the performance of the work to be done under this agreement. Subcontractor does hereby agree that he will ascertain, for the benefit of his employees and the employees of any subcontractor employed by him in accordance with the provisions of this agreement, the existence of all job conditions which constitute a hazard to the safe performance of the work and to notify all such employees thereof. In the event that Subcontractor by rental, loan or otherwise, makes use of any of Contractor's equipment, scaffolding, or other appliances on the job site, Subcontractor agrees that such use shall be at the sole risk of Subcontractor and after Subcontractor has satisfied himself as to the condition thereof, Subcontractor agrees to hold harmless and indemnify Contractor against all claims of every nature arising from the use thereof including, but not limited to, injury to Subcontractor's employees or property and the employees or property of others.

20. **LABOR DISPUTES:** *To the extent required by the prime contract documents* and applicable law, subcontractor warrants that, with respect to any and all work to be done at the site of construction, alteration, painting or repair of a building, structure or other work, Subcontractor and Subcontractor's subcontractors of every tier, have, and will continue to have for the duration of this agreement, a valid, appropriate and current labor agreement with any and all applicable unions, or subordinate body, or an affiliate thereof. It is agreed that all such work performed by Subcontractor and Subcontractor's subcontractors of every tier shall be rendered in accordance with the terms and conditions of said labor agreements. Any breach by Subcontractor or Subcontractor's subcontractors of every tier of such labor agreements shall constitute a breach of this subcontract.

Notwithstanding the foregoing, if Subcontractor performs carpentry work on the project it must remain or become signatory with the applicable labor union, at least for the work performed under this Subcontract Agreement.

Subcontractor accepts and agrees to be bound by the procedural rules and regulations and decisions of the appropriate tribunals specified in the appropriate labor agreements for the settlement of jurisdictional disputes, and will immediately comply with any decisions of said tribunals, which affect the performance of work covered by this subcontract. Subcontractor agrees to bind, by written contract, all of his subcontractors of every tier to said procedural rules and regulations and decisions of said tribunals in the same manner and to the same effect as provided herein with respect to Subcontractor. Subcontractor further agrees to maintain compliance with any applicable labor ratio for itself and any its subcontractors for the work performed under this Subcontract.

Subcontractor further agrees to indemnify and hold owner and Contractor free and harmless of and from any costs, fees, fines, expenses, claims, liabilities, charges, obligations, demands, judgments, damages, liquidated damages, penalties, bond premiums, actions or other causes of action (including attorney's fees in defense thereof) arising from fringe benefit obligations to health and welfare, pension, vacation, industry promotion, apprenticeship and related trusts, when such obligations arise from employment by Subcontractor or his subcontractors of every tier, and whether or not the claims are well founded.

In the event Subcontractor or any of his subcontractors of every tier are listed by the administrative office of any of the above-listed trusts as being delinquent in payment, Contractor may assume that the listing is correct, that Subcontractor has therefore breached his subcontract, and Contractor may exercise his rights provided for in Section 19 herein. Contractor may pay any amounts which Contractor believes due to such trusts and Subcontractor shall reimburse Contractor therefore. All the provisions of this paragraph shall apply to Subcontractor and all of his subcontractors of every tier performing work under any change of name or association or joint venture (including any person who may have been a principal financially associated with Subcontractor, or any of his subcontractor of every tier) who are listed as delinquent in fringe benefit payments to the named trusts. Contractor, at his sole option, may issue checks for the payment of work performed under this subcontract payable jointly to Subcontractor and the appropriate trusts.

In the event of any labor problems affecting the job, including but not limited to pickets, strikes, walkouts or lockouts, Contractor shall be entitled to deny job access to Subcontractor and Subcontractor's subcontractors of every tier until such time as Contractor shall deem it advisable to resume work, and Subcontractor and Subcontractor's subcontractors shall promptly resume work thereafter and Contractor shall not be liable for any damages incurred by Subcontractor or his subcontractors of every tier on account of such cessation of work. Subcontractor agrees to bind, by written contract, all of his subcontractors of every tier to the provisions of this paragraph.

If Subcontractor's presence on the job causes any labor problems, including but not limited to pickets, strikes or walkouts, and said labor problems are not the result of Subcontractor's breach of this subcontract or any of Subcontractor's labor agreements, Contractor may immediately eject Subcontractor and make any other arrangements he deems advisable to complete the work, in which case Contractor shall be required to pay Subcontractor only the reasonable value of work performed as determined by the Subcontractor Price, and said payment, including any retention, is to be paid in accordance with the terms and conditions of the subcontract.

If Subcontractor's breach of this subcontract or his breach of any of his labor agreements causes the job to experience any labor problems, including but not limited to pickets, strikes or walkouts, Subcontractor shall be in default under this subcontract, and Contractor may exercise the rights provided for in Section 19 herein.

21. LAWS, REGULATIONS AND SAFETY: Subcontractor shall comply with all laws and all regulations of any governmental bodies or agencies having jurisdiction over the performance of the work of Subcontractor under this agreement including, but not limited to, the California Occupational Safety and Health Act of 1973. Subcontractor shall obtain all necessary permits required by the Act in regard to his work and shall cooperate with and comply with all orders, requirements, regulations and decisions issued under the Act by the Division of Industrial Safety. Any delays, penalties or fines caused by Subcontractor's noncompliance with said Act or with any other applicable law or regulation shall be the responsibility of Subcontractor, and Contractor may exercise the rights provided for in Sections 10, 16 and 19 of this agreement in the event of any such delay, penalty or fine. Subcontractor further agrees to comply will all safety provisions set forth in Exhibit C to this Agreement.

22. DEFAULT: Should Subcontractor fail to perform in accordance with the terms of this agreement, Contractor shall give notice of such default to Subcontractor specifying the nature of Subcontractor's default. Failure of Subcontractor to cure such default within 24 hours of such notice shall give Contractor the option of:

(1) Without terminating this agreement or the obligation of Subcontractor hereunder as to all of the work required to be performed or furnished by him under this agreement, Contractor may perform such portion of the work required hereunder, or may furnish any material, equipment, or other item required hereunder, as Contractor, in his sole discretion, may deem necessary to avoid delay in progress of the work; and, in connection therewith, Contractor may perform such work, or any portion thereof, himself or have the same performed by others, and Contractor may procure any necessary materials, equipment or other items required for the continued progress of the work. The cost of such work or materials, equipment or other items plus 10% mark-up shall be deducted from the Contract Price, and, in the event the cost of such work or materials or other items of any nature exceeds the balance due Subcontractor, such excess shall be immediately due and owing from Subcontractor to Contractor; or

(2) Terminating this contract and the further option of (a) completing the work, or any portion thereof, himself or (b) having the work, in whole or in part, completed by others.

The aforesaid options shall not be deemed to be limitations upon the rights and remedies of Contractor in the event of default by Subcontractor, and Contractor shall be entitled to exercise the rights and remedies herein above specified and all other remedies which may be provided by law either cumulatively or consecutively, and in such order, as Contractor, in his sole discretion, shall determine.

Subcontractor shall be liable for all damages suffered by Contractor by reason of Subcontractor's default, and Contractor's exercise of the option to terminate this agreement shall not relieve Subcontractor of such liability. Subcontractor shall have no right to receive any further payment after default until such time as the work has been completed and the Contractor's damages, if any, have been fully ascertained. Under any of the options, remedies and rights given to Contractor by this agreement in the event of the default of Subcontractor, Contractor shall have the right (but shall not be obligated) to use any materials or equipment on the job site belonging to Subcontractor to complete the work whether the work is completed by Contractor or others.

23. TERMINATION FOR CONVENIENCE: Contractor reserves the right to terminate this Agreement for Convenience. Upon such termination, Subcontractor shall be entitled only to payment for work actually completed by it at the pro rata of the price herein set forth minus any adjustments or deductions as set forth in this Agreement.

24. GUARANTEE OF WORK: Subcontractor guarantees Owner and Contractor against all loss or damage arising from any defect in materials or workmanship furnished under this subcontract for a period of one year from the date of completion of the entire Project as defined in the Prime Contract, provided, however, that in the event the Prime Contract requires a longer period of guarantee, Subcontractor shall be bound for such longer period. Upon Contractor's notification, Subcontractor shall forthwith, at his own expense, replace any defective material and perform any labor necessary to correct any defect in the work. Subcontractor shall pay for all work which may be incidental to the correction of defects under the guarantee. If Subcontractor should fail to make such necessary repairs and replacements promptly, Owner or Contractor may, at Subcontractors expense, furnish such materials or labor as are necessary for this purpose, and the cost thereof shall be payable by Subcontractor upon demand.

25. ATTORNEY'S FEES: In the event an action is filed by either party to enforce rights under this agreement, the prevailing party shall be entitled to recover a reasonable attorney's fee in addition to any other relief granted by the court.

26. BOND REQUIREMENTS: Subcontractor shall furnish, upon written request from Contractor, a corporate surety bond from a California admitted surety to guarantee the faithful performance of this subcontract and the payment of all obligations incurred in the performance of this agreement. The bond shall be in an amount required by Contractor, but not to exceed the full amount of this subcontract. Contractor shall pay directly to Surety for such bond, provided that the premium therefore does not exceed the then existing rate commonly charged by corporations conducting business as admitted sureties within the state of California, and in the event such surety bond cannot be procured by Subcontractor unless at a higher rate, Subcontractor shall pay the excess over the rate commonly charged by admitted sureties. In the event that the Contractor notifies Subcontractor prior to the submission of Subcontractor's bid that a surety bond will be required, Subcontractor shall include the premium upon such bond in the price quoted and shall pay for the bond himself. Contractor shall have the right to demand such surety bond at any time during the existence of this contract, and in the event of the failure of Subcontractor to furnish a surety bond within 5 days after written demand by Contractor, Contractor shall have the right to terminate this subcontract agreement on the ground of default by Subcontractor, and Contractor shall have all the rights and remedies given to him hereunder as for any other type of default.

27. ASSIGNMENTS: Subcontractor shall not assign, sublet, nor transfer this contract, nor any part thereof, nor shall Subcontractor make any assignment or transfer of funds payable to Subcontractor under this agreement without the prior written consent of Contractor.

28. **NOTICES:** Any notice hereunder may be served personally on the superintendent, foreman, or other person in charge of work for either party at the job site, or may be served by mail, telegram, fax or electronic mail sent to the address of the parties as set forth herein. Any and all notices served on the Contractor shall also be served in the same manner to the main office of DJM.

29. **SUPERINTENDENT:** Subcontractor shall at all times have a competent superintendent or foreman on the job site who shall be authorized to receive instructions from Contractor and to make such decisions as may be necessary for the prompt and efficient performance of this agreement.

30. **SUBCONTRACTOR'S EMPLOYEES:** Subcontractor shall not employ on the work any person not skilled in the work assigned to him. Any employee of Subcontractor who is adjudged by Contractor to be incompetent, unsafe, disorderly, unreliable, or otherwise unsatisfactory shall be immediately removed from the work upon receipt of written demand by Contractor.

31. **WORK REPORT:** Subcontractor shall submit to Contractor such reports, on a daily basis, and as may be required by Contractor regarding Subcontractor's work. Subcontractor shall have all employees execute a mandatory sign in sheet on a daily basis before commencing work.

32. **CLEAN UP:** Subcontractor shall at all times keep the job site free from accumulations of waste material or rubbish. Upon completion of Subcontractor's work, he shall promptly remove all rubbish, surplus material, tools, scaffolding, and equipment from the job site, and the premises shall be left "broom clean" or its equivalent unless more exactly specified. In the event of dispute as to the responsibility for removal of rubbish from the job site, Contractor may remove the rubbish and charge the cost thereof to the various subcontractors responsible therefore in such ratio as Contractor, in his sole discretion, shall determine to be just, and such allocation shall be binding on Subcontractor.

33. **TAXES, LICENSES AND FEES:** Subcontractor shall pay all taxes, licenses, and fees of every nature which may be imposed or charged by any governmental authority upon labor, material, or other things used in the performance of the work or upon the transaction between Contractor and Subcontractor. If Subcontractor should fail to pay any tax, license or fee required to be paid by the provisions of this paragraph, Contractor may, at his option, pay such tax, and Subcontractor shall pay such sum to Contractor upon demand. Subcontractor shall, upon demand by Contractor, execute an affidavit approved by Contractor affirming that Subcontractor is compliant in the payment of obligations required pursuant to this paragraph.

34. **PREVAILING WAGE:** Notwithstanding the requirements and obligations set forth in Paragraph 20 of this Subcontract, pursuant to the provisions of Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815, Subcontractor is required to pay prevailing wages to all employees working on this project, such sections are attached hereto as **Exhibit "B"** and incorporated herein by this reference as set forth in full. 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 Subcontractor. Should Subcontractor fail to pay his or her workers the specified prevailing rate of wages, Contractor shall retain sufficient funds due the subcontractor for work performed on the Project. Prior to receiving final payment, Subcontractor shall provide an affidavit signed under penalty of perjury that Subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the project and any amounts due pursuant to Section 1813. Subcontractor shall supply and attach hereto as Exhibit _____, and incorporated herein by reference, a fully burdened detailed rate schedule, agreed to by the Contractor, for all classifications to be utilized on the Project. This rate schedule shall apply to all work performed on the Project, including any change to scope of work.

35. **CORPORATE SUBCONTRACTORS:** In the event Subcontractor is a corporation, this agreement will be signed by the president and secretary of the corporation, and the said officers, and any other officer or director signing this agreement on behalf of the corporation, do, jointly and severally, guarantee to Contractor the full and faithful performance of this agreement by Subcontractor, and do further agree, jointly and severally, that they shall be personally liable to Contractor for the full and faithful performance of this agreement in every case where Subcontractor does not supply a corporate surety bond to Contractor to guarantee the faithful performance hereof. Failure of Contractor to request a faithful performance bond from Subcontractor shall not affect the obligation assumed by the officers and directors signing this agreement on behalf of Subcontractor.

36. **RIGHTS AND BENEFITS OF SUCCESSORS:** This contract shall inure to the benefit of, and be binding upon, the heirs, executors, administrators, successors and assigns of the parties.

37. **EQUAL EMPLOYMENT OPPORTUNITY:** If applicable under the prime contract on this project, the provisions of Executive Order 11246, as amended by Executive Order 11375 (Equal Employment Opportunity), 38 USC 4212 (Vietnam Era Veteran's Readjustment Assistance Act of 1974) Section 503 and 504 of the Rehabilitation Act of 1973 (Handicapped Regulations), and the impending regulations found at 41 CFR 60-1 and 2, 41-CFR 60-250, and 41 CFR 60-741, respectively, are incorporated by reference.

38. **DEFINITIONS:** Wherever required by the context of this agreement, the masculine shall include the feminine and neuter, the neuter shall include the masculine and feminine, the singular shall include the plural, and the plural shall include the singular.

39. **HEADINGS AND EXHIBITS:** In construing this Agreement, all headings and titles are for the convenience of the parties only and shall not be considered a part of this Agreement. All exhibits attached hereto are incorporated herein by reference thereto.

40. **SEVERABILITY:** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provisions shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

41. **ENTIRE AGREEMENT:** All negotiations and agreements heretofore conducted between Contractor, Owner and Subcontractor hereto and their agents with respect to the transaction set forth herein are merged in this Agreement, which alone fully and completely expresses the parties rights and obligations and are binding on the parties hereto, their successors and assigns. All negotiations prior to the date of this Agreement not included herein are hereby voided. Any proposal or other documentation submitted or executed prior to the date of this Subcontract is superseded by this Subcontract Agreement.

Note: 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 alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000 Sacramento, California 95826.

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DJM CONSTRUCTION CO., INC. – CONTRACTOR

Sign: _____

David J. Morales, President

DATE: _____

IF SUBCONTRACTOR IS A SOLE PROPRIETOR OR A PARTNERSHIP, THIS AGREEMENT MUST BE SIGNED BY THE OWNER OR THE MEMBERS OF THE FIRM. IF SUBCONTRACTOR IS A CORPORATION, EITHER THE PRESIDENT OR THE SECRETARY OF THE CORPORATION MUST SIGN THIS AGREEMENT ON BEHALF OF THE CORPORATION.

SUBCONTRACTOR -SUBCONTRACTOR

Sign: _____

Print: _____

Title: _____

Date: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Phone No: (____) _____ Fax No.: (____) _____

State License No: _____ Class: _____

State: _____ Expiration Date: _____

EXHIBIT "A"

Exclusion or additional part of Subcontract # XXX-XXX

The following information will be part of the original subcontract as referenced above. Only information inserted or listed by DJM Construction Co., Inc. will be valid on this form. Items listed are specific, and apply to this subcontract only. They do not relieve the subcontractor from all other terms and conditions of the contract documents.

INCLUDES, BUT IS NOT LIMITED TO, THE FOLLOWING:

EXCLUSIONS:

EXHIBIT "B"

Integral Part of Subcontract Agreement # XXX-XXX

Labor Code Section 1771:

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

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

Labor Code Section 1775:

(a) The contractor and any subcontractor under him or her shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by him or her or, except as provided in subdivision (b), by any subcontractor under him or her. The amount of this penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the contractor or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the contractor in meeting his or her prevailing wage obligations, or the willful failure by the contractor or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the contractor or subcontractor had knowledge of his or her obligations under this part. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

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

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

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

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

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

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages. If the Division of Labor Standards Enforcement determines that employees of a subcontractor were not paid the general prevailing rate of per diem wages and if the body awarding the contract under which the employees performed work did not retain sufficient money under the contract to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the contractor shall withhold an amount of moneys due the subcontractor sufficient to pay those employees the general prevailing rate of per diem wages if requested by the Division of Labor Standards Enforcement. The contractor shall pay any money retained from and owed to a subcontractor upon receipt of notification by the Division of Labor Standards Enforcement that the wage complaint has been resolved. If notice of the resolution of the wage complaint has not been received by the contractor within 180 days of the filing of a valid notice of completion or acceptance of the public works project, whichever occurs later, the contractor shall pay all moneys retained from the subcontractor to the awarding body. The moneys shall be retained by the awarding body pending the final decision of an enforcement action, and be forwarded to the Labor Commissioner for disbursement pursuant to subdivision (d) if the subcontractor does not prevail in the action. Wages for workers who cannot be located after a diligent search by the Labor Commissioner shall be deposited in the Industrial Relations Unpaid Wage Fund pursuant to subdivision (c) of Section 96.7. Penalties shall be paid into the General Fund.

If the subcontractor prevails in the enforcement action, the awarding body shall release any funds retained pursuant to this subdivision to the contractor within 10 working days from the date of the final decision of the court.

(d) To the extent that there is insufficient money due a contractor to cover all penalties and amounts due in accordance with this section or Section 1813, and in all cases where the contract does not provide for a money payment by the awarding body to the contractor, the awarding body shall notify the Division of Labor Standards Enforcement of the violation and the division, if necessary with the assistance of the awarding body, may maintain an action in any court of competent jurisdiction to recover the penalties and the amounts due provided in this section. This action shall be commenced not later than 180 days after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 180 days after acceptance of the public work, whichever last occurs. No issue other than that of the liability of the contractor and subcontractor for the penalties allegedly forfeited and amounts due shall be determined in the action, and the burden shall be upon the contractor and subcontractor to establish that the penalties and amounts demanded in the action are not due. The contractor and subcontractor shall be jointly and severally liable in an enforcement action for any wages due. Following entry of a judgment for joint and several liability, the division shall first exhaust all reasonable remedies to collect the amount due from the subcontractor before pursuing the claim for wages against the contractor. From the amount collected from the subcontractor, the wage claim shall be satisfied prior to the amount being applied to penalties. Out of any money withheld, recovered, or both, there shall first be paid the amount due each worker, and if insufficient funds are withheld, recovered, or both, to pay each worker in full, the money shall be prorated among all workers.

(e) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

Labor Code Section 1776:

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

Labor Code Section 1776 - Continued:

(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.

EXHIBIT "B"

Integral Part of Subcontract Agreement # XXX-XXX

- (2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
- (3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.
- (c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.
- (d) 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 in a manner so as 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.
- (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 shall have 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.
- (h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.
- (i) The director shall adopt rules consistent with the California Public Records Act, (Chapter 3.5 (commencing with Section 6250), Division 7, Title 1, Government Code) and the Information Practices Act of 1977, (Title 1.8 (commencing with Section 1798), Part 4, Division 3, Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.
- (j) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

Labor Code Section 1777.5:

- (a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.
- (b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.
- (c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either (1) the apprenticeship standards and apprentice agreements under which he or she is training or (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.

Labor Code Section 1777.5 - Continued:

- (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).

EXHIBIT "B"

Integral Part of Subcontract Agreement # XXX-XXX

- (j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Chief of the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.
- (k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:
- (1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.
 - (2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.
 - (3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.
 - (4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.
- (l) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.
- (m)(1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.
- (2) At the conclusion of each fiscal year, 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 administering this subdivision.
- (3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which fund is hereby created in the State Treasury. Notwithstanding [Section 13340 of the Government Code](#), all money in the Apprenticeship Training Contribution Fund is hereby continuously appropriated for the purpose of carrying out this subdivision and to pay the expenses of the division in administering this subdivision.
- (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.

Labor Code Section 1813:

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

This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

Labor Code Section 1815:

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