



**JL BRAY  
& SON  
INCORPORATED**

COMMERCIAL  
INDUSTRIAL  
BUILDERS  
SINCE 1948

STATE OF CALIFORNIA  
CONTRACTORS LICENSE  
#289418

P.O. BOX L  
4501 BROADWAY AVENUE  
SALIDA, CA 95368  
(209) 545-2856  
FAX (209) 545-5255  
www.BrayConstruction.com

## SUBCONTRACT AGREEMENT

This agreement made this «Date», by and between **J.L. BRAY & SON, INC.** ("Contractor") and **«COMPANY»**, ("Subcontractor") «Address1», «City», «State» «PostalCode».

### THE PROJECT

WHEREAS Contractor has entered into or will enter into a general construction contract ("the Prime Contract") dated \*\*\*\*\* with \*Owner Name\* ("Owner"), to furnish certain material, labor and services necessary for the construction of the: «ProjNameFull» ("The Project") located at: \*Project Address\* in accordance with various contract documents hereinafter described, including certain drawings, specifications and addenda prepared by \*\*Architect\*\* ("Architects"); **SEE EXHIBIT "A" -LIST OF CONTRACT DOCUMENTS** and

WHEREAS Contractor desires to retain Subcontractor to furnish certain portions of the design, material, labor and services for the Project;

NOW THEREFORE Contractor and Subcontractor agree as follows:

### ARTICLE I SUBCONTRACT WORK

1.1 Subcontractor shall, as an independent contractor, provide and furnish all design, labor, materials, tools, supplies, equipment, services, facilities, supervision and administration necessary for the proper and complete performance and acceptance of the following portions of the work (hereinafter "the Subcontract Work") for the Project, together with such other portions of the drawings, specifications and addenda as related thereto: **SEE EXHIBIT "B" - SCOPE OF WORK.**

1.2 Subcontractor is required to adopt and implement a mandatory drug and alcohol testing program in accordance with article 6.7 of the Special Conditions to Subcontract.

### ARTICLE II SUBCONTRACT PRICE

2.1 In consideration of Subcontractor's performance of this Subcontract, and at the times and subject to the terms and conditions hereinafter set forth, Contractor shall pay to Subcontractor the total sum of «LONGPRICE» DOLLARS (\$«ShortPrice »), hereinafter "the Subcontract Price".

### ARTICLE III SPECIAL CONDITIONS

The Special Conditions to Subcontract (Articles I through XXI) are incorporated in the Subcontract as though fully set forth herein. Subcontractor hereby acknowledges receipt of the Special Conditions. **SEE EXHIBIT "C" - SPECIAL CONDITIONS TO SUBCONTRACT**

**ARTICLE IV  
COMMUNICATION AND NOTICE**

4.1 All Communication between Subcontractor and Owner or Architect shall be via Contractor.

4.2 Subcontractor shall furnish Contractor with periodic progress reports as required by Contractor, including status of material, equipment, manpower and submittals.

4.3 Subcontractor shall be deemed to have received notice of a fact, request, order or demand when its Superintendent is notified, either orally or in writing, or three (3) days after written notice is sent by overnight, registered or certified mail addressed to Subcontractor's last known place of business, whichever is sooner.

4.4 Contractor shall be deemed to have received notice of fact, request, or demand three (3) days after written notice is sent by registered or certified mail addresses to: **P.O. BOX L, SALIDA, CA 95368.**

**ARTICLE V  
GOVERNING LAW AND RULES OF CONSTRUCTION**

5.1 The validity, interpretation and performance of this Subcontract shall be governed by the laws of the State of California, County of Stanislaus.

5.2 Titles, captions or headings to any provision, article, etc. shall not limit the full contents of same. These articles have the full force and effect as if no titles existed.

5.3 If any terms or provision of this Subcontract is determined to be invalid, it shall not alter the validity and enforcement of the remaining terms and provisions of this Subcontract.

5.4 This Subcontract shall be binding upon and shall inure to the benefit to the respective successors, assigns, representatives, and heirs of the parties hereto.

**ARTICLE VI  
AMENDMENT**

6.1 This Subcontract can be amended or modified only by a written document executed by authorized representatives of Contractor and Subcontractor. The Subcontract supersedes all prior representations made by Contractor.

The following Exhibits are incorporated in the Subcontract Agreement between Contractor and Subcontractor:

- Exhibit "A" - List of Contract Documents
- Exhibit "B" - Scope of Work
- Exhibit "C" - Special Conditions to the Subcontract
- Exhibit "D" - Contract Standards
- Exhibit "E" - Labor Code (Excerpt) and Contractor Affidavit
- Exhibit "F" - Skilled and Trained Workforce Requirements

This Subcontract is acknowledged and executed as of the date set forth above.

«Company»

**JL Bray and Son, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

Name: James W. Bray

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

Title: President

License #: \_\_\_\_\_

License #: 289418

**EXHIBIT "A"**

«Company»  
«Address1»  
«City», «State» «PostalCode»  
«WorkPhone»  
«Fax»

«ProjNameShort»  
PROJECT NUMBER: «Proj»  
DATE: «Date»

Hereinafter called "the Subcontractor"

**LIST OF CONTRACT DOCUMENTS**

**«ProjNameShort»**

**General**

G0.00 Cover Sheet  
G0.01 Sheet Index, Drawing Conventions & Location Map  
G0.10 Site Data and Code Review  
G0.20 Building Data & Code Review  
G0.30 Accessibility Guidelines & Details  
G0.31 Signage

**Civil**

C1.0 Existing Topography  
C2.0 Demolition Plan  
C3.0 Civil Site Plan  
C4.0 Grading and Drainage Plan  
C4.1 Grading Details  
C5.0 Utility Plan  
C6.0 Construction Details  
C6.1 Construction Details  
C7.0 Erosion and sediment Control Plan

**Structural**

S1.0 Typical Notes  
S1.1 Typical Details  
S1.2 Typical Details  
S1.3 Typical Details  
S1.4 Typical Details  
S1.5 Typical Details  
S2.0 Foundation Plan  
S2.1 Roof Framing Plan  
S3.0 Sections  
S3.1 Sections  
S3.2 Sections  
S3.3 Sections  
S3.4 Sections  
S3.5 Sections  
S4.0 Details

**Landscape**

L1.01 Landscape Irrigation Plan and Details

**Architectural**

A1.01 Enlarged Site Plan  
A1.10 Site Details  
A2.01 Finish Floor Plan, Schedules & Details  
A2.02 Floor Plans  
A3.01 Roof Plan  
A3.02 Roof Details  
A4.10 Enlarged Restroom Plans and Elevations  
A6.01 Exterior Elevations  
A6.10 Building Sections  
A6.20 Interior Elevations  
A7.00 Interior Partition Types & Details  
A7.10 Wall Sections  
A7.11 Wall Sections  
A7.20 Details

**LIST OF CONTRACT DOCUMENTS CONTINUED**

A9.01 Windows, Storefront & Doors Elevations  
A9.10 Door Frame Details  
A9.11 Window Frame Details  
A10.01 Reflected Ceiling Plan  
A10.20 Ceiling Details  
A12.02 Equipment Floor Plan

**Mechanical**

M0.01 Mechanical Index, Legend, Notes & Schedules  
M2.01 Mechanical Floor Plan  
M3.01 Mechanical Roof Plan  
M6.01 Mechanical Details

**Plumbing**

P0.01 Plumbing Index, Legend, Notes & Schedules  
P1.01 Plumbing Site Plan  
P2.01 Plumbing Floor Plan  
P6.01 Plumbing Details

**Electrical**

E0.01 Electrical Index, Notes & Legend  
E0.02 Electrical Panel Schedules  
E1.01 Electrical Site Plan  
E2.01 Electrical Floor Plan - Power  
E3.01 Electrical Floor Plan - Lighting  
E4.01 Electrical Roof Plan  
E5.01 Electrical Single Line Diagram  
E6.01 Electrical Details  
E6.02 Electrical Details  
EC0.01 Energy Compliance Index & Notes  
EC1.01 Energy Compliance Arch & Mech  
EC1.02 Energy Compliance Arch & Mech  
EC2.01 Energy Compliance - LTI  
EC2.02 Energy Compliance - LTO  
EC2.03 Energy Compliance - ELC

**Fire Protection**

FP0.01 Fire Sprinkler Index, Legend & Schedules  
FP0.02 Fire Sprinkler Notes  
FP0.10 Fire Sprinkler Reference Site Plan  
FP2.01 Fire Sprinkler Piping Plan  
FP6.01 Fire Sprinkler Details  
FP10.01 Fire Sprinkler Reflected Ceiling Plan

**Technology**

T0.01 Technology Index, Notes & Legend  
T0.10 Technology Site Plan  
T2.01 Technology Floor Plan  
T6.01 Technology Details  
T6.02 Technology Details

**Fire Alarm**

FA0.01 Fire Alarm Index, Notes, Legend & Schedules  
FA0.10 Fire Alarm Site Plan  
FA2.01 Fire Alarm Floor Plan  
FA3.01 Fire Alarm Roof Plan  
FA5.01 Fire Alarm Riser Diagram & Calculations  
FA6.01 Fire Alarm Details

**EXHIBIT "B"**

«Company»  
«Address1»  
«City», «State» «PostalCode»  
«WorkPhone»  
«Fax»

«ProjNameShort»  
PROJECT NUMBER: «Proj»  
DATE: «Date»

**SCOPE OF WORK**

Hereinafter called "the Subcontractor"

TOTAL: \$«ShortPrice »

ALL SUBCONTRACTORS MUST:

- Purchase additional sets of project documents. A complete set of contract documents in PDF will be provided by J.L. Bray & Son, Inc.
- Provide their own debris boxes
- Provide lights to work by
- Provide drinking water for their own forces
- Have a copy of OSHA Safety Plan and Code of Safe Practices in J.L. Bray & Son's office. Provide J.L. Bray documentation of all site safety meetings with subcontractor's employees in a form acceptable to J.L. Bray.
- Provide all MSDS's with submittals and again as material arrives on site
- Provide hoisting as required for own use
- Subcontractor **BONDS** «**BONDS**» required on this contract. The cost of said bonds are excluded from the contract sum.
  - o If Bonds are provided, all quoted change orders will include bond costs
- Clean-up on non-Black Fridays will be a standard function
- Layout by Subcontractor from lines and grade by J.L. BRAY & SON
- Assurance that the offeror will include the clause in this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) who receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility), to adopt a plan similar to the plan agreed to by the offeror.
- Must be responsible for cleaning up during and after installation of their materials and shall leave areas "broom clean" daily.
- Must be responsible at all times for removing bulk debris from the site. EACH SUBCONTRACTOR SHALL, WHEN REQUIRED BY THE GENERAL CONTRACTOR, REMOVE EXCESS DEBRIS FROM THE WORK AREAS WITHIN FOUR (4) WORKING HOURS. FAILURE TO DO SO WILL RESULT IN THE GENERAL CONTRACTOR HAVING THIS WORK DONE AT THE SUBCONTRACTOR'S EXPENSE.

Furnish all labor, material, and equipment necessary to furnish and install the following:

«GenScope»

All sections complete per Plans and Specifications including Bid Memos 1,2 & 3 but not limited to:

**INCLUSIONS**

- Layout for your work from J.L. BRAY & SON, INC.'s points
- Provide debris boxes and clean-up for this work scope
- Schedule & man all inspections of subcontractors' own work
- Furnish material and labor to install the following:

- «Inclusions1»
- «Inclusions2»
- «Inclusions3»
- «Inclusions4»
- «Inclusions5»

**EXHIBIT "C"**

«Company»  
«Address1»  
«City», «State» «PostalCode»  
«WorkPhone»  
«Fax»

«ProjNameShort»  
PROJECT NUMBER: «Proj»  
DATE: «Date»

**SPECIAL CONDITIONS TO THE SUBCONTRACT**

The following Special Conditions are incorporated in the Subcontract between Contractor and Subcontractor.

**ARTICLE I  
PRIME CONTRACT DOCUMENTS**

1.1 The Prime Contract consists of the general construction contract between Contractor and Owner for the project and all addenda, modifications, and revisions thereto. The Prime Contract Documents include the Prime Contract, together with all drawings, project manuals, specifications, conditions (general, technical, supplementary, and special) and all other documents listed in or referenced by the Prime Contract. The Prime Contract Documents are incorporated herein by reference and made an integral part of this Subcontract.

1.2 The Prime Contract Documents can be Reviewed by Sub Subcontractor at Contractor's place of business during normal business hours.

1.3 Subcontractor hereby acknowledges that it has carefully reviewed and examined the Subcontract, including the Special Conditions, the Prime Contract Documents, and all other documents incorporated and/or referenced therein, and that any and all ambiguities and discrepancies have previously been clarified and/or corrected. Subcontractor agrees that it will not make any claim or demand upon Contractor based upon or arising out of any misunderstanding or misconception on Subcontractor's part of the provisions and requirements of the Prime Contract Documents or this Subcontract if Subcontractor knew or should have known of the ambiguity or discrepancy.

1.4 In case Subcontractor discovers any ambiguity or discrepancy in this Subcontract or the Prime Contract Documents relating to the Subcontract Work, Subcontractor shall promptly notify Contractor of the same in writing. Subcontractor shall at its sole expense make any change in the Subcontract Work and the subsequent work of others necessitated by failure to disclose said ambiguity or discrepancy which Subcontractor discovered or should have discovered.

1.5 The Prime Contract and this Subcontract shall be interpreted together and in harmony with one another. However, in case of conflict between the Prime Contract and this Subcontract, this Subcontract shall govern.

1.6 Subcontractor binds itself to Contractor and is obligated to Contractor in the same manner and to the same extent that Contractor is bound and obligated to Owner under the Prime Contract. All rights which Owner may exercise and enforce against Contractor may be exercised and enforced by Contractor against Subcontractor, including but not limited to any claim for liquidated damages. Subcontractor shall be required to do all things and be bound by all decisions, directives, interpretations, and rulings of the Owner, Architect or others, including but not limited to all decisions as to the scope of the Subcontract Work, to the same extent that Contractor is bound thereby.

**ARTICLE II  
SCOPE OF SUBCONTRACT WORK**

2.1 The Subcontract Work includes that work set forth in Article I of the Subcontract, together with any and all work incident or related thereto reasonably necessary for a complete Project and any and all work usually performed by the trades to be furnished by Subcontractor. The Subcontract Work shall be performed in accord with the Prime Contract Documents and in a skillful and workmanlike manner, with material and equipment being both new and of the kind and grade necessary for the purpose intended.

2.2 Subcontractor consents that it has fully examined and analyzed all existing surveys, test reports and schedules that could affect its performance, and acknowledges that no conditions exist which would adversely affect the progress, schedule, performance, or price of this Subcontract or the quality of the Subcontract Work.

2.3 Except as otherwise agreed by Contractor and Subcontractor in writing, Subcontractor shall provide, at its own expense, all temporary and permanent tools, scaffolding, implements, shop and working drawings, samples, models, guarantees,

**Special Conditions to the Subcontract**

licenses, unloading facilities and services, and all other items necessary for the proper performance of this Subcontract and acceptance of the Subcontract Work. In addition, Subcontractor shall provide, at its own expense, tests and permits necessary for the proper performance of this Subcontract and acceptance of the Subcontract Work unless the Prime Contract Documents specify the Contractor or another subcontractor is to provide such tests or permits.

2.4 Subcontractor shall, at its own expense, pay all testing costs, royalties, and license fees required for the Subcontract Work, and the costs of inspections which disclose, or are necessitated by, incorrect or faulty materials or workmanship.

2.5 Subcontractor shall make all necessary arrangements and agreements so as not to infringe any patents, trademarks, or copyrights in the performance of the Subcontract Work.

**ARTICLE III  
VERIFYING FIELD CONDITIONS**

3.1 Subcontractor, before proceeding with any portion of the Subcontract Work, shall thoroughly and accurately [a] observe and verify all previous and surrounding work performed by others and determine the location, condition, and correctness of same to the extent necessary to assure that the Subcontract Work can be performed as intended and [b] measure all field conditions relating to the Subcontract Work.

3.2 Subcontractor shall give Contractor prompt notice of any condition it discovers which adversely impacts upon Subcontractor's performance. Subcontractor shall, at its sole expense, make any change in the Subcontract Work and the subsequent work of others necessitated by Subcontractor's failure to give such notice to Contractor.

**ARTICLE IV  
COMPLIANCE WITH SCHEDULES; COOPERATION WITH OTHERS**

4.1 Subcontractor shall proceed with each portion of the Subcontract Work in a prompt and diligent manner and in strict compliance with all performance schedules and sequencing, as directed by Contractor. Subcontractor shall, within the time specified by Contractor and in no event more than thirty (30) days after the date of this Subcontract, furnish to Contractor all information and data requested by Contractor for the preparation of necessary performance schedules, including progress schedules for the Subcontract Work and submit the same to Contractor for review and approval. Subcontractor shall, from time to time, revise its progress schedules to conform to changes in the Project schedules and submit the same to Contractor for review and approval.

4.2 Time is of the essence, and any time specified for the completion of this Subcontract, the Subcontract Work, or any portion thereof is a material provision of the Subcontract.

4.3 Subcontractor shall furnish sufficient forces to assure proper performance of this work in strict compliance with all performance schedules and as required in the Article IV. Subcontractor shall, if requested by Contractor, furnish adequate evidence to substantiate its ability to meet the performance schedules and planned progress of the Subcontract Work.

4.4 Upon request by Contractor, Subcontractor shall promptly increase its work force, accelerate its performance, work overtime, and work Saturdays, Sundays and Holidays, all without additional compensation, if, as reasonably determined by Contractor, such work is necessary as a result of Subcontractor's being behind schedule due to Subcontractor's own defective or deficient work or nonperformance.

4.5 Subcontractor shall conform to Contractor's hours of work which shall be generally consistent with the standard construction practices in the area where the Project is located. No premium time will be acknowledged or paid unless pursuant to prior written authorization by Contractor.

4.6 Subcontractor shall fully cooperate and coordinate its work with that of Contractor and any other contractor or material supplier for the Project. Subcontractor shall commence, continue, and complete the Subcontract Work so as not to delay completion of the Project or any portions thereof, including portions to be performed by others.

4.7 The responsibility of Subcontractor for prompt and timely performance shall not be deemed waived by any assent or acquiescence by Contractor to Subcontractor's late performance of a portion thereof.

4.8 In the event of Subcontractor's failure to comply with this Article IV,



**Special Conditions to the Subcontract**

then in addition to the other remedies provided herein or available at law or in equity, Subcontractor shall be liable for any liquidated damages payable by Contractor to Owner pursuant to the Prime Contract Documents as a result of Subcontractor's failure to comply, together with such actual damage as may be caused to Contractor including legal fees and costs.

**ARTICLE V  
INSPECTION, STORAGE AND APPROVAL OF SUBCONTRACT WORK**

5.1 Subcontractor shall be solely responsible for thorough inspections of the Subcontract Work for conformance with the Prime Contract Documents.

5.2 Subcontractor shall provide and shall ensure that its sub-subcontractors and suppliers provide sufficient, safe, and proper facilities for such inspection and/or observation of the Subcontract Work by Contractor, Owner or Architect as may be requested. Subcontractor shall, upon request, demonstrate and confirm the quantities and qualities of the materials and equipment being supplied to the Project.

5.3 Subcontractor shall store its equipment, material, and tools only in the area designated by Contractor.

5.4 Subcontractor shall be responsible for the receipt, delivery, unloading, storage warehousing, protection, insurance, and all risk of loss relating to any materials or equipment it is to furnish, install, provide, or have provided to it for performance of this Subcontract.

5.5 If Contractor furnishes material or equipment to Subcontractor, then Subcontractor shall inspect the same at the time of receipt. Subcontractor shall promptly notify Contractor, in writing, of any defects or nonconformity in said material or equipment. Failure to so notify Contractor shall be an acceptance of the material or equipment as suitable for the Subcontract Work.

5.6 Subcontractor shall, within seventy-two (72) hours after notice from Contractor or immediately from Contractor in emergency or critical path situations, commence, and thereafter proceed diligently, to take down and remove any designated portion of its work which is condemned or is disapproved as not being in compliance and conformity with the requirements of this Subcontract or the Prime Contract Documents. Subcontractor shall promptly, at its own expense, correct the same. If Contractor determines that it will accept nonconforming work, Contractor shall be entitled to an equitable credit for the nonconformity.

5.7 Subcontractor shall promptly perform any and all punch list work submitted to them by Contractor. If such work is not performed within a reasonable time prescribed by Contractor, then in addition to its other remedies provided herein or available at law or in equity, Contractor may complete the work and deduct the cost thereof from the Subcontract Price.

**ARTICLE VI  
SAFETY AND CLEAN-UP/JOB SITE MEETINGS**

6.1 Subcontractor shall be solely responsible for the safety of its agents and employees, sub-contractors, and suppliers and shall maintain its work area so as to at all times provide a safe working environment, including but not limited to erection and maintenance of suitable fences, barriers, and barricades when specifically required for the performance of the Subcontract Work, and conformance with all safety policies and requirements of Contractor and with all safety requirements of any applicable governmental authority, including OSHA. Subcontractor shall replace any fences, barricades and/or barriers which Subcontractor removes or damages in the performance of the Subcontract Work and shall be responsible for maintaining a safe working environment while such fences, barriers and barricades are damaged or removed.

6.2 If Subcontractor or any of its sub-subcontractors or suppliers' desires to bring to the Project site any hazardous substance or chemical which requires notice to others at the Project site or to any governmental authority, written notice shall be given to Contractor immediately. Such written notice shall also be given to others at the Project site to governmental authorities prior to exposure to such substance or chemical to any persons at the Project site and, in any event, in sufficient time to permit others at the Project site to comply with all governmental laws, rules, and regulations. All such written notices shall include a description of the chemical composition of the substance or chemical in sufficient detail to permit compliance with all governmental laws, rules and regulations. Subcontractor shall furnish copies of all

**Special Conditions to the Subcontract**

such notices to Contractor.

6.3 Subcontractor shall continuously maintain its work areas of the Project free from all dirt, rubbish, debris, and any other waste materials and ensure their removal. On the completion of the various portions of the Subcontract Work, Subcontractor shall broom clean its work areas.

6.4 If Subcontractor fails, upon four (4) hours' notice, to maintain its work area as herein required, then in addition to its other remedies provided herein or available at law or in equity, Contractor may cure the deficiency and deduct the cost thereof from the Subcontract Price.

6.5 Subcontractor shall attend all job site meetings, including regular informational, progress, and safety meetings.

6.6 The Subcontractor shall also ensure compliance with any applicable laws or regulations with respect to "drugs and the workplace" and be solely responsible for the consequence of any drug-related losses or expenses due to their noncompliance.

6.7 If required by the scope of this Subcontract the Subcontractor (this also extends to any and all sub-tier Subcontractors at any level) shall adopt and implement a written mandatory drug and alcohol testing program effective at the latest when the subcontractor's employees (or any sub-tier employees as applicable) first appear on-site. The program's goal must be to attempt to provide a drug and alcohol-free workplace and must include as minimum requirements, provisions as follows:

a. Testing pre-employment applicants - applicants offered employment must pass a pre-employment drug and alcohol test before beginning work on the jobsite.

b. Testing employees involved in any on-site accident resulting in medical aid injury.

c. Testing employees involved in any on-site equipment accidents regardless of whether the accident resulted in medical aid injury or not.

d. Testing employees when there is reasonable suspicion that they are working under the influence of drugs or alcohol.

e. Any employee who test positive as defined by the drug and alcohol program must be immediately removed and will only be allowed to return when they have successfully completed a qualified drug and alcohol rehabilitation program, or in the case of an outpatient program, are in good standing in a qualified drug and alcohol rehabilitation program.

f. All testing is to be conducted by a qualified drug testing agency utilizing standard methods and detection levels.

It is highly recommended (although not a mandatory requirement) that in work jurisdictions where random drug testing is allowed, that Subcontractors include provisions for it in their program. In creating and implementing any drug and alcohol testing program, the Subcontractor agrees to abide by all applicable federal, state and municipal laws governing drug and alcohol testing. This specifically includes, but is not limited to, laws governing methods of testing, threshold detection levels, custody and processing of test samples, and use of approved laboratory facilities. The indemnification and hold harmless provision contained in Article XV of the Special Conditions to Subcontract are applicable to all subcontractor drug and alcohol testing. Subcontractors and all sub-tier subcontractors must submit a copy of their mandatory drug testing program (including at least the minimum requirements noted above) to J.L. BRAY & SON, INC. no later than thirty (30) days before they first appear on-site. Documentation evidencing implementation and on-going maintenance of the program must be provided to J.L. BRAY & SON, INC. no later than ten (10) days following any J.L. BRAY & SON, INC.'s written request.

g. Subcontractor agrees to provide J.L. Bray documentation of Subcontractor's drug and alcohol testing program.

**ARTICLE VII**

**ASSIGNMENT/SUB-SUBCONTRACTORS/MATERIAL SUPPLIERS**

7.1 Promptly after executing this Subcontract, Subcontractor shall submit to Contractor for approval a list of all suppliers, and sub-subcontractors which Subcontractor proposes to utilize in performing the Subcontract Work. At the sole discretion of Contractor, Contractor may withhold its approval of any proposed supplier or sub-subcontractor. If supplier or sub-subcontractor approval is withheld, Subcontractor shall submit for approval a new list of proposed suppliers or sub-subcontractors within 10 (ten) days.

7.2 Subcontractor shall not assign or sublet its obligations to perform this

**Special Conditions to the Subcontract**

Subcontract or any part thereof without Contractor's prior written consent. Any such assignment or subletting without such consent shall be void.

7.3 Contractor's consent to any such assignment or subletting shall not in any manner relieve Subcontractor of its obligations to Contractor for the Subcontract Work, and Subcontractor shall remain fully liable for the work of its suppliers, assignees, and sub-subcontractors.

7.4 Contractor shall have the right to assign all or any portion of its rights and interests in this Subcontract to Owner, Owner's lender, Contractor's surety, a joint venture or partnership in which Contractor is a joint venture or partner, or to another corporation which is affiliated with Contractor, and Subcontractor shall thereupon have all of the same duties and obligations to said assignee as if said assignee had been the original contracting party hereto.

**ARTICLE VIII  
SUBCONTRACTOR'S SUPERINTENDENT**

8.1 Subcontractor shall furnish a competent and experienced superintendent, approved by Contractor, at the Project at all times when Subcontractor's work is in progress. Said superintendent shall have absolute authority to act, in all respects, on behalf of Subcontractor. Subcontractor shall not replace said superintendent without prior approval of Contractor, which approval shall not be unreasonably withheld.

**ARTICLE IX  
PAYMENTS**

9.1 If Contractor is entitled to apply for progress payments from Owner pursuant to the Prime Contract Documents, Subcontractor shall be entitled to apply for progress payments for the Subcontract Work performed during the payment periods established in the Prime Contract Documents, but not more frequently than monthly.

9.2 Subcontractor shall, if requested by Contractor, submit a schedule of values in a form acceptable to Contractor prior to its first application for progress payments. Said schedule of values shall be used for payment purposes only and shall not relieve Subcontractor of any responsibilities under this Subcontract.

9.3 Payments are to be made in monthly installments for work performed the preceding month on or before ten days after payment is received by contractor from owner, in an amount equal to the value of the work performed by subcontractor during the preceding calendar month, less the retention established under the prime contract. The value of the work will be determined by reference to the subcontract price but shall not exceed the owner's allowance for the work for which payment has been received by contractor. Owner's estimate of the amount of work done by subcontractor, or contractor's estimate if owner makes no separate estimate of such work, shall be binding on subcontractor. The retention less any deductions permitted by this agreement shall be paid 10 days after retention is released per the prime contract. Work and Subcontractor expressly waives all right to commence litigation for payment until said monies are received by Contractor, unless nonpayment is caused solely by the negligent acts or omissions of Contractor. Subcontractor hereby acknowledges that it relies on the credit of the Owner, not the Contractor, for payment of Subcontract work. Subcontractor shall submit its monthly progress estimate and invoice in triplicate in a form satisfactory to Contractor at least five (5) business days prior to the date Contractor is required to submit its progress estimate to Owner. The submission of the monthly progress estimate with proper back-up in a form satisfactory to Contractor is a condition precedent to payment to Subcontractor. As a further condition precedent to payment, Subcontractors shall submit to Contractor, at least five (5) business days prior to the date that Contractor is required to submit its progress estimate to Owner, properly executed waivers of lien from Subcontractor and its sub-subcontractors and suppliers in sufficient form for the Owner and Owner's lender and title insurer, if any, to determine Contractor's right to payment in compliance with applicable mechanics lien laws. Such waivers shall at Contractor's written request be on a current basis.

9.4 In the event that Contractor and Subcontractor disagree about the amount or other information contained in any progress payment request, Subcontractor shall submit copies of such records as requested by Contractor to substantiate the progress payment request. The estimate by Owner or Architect of [a] the value of work performed during a payment period or [b] any deduction, offset, or counterclaim against the requested amount shall be binding on Subcontractor with respect to Subcontractor's progress payment.

**Special Conditions to the Subcontract**

9.5 Progress payments to Subcontractor for any payment period shall not exceed ninety percent (90%) of the value of Subcontractor's labor and materials which have been placed in position or suitably stored on the Project site and approved and paid by Owner for Subcontract Work completed to date. In addition to this five percent (5%) retention, all or part of monthly progress payments may be withheld from Subcontractor by Contractor, and/or Subcontractor may be back charged, to the extent that:

- a. Subcontractor is indebted to Contractor pursuant to this Subcontract or any other agreement between Subcontractor and Contractor or has failed to pay sub-subcontractors, suppliers, laborers, fringe benefit funds, or governmental agencies;
- b. Defective Subcontract Work has not been remedied;
- c. Claim or liens be third parties, including, but not limited to, sub-subcontractors, suppliers, and governmental agencies, have been asserted or threatened with respect to the Subcontract Work;
- d. Contractor has a reasonable basis to doubt that the Subcontract Work can be completed for the unpaid portion of the Subcontract Price or within the scheduled or agreed time;
- e. Contractor, Owner, or another subcontractor or supplier have been injured or damaged by Subcontractor's performance or failure to perform the Subcontract Work;
- f. Subcontractor fails to submit mechanic's lien waivers and/or releases as required herein or by the Prime Contract Documents or fails to provide certified payroll data when requested by Contractor.

Monies withheld by Contractor from Subcontractor as provided in this Article IX shall not accrue interest.

9.6 All amounts withheld or retained by Contractor from monthly progress payments as provided in this Article IX shall be reduced to an amount then being withheld by Owner from Contractor for the Subcontract Work upon the latest to occur of the following:

- a. Owner's release of any retention it has withheld as to the Subcontract Work;
- b. Substantial completion of the Subcontract Work;
- c. The curing of all deficiencies set forth in Subparagraphs 9.5 a-f;
- d. Approval by Subcontractor's surety of the reduction in retention.

9.7 Except as provided in Subparagraphs 9.5 a-f, final payment shall be payable to Subcontractor no later than thirty (30) days after final completion and acceptance of the Project and receipt of final payment by Contractor. Prior to final payment Subcontractor shall submit on behalf of itself and every sub-subcontractor and supplier all materials required by Article XVIII hereof, together with appropriate mechanic's lien waiver and full releases of Contractor and its performance and/or payment bond surety and verifying full payment of all monies due or to become due relating to this Subcontractor as provided in this Subcontract.

9.8 Subcontractor agrees it will pay all amounts owing to its sub-subcontractor and suppliers within ten (10) days of receipt of a progress or final payment from Contractor for all work performed and all materials furnished through the date of Subcontractor's payment request to Contractor. Subcontractor agrees that Contractor may make payment to Subcontractor by check payable jointly to Subcontractor and its sub-subcontractors, suppliers, surety, and/or governmental agencies when Contractor, in its sole discretion, determines such joint payment is necessary to protect Contractor and/or Owner from claims.

9.9 No payment, including final payment, shall be evidence of the performance of this Subcontract by Subcontractor, either in whole or in part. No payment shall be construed as an acceptance of defective or incomplete work, and Subcontractor shall remain responsible for its performance conforming to the requirements of this Subcontract and the Prime Contract Documents.

9.10 If Contractor has furnished a performance and payment bond, Subcontractor hereby waives any right that Subcontractor may have to direct, request or order the Owner, lenders, or title insurers to withhold amount owed to Contractor to satisfy any claims of Subcontractor.

**ARTICLE X**

**COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS**

10.1 All labor, services, and materials to be furnished as part of the Subcontract Work shall comply with all applicable federal, state, and local statutes, regulations, rules, and ordinances, including, without limitations, those relating to safety, hazardous waste, discrimination, fair employment, equal

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opportunity and worker's compensation. Subcontractor is required to comply with the applicable requirements of Executive Order 11246, including but not limited to the maintenance and certification of non-segregated facilities. Additionally, Subcontractor is responsible for building codes when referenced in Contract Documents and will comply with local trade practices concerning workmanship and compliance with building codes. Subcontractor shall, at its own expense, correct any violations thereof.

10.2 In case of discovery of any variance between the Prime Contract Documents and any applicable statutes, regulations, rules, or ordinances, Subcontractor shall promptly notify Contractor thereof, in writing, and make the necessary changes before proceeding with the Subcontract Work. In the event that Subcontractor discovers any such variance and fails to promptly notify Contractor, Subcontractor shall at its sole expense make any change in the Subcontract Work necessitated by failure to disclose such variance.

10.3 Subcontractor warrants that it is duly licensed by all applicable government authorities to perform the Subcontract Work and that it will maintain such licenses at its own expense for a minimum of one year after the date of final acceptance of the Project.

**ARTICLE XI  
CHANGES IN SUBCONTRACT WORK**

11.1 Contractor retains the right to make changes in the Subcontract Work, which may be accomplished after execution of this Subcontract by [a] Change Order, [b] Construction Change Directive, or [c] Field Order, subject to the limitations stated in this Subcontract and elsewhere in the Prime Contract Documents. To aid Contractor, Architect, and Owner in determining whether to issue a proposed Change Order, Subcontractor shall, upon request and at no additional charge, submit a budget and time estimate for review.

11.2 Changes in the Subcontract Work shall be performed under applicable provisions of the Prime Contract Documents, and Subcontractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or Field Order.

Where unit prices have been agreed upon by Contractor and Subcontractor, all adjustments, whether increases or decreases, shall be made in accordance with said unit prices. Unit prices shall be deemed to include all general and administrative expenses, overhead, profit, supervision, extended performance cost factors, and all other direct and indirect expenses.

11.3 A Change Order is a written instrument prepared by Contractor and signed by Contractor and Subcontractor, stating their agreement upon all of the following:

- a. A change in the Subcontract Work;
- b. The amount of the adjustment in the Subcontract Price, if any; and
- c. The extent of the adjustment in the time for performance, if any.

11.4 Within ten (10) days of receipt of any proposed Change Order from Contractor or within such shorter time as may be prescribed in the Prime Contract Documents, Subcontractor shall notify Contractor in writing of any adjustment in the Subcontract Price or time for performance necessitated thereby, including a detailed breakdown of the difference in time required and value of the work, labor, services, and materials to be altered, added, omitted or changed and including quotes from sub-subcontractors and suppliers. If Contractor and Subcontractor agree on all adjustments, and the Owner issues a corresponding Change Order to Contractor, then a Change Order will be issued to Subcontractor and, when signed, this Subcontract shall be amended thereby. If they do not agree, Contractor may issue a Construction Change Directive as provided herein.

11.5 A Construction Change Directive is a written order prepared and signed by Contractor, directing a change in the Subcontract Work and stating a proposed basis for adjustment, if any, in the Subcontract Price or time for performance, or both. A Construction Change Directive shall be used in the absence of total agreement on the terms of a proposed Change Order.

11.6 If a Construction Change Directive provides for an adjustment to the Subcontract Price, and if unit prices have not been previously agreed upon as provided in Subparagraph 11.3, the adjustment shall be based upon one of the following methods:

- a. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- b. Unit prices subsequently agreed upon;

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- c. Cost to be determined in a manner agreed upon by the parties; or
- d. As provided in Subparagraph 11.10.

11.7 Upon receipt of a Construction Change Directive, Subcontractor shall promptly proceed with the change in the Subcontract Work involved and advise Contractor of Subcontractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Subcontract Price or time for performance.

11.8 A Construction Change Directive signed by Subcontractor indicates the agreement of Subcontractor therewith, including adjustment in Subcontract Price or time for performance. Such agreement shall be effective immediately and shall be recorded as a Change Order.

11.9 If Subcontractor does not respond promptly or disagrees with the proposed method for adjustment in the Subcontract Price, the method and the adjustment shall be determined on the basis of reasonable expenditures and savings attributable to the change, including, in case of an increase in the Subcontract Price, a reasonable allowance for overhead and profit. In such case, Subcontractor shall keep and present, in such form as Contractor may prescribe, an itemized accounting, together with

appropriate supporting data. In no event shall labor charges for overtime work exceed the standard percentage increase paid for similar overtime work in the community in which the Project is located. "Overhead" shall be deemed to include full and complete compensation to Subcontractor for all general and administrative expenses, overhead, and supervision and shall be an amount consistent with the Prime Contract Documents. In no event shall overhead and profit combined exceed fifteen (15%) of the cost of the adjustment work performed by Subcontractor's own forces or five percent (5%) of the cost of work performed by sub-subcontractors. "Cost" for the purpose of this Subparagraph means Subcontractor's net costs and shall be limited to the following:

- a. Costs of labor, including Social Security, unemployment insurance, fringe benefits, required by agreement or custom, and worker's compensation insurance;
- b. Costs of material, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- c. Rental costs of machinery and equipment, exclusive of hand tools (for which overhead and profit shall be limited to five percent {5%}); and
- d. Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes related to the Subcontract Work.

11.10 Pending final determination of Subcontractor's cost, amounts not in dispute may be included in Subcontractor's applications for progress payments. When both additions and credits covering related work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

11.11 A Field Order is a written order signed by Contractor, directing a minor change in the Subcontract Work not involving adjustment in the Subcontract Price or extension of time and not inconsistent with this Subcontract. Such change shall be made promptly upon issuance of the Field Order describing said modifications and shall be performed without any adjustment of Subcontract Price or time.

11.12 Any disputes arising out of or relating to a request for or issuance of a Change Order, Construction Change Directive, or Field Order, including disputes as to price or time adjustments relating thereto, shall be resolved as provided in Article XII hereof.

11.13 In the event of a Change Order or Construction Change Directive involving omitted work or work not to be performed, Contractor shall have the right to withhold from its periodic progress payments to Subcontractor an amount which Contractor, in its reasonable judgment, determines to be the value of such work. Said amount may be held by Contractor until the value of such work is determined by agreement or by the dispute resolution procedures provided in Article XII hereof.

**ARTICLE XII  
RESOLUTION OF DISPUTES**

12.1 Subcontractor shall make no claim or initiate any proceeding against Contractor arising out of or relating to this Subcontract, the Prime Contract Documents, the performance of the Subcontract Work, or otherwise relating to the Project except as specifically provided herein, and then only after all required notice and claims procedures have been strictly followed. In the event of such claim, which must be in writing, Subcontractor shall, upon request, make available to Contractor for inspection all of Subcontractor's files and records including but

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not limited to its bid preparation files relevant to such claim.

12.2 Should Subcontractor's performance, in whole or in part, be delayed, disrupted, or suspended in the commencement, prosecution, or completion, for reasons beyond Subcontractor's control and without its fault or negligence, Subcontractor's sole remedy shall be [a] a reasonable extension of time in which to complete the Subcontract Work; and [b] to the extent that Owner pays amounts to Contractor as compensation for the delay, disruption or suspension of Subcontractor's performance, then Subcontractor shall receive reasonable compensation for such delay, not to exceed the amount actually received by Contractor as compensation for Subcontractor's delay; but only if [1] Subcontractor shall have notified Contractor in writing of the cause of delay, disruption, or suspension no later than two (2) working days prior to Contractor's deadline for notice to Owner and in no event later than seventy-two (72) hours after the occurrence of the event causing the delay, disruption, or suspension, and [2] a similar extension of time, if needed, has been granted to Contractor by Owner.

12.3 If Subcontractor is unsatisfied with any Change Order or Construction Change Directive, Contractor will assist Subcontractor in presenting its claims to the Owner and/or Architect, but in so doing Contractor acts solely as a conduit for such claim and assumes no responsibility or liability therefore.

12.4 Any claim by Subcontractor which will affect or become part of a claim which Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in writing in sufficient time to permit Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by Contractor not less than two (2) working days preceding the time by which Contractor's claim must be made. Failure of Subcontractor to make such a timely claim shall find Subcontractor to the same consequences as those to which Contractor is bound.

12.5 If [a] the Prime Contract Documents provide for arbitration or other dispute resolution procedures, including submission to the Architect, or disputes arising between Contractor, the Owner and/or others, or [b] Contractor is a party to litigation or administrative proceedings with third persons relating to this Project, then Contractor may, in its discretion, join Subcontractor in any such proceeding to which Contractor is a party and which relates to Subcontractor's performance of the Subcontract Work, and Subcontractor hereby agrees to participate in said proceeding. If so joined, Subcontractor shall be bound by said arbitration, litigation, or other proceeding to the same extent that Contractor is bound thereby.

12.6 All other disputes or claims by and between Contractor and Subcontractor arising out of or relating to this Subcontract, the Prime Contract Documents, the performance of the Subcontract Work, or otherwise relating to the Project, shall be resolved by arbitration pursuant to the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, as supplemented by Paragraphs 12.7 - 12.10 hereof. The parties are not bound to use AAA administration nor AAA arbitrators and may select an arbitrator outside of AAA as long as they continue to use AAA rules. No arbitration shall include by consolidation, joinder or in any other manner, parties other than the Owner, the Architect, the Contractor, the Subcontractor and any other persons substantially involved in a common question of fact or law, whose presence is required if complete relief is to be accorded in the arbitration. The foregoing agreement to arbitrate and any other agreement to arbitrate with an additional person or persons duly consented to by the parties to the Owner-Contractor Agreement shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. An arbitrator shall be mutually agreed upon by the Contractor and Subcontractor. The agreed arbitrator need not be a member of the American Arbitration Association.

12.7 Notice of the demand for arbitration shall be filed in writing with the other party and with the American Arbitration Association. The demand for arbitration shall be made within the time limits specified in the Prime Contract and this Subcontract where applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen; and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

12.8 Subcontractor agrees to require any surety or insurer providing any coverage for a matter in dispute to be bound by any arbitration award against it involving a covered risk. Notwithstanding any provisions of law or rule or

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arbitration to the contrary, any party to an arbitration agreed to herein may avail itself of discovery procedures, including, but not limited to, depositions, interrogatories and requests for production of documents all provided for by the California Code of Civil Procedure.

12.9 Neither Subcontractor nor Contractor shall commence or proceed with litigation or arbitration against the other, not assert a defense in any such proceeding, without having first determined that, to the best of its knowledge, information and belief, formed after reasonable inquiry, said claim or defense is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and it is not interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation or arbitration. If either party violates this provision, the presiding court or arbitration panel, upon motion, shall impose upon the violating party an appropriate sanction, which may include an order to pay to the other party the amount of the reasonable expenses incurred because of such violation, including the award of reasonable attorney's fee

12.10 Subcontractor shall proceed with the Subcontract Work and maintain its progress in all respects during the pendency of any arbitration or litigation.

12.11 Subcontractor expressly agrees that the performance of this subcontract shall be governed and constructed in the accordance with the laws of the State of California. Contractor and Subcontractor expressly agree that any dispute between the parties shall be venued in Stanislaus County, California unless mutually agreed to the contrary. Any arbitration hearing shall also be conducted within Stanislaus County, California unless mutually agreed to the contrary.

**ARTICLE XIII  
INSURANCE**

13.1 Subcontractor shall obtain, and until ten years following final acceptance of the Project by Owner (unless the Prime Contract prescribes a longer period), maintain all insurance coverage as may be specified in the Prime Contract Documents or elsewhere in this Subcontract, and in amounts not less than those so specified. In no case, however, shall Subcontractor procure and maintain less than the following insurance coverage:

Worker's Compensation and Occupational Disease Coverage - Part I - coverage conforming with the statutory requirements of the jurisdiction in which the work is to be performed, the jurisdictions in which Subcontractor's employees reside, and the states in which Subcontractor is domiciled. (\$1,000,000)

Employer's Liability Insurance - Part II - with a limit of not less than the following amounts (including stop-gap in "monopolistic" states):

- Bodily injury by accident - \$1,000,000 each accident
- Bodily injury by disease - \$1,000,000 each employee
- Bodily injury by disease - \$2,000,000 aggregate policy limit

Other States' Insurance - Part III - must provide coverage for all states other than those described in "Part I" above and other than "monopolistic" states (this coverage is the equivalent of the so-called "broad form all states" endorsement).

• All worker's compensation endorsements furnished by Subcontractor must include the following:

- Alternate employer endorsement
- Voluntary Worker's Compensation Endorsement
- United States Longshoremen and Harbor Worker's Endorsement (if applicable)

Comprehensive General Liability or Commercial General Liability - (collectively, "CGL") coverage, with an occurrence limit of not less than \$1,000,000 and an aggregate limit of not less than \$2,000,000. Claims-made policy forms are not acceptable unless an authorized representative of Contractor gives prior written approval. Such coverage shall include Premises/Operations, Products/Completed Operations, Blanket Contractual (to insure indemnity obligations specified herein), Broad Form Property Damage (including completed operations), Personal injury (waive employment related exclusion), Blanket XCU, Incidental Malpractice, Host Liquor Liability, and Independent Subcontractors.

Comprehensive Automobile Coverage, with an occurrence limit of not less than \$1,000,000, including Owned, Hired, and Non-Owned Autos.

Commercial Umbrella Coverage, with limits not less than \$1,000,000.

13.2 Contractor makes no representations that the required minimum amounts of insurance shall be adequate to protect Subcontractor, and the procuring and/or



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carrying of such insurance shall not limit Subcontractor's obligation or liability pursuant to this Subcontract or as a matter of law.

13.3 All insurance shall be procured at Subcontractor's expense. Its CGL policies shall name Contractor, Owner, and Architect as additional insured using form CG 2010 (11/85) version, or the combination of CG 2010 1001 and CG 2037 1001 or an equivalent form(s).

13.4 Subcontractor shall require insurance with the same coverage and limits from its sub-subcontractors and suppliers. Their CGL policies shall name Contractor, Owner, and Architect as additional insured.

13.5 All insurance required to be furnished by Subcontractor, shall be maintained with insurance companies with an A.M. Best Financial Strength Rating no less than "A-" and approved by Contractor. Any exceptions to this requirement must be requested by Subcontractor in writing to Contractor and written consent received in writing from Contractor five (5) days prior to commencement of the Subcontract Work. Certificates of insurance for all coverage to be maintained by Subcontractor shall be delivered to Contractor five (5) days prior to scheduled commencement of the Subcontract Work. The following requirements shall be endorsed onto the policies reflecting the Insurance required by this Subcontract: [a] Thirty (30) days prior written notice shall be given to Contractor in the event of cancellation, material change, or non-renewal of the insurance required by this Subcontract; [b] the insurance afforded to the additional insured's on Subcontractor's CGL policies shall be primary insurance over any other valid or collectible insurance that the additional insured may have respect to loss under the policy and other insurance of additional insured's applicable to the loss shall be excess over the Subcontractor's policies and the amount of the Subcontractor's insurance company's liability shall not be reduced by the existence of any other insurance; [c] the maximum deductible amount on any policy shall be \$5,000.00; and (d) Subcontractor shall obtain a Waiver of Subrogation on the CGL, Business Automobile, Workers' Compensation and Umbrella Liability policies.

13.6 Failure of Subcontractor to maintain or furnish evidence of all insurance required herein shall permit Contractor, in addition to other remedies provided herein or available at law or in equity, to terminate the Subcontract or to obtain said insurance at Subcontractor's sole expense. Subcontractor expressly consents to allowing Contractor, at Contractor's option, to deduct any insurance expense from any amounts owing Subcontractor. Such deduction shall not limit any other remedy at law or equity. Contractor's election to obtain said insurance shall in no case limit Contractor's other remedies nor reduce Subcontractor's responsibility pursuant to this Subcontract. Failure of Subcontractor to furnish evidence of insurance or failure of Contractor to require proof of insurance shall not constitute a waiver of the requirement that Subcontractor maintain insurance as set forth in this Article XIII. All deductibles on any Builder's Risk Policy obtained by Owner or Contractor for the Project shall be paid by the name insured(s) responsible for the loss, or in the absence of a determination of responsibility, then by the beneficiary of such insurance.

**ARTICLE XIV  
BONDS**

14.1 Subcontractor shall, when requested by Contractor, furnish to Contractor duly executed Performance and Payment Bonds or such substitute security as is acceptable to Contractor. Said bonds shall be issued by a surety company and in such format as are satisfactory to Contractor. Unless otherwise specified, said Bonds shall each be in the full amount of the Subcontract Price, and shall be promptly increased if the Subcontract Price is increased more than fifteen percent (15%) above the original Subcontract Price. Failure to timely furnish the requested Bonds or to increase promptly the amounts thereof may be deemed a material breach of this Subcontract.

**ARTICLE XV  
INDEMNIFICATION**

15.1 To the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless Contractor, the Owner, the Architect, the Architect's consultants, and all persons indemnified by Contractor pursuant to the Prime Contract Documents, and all agents and employees of any of them from and against any and all claims, liabilities, liens, costs, damages, citations, penalties, fines, attorney's fees, losses, and expenses of whatever nature (collectively, "claims") arising out of or resulting from Subcontractor's performance of (or failure to perform) the Subcontract Work, including loss of use of any property resulting there from,

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regardless of whether or not such claim is caused in fact by a party indemnified hereunder, but only to the extent caused in whole or in part by breach of this Subcontract or by negligent or otherwise wrongful acts or omissions of the Subcontractor, the Subcontractor's sub-subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to any party or person described in this Article XV.

15.2 In claims against any person or entity indemnified under this Article XV by an employee of the Subcontractor, the Subcontractor's sub-subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under this Article XV shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Subcontractor or the Subcontractor's sub-subcontractors under worker's compensation acts, disability benefit acts, or other employee benefit acts.

15.3 The obligations of the Subcontractor under this Article XV shall not extend to the liability of the Architect's consultants, and agents and employees of any of them arising out of [1] the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or [2] the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them, provided such giving or failure to give is the primary cause of the injury or damage.

15.4 Subcontractor's indemnity obligations under this Article XV shall be limited to the extent necessary to comply with governing state and federal law ("governing law") and to the extent any such governing law limits the indemnity provided herein, Subcontractor's obligations shall be deemed to be limited so as to comply with such governing law.

15.5 Subcontractor shall maintain such insurance as is necessary to fully underwrite Subcontractor's indemnity obligations hereunder.

15.6 In the event of any claim, cost, or other liability (or any threat thereof) covered by this Article XV Contractor may retain any and all monies due or to become due to Subcontractor under this Subcontract in an amount sufficient to assure Subcontractor's indemnity as provided herein "including reasonable attorney's fees". This right of retention is in addition to, and is intended to complement, that set forth in Article IX hereof.

15.7 Subcontractor is not responsible to indemnify Contractor for Contractor's own negligence or willful misconduct.

**ARTICLE XVI  
TAXES**

16.1 Subcontractor shall pay all taxes, contributions, assessments, or fees imposed directly or indirectly on account of its work, labor, material, or services required under or relating to this Subcontract. At no time shall there be any increase or escalation in the Subcontract Price on account of any such tax or charge unless allowed by the Prime Contract Documents. Subcontractor shall, if requested by Contractor, substantiate that all taxes and other charges have been and are being properly paid.

16.2 The Subcontractor shall be responsible for all payments of taxes, contributions, and/or premiums payable on its employees or on its operations under Worker's Compensation Laws, Employment Welfare Benefit Plans, gross business taxes, and sales and use taxes and any other taxes, contributions and/or premiums which may become payable by operation of law or contract, including contributions payable by the employees, and Subcontractor shall save Contract harmless from all liability, loss and expense resulting from Subcontractor's failure to comply with such requirements. At no time shall there be any increase or escalation in the Subcontract Price on account of any such tax or charge unless allowed by the Prime Contract Documents. Subcontractor shall, if requested by Contractor, substantiate that all taxes and other charges have been and are being properly paid. If any claim or demand is made against Contractor for any matter enumerated herein, any payment due, or thereafter to become due to Subcontractor shall be held by Contractor to cover such losses and expenses, including reasonable attorney's fees.

**ARTICLE XVII  
LABOR RELATIONS**

17.1 Subcontractor shall do whatever is reasonably necessary in the

**Special Conditions to the Subcontract**

prosecution of the Subcontract Work to assure harmonious labor relations at the Project and to prevent strikes or other labor disputes. Subcontractor shall fully abide by all labor agreements, project agreements, and jurisdictional decisions presently in force or subsequently executed with or by Contractor. Subcontractor's failure to so act may be deemed a material breach of this Subcontract.

**ARTICLE XVIII  
SUBMITTALS AND AS-BUILT DRAWINGS**

18.1 Subcontractor shall prepare and submit to Contractor in a timely manner all shop drawings, product samples, test results, installer's instructions, certificates, and other required submittals and obtain all required approvals, permits, and licenses necessary or required in connection with the Subcontract Work. In no event shall said items be submitted to Contractor later than thirty (30) days following the award of this Subcontract without the written consent of Contractor.

18.2 Contractor's review of shop drawings or other submittals shall be for general concept only. Approval by Contractor of any submittals of Subcontractor shall not relieve Subcontractor of liability for any deviations from the Prime Contract Documents or this Subcontract, unless said deviation is specifically called to Contractor's attention in writing and is then so approved by contractor in writing.

18.3 Subcontractor shall submit to Contractor within fifteen (15) days of the completion of the Subcontract Work as-built drawings and/or record drawings of the Subcontract Work, and all warranties, guarantees, and maintenance and operation manuals with respect to the Subcontract Work.

**ARTICLE XIX  
GUARANTEES AND WARRANTIES**

19.1 Subcontractor, in addition to all other guarantees and warranties contained in or required by the Prime Contract Documents, and not in limitation thereof, warrants and guarantees that its work is in conformance in all respects with the Prime Contract Documents and that it shall provide all necessary maintenance of the Subcontract Work until final acceptance of the Project and, for a minimum of one (1) year after the date of final acceptance of the Project or said longer period as the Prime Contract Documents may provide, perform any corrective work on the Subcontract Work without cost, as directed by Contractor.

**ARTICLE XX  
NON-INTERFERENCE WITH PRINCIPAL RELATIONSHIP**

20.1 Subcontractor shall not interfere with Contractor's relationship with Owner. In particular, Subcontractor shall not enter into any other contract relating to the Project without Contractor's prior written consent.

**ARTICLE XXI  
DEFAULT AND TERMINATION**

21.1 Should Subcontractor [a] fail to proceed with the Subcontract Work in the sequence directed by Contractor, [b] fail to prosecute the Subcontract Work diligently (including but not limited to failure to provide sufficient numbers of skilled workmen or proper materials, or failure to adhere to the applicable performance schedules), [c] cause delay or disruption of the work of Contractor or other subcontractors or suppliers on the project, [d] fail to perform any of its obligations under this Subcontract, [e] fail to perform the Subcontract Work in accordance with the Prime Contract Documents, [f] file bankruptcy, assign assets for the benefit of creditors, become insolvent or be unable or fail to pay its obligations as they mature, or [g] repeatedly perform the Subcontract Work in a manner which is rejected by the Architect or governmental inspectors having jurisdiction over the Project, then Contractor may deem Subcontractor to be in default and, at Contractor's sole option, and without limitation on other remedies available at law or in equity, take one or more of the following actions:

a. Take temporary possession for a period of up to one hundred twenty (120) hours of all Subcontractor's material and equipment intended for performance of the Subcontract Work (whether or not located on the Project site) in order to assure its availability for completion of the Subcontract Work.

b. Upon seventy-two (72) hours prior written notice of the default (and provided the default is not fully cured within seventy-two (72) hours), itself cure the default at Subcontractor's expense plus ten percent (10%) for Contractor's overhead and fee, and deduct the cost thereof from the Subcontract Price; where the work of other contractors will be materially delayed, Contractor may proceed without

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notice to cure the default at Subcontractor's expense plus ten percent (10%) for Contractor's overhead and fee, and deduct the cost thereof from the Subcontract Price;

c. Upon seventy-two (72) hours prior written notice of the default (and provided the default is not fully cured within said seventy-two {72} hours), give Subcontractor written notice of termination of this Subcontract and, at Contractor's option, take permanent possession of all of Subcontractor's

material, equipment, manuals, records, drawings, and other items intended for the performance of the Subcontract Work (whether or not located on the Project site), which Subcontractor hereby assigns and transfers to Contractor for such purpose, subject only to Contractor's exercising its option pursuant to this Subparagraph 21.1.c.

21.2 In the event of termination of this Subcontract as provided in Subparagraph 21.1.c, Subcontractor shall receive no further payment of any unpaid portion of the Subcontract Price until such time as the Subcontract Work is completed, at which time Subcontractor will be entitled to the unpaid portion of the Subcontract Price, less all costs and expenses (including reasonable attorney's fees) incurred by Contractor in curing said default and completing the Subcontract Work plus ten percent (10%) for Contractor's overhead and fee. If Contractor's said costs, expenses, overhead and fee exceed the unpaid portion of the Subcontract Price, Subcontractor and its surety shall be liable for, and shall promptly pay to Contractor such excess amount and Contractor shall have a lien upon Subcontractor's materials, tools, and equipment in Contractor's possession to secure payment thereof.

**EXHIBIT "D"**

«Company»  
«Address1»  
«City», «State» «PostalCode»  
«WorkPhone»  
«Fax»

«ProjNameShort»  
PROJECT NUMBER: «Proj»  
DATE: «Date»

**CONTRACT STANDARDS**

Hereinafter called "the Subcontractor"

The following procedures are outlined for your guidance in handling the administrative work necessary for the satisfactory completion of your contract.

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1. **JOB INFORMATION**

- A. Personnel: Project Manager Denae Lawrence
- B. Telephone No.: Main Office (209)545-2856
- C. Job Address: 641 Norseman Dr, Modesto, CA 95357
- D. Job Name: Fitness Center at Johansen High School
- E. Correspondence: All correspondence throughout the project duration shall be directed to the Main Office's address.

2. **PROJECT DRAWINGS AND SPECIFICATIONS**

A. Available for your job use are complete copies of all project drawings, specifications, addenda, and approved shop drawings.

B. Make sure that your Foreman checks for current revised drawings, clarifications, etc., at the job office with our Superintendent.

3. **SHOP DRAWINGS AND SAMPLES**

A. Thoroughly check the plans and specifications governing your work and make submittals to J.L. BRAY & SON, INC. Submit **Electronic** copies of all brochures, equipment lists, etc. and **Five (5) physical samples**. When coordinating work with other trades, check details with our field office. Never use the words "by other" without coordinating details with the affected subcontractors.

**The transmittal letter for each submittal must include the applicable trade reference.**

B. Note that shop drawings are reviewed, in general, for design and construction only. The subcontractor remains responsible for compliance with plans and specifications. The Architect's review of such drawings does not relieve the subcontractor from responsibility for deviations from drawings or specifications, unless the subcontractor has called the Architect's attention, in writing, to such deviations at the time of submission; nor shall it relieve the subcontractor from responsibility for errors of any kind in shop drawings or schedule.

C. **Three ( 3 )** copies of the Operating/Maintenance Manuals will be required at the time of completion of this project. In order to avoid delays at that time, work should be done throughout the duration of the Project of this manual.

4. **DAILY WORK REPORTS** - are not required on this project.

5. **CHANGE ORDERS**

A. All correspondence concerning change orders must be sent directly to the Main Office electronically.

B. No changes will be made without written authorization from J.L. Bray & Son, Inc. It will expedite the job if you answer our request for quotation within THREE (3) days; additionally, these quotations must be provided with detailed breakdowns of cost items. All change order costs shall be rounded out to the nearest dollar.

C. Markup for change orders is as allowed per contract documents or if contract documents are silent on this matter, then the markup shall be 10% on all hard costs.

D. **VALUE ENGINEERING CHANGE PROPOSALS (VECP)**

The Subcontractor is encouraged to develop, prepare and submit VECP's.

The Subcontractor shall share in any contract savings realized from the acceptance of VECP's.

6. **CONCRETE POURS**

It is the responsibility of the Subcontractor to know when the concrete pours are to be made, and to make certain that he has set embedded items, sleeves, chases, etc., in ample time so as not to delay the pour. It is also the Subcontractor's responsibility to protect his work in or on the forms during concrete placing, including, if necessary, having an employee present during the concrete pouring and finishing process.

7. **SAFETY**

Weekly Safety Meetings on site will be conducted by J.L. Bray & Son, Inc. All workmen are invited to attend these meetings. Subcontractors may conduct their own safety meetings and provide written documentation to J.L. Bray & Son's Superintendent if they prefer. J.L. Bray & Son, Inc.'s policy is to provide a safe and harmonious workplace - nothing else will be tolerated.

8. **PROGRESS PAYMENTS**

All billings are due in our Salida office by the 20th of each month and should be for work completed through that date. A complete breakdown of your work (Schedule of Values) shall be submitted within 10 days of execution of this contract. With each billing you must include a Conditional Waiver of Lien for the gross amount of your monthly billing. Unconditional Waivers of Lien will be requested from you as you receive progress payments.

The following steps will assist you in obtaining payment ten (10) days after monies have been received from the Owner:

1. Subcontract Agreement signed and received in main office.
2. Insurance certificate current and received in main office.
3. Bonds (if applicable) received and approved by main office.
4. Payment request received and approved by Superintendent.

5. Conditional waiver and release upon progress payment for prior payment request (amount on current payment request and conditional lien releases must match).
6. Unconditional waiver and release upon progress payment for prior payment received in accounting at main office.
7. Conditional waiver and release upon progress payment by all lower tier subcontractors (for twenty (20) day preliminary notices filed) with payment request.
8. Unconditional waiver and release upon progress payment by all lower tier subcontractors (for twenty (20) days preliminary notices filed) received at main office.
9. Store Materials: if approved by Owner, the following is required:
  - a) Consent of Surety for payment of stored materials.
  - b) Provide bill of sale
  - c) All stored material labeled: "Property of J.L. Bray & Son, Inc. for «ProjNameShort».
  - d) Evidence of adequate insurance coverage is received.

9. **FOREMEN'S MEETINGS**

It is your responsibility to supply our job personnel with any information which will make your job easier and more profitable. Job Foreman's meetings will be held every WEEK and must be attended by the foreman for each major subcontractor so that complete and harmonious cooperation between all trades can be maintained.

10. **SCHEDULING**

Shortly after the award of your contract, if not sooner, you will be contacted by the Project Manager for any information on timing or costs that involve your phase of this project so that we may include these aspects in our preparation of the schedule. We want this schedule to be as realistic as possible and, since it will cover the length of the project, we require you to submit the following information prior to the job meeting:

- a) Obtain expected delivery dates of equipment and materials
- b) Time estimates for each phase of your work
- c) Cost estimates for each work item
- d) Any other pertinent information

Your help in this matter will benefit the entire job and enable you to plan the size of your crews.

11. **STORAGE**

The amount of room for storage of material on the site is limited. Material to the job must be coordinated very closely with the schedule and installed as soon as possible.

12. **AS-BUILT DRAWINGS**

All as-built drawings will be kept by your job foreman and will be updated daily. Monthly progress payments will not be released



until the as-builts are updated and checked.

13. **CERTIFIED PAYROLLS AND MONTHLY MANPOWER UTILIZATION REPORT**

Subcontractor must submit weekly, for each week in which any work is performed, **One (1)** copy of all payrolls to the Contractor and **Electronic Submission** via the DIR website as per the attached Exhibit "E". The records must contain the name, address and social security number of each employee, the employee's correct classification, rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits), the daily and weekly number of hours worked, deductions made, and actual wages paid. For weeks in which no work is performed Subcontractor shall submit a Statement of Nonperformance.

14. **LABOR COMPLIANCE REQUIREMENTS**

Subcontractor shall comply with all applicable laws and regulations as required by the jurisdiction(s) having authority. The state labor law requirements applicable to the contract are composed of, but not limited to, Labor Code §§1720 *et seq.*, §1770 *et seq.*; California Code of Regulations, Title 8 and more commonly known as:

- Payment of Prevailing Wages
- Apprentices (Labor Code Section 1777.5)
- Penalties (Labor Code Sections 1775, 1776, 1777.7, 1813)
- Certified Payroll Records (Labor Code Section 1776)
- Nondiscrimination in Employment (Labor Code Section 1735, 1777.6; the Government Code; and Title VII of the Civil Rights Act of 1964, as amended)
- Kickback Prohibition (Labor Code Section 1778)
- Acceptance of Fees Prohibition (Labor Code Section 1779, 1780)
- Proper Licensing (Labor Code Section 1021, California Contractors License Law, Business and Professions Code Section 7000, *et seq*)
- Unfair Competition Prohibition (Business and Professions Code Sections 17200-17208)
- Worker's Compensation Insurance (Labor Code Section 1861)
- OSHA Rules and Regulations

15. **REQUEST FOR INFORMATION (RFI) PROCEDURE**

RFI's are used to expedite approval of solutions to contract drawing and specification discrepancies, to document these changes, and to provide a basis for contract change order if required.

All discrepancies, problems or clarification requirements pertaining to the contract drawings and specifications, shall be documented by J.L. BRAY & SON, INC.

In all instances, sufficient detail and information must be

provided by the subcontractor which will thoroughly describe the problem and permit rapid solution by the Construction Manager, Architect or Owner. No direct communication shall exist between Subcontractors and/or Suppliers and the Construction Manager, Architect or Owner without J.L. BRAY & SON's Project Management's approval.

16. **FORMS AND SAMPLES**

- Request for Information
- Conditional Waiver & Release Upon Progress Payment
- Unconditional Waiver & Release Upon Progress Payment
- Conditional Waiver & Release Upon Final Payment
- Unconditional Waiver & Release Upon Final Payment

17. **PARKING NEAR JOBSITE**

Available on-site at your own risk.

18. **USE OF CONTRACTOR'S EQUIPMENT**

Subcontractor agrees that the use of any of Contractor's equipment, rigging, blocking, hoist or scaffolding by Subcontractor, given, loaned or rented to Subcontractor, shall be under the distinct understanding that Subcontractor uses said equipment, rigging, blocking, hoist or scaffolding at its own risk, and takes the same "as is" after it has been given an opportunity to examine the condition thereof. Subcontractor does hereby assume all responsibility for its use of Contractor's equipment and agrees to indemnify, defend and hold Owner and Contractor harmless from any claims for damages whatsoever resulting from the use of Contractor's equipment, whether such use causes damages to his own employees or property or to the employees or property of others.

19. **SUBCONTRACTOR KNOW-HOW**

May we point out that in subcontracting our work with your firm, we are purchasing not only your materials, men and equipment, but also your "know-how" for the subcontracted item and your service. It is our contention that a good contracting service consists of taking care of the work when it is needed. In order to do this, it is necessary for you to know the status of the job in relation to your work at all times so that your work will not delay ours or that of another subcontractor. The responsibility for the performance of your work is in your hands. It is not the responsibility of our job personnel to contact you.

You have been selected by us for this project because of your expertise in your field, management skills, and ability to properly perform.

**EXHIBIT "E"**

«Company»  
«Address1»  
«City», «State» «PostalCode»  
«WorkPhone»

«ProjNameShort»  
PROJECT NUMBER: «Proj»  
DATE: «Date»

**Labor Code (Excerpt) and Contractor Affidavit**

In accordance with California Labor Code Section 1725.5, all public works contractors and subcontractors must be registered with the Department of Industrial Relations beginning July 1, 2014. The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public works, as defined in Chapter 1, Public Works, Article 1 Scope and Operation, entered into on or after April 1, 2015.

Contractors may register online at:

<https://efiling.dir.ca.gov/PWCR/ActionServlet?action=displayPWCRegistrationForm>

This public works project is subject to compliance monitoring and enforcement by the Department of Industrial Relations pursuant to Labor Code §1771.4.

The Subcontractor shall comply with the above statutes and specifically agrees to:

- A) Provide the contractor with a DIR Public Works Registration Number that has been assigned to the subcontractor:
  - «DIR »
- B) Maintain accurate payroll records, pursuant to Labor Code §1776, and furnish such records directly to the Labor Commissioner in the following manner:
  - At least monthly or more frequently if specified in the contract with the awarding body.
  - In the ECPR format prescribed by the Labor Commissioner.
  - For more information, please see the following website: <http://www.dir.ca.gov/Public-works/PublicWorks.html>
- C) Notify any lower-tier subcontractor to your company on this project of its obligation to register and comply with the requirements set forth in the above-referenced statutes.
- D) Upon submitting all required subcontract documents to the contractor, the subcontractor agrees to provide a list of work classifications that it plans to utilize on this project as well as its plan for meeting all apprenticeship requirements in Labor Code §1777.5. Subcontractor will also submit this information for any second-tier subcontractor that the subcontractor chooses to use on this project.

**Labor Code (Excerpt) and Contractor Affidavit**

1) The attached California Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815 are incorporated into this subcontract. The subcontractor agrees to comply with all of the above-referenced Labor Code Sections applicable to the performance of its work on this project.

Specifically, the subcontractor agrees to:

- a. Pay all workers 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.

A statutory exception to this requirement is provided in LC §1720.9 (d) for the hauling and delivery of ready-mixed concrete to carry out a public works contract. The applicable prevailing wage rate for these drivers shall be the current prevailing wage, as determined by the director of DIR, for the geographic area in which the factory or batching plant is located.

- b. Pay all workers not less than the general prevailing rate of per diem wages for holiday and overtime work as provided in this chapter.
- c. Adhere to the compliance measures outlined in Labor Code §1775(b) for any second-tier subcontractor that the subcontractor chooses to use on this project.
- d. Submit certified payroll to the contractor within three (3) working days after wages have been paid.

Subcontractors shall complete the attached "Public Works Payroll Reporting Form," Form A-1-131 and the "Statement of Employer Payments," Form PW 26 when preparing certified payroll records, or may use an alternative format provided that all of the information required by these forms is included.

Note: In addition to providing certified payroll records, subcontractors with drivers who haul and deliver ready-mixed concrete, shall submit written time records certified by each driver for the performance of job duties listed in Labor Code §1720.9 (c).

- e. Submit Statement of non-Performance (Sample format attached) for each week where no work is performed by subcontractor. Subcontractor shall provide statement no later than one week after the week ending date in which no work was performed.
- f. Submit to the contractor within three (3) working days of a written request all payroll records outlined in the notice and defined by the California Code of Regulations

**Labor Code (Excerpt) and Contractor Affidavit**

\$16000, "Payroll Records" and IWC Wage Order 16, Section 6, "Records."

g. Comply with all apprenticeship requirements pursuant to Labor Code §1777.5.

2) The subcontractor, prior to receiving final payment for work performed on this project, shall sign an affidavit under penalty of perjury that the subcontractor has paid the specified general prevailing rate of per diem wages for the proper craft needed to fulfill the obligations of the subcontract and has complied with the laws and regulations regarding the use of apprentices. (The attached affidavit is incorporated into this subcontract.)

3) The subcontractor shall indemnify, hold harmless and defend the contractor for any violations of the above-referenced California Code of Regulations and Labor Code provisions brought against the contractor due to the subcontractor's failure to comply with said provisions.

4) The following forms will be issued under separate cover:

- a) Statement of Work Classifications, Total Hourly Rate and Apprenticeship Plan
- b) DAS 7 - Agreement to Train Apprentices
- c) Sample Letter to DIR Regarding Apprenticeship Ratio
- d) Statement of Non-Performance
- e) Contractor Affidavit regarding Apprenticeship

**Labor Code (Excerpt) and Contractor Affidavit**

**1771.** Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

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

**1775.** (a) (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**1776.** (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.

**Labor Code (Excerpt) and Contractor Affidavit**

(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 and the Division of Labor Standards Enforcement of the Department of Industrial Relations.

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

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

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

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

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

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

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

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

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

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

**1777.5.** (a) (1) This chapter does not prevent the employment upon public works of properly registered apprentices who are active participants in an approved apprenticeship program.

(2) For purposes of this chapter, "apprenticeship program" means a program under the jurisdiction of the California Apprenticeship Council established pursuant to Section 3070.

(b) (1) 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.

(2) Unless otherwise provided by a collective bargaining agreement, when a contractor requests the dispatch of an apprentice pursuant to this section to perform work on a public works project and requires the apprentice to fill out an application or undergo testing, training, an examination, or other preemployment process as a condition of employment, the apprentice shall be paid for the time spent on the required preemployment activity, including travel time to and from the required activity, if any, at the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered. Unless otherwise provided by a collective bargaining agreement, a contractor is not required to compensate an apprentice for the time spent on preemployment activities if the apprentice is required to take a preemployment drug or alcohol test and he or she fails to pass that test.

(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:

**Labor Code (Excerpt) and Contractor Affidavit**

- (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) If 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 (c).

(e) Before 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 supplying 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 if the contractor agrees to be bound by those standards. However, 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. When an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Administrator of Apprenticeship, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

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

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Administrator of Apprenticeship 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) If 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



**Labor Code (Excerpt) and Contractor Affidavit**

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

(i) 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.

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

(iii) All training contributions not distributed under clauses (i) and (ii) shall be used to defray the future expenses of the Department of Industrial Relations for the administration and enforcement of apprenticeship and preapprenticeship standards and requirements under this code.

(B) An apprenticeship program shall only be eligible to receive grant funds pursuant to this subdivision if the apprenticeship program agrees, prior to the receipt of any grant funds, to keep adequate records that document the expenditure of grant funds and to make all records available to the Department of Industrial Relations so that the Department of Industrial Relations is able to verify that grant funds were used solely for training apprentices. For purposes of this subparagraph, adequate records include, but are not limited to, invoices, receipts, and canceled checks that account for the expenditure of grant funds. This subparagraph shall not be deemed to require an apprenticeship program to provide the Department of Industrial Relations with more documentation than is necessary to verify the appropriate expenditure of grant funds made pursuant to this subdivision.

(C) The Department of Industrial Relations shall verify that grants made pursuant to this subdivision are used solely to fund training apprentices. If an apprenticeship program is unable to demonstrate how grant funds are expended or if an apprenticeship program is found to be using grant funds for purposes other than training apprentices, then the apprenticeship program shall not be eligible to receive any future grant pursuant to this subdivision and the Department of Industrial Relations may initiate the process to rescind the registration of the apprenticeship program.

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

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

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

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

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

**1815.** Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1½ times the basic rate of pay.

**EXHIBIT "F"**

«Company»  
«Address1»  
«City», «State» «PostalCode»  
«WorkPhone»

«ProjNameShort»  
PROJECT NUMBER: «Proj»  
DATE: «Date»

**Skilled and Trained Workforce Requirements**

This Project is subject to Skilled and Trained Workforce Requirements pursuant to Education Code Section 17407.5 et Seq.:

Accordingly, all requirements of JL Bray and Son, Inc. as "Contractor" pursuant to said statute are incorporated into this Subcontract Agreement and, by this reference, all references to "Contractor" in said statute apply to Subcontractor in all respects.

By entering into this Subcontract Agreement, Subcontractor certifies to Contractor and affirms that it can and will comply with the Skilled and Trained Workforce Requirements as established in the above referenced statute as it applies to the Project for which this Subcontract is issued.

An "apprenticeable occupation" is an occupation for which the Division of Apprenticeship Standards had approved an apprenticeship program before January 1, 2014.

By executing this Subcontract Agreement, Subcontractor certifies to Contractor that its workforce and the workforce of all subcontractors operating under its direction to engage in work on the Project is a "Skilled and Trained Workforce" which meets all of the following conditions:

1. All workers are either skilled journeypersons (per definition in Item 4 below) or are apprentices registered in a Division of Apprenticeship Standards (DAS) approved apprenticeship program.
2. Individuals employed to perform work on the Project are comprised of 60 % skilled journeypersons that are graduates of a DIR approved apprenticeship program.
3. Pursuant to SB 418 (Hernandez), the following specific trades are exempt from increases b. c. and d. outlined above. These trades are still required to meet the 30% ratio.
  - a. Acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.
4. For an apprenticeable occupation in which no apprenticeship program had been approved before January 1, 1995, up to one-half of the graduation percentage may be satisfied by skilled journeypersons who commenced working in an apprenticeable occupation prior to the approval of an apprenticeship program for that occupation.

**Skilled and Trained Workforce Requirements**

5. A "skilled journey person" is defined as a worker who either: a) graduated from an apprenticeship program for the applicable occupation that was approved by the DAS or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor; or b) has at least as many hours of on-the-job experience in an applicable occupation as would be required to graduate from a DAS approved apprenticeship program for the applicable occupation.

Subcontractor shall submit to Contractor on or before the fifth (5<sup>th</sup>) business day of each calendar month from the start of Subcontractor's work on the Project through the final calendar month when Subcontractor's work is 100% complete, whether or not Subcontractor works in a specific month, the Skilled and Trained Workforce Compliance Report (provided under separate cover) for each apprenticeable occupation. Subcontractor shall submit this documentation for every tier subcontractor operating under its direction. The excel spreadsheet shall be completed, printed, signed, and mailed, faxed or emailed in PDF format to Contractor's project payroll specialist.

Failure of Subcontractor (or any tier subcontractor under Subcontractor's direction) to comply with the provisions of this Exhibit F shall result in the withholding of 150% of the Subcontractor's progress payment(s). Furthermore, said failure could result in Owner withholding ALL payments to Contractor in which case Subcontractor shall pay to Contractor the total amount withheld by Owner in a timely manner to comply with prompt payment statutes.

Subcontractor shall hold harmless, indemnify, and defend Contractor from any claims, complaints, withholds, or any other legal matters related to Subcontractor's lack of compliance with the above referenced requirements, including the lack of compliance by any tier subcontractor under Subcontractor's direction.

**Skilled and Trained Workforce Requirements**

Labor Code Section 2600 - 2603

**CHAPTER 2.9. Skilled and Trained Workforce Requirements [2600 - 2603]**

2600. (a) This chapter applies when a public entity is required by statute or regulation to obtain an enforceable commitment that a bidder, contractor, or other entity will use a skilled and trained workforce to complete a contract or project.

(b) A public entity may require a bidder, contractor, or other entity to use a skilled and trained workforce to complete a contract or project regardless of whether the public entity is required to do so by a statute or regulation.

(c) When the use of a skilled and trained workforce to complete a contract or project is required pursuant to subdivision (a) or (b), the public entity shall include in all bid documents and construction contracts a notice that the project is subject to the skilled and trained workforce requirement.

(Amended by Stats. 2020, Ch. 347, Sec. 1. (AB 2311) Effective January 1, 2021.)

2600.5. The failure of a public entity to provide a notice pursuant to subdivision (c) of Section 2600 shall not excuse either of the following:

(a) The public entity from the requirement to obtain an enforceable commitment that a bidder, contractor, or other entity will use a skilled and trained workforce to complete a contract or project.

(b) A bidder, contractor, or other entity from the obligation to use a skilled or trained workforce if such a requirement is imposed by a statute or regulation.

(Added by Stats. 2020, Ch. 347, Sec. 2. (AB 2311) Effective January 1, 2021.)

2601. For purposes of this chapter:

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

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

(c) "Graduate of an apprenticeship program" means either of the following:

(1) An individual that has been issued a certificate of completion under the authority of the California Apprenticeship Council for completing an apprenticeship program approved by the chief pursuant to Section 3075 of the Labor Code.

(2) An individual that has completed an apprenticeship program located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

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

(1) All the workers performing work in an apprenticeable occupation in the building and construction trades are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the chief.

(2) (A) For work performed on or after January 1, 2017, at least 30 percent of the skilled journeypersons employed to perform work on the contract or project by every contractor and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation. This requirement shall not apply to work performed in the occupation of teamster.

(B) For work performed on or after January 1, 2018, at least 40 percent of the skilled journeypersons employed to perform work on the contract or project by every contractor and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation, except that the requirements of subparagraph (A) shall continue to apply to work performed in the following occupations: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.

(C) For work performed on or after January 1, 2019, at least 50 percent of the skilled journeypersons employed to perform work on the contract or project by every contractor and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation, except that the requirements of subparagraph (A) shall continue to apply to work performed in the following occupations: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather,

**Skilled and Trained Workforce Requirements**

marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.

(D) For work performed on or after January 1, 2020, at least 60 percent of the skilled journeypersons employed to perform work on the contract or project by every contractor and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation, except that the requirements of subparagraph (A) shall continue to apply to work performed in the following occupations: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.

(3) For an apprenticeable occupation in which no apprenticeship program had been approved by the chief before January 1, 1995, up to one-half of the graduation percentage requirements of paragraph (2) may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation before the chief's approval of an apprenticeship program for that occupation in the county in which the project is located.

(4) The apprenticeship graduation percentage requirements of paragraph (2) are satisfied if, in a particular calendar month, either of the following is true:

(A) At least the required percentage of the skilled journeypersons employed by the contractor or subcontractor to perform work on the contract or project meet the graduation percentage requirement.

(B) For the hours of work performed by skilled journeypersons employed by the contractor or subcontractor on the contract or project, the percentage of hours performed by skilled journeypersons who met the graduation requirement is at least equal to the required graduation percentage.

(5) The contractor or subcontractor need not meet the apprenticeship graduation requirements of paragraph (2) if, during the calendar month, the contractor or subcontractor employs skilled journeypersons to perform fewer than 10 hours of work on the contract or project.

(6) A subcontractor need not meet the apprenticeship graduation requirements of paragraph (2) if both of the following requirements are met:

(A) The subcontractor was not a listed subcontractor under Section 4104 or a substitute for a listed subcontractor.

(B) The subcontract does not exceed one-half of 1 percent of the price of the prime contract.

(e) "Skilled journeyperson" means a worker who either:

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

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

(Amended by Stats. 2018, Ch. 882, Sec. 1. (AB 3018) Effective January 1, 2019.)

2602. (a) When a contractor, bidder, or other entity is required to provide an enforceable commitment that a skilled and trained workforce will be used to complete a contract or project, the commitment shall be made in an enforceable agreement with the public entity or other awarding body that provides both of the following:

(1) The contractor, bidder, or other entity, and its contractors and subcontractors at every tier, will comply with this chapter.

(2) The contractor, bidder, or other entity will provide to the public entity or other awarding body, on a monthly basis while the project or contract is being performed, a report demonstrating compliance with this chapter.

(b) If the contractor, bidder, or other entity fails to provide the monthly report required by this section, or provides a report that is incomplete, the public agency or other awarding body shall withhold further payments until a complete report is provided. If a monthly report is incomplete due to the failure of a subcontractor to timely submit the required information to the contractor, bidder, or other entity, the public agency or awarding body shall only withhold an amount equal to 150 percent of the value of the monthly billing for the relevant subcontractor. If a public agency or other awarding body withholds amounts pursuant to this subdivision, the contractor, bidder, or other entity shall be entitled to withhold the same amount from the subcontractor until the subcontractor provides the contractor, bidder, or other entity a complete report, and the public agency or awarding body subsequently pays the contractor, bidder, or other entity the withheld payments. If the contractor, bidder, or other entity substitutes a subcontractor pursuant to Chapter 4 (commencing with Section

**Skilled and Trained Workforce Requirements**

4100) for failure to provide a complete report, and the contractor, bidder, or other entity replaces the subcontractor with one that provides an enforceable commitment that a skilled and trained workforce will be used to complete the contract or project, the public agency or awarding body shall immediately resume making payments to the contractor, bidder, or other entity, including all previously withheld payments.

(c) If a monthly report does not demonstrate compliance with this chapter, the public agency or other awarding body shall do all of the following:

(1) Withhold further payments until the contractor, bidder, or other entity provides a plan to achieve substantial compliance with this chapter, with respect to the relevant apprenticeable occupation, prior to completion of the contract or project. All of the following shall apply to the withholding of payments under this paragraph:

(A) The public agency or awarding body shall withhold an amount equal to 150 percent of the value of the monthly billing for the entity that failed to comply with this chapter, or 150 percent of the value of the monthly billing for the subcontractor that failed to comply with this chapter. If a public agency or other awarding body withholds amounts pursuant to this paragraph, the contractor, bidder, or other entity shall be entitled to withhold the same amount from the subcontractor that did not demonstrate compliance with this chapter.

(B) If the contractor, bidder, or other entity substitutes a subcontractor pursuant to Chapter 4 (commencing with Section 4100) for failure to demonstrate compliance, and the contractor, bidder, or other entity replaces the subcontractor with one that provides an enforceable commitment that a skilled and trained workforce will be used to complete the contract or project, the public agency or awarding body shall immediately resume making payments to the contractor, bidder, or other entity, including all previously withheld payments.

(C) If a contractor, bidder, or other entity submits to the public agency or awarding body a plan to achieve substantial compliance with this chapter, the public agency or awarding body shall immediately resume making payments to the contractor, bidder, or other entity, including all previously withheld payments unless, within a reasonable time, the public agency or awarding body rejects the plan as insufficient and explains the reasons for the rejection.

(2) Forward a copy of the monthly report to the Labor Commissioner for issuance of a civil wage and penalty assessment in accordance with Section 2603.

(3) Forward to the Labor Commissioner a copy of the plan, if any, submitted by the contractor, bidder, or other entity to achieve substantial compliance with this chapter and the response to that plan, if any, by the public agency or awarding body.

(d) A monthly report provided to the public agency or other awarding body shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and shall be open to public inspection.

(Amended by Stats. 2018, Ch. 882, Sec. 2. (AB 3018) Effective January 1, 2019.)

2603. (a) If the Labor Commissioner or his or her designee determines after an investigation that a contractor or subcontractor failed to use a skilled and trained workforce in accordance with this chapter, the contractor or subcontractor responsible for the violation shall forfeit, as a civil penalty to the state, not more than five thousand dollars (\$5,000) per month of work performed in violation of this chapter. A contractor or subcontractor that commits a second or subsequent violation within a three-year period shall forfeit as a civil penalty to the state the sum of not more than ten thousand dollars (\$10,000) per month of work performed in violation of this chapter.

(b) For the purposes of this section:

(1) "Any interest" shall have the same meaning as in subdivision (h) of Section 1777.1 of the Labor Code.

(2) "Contractor or subcontractor" shall have the same meaning as in subdivision (g) of Section 1777.1 of the Labor Code.

(3) "Entity" shall have the same meaning as in subdivision (i) of Section 1777.1 of the Labor Code.

(c) The amount of any monetary penalty may be reduced or waived by the Labor Commissioner if the amount of the penalty would be disproportionate to the severity of the violation. The Labor Commissioner shall consider, in setting the amount of a monetary penalty, all of the following circumstances:

(1) Whether the violation was intentional.

(2) Whether the contractor or subcontractor has committed other violations of this chapter or of the Labor Code.

(3) Whether, upon notice of the violation, the contractor or subcontractor took steps to voluntarily remedy the violation.

**Skilled and Trained Workforce Requirements**

(4) The extent or severity of the violation.

(5) Whether a contractor or subcontractor submitted and followed a plan to achieve substantial compliance with this chapter.

(d) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741 of the Labor Code, upon determination of penalties assessed under subdivision (a). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742 of the Labor Code. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code, shall apply.

(e) The determination of the Labor Commissioner as to the amount of the penalty imposed under subdivision (a) shall be reviewable by the Director of Industrial Relations only for an abuse of discretion.

(f) If a subcontractor is found to have violated this chapter, 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 this chapter or unless the prime contractor fails to comply with any of the following requirements:

(1) For contracts entered into on or after January 1, 2019, the contract executed between the contractor and the subcontractor for the performance of work on the project shall include a copy of this chapter.

(2) The contractor shall periodically monitor the subcontractor's use of a skilled and trained workforce.

(3) Upon becoming aware of a failure of the subcontractor to use a skilled and trained workforce, the contractor shall take corrective action, including, but not limited to, retaining 150 percent of the amount due to the subcontractor for work performed on the project until the failure is corrected.

(4) Prior to making the final payment to the subcontractor for work performed on the project, the contractor shall obtain a declaration signed under penalty of perjury from the subcontractor that the subcontractor has met the requirements of this chapter.

(g) The Labor Commissioner shall notify the prime contractor within 15 days of the receipt by the Labor Commissioner of a complaint that a subcontractor violated this chapter.

(h) Whenever a contractor or subcontractor is found by the Labor Commissioner to be in violation of this chapter with intent to defraud, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period of not less than one year or more than three years to do either of the following:

(1) Bid on or be awarded a contract for a public works project.

(2) Perform work as a subcontractor on a public works project.

(i) Whenever a contractor or subcontractor is found by the Labor Commissioner to have committed two or more separate willful violations of this chapter within a three-year period, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period of up to three years to do either of the following:

(1) Bid on or be awarded a contract for a public works project.

(2) Perform work as a subcontractor on a public works project.

(j) The debarment procedures adopted by the Labor Commissioner pursuant to Section 1777.1 of the Labor Code shall apply to any finding made under subdivisions (h) or (i) of this section.

(k) The Labor Commissioner shall publish on the commissioner's Internet Web site a list of contractors who are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project pursuant to this section. The list shall contain the name of the contractor, the Contractors' State License Board license number of the contractor, and the effective period of debarment of the contractor. Contractors shall be added to the list upon issuance of a debarment order and the commissioner shall also notify the Contractors' State License Board when the list is updated. At least annually, the commissioner shall notify awarding bodies of the availability of the list of debarred contractors.

(1) (1) If a public entity or awarding body that is required to obtain an enforceable commitment that a skilled and trained workforce will be used to complete a contract or project receives a monthly report which does not demonstrate compliance with the skilled and trained workforce requirements of subdivision (c) of Section 10506.6, Section 10506.8, Section 10506.9, or subdivision (c) of Section 20928.2 of this code, Article 9 (commencing with Section 388) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, or subparagraph (B) of paragraph (8) of subdivision (a) of Section 65913.4

**Skilled and Trained Workforce Requirements**

or subparagraph (B) of paragraph (4) of subdivision (f) of Section 66201 of the Government Code, the public entity or awarding body shall forward a copy of the monthly report to the Labor Commissioner for issuance of a civil wage and penalty assessment in accordance with this section.

(2) The penalty and debarment procedures of this section shall apply to violations of subdivision (c) of Section 10506.6, Section 10506.8, Section 10506.9, or subdivision (c) of Section 20928.2 of this code, Article 9 (commencing with Section 388) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, or subparagraph (B) of paragraph (8) of subdivision (a) of Section 65913.4 or subparagraph (B) of paragraph (4) of subdivision (f) of Section 66201 of the Government Code.

(Added by Stats. 2018, Ch. 882, Sec. 3. (AB 3018) Effective January 1, 2019.)