



# L.H. WOODS AND SONS, INC.

*General Engineering Contractors*

## SUBCONTRACT AGREEMENT

CONTRACT NO. XXX-[Type text]  
Contract Start Date: [Type text]

**Subcontract Execution: This Subcontract must be executed by [Type text] and returned to LHWS no later than five (5) business days after receipt by [Type text].**

This Subcontract, made this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the Contractor and Subcontractor parties with reference to the Project and Owner described below.

Contractor has entered, or is about to enter, into a contract with \_\_\_\_\_, as Owner, for the construction of a project known as \_\_\_\_\_, located in the County of \_\_\_\_\_, California, in accordance with the terms and provisions of said contract, including the plans and specifications for said project and all other documents forming or by reference made a part thereof (collectively referred to herein as Contract Documents). This Subcontract shall become effective only if Contractor enters into a contract with Owner on the above referenced contract.

CONTRACTOR: L. H. WOODS & SONS, INC.  
2115 LA MIRADA DRIVE  
VISTA, CALIFORNIA 92081

SUBCONTRACTOR: [Type text]

PROJECT: [Type text]

OWNER: [Type text]



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## SECTION 1. SCOPE

Contractor and Subcontractor enter into this Subcontract for the scope of work, defined below, in accordance with the terms and provisions of this Subcontract and the agreement (“Prime Contract”) between the Owner and the Contractor, including all plans, drawings, specifications, special provisions, addenda, reference and other documents and data, prepared for or furnished by the Owner (collectively “Contract Documents”), all of which are incorporated and made part of this Subcontract. Subcontractor represents that it has obtained copies of the Prime Contract and all documents incorporated therein and is familiar with their contents.

The scope work of this Subcontract (“Subcontract Work”) is: [Type text]

Subcontractor shall furnish and pay for all labor, materials, tools, supplies, equipment and services required to perform the scope of work described in this Section 1, in strict accordance with the Contract Documents and the provisions of this Subcontract. Subcontractor shall comply with the terms and provisions of the Contract Documents applicable in any way to the work covered by this Subcontract, and Subcontractor shall be bound to Contractor in the same manner and to the same extent as Contractor is bound to the Owner under said Contract Documents, no matter where in said Contract Documents said obligation may be found. The Contract Documents are by this reference specifically incorporated into and made a part of the Subcontract.

## SECTION 2. SUBCONTRACT SUM

Subject to the all conditions and covenants in this Subcontract, Contractor agrees to pay Subcontractor [Type text] Dollars

(\$[Type text]), adjusted for changes, deletions or other modifications as provided under the terms of this Subcontract (“Subcontract Sum”). Subcontractor agrees to accept the Subcontract Sum as full compensation for doing all work, for furnishing all labor, equipment and materials, and for performing all obligations of this Subcontract.

ITEM DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL PRICE
			<b>TOTAL</b>	



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## SECTION 3. PAYMENT

### a. Progress Payments.

The Contractor will make periodic progress payments of part of the Subcontract Sum to Subcontractor, not more frequently than monthly, based upon the quantity of work satisfactorily installed, measured and approved for payment by the Owner and the Contractor. Subcontractor agrees to be bound by the Owner's measurement or determination of the quantity of work approved for progress payments, however, if Owner is not required or otherwise fails to measure or determine the quantity of work, Subcontractor agrees to be bound by Contractor's measurement of the quantity of work for progress payment.

Subject to provision of Section 3.d, Payment Conditions, (below, if Subcontractor is not in default and has satisfied all conditions precedent to payment as provided in this Subcontract Contractor will make progress payments to Subcontractor within seven (7) days following Contractor's receipt of payment from the Owner for the work performed under this Subcontract.

### b. Retention

As additional security for Subcontractor's satisfactory performance, Contractor may retain five (5%) percent from each progress payment, as retention. Contractor shall pay retention concurrent with final payment, as described below, or within the time otherwise required by law, whichever occurs first.

### c. Final Payment

Subject to provision of Section 3.d., Payment Conditions, below, if the Subcontractor is not in default and has satisfied all conditions precedent to payment as set forth in the Subcontract, upon final approval and acceptance of Subcontract Work by the Owner, Contractor will make final payment of the balance due under this Subcontract within seven (7) days following final payment by the Owner for the Subcontract Work. The acceptance by Subcontractor of final payment shall constitute a release by Subcontractor of all claims against Contractor and its surety arising under this Subcontract, except for written claims in stated amounts timely submitted to Contractor prior to final payment as provided in this Subcontract.

### d. Payment Conditions

(1) When requested by Contractor and as a condition precedent to any payment becoming due hereunder, Subcontractor shall furnish payroll affidavits, receipts, vouchers and appropriate releases of liens and bond claims from the Subcontractor, sub-subcontractors, materialmen, vendors, trust funds, and other persons or entities with respect to any payment made for labor, equipment or materials furnished or to be furnished by or on behalf of Subcontractor under this Subcontract, in form satisfactory to Contractor.

(2) If the Subcontractor has satisfied all other conditions for payment, but through no fault of the Subcontractor or the Contractor, the Owner delays payment or has failed to pay the Contractor for any work performed by the Subcontractor, the time allowed for the Contractor to pay the Subcontractor shall be extended for a reasonable period to allow the Contractor and its surety to initiate and exercise lawful means to obtain the payment from the Owner, including without limitation, dispute



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resolution or administrative procedures required under the Prime Contract and enforcement of lien and contract remedies. Payment to the Subcontractor shall be due within ten (10) business days after the Contractor has exhausted such lawful efforts to obtain payment from the Owner. Subcontractor shall cooperate with Contractor's effort to obtain such payments withheld by the Owner.

(3) No payment to Subcontractor shall constitute approval or acceptance of defects, errors or omissions in any work, services or materials furnished under this Subcontract. Payments based on actual quantities installed and accepted are subject to audit and final adjustments. Subcontractor agrees to reimburse Contractor in the event there is an overpayment.

(4) Contractor may deduct from any amounts due or to become due to Subcontractor any amount Subcontractor owes to Contractor on account of any obligation, liability or contract, related or not, to this Subcontract. Contractor may retain amounts, not to exceed the maximum allowed by law, sufficient to indemnify Contractor from any and all loss, damage or expense to offset any indemnity obligation under this Subcontract, or any actual or potential loss caused by any breach of this Subcontract. Subcontractor shall not be entitled to funds withheld until all causes for withholding have been cured or otherwise satisfied, at no cost to the Contractor.

(5) Contractor reserves the right to make payment by joint check or directly to any sub-subcontractors, vendors, materialmen or any other person or entity that has a right to bring an action against the Contractor or Contractor's surety for labor, equipment or materials furnished or to be furnished by or on behalf of Subcontractor. Payment made by joint check or directly under this paragraph shall be credited as payments made to Subcontractor.

e. Subcontractor agrees that the monies it receives for this project shall be a trust fund for the benefit and payment of sub-subcontractors, materialmen, vendors and other persons or entities that furnished labor, materials, equipment or services on behalf of the Subcontractor.

#### SECTION 4. CHANGES

a. Contractor may by written order signed by the Contractor's authorized representative, and without notice to Subcontractor's surety, make changes to the scope of work, including additions to and deletions from the work, all of which shall be subject to all the terms and conditions of this Subcontract. Subcontractor shall perform such changes as directed by the Contractor. Adjustment of the Subcontract Sum for additional compensation or credit for changes ordered by the Owner shall be based upon the method and limitations, if any, contained in the Contract Documents, otherwise by mutual agreement of the parties before commencement of changed work. If the parties cannot agree on the amount of the adjustment, Subcontractor shall nonetheless promptly proceed to perform the work as directed by the Contractor, and may submit a Notice of Claim as described below.

b. If a dispute arises between the Contractor and Subcontractor as to whether any particular work is a change authorized under Section 4, or as to the entitlement to or amount of any adjustment to the Subcontract Sum on account any directive by Contractor, Subcontractor must submit a written "Notice of Claim" to Contractor, immediately upon arising of the dispute but not later than three (3) days after commencing the performance of the disputed work or as provided in the Prime Contract, whichever is less. Subcontractor shall keep and submit to Contractor records to substantiate any adjustment in cost or time resulting from the change or the disputed work. As a minimum, Subcontractor shall prepare and submit a daily written accounting for time and materials incorporated into or resulting specifically from the



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change, and the cost thereof. The accounting shall include a labor breakdown by name of person, hours worked, and task performed for each employee performing said alleged extra work as well as a similar breakdown for all equipment used and copies of all invoices and delivery tickets for materials used. Timely Notice of Claim and maintaining and submitting of time and material records, as set forth in this Section 4, are conditions precedent to Subcontractor's right to claim additional compensation for any disputed change.

c. If Subcontractor claims or disputes any adjustment to the Subcontract Sum on account of changes initiated by or on account of directives, acts or omissions of the Owner, Subcontractor shall submit such claim timely and in a manner to enable Contractor to comply with any notice or other claim requirement specified in the Contract Documents. Contractor shall be liable to Subcontractor for any adjustment in the Subcontract Sum to the same extent, but only to the extent, that the Owner is liable to Contractor for changes to Subcontract Work.

d. Payment for additional compensation on account of directives or changes initiated by Owner shall be made only if Contractor receives a change order and payment from the Owner for changes to the Subcontract Work. Contractor shall be liable to Subcontractor only for the amount of the Owner's change order allocable to the Subcontractor for Subcontract Work. Amounts paid on account of changes are provisional and not an admission of liability and shall be repaid to Contractor on demand whenever Contractor determines there has been an overpayment. Credits or refunds for deletions or changes directed or ordered by the Owner shall not be less than the Owner is entitled to receive from the Contractor on account of the Subcontract Work affected by the change.

e. Payment for any changed or extra work to which Subcontractor may become entitled to under this section shall be made in accordance with the provisions of Section 3, PAYMENT, above.

### SECTION 5. SITE INVESTIGATION AND UNFORESEEN CONDITIONS

Subcontractor has examined and is familiar with the terms and conditions of the Contract Documents, is aware of subsurface and other conditions indicated in the Contract Documents, and taken all reasonable measures to investigate the nature, location and anticipated site conditions of the work. Subcontractor assumes the risk of any unanticipated site conditions and unforeseen difficulties or obstructions that might be encountered, and of any variances between the actual conditions and the conditions shown or indicated in the Contract Documents, except and only when the Contract Documents or laws provide the Contractor with a remedy for encountering differing site conditions, in which case, Contractor shall be liable to Subcontractor for differing site conditions affecting the Subcontract Work only to the extent that the Owner is liable to Contractor, and, provided further, that Subcontractor submits all necessary information and claims in a manner and in time to enable Contractor to comply with any notice or other claim requirements specified in the Contract Documents. It is further understood that the sole and only situation under which Subcontractor shall be entitled to extra payment for differing site conditions is when the Owner is similarly liable to Contractor.

### SECTION 6. SCHEDULE

a. TIME IS OF THE ESSENCE of this Subcontract. Subcontractor shall provide the Contractor with information necessary for the Contractor to incorporate reasonable sequences, dates and durations for the Subcontract Work into the Contractor's schedule for the project. Contractor shall establish reasonable dates, sequences and durations for all work on the project and, in case of conflicts,



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establish priority among different trades and tasks ("Contractor's Schedule"). Upon timely request from the Subcontractor, Contractor will consult and review the Contractor's Schedule, including revisions, with the Subcontractor before finalization of the Contractor's Schedule. The time allotted in the Prime Contract for completion of all work shall not necessarily be equivalent to the overall duration for the Subcontract Work; and the Subcontractor shall not be entitled to utilize float associated with other project work in the Contractor's Schedule without prior authorization from the Contractor. In case of any disagreement, Contractor's decision on schedule shall be final. Subcontractor shall prosecute the work in a prompt and diligent manner and in accordance with Contractor's Schedule and all revisions made hereto, and shall not delay, interfere with or hinder the work of Contractor or any other subcontractor. If the Subcontractor fails, without excuse permitted by this Subcontract, to comply with the Contractor's schedule, upon direction from the Contractor, Subcontractor shall provide additional work forces, overtime, additional shifts and shall expedite the furnishing of materials so as to bring its progress into compliance with the Contractor's Schedule at no additional cost to the Contractor.

b. In the event Subcontractor's performance is actually delayed by any act, neglect or default of Contractor or the Owner, or for any reason that entitles the Contractor to an extension of time under the Prime Contract, the time for completion of the Subcontract Work may be extended. If the cause of delay to the Subcontractor entitles the Contractor to a time extension under the Prime Contract, Subcontractor must provide a written request promptly to Contractor for a time extension to allow the Contractor to submit such request timely and in proper form to the Owner to comply with the Contract Documents. In all other cases, Subcontractor must submit its written request for excusable time extensions to the Contractor within two (2) working days from the commencement of the cause of the delay. The written request for time extension, as required in this Section is a condition precedent to Subcontractor's entitlement to a time extension for any cause.

c. If delay is caused by or the responsibility of the Owner, Subcontractor shall not be entitled to recover from Contractor any additional compensation or damages, and the extension of time granted by the Owner to the Contractor shall be the sole remedy of Subcontractor for any delay caused to the Subcontract Work, unless Contractor receives additional compensation from the Owner on behalf of the Subcontractor for those delays. In that latter event, Contractor shall be liable to Subcontractor for such delays only to the extent that the Owner pays Contractor for Subcontractor's cost of delays to Subcontract Work. Subcontractor shall comply with all claims procedures contained in the Contract Documents and in this Subcontract pertaining to compensable and non-compensable time extensions. Payment of such compensation will be made pursuant to Section 3, Payment, above.

d. In the event any delay to Subcontractor's performance is due to the fault of Contractor, Contractor shall be liable to Subcontractor only for such delays that are directly caused by Contractor, critical to completion dates established for the Prime Contract, and that are actual, unavoidable, and unreasonable under the circumstances involved, and no other. Unless compensated by the Owner under the Prime Contract, Subcontractor shall not be entitled to compensation for any delay caused by the Contractor that occurs concurrent with any non-compensable delay.

## SECTION 7. CLAIMS AND DISPUTES

a. All disputes or claims between Contractor and the Owner that directly or indirectly involve the work performed by Subcontractor and all disputes or claims between Contractor and Subcontractor which directly or indirectly involve a claim against the Owner for additional compensation or an extension of time shall be decided by the dispute resolution procedure, including arbitration, specified in the





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Contract Documents. If the Contract Documents contain no procedure for claims resolution, all such disputes or claims shall be resolved as provided otherwise in this Subcontract. Disputes or claims that involve the Owner, shall be subject to decisions, findings or determinations made or authorized in the Contract Documents, or by an administrative agency, arbitrator or court of competent jurisdiction, whether or not Subcontractor is a party to the proceedings before said person, agency, arbitrator or court.

b. As to any claim reasonably and timely asserted by Subcontractor for additional compensation, return of withheld payments, time extensions or damages arising from any act, directive or omission of the Owner, including any defects or deficiencies in the Owner-furnished plans and specifications: (1) upon Subcontractor's timely request, Contractor shall present and take reasonable steps to pursue and prosecute Subcontractor's claim for payment by the Owner; and (2) Subcontractor agrees that it shall be entitled to receive compensation or relief for such claim only to the extent that the Owner is liable to Contractor on account of Subcontractor's claim. Subcontractor covenants that it will not sue or bring any action against Contractor or Contractor's sureties on any such claim, unless Contractor fails to pay to Subcontractor, in accordance with the provisions of the subcontract, any monies recovered by Contractor from the Owner on account of Subcontractor's claim. It is expressly understood and agreed as to any claim or dispute based on act or omission of the Owner that, as to any and all work done and agreed to be done by Subcontractor, and as to any and all materials or services furnished or agreed to be furnished by Subcontractor, and as to any and all damages, if any, incurred by Subcontractor, Contractor shall never be liable to Subcontractor to any greater extent than Owner is liable to Contractor.

c. Contractor's obligation to present and prosecute any dispute or claim of Subcontractor involving any act, directive or omission of the Owner, is subject to each of the following conditions: (1) Subcontractor must deliver notice and claim timely in accordance with this Subcontract; (2) Subcontractor must provide all supporting data and proofs necessary to establish the validity and amount of the claim; (3) Subcontractor must to pay all costs and expenses, including attorneys fees, associated with the pursuit and prosecution of the Subcontractor's share of any claim against the Owner; (4) Subcontractor must comply with all of the terms and conditions of the Contract Documents and this Subcontract relating to the submission and processing of disputed claims, including any certification required by Contractor in accordance with the Contract Documents; (5) Subcontractor must certify under oath that its claim is made in good faith, with reasonable justification and knowledge, is not a false claim within the meaning of applicable law and does not otherwise violate any law; and (6) Subcontractor shall indemnify and defend and hold Contractor harmless from all expense, costs, backcharges, penalties, damages and attorneys' fees incurred by the Contractor on account of the Subcontractor's claim.

d. If Contractor disputes, prosecutes or defends any claim involving the Subcontract Work or Subcontractor's performance or conduct, and Subcontractor is not directly a party or litigant, Subcontractor agrees to cooperate fully with Contractor and to furnish all documents, statements, witnesses and other information required by Contractor for such purpose and shall pay or reimburse Contractor for all expenses and costs, incurred both internally and to outside entities, including reasonable attorneys' fees and consultant fees, incurred in connection therewith to the extent of Subcontractor's interest in or responsibility for such claim or dispute.

e. Subcontractor agrees that no claim, dispute or controversy shall interfere with the progress and performance of work required to be performed under this Subcontract and that Subcontractor shall continue to perform and proceed with its work under the Subcontract during such



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claim, dispute or controversy, and that any failure of Subcontractor to continue and proceed with its work shall be a default and material breach of this Subcontract, entitling Contractor to all remedies available in the event of breach, including termination.

### SECTION 8. RISK OF LOSS

a. Subcontractor shall be responsible for its own work, property and/or materials until completion and final acceptance of the entire project by the Owner, and shall bear the risk of any loss or damage until such completion and acceptance. In the event of loss or damage, Subcontractor shall proceed promptly to make repairs or replacement of the damaged work, property and/or materials at its own expense, as directed by Contractor. Subcontractor waives all rights Subcontractor might have against Contractor for loss or damage to Subcontractor's work, property or materials, unless caused by the active negligence or willful misconduct of Contractor, it being understood that Subcontractor waives all right of indemnification for damage caused by the passive negligence of Contractor.

b. If performance of the Subcontract Work requires use of any machinery, equipment, tools, scaffolding, hoists, lifts or similar items belonging to, leased by or under the control of Contractor, ("Contractor's equipment") Subcontractor shall be responsible for any loss or damage to Contractor's equipment and for any loss or damage caused by use of Contractor's equipment in Subcontract Work, except where such loss or damage shall be due solely to the active negligence or willful misconduct of Contractor employees operating Contractor's equipment.

### SECTION 9. INSURANCE

Subcontractor shall provide and maintain, at its own expense, insurance policies with responsible carriers approved to do business in the state of California which have a rating of not less than A: VII in the edition of the Best's Key Rating Guide current as of the date the policy is obtained, or otherwise acceptable to Contractor, as set forth in Schedule A, attached:

### SECTION 10. BONDING

a. If required by Contractor, Subcontractor shall furnish a Performance Bond and a Payment Bond each in an amount equal to the full Subcontract Sum. Such bonds shall be in a form satisfactory to Contractor and shall be executed by a corporate surety acceptable to Contractor. The premium on such bonds will be paid by Contractor per invoice at cost unless otherwise expressed in writing. If Contractor demands such bonds before work commences, Subcontractor shall not perform any work until it has furnished such bonds and until said bonds have been accepted by Contractor. If the bond is requested it shall be a condition precedent to this Subcontract being fully executed.

b. No change, alteration or modification in the terms and conditions of this Subcontract or in the terms, manner or amount of payment shall in any way exonerate or release, in whole or in part, any surety on any bond furnished by or on behalf of Subcontractor.

### SECTION 11. INDEMNITY

a. To the fullest extent of the law and except as otherwise prohibited or limited by law. Subcontractor will indemnify, defend and hold harmless the Contractor, Owner and Contractor's surety and their respective officers, agents, employees, partners, subsidiaries and affiliates (collectively





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"Indemnitees"), from all alleged or actual claims, liabilities, allegations, actions, damages, penalties, cost, expense and attorneys' fees (collectively "Indemnified Claims") arising from the acts or omissions or the performance of or failure of performance of any obligations of the Subcontractor and any person or entity for whom the Subcontractor is responsible under this Subcontract regardless of any passive negligence by Contractor or Owner. The indemnity shall apply to any act, omission, negligence, or willful misconduct, on the part of Subcontractor, its principals, employees, sub-subcontractors, vendors and suppliers, and to any passive negligence on the part of any of the Indemnitees in connection with Subcontractor's operations. The Subcontractor shall indemnify the Contractor to the same extent that the Contractor is required to indemnify the Owner under the Contract Documents in relation to Subcontractor's operations. The provisions for indemnity, this Section 11 apply to all Indemnified Claims described in this Section 11, below, and elsewhere in this Subcontract, and shall survive the termination of the Subcontract or the completion of the Subcontract Work. Restrictions or limitations defined in Cal. Civil Code §2782.05 shall apply to the indemnity provided by the Subcontractor and nothing in this Subcontract waives or modifies the provisions of Cal. Civil Code §2782.05 including, but not limited to, the prohibition against a Subcontract being required to defend and indemnify a contractor, construction manager or other subcontractor from its active negligence or willful misconduct.

b. Indemnified Claims include without limitation:

(1) Personal injury, including, but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to, any employees or agents of Subcontractor, Owner, Contractor, or any other subcontractor and/or damage to property of anyone (including loss of use thereof), caused or alleged to be caused in whole or in part by any act or omission of Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable regardless of whether such personal injury or damage is caused by any of the Indemnified Parties.

(2) Penalties imposed on account of the violation of any applicable law, order, citation, rule, regulation, standard, ordinance or statute.

(3) Patent and Copyright violations as provided in Section 13.

(4) Lien claims as provided in Section 12.

(5) Failure to perform any obligation under this Subcontract.

(6) Failure of Subcontractor to comply with the provisions of Section 9, Insurance.

(7) Violation of any applicable law, order, citation, rule, regulation, standard, ordinance or statute in any way relating to labor compliance, affirmative action, unlawful discrimination, occupational health and safety, environmental protection, and use of hazardous materials.

c. Indemnity for Indemnified Claims brought by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, shall not be limited by amount or type of damages, compensation or benefits payable by or for the Subcontractor or a sub-subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.



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d. Subcontractor shall include the terms and conditions of this Section into all of its agreements with sub-subcontractors and vendors used for the Subcontract Work.

### SECTION 12. LIEN CLAIMS

As used in this Subcontract a "Lien Claim" means any claim of lien, stop-notice, equitable lien or any other demand for payment or security, including a claim to enforce any surety bond ("Lien Claim"), made by any person or entity demanding payment for labor, services, trust fund contributions, materials, equipment, taxes or other items furnished for the Subcontract Work. Except for Subcontractor's claim for payments otherwise properly due and payable from the Contractor, as provided in this Subcontract, Subcontractor shall immediately take all steps necessary to satisfy or discharge such Lien Claims, including without limitation, procuring at its own expense an appropriate release bond to replace and remove any such Lien Claim and Subcontractor will indemnify and defend the Contractor and its sureties against any and all loss, liability, damage, cost and expense, and attorney's fees in connection therewith. In addition to indemnity rights, Contractor may retain from any payment then due or thereafter to become due to Subcontractor an amount sufficient to satisfy, discharge and defend against any Lien Claim or other demand, action or proceeding thereon which may be brought to judgment or award, and to compensate Contractor for any other damages suffered by the Contractor resulting from Lien Claims.

### SECTION 13. PATENTS AND TRADEMARKS

Subcontractor agrees to indemnify, hold harmless and defend the Contractor, Owner, the Contractor's surety and their respective officers, agents, employees, partners, subsidiaries and affiliates against all damages, claims, lawsuits, expense and attorneys' fees and losses of any kind relating to common law, statutory and other intellectual property rights, including patent or copyright, arising out of the Contractor's or Owner's use of all goods and services provided by the Subcontractor, including without limitation all design process, procedures and documents for the design and manufacture of products furnished by Subcontractor. In the event that any equipment, process or procedure employed by or on behalf of the Subcontractor is held to constitute an infringement of any claim of any United States or foreign patent, trademark, trade name, copyright or similar right, or its use enjoined, the Subcontractor shall, at its option and without compensation: (i) procure for the Contractor and Owner the right to continue using said equipment, processes or procedures; (ii) replace it with a substantially equivalent non-infringing, equipment, process or procedure; or (iii) promptly modify the equipment, process or procedure so that it becomes non-infringing.

### SECTION 14. WARRANTY

Subcontractor warrants and guarantees the work and materials covered by this Agreement shall be of good quality and in conformance with the Contract Documents, and agrees to make good, at Subcontractor's own expense, any defect in materials or workmanship, including the restoration of work of Contractor or other subcontractors that has been affected thereby and further agrees that 1) Subcontractor shall furnish and pay for all written guarantees and/or maintenance bonds required by the Contract Documents in connection with Subcontractor's work, and 2) unless and until Contractor is released from responsibility by Owner, Contractor may withhold payment from Subcontractor such sums as, at Contractor's sole discretion, are necessary to indemnify Contractor for any loss that may be caused by breach of said warranty or guarantee.



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### SECTION 15. USE OF SITE BY CONTRACTOR AND OTHERS

a. It is understood and agreed that the work provided for in this Agreement constitutes only a part of the work being performed for the Owner by Contractor and other subcontractors. Subcontractor, therefore, agrees to perform the work called for in this Agreement in such a manner that it will not injure or damage any other work performed by Contractor or any other subcontractor, and further agrees to pay Contractor for any damage that may be caused to such other work by Subcontractor or by its agents or employees.

b. Whenever it may be useful or necessary for Contractor to do so, Contractor shall be permitted to occupy and/or use any portion of the work which has been either partially or fully completed by Subcontractor before final inspection and acceptance thereof by the Owner, but such use and/or occupancy shall not relieve Subcontractor of its guarantee of said work and materials nor of its obligation to make good, at its own expense, any defect in materials and workmanship which may occur or develop prior to Contractor's release from responsibility by the Owner. Subcontractor shall not be responsible for the maintenance of such portion of the work as may be used or occupied by Contractor, nor for any damage thereto that is due to or caused by the active negligence or willful misconduct of Contractor during such period of use. Subcontractor agrees further that if it shall cause any stains, blemishes, imperfections, marks or damage of any sort whatsoever, whether to its work or to the work of Contractor or to the work of another subcontractor, it will immediately remedy the damage so caused to the satisfaction of Contractor.

c. If the scope of work includes installation of materials or equipment furnished by others or work to be performed in areas to be constructed or prepared by others, Subcontractor shall examine the materials, equipment and area upon first access and before installation and use. Subcontractor shall deliver promptly to the Contractor all written objections to the acceptability of the materials or equipment or area after inspection. Use of any materials, equipment or area without objection, shall constitute acceptance by the Subcontractor who shall be responsible for handling, storage and installation of the materials and equipment and use of the areas in conformance with the Contract Documents, and shall bear the risk of loss or damage to such materials, equipment or areas until acceptance or release by the Owner and Contractor.

### SECTION 16. PROTECTION OF WORK AND CLEAN UP

a. Subcontractor shall effectually secure and protect the work done hereunder and assume full responsibility for the condition thereof until final acceptance by Architect, Owner and Contractor. Subcontractor further agrees to provide such protection as is necessary to protect the work and the workmen of Contractor, Owner and other subcontractors from its operations.

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

c. Subcontractor shall perform any and all cutting and patching necessary in connection with Subcontract Work and agrees that such cutting and patching shall be done in a manner so as to match other work performed by others on the project.



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d. Subcontractor shall provide appropriate facilities at all reasonable times for inspection of the Subcontract Work by Contractor and the Owner, whether at the Project site or any other place where such Subcontract Work may be in preparation, manufacture, storage or installation.

e. Subcontractor shall perform its work so that the premises shall at all times be neat, orderly and free from debris. Upon termination or completion of its work, Subcontractor shall remove all unused materials and all equipment, utilities and facilities use or furnished by Subcontractor, clean up all refuse and debris, and leave the premises clean, orderly and in good condition.

### SECTION 17. LABOR COMPLIANCE

a. Subcontractor is an independent contractor and is solely responsible and liable for payment of all federal and state taxes and insurance and contributions measured by payroll, wages, salaries or other compensation paid to Subcontractor's employees.

b. Subcontractor shall comply with all applicable equal employment opportunity, affirmative action and anti-discrimination requirements prescribed by the Contract Documents and by all applicable Federal, State or local laws and regulations related to Subcontract Work, including without limitation, California Government Code 12940. Subcontractor agrees to be bound by applicable Federal, State or local laws and regulations applicable to use and compensation of labor. Subcontractor shall pay the scale of minimum wages prescribed in the Contract Documents or the scale prescribed by law if the Contract Documents prescribe no such scale.

c. Subcontractor hereby acknowledges that it is thoroughly familiar with all minority and disadvantaged business enterprise ("DBE/MBE/WBE/DVBE/UDBE") laws and regulations pertaining to the project. If the Subcontractor claims status as a DBE/MBE/WBE/DVBE/UDBE, the Subcontractor shall take all steps necessary and shall make all necessary records available to the Contractor and the Owner to assure that Subcontractor is in compliance with such requirements. In the event that any sub-subcontractor or supplier of the Subcontractor is designated as or is required to be a DBE/MBE/WBE/DVBE/UDBE, Subcontractor agrees to be responsible for insuring that said sub-subcontractor or supplier meets all applicable requirements. Subcontractor acknowledges that Contractor is relying upon Subcontractor's representations regarding the validity of Subcontractor's status, if any, as a DBE/MBE/WBE/DVBE/UDBE and that misrepresentation of the status of Subcontractor or any of its sub-subcontractors or material suppliers is a material breach of this Subcontract and grounds for immediate termination. In the event of termination as the result of material misrepresentation of the status of the Subcontractor as a DBE/MBE/WBE/DVBE/UDBE, Subcontractor shall not be entitled to any compensation not already paid until it is determined that Contractor will have no liability for Subcontractor labor compliance issues above and amount that is more than the amount otherwise owed at which time any difference between the labor compliance liability and the amount otherwise owed will be paid without interest.

d. Subcontractor shall comply with and agrees to be bound by all applicable federal, state and local laws and regulations, including, but not limited to, all provisions of the Fair Labor Standards Act, the Americans With Disabilities Act, the federal Family and Medical Leave Act, the California Labor Code, the California Fair Employment and Housing Act, and the California Family Rights Act. Subcontractor shall submit certified payroll records to Contractor no later than three (3) working days after labor has been paid. The provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 are incorporated into this subcontract through Exhibit 1 when payment of prevailing



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wages is required by contract or law, and Subcontractor agrees to comply with these provisions and all interpretations thereof by the Director of the Department of Industrial Relations insofar as they are applicable to Subcontractor on this project. See, Exhibit 1, attached. Prior to receiving final payment, Subcontractor shall execute an affidavit pursuant to Labor Code Section 1775 certifying under oath that Subcontractor has paid the specified general prevailing rate of per diem wages to its employees and any amounts due pursuant to Section 1818 and an affidavit pursuant to Labor Code Section 1777.7 certifying under oath that Subcontractor has employed the required number of apprentices on the Project.

e. Unless otherwise exempt by the rules, regulations, or order of the Secretary of Labor issued pursuant to Section 3 of Executive Order 13496, federal regulations under 29 CFR Part 471, Appendix A to Subpart A are incorporated and made part of this subcontract. Subcontractor agrees to comply with said regulations and shall include similar requirement in all agreements with sub-subcontractors, vendors and suppliers.

f. Subcontractor shall require each of its sub-subcontractors and vendors to comply with all such applicable laws, rules, regulations and standards.

### SECTION 18. DEFAULT

a. Subcontractor shall be in default if Subcontractor or any its sub-subcontractors or vendors refuses or neglects to supply a sufficient number of properly skilled workmen or a sufficient quantity of materials or otherwise fails to properly and diligently prosecute the Subcontract Work, or fails to make prompt payment of any obligation to others, including laborers and materialmen, arising from its performance of this Subcontract, or otherwise breaches a material provision of this Subcontract. If the Subcontractor fails, within forty eight (48) hours after written request by Contractor, to initiate and commence immediately steps satisfactory to the Contractor to correct the default, Contractor may, at its option, without taking over the work, 1) provide any necessary labor, equipment and materials at the expense of Subcontractor; or 2) terminate Subcontractor's right to further perform under this Subcontract and complete the performance of Subcontract Work at the expense of Subcontractor. As used in this Section the word "expense" shall be defined to mean actual direct cost to Contractor, including reasonable costs for overhead and profit of not less than fifteen percent (15%) of direct costs, plus attorneys' fees, incurred as a result of Subcontractor's failure to perform or default. If Contractor terminates Subcontractor's right to perform under this Subcontract, Contractor shall have the right to use any materials, tools or equipment furnished by or belonging to Subcontractor to complete the subcontract work without any compensation to Subcontractor for such use, and Subcontractor shall not be entitled to receive any further payment under this Subcontract until the remaining work has been completed and Contractor has received payment in full from the Owner, at which time, if the unpaid balance of the amount to be paid under this Subcontract exceeds the expense incurred by Contractor in finishing the work, such excess shall be paid to Subcontractor, but if such expense shall exceed the unpaid balance, then Subcontractor shall pay the difference to Contractor.

b. It is agreed that Subcontractor shall be considered unable to prosecute the Subcontract Work upon the appointment of a receiver for Subcontractor or if Subcontractor makes an assignment for the benefit of creditors or seeks protection under the Bankruptcy Code or commits any act of insolvency and, in such event, Contractor may terminate this Subcontract upon giving forty eight (48) hours written notice and may avail itself of all remedies provided for in the preceding paragraph. If an order for relief is entered under the Bankruptcy Code with respect to Subcontractor, Contractor may likewise terminate this Subcontract upon giving forty eight (48) hours written notice to Subcontractor or its trustee, if any,





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unless Subcontractor or its trustee promptly cures all defaults, provides adequate assurance of future performance and timely assumes the obligations of Subcontractor.

c. If Subcontractor fails to furnish the materials or perform the work required by this Subcontract within the time fixed and/or in the manner provided for herein, and such default causes delay to the Project or to portions of the work, Subcontractor shall be responsible for all liquidated damages assessed against and collected from Contractor by the Owner, and for such other and additional costs and damages incurred by the Contractor by reason of Subcontractor's default.

d. In the event it is determined that a termination under this Section 18 was improper or wrongful, said termination shall then be deemed to be and converted to a termination for convenience pursuant to Section 24.

### SECTION 19. SAFETY AND HAZARDOUS MATERIALS

a. Subcontractor shall comply with all laws, orders, citations, rules, regulations, standards and statutes pertaining to occupational health and safety, the use and storage of hazardous materials, accident prevention, and safety equipment and practices associated with the Subcontract Work. Subcontractor shall also comply with any accident prevention and safety program established by Contractor and/or Owner for the project. Before performing any work. Subcontractor shall conduct its own investigations to determine and satisfy itself that safe working conditions and equipment exist for its employees and for employees of its sub-subcontractors and suppliers of material and equipment, for the adequacy and required use of all safety equipment and for full compliance with the aforesaid laws, orders, citations, rules, regulations, standards and statutes. Subcontractor shall report to the Contractor, immediately in writing, any violation of law or unsafe working conditions that pertains to its work.

b. If Subcontractor intends to use or supply any material or mixture which is designated as a hazardous substance under any law, Subcontractor shall comply with all requirements of said law, and, in the use of any such substance, shall strictly adhere to all manufacturer's warnings and application instructions. Subcontractor shall notify Contractor of any hazardous substance that Subcontractor intends to supply to or use on the project and shall furnish, at its own expense, any information which may be requested by Contractor concerning such substance.

c. Subcontractor shall indemnify, defend and hold harmless Contractor, its sureties, and the Owner, and their officers, agents and employees from all claims, penalties, damages, liability, loss, costs and expenses, including attorneys' fees, which may result by reason of Subcontractor's failure to comply with or violation of any such law, order, citation, title, regulation, standard or statute.

### SECTION 20. SUBMITTALS

Subcontractor shall promptly supply to Contractor all drawings, plans, specifications, samples or detail work required by this Subcontract, or by Contractor, on account of work to be done. Submittals shall fully conform to the requirements of the Contract Documents pertaining to the Subcontract Work and shall satisfy all representations Contractor is required to make as a condition of such submittals. Contractor's use of Subcontractor's submittals shall not constitute approval in detail or conformity of such drawings, plans, specifications, samples or detail work with the design drawings or the specifications for the Project. If any such drawings, plans, specifications, samples or detail work as submitted by Subcontractor, whether or not approved by Owner's architect or engineer, deviate from or are



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inconsistent with the Contract Documents for the Project, Subcontractor shall hold Contractor harmless from, indemnify and pay Contractor for all cost, expense and damages resulting therefrom.

### SECTION 21. TAXES AND PERMITS

Except as otherwise provided by the Contract Documents or this Subcontract,

a. Subcontractor shall pay for and comply with all Federal, state and local contributions, taxes, duties or premiums, and all sales, use or other duties or taxes, of whatever nature, including any interest or penalties on account of the Subcontract work whether or not imposed after execution of this Subcontract. Unless the Contractor is entitled to additional compensation under the Prime Contract, Subcontractor shall have no claim for additional compensation because of any increase in the cost of complying with this Section; and

b. Subcontractor shall obtain and pay for all permits, licenses, fees and certificates of inspection necessary for the prosecution and completion of Subcontract Work. Subcontractor shall arrange for all necessary inspections and approvals by public officials.

### SECTION 22. NOTICE

Written notice, where required by the terms of this Subcontract, may be accomplished by personal service of said notice, by use of the United States mail, overnight courier, or by facsimile transmission. Electronic messaging (e-mail) shall not constitute sufficient form of notice. The written notice shall become effective upon receipt by the party being served. Personal service may be made by delivering the notice to the senior representative of the party at the project site or to a person in charge at the office address of the party set forth in this Subcontract. Service by mail, overnight courier or facsimile transmission, shall be sent to the party at its office address set forth herein.

### SECTION 23. LABOR AGREEMENTS

a. Contractor has entered or may enter into the following labor agreements covering work at the construction jobsite including but not limited to the following labor unions: Laborers; Operators; Carpenters; and Teamsters as referenced in Exhibit 2 of the Subcontract.

b. Subcontractor agrees to be bound to and comply with all of the terms and conditions of all Contractor's Labor Agreements, as described in Exhibit 2, attached, and any other collective bargaining agreements that the Subcontractor or Contractor may be required to enter into under for the Subcontract Work, including, without limitation, wage, trust fund contributions, working rules, the grievance/ arbitration procedure and any other mechanism for the resolution of disputes covered by such agreements.

c. Subcontractor, to the extent permissible under Federal and any applicable State laws, shall comply with, observe, and be bound by all the terms and provisions of any Contractor's Labor Agreements, specifically including the terms and provisions of any such agreements providing (a) for the assignment of work or the settlement of jurisdiction disputes (through the Rules, Regulations and Procedures of the National Joint Board for Settlement of Jurisdictional Disputes in the Building and Construction Industry or other agreed method for the determination of work assignments or the settlement of jurisdictional disputes), (b) for the adjustment of any other disputes or grievances, (c) for hiring and union security and (d) for the making of payments into or under health and welfare or other



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fringe benefit funds or plans, to the extent that the terms and provisions of such agreements can legally be applied to the work to be done hereunder.

d. Subcontractor further shall require all of its sub-subcontractors performing jobsite Subcontract Work covered by all Contractor's Labor Agreements to become bound to and comply with all of the terms and conditions of each applicable Contractor's Labor Agreement to the same extent as required of Subcontractor, and shall include an express provision imposing such obligation upon each agreement with such sub-subcontractor.

e. Subcontractor will indemnify, defend and save Contractor harmless from and against any liability, claim, loss, damage or cause of action, cost, expense and attorneys' fees resulting in any way, directly or indirectly, from its failure to comply with the requirements of this paragraph.

### SECTION 24. TERMINATION FOR CONVENIENCE

Contractor may terminate all or part of this Subcontract for convenience and without cause upon three (3) days written notice to Subcontractor. Upon receipt of such notice, Subcontractor shall discontinue the work and cease orders for materials, and shall, if requested, use commercially reasonable efforts to cancel all existing orders and agreement with sub-subcontractors and vendors upon terms satisfactory to Contractor. At the sole option of Contractor, Contractor shall have the right to assume any one or all of the Subcontractor's agreements with sub-subcontractors and vendors at no additional cost to the Contractor. Upon termination, Subcontractor shall perform work necessary only to preserve and protect the work already in place and to demobilize from the site. If the Owner has terminated all or any part of Contractor's contract with the Owner, and if the Subcontractor is not then in default under the terms of this Subcontract, the Subcontractor shall be entitled only to the amount Owner pays to Contractor, as provided in the Contract Documents, specifically for the Subcontract work terminated. Otherwise, upon termination by the Contractor for convenience, if the Subcontractor is not then in default under the terms of this Subcontract, Subcontractor shall be entitled only to (1) the reasonable costs, not to exceed the Subcontract Sum, actually incurred by Subcontractor to the date of termination that would have been compensable under this Subcontract and the Contract Documents plus markup of 15% for all overheads and profits on such costs; and (2) reasonable costs of termination including costs to protect the work completed and procure cancellation of existing subcontracts or orders. In any case of termination for convenience, there shall be deducted from such computed compensation the amount of any payments made to Subcontractor prior to the date of such termination and any amounts chargeable to Subcontractor pursuant to any provision of the Contract. Subcontractor shall not be entitled to any additional compensation or damages, including consequential damages from Contractor by reason of, or as a result of, such termination.

### SECTION 25. ASSIGNMENT

Any assignment or delegation, by operation of law or otherwise, in whole or in part, by Subcontractor of the work to be performed under this Subcontract or of any payment or any claim arising hereunder, without the prior written consent of Contractor, shall be void. The making of any assignment by Subcontractor or any consent thereto by Contractor shall in no event relieve Subcontractor, or its surety, of any of their obligations, duties, responsibilities or liabilities under this Subcontract.

### SECTION 26. MISCELLANEOUS



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- a. The term "Subcontract Work" means all labor, equipment, materials and services within the scope defined in Section 1, SCOPE, furnished for the project by Subcontractor, or its sub-subcontractors, suppliers, vendors or any other person or entity acting under direction or on behalf of the Subcontractor.
- b. Subcontractor is an independent contractor and shall, at its own expense, comply with all federal, state and local laws, ordinances, regulations, and rules governing the work, will obtain and pay for all permits, licenses, and pay for all taxes, employer obligations and employee benefits as necessary to conduct its business and to perform its obligations under this Subcontract, and shall furnish proof of compliance with all such obligations upon reasonable request from the Contractor.
- c. This Subcontract shall be governed by and construed in accordance with the laws of the State of California, unless otherwise restricted by law.
- d. In the event any provision of this Subcontract is thus held unenforceable or inoperative, the remaining provisions of this Subcontract shall nevertheless remain in full force and effect to the extent permitted by law.
- e. Except for any dispute or claim that is subject to determination by a claim resolution procedure as provided in Section 7, CLAIMS AND DISPUTES, all disputes or claims between Contractor and Subcontractor arising out of or relating to this Subcontract, or breach thereof, shall be resolved by litigation in a court of law, and, to the extent permitted by law the parties expressly waive the right to a trial by jury. Venue for any suit or action brought in California to resolve such disputes or claims shall be in San Diego County, California.
- f. In any action or proceeding between the parties to enforce the provisions in this Subcontract, the prevailing party shall be entitled to recover its reasonable expert and attorneys' fees.
- g. Waiver by Contractor of any breach hereof by Subcontractor shall not constitute a waiver of any subsequent breach of the same or any other provisions hereof. If any provision of this Subcontract, or any part thereof, shall at any time be held to be invalid, in whole or in part, under any applicable Federal, State, Municipal or other law, ruling or regulation, then such provision shall remain in effect to the extent permitted, and the remaining provisions hereof shall remain in full force and effect.
- h. Words used in this Subcontract in the present tense include the future as well as the present; words used in the neuter gender include the feminine and masculine; the singular number includes the plural, and the plural the singular. The Subcontract shall be read and interpreted as a whole; headings or descriptions used within this Subcontract are for the convenience of the reader and do not restrict the terms of the whole Subcontract to portions bearing such headings or descriptions.
- i. This Subcontract contains all covenants, stipulations and provisions agreed upon by the parties hereto, and supersedes any prior proposal, understanding or Subcontract. No agent or representative of either party has authority to make, and the parties shall not be liable for, any statement, representation, promise or Subcontract not set forth herein. No other agreements, representations, warranties, or other matters, oral or written, shall be deemed to bind the parties unless made in writing and executed by an authorized representative of the parties after the date of this Subcontract.



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### SECTION 27. ADDITIONAL PROVISIONS:

1. [Type text]
2. Subcontractor is required to obtain and keep updated all USA/Dig Alert tickets for any excavation work and provide copies of the ticket numbers to Contractor.
3. Subcontractor agrees to obtain and pay for a business license for the appropriate project jurisdiction(s).
4. Subcontractor shall comply with the State Permit for Storm Water Discharge Associated with Construction Activity during all phases of its construction and complete, implement or maintain the storm water pollution production plan (SWPPP) as provided in Specification or be subject to damages for each calendar day that the Subcontractor fails to comply.
5. Subcontractor will ensure that in its employment practices persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
6. Subcontractor shall attend the weekly L. H. Woods & Sons, Inc. weekly safety meetings. Subcontractor shall prepare and discuss will all appropriate field personnel Job Hazard Analyses (JHA's) for each non-routine work task performed on the project by the Subcontractor and shall submit copies of each JHA to the Contractor. The Job Hazard Analysis is a Step by Step analysis of a non-routine task, process or operation that will answer the following questions; the purpose of the job and what has to be done; what activities are involved; sequence of basic job steps; potential hazards, and most importantly recommendations for hazard elimination or control.
7. Subcontractor shall maintain a neat appearance to its work. The affected project streets and any adjacent ingress/egress street affected by the Subcontractor's activities shall be kept clean at all times.





L.H. WOODS AND SONS, INC.  
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IN WITNESS WHEREOF, the parties hereto have executed this Subcontract the day and year first above written.

_____	L. H. WOODS & SONS, INC.
SUBCONTRACTOR	CONTRACTOR
By: _____	By: _____
Print Name: _____	Print Name: <u>James D. Woods, Jr.</u>
Title: _____	Title: <u>President</u>
Date: _____	Date: _____
Address: _____	Address: <u>2115 La Mirada Drive</u>
_____	<u>Vista, CA 92081</u>
Phone: _____	Phone: <u>(760) 599-5500</u>
Fax: _____	Fax: <u>(760) 599-5510</u>
Contractor's License Number _____	Contractor's License Number: <u>213353</u>

*IN THE STATE OF CALIFORNIA, CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT IS FILED WITHIN THREE YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA 95826.*

**EXHIBIT 1**

**ADDENDUM FOR CALIFORNIA PUBLIC WORKS PROJECTS**

Subcontractor agrees to comply with all applicable provisions of California Labor Code, specifically, but not limited to, Sections 1771, 1775, 1776, 1777.5, 1813, and 1815 which are set forth below. In addition to all other conditions required by this subcontract, Subcontractor shall provide Contractor with an affidavit, signed under penalty of perjury, as described in Cal. Labor Code § 1775(b)(4) and shall indemnify, defend and hold Contractor and its surety harmless from all claims, losses or liabilities, including attorney fees, for damages, forfeitures, fines, penalties, assessments and costs on account of Subcontractor's failure to comply with the applicable provisions of the California Labor Code.

**§1771. Payment of general prevailing rate**

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

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. Penalties for violations**

(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. Payroll records; retention; inspection; noncompliance penalties; rules and regulations**

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

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

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

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

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

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

(f)(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. Employment of registered apprentices; wages; standards; number; apprenticeable craft or trade; exemptions; contributions**

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

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

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

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

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

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

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

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

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

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

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ



apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the 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 that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

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

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

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

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

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

(4) Assignment of an apprentice to any work

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

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

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

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

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

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

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Department of Industrial Relations for the administration and enforcement of apprenticeship standards and requirements under this code.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Upon appropriation by the Legislature, all moneys in the Apprenticeship Training Contribution Fund shall be used for the purpose of carrying out this subdivision 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. Forfeiture for violations; contract stipulation; report of violations**

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

**§1815. Overtime**

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

## EXHIBIT 2

### CONTRACTOR'S LABOR AGREEMENTS

Contractor has entered or may enter into the following labor agreements covering work at the construction jobsite including but not limited to the following labor unions: Laborers; Operators; Carpenters; and Teamsters as referenced in Section 23 of the Subcontract.

(1) Agreement with the Southern California District Council of Laborers and its affiliated Local Union 89: San Diego Laborers AGC Master Labor Agreement for Engineering Construction, effective July 1, 2012 to June 30, 2016 ("Master Labor Agreement"). The subcontractor acknowledges and agrees that a copy of the Master Labor Agreement is available to subcontractor.

Subcontractor agrees that, as an essential condition to entering into this Subcontract, it shall be bound to and shall comply with all of the terms and conditions of the Master Labor Agreement referenced above, including wages, trust fund contributions, working rules, the grievance/arbitration procedure and any other mechanism for the resolution of dispute contained in the Master Labor Agreement, on all covered work performed in the geographic area of the Master Labor Agreement. Subcontractor agrees that it shall be bound to the Master Labor Agreement, commencing with the first hour of work performed by its employees on this Project, and shall be bound to the Master Labor Agreement for all its construction work, whether or not the work is performed for the Contractor, for the duration of the Master Labor Agreement, and until timely terminated pursuant to the terms of the Master Labor Agreement for the duration of successor Master Labor Agreements.

Subcontractor further agrees to bind and all its subcontractors performing job site work of the type covered by the Master Labor Agreement referenced above to become bound and comply with all of the terms and conditions of the Master Labor Agreement.

Subcontractor acknowledges that the Southern California District Council of Laborers and its affiliated Local Union 89, and the Construction Laborers Trust Funds for Southern California, are the intended third party beneficiaries of this contractual provision and may enforce this provision directly against Subcontractor.

## SCHEDULE A INSURANCE

This Schedule A amends Section 9 of the Subcontract and supersedes any conflicting terms and conditions of the Subcontract.

### SECTION 9. INSURANCE

a. Policies and Limits. Subcontractor shall provide and maintain, at its own expense, insurance policies with responsible carriers approved to do business in the state of California which have a rating of not less than A: VII in the edition of the Best's Key Rating Guide current as of the date the policy is obtained, or otherwise acceptable to Contractor, of the following types and amounts:

(1) Workers' Compensation and Employer's Liability. Workers' Compensation, which shall comply with the statutory requirements of the state in which the work is being performed; and Employer's Liability Insurance with policy limits of: a) \$1,000,000 each accident for bodily injury by accident, b) \$ 1,000,000 policy limit for bodily injury by disease, and c) \$ 1,000,000 each employee for bodily injury by disease. U.S. Longshore and Harborworkers Compensation Act Endorsement and Maritime Coverage Endorsement shall be provided when Subcontractor performs any work applicable under such policies.

(2) Commercial General Liability Insurance. Commercial General Liability Insurance (CGL) in the following coverages (including but not limited to (i) personal injury; (ii) products liability; (iii) completed operations for at least ten (10) years after termination of services; (iv) Premises and Operations; (v) broad form property damage including but not limited to damage to property caused by explosion or resulting from collapse of buildings or structures, damage to underground structures and utilities; (vi) liability for slander, false arrest, and invasion of privacy arising out of construction operations; and (vii) blanket contractual liability), subject to policy terms, conditions, exclusions and limits of liability, but excluding Automobile Liability, in limits applicable specifically to the Project of not less than One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) aggregate for each policy year for combined personal injury or death and property damage, subject to an aggregate for products liability and completed operation for each policy year of Two Million Dollars (\$2,000,000). The combined aggregate limits of the Commercial General Liability Policy shall be made fully applicable to the Project by an appropriate endorsement unless issued on a project basis. Subcontractor shall not provide general liability insurance under any Claims Made General Liability form without the express written consent of Contractor. CGL shall be written on ISO Occurrence form CG OO 01 10/01 or equivalent.

If Subcontractor performs work within 50 feet of any railroad, Subcontractor shall provide an endorsement to delete the Contractual Liability exclusion for work performed within 50 feet of a railroad.

(3) Automobile Liability. Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence for combined personal injury or death and property damage. This insurance shall apply to all owned, non-owned or leased automobiles and trucks to be used by Subcontractor in the performance of the Subcontract. Automobile liability insurance shall include coverage for all damage resultant from discharge or generation of hazardous materials or waste including MCS 90 and CA9948.

(4) Pollution. If Subcontractor's work involves generating, use, disposition or handling of any hazardous waste or materials, Subcontractor shall procure a "Contractor's Pollution Liability" policy with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for Bodily Injury, Personal Injury, and Property Damage,

(5) Rigger's and Aircraft Liability. If Subcontractor's work involves the moving, lifting, lowering, rigging or hoisting of property or equipment, Subcontractor shall provide Rigger's Liability Insurance to insure against physical loss or damage to the property or equipment. If Subcontractor uses any owned, leased, borrowed, chartered or hired aircraft of any type in the performance of this subcontract, Subcontractor shall procure aircraft liability insurance in an amount of not less than \$10,000,000 per occurrence, including Passenger Liability.

(6) Professional Liability. If the Subcontractor's work requires participation of a licensed

professional, including without limitation, architect, engineer, surveyor, or other person whose qualifications to perform the Subcontractor's work, the Subcontractor shall procure and maintain professional liability insurance covering all professional duties undertaken by the Subcontractor under this Subcontract. Such insurance shall be claims-made insurance and shall have a limit of not less than One Million Dollars (\$1,000,000) for each claim and in the aggregate including but not limited to defense costs for the design firm's negligent acts, errors, or omissions in performing professional services included in the design work. The limit of liability shall be maintained during the duration of the Project (unless it is reduced by the payment of covered claims) and for a period of five (5) years after Substantial Completion of the Project. The insurance shall include a deductible no greater than Fifty Thousand Dollars (\$50,000) for each claim for which the design firm is responsible. The policy shall contain standard industry terms, conditions and exclusions. The policy shall be retroactive to the date Subcontractor commenced Work on the Project. The Professional Liability policy shall include an extended notification period, or such insurance shall be maintained, for not less than five years after completion of the Project.

(7) Excess Liability. Excess Liability Insurance coverage in the amount of at least Five Million Dollars (\$5,000,000), or Ten Million (\$10,000,000) for tunneling work, covering at a minimum the risks covered by the policies described in Section 16.a. (2) and 16.a. (3).

b. Subtier Providers. Subcontractor shall require and provide insurance with coverages, limits, terms, and conditions, specified in this Section 16 from all subtier contractors, major vendors, and consultants engaged by Subcontractor to perform any of the work under this Subcontract.

c. Additional Insureds. Except for Professional Liability and Worker's Compensation Insurance, all policies shall include an endorsement identifying the following Indemnitees, as additional insureds, evidenced by amendatory riders or endorsements (Form Nos. CG 20 10 10 01 or CG 20 33 10 01, and CG 20 37 10 01) or equivalents), attached to the policies which shall indicate that, as respects the Indemnitees, there shall be severability of interests under said insurance policies for all coverages. The coverage under these policies shall be primary to any insurance carried independently by the Indemnitees. The duty to provide such additional insured coverage is independent of the defense and indemnity obligations set forth in this Subcontract.

Indemnitees:

- (1) L.H. WOODS AND SONS, INC., and its Subsidiaries.
- (2) The Directors, Officers, Representatives, Agents, Subcontractors and Employees of the above.
- (3) [Type text], its Board, each member of the Board, its Officers, employees, and agents are designated as additional insured.

d. Evidence of Insurance; Other Policy Requirements. Each policy of insurance required to be provided and maintained by Subcontractor shall be in form and content satisfactory to Contractor. Subcontractor shall furnish to Contractor certificates of the insurance policies required to be maintained by Subcontractor within ten (10) days after the execution of this Subcontract and shall furnish or cause each Subcontractor's Consultant to furnish to Contractor certificates of the insurance policies required to be maintained by it prior to the commencement of Subcontractor's work on the Project. Upon request by Contractor, Subcontractor shall provide, promptly, a copy of such insurance policies, which must be in form and content acceptable to Contractor. Such certificates shall provide for the delivery to Contractor of at least thirty (30) days prior written notice of cancellation or non-renewal. If the certificate does not so provide, the policies shall be endorsed (Form IL 12 01 11 85 or equivalent) to provide thirty (30) days' notice of cancellation and a copy of the endorsement shall be provided Contractor. If the certificate does not provide for notice of cancellation to Contractor and the policy has not been endorsed to provide notice of cancellation, then the Subcontractor shall be responsible for notifying the Contractor of cancellation of any policy within three (3) days from the date Subcontractor becomes aware that the policy will be cancelled or not renewed. In addition, Subcontractor agrees that for the duration of Subcontractor's obligations under this Subcontract, Contractor, at its sole and exclusive election, may inquire directly of the Subcontractor's insurer and agents about the status and coverages of insurance required under this Subcontract. By execution of this Subcontract, Subcontractor authorizes the Contractor to make such inquiries. Except for specified excess coverage, each policy of insurance maintained by Subcontractor and Subcontractor's Consultants shall, to the extent applicable to the particular coverage (a) provide that such insurance is primary insurance as regards all other policies of insurance providing coverage to such additional insureds; (b) provide that any other insurance maintained by Contractor is excess and non-contributing insurance with that required herein; and (c) contain a "Cross-Liability" or "Severability of Interest" provision.



e. Assistance, Cooperation and Waiver of Subrogation. The parties shall assist and cooperate with each other in every manner possible in connection with the adjustment of all insurance claims arising out of the performance of this Subcontract and shall cooperate with the insurance carrier or carriers in litigated claims and demands, whether resulting in litigation, which the insurance carrier or carriers are called upon to adjust or resist. Contractor and Subcontractor hereby waive, and Subcontractor shall cause Subtier Providers, as applicable, to waive any and all rights to subrogation against the other, the Owner, their agents, employees and representatives for any loss or damage to such waiving party to the extent: (a) such loss or damage arises from any cause or type of peril covered by any insurance required to be carried by such waiving party pursuant to this Subcontract or any other insurance actually carried by such waiving party; and (b) of the amount the insurer actually pays with respect to such loss or damage under the insurance policy. Contractor and Subcontractor shall take reasonable steps to have their respective insurers to issue appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with this Subcontract.

f. Property Insurance. The Contractor or others may, but are not required by this Subcontract, to provide Property Insurance (Builder's Risk) covering against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, false work, testing and start-up, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, including reasonable compensation for Subcontractor's and Contractor's services and expenses required as a result of such insured loss. If such insurance is provided and also applies to any of Subcontractor's property or property in the care, custody or control of Subcontractor, Subcontractor shall be responsible for the insurance policy deductible amount applicable to damage to Subcontractor's work and/or damage to other work caused by Subcontractor.

The Subcontractor and Contractor waive all rights against each other and the and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered property insurance, if any, obtained pursuant to this Section and they actually receive insurance proceeds to cover such loss. These waivers of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

The Contractor shall have power to adjust and settle a loss with insurers under insurance provided under this Section.

g. Requirements of the Prime Contract. The requirements of the prime contract, applicable to the Subcontractors' work shall apply to the extent that they exceed the minimum requirements defined above.