

# **SUBCONTRACT AGREEMENT**

MADE THIS DAY, \_\_\_\_\_, by and between **AZTEC CONSULTANTS**,  
 whose business address is 2021 Omega Rd., Suite 200, San Ramon,  
 California, 94583, whose license number is 659133, hereinafter called "Contractor,"  
 and \_\_\_\_\_ herein after called "Subcontractor"

Address: \_\_\_\_\_

City: \_\_\_\_\_

Lic. No.: \_\_\_\_\_ Tax I.D. No. \_\_\_\_\_

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

Project address: \_\_\_\_\_

Architect/Engineer: \_\_\_\_\_

Owner: \_\_\_\_\_

Whereas Contractor has entered into a contract hereinafter called the "Prime Contract" with the Owner to construct the above noted project pursuant to the plans and specifications prepared by the above noted

***Architect/Engineer***  
and,

WHEREAS, Subcontractor desires to perform certain items or portions of the work specified in the Prime Contract and Contractor is willing to subcontract such work to Subcontractor at the price or prices stated herein and upon the terms and conditions set forth in this contract;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound, it is agreed as follows:

- GENERAL SCOPE:** Subcontractor agrees, for the subcontractor price or prices set forth below, to perform, supply, furnish and pay for all plant and jobsite labor, supervision, administration, material, equipment, drawings, transportation, tools, and other facilities, services, supplies and things necessary and incidental to fully perform and complete all work as hereinafter described, or as may be directed by change order, in strict accordance with the terms and provisions of the Prime Contract and with any and all such agreements or documents (including but not limited to the instruction to bidders, general conditions, special conditions, plans, specifications, addenda and exhibits) made a part of the Prime Contract incorporated therein by reference, attachment, or otherwise; said Prime Contract and all such documents constituting a part thereof being hereby incorporated herein by reference, to the extent applicable to the work to be performed hereunder by Subcontractor.

Subcontractor, as to the performance of this Subcontract, is bound to the Contractor and owner by the terms and requirements of the Prime Contract (to the extent of those pages and sections thereof attached hereto, or identified on Exhibit "A" hereto), and assumes toward Contractor and Owner all of the obligations and responsibilities that Contractor thereby assumes toward the Owner.

- SUBCONTRACT WORK, PRICE AND TIME:** Subcontractor agrees to perform the work, hereinafter called the "Subcontract Work," set forth on Exhibit "A" hereto, for the price or prices, herein after called the "Subcontract Price," and within any agreed finish dates (see also Section 6 hereof), there indicated.

3. **BONDS:** Performance and Payment Bonds will be furnished by the Subcontractor at his expense, only if required as specified under Exhibit "A". When such bonds are to be furnished, the Surety Company providing said bonds must be approved by the Contractor
4. **PAYMENT:** The Subcontract Price shall be subject to additions or deductions for changes as hereinafter provided. Unless otherwise herein provided, progress payments (computed on the basis of the prices set forth herein, for the quantity, as approved by the Architect or Engineer, for the Subcontract Work performed, less the aggregate of previous payments, and retainage in the same percentage as withheld by the Owner), will be made to Subcontractor within five (5) business days after receipt of payment by Contractor from the Owner. Upon complete performance of this Subcontract by Subcontractor, and final approval and acceptance of the Subcontractor Work by the Owner, Architect, Engineer and Contractor, Contractor will make final payment to Subcontractor for the balance due under this Subcontract within five (5) calendar days after full payment for such work has been received by Contractor from the Owner. Payment by Contractor to Subcontractor or for its account shall not be deemed to be an admission or approval by Contractor of the sufficiency of the work covered by the payment, nor shall any payment constitute a release of Subcontractor from any liability or obligation hereunder. Subcontractor agrees to submit to Contractor applications for payment and related documentation, as provided for in the Prime Contract or other Contract Documents, so as to enable Contractor to apply for payment to the Owner. Said applications for payment must be submitted in a timely manner.

As a condition precedent to any payment, or otherwise upon demand, Contractor may require of Subcontractor conditional or unconditional, partial or full (as appropriate) lien releases (pursuant to Section 3262 of the Civil Code of the State of California), and satisfactory evidence as to the status of Subcontractor's accounts relating to this Subcontract, including a verified statement setting forth the names of all its subcontractors and suppliers, the amounts of each such subcontract and purchase order, the amount paid and the amounts due and payable. Contractor reserves the right to make checks payable jointly to Subcontractor and any of its suppliers or subcontractors. Contractor may deduct from any amounts due or to become due to Subcontractor any sum or sums owed by Subcontractor to Contractor or other Vendors in regard to this Subcontract.

In the event of the existence or assertion by any other party of any claim or demand (whether in the nature of a mechanic's lien, stop notice or otherwise) arising out of or relating to Subcontractor's performance hereunder, against Contractor, the Owner or the Project, in addition to other remedies provided herein, Contractor shall have the right to withhold from any payments due or to become due Subcontractor pursuant to this Subcontract an amount sufficient to completely protect and make whole Contractor from any and all loss, damage, liability or expense related thereto, subject to Subcontractor's right to submit release bonds, pursuant to the Civil Code of State of California, in which event any retained monies affected thereby shall be paid to Subcontractor.

5. **ADDITIONAL PROVISIONS: THE PROVISIONS SET FORTH ON ANY PAGES ATTACHED TO THIS SUBCONTRACT AGREEMENT ARE HEREBY INCORPORATED IN AND MADE A PART OF THIS SUBCONTRACT. THIS SPECIFICALLY INCLUDES ALL ATTACHED EXHIBITS. CONTRACTOR EXPRESSLY PROHIBITS AND REJECTS ANY MODIFICATIONS MADE TO THE TERMS AND CONDITIONS CONTAINED IN ANY OF THE CONTRACT DOCUMENTS UNLESS EXPRESSLY ACCEPTED BY CONTRACTOR IN WRITING PRIOR TO SUBCONTRACTOR BEGINNING ITS WORK.**
6. **TIME OF PERFORMANCE:** Subcontractor agrees to keep itself, its employees, agents, second tier subcontractors and material suppliers fully informed as to the progress of the project and to faithfully prosecute the Subcontractor Work and the several parts thereof, at such times and in such order as necessary to keep sufficiently in advance of the other parts of the Project and to avoid any delay to other subcontractors or to the completion of the project as a whole. In the event that Subcontractor fails to maintain his part of the schedule, it shall, without additional compensation, accelerate its work as Contractor may direct until Subcontractor's work is in accordance with the schedule. Any agreed finite dates for completion are identified on Exhibit A hereto, and time is of the essence for all work in this Subcontract. Subcontractor shall follow the progress of the Project, be prepared to commence work when notified, follow the latest progress schedule, and be responsible for any and all damages caused by or attributed in whole or part by its delay, including liquidated damages assessed under the terms of the Prime Contract.

No claims for additional compensation or damages for delays, whether caused in whole or in part by any conduct on the part of Contractor, including but not limited to, conduct amounting to a breach of this Subcontract, or delays by other subcontractors or Owner, shall be recoverable from Contractor unless Contractor obtains additional compensation from Owner on account of such delays. In such case, Subcontractor shall be entitled to such portion of the additional compensation as is equitable under all of the circumstances and shall assist and fully cooperate with Contractor in the prosecution of such claim and pay an equitable portion of the attorney's fees, expert's fees and costs incurred to the extent requested by Contractor.

Subcontractor's sole remedy for delays caused by any negligent act or omission by Owner, Architect or Contractor or events beyond its control shall be an extension of time in which to complete its work. However, no extension shall be granted which prevents Contractor from completing the entire project within the time allowed by Owner.

**7. INSURANCE:**

- (a)** Subcontractor shall provide and maintain at all times during the performance of this Subcontract:
  - (1)** Worker's Compensation and Employer's Liability insurance for protection of Subcontractor's employees, as required by law and complying with the Insurance Certificate Checklists – Attachment 1 incorporated herein by reference;
  - (2)** Comprehensive General Liability insurance (including completed operations coverage) in the amount not less than a combined single limit of \$1,000,000.00, or its equivalent complying with the Insurance Certificate Checklist – Attachment 1 incorporated herein by reference;
  - (3)** Automobile Liability, including owned, not-owned, leased and hired automobiles. Not less than \$1,000,000.00 combined single-limit for Bodily Injury and Property Damages complying with the Insurance Certificate Checklist – Attachment 1 incorporated herein by reference. If amounts greater or coverage is different that the foregoing are specifically set forth in the Prime Contract or in this Subcontract, such greater amounts or differing coverage shall be provided.
- (b)** Subcontractor shall furnish Contractor a certificate that such insurance is provided and in full force and effect before starting work and it shall be subject to the requirements that Contractor and Owner must be notified by thirty (30) days prior written notice (certified mail, return receipt requested) before cancellation, lapse and/or material change of any such policy. In the event of cancellation and/or lapse for nonpayment of premium, Contractor may, at its sole discretion, either terminate this Subcontract for default, or provide such insurance coverage for Subcontractor and deduct the cost of same from amounts then or subsequently owing to Subcontractor hereunder. Contractor and Owner shall be named as additional insured (form 20 10 11 85) in regard to the Comprehensive General Liability and Automobile Liability insurance coverage referred to above and in the Insurance Certificate Checklist – Attachment 1. Failure of Contractor to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at a later date.
- (c)** If neither Owner nor Contractor have purchased Builder's Risk insurance, insuring the Subcontract Work, less a reasonable deductible, then Subcontractor may request Contractor to procure same and, if elected by Contractor, the cost thereof shall be paid to Subcontractor by Contractor.

**8. INDEMNIFICATION:** To the extent permitted by law, Subcontractor shall indemnify, defend and save harmless, Contractor and Owner (including their respective owners, agents, employees, affiliates, parents and subsidiaries) of and from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, expert's fees, losses or liability, in law or in equity, of every kind and nature (hereinafter Claims) arising out of or in any way connected to Subcontractor's operations to be performed under this Subcontract for, but not limited to:

- (1)** Personal injury, including but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to 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 in part by a party indemnified hereunder;
- (2)** Penalties imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance or statute, caused by an act or omission of Subcontractor;
- (3)** Infringement of any patent rights which may be brought against Contractor and/or Owner arising out of Subcontractor's work;
- (4)** Claims and liens for labor performed or materials used or furnished to be used on the job, all incidental or consequential damages resulting to Contractor and/or Owner from such claims or liens;

(5) Subcontractor's failure to fulfill the terms and conditions of the Labor Relations provisions of this Subcontract;

6) Failure to comply with the Insurance provisions of this Subcontract; and

7) Any violation or infraction by Subcontractor of any law, order citation, rule, regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees, including, but not limited to, the use of Contractor's or other's equipment, hoist, elevators, or scaffolds. The indemnification provisions (1) through (7) above shall extend to Claims occurring after this Subcontract is terminated as well as while it is in force and apply regardless of any active and/or passive negligent act or omission of Contractor, Owner or their respective agents or employees, however, Subcontractor shall not be obligated under this Subcontract to indemnify Contractor nor Owner for Claims arising from the sole negligence nor willful misconduct of Contractor or Owner. Subcontractor's indemnity obligations shall not be limited in any way by any obligation or duty Contractor owes Owner nor by the presence or absence of any insurance coverage.

Subcontractor shall, at its own cost, expense and risk, defend all Claims that may be brought or instituted by third persons, against Contractor, Owner and their respective agents, employees or any of them; pay and satisfy any judgment or decree that may be rendered against Contractor, Owner and their respective agents, employees or any of them arising out of such Claim; and/or reimburse Contractor, Owner and their respective agents or employees for any and all legal expense incurred by any of them in connection herewith or in enforcing the indemnity granted in this section. Contractor and Owner shall have the right to retain separate counsel of their own choosing in defending any such claims at Subcontractor's expense.

9. **PROTECTION OF THE SUBCONTRACT WORK:** Subcontractor shall bear full responsibility for the protection of the Subcontract Work and shall promptly remedy (to the reasonable satisfaction of the Architect, Owner and Contractor) any damage thereto occurring prior to the acceptance thereof, provided however that to the extent such damage is caused by Owner, Contractor or other subcontractors of Contractor, Subcontractor shall be reimbursed by Contractor for the cost of remedying such damage to the extent Contractor recovers said cost through back charges.
10. **CHANGES:** Contractor may, at any time, and without notice to Subcontractor's sureties, make changes (including additions or deletions) in the Subcontract Work by either: written agreement with Subcontractor prior to commencing with the change, which written agreement shall specify the changes and the increase or decrease, if any, in the time of performance and/or Subcontract Price; or, by written directive to the Subcontractor to proceed with changes in the Subcontract Work, without prior agreement as to any adjustment in the time of performance or Subcontract Price. If directed to proceed by Contractor's authorized representative, the Subcontractor must submit to the Contractor, within ten (10) calendar days from receipt of such directive, written notice of any claim for adjustment to the Subcontractor Price or Contract time. The Subcontractor shall not be entitled to any adjustment in the Subcontract Price or time relating to changes unless such changes were made pursuant to written agreement or written directive received by Subcontractor from an officer of the Contractor's corporation prior to commencing the work.
11. **DELAY:** If Subcontractor should default in performance of the work or should otherwise commit any act or omission which causes delay to the prime contract work, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages and liquidated damages, sustained by Contractor, or for which Contractor may be liable to Owner or any other party because of Subcontractor's default. If such delay is not the fault of Owner, Contractor, Subcontractors or its suppliers, but is the result of causes beyond the control of Subcontractor, then the Subcontractor's Subcontract time shall be equitably adjusted without additional compensation. No additional time shall be allowed to Subcontractor for any delay prior to ten (10) calendar days from when Subcontractor first gives written notice of the causes delay to Contractor.
12. **NOTICE:** All notices required of the parties under this Subcontract shall be in writing and delivered personally to the Project Manager or Superintendent of the party receiving such notice, or by certified mail, return receipt requested, addressed to the parties at the address set forth previously in this Subcontract.
13. **ARBITRATION:** Upon demand by Owner upon Contractor or by Contractor to Subcontractor, Subcontractor is bound to arbitrate any disputes, controversies, or claims between Owner, Contractor and Subcontractor, arising out of or relating to this Subcontract Agreement, in accordance with the Construction Industry Arbitration Rules then in effect of the American Arbitration Association. Arbitration shall provide all rights of discovery pursuant to California Code of Civil Procedure and the arbitration hearing shall follow same and California Evidence Code.

The Arbitration award shall be final and binding upon the parties and judgment may be entered upon such award in any court having jurisdiction. Nothing in this provision shall be construed to limit in any manner Subcontractor's right-of-stop notice, or right against any security interest of any type or nature whatsoever. Unless otherwise agreed in writing, Subcontractor shall carry on the work and maintain the schedule of work pending arbitration, legal or administrative action.

14. **CLEAN UP:** Subcontractor shall at all times keep the Project site free of rubbish, debris, waste and/or surplus material resulting from its operations, and shall turn over the Subcontract Work in such condition as to permit the next succeeding or intervening work to be commenced without further cleaning. If Subcontractor fails to comply with the provisions of this paragraph, Contractor shall have the right itself or through others, after giving two (2) working days prior written notice to Subcontractor, to perform such cleaning and to charge the actual cost thereof to Subcontractor.
15. **DEFAULT BY SUBCONTRACTOR:** If Subcontractor refuses or fails to supply enough properly skilled workers, proper materials, or to maintain the schedule of work, or fails to make prompt payment to its workers, sub-subcontractors or suppliers, disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a breach of this Subcontract, and fails within three (3) working days after receipt of written notice of such default to commence and continue satisfactory correction of such default with diligence and promptness, then Contractor, in its sole discretion, without prejudice to any other rights and remedies it may have, shall have the right to any or all of the following remedies:
  - (a) Supply or contract for such number of workers and quantity of materials, equipment and other facilities as Contractor deems necessary for the completion of the Subcontract Work, or any part thereof which Subcontractor has failed to complete, correct or perform after the aforesaid notice.
  - (b) Withhold payment of any monies due Subcontractor pending corrective action.
  - (c) In the event of an emergency creating a risk to persons or property, Contractor may proceed as set forth above in (a) and (b) without prior notice.
  - (d) Terminate this Subcontract and use any materials, implements, equipment, appliances or tools furnished by or belonging to Subcontractor to complete the Subcontract Work. All of the costs incurred by Contractor in so performing Subcontractor's Work, including reasonable overhead, profit and attorney's fees, shall be deducted from monies due to or to become due Subcontractor. Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Price.

Contractor's election of any of these remedies shall not relieve Subcontractor of any of its duties nor responsibilities under this Subcontract.

16. **ASSURANCES:** If at any time Contractor has reasonable doubt as to the ability of the Subcontractor to perform or to continue to perform its duties hereunder because of financial, labor, or other reason, Contractor may request from Subcontractor reasonable written assurances of ability to perform hereunder, and such assurances shall be provided with ten (10) calendar days of receipt of demand for same. Failure to provide said assurance shall be considered as default hereunder.
17. **ASSIGNMENTS:** This Subcontract may not be assigned without the express written consent of Contractor. Any attempted assignment shall be null and void and be considered a material breach of this Subcontract.
18. **WARRANTIES AND GUARANTEES:** Subcontractor warrants and guarantees the workmanship and materials covered by this Subcontract to be new and free from defect in material or workmanship which may occur or develop prior to Contractor's release from responsibility to the Owner therefore or within any statutory period prescribed by law. Subcontractor warrants that title to all work materials and equipment covered by an application for payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment therefore by Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances.
19. **USE OF OTHER PARTIES' FACILITIES:** If Subcontractor, by rental, loan or otherwise, makes use of any of Contractor's material, vehicles, equipment, tools, ladders, scaffolding, fall protection, safety equipment or other appliances or facilities, Subcontractor agrees to accept same "as is" and such use shall be at its sole risk and Subcontractor hereby agrees to hold harmless and indemnify Contractor from and against all expenses (including attorney's fees and expert's fees), damages and liabilities of every nature arising from or relating to its use thereof except for any damages caused by the sole negligence or willful misconduct of Contractor.
20. **INDEPENDENT CONTRACTOR AND COMPLIANCE WITH LAW:** The relationship of Subcontractor to Contractor during the term of this Subcontract shall be that of an independent contractor. Nothing in the Contract Documents

shall be construed to deem Subcontractor to be an employee, nor agent of Contractor. Subcontract shall properly report and pay all Social Security, state unemployment, welfare benefits, fringe benefits, sales and use taxes, licenses and fees, and all other taxes and assessments of every nature applicable to work by Subcontractor, its agents and employees. Subcontractor shall obtain and pay for all permits and licenses relating to the Subcontract Work and shall comply with all applicable laws, statutes, ordinances and regulations of any Federal, State or local government, department, agency or administration concerned, including but not limited to those pertaining to wages, hours and other conditions of employment, labor polices, environmental protection, the keeping of records, the making of reports and returns, the obtaining of licenses and permits, and the payment of taxes, levies and assessments of every nature.

21. **EQUAL OPPORTUNITY:** If the Prime Contract contains any provisions which prohibits discrimination on the basis of race, color, religion, sex, handicap or national origin, or if any law, regulation or order relating to Equal Employment Opportunity or Affirmative Action has any application thereto and is applicable to this Subcontract, then Subcontractor hereby agrees to comply with such provisions, laws, regulations or orders and to execute all necessary documentation required in connection with said laws. In the event that the Prime Contract or any provision, law regulation or order requires the physical attachment of specific wording to this Subcontract, then such attachments shall be furnished by Contractor and shall be considered a part of this Subcontract.
22. **TERMINATION OF WORK:** In the event the Owner for any reason (other than default of Contractor), is forced to suspend or terminate the Subcontract Work, Subcontractor shall be entitled to payment for the work done up to such suspension or cancellation to the extent Contractor is compensated for said work. The amount of said payment shall be established by negotiation between Subcontractor and Contractor, or in lieu thereof, by mediation by a mutually agreeable party.
23. **SAFETY:** Subcontractor shall be solely responsible for the safety of its employees, agents, second tier subcontractors, material suppliers and all others potentially affected by its acts or omissions. Subcontractor shall take all responsible and necessary safety precautions pertaining to its work and the conduct thereof. Subcontractor shall strictly comply with all applicable laws, ordinances, codes, rules, regulations and orders issued by any public authority, whether federal, state, local or otherwise, including, but not limited to, the Federal, State and/or Local Occupational Safety and Health Act and all regulations promulgated there under, and, in addition, the safety measures, if any called for by the Prime Contract.
24. **MISCELLANEOUS:** It is the intention of the parties hereto that no term of this Subcontract shall in any way inure to the benefit of any third person so as to constitute any such person or persons a third party beneficiary of this Subcontract or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto. This Subcontract shall be governed by and construed in accordance with the laws of the state where the Project is located. If any provision hereof shall be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision hereof. In the event of inconsistency between any provision of this Subcontract and any document herein referred to or made hereof by incorporation, the more restrictive provision shall control. If the more restrictive provision cannot be determined, then the provision(s) of this Subcontract shall control.

This Subcontract recites the entire agreement between the parties hereto and supersedes any and all prior bids, negotiations, representations, or agreements, oral or written, between the parties. Contractor and Subcontractor agree that each has had ample opportunity to review and to participate in the formulation of the provisions of this Subcontract that it has been negotiated at arm's length with equal bargaining power and that this Subcontract shall not be construed against either party as to the party preparing same. This Subcontract may not be amended or modified other than by written agreement of the parties hereto (except as otherwise specifically provided herein). Handwritten changes by Subcontractor shall not affect the original Subcontract language without the prior written acceptance by Contractor. This Subcontract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted assigns, personal representatives and heirs. The caption at the beginning of each paragraph of this Subcontract are for convenience only and are to be given no weight in construing the provision of this Subcontract. Pronouns used herein in the neuter gender include the feminine and masculine as appropriate. Waiver of any breach hereof shall not constitute a waiver of any subsequent breach of the same or any other provision hereof. In the event of any breach by Subcontractor, Contractor's decision not to pursue available remedies shall not constitute waiver of said breach.

25. **LABOR RELATIONS:** It is hereby expressly understood and agreed by Contractor and Subcontractor that nothing in this Subcontract Agreement shall bind Subcontractor to any union agreements. Subcontractor agrees that if a reserved (dual) gate system is established at the Project, Subcontractor will be responsible for insuring that its employees use the gate(s) designated for Subcontractor. If Subcontractor's employees fail to use the gate(s) designated for Subcontractor it shall constitute a material breach of this Subcontract Agreement and Contractor may, at its option, after giving twenty-four (24) hours written notice at Subcontractor's principal place of business, and without prejudice to any other remedy it may have, complete the work of Subcontractor. Such a breach of contract will entitle Contractor to recover money damages from Subcontractor for all losses caused by such breach.

26. **COMPLIANCE WITH LICENSE LAW:** In compliance with section 7030 of the Business and Professional Code of the State of California, the following statement is hereby set forth: "Contractor's are required by law to be licensed and regulated by the Contractor's State License Board. Any questions concerning a contractor may be referred to the registrar of the Board, whose address is:

Contractor's State License Board  
P.O. Box 26000  
Sacramento, CA 95826.

27. **COMPLIANCE WITH HAZCOM REQUIREMENTS:** Subcontractor and Contractor agree that both parties will comply with all provisions of "Prop. 65" and all HazMat legislation, and that subcontractor, will provide notice, prior to the use, on the Project of any chemicals or compounds listed by the California State Attorney General from time to time under provisions of Prop.65 advising the general contractor the dates and locations where such items will be used or stored. Subcontractor agrees to provide to Contractor, prior to its use on the project of any chemicals or compounds listed by the California State Attorney General from time to time under provisions of Prop. 65, by delivering clear, written notice in advance informing the Contractor of the dates and locations where such items are to be used or stored. The notices required herein shall contain clear descriptions of the type, amount, uses, locations and content of such items as incorporated into or used in connection with the work.

IN WITNESS WHEREOF, the parties have executed this Subcontract Agreement as of the day and year first above stated.

SUBCONTRACTOR

CONTRACTOR

«COMPANY» \_\_\_\_\_

**AZTEC CONSULTANTS** \_\_\_\_\_

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

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

\_\_\_\_\_  
(Name & Title)

E. Frank Duarte, President

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

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

Attachments: Exhibits A, B, C, D  
Insurance Certificate Checklist - Attachment 1

**Initial ALL Attachments**\_\_\_\_\_

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

**EXHIBIT "A"**

**SPECIAL PROVISIONS**

- A. Without limiting any provisions of the Agreement, the Subcontractor agrees to furnish all labor, materials, equipment and other facilities required to perform the work to complete Specification Sections:

**All work to be performed in accordance with the plans, specifications and other Contract Documents including, but not limited to the following:**

**\*Acknowledge Addendums \_\_\_\_\_ thorough \_\_\_\_\_**

- B. Exclusions:

**Total Subcontract Price(s) - Lump Sum:     \$ \_\_\_\_\_  
\_\_\_\_\_ and 00/100 Dollars. \*\*\*\*\***

**PROJECT COMPLETION:**

- A. Subcontract Time is \_\_\_\_\_ calendar days.
- B. Liquidated Damages are fixed at \_\_\_\_\_ per day.

Initials:

Aztec: \_\_\_\_\_

Sub: \_\_\_\_\_

**EXHIBIT "B" -**  
**CONTRACT DOCUMENTS**

- 1. The Contract Documents consist of Plans and Specifications as prepared by \_\_\_\_\_ listed below;
- 2. Specifications or the Project Manual for \_\_\_\_\_;
- 3. Contractor's Prime Contract with Owner;
- 4. This Subcontract, including documents incorporated by reference;
- 5. All change orders, addenda, clarifications, instruction bulletins, amendments and exhibits; and;
- 6. The latest publication of all applicable manufacturers' literature relating to Subcontractor's scope of work.

| <b>SHEET</b> | <b>DESCRIPTION</b> | <b>DESIGNER</b> |
|--------------|--------------------|-----------------|
|--------------|--------------------|-----------------|

Initials:  
Aztec: \_\_\_\_\_  
Sub: \_\_\_\_\_

**EXHIBIT "C"**  
**GENERAL INSTRUCTIONS TO SUBCONTRACTORS**

**I. SUMMARY OF PROVISIONS**

**A. General Inclusions:**

General Compliance Provisions required of all subcontractors as detailed in their subcontract Scope of Work under Exhibit "A".

1. All work as shown on the plans and specifications complete per the subcontract.
2. All permits, connection fees, certifications and inspections to complete your work **unless otherwise excluded in the Scope of Work in Exhibit A.**
3. Work shall conform to all local, state and federal regulatory agencies.
4. Operation and maintenance manuals will be required to be submitted prior to final payment whenever applicable.
5. Warranties per specifications, and as provided by manufacturers, for whichever time is greatest, whenever applicable shall also be furnished as appropriate.
6. Clean up and **removal** of debris **from jobsite** on a weekly basis, or as required by Aztec. If subcontractor fails to clean up their work as required by Aztec, and after sufficient written notice, Aztec will clean up subcontractor's work and back charge subcontractor for all applicable costs. Aztec will provide a jobsite dumpster for subcontractor use as defined in Exhibit A.
7. Coordinate installation of hangers (if applicable) with Aztec and other subcontractors. Obtain engineer's approval of hangers before proceeding with your work.
8. Install seismic bracing as required per the contract documents and codes if applicable to your Scope of Work or **unless otherwise excluded in Exhibit "A".**
9. Provide all necessary equipment and hoisting to perform your work **unless otherwise excluded in your Scope of Work as detailed in Exhibit A.**
10. Verify installation conditions are correct. Commencing your work constitutes acceptance of existing conditions as satisfactory.
11. Furnish and install traffic control, barricades, and other devices required to protect the general public, other subcontractors and the owner's personnel at all times during your work **unless otherwise excluded in your Scope of Work in Exhibit A.**
12. Protect surrounding areas and surfaces to preclude damage from your work.
13. Aztec will not provide free telephone service at jobsite. Subcontractors are to provide their own cellular phones.

**B. CONTRACT TERMS AND CONDITIONS**

1. **Insurance:** A certificate of insurance will be **required prior to work on site.** Please note coverage limits required by Owner. Endorsement for the Owner and Aztec as additional insured is mandatory with **No Exceptions.** Aztec will not be responsible for delays on site due to a late certificate. An Insurance Certificate Check List is attached for you reference as Attachment (1)

**C. Payment Terms:**

1. Subcontractor monthly invoices shall be submitted to Aztec's main office in San Ramon no later than the 25th of each month in order for the invoice amounts to be incorporated into Aztec's Pay Estimate Request. Payment request should reflect anticipated progress through the end of the month. Aztec's pay estimate request will be submitted to the Owner on or about the 1st of the following month. The contract with Owner stipulates payment within 30 days after submittal and approval of Aztec's pay estimate request. Aztec will release payment to Subcontractor within 5 business days following receipt of payment from Owner.
2. Conditional Lien Releases shall be submitted with each invoice for the work accomplished during this billing period.
3. As a condition of the agreement, Contractor retains the right to request a list of material suppliers and second tier subcontractors with the value of the material supplied or work performed on the project. Accompanying each monthly draw request, the Subcontractor shall include Unconditional Waivers of Lien from all major material supplier/subcontractor for payments made the previous month.
4. Retention may be withheld on subcontractor's monthly draws throughout the course of the project in the same percentage as prime contract.
5. In the event that this project does require payment of Prevailing Wages, (a) and (b) must be followed:
  - a) The Subcontractor shall provide two (2) copies of Certified Payroll. These shall be provided twice a month and must be current. **Failure to provide in a timely manner will result in delay of payment.**
  - b) An extract of Labor Code sections related to prevailing wages is attached (Exhibit D). Aztec Consultants requires the Subcontractor to sign an affidavit (Exhibit E) that certifies that the Subcontractor has read and understands the prevailing wage obligations and will pay the prevailing rate. At the completion of the project Aztec Consultants also requires the Subcontractor to sign an affidavit (Exhibit F) that certifies that the Subcontractor fulfilled all prevailing wage obligations on the project, before receiving the final payment.

**D. Safety Requirements:**

1. Subcontractor shall abide by Aztec's safety requirements, which are available for review.
2. Hard-hats and eye protection will be mandatory for all site personnel. Tennis shoes/sneakers are not allowed on site. Only suitable work boots are acceptable footwear.
3. Subcontractor shall provide a written job-specific safety plan prior to any on-site work.
4. Subcontractor's employees shall attend Aztec's weekly safety meetings. Subcontractor may hold his own safety meeting in lieu of attending Aztecs with meeting notes from each meeting submitted to Aztec for review and filing.

**E. Jobsite Project Rules:**

1. Subcontractor will be required to report to the Field superintendent and/or Owner's representative prior to the start of each work activity and upon completion each day. Reporting includes labor force head-count on site.
2. Subcontractor must at all times maintain proper decorum and refrain from any unnecessary noise that is not associated with the performance of their work.

3. Subcontractor will work the same hours as Aztec; hours to be determined, and will be based on a typical 40-hour workweek.
  - a) If Subcontractor needs to work different hours than Aztec's stated hours, this will require prior approval by Aztec.
  - b) Aztec must be on site when a Subcontractor is working.

**F. Project Quality Requirements:**

1. The minimum requirements are:
  - a) Adherence to specifications included with this bid package.
  - b) No project substitution will be allowed that varies from approved and submittal unless substitution is approved by Architect or engineer

**G. Other Concerns and Requirements:**

1. Shop Drawings and Submittals:  
When applicable, subcontractor is responsible for submitting shop drawings and product submittals in a timely manner, so as not to delay the project. Subcontractor shall supply sufficient drawings and submittals to satisfy the Owner's requirements. Subcontractor shall allow, at a minimum, two (2) weeks for Owner review of submitted information.
2. Material Deliveries and Work Schedule:  
Subcontractor shall deliver material, perform, and complete this work per the Contractor's schedule. Subcontractor shall make final coordination for material deliveries and work schedule with Aztec's Office @ 925-837-1050 or Fax 925-837-1652. Subcontractor shall have a representative on site to accept all deliveries.
3. The Subcontractor shall not assign to the work any Project Manager or Superintendent to whom the Owner or the Contractor makes reasonable objection. The Subcontractor shall make no substitution for any Project Manager or Superintendent previously assigned, if the Owner and Contractor make a reasonable objection to such substitution. The Subcontractor shall not remove the Project Manager or Superintendent from the work prior to final completion of the work without agreement with the Owner and/or the Contractor.
4. As-Builts, Operation and Maintenance Manuals:  
Provide as-built drawing showing location and depth of utilities. Use property lines or building gridlines for dimensioning horizontal locations of utilities. Furnish operation and maintenance manuals in quantities requested by the Owner. The superintendent will review as-built drawings each month. Failure to keep as-builts current **will result in delays of monthly pay requests.**
5. All subcontractors will be required to obtain a City Business License before beginning their work.

**H. Contract Exhibits:**

1. Exhibit "A", Special Provisions
2. Exhibit "B", Contract Documents
3. Exhibit "C", Summary Provisions
4. Exhibit "D", California Labor Codes

Initials:  
Aztec: \_\_\_\_\_  
Sub: \_\_\_\_\_

**Exhibit "D"**  
**California Labor Code**

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

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

**1771.5** (a) Notwithstanding Section 1771, an awarding body may not require the payment of the general prevailing rate of per diem wages or the general prevailing rate of per diem wages for holiday and overtime work for any public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction work, or for any public works project of fifteen thousand dollars (\$15,000) or less when the project is for alteration, demolition, repair, or maintenance work, if the awarding body elects to initiate and enforce a labor compliance program pursuant to subdivision (b) for every public works project under the authority of the awarding body.

(b) For the purposes of this section, a labor compliance program shall include, but not be limited to, the following requirements:

(i) All bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter.

(2) A pre-job conference shall be conducted with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract.

(3) Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.

(4) The awarding body shall review, and, if appropriate, audit payroll records to verify compliance with this chapter.

(5) The awarding body shall withhold contract payments when payroll records are delinquent or inadequate.

(6) The awarding body shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.

(c) For purposes of this chapter, "labor compliance program," means a labor compliance program that is approved, as specified in state regulations, by the Director of the Department of Industrial Relations.

(d) For purposes of this chapter, the Director of the Department of Industrial Relations may revoke the approval of a labor compliance program in the manner specified in state regulations.

**1773.4** Any prospective bidder or his representative, any representative of any craft, classification or type of workman involved, or the awarding body may, within 20 days after commencement of advertising of the call for bids by the awarding body, file with the Director of Industrial Relations a verified petition to review the determination of any such rate or rates upon the ground that they have not been determined in accordance with the provision of Section 1773 of this code. Within two days thereafter, a copy of such petition shall be filed with the awarding body. The petition shall set forth the facts upon which it is based. The Director of Industrial Relations or his authorized representative shall, upon notice to the petitioner, the awarding body and such other persons as he deems proper, including the recognized collective bargaining representatives for the particular crafts, classifications or types of work involved, institute an investigation or hold a hearing. Within 20 days after the filing of such petition, or within such longer period as agreed upon by the director, the awarding body, and all the interested parties, he shall make a determination and transmit the same in writing to the awarding body and to the interested parties.

Such determination shall be final and shall be the determination of the awarding body. Upon receipt by it of the notice of the filing of such petition the body awarding the contract or authorizing the public work shall extend the closing date for the submission of bids or the starting of work until five days after the determination of the general prevailing rates of per diem wages pursuant to this section.

Upon the filing of any such petition, notice thereof shall be set forth in the next and all subsequent publications by the awarding body of the call for bids. No other notice need be given to bidders by the awarding body by publication or otherwise. The determination of the director shall be included in the contract.

**1775.(a)(1)** The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**1776.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.

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

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

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

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

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

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

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

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

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in a manner so as to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. 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. 1752) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction

against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fees and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

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

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

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

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

**1777.5** (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 and 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, or any subcontractor under him or her, in performing any of the work under the contract or subcontract, employs workers in any apprentice-able 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. "Apprentice-able craft or trade," as used in this section, means a craft or trade determined as an apprentice-able 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. 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 to 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 job site 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 job site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Chief of the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of no 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 ration required by subdivision (g).

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

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

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

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

(3) There is a showing that the apprentice-able 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 apprentice-able craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the

contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

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

(A) If there is an approved multi-employer 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 multi-employer apprenticeship programs serving the same craft or trade and geographic area for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices registered in each program.

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

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

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

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

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

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

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

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

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

made by the Chief, the order shall become the final order of the Administrator.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**1781** (a)(1) Notwithstanding any other provision of law, a contractor may, subject to paragraphs (2) and (3), bring an action in a court of competent jurisdiction to recover from the body awarding a contract for a public work or otherwise undertaking any public work or otherwise undertaking any public work any increased costs incurred by the contractor as a result of any decision by the body, the Department of Industrial Relations, or a court that classifies, after the time at which the body accepts the contractor's bid or awards the contractor a contract in circumstances where no bid is solicited, the work covered by the bid or contract as a "public work," as defined in this chapter, to which Section 1771 applies, if that body, before the bid opening or awarding of the contract, failed to identify as a "public work," as defined in this chapter, in the bid specification or in the contract documents that portion of the work that the decision classifies as a "public work."

(2) The body awarding a contract for a public work or otherwise undertaking any public work is not liable for increased costs in an action described in paragraph (1) if all of the following conditions are met:

(A) The contractor did not directly submit a bid to, or directly contract with, that body.

(B) The body stated in the contract, agreement, ordinance, or other written arrangement by which undertook the public work that the work described in paragraph (1) was a "public work," as defined in this chapter, to which Section 1771 applies, and obligated the party with whom the body makes its written arrangement to cause the work described in paragraph (1) to be performed as a "public work."

(C) The body fulfilled all of its duties, if any, under the Civil Code or any other provision of law pertaining to the body providing and maintaining bonds to secure the payment of contractors including the payment of wages to workers performing the work described in paragraph (a).

(3) If a contractor did not directly submit a bid to, or directly contract with a body awarding a contract for, or otherwise undertaking a public work, the liability of that body in an action commenced by the contractor under subdivision (a) is limited to that portion of a judgment, obtained by that contractor against the body that solicited the contractor's bid or awarded the contract to the contractor, that the contractor is unable to satisfy, for purposes of this paragraph, a contractor may not be deemed to be unable to satisfy any portion of a judgment unless in addition to other collection measures, the contractor has made a good faith attempt to collect that portion of the judgment against a surety bond, guarantee, or some other form of assurance.

(b) When construction has not commenced at the time a final decision by the Department of Industrial Relations or a court classifies all or part of the work covered by the bid or contract as a "public work," as defined in this chapter, the body that solicited the bid or awarded the contract shall re-bid the "public work" covered by the contract as a "public work," any bid that was submitted and any contract that was executed for this work are null and void, and the contractor may not be compensated for any non-construction work already performed unless the body soliciting the bid or awarding the contract has agreed to compensate the contractor this work.

(c) For purposes of this section:

(1) "Awarding body" does not include the Department of General Services, the Department of Transportation, or the Department of Water Resources.

(2) "Increased costs" includes, but is not limited to:

(A) Labor cost increases required to be paid to workers who perform or performed work on the "public work" as a result of the events described in subdivision (a).

(B) Penalties for a violation of this article for which the contractor is liable, and which violation is the result of the events described in subdivision a).

**1810** Eight hours labor constitutes a legal day's work in all cases where the same is performed under the authority of any law of this State, or under the direction, or control or by the authority of any officer of this State acting in his official capacity, or under the direction, or control or by the authority of any municipal corporation, or of any officer thereof. A stipulation to that effect shall be made a part of all contracts to which the State or any municipal corporation therein is a party.

**1811** The time of service of any workman employed upon public work is limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week, except as hereinafter provided for under Section 1815.

**1813** The contractor 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 workman employed in the execution of the contract by the contractor or by any subcontractor for each calendar day during which the workman 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 therein a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

**1815** Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.

## Attachment (1)



General Contractors  
Design - Build  
Construction Management

Ph: (925) 837-1050  
Fax: (925) 837-1652

### Insurance Certificate Checklist

What you need to have on your Certificate of Insurance for Aztec Constructors:

- Subcontractor, second tier subcontractors and material suppliers shall, at their sole expense, procure and maintain on all of their operations, the following insurance requirements as a minimum: **or higher limits if required by the Project Specifications**:

#### A) General Liability

- 1) Minimum Limits: \$1,000,000 Any One Occurrence  
\$2,000,000 General Aggregate  
\$1,000,000 Products/Completed Operations Aggregate
- 2) All general liability policies shall be occurrence policies only. Claims made and/or modified occurrence policies are not acceptable.
- 3) The "Occur" and "Project" boxes should be checked
- 4) Subcontractor's proper name and address must be on the certificate.
- 5) Subcontractor must provide an additional insured endorsement (in addition to the Certificate of Insurance) naming Contractor and Owner as additional insured per form **CG 20-10-11- 85**, prior to beginning its work. The Certificate of Insurance and additional insured endorsement shall provide that its coverage for Contractor and Owner shall apply as primary insurance and that any other insurance carried by Contractor and/or Owner will be excess only and will not contribute with this insurance, and that all claims of subrogation against Contractor and Owner are waived.
- 6) Subcontractor's general liability coverage shall be sufficient to cover all claims, damages, losses and obligations contained in the Subcontract, premises and operations, products and completed operations, contractual liability under this Subcontract, broad form property damage (including completed operations), explosion, collapse and underground hazards, and personal injury liability for Contractor and Owner.
- 7) Coverage shall be evidenced to Aztec for a period of two years after completion of work.

## Attachment (1)

### **B) Automobile**

- 1) Minimum Limits: \$1,000,000 combined single limit for each accident for bodily Injury and property damage.
- 2) The "Any Auto" box shall be checked, including coverage for all owned, hired and non-owned vehicles.
- 3) Subcontractor shall provide Contractor with an endorsement naming Contractor and Owner as an additional insured.

### **C) Workers Compensation**

- 1) Minimum Limits: \$1,000,000 each Accident for bodily injury by accident:  
\$1,000,000 policy limit for bodily injury by disease  
\$1,000,000 each employee for bodily injury by disease.
- 2) All claims of subrogation against Contractor and Owner are waived.
- 3) If there is exposure to injury to Subcontractor's employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

### **D) All Insurance**

- 1) All policies much indicate that Contractor and Owner will be given a minimum of 30 days notice prior to cancellation of the insurance policies listed above.
- 2) All insurance carriers must maintain an A.M. Best Company rating of at least A-VII and be acceptable to Contractor. The exception to this would be the State Compensation Fund for workers compensation coverage.
- 3) All Certificates of Insurance shall clearly contain the policy Number and effective and expiration dates.