



**GENERAL CONTRACTORS**

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 Contractors State License Number: 881824  
 www.amgassociatesinc.com

**AGREEMENT NO. 01-16-111-XXX**

**AMG Job No.: 01-16-111 File: XXXXXX**

This Agreement is issued this \_\_\_\_ day of \_\_\_\_\_, 2016, between AMG & ASSOCIATES, INC., with its principal place of business located at 28296 Constellation Road, Santa Clarita, California 91355, (hereinafter "Contractor"), and

Name: **Subcontractor Name** Attn.: **President's Name**  
 Address: **Subcontractor Address** Phone: **(XXX)XXX-XXXX** Fax: **(XXX)XXX-XXXX** Email: **XXXXXXXXXX**  
 Subcontractor License Number: **Subcontractor License**  
 (hereinafter "Subcontractor"). Contractor and Subcontractor hereinafter may be referred to collectively as the "Parties".

**RECITALS**

**The Project:** The Work described below shall be performed in accordance with  
**Project Contract:** XXXXXX  
**Name:** **Project Name**  
**Address:** **Owner's Address**  
**Job Site Address:** **Project Address**  
 (Hereinafter "Owner") for the Project known as: **XXXXXXXXXX**. The drawings and specifications contained in the Prime Contract have been prepared by: **Architect, Address of Architect**.

NOW THEREFORE, for and on account of the mutual covenants, agreements, terms and conditions set forth herein, the Parties agree as follows:

**Contract Documents** The Contract Documents, except for modifications, change orders and written Contractor directives issued after execution of this Agreement, consist of the following documents, all of which are either attached hereto as Exhibits or are hereby incorporated by this reference and made a part hereof as follows:

- A. This Agreement, including:
  - 1. Exhibit A – Summary of Scope of Work
  - 2. Exhibit B – Index of Prime Contract Documents
  - 3. Exhibit C – Federal Taxpayer Identification Number Form
  - 4. Exhibit D – Project Safety Requirements and Procedures
  - 5. Exhibit E – Insurance Requirements
  - 6. Exhibit F – Subcontractor Payment Application
  - 7. Exhibit G – Joint Check Agreement
  - 8. Exhibit H – Subcontractor's Suppliers, & Material Sources
  - 9. Exhibit I – Certified Payroll Procedures
  - 10. Exhibit J – Form of Daily Report
  - 11. Exhibit K – California Labor Code Provisions Re: Prevailing Wages
  - 12. Exhibit L – Declaration of Subcontractor Re: Payment of Prevailing Wages, Declaration of Subcontractor Re: Apprentices
  - 13. Exhibit M – Statement of Employer Payments
  - 14. Exhibit N – Public Works Contract Award Information
  - 15. Exhibit O – Training Funds Contributions
  - 16. Attachment 1 – Payment Procedures
- B. The Prime Contract: **Agreement Form between Contractor and Owner Dated April 19, 2016** the following Amendments: **Addendum 1 dated September 11, 2015, Addendum 2 dated, September 16, 2015, Addendum 3 dated September 24, 2015, Addendum 4 dated September 27, 2015 and Addendum 5 dated October 7, 2015** and all documents and modifications incorporated therein, including but not limited to the specifications and drawings, an index of which is attached hereto as **Exhibit B** and incorporated herein by this reference.
- C. The Work required to be performed by Subcontractor is not confined to any specific portion or section of the drawings and specifications and other Work may be found in other areas of the Contract Documents.

**Subcontract Price** Contractor agrees to pay Subcontractor for the full, complete, proper and timely performance of its Work, the sum of: **CONTRACT VALUE IN WORDS (\$XXXXX.00)**, for the Work defined herein and in the drawings and specifications as Base Bid, subject to adjustments for changes in the Work as may be directed in writing by the Contractor and as provided in the Contract Documents (hereinafter "Subcontract Price").

**Scope of Work** The Subcontractor shall furnish and pay for all labor, material, tools, equipment, services, permits, fees, taxes, supervision, safety requirements, coordination, submittals, all O & M and warranty information, shop drawings, transportation, mobilization, demobilization, layout, offloading, demolition, removal, disposal, delivery, rigging, hoisting, staging, scaffolding, temporary utilities, shop and field engineering, and other facilities required to complete the work in strict compliance with the Contract Documents, and as outlined in the Summary of Scope of Work, attached hereto as **Exhibit A** and incorporated by this reference, and generally described as Specification Section(s): **XXXXX - Specifications**. Subcontractor's work also includes such work as is reasonably inferable from the Contract Documents to produce the intended results, as well as that work which is customarily furnished by a subcontractor performing services in Subcontractor's line of work. The term "reasonably inferable" as used herein shall be defined to include those components and systems which a reasonably prudent subcontractor should have anticipated as being included in the Project based on its skill, experience and knowledge. The foregoing is herein collectively the "Work".

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## TERMS AND CONDITIONS

**Article 1 - Entire Agreement** This Agreement represents the entire agreement between Contractor and Subcontractor, and supersedes any prior written or oral representation or bid. It is further agreed that the Contract Documents are incorporated in this Agreement by reference, with the same force and effect as if the same were set forth herein at length, and that Subcontractor and its sub-subcontractors and suppliers will be, and are, bound by any and all parts of said Contract Documents, including the Prime Contract, insofar as they relate in any part, or in any way, directly or indirectly, to the Work herein undertaken by Subcontractor. Where, in the Contract Documents, reference is made to Contractor, and the Work, drawings or specifications therein pertain to Subcontractor's trade, craft or type of Work, such Work, drawing or specification shall be interpreted to apply to Subcontractor instead of Contractor. The terms of this Agreement are not subject to modification unless made in writing by an authorized representative of Contractor. No interlineations of this Agreement, whether typed or handwritten, shall be effective unless initialed and dated by both Parties. The Contract Documents are complementary and Work displayed in one portion of the Contract Documents will be performed as though displayed in all portions of the Contract Documents.

**Article 2 - Owner's Representative** It is understood and agreed by and between the Parties hereto, that the Work included in this Agreement is subject to the direction of the Owner and/or its representatives as defined in the applicable Prime Contract (hereinafter the Owner's Representative"). The decision of the Owner's Representative as to the construction and meaning of the drawings and specifications shall be final, and shall be binding upon Subcontractor to the same extent as it is upon the Contractor provided, however, that Owner's Representative shall have no authority to resolve any question or dispute as to the scope of Subcontractor's Work under this Agreement or the interpretation of this Agreement. It is also understood and agreed by and between the Parties hereto, that such additional drawings and explanations as may be necessary to detail and illustrate the Work to be done, may be furnished by said Owner's Representative, and both Parties hereto agree to conform to, and abide by the same, in so far as they may be consistent with the same purpose and intent of the original drawings and specifications.

### **Article 3 - Investigation and Representations by Subcontractor**

- A. Subcontractor warrants, represents and certifies that it is fully familiar with all of the terms, conditions and obligations of the Contract Documents, the location of the job site and the conditions under which the Work is to be performed including, but not limited to those bearing on transportation, disposal, handling and storage of materials, availability of labor, utilities (including the locations of all points of connection for the Subcontractor's Work), site access and logistics and the uncertainties of weather, water, river stages, tides and all other physical conditions of the site and the type of equipment and facilities needed preliminary to, and during the performance of, the Work. Subcontractor will satisfy itself as to the conditions of the site from inspections of the site, all exploratory work done by Owner and/or Contractor, as well as from information presented in the Contract Documents. Any failure by Subcontractor to acquaint itself with such information that results in Subcontractor reaching erroneous conclusions or misinterpretations shall preclude Subcontractor from being entitled to a change in Subcontract Price or time extension. Subcontractor enters into this Agreement based upon its investigation of all such matters, and is in no way relying upon any opinions or representations of the Contractor. Upon Subcontractor's request, Contractor will furnish a copy of any part of the Contract Documents. If there are any conflicts or ambiguities in or between the Contract Documents themselves, or between a Contract Document and a manufacturer's directions, application instructions, or recommendations, Subcontractor shall notify Contractor's Superintendent in writing, prior to the execution of this Agreement, and shall not proceed with any Work which may be affected by conflicts or ambiguities until they are resolved. In the event of a conflict, inconsistency or ambiguity within or between any of the Contract Documents, or between any Contract Document and a manufacturer's directions, application instructions, or recommendations, Subcontractor shall be held to the higher standard or greater requirement. Subcontractor shall be bound by Contractor's resolution of such conflicts, inconsistencies and ambiguities, which shall be binding and final, at no additional cost to Contractor.
- B. Subcontractor certifies that it has a valid California State Contractor's License(s), including all necessary and proper classification(s), to do the Work, and that the license(s) is/are current, active, and in good standing, and that Subcontractor will maintain its license(s) in such status and standing at all times throughout the duration of this Agreement. Subcontractor shall ensure that all sub-subcontractors of every tier performing any portion of the Work under this Agreement shall adhere to the foregoing license obligations. Subcontractor, upon request, shall furnish evidence satisfactory to Contractor that any or all of the foregoing obligations have been fulfilled, and shall be responsible to Contractor for all liability or damage incurred by Contractor as a result of Subcontractor's breach of its obligations hereunder.
- C. Subcontractor represents and warrants that it is fully experienced and properly qualified to perform the Work provided for herein, has sufficient financial capability and working capital, that it shall finance all operations required under this Agreement for the performance of the Work and that it is properly equipped and organized to perform the Work in a competent, timely and proper manner in accordance with the requirements of the Agreement. Subcontractor represents and warrants that it is not presently disbarred, suspended, proposed, threatened or under investigation for debarment, or declared ineligible for the award of contracts by any state, federal or other public agency.
- D. If Subcontractor claims status as a disadvantaged business enterprise, including, without limitation, a minority business enterprise, veteran or service disabled veteran business enterprise, women's business enterprise, disabled persons business enterprise, HUBZone, small business, or any other specialized status or protected class recognized by applicable law (herein "Specialized Status"), then Subcontractor shall, at the request of Contractor or Owner, make all records available (including those of any lower tier subcontractor or supplier) in support of Subcontractor's claim (or that of a lower tier subcontractor or supplier) of Specialized Status within two (2) business days of such request by Contractor or Owner. Subcontractor shall provide to Contractor certification or other proof of Specialized Status, including confirmation of the Specialized Status claimed as of execution of this Agreement, as of Subcontractor's application for final payment, within two (2) business days of a separate request made by Contractor therefore, and at such other times as Contractor may require. The certification or such other proof of Specialized Status shall be in such form and content as required by Owner and/or Contractor and shall include a statement certifying that Subcontractor is performing a commercially useful function as defined by applicable law including, but not limited to, 49 C.F.R. 26.55(c)(1). If Subcontractor claims Specialized Status, but such status is denied or revoked by any agency or entity having authority to do so, then Subcontractor shall immediately provide written notice to Contractor of such loss of status together with the written determination of such agency or entity as communicated to Subcontractor. Subcontractor shall be responsible to Contractor for all liability, loss, damage or expense incurred by Contractor as a result of Subcontractor's breach of its obligations hereunder.

### **Article 4 - Submittals**

- A. Subcontractor shall submit for approval by Contractor, within ten (10) calendar days after the date of issuance of this Agreement, the following in form and substance acceptable to Contractor:

1. **One (1)** original of this Agreement, including all Exhibits, fully executed by Subcontractor;
  2. All insurance requirements set forth in **Exhibit E** and in accordance with Articles 15 and 16 herein, including the insurance policies, endorsements and certificates of insurance;
  3. Fully executed payment and performance of bonds if required by this Agreement;
  4. Schedule of Submittals, including O & M's and warranty information;
  5. Procurement schedule for materials, equipment and work of sub-subcontractors and suppliers;
  6. Schedule for performance of Subcontractor's Work in accordance with Article 6 herein;
  7. All required submittals shall be in strict accordance with the Prime Contract, and will be submitted electronically in PDF format, unless a request is to have hard copies by the Architect.
  8. All O & M and warranty information to be provided with the initial product submittals for the project.
- B. Subcontractor shall allow such time as is set forth in the Contract Documents for approval of each submittal, or forty five (45) calendar days from the date of the submittal submission, whichever is greater. Any delays or costs caused by late, incomplete, improper or disapproved shall be borne solely by the Subcontractor. Upon 75% completion of Subcontractor's Work, Subcontractor must submit all required O&M's and warranty information with the initial product submittals for the project. The Subcontractor agrees that the Contractor may withhold an additional 10% retention at 75% completion of the Subcontractor's Work until such time that all required O&M's and warranties are furnished by the Subcontractor.
- C. Subcontractor shall not order, fabricate or install any Work, or portion of Work, for which an approved submittal, shop drawing, report, certification or other documentation is required, without first having received full and complete written approval of the same from all entities whose approval is required by the Contract Documents and/or any applicable statute, law, regulation, ordinance or other legal authority.
- D. Should the Subcontractor make changes in the design of the Work, including but not limited to dimensional changes, either through the submittal/shop drawing approval process, or actual field work, the Subcontractor will bear all responsibility for the functionality and adequacy of all such changes, and shall, prior to making any such changes, obtain all necessary approvals, in writing, of such changes by the Owner, Architect, and any other required third parties. Additionally, the Subcontractor will be responsible for all delays, costs and damage associated with such changes, including, but not limited to, the modification and/or repair of work by other Subcontractors or trades or Contractor associated with such changes.
- E. The Subcontractor is responsible for reviewing and being completely familiar with the shop drawings, submittals, O & M and warranty information of other Subcontractors, trades, suppliers, or vendors to avoid any conflicts with its Work or the work of other Subcontractors or trades.
- F. The Subcontractor will not be relieved from correcting Work reflected in error on its shop drawings, submittals, and/or O & M and warranty information not conforming to field requirements, or not complying with the terms of this Agreement, the Prime Contract or the Contract Documents. It is incumbent upon the Subcontractor, not the Contractor, to discover mistakes, errors, omissions, or deviations in the quality, quantity or type of materials used by Subcontractor in the shop drawings, submittals, O & M and warranty information, schedules, reports and all other documents submitted by Subcontractor, and nothing herein shall relieve Subcontractor from responsibility for unauthorized changes, mistakes, errors, omissions or deviations of any type.

## Article 5 - Payment Procedures and Conditions

- A. Prior to submittal of Subcontractor's initial and all subsequent payment applications, the following documents must be received in a form and substance acceptable by Contractor:
1. One (1) original of this Agreement, including all Exhibits, fully executed by Subcontractor;
  2. Schedule of Values;
  3. Completed Federal Taxpayer Identification Number Form (attached here to as **Exhibit C**);
  4. Completed W-9 Form;
  5. Completed Subcontractor Supplier and Material Sources Form (attached hereto as **Exhibit H**);
  6. All documents and submittals required by Article 4 herein, including all O & M and warranty information;
  7. Updated schedules for performance of Subcontractor's Work in accordance with Article 6 herein; and
  8. Updated record drawings showing all changes and selections made during construction.
- B. The period covered by each payment application shall be one calendar month. Payment applications must be submitted 10 days prior to the date for Contractor's submission of its monthly payment application to the Owner (**See EXHIBIT F**).
- C. Each payment application shall be based upon the Schedule of Values approved by Contractor. Subcontractor's Schedule of Values shall be submitted on Contractor's approved form and shall be sufficiently itemized as to work elements, labor, equipment, materials, etc., to allow Contractor to monitor Subcontractor's progress and to evaluate Subcontractor's billings. Subcontractor's overhead and profit shall be distributed on a pro rata basis to each line item. An intentionally unbalanced, distorted or misrepresented cost breakdown shall be deemed to be fraudulent and shall constitute a material breach of this Agreement.
- D. Monthly billing percentages must be approved by Contractor's Superintendent and all scheduled submittals, including O & M and warranty information, must be approved by Owner prior to submission of any payment application. Owner has final approval of all billing percentages of Work completed. Contractor will pay Subcontractor only the percentage amount approved by the Owner.
- E. All payment applications shall be supported by such data substantiating the Subcontractor's right to payment as the Contractor may require, including, but not limited to, conditional waivers and release of rights for the current payment period and unconditional waivers and release of rights for all previous payment periods from all persons legally eligible to record mechanic's liens, serve stop payment notices or make claims against payment bonds provided with respect to the Project. No payment received by the Subcontractor shall be used to satisfy or secure any indebtedness other than those owed by the Subcontractor for labor, material, equipment and services furnished in performing the Subcontractor's Work on this Project, unless and until all such indebtedness is fully satisfied.
- F. Payments may be withheld on account of: (1) Subcontractor's failure to fully execute the Agreement; (2) Subcontractor's failure to timely provide the insurance documents or any of the documents required by Articles 4 and 5 herein; (3) Subcontractor's failure to timely provide Daily Reports, Certified Payroll Reports, as defined in **Exhibit I**, and Basic Payroll Records as defined in Article 22, as required or upon Contractor's request; (4) failure of Subcontractor or any sub-subcontractor to pay prevailing wages or to make any required fringe benefit or trust fund payments; (5) Subcontractor's failure to comply with the apprenticeship requirements under the Labor Code; (6) defective Work of Subcontractor, its sub-subcontractors or suppliers; (7) failure of the Subcontractor to make payments properly to its sub-subcontractors or suppliers for labor, materials, equipment or services; (8)

damage to the Contractor, Owner, another Subcontractor, other trades or third parties caused in whole or in part by Subcontractor; (9) Subcontractor's failure to carry out the Work promptly and diligently in accordance with the Contract Documents and the current Approved Project Schedule or Short Interval Schedule; (10) a claim or reasonable evidence indicating a likely claim arising out of Subcontractor's acts or omissions; (11) any reasonable doubt that the Work can be completed for the remaining balance of the unpaid Subcontract Price, (12) penalties, fines, taxes or assessments against Contractor, the Owner, or their agents, resulting from Subcontractor's failure to comply with any state, federal or local law, ordinance, or regulations, (13) failure by Subcontractor to comply with any term, condition or obligation of this Agreement; (14) any ground for withholding of payment allowed by state or federal law, or as otherwise provided in this Agreement Contractor shall have right to withhold from Subcontractor for the violation of any of the foregoing by Subcontractor's sub-subcontractors or suppliers. When the cause of above-referenced withholding has been rectified to the satisfaction of Contractor, the amounts withheld will be paid or credited to Subcontractor as otherwise provided for in this Agreement. Amounts withheld for the foregoing reasons shall not accrue interest during the withholding period.

- G. Contractor shall retain from progress or other payments hereunder ten percent (10%) of the amount due until final completion and acceptance of the Project and shall release such retention to Subcontractor within ten (10) days after Contractor's receipt of final acceptance of the Project and the payment of such retention from the Owner. With respect to public works projects only as defined under applicable California law, Contractor's retention pursuant to the prior sentence shall be five percent (5%), unless applicable law permits Contractor to withhold a greater percentage, in which event the retention shall be such greater permitted percentage.
- H. In addition to the foregoing, final payment shall not become due until Subcontractor's: (1) submission of unconditional waivers and releases of rights from all persons or entities legally eligible to record mechanic's liens, serve stop payment notices or make claims against payment bonds (including Miller Act bonds if applicable) in connection with the Work; (2) submission of Affidavit of Subcontractor Re: Payment of Prevailing Wages (in the form attached hereto as Exhibit L) and a Declaration (in the form attached hereto as Exhibit L) stating that the Contractor has employed the required number of apprentices; (3) submission of Certified Payroll Reports clearly marked "final;" (4) completion of all punch list Work; (5) submission of record drawings marked to indicate all selections and changes made during construction; (6) submittal of all warranties and O&M manuals; and (7) submission of such other documents as Contractor may reasonably require. All such submissions must be to the satisfaction of Contractor and in full compliance with the requirements of the Contract Documents.
- I. Contractor agrees, in consideration of the full, complete, timely and proper performance of the Work by Subcontractor in accordance with the terms and provisions hereof, to pay or cause to be paid to Subcontractor the Subcontract Price. By entering into this agreement, Subcontractor expressly acknowledges that in the current commercial environment, it often times happens that owners delay and/or withhold payments for disputes or for lack of funds. Subcontractor recognizes this is a risk of doing business, even in circumstances where the reason payment is withheld is unrelated to Subcontractor's performance. Thus, as an express condition and part of Subcontractor's rights and duties, it expressly agrees to share in the risk of delayed payment with Contractor to the following extent: If Owner or other responsible party delays making payment to Contractor from which any payment to Subcontractor is to be made, Contractor and its sureties shall have a "Reasonable Time" to make payment to Subcontractor. "Reasonable Time" shall be determined according to the relevant circumstances but, in no event, shall it be less than the time Contractor, Contractor's sureties, and Subcontractor require to pursue and exhaust their legal remedies to conclusion against Owner or other responsible party to obtain payment. As part of the sharing of the risk of late payment that Subcontractor accepts hereunder, Subcontractor shall support, without additional compensation, Contractor's and its surety's efforts to recover payment as requested by Contractor, including, but not limited to, by supplying records and witnesses as requested by Contractor or its surety.
- J. The timing of Contractor's payment to Subcontractor shall be as outlined in Attachment 1.
- K. Subcontractor expressly agrees to follow the invoice procedures outlined in Attachment 1. Subcontractor Invoice Approval Forms will be provided to Subcontractor indicating the amount of approved dollars available to Subcontractor Exhibit F must be used for all pay applications in order for Subcontractor to receive payment.
- L. If Contractor has provided payment or performance bonds, or a combination of payment and performance bonds, the obligations of Contractor and its surety to make payment (whether a progress payment or final payment) pursuant to such bonds are similarly subject to the conditions and timing set forth in this Agreement.
- M. Contractor reserves the right, but shall have no obligation, to make payment directly to Subcontractor's sub-subcontractors and suppliers, and to make payment by joint check or direct check without Subcontractor's approval. Subcontractor agrees that it and each of its sub-subcontractors and suppliers will execute and be bound by the Joint-Check Agreement attached hereto as Exhibit G. Contractor shall have the right at all times to contact the Subcontractor's sub-subcontractors and suppliers to ensure that the same are being paid by the Subcontractor for all labor, materials, equipment and services furnished for use in performing the Subcontractor's Work on this Project.
- N. Subcontractor shall promptly pay Contractor for any damage, loss or expense that Contractor may sustain as a result of Subcontractor's performance. Alternatively, Contractor may apply any amounts due, or to become due, to Subcontractor to pay for any such damage, loss or expense. If Subcontractor is performing more than one project for Contractor, the Contractor may withhold or offset payments to Subcontractor on any project because of damage, loss or back charges assessed on any other project.
- O. All payments shall be deemed advances and are subject to adjustment at any time by Contractor for errors, overpayment or Contractor's determination that the remaining balance of payments may be insufficient to insure completion of the Agreement Work in accordance with its terms, to satisfy any withholding rights of Contractor, or to pay lien, retention or bond claims.
- P. Subcontractor shall not be entitled to any interest on retention or other amounts to be paid to Subcontractor under the terms of this Agreement except where the payment of interest is required by statute and the right to such interest cannot be waived or where Contractor actually receives interest from Owner on proceeds due Subcontractor for Work performed.

## Article 6 - Time and Schedule of Work

- A. Except as may otherwise directed by Contractor in writing, Subcontractor shall, within ten (10) calendar days after its execution of this Agreement, prepare and submit to Contractor in writing, for Contractor's review and approval, a proposed schedule showing in detail: (1) the total number of days required by Subcontractor to complete the Work; (2) the order in which Subcontractor proposes to carry out all Major Activities (including the sequence and expected duration of such activities) anticipated by Subcontractor; and (3) the dates on which the activities representing the complete performance of the Work (including, but not limited to, the procurement, submittal review, fabrication, delivery, and installation activities for all major components of the Work) may be started and finished. "Major Activities" are defined as those that exceed ten (10) calendar days in duration. Subcontractor shall schedule and sequence its Work such that it is integrated into, and consistent with, the schedule for the Project approved by the Owner ("Approved Project Schedule"), as determined by Contractor.



- B. If requested by Contractor from time to time, the Subcontractor shall, within forty-eight (48) hours of Contractor's request, prepare and submit to Contractor, for Contractor's approval, a "Short Interval Schedule." Each such Short Interval Schedule shall describe in detail the activities of the Subcontractor in the performance of the Work and the relationships in time of such activities on a daily basis for two or three week time frames, and shall include any other information, as specified by Contractor, and supported by such evidence as to its correctness as Contractor may request. Each such Short Interval Schedule shall be consistent with the Approved Project Schedule and the completion date required by the Contract Documents. Approval of each such requested Short Interval Schedule shall be a material condition for Contractor's payment of each Application for Payment which is submitted after a request for such schedule has been made. Subcontractor's Short Interval Schedules may be accepted or rejected by Contractor in its reasonable discretion. If rejected, Subcontractor shall, within 48 hours, submit a revised Short Interval Schedule curing Contractor's objections.
- C. The Short Interval Schedule: (1) shall not exceed the time limits under the then current Approved Schedule and the Contract Documents, (2) shall be revised at the direction of the Contractor from time to time, (3) shall be related to the entire Project to the extent required by the Contractor, and (4) shall provide for expeditious and practicable execution of the Work. The Subcontractor shall use its best efforts and due diligence to maintain, and shall maintain, the progress of the Work in accordance with the Short Interval Schedule and the then current Approved Project Schedule. Notwithstanding anything contained in the foregoing, the Short Interval Schedule approved by Contractor shall not be revised without the prior written approval of the Contractor.
- D. Time is of the essence of this Agreement. Contractor's Superintendent shall contact Subcontractor, verbally or in writing as determined by Contractor, forty-eight (48) hours prior to the required presence of Subcontractor, and Subcontractor shall promptly mobilize its forces to the Project site within said time frame and immediately begin performing its Work. Subcontractor shall conform to the current Approved Project Schedule, as well as Subcontractor's current approved Short Interval Schedule, at Contractor's discretion, subject to Contractor's modification. Subcontractor shall prepare and obtain approval as required by the Contract Documents for all shop drawings, details, samples, and do all other things necessary and incidental to the prosecution of its Work in conformance with the then current Approved Project Schedule or this Agreement, whichever dates are earlier, and shall coordinate the Work covered by this Agreement with that of all other separate contractors, subcontractors, and of the Contractor in a manner that will facilitate the efficient and timely completion of the entire Project.
- E. Subcontractor agrees to meet its part of the then current Approved Project Schedule, as well as its then current approved Short Interval Schedule, and to apprise Contractor each month, or more frequently if requested by Contractor, of Subcontractor's progress against such schedules. In the event Subcontractor fails to maintain its part of the then current Approved Project Schedule, or Subcontractor's current approved Short Interval Schedule, it shall, without additional compensation, accelerate the Work and/or take such action as Contractor may direct until Subcontractor's Work is in accordance with said schedules. Such action may include, without limitation, requiring Subcontractor to increase the number of shifts, personnel, overtime operations, days of Work, equipment, plant, or other remedies. Subcontractor shall submit to Contractor, within forty-eight (48) hours of such request, for Contractor's approval, a recovery schedule satisfactorily demonstrating to Contractor how the required rate of progress will be regained without additional costs to Contractor. If the Subcontractor fails to regain the required rate of progress with respect to its Work, the Contractor may take such actions as it may deem necessary to maintain the then current Approved Project Schedule, and/or Subcontractor's current approved Short Interval Schedule, and shall deduct the cost of such actions from monies due or to become due Subcontractor.
- F. Contractor shall have complete control of the premises on which the Work is to be performed and shall have the right to decide the time or order in which the various portions of the Work shall be installed, the priority of the Work in relation to the work of other Subcontractors, and, in general, all matters representing the timely and orderly conduct of the Work of Subcontractor on the Project. Subcontractor acknowledges that as construction progresses it may be necessary for Contractor to change the sequential order and/or duration of the various activities, including those contemplated by this Agreement, to account for unanticipated delays, occurrences and other factors which act to alter the original Approved Project Schedule. Contractor may require Subcontractor, at no additional cost to Contractor, to prosecute Subcontractor's Work in such sequence as the progress of other subcontractors and the then current Approved Project Schedule dictates. It is expressly understood and agreed that the scheduling and sequencing of the Work is an exclusive right of Contractor and that Contractor reserves the right to reschedule and re-sequence Subcontractor's Work from time to time as the demands of the Project require without any additional cost or expense to be paid to the Subcontractor.
- G. Extra charges will not be allowed for additional move-ons, shift work, weekend work, or over-time work due to the phasing of work or sequencing of work required by the Contract Documents or as required by the Contractor. Contractor will coordinate with Subcontractor to attempt to minimize the number of move-ons, shift work, weekend work, or over-time work to the jobsite for the Subcontractor to complete its Work. However, Subcontractor shall anticipate that multiple move-ons, shift work, weekend work, or over-time work may be required.
- H. If Subcontractor commits any act or omission which causes delay to the overall work of the Project, or the work of any other party, Subcontractor shall be liable for all losses, costs, expenses, liabilities, and damages, including actual, consequential and liquidated damages, sustained by Contractor, or for which Contractor may be liable to Owner or any other party as a result thereof. The Contractor will determine the proportion of fault for any delay among all subcontractors, and the damages for delay will be distributed between subcontractors accordingly. The Contractor's allocation of fault with respect to such delays shall be final and binding on Subcontractor, so long as the allocation is made in good faith.

## Article 7 - Delays and Impacts

- A. Should Subcontractor be delayed in the prosecution or completion of the Work by the act, neglect or default of the Owner, Contractor or other third party for whom they are legally responsible, or should Subcontractor be delayed waiting for materials or information required to be furnished by Owner or Contractor, or by damage caused by fire or other casualty for which the Subcontractor is in no way responsible, or by the combined action of the workforce, in no way caused by, or resulting from default or collusion on the part of the Subcontractor, then the time herein fixed for the completion of the Work shall be extended by the number of days that Subcontractor has been delayed, but no allowance or extension shall be made unless a claim therefore is presented in writing to the Contractor within forty-eight (48) hours of the commencement of such delay, and in no circumstances shall the time of completion be extended to a date which will prevent the Contractor from completing the entire Project within the time that Owner allows Contractor for such completion.
- B. It is understood and agreed by the Subcontractor that its obligation under this Agreement is and shall be to well and fully perform and complete the Work herein specified in compliance with all laws, ordinances and regulations of all governmental authorities in any manner relating to said Work, and that the Subcontract Price herein agreed to be paid by Contractor to Subcontractor shall be in compensation for the full performance and completion of the Work, and not as per diem compensation for the number of days which the Parties may estimate as necessary for the prosecution of the Work. It is further agreed that the time or times herein specified shall not be construed to limit and restrict the obligation of Subcontractor to such period, but

it shall proceed with the Work during such times as shall be necessary to perform and complete the said Work, at no other and further expense to Contractor than the Subcontract Price as hereinabove stated.

- C. Subcontractor acknowledges that a certain amount of delay is inherent in every construction project. No claims for additional compensation or damages for delays, whether in the furnishing of material by Contractor, or delays by other Subcontractors, Owner, or other third party for whom any of them are legally responsible, will be allowed by the Contractor, and said extension of time for the completion shall be the sole remedy of Subcontractor. However, in the event, and in such event only, that Contractor actually receives additional compensation from Owner on account of such delays, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor from Owner, minus a pro-rata share of Contractor's attorneys' fees, experts fees, and other costs in securing such additional compensation, as is equitable under all of the circumstances. Such determination shall be made solely by Contractor, and shall be final and binding on Subcontractor. Subcontractor shall have the burden of proving the impact of any delay it claims justifies a time extension and, if permitted under this Agreement, any compensation requested. If the performance of the Work by Subcontractor is unaffected by a delay incurred by Contractor (or another subcontractor) and for which relief is granted to Contractor (or such other subcontractor), Subcontractor shall not be entitled to claim an extension of time for such delay as a justification for delay in the timely performance of its Work. Nothing herein contained shall require Contractor to make any claim against Owner for any actual or alleged delays, and it is specifically agreed that the failure of Contractor to prosecute any such claim against Owner shall not entitle Subcontractor to any claim for damages against Contractor.
- D. Subcontractor acknowledges that a certain amount of impacts of the type set forth herein are inherent in every construction project. No claims for additional compensation or damages for impacts, including but not limited to loss of productivity, disruptions, re-sequencing of work, re-phasing, re-mobilizations, cumulative impacts as a result of multiple changes, excessive Requests for Information (RFI'S) or trade stacking will be allowed by the Contractor. However, in the event, and only in such event, that Contractor obtains additional compensation from Owner on account of such above described impacts, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor from Owner, minus a pro-rata share of Contractor's attorneys' fees, experts fees, and other costs in securing such additional compensation, as is equitable under all of the circumstances. Such determination shall be made solely by Contractor, and shall be final and binding on Subcontractor. Nothing herein contained shall require Contractor to make any claim against Owner for such impacts, and it is specifically agreed that the failure of Contractor to prosecute any such claim against Owner shall not entitle Subcontractor to any claim for such damages against Contractor.
- E. In no event, shall Subcontractor be entitled to any compensation for impacts to its Work unless it has fully complied with the notification requirements set forth in the Prime Contract and in this Agreement. In the event that the Prime Contract does not contain specific notification and/or documentation requirements, the Subcontractor shall notify Contractor in writing within twenty-four (24) hours of the commencement of any alleged impact (s). Such notification shall include, for each alleged impact: (1) a written, detailed narrative outlining the specific alleged impact and its alleged cause(s), (2) the quantity and identity of the workers allegedly impacted, (3) the specific location of the alleged impact, and (4) the duration of the alleged impact. Subcontractor agrees that its failure to strictly comply with the notification and documentation requirements of this Article will result in the waiver of any such claim by Subcontractor.
- F. Subcontractor acknowledges that in the event that any of the foregoing prohibitions and limitations are held unenforceable, and Subcontractor is permitted to pursue a claim of inefficiency, loss of productivity or other similar or related request for additional compensation, Subcontractor expressly agrees that it may rely only on evidence indicating the actual inefficiency, loss of productivity or other similar consequence as it occurred on the Project. Subcontractor further expressly agrees that no reports, analyses, data, industry or academic studies or any other evidence that does not exclusively rely on, and pertain to, the Work performed at the Project shall be used or in any way considered, in whole or in part, in connection with such claims.

**Article 8 - Contractor's Right to Do Subcontractor's Work** The Contractor, at its sole discretion, may demand written assurances from Subcontractor of its ability to fully perform any and all requirements of this Agreement. The Subcontractor's failure to provide adequate assurances to the Contractor's reasonable satisfaction within three (3) days shall constitute a default of this Agreement as outlined in Article 12 – Termination for Default. In addition to Contractor's other remedies, if Subcontractor fails to supply sufficient manpower, equipment or materials to advance the Work according to the then current Approved Project Schedule and Short Interval Schedule, then Contractor may, at its option, use its own or other forces, equipment or materials to perform such portions of the Work, and/or take any other actions permitted by this Agreement, as it deems necessary to increase the rate of progress. Contractor shall deduct the expenses thereof plus all associated direct and indirect costs, along with Contractor's overhead and profit, from the Subcontract Price.

**Article 9 - Inspection, Testing and Correction of Work** Subcontractor shall make its Work accessible at all times, and shall coordinate and facilitate all inspections required for its Work by the Contract Documents. Unless the Contract Documents expressly provide otherwise, Subcontractor shall schedule and pay for all tests and inspections required for its Work. If it is necessary to do so for such inspection and testing, Subcontractor will remove and replace, at its own expense, those portions of Subcontractor's Work necessary to perform such inspections and testing. Subcontractor will also reimburse Contractor for any re-testing or re-inspection expense incurred because of defects in Work or materials supplied by Subcontractor. Subcontractor shall, within twenty-four (24) hours after receiving written notice from the Contractor, proceed to take down and remove all portions of the Work which the Contractor or Owner's Representative shall determine are unsound, improper or fail to conform to the Contract Documents and shall repair and replace, at Subcontractor's sole expense, all such Work and such other work (whether its own or others') as is damaged or destroyed in connection with the repair or replacement of such Work.

**Article 10 - Changes** Contractor may at any time by written directive, and without notice to Subcontractor's surety(ies), make changes to the Work. If such changes causes an increase or decrease in the cost of the Work, or in the time of performance, an adjustment shall be made in accordance with the provisions for pricing changes to the Work set forth in the Prime Contract and as outlined below.

- A. Subcontractor shall make no changes to the Work described in this Agreement, and shall not be compensated for any extra work or cost, without a written change order or written directive issued by an authorized representative of the Contractor and subject to the terms set forth below.
- B. No increase in compensation to the Subcontractor, or extension of time for performance of the Work, shall be allowed for changes in the Work unless the Subcontractor makes application therefore, in writing, to Contractor within five (5) days from the date on which Subcontractor receives a notification of change in the Work, or within three (3) days prior to the time within which Contractor must submit a change order request or quotation to Owner pursuant to the terms of the Prime Contract, whichever is earlier. Subcontractor's application must include a detailed breakdown of all costs regardless of whether the notification instructs Subcontractor to proceed or not to proceed with the changed work. If Subcontractor fails to submit an

application with pricing within the time specified above, Contractor will be entitled to conclusively presume that the change in the Work results in no change to the compensation of the Subcontractor or the time required for performance of Work; alternatively, Contractor, at its option, may quote the change order work to the Owner on behalf of the Subcontractor, and Subcontractor will be responsible to perform the changes defined in the change order for the price and additional time (if any) approved by the Owner and as issued by Contractor to Subcontractor.

- C. Change order applications shall be sufficiently detailed to permit a thorough and complete analysis and evaluation of all proposed costs. The pricing will include all work covered by the change whether such work was changed, added or deleted. Direct labor hours and rates, equipment hours and rates, material quantities and costs and taxes must be supported by quotes or receipts from the supplier, as determined by Contractor. The labor rates and classifications shall be shown in detail for each trade involved. Wages, fringes and labor burden shall be detailed and at the Subcontractor's documented rates. Subcontractor will provide, within forty-eight (48) hours of Contractor's request, any additional information requested concerning any proposed changes
- D. The change order pricing shall also include mark-up which will cover all of Subcontractor's indirect costs, field and office supervision and administration including the Subcontractor's superintendent, home office overhead, change request pricing and estimating, insurance, bonds, safety measures and profit and all other expenses, not to exceed the amount specified in the Prime Contract for work performed by Subcontractor's forces, or 15%, whichever is less. Subcontractor shall not be entitled to any increase in the Subcontract Price or Subcontract Time for pricing or estimating as to changes not accepted and authorized by Contractor and Owner, and Subcontractor acknowledges that all such costs and time are deemed included in the base Subcontract Price and Subcontract Time.
- E. For work performed by the Subcontractor or its sub-subcontractors, overhead (of all types and classification) and profit will not exceed 15% of the direct cost of the change order work, or as specified in the Prime Contract, whichever is less, regardless of the number of tiers of sub-subcontractors.
- F. For deleted Work, the Contractor will be entitled to a credit for overhead and profit in the same percentage(s) as indicated above. If the percentages are not identified in the Contract Documents, the Subcontractor will provide a credit amount of 15% for overhead and profit on deleted Work.
- G. If the Subcontractor and the Contractor cannot agree on the cost or the time for the performance of any change, the Subcontractor shall nevertheless perform the work as directed in writing by the Contractor. The Subcontractor shall provide back-up documentation to the Contractor on a daily basis to substantiate the cost of the disputed work, including, but not limited to, verification of hours worked signed by Contractor's superintendent. The signature of Contractor's superintendent on any time and material ticket shall only serve to verify the reported hours worked, and material supplied, and shall not represent Contractor's agreement that the provision of such work and/or material constitutes extra work or entitles Subcontractor to any increase in compensation or an extension of time on the Project. The Subcontractor may, in Contractor's sole discretion, be denied reimbursement for the disputed work if the Subcontractor fails to provide the daily documentation with forty-eight (48) hours of completion of each day's work. At no time shall Subcontractor delay or refuse to perform any work if a dispute arises over whether such work is an extra or change to the Work under this Agreement. The Subcontractor must promptly proceed with the disputed work as and when directed by the Contractor in all cases, and Subcontractor shall pursue any such dispute under Article 14 below. If the Subcontractor refuses to proceed with the disputed work as directed, Subcontractor will be responsible for all time and cost impacts, including but not limited to liquidated, actual and consequential damages, associated with the refusal to proceed with the disputed work, and such refusal shall constitute grounds for termination under Article 12.A. - Termination for Default.
- H. The Contractor will issue Contractor's Official Change Order Document to modify the Contract Documents, after Owner and Contractor have agreed to changes to the price and time for the affected work, or after an internal change order has been agreed to between Contractor and Subcontractor. Contractor will not acknowledge a Subcontractor change order document, and any Subcontractor generated document shall not modify the Contract Documents.
- I. Approved changes shall be considered as subject to, and a part of the original Work. The Subcontractor waives any claim that any change in the Work will affect the Subcontractor's warranties or guarantees, unless the Subcontractor has notified the Contractor in writing prior to proceeding with the change.
- J. When the Subcontractor is making an application for payment for change order work, the Subcontractor must reflect only fully executed change orders on the application for payment. The Subcontractor shall not submit a payment application which includes the cost of change order work, and the Contractor will not recognize any application for payment of a change order, until the Contractor has received an executed change order for the Work from the Owner and the change order has been executed by the Contractor and Subcontractor on Contractor's unmodified Official Change Order Document. It is expressly understood and agreed in connection with the determination of any changes or claimed changes 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 in connection with the Project, Contractor shall never be liable to Subcontractor to any greater extent than Owner is liable to Contractor.
- K. No increase in compensation to the Subcontractor, nor extension of time, shall be allowed for any changes in market conditions, including but not limited to any increase in labor rates, freight costs, storage fees, tax rates, the cost of materials, equipment or any other costs, or shortages or unavailability of labor, materials or services. Subcontractor accepts the sole risk that such costs are subject to change and are not predictable and that the availability of the necessary labor, materials and services may change.
- L. Changes made under this Article 10 shall not be construed as interference with Subcontractor's performance of the Work regardless of the extent or number of such changes and whether the changes originate with the Contractor or Owner, including Owner's or Contractor's exercise of the right to suspend all or any portion of the Work.

**Article 11 - Safety** Subcontractor shall comply fully, at no additional cost, with all laws, orders, citations, rules, regulations, standards, statutes and interpretations of those charged with enforcing the same, concerning occupational health and safety, the handling and storage of hazardous materials, accident prevention, safety equipment and practices including the accident prevention and safety programs of Owner and Contractor. Subcontractor shall conduct inspections to determine that safe working conditions and equipment exist and Subcontractor accepts sole responsibility for providing a safe workplace for its employees and for employees of its sub-subcontractors and suppliers, for the adequacy of, and required use of, all safety equipment and for full compliance with the aforesaid laws, orders, citations, rules, standards, statutes and interpretations of any of them. Subcontractor will familiarize itself with Contractor's Project Safety Requirements and Procedures attached hereto as **Exhibit D** and will promptly comply with all safety instructions issued by Contractor. Subcontractor will be responsible and pay Contractor for all damages, liabilities and expenses, including attorney's fees, incurred by Contractor as a result, either directly or indirectly, of the failure of Subcontractor or its agents to comply with the provisions of this article.

## Article 12 - Termination

### A. Termination for Default



1. In addition to any other rights the Contractor may have under law or the Contract Documents, the Contractor may issue a Cure Notice in the event the Subcontractor refuses or neglects to meet any obligation under this Agreement, including, but not limited to a failure to:
  - a. Supply a sufficient number of skilled workers;
  - b. Supply a sufficient quantity of materials of proper quality;
  - c. Prosecute the Work covered by this Agreement with promptness and diligence, including, but not limited to, performance in accordance with the then current Approved Project Schedule and Short Interval Schedule;
  - d. Install the Work in accordance with the requirements of the Contract Documents;
  - e. Correct a safety deficiency as directed by the Contractor;
  - f. Timely and properly pay for the labor, services, equipment or materials furnished to Subcontractor for use on the Project; or
  - g. Accelerate the Work when directed to do so by Contractor.
2. If Subcontractor fails to cure such deficiencies within three (3) calendar days of receipt of the Cure Notice, or within such shorter period of time specified in the Cure Notice due to an emergency or other exigent circumstances as determined by Contractor, the Contractor, at its option, may enforce any combination of the following:
  - a. Require the Subcontractor to provide a payment and performance bond written in an amount equal to 100% of the Subcontract Price at Subcontractor's sole cost and expense (except to the extent, if any, prohibited by applicable law);
  - b. Withhold future payments until the Cure Notice has been satisfied;
  - c. the Subcontractor to provide a specific work recovery plan and schedule satisfactory to Contractor; and/or
  - d. Take any of the actions set forth in paragraph A.3 stated below:
3. If the Subcontractor fails to satisfy the Cure Notice in whole or in part, within the time required, the Subcontractor will be in default of the Agreement and the Contractor may take whatever steps it deems necessary and appropriate to correct said default, including, but not limited to, providing labor, materials, equipment and services and deducting the costs thereof, from any money then due or thereafter to become due to the Subcontractor under this Agreement, or any other agreement between the Parties. The Contractor may also, at its option, declare the Subcontractor to be in breach, terminate the Subcontractor's right to perform further Work, and shall have the right to enter upon the premises and take possession, for the purpose of completing the Work included under this Agreement, of all of the materials, tools, and equipment thereon, and may employ any other person or persons to finish the Work. In case of such default by Subcontractor, said Subcontractor shall not be entitled to receive any further payment under this Agreement. At Contractor's option, Subcontractor will assign and transfer to Contractor, in whole or in part (if and as directed by Contractor), Subcontractor's subcontracts, orders, and commitments relating to the Work. The Subcontractor shall execute and deliver all documents and take all action required to transfer Subcontractor's rights in subcontracts, orders, and commitments relating to the Work to the Contractor, should Contractor so request. Further, in the event of default, Subcontractor is required, if directed by Contractor, to cancel, all or part of the Subcontractor's subcontracts, orders, and commitments relating to this Agreement. Any claims or damages resulting from such cancellations shall be the sole and exclusive responsibility of Subcontractor. The expense incurred by the Contractor as herein provided, either for furnishing materials or for finishing the Work, and any damages including, but not limited to liquidated, actual and consequential damages incurred by Contractor as a result of such default, shall be chargeable to, and paid by, said Subcontractor. The Contractor shall have a lien upon all material, tools and equipment taken possession of, as aforesaid, to secure payment thereof.
4. Contractor's remedies are cumulative, and the exercise of one remedy shall not restrict Contractor, at the same time or thereafter, from exercising any other remedy set forth herein or provided by applicable law.
5. In the event a termination under this Agreement is found not to have been warranted under this or any other provision of this Agreement, the total compensation and damages that Subcontractor is entitled to recover on account of such termination shall be limited to the compensation that would have been payable to Subcontractor under the provisions of this Agreement as if the Agreement has been terminated for Contractor's convenience pursuant to Article 12.B below.

**B. Termination for Convenience**

1. Contractor may at any time, and for any reason or no reason, terminate Subcontractor's services hereunder for Contractor's convenience by written notice to Subcontractor. Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the Work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Contractor, or at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived there from. Subcontractor shall thereafter do only such Work as may be necessary to preserve and protect the Work already in progress and to protect material and equipment on the Project site or in transit thereto.
2. Upon such termination, Subcontractor shall be entitled to recover only its reasonable direct costs incurred prior to the termination and mark-up for overhead and profit (not to exceed 15% combined) on Work actually performed. In no event, however, shall the mark-up for profit on completed work exceed the actual profit Subcontractor would have earned for that Work absent the decision to terminate the Subcontract. If it appears that the Subcontractor would have sustained a loss on the Work had it been completed, no amounts for profit shall be paid by Contractor, and the amounts paid for the termination shall be reduced by the indicated rate of loss. Subcontractor must make its complete records available at reasonable times and places for Contractor's audit. In no event shall Subcontractor be entitled to any payment which would cause the Subcontract Price (as adjusted by any fully executed change orders) less previous payments to be exceeded.
3. Subcontractor expressly agrees that it shall not be entitled to any other compensation or damages in the event of termination for convenience, including without limitation, compensation for lost profits, lost opportunity costs, unabsorbed or under absorbed home office overhead, delay or disruption damages, consequential damages, or other similar remuneration.

- C. Termination of Prime Contract** Should the Owner terminate the Prime Contract or any part which includes the Subcontractor's Work, the Contractor shall so notify the Subcontractor in writing and upon written notification this Agreement shall be terminated (except for Subcontractor's obligations which, by their nature, survive the termination of this Agreement) and the Subcontractor shall immediately stop work, follow all of Contractor's instructions and mitigate all costs. In the event of such Owner termination, the Contractor's liability to the Subcontractor is limited to the extent of the Contractor's recovery, if any, on behalf of the Subcontractor under the Prime Contract. Nothing herein contained shall require the Contractor to make any claim against the Owner for such additional compensation or damages in the event of termination before completion, and it is specifically agreed that the failure of the Contractor to prosecute any such claim against the Owner shall not entitle the Subcontractor to any claim for

additional compensation or damages against the Contractor Contractor's recovery, if any, on behalf of the Subcontractor, shall be subject to deduction for a pro-rata share of Contractor's attorneys' fees, experts' fees, and other costs, in securing such additional compensation associated with the termination of the Prime Contract. Unless Contractor receives a greater net recovery from Owner as a result of Owner's termination of the Prime Contract, in no event shall Subcontractor be entitled to a greater recovery from Contractor than under a termination pursuant to Article 12.B. above.

**Article 13 - Liens, Stop Payment Notices, and Third Party Payment Claims** Subcontractor hereby agrees to turn the Work over to the Contractor in good condition and free and clear from all claims, encumbrances, stop payment notices, bond claims and liens, including, but not limited to those for, labor, materials, equipment, services, trust fund contributions or fringe benefit contributions, and to immediately and fully defend, indemnify and hold the Contractor and Owner harmless from all claims, encumbrances, stop payment notices, bond claims and liens arising from the performance of this Agreement. In the event of the failure of the Subcontractor during the progress of the Work, or any time thereafter, to pay all claims, encumbrances, stop payment notices, and liens, including, but not limited to those for, labor, materials, equipment, services, trust fund contributions or fringe benefit contributions, the Contractor may, at its option, and without notice to the Subcontractor prior thereto, pay all such claims, encumbrances, stop payment notices, and liens and charge the amounts to Subcontractor. If the balance of the Subcontract Price is insufficient to cover such amounts, the Subcontractor agrees to pay the balance to Contractor within seven (7) days of Contractor's demand. In case of suit to foreclose any lien, stop payment notice or bond claim (including Miller Act, if applicable) that is brought by any entity making claim for labor, materials, equipment, services, trust fund contributions or fringe benefit contributions, under this Agreement, Subcontractor will, at its own cost and expense (including attorney's fees), defend such suit and pay any judgment entered. It is understood and agreed that the full and faithful performance of this Agreement on the part of the Subcontractor (including the payment of any obligations due from Subcontractor to the Contractor, or any amounts for labor, materials, equipment, services, trust fund contributions or fringe benefit contributions with respect to said Work) is a condition precedent to the Subcontractor's right to receive payment for the Work performed, and any moneys paid by the Contractor to the Subcontractor under the terms of this Agreement shall be impressed with a trust in favor of labor and materialmen furnishing labor, material or services to the Subcontractor on the Work herein subcontracted, as well as with respect to any applicable labor trust or training funds.

#### Article 14 - Dispute Resolution

- A. All claims, disputes and matters in question arising out of or relating to this Agreement, or the breach thereof, except for claims described in paragraph B shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise, provided, however, that only one arbitrator shall hear the dispute regardless of the amount in controversy. The Parties agree to participate, in good faith, in mediation as an express condition precedent to the initiation of any arbitration proceeding. The costs of the foregoing mediation shall be split evenly by the parties.
- B. The agreement to arbitrate shall not apply to any claim:
  1. Primarily for contribution or indemnity asserted by one Party to this Agreement against the other Party and arising out of an action brought in a state or federal court; or
  2. Required to be resolved in a different manner by the Prime Contract.
- C. The venue for resolution of any dispute between the parties concerning this Project or this Agreement, unless otherwise expressly required by the Prime Contract, shall be the County of Los Angeles. The Parties hereby expressly waive all rights they may have to a change of venue. Subcontractor agrees to incorporate the provisions of this paragraph into all sub-subcontracts, material supply agreements and purchase orders.
- D. Notwithstanding the existence of any dispute as it pertains to the Work or to compensation, or Subcontractor's dissatisfaction with any decision of Contractor required hereunder, unless and until Subcontractor's right to perform Work under this Agreement has been terminated in accordance with its terms, or all Work has been completed as required, Subcontractor shall not delay or suspend any Work, and Subcontractor shall not be excused from any performance due under this Agreement. During any pending dispute, notwithstanding the pursuit of its resolution, whether in arbitration, court or otherwise, Subcontractor shall perform and carry on the Work, perform all tasks, and provide all services as authorized and required by this Agreement. As to the particular matter in dispute, Subcontractor shall comply with Contractor's directives with regard thereto pending the resolution of the dispute, and the failure to so comply shall be deemed a material breach hereunder.
- E. Attorneys' Fees. In the event the Parties become involved in litigation or arbitration with each other arising out of this Agreement or other performance thereof in which the services of an attorney or other expert are required, each party will be responsible for their own attorneys' fees, costs and experts' fees. In the case of a dispute under the Prime Contract dispute resolution provisions, the Parties shall be entitled to such attorneys' fees and other costs as may be provided for under the Prime Contract.

#### Article 15 - Indemnity

- A. Subcontractor's Indemnification and Defense of Contractor. With the exception that this Article 15 shall in no event be construed to require indemnification by Subcontractor to an extent greater than that permitted under the statutes or public policy of the State of California, Subcontractor shall defend, indemnify, and hold harmless Contractor, including its officers, directors, shareholders, partners, members, joint venturers, representatives, agents, employees, affiliates, parents and subsidiaries, and each of them (collectively "Contractor" for purposes of this Article 15), of and from any and all claims, demands, lawsuits, actions, causes of action, proceedings, damages, penalties, costs, expenses, actual attorneys' and experts' fees, losses or liabilities, in law or in equity, of every kind and nature whatsoever ("Claims") arising out of or in connection with Subcontractor's obligations under this Agreement, including, the acts or omissions of Subcontractor's sub-subcontractors and suppliers of any tier. Subcontractor's duties under this Article 15 shall apply to Claims 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, any employees or agents of Subcontractor, Owner, Contractor, or any other subcontractor or third party;
  2. Damage to the real or personal property of anyone (including loss of use thereof);
  3. Damages and penalties imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance or statute;
  4. Infringement of any patent rights which may be brought against the Contractor;

5. Claims and liens for labor performed, services rendered or materials used (or furnished to be used) on the project, including all incidental or consequential damages resulting to Contractor from such claims or liens;
  6. Claims for unpaid or underpaid wages, taxes, trust fund contributions, training fund contributions or fringe benefits brought by any claimant with respect to Subcontractor's work under this Agreement or on the Project;
  7. Failure of Subcontractor to comply with the provisions of Article 16 – Insurance or Exhibit E – Insurance Requirements for Subcontractors;
  8. 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 others' equipment, hoists, elevators, or scaffolds; and
  9. Any failure or alleged failure to comply with the terms of this Agreement or the Contract Documents. The requirements of this Article 15 shall extend to Claims occurring after this Agreement is terminated as well as while it is in force. Such defense, indemnity and hold harmless provisions apply to the fullest extent permitted by law, regardless of any passively negligent act or omission of Contractor. Subcontractor, however, shall not be obligated to indemnify Contractor for Claims to the extent arising from the active negligence, sole negligence, or willful misconduct of Contractor, or its agents, employees or independent contractors who are directly responsible to Contractor, or for defects in design furnished by such persons, or for Claims that do not arise out of the Subcontractor's scope of Work under this Agreement. Except as otherwise provided by the statutes or public policy of the State of California, Subcontractor's obligations under this Article are not affected by the insurance required of Subcontractor under this Agreement. With respect to Claims by an employee of Subcontractor, anyone directly or indirectly employed by Subcontractor, or anyone for whose acts it may be liable, the obligations under this Article shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.
- B. Defense of Claims. Subcontractor shall:
1. At Subcontractor's own cost, expense and risk, defend (with independent counsel acceptable to Contractor) all Claims as defined in Article 15.A that may be brought or instituted by third persons, including, but not limited to, governmental agencies or employees of Subcontractor, against Contractor;
  2. With respect to any Claims against Contractor as to which Subcontractor owes to Contractor a defense obligation, Subcontractor hereby elects to proceed under California Civil Code Sections 2782(e)(2) and/or 2782.05(e)(2), as applicable, and further agrees that upon final resolution of any such Claim, any reimbursement for defense fees and costs previously paid by Subcontractor shall be governed by such provisions of the California Civil Code;
  3. Pay and satisfy any judgment or decree that may be rendered against Contractor arising out of any Claim covered by this Article 15; and
  4. Reimburse Contractor for any and all legal expense incurred in connection herewith or in enforcing the indemnity granted in this Article 15.
- C. Risk of Loss. To the fullest extent permitted by law, all work covered by this Agreement done at the Project site, or in preparing or delivering materials or equipment, or any or all of them, to the Project site shall be at the risk of Subcontractor exclusively until the completed work is accepted by Contractor and Owner.
- D. Subcontractor's Indemnification and Defense of Owner and Others. With the exception that this Section Article 15.D shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the statutes or public policy of the State of California, Subcontractor shall defend, indemnify, and hold harmless Owner, including its officers, directors, shareholders, partners, members, joint venturers, representatives, agents, employees, affiliates, parents and subsidiaries, and each of them, as well as any other persons that Contractor is required to indemnify, defend and hold harmless under the Contract Documents (collectively "Owner" for purposes of this Article 15), of and from any and all Claims, to the same extent that Contractor is required to defend, indemnify and/or hold harmless Owner and such other persons, but only with respect to Claims arising out of or in connection with Subcontractor's obligations under this Agreement.
- E. Construction of Article. Notwithstanding any of the provisions of this Article 15, if it is finally determined by a court of competent jurisdiction that any of such provisions are void or unenforceable under governing law, then such provisions shall be deemed stricken from this Agreement and the remaining provisions shall remain in full force and effect and shall be construed to provide for the maximum defense, indemnification and hold harmless obligation by Subcontractor permitted by law. Subcontractor's obligations under this Article 15 are in addition to any other rights or remedies which Contractor may have at law, in equity or under this Agreement. Subcontractor shall include, in all agreements with any of its lower tier subcontractors on the Project, defense, indemnity and hold harmless provisions substantially similar to those set forth in this Article 15 for the benefit of Owner and Contractor.

## Article 16 - Insurance

- A. Without limiting Contractor's right to indemnification under this Agreement, the Subcontractor shall procure and maintain, without interruption, all insurance as will protect the Owner, Contractor and Subcontractor from claims which may arise out of or result from the Subcontractor's operations under this Agreement or for which Subcontractor may be legally liable, in accordance with the types, limits and conditions of coverage set forth in the Prime Contract, herein and in Exhibit E, which is attached hereto and incorporated herein by this reference. Subcontractor shall maintain the required insurance at all times during the performance of its Work on the Project, and for such longer periods as set forth in the Contract Documents. In the event of a conflict between this Agreement, Exhibit E, the Prime Contract and/or any other Contract Document, the greater and more comprehensive requirement for the types, forms and limits of insurance shall apply.
- B. All insurance required under this Agreement shall be placed with insurers licensed or approved to do business in the State of California with an A.M. Best's Financial Strength rating of no less than "A" and an A.M. Best's Financial Size rating of no less than "VII," unless the Contractor has granted specific, prior approval in writing. The Contractor may allow deductibles and/or self-insured retentions of up to \$25,000 per occurrence if Subcontractor is willing to post security, guaranteeing payment of losses and defense expenses for a period of four (4) years after the Project is

completed. Notwithstanding the foregoing, any deductibles and/or self-insured retentions in excess of \$10,000 per occurrence require the express prior written consent of Contractor.

- C. The policies of insurance shall include the following endorsements, as more specifically set forth in **Exhibit E**, copies of which shall be provided:
1. The Owner, Contractor, their respective officers, directors, employees, agents and representatives are to be covered as Additional Insureds as respects: liability arising out of all activities performed by or on behalf of the Subcontractor; products and completed operations of the Subcontractor; premises owned, occupied or used by the Subcontractor; and automobiles owned, leased, hired or borrowed by the Subcontractor. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insured's.
  2. Stipulation that the Subcontractor's insurance coverage shall be primary insurance as respects the Contractor, Owner, and their respective officers, directors, employees, agents, and representatives. Any insurance or self-insurance maintained by the Contractor, Owner, or their respective officers, directors, employees, agents, or representatives, shall be excess of the Subcontractor's insurance and shall not contribute with it.
  3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Contractor, Owner, or their respective officers, directors, employees, agents, or representatives.
- D. Prior to commencement of any Work under this Agreement, the Subcontractor shall deliver to the Contractor insurance certificates and policy endorsements fully confirming the existence of all insurance required under the Prime Contract and this Agreement, including all limits, deductibles, self-insured retentions, terms, clauses, and conditions as set forth herein and in **Exhibit E**. Such certificates and endorsements shall be signed by an authorized representative of the relevant insurance company and shall include the signatory's company affiliation and title. Should it be deemed necessary by the Contractor, the Subcontractor shall provide documentation, acceptable to the Contractor, which confirms that the individual signing said certificates and endorsements is indeed authorized to do so by the insurance company. Contractor also has the right to demand from the Subcontractor and to receive, within five (5) calendar days, full and complete copies of any insurance policies required under this Agreement.
- E. Sub-Subcontractor Insurance Requirements.
1. The Subcontractor shall include in all sub-subcontracts a requirement that its sub-subcontractors obtain all insurance required by this Agreement, except that, with Contractor's specific, prior approval in writing, the limits of liability and deductibles may be in amounts determined by the Contractor, according to the Work performed by each sub-subcontractor and the size of each sub-subcontract. The Owner, Contractor and their respective officers, directors, employees, agents, or representatives shall be named as additional insureds under each of sub-subcontractor's policies as set forth in **Exhibit E**.
  2. Certificates of insurance and endorsements acceptable to the Contractor for each Subcontractor and sub-subcontractors shall be filed with the Contractor prior to the Subcontractor or sub-subcontractor's commencement of Work. The certificates and endorsements shall contain a provision that coverage affordable under the policies will not be canceled unless at least thirty (30) calendar days' prior written notice has been given to the Contractor.
- F. Subcontractor's failure to provide or maintain the requisite insurance, with the limits, terms, clauses, and conditions as required, shall constitute a material breach of this Agreement. Should the Subcontractor fail to provide insurance, certificates or endorsements as required, the Contractor may, in addition to any other remedy provided in this Agreement or by law:
1. Obtain such requisite insurance and deduct and retain the amount of the premiums for such insurance from any sums due to the Subcontractor under the Agreement;
  2. Order the Subcontractor to stop Work under this Agreement and/or withhold any payment(s) which become due to the Subcontractor hereunder until the Subcontractor demonstrates compliance with the requirements hereof; or
  3. Declare Subcontractor to be in default and terminate the Subcontractor for cause. Nothing herein contained shall be construed as limiting in any way the extent to which the Subcontractor may be held responsible for payments of damages resulting from the Subcontractor's performance of, or failure to perform, the Work covered under this Agreement.
- G. Subcontractor agrees that no act or omission by Contractor shall act as a waiver of the required insurance coverage, in the required amounts, including, but not limited to, acceptance of insurance certificates and/or additional insured endorsements which are not in full and complete accordance with the requirements contained herein, and Contractor has the right to enforce the Subcontract as if all of the requirements had been met and to declare Subcontractor in default, at any time, if such requirements have not been satisfied.
- H. Subcontractor shall maintain, at all times during the performance of its Work, and at its sole cost and expense, insurance for theft or physical damage to its tools, equipment and property (whether owned or rented) used in the performance of its Work. Such insurance shall cover said tools, equipment and property while in temporary locations, in transit to the Project, and while stored on the Project site. Subcontractor expressly waives all claims against and releases Contractor, Owner, and their respective officers, directors, employees, agents, and representatives from any liability for the damage, loss or destruction of such tools, equipment and property.
- I. Subcontractor shall be responsible for the payment of the deductible for any Builder's Risk or Course of Construction insurance claim, regardless of who provides such insurance, in proportion to Subcontractor's responsibility for such loss as reasonably determined by Contractor.

**Article 17- Protection of Work and Risk of Loss** Prior to final acceptance by the Contractor and the Owner, the Subcontractor shall be responsible for the protection of its Work and materials from all risks of physical damage. In the event the Subcontractor's Work or materials are damaged, the Subcontractor shall repair or replace such damaged Work or material to the satisfaction of the Owner and Contractor at Subcontractor's sole cost and expense. Subcontractor shall also provide proper protection of any existing work, furnishings, and fixtures or anything likely to be damaged by its Work. Any work damaged by failure to provide protection shall be removed and replaced at Subcontractor's expense. No payments to the Subcontractor under this Agreement shall be construed to be an acceptance of any defective Work performed or defective materials furnished by the Subcontractor or its sub-subcontractors or suppliers.

**Article 18 - Clean-Up & Use of Site** The Subcontractor shall perform its Work, including any necessary clean-up, so as to maintain the Project site in a clean, safe and orderly condition, free from accumulation of waste materials and rubbish on a daily basis. All construction debris created by the Subcontractor's



trade is to be deposited into jobsite roll-offs supplied by Subcontractor on a daily basis. AMG & Associates, Inc.'s Superintendent must approve clean-up of all Work areas before Subcontractor's Work will be considered complete. If Subcontractor fails to maintain the Project free from accumulation of waste and rubbish, and fails within a twenty-four (24) hour period after receipt of notice to correct such failure, the Contractor may correct such deficiencies at the rate of \$85.00 per hour plus overhead and profit, chargeable to Subcontractor. During the course of construction, debris may accumulate that cannot be attributed to any specific subcontractor(s). The Contractor, and its sole discretion, may perform the necessary clean-up and distribute the costs pro-rata to all subcontractors in the affected areas at the rate indicated above.

**Article 19 - Superintendent / Foreperson** The Subcontractor shall provide, at all times during the course of Subcontractor's Work, a full-time competent English speaking Superintendent or Foreperson, necessary assistants and other personnel satisfactory and acceptable to the Contractor. Prior to the commencement of the Work, Subcontractor shall notify the Contractor of the identity of said individuals. Contractor shall have the right, at any time, and without any increase in the Subcontract Price or Subcontract Time, to direct a change in Subcontractor's Superintendent, Foreperson or other personnel if their performance is unsatisfactory, as determined by Contractor in its sole discretion. Subcontractor shall secure the prior written approval of Contractor for any change or reassignment of its Superintendent, Foreperson or other personnel.

**Article 20 - Warranty and Correction Period** Subcontractor warrants to Contractor that all materials and equipment furnished shall be new, free from defects and of good quality. Subcontractor guarantees all materials and workmanship, and agrees to replace, at its sole cost and expense and to the satisfaction of Contractor, any and all materials adjudged by Contractor to be defective or improperly installed as well as guarantee the Owner and Contractor against liability, loss or damage arising from said installation during a period of one (1) year from final completion and acceptance of the entire Project covered by the Prime Contract, or, if the period of guarantee required is in excess of one (1) year by the Contract Documents, Subcontractor shall be bound during such longer period. Under no circumstances shall the warranty period be deemed to start before final acceptance of the entire Project unless expressly provided in the Prime Contract. If the Subcontractor refuses to correct any warranty work as directed by the Contractor, and the Subcontractor has received final payment, the Subcontractor will, within ten (10) days of demand, reimburse Contractor any funds expended, including not limited to the direct costs of the work, and an additional 20% for Contractor's overhead and profit.

**Article 21 - Assignment** It is specifically agreed that the Subcontractor shall not subcontract, assign or transfer this Agreement, any part thereof, any right to payment thereunder or any claim pursuant thereto without the written consent of the Contractor. Any such attempted subcontracting, assignment or transfer not consented to in writing by Contractor shall be voidable, at Contractor's election. Any assignment or transfer hereunder shall be subject to all rights and remedies available to Contractor under law or under this Agreement, including, but not limited to, Contractor's rights of set-off, offset, to retain funds, to amend or modify this Agreement, and to assert all other claims and defenses whether or not arising under this Agreement. The making of any subcontract, assignment or transfer by Subcontractor, or any consent thereto by Contractor, shall in no event relieve Subcontractor or its sureties of any of their obligations, duties, responsibilities or liabilities under this Agreement.

**Article 22 - Prevailing Wage Requirements** If this Agreement is for public work (as defined in Sections 1720 through 1720.6 of the California Labor Code), Subcontractor agrees to abide by and comply with all applicable provisions of the California Prevailing Wage laws, as set forth in Section 1770, et seq. and Section 1810, et seq. of the California Labor Code (Sections 1771, 1775, 1776, 1777.5, 1813, and 1815 of the California Labor Code are attached hereto as Exhibit K), and Section 16100 et seq. of the California Code of Regulations; and if Federal funds are involved, Subcontractor agrees to comply with all applicable provisions of the Davis Bacon Act, 40 U.S.C. 276(a). Subcontractor specifically agrees:

1. To pay its employees on public works not less than the rate of prevailing per diem wages for general, holiday, and overtime work, as fixed by either the Director of Industrial Relations pursuant to California Labor Code § 1773 and as made available pursuant to California Labor Code § 1773.2; or if Federal funds are involved, to pay its employees the higher wage rate as between that determined by the California Director of Industrial Relations pursuant to the California Labor Code or as determined by the United States Secretary of Labor pursuant to the Davis-Bacon Act;
2. To require its sub-subcontractor(s) (if any), to comply with the prevailing wage requirements as described in this Agreement, the Contract Documents, the California Labor Code, and the Davis-Bacon Act, if applicable;
3. To submit a completed "Public Works Contract Award Information" form (attached to this Agreement as Exhibit N) for Subcontractor and each of Subcontractor's sub-subcontractors, prior to commencing work on the public works project, to the appropriate apprenticeship program who can supply apprentices to the Project, in accordance with 1777.5(e) of the Labor Code. Within 60 days after concluding work on the contract, the Subcontractor and each of the Subcontractor's sub-subcontractors shall submit to apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Subcontract. Subcontractor shall provide Contractor with a copy of the completed forms, and to the awarding body, if requested by the awarding body;
4. To submit to Contractor a "Statement of Employer Payments" (attached to this Agreement as Exhibit M) for Subcontractor and each of its sub-subcontractors who pay benefits to a third party trust, plan or fund for health and welfare benefits, vacation funds, or makes pension contributions;
5. To provide the Contractor, one week after the end of a pay period or such shorter period as required by the Prime Contract, with all Certified Payroll Reports of the Subcontractor and any of its sub-subcontractors, who performed Work on the Project during the pay period. The Certified Payroll Reports must comply with Contractor's Certified Payroll Procedures set forth in Exhibit I;
6. To cooperate fully and completely with Contractor to resolve any issues, rectify any failures of Subcontractor or its sub-subcontractors to pay the prevailing wages (and any other amounts) as required by law, or to correct any possible violations of the California Labor Code, including cooperating with Contractor in preparing any required responses to inquiries by the Owner, Labor Commissioner, or any other relevant public agency or official;
7. To produce, upon request of Contractor or Owner, within ten (10) days, the Certified Payroll Reports, Daily Reports, and/or "Basic Payroll Records" for Subcontractor and all sub-Subcontractors and to preserve same for a period of three (3) years after completion of the Project. "Basic Payroll Records"

means timecards, front and back copies of cancelled checks, cash receipts, trust fund forms, daily logs, employee sign-in sheets, accounting ledgers, tax forms, and any other record maintained for the purposes of, or in any way related to, the reporting of payroll;

8. To comply with the provisions of California Labor Code § 1777.5, including employing the requisite number of registered apprentices pursuant to section 1777.5 and the California Code of Regulations (8 Cal. Code of Regulations, section 230.1). Subcontractor will promptly submit information regarding workers employed by the Subcontractor and its sub-subcontractors in each trade or craft on the Project to Contractor, Owner, and Joint Apprenticeship Committee when requested; Subcontractors and its sub-subcontractors must contribute the amount determined by the Director to be the prevailing amount of apprenticeship training contributions in the area of the Project to the California Apprenticeship Council. Payments to the California Apprenticeship Council must be by check and be accompanied by a completed Training Fund Contribution Form (CCA2) (attached to this Agreement as **Exhibit O**);
9. To comply with California Labor Code § 1810, 1811, and 1815 by compensating employees performing work in excess of 8 hours per day or 40 hours per week at not less than one and one-half (1-1/2) times the basic rate of pay for those hours in excess of 8 hours per day and 40 hours per week;
10. That upon Contractor's notice to Subcontractor of Subcontractor's or any of its sub-subcontractors' failure to pay prevailing wages or failure to submit Daily Reports, Certified Payroll Reports or and Basic Payroll Records, Contractor may withhold from payments due Subcontractor funds sufficient to pay any and all prevailing wages and penalties;
11. To immediately defend, indemnify, and hold harmless Contractor for any principal amounts, fines or other penalties assessed by Owner or other entities resulting from violations of the prevailing wage requirements as described by this Agreement, the Contract Documents, the California Labor Code, and the Davis-Bacon Act, if applicable, by Subcontractor or Subcontractor's sub-subcontractors;
12. To participate and comply fully with any Labor Compliance Program established by the Owner; and
13. Prior to receiving final payment for Work performed on this Project, to submit and deliver to Contractor affidavits, in the form attached in **Exhibit L**, for Subcontractor and all sub-subcontractors, stating under penalty of perjury that Subcontractor and its sub-subcontractors have paid the specified general prevailing rate of per diem wage to all of its employees on the Project and any amounts due pursuant to Labor Code § 1813, and that Subcontractor and its sub-subcontractor have employed the required number of apprentices on the Project.

## Article 23 - Surety Bonds

- A. Pre-Award Demand - In the event Contractor notifies Subcontractor in writing before submission of Subcontractor's bid that bonds will be required, Subcontractor shall include the premium of such bonds in its bid price. The performance bond and the payment bond shall be written in an amount equal to one hundred percent (100%) of the Subcontract Price and shall be security for the faithful performance of the Subcontractor and for payment of all persons, firms or corporations to whom the Subcontractor may become legally indebted in performing the Work.
- B. Post Award Demand -
  1. Contractor shall have the right to demand payment and performance bonds at any time during the progress of the Project. The Subcontractor guarantees that it will deliver to the Contractor the requested bonds within five (5) calendar days after written demand by the Contractor. The invoiced bond premium, as issued from the bonding company, will be paid by Contractor, for an amount not to exceed three quarters of one percent of the Subcontract Price.
  2. In the event of Subcontractor's failure to furnish a surety bond within five (5) days after written demand by Contractor, Subcontractor will be deemed to be material in default of this Agreement.
- C. Bond Requirements -
  1. Each bond shall be executed by a California admitted surety. The surety must be listed in the latest version of the U.S. Department of Treasury Circular 570. The limit on the surety bond must not exceed the surety's underwriting limitation stated in the Treasury Circular 570 listing. The surety must have an A.M. Best Financial Strength rating of "A, Excellent" and an A.M. Best Financial Size rating of VIII or better.
  2. Every bond must display the surety's bond number and incorporate the Contract Documents by reference. The Contractor shall be named as the obligee on each bond. The terms of the bond shall provide that the surety agrees that no change, extension of time, alteration or modification of the Contract Documents or the Work to be performed there under shall in any way affect its obligations and shall waive notice of any such change, extension of time, alteration or modification of the Contract Documents.
  3. Regardless of whether a performance bond and a payment bond are required, Subcontractor shall defend, indemnify and hold harmless the Contractor from all claims for liens or stop notices arising out of the Subcontractor's Work to be performed under this Agreement, and Subcontractor will immediately assume defense of any action alleging such a claim for lien or stop notice. In the event a claim of lien or stop notice is filed, the Subcontractor shall promptly cause said lien or stop notice to be removed by posting a bond in accordance with the California Civil Code.

## Article 24 - Claim Certification & False Claims Liability

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

claims certification requirement shall be a condition precedent to any obligation Contractor otherwise may have to review the claim, make any payment on the claim, or to forward the claim to Owner.

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

**Article 25 - Taxes** The compensation payable to Subcontractor as herein provided includes all sales, gross receipts, excise and other taxes and is not subject to any addition on account of taxes which are now or may hereafter be levied. It is hereby agreed that Subcontractor is an independent contractor within the purview of the Internal Revenue Code, the Federal Social Security Act, and any and all unemployment insurance laws, both State and Federal, and is solely responsible to the Federal and State Government for all payroll taxes, deductions, and contributions under such laws.

### Article 26 - Insolvency of Subcontractor

- A. Upon the appointment of a receiver for Subcontractor, or upon Subcontractor making an assignment for the benefit of creditors, or if Subcontractor seeks protection under the Bankruptcy Code, or commits any other act of insolvency, Contractor may, absent any applicable legal limitation, terminate this Agreement upon giving seventy-two (72) hours written notice, by certified mail, to Subcontractor, its trustee, and its surety, if any, unless Subcontractor, the surety, or the trustee:
1. Promptly cures all defaults;
  2. Provides adequate assurance of future performance;
  3. Compensates Contractor for all actual pecuniary loss resulting from such defaults; and
  4. Assumes the obligations of Subcontractor within the statutory time limits.
- B. If Subcontractor is not performing in accordance with the schedule of work at the time of entering an order for relief, or at any subsequent time, Contractor, while awaiting the decision of Subcontractor or its trustee to reject or to accept this Agreement and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under this Section as are reasonably necessary to maintain the schedule of work. Contractor may offset against any sums due or to become due Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, reasonable overhead, profit and actual attorneys' fees incurred as a result of Subcontractor's non-performance. Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Price.

**Article 27 - Record Drawings** Subcontractor shall maintain at the Project site one record copy of the drawings, specifications, shop drawings, submittals, all O & M and warranty information, RFI responses and change orders and other modifications, in good order and marked currently to record changes and selections made during construction or other variations from the Contract Documents which shall be submitted to the Contractor upon completion of the Work. The record drawings shall be maintained in the format specified in the Contract Documents, or if not specified therein as directed by Contractor, and shall be updated at intervals required by the Contract Documents, but no less than once per month. Additionally, beginning with the date of issuance of this Agreement, and terminating three (3) years after final payment by Contractor, Subcontractor shall preserve all documents, records, books, correspondence, drawings, instructions, vouchers, payroll records, memoranda and similar records relating to the Project and performance of the Work and afford Contractor reasonable access thereto. In addition to the requirements stated above, the Subcontractor will be required to update Contractor's as-built drawings on a weekly basis. The Contractor's as-built drawings will be maintained inside the job site trailer identified as "As-Built Drawings". Any failure to keep the as-built drawings updated may result in the withholding of a progress payment until the deficiency is rectified to the satisfaction of the Contractor and/or Owner. If the Subcontractor fails to maintain or update the as-built drawings and the Contractor has to perform this duty for Subcontractor, the Subcontractor will reimburse Contractor for all costs incurred including, but not limited to, 20% for overhead and profit.

**Article 28 – Severability** In the event any clause or provision of this Agreement should be held to be invalid, then the remaining clauses and provisions shall nevertheless be and remain in full force and effect.

**Article 29 - Waivers** Waiver by Contractor of any particular default by Subcontractor shall not affect or impair Contractor's rights in respect to any subsequent default of the same or of a different nature. Except as may otherwise expressly provided for herein, and to the fullest extent permitted by law, Subcontractor hereby waives any form of consequential or indirect damages arising out of, or resulting in any way, from the Work, the Project or this Agreement. Such waived damages include, but are not limited to, lost profits on unperformed Work, home office overhead (or any form of overhead not directly incurred at the Project site), increased costs of wages or salaries, ripple or cumulative effect delay damages, loss of productivity, increased or extended costs of capital for this Project (or any other project), lost opportunity for work on other projects, inflation costs of labor, material, services or equipment, non-availability of labor, material, equipment or services due to delays, increased cost of bonding and any other consequential or indirect loss arising from the Work, the Project or this Agreement.

**Article 30 - Notices** All notices provided hereunder shall be made in writing and will be deemed made at the time of deposit if mailed by first-class mail, postage prepaid at the address shown of the first page of this Agreement, upon written confirmation of receipt if delivered by a nationally or regionally recognized

overnight delivery service, or at the time of facsimile transmission, provided that the same is confirmed by a printed transmission confirmation from the sending facsimile machine.

**Article 31 - Limitations Period** All claims, suits or demands by Subcontractor as against Contractor or Owner shall be brought within the earlier of one (1) year following Subcontractor's achieving substantial completion of the Subcontractor's Work, or within one (1) year of Contractor's notice of default in the event that Contractor has taken any action in accordance with Article 12, and Subcontractor hereby agrees that all relevant statutes of limitations shall be deemed reduced to such time period, to the fullest extent permitted by law.

**Article 32 - Personal Guaranty by the Undersigned Officers, Directors, Shareholders and/or Members of Subcontractor**

By signing this Agreement in an individual, as well as in a corporate capacity, each undersigned officer, director, shareholder and/or member of Subcontractor agrees to be personally liable, jointly and severally, for the acts, errors, omissions and obligations of Subcontractor under this Agreement and any modifications or changes thereto signed by any representative of Subcontractor, both present and future. Guarantor(s) shall be directly liable to Contractor for all such obligation(s) without requiring that Contractor first proceed against Subcontractor. Guarantor(s) agree; (1) this Guaranty includes liability relating to changes, extra work and claims relating to the Agreement; (2) Guarantor(s) obligations shall remain in full force and effect regardless of any Agreement modifications, or extensions of time for performance or for payment; (3) Guarantor(s) hereby waive presentment, protest, notice of default, notice of changes to the Agreement or to the Work thereunder; and (4) Guarantor(s) waive demand for payment and all other suretyship defenses whatsoever with respect to the obligations guaranteed under this Guaranty, and agree to pay unconditionally upon demand all amounts outstanding and due. Each reference in this Guaranty to Guarantor(s) shall be deemed to include the heirs, personal representatives, successors and assigns of Guarantor(s), all of whom shall be jointly and severally bound by the provisions of this Guaranty.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed and authorized as indicated immediately below.

**CONTRACTOR**

**AMG & ASSOCIATES, INC.**

Contractor's State License No.: 881824

**SUBCONTRACTOR**

**NAME OF SUBCONTRACTOR**

Subcontractor's State License No: **SUBCONTRACTOR'S LICENSE**

Corporation

Partnership

Sole Proprietorship

Other: \_\_\_\_\_

(Specify form of business)

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

(Signature)

Printed Name: **Albert Giacomazzi**

Title: **President**

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

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

(Signature)

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

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

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



## Exhibit A Summary of Scope of Work

1. Subcontractor shall furnish and install all labor, materials, services, tools, equipment, lifts, scaffolding, delivery, rigging, hoisting, staging, fasteners, permits, fees, taxes, supervision, safety requirements, coordination, submittals, all O & M and warranty information, shop drawings, transportation, mobilization, demobilization, layout, offloading, demolition, removal, disposal, temporary utilities, shop and field engineering, and all other facilities or items required to provide a complete and professional installation of Subcontractor's work required as per the Contract Documents, and generally described as follows:

**[INSERT DESCRIPTION OF SCOPE OF WORK AND COVERED SPECIFICATION SECTIONS]**

2. Subcontractor shall coordinate all scheduling, questions, discrepancies, conflicts with other trades, and any other items with Contractor's Superintendent at the Project site. Subcontractor agrees to attend all Project meetings (whether at the Project site or elsewhere) scheduled by the Contractor's Superintendent. The Subcontractor representative(s) attending shall have authority to make commitments regarding start times, durations, crew sizes required, material/equipment delivery dates, and shall be knowledgeable with respect to the Scope of Work, the then current Approved Project Schedule and Short Interval Schedule, and any necessary information to coordinate with other trades, etc. Subcontractor's obligations with respect to Project meetings shall include, but shall not be limited to, Subcontractor ensuring that its on-site personnel: (1) attend Contractor's daily safety and/or coordination meetings; (2) attend regular quality control meetings as specified or as required by the Project Superintendent, Project Manager or Project Engineer; and (3) attend (if they have not previously attended) Contractor's mandatory safety orientation meeting prior to performing Work at the Project.

3. Subcontractor agrees to abide by the then current Approved Project Schedule set forth by AMG & Associates, Inc. All materials, manpower, and work must be delivered to the job-site, scheduled, and performed in a timely manner that meets all scheduling requirements. The current Approved Project Schedule will not be compromised for any reason.

4. Located at the Contractor's Project site trailer/office are complete and updated project drawings and specifications for the Subcontractor's use and reference. These drawings do not alleviate the responsibility of the Subcontractor to provide current and up to date drawings and specifications to its field crews. It is the Subcontractor's responsibility to verify, on a continual basis, that it is using the most current set of drawings and specifications. A complete list of the most current drawings and specifications will be posted in the Contractor's Project site trailer/office. The Subcontractor shall review this list of documents on a periodic basis (daily, if necessary) and advise Contractor's Superintendent of any drawings or specifications that affect its Work that are missing, incomplete or inaccurate. Subcontractor's use of "outdated" Contract Documents is inexcusable and any re-work cost will be at the Subcontractor's sole expense. Subcontractor will field verify all locations, dimensions, and field conditions for all of Subcontractor's Work. No extras will be allowed for discrepancies between the drawings and specifications and the actual field conditions. Shop drawings, finished samples, submittals and O & M and warranty information for all Work are included. Subcontractor shall only install approved materials and per approved methods, and shop drawings.

5. The Subcontractor is responsible for providing a complete scope of work in accordance with the intent of the Contract Documents and as defined in the Agreement and this Summary Scope of Work. It is the Subcontractor's responsibility to request information or clarification on any and all items perceived to be incomplete or unclear in the Contract Documents. All RFI's must be submitted within two (2) weeks of Subcontractor's receipt of Notice to Proceed or the execution of this Subcontract Agreement, whichever is earlier.

6. Subcontractor's Scope of Work includes all shipping or other transportation costs for all materials, equipment, tools, and labor to be shipped and delivered to the Project site. Subcontractor is responsible for the delivery, handling, storage, and protection of all materials at the Project site for Subcontractor's Scope of Work. Subcontractor shall coordinate all deliveries of materials with the Contractor's Superintendent. All materials must be ordered and delivered to the Project site in a timely manner as to meet the then current Approved Project Schedule and completion date.

7. Subcontractor's Work required from Architect and Owner generated punch lists must commence within forty-eight (48) hours after receipt of the punch list from Contractor. Subcontractor will coordinate all punch list work and scheduling with Contractor's Superintendent.

**Exhibit A (continued)**  
**Summary of Scope of Work**

8. Subcontractor's Work includes all additions, deletions, changes and alterations in Subcontractor's Scope of Work found in all addenda, as per the Contract Documents. Subcontractor shall coordinate all addendum work with the Contractor's Superintendent.
9. On a daily basis, Subcontractor shall submit to Contractor's Superintendent a report of each day's activities. This daily report shall include but is not limited to the following: Number of workers in each trade (including full name and classification of work), total number of hours worked for each trade and each worker, a description of each trade's and workers' activities, equipment and vehicles on-site, weather conditions, reports of any injuries, inspections and any other relevant information describing activities or persons on-site.
10. Subcontractor shall submit and have approved a Schedule of Prices. Partial payment cannot be made unless there is an approved Schedule of Prices.
11. No substitution of approved and specified materials is allowed. Subcontractor shall only use approved materials and methods of installation, as per the Project drawings, specifications and addenda.
12. This Project is a prevailing wage project falling under the local county prevailing wage rates and jurisdiction. Certified Payroll Reports detailing all on-site labor hours' work by Subcontractors work forces and all Subcontractors' sub-subcontractors work forces is required on a continuing basis throughout the progress of this project. Failure to provide all Certified Payroll Reports on a timely basis as directed by the Owner and Contractor shall cause grounds to hold all Subcontractor payments. Subcontractor shall coordinate all Certified Payroll report requirements and schedule with the Contractor's field supervision team.
13. Subcontractor is responsible, at its cost, for adhering to all Best Management Practices and SWPPP controls during with respect to its work. Any damage caused by the Subcontractor, or costs related to repairing such, controls will be the sole responsibility of the Subcontractor.

EXCLUSIONS:

a.

**Exhibit B**  
**Index of Prime Contract Documents**

Project: **Project Name**  
 Location: **Project Address**  
 Owner: **XXXXX**  
 Architect: **XXXXX**

- A. Agreement No.: **01-16-111-XXX**  
 B. Prime Contract: Agreement Form between Contractor and Owner Dated April 19, 2016

**\*\*THE COMPLETE PRIME CONTRACT CONSISTS OF THE FOLLOWING CONTRACT DOCUMENTS\*\***

**DRAWING INDEX:**

**GENERAL SHEETS**

TS	TITLE SHEET	DATED 6/14/13
TS-2	CODE ANALYSIS, NOTES, LISTS	DATED 6/14/13

**CIVIL DRAWINGS**

C1	SITE PLAN	DATED 5/28/13
C2	GRADING PLAN	DATED 5/28/13
C3	UTILITY PLAN	DATED 5/28/13
C4	EROSION & SEDIMENT CONTROL PLAN	DATED 5/28/13
C5	BMP DETAILS	DATED 5/28/13

**ARCHITECTURAL**

A1.1	SITE PLAN, PROPERTY SITE PLAN	DATED 6/14/13
A1.2	DEMOLITION PLAN, SITE PLAN	DATED 6/14/13
A1.3	DESIGNATED WORK AREAS, TEMPORARY FENCING	DATED 6/14/13
A2.1	FLOOR PLAN	DATED 8/7/13
A2.2	CEILING PLANS, ROOF PLAN, DETAILS	DATED 6/14/13
A3.1	BUILDING SECTIONS, WALL SECTIONS	DATED 6/14/13
A4.1	ELEVATIONS, SCHEDULE, DETAILS	DATED 10/9/13
A5.1	ENLARGED PLANS, INTERIOR ELEVATIONS	DATED 8/7/13

**STRUCTURAL SHEETS**

S1.0	GENERAL NOTES	DATED 5/28/13
S1.1	TYPICAL DETAILS	DATED 5/28/13
S1.2	TYPICAL DETAILS	DATED 5/28/13
S2.0	FOUNDATION PLAN	DATED 8/7/13
S3.0	MEZZANINE FRAMING PLAN	DATED 8/7/13
S3.1	ROOF FRAMING PLAN	DATED 5/28/13
S4.0	WALL ELEVATIONS	DATED 5/28/13
S4.1	WALL ELEVATIONS	DATED 5/28/13
S5.0	ROOF DETAILS	DATED 5/28/13
S5.1	ROOF DETAILS	DATED 5/28/13
S5.2	MEZZANINE DETAILS	DATED 5/28/13
S6.0	FOUNDATION DETAILS	DATED 5/28/13

**MECHANICAL SHEETS**

M1.0	MECHANICAL SCHEDULES	DATED 5/28/13
M2.1	MECHANICAL PLANS	DATED 5/28/13
M3.1	MECHANICAL SECTIONS	DATED 5/28/13
M4.1	MECHANICAL TITLE 24 DOCUMENTS	DATED 5/28/13

M4.2 MECHANICAL TITLE 24 DOCUMENTS DATED 5/28/13

**PLUMBING SHEETS**

P2.1	PLUMBING FLOOR PLANS	DATED 5/28/13
P2.2	PARTIAL PLUMING FLOOR PLANS	DATED 5/28/13
P3.1	PLUMBING DETAILS AND SCHEDULES	DATED 5/23/13

**ELECTRICAL SHEETS**

E1.0	DEMO SITE ELECTRICAL PLAN	DATED 5/28/13
E1.1	SITE ELECTRICAL PLAN	DATED 5/28/13
E2.1	LIGHTING PLAB	DATED 8/7/13
E2.2	POWER PLAN	DATED 8/7/13
E2.3	FIRE ALARM PLAN	DATED 8/7/13
E2.4	SECURITY PLAN	DATED 8/7/13
E3.1	SYMBOLS, SCHEDULES, DETAILS	DATED 5/28/13
E4.1	LINE DIAGRAM PANEL SCHEDULES	DATED 5/28/13
E4.2	FIRE ALARM RISER DIAGRAM, DETAILS, NOTES	DATED 5/28/13
E5.1	INDOOR TITLE 24 LIGHTING COMPLIANCE	DATED 5/28/13
E5.2	OUTDOOR TITLE 24 LIGHTING COMPLIANCE	DATED 5/28/13

**SPECIFICATION INDEX:**

TECHNICAL SPECIFICATIONS PREPARED BY ARCHITECTS, DATED JULY 16, 2015. DIVISIONS 01100-GENERAL REQUIREMENT-THRU DIVISION 16721 ELECTRICAL.

**SPECIFICATION INDEX:**

SOILS REPORT PREPARED BY XXXXXXXX., GEOTECHNICAL ENGINEERING DIVISION DATED JANUARY 10, 2016.

**ADDENDA**

ADDENDA 1 DATED SEPTEMBER 11, 2015  
 ADDENDA 2 DATED SEPTEMBER 16, 2015  
 ADDENDA 3 DATED SEPTEMBER 24, 2015  
 ADDENDA 4 DATED SEPTEMBER 27, 2015  
 ADDENDA 5 DATED OCTOBER 7, 2015



Exhibit C

Form <b>W-9</b> (Rev. August 2013) Department of the Treasury Internal Revenue Service	<h2 style="margin:0;">Request for Taxpayer Identification Number and Certification</h2>	<b>Give Form to the requester. Do not send to the IRS.</b>
Print or type See Specific Instructions on page 2.	Name (as shown on your income tax return)	
	Business name/disregarded entity name, if different from above	
	Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate  <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____  <input type="checkbox"/> Other (see instructions) ▶ _____	
	Exemptions (see instructions):  Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code		
List account number(s) here (optional)		

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number									

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Employer identification number									

**Part II Certification**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below), and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here	Signature of U.S. person ▶	Date ▶
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**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.  
**Future developments.** The IRS has created a page on IRS.gov for information about Form W-9, at [www.irs.gov/w9](http://www.irs.gov/w9). Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

**Purpose of Form**

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the

withholding tax on foreign partners' share of effectively connected income, and

4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

**Note.** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

**Exhibit D**  
**Project Safety Requirements and Procedures**

1. The latest version of all safety rules and regulations are to be complied with, including the Code of Safe Practices for the Construction Industry, the State of California Industrial Relations Title 8 requirements, and the requirements of Senate Bill 198.
2. The governing safety agency will be Cal/OSHA, as well as any other government or local safety officers. The stipulations of any inspector or officer are to be complied with. Any fines or delays resulting from noncompliance or a failure to follow safety rules will be the sole responsibility of the Subcontractor.
3. The AMG & Associates, Inc. Cal/OSHA Injury Prevention Program (IPP) is to be read and understood by all Subcontractors. All policies in the IPP are to be complied with on all AMG & Associates, Inc. jobs. Each Subcontractor must also have its own injury prevention program in place for the duration of this Project.
4. Each Subcontractor is responsible for training the workers under its employ in all matters of safety and making sure that they are licensed and certified as required. Regular training is to be conducted by the Subcontractor to ensure that each worker is using safe practices and is familiar with all applicable safety rules.
5. Each Subcontractor is responsible for the safe operation and use of all tools and equipment used on the job site that are owned, rented, leased, or hired by the Subcontractor. This includes proper training in the safe operation of the equipment and any required licensing or certification.
6. The AMG & Associates, Inc. Site Superintendent has the authority to enforce all safety policies and rules and regulations. All stipulations of the Superintendent are to be complied with in matters of safety. The Superintendent has the authority to remove anyone from the job site for safety violations or non-compliance and to refuse access to the job site to any worker, operator, or other personnel and equipment for reasons of safety. The Subcontractor will be held responsible for delays caused by such action.
7. Regular tailgate safety meetings will be held by AMG & Associates, Inc. at the job site. All workers are required to attend the safety meetings and sign the attendance roster.
8. All safety violations and hazards are to be reported to the AMG & Associates, Inc. Superintendent immediately. The worker making the report will not be subject to reprisals for making the report.
9. All injuries are to be reported to the AMG & Associates, Inc. Superintendent immediately. Subcontractor shall prepare and immediately furnish AMG & Associates, Inc. with copies of all accident reports.
10. Subcontractor shall ensure that its workers familiarize themselves with emergency procedures and the location of the first aid kit and the fire extinguisher(s).
11. Noncompliance with safety rules or the willful endangerment of any worker is cause for immediate termination and removal from the job site.
12. Subcontractor shall furnish Contractor with current material safety data sheets for hazardous materials prior to delivery of any hazardous materials to the jobsite. Subcontractor shall inform AMG & Associates, Inc. of any precautionary measures to be taken to protect employees.

## Exhibit E

### Insurance Requirements for Subcontractors

Without limiting Contractor's rights to indemnification under this Agreement or at law, Subcontractors shall procure and maintain for the duration required by this Agreement or the Prime Contract, whichever is greater, insurance against claims for injuries to persons and damage to property which may arise from, or in connection with, the performance of the Work hereunder by the Subcontractor, its sub-subcontractors, suppliers or any party for whom it is responsible. The cost of such insurance shall be included in the Subcontractor's bid, unless expressly required to be excluded by the Contract Documents.

1. **Minimum Scope and Limits of Insurance:** Coverage shall be at least as broad as:
  - A. **Commercial General Liability:** Insurance Services Office "occurrence" form CG 00 01 (ed. 12/04) covering commercial general liability, or its equivalent; claims made or modified occurrence policies are not acceptable.
  - B. **Automobile Liability:** Insurance Services Office form CA 00 01 (ed. 6/92) covering automobile liability, Code 1 "Any Auto" and Endorsements CA 22 32 (ed. 4/92) and CA 01 12 (ed. 6/91).
2. **Minimum Limits of Insurance:** Subcontractor shall maintain limits no less than those required by the Prime Contract, or those set forth below, whichever are greater:
  - A. **Commercial General Liability:** \$1,000,000 combined limit per occurrence for bodily injury; personal and advertising injury and property damage. Minimum \$2,000,000, general aggregate and completed operations aggregate. (The general aggregate limit and completed operations aggregate limit shall apply separately to this Project/location or said aggregates.
  - B. **Automobile Liability:** \$1,000,000 combined limit per accident for bodily injury and property damage coded "any auto" applicable to all owned, non-owned and hired vehicles.
  - C. **Workers Compensation and Employers Liability:** Workers compensation limits as required by the laws of the State of California and Employers Liability limits of \$1,000,000 each accident for bodily injury by accident, \$1,000,000 policy limits for bodily injury by disease, and \$1,000,000 each employee for bodily injury by disease.
3. **Commercial General Liability and Automobile Liability - Additional Requirements** Standard ISO Form CG 00 01 exclusions will be allowed. Allowance of any additional exclusions or coverage-limiting endorsements is subject to Contractor's prior written consent, and is at the sole discretion of the Contractor. The Subcontractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

The Owner, Contractor and their respective officers, directors, shareholders, employees, agents and representatives shall be named as additional insured as respects: (i) liability arising out of activities performed by or on behalf of the Subcontractor; (ii) products and completed operations of the Subcontractor; (iii) premises owned, leased, or used by the Subcontractor; and (iv) automobiles owned, leased, hired, or borrowed by the Subcontractor. The Subcontractor shall name the Owner, Contractor and their respective officers, directors, shareholders, employees, agents and representatives as additional insured using an unmodified ISO Form Number CG 20 10 (11/85), or its equivalent on all commercial general liability policies.

Products/Completed Operations Coverage, and the above-referenced additional insured endorsements, are required to be maintained for ten (10) years following final completion and acceptance of the Work by the Owner.

The coverage shall contain no special limitations on the scope of protection afforded to the Owner, Contractor and their respective officers, directors, shareholders, employees, agents and representatives. Additional insured endorsements with "ongoing operations" limitations or which exclude the independent negligence of the Owner, Contractor and their respective officers, directors, shareholders, employees, agents and representatives, or bodily injury to the Subcontractors' employees are strictly prohibited.

The Subcontractor's insurance coverage shall be primary insurance as respects the Owner, Contractor or their respective officers, directors, shareholders, employees, agents and representatives. Any insurance or self-insurance maintained by the Owner, Contractor and their respective officers, directors, shareholders, employees, agents and representatives shall be excess of, and shall not contribute with, the Subcontractor's insurance.

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Owner, Contractor or their respective officers, directors, shareholders, employees, agents and representatives.

4. **Workers Compensation and Employers Liability Insurance** Subcontractor, by the execution of the Agreement to which this **Exhibit E** is attached, warrants and represents to the Owner and Contractor that all employees of Subcontractor will be properly covered by Workers Compensation coverage for the full duration of the Project, that the coverage will be based upon the proper recording of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier, or in the case of a self-insured, as required by the applicable state's self -

**Exhibit E (continued)**  
**Insurance Requirements for Subcontractors**

insurance laws and regulations. Providing false or misleading information may subject the Subcontractor to administrative penalties, criminal penalties, or other civil actions.

If there is an exposure of injury to the Subcontractor's employees under the U.S. Longshoreman and Harbor Workers' Compensation Act, the Jones Act or under laws, statutes or regulations applicable to maritime employees, coverage shall be included for such injuries or claims.

5. **Professional Liability Insurance** If the Subcontractor performs any design/build work, the Subcontractor shall maintain in force and effect at all times during the performance of the Work, as well as for a period of ten (10) years following g final completion and acceptance of the Work by the Owner, Professional Liability Insurance with a minimum limit of \$1,000,000 per claim. Any deductible or self-insured retention in excess of \$25,000 must be approved in advance, in writing, by the Contractor. Subcontractor shall be under a continuing obligation to notify Contractor of any claims made under said policy.
6. **Pollution Liability Insurance** If Subcontractor's Work involves earthmoving, asbestos, lead, mold, pollutant abatement or any other activities which involve the potential for an exposure to hazardous materials, as such term is defined under federal, state or local law, Subcontractor shall purchase and maintain a Contractor's Pollution Liability policy with limits of \$1,000,000 each occurrence (if written on an occurrence basis) or \$1,000,000 each claim (if written on a claims-made basis). This insurance shall be maintained for not less than the duration of the Project and four (4) years following final completion of the Project. The policy must name Contactor and those entities required to be named as additional insureds under Subcontractor's Commercial General Liability insurance as additional insureds, and shall be endorsed primary and not in excess of, or contributing with, any other insurance carried by or for the benefit of the additional insureds. If Subcontractor's Work includes the hauling of hazardous materials or pollutants, the policy must extend pollution coverage to the transportation of hazardous materials and pollutants. Subcontractor will attach any required endorsements, including the MCS-90 endorsement required by the Motor Carrier Act of 1980, if applicable.
7. **Temporary Workers** If Subcontractor hires temporary labor forces from a leasing company to perform Work on the Project, Subcontractor shall ensure that the leasing company providing such workers maintains Workers' Compensation coverage in accordance with state statutes. Employer's Liability Insurance shall be maintained with aggregate limits of no less than \$1,000,000, and the leasing company shall add Contractor and Owner as Additional Insureds on ISO Form CG 20 26 (11/85) with primary/non-contributory wording and a waiver of subrogation. If the leased employee will be driving on Subcontractor business, the Subcontractor must secure motor vehicle records and all other appropriate background checks for such employee.
8. **Waivers of Subrogation** The Subcontractor hereby agrees to waive, and shall ensure that all of its insurers provide policy endorsements waiving, subrogation against the Owner, Contractor and their respective officers, directors, shareholders, employees and lenders for losses arising from Work performed by the Subcontractor or those for whom it is legally responsible.
9. **Notice of Cancellation** Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the Contractor.
10. **Acceptability of Insurers** All insurance required under this Agreement shall be placed with insurers licensed or approved to do business in the State of California with an A.M. Best's Financial Strength rating of no less than "A" and an A.M. Best's Financial Size rating of no less than "VII," unless the Contractor has granted specific, prior approval in writing.
11. **Verification of Coverage** Subcontractor shall furnish the Contractor with certificates of insurance and additional insured endorsements effecting coverage required by the Agreement, immediately upon request. The certificates and additional insured endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and additional insured endorsements are to be on forms that are to be received and approved by the Contractor before Work commences. The Contractor reserves the right to obtain complete, certified copies of all required insurance policies, at any time. All certificates shall state that coverage shall not be suspended, voided, or materially changed except after 30 days written notice to the Contractor.
12. **Sub-subcontractors** Subcontractors shall include all lower tier subcontractors as insured under its policies or shall furnish separate certificates and additional insured endorsements from each. All coverage for lower tier subcontractors shall be subject to all of the requirements stated herein.
13. **Materiality of Requirements** Failure of Subcontractor to provide or maintain the required insurance within the appropriate limits, terms, clauses and conditions as required herein constitutes a material breach of this Agreement.

**Exhibit E (continued)**  
**Insurance Requirements for Subcontractors**

- 14. Contractor Remedies for Breach of Insurance Requirements** If Subcontractor fails to provide insurance, certificates, endorsements or policies as required, the Contractor may, in addition to any other remedy provided in this Agreement or by law:
- A. Obtain such requisite insurance and deduct and retain the amount of the premiums for such insurance from any sums due to the Subcontractor under the Agreement;
  - B. Order the Subcontractor to stop Work under this Agreement and/or withhold any payment(s) which become due to the Subcontractor hereunder until the Subcontractor demonstrates compliance with the requirements hereof; or
  - C. Declare Subcontractor to be in default and terminate the Agreement for default as provided by the Agreement.

Nothing herein contained shall be construed as limiting in any way the extent to which the Subcontractor may be held responsible for payments of damages resulting from the Subcontractor's performance of, or failure to perform, the Work covered under this Agreement.





## Exhibit G

## Standard Supplier or Sub-Subcontractor Joint Check Agreement

AMG &amp; Associates, Inc.

Agreement No.: 01-16-111-XXX

Job Name: Project Name

Job Address: Project Address

Maximum Total of Joint Checks To Be Issued: \$ \_\_\_\_\_

**IMPORTANT: READ VERY CAREFULLY  
NOTICE TO SUPPLIERS AND SUB-SUBCONTRACTORS:**

**By Signing This Agreement You Agree To The Following Terms and Conditions:**

1. If you sign a joint check, **and the check is cashed**, you will be treated by AMG & Associates, Inc. as if you were paid, even if you didn't get the money. **You agree you have been paid whether or not you get any of the money from the check.**
2. AMG & Associates, Inc. will apply the payment shown on the joint check to the Agreement number listed above, even if the work, labor, or materials is used on another job. **Any agreement you make to the contrary is void as to AMG & Associates, Inc., unless otherwise expressly put in writing and signed by the President, or a Vice President, of AMG & Associates, Inc.**
3. AMG & Associates, Inc. can use the joint checks in court to prove you were paid if you sue AMG & Associates, Inc., its bonding company, or the owner of the Project, because you were not paid for some or all of the work or labor or materials you put into the job. **It will not matter if you actually got the money or not.**
4. You agree to allow access by AMG & Associates, Inc. personnel to information as to the status of your account with the Subcontractor whose name appears on the joint check.
5. You agree to deliver all materials or services to the above jobsite address - **no "Will Call"**. Invoices for other projects will not be considered.
6. Joint checks will be issued according to an approved schedule of values and the terms and conditions of the AMG & Associates, Inc. Agreement. AMG & Associates, Inc. will issue joint checks only on draws which are due, and for which AMG & Associates, Inc. has been paid by the Owner of the Project.
7. **This does not change your agreement with the Subcontractor or the Subcontractor's obligation to pay you.**

**CAUTION: DO NOT ENDORSE A JOINT CHECK UNLESS YOU GET PAID!**

**NOTICE TO AMG & ASSOCIATES, INC. SUBCONTRACTOR:**

**By Signing This Agreement You Agree To The Following Terms and Conditions:**

1. All checks will be joint checks unless you present AMG & Associates, Inc. with an unconditional final waivers and releases for the current pay period from the Sub-Subcontractor and/or material suppliers whose work is the subject of the Payment Application.
2. If AMG & Associates, Inc. is denied access to information on the status of the Sub-Subcontractor or material supplier's account with you, **all checks will be joint.**
3. You will see to it that the joint check is properly endorsed by all payees before it is cashed.
4. Once the joint check is cashed, you are considered paid whether you get any money from the check or not.
5. This Agreement does not change or affect your obligation to pay your supplier or Sub-Subcontractor.
6. This Agreement does not change or affect the terms and conditions of the Agreement.

**EXHIBIT G (continued)**  
**Standard Supplier or Sub-Subcontractor Joint Check Agreement**

The Parties agree that AMG & Associates, Inc. shall make all payments by joint check according to the above terms and conditions.

**Subcontractor:**

Signature of authorized person: \_\_\_\_\_

Firm: \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

**Sub-Subcontractor:**

Signature of authorized person: \_\_\_\_\_

Firm: \_\_\_\_\_

Date \_\_\_\_\_

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

Your Account # or Job Reference #: \_\_\_\_\_

**CAUTION: DO NOT ENDORSE A JOINT CHECK UNLESS YOU GET PAID!**

**AMG & Associates, Inc.:**

Signature of authorized person:

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

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

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



## Exhibit I Certified Payroll Procedures

1. In an effort to process Certified Payroll Reports more efficiently, AMG & Associates, Inc. requires that all Subcontractors utilize the standard Certified Payroll Report form maintained by AMG & Associates, Inc. or other approved form. AMG & Associates, Inc. requires all Subcontractors who have employees verify that the following information is included on the Certified Payroll Reports ("Certified Payroll Reports") before submittal to AMG & Associates, Inc.:
  - A. Name of Prime (AMG & Associates, Inc.)
  - B. Project Address
  - C. Prime Contract Number
  - D. Subcontractor Federal Tax ID Number
  - E. Payroll Number (Certified Payroll Reports should be numbered consecutively from the first one turned in)
  - F. Date (e.g. "Week Ending \_\_/\_\_/\_\_")
  - G. Complete Employee Information (for each journeyman, apprentice, worker, or other employee employed by Subcontractor in connection with Subcontractor's work pursuant to the Agreement)
    - (1) Name
    - (2) Address
    - (3) Social Security Number
    - (4) Work Classification and Rate of Pay
    - (5) Straight Time and Overtime Hours Worked Each Day and Week
    - (6) Actual Per Diem Wages Paid
  - H. Certification of Employer (Including Signature)
  - I. Indication of Fringe Benefits Paid Through Approved Plan (e.g. union) or Paid in Cash
2. Each Certified Payroll Report must be verified by a written declaration made by a person with authority to represent the reporting entity, under penalty of perjury, that the information contained in the payroll record is true and correct and that the Subcontractor has complied with the requirements of California Labor Code §§ 1771, 1811 and 1815 for any Work performed by his, her or its employees on the Project.
3. Subcontractor must maintain Daily Reports in the form attached as **Exhibit J** – "Form of Daily Reports." Subcontractor must include Daily Reports with each Certified Payroll Report submission.
4. Certified Payroll information must be submitted to AMG & Associates, Inc. no later than **one week** after the end of a pay period or such shorter period as required by the Prime Contract. If Subcontractor employees have not worked on the Project jobsite for a particular pay period after starting the job, submit a Certified Payroll Report indicating that "No Work" was performed on the jobsite for that particular pay period. When Subcontractor is certain that no further employees will be working on the job site, mark the last Certified Payroll Report submission as "Final."

If you have any problems or questions regarding Certified Payroll Reports, would like a copy of a standard Certified Payroll Report or wish to discuss Certified Payroll Report matters contact AMG & Associates, Inc. Project Administration at (661) 251-7401.







## Exhibit K

### CALIFORNIA LABOR CODE PROVISIONS RE: PREVAILING WAGES

Subcontractor agrees to comply with the provisions of California Labor Code § § 1771, 1775, 1776, 1777.5, 1813, and 1815, the text and terms of which are set forth below and incorporated into this Agreement.

#### § 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.

**Exhibit K (continued)**  
**CALIFORNIA LABOR CODE PROVISIONS RE: PREVAILING WAGES**

(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.

**Exhibit K (continued)**  
**CALIFORNIA LABOR CODE PROVISIONS RE: PREVAILING WAGES**

(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; apprenticeship 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



**Exhibit K (continued)**  
**CALIFORNIA LABOR CODE PROVISIONS RE: PREVAILING WAGES**

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).

**Exhibit K (continued)**  
**CALIFORNIA LABOR CODE PROVISIONS RE: PREVAILING WAGES**

(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 L

AFFIDAVIT OF SUBCONTRACTOR RE: PAYMENT OF PREVAILING WAGES

Progress Release

Final Release

I, \_\_\_\_\_, declare and state as follows:

1. I am the \_\_\_\_\_ (officer/owner/partner/agent) of \_\_\_\_\_

(Subcontractor) and I am responsible for the payment of employees of \_\_\_\_\_

(Subcontractor) who performed work on the \_\_\_\_\_ (name/ number of project).

2. During all payroll periods from \_\_\_\_\_ (date of commencement of work) through \_\_\_\_\_ ( last day of work completed), all employees of \_\_\_\_\_ (Subcontractor) working on this project have at all times been paid the specified general prevailing rate of per diem wages and amounts due pursuant to California Labor Code § 1813.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ at \_\_\_\_\_ California.

\_\_\_\_\_  
Title (Officer/Owner/Partner)

\_\_\_\_\_  
Signature

DECLARATION OF SUBCONTRACTOR RE: APPRENTICES

Progress Release

Final Release

I, \_\_\_\_\_, declare and state as follows:

1 I am the \_\_\_\_\_ (officer/owner/partner/agent) of \_\_\_\_\_

(Subcontractor) and I am responsible for the payment of employees of \_\_\_\_\_

(Subcontractor) who performed work on the \_\_\_\_\_ (name/ number of project).

2. During all payroll periods from \_\_\_\_\_ (date of commencement of work) through \_\_\_\_\_ ( last day of work completed), all employees of \_\_\_\_\_ (Subcontractor) working on this project have at all times been paid the specified general prevailing rate of per diem wages and amounts due pursuant to California Labor Code § 1813.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ at \_\_\_\_\_ California.

\_\_\_\_\_  
Title (Officer/Owner/Partner)

\_\_\_\_\_  
Signature

### Exhibit M FRINGE BENEFIT STATEMENT

Contract Number / Name:		Contract Location:		Date:
Subcontractor Name:		Business Address:		
This form is to be submitted with the first certified payroll. In order that the proper Fringe Benefit rates can be verified when checking payrolls on the above contract, the hourly rates for fringe benefits, subsistence and/or travel allowance payment made for employees on the various classes of work are tabulated below.				
Classification:		Effective Date:	Subsistence or Travel Pay: \$	
FRINGE BENEFITS	Health & Welfare \$	Paid To: Name: _____ Address: _____		
	Pension \$	Paid To: Name: _____ Address: _____		
	Vacation/Holiday \$	Paid To: Name: _____ Address: _____		
	Training \$	Paid To: Name: _____ Address: _____		
	Other \$	Paid To: Name: _____ Address: _____		
Classification:		Effective Date:	Subsistence or Travel Pay: \$	
FRINGE BENEFITS	Health & Welfare \$	Paid To: Name: _____ Address: _____		
	Pension \$	Paid To: Name: _____ Address: _____		
	Vacation/Holiday \$	Paid To: Name: _____ Address: _____		
	Training \$	Paid To: Name: _____ Address: _____		
	Other \$	Paid To: Name: _____ Address: _____		
Classification:		Effective Date:	Subsistence or Travel Pay: \$	
FRINGE BENEFITS	Health & Welfare \$	Paid To: Name: _____ Address: _____		
	Pension \$	Paid To: Name: _____ Address: _____		
	Vacation/Holiday \$	Paid To: Name: _____ Address: _____		
	Training \$	Paid To: Name: _____ Address: _____		
	Other \$	Paid To: Name: _____ Address: _____		
Supplemental statements must be submitted during the progress of work should a change in rate of any of the classifications be made. I CERTIFY THAT THE FRINGE BENEFIT PAYMENTS ARE MADE TO THE APPROVED PLANS, FUNDS OR PROGRAMS AS LISTED ABOVE.				
Submitted (Subcontractor)		By (Name and Title)	Signature	

## Exhibit N PUBLIC WORKS CONTRACT AWARD INFORMATION

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

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

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

***This is not a request for dispatch of apprentices.***

Contractors must make a separate request for actual dispatch, in accordance with Section 230,1(a) California Code of Regulations

*Check One Of The Boxes Below*

- 1.  We are already approved to train apprentices by the \_\_\_\_\_  
Apprenticeship Committee. We will employ and train under their standards Enter name of the Committee
  
- 2.  We will comply with the standards of \_\_\_\_\_ Apprenticeship Committee for  
the duration of this job only. Enter name of the Committee
  
- 3.  We will employ and train apprentices in accordance with the California Apprenticeship Council regulations, including §230.1(c) which requires that apprentices employed on public projects can only be assigned to perform work of the craft or trade to which the apprentice is registered and that the apprentices must at all times work with or under the direct supervision of journeyman/men.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Typed Name \_\_\_\_\_

Title \_\_\_\_\_

State of California – Department of Industrial Relations DIVISION  
OF APPRENTICESHIP STANDARDS



**Exhibit O**

State of California – Department of Industrial Relations  
 DIVISION OF APPRENTICESHIP STANDARDS

State of California  
 Department of Industrial Relations  
 California Apprenticeship Council  
 P.O. Box 101325  
 Pasadena, CA91189-0005

**TRAINING FUND CONTRIBUTIONS**

*California Apprenticeship  
 Council*

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

**\*\*Training Fund Contributions are due on the 15th of each month\*\***

PLEASE TYPE OR PRINT IN BLACK OR BLUE INK. ALL FIELDS MUST BE FILLED IN TO ENSURE SUCCESSFUL SUBMISSION AND PROCESS OF PAYMENT.

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

## Attachment 1 Subcontractor Payment Procedures

Our goal at AMG & Associates, Inc. is to pay our Subcontractors, Suppliers and Vendors timely. In order to do this we must be paid timely from the Owner. There are a number of reasons an Owner may withhold payment from a Prime Contractor on their project. **The most common reasons are a failure to provide current, accurate certified payroll and a failure to provide the proper progress payment releases.** These and other documents are generated by you, the Subcontractor. AMG has implemented very simple payment procedures in order to make certain the appropriate paperwork is in place and payment is not delayed. Our goal is not to burden you with paperwork but to make certain payment can be made timely.

AMG & Associates, Inc. will prepare a DRAFT invoice to the Owner on the 25<sup>th</sup> of every month for work completed during that month, including projected work to be completed through the end of that month. Therefore, your firm is to provide an invoice to us **no later than the 22<sup>nd</sup> of each month.** Be sure to include a projection of any work you will be completing through the end of that month. Do not overestimate the amount of work you will complete. This will only delay your payment.

**STEP 1** - Submit your invoice to our Corporate Office via fax on or before the 22<sup>nd</sup> of each month. Fax your invoice to: Attention Accounts Payable at 661-251-7405.

AMG will review your invoice and incorporate it into our invoice to the Owner. We will not include invoices for change orders that have not been signed. If you have change orders that have not been signed and you wish to invoice for them, first contact AMG's project manager to get the change orders issued/signed. Don't let a missing change order hold up your billing. Issue your invoice without the change order if necessary and contact AMG management to discuss the change order.

Upon the Owner's receipt of AMG's invoice on the 25<sup>th</sup> of the month, the Owner, Architect, and Inspector will review our invoice and either approve it or deny it. If the invoice is denied due to a disagreement on the amount your firm is billing for, you will be asked to either revise your billing or plead your case with the Owner. The Owner and their representatives have complete control over your approved billing percentage. AMG does not have the authority to approve your billing amount. An agreement on the billing amount **MUST** be reached by the last day of each month. If your firm is unwilling or unable to either revise your billing or satisfy the Owner's concerns about your percentages, AMG will revise your billing for you.

AMG will submit an Owner accepted billing to the Owner on the first of each month. Within ten (10) days of submitting our billing, AMG will complete and fax to you an approved Subcontractor Payment Application (Exhibit F of this agreement). This is your invoice for that month. If this amount does not match your original invoiced amount, please revise your records to reflect the approved amount.

**STEP 2** - Receive from AMG a completed Exhibit F. Revise your records to match those amounts approved on Exhibit F (if different). Review and complete the reminders outlined on Exhibit F, Footnotes 1-9. Attach all relevant documents, sign, date and fax Exhibit F (with all required documentation) to our Corporate Office.

AMG will issue a payment check to your firm including any and all required joint checks upon receipt of your complete fax copy pay application as outlined in Step 2. The checks will be held in our Corporate Office and will be released to you upon receipt of each of the following: (1) Receipt of your original wet signature pay application documents in the mail; (2) Receipt of payment from the Owner.

**STEP 3** - Mail the original wet signature copy along with original wet signature copies of all accompanying documents to our Corporate Office.

That's it! 1-2-3. Please feel free to contact us with questions, concerns, or if you need any assistance.