



C O N S T R U C T I O N

1020 Shannon Court - Livermore, CA 94550 - Tel. (925) 447-0292 - Fax (925) 447-0962
Contractor's License 401498 - Equal Opportunity Employer

Document 544 -LTS-011

Subcontractor Federal ID No. _____

Contract No.544 - 003

Cost Code 09900 S

SUBCONTRACT AGREEMENT

[SAMPLE]

The following is an agreement entered into on this day 28th day of August, 2006 between

GSE Construction Co., Inc.
1020 Shannon Court
Livermore, CA 94550
Tel: 925-447-0292
Fax: 925-447-0962

here in after called the Contractor, and

ABC Painting Co., Inc.
100 West 10th Street
Sesame Street, CA 90000
1-800-925-0000
1-555-867-5309

hereinafter called the Subcontractor. This contract is for Painting and Coatings for the following project:

WASTEWATER CONTROL SYSTEM IMPROVEMENTS
234 Ernie Avenue
Sesame Street, CA 94560

Hereinafter called Project.

Whereas the Contractor has entered into a contract dated 8/28/06 with

CITY MUNICIPALITIES
234 Ernie Avenue
Sesame Street, CA 94560

Hereinafter called Owner.

WHEREAS copies of the Prime Contract are on file in the office of the Contractor and have been examined by the Subcontractor.

NOW THEREFORE it is agreed:

SECTION 1. SCOPE OF WORK AND CONTRACT DOCUMENTS

The Subcontractor agrees to furnish all supervision, labor, tools, material, equipment and supplies required to perform the following described work.

Painting and Coatings complete as per Plans and Specification Section 09900-PAINTING AND COATINGS

Provide eight sets of submittals for Subcontractor work. All submittals required by September 15, 2006.

The term "prime Contract" as used herein refers to all General and Special conditions, Drawings, Specifications, Addenda, Amendments, Modifications, and all other documents forming or by reference made a part of the Contract between the Contractor and the Owner. All of the aforesaid shall be considered a part of this Subcontract by reference thereto and the Subcontractor agrees to be bound to the Contractor by the terms and provisions thereof, so far as they apply to the work described.

This contract includes the following addenda

One.

and exhibits

Plans and Specifications .

The following alternates are included in this contract.

The following specific items are included in the contract.

Inclusion Number	Inclusion Description
001	Painting and Coatings per specifications
002	Addendum # 1.
003	Insurance coverage up to \$10,000,000

The following specific items are excluded from the contract.

Exclusion Number	Exclusion Description
001	Painting of embedded pipe and wall thimbles
002	Lining of pipe, fittings, valves and pumps.
003	Isolation of dissimilar metals.
004	Use of weather enclosures or heating of structures for painting.
005	Performance and Payment Bonds
006	Overtime work, other than if required due to delays of performance of work by subcontractor.
007	Priming of fabricated metalwork and Ductile Iron Piping. Priming to be compatible to finish paint.
008	Identification of pipe, valves , equipment (mechanical, HVAC and electrical), conduit and duct.
009	Lead and asbestos batement

010	Fusion bonded epoxy coating
011	Fiberglass resin refinishing.

SECTION 2. PAYMENT

- (a) The Contractor agrees to pay the Subcontractor for the performance of this Subcontract, as specified, herein,

the sum of: **(\$96,500.00)**.

subject to additions and deductions for changes agreed upon or determined, as herein after provided. Partial payments will be made to the Subcontractor each month in an amount equal to 90 percent of the value, computed on the basis of the prices set forth above, of the quantity, as estimated by the Architect or the Engineer, of the Work performed hereunder, less the aggregate of previous payments, but such partial payments shall not become due to the Subcontractor until 10 days after the Contractor receives payments for such Work from the Owner. No partial payment to the Subcontractor shall operate as approval or acceptance of Work furnished hereunder. Upon complete performance of this Subcontract by the Subcontractor and final approval and acceptance of Subcontractor's Work by the Owner, the Contractor will make final payment to the Subcontractor of the balance due him under this Subcontract within 10 days after full payment for such work has been received by the Contractor from the Owner. Retention shall be paid within seven days after receipt of retention from Owner, subject to withholding in good faith for disputes or other cause. If owner or other responsible party delays in making any payment to Contractor from which 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 relevant circumstances, but in no event shall be less than the time Contractor, Contractor's sureties, and Subcontractor require to pursue to conclusion their legal remedies against Owner or other responsible party to obtain payment, including (but not limited to) mechanics' lien remedies.

- (b) The Contractor may deduct from any amounts due or to become due to the Subcontractor any sum or sums owed by the Subcontractor to the Contractor in the event of any breach by the Subcontractor of any provision or obligation of this Subcontract, or in the event of the assertion of other parties of any claim or lien against the Contractor or the premises arising out of the Subcontractor's performance of this Subcontract. The Contractor shall have the right to retain out of any payments due or to become due to the Subcontractor an amount sufficient to completely protect the Contractor from any and all loss, damage or expense therefrom, until the situation has been satisfactorily remedied by the Subcontractor. All payments to Subcontractor are impressed with a trust in favor of persons furnishing labor, equipment, materials and services to Subcontractor, and trust funds and apprenticeship programs and Contractor shall be entitled to enforce such trust obligations against Subcontractor.

SECTION 3. BONDING

If requested by the Contractor, the Subcontractor shall furnish a Performance and Payment Bond in an amount equal to the full subcontract price, at Subcontractor's expense unless expressly stated otherwise. Such bonds shall be furnished by a Surety satisfactory to the Contractor. Premium for such bonds shall be paid by the Contractor upon receipt of an invoice from the Surety.

SECTION 4. CHANGES

- (a) The Contractor may at any time by written order of the Contractor's authorized representative, make any changes in, additions to and omissions to the Work to be performed under this Subcontract, and the Subcontractor shall promptly proceed with the performance of this Subcontract as so changed. Any increase or decrease in the Subcontract price resulting from such changes shall be agreed upon in writing by the parties hereto. Moreover, the requested change in the Subcontract price must be submitted to the Contractor for review within 3 working days of the written order. Failure to provide such pricing within 3 working days shall result in a waiver of claims and in non payment.
- (b) Any other changes in, additions to or omissions to the Work that may be required involving a change in price to the Subcontract shall not be completed without written authorization prior to beginning the work. Daily tags must be submitted to and signed by the Contractor for all extra work on the day the extra work is performed. Failure to do so shall result in a waiver of claims and in non payment.

SECTION 5. PROSECUTION OF THE WORK

- (a) Time is of the essence of this Agreement. The Subcontractor shall prosecute the Work undertaken in a prompt and diligent manner whenever such Work, or part of it becomes available, or at such other time or times as the Contractor may direct, and so as to promote the general progress of the entire construction, and shall not by delay or otherwise interfere with or hinder the work of the Contractor or any other subcontractor. The Subcontractor shall comply with Contractor's schedule, should the Subcontractor fail to complete the

work within the time specified in the contract schedule, the Subcontractor agrees to reimburse the Contractor for any and all liquidated or actual damages that may be assessed against and collected from the Contractor which are attributable to or caused by the Subcontractor's failure to perform the Work required by this Subcontract within the time fixed or in the manner provided for herein, and in addition hereto, agrees to pay to the Contractor such other additional damages as the Contractor may sustain by reason of such delay by the Subcontractor. The payment of such damages shall not release the Subcontractor from his obligation to otherwise fully perform this Agreement. Subcontractor shall coordinate the work covered by this Agreement with that of all other contractors, subcontractors, suppliers and/or material men and of the Contractor, in a manner that will facilitate the efficient completion of the entire work. Contractor shall have the right to decide the time and order in which various portions of the work shall be installed and the relative priority of the work of Subcontractor and other subcontractors, and, in general, all other matters pertaining to the timely and orderly conduct of the work of Subcontractor on the premises. Subcontractor acknowledges that it will have to perform work in areas occupied by other forces, and that it will have to perform its work in a sequence or manner to accommodate and facilitate the progress of the work as a whole, rather than in the manner most efficient desirable for Subcontractor. Subcontractor's price is based upon Contractor exercising the rights indicated in this Sections 5 and upon Subcontractor having planned to perform its work under such circumstances.

- (b) In the event that the Subcontractor fails to comply or becomes disabled from complying with the provisions herein as to character or time of performance, and the failure is not corrected within two working days after written request by the Contractor to the Subcontractor, the Contractor, by Subcontract or otherwise, may without prejudice to any other right or remedy, take over and complete the performance of this Subcontract at the expense of the Subcontractor, or without taking over the Work, may furnish the necessary materials and/or employ the workmen necessary to remedy the situation at the expense of the Subcontractor. If the Contractor takes over the Work pursuant to this paragraph it is specifically agreed that the Contractor may take possession of the premises and of all materials, tools and equipment of the Subcontractor at the site for the purpose of completing the Work covered by this Subcontract.
- (c) It is agreed that the Subcontractor shall be considered as disabled from so complying whenever a petition in Bankruptcy or for the appointment of a receiver is filed against him. 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 two (2) working days written notice, by certified mail, to Subcontractor and its surety, if any. If an order for relief is entered under the Bankruptcy Code with respect to Subcontractor, Contractor may terminate this Agreement upon giving forty-eight (48) hours written notice, by certified mail, to Subcontractor, its trustee, and its surety, if any, unless Subcontractor, the surety, or the trustee:
 - i) promptly cures all defaults;provides adequate assurance of future performance;
 - ii) compensates Contractor for actual pecuniary loss resulting from such defaults; and
 - iii) assumes the obligations of Subcontractor within statutory time limits.

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 or 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 Contract Price.

- (d) Subcontractor shall keep, on the site during the progress of the Work, a competent superintendent who shall be the authorized representative of the Subcontractor. Directions and communications to him from the Contractor in connection with the Work shall be treated as directions and communications to the Subcontractor.
- (e) The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by or in any way related to operations performed under this Subcontract. The Subcontractor shall provide their own dumpster for the removal of debris. If the Subcontractor does not comply with this requirement, the Contractor, on 24 hour notice, may complete the clean up work and back charge the Subcontractor.
- (f) The Subcontractor shall follow the SWPPP procedures as established by the Contractor, as it pertains to their work. The Subcontractor will maintain, repair or replace any SWPPP facilities that are disturbed by their work.

SECTION 6. DELAYS

- (a) If Subcontractor is delayed in the prosecution or completion of the work by the act, neglect or default of Owner, Architect or Contractor, or if Subcontractor is delayed waiting for materials required by this Contract to be furnished by Owner or Contractor, or by damage caused by fire or other casualty for which Subcontractor is not responsible, or by the combined action of the workmen, in no way caused by or resulting from fault or collusion on the part of the Subcontractor, or in the event of a lock-out by Contractor, then the time herein fixed for the completion of the work shall be extended the number of days that Subcontractor has thus been delayed, but no allowance or extension shall be made unless a claim therefore is presented in writing to Contractor within three business days of the commencement of such delay or three business days prior to the time that Contractor must give notice to the Owner, whichever is sooner, and under no circumstances shall the time of completion be extended to a date which will prevent Contractor from completing the entire project within the time allowed Contractor by Owner for such completion. If and only to the extent that Section 7102 of the Public Contract Code requires that subcontractor be compensated for delays: (1) recovery shall be permitted only for those circumstances recognized under the Contract Documents as compensable delays; (2) recovery shall only be allowed for those delays that are unreasonable under the circumstances involved and not within the contemplation of the parties, in light of the nature of the project, industry custom and practice, and other relevant factors; (3) recovery may only be had for those items of costs permitted under the prime contract, plus those additional items of costs, if any, that Section 7102 of the Public Contract requires be paid; (4) subcontractor is bound by and must comply with all provisions of the prime contract and subcontract (and any portions thereof) that are not in conflict with Section 7102, including provisions concerning notice and certification of claims with respect to compliance with the False Claims Act. For purposes of Section 5, a claim that Section 7102 of the Public Contract requires be permitted, where the foregoing conditions have been satisfied, shall be referred to as an "Authorized 7102 Claim."
- (b) Except for an Authorized 7102 Claim, Subcontractor's sole remedy for delay, disruption or suspension shall be an extension of time, and Subcontractor shall not be entitled to recover additional compensation or damages for delays, disruption or suspension, including without limitation, claims for any productivity losses, efficiency losses, increased supervisory costs, home office overhead, extended job site overhead, disruption costs, "ripple effect" costs, trade stacking, compression, acceleration, consequential damages, damages of any other type, lost profits, lost opportunity costs, or similar damages or costs, however denominated, as well as any other monetary relief, for any delay, disruption or suspension of the work (collectively, "Impact Costs And Consequential Damages"). Except for Authorized 7102 Claims, Subcontractor waives any Claim for Impact Costs and Consequential Damages. However, in the event Contractor obtains additional compensation from Owner on account of delays that otherwise would be noncompensable under this Section 5, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor from Owner as is equitable under all of the circumstances. In the event that Contractor prosecutes a claim against Owner for additional compensation for any delay, Subcontractor shall cooperate fully with Contractor in the prosecution thereof and shall pay costs and expenses incurred in connection therewith, including actual attorneys' fees, to the extent that said claim is made by Contractor at the request of Subcontractor. Nothing in this Section 6 shall be deemed to authorize recovery for Impact Costs And Consequential Damages.
- (c) No allowance for an extension of time, for any cause whatever, shall be claimed by the Subcontractor unless the Subcontractor shall have made written request upon the Contractor, for such extension within two working days after the cause of such extension occurred, or if the Prime Contract provides for a shorter period, within sufficient time to permit the Contractor to give notice to the Owner within the time allowed by the Prime Contract for such notice.
- (d) No allowance of an extension of time shall, in any event, be made to the Subcontractor for delay by the Subcontractor in preparing drawings or in securing approval of the Architect or Engineer there to when such drawings are not properly prepared or when the Subcontractor by the exercise of reasonable diligence and judgment could have anticipated and avoided the delay.

SECTION 7. COMMUNICATIONS

All communications between the Subcontractor and the Architect, Engineer or Owner with respect to the Work shall be transmitted through the Contractor.

SECTION 8. INSURANCE

Before performing work or conducting any activities at the site of the Project, Subcontractor shall, at its expense, procure and maintain insurance and required coverages on all its operations, in admitted companies having at least an A. M. Best rating of no less than A-VIII (except for State Fund for Workers' Compensation coverage), or Contractor may consider accepting coverage from a non-admitted carrier with an A.M. Best rating of A or better, financial capacity of XII or better and in forms acceptable to the Contractor as follows:

- a) Workers' Compensation and Employers Liability Insurance as required by any applicable law or regulation. Employers Liability Insurance shall be provided in amounts not less than:
- i) \$1,000,000 each accident for bodily injury by accident;
\$1,000,000 each employee for bodily injury by disease;
\$1,000,000 policy limit for bodily injury by disease;
 - ii) Waiver of Subrogation endorsement in favor of the Contractor and the Project Owner (if requested.)
- b) General Liability Insurance, either Comprehensive General Liability or Commercial General Liability on coverage forms at least as broad as ISO occurrence form CG 0001, including but not limited to coverage insuring all subcontractors for:
- i) Bodily Injury and Property Damage;
 - ii) Personal injury and Advertising Injury;
 - iii) Products and Completed Operations;
 - iv) Broad Form Property Damage (including Completed Operations)
 - v) Explosion, Collapse, Underground Hazards (including subsidence);
 - vi) Contractual Liability insuring obligations assumed in this agreement;
 - vii) General Aggregate Limits of Insurance shall apply separately to the project.
 - viii) "Claims Made" and "Modified Occurrence" policy forms are not acceptable.
 - ix) Any self-insured retention or deductible greater than \$25,000 must be declared to contractor at time of bid and approved by contractor in writing.
 - x) Subcontractor shall maintain primary and excess products liability and completed operations coverage through the expiration of the patent deficiency in construction statute of repose set forth in Section 337.1 of the California Code of Civil Procedure.
- c) Limits of Liability shall not be less than:
- i) \$1,000,000 each occurrence Bodily Injury and Property Damage combined;
 - ii) \$1,000,000 for Personal Injury Liability;
 - iii) \$2,000,000 Products & Completed Operations aggregate;
 - iv) \$2,000,000 general aggregate;
 - v) If either defense costs are included in the General Liability Aggregate limit or if the General Aggregate limit does not apply separately to this project, then the required General Liability Aggregate limit shall be \$3,000,000. This additional limit can be provided by an excess/umbrella policy.
- d) Automobile Liability Insurance on a coverage form at least as broad as ISO form CA 0001, including:
- i) Coverage on all owned, non-owned and hired automobiles;
 - ii) Limit of liability shall not be less than \$1,000,000 Combined Single Limit for bodily injury and property damage
 - iii) Contractor and Project Owner will be named as additional insured.
- e) Increased liability limits:
- If higher limits of insurance are required by the General Conditions of the Prime Contract, the Subcontractor will comply with the Project Owner's requirements by providing evidence of an umbrella or excess liability policy.
- f) Additional Insured and Primary Insured Requirement:
- i) Under the Commercial General Liability policy the Subcontractor shall add the Contractor, its officers, directors and employees and the Project Owner (as required in this Agreement) as additional insured. The policy shall stipulate that the insurance afforded the Contractor and the Project Owner as additional insureds shall apply as primary insurance. Any other insurance carried by the Contractor or the Project Owner will be excess only and will not contribute with this insurance.
 - ii) The additional insured coverage as required herein shall be provided by an endorsement providing coverage at least as broad as:
 - (1) Additional Insured (Form B) endorsement form **CG 2010 1185** (1985 version) as published by the **Insurance Services Office** (herein after "ISO");
 - (2) A combination of Additional Insured endorsement form **CG 2010 1093** (1993 version) as published by the ISO (or equivalent) and Additional Insured endorsement form **CG 2037 1001** (2001 version) as published by the ISO (or equivalent);

- (3) A combination of Additional Insured endorsement form **CG 2010 0397** (1997 version) as published by the ISO (or equivalent) and Additional Insured endorsement form **CG 2037 1001** (2001 version) as published by the ISO (or equivalent); or,
- (4) A combination of Additional Insured endorsement form **CG 2010 1001** (2001 version) as published by the ISO (or equivalent) and Additional Insured endorsement form **CG 2037 1001** (2001 version) as published by the ISO (or equivalent);
- (5) Or equivalent coverage on a non-ISO endorsement form.

iii) Additional insured endorsements shall include coverage for completed operations and shall be provided for one year following project completion.

g) Evidence of Coverage and Certificates of Insurance:

Certificates of Insurance shall be furnished by the Subcontractor to Contractor before any work is commenced hereunder by the Subcontractor. The Certificates of Insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) days prior written notice to Contractor, except for 10 days in the event of non-payment of premium. In the event Subcontractor does not comply with the requirements of this section, Contractor, at its option, may provide insurance coverage to protect its interests and charge the Subcontractor for the cost of that insurance or Contractor may terminate this Agreement. The required insurance shall be subject to approval of Contractor, but any acceptance of insurance certificates by the Contractor shall in no way limit or relieve the Subcontractor of the duties and responsibilities assumed by the Subcontractor in this Contract. Failure of Contractor to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Contractor to identify deficiencies from evidence that is provided shall not be construed as a waiver of Subcontractor's obligation to maintain such insurance. Allowance of any additional exclusions or coverage limiting endorsements is at the discretion of Contractor, and Subcontractor's bid shall be subject to adjustment to compensate for the existence of such exclusions. Payment may be withheld, at the option of the Contractor, until such certificates have been furnished, or if upon receipt of a cancellation notice on a policy, until withdrawal of the notice or the reinstatement of the canceled policy. Failure of Subcontractor or its subcontractors, truckers, vendors or suppliers to maintain the required insurance may result in termination of this subcontract agreement at Contractor's option. Copies of policies shall be furnished by Subcontractor, its subcontractors, truckers, vendors or suppliers within ten (10) days of written request from Contractor or Owner.

h) Insurance Requirements for Sub-Subcontractors, Truckers, Vendors and Suppliers:

Subcontractor shall ensure that its Subcontractors, Truckers, Vendors and Suppliers of any tier shall maintain insurance in like form and amounts, including the Additional Insured requirements set forth above, and will provide contractor evidence of sub-Subcontractors, truckers, vendors and suppliers insurance prior to their starting work.

i) Waiver of Subrogation:

i) Contractor and Subcontractor waive all rights against each other and against all other Subcontractors and Project Owner(s) for loss or damage to the extent reimbursed by Builder's Risk, Installation Floater, or any other property or equipment insurance Applicable to the work, except such rights as they may have to the proceeds of such insurance.

ii) If Builder's Risk insurance purchased by the Project Owner(s) or Contractor provides coverage for Subcontractor for loss or damage to Subcontractor's work, Subcontractor shall be responsible for the insurance policy deductible amount.

j) Property Insurance

i) Subcontractor shall procure and maintain at its own expense property and equipment insurance for Subcontractor's tools, equipment, temporary structures, work in progress, work in transit and/or in temporary storage.

ii) If builders' risk insurance is not provided by Project Owner or Contractor, Subcontractor shall purchase and maintain installation floater coverage written to cover all risks of physical loss except those specifically excluded in the policy, and shall insure at least against the perils of fire and extended coverage, theft, vandalism, malicious mischief and collapse. This insurance shall be written in an amount to provide full protection for Subcontractor's work. This insurance shall apply on a replacement cost basis. Any deductible shall be the full responsibility of Subcontractor. Subcontractor waives all rights against Project Owner and Contractor or for recovery of damages pursuant to section 9 above.

k) Hazardous Materials and Pollution Liability

i) If Subcontractors or their Subcontractors or Suppliers of any tier are either required to perform remediation of hazardous materials as those terms are defined in federal, state or local law, or if their operations create an exposure to hazardous materials, they must, in addition to the above requirements, carry a "Contractor's Pollution Liability" policy with limits not less than \$1,000,000 per occurrence and not less than \$2,000,000 aggregate for Bodily Injury, Personal Injury and Property Damage, naming Contractor as additional Insured. The status of Project Owner as an insured under a CGL policy obtained in compliance with section 2 of this agreement shall not restrict coverage under such CGL with respect to the escape or release of pollutants at or from a site owned or occupied by or rented or loaned to Project Owner.

ii) If Subcontractor or their Subcontractors haul hazardous material (including, without limitation, waste), the policy must extend pollution coverage to the transportation of hazardous materials or pollutants by waste hauling vehicles. Such coverage requirement may be met through Subcontractor's or its Subcontractors or Suppliers Automobile Liability Policy pursuant to paragraph 4 by providing coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48). If Subcontractor is subject to the Motor Carrier Act of 1980, the Motor Carrier Act endorsement MCS-90 must be obtained and attached to the policy.

l) Riggers Liability

Should Subcontractor's work involve the moving, lifting, lowering, rigging or hoisting of property or equipment, Subcontractor shall carry Rigger's Liability Insurance to insure against physical loss or damage to the property or equipment.

m) Work Near Railroads

If Subcontractor (including any lower tier Subcontractor or supplier) performs any work or conducts any operations within fifty feet of any railroad (including any light rail, fixed rail or other rail system), Subcontractor shall obtain an endorsement of its Commercial General Liability Policy to delete any exclusion, including the "Contractual Liability" exclusion, for work performed within fifty feet of a railroad. A copy of such endorsement shall be provided to Contractor prior to any work or operations by Subcontractor within fifty feet of any railroad.

n) Other requirements

i) Any acceptance of insurance certificates by Contractor shall in no way limit or relieve Subcontractor of its duties and responsibilities under this Agreement including the duty to indemnify and hold harmless Contractor under other provisions hereof. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Subcontractor for liability in excess of such coverage nor shall it preclude Contractor from taking such other actions as is available to it under any other provision of this Agreement or law.

ii) Subcontractor shall be responsible for any deductible amount or any loss arising out of coverage denials by its insurance carrier(s).

iii) Should any insurance policy lapse or be canceled during the contract period, Subcontractor shall, prior to the effective expiration or cancellation date, furnish Contractor with evidence of renewal or replacement of the policy. Failure to continuously satisfy insurance requirements as herein provided is a material breach of contract. In the event Subcontractor fails to maintain any insurance coverage required, Contractor may, but is not required to, maintain such coverage and charge the expense to Subcontractor or terminate this contract.

iv) Subcontractor's obligations for loss or damage arising out of Subcontractor's work is in no way limited to the types or amounts of insurance set forth above. To the extent Subcontractor maintains insurance greater than these minimum requirements, Subcontractor agrees that such insurance shall be applicable to any of Subcontractor's liability obligations hereunder. In specifying minimum insurance requirements herein, neither Contractor nor Project Owner assert or recommend this insurance as adequate to Subcontractor's requirements. Subcontractor is solely responsible to inform itself of types or amounts of insurance it may need beyond these requirements to protect itself from loss, damage, or liability.

o) In addition to and without derogation to any insurance required under this Section 8 or any other provision of this Agreement, Subcontractor shall obtain and maintain all insurance required under Section SC 5.04 of the Prime Contract, including any endorsements in favor of Owner, Engineer, or Consulting Engineer, in strict accordance with Section SC 5.04.

SECTION 9. INDEMNIFICATION

(a) To the greatest extent permitted by law, Subcontractor shall indemnify, defend and save harmless Owner, Contractor and ARCHITECT/Engineer, including their officers, agents, directors, partners, members, employees, affiliates, parents and subsidiaries, and each of them, of and from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or equity, of every kind and nature whatsoever ("Claims") arising out of or in any way relating to (i) this Agreement; (ii) either actual or alleged actions or omissions by Subcontractor or any of its subcontractors, suppliers, vendors, employees, or persons for whom it is responsible (regardless of whether the acts or omissions are actually negligent), and/or (iii) the actual or alleged presence at or near the PROJECT site of Subcontractor, its subcontractors or suppliers (regardless of tier) or any of their respective employees, agents or persons performing tasks for or on their behalf, such as truckers or delivery persons. The obligations to defend, indemnify and save harmless shall apply notwithstanding that Subcontractor is not actively involved in the events that give rise to the Claims for which a defense or indemnity is sought. The indemnity, defense, and other obligations under this Section 9 shall apply even if Subcontractor was not actually negligent or in breach of contract obligations. The obligations of this Section 9 shall apply to Claims occurring after this Agreement is terminated as well as while it is in force. This Section 9 shall apply regardless of any active and/or passive negligent act or omission of Owner or Contractor or of any other person to be indemnified hereunder. Subcontractor, however, shall not be obligated under this Agreement to defend or indemnify any person against Claims arising only from the sole negligence or willful misconduct of the person to be indemnified or for defects in design furnished by the person to be indemnified. Without limiting the scope of the obligations under this Section 9, the following Claims, without limitation, are within the scope the obligations to indemnify, defend, and save harmless:

- Claims involving alleged or actual personal or bodily injury, sickness or disease, or death to persons
- Claims involving alleged or actual damage to physical property or alleged or actual loss of use of tangible property, including the Work itself
- Claims seeking penalties, fees and/or costs on account of the alleged or actual violation of any law, order, citation, rule, regulation, standard, ordinance or statute, including prevailing wage laws
- Alleged or actual infringement of any patent or intellectual property rights
- Claims (including liens or stop notices) arising out of an alleged or actual failure to make payment for labor, equipment, materials, services, trust fund or apprenticeship contributions, and/or taxes, including all incidental or consequential damages resulting to Contractor or Owner from such Claims or liens
- Subcontractor's actual or alleged failure to fulfill covenants with regard to labor conditions or employment
- Alleged or actual failure of Subcontractor to comply with provisions regarding liability or other insurance
- Alleged or actual violation of or infraction by Subcontractor with regard to 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, alleged or actual violations or infractions arising from the alleged or actual use of Contractor's or others' equipment, hoists, elevators, or scaffolds

(b) Subcontractor shall:

- (i) At Subcontractor's own cost, expense and risk, promptly defend all Claims, to the extent required by Section 9(a), brought or instituted by third persons, including, but not limited to, governmental agencies or employees of Subcontractor, against Contractor or Owner or any other person to be indemnified hereunder;
- (ii) Pay and satisfy any judgment, award or decree that may be rendered against Contractor or Owner or any other person to be indemnified or defended hereunder, or any of them, arising out of any such Claim; and/or
- (iii) Reimburse Contractor or Owner or any other person to be indemnified hereunder for any and all legal expense incurred by any of them in connection herewith in defending any Claim that Subcontractor is required to defend, in the event that Subcontractor fails to do so.

The duty to defend shall apply, and Subcontractor shall immediately be required to furnish a defense, notwithstanding that there has not yet been an adjudication or finding of liability on the part of Subcontractor or any person to be indemnified. The duty to defend is an independent and separate obligation from the duties to indemnify and save harmless.

(c) In addition to, and without derogation of the obligations in Section 9(a), (b) and (d), Subcontractor shall assume and promptly discharge all obligations owed by Contractor to Owner, Engineer, and any Consulting Engineer (and their respective officer, directors, partners, employees, agents, other consultants and subcontractors) under the PRIME CONTRACT (including SC 6.20 and Section 6.20 of the General Conditions as modified) with respect to indemnification against and defense of Claims, and any other matters referred to in SC 6.20. The obligations under this Section 9(c) are cumulative with and do not supersede, waive, release, impair or limit obligations otherwise owed under this Section 9, this Agreement, the CONTRACT DOCUMENTS and/or applicable law.

- (d) All work covered by this Agreement done at the site or in preparing or delivering materials or equipment, or any or all of them, to the site shall be at the risk of Subcontractor exclusively until the completed work is accepted by Owner.
- (e) If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, its subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and employers on the site.

SECTION 10. LIENS AND CLAIMS

The Subcontractor shall, as and when requested, furnish evidence satisfactory to the Contractor and the Owner that claims for labor and materials furnished by the Subcontractor in connection with performance of this Subcontract have been paid, including payroll taxes and employee benefits. Subcontractor shall furnish Contractor releases of bond rights and lien rights by persons who have furnished labor, materials or other things in the performance of this Subcontract, it being agreed that payment of money otherwise due Subcontractor need not be made by Contractor until such releases are furnished. Subcontractor shall deliver his work free from all claims, encumbrances or liens.

SECTION 11. POSSESSION PRIOR TO COMPLETION

Whenever it may be useful or necessary for the Contractor to do so, the Contractor shall be permitted to occupy and/or use any portion of the Work which has been partially or full completed by the Subcontractor before final inspection and acceptance thereof by the Owner, but such use and/or occupation shall not relieve the Subcontractor of his guarantee of said Work nor of his obligation to make good at his own expense any defects in material and/or workmanship which may occur or develop prior to Contractor's release from responsibility to the Owner.

SECTION 12. OTHER CONTRACTS

It is understood and agreed that the Work provided for in this Subcontract constitutes only a part of the work being performed for the owner by the Contractor and other subcontractors. The Subcontractor, therefore, agrees to perform the Work called for in his Subcontract in such a manner that he will not injure, damage or delay any work performed by the Contractor or other subcontractors or suppliers, and further agrees to pay or reimburse the Contractor for any additional costs, damage or delay that may be caused to such other work of the Contractor, subcontractors or suppliers, by the Subcontractor or by his agents or employees. The Subcontractor shall participate in the preparation of coordinated drawings, the review of existing drawings, contract or otherwise, and/or the review and/or preparation of other information as may be necessary to specifically note and advise the Contractor of potential conflicts between the work of the Subcontractor and that of the Contractor, other subcontractors or the Owner's own forces.

SECTION 13. INDEPENDENT CONTRACTOR

The Subcontractor agrees that he is, or prior to the start of the work will become, an independent contractor.

SECTION 14. COMPLIANCE WITH THE LAW

- (a). The Subcontractor agrees to fully comply with all Federal, State and local laws, ordinances and regulations.
- (b). If the project is subject to prevailing wage requirements under the California Labor Code, either by operation of law or by agreement, then Subcontractor agrees fully to comply with all provisions of applicable law, including Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815. A copy of these laws is attached hereto and incorporated herein (attachment 2). Subcontractor acknowledges that these laws are incorporated into this Subcontract. In addition, as a strict condition precedent to the making of final payment, Subcontractor agrees to furnish an affidavit signed under penalty of perjury certifying that Subcontractor has paid the specified prevailing wage rate of per diem wages to Subcontractor's employees on the Project as well as any and all amounts due pursuant to Section 1813 of the Labor Code. Subcontractor acknowledges that no final payment shall be made to Subcontractor until Subcontractor has complied with these requirements.

SECTION 15. SAFETY

- (a). The Subcontractor shall take all safety precautions pertaining to his work and the conduct thereof. Without limiting the generality of the foregoing, he shall comply with all applicable laws, ordinances, rules, regulations and

orders issued by a public authority, whether federal, state, local or otherwise, including, but not limited to, the Federal Occupational Safety and Health Act and, in addition, the safety measures called for by the Contractor.

(b). The subcontractor shall be responsible for holding weekly safety toolbox meetings as required by law on their own time at their own expense. If requested, records of such meetings shall be submitted to the Contractor. Failure to provide such minutes may be reason for withholding payment for the work performed.

(c). Hardhats and appropriate safety clothing and equipment are required on this job site.

SECTION 16. PROTECTION OF THE WORK

The Subcontractor specifically agrees that he is responsible for the protection of his work until final completion and acceptance thereof by the owner and that he will make good or replace at no expense to the Contractor or the Owner, any damage to his work which occurs prior to said final acceptance.

SECTION 17. DISPUTES

All claims, disputes and other matters in question between the Contractor, and the Subcontractor (parties) arising out of, or relating to this agreement or the breach thereof, shall be resolved or set forth in (a) through (d) below. The parties waive any other means of recourse with respect to the resolution of claims and disputes.

(a) Any party presenting any claim or dispute must notify the other party within 2 working days of identifying the potential claim. Failure to notify the other party as required above shall be reason for rejecting the claim. The presenting party shall detail such claim in writing setting forth the facts and theories supporting such claim, and setting forth the claimed damages and/or relief desired, supported by evidentiary material sufficient upon its face to support such claim within 10 working days of the completion of the work which makes up the claim. Each party to the claim shall have the right, within ten days of receipt of the claim to demand and receive within 10 days additional record and evidence material to the issues involved. Within 30 days thereafter the parties must engage in good faith negotiations to resolve the issues among themselves. Each party must include a principal present at the negotiation empowered to resolve such claim. Such negotiations may be terminated only after a minimum of 4 hours of discussion and a determination by one of the parties of an impasse.

(b) In the event the claim is not resolved in accordance with (a) (above) the parties will enter into mediation. The parties will select a mediator by unanimous agreement within 5 days of the termination of negotiations. Failing agreement, a mediator will be appointed by the American Arbitration Association from its list of construction mediators within 2 working days, or as soon as possible thereafter depending on the American Arbitration Association schedule, upon the request of any party. The mediator so appointed will be binding on the parties. Each party will provide whatever supplemental information they desire to the mediator and other parties to support their position including furnishing documents making available witness statements and identifying experts and making available their reports. The above tasks shall be accomplished within 30 days. The mediator at his/her discretion shall commence the mediation within 60 days of the failure to resolve the dispute in accordance with (a) (above). Each party will be permitted to utilize in the mediation, only those documents, witnesses and witness statements, experts and expert statements provided in the 30 day period noted above. Each party will share equally the cost of mediation. Should any claimant fail to cooperate in the mediation process, the claim will be barred. In the event any other party fails to cooperate, the claimant shall be entitled to seek any other legal remedy.

(c) In the event the mediator fails to cause the parties to enter into a settlement, the mediator will render within 30 days a recommendation as to the final resolution of the case. The parties will have 10 days in which to accept, reject or reach a negotiated agreement. In the event an agreement is not reached, the parties can agree to the following:

1. Submit rebuttal statements to the mediator for reconsideration and mutually agree to abide by the mediator decision;

2. To mutually agree to Arbitration under the auspices of the American Arbitration Association;

3. Agree on an alternate binding dispute resolution procedure;

4. Seek legal redress.

(d) In the event legal redress is sought in accordance with (c) (above) the parties shall be permitted to utilize only those experts and expert reports produced at the mediation in the presentation of their case. The disputants shall not produce as their witnesses any employees of their respective organization not presented in accordance with the procedures outlined in this Disputes Clause. All discovery by plaintiffs and defendants must be completed within 90 days of the defendants filing on appearance. The above procedures shall supersede the rules of the applicable jurisdiction and be binding on the parties but be subject to the interpretation of the presiding judge.

If any action is brought by either party to enforce or have interpreted the provisions of this Subcontract, both parties consent that any and all proceedings shall occur in Alameda County.

Unless otherwise agreed in writing, the Subcontractor shall carry on the work and maintain its progress during the dispute resolution process. The Contractor shall continue to fulfill its obligations including payment obligations in accordance with the Subcontract Agreement.

SECTION 18. ATTORNEY'S FEES

Under the circumstances where Section 20104 et seq. of the Public Contract Code permits a court, in its discretion, to award fees if a party demands a trial following judicial arbitration and fails to achieve a more favorable result, the parties agree that the Court or an arbitrator, as the case may be, shall have discretion to award fees and costs against the party that failed to obtain a more favorable result. Except as provided in the previous sentence of this Section 18, and notwithstanding any other provision of this Agreement, the Contract Documents or applicable law, neither subcontractor nor Contractor shall be permitted to recover attorney's fees or costs in any dispute or litigation and Subcontractor expressly waives the right to recover attorney's fees and costs from Contractor and from Contractor's sureties except where the same is permitted to be recovered under the first sentence of this Section 18. This waiver of the right to fees and costs, to the extent permitted by law, shall be effective as to statutory rights such as those afforded by Civil Code Sections 3250 through 3252. This provision shall not limit, impair or waive Contractor's rights to be defended by, to be indemnified by, to be held harmless by, to receive contribution from, and to receive the benefits of insurance furnished by Subcontractor or any other persons, with regard to attorney's fees, expert costs and other expenses. In the event that a court were to find that this provision would allow an award of fees even when the conditions under the first sentence of this Section 18 were not satisfied, then this Agreement shall be reformed to eliminate and waive any right to fees from either party or its sureties, except where such a waiver would violate public policy.

SECTION 19. TAXES

Subcontractor shall pay all taxes, licenses, and fees of any nature that may be imposed or charged by any governmental authority upon the labor, material, or other things used in the performance of the Work or upon the transaction between the Contractor and Subcontractor.

SECTION 20. EQUAL OPPORTUNITY / AFFIRMATIVE ACTION

(a). If the Prime Contract contains any provision which prohibits discrimination on the basis of race, color, religion, sex, or national origin, hereinafter referred to as Equal Opportunity, or if any law, regulation or order has any application thereto and is applicable to this Subcontract, then the Subcontractor hereby agrees to comply with such provision, law, regulation or order.

(b). The Subcontractor hereby acknowledges that the Contractor is an Equal Opportunity Employer / Affirmative Action, and is bound by the clauses and conditions identified in Executive order 11246, as amended by, the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, 38 USC 4212, and Section 503 of the Rehabilitation Act of 1973, as amended, and their implementing regulations and which by this clause are incorporated herein 60.14d.

SECTION 21. ARCHITECT-ENGINEER

The words "Architect or Engineer" as used herein refer to the person appointed by the Owner to supervise the work of the Contractor on behalf of the Owner.

SECTION 22. ASSIGNMENT

The Subcontractor shall not, in whole or in part, assign or sublet this Subcontract or the proceeds thereof without the written consent of the Contractor.

SECTION 23. PRIOR UNDERSTANDING OR REPRESENTATIONS

The Contractor assumes no responsibility for any understanding or representations made by any of its officers or agents prior to the execution of this Subcontract, unless such understanding or representations by the Contractor are expressly stated in the Subcontract. The terms and conditions of this subcontract shall take precedence over any conflicting conditions or statements.

SECTION 24. ADDITIONAL PROVISIONS

BONDING UNDER SECTION 3 IS NOT REQUIRED.

Attachment 1 is made a part of this subcontract.

IN WITNESS WHEREOF, the parties hereto have executed this Subcontract by their proper officers or duly authorized agents.

CONTRACTOR

SUBCONTRACTOR

G.S.E. CONSTRUCTION COMPANY, INC.
DATE:
CONTR. LICENSE 401498

ABC Painting Co., Inc.
DATE:
CONTR. LICENSE No. _____

ATTACHMENT No. 1

DOCUMENTS REQUIRED WITH SUBCONTRACT

1. Certificates of Liability Insurance
2. Certificates of Workman's Compensation Insurance
3. Certificates of Commercial Auto Insurance
4. Federal ID number or Social Security Number. This is required under Section 6041A of the Internal Revenue Code. Space is provided in the left upper corner of the Subcontract Agreement.
5. Submittals as required by the Plans and Specifications. Please provide us with EIGHT copies of each.
6. Breakdown of your Subcontract Price. This breakdown will serve as the basis for progress payments.
7. Sample of Subcontractor's Safety Toolbox Meeting form to be used during this project. Please refer to SECTION 15-SAFETY of the Subcontract Agreement.
8. Copy of your contractors license.
9. Payment and Performance Bonds, if not waived in Section 24.
10. Completed Copy of DAS Form 140 (Attached to this Subcontract Agreement)

ATTACHMENT No. 2

LABOR CODE SECTIONS 1771, 1775, 1776, 1777.5, 1813 and 1815

1771. Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works. This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

1775. The contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by him or her or by any subcontractor under him or her. The amount of this penalty shall be determined by the Labor Commissioner and shall be based on consideration of the contractor's mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages, or the previous record of the contractor in meeting his or her prevailing wage obligations, or a contractor's willful failure to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the contractor had knowledge of his or her obligations under this part. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with. To the extent that there is insufficient money due a contractor to cover all penalties and amounts due in accordance with this section, or in accordance with Section 1813, and in all cases where the contract does not provide for a money payment by the awarding body to the contractor, the awarding body shall notify the Division of Labor Standards Enforcement of the violation and the Division of Labor Standards Enforcement, if necessary with the assistance of the awarding body, may maintain an action in any court of competent jurisdiction to recover the penalties and the amounts due provided in this section. This action shall be commenced not later than 90 days after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 90 days after acceptance of the public work, whichever last occurs. No issue other than that of the liability of the contractor for the penalties allegedly forfeited and amounts due shall be determined in the action, and the burden shall be upon the contractor to establish that the penalties and amounts demanded in the action are not due. Out of any money withheld, recovered, or both, there shall first be paid the amount due each worker, and if insufficient funds are withheld, recovered, or both, to pay each worker in full, the money shall be prorated among all workers. This section shall become operative on January 1, 2003.

1775. (a) The contractor and any subcontractor under him or her shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by him or her or, except as provided in subdivision (b), by any subcontractor under him or her. The amount of this penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the contractor or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the contractor in meeting his or her prevailing wage obligations, or the willful failure by the contractor or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the contractor or subcontractor had knowledge of his or her obligations under this part. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

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

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

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

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

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

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages. If the Division of Labor Standards Enforcement determines that employees of a subcontractor were not paid the general prevailing rate of per diem wages and if the body awarding the contract under which the employees performed work did not retain sufficient money under the contract to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the contractor shall withhold an amount of moneys due the subcontractor sufficient to pay those employees the general prevailing rate of per diem wages if requested by the Division of Labor Standards Enforcement. The contractor shall pay any money retained from and owed to a subcontractor upon receipt of notification by the Division of Labor Standards Enforcement that the wage complaint has been resolved. If notice of the resolution of the wage complaint has not been received by the contractor within 180 days of the filing of a valid notice of completion or acceptance of the public works project, whichever occurs later, the contractor shall pay all moneys retained from the subcontractor to the awarding body. The moneys shall be retained by the awarding body pending the final decision of an enforcement action, and be forwarded to the Labor Commissioner for disbursement pursuant to subdivision (d) if the subcontractor does not prevail in the action. Wages for workers who cannot be located after a diligent search by the Labor Commissioner shall be deposited in the Industrial Relations Unpaid Wage Fund pursuant to subdivision (c) of Section 96.7. Penalties shall be paid into the General Fund. If the subcontractor prevails in the enforcement action, the awarding body shall release any funds retained pursuant to this subdivision to the contractor within 10 working days from the date of the final decision of the court.

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

there shall first be paid the amount due each worker, and if insufficient funds are withheld, recovered, or both, to pay each worker in full, the money shall be prorated among all workers.

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

1776. (a) Each contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, and 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.

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

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

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

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

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

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

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

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

(g) The contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the contractor must comply with this section. In the event that the contractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

(h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. These stipulations shall fix the responsibility for compliance with this section on the prime contractor.

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

This section shall become operative January 1, 2003.

1776. (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee

employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct. (2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project. (b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

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

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

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

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

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

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

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

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

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

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

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

1777.5. Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work of the craft or trade to which he or she is registered.

Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed on public works. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training.

When the contractor to whom the contract is awarded by the state or any political subdivision, or any subcontractor under him or her, in performing any of the work under the contract or subcontract, employs workers in any apprenticeable craft or trade, the contractor and subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site of the public work for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject contractor or subcontractor, shall arrange for the dispatch of apprentices to the contractor or subcontractor in order to comply with this section. Every contractor and subcontractor shall submit contract award information to the applicable joint apprenticeship committee that includes an estimate of journeyman hours to be performed under the contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There is an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the craft or trade in the area of the site of the public work to ensure equal employment and affirmative action in apprenticeship for women and minorities. Contractors or subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen who shall be employed in the craft or trade on the public work may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentices work for every five hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeymen.

Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the job site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

The contractor or subcontractor, if he or she is covered by this section, upon the issuance of the approval certificate, or if he or she has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the contractor that he or she employs apprentices in the 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 a journeyman or, in the land surveyor classification, one apprentice for each five journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio as set forth in this section. 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) or 20 working days. 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 hourly ratio required by this section.

"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. The joint apprenticeship committee has the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

- (a) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.
- (b) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(c) 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.

(d) 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 if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

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

A contractor to whom the contract is awarded, or any subcontractor under him or her, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any craft or trade in the area of the site of the public work, to which fund or funds other contractors in the area of the site of the public work are contributing, shall contribute to the fund or funds in each craft or trade in which he or she employs journeymen or apprentices on the public work in the same amount or upon the same basis and in the same manner as the other contractors do, but, where the trust fund administrators are unable to accept the funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The contractor or subcontractor may add the amount of the contributions in computing his or her bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in Section 227.

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.

All decisions of the joint apprenticeship committee under this section are subject to Section 3081.

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

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

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