

SPOSETO ENGINEERING, INC.

4558 CONTRACTORS PLACE
LIVERMORE, CA 94551-4805
License No. 310292
DIR No: 100005234
(925) 443-4200 FAX: (925) 443-6800

SPOSETO JOB #S17-***

SUBCONTRACT AGREEMENT

This Agreement is made this **DATE HERE**, between **Sposeto Engineering, Inc.** (Contractor) with principal office at **4558 Contractors Place Livermore, CA 94551-4805** and **SUB NAME HERE** (Subcontractor) with its principal office at **SUB ADDRESS HERE**. The work described in Section 1 below shall be performed in accordance with the prime contract, dated **CONTRACT DATE HERE** between Contractor and **PRIME CONTRACTOR HERE** (Prime) with its principal office at **PRIME CONTRACTOR ADDRESS HERE** and in accordance with all plans, specifications, addenda's and other contract documents attached to or incorporated into the prime contract for the project known as: **PROJECT NAME AND ADDRESS HERE**.

SECTION 1. SCOPE. Subcontractor agrees to furnish all labor, materials, equipment and other facilities required to complete the following work:

Furnish labor, material, and equipment for the installation of all _____
_____ In accordance with

:

SECTION 2. PRICE AND PAYMENT. Contractor agrees to pay Subcontractor for the strict performance of his work the sum of - **_____ dollars (\$ 00.00)** or as set out in Section 20 below, subject to adjustments for changes in the work as may be directed in writing by Contractor. Payment shall be made in monthly progress payments of ninety-five percent (95%) of labor and material which have been incorporated into the work of improvement; progress payments to Subcontractor shall be made only with sums received by Contractor from Owner for work performed by Subcontractor as reflected in Contractor's applications for payment. Final payment of the balance owed to Subcontractor shall be due seven days after receipt by Contractor of final payment from Owner for Subcontractor's work. It is the intent of the parties that receipt by the Contractor from the Owner of funds for work performed by Subcontractor shall be a condition precedent to each payment to be made to the Subcontractor pursuant to the provisions of this section, and no recourse to the Contractor or its sureties may be made except as otherwise stated herein. Subcontractor agrees to furnish, if and when required by Contractor, payroll affidavits, receipts, vouchers, releases of claims for labor, and material, and agrees to furnish same from its subcontractors, suppliers and/or material men in form satisfactory to Contractor, prior to receipt of any payment. Contractor may, at its option, make any payment or portion thereof by joint check payable to Subcontractor and any of its subcontractors, suppliers and/or material men.

SECTION 3. ENTIRE AGREEMENT. This Agreement represents the entire agreement between Contractor and the Subcontractor and supersedes any prior written or oral representations. Subcontractor, its subcontractors, suppliers and/or material men are bound by the prime contract and any contract documents incorporated therein insofar as they relate in any way, directly or indirectly, to the work covered by this Agreement.

SECTION 4. TIME. Time is of the essence of this Agreement. Subcontractor shall provide Contractor with scheduling information in a form acceptable to Contractor and shall conform to Contractor's progress schedules, including any changes made by Contractor in the scheduling of work. Subcontractor shall coordinate its work with that of all other contractors, subcontractors, suppliers and/or material men so as not to delay or damage their performance. Accordance with the specifications the project must be completed in a timely manner as outlined within the specifications weather its calendar days or working days.

SECTION 5. DELAY. In the event that Subcontractor's work is delayed for any reason, including acts of the Contractor, Subcontractor's sole remedy shall be an extension of time equal to the period of delay, provided Subcontractor has given Contractor written notice of the commencement of delay within 48 hours of its occurrence. In the event that Contractor, in its sole discretion, should seek compensation from the Owner as a result of any delay, Subcontractor shall be entitled to an equitable portion of any

amount recovered by Contractor, minus an aliquot share of the cost of pursuing said claim. This provision shall not be construed to require the Contractor to pursue any delay claim against the Owner of any other party.

SECTION 6. CHANGES IN WORK. Subcontractor shall make no changes in the work covered by this Agreement without written direction from the Contractor. Subcontractor shall not be compensated for any change which is made without such written direction. No changes in the work covered by this Agreement shall exonerate any surety or any bond given in connection with this Agreement.

SECTION 7. CLAIMS. If any dispute shall arise between Contractor and Subcontractor regarding performance of the work, or any alleged change in work, Subcontractor shall timely perform the disputed work and shall give written notice of a claim or additional compensation for the work prior to commencement of the disputed work. Subcontractor's failure to give written notice prior to commencement constitutes an agreement by Subcontractor that it will receive no extra compensation for the disputed work.

SECTION 8. INSPECTION AND PROTECTION OF WORK. Subcontractor shall make the work accessible at all reasonable times for inspection by Contractor. Subcontractor shall, at the first opportunity, inspect all material and equipment delivered to the job site by others to be used or incorporated in the Subcontractor's work and give prompt notice of any defect therein. Subcontractor assumes full responsibility to protect the work done hereunder until final acceptance by the Architect, Owner and Contractor.

SECTION 9. LABOR RELATIONS. Subcontractor shall submit two copies of certified payroll reports with original signatures to Contractor no later than five (5) working days after payment of labor has been made to verify compliance with all applicable federal, state and local laws and regulations., including requirements under the Davis-Bacon Act or California labor Code. Such cooperation shall include, without limitation, furnishing copies and original records and providing access to employees or witnesses for interviews and statements. Contractor may withhold sufficient funds to protect Contractor against any claims related to labor requirements, including without limitation, requirements under the Davis-Bacon Act or the California Labor Code.

On all projects subject to state or local prevailing wage requirements, Subcontractor shall comply with any applicable California prevailing wage laws. With respect to such projects, the provisions of California labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 are attached and incorporated. On such projects, as a condition precedent to final payment, Subcontractor agrees to provide an affidavit that complies with the terms of Labor Code Section 1775(b)(4).

On all projects advertised for bid or awarded on or after July 1, 2016, Section 1720.9 of the Labor Code (AB 219) requires that any person or entity that engages in "the hauling and delivery of ready-mixed concrete" must: (1) comply with prevailing wage laws, including payment of prevailing wages and the submission of certified payroll reports; and (2) register with the Department of Industrial Relations, even if person or entity is not a licensed contractor. Subcontractor agrees strictly to comply with these requirements, and Subcontractor's failure to comply shall constitute a material breach. In particular, and without limitation, Subcontractor agrees to comply with Division 2, Part 7, Chapter 1 of the California Labor Code, Section 1720.

Subcontractor shall comply with all equal opportunity and affirmative action requirements of any governmental authority. Subcontractor shall comply with and agrees to be bound by Subcontractor shall maintain labor relations policies in conformity with the directions of the Contractor, and shall be bound to and comply with all of the terms and conditions, including trust fund contributions, required by those labor agreements applicable to work performed under this Agreement to which the Contractor is bound. The specific agreements to which the Contractor is bound are listed in Section 19.

SECTION 10. TERMINATION. (i) Should Subcontractor fail to rectify any contractual deficiencies, including failure to pay its creditors, within three (3) working days from receipt of Contractor's written notice, Contractor shall have the right to take whatever steps it deems necessary to correct said deficiencies and charge the cost thereof to Subcontractor, who shall be liable for the full cost of Contractor's corrective action, including overhead, profit and actual attorneys' fees. (ii) Contractor may at any time and for any reason terminate Subcontractor's services hereunder at Contractor's convenience; in the event of termination for convenience, Subcontractor shall recover only the actual cost of work completed to the date of termination, in approved units of work or percentage of completion, plus fifteen percent (15%) of the actual cost of the work for overhead and profit. Subcontractor shall not be entitled to any claim or lien against Contractor or Owner for any additional compensation or damages in the event of such termination.

SECTION 11. INDEMNIFICATION. To the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless Owner and Contractor and their agents and employees from claims, demands, causes of actions and liabilities of every kind and nature whatsoever arising out of or in connection with Subcontractor's operations performed under this Agreement. This indemnification shall extend to claims occurring after this Agreement is terminated as well as while it is in force. The indemnity shall apply regardless of any active and/or passive negligent act or omission of Owner or Contractor, or their agents or employees, but Subcontractor shall not be obligated to indemnify any party for claims arising from the sole negligence or willful misconduct of Owner or Contractor or their agents or employees or caused solely by the designs provided by such parties. The indemnity set forth in this Section shall not be limited by insurance requirements or by any other provision of this Agreement.

All work covered by this Agreement done at the site or in preparing or delivering materials or equipment to the site shall be at the sole risk of Subcontractor until the completed work is accepted by Contractor.

SECTION 12. INSURANCE. SEE ATTACHED ADDENDUM TO SECTION 12**** Subcontractor shall, at its expense, procure and maintain insurance on all of its operations with carriers acceptable to Contractor and as required by the prime contract, including the following coverage's:

- a. Workers' Compensation and Employer's Liability insurance;
- b. Comprehensive General Liability or commercial General Liability insurance covering all operations; and,
- c. Automobile Liability insurance, including coverage for all owned, hired and non-owned automobiles.
- d. The insurance coverage in A, B and C and any other requirements of insurance that are in special provisions and general specifications and any other specifications that the district uses for the construction of this contract.

All insurance coverages shall be in amounts and for durations acceptable to Contractor and as required by the prime contract. Subcontractor shall, when required by Contractor, name contractor as an additional insured under the General Liability policy. Subcontractor shall provide certificates of insurance to Contractor. The certificates of insurance shall provide that there will be no cancellation nor reduction of coverage without thirty (30) days prior written notice to Contractor. The failure of Contractor to enforce in a timely manner any of the provisions of this Section 12 shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of this Agreement.

SECTION 13. DISPUTE RESOLUTION. Any dispute resolution procedure in the prime contract shall be deemed incorporated in this Agreement, and shall apply to any disputes arising hereunder, except disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the prime contract, those which have been waived by the making or acceptance of final payment, and questions regarding the licensure of the Subcontractor. Subject to compliance with all applicable laws, including but not limited to those relating to false claims, dispute and claim certifications, and cost and pricing date requirements, Contractor's sole obligation is to present any timely-filed claims by Subcontractor to the Owner under such procedure and, subject to the other provisions of this Agreement, to pay to Subcontractor the proportionate part of any sums paid by the Owner to which Subcontractor is entitled. For disputes not involving the acts, omissions or otherwise the responsibility of the owner under the prime contract, the parties hereto shall submit any and all disputes arising under or relating to the terms and conditions of the Subcontract to arbitration in accordance with the Construction Industry Rules of the American Arbitration Association. No demand in arbitration shall be made after the date when the institution of legal or equitable proceedings based on such dispute would be barred by the applicable statute of limitations. In any dispute resolution between the parties, the prevailing party shall be entitled, in addition to any other relief granted, to recover its costs of participation, including attorneys' fees and experts' fees. An award rendered by an arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

SECTION 14. WARRANTY. Subcontractor warrants to Owner and Contractor that all materials and equipment furnished shall be new unless otherwise specified, and that all work under this Agreement will be performed in a good and workmanlike manner, shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty provided in this Section 14 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

SECTION 15. BONDING OF SUBCONTRACTOR. Concurrent with the execution and/or performance of this Agreement, Subcontractor shall, upon request, execute a labor and material bond and Performance Bond in an amount equal to one hundred percent (100%) of the Contract Price. Said bonds shall be executed by a corporate surety acceptable to Contractor and shall be in a form satisfactory to Contractor.

SECTION 16. PROTECTION OF WORK. Subcontractor shall effectually secure and protect the work done hereunder and assume full responsibility for the condition thereof until final acceptance by Architect, Owner and Contractor. Subcontractor further agrees to provide such protection as is necessary to protect the work and the workmen of Contractor, Owner and other subcontractors from his operation. Subcontractor shall be liable for any loss or damage to any work or to any equipment and materials on the job site caused by it or its agents, employees or guests.

SECTION 17. SAFETY PRACTICES. (i) Subcontractor shall comply fully with laws, orders, citations, rules, regulations, standards and statutes with respect to occupational health and safety, the handling and storage of hazardous materials, accident prevention and safety equipment and practice including the accident prevention and safety program of Owner and Contractor. Subcontractor shall conduct inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for providing a safe

place to work for its employees and for employees of its subcontractors and suppliers of material and equipment, for adequacy of and required use of all safety equipment and for full compliance with the aforesaid laws, orders, citations, rules, regulations, standard and statutes. (ii) Construction Safety Orders Code of Safe Practice: Subcontractor shall, upon written notice from Contractor, Owner or Governing Agency, make available for review a complete and current copy of Subcontractor's ILLNESS AND INJURY PREVENTION PROGRAM (IIPP) as required by California Code of Regulations within twenty-four (24) hours of said notice.

SECTION 18. ASSIGNMENT OF CONTRACT. Subcontractor shall not assign, transfer or sublet any portion or part of the work required by this Agreement, nor assigns any payment hereunder to others. All work is to be performed by employees of Subcontractor as documented within certified payroll reports in accordance with Section 2 of this Agreement.

SECTION 19. LABOR AGREEMENTS. The Contractor is signatory to the following labor agreements covering work on this project: Northern California Cement Masons; International Union of Operating Engineers; Northern California Laborers; California Bricklayers & Allied Craftsmen; Northern California Carpenters.

SECTION 20. SPECIAL PROVISIONS.

Per your quotation dated 00/00/0000 (attached hereto and made a part of this agreement):

Bid Items:

TOTAL >>>>

\$ 00.00

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT IS FILED WITHIN THREE (3) YEARS OF THE DATE OF THE ALLEGED VIOLATION.

ALSO IT IS A REQUIREMENT BY THE STATE OF CALIFORNIA THAT THE GENERAL CONTRACTOR AND SUBCONTRACTORS DOING BUSINESS IN THE STATE OF CALIFORNIA UNDER PUBLIC WORKS MUST BE REGISTERED WITH THE STATE OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS (DIR).

DATED: _____

DATED: _____

CONTRACTOR:

SUBCONTRACTOR:

**SPOSETO ENGINEERING, INC.
4558 CONTRACTORS PLACE
LIVERMORE, CA 94551-4805**

BY: _____
John P. Sposeto, President

BY: _____

Dir No: _____

**Contractor's License No.: 310292
DIR Registration No. 100005234**

**Contractor's License No. _____
Expiration Date: _____**

SUBCONTRACT ATTACHMENT

EXHIBIT 'A' – INSURANCE

Section 12. is amended to read:

SECTION 12. INSURANCE. The Subcontractor and its subcontractors shall each, at their own expense, purchase and maintain insurance of the following types of coverage and limits of liability with insurers rated "A- VII" or better by A.M. Best Co.:

1. Commercial General Liability (CGL): with limits of Insurance not less than:

- \$1,000,000 Each Occurrence Limit
- \$1,000,000 Personal & Advertising Injury Limit
- \$2,000,000 Annual Aggregate Limit
- \$2,000,000 Products-Completed Operations Limit.

- a. The General Aggregate Limit shall apply separately to each project.
- b. CGL coverage shall be written on ISO Occurrence form CG00011093 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury. Use of any CGL form covering defense costs within the limits of insurance requires the prior written consent of the contractor.
- c. General Contractor, Owner and all other parties required of the General Contractor, shall be included as insureds on the CGL, using ISO Additional Insured Endorsement CG20101185 or an endorsement providing equivalent coverage to the additional insureds. This contract requires that coverage afforded the additional insured(s) under any form other than CG20101185 must be as broad as coverage that would be provided under CG20101185. This insurance for the additional insureds shall be as broad as the coverage provided for the named insured subcontractor. Subcontractor must also cause its policy to be amended to provide that the coverage afforded to the additional insured is primary to and noncontributing with any other insurance, self-insurance or deductible amount maintained by or provided to the additional insured. Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Subcontractor's Commercial General Liability Policy, as well as a copy of the policy's endorsement providing coverage to the additional insured on a primary and non-contributing basis.
- d. Claims Made/Self-Insurance Provisions. Subcontractor shall not provide general liability insurance under any Claims-Made General Liability form without express prior written consent of Contractor. Any self-insurance program providing coverage in excess of \$25,000 per occurrence requires the prior written consent of the contractor.
- e. If Subcontractor's Scope of Work includes work within 50 feet of any railroad, Subcontractor's Commercial General Liability policy shall be endorsed to delete the Contractual Liability exclusion for work performed within 50 feet of a railroad. A copy of such endorsement shall be provided to Contractor prior to commencement of such work.
- f. Subcontractor shall maintain CGL coverage for itself and all additional insureds for the duration of the project and maintain Completed Operations coverage for itself and each additional insured for at least 3 years after completion of the Work. Completed Operations coverage shall be maintained for at least ten (10) years if the project is residential.

2. Automobile Liability:

- a. Business Auto Liability with limits of at least \$1,000,000 each accident.
- b. Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
- c. General Contractor, Owner and all other parties required of the General contractor, shall be included as insureds on the auto policy.

3. Commercial Umbrella:

- a. Umbrella limits must be at least \$5,000,000.

- b. Umbrella coverage must include as insureds all entities that are additional insureds on the CGL.
- c. Umbrella coverage for such additional insureds shall apply as primary before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured other than the CGL. Auto Liability and Employers Liability coverages maintained by the subcontractor.

4. Workers Compensation and Employers Liability:

- a. Employers Liability Insurance limits of at least:
 - \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for injury by disease, with a policy limit of \$1,000,000 for injury by disease.
- b. Where applicable, U.S. Longshore and Harbor workers Compensation Act Endorsement shall be attached to the policy.
- c. Where applicable, the Maritime Coverage Endorsement shall be attached to the policy.

5. Waiver of Subrogation:

Subcontractor waives all rights against Contractor, Owner and Architect and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by Commercial General Liability, Commercial Umbrella Liability, Business Auto Liability or Workers' Compensation and Employers Liability insurance maintained per requirements stated above.

6. Hazardous Materials:

If Subcontractor and/or its subcontractors or suppliers, regardless of tier, perform remediation of hazardous material, or if their operations create an exposure to hazardous materials as those terms are defined in federal, state, or local law, Subcontractor and its subcontractors and suppliers must obtain a "Contractor's Pollution Liability" policy with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for Bodily Injury, Personal Injury and Property Damage, naming Contractor and Owner as additional insured. If Subcontractor or its subcontractors or suppliers haul hazardous material (including, without limitation, waste), they must carry Auto Liability insurance with a \$1,000,000 Combined Single Limit for bodily Injury and Property damage applicable to all hazardous waste hauling vehicles, and include MCS90 and CA9948.

7. Professional Liability:

Any subcontractor performing work that includes and design/build work or services shall obtain a Professional Liability Insurance Policy. Design/build work includes, without limitation, design/build work with respect to mechanical, structural, plumbing, and fire sprinkler systems. Coverage must allow for a minimum of two years following the completion of the project. If Owner or Contractor elects to purchase a project design policy, Subcontractor's policy shall be endorsed to provide excess coverage only.

8. Rigger's Liability and Aircraft 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 of equipment. If Subcontractor (or its subcontractors or suppliers regardless of tier) use any owned, leased, borrowed, chartered or hired aircraft of any type in the performance of this subcontract, they shall maintain aircraft liability insurance in an amount of not less than \$10,000,000 per occurrence, including Passenger Liability. Evidence of coverage in the form of a certificate of insurance shall be provided prior to the start of the project.

8. Property Insurance:

Contractor and Subcontractor waive all rights against each other and against all other subcontractors and Owner for loss or damage to the extent reimbursed by Builder's Risk or any other property or equipment insurance applicable to the work, except such rights as they may have to the proceeds of such insurance. If the policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

Upon written request of the Subcontractor, Contractor shall provide Subcontractor with a copy of the Builder's Risk policy of insurance or any other property or equipment coverage in force for the project and procured by

Contractor. Subcontractor shall satisfy himself as to the existence and extent of such coverage prior to commencement of Subcontractor's work.

If Builder's Risk insurance purchased by Owner of contractor provides coverage for Subcontractor for loss or damage to Subcontractor's work, Subcontractor shall be responsible for the insurance policy deductible amount applicable to damage to the Subcontractor's work and/or damage to other work caused by Subcontractor.

If not covered under the Builder's Risk policy of insurance or any other property or equipment insurance required by the Contract Documents, Subcontractor shall procure and maintain at his own expense property and equipment insurance for portions of Subcontractor's work stored off the site or in transit.

If Owner or contractor has not purchased Builder's Risk or equivalent insurance including the full insurable value of Subcontractor's work, then Subcontractor may procure such insurance at his own expense as will protect the interest of Subcontractor, and his subcontractors in the work. Such insurance shall also apply to any of the Owner's or Contractor's property in the care, custody or control of Subcontractor.

10. Evidence of Coverage, Certificates and Insurers.

Certificates of insurance shall set forth deductible amounts applicable to each policy and all exclusions or limitations not set forth in ISO Commercial General Liability Form CG 0001. CONTRACTOR may allow deductible provisions if SUBCONTRACTOR is willing to increase retentions accordingly. Standard ISO Form CG 0001 exclusions will also be allowed. 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.

Regardless of the allowance of exclusions, coverage limitations or deductibles by CONTRACTOR. SUBCONTRACTOR shall be responsible for any deductible amount or any loss arising out of coverage denials by its insurance carrier(s). The certificates of insurance shall provide that there will be not cancellation or reduction of coverage without ten (10) day's prior written notice to CONTRACTOR.

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 SUBCONTRACTORS 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. If higher limits or other forms of insurance are required in the PRIME CONTRACT, SUBCONTRACTOR will comply with such requirements.

SUBCONTRACTOR shall provide, as evidence of coverage, actual additional insured endorsements. SUBCONTRACTOR shall take such steps as are necessary to assure SUBCONTRACTOR's compliance with its obligations. 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.

All insurance (including, but not limited to general liability, automobile liability, and workers' compensation and employer's liability insurance) shall be provided by a California admitted carrier with an A.M. Best's Rating of A- or better, financial capacity VII or greater (except for State Fund of California for workers' compensation coverage); however, in CONTRACTOR's sole subjective discretion, CONTRACTOR may consider accepting coverage from a non-California admitted carrier with an A.M. Best rating of A or better, financial capacity of XII or better. Additional insured endorsements shall be maintained and furnished to contractor for three years following completion of the Project.

SUBCONTRACTOR shall not provide any liability coverage under a "wasting" policy or other form of policy that reduces the amount of coverage, in whole or in part, by amounts expended on defense of claims.

11. Requirements of the Prime Contract:

If the prime contract requires limits of insurance higher than the minimum limits outlined above, or broader coverage than outlined above, the requirements of the prime contract shall apply to the extent that they exceed the minimum requirements above.

Section 17 is Added:

SECTION 17. COMPLIANCE WITH LAWS, PERMITS, AND SAFETY PROGRAMS

- 1. Laws, Regulations, and Permits.** SUBCONTRACTOR shall at its sole expense obtain and pay for all necessary permits and licenses pertaining to the work and shall comply with all federal, state, municipal and local laws, ordinances, codes, rules, regulations, standards and requirements, including but not limited to those relating to state contractor license requirements, safety, discrimination in employment, fair employment practices or equal employment opportunity, applicable local, disadvantaged or minority preference of hiring programs, and with the requirements of the American Insurance Association whether or not provided for by the plans, specifications, general conditions or other contract documents without additional charge or expense to CONTRACTOR. SUBCONTRACTOR agrees to hold harmless and indemnify CONTRACTOR from and against any and all fees, including attorneys' fees, occasioned directly or indirectly by SUBCONTRACTOR's failure to comply with any said laws, ordinances, rules, regulations, standards, orders, notices or requirements or the correct said violations.
- 2. Compliance with Safety Requirements and Programs.** At its sole expense, SUBCONTRACTOR shall institute and maintain a safety program to the extent such a program is required by applicable law. SUBCONTRACTOR at its sole expense shall fully cooperate with and adhere to any safety program or requirements of CONTRACTORS, whether such program is a stand-alone program or is a program modified to conform to OWNER's safety program. All personnel of SUBCONTRACTOR, its subcontractors and suppliers are required when appropriate to wear hard hats, safety vests, and any other necessary safety garments or devices, while visiting or working at a construction site in any way related to this AGREEMENT. To the greatest extent permitted by law, SUBCONTRACTOR agrees to defend and indemnify CONTRACTOR, and any of its directors, partners, officers, employees, affiliates, subsidiaries, successors and assigns, from any OSHA or other regulatory penalties, fines, sanctions, assessments, or claims, including any increased penalties, fines, sanctions, assessment, or claims that result from CONTRACTOR's prior record or history.
- 3.** The foregoing defense and indemnity obligation shall apply notwithstanding negligence or fault on the part of the persons to be indemnified, to the greatest extent permitted by Section 2782 of the Civil Code. Failure to comply with safety requirements may result in termination under Section XI of this AGREEMENT.

SECTION 18.

Please be advised that this potential contract language is for informational purposes only. We are not attorneys, and cannot offer legal advice, or advice on the possible success or failure of the language provided. Moreover, this language may not work in all situations or all jurisdictions. Some restrict indemnity agreements. You should consult an attorney with expertise in contract law in the state where the work is to be performed before deciding to make use of the language provided.

SECTION 19.

See attachment of insurance certificate notification example only please provide a necessary documentation and information within this format.

SUBCONTRACT ATTACHMENT

EXHIBIT 'B'

LABOR CODES SECTIONS 1771, 1775, 1776, 1777.5, 1813 AND 1815
(Applies to State and Local Public Works Projects Only Unless Otherwise Indicated)

EXHIBIT B

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1776. (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall

endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Administrator of Apprenticeship, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

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

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

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

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

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

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

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

(l) 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 county for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices from that county registered in each program.

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

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

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

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

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

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

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

SUBCONTRACT ATTACHMENT

EXHIBIT 'C'

PROPOSAL

SUBCONTRACTOR CHECK-LIST

Before you return all your paperwork, review this checklist and make sure you have everything complete:

1. Return 2 signed and dated subcontracts
 - a. An executed subcontract will be sent back to you for your records.
 - b. Do NOT make any marks or changes to the contract, call the office if you have any questions.
2. Complete the Subcontractor Information Update Sheet
 - a. Make sure a copy of your License & W-9 is attached
3. An insurance certificate completed per specs.

REMINDER:

This job requires certified payroll to be submitted weekly, including “non-performance”. Mark your last CPR as FINAL.

If you have any questions regarding CPR or any paperwork please call the office at (925) 443-4200.

CONTACT PERSON:

Jasmine Ruelas
Corporate Secretary
Contract Compliance Officer
jasminef@sposetoengineering.com

SUBCONTRACTOR INFORMATION UPDATE

To All Subcontractors:

To assist us in processing your payments in a fair and timely manner, please complete and return all information as noted.

**** ALL INFORMATION MUST BE CURRENT AND ON FILE WITH
SPOSETO ENGINEERING, INC. PRIOR TO PROCESSING
OF SUBCONTRACTOR INVOICES ****

FULL LEGAL COMPANY NAME (as shown on contractor's license):

STATE CONTRACTORS LICENSE NUMBER: _____ (attached copy)
CLASSIFICATION(s): _____
EXPIRATION DATE: _____

FEDERAL TAX I.D. NUMBER: _____ (Please return attached W-9)

STATE OF CALIFORNIA DIR#: _____

TYPE OF BUSINESS: Corporation State Incorporated: _____
 Partnership
 Joint Venture
 Sole Ownership SS# _____
 Other _____

 Union _____ Non-Union _____

Signature: _____ **Title:** _____

Phone: _____ **Fax:** _____ **E-Mail:** _____

Copy of License attached _____
Completed W-9 attached _____

Please return to: **Jasmine Ruelas, Contract Administrator**
 jasminef@sposetoengineering.com
 (925) 443-4200
 Fax # (925) 443-6800