

SUBCONTRACT
AGREEMENT NO. 10000GC – 001

This Subcontract ("Subcontract") is entered into in Orange, California 92863 on this ( "Contract Date") by and between Mobile Modular Construction, Inc. located at 18601 Patrician Drive, Villa Park, Ca 92861, ("Contractor"), and Subcontractor AAA, located at, {address}, , CA ,("Subcontractor").

Contractor has entered into a contract dated the ( "Contract Date") ("Prime Contract") with located at , ("Owner"), to perform certain construction work described generally as follows: ("Project")

In consideration of the mutual covenants and conditions set forth in this Subcontract, Contractor and Subcontractor agree as follows:

- I. Subcontractor certifies it has examined and is fully familiar with all terms and conditions of the Prime Contract, all of its component parts, Including all referenced documents, plans and specifications, the location of the Project, the conditions under which the Project is to be performed; and enters into this Subcontract based upon its own investigation of all such matters, including the securing of all field measurements and specification requirements; and is in no way relying upon any representations or opinions made by Contractor and that this Subcontract represents the entire agreement between Contractor and Subcontractor concerning the Project and supersedes and voids any prior proposals or agreements relating to the Project.
- II. Subcontractor agrees to provide all labor, materials, skill and instrumentalities to perform the following portion of the Prime Contract ("Work"):
Furnish and install tax included, all requirements of Prime Contract Specification Section(s): General Specifications
Work shall be in accordance with the "Contract Documents" which include without limitation the Prime Contract, all plans, specifications, and documents referenced therein, as pertinent to Work and the following addenda and alternates, and further defined in Article V below.
Addendum (s) 1, and Alternate (s) N/A.
- III. Contractor agrees to pay and Subcontractor agrees to accept, for Work and subject to the provisions of this Subcontract upon full, faithful and prompt performance, the sum of (\$0.00) (Contacts Origin Value) (Number to text) in progress payments upon conditions as follows: (A) Contractor agrees to include in its monthly work estimate to Owner the value of all Work incorporated in the Project; (B) Subcontractor agrees that estimates submitted to Contractor shall be for work actually performed upon the Project and that all such Work, including labor, materials and services has been paid for by Subcontractor; (C) At Contractor's request Subcontractor shall submit a list of all suppliers of materials and services and shall furnish releases on forms provided by Contractor; (D) If conditional releases are received, Contractor may, at its option, issue a joint check and if a joint check is required by Subcontractor and/or Subcontractor's suppliers and/or lower tier subcontractors, it shall be on forms provided by Contractor; Subcontractor acknowledges and agrees that issuance of Joint Checks shall not be deemed or construed as creating: (i) privity of contract by and between Contractor and any Supplier; (ii) a relation of guarantor and/or surety between Contractor and Supplier; or (iii) any other obligation or liability to the Supplier from Contractor other than as maker of the Joint Check (Contractor reserves the right to place a restrictive endorsement on any Joint Check reflecting any or all of the provisions above). (E) The determination of the percentage of Work completed shall rest with Owner and Contractor, and Contractor shall within 10 days upon receipt from Owner pay Subcontractor 95% of such Work, and shall retain the remaining 5% until final completion and acceptance of all Work covered by this Subcontract, and Retainer shall not be considered monies due and owing, until (45) days after "Notice of Completion" is recorded by Owner, and Contractor has received final payment from Owner. (F) In the event of good faith dispute, Contractor may withhold up to 150% of the disputed amount; and (G) As a condition precedent to the payment of retention withheld, Subcontractor shall provide releases on its own behalf, obtain unconditional or conditional final releases form all persons supplying materials, services and/or furnishing labor other than the employees of Subcontractor on the Project, and Subcontractor shall guarantee that all labor and materials furnished under its direction for the Project have been paid for.
- IV. 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 regarding a patent act or omissions is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, 9821 Business Park Drive, Sacramento, CA 95827.
- V. General Conditions, Exhibit No(s). 1, 2, 3, 4, 5 attached hereto, are incorporated herein as if fully set forth.
All above listed Exhibits must be signed by Subcontractor.
- VI. Subcontractor acknowledges receipt of Contractor's Subcontractor/Vendor Policy and Procedure Manual. All procedures, policies and forms contained in said manual must be followed and are terms of this Subcontract. Failure to comply with Contractor's Policy and Procedure Manual may result in delay of payment.
- VII. If Subcontractor is a corporation, the legal name of the corporation shall be set forth, together with the signatures of authorized officers or agents and the document shall bear the corporate seal; if Subcontractor is a partnership, the true name of the firm shall be set forth, together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership; and if Subcontractor is an individual, his/her signature shall be set forth below.

CONTRACTOR:	SUBCONTRACTOR :
Mobile Modular Construction Inc	AAA
Name:_____	Name:_____
Title:_____	Title:_____
_____	_____
Signature	Signature
Date:_____	Date: _____

Subcontractor represents that it is a:

\_\_\_\_\_ an individual  
\_\_\_\_\_ a partnership  
\_\_\_\_\_ a nonprofit organization  
\_\_\_\_\_ a joint venture  
\_\_\_\_\_ a Corporation incorporated under the laws of the State of \_\_\_\_\_. (Affix Corporate Seal)

Federal Tax Identification Number is: \_\_\_\_\_.  
Contractors State License Number is: \_\_\_\_\_.

**GENERAL CONDITIONS**  
**AGREEMENT NO. 10000GC- 001**

1.
- All Work done at the Project or in preparing or delivering materials or equipment, or any or all of them, to or from the Project shall be at the risk of Subcontractor exclusively. To the fullest extent permitted by law, Subcontractor shall, with respect to all Work which is covered by or incidental to this Subcontract, indemnify, hold harmless and defend Contractor from and against any and all of the following: (A) Any claim, liability, loss, damage, cost, expense, (including costs, expenses, attorney’s fee, awards, fines and judgments) arising out of or relating to the death or bodily injury to persons, injury to property, design defects (if design by Subcontractor) or other loss, damage or expense, including any of the same resulting from Contractor’s alleged or actual negligent act or omission, regardless of whether such act or omission is active or passive; (B) any and all claims liability, loss, damage, costs, including actual attorneys’ fees, awards, fines or judgments arising out of or relating to Subcontractor’s Work; and (C) any and all claims liability, loss, damage, costs, including attorney’s fees, awards, fines or judgments arising out of or relating to any obligation or indemnity which Contractor has to owner. Each of the foregoing indemnities is independent and both shall be given effect. However, Subcontractor shall not be obligated to indemnify Contractor with respect to the sole negligence or willful misconduct of Contractor, its agents, servants or subcontractors who are directly responsible to Contractor, excluding Subcontractor. Subcontractor agrees to obtain and maintain during the term of this Subcontract, broad from public liability and property damage insurance, employer’s liability, workers compensation coverage and errors and omissions coverage (if Subcontractor’s work includes design services) in such amounts as are set forth in Exhibit No. 2 to this Subcontract. Subcontractor agrees to have Contractor and Owner named as co-insured under all said policies of insurance. Such insurance coverage provided by Subcontractor shall be primary insurance for Contractor and Owner and no insurance otherwise carried or obtained by Contractor shall be deemed to be primary or contributing to insurance provided by Subcontractor. Notwithstanding any provision in the Subcontract regarding insurance to be provided by Subcontractor, Subcontractor’s indemnity obligations shall not be limited in any way by the limits of insurance provided by Subcontractor.
2.
- Time is the essence for performance of Subcontractor’s obligations under this Subcontract and it shall be Subcontractor’s obligation to begin Work as soon as the Project is ready for such Work or, in any event, within two (2) Calendar days after being notified in writing by Contractor to do so, to complete all Work according to the schedule of Contractor, to coordinate Work with that of all other contractors, subcontractors, and Contractor in manner that will facilitate the efficient completion of the entire Project. Contractor shall have complete control over the sequence in which the various portions of the Project shall be done and may update the schedule as its judgment may dictate. Subcontractor will adjust its Work accordingly with out compensation. No extension of time shall be considered unless written notification is given two (2) calendar days after Subcontractor becomes aware of a delay.
3.
- Subcontractor agrees to clean up and remove all debris arising out of the performance of its Work and to leave the premises in a broom swept, raked or graded, clean condition. Should it be impossible for Subcontractor to leave the premises in such condition because of continuing work of other subcontractors, Subcontractor agrees to share on a prorated basis with the other subcontractors the cost of cleanup, the portion of such cost to be determined by Contractor. Contractor reserves the right (but shall not have any duty) to perform Subcontractor’s duties imposed by this article and to charge to Subcontractor the expense thereof or Subcontractor’s share of the expense thereof, and Subcontractor agrees to pay the same to Contractor. Subcontractor will be notified 24 hours prior to cleanup and be allowed to self-perform in the allotted time frame.
4.
- Subcontractor agrees that in the event a dispute should occur between Subcontractor and another subcontractor or Contractor as to who has the responsibility to perform a particular item or items of work or to repair damage to any particular item of work, or as to the cost of the same, the final and absolute determination shall be made by Contractor, or neutral third party, and Subcontractor shall abide by the determination and shall perform such item or items of work as directed by Contractor pending resolution of such dispute or controversy. Subcontractor shall follow all direction by Contractor to perform disputed work and shall track the actual cost of same with verified time and materials tickets to be delivered to Contractor at the end of each work week. Failure

to provide the time and materials proof to Contractor within five (5) days of the close of each week of work shall constitute a waiver of Subcontractor’s claim to be paid for the same.

5.
- Subcontractor agrees to be bound to Contractor by the terms of the Prime Contract and any additions or changes to it, and to assume all the obligations and responsibilities that Contractor assumes by that contract towards Owner insofar as they are applicable to Work. If Owner terminates the Prime Contract, or any part which includes portions or all Subcontractors’ Work, Contractor shall notify Subcontractor in writing and Subcontractor shall immediately stop performance of the terminated work, follow Contractor’s instructions regarding any shutdown and termination procedures, and mitigate all costs. If Owner’s termination partially eliminates Subcontractor’s Work, Contractor may terminate this Subcontract in its entirety. Contractor’s liability to Subcontractor for any damages incurred or claims resulting from Owner termination shall be limited to the amount Owner is determined to be liable to Contractor for Subcontractor’s damages.

6.
- SUBCONTRACTOR AGREES NOT TO MAKE ANY CLAIM FOR ANY EXTRAS UNLESS THE EXTRAS HAVE BEEN ORDERED IN WRITING BY AN OFFICER OF CONTRACTOR, AS LISTED WITH THE CALIFORNIA CONTRACTORS STATE LICENSE BOARD, AND THE ADDITIONAL COSTS HAVE BEEN AGREED UPON IN WRITING. ANY EXTRAS FURNISHED BY SUBCONTRACTOR EXCEPT IN ACCORDANCE WITH THE FOREGOING WILL BE DONE SO AT SUBCONTRACTOR’S SOLE COST AND EXPENSE. CONTRACTOR SHALL BE ENTITLED TO DEDUCT FROM WORK SUCH PORTIONS OF WORK AS CONTRACTOR MAY SEE FIT, AND IN SUCH EVENT THE SUBCONTRACT PRICE SHALL BE REDUCED BY AN AMOUNT EQUAL TO THE REASONABLE VALUE OF SUCH OMITTED WORK. SUBCONTRACTOR AGREES AT NO ADDITIONAL COST TO CONTRACTOR TO MAKE ANY CHANGES OR MODIFICATIONS ORDERED BY CONTRACTOR, WHICH DO NOT INVOLVE EXTRA COSTS TO SUBCONTRACTOR. SUBCONTRACTOR SHALL PROVIDE WRITTEN NOTIFICATION WITHIN 48 HOURS TO AN OFFICER OF CONTRACTOR, AS LISTED WITH THE CALIFORNIA CONTRACTORS STATE LICENSE BOARD, OF ANY CLAIMS (DEFINED TO INCLUDE ANY REQUESTED ADJUSTMENT TO THE SUBCONTRACT PRICE OR TIME, OR PAYMENT OF DISPUTED FUNDS) SO THAT CONTRACTOR HAS SUFFICIENT TIME TO TAKE ACTIONS TO MINIMIZE ANY ADDITIONAL COSTS OR TIME, AND HAS SUFFICIENT TIME TO PROVIDE NOTIFICATION TO THE OWNER IN ACCORDANCE WITH THE PRIME CONTRACT. ALL SUCH CLAIMS SHALL ITEMIZE IN A FORM ACCEPTABLE TO CONTRACTOR, AND AS REQUIRED BY THE PRIME CONTRACT (INCLUDING CERTIFICATION BY SUBCONTRACTOR THAT THE CLAIM IS NOT A FALSE CLAIM), ANY ADDITIONAL COSTS OR TIME FOR PERFORMANCE BEING SOUGHT BY SUBCONTRACTOR. FAILURE TO COMPLY WITH THE ABOVE SHALL CONSTITUTE A WAIVER OF SUBCONTRACTOR’S CLAIM TO BE PAID FOR THE SAME.

\_\_\_\_\_ SUBCONTRACTOR INITIALS

\_\_\_\_\_ CONTRACTOR INITIALS

7.
- Subcontractor agrees to guarantee its work against all defects of material or workmanship as called for in the Prime Contract, or if no guarantee is called for, then a period of one (1) year from the date of final completion and acceptance of the Project by Owner.

8.
- In the event Subcontractor shall fail to: correct, replace, and/or re-execute faulty or defective work and/or materials, fails to diligently proceed with this Subcontract within the time provided for, or fails to make prompt payment to its suppliers and laborers, Contractor may, at its option after 48 hours written notice, provide any such labor and materials as may be necessary, and deduct the cost thereof from any money then due or thereafter to become due to Subcontractor for work on the Project or any other project. Contractor shall have the right to take possession of all the tools and materials of Subcontractor then on the Project for the purpose of completing the work, Contractor, in addition to other remedies, shall have a lien on such tools and materials to secure payment.

**GENERAL CONDITIONS (cont'd)**  
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9.

Should Subcontractor be in default in the proper performance of its Work, which causes delay to Contractor or any other subcontractor working on the Project, under such conditions and circumstances so as to render the Contractor liable to other subcontractors on their subcontract and/or Contractor liable to Owner on the Prime Contract, including the amount of any liquidated damages that may be assessed under the Prime Contract, Subcontractor shall be liable for any and all loss and damages that may be assessed under the Prime Contract, Subcontractor shall be liable for any and all loss and damages so sustained.
10.

Subcontractor agrees to comply with all Federal and State Laws, codes and regulations, and all municipal ordinances and regulations effective where Work is to be performed, and to pay all costs and expenses connected with such compliance; to pay all fees, licenses, permits, deposits and taxes, including sales and use taxes, and also to pay all taxes imposed by any State and Federal law for any employment insurance, pensions, old age retirement funds or any similar purposes, and to hold Contractor, all other subcontractors, and Owner harmless from any and all loss or damage occurred by the failure of subcontractor to comply with the terms of this paragraph.
11.

Subcontractor agrees to pay all royalties and license fees, and further agrees to defend all suits or claims for infringement of any patent rights involved in Work of Subcontractor under this Subcontract; and further agrees to save Contractor harmless from loss, cost or expenses on account of such use or infringement by Subcontractor.
12.

Subcontractor agrees not to assign or sublet this Subcontract or any portion of Work, nor to assign any of the funds due or to become due hereunder, without the prior written consent of Contractor. In the event there be an assignment, the assignee's rights shall be subject to all the rights and privileges of Contractor and to any right to setoffs Contractor may have against Subcontractor, whether arising under this Subcontract or any other matter, and the surety, if any, writing bonds for this Subcontract consents to all provisions of this Subcontract including this one.
13.

It is understood and agreed that no payment to or on account of Subcontractor shall constitute an acceptance or approval of Work performed or furnished by Subcontractor, nor shall any filing of notice of completion or occupancy of the Project in whole or in part constitute an acceptance or approval by Contractor, in whole or in part of Work or constitute a waiver of any claims by Contractor against Subcontractor.
14.

Subcontractor's failure to promptly report in writing to Contractor any alleged defects in any work performed by others in, on or adjacent to the area in which Subcontractor is to perform its Work will be deemed acknowledgment by Subcontractor; that such work by others may be asserted by Subcontractor to justify its failure to perform.
15.

(A) Subcontractor shall employ labor under conditions that are satisfactory to Contractor. Subcontractor shall keep a representative at the jobsite during all times when Subcontractor's Work is in progress. Such representatives shall be authorized to receive orders and have full authority to make decisions regarding Subcontractor's Work. Before starting Work, Subcontractor shall notify Contractor who Subcontractor's representative shall be. In the event of any change of representative, Subcontractor shall notify Contractor who the new representative is to be before such change. Upon written or verbal request from Contractor, Subcontractor shall immediately provide Contractor in writing with the names and emergency or home telephone numbers of the corporate or company officer, general superintendent, and project superintendent. (B) Prior to commencement of Work, Subcontractor shall notify Contractor of the collective bargaining agreements to which it is signatory, and shall provide a copy of all such agreements within twenty-four (24) hours of a request by Contractor. Subcontractor shall provide Contractor with at least thirty (30)-day's notice of the anticipated expiration of each collective bargaining agreement. If Subcontractor enters into subsequent collective bargaining agreements during the course of the Project, Subcontractor will immediately notify Contractor. Subcontractor warrants that, with respect to any of Work covered by this Subcontract, it and
- its lower tier-subcontractors, visitors, and suppliers will at all times comply fully with the provisions of any collective bargaining agreement and related trust agreements to which it or they are bound. Subcontractor agrees for itself, its lower tier-subcontractors, and suppliers to provide certified weekly payrolls, and/or time cards or other payroll related information on a weekly basis, and as requested, as well as progress lien releases for Work performed in connection with this Subcontract on a monthly basis. (C) If any personnel of Subcontractor shall refuse to follow the policies or other directives of Contractor, or fail to have necessary skills required to perform satisfactory Work, Contractor shall have the right to direct Subcontractor to remove such personnel from the Project. (D) Strikes (including sympathy strikes), picketing, or any other stoppage of Work by employees performing work on or for, or delivery of materials to the Project shall not excuse any delay of Subcontractor, regardless whether the strike, picketing, or other work stoppage is attributed to union action or the decision of an individual employee. (E) Strict compliance with Contractor's gate usage procedures shall be required by Subcontractor who shall be responsible for such gate usage by its employees, lower tier-subcontractors, visitors, and suppliers. (G) In addition to any other rights and remedies provided in this Subcontract, Contractor reserves the absolute right to end Subcontract upon twenty-four (24) hours written notice, if due to labor disputes, there is an interruption in Subcontractor's Work performance. Interruption in Subcontractor's work performance includes, but is not limited to: Subcontractor's unwillingness or inability to continue performance of its Work, or if Subcontractor is unwilling or unable to provide sufficient qualified workers. Labor disputes include, but are not limited to: any disputes between a union and any other entity resulting in a work stoppage, work slowdown, or interruption in delivery of materials. Contractor reserves the right to have Work continued and/or completed at Subcontractor's expense as provided for in General Conditions Article 9.
16.

All clauses of this Subcontract shall apply to any changes or extras in a like manner and to the same extent as though said changes or extras were incorporated herein. Signature by Subcontractor on any change to this Subcontract constitutes Subcontractor's agreement to the amount of said change as full compensation for all direct and indirect costs arising out of or relating to the change, including without limitation all delay, disruption, acceleration and overhead expenses of any kind. Waiver of any breach, alleged breach, clause, covenant or condition of this Subcontract by Contractor shall not be construed as a waiver of the same, or of any other clause of this Subcontract on any other occasion; nor shall such waiver serve as an estoppel of any other right Contractor may have hereunder. Should any clause in this Subcontract be held or declared void or invalid, all other clauses shall remain in full force and effect.
17.

Should the parties be required to initiate any legal action or proceedings to enforce this subcontract or to recover damages for the breach thereof, the non-prevailing party agrees to pay court costs and reasonable attorney's fees incurred by the prevailing party. Should the parties be required to incur attorneys' fees to effectuate the enforcement of the terms of this Subcontract, the non-prevailing party shall pay such fees even though no actual legal action or proceedings are initiated.
18.

Contractor's equipment shall be available to Subcontractor only at Contractor's discretion and then at a reasonable charge for the use of equipment. In the event Contractor is required to perform work under this Subcontract, whether at the request of Subcontractor or because of the failure of Subcontractor to perform such work; Subcontractor agrees to pay to Contractor the actual cost of the work plus 15% of said cost as an overhead charge and in addition 10% of such cost as profit to Contractor.
19.

Should Contractor receive notification of any claims made against Subcontractor arising out of or relating to the Project, on account of any actions or failures to act by Subcontractor in the performance of this Subcontract or otherwise; Contractor may, at its discretion, withhold such amounts otherwise due or to become due hereunder to cover said claims and any costs or expenses arising or to arise in connection therewith pending legal settlement of such claims.

**GENERAL CONDITIONS (cont'd)**  
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20. Arbitration of disputes where Prime Contract contains arbitration clause: Where a claim resolution procedure is specified in the Prime Contract, Subcontractor is responsible for timely notifying Contractor of its claim for compliance with the same. Claims concerning Work performed under this Subcontract shall be processed under the following terms and conditions: Contractor will present Subcontractor’s claim to the first tier of Owner’s representatives at the Project. The decision of such representatives will be conveyed to Subcontractor and such decision shall be final unless Subcontractor, within ten (10) days from the receipt of same, shall notify Contractor in writing of its desire to proceed further pursuant to the claim resolution terms of the Prime Contract. Upon receipt of such notice Contractor shall, subject to the approval of Owner, allow Subcontractor to act as its representative and at Subcontractor’s own cost to pursue arbitration and/or litigation arising there under. If owner refuses to allow Subcontractor to appear in such proceedings, Contractor will appear on its behalf. However costs, including but not limited to: attorney’s fees, court costs and cost of Contractor’s personnel employed in perfecting such arbitration will be paid by Subcontractor. No litigation shall be commenced on behalf of Subcontractor unless the same is expressly requested in writing directed to Contractor ten (10) days after receipt of the first determination on the claim by Owner. Nothing contained herein shall prevent Contractor from accepting a unilateral change order from Owner that preserves the rights of Subcontractor to perfect its claim under this paragraph. If because of Subcontractor’s claim owner withholds funds in excess of any sums due Subcontractor, as originally agreed upon at the execution of this Subcontract or as modified by any accepted change order; then Subcontractor shall pay to Contractor interest on the excessive monies so withheld at the rate of 10% per annum until paid by Owner to Contractor. Interest will accrue at the rate of 10% per annum from the time said monies are expanded, or said costs or expenses are incurred, until the same are paid to Contractor by Subcontractor. Nothing herein shall be construed as requiring Contractor to make any such expenditure, advance any such monies, or incur any such expenses. Failure to comply with the above shall constitute a waiver of Subcontractor’s claim to be paid for the same.

21. NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE “ARBITRATION OF DISPUTES” PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE “ARBITRATION OF DISPUTES” PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE BUSINESS AND PROFESSIONS CODE OR OTHER APPLICABLE LAWS. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY. “ANY AND ALL DISPUTES BETWEEN CONTRACTOR AND SUBCONTRACTOR SHALL BE RESOLVED PURSUANT TO THIS CONDITION OR CONDITION 20, ABOVE. IN THE EVENT THAT SUBCONTRACTOR HAS A CLAIM OR DISPUTE WITH CONTRACTOR, SUBCONTRACTOR SHALL PROVIDE WRITTEN NOTICE OF THE CLAIM OR DISPUTE TO CONTRACTOR WITHIN TEN (10) DAYS OF THE CLAIM OR DISPUTE. NOTICE OF THE CLAIM OR DISPUTE SHALL BE MADE IN WRITING AND SENT TO THE CONTRACTOR VIA CERTIFIED MAIL. IF SUBCONTRACTORS FAILS TO GIVE CONTRACTOR WRITTEN NOTICE OF ANY CLAIM OR DISPUTE WITHIN TEN (10) DAYS OF THE CLAIM TO DISPUTE, THEN SUBCONTRACTOR WAIVES ANY RIGHT TO BE COMPENSATED FOR SUCH CLAIM OR DISPUTE.

22.

I HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE “ARBITRATION OF DISPUTES” PROVISION TO NEUTRAL ARBITRATION.

\_\_\_\_\_ SUBCONTRACTOR INITIALS

\_\_\_\_\_ CONTRACTOR INITIALS

23. ARBITRATION OF DISPUTES WHERE PRIME CONTRACT DOES NOT CONTAIN ARBITRATION CLAUSE: IF THE PRIME CONTRACT DOES NOT CONTAIN A DISPUTE RESOLUTION PROCEDURE OR AN ARBITRATION CLAUSE, OR IF THE PROCEDURE IS VAGUE, DEFECTIVE, OR OTHERWISE AMBIGUOUS, THIS SECTION SHALL APPLY AND/OR SUPPLEMENT ANY PROVISIONS IN THE PRIME CONTRACT, WHICH IS INCORPORATED HEREIN BY REFERENCE.

SUBCONTRACTOR AGREES TO THE DISPUTE RESOLUTION PROCEDURE OUTLINES IN CONDITION 20 ABOVE REGARDING PRE-ARBITRATION DISPUTE RESOLUTION PROCEDURES, AND AGREES THAT NO

CLAIM OR CONTROVERSEY WILL BE RIPE FOR LAWSUIT OR ARBITRATION UNLESS SUBCONTRACTOR FOLLOWS THE PROCEDURES IN CONDITION 20 ABOVE.

ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS SUBCONTRACT, OR THE BREACH THEREOF, SHALL BE SETTLED BY ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS CONSTRUCTION INDUSTRY ARBITRATION RULES, AND JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF.

THE ARBITRATOR SHALL BE ONE MUTUALLY AGREEABLE TO BOTH THE CONTRACTOR AND SUBCONTRACTOR. IF BOTH THE SUBCONTRACTOR AND CONTRACTOR CANNOT AGREE ON A PERSON TO ARBITRATE THE DISPUTE, THEN EACH SHALL SELECT ITS OWN ARBITRATOR, THEN THE TWO ARBITRATORS SELECTED BY THE CONTRACTOR AND SUBCONTRACTOR SHALL SELECT A THIRD ARBITRATOR. THE THIRD ARBITRATOR WILL BE THE PERSON TO ARBITRATE THE DISPUTE.

ARBITRATION FEES SHALL BE SHARED BY THE CONTRACTOR AND SUBCONTRACTOR. BUT THE PREVAILING PARTY IN ARBITRATION SHALL BE ENTITLED TO AN AWARD OF COSTS AND/OR ATTORNEYS’ FEES INCURRED DURING ARBITRATION.

I HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE “ARBITRATION OF DISPUTES” PROVISION TO NEUTRAL ARBITRATION.

\_\_\_\_\_ SUBCONTRACTOR INITIALS

\_\_\_\_\_ CONTRACTOR INITIALS

**GENERAL CONDITIONS (cont'd)**  
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24.

Where a claim resolution procedure is specified in the Prime Contract, Subcontractor is responsible for timely notifying Contractor of its claim for compliance with the same. Claims concerning Work performed under this Subcontract shall be processed under the following terms and conditions: Contractor will present Subcontractor's claim to the first tier of Owner's representatives at the Project. The decision of such representatives will be conveyed to Subcontractor and such decision shall be final unless Subcontractor, within ten (10) days from the receipt of same, shall notify Contractor in writing of its desire to proceed further pursuant to the claim resolution terms of the Prime Contract. Upon receipt of such notice Contractor shall, subject to the approval of Owner, allow Subcontractor to act as its representative and at Subcontractor's own cost to pursue arbitration and/or litigation arising thereunder. If owner refuses to allow Subcontractor to appear in such proceedings, Contractor will appear on its behalf. However, costs, including but not limited to: attorneys' fees, costs, and cost of Contractor's personnel employed in perfecting such arbitration will be paid by Subcontractor. No litigation shall be commenced on behalf of Subcontractor unless the same is expressly requested in writing directed to Contractor ten (10) days after receipt of the first determination on the claim by Owner. Nothing contained herein shall prevent Contractor from accepting a unilateral change order from Owner that preserves the rights of Subcontractor to perfect its claim under this paragraph. If because of Subcontractor's claim Owner withholds funds in excess of any sums due Subcontractor, as originally agreed upon at the execution of this Subcontract or as modified by any accepted change order, then Subcontractor shall pay to Contractor interest on the excessive monies so withheld at the rate of 10% per annum until paid by Owner to Contractor. Interest will accrue at the rate of 10% per annum from the time said monies are expended, or said costs or expenses are incurred, until the same are paid to Contractor by Subcontractor. Nothing herein shall be construed as requiring Contractor to make any such expenditure, advance any such monies, or incur any such expenses. Failure to comply with the above shall constitute a waiver of Subcontractor's claim to be paid for the same.
25.

Whenever any monies are expended or costs or expenses are incurred by Contractor on behalf of or on account of Subcontractor which Subcontractor should have paid, Subcontractor is required to reimburse Contractor, or, if Contractor continues or completes the work after default by Subcontractor, Subcontractor shall pay to Contractor the amount so spent in excess of the amount due under this Subcontract.
26.

Contractor may reduce, reject or withhold a Subcontractor payment application or nullify a previously approved Subcontractor payment application, in whole or in part, as may reasonably be necessary to protect Contractor from loss or damage, to the fullest extent permitted by law, based upon: (A) Subcontractor's failure to perform as required by this Subcontract; (B) loss or damage to Owner, Contractor or others to whom Contractor may be liable arising out of or relating to this Subcontract and caused by Subcontractor or its lower tier subcontractors or suppliers; (C) Subcontractor's failure to properly pay for labor, materials, equipment or supplies furnished in connection with its Work; (D) rejected, nonconforming or defective Work which has not been corrected; (E) reasonable evidence of delay in performance of Subcontractor's Work such that the Work will not be completed within the time allotted by the updated progress schedule, and that the unpaid balance of the Subcontract price is not sufficient to offset the liquidated damages and/or actual damages that may be sustained by Contractor as a result of the anticipated delay caused by Subcontractor; (F) reasonable evidence demonstrating that the unpaid balance of the Subcontract price is insufficient to cover the cost to complete Subcontractor's work; (G) third party claims against Subcontractor and/or reasonable evidence demonstrating that third party claims are likely to be filed; (H) Owner's reduction, rejection or nullification of any part of a payment application, and; (I) any other failure to comply with the terms and conditions of this Subcontract. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be made for amounts previously withheld.
27.

In the event of any default by Subcontractor, under this Subcontract or any other agreement between Subcontractor and Contractor, Contractor shall be entitled to withhold payment of any monies due to Subcontractor in an amount sufficient to secure performance and/or to compensate Contractor for
- damages for default under this Subcontract or any other agreement between Subcontractor and Contractor.
28.

Before commencing with any portion of the Work, Subcontractor shall examine all Contract Documents, and Subcontractor shall promptly notify Contractor, in writing, of any reasonably perceived or alleged inconsistencies, conflicts with any other structures, ambiguity, or lack of detail or explanation in the Contract Documents. Should Subcontractor proceed with Work which it knows or should have known, subsequent to examining the Contract Documents, to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, Subcontractor shall bear any and all costs arising from said Work, including, but not limited to the cost of correction. Should response from Owner and/or its Architect be insufficient to properly execute Work, Subcontractor shall promptly notify Contractor of same.
29.

Contractor and Subcontractor agree to be bound to and by the dispute resolution procedure of the Prime Contract for purposes of this Subcontract.
30.

The definitions of terms used, interpretation of this Subcontract, and the rights of all parties hereunder, shall be construed under and governed by the laws of the State of California, and venue for any dispute regarding this Subcontract shall be proper in the courts of Riverside County, California. Whenever Contractor is not the ultimate consumer of the materials, goods and services provided hereunder, all rights, benefits and remedies conferred upon Contractor hereunder shall accrue and be available to and are for the express benefit of any successors-in-interest, including the ultimate consumer of the materials and/or Owner. The term materials, as used in this Subcontract, includes the supplies, drawings, data, and other property and all services, including design, delivery, installation, inspection and testing specified or required to furnish the materials or services ordered from Subcontractor hereunder. Any section headings, to the extent used in this Subcontract, are for convenience only and shall not be construed to alter or interpret the provisions herein. No party shall be construed to be the drafter of this Subcontract for interpretations purposes, and if any provision of this agreement shall be found contrary to law, that portion shall be severed and the remainder of this Subcontract shall remain in full force and effect. The parties do not intend the benefits of this Subcontract to inure to any third party.
31.

Subcontractor warrants to Contractor that it has fully and carefully reviewed the provisions, specifications, drawings, samples or other descriptions contained in this Subcontract and in the Prime Contract. Subcontractor shall furnish, for the approval of the architect designated in the Prime Contract, all shop drawings and such samples the architect may require within twenty (20) days of request. All workmanship and materials manufactured and/or provided by Subcontractor pursuant to this Subcontract shall be in strict conformance with said approval samples or approved submittal. Subcontractor warrants that the work and materials shall be free from all defects, shall be of the quality specified, shall be fit and appropriate for the purpose intended and shall conform to the provisions, specifications, performance standards, drawings, samples or other descriptions contained herein or in the Prime Contract. Any labor provided by Subcontractor pursuant to this Subcontract shall not interfere with the work and/or performance of other trades on the Project. Subcontractor warrants that the materials are free from any charges, liens and/or encumbrances of any kind in favor of any third person and that Subcontractor holds good title to the materials. Subcontractor warrants that the materials will be complete in all respects necessary to make the materials fully functional if installed in accordance with the Prime Contract. All warranties implied by law or usage of trade are incorporated into this Subcontract and shall apply to services and materials provided hereunder. Subcontractor guarantees Contractor that the materials rendered shall be free of any and all defects in workmanship and materials that may develop for the period set forth in the Prime Contract. Subcontractor's warranty shall in all respects meet the terms of the warranty requirements of the Prime Contract for the materials and services provided hereunder. The services and materials are contracted for by Purchaser in reliance on each and all of the warranties and guarantees specified herein and implied by law or usage of trade. Contractor's remedies pursuant to this Section are in addition to, and not a limitation on, all other remedies allowed by law and under this Subcontract. All warranties, representations, and guarantees of Subcontractor contained herein shall survive the term of this Subcontract and the Prime Contract to the full extent allowed by law.

**EXHIBIT No. 1**  
**DESCRIPTION OF WORK**  
**AGREEMENT NO. 10000GC – 001**

The following provisions are incorporated into the Subcontract. Work referred to in Article II of the Subcontract is clarified as follows:

- 1) Work not included by Subcontractor:

a. Debris Removal, Subcontractor to place into Contractor provided debris box.
- 2) By way of description and not limitation, the following Work is included by Subcontractor:

a. Responsibility for hoisting, scaffolding, delivery, offloading, storage and security of own material and equipment on the Project. Contractor personnel will not accept or sign for any material deliveries. It is Subcontractor’s responsibility to coordinate delivery of materials and acceptance of same.

b. Work shed, yard and security fence, if required for storage.

c. Utility requirements from Contractor provided sources, up to 150 feet. Contractor may at its option provide temporary lighting at work source. Cost of lighting service will be prorated among subcontractors.

d. Clean-up of own debris and removal of same from Project. Contractor may at its option clean areas involving more than one subcontractor trade. The cost of this clean-up effort will be prorated among subcontractors.

e. Coordination with other trades.

f. Responsibility for submittals including product data, shop drawings, samples, and as-built drawings for Work. (Refer to Sections entitled Submittals and to specification section of Work).

g. Responsibility for environmental condition effecting Work.

h. Production of Work.

i. Layout and field measurements for Work.

j. Safety requirements for Work including barricades for traffic control.

k. Parking as required for Subcontractor’s forces.

l. Compliance with specified warranty requirements.

m. One foreman for duration of Work on Project.

n. Procurement of business license for Work if necessary

o. Preparation of finish surfaces to receive Work per Contract Documents.

p. Necessary move-ons and manpower to comply with Contractor schedule.

q. Inspection of surfaces to receive Work.

r. All licenses, fees and permits associated with Work.

s. Caulking and sealant for Work.

t. Access panels and accessories for Work.

u. Compliance with Employee Criminal Background Checks as required by Owner (as applies).

v. Compliance with SWPPP requirements, as applicable and maintenance of existing SWPPP established by others.

w. Compliance with Labor Compliance Program as required by Owner (as applies).

x. Subcontractor is required to login to the MMC, Inc. cloud based website for all contract drawings, specifications, addendums, RFI responses, coordination submittals, bulletins, ASI’s etc. for any coordination information. MMC, Inc. will issue bulletins, RFI responses and reviewed submittal information to the subcontractors affected, however, complete coordination of all information provided on this project will be the responsibility of this subcontractor.

y.

**EXHIBIT No. 1 (cont'd)**  
**DESCRIPTION OF WORK**  
**AGREEMENT NO. 10000GC – 001**

3) Subcontractor and Contractor further agree:

- a. Contractor's schedule is all-important and delays caused by manpower, or late equipment arrival shall be avoided. Subcontractor acknowledges that liquidated damages are payable at the amount of **500.00** per day as described in the Prime Contract and other Contract Documents, and Contractor's extended project overhead is **\$1,000.00** per day. A copy of the schedule is posted on the wall of Contractor's office at the project and should be referred to for current job status.
- b. Subcontractor agrees to be bound by Contractor's jobsite safety program as established by Contractor. In general Contractor's policy is to strictly observe all OSHA and CAL-OSHA requirements, as applicable. Subcontractor agrees that it has received a copy of Contractor's Subcontractor's Policy and Procedure Manual, which contains an Injury and Illness Protection Plan and agrees to abide by said policies and plans. Subcontractor is responsible for prevention of accidents arising from or relating to its Work. Subcontractor shall comply fully with all federal, state and local laws, orders, citations, rules, regulations, standards and statutes affecting or relating to the Subcontract and its performance. Establishment of a safety program by Contractor shall not relieve Subcontractor of its safety responsibilities. Subcontractor shall establish its own safety program implementing safety measures, policies and standards conforming to those required by governmental authorities having jurisdiction, and by Contractor, and Owner. Subcontractor shall notify Contractor immediately following an accident and promptly confirm the notice in writing. A detailed written report shall be furnished to Contractor. Subcontractor shall indemnify and hold Contractor harmless from all fines, penalties or costs of abatement imposed on Contractor as a result of safety violations caused by Subcontractor's failure to comply with applicable safety requirements. Subcontractor shall notify Contractor of any unsafe condition it discovers or observes and shall stop Work until informed by Contractor that Subcontractor may resume Work. Should Subcontractor encounter any hazardous substances at the Project which are potentially harmful to persons or property, Subcontractor shall take all steps required by this Subcontract and by law to protect persons and property from injury or damage including stopping Subcontractor's Work in the affected areas(s) and promptly notifying Contractor in writing of the conditions encountered. Should Subcontractor be required to stop Work in any area of the Project as a result of hazardous substances located at the site, Subcontractor shall not resume its Work in the affected area(s) until the hazardous substances have been removed or made harmless, all necessary approvals to resume Work are obtained and Contractor gives Subcontractor written direction to resume Work.
- c. Subcontractor agrees that work shown on the drawings but not included in specification or included in the specifications and not shown on drawings shall be as if included or shown in both for performance purposes of this Subcontract.
- d. Subcontractor agrees that it has received a complete set of Contract Documents.
- e. Subcontractor agrees to provide all Certificates, Letters of Certifications or Compliance, Testing, Test Reports, Samples, Shop Drawings, Catalog Cuts and other data required by the Contract Documents or that may be required by Owner. Submittals shall be in compliance with the Contract requirements and shall be forwarded to Contractor for approval processing.
- f. Subcontractor agrees that should submittals be incomplete or not comply with the Contract Documents and be returned NOT APPROVED, INCOMPLETE, or ADDITIONAL INFORMATION REQUIRED, the fees for rechecking, if any, will be paid by Subcontractor. Subcontractor will make restitution for any costs incurred by Owner and/or Contractor as a result of reinspection and/or retesting due to failure.
- g. Any submittal or portion of submittal that does not comply with the Contract Documents shall be submitted individually as a deviation with Owner approval requested. It is understood that Owner approval of substitutions and deviations can take sixty (60) days with no assurance of acceptance, and Subcontractor remains responsible for completing all portions of its Work in accordance with Contractor's schedule.
- h. Should Subcontractor cause, request, or initiate an action that requires any of Owner's Engineering Consultants to visit the Project, the cost thereof will be paid by Subcontractor. Contractor will not retain consultant services without first discussing it with Subcontractor.
- i. Should Subcontractor initiate a change order that is not approved by Owner, any fee incurred by Owner's Engineering Consultants will be paid by Subcontractor if Engineering Consultants are employed to review said change.
- j. Inspection and approval of Subcontractor's material and/or Work by Contractor shall not relieve Subcontractor of the responsibility for full performance in accordance with Contract Documents.
- k. In the event of Project phasing, should the parties be unable to mutually agree upon a reasonable value for Work in any phase, Contractor may terminate this Subcontract for convenience. Contractor shall notify Subcontractor in writing and Subcontractor shall immediately stop the performance of the terminated Work, follow the Contractor's instructions regarding any shutdown and termination procedures and mitigate all costs. Contractor's liability to Subcontractor for any damages incurred or claims resulting from such a termination shall be limited to the reasonable value for the amount of Work completed and in place at that time, based on Contractor approved schedule of values of the Work.

Subcontractor Initial \_\_\_\_\_

Contractor Initial \_\_\_\_\_

**EXHIBIT No. 2**  
**INSURANCE REQUIREMENTS**  
**AGREEMENT NO. 10000GC-001**

The following provisions are incorporated into the Subcontract as additional requirements of Subcontractor.

- 1. Insurance requirements. Subcontractor agrees to obtain and maintain during the term of the Subcontract the following minimum insurance and such additional requirements of the Prime Contract. Subcontractor shall pay the premiums for such insurance.
  - a) Comprehensive general liability insurance including bodily injury and property damage liability: Coverage in minimum limits of \$1,000,000 per each injury or death of any person; \$1,000,000 for each accident or occurrence resulting in death or injury to any persons; \$1,000,000 for each accident or occurrence for property damage; \$2,000,000 general annual aggregate and \$2,000,000.00 completed operations aggregate. Coverage may include an umbrella for above requirements.
  - b) Comprehensive automotive liability insurance including bodily injury and property damage liability. Coverage limits of \$1,000,000 for each injury or death of any person; and \$1,000,000 for each accident or occurrence resulting in death or injury to any persons; and \$1,000,000 for each accident or occurrence for property damage, including owned, hired and non-owned automobiles.
  - c) Workman’s Compensation, as required by state law.
  - d) Employer’s Liability, minimum amount of \$1,000,000.
  - e) Other coverage. If Subcontractor’s work requires special insurance and/or bonds to comply with any utility, railroad, or governmental body, or if Owner requires limits of liability greater than in paragraph “a” or “b”, Subcontractor agrees to obtain such additional coverage at its expense.
  - f) Errors and Omissions Insurance: As may be required for own work.
  - g) Occurrence-based form policy is required. Claims-made form is unacceptable.
  - h) An **additional insured endorsement** for contractual liability coverage is required and **must be on ISO Form 20101185 or equivalent**. No additional insured listed on the certificate will be accepted.
  - i) All such insurance shall be endorsed to provide for a **Waiver of Subrogation** in favor of additional insured.
- 2. Subcontractor agrees to furnish to Contractor copies of the insurance coverage set forth above, together with a commitment by the insurance company or companies to notify Contractor (Mobile Modular Construction, Inc, Box 5808, Orange, CA 92863) thirty (30) days prior to the expiration, cancellation or any material change to any of the insurance policies required hereunder. In the event Subcontractor fails to obtain and maintain such insurance coverage, Contractor may, at its option, obtain and maintain the same for and on behalf of Subcontractor or terminate the Subcontract for default. All premiums plus twenty-five (25%) percent for overhead will be deducted from any amounts due Subcontractor from the complete and absolute responsibility of obtaining and maintaining insurance coverage as specified.
- 3. Subcontractor agrees to name Contractor (**Mobile Modular Construction, Inc., AAA**) and others specified in Contract Document as additional insured on all insurance policies. The additional insured must be listed on separate endorsement. Please read general provision 1 item h, regarding additional insured requirements.
- 4. Subcontractor agrees to ensure that all vendors and subcontractors provide and adhere to the substance and requirements of this Exhibit.
- 5. Subcontractor shall be responsible for the deductible on any claim made against the project’s Builder’s Risk Policy, for a loss related to this Subcontractor’s scope of work.
- 6. Certificates shall be issued specifically for the following and this description should appear on the face of all certificates:

**Project No.**

- 7. Contractor (Mobile Modular Construction, Inc., BOX 5808, Orange, CA 92863), shall be named as certificate holder as well as additional insured.
- 8. Subcontractor agrees it is aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for worker’s compensation, or to undertake self-insurance in accordance with the provisions of that Code, and will comply with such provisions before commencing the performance of any work of the Subcontract Agreement.



**EXHIBIT No. 3**  
**CONTRACT DOCUMENTS**  
**AGREEMENT NO. 10000GC-001**

The following provisions are incorporated into the Subcontract.

9. Subcontractor agrees to be bound to the Prime Contract and the Contract Documents including, but not limited to the following:

Subcontractor agrees to be bound by Local Affirmative Action Plan and Equal Opportunity Program, as applicable

Subcontractor agrees to be bound by the prevailing wages established by the Department of Industrial Relations in the locality in which the work is performed, or Federal prevailing wages, as applicable.

**EXHIBIT No. 4**  
**PERSONAL GUARANTEE**  
**AGREEMENT NO. 10000GC-001**

For good and valuable consideration, including **Mobile Modular Construction, Inc.** (“Contractor”) entering into a subcontract with **Mobile Modular Construction** (“Subcontractor”) relating to the project (the “Subcontract”), the undersigned individual(s) (each as “Guarantor”), personally guarantees to Contractor the performance of Subcontractor as required by the Subcontract. Such guaranteed performance includes Subcontractor’s prompt and timely completion of the Subcontract in compliance with the Subcontract terms and conditions, including the Contract Documents, the payment of all debts incurred by Subcontractor in the prosecution of the work pursuant to the Subcontract, and payment of any and all costs or damages incurred by Contractor should a substitute subcontractor be engaged to complete Subcontractor’s work. The liability of Guarantor shall, not be diminished by: (a) the release or discharge of Subcontractor in any bankruptcy proceeding otherwise; (b) the waiver of any term or condition in the Subcontract; (c) any time extension granted to, or delays in the performance of Subcontractor; (d) the assignment or transfer of the Subcontract; (e) any disability or defense of Subcontractor; (f) cessation of the liability of Subcontractor; (g) the exercise by Contractor of any of its rights or remedies reserved under the Subcontract including any termination of the Subcontract. Contractor may enforce this guarantee, including obtaining judgment against Guarantor, without proceeding either first or concurrently against Subcontractor, any security received from Subcontractor, Guarantor or any other person, firm or entity, or pursuing any other remedy. Guarantor waives notice of default of Subcontractor and waves the benefit of any statute of limitations to enforce this guarantee. Guarantor will pay Contractor’s reasonable attorneys’ fees and costs enforce this guarantee regardless of whether a legal action is filed.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Guarantor \_\_\_\_\_

Signature: \_\_\_\_\_

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

Social Security No.: \_\_\_\_\_

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

**EXHIBIT No.5**  
**LABOR CODE**  
**AGREEMENT NO. 10000GC – 001**

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

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

**§1775. Penalties for violations**

(a)(1) The contractor and any subcontractor under 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 (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor. (a)(2) The amount of this 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 ten dollars (\$10) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) The penalty may not be less than twenty (\$20) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties 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 thirty dollars (\$30) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

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

(d) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.1018

(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 compiled with.

(f) 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:

(i) 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.

(ii) 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.

(iii) 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 to the subcontractor for work performed on the public works project.

(iv) 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.

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

**EXHIBIT No. 5**  
**LABOR CODE**  
**AGREEMENT NO. 10000GC – 001**

**§1776. Payroll records; retention; inspection; noncompliance; rules and regulations**

(a) Each contractor and subcontractor shall keep accurate payroll records, 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. 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; and (2) the employer has complied with the requirements of section 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

1 All statutory references, unless otherwise indicated, are to the California Labor Code.

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

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

(g) The contractor shall 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 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 sections 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 records, including the establishment of reasonable fees be charged for reproducing copies of records required by this section.

**§1775.5. Employment of registered apprentices; wages; standards; number; apprenticeable craft or trade; exemptions; contributions**

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

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

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

- (1) The apprenticeship standards and apprentice agreements under which he or she is training.
- (2) The rules and regulations of the California Apprenticeship Council.

**EXHIBIT No. 5**  
**LABOR CODE**  
**AGREEMENT NO. 10000GC – 001**

(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 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 journey man 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 Chief of the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 hourly 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 Chief of the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant a participating contractor or 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 on-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 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 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.

(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.

**EXHIBIT No. 5**  
**LABOR CODE**  
**AGREEMENT NO. 10000GC – 001**

(2) At the conclusion of the 2002-2003 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Division of Apprenticeship Standards for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

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

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

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

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

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all 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) All decisions of an apprenticeship program under this section are subject to Section 3081.

**§1813. Forfeiture for violation; contract stipulation; report of violations**

The contractor shall, as penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each workman 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 become operative January 1, 2003.

**§ 1815. Overtime**

Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, 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 ½ times the basic rate of pay.

Subcontractor acknowledges Subcontractor is familiar with the Labor Code requirements above and will comply with them.