



# Plant Accounting: Stop Payment Notices, Prevailing Wage Claims, Assignments, and Liens

<b>Responsible Officer:</b>	EVP - Chief Financial Officer
<b>Responsible Office:</b>	FA - Financial Accounting
<b>Issuance Date:</b>	6/2/1969
<b>Effective Date:</b>	6/2/1969
<b>Last Review Date:</b>	5/20/2016
<b>Scope:</b>	System wide

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## I. POLICY SUMMARY

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This chapter outlines the procedures for Stop Payment Notices with regards to Plant accounting.

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## II. DEFINITIONS

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**STOP PAYMENT NOTICE:** On a public construction project, a subcontractor, supplier, laborer, or laborer's trust fund that is not paid by the general contractor or subcontractor may file a document called a "stop payment notice" with the public entity on whose behalf the project is being constructed. The stop payment notice requires the public entity to withhold, from funds payable to the general contractor for the project, the amount specified in the stop payment notice. Thereafter, a lawsuit may be filed against the public entity and the general contractor seeking an order directing the public entity to pay the withheld funds to the subcontractor, supplier, laborer, or laborer's trust fund. If a claimant files a stop payment notice against the subcontractor instead of the general contractor, funds still must be withheld from the general contractor, and the claimant must pursue litigation against the subcontractor, the general contractor, and the public entity to enforce the stop payment notice.

**PRELIMINARY 20-DAY NOTICE:** A preliminary 20-day notice is a document filed by a claimant before filing a stop payment notice.

**PREVAILING WAGE CLAIM:** Under prevailing wage laws, laborers on public construction projects must be paid not less than a statutorily prescribed wage. A prevailing wage claim can be filed by the California Division of Labor Standards Enforcement on a project. The claim demands a withholding of those funds payable to a general contractor which are:

- (1) Amounts not paid to laborers in violation of prevailing wage laws and
- (2) Statutory penalties for violation of prevailing wage laws.

**MECHANIC'S LIEN:** A mechanic's lien is a lien against private property for the value of labor and materials furnished to that property by a contractor, subcontractor or supplier. Such liens may arise on developments owned by the University where the improvements are privately owned or leased by faculty or staff. In such instances, the improvements, and not the underlying property, may be subject to a mechanic's lien.

**ASSIGNMENT:** An assignment is the transfer of contractual rights and/or obligations from a contracting party to a third party. For example, a general contractor may, if the University CONCURS, assign its right to be paid by the University for Work on a construction project to a subcontractor, surety, or other third party.

**TAX LIEN:** A tax lien is a claim against a taxpayer's property (personal or real) for the payment of delinquent taxes. For example, a tax lien may be made against funds to be paid to a contractor by the University for the contractor's work on a construction project.

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### **III. POLICY STATEMENT**

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The University will comply with all applicable laws regarding withholding money from amounts due the contractor to satisfy any asserted claims. Most claims are resolved by the claimant and the general contractor short of trial, or, in extraordinary cases where a claimant proceeds to trial or protracted litigation, the University will likely deposit the funds at issue with the court for resolution. The University is a stakeholder for the funds and typically takes no position regarding the veracity of a claim. Refer questions to the Office of General Counsel.

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### **IV. COMPLIANCE / RESPONSIBILITIES**

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It is the responsibility of the accounting officer concerned to assure that STOP PAYMENT NOTICES, PREVAILING WAGE CLAIMS, ASSIGNMENTS, and TAX LIENS presented to the University are processed and complied with in accordance with the procedures outlined in this chapter.

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### **V. PROCEDURES**

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#### **A. GENERAL RULE**

Should any questions arise about the correct procedure to follow, the general rule is to withhold sufficient money from the contractor to satisfy any asserted claim, ASSIGNMENT, lien, etc. Thereafter, questions should be referred to the Office of General Counsel.

#### **B. STOP PAYMENT NOTICE PROCEDURES**

##### **1. ELEMENTS OF A VALID PRELIMINARY NOTICE**

A preliminary notice is essentially notice to a contractor and a public agency that a potential STOP PAYMENT NOTICE claimant has provided goods and/or services on a public works job. It is not a claim, and it does not require any affirmative action by the University. Although such notice is legally required to enforce most STOP PAYMENT NOTICES, the University does not typically require proof of a filing of a PRELIMINARY 20-DAY NOTICE prior to withholding funds pursuant to a STOP PAYMENT NOTICE. The lack of such notice may still

be used as a defense by a contractor or by the University should litigation proceed.

A preliminary notice may be served on the University in person, or by first class, registered, or certified mail, Express Mail, or overnight delivery by express service carrier. If the University receives a preliminary notice for a project, it should retain the notice until the earlier of either: (1) the time within which to file suit on a STOP PAYMENT NOTICE expires (see below); or (2) until all funds have been paid to the contractor, inclusive of retention.

Exhibit A is a sample of a California Preliminary Notice.

## 2. ELEMENTS OF A VALID STOP PAYMENT NOTICE

The University takes a very liberal approach to the validity of a STOP PAYMENT NOTICE, siding with the claimant if reasonable to do so. The courts have historically done the same as now codified in statute<sup>1</sup>. If the University rejects a STOP PAYMENT NOTICE or improperly releases funds, a court may rule in favor of a claimant and deem the University liable for all losses incurred, resulting in double liability. Still, a legally effective STOP PAYMENT NOTICE must<sup>2</sup>:

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<sup>1</sup> Cal. Civ. Code § 8102(b).

<sup>2</sup> Cal. Civ. Code §§ 9352, 9356.

- a) Be preceded by a timely filed preliminary notice (see above).
- b) State in general terms the kind of labor, services, equipment, or materials furnished or agreed to be furnished.
- c) Name the person to whom or for whom the labor, services, equipment, or materials were furnished.
- d) State the value of the labor, services, equipment, or materials already furnished and the value of the total amount of such items agreed to be furnished.
- e) Be signed and verified by the claimant.
- f) Be timely filed. A STOP PAYMENT NOTICE must be filed within one of the following time limits, whichever occurs first:
  - (1) If a notice of completion, acceptance or cessation is timely recorded, the STOP PAYMENT NOTICE must be received by the University on or before the thirtieth (30th) day after the recording of the notice of completion.
  - (2) If a notice of completion, acceptance or cessation is not timely recorded (see below), the STOP PAYMENT NOTICE must be received by the University on or before the ninetieth (90th) day after completion or cessation of the project. For the purpose of determining the timeliness of the filing of a STOP PAYMENT NOTICE, project completion is defined<sup>3</sup> as the earliest of the following:
    - (a) *The date the University accepts the project as complete (NOTE: Since the “project” consists of both physical and administrative work, this date of acceptance of the entire project may not be the same date the project is physically completed).*
    - (b) *The date after which a cessation of labor has existed for a continuous period of sixty (60) days (NOTE: Where the physical work is done but the administrative work is lagging (as-builts incomplete, Operation and Maintenance manuals incomplete, etc.) and the project has not been accepted as complete because of the outstanding administrative work, the clock for filing a STOP PAYMENT NOTICE or filing a lawsuit to enforce a STOP PAYMENT NOTICE may still expire because of the cessation of physical labor at the site.).*

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<sup>3</sup> Cal. Civ. § 9200.

If a notice of completion is recorded prematurely (before all the work called for by the original contract is completed), or is recorded too late (more than 15 days after the date of actual completion), a claimant has 90 days from the date of actual date of acceptance of the project in which to file a STOP PAYMENT NOTICE.<sup>4</sup>

A STOP PAYMENT NOTICE is effective when delivered if given by personal delivery, or when deposited in the mail if delivered by mail or express service carrier.<sup>5</sup>

If the last day on which a STOP PAYMENT NOTICE may be filed falls on a Saturday, Sunday, or holiday, the STOP PAYMENT NOTICE is effective even though not received until the first working day after the Saturday, Sunday, or holiday.<sup>6</sup>

Exhibit B is a sample of a STOP PAYMENT NOTICE.

### 3. WHEN TO FILE A NOTICE OF COMPLETION

A notice of completion should be filed (by the campus construction office) when a project is complete because it shortens the time for filing STOP PAYMENT NOTICES, thereby (1) reducing the University's exposure to STOP PAYMENT NOTICE lawsuits; and (2) allowing the project account to be closed at an earlier date.

A notice of completion is a written notice, signed and verified by the University's agent or employee<sup>7</sup>, which contains the following:

- a) The date of completion.
- b) Name and address of The Regents of the University of California. If The Regents is co-owner, the notice of completion should recite the name and address of all co-owners.
- c) Description of the job site sufficient for identification, containing the street address of the site, if any.
- d) Name of the general contractor.

The notice of completion must be recorded within fifteen (15) days after completion in the Office of the County Recorder of the county in which the project site is located.

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<sup>4</sup> Cal. Civ. § 9204.

<sup>5</sup> Cal. Civ. Code §§ 9354, 8116.

<sup>6</sup> Cal. Code Civ. Proc. § 10.

<sup>7</sup> Cal. Civ. Code § 9204

Exhibit C is a sample of a notice of completion.

4. WHEN TO FILE A NOTICE OF CESSATION OF LABOR

If work on a construction project has been stopped for thirty (30) days or more, the campus construction office should contact the Office of General Counsel for advice. The campus may be advised to record a "notice of cessation," which would shorten the time for filing STOP PAYMENT NOTICES, thereby (1) reducing the University's exposure to STOP PAYMENT NOTICE lawsuits; and (2) allowing the project account to be closed out at an earlier date.

A notice of cessation is a written notice, signed and verified by the University's agent or employee, which contains the following<sup>8</sup>:

- a) The name of the project.
- b) The name of the contractor.
- c) The name and address of The Regents of the University of California.
- d) The nature of the owner's interest, e.g., fee simple, leasehold, or other.
- e) The location of the project.
- f) The date on which cessation of labor began and a statement that the cessation has continued until the recording of the notice.

Exhibit D is a sample of a notice of cessation. Just as with the notice of completion, this document may be recorded in the Office of the County Recorder.

5. AMOUNT TO BE WITHHELD UPON RECEIPT OF A VALID STOP PAYMENT NOTICE

If a STOP PAYMENT NOTICE is received, the accounting officer must withhold from amounts presently due and payable or which later become due and payable, an amount equal to 125 percent of the amount of the claim.<sup>9</sup> The 125 percent is not to be withheld from:

- a) Retention- including funds held in escrow (unless retention is due and payable under the terms of the contract) or
- b) The unpaid contract balances unless that balance is due and payable under the terms of the contract.

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<sup>8</sup> Cal. Civ. Code §§ 9202, 8102.

<sup>9</sup> Cal. Civ. Code §§ 9358, 9360.

For example, assume a contract is awarded to a contractor under which he/she agrees to construct a project for the University for \$100,000. On June 1, the fifth progress payment is made. As of June 15, the project account is as follows:

\$45,000 total amount paid to date to contractor.

\$ 2,250 retention withheld and in escrow (but not yet due).

\$52,750 unpaid contract balance.

On June 20, a STOP PAYMENT NOTICE for \$5,000 is received. 125% of \$5,000 is \$6,250. As of June 20, no money is due the contractor and none can be withheld as a result of the STOP PAYMENT NOTICE.

On July 1, an approved certificate for payment for the sixth progress payment is received by the accounting office. The certificate approves payment of \$4,500. The amount now due the contractor is the payment minus the retention, or 95% of the certificate, which is \$4,275. All of the \$4,500 is withheld from the contractor because \$4,275 is withheld for the STOP PAYMENT NOTICE, and \$225 is withheld as retention not currently due the contractor.

On August 1, an approved certificate for payment for the seventh progress payment is received by the accounting office. It approves payment of \$4,500. Of the \$4,500 approved for payment, \$225 is withheld as retention not currently due the contractor, and \$1,975 is withheld in addition to the previous \$4,275 to total \$6,250, which is 125% of the STOP PAYMENT NOTICE. The contractor is to be paid \$2,300.

#### 6. NOTIFYING THE CONTRACTOR OF RECEIPT OF STOP PAYMENT NOTICE

Upon receipt of a valid STOP PAYMENT NOTICE, the accounting officer should notify the general contractor that the STOP PAYMENT NOTICE has been received and that 125 percent of the amount claimed will be withheld from future payments, if any, to the contractor.

Exhibit E is a form to be used to notify the general contractor of receipt of a STOP PAYMENT NOTICE.

#### 7. NOTIFYING STOP PAYMENT NOTICE CLAIMANT OF TIME WITHIN WHICH AN ACTION TO ENFORCE PAYMENT OF CLAIM MUST BE COMMENCED

If a STOP PAYMENT NOTICE claimant pays the University \$10.00 at the time of filing its STOP PAYMENT NOTICE, the accounting officer must notify the claimant in writing of the time within which an action to enforce payment of the



claim must be commenced. The notice is to be given no later than the sixteenth (16th) calendar day after a project is accepted by the University as complete. However, if a Notice of Completion is timely recorded, than the Officer is advised to send the notice to the claimant as soon after the Notice of Completion is recorded as possible.<sup>10</sup>

(NOTE: Notices of Completion recorded later than fifteen (15) days from the date of acceptance of the project are invalid and should not be recorded nor recognized for purposes of determining the time within which a STOP PAYMENT NOTICE action (lawsuit) must be commenced.<sup>11</sup>)

If a project is not accepted by the University as complete, but all labor has ceased for a continuous period of thirty (30) days, or if a Notice of Cessation has been recorded, contact the Office of General Counsel.

When service is by registered or certified mail, service is complete at the time of deposit of the registered or certified mail in the United States post office addressed to the claimant at the address shown upon its STOP PAYMENT NOTICE claim. Notice may also be given by overnight delivery via an express courier service or via Express Mail, and service is complete at the time of deposit with the courier.<sup>12</sup>

Failure to give notice where required may subject the University to liability for the amount of the claimant's claim.

Exhibit F is a form to be used to notify a STOP PAYMENT NOTICE claimant of the time within which an action to enforce payment of claim must be commenced.

#### 8. WHEN THE UNIVERSITY'S OBLIGATION TO WITHHOLD FUNDS PURSUANT TO A STOP PAYMENT NOTICE CEASES

STOP PAYMENT NOTICE funds must be withheld until the occurrence of any one of the following:

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<sup>10</sup> See Cal. Civ. Code § 9362.

<sup>11</sup> Cal. Civ. Code § 9204.

<sup>12</sup> Cal. Civ. Code § 8116.

- a) The claimant unconditionally withdraws or releases its STOP PAYMENT NOTICE (see section. V, B.9.).
- b) An acceptable release bond is filed with The Regents (see section. V, B.10.). NOTE: The Office of the General Counsel must deem the release bond acceptable.
- c) The general contractor files an affidavit (sworn statement) contesting the validity of the STOP PAYMENT NOTICE and the claimant fails to file a counter- affidavit in timely fashion (see section. V, B.11.). NOTE: The Office of General Counsel must authorize the release.
- d) Both of the following conditions exist:
  - (1) Ninety-five (95) days have passed from the last date on which a STOP PAYMENT NOTICE could be filed (see section, V.B.2.f.); and
  - (2) The University has not received written notice that the STOP PAYMENT NOTICE claimant filed suit to perfect its claims.  
\*\*Confirm with Office of General Counsel that suit has not been filed.
- e) On receipt of disposition instructions from General Counsel's Office.

## 9. RELEASE OR REDUCTION OF STOP PAYMENT NOTICE

If a STOP PAYMENT NOTICE claimant files a written reduction or release of STOP PAYMENT NOTICE in its entirety as prescribed by California Civil Code section 8128, the accounting officer may disburse the released funds to the contractor, unless there are other claims against the same funds. Civil Code section 8128 requires that a written reduction in the amount of the STOP PAYMENT NOTICE (1) state the amount of the reduction and (2) the amount to remain withheld after the reduction. The code also states that the written reduction or release of a STOP PAYMENT NOTICE may be in a form other than the waiver and release form provided within Civil Code sections 8132, 8134, 8136, and 8138 at Exhibits G-1 and G-2.

Civil Code section 8128 also provides that the acceptance of a written release or reduction in the amount of a STOP PAYMENT NOTICE has the following effects; (1) releases the claimant's right to enforce payment of the claim stated in the notice to the extent of the reduction or release; (2) releases the person given the notice from the obligation to withhold funds to the extent of the reduction or release; (3) does not preclude the claimant from giving a subsequent STOP

PAYMENT NOTICE that is timely and proper; and (4) does not release any right of the claimant other than the right to enforce payment of the claim to the extent of the reduction or release.

Exhibit G-3. Is a Sample Release OR Reduction of STOP PAYMENT NOTICE

#### 10. RELEASE BOND

A release bond is an undertaking to indemnify The Regents from any liability which The Regents might incur by disbursing funds subject to a STOP PAYMENT NOTICE. If the University accepts a release bond, it may<sup>13</sup> disburse the funds withheld pursuant to the STOP PAYMENT NOTICE for which the bond was filed unless the funds are subject to other liens. Note that only the general contractor is an acceptable principal of a release bond.

The Regents have the option to accept or refuse any release bond. When such option is under consideration, the accounting officer should check with the project manager to see if he/she has any objection to accommodating the general contractor in this manner. Refer to section V.B.5 for procedures to be followed when the amount claimed by a STOP PAYMENT NOTICE exceeds the amount which could be withheld. References in the release bond to sections in the Civil Code other than the new code sections commencing with section 9000 will only be accepted until January 1, 2016. Should the bond contain another code section, notify the contractor that it will be accepted in that form only until January 1, 2016.

A release bond is acceptable as to form if (1) the undertaking (the portion of the bond beginning with the words "NOW, THEREFORE") states that the general contractor (the principal) and the bonding company (the surety) will fully protect and defend The Regents (the obligee) from any loss arising out of the acceptance of the bond; (2) the penal sum of the bond is equal to 125% of the STOP PAYMENT NOTICE claim; (3) the release bond has been signed by both the contractor and the surety;<sup>14</sup> and (4) the recitals of the bond about the claim and the project are accurate.

Exhibit H is a pro forma example of an acceptable release bond.

Note: A release bond must not be accepted unless issued by a surety other than the one that executed the payment bond. A release bond from the same surety that executed the payment bond is not a statutory bond, does not fully protect the University, and might result in liability to the University.

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<sup>13</sup> Cal. Civ. Code § 9364.

<sup>14</sup> Signatures for the principal and the surety should be notarized. In addition, the written power of attorney for the surety's agent should be attached to the release bond.

The Office of General Counsel may be contacted to assist with a determination that a release bond is acceptable. Upon such a determination, the accounting officer must confer with OGC to determine if litigation was initiated by the STOP PAYMENT NOTICE claimant prior to executing a release bond, and if any legal fees or costs have been incurred to date for such litigation. These incurred legal fees and costs may, if the campus concurs, be deducted for payment to OGC.

After a release bond has been accepted by the University and the appropriate funds have been released to the contractor, the University must claim indemnity from the bonding company if the STOP PAYMENT NOTICE claimant thereafter commences litigation to perfect his claim. Thus, the wording of the release bond is of critical importance. Any release bond that does not conform to the above specifications must be referred to General Counsel for approval as to legal form before the bond is accepted by the University and funds released to the general contractor in reliance on the bond.

#### 11. CONTRACTOR'S AFFIDAVIT

If the general contractor files an affidavit (original and one copy) disputing the validity of a STOP PAYMENT NOTICE, the copy of the affidavit, a "Notice to Claimant of Contractor's Affidavit," and a "Declaration of Service by Mail" should be sent to the claimant by certified or registered mail, express mail, or overnight delivery by an express service carrier.<sup>15</sup> Form notices are attached (Exhibits I and J).

Unless the claimant files a counter affidavit within 20 days of its receipt of the notice, the funds withheld because of the STOP PAYMENT NOTICE must be released pending a determination by OGC that no legal fees or costs have been incurred to date.<sup>16</sup>

However, the campus should wait an additional five calendar days after the 20th day before releasing the funds, since the claimant can postmark a valid counter affidavit on the 20th day. If a counter affidavit is filed by the claimant, the withheld funds cannot be disbursed.

#### 12. SETTLEMENT OF STOP PAYMENT NOTICE CLAIMS

A University representative contacted by a general contractor and a STOP PAYMENT NOTICE claimant who proposes to have the University participate in a settlement of the STOP PAYMENT NOTICE claim, should advise the general contractor and the STOP PAYMENT NOTICE claimant that if they wish to enter into a settlement agreement involving the University, the University prefers (subject to approval of General Counsel of The Regents) that the settlement be accomplished by delivery to the University of:

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<sup>15</sup> Cal. Civ. Code §§ 9404, 8110.

<sup>16</sup> Cal. Civ. Code §§ 9404, 9406.

- a) Written release of STOP PAYMENT NOTICE in the form prescribed by California Civil Code section 8128; and
- b) Written direction from the general contractor authorizing the University to issue a check made payable to the STOP PAYMENT NOTICE claimant or made jointly payable to the contractor and the claimant. NOTE: In such instances of a joint check, the check should be made only in the amount of funds to be paid to a claimant and should not include funds also being paid directly to the contractor. The accounting officer must manage the joint check procedure to ensure that both parties accept the check at the same time in person at the campus. Contact the Office of General Counsel for assistance.

Any settlement of a STOP PAYMENT NOTICE claim should be referred to the General Counsel's Office with a completed Accounting Officer's Report (Exhibit K). NOTE: An Accounting Officer's Report will also be requested if a STOP PAYMENT NOTICE claimant initiates litigation.

The accounting officer should verify with OGC whether any legal fees or costs have been incurred and should deduct those amounts for payment to OGC from the funds withheld.

### **C. PREVAILING WAGE CLAIM PROCEDURES**

According to policy, with limited exceptions, workers on construction contracts awarded by the University are to be paid not less than the prevailing wage rate established by the Division of Labor Standards Enforcement of the State of California (DLSE).

If DLSE determines that a worker on a University construction contract has been paid less than the prevailing wage rate established for the worker, DLSE will notify the University in writing and request the University to withhold, from the prime contractor, penalties (\$200.00 per day per underpaid worker) and an amount equal to the prevailing wage underpayment (see Exhibits L and M). The prevailing wage underpayment may include amounts not paid to the apprenticeship training fund.

Upon receipt of a Civil Wage and Penalty Assessment from DLSE, the accounting officer should withhold, from the prime contractor, amounts claimed as (i) penalties; (ii) unpaid wages; and (iii) apprenticeship training fund underpayments. Release bonds may not be accepted for any part of a PREVAILING WAGE CLAIM. Therefore, PREVAILING WAGE CLAIMS are to be withheld at 100% of the amounts claimed. The Labor Code provides that, at the expiration of 90 days after completion of a construction contract and formal acceptance of the project (e.g., by filing a Notice of Completion), the public entity that awarded the contract shall transfer all amounts withheld on PREVAILING WAGE CLAIMS to the State Labor Commissioner--unless within the 90-day period, suit to recover the amounts withheld is brought against the public entity by

the prime contractor or its assignee, and formal notice of the suit, either by service of summons or by registered mail, is received by the public entity. The Labor Code further provides that if the contractor files such suit and gives timely notice thereof, the amounts withheld are to be retained by the public entity pending the outcome of the suit and are to be forwarded to the State Labor Commissioner only in the event of a final court judgment against the contractor or its assignee; otherwise, the penalties are subject to any final judgment which is obtained by the contractor or its assignee. However, if there are outstanding STOP PAYMENT NOTICE claims which are not fully funded, and the time within which to file suit on such claims has not expired, then the funds should continue to be withheld. Contact General Counsel for direction.

#### **D. ASSIGNMENT PROCEDURES**

A general contractor or an architect may assign his right to receive payment from the University to a third party, but only with the consent of the University. Upon receipt of a proposed ASSIGNMENT, the University must withhold the amount stipulated in the ASSIGNMENT from the contractor or architect. However, the amount withheld should not be paid until receipt of advice from General Counsel. All ASSIGNMENTS shall be referred to General Counsel with a completed Accounting Officer's Report (Exhibit K). (See also Accounting Manual chapter A-773-82, Assignments by Vendors and Construction Contractors.)

#### **E. TAX LIEN PROCEDURES**

##### **1. GENERAL PROCEDURES**

As TAX LIENS may be filed by various state and Federal governmental agencies pursuant to different statutory authorities, the requirements of a valid TAX LIEN differ according to the type of tax for which the lien is filed. Each TAX LIEN received shall be referred to General Counsel with a completed Accounting Officer's Report (Exhibit K).

##### **2. AMOUNT TO BE WITHHELD UPON RECEIPT OF A TAX LIEN**

If a TAX LIEN is received, the accounting officer must withhold an amount equal to the face amount of the lien to the extent that funds are available.

If an accounting officer fails or refuses to honor a valid TAX LIEN, The Regents may be held liable for the amount of the lien.

##### **3. WHEN THE UNIVERSITY'S OBLIGATION TO WITHHOLD FUNDS PURSUANT TO A TAX LIEN CEASES**

The funds withheld pursuant to a valid TAX LIEN cannot be disbursed to the contractor until one of the following events occurs:

- a) The governmental agency unconditionally, in writing, withdraws or releases the TAX LIEN.
- b) Disposition instructions are received from the General Counsel's Office.

## **F. MECHANIC'S LIEN PROCEDURES**

Improvements constructed for public agencies, such as the University, are generally not subject to MECHANIC'S LIENS under the principle of sovereign immunity. This is because the enforcement of a mechanic's lien would interfere with the public's use of public property.

Should the University receive a MECHANIC'S LIEN, contact the Office of General Counsel. Typically, the MECHANIC'S LIEN claimant should be advised that the lien is improper under the principles of sovereign immunity and immune from such civil suits on public property, and demand should be made for the immediate removal of the lien.

## **G. ADMINISTRATIVE AND ACCOUNTING PROCEDURES**

### **1. ADMINISTRATIVE**

Because of the critical timing involved in receiving preliminary notices, STOP PAYMENT NOTICES, and TAX LIENS, it is important that the campus accounting office time date each document upon receipt and retain for quick reference the mailing envelope, which would contain the registered or certified mail number.

If for any reason a notice of commencement of action or, a preliminary notice or STOP PAYMENT NOTICE is sent to and received by Financial Management, Office of the President, Financial Management will immediately send the notice to the accounting office of the campus concerned to ensure that the University complies with statutory mandates concerning such notices.

A control procedure must be maintained for valid STOP PAYMENT NOTICES. A control sheet should be prepared for each project listing the contractors and related STOP PAYMENT NOTICES received.

The STOP PAYMENT NOTICE checklist (Exhibit N) can be used as a control sheet.

### **2. ACCOUNTING PROCEDURES**

Campuses should record amounts withheld pursuant to a STOP PAYMENT NOTICE.

STIP income is earned on the credit balance and will be credited. The plant reserve fund is to be charged for any accrued interest due in the settlement payment. If interest is due for a partial period, before the STIP income rate of return is known, the prior quarter's distribution rate should be used.

The University is liable for interest earned on money withheld from contractors pursuant to the STOP PAYMENT NOTICE procedures. Therefore, any interest earned by the University on such money belongs to the contractor.<sup>17</sup> The interest earned can be used either to satisfy STOP PAYMENT NOTICE claims or, after the release of the underlying STOP PAYMENT NOTICE, should be remitted to the contractor.

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## VI. RELATED INFORMATION

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Exhibits:

**EXHIBIT A:** CALIFORNIA PRELIMINARY NOTICE

**EXHIBIT B:** STOP PAYMENT NOTICE

**EXHIBIT C:** NOTICE OF COMPLETION

**EXHIBIT D:** NOTICE OF CESSATION OF LABOR

**EXHIBIT E:** NOTICE TO GENERAL CONTRACTOR OF RECEIPT OF STOP PAYMENT

**EXHIBIT F:** NOTICE TO STOP PAYMENT NOTICE CLAIMANT OF TIME WITHIN WHICH AN ACTION TO ENFORCE PAYMENT OF CLAIM MUST BE COMMENCED

**EXHIBIT G1:** UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT CIVIL CODE SECTION 8138

**EXHIBIT G2:** UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT CIVIL CODE 8134

**EXHIBIT G3:** RELEASE OR REDUCTION OF STOP PAYMENT NOTICE CALIFORNIA CIVIL CODE §§ 8128, 8520, 8522 & 9350

**EXHIBIT H:** PRO FORMA EXAMPLE OF RELEASE BOND

**EXHIBIT I:** NOTICE TO CLAIMANT OF CONTRACTOR'S AFFIDAVIT (CIVIL CODE 9404)

**EXHIBIT J:** DECLARATION OF SERVICE BY MAIL FOR NOTICE TO CLAIMANT OF CONTRACTOR'S AFFIDAVIT

**EXHIBIT K:** ACCOUNTING OFFICER'S REPORT

**EXHIBIT L:** ACCOUNTING OFFICER'S REPORT SUPPLEMENTAL SHEET

**EXHIBIT M:** CIVIL WAGE AND PENALTY ASSESSMENT

**EXHIBIT N:** STOP PAYMENT NOTICE CHECKLIST

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## VII. FREQUENTLY ASKED QUESTIONS

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**Q. If we know that stop payment notices are coming, but we have not received them yet, should we withhold funds?**

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<sup>17</sup> Cal. Civ. Code § 9360.



**A. No**, the University is required to withhold funds to satisfy a stop payment notice only upon receipt of the stop payment notice. (Civil Code section 9358)

**Q. Are funds “withheld” to satisfy a stop payment notice when the project manager intentionally does not submit an approved pay application to the Accounting officer for processing?**

*A. Approved pay applications should always be timely processed with the requisite withholding. Failing or refusing to process a pay application solely because of stop payment notices is contrary to the contract requirements and may result in liability to the University. Only funds which are “due and payable” to the contractor may be withheld to satisfy a stop payment notice. Because the pay application has not been processed, the funds are not “due and payable” and have not been withheld, and both the contractor’s and the claimant’s rights have been impacted.*

**Q. If we have paid all funds due the contractor including retention, and then we receive a timely stop payment notice, is the University liable for the stop payment notice amount?**

*A. No*, the University is liable only for funds that are in its possession at the time the stop payment notice is received.

**Q. If a stop payment notice has been received, should we withhold all amounts due the contractor, even those in excess of 125% of the stop payment notice?**

*A. No*, only funds equal to 125% of the stop payment notice amount should be withheld, and the balance of funds due the contractor should be released to the contractor if there are no additional outstanding claims.

**Q. What if the remaining amounts due the contractor are withheld for stop payment notices but later revealed to be needed for completion of the project? Will the stop payment notices take priority over completion of the project?**

*A. Completion of The University’s Project is the main objective and takes priority over other claims made against the project funds.*

**Q. Will the stop payment notices take priority over funds held by the University for liquidated damages?**

*A. Funds held by the University as Liquidated damages take priority over stop payment notice claims.*

**Q. If the University received a ‘Civil Wage and Penalty Assessment’ from the California Division of Labor Standards Enforcement, should we withhold 125% of the funds claimed?**

**A. No**, funds withheld to satisfy a ‘Civil Wage and Penalty Assessment’ should be withheld only at 100% of the total claim.

**Q. If a contractor submits a release bond which conforms to all University requirements to release a Civil Wage and Penalty Assessment, may we accept it?**

**A. No**, a release bond may not be accepted to release funds withheld to satisfy a Civil Wage and Penalty Assessment.

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## VIII. REVISION HISTORY

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6/2/1969: First Published

Revised:

5/3/1971, 2/1/72, 3/1/73, 11/1/73, 9/1/78, 6/15/83, 12/1/85, 11/1/87, 12/30/93, 3/31/94, 12/30/94, 12/30/97, and 6/30/06; Helena Leung.

11/18/2015: Reformatted to the new policy template. Revised to reflect statutory changes to California Civil Code.

5/20/2016: Changed formatting of exhibits.

EXHIBIT A:

CALIFORNIA PRELIMINARY NOTICE – PUBLIC WORKS

(THIS NOTICE IS GIVEN PURSUANT TO CALIFORNIA CIVIL CODE §§ 8034(b), 8102, 8106-8118, 9300 et seq.)

TO: PUBLIC ENTITY (CA Civ. Code §§ 8036, 9302) DIRECT CONTRACTOR (CA Civ. Code § 8018) 1ST TIER SUBCONTRACTOR (IF APPLICABLE) (CA Civ. Code § 8046)

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

YOU ARE HEREBY NOTIFIED THAT:

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

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

Relationship to the parties of the one giving this notice (subcontractor, supplier, describe if otherwise): \_\_\_\_\_

HAS FURNISHED OR WILL FURNISH WORK, LABOR, SERVICES, EQUIPMENT OR MATERIAL OF THE FOLLOWING GENERAL DESCRIPTION:

FOR THE BUILDING, STRUCTURE OR OTHER WORK OF IMPROVEMENT LOCATED AT THE FOLLOWING ADDRESS OR SITE OTHERWISE DESCRIBED SUFFICIENTLY FOR IDENTIFICATION:

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

or Description.

THE PERSON OR FIRM TO WHOM SUCH WORK, LABOR, SERVICES, EQUIPMENT OR MATERIAL IS PROVIDED:

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

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

AN ESTIMATE OF THE TOTAL PRICE OF THE WORK, LABOR, SERVICES, EQUIPMENT OR MATERIAL PROVIDED TO DATE IS:

Amount: \$ \_\_\_\_\_

AN ESTIMATE OF THE TOTAL PRICE OF THE WORK, LABOR, SERVICES, EQUIPMENT OR MATERIAL TO BE PROVIDED IS

Amount: \$ \_\_\_\_\_

PROOF OF SERVICE DECLARATION

I, \_\_\_\_\_, declare that I served copies of the above CALIFORNIA PRELIMINARY NOTICE – PUBLIC WORKS, (check appropriate box):

a. [ ] By personally delivering copies to \_\_\_\_\_ (name(s) and title(s) of person served) at \_\_\_\_\_ (address), on \_\_\_\_\_ (date), at \_\_\_\_\_ (time)

b. [ ] By Registered or Certified Mail, Express Mail or Overnight Delivery by an express service carrier, addressed to each of the parties at the address shown above on \_\_\_\_\_ (date).

c. [ ] By leaving the notice and mailing a copy in the manner provided in § 415.20 of the California Code of Civil Procedure for service of Summons and Complaint in a Civil Action.

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

Executed on \_\_\_\_\_ (date), at \_\_\_\_\_ (City), \_\_\_\_\_ (State).

(Signature of Person Making Service) © Porter Law Group, Inc.

EXHIBIT B:

TO: PUBLICITY (CA Civ. Code §§ 8036, 9354) **STOP PAYMENT NOTICE** LEGAL NOTICE TO WITHHOLD CONSTRUCTION FUNDS (CA CIVIL CODE §§ 8044, 9350 ET SEQ.) CONSTRUCTION LENDER, If any (CA Civ. Code § 8006)

DIRECT CONTRACTOR (CA Civ. Code § 8018)

NAME: REGENTS OF UNIVERSITY OF CA. FD&C FIDELITY & DEPOSIT CO. OF MARYLAN  
 ADDRESS: 10280 N. TORREY PINES RD. #470 525 MARKET STREET, SUITE #2900  
 LA JOLLA, CA. 92128 SANDIEGO, CA. 92127 SAN FRANCISCO, CA. 94105

YOU ARE HEREBY NOTIFIED THAT (Claimant):

Name (Use correct legal name):

Address: SANTA BARBARA, CA. 93101

Relationship to the parties of the one giving this notice (subcontractor, supplier, describe if otherwise):

HAS FURNISHED WORK, LABOR, SERVICES, EQUIPMENT OR MATERIAL OF THE FOLLOWING GENERAL DESCRIPTION:

SUPPLY AND INSTALL COMMERCIAL FOOD SERVICE EQUIPMENT

FOR THE BUILDING, STRUCTURE OR OTHER WORK OF IMPROVEMENT LOCATED AT THE FOLLOWING ADDRESS OR SITE OTHERWISE DESCRIBED SUFFICIENTLY FOR IDENTIFICATION:

Address: 9500 GILMAN DRIVE LAJOLLA, CA. 92037

or Description:

THE PERSON OR FIRM TO WHOM SUCH WORK, LABOR, SERVICES, EQUIPMENT OR MATERIAL IS PROVIDED: Name: \_

Address: SANDIEGO, CA. 92127

THE VALUE OF THE WHOLE AMOUNT OF WORK, LABOR, SERVICES, EQUIPMENT AND/OR MATERIALS TO PROVIDE IS:

.Amount \$ 2,313,444.00 - INCLUDING DISPUTED AMOUNT THE

VALUE OF WORK, LABOR, SERVICES, EQUIPMENT OR MATERIAL PROVIDED TO DATE IS:

.Amount \$ 2,313,444.00

CLAIMANT HAS BEEN PAID THE SUM OF \$ 2,051,176.35

AND THERE REMAINS UNPAID AFTER DEDUCTING ALL JUST CREDITS AND OFFSETS THE SUM OF \$ 262,267.65

INTEREST AT THE RATE OF 10 % PER ANNUM, FROM APRIL 2015 (date).

UNDER CALIFORNIA CML CODE § 9358 YOU ARE REQUIRED TO SET ASIDE SUFFICIENT FUNDS TO SATISFY THIS CLAIM WITH INTEREST, COURT COSTS AND REASONABLE COSTS OF LITIGATION, AS PROVIDED BY LAW. YOU ARE ALSO NOTIFIED THAT CLAIMANT CLAIMS AN EQUITABLE LIEN AGAINST ANY CONSTRUCTION FUNDS FOR THIS PROJECT WHICH ARE IN YOUR HANDS.

DATE: APRIL 23, 2015

NAME OF CLAIMANT:

(Signature of Claimant or Authorized Agent)

VERIFICATION

state: I am the CONTROLLER (Owner of, President of, Authorized Agent of, Partner of, etc.) the claimant named in the PUBLIC WORKS. I have read said STOP PAYMENT NOTICE - PUBLIC WORKS and know the contents thereof; the same is true of my own

Perjury under the laws of the State of California that the foregoing is true and correct.

(date) at (City), CA (STATE)

(Signature of Claimant or Authorized Agent)

EXHIBIT C:

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WHEN RECORDED, MAIL TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ , the Work on the **{Insert Project Name}** Project was completed. The name of the owner is THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, hereinafter referred to as "The Regents." The address of The Regents is University of California, Office of the President, 1111 Franklin St. 6th Floor, Oakland, California, 94607-5200. The Regents is the owner in fee simple of the real property commonly known as: {Building name, if any}, {Building number i.e. CAAN}, {Names of streets abutting project, if any, and street address, if any}, {Facility name e.g. campus, laboratory, etc.}, City in which project is located}, {County in which project is located} and of all improvements and buildings thereon including the above-named Project. The name of the original Contractor is: {Insert name of original Contractor}.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:

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

I, \_\_\_\_\_, say that I am the \_\_\_\_\_ of the {Facility} of the University of California, and as such, make this verification on behalf of The Regents, a corporation; and that I have read the above Notice of Completion and know the contents thereof and that the facts stated therein are true. I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, 20\_\_, at \_\_\_\_\_.

\_\_\_\_\_  
(Signature)

*(Note: See attached optional Notary Acknowledgment)*

*Note: California Civil Code section 9208 provides that a Notice of Completion in the form required by Civil Code sec. 8100-8118, 8182 "shall be accepted by the recorder for recording and is deemed duly recorded without acknowledgment." Nevertheless, clerks in the county recorder's office may choose not to accept a document without an acknowledgment, so the document acknowledgment may simplify recording, even though unnecessary.*

STATE OF CALIFORNIA COUNTY OF \_\_\_\_\_.

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity on behalf of the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

IN WITNESS WHEREOF, my hand and official seal.

\_\_\_\_\_  
Signature

My Commission expires: \_\_\_\_\_

EXHIBIT D:

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WHEN RECORDED, MAIL TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTICE OF CESSATION OF LABOR

NOTICE IS HEREBY GIVEN that on or about the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the WORK on the (Insert Project Name) Project ceased. The name of the Original Contractor for the Project is (Insert Name of Contractor). The owner of the project is THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, hereinafter referred to as "The Regents". The address of The Regents is 1111 Franklin St., 6<sup>th</sup> Floor, Oakland, California, 94607-5200. The Project's location is commonly known as (Building name, if any). (Building number, if any). (Name of streets abutting Project, if any and street address, if any). (Facility name e.g. campus, laboratory. etc.), (City and County in which Project is located). There has been continuous cessation of labor for at least 30 days prior to the recordation and cessation continues through the recordation of this Notice.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA:

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

I, \_\_\_\_\_, say that I am the \_\_\_\_\_ of the (Facility name e.g. campus, laboratory. etc.) of the University of California, and as such, make this verification on behalf of The Regents, a corporation, and that I have read the above Notice of Cessation of Labor and know the contents thereof and that the facts stated herein are true. I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, 20\_\_, at \_\_\_\_\_

\_\_\_\_\_  
(Signature)

EXHIBIT E:

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NOTICE TO GENERAL CONTRACTOR OF RECEIPT OF STOP PAYMENT NOTICE

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Date

Contractor (Name)  
(insert address)

Re: Project X, Facility name (e.g. campus, laboratory, etc.)

Dear Sir:

You are hereby notified that a Stop Payment Notice has been received by The Regents of the University of California from (Claimant's name) in connection with the above referenced project. This is to advise you that the University intends to withhold, from any payments which may become due to you under your contract with the University, the sum of \$ representing 125% of the amount claimed in the stop payment notice. Moreover, should litigation be commenced to enforce this stop payment notice, then, should you fail to accept the University's tender of defense or otherwise resolve this claim, the University reserves the right to deduct its legal fees and costs incurred in defending such litigation from this withheld amount, and if required, from the contract balance, pursuant to Civil Code section 9358 and your contractual defense and indemnity obligations in the contract documents.

If a release bond is to be issued, University policy states: "A release bond should be accepted only if issued by a surety other than the surety that executed the payment bond."

Enclosed is a sample release bond whose format is acceptable to The Regents. (EXHIBIT H)

Sincerely,

Accounting Officer

cc: Claimant  
Bonding Company  
Project Manager



EXHIBIT F:

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**[NOTE: This notice must be sent within 16 days from the date of acceptance of the construction project as complete. This notice should be sent as soon after the Notice of Completion is recorded (if timely filed) as possible. Contact the Project Manager or University Representative for this information.]**

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NOTICE TO STOP PAYMENT NOTICE CLAIMANT OF TIME WITHIN WHICH AN ACTION TO ENFORCE PAYMENT OF CLAIM MUST BE COMMENCED

---

Re: Project X, Campus

Dear \_\_\_\_\_:

This is to advise you that on (insert date), the following event occurred: **[Note: Include only one of the following sentences in the letter.]**

A Notice of Completion was recorded for the above referenced project. **[NOTE: The Notice must be recorded within 15 days of completion.]**

(OR) A Notice of Cessation of Labor was recorded for the above-referenced project. **[NOTE: Contact your designated construction counsel to discuss use of this option.]**

(OR) The University accepted the project as complete, and no Notice of Completion or Cessation has been recorded to date.

(OR) A Cessation of Labor has existed for a continuous period of sixty (60) days, and no Notice of Completion or Cessation has been recorded to date. **[NOTE: Contact your designated construction counsel to discuss use of this option.]**

An action to enforce your Stop Payment Notice Claim must be commenced not later than

**120 days [NOTE: This applies only if A Notice of Completion or Cessation was timely recorded.]**

**(OR) 180 days [NOTE: This applies only if A Notice of Completion or Cessation was NOT timely recorded.]**

after the above referenced date.

This notice is given pursuant to California Civil Code sections 9200, 9202, 9204, 9356, 9362, and 9502 which are incorporated herein by reference.

Sincerely,

Accounting Officer

cc: Bonding Company  
Project Manager  
Local Contract Administrator

4847-1582-8240.1

EXHIBIT G1:

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UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT CIVIL CODE  
SECTION 8138

---

**NOTICE TO CLAIMANT:** THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

**Identifying information**

Name of Claimant: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Job Location: \_\_\_\_\_

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

**Unconditional Waiver and Release**

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full.

**Exceptions**

This document does not affect the following: Disputed claims for extras in the amount of:

\$ \_\_\_\_\_

**Signature**

Claimant's Signature: \_\_\_\_\_

Claimant's Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

EXHIBIT G2:

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UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT CIVIL CODE 8134

---

**NOTICE TO CLAIMANT:**

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

**Identifying information**

Name of Claimant: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Job Location: \_\_\_\_\_

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

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

**Unconditional Waiver and Release**

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment: \$ \_\_\_\_\_

**Exceptions**

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

**Signature**

Claimant's Signature: \_\_\_\_\_

Claimant's Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

EXHIBIT G3:

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RELEASE OR REDUCTION OF STOP PAYMENT NOTICE CALIFORNIA CIVIL CODE §§ 8128, 8520, 8522 & 9350

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**TO: THE REGENTS OF THE UNIVERSITY OF CALIFORNIA**

The Stop Payment Notice claimed by (Enter Claimant's name) on the Project known as (Enter Project Name as it appears on the Notice) against The Regents of the University of California dated the \_\_day of \_\_, 20\_\_,

(1) is hereby **fully** released in the amount of \$ (Enter Total Amount of Stop Payment Notice)

**OR**

(2) is hereby **partially released** in the amount of \$ (Enter Amount of Stop Payment Notice to be released), thereby partially reduced, **leaving a remaining balance due of** \$\_\_\_\_\_.

Dated:\_\_\_\_\_

Claimant Name: (As it appears on Stop Payment Notice)

By:

Title:

Signature:

(Owner or Agent of Stop Payment Notice Claimant Must Verify Below)

**VERIFICATION**

I, the undersigned, state: I am the\_\_\_\_(president / manager/ owner/ etc.) of the Claimant of the above referenced Stop Payment Notice: I have read this (circle applicable release) Full Release/Partial Release of Stop Payment Notice and know the contents thereof; the same is true of my own knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on\_\_\_\_\_, 20\_\_, at \_\_\_\_\_ California.

Signature\_\_\_\_\_ (Personal signature of person who is swearing that contents of this release are true.)

**NOTE:** This full or partial release shall not preclude the service of a subsequent stop payment notice that is timely and proper and shall release the owner from any obligation to withhold money on account of the stop payment notice to the extent it is released.

EXHIBIT H:

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PRO FORMA EXAMPLE OF RELEASE BOND

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Bond No: \_\_\_\_\_

BOND TO RELEASE MONEY WITHHELD ON CLAIM

**KNOW ALL PERSONS BY THESE PRESENTS:**

That, \_\_\_\_\_ (Contractor), as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto The Regents of the University of California, as Oblige, in the penal sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) (125% of the stop payment notice amount), lawful money of the United States of America, for the payment of which well and truly to be made, we and each of us bind ourselves, our and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**THE CONDITION OF THIS OBLIGATION IS SUCH THAT**

**WHEREAS**, Principal entered into a Contract with The Regents of the University of California to construct a project known as \_\_\_\_\_ ;

**WHEREAS**, \_\_\_\_\_ ("Claimant") filed a claim and stop payment notice in the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), with said Oblige against Principal in connection with said Contract;

**WHEREAS**, Principal has requested that Oblige permit Principal to deliver to Oblige a bond in the penal sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) and upon delivery of said bond to Oblige, that Oblige not withhold funds from Principal pursuant to the stop payment notice.

**NOW, THEREFORE**, if the above named Principal shall fully protect and defend Oblige against any loss by reason of or rising out of the acceptance of this bond, or the release of any funds that would otherwise be withheld pursuant to the stop payment notice, and shall pay any sum which Claimant may recover on said claim, together with the cost of suit in said action, not exceeding the penal sum of this bond, then this obligation shall be void; otherwise to remain in full force and effect.

This bond is given and accepted under and in accordance with the provisions of Section 9364 of the Civil Code of California. This bond affords Oblige both contractual rights and the rights contemplated by Section 9364. Surety is jointly and severally liable to the Claimant with the sureties on any payment bond given under Chapter 5 (commencing with Section 9550), Title 3, Part 6, Division 4, of the Civil Code of California.

In the event suit is brought upon this bond by The Regents, Surety shall pay reasonable attorney's fees and costs incurred by The Regents in such suit.

Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this \_\_\_ day of \_\_\_\_\_, 20\_\_.

Principal: _____ (Name of Firm)	Principal: _____ (Name of Firm)
By: _____ (Signature)	By: _____ (Signature)
_____ (Printed)	_____ (Printed)
Title: _____ (Printed Name)	Title: _____ (Printed Name)
Address for Notice:	Address for Notice:

NOTE: Notary acknowledgment for Surety pursuant to §1189 of the Civil Code of California and Surety's Power of Attorney must be attached.

4848-7223-3745.5

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 2013 \_\_\_\_\_,

Date

Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

before me \_\_\_\_\_

personally appeared \_\_\_\_\_

Name of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

- Partner(s)  Limited
- Attorney-In-Fact  General
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

**DESCRIPTION OF ATTACHED DOCUMENT**

\_\_\_\_\_  
Title or Type of Document

\_\_\_\_\_  
Number Of Pages

Signer is representing:  
Name Of Person(s) Or Entity (ies)

\_\_\_\_\_

\_\_\_\_\_  
Date Of Document

EXHIBIT I:

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NOTICE TO CLAIMANT OF CONTRACTOR'S AFFIDAVIT (CIVIL CODE 9404)

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NOTICE TO CLAIMANT OF CONTRACTOR'S AFFIDAVIT--

(Project Name)

University of California, (Campus)

TO: (Stop Payment Notice Claimant) (Address)

Please take notice that (name of general contractor), the general contractor for (project name), University of California--(campus), the work of improvement for which you have previously filed a notice to withhold with The Regents of the University of California, has on the (date on which affidavit received) filed with The Regents of the University of California the affidavit, a copy of which is mailed herewith, disputing your claim in the particulars set forth in the affidavit and demanding the release of funds.

Unless you file with:

Accounting Officer: (name and address)

University of California: (campus)

Within twenty days from the date of receipt of this notice, a counter affidavit, together with proof of service of a copy of such counter affidavit upon the general contractor, The Regents of the University of California will release the funds in accordance with the demand of said contractor.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Accounting Officer (Name)



EXHIBIT J:

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DECLARATION OF SERVICE BY MAIL FOR NOTICE TO CLAIMANT OF CONTRACTOR'S  
AFFIDAVIT

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**DECLARATION OF SERVICE BY MAIL**

I, the undersigned, say: I am a citizen of the United States, over 18 years of age, employed in \_\_\_\_\_ County, California, in which county the within-mentioned mailing occurred. My business address is \_\_\_\_\_  
\_\_\_\_\_. I served the attached Notice to Claimant of Contractor's Affidavit by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

\_\_\_\_\_

(name)

\_\_\_\_\_

(address)

\_\_\_\_\_

Each envelope was then sealed and with the postage thereon fully prepaid deposited in the United States mail by me at my business address shown above, on \_\_\_\_\_, 20\_\_ following ordinary business practice.

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

Executed on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Signature)

EXHIBIT K:

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ACCOUNTING OFFICER'S REPORT

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ACCOUNTING OFFICER'S REPORT  
STOP PAYMENT NOTICE CLAIMS, PREVAILING WAGE CLAIMS,  
ASSIGNMENTS, TAX LIENS OR OTHER CLAIMS

1. Name, title and phone number of person preparing report: \_\_\_\_\_
2. Date of report: \_\_\_\_\_
3. Prime contractor's name and address: \_\_\_\_\_
4. Project name and number: \_\_\_\_\_
5. Contract execution date: \_\_\_\_\_
6. Anticipated completion date: \_\_\_\_\_
7. Actual completion date: \_\_\_\_\_
8. Acceptance date: \_\_\_\_\_
9. Notice of completion filing date: \_\_\_\_\_
10. Notice of cessation of labor filing date: \_\_\_\_\_
11. If neither notice of completion nor notice of cessation of labor was filed and the project was accepted by the University, date on which project was accepted: \_\_\_\_\_
12. If neither notice of completion nor notice of cessation of labor was filed and the project was not accepted by the University, date on which labor ceased: \_\_\_\_\_
13. Payment bond no. \_\_\_\_\_
14. Name of payment bond surety: \_\_\_\_\_
15. Address of payment bond surety: \_\_\_\_\_
16. Performance bond no.: \_\_\_\_\_
17. Name of performance bond surety: \_\_\_\_\_
18. Address of performance bond surety: \_\_\_\_\_
19. Adjusted contract price: \_\_\_\_\_
20. Liquidated damages assessed to date: \_\_\_\_\_
21. Does the adjusted contract price include deductions for liquidated damages assessed to date? \_\_\_\_\_
22. Amounts withheld ("backcharges") from contractor for deficiencies in work or other damages to the University \_\_\_\_\_
23. Does the adjusted contract price include amounts withheld ("backcharges") from contractor for deficiencies in work or other damages to the University? \_\_\_\_\_
24. Total amount paid to contractor to date: \_\_\_\_\_
25. Amount currently owed to contractor but not paid because of receipt of stop payment notices, associated legal fees and costs, prevailing wage claims, assignments, tax liens, or other claims: \_\_\_\_\_
26. Have any stop payment notices, prevailing wage claims, assignments, tax liens or other claims been received by the accounting office? If so, how many: \_\_\_\_\_. For each active claim complete and attach Accounting Officer's Report-- Supplemental Sheet.
27. If you are requesting legal advice, please state request: \_\_\_\_\_

EXHIBIT L:

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ACCOUNTING OFFICER'S REPORT SUPPLEMENTAL SHEET

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**ACCOUNTING OFFICER'S  
REPORT SUPPLEMENTAL SHEET**

1. Claimant's name: \_\_\_\_\_
2. Claimant's address: \_\_\_\_\_
3. Type of claim (Stop Payment Notice, prevailing wage, assignment, tax lien, or other):
4. Is claimant a subcontractor, sub-subcontractor, or material supplier to a subcontractor?  
\_\_\_\_\_
5. If claimant is a sub-subcontractor or material supplier to a subcontractor, was a preliminary notice received? \_\_\_\_ If so, when was it received? \_\_\_\_\_
6. Date of receipt of Stop Payment Notice, prevailing wage claim, tax lien, assignment or other claim: \_\_\_\_\_  
\_\_\_\_\_. -- Please attach copy of Stop Payment Notice, prevailing wage claim, assignment, tax lien or other claim.
7. Amount claimed in Stop Payment Notice, prevailing wage claim, assignment, tax lien, or other claim: \_\_\_\_\_
8. Amount withheld because of Stop Payment Notice, prevailing wage claim, assignment, tax lien, or other claim: \_\_\_\_\_.
9. Has a release bond been filed on the claim? \_\_\_\_ If so, when was it accepted? How much money was released? \_\_\_\_ Please attach a copy of the release bond.
10. Has the campus been notified, in writing, of any litigation in connection with the Stop Payment Notice, prevailing wage claim, assignment, tax lien, or other claim?  
\_\_\_\_\_. If so, please attach a copy of the notification.

EXHIBIT M:

Labor Commissioner, State of California Department of Industrial Relations Division of Labor Standards Enforcement Bureau of Field Enforcement- Public Works 7718 Meany Avenue Bakersfield, CA 93308 TEL: 661-587-3040 FAX: 661-587-3081	Edmund G. Brown Jr., Governor  
DATE May 1, 2015	In Reply Refer to Case No

CIVIL WAGE AND PENALTY ASSESSMENT

Awarding Body UC Merced, Physical Planning	Work Performed in County or Merced
PROJECT NAME	Project No 0
Prime Contractor A California Corporation	
Subcontractor California Corporation	

After an investigation concerning either the payment of wages to workers employed in the execution of the contract for the above-named public works project or compliance with the apprenticeship standards found in Labor Code section 1777.5, or both, the Division of Labor Standards Enforcement (the "Division") has determined that violations of the California Labor Code have been committed by the contractor and/or subcontractor identified above. In accordance with Labor Code section 174 I, the Division hereby issues this Civil Wage and Penalty Assessment.

The nature of the violations of the Labor Code and the basis for the assessment are as follows:

Wage Violations: Violation of Labor Code §177 I, 1774: Failure to pay the required prevailing wage rates to Inside Wiremen for their work on this public project; Failure to correctly classify workers who performed work under the Inside Wireman scope as Inside Wiremen; Failure to pay travel pay and mileage to Communication & System Installers as required. Violation of Labor Code §1813: Failure to pay overtime worked at the required overtime rates to Inside Wiremen; Failure to pay Saturdays/Sundays worked at the required Saturday/Sunday rates to Inside Wiremen.

Apprenticeship Violations: \_\_\_\_\_

The attached Audit Summary further details the basis for this Assessment and itemizes the calculation of wages and penalties due under Labor Code sections 1775 and 1813.

The Division has determined that the total amount of wages due is: \$115,008.64

The Division has determined that the total amount of penalties assessed under Labor Code sections 1775 and 1813 is: \$74,250.00

The Division has determined that the amount of penalties assessed under Labor Code section 1777.7 is: \$0.00

The Division has determined that the amount of penalties assessed under Labor Code section 1776 against Tri - Signal Integration Inc. is: \$0.00

**Please refer to page 5 for specific withholding obligations pertaining to these amounts.**

STATE LABOR COMMISSIONER

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

Industrial Relations Representative

**Notice of Right to Obtain Review - Formal  
Hearing**

In accordance with Labor Code Section 1742, an affected contractor or subcontractor may obtain review of this Civil Wage and Penalty Assessment by transmitting a written request to the office of the Labor Commissioner that appears below within 60 days after service of the assessment.

**To obtain a hearing, a written Request for Review must be transmitted to the following address:**

Labor Commissioner - State of California Civil Wage  
and Penalty Assessment Review Office

PO Box 255809  
2801 Arden Way  
Sacramento, CA 95825

A Request for Review either shall clearly identify the Civil Wage and Penalty Assessment from which review is sought, including the date of the assessment, or it shall include a copy of the assessment as an attachment, and shall also set forth the basis upon which the assessment is being contested. In accordance with Labor Code section 1742, the contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Commissioner at the hearing within 20 days of the Labor Commissioner's receipt of the written Request for Review.

**Failure by a contractor or subcontractor to submit a timely Request for Review will result in a final order which shall be binding on the contractor and subcontractor, and which shall also be binding, with respect to the amount due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. Labor Code section 1743.**

In accordance with Labor Code section 1742(d), a certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the State against the person assessed in the amount shown on the certified order.

(continued on next page)

### **Opportunity for Settlement Meeting**

In accordance with Labor Code section 1742.1(c), the labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of this Civil Wage and Penalty Assessment, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking a hearing as set forth above under the heading Notice of Right to Obtain Review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. This opportunity to timely request an informal settlement meeting is in addition to the right to obtain a formal hearing, and a settlement meeting may be requested even if a written Request for Review has already been made.

Requesting a settlement meeting, however, does not extend the 60-day period during which a formal hearing may be requested.

A written request to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding this assessment must be transmitted to Dina Morsi at the following address:

State of California - Department of Industrial Relations Division of  
Labor Standards Enforcement - Public Works Unit  
7718 Meany Avenue  
Bakersfield, CA 93308

### **Payment of Civil Wage and Penalty Assessment**

Payment of the assessed wages and/or penalties must be made by check or money order payable to the Division of Labor Standards Enforcement and mailed to the following address along with a copy of this Civil Wage and Penalty Assessment:

State of California - Department of Industrial Relations Division  
of Labor Standards Enforcement - Cashiering Unit 2031 Howe  
Avenue, Suite 100  
Sacramento, CA 95825-0196

(continued on next page)

### Liquidated Damages

In accordance with Labor Code section 1742.1(a), after 60 days following the service of this Civil Wage and Penalty Assessment, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages in an amount equal to the wages, or portion that still remains unpaid. If the assessment subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor or subcontractor demonstrates to the satisfaction of the Director of the Department of Industrial Relations that he or she had substantial grounds for believing the assessment or notice to be an error, the Director shall waive payment of the liquidated damages.

Notwithstanding the above, in accordance with Labor Code 1742.1(b), there shall be no liability for liquidated damages if the full amount of the assessment or notice, including penalties, has been deposited with the Department of Industrial Relations, within 60 days following service of the Assessment or Notice, for the Department to hold in escrow pending administrative and judicial review. The Department shall release such funds, plus any interest earned, at the conclusion of all administrative and judicial review to the persons and entities that are found to be entitled to such funds.

Deposits must be made by check or money order payable to the Department of Industrial Relations with a letter and a copy of the Civil Wage and Penalty Assessment and mailed to:

Department of Industrial Relations  
Attention Cashiering Unit  
P.O. Box 420603  
San Francisco, CA 94142

**The Amount of Liquidated Damages Available Under this Assessment is: \$115,008.64**

(continued on next page)

Statutory Withholding Obligations

1. Awarding Body Withholding Obligations

In accordance with Labor Code section 1727(a), before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom all amounts required to satisfy this Civil Wage and Penalty Assessment. The amount required to satisfy this Civil Wage and Penalty Assessment shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

The amount which must be withheld and retained by the awarding body pursuant to this Civil Wage and Penalty Assessment is:

Wages Due:	\$115,008.64
Penalties Due Under Labor Code sections 1775 and 1813:	\$74,250.00
Penalties Due Under Labor Code section 1777.7:	\$0.00
Penalties Due Under Labor Code sections 1776:	\$0.00
<b>Total Withholding Amount:</b>	<b>\$189,258.64</b>

2. Prime Contractor Withholding Obligations:

In accordance with Labor Code section 1727(b), if the awarding body has not retained sufficient money under the contract to satisfy this Civil Wage and Penalty Assessment based on a subcontractor's violations, the contractor shall, upon the request of the Labor Commissioner, withhold sufficient money due the subcontractor under the contract to satisfy the assessment and transfer the money to the awarding body. This amount shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

If this box is checked, the Labor Commissioner hereby requests that the prime contractor withhold the following amount from money due the subcontractor and transfer the money to the awarding body to satisfy this assessment:

Wages Due:	\$115,008.64
Penalties Due Under Labor Code sections 1775 and 1813:	\$74,250.00
Penalties Due Under Labor Code section 1777.7:	\$0.00
Penalties Due Under Labor Code sections 1776:	\$0.00
<b>Total Withholding Amount:</b>	<b>\$189,258.64</b>

Distribution:

Awarding Body Surety(s) on  
Bond Prime Contractor  
Subcontractor



STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

**CERTIFICATION OF SERVICE BY  
MAIL (C.C.P. 1013a) OR CERTIFIED  
MAIL**

I, Linda Rodriguez, do hereby certify that I am a resident of or employed in the County of  
Kern, over 18 years of age, and not a party to the within action, and that I am employed at  
and my business address is:

Division of Labor Standards Enforcement  
Bureau of Field Enforcement  
7718 Meany Ave.  
Bakersfield, CA 93308

On May 1, 2015, served the within: (1) Civil Wage and Penalty Assessment

by placing a true copy thereof in an envelope addressed as follows:

UC Merced , Physical Planning
767 E. Yosemite, Suite C
Merced, CA 95340
Thomas E Lollinin

San Diego, CA 92186

.
Sylmar, CA 91342

Travelers Casualty and Surety Company of America
Care of: Corporation Service Company
2710 Gateway Oaks Dr.
Sacramento, CA 95833

and then sealing the envelope and with postage and certified mail fees (if applicable) thereon fully prepaid,  
and then depositing it in the United States mail in Bakersfield by:

- Original first class Mail
- Certified Mail
- Registered mail

*I certify under penalty of perjury that the fore going is true and correct*

Executed on May 1, 2015 , at Bakersfield , County of Kern , California

\_\_\_\_\_  
Signature

EXHIBIT N:

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STOP PAYMENT NOTICE CHECKLIST

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1. Received valid stop payment notice?
2. If claimant is a 2nd or 3rd tier sub-contractor, was preliminary notice received?
3. Was all legally required information included on the stop payment notice?
4. Was stop payment notice timely filed?
5. Did claimant pay the University \$10 with stop payment notice?
6. Was 125% of claim withheld?
7. Was general contractor informed?
8. Was Exhibit F (*"Notice to stop payment notice claimant of time within which an action to enforce payment of claim must be commenced"*) sent to claimant?
9. \*\*Prior to releasing any funds withheld pursuant to stop payment notice, was OGC contacted to determine legal fees or cost incurred?
10. Payment was made because:
  - Claimant withdrew stop payment notice
  - Received acceptable release bond
  - Received affidavit from general contractor and
  - claimant failed to respond within 20 days
  - Claimant failed to perfect his claim
  - General Counsel office instructed to pay

End.