

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Kirk H. Havs, Esq. AZ Bar 016535 1 East Washington Street, Suite 400 Phoenix, AZ 85004 TELEPHONE NO.: 602-256-0000 FAX NO.: 602-256-2488 E-MAIL ADDRESS: kirk.havs@knchlaw.com ATTORNEY FOR (Name): Def./Counter-Claimant Navajo County Comm. College	FOR COURT USE ONLY FILED 16 SEP 20 PM 2:57 ROSA JUNQUEIRO, CLERK
Court for county in which discovery is to be conducted: Stockton SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Joaquin STREET ADDRESS: 222 E. Weber MAILING ADDRESS: P.O. Box 201022 CITY, STATE, AND ZIP CODE: Stockton, CA 95202 BRANCH NAME: Stockton Courthouse	BY <u>Donna Edwards</u> DEPUTY
Court in which action is pending: Navajo County Superior Court Name of Court: Navajo County Superior Court STREET ADDRESS: 201 E. Jefferson Street MAILING ADDRESS: 201 E. Jefferson Street CITY, STATE, AND ZIP CODE: Phoenix, AZ 85003 COUNTRY: United States	#30 #103099 BY FAX
PLAINTIFF/PETITIONER: Whiteriver Construction, Inc. DEFENDANT/RESPONDENT: Navajo County Community College	CALIFORNIA CASE NUMBER (if any assigned by court): 2016-04
SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS IN ACTION PENDING OUTSIDE CALIFORNIA	CASE NUMBER (of action pending outside California): CV2015-00265

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):
Star Building Systems, 12101 E. Brandt Road, Lockeford, CA 95237

1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows:

To (name of deposition officer): Koeller Nebeker Carlson Haluck LLP On (date): October 3, 2016 At (time): 5:00 p.m. Location (address): 1 E. Washington, Suite 400, Phx, Az 85004
Do not release the requested records to the deposition officer prior to the date and time stated above.

- a. by delivering a true, legible, and durable **copy** of the business records described in item 3, enclosed in a sealed inner wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1.
- b. by delivering a true, legible, and durable **copy** of the business records described in item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).
- c. by making the **original** business records described in item 3 available for inspection at your business address by the attorney's representative and permitting **copying** at your business address under reasonable conditions during normal business hours.
2. The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records must be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561.
3. The records to be produced are described as follows (if electronically stored information is demanded, the form or forms in which each type of information is to be produced may be specified):
See Exhibit A
- Continued on Attachment 3 (use form MC-025).
4. Attorneys of record in this action or parties without attorneys are (name, address, telephone number, and name of party represented):
Donald Loose, 11240 N. Tatum Blvd., Suite 110, Phx, AZ 85028
- Continued on Attachment 4 (use form MC-025).

PLAINTIFF/PETITIONER: Whiteriver Construction, Inc.	CASE NUMBER (of action pending outside California):
DEFENDANT/RESPONDENT: Navajo County Community College	

5. If you have been served with this subpoena as a custodian of consumer or employee records under Code of Civil Procedure section 1985.6 and a motion to quash or an objection has been served on you, a court order or agreement of the parties, witnesses, and consumer or employee affected must be obtained before you are required to produce consumer or employee records.

6. Other terms or provisions from out-of-state subpoena, if any (specify):

Continued on Attachment 6 (use form MC-025).

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF \$500 AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: **SEP 20 2016**

 (TYPE OR PRINT NAME)

Donna Edwards

Donna Edwards

 (SIGNATURE OF PERSON ISSUING SUBPOENA)
 Legal Process Clerk II

 (TITLE)

PROOF OF SERVICE OF SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS

1. I served this Subpoena for Production of Business Records In Action Pending Outside California by personally delivering a copy to the person served as follows:

- a. Person served (name):
- b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. Witness fees and mileage both ways (check one):

(1) were paid. Amount: \$ _____

(2) were not paid.

(3) were tendered to the witness's public entity employer as required by Government Code section 68097.2. The amount tendered was (specify): \$ _____

f. Fee for service: \$ _____

2. I received this subpoena for service on (date):

3. I also served a completed Proof of Service of Notice to Consumer or Employee and Objection (form SUBP-025) by personally delivering a copy to the person served as described in 1 above.

4. Person serving:

- a. Not a registered California process server
- b. California sheriff or marshal
- c. Registered California process server
- d. Employee or independent contractor of a registered California process server
- e. Exempt from registration under Business and Professions Code section 22350(b)
- f. Registered professional photocopier
- g. Exempt from registration under Business and Professions Code section 22451
- h. Name, address, telephone number, and, if applicable, county of registration and number:

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

(For California sheriff or marshal use only)
 I certify that the foregoing is true and correct.

Date:

Date:

 (SIGNATURE)

 (SIGNATURE)

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Kirk H. Hays, Esq. AZ Bar 016535 1 East Washington Street, Suite 400 Phoenix, AZ 85004 TELEPHONE NO.: 602-256-0000 FAX NO. (Optional): 602-256-2488 E-MAIL ADDRESS (Optional): kirk.hays@knchlaw.com ATTORNEY FOR (Name): Def./Counter-Claimant Navajo County Comm. College</p>	<p>FOR COURT USE ONLY</p>
<p>Court for county in which discovery is to be conducted: Stockton SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Joaquin STREET ADDRESS: 222 E. Weber MAILING ADDRESS: P.O. Box 201022 CITY AND ZIP CODE: Stockton 95202 BRANCH NAME: Stockton Courthouse</p>	
<p>Court in which action is pending: Navajo County Superior Court Name of Court: Navajo County Superior Court STREET ADDRESS: 201 W. Jefferson Street MAILING ADDRESS: 201 W. Jefferson Street CITY, STATE, AND ZIP CODE: Phoenix, Arizona, 85003 COUNTRY: United States</p>	
<p>PLAINTIFF/PETITIONER: Whiteriver Construction, Inc. DEFENDANT/RESPONDENT: Navajo County Community College</p>	<p>CALIFORNIA CASE NUMBER (if any assigned by court)</p>
<p>APPLICATION FOR DISCOVERY SUBPOENA IN ACTION PENDING OUTSIDE CALIFORNIA</p>	<p>CASE NUMBER (of action pending outside California): CV2015-00265</p>

1. Applicant (name): **Navajo County Community College** is (check one):
 Plaintiff Petitioner Defendant Respondent Other (specify):
 in the above action.

2. Applicant requests that this court issue a subpoena for discovery under Code of Civil Procedure sections 2029.100 – 2029.900 to (name and address of deponent or person in control of property):
Star Building Systems, 12101 E. Brandt Road, Lockeford, CA 95237

3. Attached is (check one): the original a true and correct copy of the document from the court in which the action is pending that requires the person in 2 to (check all that apply):
 a. attend and give testimony at a deposition;
 b. produce and permit inspection and copying of designated materials, information, or tangible things in the possession, custody, or control of the deponent;
 c. permit the inspection of premises under the control of the deponent.

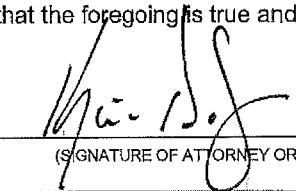
4. Applicant submits with this application a proposed subpoena that includes terms identical to those in the document from the out-of-state court. (Code of Civil Procedure section 2029.300(d).)

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

Date: **9/9/16**

Kirk Hays

(TYPE OR PRINT NAME)

▶ 
 (SIGNATURE OF ATTORNEY OR PARTY WITHOUT ATTORNEY)

Note: This application must be accompanied by the fee specified in Government Code section 70626. A discovery subpoena must be personally served on the deponent in compliance with California law, including Code of Civil Procedure section 1985.

1 Kirk H. Hays, Esq., State Bar No. 016535
2 **KOELLER, NEBEKER, CARLSON & HALUCK, LLP**
3 One East Washington Street, Suite 400
4 Phoenix, Arizona 85004
5 Telephone: (602) 256-0000
6 Facsimile: (602) 256-2488
7 Kirk.Hays@knchlaw.com
8 *Attorneys for Defendant*

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF NAVAJO**

11 WHITERIVER CONSTRUCTION, INC., an
12 Arizona corporation,

13 Plaintiff/Counter-Defendant,

14 vs.

15 NAVAJO COUNTY COMMUNITY
16 COLLEGE DISTRICT, an Arizona
17 Community College District,

18 Defendant/Counter-Claimant.

Case No.: CV2015-00265

**SUBPOENA DUCES TECUM TO
STAR BUILDING SYSTEMS**

(Records only)

(Assigned to Hon. Michala M. Ruechel)

19 **THE STATE OF ARIZONA TO:** Custodian of Records
20 Star Building Systems
21 An NCI Company
22 12101 E. Brandt Road
23 Lockforde, CA 95237

24 **YOU ARE HEREBY COMMANDED**, to produce and permit inspection, copying, testing, or
25 sampling of the following designated documents, electronically stored information or tangible
26 things, or to permit the inspection of premises: **See Exhibit "A" hereto** at the place, date and
27 time specified below:

28 **PLACE OF PRODUCTION:** Koeller Nebeker Carlson Haluck, LLP
One East Washington
Suite 400
Phoenix, AZ 85004
(602) 256-0000

1 **DATE AND TIME:** Monday, October 3, 2016 at 5:00 p.m.

2 THIS SUBPOENA MAY BE COMPLIED WITH BY MERELY MAILING THE RECORDS
3 OR LEGIBLE COPIES TO THE ADDRESS ABOVE BY THE DATE INDICATED
4 ABOVE. The attached Affidavit of Custodian of Records must be executed and returned with
5 the records or copies.

6 You have been subpoenaed by Defendant NAVAJO COUNTY COMMUNITY COLLEGE
7 DISTRICT, whose attorney's name, address and telephone number are as follows:

8
9 Kirk H. Hays, Esq.
Koeller Nebeker Carlson Haluck, LLP
10 One East Washington
Suite 400
11 Phoenix, AZ 85004
(602) 256-0000
12

13 **Your Duties In Responding To This Subpoena**

14 ***Attendance at a Trial.*** If this subpoena commands you to appear at a trial, you must appear at
15 the place, date and time designated in the subpoena unless you file a timely motion with the
16 court and the court quashes or modifies the subpoena. *See* Rule 45(b)(5) and Rule 45(e)(2) of
17 the Arizona Rules of Civil Procedure. *See also* "Your Right To Object To This Subpoena"
18 section below. Unless a court orders otherwise, you are required to travel to any part of the
19 state to attend and give testimony at a trial. *See* Rule 45(b)(3)(A) of the Arizona Rules of Civil
20 Procedure.

21 ***Attendance at a Hearing or Deposition.*** If this subpoena commands you to appear at a hearing
22 or deposition, you must appear at the place, date and time designated in this subpoena unless
23 either: (1) you file a timely motion with the court and the court quashes or modifies the
24 subpoena; or (2) you are not a party or a party's officer and this subpoena commands you to
25 travel to a place other than: (a) the county in which you reside or you transact business in
26 person; or (b) the county in which you were served with the subpoena or within forty (40) miles
27 from the place of service; or (c) such other convenient place fixed by a court order. *See* Rule
28

1 45(b)(3)(B) and Rule 45(e)(2)(A)(ii) of the Arizona Rules of Civil Procedure. *See also* “You
2 Right To Object To This Subpoena” section below.

3 ***Production of Documentary Evidence or Inspection of Premises.*** If this subpoena commands
4 you to produce and permit inspection, copying, testing or sampling of designated documents,
5 electronically stored information, or tangible things, you must make the items available at the
6 place, date and time designated in this subpoena, and in the case of electronically stored
7 information, in the form or forms requested, unless you provide a good faith written objection
8 to the party or attorney who served the subpoena. *See* Rule 45(c)(5) of the Arizona Rules of
9 Civil Procedure. *See also* “Your Right To Object To This Subpoena” section below. Similarly,
10 if this subpoena commands you to make certain premises available for inspection, you must
11 make the designated premises available for inspection on the date and time designated in this
12 subpoena unless you provide a good faith written objection to the party or attorney who served
13 the subpoena. *See* Rule 45(c)(5) of the Arizona Rules of Civil Procedure. *See also* “Your
14 Right to Object to This Subpoena” section below.

15 You should note that a command to produce certain designated materials, or to permit
16 the inspection of premises, *may* be combined with a command to appear at a trial, hearing or
17 deposition. *See* Rule 45(b)(2) of the Arizona Rules of Civil Procedure. You do not, however,
18 need to appear in person at the place of production or inspection unless the subpoena *also* states
19 that you must appear for and give testimony at a hearing, trial or deposition. *See* Rule 45(c)(3)
20 of the Arizona Rules of Civil Procedure.

21 If the subpoena commands you to produce documents, you have the duty to produce the
22 designated documents as they are kept by you in the usual course of business, or you may
23 organize the documents and label them to correspond with the categories set forth in the
24 subpoena. *See* Rule 45(c)(4) of the Arizona Rules of Civil Procedure.

25 Your Right To Object To This Subpoena

26 ***Generally.*** If you have concerns or questions about this subpoena, you should first contact the
27 party or attorney who served the subpoena. The party or attorney serving the subpoena has a
28 duty to take reasonable steps to avoid imposing an undue burden or expense on you. The

1 superior court enforces this duty and may impose sanctions upon the party or attorney serving
2 the subpoena if this duty is breached. See Rule 45(e)(1) of the Arizona Rules of Civil
3 Procedure.

4 ***Procedure of Objecting to a Subpoena for Attendance at a Hearing, Trial or Deposition.*** If
5 you wish to object to this subpoena commanding your appearance at a hearing, trial or
6 deposition, you must file a motion to quash or modify the subpoena with the court to obtain a
7 court order excusing you from complying with this subpoena. See Rules 45(b)(5) and 45(e)(2)
8 of the Arizona Rules of Civil Procedure. The motion must be filed in the superior court of the
9 county in which the case is pending or in the superior court of the county of which the
10 subpoena was issued. See Rule 45(e)(2)(A) and (B) of the Arizona Rules of Civil Procedure.
11 The motion must be filed before the time specified for compliance or within 14 days after the
12 subpoena is served, whichever is earlier. See Rule 45(e)(2)(D) of the Arizona Rules of Civil
13 Procedure. You must send a copy of any motion to quash or modify the subpoena to the party
14 or attorney who served the subpoena. See Rule 45(e)(2)(E) of the Arizona Rules of Civil
15 Procedure.

16 The court *must* quash or modify a subpoena:

- 17 (1) if the subpoena does not provide a reasonable time for compliance;
- 18 (2) unless the subpoena commands your attendance at a trial, if you are not a party or a
19 party's officer and if the subpoena commands you to travel to a place other than: (a) the county
20 in which you reside or transact business in person; (b) the county in which you were served
21 with a subpoena, or within forty (40) miles from the place of service; or (c) such other
22 convenient place fixed by a court order; or
- 23 (3) if the subpoena requires disclosure of privileged or other protected matter, if no
24 exception or waiver applies; or
- 25 (4) if the subpoena subjects you to undue burden.

26 See Rule 45(e)(2)(A) of the Arizona Rules of Civil Procedure.

27 The court *may* quash or modify a subpoena:

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1 (1) if the subpoena requires you to disclose a trade secret or other confidential research
2 development or commercial information;

3 (2) if you are an unretained expert and the subpoena requires you to disclose your
4 opinion or information resulting from your study that you have not been requested by any party
5 to give on matters that are specific to the dispute;

6 (3) if you are not a party or party's officer and the subpoena would require you to incur
7 substantial travel expense; or

8 (4) if the court determines that justice requires the subpoena to be quashed or modified.

9 *See* Rule 45(e)(2)(B) of the Arizona Rules of Civil Procedure.

10 In these last four circumstances, a court may, instead of quashing or modifying a
11 subpoena, order your appearance or order the production of material under specified conditions
12 if: (1) the serving party or attorney shows a substantial need for the testimony or material that
13 cannot be otherwise met without undue hardship; and (2) if your travel expenses or the
14 expenses resulting from the production are at issue, the court ensures that you will be
15 reasonably compensated. *See* Rule 45(e)(2)(C) of the Arizona Rules of Civil Procedure.

16 ***Procedure for Objecting to Subpoena For Production of Documentary Evidence.*** If you
17 wish to object to a subpoena commanding you to produce documents, electronically stored
18 information or tangible items, or to permit the inspection of premises, you may send a good
19 faith written objection to the party or attorney serving the subpoena that objects to: (1)
20 producing, inspecting, copying, testing or sampling any or all of the materials designated in the
21 subpoena; (2) inspecting the premises; or (3) producing electronically stored information in the
22 form or forms requested. You must send your written objection to the party or attorney who
23 served the subpoena before the time specified for compliance or within 14 days after the
24 subpoena is served, whichever is earlier. *See* Rule 45(c)(5)(A)(ii) of the Arizona Rules of Civil
25 Procedure.

26 If you object because you claim the information requested is privileged, protected, or
27 subject to protection as trial preparation material, you must express the objection clearly, and
28 support each objection with a description of the nature of the document, communication or item

1 not produced so that the demanding party can contest the claim. *See* Rule 45(c)(5)(C) of the
2 Arizona Rules of Civil Procedure.

3 If you object to the subpoena in writing, you do not need to comply with the subpoena
4 until a court orders you to do so. It will be up to the party or attorney serving the subpoena to
5 first personally consult with you and engage in good faith efforts to resolve your objection and,
6 if the objection cannot be resolved, to seek an order from the court to compel you to provide the
7 documents or inspection requested, after providing notice to you. *See* Rule 45(c)(5)(B) of the
8 Arizona Rules of Civil Procedure.

9 If you are not a party to the litigation, or a party's officer, the court will issue an order to
10 protect you from any significant expense resulting from the inspection and copying
11 commanded. *See* Rule 45(c)(6)(B) of the Arizona Rules of Civil Procedure.

12 Instead of sending a written objection to the party or attorney who served the subpoena, you
13 also have the option of raising your objections in a motion to quash or modify the subpoena.
14 *See* Rule 45(e)(2) of the Arizona Rules of Civil Procedure. The procedure and grounds for
15 doing so are described in the section above entitled "Procedure for Objecting to a Subpoena for
16 Attendance at a Hearing, Trial or Deposition."

17 If the subpoena *also* commands your attendance at a hearing, trial or deposition, sending
18 a written objection to the party or attorney who served the subpoena does not suspend or
19 modify your obligation to attend and give testimony at the date, time and place specified in the
20 subpoena. *See* Rule 45(c)(5)(A)(iii) of the Arizona Rules of Civil Procedure. If you wish to
21 object to the portion of this subpoena requiring your attendance at a hearing, trial or deposition,
22 you must file a motion to quash or modify the subpoena as described in the section above
23 entitled "Procedure for Objecting to a Subpoena for Attendance at a Hearing, Trial or
24 Deposition." *See* Rule 45(b)(5) and 45(c)(5)(iii) of the Arizona Rules of Civil Procedure.

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ADA Notification

Requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled court proceeding.

SIGNED AND SEALED this date: _____

CLERK OF THE COURT

COPY

SEP 20 2016

By _____

Deputy Clerk



MICHAEL K. JEANES, CLERK
C. FLORES
DEPUTY CLERK

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EXHIBIT "A"

Produce all documents in your possession or control relating in any way to the Northland Pioneer College Painted Desert Campus Skills Center construction project, including but not limited to:

- **Your subcontract with Whiteriver Construction, Inc. and any change orders or other modifications to that subcontract.**
- **All correspondence—including email—with Whiteriver.**
- **Any sub-subcontracts you entered into with any entity performing work on your behalf on the project.**
- **All payment applications, liens, lien releases, drafts, checks or any other documents concerning payment.**
- **All construction schedules, schedule updates, notice to proceed, start work orders or any other documents relating in any way to the progress of the work on the project.**
- **All submittals submitted by you and any response to same.**
- **All Requests for Information, Change Orders, Change Order Requests, and Architect's Supplemental Instructions.**
- **Any notices of claims, demands, offsets, lawsuits, demands for arbitration, arbitration documents or any other documents evidence any dispute with Whiteriver over payment, performance of time for performance related to the project.**
- **Plans, drawings, specifications, manufacturer's instructions, directives or other documents relied upon by You in performing work on the project.**

AFFIDAVIT OF CUSTODIAN OF RECORDS

STATE OF CALIFORNIA)
) ss.
County of _____)

Being first duly sworn upon his/her oath, affiant, _____

does state as follows:

1. I am a duly authorized custodian of records described in the attached Subpoena Duces Tecum and I have authority to certify the records.
2. The attached copies are true and correct copies of all the responsive records described in the Subpoena Duces Tecum comprising of _____ pages.

Further affiant sayeth not.

Custodian of Records for
Star Building Systems

SUBSCRIBED AND SWORN to before me this ___ day of _____, 2016.

Notary Public

My Commission Expires: _____