



COOPER ENGINEERING, INC.
 524 Malloy Ct., Corona, CA 92880

STANDARD SUBCONTRACT

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**THE TERMS AND CONDITIONS SET FORTH IN CEI BID PROPOSAL ARE
 INCORPORATED**

LONG FORM STANDARD SUBCONTRACT

This "Subcontract" is made at _____,

as of this ____ day of _____, 20 ____, between:

CONTRACTOR

Name _____

Address _____

Phone/Email _____

and

SUBCONTRACTOR

Name _____

Address _____

Phone/Email _____

On or about the ____ day of _____, 20 ____, Contractor entered into a "Prime Contract" with:

OWNER

Name _____

Address _____

to contract the Project described in Section 1.

The Project is financed by:

CONSTRUCTION LENDER (if applicable)

Name _____

Address _____

The Project is to be constructed in accordance with the Prime Contract and the plans and specifications. Said plans and specifications have been prepared by or on behalf of

ARCHITECT/ENGINEER

Name _____

Address _____

Phone/Email _____

SECTION 1. ENTIRE CONTRACT

Contract Documents. The phrase “Contract Documents” is defined to mean this Subcontract, including any and all addenda and attachments hereto, and, the plans, specifications and other contract documents attached to or incorporated into the Prime Contract, including:

for the “Project” known as _____

and located at _____.

Subcontractor certifies that it is fully familiar with all of the terms of the Prime Contract, the location of the job site, and the conditions under which the Work is to be performed and that it enters into this Subcontract based upon its investigation of all such matters and is not relying on any opinions or representations of Contractor, and is properly licensed and qualified to perform the Work. This Subcontract represents the entire agreement between Contractor and Subcontractor, and supersedes any prior oral or written agreements or representations. The Prime Contract is incorporated in this Subcontract by reference, insofar as it relates directly to the Work. Subcontractor agrees to be bound to Contractor in the same manner and to the same extent as Contractor is bound to Owner under the Prime Contract. Where, in the Prime Contract, reference is made to Contractor, and the work or specifications therein pertain to Subcontractor’s trade, craft or type of work, such work or specifications shall be interpreted to apply to Subcontractor instead of to Contractor.

SECTION 2. SCOPE

Subcontractor agrees to furnish all labor, materials, equipment and other facilities required to complete the following “Work”:

Exhibit “B” Subcontractor Items / Terms

For the Project in accordance with the Contract Documents and as more particularly specified in:

Exhibit “B” Subcontractor Items / Terms

In the event of any dispute between Contractor and Subcontractor over the scope of the Work under the Contract Documents, and provided Contractor has made all timely payments due to Subcontractor then, Subcontractor will not stop Work but will prosecute the Work diligently to completion as directed by Contractor, and the dispute will be submitted for resolution in accordance with Section 17.

SECTION 3. SUBCONTRACT PRICE

Contractor agrees to pay Subcontractor for the strict performance of the Work the sum as referenced in Exhibit “B” Subcontractor Items / Terms or as set out in Section 26, subject to additions and deductions for changes in the Work as may be directed in writing by Contractor, and to make payment in accordance with Section 4.

SECTION 4. PAYMENT SCHEDULE/RETENTION

4.1 Schedule of Values. As a condition of payment, the Subcontractor shall provide a schedule of values satisfactory to the Contractor not more than fifteen (15) days from the date of execution of this Agreement.

4.2 Progress Payments. Contractor agrees to pay Subcontractor, in monthly progress payments, for labor and materials which have been placed in position by Subcontractor, with funds received by Contractor from Owner for Work performed by Subcontractor, as reflected in Contractor's applications for payment to Owner. Such monthly progress payments shall be made by Contractor within seven (7) days after receipt of payment from Owner. Final payment shall be made to Subcontractor pursuant to California Civil Code 8814. Subcontractor agrees to furnish, if and when required by Contractor, payroll affidavits, receipts, vouchers, releases of claims for labor and material, and agrees to furnish same from its subcontractors, suppliers and/or material suppliers performing Work or furnishing materials under this Subcontract, all in form satisfactory to Contractor, and it is agreed that no payment hereunder shall be made, except at Contractor's option, until and unless such documents have been furnished. Contractor, at its option, may make any payment due hereunder by check made payable jointly to Subcontractor and of its subcontractors and/or suppliers who have performed Work or furnished materials under this Subcontract. Any payment made hereunder prior to completion and acceptance of the Project, as referred to above, shall not be construed as evidence of acceptance or acknowledgement of completion of any part of the Work, or waiver of any Contractor's rights.

As a prerequisite for payments, the Subcontractor shall provide, in a form satisfactory to the Owner and Contractor, partial lien or claim waivers in the amount of the application for payment and affidavits covering its subcontractors and suppliers for completed Work. Such waivers may be conditional upon payment. In no event shall Contractor require the Subcontractor to provide an unconditional waiver of lien or claim; either partial or final, prior to receiving payment or in an amount in excess of what it has been paid.

4.3 Time of Application. The Subcontractor shall submit progress payment applications to the Contractor no later than the 20th day of each payment period for the Subcontract Work performed up to and including the last day of the prior payment period indicating work completed and, subject to approval by Owner and Contractor, materials and equipment received and suitably stored during the preceding payment period

4.4 Contractor's monthly progress payments to Subcontractor shall be subject to retention as follows (select one of the following options):

- If the Project is a private work of improvement, Contractor shall be entitled to retain _____ percent (___%) of the value of all Work included in any monthly progress payment to Subcontractor. This amount retained shall be paid with the final payment to Subcontractor.
- If the Project is a public work of improvement, and if Contractor requested performance and payment bonds from Subcontractor in the solicitation for bids and Subcontractor failed or refuse to provide such bonds, then Contractor shall be entitled to retain Ten percent (10%) of the value of all Work included in any monthly progress payment to Subcontractor. This amount retained shall be paid with the final payment to Subcontractor.
- If the Project is a public work of improvement, and if Contractor did not request performance and payment bonds from Subcontractor in the solicitation for bids, then Contractor shall be entitled to retain only that percentage specified in the Prime Contract of the value of all Work included in any monthly progress payment to Subcontractor. This amount retained shall be paid with the final payment to Subcontractor.
- If the Project is a public work of improvement, and if Contractor requested performance and payment bonds from Subcontractor in the solicitation for bids and Subcontractor provided such bonds, then Contractor shall be entitled to retain only that percentage specified in the Prime Contract of the value of all Work included in any monthly progress payment to Subcontractor. This amount retained shall be paid with the final payment to Subcontractor.

Contractor, provided that Contractor has made all payments due to Subcontractor, may withhold all or part of any payments claimed by Subcontractor, or, on account of subsequently discovered evidence, may nullify all or part of and any amounts previously paid, for any of the following reasons:

- (1) failure of the Subcontractor to make payments properly for labor, materials or equipment to its

- subcontractors and/or suppliers performing Work or furnishing materials under this Subcontract;
- (2) damage to the Owner, Contractor, or another subcontractor caused or alleged to be caused by Subcontractor;
 - (3) reasonable evidence that the Work may not be completed within the time required by this Subcontract;
 - (4) reasonable evidence that the unpaid balance of the Subcontract Price will not be adequate to cover any liquidated or delay damages for which Subcontractor is responsible;
 - (5) penalties assessed against Contractor or Subcontractor for failure of Subcontractor, or its subcontractors or suppliers, to comply with state, federal or local laws and regulations;
 - (6) failure by Subcontractor to submit insurance certificates and endorsements as required by Section 16, or failure by Subcontractor to maintain all required insurance

Any amounts so withheld or nullified shall be considered not due to Subcontractor under this Subcontract. When Subcontractor remedies any of the above reasons for withholding, Contractor shall pay within seven (7) days the amount previously withheld for that reason.

4.5 Delay in Payment. If Owner or other responsible party delays making payment to Contractor from which payment to Subcontractor is to be made, Contractor and its sureties shall have a reasonable time to make payment to Subcontractor.

If Subcontractor asserts a claim which involves, in whole or in part, acts or omissions which are the responsibility of Owner or another party, including but not limited to claims for failure to pay, extensions of time, delay damages, or extra Work, Contractor will present Subcontractor's claim to Owner or other responsible party. Subcontractor shall cooperate fully with Contractor in all steps taken in connection with prosecuting such claim. Subcontractor shall present, and shall bear the expense of presenting its own claims. Subcontractor shall be bound by any adjudication or award in any action or proceeding resolving such claim.

4.6 Final Payment

4.6.1 Application. Upon acceptance of the Work by the Owner and the Contractor and receipt from the Subcontractor of evidence of fulfillment of the Subcontractor's obligations in accordance with the Contract Documents and Subparagraph 4.6.2, the Contractor shall incorporate the Subcontractor final payment application into the Contractor's next application for payment to the owner.

4.6.2 Requirements. Before the Contractor shall be required to incorporate the Subcontractor's application for final payment into the Contractor's next application for payment the Subcontractor shall submit to the Contractor:

- (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or its property or the Contractor or the Contractor's surety might in any way be liable, have been paid or otherwise satisfied;
- (2) consent of surety to final payment, if required;
- (3) satisfaction of required closeout procedures;
- (4) certification that insurance required by the Contract Documents is to remain in effect beyond final payment pursuant to Section 16 and will not be cancelled or allowed to expire without at least thirty (30) days' written notice to the Contractor unless a longer period is stipulated in this Agreement;
- (5) other data, if required by the Contractor or Owner, such as receipts, releases, and waivers of liens to the extent and in such form as may be designated by the Contractor or Owner;
- (6) written warranties, equipment manuals, startup and testing required in Section 23; and

(7) as-built drawings if required by the Contract Documents.

4.6.3 Time of Payment. Final payment of the balance due of the Subcontract amount shall be made to the Subcontractor within seven (7) days after receipt by the Contractor of final payment from the Owner for such Work.

4.6.4 Waiver of Claims. A signed waiver of claims and final payment shall constitute a waiver of all claims by the Subcontractor relating to the Work, but shall in no way relieve the Subcontractor of liability for obligations assumed under section 18 and 19, or for faulty or defective work or services discovered after final payment.

SECTION 5. TIME

Time is of the essence for both parties to this Subcontract. Subcontractor shall provide Contractor with scheduling information and a proposed schedule for performance of the Work in a form acceptable to Contractor. Subcontractor shall conform to Contractor's progress schedule and all reasonable revisions or changes made thereto. Subcontractor shall prosecute the Work in a prompt and diligent manner in accordance with Contractor's progress schedule without unreasonably delaying or hindering Contractor's work or the work of other contractors or subcontractors. Contractor shall coordinate the Work with that of Contractor and all other contractors, subcontractors, and/or material suppliers, in a manner that will facilitate the efficient completion of the entire Project. Subcontractor shall furnish sufficient forces to ensure timely and proper performance of the Work in strict compliance with Contractor's progress schedule. Subcontractor shall promptly increase its forces, accelerate its performance, work overtime and weekends, if, in the option of Contractor, such work is necessary to maintain proper progress. Subcontractor shall conform to Contractor's hours of work. No overtime will be worked, acknowledged or paid unless pursuant to a prior written authorization from Contractor. Contractor shall have the right to decide the time and order in which various portions of the Project shall be installed and relative priority of the Work, and, in general, all other matters pertaining to the timely and orderly conduct of the work required to complete the Project. Should Subcontractor be delayed in the prosecution or completion of the Work by the act, neglect or default of Owner, Architect or Contractor, or should Subcontractor be delayed waiting for materials, if required to be furnished by Owner or Contractor, or by damage caused by fire or other casualty for which Subcontractor is not responsible, or by the combined action of the workmen, in no way caused by or resulting from fault or collusion on the part of Subcontractor, then the time herein fixed for the completion of the Work shall be extended the number of days that Subcontractor has been delayed, but no allowance or extension shall be made unless a claim therefor is presented in writing to Contractor within 14 days of the commencement of such delay, and under no circumstances shall the time of completion be extended to a date which will prevent Contractor from completing the entire Project within the time allowed Contractor by Owner for such completion.

In the event Contractor obtains additional compensation from owner on account of such delays, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor from Owner as is equitable under all of the circumstances. In the event that Contractor prosecutes a claim against Owner for additional compensation for any delay, Subcontractor shall cooperate fully with Contractor in the prosecution thereof. Subcontractor shall present its own delay claims.

SECTION 6. CHANGES IN THE WORK

Subcontractor shall make changes in the Work as reasonably directed by Contractor in writing. Such changes shall not invalidate this Subcontract.

The Subcontract Price and the time for Subcontractor's performance shall be adjusted by appropriate additions or deductions mutually agreed upon before Subcontractor performs the changed Work. Subcontractor shall supply Contractor with all documentation necessary to substantiate the amount of the addition to or deduction from the Subcontract Price or time. If Contractor and Subcontractor cannot agree on the amount of the addition or deletion, the work will be monitored on a time and material standard Caltrans force account basis unless the prime contract specifies a different force account method, and final price will be agreed upon within a reasonable length of time, Subcontractor shall be responsible for the timely performance of the Work as changed by Contractor's written direction.

Payment for changed Work shall be made in accordance with Section 4.

If a dispute arises about whether particular work is change work or if the Contractor and Subcontractor are unable to agree on an appropriate adjustment for change work, the Subcontractor is to file a written claim for additional compensation. The claim shall be filed before or soon after the start of the disputed work. The claim shall be in sufficient detail for the Contractor to make an evaluation of the merits of the claim. If the claim is not resolved by mutual written agreement, Subcontractor shall nonetheless proceed with and perform the work under protest. Such disputed work shall be performed and tracked under a standard force account basis in compliance with the requirements of the Prime Contractor. Any such work that remains disputed, shall be resolved pursuant to Section 17 of this Subcontract.

No change, alteration, or modification to or deviation from this Subcontract, the Contract Documents, Prime Contract, plans, or specifications, whether made in the manner provided in this Section or not, shall release or exonerate, in whole or in part, any bond or any surety on any bond given in connection with this Subcontract, and no notice is required to be given to such surety of any such change, alteration, modification, or deviation.

The modification in the Subcontract Price and/or the time for performance stated in a Subcontract Change Order shall unequivocally comprise the total price and time adjustment due or owed by Contractor to Subcontractor for the Work and changes defined therein.

SECTION 7. DAMAGES CAUSED BY DELAYS

- 7.1 If Subcontractor or Contractor should default in performance of the Work or payment therefore, or should otherwise commit any act which causes delay to the Work, the party in default shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages and liquidated damages, sustained by the non-defaulting party.
- 7.2 If liquidated damages are assessed against Contractor by reason of Subcontractor's failure to complete its Work on time, Contractor shall have the right to recover the amount of such damages from Subcontractor.

SECTION 8. BONDING OF SUBCONTRACTOR

Concurrently with the execution of this Subcontract, or at any time during performance of the Work by Subcontractor and upon 10 days advance written notice to Subcontractor, Subcontractor shall, if required by Contractor, execute a labor and material bond and a performance bond, each in an amount equal to one hundred percent (100%) of the Subcontract Price. Said bonds shall be executed by a corporate surety acceptable to Contractor and shall be in a form satisfactory to Contractor. Contractor shall pay the premium on said bonds unless otherwise provided herein or in the Contract Documents.

SECTION 9. CLAIMS & LIENS

If any suit is brought, or if any claim or lien is recorded or served, for labor performed or materials used on or furnished to the Project under this Subcontract, provided Contractor has made payment to Subcontractor for the same, then Subcontractor shall pay and satisfy any such claim, lien or judgment. Subcontractor agrees within ten (10) days after written demand to cause the effect of any such suit, claim or lien to be removed from the premises, and in the event Subcontractor shall fail so to do, Contractor is authorized to use whatever means it may deem appropriate to cause said claim, lien or suit to be removed or dismissed and the cost thereof, together with actual attorneys' fees, shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may contest any such claim, lien or suit.

It is understood and agreed that provided Contractor has made all timely payments due, the full and faithful performance of this Subcontract on the part of Subcontractor (including payment of any obligations due from the Subcontractor to Contractor and payment of any amounts due to labor or material suppliers furnishing labor or material for the Work) is a condition precedent to Subcontractor's right to receive payment for the Work performed, and any monies paid by Contractor to Subcontractor under the terms of this Subcontract shall be impressed with a trust in favor of labor and material suppliers furnishing labor and materials to Subcontractor for the Work.

SECTION 10. PROVISIONS FOR INSPECTION

- 10.1 Accommodation for Inspection.** Subcontractor shall at all times furnish to Contractor and its representatives, as well as Owner, Architect/Engineer and all governmental authorities with jurisdiction over the Work, safe and ample facilities for inspecting materials at the site of construction, shops, factories or any place of business of Subcontractor and its subcontractors and material suppliers where materials under this Subcontract may be in course of preparation, process, manufacture or treatment. Subcontractor shall furnish to Contractor as often as required by Contractor, full reports of the progress of the Work at any place where materials under this Subcontract may be in the course of preparation or manufacture. Such reports shall show the progress of such preparation and manufacture in such details as may be required by Contractor, including, but not limited to, any plans, drawings or diagrams in the course of preparation.
- 10.2 Permits, Fees, Licenses and Taxes.** The Subcontractor shall give timely notices to authorities pertaining to the Subcontract Work, and shall be responsible for all permits, fees, licenses, assessments, inspections, testing and taxes necessary to complete the Subcontract Work in accordance with the Contract documents.

SECTION 11. MATERIALS AND WORK FURNISHED BY OTHERS

In the event the Work includes installation of materials or equipment furnished by others or Work to be performed in areas to be constructed or prepared by others, it shall be the responsibility of Subcontractor to examine and accept, at the time of delivery or first access, the items so provided and thereupon handle, store and install the items with such skill and care as to insure a satisfactory completion of the Work. Use of such items or commencement of Work by Subcontractor in such areas shall be deemed to constitute acceptance thereof by Subcontractor. Loss or damage due to acts of Subcontractor shall be charged to the account of Subcontractor and deducted from monies otherwise due under this Subcontract.

SECTION 12. PROTECTION OF WORK

Subcontractor shall effectually secure and protect the Work and assume reasonable responsibility for the condition thereof until final acceptance by Architect/Engineer, Owner and Contractor. Subcontractor further agrees to provide such protection as is necessary to protect the work and the workers of Contractor, Owner and other subcontractors from Subcontractor's operations.

Subcontractor shall be liable for any loss or damage to any work in place or to any equipment and materials on the job site caused by it or its agents, employees or guests. Notwithstanding the status of any actual or potential recovery or claim under any insurance policy, in the event of any loss or damage to the work, Subcontractor shall immediately repair, replace or make good such loss or damage.

SECTION 13. LABOR RELATIONS

- 13.1** Subcontractor shall keep a representative at the job site during all times when the Work is in progress, and such representative shall be authorized to represent and bind Subcontractor as to all phases of the Work. Prior to commencement of the Work, Subcontractor shall provide Contractor with contact information for Subcontractor's representative, and in the event of any change of representative, Subcontractor shall provide Contractor with contact information for the new representative, prior to the change becoming effective.

Subcontractor agrees to be bound and to comply with all the terms and conditions of the labor agreements listed in Section 24 to the same degree and extent as if Subcontractor were a party to those agreements, including payments into the employee benefit trust funds required by the labor agreements listed in Section 24, and including Subcontractor's submission to, and Subcontractor's compliance with, the arbitration and other dispute resolution requirements of the labor agreements listed in Section 24. Subcontractor agrees to comply with the terms and provisions contained in such agreements for resolution of jurisdictional disputes. In the absence of any such procedure, or if such procedure fails to promptly resolve any jurisdictional dispute, Subcontractor agrees, at its own cost and expense, upon request of Contractor, to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board.

Subcontractor acknowledges that terms and conditions of the labor agreements listed in Section 24 may require that Subcontractor comply with additional labor agreements with unions affiliated with the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) but not listed in Section 24. If the terms and conditions of the listed labor agreements so require, Subcontractor shall perform the Work pursuant to all terms and conditions of the labor agreement with a union affiliated with the AFL-CIO.

Should there be picketing on the job site, and Contractor establishes a reserved gate for Subcontractor's use, Subcontractor shall continue the proper performance of the Work without interruption or delay.

Subcontractor further promises and agrees that it will bind and require all of its subcontractors and their subcontractors performing any Work of the type covered by any of the labor agreements listed below to agree to all of the foregoing promises and undertakings, to the same effect as herein provided.

13.2 Subcontractor hereby acknowledges that it is thoroughly familiar with all DBE/MBE/WBE/DVBE requirements pertaining to the Project. If Subcontractor claims status as a DBE/MBE/WBE/DVBE, Subcontractor shall take all steps necessary and shall make all necessary records available to Contractor and Owner to assure that Subcontractor is in compliance with such requirements. In the event that any sub-subcontractor or supplier of the Subcontractor is designated as or is required to be a DBE/MBE/WBE/DVBE, Subcontractor agrees to be responsible for insuring that said sub-subcontractor or supplier meets all applicable requirements. Subcontractor acknowledges that Contractor is relying upon Subcontractor's representations regarding the validity of Subcontractor's status, if any, as a DBE/MBE/WBE/DVBE and that misrepresentation of the status of Subcontractor or any of its sub-subcontractors or material suppliers is a material breach and grounds for immediate termination of this Subcontract. In the event of termination as the result of material misrepresentation of the status of the Subcontractor as a DBE/MBE/WBE/DVBE, Subcontractor shall not be entitled to any compensation not already paid.

13.3 Subcontractor shall comply with and agrees to be bound by all applicable federal, state and local laws and regulations, including, but not limited to, all provisions of the Fair Labor Standards Act, the Americans With Disabilities Act, the federal Family and Medical Leave Act, the California Labor Code, the California Fair Employment and Housing Act, and the California Family Rights Act. Attached hereto as Exhibit "A" are the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815. These provisions are incorporated by reference into this Subcontract when payment of prevailing wages is required by contract or law, and Subcontractor agrees to comply with these provisions and all interpretations thereof by the Director of the Department of Industrial Relations insofar as they are applicable to Subcontractor. Upon request, Subcontractor shall submit certified payroll records to Contractor no later than three (3) working days after labor has been paid. Prior to receiving final payment for Work performed on the Project, when payment of prevailing wages is required by contract or law, Subcontractor shall sign an affidavit under penalty of perjury that Subcontractor has paid the specified general prevailing rate of per diem wages to its employees for the proper craft needed to fulfill the obligations of this Subcontract and all amounts due pursuant to Labor Code section 1813. Subcontractor further promises and agrees that it will bind and require all of its sub-subcontractors and their subcontractors performing any Work under this Subcontract to agree to all of the foregoing promises and undertakings contained in this Section 13.3, to the same effect as herein provided.

13.4 Contractor has entered into the Southern California Laborers Master Labor Agreement, effective July 1, 2012 to June 30, 2015, and Subcontractor agrees to all of the following promises and undertakings contained in this section 13.4.

Subcontractor acknowledges that Contractor has entered into the following labor agreements covering work at the construction jobsite with the Southern California District Council of Laborers and its affiliated Local Unions: Southern California Laborers Master Labor Agreement, effective July 1, 2009 to June 30, 2012 ("Master Labor Agreement"). The Subcontractor acknowledges and agrees that a copy of the Master Labor Agreement is available to Subcontractor.

Subcontractor agrees that it is bound to and shall comply with all of the terms and conditions of the

Master Labor Agreement referenced above, including wages, trust fund contributions, working rules, the grievance/arbitration procedure and any other mechanism for the resolution of dispute contained in the Master Labor Agreement, on all covered work performed in the geographic area of the Master Labor Agreement, whether or not the work is performed for the Contractor.

Subcontractor further agrees to bind all its subcontractors performing job site work of the type covered by the Master Labor Agreement referenced above to become bound and comply with all of the terms and conditions of the Master Labor Agreement.

Subcontractor acknowledges that the Southern California District Council of Laborers and its affiliated Local Unions, and the Construction Laborers Trust Funds for Southern California are the intended third party beneficiaries of this contractual provision and may enforce this provision directly against Subcontractor.

SECTION 14. RECOURSE BY CONTRACTOR

14.1 Suspension.

14.1.1 Suspension by Owner for Convenience. Should Owner, for its convenience, suspend the entire Project or any part which includes the Work, and such suspension is not due to any act or omission of Contractor, or any other person or entity for whose acts or omissions Contractor may be liable, Contractor shall notify Subcontractor in writing and, upon receiving notification, Subcontractor shall immediately suspend the Work. Subcontractor, after receipt of Contractor's notice, shall notify Contractor in writing in sufficient time to permit Contractor to provide timely notice to Owner in accordance with the Prime Contract of the effect of such order upon the Work. To the extent provided in the Prime Contract and to the extent Contractor recovers such on Subcontractor's behalf, the Subcontract Price and the time for performance shall be equitably adjusted by Subcontract Change Order for the cost and delay resulting from any such suspension. Contractor agrees to cooperate with Subcontractor, at Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension and to permit Subcontractor to prosecute the claim, in the name of Contractor, for the use and benefit of Subcontractor.

14.1.2 Suspension by Contractor. The Contractor may, for its convenience, order Subcontractor in writing to suspend all or any part of the Work for such period of time as Contractor determines is appropriate. Phased work or interruptions of the Work for short periods of time shall not be considered a suspension. Subcontractor, after receipt of Contractor's written order, shall notify Contractor in writing the effect of such order upon the Work. The Subcontract Price and/or the time for performance shall be adjusted by Subcontract Change Order for any increase in the price or time of performance of the Work caused by such suspension. Neither the Subcontract Price nor the time for performance shall be adjusted for any suspension, to the extent that the suspension is due to the fault or negligence of Subcontractor.

14.2 Failure of Performance.

14.2.1 Right to Adequate Assurance. When reasonable grounds for insecurity arise with respect to Subcontractor's performance, Contractor may in writing demand adequate assurance of due performance. Failure to provide within ten (10) days of the demand such assurance of due performance as is adequate under the circumstances of the particular case is a default under Section 14.2.2.

14.2.2 Notice to Cure. Provided that Contractor has timely made all payments due Subcontractor, and if Subcontractor at any time refuses or neglects to supply enough properly skilled workers and proper materials, or fails to properly and diligently prosecute the Work, or fails to make prompt payment to its workers, sub-subcontractors or suppliers, or becomes delinquent with respect to contributions or payments required to be made to any health and welfare, pension, vacation, apprenticeship or other employee benefit program or trust, or fails to provide adequate assurance pursuant to Section 14.2.1, or is otherwise guilty of a material breach of a provision of this Subcontract, and fails within forty-eight (48) hours after receipt of written notice to commence and continue satisfactory correction of such

default with diligence and promptness, then Contractor, without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

- (a) supply such number of workers and quantity of materials, equipment and other facilities as Contractor deems necessary for completion of the Work or any part thereof which Subcontractor has failed to complete or perform, and charge the cost thereof to Subcontractor, who shall be liable for the payment of that cost and a markup of fifteen percent (15%) for overhead and profit, plus actual attorneys' fees incurred as a result of Subcontractor's failure of performance;
- (b) contract with one or more additional contractors to perform such part of the Work as Contractor shall determine will provide the most expeditious completion of the entire Project and charge the cost thereof to Subcontractor, who shall be liable for the payment of that cost and a markup of fifteen percent (15%) for overhead and profit, plus actual attorneys' fees incurred as a result of Subcontractor's failure of performance; and
- (c) withhold payment of any monies due Subcontractor pending corrective action to the extent required by and to the satisfaction of Contractor.

In the event of an emergency affecting the safety of persons or property, Contractor may proceed as above without notice to Subcontractor.

14.2.3 Termination for Default. Provided Contractor has made all payments due to Subcontractor and, if Subcontractor fails to commence and satisfactorily continue correction of a default within forty-eight (48) hours after receipt by Subcontractor of a notice issued under Section 14.2.2, then Contractor may, subject to any applicable listing laws, terminate Subcontractor's right to perform under this Subcontract and use any materials, implements, equipment, appliances or tools furnished by or belonging to Subcontractor to complete the Work without any further compensation to Subcontractor for such use. Contractor also may furnish those materials and equipment, and/or employ such workers or subcontractors as Contractor deems necessary to maintain the orderly progress of the Project.

In such case, Subcontractor shall be entitled to no further payment until the balance of the Work has been completed. At that time, all of the costs incurred by Contractor in performing the Work, and a markup of fifteen percent (15%) for overhead and profit on such costs, plus actual attorneys' fees as provided above, shall be deducted from any monies due or to become due Subcontractor. Subcontractor shall be liable for the payment of any amount by which such expenses may exceed the unpaid balance of the Subcontract Price.

14.3 Bankruptcy.

14.3.1 Termination Absent Cure. Upon the appointment of a receiver for Subcontractor or upon Subcontractor making an assignment for the benefit of creditors, or if Subcontractor seeks protection under the Bankruptcy Code or commits any other act of insolvency, Contractor may, absent any applicable legal limitation, terminate this Subcontract upon giving forty-eight (48) hours written notice, by certified mail, to Subcontractor, its trustee, and its surety, if any, unless Subcontractor, the surety, or the trustee, within the notice period:

- (a) promptly cures all defaults;
- (b) provides adequate assurance of future performance;
- (c) compensates Contractor for actual pecuniary loss resulting from such defaults; and
- (d) assumes the obligations of Subcontractor within the statutory time limits.

14.3.2 Interim Remedies. If Subcontractor is not performing in accordance with the Contractor's schedule at the time of entering an order for relief, or at any subsequent time, Contractor, while awaiting the

decision of Subcontractor or its trustee to reject or to accept this Subcontract and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under this Section as are reasonably necessary to maintain the Contractor's schedule. Contractor may offset against any sums due or to become due Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, and reasonable overhead, profit and actual attorneys' fees incurred as a result of Subcontractor's non-performance.

SECTION 15. INDEMNIFICATION

15.1 Subcontractor's Indemnification and Defense of Contractor. With the exception that this Section 15.1 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the statutes or public policy of the State of California, Subcontractor shall defend, indemnify, and save harmless Contractor, including its officers, directors, partners, joint venturers, agents, employees, affiliates, parents and subsidiaries, and each of them, of and from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity, of every kind and nature whatsoever ("Claims") arising out of or in connection with Subcontractor's obligations under this Subcontract. Subcontractor's duties under this Section 15.1 shall apply to Claims for, but not limited to:

- (a) Personal injury, including, but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to, any employees or agents of Subcontractor, Owner, Contractor, or any other subcontractor and/or damage to property of anyone (including loss of use thereof) caused or alleged to be caused in whole or in part by any act or omission of Subcontractor, its employees, agents, sub-subcontractors and others for whom Subcontractor is responsible.
- (b) Damages and penalties imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance or statute, caused by the action or inaction of Subcontractor.
- (c) Infringement of any patent rights which may be brought against the Contractor arising out of the Work.
- (d) Claims and liens (see Section 9) for labor performed or materials used or furnished to be used in performance of the Work, including all incidental or consequential damages resulting to Contractor from such claims or liens.
- (e) Subcontractor's failure to fulfill the covenants set forth in each subpart of Section 13.
- (f) Failure of Subcontractor to comply with the provisions of Section 16.
- (g) Any violation or infraction by Subcontractor of any law, order, citation, rule, regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees, including, but not limited to, the use of Contractor's or others' equipment, hoists, elevators, or scaffolds (see Sections 18 and 20).
- (h) Any failure or alleged failure to comply with the terms of this Subcontract or the Contract Documents.

The indemnification requirements of this Section 15.1 shall extend to Claims occurring after completion of Subcontractor's work. Subcontractor, however, shall not be obligated to indemnify Contractor for claims arising from the active negligence, sole negligence, or willful misconduct of Contractor, or its agents, employees, or independent contractors who are directly responsible to Contractor, or for defects in design furnished by such persons, or for Claims that do not arise out of the Work.

With respect to Claims by an employee of Subcontractor, anyone directly or indirectly employed by Subcontractor or anyone for whose acts it may be liable, the indemnification obligation under this Section shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts or other employee benefits act, if it provides for the exclusive remedy for such Claims.

Subcontractor shall promptly pay and satisfy any judgment or final decree that may be rendered against Contractor or its agents or employees, or any of them, arising out of any Claim covered by this Section 15.

15.2 Defense of Claims.

(a) Subcontractor shall reimburse Contractor or its agents or employees for any and all legal expense incurred by any of them in connection herewith or in enforcing the indemnity granted in this Section 15.

15.3 Risk of Loss. All Work done at the site or in preparing or delivering materials or equipment, or any or all of them, to the site shall be at the risk of Subcontractor exclusively until the completed Work is accepted by Contractor and Owner. The parties recognize that the waiver of subrogation provision of Section 16.10 and the builder's risk insurance provision of Section 16.12 may reduce the risk of loss and property damage indemnification obligations of Subcontractor.

15.4 Subcontractor's Indemnification and Defense of Owner and Others. With the exception that this Section 15.4 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the statutes or public policy of the State of California, Subcontractor shall defend, indemnify, and save harmless Owner, including its officers, directors, partners, joint venturers, agents, employees, affiliates, parents and subsidiaries, and each of them, as well as any other persons that Contractor is required to indemnify and defend under the Contract Documents, of and from any and all Claims, to the same extent that Contractor is required to defend and/or indemnify Owner and such other persons, but only with respect to Claims arising out of or in connection with Subcontractor's performance under this Subcontract and only to the extent caused by the negligence, recklessness or willful misconduct of Subcontractor.

15.5 Sub-subcontractor Indemnity. Subcontractor shall ensure that its sub-subcontractors of every tier also fully indemnify and defend Contractor, Owner and any other persons that Contractor is required to indemnify and defend under the Contract Documents, to the same extent that Contractor is required to indemnify and defend such persons.

SECTION 16. INSURANCE

16.1 Subcontractor's Insurance. Before commencing the Work, and as a condition of any payment due under this Subcontract, Subcontractor shall, at its own expense, procure and maintain insurance on all of its operations under this Subcontract whether the operations are by the Subcontractor or by anyone for whose acts Subcontractor may be liable. Insurance companies must be authorized to do business in the State of California and be A.M. Best rated A-VII or better. Such coverage shall be acceptable to Contractor, which acceptance shall not be unreasonably withheld, and shall include coverage as follows:

(a) **Workers' Compensation and Employer's Liability Insurance.** Workers' Compensation insurance shall be provided as required by any applicable law or regulation. Employer's Liability insurance shall be provided in amounts not less than:

\$1,000,000 each accident for bodily injury by accident
\$1,000,000 policy limit for bodily injury by disease
\$1,000,000 each employee for bodily injury by disease

A Waiver of Subrogation is required in favor of Contractor, Owner, and other parties as required by the General Contract Documents.

(b) **Commercial General Liability Insurance.** Subcontractor shall carry Commercial General Liability insurance covering operations by or on behalf of Subcontractor providing insurance for bodily injury and property damage for the limits of liability indicated below and including, but not limited to:

- Premises and Operations
- Products and Completed Operations coverage through the expiration of the statute of repose as set forth in 337.1 with minimum renewal of ten (10) years;
- Broad-form contractual liability (no limitations or modification to the ISO Standard General Liability policy definition of Insured Contract);
- Personal injury liability/advertising injury;
- Separation of insured's; and
- Removal of any explosion, collapse & underground damage exclusions

1) Minimum Limits of Liability: (based on total subcontract values)

For subcontractors less than \$100,000:

\$1,000,000	Each Occurrence
\$1,000,000	Products/Completed Operations Aggregate
\$2,000,000	Personal and Advertising Injury
\$2,000,000	General Aggregate

For subcontractors \$100,000 - \$249,999:

\$2,000,000	Each Occurrence
\$4,000,000	Products/Complete Operations Aggregate
\$2,000,000	Personal and Advertising Injury
\$4,000,000	General Aggregate

For subcontracts \$250,000 and greater:

\$5,000,000	Each Occurrence
\$5,000,000	Products/Complete Operations Aggregate
\$5,000,000	Personal and Advertising Injury
\$5,000,000	General Aggregate

- 2) If Subcontractor's Work involves the moving, lifting, lowering, rigging, or hoisting of property or equipment, Subcontractors shall carry Rigger's liability Insurance to insure against physical loss or damage of the property or equipment.
- 3) **Deductibles and/or Self-Insured Retentions ("SIR"):** All deductibles and/or SIR must be clearly identified on the Certificate of Insurance. Contractor reserves the right to reject any SIR in excess of \$25,000 or require that the Subcontractor provide a bond on the SIR at no additional cost to Contractor. If the policy has a deductible, the deductible endorsement must be provided. The SIR endorsement shall allow, but not obligate, the additional insured to pay any amounts to satisfy the SIR.
- 4) "Claims-made" and "modified occurrence" policy forms are not acceptable.
- 5) **Per Project Aggregate:** The policy must have the endorsement providing that the general aggregate limit applies separately to this project. If a Per Project Aggregate is not provided, the total aggregate limits of liability shall be \$5,000,000.
- 6) **Blanket Endorsements** are acceptable. If not available, Subcontractor must provide Project Specific Additional Insured & Waiver of Subrogation Listing (see attached).
- 7) **Additional Insured Endorsements:** Shall include a provision or endorsement, at least as broad

as the (Form B) CG20 10 11 85. Other endorsement forms may be acceptable if endorsement provides additional insured status for liabilities arising out of or in connection with the performance of Subcontractor's work.

- 8) **Primary and Not-Contributory:** The insurance coverage required and/or provided by the Subcontractor shall apply on a primary and non-contributing basis to any other insurance policy(ies) available to Contractor, the Owner and other parties as required by the General Contract Documents. Such Primary wording shall be included on the Additional Insured Endorsement and/or provided by separate Endorsement.
- 9) **Defense in Addition or Outside the Limits of Liabilities:** Costs to defend must not reduce the limit of liability and must pay above and beyond the policy limits.
- 10) If work is of a substantial maritime nature, special maritime coverage's such as Longshore and Harbor Workers, Jones Act and Protection and Indemnity coverage shall be required.

(c) **Auto Insurance**

Coverage shall be for "Any Auto", Owned, Non-owned and Hired. Bodily Injury Liability & Property Damage Combined Single Limit shall be not less than \$1,000,000.

A Waiver of Subrogation is required in favor of Contractor, Owner, and other parties as required by the General Contract Documents.

(d) **Professional Liability Insurance (Errors and Omissions)**

- 1) All Architects, Engineers, Surveyors, Consultants and SUBCONTRACTORS that include design services as part of the Work shall provide as follows:
 - Deductible no greater than \$25,000 per claim;
 - Policy must be maintained continuously for a total of ten (10) years from the date services are rendered;
 - Retroactive date of such policy must be on or before the date you began offering professional services; and
 - Limit of liability shall not be less than \$2,000,000 per claim
- 2) All others that provide any professional services not listed in above (Section D, Item 1) shall provide as follows:
 - Deductible no greater than \$25,000 per claim;
 - Policy must be maintained continuously for a total of ten (10) years from the date services are rendered;
 - Retroactive date of such policy must be on or before the date you began offering professional services; and
 - Limit of liability shall not be less than \$2,000,000 per claim.

Retroactive Date and Deductible must be shown on the Certificate of Insurance.

(e) **Property Insurance**

- 1) **Equipment & Property:** Subcontractor shall be responsible for procuring and maintaining property and equipment insurance for Subcontractor owned, leased, borrowed, and/or rented tools and equipment.

A waiver of subrogation is required in favor of Subcontractor, Owner and other parties as required by the General Contract Documents (see attached).

- 2) **Builder's Risk:** Subcontractor shall be responsible for the insurance policy deductible amount for any damage and/or loss under any Builder's Risk Policy.

Unless otherwise provided by the General Contract Documents, Contractor and Subcontractor agree to mutually waive all rights against the other and against other Subcontractors, Architects, Engineers, Owner, and other parties required by the General Contract Documents for loss or damage under any Builder's Risk or Installation Policy.

(f) **Other Requirements**

- 1) Certificates of Insurance and required endorsements, as evidence of all insurance required by this Agreement, shall be furnished by subcontractor to Contractor prior to commencement of Work. Insurance coverage's in the minimum amounts set for herein shall not be construed to relieve subcontractor for liability in excess of such coverage. Any acceptance by Contractor, or failure of subcontractor to provide Certificates of Insurance and Endorsements, shall in no way limit or relieve subcontractor of its duties and responsibilities
- 2) The subcontractor shall contractually require and ensure that all tiers of their subcontractors shall procure and maintain insurance in like form and amounts including the required endorsements. Copies of the Certificate of Insurance and required endorsements must be provided prior to subcontractors entering the site.
- 3) Consolidated Insurance Program Exclusions: Where a Consolidated Insurance Program is provided and subcontractor is performing Work as a non-enrolled and/or excluded party, subcontractor must provide confirmation of Insurer's exception to any such exclusion.
- 4) subcontractor agrees, upon written request by Contractor or Owner, to furnish copies of such policies, certified by an authorized representative of the insurer(s).
- 5) All insurance coverage provided by the subcontractor shall be through acceptable insurance carriers licensed in the state(s) where work is being performed with a minimum A.M. Best Company standard of A and a financial strength rating of X or greater.
- 6) GL, Auto & Workers' Compensation insurance policies should be endorsed to provide thirty (30) days written notice for cancellation of policy to Contractor & Owner. In the case that third party notice is not commercially available, subcontractor will provide such notice by registered mail to each of the additional insured's.
- 7) The Cancellation Section of the Certificate of Insurance should read: "Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions." A copy of the cancellation endorsement should be attached to Certificate of Insurance.
- 8) subcontractor agrees to the extent first dollar coverage, including defense of any claim is not available to Contractor or any other additional named insured because of an SIR, deductible or any form of self-insurance, subcontractor is obligated to assume the responsibilities of the insurer until

such time as the deductible, SIR or other condition of the insurer assuming its defense and/or indemnity obligations has been satisfied. subcontractor shall be responsible to pay any deductible or SIR.

- 9) Commercial Excess or Umbrella Liability insurance may be used to satisfy limits of liability requirements for the Commercial General Liability, Business Auto, and Employers Liability insurance required herein. This insurance must be a “true follow form” and provide that aggregate limits apply separately to the project.

Contractor reserves the right to amend the required limits and/or type of insurance required of subcontractor and/or any of its tier subcontractors

SECTION 17. DISPUTE RESOLUTION PROCEDURE

17.1 Preliminary Dispute Resolution Procedure and Agreement to Arbitrate

17.1.1 Disputes Under Prime Contract. Any dispute resolution procedure in the Prime Contract shall be deemed incorporated in this Subcontract, and shall apply to any disputes arising hereunder, except for disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the Prime Contract, and those which have been waived by the making or acceptance of final payment. Subject to compliance with all applicable laws, including but not limited to those relating to false claims, dispute and claim certifications, and cost and pricing data requirements, Contractor’s sole obligation is to present any timely-filed claims by Subcontractor to Owner under such procedure and, subject to the other provisions of this Subcontract, to pay to Subcontractor the proportionate part of any sums paid by the Owner to which Subcontractor is entitled.

17.1.2 Settlement Negotiations. Subject to Prime Contract dispute resolution procedures under Section 17.1.1, and as to disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the Prime Contract, promptly upon notification by the Subcontractor of a dispute, the Contractor and Subcontractor shall meet to informally resolve such dispute. In the event that no resolution is achieved, the parties, prior to the initiation of any action or proceeding under this Section, shall make a good faith effort to resolve the dispute by negotiation between representatives with decision-making power, who, to the extent possible, shall not have had substantive involvement in the matters of the dispute, unless the parties otherwise agree. To facilitate the negotiation, the parties agree either to fashion a procedure themselves or seek the assistance of a person or organization experienced in alternative dispute resolution procedures, such as mediation or other similar procedures.

17.2 Arbitration Procedures. In the event the Prime Contract contains an arbitration provision or for disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the Prime Contract, or allocation issues pertaining to Section 15.2(a) which were resolved by the trier of fact in any underlying litigation or binding dispute resolution, the following shall apply:

17.2.1 Notice of Demand. For arbitration under the Prime Contract, notice of the demand for arbitration shall be filed in writing with the other party to this Subcontract and shall conform to the requirements of the arbitration provision set forth in the Prime Contract. For claims not involving the acts or omission or otherwise the responsibility of the Owner under the Prime Contract, the parties hereto may elect to submit any and all disputes arising under or relating to the terms and conditions of this Subcontract to arbitration. In the event that such a mutual election is made, then such binding arbitration shall be in accordance with the Construction Industry Rules of the American Arbitration Association then in effect. In either case, the demand for arbitration shall be made within a reasonable time after written notice of the claim, dispute or other matter in question has been given, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim dispute or other matter in question would be barred by the applicable statute of limitations. If the parties do not mutually agree to submit to AAA arbitration, then either party may commence litigation.

- 17.2.2 Award.** The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.
- 17.2.3 Work Continuation and Payment.** Unless otherwise agreed in writing, Subcontractor shall carry on the Work and maintain the Contractor's schedule pending arbitration, and if so, Contractor shall continue to make payments in accordance with this Subcontract.
- 17.2.4 Consolidated Arbitration Proceedings.** To the extent not prohibited by their contracts with others, the claims and disputes of Owner, Contractor, Subcontractor and other subcontractors, suppliers and/or material suppliers involving a common question of fact or law shall be heard by the same arbitrator(s) in a single proceeding. In this event, it shall be the responsibility of Subcontractor to prepare and present Contractor's case, to the extent the proceedings are related to this Subcontract. Should Contractor enter into arbitration with the Owner or others regarding matters relating to this Subcontract, Subcontractor shall be bound by the result of the arbitration to the same degree as the Contractor.
- 17.2.5 No Limitation of Rights or Remedies.** This Section shall not be deemed a limitation of any rights or remedies which Subcontractor may have under any federal or state mechanic's lien laws or under any applicable labor and material payment bonds unless such rights or remedies are expressly waived by it.

SECTION 18. COMPLIANCE WITH ALL LAWS AND SAFETY PRACTICES

- 18.1** Subcontractor shall ascertain the applicability of, and shall timely and fully comply with all laws, orders, citations, rules, regulations, standards and statutes affecting or relating to this Subcontract or its performance, including but not limited to those with respect to occupational health and safety, the handling and storage of hazardous materials, accident prevention, use of safety equipment, and safety practices, including the accident prevention and safety programs of Owner and Contractor.

Subcontractor shall conduct regular inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for providing a safe place to work for its employees and for employees of its subcontractors and suppliers of material and equipment, for adequacy of and required use of all safety equipment and for full compliance with the aforesaid laws, orders, citations, rules, regulations, standards, statutes and programs.

If Contractor determines, in its sole discretion, that Subcontractor's activities are unsafe or that Subcontractor's safety record is unacceptable, Contractor may suspend performance of the Work until such matters are corrected, or may declare Subcontractor to be in default under Section 14.2.2.

- 18.1.1 Damage or Loss.** Damage or loss which may arise from the performance of the Subcontract Work, to the extent of the negligence attributed to such acts or omissions of the Subcontractor, or anyone for whose acts the Subcontractor may be liable, shall be promptly remedied by the Subcontractor.
- 18.1.2 Assumption of Responsibility.** Prevention of accidents at the site is the responsibility of the Contractor, Subcontractor, and all other subcontractors, persons and entities at the site. Establishment of a safety program by the Contractor shall not relieve the Subcontractor or other parties of their safety responsibilities. The Subcontractor shall establish its own safety program implementing safety measures, policies and standards conforming to those required or recommended by governmental and quasi-governmental authorities having jurisdiction and by the Contractor and Owner, including, but not limited to, requirements imposed by the Contract documents. The Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project, and shall stop any part of the Subcontract Work which the Contractor deems unsafe until corrective measures satisfactory to the Contractor have been taken. The Contractor's failure to stop the Subcontractor's unsafe practices shall not relieve the Subcontractor of the responsibility therefore. The Subcontractor shall notify the Contractor immediately following an accident and promptly confirm the notice in writing. A detailed

written report shall be furnished if requested by the Contractor. The Subcontractor shall indemnify the Contractor from and against fines or penalties imposed as a result of safety violations, to the extent that such fines or penalties are caused by its failure to comply with applicable safety requirements.

18.2 Safety Provisions

18.2.1 Subcontractor Safety Representative. The Subcontractor is required to designate an individual at the site in the employ of the Subcontractor who shall act as the Subcontractor's designated safety representative with a duty to prevent accidents. Unless otherwise identified by the Subcontractor in writing to the Contractor, the designated safety representative shall be the Subcontractor's project superintendent.

18.2.2 Notice of Injury or Damage. The Subcontractor shall give prompt written notice to the Contractor of any accident involving bodily injury requiring a physician's care, any property damage exceeding Five Hundred Dollars (\$500) in value, or any failure that could have resulted in serious bodily injury, whether or not such an injury was sustained.

18.3 Material Safety Data (MSD) Sheets. The Subcontractor shall submit to the Contractor all Material Safety Data Sheets required by law for materials or substances necessary for the performance of the Subcontract Work. MSD sheets obtained by the Contractor from other subcontractors or sources shall be made available to the Subcontractor by the Contractor.

SECTION 19. WARRANTY

19.1 Warranty. Subcontractor warrants to Owner and Contractor that all materials and equipment furnished shall be new unless otherwise specified and that all Work shall be performed in a good and workmanlike manner, shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty provided in this Section 19 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

19.2 Correction of Work. If the Architect/Engineer or Contractor rejects the Work or the Work is not in conformance with the Contract Documents, the Subcontractor shall promptly correct the Work whether it had been fabricated, installed or completed. The Subcontractor shall be responsible for the costs of correcting such Work, any additional testing, inspections, and compensation for services and expenses of the Architect/Engineer and Contractor made necessary by the defective Work.

If the Subcontractor's correction or removal of the Work destroys or damages completed or partially completed work of the Owner, the Contractor or any separate contractors, the Subcontractor shall be responsible for the cost of correcting such destroyed or damaged construction.

SECTION 20. USE OF CONTRACTOR'S EQUIPMENT

In the event Subcontractor shall use Contractor's equipment, materials, labor, supplies or facilities, Subcontractor shall reimburse Contractor at a predetermined rate, except as otherwise stated herein. Further, Subcontractor assumes all responsibility for physical damage to such equipment, materials, labor, supplies or facilities used by Subcontractor or its agents, employees or permittees. In the event that Contractor's employees are used by Subcontractor, Subcontractor shall

have full responsibility for all acts or omissions of Contractor's employees with regard to Subcontractor's use or employment of them. Subcontractor accepts any and all of Contractor's equipment, materials, labor, supplies or facilities as furnished.

SECTION 21. ASSIGNMENT OF CONTRACT

Subcontractor shall not, without the prior written consent of Contractor, assign, transfer or sublet any portion or part of the Work, nor assign prior to completion of the Work. any payment hereunder to others.

SECTION 22. INDEPENDENT CONTRACTOR

Subcontractor is an independent contractor and shall, at its sole cost and expense, and without increase in the Subcontract Price, comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the Work; obtain all necessary permits and licenses therefor, pay all manufacturers' taxes, sales taxes, use taxes, processing taxes, and all federal and state taxes, insurance and contributions for social security and unemployment which are measured by wages, salaries, or other remunerations paid to Subcontractor's employees, whether levied under existing or subsequently enacted laws, rules or regulations. Subcontractor, upon request, shall furnish evidence satisfactory to Contractor that any or all of the foregoing obligations have been fulfilled.

SECTION 23. STARTUP & CLEAN-UP

With the assistance of the Owner's maintenance personnel and the Contractor, the Subcontractor shall direct the check-out and operation of systems and equipment for readiness, for their initial startup and the testing of the Subcontract Work.

At all times during the course of construction, Subcontractor and Contractor shall perform the Work so as to maintain the Project site in a clean, safe and orderly condition. Upon completion of the Work, Subcontractor shall remove from the site all hazardous materials, temporary structures, debris and waste incident to its operation and clean all surfaces, fixtures, equipment, etc., affected by the performance of the Work.

SECTION 24. LABOR AGREEMENTS

The Contractor is signatory to the following labor agreements covering work on this Project:

- Southwest Regional Council of Carpenters Trust
- Southern California District Council of Laborers
- Cement Masons
- Operating Engineers Local 12

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTOR'S STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CA 95826.

WHEREFORE, this Subcontract is executed by Contractor and Subcontractor on the dates set forth above their signatures below.

Dated: _____

Dated: _____

CONTRACTOR:

SUBCONTRACTOR:

By: _____

By: _____

(SIGNATURE)

(SIGNATURE)

(NAME AND TITLE)

(NAME AND TITLE)

(CONTRACTOR'S LICENSE NO.)

(CONTRACTOR'S LICENSE NO.)

EXHIBIT "A"
CALIFORNIA LABOR CODE SECTIONS

§1771:

Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

§1775:

- (a) (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.
- (2) (A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:
- (i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.
 - (ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.
- (2) (B) (i) The penalty may not be less than ten dollars (\$10) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.
- (ii) The penalty may not be less than twenty dollars (\$20) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.
- (iii) The penalty may not be less than thirty dollars (\$30) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.
- (2) (C) When the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.
- (2) (D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.
- (2) (E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.
- (b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

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

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

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

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

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

§1776:

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

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

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

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

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

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

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

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).

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

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fees and costs incurred in maintaining the

action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

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

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

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

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

§1777.5:

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

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

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

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

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

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

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

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

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

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Chief of the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

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

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Chief of the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1 -to-5 hourly ratio, as set forth in this section for that craft or trade. (k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1 -to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

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

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

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

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

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

(m) (1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2) At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Division of Apprenticeship Standards for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

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

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

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

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

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

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

(p) All decisions of an apprenticeship program under this section are subject to Section 3081.

§1813:

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

§1815:

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

EXHIBIT "B"
SUBCONTRACT ITEM/TERMS