

## Construction Subcontract

This agreement is made on the date written above our signatures between

Contractor Name: \_\_\_\_\_ (Contractor) and  
Subcontractor Name: \_\_\_\_\_ (Subcontractor).

### Contractor

Contractor Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_, State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Work Phone Number: \_\_\_\_\_  
Cell Phone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
License Number: \_\_\_\_\_  
Contractor Name: \_\_\_\_\_ will be referred to as Contractor throughout  
this agreement.

### Subcontractor

Subcontractor Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_, State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Work Phone Number: \_\_\_\_\_  
Cell Phone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
License Number: \_\_\_\_\_  
Subcontractor Name: \_\_\_\_\_  
will be referred to as Subcontractor throughout this agreement.

### Owner

Owner Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_, State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Day Phone Number: \_\_\_\_\_  
Cell Phone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Owner Name: \_\_\_\_\_ is organized  
as a government agency in the state of state \_\_\_\_\_.  
Owner Name: \_\_\_\_\_ will be

referred to as Owner throughout this agreement.

**Owner's Representative**

Owner will be represented by Representative Name

\_\_\_\_\_ (Owner's Representative) as described in this agreement.

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

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

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

City: \_\_\_\_\_, State: \_\_\_\_\_ Zip: \_\_\_\_\_

Day Phone Number: \_\_\_\_\_

Cell Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

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

Representative Name \_\_\_\_\_ will be referred to as Owner's Representative throughout this agreement.

**The Construction Site**

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

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

City: \_\_\_\_\_, California Zip: \_\_\_\_\_

**I. Project Description**

A. For a price identified below, Subcontractor agrees to complete the Project - Subcontract (as detailed below) for Contractor.

1. The Project, referred to as the Project - Subcontract in this agreement, includes:

\_\_\_\_\_  
\_\_\_\_\_.

**II. Contract Price**

A. In addition to any other charges specified in this agreement, Contractor agrees to pay Subcontractor \$\_\_\_\_\_ for completing the Work described as the Project - Subcontract.

**III. Alternative Pricing Options**

A. At the option of Owner, the following adjustment may be made to the Project - Subcontract:

1. Add \$\_\_\_\_\_ for

\_\_\_\_\_  
\_\_\_\_\_.

**IV. Allowances**

A. This Contract Price includes an allowance for an item to be selected later by Contractor.

1. \$\_\_\_\_\_ for \_\_\_\_\_.

Installation will be by Contractor at a cost included in the Contract Price

The allowance price covers the cost of:

- Materials
- Taxes
- Delivery
- Handling on the Job Site
- Testing
- Insurance
- Markup

**V. Payment Per Unit of Work**

A. In addition to other charges specified in this agreement, Contractor agrees to pay Subcontractor \$\_\_\_\_\_ per \_\_\_\_\_ of \_\_\_\_\_.

1. If the actual quantity of \_\_\_\_\_ is more or less than \_\_\_\_\_, the Contract Price will be increased or reduced by \$\_\_\_\_\_ per \_\_\_\_\_ of \_\_\_\_\_ more or less than \_\_\_\_\_.

**VI. Scheduled Start of Construction**

A. Work under this agreement will begin on \_\_\_\_/\_\_\_\_/\_\_\_\_.

**VII. Scheduled Completion of Construction**

A. Work under this agreement will be Substantially Complete on or before \_\_\_\_/\_\_\_\_/\_\_\_\_.

**VIII. Documents Incorporated**

A. The Glossary of Terms which follows our signatures is incorporated into this contract as though

\_\_\_\_\_

included in full as part of this agreement.

B. This agreement incorporates by reference certain documents which define and describe the Work to be done. The following documents are incorporated as though included in full as part of this agreement.

**1. Plans**

Plans dated \_\_\_\_/\_\_\_\_/\_\_\_\_

Consisting of \_\_\_\_\_ sheet(s)

Prepared by \_\_\_\_\_

Last changed on \_\_\_\_/\_\_\_\_/\_\_\_\_

And further identified as \_\_\_\_\_

**2. Specifications**

Specifications dated \_\_\_\_/\_\_\_\_/\_\_\_\_

Consisting of \_\_\_\_\_ sheet(s)

Prepared by \_\_\_\_\_

Last changed on \_\_\_\_/\_\_\_\_/\_\_\_\_

And further identified as \_\_\_\_\_

**3. The Prime Contract**

This Subcontract is for completion of a portion of the Work Contractor has agreed to perform for Owner under the following Prime Contract:

The Prime Contract dated \_\_\_\_/\_\_\_\_/\_\_\_\_

Consisting of \_\_\_\_\_ sheet(s)

And further identified as \_\_\_\_\_

**IX. Ownership of Plans**

A. All Plans, Drawings, Specifications and other documents prepared by or for Owner for use under this agreement are the property of Owner and remain the property of Owner. Plans, Drawings and Specifications, whether in paper or electronic form, prepared for use in construction under this agreement shall not be modified or used on any other project without written consent of Owner. Subcontractor shall hold harmless and Indemnify Contractor from and against any and all Claims, actions, suits, costs, damages, losses, expenses and attorney's fees arising out of use of the Project Plans, Drawings, or Specifications for any purpose other than construction to be completed under this agreement. Subcontractor and Sub-subcontractors are granted a limited license to use and reproduce applicable portions of the Plans, Specifications and Drawings as required for construction under this agreement. All copies made under this license shall bear a notice showing Owner as copyright holder. All Plans, Drawings, Specifications and other documents prepared for use in construction under this agreement are to be returned to Contractor at completion of the Work or termination of the contract. Subcontractor may retain one record set of the Plans, Drawings and Specifications. All other sets shall be accounted for by Subcontractor and returned to Contractor. Submittal or distribution of Project Plans, Drawings or Specifications to meet Official Regulatory Requirements is not to be construed as publication in derogation of the rights of Owner.

**X. Plans on Site**

A. Subcontractor will maintain at the construction site a copy of all relevant Plans, Addenda, Change Orders, supplemental Drawings, written directives, approved Submittals, Inspection reports and an updated Contract Schedule. At all reasonable times, these documents will be made available for review by authorized personnel.



## **XI. Documents Supplied to Subcontractor**

- A. Contractor will furnish to Subcontractor at no cost:
1. One set of relevant Plans and Specifications on paper.  
If Subcontractor needs additional Plan sets, Contractor will furnish those Plan sets to Subcontractor at the actual cost of reproduction plus delivery.
  2. Subcontractor will distribute Contract Documents as required by Sub-subcontractors.

## **XII. Submittals**

- A. All Submittals delivered to Contractor will be accompanied by a letter of transmittal identifying in detail all attachments and enclosures. The letter of transmittal will include the following information: (1) Date of submission, (2) Project name, (3) Project location, (4) Name of the submitting Subcontractor, and (5) Revision number.
- B. Shop Drawings will indicate in detail all parts of the building components, Installation details, and coordination with Work of other trades or other Contractors. Shop Drawings for structural steel, timbers and pre-cast concrete will include engineering calculations, fabrication details and erection Drawings that show physical characteristics, dimensions, shapes, inserts, attaching points and methods, and other information required for manufacture, assembly and erection, in compliance with the Contract Documents.
- C. Subcontractor will review Submittals for accuracy, completeness, and compliance with the Contract Documents. Before submission to Contractor, Subcontractor will verify that materials, field measurements, products, materials, systems, equipment, procedures and conditions in the Submittal comply with the Contract Documents and other relevant Submittals. As evidence of this review, Subcontractor will attach to each Submittal a written verification of accuracy when delivered to Contractor. Submittals delivered to Contractor without written verification of accuracy by Subcontractor may be returned to Subcontractor without further action.
- D. Approval by Contractor or Owner of a Submittal does not relieve Subcontractor of responsibility for compliance with the Contract Documents except as follows: If a Submittal does not comply with Contract Documents, Subcontractor will attach to the Submittal, prior to approval, a written request for variation showing the change in Contract Price and Contract Time, if any, that will result from the variation. If Contractor approves a Submittal which includes a written request for a variation and which requires a change in the Contract Price or Contract Time, Contractor will issue a contract Modification confirming the change. If Contractor or Owner approves a Submittal with a written request for a minor variation which does not require a change in the Contract Price or Contract Time, no contract Modification is needed. A minor variation is anything which does not materially alter the quality or performance of the Work. Approved variations are subject to all terms of this agreement and without prejudice to any rights granted to Contractor under a Surety Bond.
- E. Subcontractor is entitled to expect that corrections to Submittals by Contractor be clearly noted and easily understood so that prompt resubmission is possible without further instructions from Contractor.
- F. Changes to Submittals indicated by Contractor will not be considered authorization to perform Extra Work. If Subcontractor considers any correction or change to a Submittal to require Work which differs from Requirements in the Contract Documents, Subcontractor shall promptly notify Contractor in writing.
- G. Subcontractor will submit to Contractor \_\_\_\_\_ copies of Shop Drawings for approval. One set of

Shop Drawings will be returned to Subcontractor. Contractor may duplicate, use, and disclose in any manner and for any purpose Shop Drawings delivered under this contract.

H. Unless otherwise directed, Subcontractor will submit Samples in triplicate, boxed or wrapped securely, each labeled with the name, type or brand of the material, place of origin, name of the producer, name of the Project for which the material is intended, and name and address of Subcontractor. All Samples will be delivered to Contractor with shipping charges prepaid.

I. Subcontractor will perform no portion of the Work requiring approval of Shop Drawings, product data, Samples, or other Submittals until the appropriate Submittal has been reviewed and approved by Contractor. Work that requires approval will be done in accord with the approval as issued by Contractor, and as required by the Contract Documents.

J. If the Contract Documents require that a Submittal be prepared and sealed by a registered architect or licensed engineer retained by Subcontractor, all Drawings, calculations, Specifications, and certifications of the Submittal will bear the seal of registration and signature of the registered or licensed Design Professional who prepared the Submittal or under whose supervision the Submittal was prepared. Contractor may rely on the adequacy, accuracy, and completeness of any Submittal signed and sealed by a licensed Design Professional if performance and design criteria of the Submittal meets Requirements of the Contract Documents.

K. Subcontractor will, upon completion of the Work, furnish to Contractor a complete set, neatly bound and in good condition, of all Submittals prepared for review by Contractor with all Modifications indicated and showing the Work as actually completed. This Requirement is a condition precedent to Subcontractor receiving final payment.

L. Subcontractor will prepare and deliver Submittals to Contractor sufficiently in advance of construction Requirements and in a sequence unlikely to cause delay in the Work or in the activities of Contractor or of Separate Contractors. In each case, Subcontractor will allow Contractor sufficient time to transmit Submittals to Owner for adequate review of Submittals, and resubmission, if necessary, without delaying the Work.

M. Contractor will notify Subcontractor of approval or rejection of Submittals within \_\_\_\_ Calendar Days after delivery to Contractor or within 24 hours after approval or rejection by Owner.

N. Contractor will advise Subcontractor of any errors or omissions which the reviewing authority has detected during review. Submittals approved by Contractor become additions to the Contract Documents and can be relied on by Subcontractor in completing the Work. Nothing in any approved Submittal shall be interpreted to limit Subcontractor in selection of the means, method, technique, sequence or procedure of construction.

### **XIII. Record Documents**

A. Subcontractor will note on a record set of Project Drawings any Work done that is not shown on the original Plans and not described in other Contract Documents. The record set of Project documents will be delivered to Contractor at the same time as final payment is requested.

### **XIV. Job Site Safety**

A. Subcontractor will at all times take all reasonable precautions for the safety of employees and the public at the Job Site and will comply with all applicable safety Laws and regulations of federal, state, and local authorities (including building codes) and safety Requirements of Contractor.

## **XV. Protection of People and Property**

### **A. Protection of Personnel**

1. Subcontractor shall comply with all applicable Laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the safety of persons and protection of property, including Requirements of the Occupational Safety and Health Act (OSHA). Where Requirements of federal, state or local Law or regulations are in conflict, Subcontractor shall comply with the most stringent or demanding provision.
2. Subcontractor shall supply to Contractor and Sub-subcontractors, a copy of each Material Safety Data Sheet(s) (MSDS) on any Hazardous Material that Subcontractor or any Sub-subcontractor, brings on the Job Site. When no longer needed for construction, Subcontractor shall ensure that Hazardous Materials are removed from the Job Site. No Hazardous Material shall be disposed of or discarded in any means other than as prescribed in the applicable MSDS. No toxic or Hazardous Materials of any description will be placed in refuse disposal containers used for general construction debris.
3. Subcontractor shall promptly submit to Contractor a written notice of any accident on the Job Site that results in personal injury requiring medical treatment, or damage to property in excess of \$500. Subcontractor will make available to Contractor a copy of any accident report Subcontractor is required to file with any public agency or insurance carrier.

### **XVI. Hazardous Materials Used in Construction**

- A. Except as provided elsewhere in the Contract Documents, Subcontractor is responsible for all Hazardous Materials brought to the Job Site by or for use by Subcontractor or Sub-subcontractors. Subcontractor will distribute to Contractor the appropriate material safety data sheets when any Hazardous Material is brought to the Job Site. Contractor will provide Subcontractor with a material safety data sheet disclosing the chemical composition of any hazardous material know to be used on the Job Site which (1) might be harmful to those working for Subcontractor, or (2) for which Subcontractor has a legal obligation to notify employees.
- B. Explosives shall not be used without first obtaining all permits required by Law, and written permission from Contractor. Storage of explosives on the Job Site is prohibited. Regardless of the approval by Contractor, any loss or damage that results from use or handling of explosives by Subcontractor shall be the sole responsibility of Subcontractor. Powder-activated tools are not considered explosives for purposes of this contract.
- C. Except as provided elsewhere in the Contract Documents, Subcontractor is prohibited from installing any lead-containing materials or products, including paint, in any Work to be performed under this contract. Subcontractor shall be responsible for removal and replacement costs should it be determined that the provision of this paragraph has been violated. Responsibility of Subcontractor for violating the terms of this paragraph shall not be limited in duration by Project completion, the warranty period, or other provisions of this contract.
- D. All flammable liquid having a flash point of 110 degrees F. or below shall be confined to Underwriters Laboratories-labeled safety cans. Paint thinners, gasoline, oil, roofing materials, and other flammables shall be stored in suitable shelters at least 50 feet from permanent structures. Spigots shall not be used on drums containing flammable liquids. Drums are to be equipped with approved vented pumps.

### **XVII. Compliance with Law**

- A. Subcontractor and Sub-subcontractors working for Subcontractor shall comply with state, federal

and local Law when discharging their responsibilities under this agreement. All Work done under this agreement will meet Requirements of state and federal Law, ordinances, regulations and codes adopted pursuant to Law.

B. Subcontractor shall bear all cost of correcting Work that does not comply with Law if Subcontractor knows or reasonably should have known that Plans or Contract Documents are Defective, and Subcontractor fails to give notice of that Defect to Contractor.

C. Subcontractor is licensed to do Work described in the Contract Documents. Subcontractor will notify Contractor of any change in that license status. Every Sub-subcontractor working for Subcontractor will hold a license appropriate for the Work performed.

### **XVIII. Taxes**

A. Contractor asserts that the Project - Subcontract is exempt from sales and use tax and that none should be charged to Subcontractor or Sub-subcontractors for building materials, supplies, fixtures, equipment, and Installation labor which actually become part of the structure. Supplies, tools and equipment used in the construction process (such as perimeter fencing) will be subject to sales and use tax and payable by Subcontractor, even if used exclusively on the Project - Subcontract. On request of Subcontractor or any Sub-subcontractor, Contractor shall cause a certificate of exemption to be issued as evidence of the tax status of the Project - Subcontract. Should sales or use tax be imposed other than as described in this paragraph, Contractor agrees that the Contract Price shall be increased by the full amount of all such sales or use tax (including fines and penalties) actually paid by Subcontractor or Sub-subcontractors.

### **XIX. Temporary Utilities**

A. Contractor shall make electric power, water, heat and cooling available to Subcontractor and Sub-subcontractors through existing outlets and at reasonable cost determined by Contractor. Subcontractor shall install and maintain temporary connections, distribution lines, and meters required to measure the amount of water, electric power, heating and cooling consumed during construction. Before final acceptance of the Work, Subcontractor shall remove all the temporary connections, distribution lines, and meters and issue a credit to Contractor for utility services used during construction.

B. Contractor shall provide, at no cost to Subcontractor, adequate parking for construction personnel during the period of construction.

C. Unless agreed to in advance by Contractor, construction personnel shall use temporary toilet facilities provided by Contractor, and none other.

D. Anything to the contrary in this contract notwithstanding, Contractor will provide, at no cost to Subcontractor, 110 volt electrical power from the existing distribution system on the Job Site for hand-held portable power tools. Subcontractor will not use the existing electric power system for welding machines or other electrical equipment with heavy power Requirements.

E. Contractor shall provide the temporary electric lighting necessary for safe completion of Work by all trades and Subcontractors.

### **XX. Job Cleanup**

A. Subcontractor shall regularly remove from the Job Site and storage areas all surplus material, waste and debris resulting from Work done by Subcontractor. Construction debris shall be removed to a legal refuse collection site with disposal or recycling fees paid by Subcontractor. At completion of the Work, Subcontractor shall, in addition, remove from the Job Site all tools, equipment and staging

brought to the Job Site by Subcontractor or Sub-subcontractors.

B. Contractor shall provide a trash disposal facility on the Job Site for use by Subcontractor at no charge. All construction debris created by Subcontractor and Sub-subcontractors shall either be placed in a trash container provided by Contractor or hauled to a legal disposal site at the expense of Subcontractor. Subcontractor will notify Contractor if the trash facility provided by Contractor is full.

C. If Subcontractor or any Subcontractor working on the Project fails to comply with Requirements in the Contract Documents for progressive or final Job Site cleanup, Contractor may notify any and all Subcontractors working on the Project to be present for a meeting on the Job Site at a time no sooner than 3 Calendar Days from the date of the notice. At that meeting, Contractor will solicit reasons and explanation why Subcontractor and other Subcontractors should not be back charged for removal of construction debris in proportion to the debris each Subcontractor has discarded on the Job Site. At the conclusion of this Job Site meeting, Contractor will advise all Subcontractors present of the proposed allocation of cost for Project cleanup. The allocation shall be based on the reasonable opinion of Contractor after viewing the site and hearing representation of all Subcontractors present. 3 Days thereafter, if Subcontractor or Subcontractors remain in non-compliance with cleanup Requirements in the Contract Documents, Contractor may begin job cleanup and deduct the actual cost from payments due Subcontractors according to the allocation announced.

#### **XXI. Project Sign**

A. Contractor grants to Subcontractor the right to display a small sign (2' x 3' maximum) listing the company name, address, logotype, phone number, and website address of Subcontractor.

#### **XXII. Project Superintendent**

A. Subcontractor shall employ a competent Superintendent and any necessary assistants or alternates, all approved by Contractor. The Superintendent shall not be changed except with the consent of Contractor, unless the Superintendent is discharged by Subcontractor. The Superintendent shall have authority to represent Subcontractor in all matters relating to the Project. Communications with the Superintendent shall have the same force and effect as direct communication with Subcontractor.

B. The Project Superintendent shall be experienced in the type of Work being performed under this contract, shall be able to read and understand the Plans and Specifications, and shall be capable of communicating, orally and in writing, with construction personnel.

#### **XXIII. Employee Relations**

A. Subcontractor will ensure that personnel will be furnished and required to use safety equipment complying with OSHA standards, including hard hats, safety glasses with permanently attached side shields, body harnesses with shock cord lanyard, steel toe work boots, and appropriate protective equipment and clothing. Any employee who refuses to comply with OSHA standards shall be barred from the Job Site at the discretion of Contractor or Owner.

B. Subcontractor shall pay not less than the wage scale of the various classes of labor as shown in a prevailing wage schedule provided by Owner. Wage rates on this schedule are minimum rates only and do not include fringe benefits such as health, welfare and pension contributions, and travel allowances. Subcontractor and each Sub-subcontractor shall keep, or cause to be kept, an accurate record showing the names and trade classification of all workers employed in connection with the Work and showing the actual per diem wage paid to each worker. Pay records shall be open at all reasonable hours for Inspection by Owner or Contractor. Subcontractor and every Sub-subcontractor shall keep posted on the construction Site, in a conspicuous place, a copy of all prevailing wage and fringe benefit rates.

C. Employment and training of apprentices shall be in accord with apprentice agreements under which each apprentice is training. Every apprentice shall be paid the wage appropriate for the craft or trade under which the apprentice is indentured. Subcontractor or any Sub-subcontractor employing an apprentice shall hold a certificate approving Subcontractor or the Sub-subcontractor for employment and training of apprentices. Subcontractor and any Sub-subcontractor shall comply with any limitation on the number of apprentices or the ratio of apprentices to journeymen who may be employed in the craft or trade on the Work.

#### **XXIV. Emergency Response**

A. Provided Subcontractor is not responsible for the Emergency condition and provided the additional cost to Subcontractor for the Emergency response is not covered by insurance or recoverable from others, Subcontractor shall be granted a Change Order to compensate for the Emergency response.

#### **XXV. Contractor's Responsibilities**

A. All materials to be furnished by Contractor under the Contract Documents shall be on hand and available at the location specified, when required in the normal course of construction. Subcontractor makes no warrant that materials Furnished by Contractor are suitable for use in the Project - Subcontract and may reject such materials if Installation would materially increase the cost of construction or substantially delay completion of the Project - Subcontract.

B. On written request from Subcontractor, Contractor shall identify (1) The legal description of the property being improved, (2) Whether there is a Surety Bond in effect on the improvement Project and if so, the name and last known address of the Surety and a copy of the Bond, and (3) Whether there are any prior recorded liens or security interests on the real property being improved and, if so, the name and address of the person having the lien or security interest.

#### **XXVI. Authority of Owner's Representative**

A. Subcontractor acknowledges that Owner's Representative has authority to administer the Prime Contract between Owner and Contractor, make construction decisions on behalf of Owner, and is the primary authority on issues of compliance with the Drawings and Specifications, quality of workmanship, materials used, manner of performance, and rate of progress on the Work of Subcontractor.

B. Subcontractor acknowledges that Owner's Representative has the right to visit the Project - Subcontract and view Work in progress at any time. Any Defective Work found or suspected, either as the result of a site visit or otherwise, will be reported promptly to Contractor. No actions taken or statements made during site visits shall relieve Subcontractor of obligations described in the Contract Documents.

C. Unless otherwise authorized by Contractor, communications between Owner's Representative and Subcontractor shall be through Contractor. Communications by Subcontractor with Separate Contractors shall be through Contractor.

D. Subcontractor acknowledges that Owner's Representative has the authority to reject and order removed any portion of the Work of Subcontractor which does not conform to the Contract Documents.

E. Subcontractor acknowledges that Owner's Representative has the authority to stop Work under this Subcontract whenever Owner's Representative considers it necessary to prevent the performance of Defective Work.

F. Subcontractor acknowledges that Owner's Representative has authority to require additional

Inspection or testing of the Work of Subcontractor regardless of the completion status.

G. Subcontractor acknowledges that Owner's Representative has authority to conduct Inspections in connection with Beneficial Occupancy and to determine the dates of Substantial Completion and Final Completion.

H. Subcontractor acknowledges that Owner's Representative will receive for review and approve or decline to approve all written records and warranties required by the Contract Documents to be delivered to Contractor.

I. Subcontractor acknowledges that Owner's Representative has authority to approve or decline all requests by Subcontractor for payment, including final payment.

J. Subcontractor acknowledges that Owner's Representative has authority to interpret and clarify Requirements of the Contract Documents and evaluate compliance of Subcontractor. Subcontractor shall maintain a log of requests for information made about the Plans and Specs and the responses received. Interpretations by Owner's Representative of the Plans and Specs shall be final and binding if consistent with the Contract Documents. Decisions by Owner's Representative on disputes between Subcontractor and Contractor and Owner or any of them shall be advisory.

K. Subcontractor acknowledges that Owner's Representative is authorized to approve or make minor changes in the Work as defined in this agreement.

L. Subcontractor shall have the right to expect that Owner's Representative respond to questions concerning execution of the Work and interpretation of the Contract Documents within a reasonable time so as to avoid delaying the Work.

M. Owner's Representative shall have no authority to (1) Revoke, alter, relax, or waive any Requirement of the Contract Documents (other than minor changes) without concurrence of Owner and Contractor, (2) Give final approval or accept any portion of the Work without concurrence of Owner and Contractor, (3) Issue instructions contrary to the Contract Documents, (4) Issue a notice of termination or otherwise terminate the contract, (5) Require Subcontractor to stop Work except only to avoid the performance of Defective Work, and (6) Supervise or coordinate the Work.

N. Subcontractor shall not be bound by any determination, interpretation or decision of Owner's Representative that is later determined a contravention of the Contract Documents.

O. Owner's Representative is an agent of Owner but has an obligation to be fair to Subcontractor and impartial in administering this contract.

## **XXVII. Representations by Subcontractor**

A. Subcontractor has reported to Contractor all errors, inconsistencies, ambiguities, and omissions found in the Plans and Specifications and has concluded that the Contract Documents define the Work required with enough detail to allow Subcontractor to complete the Project - Subcontract.

B. Based on a thorough evaluation of the Contract Documents, the Job Site, and all conditions that may affect construction cost and duration, Subcontractor affirms that the Contract Price and Project duration are fair and reasonable for completion of the Project - Subcontract.

C. Contractor has reported to Subcontractor all conditions known to Contractor which may not be apparent to Subcontractor and which might significantly increase cost of the Work or delay completion. These concealed conditions include, but are not limited to, hazards on the Job Site, unsuitable soil conditions, prior Defective Work of others, latent Defects in the Plans or Specifications, earlier attempts

to do Similar or related Work, and obligations imposed by government.

**XXVIII. Disclaimer by Contractor, Reliance by Subcontractor**

A. Contractor assumes no responsibility for any conclusions or interpretations made by Subcontractor based on the information made available by Contractor. Nor does Contractor assume responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any officer or agent of Contractor before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

**XXIX. Discrepancy Between Plans and Field Conditions**

A. Subcontractor shall compare conditions at the Job Site with representations and Requirements in the Contract Documents. If Subcontractor discovers a discrepancy between Job Site conditions and representations or Requirements in the Contract Documents, Subcontractor shall promptly report the discrepancy to Contractor, and provide a detailed explanation.

B. Subcontractor is not a Design Professional and has no obligation to find discrepancies between Job Site conditions and representations or Requirements in the Contract Documents.

**XXX. Differing Site Conditions**

A. Subcontractor shall promptly, and before the conditions are disturbed, give a written notice to Contractor on encountering unforeseeable conditions adversely affecting the Work. Contractor shall investigate the site conditions promptly after receiving notice. If the conditions cause an increase in cost to Subcontractor or the time required for performing any part of the Work and were not reasonably foreseeable by an experienced Subcontractor, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

B. Subcontractor shall make no Claim for equitable adjustment due to differing site condition if the site condition was known to Subcontractor at the time this contract was signed or would have been known to Subcontractor had Subcontractor made a reasonable investigation of conditions on and near the Job Site, including all available reports and tests, environmental considerations, Code Requirements, climatic conditions, and other local conditions that could affect cost to Subcontractor or duration of construction.

C. No request by Subcontractor for an equitable adjustment to the contract under this clause shall be allowed unless Subcontractor has given the written notice as required. In no case will a request by Subcontractor for an equitable adjustment to the contract for differing site conditions be allowed if made after final payment under this contract.

D. Physical conditions including weather, rising water, seismic activity, and other forces of nature may form the basis for a Claim for equitable adjustment for differing site conditions.

**XXXI. Payment Plan**

A. Contractor will pay to Subcontractor the Contract Price in installments consisting of progress payments and a final payment on completion of the Work.

**XXXII. Progress Payments**

**A. Schedule of Progress Payments**

1. Each progress payment will cover Work done during the pay period. If a progress payment would be due on a legal holiday, the payment will be made on the last business Day before that holiday.

2. Progress payments will be made twice a month on the 1st Friday and the 3rd Friday of the month.

### **B. Processing of Progress Payments**

1. No later than 2 Calendar Days before each Progress Payment is due under the terms of this contract, Subcontractor shall provide Contractor with an application for payment (invoice) in a form which complies with generally accepted trade practice.
2. The amount of each progress payment shall be based on the value of construction put in place during the payment period as calculated from an approved Schedule of Values.
3. Each application for payment shall include a certification by Subcontractor that the charges are an accurate statement of the amount earned and payable under the terms of this contract for the current payment period, and include no items for which payment has been made previously.
4. Contractor may withhold payment for charges which lack supporting information or for which there is no lien release.
5. Payments to Subcontractor do not constitute a waiver of any Claim that Contractor may have for Defective or inadequate workmanship or materials installed on the Project - Subcontract.
6. Contractor may withhold payment while Subcontractor is in material breach of this contract.

### **C. Approval of Progress Payments**

1. Subcontractor acknowledges that Contractor may decline to approve the portion of any request for payment which includes: (1) Charges based on Defective Work not remedied, or (2) Work in dispute.
2. Subcontractor acknowledges that Contractor may decline to approve all or any portion of a request for payment (1) After legal Claims related to Subcontractor have been filed and served on Contractor or Owner, (2) After Subcontractor is delinquent paying Sub-subcontractors, employees or Material Suppliers, (3) After failure of Subcontractor to make contributions required by state or federal Law or by collective bargaining agreements, (4) If it becomes apparent that the Work cannot be completed for the unpaid balance of the Contract Price or finished by the Contract Completion Date, (5) If Subcontractor is responsible for substantial damage to Work of Owner or a Separate Contractor, or (6) If payment would exceed the total liability of Contractor for the Project - Subcontract after deducting a reserve for liquidated damages reasonably expected.
3. Contractor may deduct from the amount due in the current pay period the value of Work approved in any previous pay period which was later found to be unacceptable or not in compliance with the Contract Documents.
4. Each application for payment shall be submitted on the form approved by Contractor.

### **D. Discharge of Liens**

1. Subcontractor warrants and guarantees that no Work, materials, or equipment covered by a request for payment has been acquired by Subcontractor or by any other person performing the Work or furnishing materials or equipment for the Project - Subcontract subject to an agreement under which an interest therein, or an encumbrance thereon, has been retained by seller or otherwise imposed by Subcontractor.
2. Subcontractor shall furnish, with each application for payment, executed waivers of liens from Subcontractor and each Sub-subcontractor and Material Supplier to the Project - Subcontract in the

amount of the application for payment. Waivers of liens shall be in a form satisfactory to Owner, title insurer, and lenders. In lieu of a waiver of lien, Subcontractor may submit a Bond by a Surety company licensed to do business in the state of California guaranteeing satisfaction of any lien rights claimed by Subcontractors, Material Suppliers, or employees.

3. With each application for payment, Subcontractor shall certify that: (1) Subcontractor has applied the proceeds of prior payments, if any, to discharge all prior mechanics' and materialmen's liens outstanding as of the date of application, (2) There are no new mechanics' or materialmen's liens outstanding as of the date of application, (3) All due and payable bills with respect to the Work completed in the payment period have been paid to date or are included in the amount requested in the current application, (4) Except for such bills not paid, there is no known basis for the filing of any mechanics' or materialmen's liens on the Work, and (5), Waivers from all Sub-subcontractors and materialmen have been obtained to constitute an effective waiver of lien under the laws of California.

4. Subcontractor shall disburse funds received from Contractor among Sub-subcontractors and Material Suppliers in proportion to the Work done and materials received for the Project - Subcontract during the pay period. Subcontractor shall retain or hold back payment to Sub-subcontractors in no greater proportion than the proportion of Retainage in payments made by Contractor to Subcontractor. By separate agreement, Subcontractor shall require each Sub-subcontractor on the Project - Subcontract to make payments to Sub-subcontractors and Material Suppliers in a similar manner.

#### **E. Schedule of Values**

1. No later than 30 Calendar Days before the first progress payment is due, Subcontractor shall submit a draft Schedule of Values for approval by \_\_\_\_\_. When approved, the Schedule of Values shall be the basis for calculating amounts due in progress payments. The units installed or the estimated percent completed during the pay period multiplied by the unit value equals the payment earned during the pay period.

2. Subcontractor shall draft a revised Schedule of Values for approval by \_\_\_\_\_ when, in the opinion of \_\_\_\_\_, changes to the Contract Documents or the Contract Price require a revised Schedule of Values.

#### **XXXIII. Payment for Materials Stored Off Site**

A. No application for payment shall include materials stored off site unless: (1) Subcontractor has received written approval from Contractor to store the materials or equipment off-site in advance of delivery, (2) A certificate of insurance is furnished by Subcontractor evidencing the property in question is covered by all-risk property insurance naming the materials or equipment stored and naming Owner as an insured party, (3) Contractor is provided with a detailed inventory of the stored materials or equipment, (4) The materials or equipment are clearly marked and identified and made available for Inspection and verification during normal business hours, (5) The materials or equipment are properly and safely stored, protected from weather, damage, vandalism and theft in a Bonded warehouse or a facility otherwise approved in advance by Contractor, (6) Subcontractor provides documentation of the purchase price and that Subcontractor can pass clear title to the materials or equipment upon payment by Contractor, and (7) Subcontractor warrants that the materials and equipment shall not be moved from the approved storage location except to the Job Site.

#### **XXXIV. Retainage**

A. Progress payments to Subcontractor shall be reduced by the amount set out in this contract for

Retainage.

- B. Except as otherwise provided in this agreement, Contractor shall retain \_\_\_\_\_ percent of the total amount due on progress payments.
- C. On written request from Subcontractor supported by written consent from each Surety company at risk, Contractor may release all or part of the Retainage being held on the Project - Subcontract.
- D. Subcontractor may, for satisfactory and substantial reasons, make a written request for release of part or all of Retainage when all Work has been completed in a manner acceptable to Owner and Contractor. Any such request shall be supported by a written approval from each Surety company furnishing a Bond for either Contractor or Subcontractor. The release of any such Retainage shall be supported by any evidence or statement that Owner or Owner's Representative may require, including evidence of prior payments made to Subcontractor, a copy of this contract, copies of applicable warranties, as-built documents, maintenance manuals or other documentation. Release of Retainage on behalf of Subcontractor shall not affect any warranty or guarantee of Subcontractor under this contract unless a notice of partial Substantial Completion is issued for Work which is subject to the release of Retainage. Prior to release of Retainage on behalf of Subcontractor, Owner or Owner's Representative shall make a final Inspection of the applicable portion of the Project - Subcontract to determine whether Work of Subcontractor has been completed in accord with the Contract Documents. If necessary, a final Punch List shall be made for the Work.
- E. Contractor shall not withhold from Subcontractor any greater proportion of payments due than Owner withholds from Contractor unless Work of Subcontractor is not in compliance with the Contract Documents, in which case, Contractor may retain additional sums to ensure satisfactory performance.
- F. Contractor agrees to extend to Subcontractor the same rights to reduce or release Retainage as Contractor has under the Prime Contract. Contractor shall be solely responsible for the management and administration of reduction or early release of Retainage to Subcontractor.
- G. Retainage shall be released to Subcontractor upon Substantial Completion of the Project - Subcontract except for (1) An amount equal to 200 percent of the estimated value any Work remaining to be completed on a Punch List developed under the terms of this contract, and (2) Any amount required to ensure compliance with Warranty provisions of this contract. All Retainage shall be released to Subcontractor on Final Completion.

#### **XXXV. Contract Allowances**

- A. If the cost to Subcontractor for a contract allowance item is more or less than the allowance price, the Contract Price shall be adjusted for the difference by a Change Order.
- B. If selection of any contract allowance item by Contractor delays the Work, the Contract Completion Date shall be extended by the equivalent of the delay and Subcontractor shall be entitled to recover for the cost of delay, including liquidated damages, shutdown or startup expense, lost profits, or consequential damages.

#### **XXXVI. Contingent Payment**

- A. Contractor will not unreasonably withhold payment to Subcontractor for Work done by Subcontractor once Contractor has been paid by Owner for that Work.

#### **XXXVII. Grounds for Withholding Payment**

- A. Contractor may withhold payment due Subcontractor for Defective Work which has not been

corrected in compliance with terms of this agreement.

B. Contractor may withhold payment due Subcontractor on the filing of a legal Claim against Subcontractor by any third party if the Claim relates to the subject matter of this contract and (1) May result in a lien on the Project - Subcontract, or (2) May result in a judgment for damages against Contractor or Owner. Filing of a legal Claim shall not constitute grounds to withhold payment if Subcontractor has insurance coverage which would prevent loss to Contractor and Owner from the legal Claim made.

C. Contractor may withhold payment due Subcontractor for failure by Subcontractor to meet financial obligations to Sub-subcontractors, tradesmen or Material Material Suppliers on the Project - Subcontract. Failure to meet financial obligations shall not constitute cause to withhold payment if Subcontractor has provided a Payment Bond from a licensed Surety, guaranteeing payment of Sub-subcontractors, Material Suppliers, and tradesmen.

D. If Contractor withholds any payment under terms of this agreement, Contractor will notify Subcontractor in writing of the amount being withheld, the reason why payment is withheld, and what must be done to release the payment otherwise due.

E. Grounds entitling Contractor to withhold certain amounts due Subcontractor under this agreement shall not relieve Contractor from the obligation to pay Subcontractor other amounts then due and shall not relieve Contractor of the obligation to pay in full when the reason for withholding payment no longer exists.

### **XXXVIII. Final Payment**

A. Subcontractor will submit an application for final payment and will notify Contractor when the Work has been completed. When, in the opinion of Contractor, the Work has been completed, the entire unpaid balance of the contract amount is payable to Subcontractor, less the proportionate share of any Retainage withheld under the Prime Contract between Contractor and Owner.

B. Making of final payment constitutes waiver of all Claims by Contractor against Subcontractor, except: (1) Outstanding lien Claims or Claims for liens, (2) Claims for Defective Work specifically identified before the making of final payment, (3) Defects which result from failure by Subcontractor to perform the Work in strict accordance with the Contract Documents, (4) Any warranty or guarantee required by the Contract Documents, (5) Any Claim for which Subcontractor was specifically given notice before final payment, and (6) Any right Contractor has as a matter of Law.

C. The acceptance of final payment by Subcontractor shall constitute a release by Contractor of known Claims against Contractor arising out of this contract except those Claims which (1) Have been made in writing and identified by Subcontractor as not having been settled at that time, or (2) Are based on fraud or misconduct by Contractor.

D. Contractor has no obligation to make final payment until unconditional waivers of lien in a form satisfactory to Contractor, lenders and Sureties have been received from Subcontractor, Sub-subcontractors, vendors, tradesmen, and all Material Suppliers with lien rights on the Project - Subcontract. Subcontractor may furnish a Bond satisfactory to Contractor in lieu of waivers of lien.

E. Contractor has no obligation to make final payment until all Punch List items have been satisfactorily completed unless Contractor agrees to accept a certified check equal to the value of any uncompleted Work.

F. Contractor has no obligation to make final payment until all applicable certificates of insurance required to remain in force after completion of the Work have been delivered to Contractor.

G. Contractor has no obligation to make final payment until all Sureties having issued Bonds on the Project give their consent to final payment to Subcontractor.

H. Application for final payment constitutes affirmation by Subcontractor that all payrolls, bills for materials, equipment charges, and other obligations of Subcontractor in connection with the Work have been paid or otherwise satisfied.

### **XXXIX. Changes in the Work**

A. When required by a change in the Prime Contract between Owner and Contractor, Contractor may direct Subcontractor to make changes to the Work which are required by changes in the Prime Contract, including changes in the Plans and Specifications and changes which add, delete or revise portions of the Work. Each change required by Contractor shall be in the form of a written Change Order and shall result in a change in the Contract Price and the Contract Time, if any.

B. Any change in Plans, Specifications or Contract Documents necessary to conform to existing or future Laws, codes, ordinances or regulations shall be considered Extra Work.

C. Changes in the Work required due to defects or inconsistencies in Plans or Specifications or other Contract Documents shall be considered Extra Work.

D. Any act, error, or omission by Contractor or anyone acting on behalf of Contractor which increases the cost of completing the Work or delays the Contract Completion Date shall be considered Extra Work.

E. The cost deducted from or added to the Contract Price for a Change Order shall be the difference in:

(1) Labor. The actual payroll cost to Subcontractor for Job Site labor and field supervision of changed Work, engineering, technical services, royalties, permits, Inspection and testing required for performance of the Change Order. Labor costs may include payments, assessments and employee benefits (including those required by Law or collective bargaining agreements) for health care, compensation insurance, liability insurance, and payroll taxes levied by state, federal and local government. No labor cost will be recognized at a rate in excess of the wage usually paid by Subcontractor for Similar Work on the Project - Subcontract at the time the Work is performed, nor will the use of a labor classification which would increase the labor cost be permitted unless Subcontractor establishes to the satisfaction of Contractor the need for use of the higher classifications. On request of Contractor, Subcontractor shall submit a detailed breakdown of the cost of each labor classification required to complete the Change Order. The following labor costs are included in overhead and profit and excluded from calculations of the labor cost: estimating and purchasing, indirect supervision and Project management, home office overhead, Change Order coordination, course of construction insurance, indirect supervision, clerical and purchasing.

(2) Materials. The actual cost of materials required to perform the Change Order including the costs of transportation, storage, sales tax, as-built Drawings, warranties, Bonds, fuel, temporary construction, scaffolding, utilities, and delivery if paid by Subcontractor but less any trade discounts not paid by Subcontractor. If materials are from a supply source owned or controlled by Subcontractor, cost will not exceed the current wholesale price for such materials. Costs for consumable supplies such as tape and rags may be estimated. If, in the opinion of Contractor, the cost of materials is excessive, or if Subcontractor fails to furnish satisfactory evidence of the cost from the actual Material Suppliers, the cost of the materials shall be deemed to be the lowest wholesale price at which Similar materials are available in the quantities required at the time they were needed.

(3) Equipment. The actual cost to Subcontractor for the use of equipment required to perform the Change Order. No payment will be made for time while equipment is inoperative due to breakdowns or for non-working Days. Equipment expense shall include the cost of moving equipment to the Job Site from the nearest available source and return to that source from the Job Site on completion. However,

neither moving time nor loading and transportation costs will be paid if the equipment is used on the Project for any purpose other than the Change Order. No payment will be made for individual pieces of equipment with a replacement value of \$200 or less unless rented specifically for the Change Order. The cost for consumable equipment and tools, such as brushes, rollers and drill bits, may be estimated. For equipment owned by Subcontractor, charge to Contractor shall be the rate charged for Similar equipment at rental yards in the area where the Work is performed. Charge to Contractor for equipment shall include all costs to Subcontractor incidental to the use of the equipment, including fuel, power, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance, depreciation, storage and insurance. (4) Sub-subcontract. For any portion of the Change Order performed by a Sub-subcontractor (any Tier), Subcontractor shall Furnish to Contractor a signed copy of Sub-subcontractor's detailed invoice showing the charge for labor, material, equipment and markup to perform the Change Order. At the option of Contractor, a lump sum estimate of such cost to Subcontractor may be accepted in lieu of the detailed invoice. The charge for Sub-subcontractor's overhead, profit, taxes, indirect supervision, insurance, Bonds, warranty, time extension, delay and any other costs not specifically allowed in this paragraph shall not exceed 15 percent on the first \$50,000 of the direct cost and 10 percent on the balance beyond \$50,000. No deduction for Sub-subcontractor overhead and profit shall be figured on a change which results in a net credit to Contractor. (5) Markup. When any or all of a Change Order is added to Work performed by a Sub-subcontractor, Subcontractor shall add 10 percent markup to the first \$50,000 of that Work and 7 percent on the balance beyond \$50,000. No markup on markup is permitted if a Sub-subcontractor is owned, partially owned, or has a shared profits arrangement with Subcontractor. Markup by Subcontractor for Work performed by crews of Subcontractor (including Job Site overhead, off-site overhead and overhead caused by delay) shall be 15 percent of the direct cost (labor, material and equipment) for the first \$50,000 of Work added by a Change Order and 10 percent on the balance beyond \$50,000. No deduction for overhead and profit shall be made on a Change Order which results in a net credit to Contractor.

F. The cost to Contractor for changes in the Work shall exclude any Claim of Subcontractor for penalties or damages. Extension of the Contract Time due to a Change Order shall not be the basis for any Claim by Subcontractor to extra compensation.

G. Should Subcontractor fail to keep cost records as required under this agreement for Work done in response to a request for a change in the Work, payments to Subcontractor for any change in the Work shall be based on good faith estimates by Contractor.

H. Should any delay of Subcontractor in submitting a Claim for Extra Work cause a forfeiture by Contractor in a right to make a Claim for Extra Work, the right of Subcontractor to payment on that Claim is similarly forfeit.

I. Any Claim by Subcontractor for Extra Work shall be made with Contractor. Only Contractor has the right to make a Claim with Owner for changes in the Work. No Subcontractor at any Tier shall have the right to file a Claim for Extra Work with Owner.

J. When a change in the Work has been proposed by Contractor, Subcontractor shall halt Work in the area of the proposed change and take steps to minimize any loss or waste which might result from implementing the proposed change.

K. Acceptance by Subcontractor of payment for a Change Order shall constitute a waiver by Subcontractor of all other Claims by Subcontractor based on Work described in the Change Order.

L. No Claim for payment for Extra Work and no claim for additional time to complete the Work shall be recognized under this agreement without a written Change Order or a notice of Claim. Failure by Subcontractor to assert the right to a written Change Order or a Claim within 30 Calendar Days after

beginning Work on a change in the Work shall constitute waiver by Subcontractor of the right to additional compensation and waiver of the right to additional time to complete a change in the Work. No act or omission of either Contractor or Subcontractor shall be interpreted as waiver of the Requirement for a written Change Order or notice of Claim, nor shall any Claim that Contractor or Owner has been unjustly enriched support a Claim for a constructive Change Order. The provisions of this paragraph are the essence of this agreement.

M. Failure of Contractor and Subcontractor to agree on the terms of a Change Order shall be resolved under the provisions of this agreement which cover Claims and disputes.

N. Should Contractor and Subcontractor fail to agree promptly on the cost of a Change Order, Subcontractor shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of Work allocable to the change. Subcontractor shall maintain such accounts until Contractor and Subcontractor agree on the cost of change or until the issue is resolved under provisions of this contract relating to disputes.

#### **XL. Job Conferences**

A. Prior to the start of construction, Subcontractor and Contractor shall hold a pre-construction conference to identify: (1) The people who will be involved in construction of the Project - Subcontract, their chain of authority, addresses, telephone numbers, fax numbers and email addresses to be used when requesting information or giving notices, (2) The proposed construction Schedule, (3) Procedures for approving Shop Drawings, product data and Submittals, (4) Procedures for handling Change Orders, (5) Construction Site Requirements such as dust and erosion control, storm water management, Project signs, clean up and housekeeping, temporary facilities, utilities, security, and traffic, (6) Safety Requirements and procedures, (7) Quality control, testing, Inspections and notice Requirements, (8) Inspection procedures, and (9) The handling of payment requests.

B. Contractor may impose a reasonable fine (not to exceed \$100) on Subcontractor for failure to participate in a scheduled conference. Any fine imposed shall be deducted from the next progress payment due.

#### **XLI. Defective Work**

##### **A. General Requirements**

1. On written notice from Contractor, Subcontractor shall promptly remove from the Job Site all Work or materials not in compliance with the Contract Documents, whether or not such rejected Work or materials are incorporated in the Project - Subcontract. Subcontractor shall promptly repair or replace such rejected Work or materials at no cost to Owner.

##### **B. Rejected Work - Subcontractor's Obligations**

1. Subcontractor shall bear all expenses related to the correction of rejected Work and replacing rejected materials, including the expense of making good all Work of Subcontractor, Contractor and Separate Contractors destroyed or damaged by the corrections and replacements.

2. If Subcontractor fails to correct rejected Work or replace rejected materials within a reasonable time, Contractor may remove and store the rejected Work or materials at the expense of Subcontractor. If Subcontractor does not pay the cost of such removal and storage within 10 Calendar Days, Contractor may, upon written notice, sell such Work or materials at auction or by private sale and shall account to Subcontractor for the net proceeds after deducting all costs. If proceeds of such sale do not cover the costs of correcting the rejected Work, the difference shall be charged to Subcontractor by an appropriate Change Order.

3. If Subcontractor fails to correct rejected Work or replace rejected materials within a reasonable time, Contractor may, without further notice to Subcontractor or Surety and without termination of this contract, correct the rejected Work or replace the rejected materials and charge the cost to Subcontractor.
4. If Subcontractor fails to correct rejected Work or replace rejected materials within a reasonable time, Contractor may terminate the contract for default. After such termination, Subcontractor and any Surety shall be liable for damage according to proof and for the cost of correcting rejected Work or replacing rejected materials.
5. The value of rejected Work and rejected materials shall not be included in any application for payment by Subcontractor or, if previously included, shall be deducted from the next application for payment submitted by Subcontractor.
6. No correction of rejected Work or replacement of rejected materials shall be complete until testing and Inspection is approved by Owner's Representative.
7. At the request of Contractor, Subcontractor shall search for the cause of a construction Defect.
8. After notice that Work or materials have been rejected, Subcontractor shall halt related or dependent construction tasks until the rejected Work or materials have been corrected and approved.
9. After notice that Work or materials have been rejected, Subcontractor shall halt Similar Work or delivery of Similar materials until correction has been approved and made.
10. The obligation of Subcontractor to correct Defective Work is in addition to and does not limit any other remedy Contractor may have under the Contract Documents, Law, or any warranty provided by Subcontractor or others. This obligation to correct Defective Work does not limit other liability of Subcontractor for Defective Work or limit the time within which proceedings may be commenced to enforce rights and obligations under this agreement.

### **C. Rejected Work - Subcontractor's Rights**

1. If Subcontractor disagrees with a decision on rejection of Work or rejection of materials, Subcontractor may proceed with corrections under protest and invoke the provisions of this agreement which cover dispute resolution. If such rejection of Work or materials is found to be without merit or with no adequate foundation, Subcontractor shall be entitled to a Change Order for Extra Work and Contractor shall pay all costs associated with corrections completed under protest.

### **XLII. Call-Backs**

- A. On written notice from Contractor within 30 Calendar Days after Substantial Completion (the call-back period), Subcontractor shall promptly repair or replace any portion of the Work which becomes Defective due to faulty materials or workmanship.
- B. The obligation of Subcontractor to repair or replace Defects due to faulty materials or workmanship during the call-back period is in addition to and does not limit any other remedy Contractor may have under the Contract Documents, Law, or any warranty provided by Subcontractor or others. This call-back remedy does not limit the liability of Subcontractor for Defective Work or limit the time within which proceedings may be commenced to enforce rights and obligations under this agreement.
- C. If Subcontractor fails to respond to a notice by Contractor to correct a Defect in material or workmanship within a reasonable time, Contractor may make the correction at the expense of Subcontractor.

## **XLIII. Warranty**

Except as otherwise provided in this agreement, Subcontractor warrants that Work performed under this contract shall conform to the Contract Documents and be free of Defects in material, or design furnished, or workmanship performed by Subcontractor or any Sub-subcontractor or Material Supplier for the period specified in this agreement. This warranty is made for the specific benefit of both Owner and Contractor.

### **A. General Requirements**

1. Except as otherwise provided in this agreement, the warranty period shall begin from the date of Final Completion.
2. A new basic warranty period with duration equal to the first warranty period begins to run from completion of repairs or replacements made under the first warranty period.
3. Contractor shall notify Subcontractor promptly and in writing on discovery of any warranty claim made under this agreement. Subcontractor shall make repairs, replacements and corrections promptly and at no expense to Contractor.
4. If Subcontractor fails to respond to a notice by Contractor of a warranty Claim within a reasonable time, Contractor may make the appropriate correction or repair at the expense of Subcontractor.
5. Subcontractor shall deliver to Contractor all warranties provided by vendors and manufacturers of materials and equipment used to complete the Project - Subcontract. Subcontractor shall have no obligation under warranties provided by others except to render any assistance that Contractor may require in enforcing the terms of those warranties.

### **B. Basic Warranty Coverage**

#### **1. Warranty on Electrical Systems**

- I. Electrical wiring that frequently trips circuit breakers should be inspected for appliances that are overloading the system. It is a breach of warranty if any portion of the electrical system installed by Subcontractor is found during the first year to be out of compliance with the electrical code enforced at the time of Installation, or out of compliance with the Plans and Specifications. This warranty does not cover any modification of the electrical system by Owner and does not cover damage that results from improper maintenance or connection of unusual or excessive loads.
- II. It is a breach of warranty if any ground fault circuit interrupter (GFCI) fails to operate normally during the first year. A single GFCI can protect all receptacles on a circuit. GFCIs are designed to trip when a ground fault is detected. Inspect the circuit for an overload or a fault in the wiring if a GFCI trips frequently. Defects that result from abuse, modification, or improper maintenance of the electrical system are not covered under this warranty.
- III. It is a breach of warranty if electrical fixtures are found not to be installed in compliance with manufacturer's instructions or in compliance with the electrical code, during the first year. Any electrical circuit installed under this contract that fails to deliver or distribute electricity during the first year is in breach of warranty. Defects that result from modification or abuse of electrical fixtures or the electrical system are not covered under this warranty, nor is any damage that results from improper maintenance. Be sure to confirm that electrical fixtures operate properly at Substantial Completion. Only those Defects attributable to faulty workmanship are covered under this warranty. Manufacturing Defects may be covered under the manufacturer's warranty, but are not covered under this warranty.

IV. It is a breach of warranty if any electric receptacle or switch fails to operate normally during the first year. Inspect the electrical service panel for a tripped breaker if a receptacle or switch does not work. Any Defect that results from abuse, modification, or improper maintenance of the electrical system is not covered under this warranty.

V. It is a breach of warranty if electrical outlets are found during the first year not to comply with the electrical code enforced at the time of Installation. It is a breach of warranty if, during the first year, electrical outlets are found to be out of compliance with the building Plans or Specifications. Owner is responsible for using appliance cords appropriate for the existing electrical system and for each appliance connected.

VI. It is a breach of warranty if a smoke detector emits false warning signals or does not pass an operational test during the first year. Battery replacement and testing of smoke detectors are part of normal building maintenance, and are not covered under this warranty.

#### **XLIV. Subcontractor Claims**

A. Unresolved Claims or disputes shall not cause Subcontractor to delay or suspend Work or for Contractor to delay or suspend payments as provided by this agreement. Continued performance by Subcontractor shall not be deemed a waiver of any Claim for additional compensation or an extension of Time for Completion. Subcontractor shall cooperate with Contractor and representatives of Contractor to mitigate potential damages, delay and other adverse consequences arising out of the condition which is the subject of the Claim.

#### **XLV. Notice of Claims**

A. No Claim by Subcontractor shall be considered unless Subcontractor provides Contractor with a notice that there will be a Claim for additional compensation or an extension of time. This notice of Claim shall be made no less than 3 Calendar Days after Subcontractor recognizes or should have recognized that circumstances exist which support such a Claim and within the time permitted for such Claims in the Prime Contract. The notice of Claim shall include: (1) The date of the notice, (2) The date the basis for the Claim was discovered, (3) The circumstances that support the Claim, and (4) The estimated additional cost to Contractor or additional time required to complete the Project - Subcontract.

B. If the Claim involves Extra Work, Subcontractor shall maintain detailed records which show each expense incurred, including payroll records and receipts for Sub-subcontracted Work, materials and equipment. These detailed records shall be made available to Contractor for verification while Work subject to the Claim is being performed.

C. Within 10 Calendar Days after completion of Work which is the subject of a notice of Claim, Subcontractor shall provide to Contractor a written final statement of Claim. The final statement of Claim shall include: (1) The date of the statement, (2) The date when Work done under the Claim was completed, (3) The full and final amount of the Claim and the additional time Claimed, and (4) An offer to provide detailed written records substantiating each element of the Claim.

D. The final statement of Claim shall be accompanied by a certificate executed by Subcontractor and stating as follows: "I certify that this claim is made in good faith; that the supporting information is accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which Contractor is liable; and, that I am duly authorized to certify the claim on behalf of Subcontractor."

E. All Claims of any nature are barred if asserted after final payment has been made under this contract.

F. Neither mediation nor arbitration shall relieve the obligation of Subcontractor to give timely notice

of Claims. No conduct or settlement negotiation during mediation shall be considered a waiver of the right of Contractor to assert that Claim procedures were not followed.

## **XLVI. Dispute Resolution**

A. Except as provided elsewhere in this agreement, all Claims and disputes between Contractor and Subcontractor arising out of or relating to the Contract Documents or contract warranty or the breach thereof, except for Claims which have been waived by the making or acceptance of final payment, shall be decided by courts of competent jurisdiction in the county where the Project - Subcontract is located.

## **XLVII. Insurance**

### **A. Wrap-Up Insurance**

1. To the extent that California Civil Code § 2782.95 applies to the Project - Subcontract, Contractor will disclose (in separate document which is hereby incorporated by reference) the cost of wrap-up insurance coverage and wrap-up policy provisions, including (1) Coverage limits, (2) Scope of coverage, (3) Duration of coverage, (4) Basis upon which the deductible or occurrence is triggered by the insurance carrier, (5) If the policy covers more than one Work of improvement, the number of units, if any, indicated on the application for the insurance policy, and (6) A good faith estimate of the amount of available limits remaining under the policy as of the date of disclosure.

2. Subcontractors and Sub-subcontractors at all Tiers performing construction and maintenance Work on Project - Subcontract will be enrolled in a wrap-up insurance program. Unless specifically excluded, all Subcontractors and Sub-subcontractors at all Tiers working on Project - Subcontract must enroll in this wrap-up insurance program before entering the Job Site. Enrollment is mandatory but not automatic. Subcontractors and Sub-subcontractors of every Tier accept the obligation to notify the wrap-up insurance program administrator when enrollment is required of any person or company working under direction of that Subcontractor or Sub-subcontractor. The administrator, upon review and acceptance of each set of enrollment forms, will officially enroll the Subcontractor or Sub-subcontractor in the wrap up insurance program and deliver certificates of insurance when issued. Once enrolled, each Subcontractor and Sub-subcontractor shall comply with the reasonable requirements of each insurance carrier as to payroll reports and audits, safety meetings, reporting of accidents, damage or injury, claims notification and notice of Substantial Completion.

3. The following Work is excluded from this wrap-up insurance program:

- (1) Work under a contract with an initial value of less than \$2,500 and which requires three or less days to complete.
- (2) Work done by vendors, Material Suppliers, material dealers, haulers or others who perform Work limited to delivery, pickup, or Inspection at the Job Site.
- (3) Professional services of architects, engineers, surveyors or consultants.
- (4) Work performed off the Job Site.

Enrolled Subcontractors and Sub-subcontractors must purchase their own insurance for excluded Work. Subcontractors and Sub-subcontractors excluded from the wrap-up insurance program must purchase their own insurance. Excluded Subcontractors and Sub-subcontractors and enrolled Subcontractors and Sub-subcontractors performing excluded Work must submit to the wrap-up insurance program administrator a valid and properly executed certificate of insurance for their Work. Coverage must be written by an insurance company with a rating not less than A VII as established by the A.M. Best Company. Certificates must include an agreement to provide written notice to the wrap-up insurance program administrator at least 30 Calendar Days in advance of any cancellation, material change in policy terms or non-renewal. Owner must be listed as an additional insured on the certificate. Failure to provide the required certificates of insurance will not relieve a Subcontractor or Sub-subcontractor of the

responsibility to carry and maintain such insurance. The wrap-up insurance program administrator has the right to stop Work or prevent any Subcontractor or Sub-subcontractor at any Tier from entering the Job Site until the appropriate certificate has been filed. Denial of site access for this reason does not constitute grounds for a Claim for delay

4. Any clause of this contract notwithstanding, all Subcontractor or Sub-subcontractors of any Tier enrolled in this wrap-up insurance program agree to waive all rights of subrogation against Owner, Contractor, officers, agents, and employees of Owner or Contractor, and wrap-up insurance carriers regarding any insured loss, whether the insurance is provided by this wrap-up insurance program or purchased by the Subcontractor or Sub-subcontractor. Owner, Contractor, and insurance carriers for this wrap-up insurance program waive subrogation rights against enrolled Subcontractors and Sub-subcontractors of any Tier for any covered loss, including any right of subrogation for physical loss or damage to owned, non-owned or leased machinery, watercraft, vehicles, tools, or equipment.

5. This wrap-up insurance program may be terminated after giving all enrolled Subcontractors and Sub-subcontractors written notice by certified mail 45 Calendar Days in advance of termination. Upon termination, enrolled Subcontractors and Sub-subcontractors must obtain equivalent insurance coverage with policy limits comparable to the terminated wrap-up insurance program. Contractor will reimburse enrolled Subcontractors and Sub-subcontractors for the reasonable replacement cost of equivalent insurance. Upon termination, written evidence of replacement coverage must be provided to Contractor in the same manner as evidence of coverage is required under this wrap-up insurance program for exempt Subcontractors and Sub-subcontractors.

6. Wrap-up insurance for Project - Subcontract will include workers' compensation insurance covering employees of all enrolled Subcontractors and Sub-subcontractors while performing work at the Job Site. Statutory benefit will be no less than the minimum benefit required by law for injury, disability, dismemberment or death resulting from an occupational hazard. This wrap-up coverage does not include workers' compensation insurance for: (1) Asbestos or lead abatement workers, (2) For injuries occurring away from the job site, (3) For injuries to non-enrolled equipment owners or equipment operators or truckers, (4) To employees of non-enrolled Subcontractors or Sub-subcontractors engaged solely in the delivery or removal of material or equipment from the Job Site.

7. Wrap-up insurance for Project - Subcontract will provide employer's liability insurance protecting any enrolled Subcontractor or Sub-subcontractor against common law liability for employee accidents.

8. Wrap-up insurance for Project - Subcontract will provide commercial general liability (CGL) insurance for operations of all enrolled Subcontractors and Sub-subcontractors at the Job Site. Coverage will provide protection against third party bodily injury and property damage caused by an occurrence at the Job Site created by the enrolled Subcontractor or found in the enrolled Subcontractor's area of responsibility. CGL liability limits apply collectively to all enrolled Subcontractors and Sub-subcontractors. Policy limits will meet or exceed the following values: \$2,000,000 for each occurrence, \$4,000,000 general aggregate, and \$4,000,000 products and completed operations aggregate for bodily injury and property damage, as defined in the policy. Completed operations coverage will extend for a period not less than 60 months after Final Completion. CGL coverage includes the following: (1) Premises and operations, (2) Blanket contractual liability, (3) Incidental medical malpractice, (4) Perils relating to XCU coverage (Explosion, Collapse and Underground), (5) Personal injury, (6) Coverage for pre- and post-judgment interest. This CGL coverage does not include professional services of architects, engineers or surveyors, asbestos, pollution (with the exception of hostile fire), and vendors. This CGL coverage does not extend to any insured party, Sub-subcontractor, vendor, Material Supplier, material dealer or others for

any product or products manufactured, assembled or otherwise worked on away from the job site, unless such manufacturing or assembly is required by the Contract Documents.

9. Wrap-up insurance for Project - Subcontract will provide automobile liability coverage for enrolled Sub-subcontractor and Sub-subcontractors. Minimum policy limit will be \$2,000,000 for each accident (combined bodily injury and property damage) that results from the use of any auto in or about the Job Site and that arises out of direct performance of Work on Project - Subcontract. This coverage does not include automobile liability while any agent or employee is traveling to or from the Job Site. Limits of liability reinstate annually. Automobile liability does not cover uninsured or underinsured motorist liability or personal injury protection/no fault coverage.

10. Wrap-up insurance for Project - Subcontract will provide excess liability insurance for all enrolled Subcontractors and Sub-subcontractors working on the Job Site. This insurance covers only operations at the Job Site and is in addition to limits provided by other coverage in this wrap-up package. Excess coverage of not less than \$2,000,000 for each occurrence will apply collectively to all enrolled Subcontractors, Sub-sucontractors, and Contractor on the Job Site.

11. Wrap-up insurance for Project - Subcontract will provide builder's risk coverage for direct losses to buildings and other property during construction (repair or replacement of property) and certain indirect losses. All labor on-site and all materials to be incorporated into the Work are covered. A blanket policy limit provides coverage for "all risks" of direct physical loss or damage, including terrorism coverage, subject to policy exclusions. This policy does not cover (1) Damage to or theft of owned or leased tools, machinery, equipment, or trailers, (2) Loss of market value or loss of use, (3) Indirect losses (business interruption and extra expense) for Subcontractors and Sub-subcontractors, (4) Faulty workmanship, material, construction or designs, unless the result of physical damage not otherwise excluded, (5) Damage to utility lines, conduits or pipes if accurately located on the drawings or by the utility company, (6) Material or equipment upgrades, unrelated equipment, or system changes, unless approved in advance by a designated insurance company representative. If an enrolled Subcontractor or Sub-subcontractor Claims compensation for Work performed to repair or mitigate damage caused by the enrolled Subcontractor or Sub-subcontractor, such loss will be reimbursed at cost excluding the costs of Bonds, insurance, first party tax, overhead and profit. The enrolled Subcontractor or Sub-subcontractor is responsible for the first loss under builder's risk coverage up to \$5,000 during the policy year. This deductible will increase progressively in increments of \$5,000 for each loss up to a maximum of \$50,000 per policy year.

#### **XLVIII. Indemnity**

A. Subcontractor shall defend, Indemnify, and hold harmless Contractor against all loss, liability, costs, and damage of any kind whatsoever that arises out of or results from performance of Work under this agreement provided such loss, liability, costs, and damage is attributable to bodily injury, sickness, disease or death, or to injury or destruction of property (other than the Work itself) but only to the extent caused in whole or in part by the negligent acts or omissions of Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by them.

B. Indemnification under this agreement shall not be limited by the amount or type of damages, compensation, or benefits payable by or for Subcontractor or any Sub-subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

#### **XLIX. Payment and Performance Bonds**

A. Subcontractor shall furnish to Contractor within 10 Calendar Days after execution of this agreement a Performance Bond guaranteeing faithful performance of the contract. The penal sum of the

Performance Bond shall be the Contract Price plus the value of Change Orders issued. Premiums for the Performance Bond shall be paid by Subcontractor. The Performance Bond shall be in effect 10 Calendar Days after this contract is signed by Contractor and shall expire on completion of Work under this contract, including any warranty period.

B. Subcontractor shall furnish to Contractor within 10 Calendar Days after execution of this contract a Bond guaranteeing payment of all obligations of Subcontractor arising under this contract. The penal sum of the Payment Bond shall be the Contract Price plus the value of Change Orders issued. Premiums for the Payment Bond shall be paid by Subcontractor. The Payment Bond shall be in effect 10 Calendar Days after this contract is signed and shall continue in force until the time permitted under Law for the filing of mechanics' and materialmen's liens on the Project - Subcontract has passed.

C. Subcontractor will notify each Surety underwriting bonds on the Project - Subcontract of each Change Order involving an increase in the Contract Price and shall secure an endorsement on each Bond reflecting the change.

#### **L. Interpretation of the Contract**

A. Except as otherwise provided in this contract, Subcontractor and Contractor intend that this contract be interpreted in accord with the *Restatement of Law, Contracts*, published by the American Law Institute. Specifically: All parts of the Contract Documents should be interpreted together, and conduct of the Parties should be interpreted as a manifestation of intention, and specific provisions should be interpreted as qualifying the meaning of the general provisions.

#### **LI. Dealing With Plan Defects**

A. Unless an item shown or described in the Contract Documents is specifically identified as not a part of the contract or is identified as being furnished or installed by anyone other than Subcontractor, the obligation of Subcontractor shall be to furnish, assemble, install, finish and connect each item identified in the Contract Documents. Work not described in the Contract Documents is not part of the Project - Subcontract unless it is: (1) Consistent with the purpose of the Contract Documents, (2) Reasonably inferable from the Contract Documents, and (3) Necessary to produce a functionally complete structure ready for the anticipated use in all respects.

B. Unless Subcontractor has asked for and received a written clarification from Contractor in time to prevent delay in the Work, any omission or ambiguity in the Contract Documents shall be interpreted as requiring the material or construction technique necessary to produce the greater quantity and better quality of Work.

C. Anything described in one of the Contract Documents shall be considered required by all Contract Documents.

D. If inconsistent, approved changes to the Contract Documents take precedence over the original Contract Documents. Subsequent changes to the Contract Documents take precedence over prior changes to the Contract Documents.

E. If inconsistent, the Specifications take precedence over the construction Drawings.

F. If anything in the construction Specifications is inconsistent with anything else in the construction Specifications: (1) A product performance Requirement takes precedence over a named product or manufacturer, and (2) Other clauses in the Specifications take precedence over anything incorporated by reference into the Specifications.

G. If anything in the construction Drawings is inconsistent with anything else in the construction

Drawings: (1) Dimensions written in numbers take precedence over scaled measurements, (2) Notes and schedules take precedence over lines on the Drawings, (3) Large scale Drawings take precedence over small scale Drawings, (4) Schedules take precedence over notes or other directions, (5) Specific notes take precedence over general notes, and (6) Bottom elevations of footings take precedence over any general notes.

H. Pending clarification by Contractor, Subcontractor shall perform no Work on any portion of the Project - Subcontract requiring an interpretation of the Contract Documents. Subcontractor has no liability for Work done before discovering the need for interpretation so long as that Work was done in good faith reliance on one of the Contract Documents.

### **LII. Assignment of the Contract**

A. Except as otherwise provided in this agreement, Subcontractor shall not assign this contract or sublet it as a whole without the written consent of Contractor.

### **LIII. Entire Agreement**

A. The Contract Documents are the entire agreement and constitute a complete integration of all understandings between Contractor and Subcontractor on the subject of the Project - Subcontract. The Contract Documents supersede all prior negotiations, representations and agreements, whether written or oral. No subsequent notation, renewal, addition, deletion, change or amendment to this contract shall have any force or effect unless in the form of a written Change Order or amendment to this contract.

### **LIV. Independent Contractor**

A. Subcontractor shall perform all obligations required by this agreement as an independent contractor and not as an employee of Contractor. No agent, employee or Sub-subcontractor of Subcontractor shall accrue leave, pension, insurance, or any other benefit provided to employees of Contractor.

### **LV. Severability**

A. If any provision of this contract is interpreted or rendered invalid and unenforceable, then the remainder of this contract shall remain in full force and effect.

### **LVI. Survival of Obligations**

A. Provisions of this contract which by their nature survive Final Completion or termination of the contract, including any and all warranties, Indemnities, payment obligations, the obligations to settle disputes by arbitration and the right of Contractor to audit the books of Subcontractor, shall remain in full force and effect after Final Completion or termination of the contract.

### **LVII. Subcontracted Work**

A. This is a Subcontract written under a Prime Contract between Contractor and Owner. In this Subcontract, Subcontractor agrees to complete a portion of the Work Contractor is obligated to perform under that Prime Contract. For the Scope of Work of this agreement, Subcontractor assumes all the duties and obligations of Contractor that exist under the Prime Contract between Owner and Contractor.

B. Subcontractor agrees that the terms of this contract shall apply equally to each Sub-subcontractor. Subcontractor agrees to take such action as may be necessary to bind each Sub-subcontractor to the terms of this agreement for the appropriate portion of the Work.

C. Anything in this contract or the Contract Documents notwithstanding, there is no contractual relationship between Subcontractor or vendor to Subcontractor and Owner or Owner's Representative.

Except as provided by Law or regulation, Subcontractor acknowledges that Owner has no obligation to respond to Claims of Subcontractor on the Project - Subcontract or to resolve disputes between or among Contractor, Subcontractor, and vendors on the Project - Subcontract.

D. Contractor affirms and guarantees that Subcontractor will have opportunity to review and copy all relevant changes and revisions to the Prime Contract between Contractor and Owner. Similarly, Subcontractor will make revisions to all documents relevant to the Work of Sub-subcontractors available to those Sub-subcontractors for review and copying.

E. Contractor may not subcontract any portion of the work to be done under the Prime Contract with Owner without prior consent of Owner and until Owner has reviewed and approved this agreement. Consequently, this contract does not become effective unless and until reviewed and approved by Owner.

F. Subcontractor will be given, on request, a list of payments made and payments due to Contractor under the Prime Contract between Contractor and Owner and any other documentation available to Contractor which would tend to show what amounts are due and payable to Subcontractor.

G. Contractor will make available to Subcontractor at the Job Site the following facilities and services at the charges listed: \_\_\_\_\_  
for a charge of \$\_\_\_\_\_.

#### **LVIII. The Construction Schedule**

A. Contractor agrees to: (1) Provide Subcontractor with a copy of the construction Schedule approved by Owner, (2) Inform Subcontractor of any change to the construction Schedule which would affect the Work of Subcontractor, and (3) Act promptly when Samples, Submittals, approvals, requests or other information must be passed between Owner and Subcontractor.

B. Subcontractor shall plan, develop, supervise, control, and coordinate the performance of the Work so that job progress, sequence and timing conform to the construction Schedule. If Subcontractor falls materially behind the currently approved construction Schedule, Contractor may require Subcontractor to prepare and submit for approval, at no cost to Contractor, a plan for completing the Project - Subcontract within the Contract Time. Failure to submit a plan meeting this Requirement shall constitute grounds for termination under the terms of this agreement.

#### **LIX. Subcontractor Claims for Delay**

A. Extension of the Contract Time shall be the sole remedy for suspension, delay or interruption of the Work unless caused by acts constituting intentional interference with performance of the Work or fraud or bad faith by Contractor, Owner or agents of Owner. No act of Contractor shall constitute intentional interference with performance of the Work unless continued after notice by Subcontractor that a Claim will be asserted for delay. Exercise by Contractor of any right or remedy provided under this agreement shall not constitute intentional interference with performance of the Work. Nothing in this paragraph shall limit the right of Subcontractor to terminate this agreement under the terms of this agreement.

B. Anything in this contract notwithstanding, Subcontractor shall receive no less than a proportionate share of any compensation for suspension, delay or interruption provided by Owner to Contractor.

#### **LX. Substantial Completion**

A. When, in the opinion of Subcontractor, the Work is Substantially Complete, Subcontractor shall request acknowledgment of Substantial Completion by Contractor. If Contractor knows of nothing that prevents the Work from being Substantially Complete, Contractor shall conduct an Inspection of the

Work to evaluate compliance with the Contract Documents.

B. The Project - Subcontract shall not be considered Substantially Complete until: (1) The Work completed can be tested and evaluated, (2) Debris, waste, and excess materials have been removed from the Job Site, and (3) The Work has passed Inspection by the public authority.

C. The Inspection for Substantial Completion shall be terminated and rescheduled at a later date on discovery of: (1) Any discrepancy which is inconsistent with or would restrict the intended use of Owner, (2) Any discrepancy which would be difficult to remedy with Owner occupying the premises, (3) An excessive number of discrepancies of any nature, or (4) A significant discrepancy requiring an extended period of time to repair or complete.

D. If, after Inspection, the Project - Subcontract does not qualify as Substantially Complete, Contractor shall provide Subcontractor with a written list of the Work found to be: (1) Incomplete, (2) Out of compliance with the Contract Documents, or (3) Defective in operation or workmanship. Subcontractor shall complete or correct all Work listed prior to requesting a subsequent Inspection for Substantial Completion.

E. Subcontractor shall receive a comprehensive Punch List of discrepancies to be corrected or Work to be finished by Subcontractor and a date for completing this Work. Subcontractor shall complete and correct items on the Punch List by the designated date.

F. Failure of Contractor to note Defective or incomplete Work on the Punch List does not constitute waiver of any Requirement of the Contract Documents and does not relieve Subcontractor of warranty or call-back obligations.

#### **LXI. Delivery of Notices**

A. Any written notice required by this contract can be: (1) Delivered by hand at the last known address of the addressee, or (2) Delivered by hand to the addressee or representative of the addressee, wherever found. Notice is effective upon delivery.

B. Any written notice required by this contract can be: (1) Delivered by enclosing in a stamped envelope addressed to the last known address of the intended recipient and either deposited in a United States Postal Service mailbox or given to a USPS employee, or (2) Consigned to a commercial courier service and addressed to the last known address of the intended recipient. Notice is effective upon delivery if proof of delivery is provided; Where no proof of delivery is available, notice is effective 5 Calendar Days after mailing or consignment to a courier service.

C. Any written notice required by this contract can be delivered by e-mail to the address listed in this contract with a read receipt requested. Notice sent by e-mail shall be effective on delivery of the read receipt.



## **Glossary of Terms**

**Addenda** means anything that modifies, interprets, deletes, clarifies, corrects or adds to either this contract or to documents incorporated by reference into this contract and which become part of this Agreement when approved by all parties.

**Beneficial Occupancy** refers to Owner's use of the project premises after Substantial Completion but prior to Final Completion. Beneficial Occupancy may occur when the project or some portion is sufficiently complete and systems operational such that the Owner could, after obtaining necessary approvals and certificates, occupy and utilize the space for its intended purpose. The time limit for warranties applicable to that portion of the Work begin on the date the Owner begins Beneficial Occupancy, unless otherwise specified in this Agreement.

**Bond** means the security offered by a licensed surety company which may be used to satisfy a claim of failure to perform obligations undertaken in this Agreement.

**Calendar Day** means any day shown on the calendar beginning at midnight and ending at midnight the following day. Contrast the term Work Day which excludes Saturdays, Sundays and state-recognized holidays.

**Change Order** is a written modification of the Contract Price (including all claims for direct, indirect and consequential damages and costs of delay), Time for Completion, and Scope of Work under this Agreement. A Change Order, once signed by all parties, is incorporated into and becomes a part of the Contract Documents.

**Claim** means a demand or assertion by one of the parties to this Agreement seeking, as a matter of right, modification, adjustment or interpretation of contract terms, payment of money, extension of time or other relief.

**Code Requirements** means all laws, statutes, regulations, building codes, ordinances, rules, and lawful orders of all public authorities having jurisdiction over Owner, Contractor, any Subcontractor, the Project, the Job Site, the Work, or the prosecution of the Work.

**Contract Completion Date** means the day by which the Work must be substantially complete.

**Contract Documents** are this Agreement and all documents incorporated by reference into this Agreement.

**Contract Price** is the amount which will become due in exchange for work performed under this Agreement. Contract Price includes allowances for purchased materials and equipment and may be modified by a Change Order or contract modification. The Contract Price may be paid in one or more installments, including an Initial Payment at or before the start of work, Progress Payments as work is completed, and a Final Payment on final acceptance of the work. Payment Period is the time elapsed

between applications for progress payments or prior to the first application for progress payment.

**Contract Schedule** is a graphical representation of a practical plan to complete Work within the Contract Time.

**Contract Time** means the period between Date of Commencement and the date of Substantial Completion.

**Defective Work** means construction done under this Agreement that is unsatisfactory, faulty, omitted, incomplete, deficient, or does not conform to the requirements of the Contract Documents, directives of Owner's Representative, or the requirements of an inspection, reference standard, test, or approval specified in the Contract Documents.

**Design Professional** means the person, organization or authorized representative who is responsible to the Owner for design of the Project through preparation of Drawings and Specifications. The term Design Professional may refer to an architect, designer, engineer or landscape architect.

**Drawings** (also called plans or prints) are scale representations of the shape, location, character and dimensions of Work to be completed under this contract. Drawings include plan views, elevation views, transverse and longitudinal sections, large and small scale sections and details, isometrics, diagrams, schedules, tables, data and pictures which depict the completed Project. A group of drawings adequate to complete construction of the Project may be referred to as a plan set. Drawings can be either paper or electronic media.

**Emergency** means an unforeseen event, combination of circumstances, or a resulting state that poses imminent danger to health, life or property.

**Extra Work** means any change, interpretation, clarification or correction in the Contract Documents or in applicable law, ordinance or regulation which would increase or decrease the quantity of work, delay, suspend or interfere with the work, require an addition to or omission from the work, change the character, quality or nature of any part of the work or material used in the work, change levels, lines, positions or dimensions of any part of the work, require demolition or removal of any work completed under this Agreement, extend or amend the normal work day, alter the construction schedule or require completion of any part of the work at a time other than provided by this Contract when originally made.

**Final Completion** is the date of Owner's acceptance of the Work as fully performed according to the Contract Documents.

**Furnish** means to supply and deliver to the job site.

**Hazardous Materials** means radioactive materials, asbestos, polychlorinated biphenyls, petroleum, crude oil, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, and toxic substances which are restricted, prohibited, or regulated by any agency of government in the manufacture,

use, maintenance, storage, ownership or handling.

**Indemnification** Financial compensation intended to restore someone to their condition before a loss or damage.

**Inspection** is any review of the Project, including a visual review of the Work completed to ascertain compliance with Contract Documents, building codes and construction standards.

**Install** means to secure in position in compliance with the Contract Documents and includes unloading materials, supplying all necessary equipment and rigs to do the work and performing functional tests which demonstrate fitness for the intended purpose.

**Job Site** is the address or location of the Project.

**Law** means federal or state statutes, municipal ordinances, building codes, regulations adopted pursuant to statute, executive orders, official interpretations, and other rules and directives issued by government.

**Material Supplier** means any manufacturer, fabricator, distributor, materialman or vendor who provides material for the Project but does not provide on-site labor.

**Modification** is a written amendment to the Contract signed by both parties.

**Non-Conforming Work** is any task or installed material which is inconsistent with requirements of the Contract Documents.

**Party (to this contract)** means a person or business organization which has an obligation to perform under the terms of this contract.

**Plans** (also called drawings or prints) are scale representations of the shape, location, character and dimensions of Work to be completed under this contract. Plans include plan views, elevation views, transverse and longitudinal sections, large and small scale sections and details, isometrics, diagrams, schedules, tables, data and pictures which depict the completed project. A group of plans adequate to complete construction of the Project may be referred to as a plan set. Plans can be either paper or electronic media.

**Prime Contract** is a written agreement between Contractor and Owner which binds Contractor to furnish labor, equipment, or materials or perform certain work for a price to be paid by Owner.

**Project** means Work to be completed in accord with the Contract Documents. Work at the Job Site may include other projects to be completed by the Owner or other contractors working under other agreements.

**Provide** means furnish and install and includes connecting, testing, and placing in service for the

intended use.

**Punch List** is a comprehensive list of incomplete, defective or incorrect Work yet to be completed or which does not comply with Contract Documents. A Punch List may be prepared by the Contractor, Subcontractor, Design Professional or Owner. An initial Punch List will be prepared before application for Substantial Completion. A Close-out Punch List will be prepared before Final Completion.

**Requirements** means, in addition to obligations, responsibilities and limitations set out in the Contract Documents, the obligations, responsibilities and limitations imposed by law, rules, orders, ordinances, regulations, statutes, codes and executive orders of governmental authorities or fire rating bureaus.

**Retainage** is a portion of each progress payment temporarily held back or retained by the owner. Accumulated retainage is released to Contractor on satisfactory completion of the work.

**Sample** means a physical example of material, equipment or workmanship intended to be representative of some portion of the Work. When approved, samples establish standards for completion of similar work on the Project.

**Schedule of Values** means the detailed breakdown of cost of materials, equipment and labor necessary to complete the Project as described in the Contract Documents.

**Scope of Work** means the Work as defined by the Contract Documents.

**Separate Contractor** means a person or firm working under a different contract but on the same site and at the same time as work will be done under this contract.

**Shop Drawings** are diagrams, illustrations, pictures, schedules, performance charts, layouts, schematics, descriptive literature, schedules, performance and test data, and other data which are prepared by the Subcontractor or a Sub-subcontract, manufacturer, supplier or distributor, and which illustrate or describe some portion of the Work to be completed in compliance with the Contract Documents. Once submitted to the approval authority and approved, Shop Drawings establish standards for completion of work on Project.

**Similar** means having a like kind, quality and characteristics. Similar is not to be construed as meaning identical or by the same manufacturer.

**Specifications** (also called specs) are the part of the Contract Documents which provide descriptions of materials, equipment, construction systems, technique and workmanship to be used on the Project. Specifications are both instructions to be followed by the Subcontractor and Sub-subcontractors and a reference for the Building Official to evaluate code compliance.

**Subcontract** is a written agreement between a specialty contractor and General Contractor. Terms of the subcontract require the specialty contractor to complete some portion of the work General

Contractor is obligated to perform under another agreement, usually with the Owner.

**Subcontractor** is any person or business entity under contract to a general contractor to perform some portion of the work general contractor is obligated to complete under a contract with the Owner. Subcontractor is an independent contractor performing services for another contractor rather than for the Owner. A person or organization providing supplies or materials for the Project - Subcontract but no job site labor is not a Subcontractor.

**Submittals** demonstrate the way by which the Subcontractor proposes to conform to the requirements of the Contract Documents. Submittals are shop drawings (diagrams, illustrations, pictures, schedules, performance charts, layouts, schematics, descriptive literature, schedules, performance and test data, and other data) required by the Contract Documents which are prepared by or for the Contractor to depict some portion of the Work. Submittals are delivered to the Contractor for approval or disapproval by the Contractor prior to purchase or installation.

**Substantial Completion** means the Project or a designated portion of the Project is nearly in compliance with the Contract Documents and is sufficiently complete to be considered fully operational in all its components and is fit for the intended use. Substantial Completion is reached when a limited number of non-conforming or defective items on a Punch List remain to be completed. Normally, work is substantially complete when (1) all equipment and materials are installed and in acceptable working condition and when (2) additional activity by the Subcontractor to correct the items on the Punch List will not prevent or disrupt intended use of the facility or other construction activities.

**Sub-subcontract** is a written agreement between a specialty contractor and subcontractor. Terms of the sub-subcontract require the specialty contractor to complete some portion of the work Subcontractor is obligated to perform under another agreement, usually with the General Contractor.

**Sub-subcontractor** is any person or business entity under contract to a subcontractor or any lower tier subcontractor to perform some portion of the work subcontractor is obligated to complete under a contract with the prime contractor. Sub-subcontractors are independent contractors performing services for another contractor rather than for the prime contractor. A person or organization providing supplies or materials for the Project but no job site labor is not a Sub-subcontractor.

**Superintendent** is the representative of the Contractor at the job site who is authorized to receive instructions from the Owner or Owner's Representative and who is authorized to direct the performance of work on behalf of the Contractor.

**Surety** means any qualified individual, firm or corporation other than the Contractor, which executes a bond to insure its acceptable performance of the contract.

**Tier** refers to the contractual level of a person or business organization doing work on the Project. A first-tier subcontractor has a contract with the general contractor but not the owner. A second-tier subcontractor has a contract with another subcontractor but not with the general contractor or the owner.

**Time for Completion** is the Contract Time, the period between Date of Commencement and the date of

Substantial Completion. The Notice to Proceed usually states a Contract Completion Date based on the Time for Completion.

**Work** means all labor, material, equipment, tools, transportation, permanent and temporary utilities, connections, provisions for safety and management services required to complete the Project in compliance with the Contract Documents. Work may constitute the whole or a part of the Project. Work is to be performed in a safe, expeditious, orderly and professional manner in keeping with current standards of the industry. Work includes everything that is or should be evident to a skilled construction professional after careful examination of the Contract Documents and the Job Site.

**Work Day** means any day, excluding Saturdays, Sundays and state-recognized holidays, shown on the calendar beginning at midnight and ending at midnight the following day.