

LONG FORM SUBCONTRACT

TABLE OF CONTENTS

	PAGE
SECTION 1. ENTIRE CONTRACT	3
SECTION 2. SCOPE	3
SECTION 3. SUBCONTRACT PRICE	4
SECTION 4. PAYMENT SCHEDULE/RETENTION	4
SECTION 5. TIME	6
SECTION 6. CHANGES IN THE WORK	8
SECTION 7. DAMAGES CAUSED BY DELAYS	9
SECTION 8. BONDING OF SUBCONTRACTOR AND GUARANTY	9
SECTION 9. CLAIMS & LIENS	10
SECTION 10. PROVISIONS FOR INSPECTION	11
SECTION 11. MATERIALS AND WORK FURNISHED BY OTHERS	11
SECTION 12. PROTECTION OF WORK	11
SECTION 13. LABOR RELATIONS	11
SECTION 14. RE COURSE BY CONTRACTOR	15
SECTION 15. INDEMNIFICATION	18
SECTION 16. INSURANCE	20
SECTION 17. DISPUTE RESOLUTION PROCEDURE	25
SECTION 18. COMPLIANCE WITH ALL LAWS AND SAFETY PRACTICES	27
SECTION 19. WARRANTY	27
SECTION 20. USE OF CONTRACTOR'S EQUIPMENT	29
SECTION 21. ASSIGNMENT OF CONTRACT	29
SECTION 22. INDEPENDENT CONTRACTOR	29
SECTION 23. CLEAN-UP	29
SECTION 24. RISING COSTS	29
SECTION 25. RECORD DRAWINGS	30
SECTION 26. ACCOUNTING RECORDS	30
SECTION 27. ATTORNEYS' FEES	30
SECTION 28. LABOR AGREEMENTS	31
SECTION 29. NOTICE	31
SECTION 30. SPECIAL PROVISIONS:	32

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS USE OR MODIFICATION. SOME CONSTRUCTION PRIME CONTRACTS MAY REQUIRE THE USE OF SPECIALIZED PROVISIONS NOT INCLUDED IN THIS FORM.



© Associated General Contractors of California, Inc. 2018

Form AGCC-03

LONG FORM SUBCONTRACT

This "Subcontract" is made at Wildomar, CA, as of this _____ day of _____, 20____, between:

CONTRACTOR

Name: ProWest PCM, Inc DBA ProWest Constructors

Address: 22710 Palomar Street, Wildomar, CA 92595

Phone: 951-678-1038

and

SUBCONTRACTOR

Name: _____

Address: _____

Phone: _____

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

OWNER

Name: _____

Address: _____

to construct the Project described in Section 1. The Project is financed by:

CONSTRUCTION LENDER (if applicable)

Name: _____

Address: _____

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

ARCHITECT/ENGINEER

Name: _____

Address: _____

Phone: _____

SECTION 1. ENTIRE CONTRACT

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

EXHIBIT A – ALTERNATES & UNIT PRICES
EXHIBIT B – SCOPE OF WORK
EXHIBIT C – LIST OF CONTRACT DOCUMENTS
EXHIBIT D – MASTER PROJECT SCHEDULE
EXHIBIT E – REQUIRED LABOR CODE SECTIONS
EXHIBIT F – PROOF OF REGISTRATION UNDER CALIFORNIA LABOR CODE SECTION 1725.5
EXHIBIT G – INSURANCE REQUIREMENTS AND TAXPAYER IDENTIFICATION
EXHIBIT H – PERFORMANCE AND PAYMENT BOND FORMS
EXHIBIT I – SCHEDULE OF VALUES FORM
EXHIBIT J – PAYMENT APPLICATION AND WAIVER & RELEASE FORMS
EXHIBIT K – CERTIFIED PAYROLL REPORTING FORMS
ADDITIONAL EXHIBITS TBD

For the "Project" known as: _____
and located at: _____

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

SECTION 2. SCOPE

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

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

Exhibit B – Scope of Work and Exhibit C – List of Contract Documents

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

SECTION 3. SUBCONTRACT PRICE

Contractor agrees to pay Subcontractor for the strict performance of the Work the sum of:

\$ (_____)

subject to additions and deductions for changes in the Work as may be directed in writing by Contractor, and to make payment in accordance with Section 4.

SECTION 4. PAYMENT SCHEDULE/RETENTION

Contractor agrees to pay Subcontractor, in monthly progress payments, for labor and materials which have been placed in position by Subcontractor, with funds received by Contractor from Owner for Work performed by Subcontractor, as reflected in Contractor's applications for payment to Owner. Such monthly progress payments shall be made by Contractor within seven (7) days after receipt of payment from Owner. Final payment to Subcontractor shall be made after the Project has been fully completed in conformity with the Contract Documents and has been delivered to and accepted by Owner and Architect, with funds received by Contractor from Owner in final payment. Subcontractor agrees to furnish, if and when required by Contractor, payroll affidavits, payroll records / statements, fringe benefit and subsistence statements, employee time cards, receipts, cancelled checks, vouchers, releases of claims for labor and material, and agrees to furnish same from its subcontractors, suppliers and/or material suppliers performing Work or furnishing materials under this Subcontract, all in form satisfactory to Contractor, and it is agreed that no payment hereunder shall be made, except at Contractor's option, until and unless such documents have been furnished. As a condition precedent to Contractor's obligation to make payment to Subcontractor, Subcontractor shall provide Contractor with a conditional waiver and release form signed by Subcontractor and signed by all its subcontractors, suppliers and/or material suppliers for the current progress payment and an unconditional release from Subcontractor and from its subcontractors, suppliers and/or material suppliers establishing receipt of payment in full, less earned retention, for the preceding progress payment, in the form of **Exhibit J**. Contractor, at its option, may make any payment due hereunder by check made payable jointly to Subcontractor and of its subcontractors and/or suppliers or directly to said subcontractors and/or suppliers who have performed Work or furnished materials under this Subcontract. Any payment made hereunder prior to completion and acceptance of the Project, as referred to above, shall not be construed as evidence of acceptance or acknowledgement of completion of any part of the Work, or waiver of any Contractor's rights.

If **Exhibit M** - Labor Code Specific to Lease-Leaseback & Design-Build Projects is listed in Section 1 of this Subcontract, labor laws specific to Design-Build and Lease-Leaseback projects are applicable to this Project. For these projects Subcontractor must provide with each payment application a declaration, signed under penalty of perjury, that the Subcontractor has met the Skilled and Trained Workforce requirements.

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

If the Project is a private work of improvement, Contractor shall be entitled to retain _____ percent (____ %) of the value of all Work included in any monthly progress payment to Subcontractor. This amount retained shall be paid with the final payment to Subcontractor.

If the Project is a public work of improvement, and if Contractor requested performance and payment bonds from Subcontractor in the solicitation for bids and Subcontractor failed or refused to provide such bonds, or did not provide such bonds in the full-amount requested by Contractor, then Contractor shall be entitled to retain _____ percent (____ %) of the value of all Work included in any monthly progress payment to Subcontractor. This amount retained shall be paid with the final payment to Subcontractor.

If the Project is a public work of improvement, and if Contractor did not request performance and payment bonds from Subcontractor in the solicitation for bids, then Contractor shall be entitled to retain only that percentage specified in the Prime Contract of the value of all Work included in any monthly progress payment to Subcontractor. This amount retained shall be paid with the final payment to Subcontractor.

If the Project is a public work of improvement, and if Contractor requested performance and payment bonds from Subcontractor in the solicitation for bids and Subcontractor provided such bonds, then Contractor shall be entitled to retain only that percentage specified in the Prime Contract of the value of all Work included in any monthly progress payment to Subcontractor. This amount retained shall be paid with the final payment to Subcontractor.

Contractor may withhold all or part of any payments claimed by Subcontractor, or, on account of subsequently discovered evidence, may nullify all or part of and any amounts previously paid, to the extent necessary to protect Contractor from loss, including costs and actual attorneys' fees, for any of the following reasons:

- (1) failure to provide a schedule of values (SOV) satisfactory to Contractor per **Exhibit I** of this Subcontract, or failure to utilize Contractor's online payment application, SOV, waivers and releases, and insurance request and tracking system(s) if directed by Contractor to do so at any time before Substantial Completion of this Project;
(Note: Contractor may reject or modify Subcontractor's SOV at Contractor's sole discretion.)
- (2) defective Work not remedied;
- (3) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to Contractor is provided by Subcontractor;
- (4) failure of the Subcontractor to make payments properly for labor, materials or equipment to its subcontractors and/or suppliers performing Work or furnishing materials under this Subcontract;
- (5) reasonable evidence that the Work cannot be completed for the unpaid balance of the Subcontract Price;
- (6) damage to the Owner, Contractor, or another subcontractor caused or alleged to be caused by Subcontractor;
- (7) reasonable evidence that the Work may not be completed within the time required by this Subcontract;
- (8) reasonable evidence that the unpaid balance of the Subcontract Price will not be adequate to cover any liquidated, delay, or closeout damages for which Subcontractor is responsible;
- (9) repeated failure to carry out the Work in accordance with the Contract Documents;
- (10) penalties assessed against Contractor or Subcontractor for failure of Subcontractor, or its subcontractors or suppliers, to comply with state, federal or local laws and regulations;
- (11) failure by Subcontractor to submit insurance certificates and/or endorsements as required by Section 16, or failure by Subcontractor to maintain all required insurance;
- (12) failure by Subcontractor to submit required warranties, guarantees, as-built drawings and other documents required by the Contract Documents; or
- (13) any other ground for withholding payment allowed by state or federal law, including but not limited to California Labor Code Section 218.8, or as otherwise provided in this Subcontract.

Subcontractor must submit closeout documentation and conditional or unconditional final releases and payroll affidavits as provided in California Labor Codes Section 218.8 (a)(3)(C) (from all its suppliers and sub-subcontractors) prior to requesting a progress payment of 90% complete or greater from Contractor. Subcontractor will not hold retention from its suppliers or sub-subcontractors.

As a condition precedent to final payment under this Subcontract, upon completion of Subcontractor's scope of work, Subcontractor shall furnish to Contractor job site payroll records/reports to the extent not already provided with each statement for payment as described above, and permit Contractor or its representative to audit Subcontractor's books and records pursuant to Section 26 of this Subcontract and provide documentation as may be required to assure accuracy of such payroll reports/records. The purpose of the final audit, among other things, is to verify Subcontractor fulfilled its obligations to pay wage, fringe, or other benefit payments or contributions. Subcontractor shall also provide final written confirmation from contract trust funds or a third party owed fringe or other benefit

payment or contribution on a wage claimant's behalf that Subcontractor made timely and correct contributions and payments. In addition, an owner, officer, or director of Subcontractor must certify under penalty of perjury that Subcontractor has paid all wages on the Project. Subcontractor agrees that its failure to submit the documents required by this Section or permit an audit of its payroll records will constitute grounds for withholding retention and/or any remaining contract balance.

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

If Contractor is not paid by Owner any sum claimed due by Subcontractor for progress payment, final payment, or extra work, Subcontractor agrees not to pursue an action against Contractor or its sureties until 180 days after "Completion" of the subject work of improvement(s) as that term is defined in California Civil Code section 8180, and Subcontractor's compliance for all prerequisites for payment under this Subcontract have been satisfied. In the event Contractor is still not paid by Owner at the expiration of the 180 days from "Completion," Subcontractor may commence an action against Contractor, and the Contractor's surety, on any payment bond, mechanics' lien, or stop payment notice release bond; provided however, if payment to Subcontractor is subject to dispute by Contractor or Owner, Subcontractor agrees any such action will be stayed for the lesser of: (1) the time Contractor (and Subcontractor) require to pursue to conclusion legal remedies against the Owner; or (2) 18 months from "Completion." Nothing in this Subcontract shall be interpreted as releasing, affecting, impairing, or waiving the Subcontractor's statutory mechanic's lien, stop payment notice, or bond rights to the extent such rights exist; provided however, that Contractor and its surety may assert, as a defense to Subcontractor's claims, the failure of Subcontractor to stay proceedings or allow Contractor the amount of time allowed by this Subcontract to make payment to Subcontractor. If any portion of this provision is determined to be void, invalid, or illegal, all other portions of this provision shall remain in full force and effect.

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

To the extent that the payment terms set forth in this Subcontract differ from those stated in California Public Contract Code § 10262.5 and/or Business & Professions Code § 7108.5 (Prompt Payment Act), Subcontractor hereby waives such statutory provisions.

SECTION 5. TIME

Time is of the essence of this Subcontract. Subcontractor shall provide Contractor with scheduling information and a proposed schedule for performance of the Work in a form acceptable to Contractor. Subcontractor shall conform to the Master Project Schedule and all revisions or changes made thereto. Subcontractor shall prosecute the Work in a prompt and diligent manner in accordance with the Master Project Schedule without delaying or hindering Contractor's work or the work of other contractors or subcontractors. Subcontractor shall coordinate the Work with that of Contractor and all other contractors, subcontractors, and/or material suppliers, in a manner that will facilitate the efficient completion of the entire Project. In the event Subcontractor fails to maintain its part of the Contractor's schedule, it shall, without additional compensation, accelerate the Work as Contractor may direct until the Subcontractor's Work is in accordance with such schedule. Contractor shall have the right to decide the time and order in which various portions of the Project shall be installed and the relative priority of the Work, and, in general, all other matters pertaining to the timely and orderly conduct of the work required to complete the Project within the time allowed Contractor by Owner for such completion. Should Subcontractor be delayed in the prosecution or

completion of the Work by the act, neglect or default of Owner, Architect or Contractor, or should Subcontractor be delayed waiting for materials, if required to be furnished by Owner or Contractor, or by damage caused by fire or other casualty for which Subcontractor is not responsible, or by the combined action of the workmen, in no way caused by or resulting from fault or collusion on the part of Subcontractor, then the time herein fixed for the completion of the Work shall be extended the number of days that Subcontractor has been delayed, but no allowance or extension shall be made unless a claim therefor is presented in writing to Contractor within 48 hours of the commencement of such delay, and under no circumstances shall the time of completion be extended to a date which will prevent Contractor from completing the entire Project within the time allowed Contractor by Owner for such completion.

Except with respect to the liquidated damages provisions set forth below in this Section 5, no claims for additional compensation or damages for delays, whether caused in whole or in part by any conduct on the part of Contractor, including, but not limited to, conduct amounting to a breach of this Subcontract, or delays by other subcontractors or Owner, shall be recoverable from Contractor, and the above-mentioned extension of time for completion shall be the sole remedy of Subcontractor; provided, however, that in the event Contractor obtains additional compensation from Owner on account of such delays, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor from Owner as is equitable under all of the circumstances. In the event that Contractor prosecutes a claim against Owner for additional compensation for any delay, Subcontractor shall cooperate fully with Contractor in the prosecution thereof and shall pay costs and expenses incurred in connection therewith, including actual attorneys' fees, to the extent that said claim is made by Contractor at the request of Subcontractor.

Contractor and Subcontractor acknowledge and agree that if Subcontractor is unable, due to compensable delay, to substantially complete the Work in conformity with Contractor's Master Project Schedule, the Subcontractor will suffer losses which are both extremely difficult and impracticable to ascertain. On that basis they agree, as a reasonable estimate of those losses and not a penalty, to the payment by Contractor of liquidated damages as provided in this Section 5.

The Subcontract Price payable to Subcontractor shall be increased by Subcontract Change Order by the sum of **One Hundred Dollars (\$100.00) per Day** as liquidated damages for each working day for which Subcontractor is entitled under the Contract Documents to an extension of time under Contractor's Master Project Schedule due to compensable delay, with no additional amount for allowable markup or any other markup for overhead or profit thereon. Contractor and Subcontractor agree that liquidated damages pursuant to this Section 5 shall only be payable to Subcontractor in the event that the number of days for which Subcontractor is entitled to an extension of time for compensable delay is greater than the number of days of critical-path delays to Contractor's Master Project Schedule caused by Subcontractor, in which event Subcontractor shall only be entitled to liquidated damages calculated pursuant to the difference in days between compensable delays and Subcontractor-caused delays.

Notwithstanding any other provision of the Contract Documents to the contrary, any Subcontract Change Order for an adjustment to the Subcontract Price payable for liquidated damages permitted by this Section 5 shall be executed following, and not before, the actual occurrence of substantial completion of Subcontractor's Work and prior to final completion. All sums due to Subcontractor pursuant to this Section 5 shall be due and payable, subject to Contractor's rights of withholding payment permitted by the Subcontract Documents or otherwise pursuant to applicable law, as part of the final payment to Subcontractor.

Liquidated damages payable pursuant to this Section 5 constitute Subcontractor's sole and exclusive right and remedy for recovery from Contractor for losses to Subcontractor due to delay and/or disruption, regardless of the cause, duration, or timing, attributable to otherwise compensable delay.

A credit shall be given to Contractor reducing the Subcontract Price payable due to any and all deleted work that results in a shortening of the time period for Subcontractor's Work pursuant to Contractor's Master Project Schedule. Such reduction in the Subcontract Price shall be effected by means of a Subcontractor Change Order that is based on the product derived from multiplying (1) the number of days that the time period for Subcontractor's Work pursuant

to Contractor's Master Project Schedule is shortened by (2) the amount of liquidated damages set forth in this Section 5, without any additional credit to Contractor for allowable markups.

Contractor shall have no liability to Subcontractor to pay any liquidated damages provided for under this Section 5, nor shall Contractor have any other liability to Subcontractor for any loss due to delay and/or disruption (including, without limitation, otherwise compensable delay and/or disruption) in the event there is a termination of this Agreement (whether such termination is a termination for cause by Contractor or Subcontractor or is a termination for convenience by Contractor) prior to expiration of the period of time set forth in forth in this Agreement for substantial completion of the Subcontractor's Work.

No Subcontract Change Order, adjustment to the Contract Price, or other form of compensation or reimbursement, of any kind, to Subcontractor shall be permitted for any loss resulting, directly or indirectly, from or attributable to any of the following: (1) unexcused delay or acceleration to overcome unexcused delay; (2) excusable delay or any acceleration not authorized by Contractor in writing to overcome excusable delay; or (3) concurrency of a compensable delay with any different type or class of unexcused delay or excusable delay, whether such concurrency is a concurrency in cause or in effect.

Delays and/or disruptions experienced by Subcontractor caused by parties other than Contractor are non-compensable delays. Subcontractor agrees and acknowledges that the remedy for such delays and/or disruptions, if proven, is a time extension only.

SECTION 6. CHANGES IN THE WORK

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

If necessary, the Subcontract Price and the time for Subcontractor's performance shall be adjusted by appropriate additions or deductions mutually agreed upon before Subcontractor performs the changed Work. Subcontractor shall supply Contractor with all documentation necessary to substantiate the amount of the addition to or deduction from the Subcontract Price or time. If Contractor and Subcontractor cannot agree on the amount of the addition or deletion, Subcontractor shall nonetheless timely perform the Work as changed by Contractor's written direction. Once Subcontractor receives Contractor's written direction, Subcontractor is solely responsible for timely performance of the Work as changed by the written direction. In an emergency affecting the safety of persons or the protection of property, Subcontractor shall act to prevent threatened damage, injury or loss and any change in the Subcontract Price or Time shall be equitably adjusted as provided in this Subcontract.

Subcontractor markup (all-inclusive) on work performed by its sub-subcontractors is up to 5%. For work performed by Subcontractor's own forces the markup (all-inclusive) is up to 15%. Markups are allowed as stated in the Prime Contract between ProWest and the Owner.

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

If a dispute arises between Contractor and Subcontractor about whether particular Work is a change in the Work, or if Contractor and Subcontractor are unable to agree on an appropriate adjustment for changed Work, or if Contractor, in its sole discretion, issues a Unilateral Change Order to perform Work, Subcontractor shall timely perform such Work, upon receiving written direction from Contractor including, without limitation, upon receipt of a Unilateral Change Order from Contractor. If Subcontractor intends to submit a claim for such Work or if Subcontractor disagrees with any terms and conditions set forth in a Unilateral Change Order, it shall give prompt written notice to Contractor before proceeding with the Work. In addition, Subcontractor shall submit its written claim for additional compensation or time for that Work within ten (10) days after such Work is performed, in sufficient detail for Contractor to make an evaluation of the merits of the claim. Subcontractor's failure either to give the written notice before proceeding with such Work or to submit the written claim within the ten (10) days after performance

constitutes an agreement by it that it will not be paid for or receive an extension of time for such Work and, if a Unilateral Change Order was issued by Contractor, that the subcontract price and/or time will be adjusted as set forth in the Unilateral Change Order.

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

The modification in the Subcontract Price and/or the time for performance stated in a Subcontract Change Order shall unequivocally comprise the total price and time adjustment due or owed by Contractor to Subcontractor for the Work and changes defined therein, and shall represent full and final compensation for all increases or decreases in direct, indirect and consequential costs, overhead, profit and time required to perform the entire Work under this Subcontract arising directly or indirectly from the Work and changes defined therein, including additional and/or extended overheads, delay, acceleration, loss of momentum and cumulative impacts on all other Work.

SECTION 7. DAMAGES CAUSED BY DELAYS

If Subcontractor should default in performance of the Work or should otherwise commit any act which causes delay to the Prime Contract work, Subcontractor shall be liable for any and all losses, costs, expenses, liabilities and damages, including consequential damages and liquidated damages, sustained by Contractor, or for which Contractor may be liable to Owner or any other party because of Subcontractor's delay, default or breach of this Subcontract.

In addition to any other liquidated damages, Subcontractor shall be liable to Contractor for all delays in providing closeout documentation and completing corrective and / or punch list work.

If the closeout documents are not received and deemed acceptable by Contractor, prior to Subcontractor's request for payment for work at 90% (or more) complete, such payment request will be considered invalid. If the closeout documents are not received prior to Substantial Completion it is understood that the Contractor will suffer damage and it being impractical and infeasible to determine the amount of actual damage, it is agreed that Subcontractor shall be liable for liquidated damages, and not as a penalty, the sum of \$250.00 per calendar day until such closeout document deficiencies are cured.

If corrective and or punch work is not completed and deemed acceptable by Contractor, within 10 days of notice of such corrective and / or punch work it is understood that the Contractor will suffer damage and it being impractical and infeasible to determine the amount of actual damage, it is agreed that Subcontractor shall be liable for liquidated damages, and not as a penalty, the sum of \$500.00 per calendar day until such corrective and / or punch work deficiencies are cured.

SECTION 8. BONDING OF SUBCONTRACTOR AND GUARANTY

Concurrently with the execution of this Subcontract, if required (see Section 30 of this Subcontract), or at any time during its performance upon ten (10) days' written notice to Subcontractor by Contractor, Subcontractor shall, execute a labor and material payment bond and a performance bond, each in an amount equal to one hundred percent (100%) of the Subcontract Price. Said bonds shall be executed by a California-licensed corporate surety who is listed on the United States Treasury list and is acceptable to Contractor and shall be in a form satisfactory to Contractor. Contractor shall pay the actual premium, with no markup, fees, or charges of any kind, on said bonds up to 1.5% of the amount of the bond unless otherwise provided herein or in the Contract Documents; premiums in excess of 1.5% must be paid by Subcontractor. Reimbursement for additional bond costs, if any, will only be allowed for a net increase in the Subcontract amount and must be requested by Subcontractor as part of each and every modification to the Subcontract. Additional bond costs related in any way to project duration shall not be allowed.

In the event Subcontractor shall fail to provide any required bonds within 10 days of Contractor's written notification to do so, Contractor may terminate this Subcontract for cause. All costs and expenses incurred by Contractor as a result of such a termination shall be paid by Subcontractor in accordance with the termination for default article of the Subcontract.

Subcontractor expressly agrees that the contractual obligations to be secured by any payment and/or performance bonds obtained pursuant to this Section 8 shall include Subcontractor's duties to defend, indemnify, and hold harmless Contractor in connection with claims arising out of or related to any alleged, claimed, and/or actual liability of Contractor for any debt owed to any wage claimant or third party on the wage claimant's behalf incurred by Subcontractor or a sub-subcontractor at any tier acting under, by, or for Subcontractor for the wage claimant's performance of labor included in the Prime Contract.

No change, directive, clarification or communication regarding this Subcontract, whether made in the manner specified in the Subcontract or not, shall release or exonerate, in whole or in part, any surety on any bond given in connection with this Subcontract and neither Owner nor Contractor shall be under any obligation to notify the surety or sureties of any change, directive, clarification or communication with Subcontractor.

As a material inducement to and in consideration of Contractor entering into this Agreement with Subcontractor, the individual(s) executing this Agreement on behalf of Subcontractor (collectively the "Guarantor") do(es) hereby individually (and not as an officer, representative or agent of Subcontractor) guaranty, as a primary obligor and not as a surety, and promise to perform and be liable for any and all obligations and liabilities of Subcontractor under the terms and conditions of this Agreement. Guarantor agrees that without the consent or notice to Guarantor and without affecting any of the obligations of Guarantor that the Agreement may be amended, compromised, released or otherwise altered by Subcontractor and Contractor by change order to the Agreement or otherwise, and Guarantor does guaranty and agree to perform all the obligations of Subcontractor under the Agreement as so amended, compromised, released, or altered. This is a continuing guaranty and will not expire with the cessation or completion of the work on the Project. Guarantor hereby waives and agrees not to assert or take advantage of any right to require Contractor to proceed against Subcontractor or any other person or to pursue any other remedy before proceeding against Guarantor. Guarantor hereby waives the benefit of any applicable state or federal laws, which generally provide sureties or guarantors with any defenses to the enforcement of this guaranty or guaranties in general.

SECTION 9. CLAIMS & LIENS

If any suit is brought, or if any claim, stop payment notice or lien is recorded or served, for labor performed or materials used on or furnished to the Project under this Subcontract, Subcontractor shall pay and satisfy any such claim, stop payment notice, lien or judgment. Subcontractor agrees within ten (10) days after written demand to cause the effect of any such suit, claim, stop payment notice or lien to be removed from the premises, and in the event Subcontractor shall fail so to do, Contractor is authorized to use whatever means it may deem appropriate to cause said claim, stop payment notice, lien or suit to be removed or dismissed and the cost thereof, together with actual attorneys' fees, shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may contest any such claim, stop payment notice, lien or suit provided it causes the effect thereof to be removed, promptly in advance, from the premises, and shall further take such actions as may be necessary to cause Owner not to withhold any monies due to Contractor from Owner by reason of such claims, stop payment notices, liens or suits.

It is understood and agreed that the full and faithful performance of this Subcontract on the part of Subcontractor (including payment of any obligations due from the Subcontractor to Contractor and payment of any amounts due to labor or material suppliers furnishing labor or material for the Work) is a condition precedent to Subcontractor's right to receive payment for the Work performed, and any monies paid by Contractor to Subcontractor under the terms of this Subcontract shall immediately constitute a trust fund for the benefit and payment of such materialmen and subcontractors, and Subcontractor's diversion of such funds for any other purpose shall constitute grounds for Civil Theft pursuant, *inter alia*, to Cal.Penal Code Section 496.

SECTION 10. PROVISIONS FOR INSPECTION

Subcontractor shall at all times furnish to Contractor and its representatives, as well as Owner, Architect/Engineer and all governmental authorities with jurisdiction over the Work, safe and ample facilities for inspecting materials at the site of construction, shops, factories or any place of business of Subcontractor and its subcontractors and material suppliers where materials under this Subcontract may be in course of preparation, process, manufacture or treatment. Subcontractor shall furnish to Contractor as often as required by Contractor, full reports of the progress of the Work at any place where materials under this Subcontract may be in the course of preparation or manufacture. Such reports shall show the progress of such preparation and manufacture in such details as may be required by Contractor, including, but not limited to, any plans, drawings or diagrams in the course of preparation.

If any Work should be covered up without approval or consent of Contractor, Architect/Engineer or applicable public authority, it must, if required by Architect/Engineer or applicable public authority, be uncovered for examination and properly restored at Subcontractor's expense, unless Architect/Engineer has unreasonably delayed inspection. If a portion of the Work has been covered which Architect/Engineer has not specifically requested to observe prior to its being covered, Architect/Engineer may request to see such work and it shall be uncovered by Subcontractor. If such work is in accordance with the Contract Documents, costs of uncovering and replacement shall be charged to Owner. If such work is not in accordance with the Contract Documents, Subcontractor shall pay such costs unless the condition was caused by Owner or a separate contractor, in which event Owner shall be responsible for payment of such defects.

SECTION 11. MATERIALS AND WORK FURNISHED BY OTHERS

In the event the Work includes installation of materials or equipment furnished by others or Work to be performed in areas to be constructed or prepared by others, it shall be the responsibility of Subcontractor to examine and accept, at the time of delivery or first access, the items so provided and thereupon handle, store and install the items with such skill and care as to insure a satisfactory completion of the Work. Use of such items or commencement of Work by Subcontractor in such areas shall be deemed to constitute acceptance thereof by Subcontractor. Loss or damage due to acts of Subcontractor shall be charged to the account of Subcontractor and deducted from monies otherwise due under this Subcontract. If the loss or damage to such items caused by the acts of Subcontractor exceed monies otherwise due under this Subcontract, Contractor has the right to pursue all costs, including attorney's fees and costs, that exceed monies due to replace or repair the loss or damage to such item, if not covered by insurance.

SECTION 12. PROTECTION OF WORK

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

Subcontractor shall be liable for any loss or damage to any work in place or to any equipment and materials on the job site caused by it or its agents, employees or guests.

SECTION 13. LABOR RELATIONS

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

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

Subcontractor acknowledges that terms and conditions of applicable labor agreements may require that Subcontractor comply with additional labor agreements with unions affiliated with the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). If the terms and conditions of such labor agreements so require, Subcontractor shall perform the Work pursuant to all terms and conditions of the labor agreement with a union affiliated with the AFL-CIO.

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

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

To the extent applicable to any Project, Subcontractor agrees to comply with all applicable skilled and trained workforce requirements, including, but not necessarily limited to, those governed by Public Contract Code sections 2600 through 2603. This includes monthly reporting by Subcontractor and all of Subcontractor's sub-subcontractors. Subcontractor further agrees that Contractor shall be entitled to withhold from Subcontractor amounts under this Agreement consistent with Public Contract Code sections 2600 through 2603 in the event that Subcontractor or any of its sub-subcontractors fail to comply, in whole or in part, with applicable skilled and trained workforce requirements. Subcontractor agrees to provide Contractor with a sworn affidavit of compliance with all skilled and trained workforce requirements prior to Contractor's progress or final payments to Subcontractor becoming due.

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

13.3 Compliance with Laws.

13.3.1 Subcontractor shall comply with and agrees to be bound by all applicable federal, state and local laws and regulations, including, but not limited to, all provisions of the Fair Labor Standards Act, the Americans With Disabilities Act, the federal Family and Medical Leave Act, the California Labor Code, the California Fair Employment and Housing Act, and the California Family Rights Act. Subcontractor shall be solely responsible for providing its employees with the timely and accurate payment of any wages, salaries, fringe or other benefits, other

compensation or contributions, or expense reimbursement in accordance with all federal, state and/or local laws, including without limitation, the Fair Labor Standards Act, as amended, (29 U.S.C. 201, et seq.), the California Labor Code and Industrial Welfare Commission wage orders. Similarly, Subcontractor shall be solely responsible for any insurance and taxes, including health insurance, taxes, FICA, and other governmental levies related to the salaries, wages, benefits and/or other compensation provided to its employees.

Subcontractor, and any lower tier subcontractors of Subcontractor, shall provide to Contractor within five (5) business days of Contractor's written request, (i) daily reports identifying all personnel who worked on the Project and the hours worked; and/or (ii) all payroll records which contain the information set forth in subdivision (a) of Section 226, and which are payroll records as contemplated by Section 1174 of its employees who are providing labor on the Project. Such records include, without limitation, time cards and time sheets, cancelled checks, electronic fund transfers to employees, cash receipts, trust fund reporting forms, and records reflecting work performed by employees of the Subcontractor or the lower tier subcontractor on the Project and payment of wages, benefits or contributions for such work. The payroll records shall be marked or obliterated only to prevent disclosure of an individual's full social security number but shall provide the last four digits of the social security number. The payroll records must contain information sufficient to apprise the Contractor of the Subcontractor's, or lower tier subcontractor's, payment status in making fringe or other benefit payments or contributions to a third party on the employee's behalf.

Subcontractor shall provide written notice to Contractor of the award of any work within the scope of the Agreement to any independent contractor or subcontractor of any tier within five (5) business days of the award of such work, which notice shall state the Project name, name and address of the independent contractor or subcontractor, name of the subcontractor with whom each lower tier subcontractor is under contract, anticipated start date, duration, and estimated journeymen and apprenticeship hours, and contact information for its lower tier subcontractors on the Project.

In addition to compliance with all applicable labor laws stated or not stated in this subcontract, Subcontractor must comply with Labor Code sections 6325 and 6432.

Subcontractor's obligation to provide information required by this section is a material term of this Agreement. Subcontractor's failure to provide such information timely shall be deemed a material breach of this Agreement, and Contractor shall be entitled to all remedies for breach of contract including but not limited to termination of Subcontractor's right to proceed under the Agreement and the right to withhold all sums owed to Subcontractor under this Agreement until such information is provided to Contractor.

13.3.2 All private works contracts are subject to California Labor Code section 218.8 and Subcontractor and any lower tiered subcontractor shall pay not less than the minimum wage and premium pay when applicable pursuant to Industrial Welfare Commission Wage Order No. 16-2001 and Labor Code Sections 510, 511, 514 and 1197. Subcontractor and any lower tiered subcontractor may also be obligated to pay a higher wage and/or fringe or other benefit payments or contributions pursuant to a contractual agreement between an employee and the subcontractor, or pursuant to a collective bargaining agreement.

Contractor may coordinate with Subcontractor and/or any lower tiered subcontractor and the applicable trust fund(s) or third parties pursuant to a fund, plan or program which may include the verification of amounts due and the issuance of a joint check that will satisfy the Subcontractor's or lower tiered subcontractor's fringe benefits payment obligation.

By execution of this Subcontract, Contractor makes a request of Subcontractor under California Labor Code Section 218.8(f)(2) to provide to Contractor within thirty (30) days of the execution of this Subcontract, award information that includes the Project name, name and address of Subcontractor, name and address of all lower tier subcontractors or contractors with whom Subcontractor or its subcontractors of any tier will be performing any portion of the Scope

of Work set forth in **Exhibit B**, their respective anticipated start date(s), duration, and estimated journeymen and apprentice hours, and contact information for its lower tier subcontractors on the Project.

Subcontractor and all of its lower tier subcontractors performing any of the Scope of Work set forth in **Exhibit B**, shall provide Contractor with each payment applications submitted under Section 4 their respective payroll records, which shall contain all of the information required by California Labor Code Section 218.8(f)(1), including the information set forth in subdivision (a) of Section 226, including but not limited to, payroll records as contemplated by Section 1174, of their respective employees who are providing labor on the Project, which payroll records shall be marked or obliterated only to prevent disclosure of an individual's full social security number but shall provide the last four digits of the social security number and shall contain information sufficient to apprise Contractor of Subcontractor's and its lower tier subcontractors' payment status in making fringe or other benefit payments or contributions to a third party on their respective employee's behalf. Contractor shall be entitled to withhold payment from Subcontractor until all of said payroll records are provided to Contractor.

In accordance with California Labor Code Section 218.8(a), Subcontractor agrees that: (i) Contractor shall have the right to make periodic review of Subcontractor's and all of its lower tier subcontractors' payroll records; (ii) should there be a failure by Subcontractor or any of its lower tier subcontractors to pay wage, fringe benefit payments or contribution to the employees or labor trust funds, Subcontractor shall cooperate with Contractor diligently taking corrective action to halt or rectify the failure, including but not limited to, Contractor withholding as "disputed" sufficient funds due Subcontractor for work performed on this Project; and (iii) as a condition to final payment, Subcontractor shall provide to Contractor an affidavit signed under penalty of perjury from Subcontractor and all of its lower tier subcontractors that they have paid the wage, fringe or other benefit payments or contributions due to their respective employees or the labor trust fund(s) for all work performed on the Project.

Subcontractor agrees to indemnify, defend and hold Contractor harmless from any and all claims, actions and liability asserted or awarded against Contractor under California Labor Code section 218.8 for any debt owed to a wage claimant or third party owed fringe or other benefit payments or contributions on the wage claimant's behalf, incurred by Subcontractor or any of its subcontractors at any tier for the wage claimant's performance of labor included in the Prime Contract, including but not limited to, reasonable attorney's fees and costs, including expert witness fees awarded to a prevailing plaintiff in an action under Section 218.8, as well as all of Contractor's attorney's fees and costs, including expert witness fees, incurred as a result of investigating, responding to, and/or defending (i) California Labor Commissioner's citations, hearings, subpoenas or actions for unpaid wage claims and the claims and actions of third parties owed fringe or other benefit payments or contributions, penalties and liquidated damages and interest owed by Subcontractor or its lower tier subcontractors on account of the performance of labor on the Project. Subcontractor agrees to include in all its subcontracts a similar provision requiring its lower tier subcontractors to indemnify, defend and hold Contractor harmless from any and all claims, actions and liability asserted against Contractor under California Labor Code Section 218.8.

Upon request by Contractor, Subcontractor shall provide for itself and for any lower tiered subcontractor operating under its direction specified records or documents referenced in Labor Code Sections 226 (a), 1174 (b), (c) and (d), and/or California Code or Regulations Section 16000, "Payroll Records" within five (5) days of Contractor's request. Failure of Subcontractor to comply with the aforementioned requirements for itself and for every lower tier subcontractor operating under its direction, shall result in the withholding of Subcontractor's progress payment(s) and may be deemed a material breach of the Subcontract. Failure of Subcontractor, or any lower tiered subcontractor operating under its direction, to pay wage claimant or a third party on a wage claimant's behalf in accordance with their agreement, shall result in the withholding of Subcontractor's progress payment(s) and/or retention and may be deemed a material breach of the Subcontract.

13.3.3 For all public works contracts subject to the payment of prevailing wages under California Labor Code section 1720 et seq., Subcontractor shall comply with and agrees to be bound by California Labor Code sections 1725.5, 1771.1, and 1771.4, and acknowledges that the Project is subject to compliance monitoring and enforcement by the

Department of Industrial Relations. California Labor Code section 1771.1(a) provides that a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of California Public Contract Code section 4104, or engage in the performance of any contract for public work unless currently registered and qualified to perform public work pursuant to Section 1725.5. Subcontractor represents that as of the date of execution of this Agreement, Subcontractor is registered and qualified to perform public work pursuant to California Labor Code section 1725.5 and that attached hereto as **Exhibit F** is confirmation of Subcontractor's current registration status. Subcontractor shall maintain its registration and qualification pursuant to California Labor Code section 1725.5 at all times during the performance of the Work. Pursuant to California Labor Code section 1771.4, Subcontractor further represents that at all times during performance of the Work, it will submit on a monthly basis – or more frequently, if specified in the contract with the awarding body – certified payroll records to the California Labor Commissioner in a format prescribed by the California Labor Commissioner.

Attached hereto as **Exhibit E** are the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815. These provisions are incorporated by reference into this Subcontract when payment of prevailing wages is required by contract or law, and Subcontractor agrees to comply with these provisions and all interpretations thereof by the Director of the Department of Industrial Relations insofar as they are applicable to Subcontractor. Upon request, Subcontractor shall submit certified payroll records to Contractor no later than three (3) working days after labor has been paid. Prior to receiving final payment for Work performed on the Project, when payment of prevailing wages is required by contract or law, Subcontractor shall sign an affidavit under penalty of perjury that Subcontractor has paid the specified general prevailing rate of per diem wages to its employees for the proper craft needed to fulfill the obligations of this Subcontract and all amounts due pursuant to Labor Code section 1813.

See **Exhibit M** for additional requirements specific to Design-Build and Lease-Leaseback projects.

13.3.4. Subcontractor further promises and agrees that it will bind and require all of its sub-subcontractors and their subcontractors performing any Work under this Subcontract to agree to all of the foregoing promises and undertakings contained in Sections 13.3.1, 13.3.2 and 13.3.3, to the same effect as herein provided.

SECTION 14. RE COURSE BY CONTRACTOR

14.1 Suspension.

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

14.1.2 Suspension by Contractor. The Contractor may, for its convenience, order Subcontractor in writing to suspend all or any part of the Work for such period of time as Contractor determines is appropriate. Phased work or interruptions of the Work for short periods of time shall not be considered a suspension. Subcontractor, after receipt of Contractor's written order, shall notify Contractor in writing the effect of such order upon the Work. The Subcontract Price and/or the time for performance shall be adjusted by Subcontract Change Order for any increase in the price or time of performance of the Work caused by such suspension. No claim under this Section shall be allowed for any costs incurred more than fourteen (14) days prior to Subcontractor's written notice to Contractor.

Neither the Subcontract Price nor the time for performance shall be adjusted for any suspension, to the extent that the suspension is due in whole or in part to the fault or negligence of Subcontractor or otherwise the responsibility of Subcontractor. If and to the extent the suspension is due to a cause for which Subcontractor would have been entitled only to a time extension under this Subcontract, the Subcontract Price shall not be adjusted.

Any claims by Subcontractor under Sections 14.1.1 and 14.1.2 are subject to all notice requirements and time limits contained in Section 6 of this Subcontract.

14.2 Failure of Performance.

14.2.1 Right to Adequate Assurance. When reasonable grounds for insecurity arise with respect to Subcontractor's performance, Contractor may in writing demand adequate assurance of due performance. Subcontractor's failure to provide within five (5) calendar days of the demand such assurance of due performance as is adequate under the circumstances of the particular case is a default under Section 14.2.2.

14.2.2 Notice to Cure. If Subcontractor, as determined by the Contractor, at any time refuses or neglects to supply enough properly skilled workers and proper materials, or fails to properly and diligently prosecute the Work, or fails to make prompt payment to its workers, sub-subcontractors or suppliers, or becomes delinquent with respect to contributions or payments required to be made to any health and welfare, pension, vacation, apprenticeship or other employee benefit program or trust, or fails to provide adequate assurance pursuant to Section 14.2.1, or is otherwise guilty of a material breach of a provision of this Subcontract, and fails within forty-eight (48) hours after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then Contractor, without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

- (a) supply such number of workers and quantity of materials, equipment and other facilities as Contractor deems necessary for completion of the Work or any part thereof which Subcontractor has failed to complete or perform, and charge the cost thereof to Subcontractor, who shall be liable for the payment of that cost and a markup of ten percent (10%) for overhead and profit, plus actual attorneys' fees incurred as a result of Subcontractor's failure of performance;
- (b) contract with one or more additional contractors to perform such part of the Work as Contractor shall determine will provide the most expeditious completion of the entire Project and charge the cost thereof to Subcontractor, who shall be liable for the payment of that cost and a markup of ten percent (10%) for overhead and profit, plus actual attorneys' fees incurred as a result of Subcontractor's failure of performance; and
- (c) withhold payment of any monies due Subcontractor pending corrective action to the extent required by and to the satisfaction of Contractor.

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

14.2.3 Right to Recoupment and Setoff. If Subcontractor is not performing in accordance with the Contractor's schedule at the time of entering an order for relief, or at any subsequent time, Contractor, while awaiting the decision of Subcontractor or its trustee to reject or to accept this Subcontract and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under this Section as are reasonably necessary to maintain the Contractor's schedule. Contractor may offset against any sums due or to become due Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, and reasonable overhead, profit and actual attorneys' fees incurred as a result of Subcontractor's non-performance. Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Price.

To the fullest extent permitted by California law, in the event of the Subcontractor's default in the performance of any obligation required under this Subcontract, Contractor may offset all costs incurred as a result of such default,

including but not limited to, costs to correct and/or complete Subcontractor's Work, payments to the Subcontractor's sub-subcontractors or suppliers, and attorney's fees, against any sums due or to become due the Subcontractor under this Subcontract or any other agreement between the Subcontractor and the Contractor.

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

In such case, Subcontractor shall be entitled to no further payment until the balance of the Work has been completed. At that time, all of the costs incurred by Contractor in performing the Work, and a markup of ten percent (10%) for overhead and profit on such costs, plus actual attorneys' fees as provided above, shall be deducted from any monies due or to become due Subcontractor. Subcontractor shall be liable to Contractor for the payment of any amount by which such expenses may exceed the unpaid balance of the Subcontract Price.

14.2.5 Termination for Convenience. Contractor may, at any time and for any reason, terminate Subcontractor's services and performance of the Work at Contractor's sole and absolute convenience. Cancellation shall be by service of written notice to Subcontractor's Representative.

Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the Work and placing of orders for materials, facilities and supplies in connection with the services and performance of this Subcontract, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Contractor or, at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived therefrom. Subcontractor shall thereafter do only such Work as may be necessary to preserve and protect the Work already in progress and to protect material and equipment on the job site or in transit thereto.

Upon such termination, Subcontractor's remedy for termination shall be limited to the following: (1) payment for only the actual cost for labor, materials, and equipment provided to the Project in conformity with the Subcontract and properly completed prior to termination; (2) 10% of the above total cost for overhead and profit; and, (3) at the Contractor's sole and absolute discretion, payment for other close-out costs which are permitted by the Prime Contract. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Subcontractor prior to the date of the termination of this Subcontract. In no event shall payment due hereunder exceed the amount due for approved units of Work or percentage of completion. Subcontractor shall not be entitled to any claim or claim of lien against Contractor or Owner for any additional compensation or damages in the event of such termination and payment.

14.3 Bankruptcy.

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

- (a) promptly cures all defaults;
- (b) provides adequate assurance of future performance;

- (c) compensates Contractor for actual pecuniary loss resulting from such defaults; and
- (d) assumes the obligations of Subcontractor within the statutory time limits.

14.3.2 Interim Remedies. If Subcontractor is not performing in accordance with the Contractor's Master Project Schedule at the time of entering an order for relief, or at any subsequent time, Contractor, while awaiting the decision of Subcontractor or its trustee to reject or to accept this Subcontract and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under this Section as are reasonably necessary to maintain the Contractor's Master Project Schedule. Contractor may offset against any sums due or to become due Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, and reasonable overhead, profit and actual attorneys' fees incurred as a result of Subcontractor's non-performance. Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Price.

SECTION 15. INDEMNIFICATION

15.1 Subcontractor's Indemnification and Defense of Contractor. With the exception that this Section 15.1 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the statutes or public policy of the State of California, Subcontractor shall defend, at its sole cost, including attorneys' fees, from the date of tender, indemnify, and save harmless Contractor, including its officers, directors, partners, joint venturers, agents, employees, affiliates, parents and subsidiaries, and each of them, of and from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity, of every kind and nature whatsoever ("Claims") arising directly or indirectly out of or relating to any actual or alleged acts or omissions by, breach of contract, Work performed by, or in connection with Subcontractor's obligations under this Subcontract (which for purposes of this Section 15 includes officers, directors, agents, employees, subsidiaries, shareholders, partners, or others for whom Subcontractor is responsible, including without limitation, its subcontractors, and suppliers). Notwithstanding any provision in this Subcontract to the contrary, and for the avoidance of doubt, Subcontractor's duties to defend, at Subcontractor's sole cost, including attorneys' fees, from the date of tender, and to indemnify, and hold harmless, and each of them described herein, shall ripen and be immediately effective at the time Contractor is joined or threatened to be joined in any adversarial process arising out of or in connection with Subcontractor's obligations under this Subcontract, without regard for or conditioned upon the enforceability, in whole or in part, of this Section 15.1.

Subcontractor's duties under this Section 15.1 shall apply to Claims for, but not limited to:

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

The indemnification requirements of this Section 15.1 shall extend to Claims occurring after this Subcontract is terminated as well as while it is in force. Such indemnity provisions apply to the fullest extent permitted by law, regardless of any passively negligent act or omission of Contractor, or its agents or employees. Subcontractor, however, shall not be obligated to indemnify Contractor for Claims arising from the active negligence, sole negligence, or willful misconduct of Contractor, or its agents, employees or independent contractors who are directly responsible to Contractor, or for defects in design furnished by such persons, or for Claims that do not arise out of the Work.

The foregoing obligations of Subcontractor include all costs of pre-litigation, litigation, mediation and arbitration and all consultant, expert and attorney fees arising out of, pertaining to, or relating to the scope of work of Subcontractor howsoever caused, and regardless of any fault on the part of Owner, Contractor, or other Indemnified Party including, but not limited to, (1) the reasonable value of repairing the Work of Subcontractor; (2) the reasonable cost of repairing any damages caused by the repair efforts; (3) the reasonable cost of repairing and rectifying any damages resulting from the failure of the Project, or portions thereof, to meet building standards, codes or industry standards; (4) the reasonable cost of removing and replacing any improper repair by Subcontractor; (5) reasonable relocation and storage expenses; (6) lost business income if the rental unit was used as a principal place of a business licensed to be operated from the rental unit; (7) reasonable investigative costs for each established violation; and (8) all other costs or fees recoverable by this Subcontract or by statute.

Except as otherwise provided by the statutes or public policy of the State of California, Subcontractor's obligations under this Section do not affect, and are not affected by, the insurance required of Subcontractor pursuant to Section 16. Nothing in this Section 15.1 shall limit any obligation of any insurer.

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

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

15.2 Defense of Claims.

- (a) With respect to any Claims against Contractor as to which Subcontractor owes to Contractor a defense obligation, Subcontractor, having considered its options available at law, hereby elects to proceed under California Civil Code Sections 2782(e)(2) and/or 2782.05(e)(2), and further agrees that upon final resolution of any such Claim, any reimbursement for defense fees and costs previously paid by Subcontractor shall be governed by such provisions of the California Civil Code and the provisions of Section 17.
- (b) Subcontractor shall, at Subcontractor's own cost, expense and risk, defend (with counsel designated by Contractor) all Claims as defined in Section 15.1 that may be brought or instituted by third persons, including, but not limited to, governmental agencies or employees of Subcontractor, against Contractor, subject to the provisions of Civil Code Sections 2782(e)(2) and/or 2782.05(e)(2).
- (c) Subcontractor shall reimburse Contractor or its agents or employees for any and all legal expense incurred by any of them in connection herewith or in enforcing the indemnity granted in this Section 15.

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

insurance provision of Section 16.12 may reduce the risk of loss and property damage indemnification obligations of Subcontractor.

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

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

15.6 Construction of Section. Notwithstanding any of the provisions of this Section 15, if it is finally determined by a court of competent jurisdiction that any of such provisions are void or unenforceable under governing law, then such provisions shall be deemed stricken from this Subcontract and the remaining provisions shall remain in full force and effect and shall be construed to provide for the maximum defense and indemnification obligation by Subcontractor permitted by law.

SECTION 16. INSURANCE

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

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

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

If there is an exposure of injury to Subcontractor's employees under the U. S. Longshore and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims as set forth in Section 30.

(b) **Commercial General Liability Insurance (CGL).** Subcontractor shall carry Commercial General Liability insurance (Insurance Services Office, Form CG 00 01) covering all operations by or on behalf of Subcontractor providing insurance for bodily injury, personal injury, and property damage for the limits of liability indicated below including but not limited to coverage for:

- (1) Premises and Operations
- (2) Products and Completed Operations
- (3) Contractual Liability including Subcontractor's bodily injury and property damage indemnity obligations assumed in Section 15

- (4) Explosion, Collapse and Underground Hazards (including Subsidence and Any Other Earth Movement)
- (5) Personal Injury Liability
- (6) Liability of Independent Contractors
- (7) Construction means, methods, techniques, sequences and procedures including safety and field supervision

Items 1-7 above shall not be subject to any of the following limiting or exclusionary endorsements:

- subsidence or earth movement
- prior acts or prior work
- action over - precluding indemnity for passive acts of Contractor contributing to injury of a Subcontractor's employee
- contractual limitation – eliminating cover for assumed liability
- supervisory or inspection service limitation
- insured vs. insured cross suits
- clauses terminating coverage after a designated period of time
- residential or habitational limitation if the Work includes residential or habitational work
- classification limitation limiting coverage for work to be performed
- defense inside limits provision
- sub-subcontractor insurance coverage exclusions for failure to satisfy coverage conditions
- any limitation on any insured's right to satisfy any deductible or self-insured retention

The limits of liability shall be not less than the amounts required of Subcontractor under the Contract Documents, but in no event less than:

\$1,000,000 Each Occurrence
\$1,000,000 for Personal Injury Liability
\$2,000,000 Aggregate for Products-Completed Operations
\$2,000,000 General Aggregate

The general aggregate limit shall apply separately to the Work (per Project Aggregate) as evidenced by ISO endorsement CG 25 03 or equivalent.

If Subcontractor's Scope of Work includes work within 50 feet of any railroad, Subcontractor's CGL policy shall be endorsed to delete the Contractual Liability exclusion for work performed within 50 feet of a railroad. A copy of such endorsement shall be provided to Contractor prior to commencement of such work.

If the General Liability policy has a deductible or Self-Insured Retention higher than \$25,000, the General Contractor must approve this in writing before any work is to be performed.

Contractor, Owner, and any other party or parties the Contractor is required to include as an additional insured under the Prime Contract shall be included as additional insureds under the CGL, using ISO additional insured endorsements CG 20 10 10/01 (ongoing operations) and CG 20 37 10/01 (completed operations) or their equivalents. This coverage shall be maintained in effect for the benefit of the additional insured parties for a period of ten (10) years following the completion of all work under the Prime Contract and acceptance by Owner. Additional insured coverage as required herein shall be primary to, and will not seek contribution from, any other insurance or self-insurance programs afforded to Contractor or Owner. A copy of the required endorsements must be submitted with the Certificate of Insurance.

The duty to provide such additional insured coverage is independent of the defense and indemnity obligations set forth in Section 15. This Section 16.1 shall, in no event, be construed to require that additional insured insurance coverage be provided to a greater extent than permitted under the statutes or public policy of the State of California.

(c) **Automobile Liability Insurance.** Subcontractor shall carry Automobile Liability insurance, including coverage for all owned, hired and non-owned automobiles. The limits of liability shall be not less than \$1,000,000 combined single limit each accident for bodily injury and property damage.

Coverage shall be written on the current version of ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01. Contractor, Owner, and any other party or parties the Contractor is required to include as an additional insured under the Prime Contract shall be included as additional insureds. This insurance will be primary to, and will not seek contribution from, any other insurance or self-insurance programs afforded to Contractor or Owner. A copy of the required endorsements must be submitted with the Certificate of Insurance.

(d) **Umbrella/Excess Liability.** Subcontractor shall be required to carry an Umbrella or Excess Liability policy in an amount of at least \$3,000,000 per occurrence. Such policy will provide coverage over and above the Commercial General Liability, Auto Liability and Employers Liability required herein. Coverage will be at least as broad as the underlying coverages. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. This insurance shall include as additional insureds all entities that are required to be additional insureds on the CGL, and coverage shall be primary to, and will not seek contribution from, any other insurance or self-insurance programs afforded to Contractor or Owner.

(e) **Professional Liability.** If the Work includes design, design/build, architecture, engineering, inspection, survey, testing, or other similar work or services, Subcontractor shall obtain Professional Liability coverage with limits not less than \$1,000,000 per claim and \$2,000,000 aggregate. Coverage shall be continuously carried for the entire duration of the Work plus 3 years after substantial completion of the work under the Prime Contract. The retroactive date of the Professional Liability policy will predate the beginning of any services provided under the contract and will not be advanced during the period of time that the Subcontractor is required to carry the coverage. Any deductible or Self-Insured Retention greater than \$25,000 must be disclosed and approved by Contractor at its sole discretion per terms of Section 16.5(c).

(f) **Pollution Liability.** If performance of the Work includes a risk of causing disturbance or release of hazardous materials (including but in not limited to mold, lead, lead paint, and asbestos) or creates a potential exposure to hazardous materials as those terms are defined in federal, state, or local law, Subcontractor shall maintain Pollution Liability insurance for bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured, environmental damage resulting from pollution (including respirable crystalline silica and other naturally occurring substances), and related cleanup costs, investigation expense, defense, and settlement costs arising out of or related to the Work by the Subcontractor, his agents, representatives, employees, or subcontractors of any tier. Such Pollution Liability coverage shall have limits of at least \$1,000,000 per occurrence and \$2,000,000 aggregate and shall be maintained for a minimum of five (5) years after completion of the work, including the disposal of hazardous material.

Coverage as required in this section shall be written on an occurrence basis. Claims made policies need to be approved in writing by Contractor. If approved in writing by Contractor, Subcontractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Subcontract, and that continuous coverage will be maintained, or an extended discovery period will be exercised for a period of four (4) years beginning from the time that work under the contract is completed. This insurance must include as additional insureds Contractor, Owner, and any other party or parties Contractor is required to include as an additional insured under the Prime Contract. This insurance will be primary to, and will not seek contribution from, any other insurance or self-insurance programs afforded to Contractor or Owner.

Subcontractor shall indemnify, defend, protect and hold Contractor and Owner harmless from all costs, claims, liabilities, damages, penalties and assessments arising from or in any way connected to any Hazardous Substance at the site or in the soil, surface or ground water, or air as a result of action or inaction of Subcontractor in violation of Section 16.1(f) and whether or not caused accidentally, negligently or intentionally.

If Subcontractor or its subcontractors or suppliers haul hazardous material (including, without limitation, waste), they must carry Auto Liability insurance with a \$1,000,000 Combined Single Limit for Bodily Injury and Property damage applicable to all hazardous waste hauling vehicles and include MCS 90 and CA9948.

16.2 Duration of Insurance. Subcontractor shall maintain all insurance required by this Section 16 at all times during the performance of the Work, and for such longer periods as set forth in the Contract Documents.

16.3 Requirements of the Prime Contract. Subcontractor shall name Owner, Contractor, and any other entity which Contractor is required to name as an additional insured under the Prime Contract as an additional insured, but only with respect to Claims arising out of or in connection with Subcontractor's obligations under this Subcontract. If the Prime Contract requires limits of insurance higher than the minimum limits outlined in this Subcontract or requires broader coverage than the coverages outlined in this Subcontract, the requirements of the Prime Contract shall apply to the extent that they exceed the minimum requirements in this Subcontract.

16.4 Sub-subcontractor Insurance. Subcontractor shall ensure that its sub-subcontractors of every tier also carry insurance with the limits of liability specified above. Contractor may require written proof that the requisite insurance is being carried. Such written proof shall be furnished to Contractor within ten (10) days after such request has been made. Any such insurance coverage required of sub-subcontractors shall name Owner and Contractor as additional insureds, in the same manner as required by Section 16.3, at no additional cost or expense to Contractor.

16.5 Supplementary Liability Provisions.

- (a) Subcontractor shall not provide General Liability insurance under any Claims Made or Modified Occurrence General Liability form.
- (b) Any deductible or self-insurance program providing coverage in excess of \$25,000 per occurrence requires the express written consent of Contractor.
- (c) Contractor may allow deductible provisions and/or self-insured retentions of more than \$25,000 per occurrence if Subcontractor is willing to post security, guaranteeing payment of losses and defense expenses for a period of four years after the Project is completed.
- (d) Standard ISO Form CG 00 01 exclusions will be allowed. Allowance of any additional exclusions or coverage-limiting endorsements is at the discretion of Contractor.
- (e) If the Work is of a substantial maritime nature, special maritime coverages such as Longshore and Harbor Workers, Jones Act and Protection and Indemnity coverage shall be required as set forth in Section 30.
- (f) If consolidated wrap-up type liability and excess coverage is adopted for the Project, then such wrap-up program liability requirements, including builder's risk programs, are set forth in Section 30.
- (g) Increased Limits of Liability, if any, are set forth in Section 30.
- (h) If the Work involves the moving, lifting, lowering, rigging or hoisting of property and/or equipment, Subcontractor shall obtain Rigger's Liability coverage to insure against loss or damage to such property or equipment.
- (i) If Subcontractor or its subcontractors or suppliers use any owned, leased, borrowed, chartered or hired aircraft of any type in the performance of the Work, then Aircraft Liability coverage shall be maintained, as set forth in Section 30.

16.6 Certificates of Insurance. As evidence of the insurance required by this Subcontract, certificates of insurance, including the required additional insured and other endorsements, shall be furnished to Contractor prior to the performance of any Work. Delivery of such certificates and endorsements shall be a condition of any payment due under this Subcontract. Certificates shall set forth deductible amounts in excess of \$5,000 applicable to each policy. Contractor has the right to require agent-certified copies of any of the required policies. If such request is made, such policies shall be emailed to Contractor within ten (10) days. Receipt by Contractor of any certificate of insurance or additional insured endorsement which does not comply with the requirements of this Section 16 shall not act as a waiver to enforcement of such requirements at a later date.

16.7 Responsibility for Deductible. Regardless of the consent to exclusions, coverage limitations or deductibles by Contractor, Subcontractor shall be responsible for any deductible amount or any loss arising out of coverage denials by its insurance carrier(s).

16.8 Maintenance/Cancellation of Insurance. Contractor may take whatever actions are necessary to assure Subcontractor's compliance with its obligations under this Section 16. Should any insurance policy lapse or be canceled during the performance of the Work, or thereafter, Subcontractor shall, prior to the effective expiration or cancellation date, furnish the Contractor with evidence of renewal or replacement of the policy. Failure to continuously satisfy the insurance requirements herein is a material breach of this Subcontract. In the event Subcontractor fails to maintain any of the insurance coverage required, Contractor may, but is not required to, maintain such coverage and charge the expense to Subcontractor. There will be no cancellation or reduction of coverage of any required insurance without an unqualified, thirty (30) day, prior written notice to Contractor and Subcontractor's insurance policies shall be endorsed to provide such written notice of any cancellation or reduction of coverage of any required insurance. Evidence of such endorsement shall be attached to Subcontractor's certificate of insurance.

16.9 Subcontractor's Duties. Any acceptance of insurance certificates by Contractor shall in no way limit or relieve Subcontractor of its duties and responsibilities under this Subcontract including the duty to defend, indemnify and hold harmless Contractor, Owner and other persons as set forth in Section 15. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Subcontractor from liability in excess of such coverage nor shall it preclude Contractor from taking such other actions as are available to it under any other provision of this Subcontract or by law.

16.10 Waiver of Subrogation. Subcontractor waives all rights against Contractor, Owner, all other subcontractors, and their agents, officers, directors and employees, for recovery of damages to the extent such damages are covered by the Commercial General Liability, Workers' Compensation, Auto Liability, Umbrella or Excess Liability, Pollution Liability, and Professional Liability insurance required of Subcontractor. Contractor and Subcontractor waive all rights against each other and against all other subcontractors and Owner for loss or damage to property to the extent covered by any other insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance. If any applicable policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent. Copies of General Liability and Worker's Compensation endorsements shall be provided to Contractor along with the certificates of insurance required by Section 16.6.

16.11 Owner's Property Insurance. Property insurance is to be provided on the completed Project by Owner, through a policy or policies other than those insuring the Project during the construction period.

16.12 Builder's Risk Insurance. Select one of the following options:

Builder's Risk insurance is provided for the Project. Such insurance shall apply to any of Owner's or Contractor's property in the care, custody or control of Subcontractor. Subcontractor shall be responsible for the first insurance policy deductible amount applicable to damage to the Work and/or damage to other work caused by Subcontractor.

Builder's Risk insurance is not provided for the Project. The extent of Builders Risk or other property insurance available to Subcontractor (if any) during the course of construction is specified in Section 30.

16.13 Supplementary Insurance. If not provided by Builder's Risk coverage, Subcontractor shall maintain in full force and effect property insurance for all equipment, and property obtained by or for Subcontractor which is to become a part of the Work during installation and while such equipment and property is stored at the jobsite, at temporary locations, or while in transit to the Project from such temporary locations. Subcontractor shall also be responsible for insuring Subcontractor's owned, rented or borrowed equipment.

SECTION 17. DISPUTE RESOLUTION PROCEDURE

17.1 Preliminary Dispute Resolution Procedure and Agreement to Arbitrate

17.1.1 Disputes Under Prime Contract. Any dispute resolution procedure in the Prime Contract shall be deemed incorporated in this Subcontract, and shall apply to any disputes arising hereunder, except for disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the Prime Contract, and those which have been waived by the making or acceptance of final payment. All disputes or claims between Contractor and Owner which directly or indirectly involve Subcontractor's Work, and all disputes or claims between Contractor and Subcontractor which directly or indirectly involve a claim against Owner for additional compensation, shall be decided by the claims resolution procedure, including arbitration, specified in the Prime Contract. If the Prime Contract contains no procedure for claims resolution, all such disputes or claims shall be resolved as provided in this Subcontract. For all disputes or claims which potentially involve the Owner or which Contractor asserts involve the Owner, Contractor shall only be liable to Subcontractor for all matters, including but not limited to payment for items, differing site conditions, and changes, to the same extent that Owner is liable to and pays Contractor for the same insofar as it concerns Subcontractor's Work. Subcontractor will be bound by all decisions or determinations made in the proceedings by the administrative agency, arbitrator, or court of competent jurisdiction, whether or not Subcontractor is a party to the proceedings before the person, agency, arbitrator or court; such agreement expressly extends to Subcontractor's claims and potential claims including but not limited to actions for breach of contract and other actions on this Subcontract, lien claims, stop notice claims, payment bond claims, performance bond claims, Miller Act claims, and Little Miller Act claims. With respect to all Work done and agreed to be done by Subcontractor and all materials or services furnished or agreed to be furnished by Subcontractor, and as to any damages claimed or incurred by Subcontractor in connection with the Project, Contractor will never be liable to Subcontractor to any greater extent than Owner is liable to Contractor for such damages. Subcontractor will be bound by any settlement between Contractor and Owner of which it has notice and which is made by Contractor in good faith.

17.1.1.1 As a condition precedent to Subcontractor's ability to maintain an action (including but not limited to contract, lien and bond actions) and/or participate in a proceeding against Contractor or Owner, Subcontractor shall deliver notices and claim documents to Contractor in the form called for by the Prime Contract and in sufficient time to allow Contractor to submit the notice to the Owner in conformance with the notice specifications and administrative remedies specified in the Prime Contract, and follow and complete all administrative remedies (including Dispute Review Board provisions of the Prime Contract, if any) to the extent applicable to Subcontractor's claims or potential claims. Any failure on the part of Subcontractor to deliver such notices timely shall constitute a complete waiver by Subcontractor of any such claims.

17.1.1.2 If, after Project completion, Subcontractor delivers a proper and timely claim to Contractor, Contractor may, at its sole discretion, present such claim to Owner in its own name or allow Subcontractor to present it in Subcontractor's own name. Contractor's submission of Subcontractor's claim to Owner does not constitute an

agreement, nor obligate Contractor to review or analyze Subcontractor's claim or to ascertain evidence to prove Subcontractor's claim; such steps are Subcontractor's sole responsibility. Subcontractor must verify any claim it submits against Contractor or Owner in the same manner the Contractor is obligated to verify its claim against Owner under the Prime Contract and applicable law.

17.1.1.3 Contractor has no obligation to file a Complaint in arbitration or court against Owner and the failure of Contractor to prosecute Subcontractor's claim against Owner will not entitle Subcontractor to a claim for additional compensation or damages against Contractor. If Subcontractor seeks to file a complaint in court or arbitration against Owner to recover on a claim, Contractor may, at its option, pursue Subcontractor's action, or permit Subcontractor to appear as an interested party in the action, or permit Subcontractor to bring its action directly against Owner on a pass-through basis or by assignment. Subcontractor must pay for or reimburse Contractor for all costs and expenses, including legal fees and consultant fees, incurred for the presentation of Subcontractors' claim.

17.1.1.4 If Contractor prosecutes or defends a dispute or claim against Owner, and Subcontractor is not a direct or interested party or litigant, Subcontractor shall cooperate fully with Contractor and furnish at Subcontractor's own expense all documents, statements, witnesses and other information reasonably requested by Contractor for Contractor's claim or defense.

17.1.1.5 If Contractor becomes involved in arbitration or litigation with a third party concerning the work required under this Subcontract, Subcontractor shall participate in the arbitration or litigation if requested by Contractor, and be bound by same.

17.1.1.6 No claim or dispute shall interfere with the progress and performance of work required to be performed under this Subcontract. Subcontractor must proceed with its work as reasonably directed by Contractor in all instances. Failure of Subcontractor to proceed will be a material breach of this Subcontract.

17.1.2 Settlement Negotiations. Subject to Prime Contract dispute resolution procedures under Section 17.1.1, and as to disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the Prime Contract, promptly upon notification by the Subcontractor of a dispute, the Contractor and Subcontractor shall meet to informally resolve such dispute. In the event that no resolution is achieved, the parties, prior to and as a condition precedent to the initiation of any action or arbitration proceeding under Section 17.2, shall: (i) first, make a good faith effort to resolve the dispute by negotiation between representatives with decision-making power, who, to the extent possible, shall not have had substantive involvement in the matters of the dispute, unless the parties otherwise agree; and (ii) second, mediate such dispute in a mediation administered by JAMS LLC in accordance with its Mediation Guidelines then in effect. Unless otherwise agreed by the parties, mediation shall be held in the city where the Project is located. The parties shall bear equally all expenses, exclusive of attorney fees, associated with mediation.

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

17.2.1 Notice of Demand. For arbitration under the Prime Contract, notice of the demand for arbitration shall be filed in writing with the other party to this Subcontract and shall conform to the requirements of the arbitration provision set forth in the Prime Contract. The demand for arbitration shall be made within a reasonable time after written notice of the claim, dispute or other matter in question has been given, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim dispute or other matter in question would be barred by the applicable statute of limitations.

17.2.2 Award. The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

17.2.3 Work Continuation and Payment. Unless otherwise agreed in writing, Subcontractor shall carry on the Work and maintain the Contractor's schedule pending arbitration or court litigation, and if so, Contractor shall continue to make payments in accordance with this Subcontract.

17.2.4 Consolidated Arbitration Proceedings. To the extent not prohibited by their contracts with others, the claims and disputes of Owner, Contractor, Subcontractor and other subcontractors, suppliers and/or material suppliers involving a common question of fact or law shall be heard by the same arbitrator(s) in a single proceeding. In this event, it shall be the responsibility of Subcontractor to prepare and present Contractor's case, to the extent the proceedings are related to this Subcontract. Should Contractor enter into arbitration with the Owner or others regarding matters relating to this Subcontract, Subcontractor shall be bound by the result of the arbitration to the same degree as the Contractor.

17.2.5 No Limitation of Rights or Remedies. This Section shall not be deemed a limitation of any rights or remedies which Subcontractor may have under any federal or state mechanic's lien laws or under any applicable labor and material payment bonds unless such rights or remedies are expressly waived by it. Notwithstanding the preceding, in the event Subcontractor files a payment bond claim against Contractor, Subcontractor shall not be entitled to recovery or reimbursement of any legal fees or costs unless such claim has merit and until such time as a reasonable period of time has elapsed. For purposes of this Subcontract such reasonable period of time is agreed to be twenty-four months after the filing of a payment bond claim by Subcontractor.

SECTION 18. COMPLIANCE WITH ALL LAWS AND SAFETY PRACTICES

Subcontractor shall ascertain the applicability of, and shall timely and fully comply with all laws, orders, citations, rules, regulations, standards and statutes affecting or relating to this Subcontract or its performance, including but not limited to those with respect to occupational health and safety, the handling and storage of hazardous materials, storm water control, accident prevention, use of safety equipment, and safety practices, including the accident prevention and safety programs of Owner and Contractor. Subcontractor's safety obligations include but are not limited to the safe handling of silica and other potentially hazardous materials.

Subcontractor must comply with all Cal-OSHA requirements, including but not limited to the non-emergency General Industry Safety Orders, sections 3205 through 3205.3, effective 2/3/2023 known as COVID-19 PREVENTION non-emergency orders. These orders were adopted by Cal-OSHA on 12/15/2022 and are planned to expire on 2/3/2025, however compliance with these orders must be maintained as long as they are effective, including for any extended term directed by Cal-OSHA.

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

If Contractor determines, in its sole discretion, that Subcontractor's activities are unsafe or that Subcontractor's safety record is unacceptable, Contractor may suspend performance of the Work until such matters are corrected, or may declare Subcontractor to be in default under Section 14.2.2. Subcontractor shall be liable for all costs and damages associated with such suspension.

SECTION 19. WARRANTY

Subcontractor warrants and guarantees to Owner and Contractor that the Work (i) shall be free of defects in design, workmanship and material; (ii) shall be performed in accordance with the generally accepted industry codes and

standards applicable to the Work and the manufacturer's instructions; (iii) shall be performed in a good and workmanlike manner; and (iv) shall strictly conform to the requirements of the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty provided in this Section 19 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, including, but not limited to the following:

19.1 Defective Work. Subcontractor warrants to Contractor that the materials and equipment furnished under the Subcontract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Subcontractor's Work will be free from defects and that the Subcontractor's Work will conform with the requirements of the Contract Documents. Subcontractor's Work not conforming with these requirements, including substitutions not properly approved and authorized may be considered defective ("Defective Work"). Without limiting any of Subcontractor's warranties and/or obligations otherwise imposed under and by this Subcontract or by the law, Subcontractor agrees to replace at its sole cost and expense and to the satisfaction of Contractor, any or all Defective Work including, without limitation, materials judged defective or improperly installed for a period of one year from completion and acceptance of the entire Project. If, however, the period of warranty is stipulated in excess of one year by the Contract Documents, Subcontractor shall be bound as specified.

19.2 Corrective Work. Subcontractor shall correct ("Corrective Work") Defective Work promptly upon receipt of a written notice ("Notice of Defect") from the Contractor to do so unless the Contractor has previously given the Subcontractor a written acceptance of such condition. The Contractor shall give such notice promptly after discovery of the condition. Subcontractor shall commence the Corrective Work within five (5) days of receipt of the Notice of Defect and shall diligently complete the Corrective Work to the satisfaction of Contractor. If Subcontractor fails to commence the Corrective Work within ten (10) days after receipt of the Notice of Defect, or if Subcontractor fails to diligently or continuously complete the Corrective Work, Contractor shall have the right (but shall not have the obligation) to perform the Corrective Work. In the event Contractor performs the Corrective Work, Subcontractor shall promptly reimburse Contractor for the cost of the Corrective Work, including specifically an amount of fifteen percent (15%) in excess of such cost to perform such work for Contractor's overhead and profit. Subcontractor shall be responsible for enforcing any and all warranties given by his subcontractors or sub-subcontractors. The correction period shall be extended for an additional year for any Work corrected pursuant to this Section. It is understood and agreed that Contractor and Owner are intended third-party beneficiaries of all sub-subcontracts, purchase orders and other agreements pertaining to the Work and Contractor and Owner shall have the right, but not the obligation, to bring an action for Defective Work against any sub-subcontractor, manufacturer or material supplier responsible therefore. The obligations set forth in this Section shall survive acceptance of the Work and termination of the Subcontract and are in addition to the other warranties provided by Subcontractor and shall not be construed to establish a period of limitation with respect to the other obligations Subcontractor has under the Subcontract. Establishment of the one-year period for correction relates only to the specific obligation of Subcontractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced nor to the time within which proceedings may be commenced to establish Subcontractor's liability with respect to Subcontractor's obligations other than specifically to correct the Work.

19.3 Additional Terms Applicable to Roofing, Sheet Metal, Caulking and/or Waterproofing Subcontracts. Subcontractor agrees to maintain roofing, waterproofing, gravel stops, flashings and counter flashings in a watertight condition for the number of years specified in the Contract Documents and in any case not less than two (2) years. If the waterproofing or roof leaks, Subcontractor agrees to make the necessary permanent repairs immediately to produce a watertight condition and agrees to reimburse Contractor for any costs required to repair water damage to the walls, ceilings, fixtures, furnishings, paintings or decorating, etc., caused by the leaks. Subcontractor will remove and replace any work necessary to gain access to the roofing or waterproofing membranes being maintained hereunder.

19.4 Additional Terms Applicable to Plumbing, Heating, Air Conditioning, Electrical, Fire Sprinkler or Process Piping Subcontracts. Subcontractor shall be responsible for all damages to the building, furnishing and all

improvements included in the Prime Contract caused by leaks in the piping or conduit systems installed hereunder, or due to leaks where pipes or conduit go through walls or slabs where the joints around such pipes or conduits are to be watertight. Subcontractor shall repair at his expense all damage so caused or will reimburse Contractor for any costs required to repair water damage to the walls, ceilings, fixtures, furnishings, paintings or decorating, etc., cause by such leaks.

19.5 Additional Terms Applicable to Glass and Glazing, Curtain or Window Wall, or Storefront Subcontracts. Subcontractor will be responsible for all damages to the building and furnishings, and to all improvements, caused by leaks through, under and around such work. Subcontractor will remove and replace any work as required to gain access to sources of leakage to be corrected hereunder.

SECTION 20. USE OF CONTRACTOR'S EQUIPMENT

In the event Subcontractor, with Contractor's written consent, shall use Contractor's equipment, materials, labor, supplies or facilities, Subcontractor shall reimburse Contractor at a predetermined rate, except as otherwise stated herein. Further, Subcontractor assumes all responsibility for physical damage to such equipment, materials, labor, supplies or facilities used by Subcontractor or its agents, employees or permittees. In the event that Contractor's employees are used by Subcontractor, Subcontractor shall have full responsibility for all acts or omissions of Contractor's employees with regard to Subcontractor's use or employment of them. Subcontractor accepts any and all of Contractor's equipment, materials, labor, supplies or facilities as furnished.

SECTION 21. ASSIGNMENT OF CONTRACT

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

SECTION 22. INDEPENDENT CONTRACTOR

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

SECTION 23. CLEAN-UP

At all times during the course of construction, Subcontractor shall perform the Work so as to maintain the Project site in a clean, safe and orderly condition. Upon completion of the Work, Subcontractor shall remove from the site all hazardous materials, temporary structures, debris and waste incident to its operation and clean all surfaces, fixtures, equipment, etc., affected by the performance of the Work. Upon reasonable notice, Contractor may back charge Subcontractor for any costs incurred by Contractor as a result of Subcontractor's failure to meet these requirements.

SECTION 24. RISING COSTS

Contractor shall pay the Subcontract Price in current funds and in the manner and at the times herein set forth. The Subcontract Price shall include all increases in cost, foreseen or unforeseen, including without limiting the generality of the foregoing, taxes, labor, materials, and transportation costs, all of which are to be borne solely by Subcontractor. All loss or damage to Subcontractor arising from any of the Work as a result of unforeseen or unusual obstructions,

difficulties or delays which may be encountered in the prosecution of same, or through the action of the elements, shall be borne by Subcontractor.

SECTION 25. RECORD DRAWINGS

Subcontractor shall maintain a complete set of drawings of Subcontractor's Work for record purposes ("Subcontractor's As-Built Drawings") which shall show in a neat legible manner all changes and deviations from work reflected on or specified in the Subcontract Documents. Subcontractor's As-Built Drawings shall be used exclusively for record purposes. Throughout performance of its Work, Subcontractor shall record daily on Subcontractor's as-Built Drawings all such changes and deviations pertaining to its Work, including but not limited to, the exact location of all concealed and non-concealed conduit, piping, ducts, mechanical and electrical equipment. In addition, depths, sizes, and dimensions, and plan locations shall also be indicated for all piping below grade, under floor slabs or installed in elevated decks. Upon request, Contractor and/or Owner shall have the right to inspect Subcontractor's As-Built Drawings to monitor Subcontractor's compliance with this Section. The maintenance of Subcontractor's As-Built Drawings shall be a condition precedent to Subcontractor's right to receive progress payments. As the completion of Subcontractor's Work, and as a condition precedent to receipt of final payment, Subcontractor shall furnish to Contractor a complete set of As-Built Drawings that incorporate all record data related to Subcontractor's Work in a real legible manner utilizing the symbols of the Subcontract Documents.

SECTION 26. ACCOUNTING RECORDS

Subcontractor shall establish and maintain a reasonable accounting system that enables Contractor to readily identify Subcontractor's assets, expenses, costs of goods, and use of funds. Contractor and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Subcontract kept by or under the control of the Subcontractor, including, but not limited to those kept by the Subcontractor, its employees, agents, assigns, successors, lower-tier subcontractors, and/or material suppliers. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; certified payroll documents, memoranda; and correspondence. Subcontractor shall, at all times during the term of this Subcontract and for a period of ten (10) years after the completion of this Agreement, maintain such records, together with such supporting or underlying documents and materials. Subcontractor shall at any time requested by Contractor, whether during or after completion of this Agreement, and at Subcontractor's own expense make such records available for inspection and audit (including copies and extracts of records as required) by Contractor. Such records shall be made available to Contractor during normal business hours at Subcontractor's office or place of business and subject to forty-eight (48) hours' written notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for Contractor. Subcontractor shall ensure Contractor has these rights with Subcontractor's employees, agents, assigns, successors, lower-tier subcontractors, and material suppliers, and the rights and obligations set forth in this Section shall be explicitly included in any subcontracts or agreements formed between the Subcontractor and any lower-tier subcontractors and/or material suppliers to the extent that those subcontracts or agreements relate to fulfillment of the Subcontractor's obligations to Contractor.

SECTION 27. ATTORNEYS' FEES

In any dispute resolution process initiated by either Contractor or Subcontractor to enforce the terms of this of this Subcontract, and/or otherwise relating to and/or arising from this Subcontract, the prevailing party therein shall be entitled to an award of its reasonable attorney's fees and costs in bringing or defending the action in addition to any other relief available therein.

SECTION 28. LABOR AGREEMENTS

Subcontractor, to the extent required under federal and any applicable state laws, must comply with, observe, and be bound by all the terms and provisions of any labor agreements executed by Contractor or on Contractor's behalf, including the terms and provisions of any such agreements providing: (a) for the assignment of work or the settlement of jurisdictional disputes (through the Rules, Regulations and Procedures of the National Joint Board for Settlement of Jurisdictional Disputes in the Building and Construction Industry or any other agreed method for the determination of work assignments or the settlement of jurisdictional disputes); (b) for the adjustment of any other disputes or grievances; (c) for hiring and union security; and (d) for the making of payments into or under health and welfare or other fringe benefit funds or plans, to the extent that the terms and provisions of such agreements can legally be applied to the work to be done hereunder. If any portion of such work is further subcontracted, Subcontractor must ensure that such sub-subcontractors shall be bound by and observe the terms and provisions of such agreements to the same extent as is herein required of Subcontractor, and that an express provision imposing such obligation upon the sub-subcontractor shall be included in any such sub-subcontract.

SECTION 29. NOTICE

Any notices required or permitted under this Subcontract shall be in writing and shall be provided to the following representative of the party to whom the notice is addressed, and shall be deemed to have been duly served only if delivered by one of the following means: (i) electronic transmission addressed to the party and sent by email; (ii) personally delivered or left at a party's address listed below; (iii) sent certified mail return receipt requested to representative at the address listed below; or (iv) sent by a standard overnight courier (such as FedEx or UPS). Certified mail shall be deemed received the date the return receipt is signed. Overnight courier notice shall be deemed received when delivered. The initial authorized representatives and their respective addresses are:

Contractor Representative:

Subcontractor Representative:

ProWest Constructors
22710 Palomar Street
Wildomar, CA 92595

Email: Email:

Either party may change its authorized representative or address by giving written notice to the other party. If a representative is not listed above, notices shall be sent to the attention of the person signing this Subcontract.

SECTION 30. SPECIAL PROVISIONS:

Project specific information to be added later.

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

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

Dated: _____

Dated: _____

CONTRACTOR:

SUBCONTRACTOR:

By:

(SIGNATURE)

(NAME & TITLE)

(CONTRACTOR'S LICENSE NO.)

By:

(SIGNATURE)

(NAME & TITLE)

(CONTRACTOR'S LICENSE NO.)