

STANDARD SUBCONTRACT

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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.

SUBCONTRACT PROPOSAL AND AGREEMENT

THIS AGREEMENT is made by and between Contractor: **MIDSTATE CONSTRUCTION CORPORATION** ("Contractor")
And Subcontractor: ("Subcontractor")

PROJECT DESCRIPTION

Project: ("Project")

Project Address:

Owner: ("Owner")

Owner Address:

Construction Lender:

Construction Lender Address:

SECTION 1 ENTIRE CONTRACT

The phrase "Contract Documents" is defined to mean the plans, specifications and other contract documents attached to or incorporated into Contractor's contract with Owner, including without limitation those listed in Exhibit C to this Subcontract Proposal and Agreement.

Subcontractor certifies that it is fully familiar with all of the terms of the Contract Documents, the location of the job site, and the conditions under which the work is to be performed and that it enters into this Agreement based upon its investigation of all such matters and is not relying on any opinions or representations of Contractor.

This Agreement represents the entire agreement between Contractor and Subcontractor, and supersedes any prior oral or written agreements or representations. The Contract Documents are incorporated in this Agreement by reference, and Subcontractor, its subcontractors, suppliers and/or materialmen will be and are bound by the Contract Documents insofar as they relate in any way, directly or indirectly, to the work covered by this Agreement. Subcontractor agrees to be bound to Contractor in the same manner and to the same extent as Contractor is bound to Owner under the Contract Documents, including, but not limited to, all applicable terms and provisions thereof. Where, in the Contract Documents, 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 OF WORK AND CONTRACT PRICE

Subcontractor agrees to furnish all labor, materials, equipment and supervision required to perform the work to complete: for the project in accordance with Exhibit A, Specific Inclusions, Qualifications and Exclusions; Exhibit B, Schedule; and Exhibit C, Contract Documents.

CONTRACT PRICE

Contractor agrees to pay Subcontractor as consideration for the strict performance of its work, the sum of

),

in accordance with the terms of Section 3, Payment Terms.

SIGNATURES

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS 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 BE 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.

Subcontractor agrees that there are no understandings or conditions, written or oral, excepting those set forth by the Contract Documents and this Proposal and Agreement, including Sections 1 thru 28 on pages 1 thru 9 hereof all of which Subcontractor has read thoroughly and acknowledges are a part of this Agreement. When signed by Subcontractor, signed acceptance by Contractor shall constitute a contract. Subcontractor shall return this Agreement to Contractor, fully executed by Subcontractor, within seven (7) calendar days of receipt.

IN WITNESS WHEREOF: The parties hereto have executed this Agreement for themselves, their heirs, executors, successors, administrators, and assignees on the dates indicated below:

,
Phone: Fax:
California License No.

Address: ,
Contact:
Phone: Fax:
Contractor's Lic.#: Expiration: Class:
Federal ID#:

By _____

By _____ Title _____

Date _____

Date _____

SECTION 3 PAYMENT TERMS

Contractor agrees to make payment in the following manner:

Contractor agrees to pay to Subcontractor ninety percent of the value of the work performed through the last day of each month as monthly progress payments for labor and materials which have been placed in position, with funds received by Contractor from Owner for work performed by Subcontractor as reflected in Contractor's applications for payment, provided Subcontractor has furnished in writing an application for said payment by the 25th day of the month in which the work was performed. Such monthly progress payments shall be made ten (10) days after receipt of payment from the Owner by Contractor. Final payment to Subcontractor shall be made ten (10) days after the entire work required by the prime contract has been fully completed in conformity with the Contract Documents and has been delivered to and accepted by Owner, Architect, and Contractor, with funds received by Contractor from Owner in final payment for work under the prime contract.

Subcontractor shall submit to Contractor a schedule of values for approval within two (2) weeks of the receipt of this Agreement. Subcontractor agrees to submit pay requests on Contractor's pay request form with Subcontractor's invoice. Subcontractor agrees to furnish, if and when required by Contractor, payroll affidavits, receipts, vouchers, releases of claims for labor, and material, and agrees to furnish same from its subcontractors, suppliers and/or materialmen performing work or furnishing materials under this Agreement, all in form satisfactory to Contractor. It is agreed that no payment hereunder shall be made, except at Contractor's option, until and unless such documents have been furnished. Contractor, at its option, may make any payment due hereunder by check made payable jointly to Subcontractor and any of its subcontractors, suppliers and/or materialmen who have performed work or furnished materials under this Agreement. Any payment made hereunder prior to completion and acceptance of the work, as referred to above, shall not be construed as evidence of acceptance or acknowledgement of completion of any part of Subcontractor's work.

If owner or other responsible party delays in making any payment to Contractor from which payment to Subcontractor is to be made, Contractor and its sureties shall have a reasonable time to make payment to Subcontractor. "Reasonable time" shall be determined according to relevant circumstances, but in no event shall be less than the time Contractor, Contractor's sureties, and Subcontractor require to pursue to conclusion their legal remedies against Owner or other responsible party to obtain payment, including (but not limited to) mechanics' lien remedies.

If Subcontractor asserts a claim which involves, in whole or in part, acts or omissions which are the responsibility of the Owner or another party, including but not limited to claims for failure to pay, an extension of time, delay damages, or extra work, Contractor will present Subcontractor's claim to the Owner or other responsible party provided such claim is presented to the Contractor in writing by Subcontractor within ten (10) calendar days of the date of the claimed act or omission of the Owner or other party. Subcontractor shall cooperate fully with the Contractor in all steps taken in connection with prosecuting such a claim and shall hold harmless and reimburse the 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 a claim.

Contractor may deduct from any amounts due or to become due to Subcontractor any sum or sums owing by Subcontractor to Contractor, regardless of whether the sums owed arise out of the Project; and, in the event of the assertion by other parties of any claim or lien against Contractor or Contractor's Surety or the construction site arising out of Subcontractor's performance of this Agreement, Contractor shall have the right, to retain out of any payments due or to become due to Subcontractor an amount sufficient to completely protect Contractor from any and all loss, damage or expense therefrom until the situation has been remedied or adjusted by Subcontractor to the satisfaction of Contractor.

If at any time Contractor, shall determine that Subcontractor's financial condition has become unstable or unsatisfactory, Subcontractor shall furnish additional security satisfactory to Contractor within three days after written demand therefore is mailed or delivered to Subcontractor, and, in default of furnishing said additional security, Contractor shall have the option to cancel this Agreement or to initiate such other action as Contractor may deem necessary for the protection or preservation of its interests and/or the prevention of delay in the efficient and orderly progress of work on the Project, including but not limited to that portion of the work to be performed by Subcontractor hereunder. In the event of such cancellation, the rights of Contractor shall be the same as if Subcontractor had willfully refused to further perform the work of this Agreement.

Funds paid to Subcontractor shall be impressed with a trust in favor of persons who have provided labor, equipment, materials and services.

SECTION 4 CHANGES IN THE WORK

Contractor may, at any time by written order of Contractor's authorized representative, make changes in, additions to and omissions from the work to be performed and materials to be furnished under this Agreement, and Subcontractor shall immediately proceed with the performance of this Agreement as so changed. Subcontractor shall make no changes in the work described in the Contract Documents and this Agreement except as directed by Contractor in writing. Such change or written direction shall not invalidate this Agreement.

If necessary, the contract price stated in Section 2 and the time for Subcontractor's performance shall be adjusted by appropriate additions or deductions mutually agreed upon before the 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 price or time. Where cost proposals are required for changes in the work, Subcontractor agrees to furnish costs with required breakdowns (labor breakdowns shall include hours). Subcontractor agrees to furnish written proposals to the Contractor in accordance with the following schedule:

- (a) Changes to work in progress or on hold pending change approval shall be submitted within one (1) business day of change notification.
- (b) Changes to work scheduled to begin within one (1) week shall be submitted within three (3) business days of change notification.
- (c) All other changes shall be submitted within seven (7) calendar days of change notification.

In the event Subcontractor fails to comply with the above submittal requirement, Contractor at its sole option may prepare and submit to the Owner an estimate for the value of change in question. Subcontractor agrees to be bound to the cost submitted by the Contractor for this change.

A disagreement between Contractor and Subcontractor as to an increase or decrease in the subcontract price shall not relieve Subcontractor from immediately proceeding with the performance of the subcontract as modified, changed or amended.

If a dispute arises between Contractor and Subcontractor about whether particular work is a change in the work described in Section 2, Subcontractor shall, upon receipt of Contractor's written directive, timely perform the disputed work. If Subcontractor intends to submit a claim for the disputed work, it shall give prompt written notice to Contractor before proceeding with the work. In addition, Subcontractor shall submit its written claim for additional compensation 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 to either give the written notice before proceeding with the work or to submit the written claim within the ten (10) days constitutes an agreement by Subcontractor that it will not be paid for the disputed work.

If Subcontractor makes any changes in the work described in Section 2 without written direction from Contractor, such change constitutes an agreement by Subcontractor that it will not be paid for that changed work, even if it received verbal direction from Contractor or any form of direction, written or otherwise, from Owner or any other person or entity. In addition, Subcontractor shall be liable for any and all losses, costs, expenses, and liability of any nature whatsoever associated with or in any way arising out of any such change it makes without written direction from Contractor.

No change, alteration, or modification to or deviation from this Agreement, 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 Agreement, and no notice is required to be given to such surety of any such change, alteration, modification, or deviation.

SECTION 5 RECOURSE OF CONTRACTOR

5.1 Failure of Performance.

5.1.1 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 forty-eight (48) hours of the demand such assurance of due performance as is adequate under the circumstances of the particular case is a default under Section 5.1.2 of this Agreement.

5.1.2 Notice to Cure. If Subcontractor at any time refuses or neglects to supply enough properly skilled workers and proper materials, or fails to properly and diligently prosecute the work covered by this Agreement, 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 5.1.4, or is otherwise guilty of a material breach of a provision of this Agreement, 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, and to complete the cure of such default within the time period stated in Contractor's default notice, then Contractor, without prejudice to any 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 the completion of Subcontractor's 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 same including fifteen percent (15%) overhead and profit fee, and 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 Subcontractor's work as Contractor shall determine will provide the most expeditious completion of the total work and charge the cost thereof to Subcontractor; 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 per (a), (b) and (c) above without notice.

5.1.3 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 the notice issued under Section 5.1.2., and/or fails to complete the cure of such default within the time period stated in Contractor's default notice, then Contractor may terminate Subcontractor's right to perform under this Agreement and use any materials, implements, equipment, appliances or tools furnished by or belonging to Subcontractor's work without any further compensation to Subcontractor for such use. Contractor may also furnish those materials and equipment, and/or employ such workers or subcontractors, as Contractor deems necessary to maintain the orderly progress of the work.

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

5.1.4 Termination for Convenience. Contractor may at any time and for any reason terminate Subcontractor's services and work at Contractor's convenience. Cancellation shall be by service of written notice to Subcontractor's place of business.

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 performance of this Agreement, 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 there from. 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 shall be entitled to payment in accordance with Section 3 only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Subcontractor as are permitted by the prime contract and approved by Owner; plus (3) fifteen percent (15%) of the cost of the work referred to in item (1) above for overhead and profit. 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 Agreement. 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.

5.1.5 Grounds for Withholding Payment. Contractor may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to the extent necessary to protect Contractor from loss, including costs and actual attorneys' fees, on account of (1) defective work not remedied; (2) claims filed or reasonable evidence indicating probable filing of claim; (3) failure of Subcontractor to make payments properly to its subcontractors or for material, labor or fringe benefits; (4) a reasonable doubt that this Agreement can be completed for the balance then unpaid; (5) damage to another subcontractor; (6) penalties assessed against Contractor or Subcontractor for failure of Subcontractor to comply with state, federal or local laws and regulations; or (7) any other ground for withholding payment allowed by state or federal law, or as otherwise provided in this Agreement. When the above matters are rectified, such amounts as then due and owing shall be paid or credited to Subcontractor.

5.2 Bankruptcy.

5.2.1 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 Agreement upon giving forty-eight (48) hours written notice, by certified mail, to Subcontractor and its surety, if any. If an order for relief is entered under the Bankruptcy Code with respect to Subcontractor, Contractor may terminate this Agreement 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:

- (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 statutory time limits.

5.2.2 Interim Remedies. If Subcontractors is not performing in accordance with the schedule of work 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 Agreement 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 schedule or work.

Contractor may offset against any sums due or to become due Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, fifteen percent (15%) overhead and profit fee, 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 Contract Price.

SECTION 6 TIME AND SCHEDULING OF WORK

Time is of the essence of this Agreement. Subcontractor shall conform to Contractor's progress schedule and all revisions or changes made thereto. Subcontractor shall prosecute its work in a prompt and diligent manner without delaying or hindering Contractor's work or the work of other contractors or subcontractors. Subcontractor shall coordinate the work covered by this Agreement with that of all other contractors, subcontractors, suppliers and/or materialmen and of the Contractor, in a manner that will facilitate the efficient completion of the entire work. 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 Subcontractor's work is in accordance with Contractor's schedule. Contractor shall have complete control of the premises on which the work is to be performed and shall have the right to decide the time and order in which various portions of the work shall be installed and the relative priority of the work of Subcontractor and other subcontractors, and, in general, all other matters pertaining to the timely and orderly conduct of the work of Subcontractor on the premises.

If Subcontractor is delayed in the prosecution or completion of the work by the act, neglect or default of Owner, Architect or Contractor, or if Subcontractor is delayed waiting for materials, if required by this Contract 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 the Subcontractor, or in the event of a lock-out by Contractor, then the time herein fixed for the completion of the work shall be extended the number of days that Subcontractor has thus been delayed, but no allowance or extension shall be made unless a claim therefore is presented in writing to Contractor within three (3) business days of the commencement of such delay, and under no circumstances shall the time of completion be extended to a date which will prevent Contractor from completing the entire project within the time allowed Contractor by Owner for such completion.

If a progress schedule is furnished by Contractor to Subcontractor, it shall be solely for Contractor's benefit; however, Subcontractor must be ready to perform at the times indicated in the progress schedule. The Contractor makes no representation that it will be ready for the Subcontractor at the times indicated in said schedule regardless of whether delays may be occasioned by circumstance within the control of the Contractor.

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 Agreement, 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, Subcontractors 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.

Subcontractor shall prepare and obtain approval as required by the Contract Documents for all shop drawings, details, samples, and do all other things necessary and incidental to the prosecution of its work in conformance with this Agreement. No allowance of an extension of time shall in any event be made to the Subcontractor for delay by the Subcontractor in preparing drawings or in securing approval of the Owner's Representative thereto when such drawings are not properly prepared or when the Subcontractor by the exercise of reasonable diligence and judgment could have anticipated and avoided the delay.

Subcontractor shall prepare, maintain, and submit as-built information in a timely manner as may be required by Contractor. Subcontractor agrees to update as-built information on a monthly basis and submit to Contractor for review as a condition of monthly progress payments.

Prior to release of final monthly payment, Subcontractor shall provide complete close out information, warranties, product data, and as-builts as may be required. All costs associated with as-built drawings and close out information shall be born by the Subcontractor.

Subcontractor acknowledges that it will have to perform work in areas occupied by other forces, and that it will have to perform its work in a sequence or manner to accommodate and facilitate the progress of the work as a whole, rather than in the manner most efficient and desirable for the Subcontractor. Subcontractor's sole remedy for delay, disruption or suspension shall be an extension of time, and Subcontractor shall not be entitled to recover, and hereby waives, compensation or damages for delays, disruption or suspension, including without limitation, claims for any productivity losses, efficiency losses, increased supervisory costs, home office overhead, extended job site overhead, disruption costs, "ripple effect" costs, trade stacking, compression, acceleration, consequential damages, damages of any other type, lost profits, lost opportunity costs, or similar damages or costs, however denominated, as well as any other monetary relief, (collectively, "Impact Costs And Consequential Damages") except to the extent of such sums as may be recovered on Subcontractor's account from Owner.

It is further specifically agreed by the parties hereto that no claim, dispute or controversy shall interfere with the progress and performance of work required to be performed under this Subcontract and that Subcontractor shall proceed as directed by Contractor in all instances with its work under the Subcontract and that any failure of Subcontractor to comply herewith and to proceed with its work shall automatically be deemed a breach of this Subcontract entitling Contractor to all remedies available in the event of breach.

Unless specifically authorized by Contractor, Subcontractor shall maintain the same working hours at the job site as determined and worked by Contractor.

SECTION 7 DAMAGES CAUSED BY DELAYS

If Subcontractor should default in performance of the work described in Section 2 or should otherwise commit any act which causes delay to the prime contract work, Subcontractor shall be liable for 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 default.

SECTION 8 BONDING OF SUBCONTRACTOR

Concurrently with the execution of this Agreement, Subcontractor shall, if required by Contractor, execute a labor and material bond and performance bond, in an amount equal to one hundred percent (100%) of the Contract Price. Said bonds shall be executed by a corporate surety acceptable to Contractor and shall be in a form satisfactory to Contractor. Contractor shall pay the premium on said bonds unless otherwise provided herein or in the Contract Documents.

SECTION 9 INSURANCE

9.1 Casualty Insurance. Subcontractor shall, at its expense, procure and maintain insurance on all of its operations, with companies acceptable to Contractor. Subcontractor agrees to provide the required insurance certificates showing proof of insurance prior to start of work or within ten (10) days of receipt of this Agreement, whichever occurs first. Insurance requirements are as follows:

9.1.1 Worker's 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. Longshoreman 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.

9.1.2 General Liability Insurance. Subcontractor shall carry primary Commercial General Liability insurance covering all operations by or on behalf of Subcontractor providing insurance for bodily injury and property damage liability for the limits of liability indicated below and including but not limited to coverage for:

- (a) premises and operations
- (b) products and completed operations will be maintained for three years following project completion.
- (c) contractual liability insuring tort obligations assumed by Subcontractor in this Contract
- (d) broad form property damage (including completed operations)
- (e) explosion, collapse and underground hazards
- (f) personal injury liability

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 (combined single limit for bodily injury and property damage)
- \$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 Subcontractor's work under this Contract. For subcontracts in excess of \$1,000,000 an additional \$5,000,000 Excess Liability Insurance policy shall be maintained over the General Liability coverage and shall, at a minimum, include coverage for the exposures set forth in items a-f above. Contractor, its officers, directors and employees, and Owner shall be named as additional insureds under the Commercial General Liability policy and any Excess Liability policy and such insurance afforded the additional insureds shall apply as primary insurance. Any other insurance maintained by Contractor or Owner shall not be called upon to contribute with this insurance. Coverage for the Contractor, its officers, directors and employees and the Owner as additional insureds shall be provided by an endorsement providing coverage at least as broad as Additional Insured endorsement form CG 2010 1185 as published by the Insurance Services Office (ISO) (or equivalent). The additional insured endorsement will be provided until the statute of repose on latent defects has expired. All insurance under this Section (including, but not limited to general liability, automobile liability, and workers' compensation and employer's liability insurance) shall be provided by a carrier with an A.M. Best's Rating of VII, A- or better. General liability insurance shall be written on a form at least as broad as ISO occurrence form CG 0001; Automobile Liability Insurance shall be provided pursuant to a coverage form at least as broad as ISO form CA 0001. Contractor reserves the right, in its sole and subjective discretion, to reject an insurer and require Subcontractor to obtain policies from another insurer.

9.1.3. Claims Made/Self Insurance Provisions. Subcontractor shall not provide general liability insurance under any Claims Made General Liability form without the express prior written consent of Contractor. Any self-insurance program providing coverage in excess of \$25,000 per occurrence requires the prior written consent of Contractor.

9.1.4. 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.

9.1.5. Certificates of insurance, as evidence of the insurance required by this Contract and including the required "additional insured" endorsement(s) shall be furnished by Subcontractor to Contractor with its bid. Certificates shall set forth deductible amounts applicable to each policy and all exclusions or limitations not set forth in ISO Commercial General Liability Form CG 00 01. The Contractor may allow deductible provisions if Subcontractor is willing to increase retentions accordingly. Standard ISO Form CG 0001 exclusions will also be allowed. Allowance of any additional exclusions or coverage limiting endorsements is at the discretion of the Contractor.

Regardless of the allowance of exclusions, coverage limitations or deductibles by the Contractor, the Subcontractor shall be responsible for any deductible amount or any loss arising out of coverage denials by his insurance carrier(s). The certificates of insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) day's prior written notice to Contractor. Such thirty-day notice should be adequate to ensure replacement coverage is procured by Subcontractor.

9.1.6 Subcontractor shall take such steps as are necessary to assure Subcontractor's compliance with its obligations. Should any insurance policy lapse or be canceled during the contract period, 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 insurance requirements as herein provided is a material breach of contract. In the event Subcontractor fails to maintain any insurance coverage required, Contractor may, but is not required to, maintain such coverage and charge the expense to Subcontractor or terminate this contract.

9.1.7 Any acceptance of insurance certificates by Contractor shall in no way limit or relieve Subcontractor of its duties and responsibilities under this Contract including the duty to indemnify and hold harmless Contractors set forth in Section 10, Indemnification. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Subcontractor for liability in excess of such coverage nor shall it preclude the Contractor from taking such other actions as is available to it under any other provision of the contract or law. If higher limits or other forms of insurance are required in the Contract Documents, Subcontractor will comply with such requirements.

9.1.8. Additional insured endorsements shall be obtained and furnished to Contractor for three years following completion of the Project, and shall include all coverage required hereunder, including completed operations coverage. Failure by Contractor to request such endorsements or to give notice of their not having been filed shall not waive this requirement. Subcontractor shall not provide any liability coverage under a "wasting" policy or other form of policy that reduces the amount of coverage, in whole or in part, by amounts expended on defense of claims. The following additional requirements shall also be satisfied:

- (a) **Hazardous Materials.** If Subcontractor and/or its subcontractors or suppliers, regardless of tier, perform remediation of hazardous materials or if their operations create an exposure to hazardous materials as those terms are defined in federal, state or local law, Subcontractor and its subcontractors and suppliers must obtain a "Contractor's Pollution Liability" policy with limits not less than \$1,000,000 per occurrence and not less than \$2,000,000 aggregate for bodily injury, personal injury and property damage, naming Contractor as an additional insured. If Subcontractor or its subcontractors or suppliers haul hazardous material (including, without limitation, waste), the policy provided by Subcontractor must extend pollution coverage to include the transportation of hazardous materials or pollutants by waste hauling vehicles. If Subcontractor is subject to the Motor Carrier Act of 1980, the Motor Carrier Act endorsement MCS-90 must be obtained and attached to the policy.
- (b) **Professional Liability.** Any Subcontractor performing work that includes any design/build work or services shall obtain a Professional Liability Insurance Policy. Design/build work includes, without limitation, design/build work with respect to mechanical, electrical, structural, plumbing and fire sprinkler systems. Evidence of coverage in the form of a Certificate of Insurance shall be provided prior to the start of the project. Subcontractor shall obtain coverage for a minimum of three years following completion of the project, either through continued purchase of policies for such years or through purchase of an extended reporting period. If Owner or Contractor elects to purchase a project design policy, Subcontractor's policy shall be endorsed to indicate that Subcontractor's policy shall provide coverage once the project design policy has been exhausted.
- (c) **Riggers Liability.** Should Subcontractor's work involve the moving, lifting, lowering, rigging or hoisting of property or equipment, Subcontractor shall carry Rigger's Liability Insurance to insure against physical loss or damage to the property or equipment.
- (d) **Aircraft Liability.** If Subcontractor (or its subcontractors or suppliers, regardless of tier) use any owned, leased, chartered or hired aircraft of any type in the performance of this contract, they shall maintain aircraft liability insurance in an amount of not less than \$10,000,000 per occurrence, including Passenger Liability. Evidence of coverage in the form of a certificate of insurance shall be provided prior to the start of the Project.
- (e) **Waiver of Subrogation.** Contractor and Subcontractor waive all rights against each other for loss or damage to the extent reimbursed by any property or equipment 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.
- (f) **Work Near Railroads.** If Subcontractor (including any lower tier subcontractor or supplier) performs any work or conducts any operations within fifty feet of any railroad (including any light rail, fixed rail or other rail system), Subcontractor shall obtain an endorsement of its Commercial General Liability Policy to delete any exclusion, including the "Contractual Liability" exclusion, for work performed within fifty feet of a railroad. A copy of such endorsement shall be provided to Contractor prior to any work or operations by Subcontractor within fifty feet of any railroad.
- (g) **Requirements for Sub-subcontractors, Vendors, and Suppliers.** Subcontractor shall ensure that all tiers of its subcontractors, vendors and suppliers shall maintain insurance in like form and amounts, shall comply with the additional insured requirements as set forth above, and shall provide Contractor with evidence of insurance prior to commencing work.

9.2 Waiver of Subrogation Subcontractor waives all rights against Owner and Contractor, and against all other subcontractors, for liability, loss or damage to the extent reimbursed by any property or liability insurance applicable to the work, except such rights, if any, as Subcontractor 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.

9.3 Builder's Risk. Upon written request of Subcontractor, Contractor shall provide Subcontractor with a copy of the Builder's Risk policy of insurance or any other property insurance in force for the project and procured by Contractor. Subcontractor shall satisfy itself as to the existence and extent of such insurance prior to commencement of Subcontractor's work.

If Builder's Risk insurance purchased by Owner or Contractor provides coverage for Subcontractor for loss or damage to Subcontractor's work, Subcontractor shall be responsible for the insurance policy deductible amount applicable to damage to Subcontractor's work and/or damage to other work caused by Subcontractor.

If not covered under the Builder's Risk policy of insurance or any other property insurance required by the Contract Documents, Subcontractor shall procure and maintain at its own expense property insurance for portions of Subcontractor's work stored off the site or in transit.

9.4 Failure of Contractor to enforce in a timely manner any of the provisions of this Section shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of this Contract

SECTION 10 INDEMNIFICATION

10.1 Subcontractor's Performance. With the exception that this Section shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the public policy of the State of California, Subcontractor shall indemnify protect, defend and save harmless Owner and Contractor, including their officers, agents, directors, partners, members, employees, affiliates, parents and subsidiaries, and each of them, from and against any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or equity, of every kind and nature whatsoever ("Claims") arising out of or in any way relating to (i) this Agreement, (ii) either actual or alleged actions or omissions by Subcontractor or any of its subcontractors, suppliers, vendors, employees, or persons for whom it is responsible (regardless of whether the acts or omissions are actually negligent), or (iii) the Project to which this Agreement relates, including, but not limited to Claims for:

- (a) Personal injury, including, but not limited to, bodily injury, sickness or disease, or death to persons, including, but not limited to, any employees or agents of Subcontractor, Owner, Contractor, or any other subcontractor and/ or damage to property of anyone (including loss of use thereof), caused or alleged to be caused in whole or in part by any actual or allegedly negligent act or omission of Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable regardless of whether such personal injury or damage is caused by a party indemnified hereunder;
- (b) Penalties, fees and costs 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 or Owner arising out of Subcontractor's work;
- (d) Liens (see Section 22) for labor performed or materials used or furnished to be used on the job, including all incidental or consequential damages resulting to Contractor or Owner from such claims or liens;
- (e) Subcontractor's failure to fulfill the covenants set forth in each subpart of Section 13, Labor Relations;
- (f) Failure of Subcontractor to comply with the Provisions of Section 9.1, Casualty Insurance;
- (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, hoist, elevators, or scaffolds (See Section 9 and 25).

The specific listing in clauses (a) through (g) above shall not in any way limit Subcontractor's agreement and obligation to fully defend and indemnify any indemnitee as specified in this Agreement for all acts and omissions of Subcontractor, and anyone for whom Subcontractor is responsible in the performance of the work and other obligations under this Subcontract. The obligation to defend and indemnify shall apply notwithstanding that Subcontractor is not actively involved in the events that give rise to the claims for which a defense or indemnity is sought. The indemnity, defense, and other obligations under this Section 10 shall apply even if subcontractor was not actually negligent.

The indemnification provisions of (a) through (g) above shall extend to Claims occurring after this Agreement is terminated as well as while it is in force. Such indemnity provisions apply regardless of any active and/or passive negligent act or omission of Owner or Contractor or of any other person to be indemnified hereunder. Subcontractor, however, shall not be obligated under this Agreement to indemnify Owner or Contractor from Claims arising from the sole negligence or willful misconduct of Owner or Contractor or of any other person to be indemnified hereunder, or for defects in design furnished by such persons.

If and only if the Project is governed by California Civil Code Sections 895 et seq. and Contractor is determined to be a "Builder" for purposes of California Civil Code Section 2782(c), then as to claims of construction defects ("Defect Claims") only, the foregoing indemnity is modified such that the Subcontractor is not obligated to indemnify Owner to the extent that such Defect Claims arise out of, pertain to, or relate to the negligence of the Owner, or the Owner's other agents, other servants, or other independent contractors who are directly responsible to Owner, or for defects in design furnished by those persons, or to the extent the Defect Claims do not arise out of, pertain to, or relate to the scope of work covered by this Agreement; however, Subcontractor shall nevertheless be obligated to defend Owner and Contractor from any such Defect Claims, within five (5) days of obtaining knowledge of any such Defect Claims, subject to reallocation after final resolution of the claims pursuant to Civil Code Section 2782(d). Indemnity and defense obligations not affected or restricted by Civil Code Section 2782(c) or (d), such as for property damage not caused by construction defects or other matters not involving Defect Claims, shall not be limited, impaired or modified by the foregoing sentence, and such indemnity and defense obligations shall remain in full force and effect.

10.2 Subcontractor shall:

- (a) At Subcontractor's own cost, expense and risk, defend all Claims as defined in Section 10.1 that may be brought or instituted by third persons, including, but not limited to, governmental agencies or employees of Subcontractor, against Contractor or Owner or any other person to be indemnified hereunder or any of them; and
- (b) Pay and satisfy any judgment or decree that may be rendered against Contractor or Owner or any other person to be indemnified hereunder, or any of them, arising out of any such Claim; and/or
- (c) Reimburse Contractor or Owner or any other person to be indemnified hereunder for any and all legal expense incurred by any of them in connection herewith or in enforcing the indemnity granted in this Section 10.

The duty to defend shall apply, and Subcontractor shall be required to furnish a defense, notwithstanding that there has not yet been an adjudication or finding of liability on the part of Subcontractor or any person to be indemnified.

10.03 Risk of Loss

All work covered by this Agreement 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.

SECTION 11 OCCUPANCY PRIOR TO COMPLETION

Whenever it may be useful or necessary to the Contractor to do so, the Contractor shall be permitted to occupy and/or use any portion of the work which has been either partially or fully completed by the Subcontractor before final inspection and acceptance thereof by the Owner, but such use and/or occupancy shall not relieve the Subcontractor of its guarantee of said work and materials nor of its obligation to make good, at its own expense, any defect in materials and workmanship which may occur or develop prior to Contractor's release from responsibility by the Owner. Provided, however, the Subcontractor shall not be responsible for the maintenance of such portion of the work as may be used and/or occupied by the Contractor, nor for any damage thereto that is due to or caused by the negligence of the Contractor during such period of use. Subcontractor agrees further that, if it shall cause any stains, blemishes, imperfections, marks or damage of any sort whatsoever, whether to its work or to the work of Contractor or to the work of another subcontractor, it will immediately remedy the damage so caused and to the satisfaction of Contractor.

SECTION 12 PROTECTION OF WORK

It is understood and agreed that the work provided for in this Agreement constitutes only a part of the work being performed for the Owner by Contractor and other subcontractors. Subcontractor, therefore, agrees to perform the work called for in this Agreement in such a manner that it will not injure or damage any other work performed by Contractor or any other Subcontractor, and further agrees to pay Contractor for any damage that may be caused to such other work by Subcontractor or by its agents or employees.

In the event the scope of 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 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 Agreement.

Subcontractor shall effectually secure and protect the work done hereunder and assume full responsibility for the condition thereof until final acceptance by Architect, Owner and Contractor.

If Subcontractor removes existing protection to perform work under this Agreement, Subcontractor agrees to restore this protection to its original condition. Subcontractor shall be liable for any loss or damage to 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 Picketing. Should there be picketing on Contractor's job site, it shall be the obligation of Subcontractor to continue the proper performance of its work without interruption or delay. If Subcontractor is the target of a picket at the jobsite, Subcontractor shall bear the cost of establishing and maintaining a dual-gate system.

13.2 DBE/MBE/WBE. Subcontractor hereby acknowledges that it is thoroughly familiar with all DBE/MBE/WBE requirements pertaining to the project. If the Subcontractor claims status as a DBE/MBE/WBE, the Subcontractor shall take all steps necessary and shall make all necessary records available to the Contractor and the Owner to assure that Subcontractor is in compliance with such requirements. In the event that any subcontractor or supplier of the Subcontractor is designated as or is required to be a DBE/MBE/WBE, 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, and that misrepresentation of the status of Subcontractor or any of its sub-subcontractors or material suppliers is a material breach of this Agreement and grounds for immediate termination. In the event of termination as the result of material misrepresentation of the status of the Subcontractor as a DBE/MBE/WBE, Subcontractor shall not be entitled to any compensation not already paid and shall be responsible for all costs exceeding the unpaid balance for Subcontractor's scope of work.

13.3 Labor Laws and Regulations. 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. Upon request, Subcontractor shall submit certified payroll records to contractor no later than three (3) working days after labor has been paid.

13.4 Prevailing Wages. On all projects subject to state or local prevailing wage requirements, Subcontractor shall comply with any applicable California prevailing wage laws. The provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 are attached hereto and incorporated herein by this reference. On all such projects, as a condition precedent to final payment, Subcontractor agrees to provide an affidavit that complies with the terms of Labor Code Section 1775(b)(4). Subcontractor acknowledges and agrees that it has performed its own investigation as to the applicability of California prevailing wage laws, the federal Davis-Bacon Act, or any similar laws, regulations, or contract requirements; Subcontractor shall comply with all applicable laws, regulations, or other requirements concerning payment of wages and conditions of employment, and record keeping in accordance therewith. Subcontractor agrees to furnish certified payrolls promptly upon demand and further agrees to cooperate fully in any effort by Contractor to verify compliance with labor laws and regulations, including requirements under the Davis-Bacon Act or the California Labor Code. Such cooperation shall include, without limitation, furnishing copies and originals of records and providing access to employees or witnesses for interviews and statements. In addition to and without derogation to any other rights that Contractor may enjoy, Contractor may withhold sufficient funds to protect Contractor against any claims related to labor requirements, including without limitation, requirements under the Davis-Bacon Act or the California Labor Code. Subcontractor agrees that the amounts set forth as the Subcontract Price shall be deemed to be full compensation for compliance with such laws, regulations, or requirements, including payment of all applicable wage rates, and that no additional compensation will be owed to Subcontractor in the event that Subcontractor is required thereunder to pay higher wages or incur additional costs that Subcontractor contends that it did not anticipate.

SECTION 14 ASSIGNMENT OF CONTRACT

Subcontractor shall not, without written consent of Contractor, assign, transfer, or sublet any portion or part of this Agreement, the proceeds from this Agreement, or the work required by this Agreement, nor assign any payment hereunder to others. Any assignment for which written consent was not obtained shall be void.

SECTION 15 COMPLIANCE WITH ALL LAWS AND SAFETY PRACTICES

Subcontractor shall comply fully with all laws, orders, citations, rules, regulations, standards and statutes affecting or relating to this Agreement or its performance, including but not limited to those with respect to occupational health and safety, the handling and storage of hazardous materials, accident prevention, safety equipment and practices including the accident prevention and safety program of Owner and Contractor. If, at any time, Subcontractor violates OSHA standards or performs its work in an unsafe manner, Contractor has the option of either requiring that Subcontractor cease work until the unsafe practice is corrected to Contractor's satisfaction or providing the required safety measures at Subcontractor's cost. Subcontractor shall conduct inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for providing a safe place to work for its 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 and statutes. Suitable clothing and footwear will be worn at all times. Personal protection equipment (hardhats, eye protection, gloves and earplugs) shall be worn at all times necessitated by good safety practice. The use of music systems are prohibited on the jobsite. Smoking is not allowed inside the building. Smoking will be allowed outside of building in an area designated by Contractor. Subcontractor shall supply Contractor with all forklift certifications for all their operators of forklifts at the jobsite. These certifications are to be given to Contractor's Superintendent before Subcontractor starts work at the jobsite.

SECTION 16 SUBMITTALS

When drawings, plans, specifications, samples or detail work shall be required by this Agreement, or shall otherwise be required by Contractor to be submitted by Subcontractor, whether on account of work required to be done hereunder or on account of changes in work, Subcontractor agrees promptly to supply the same to Contractor's main office. Subcontractor agrees to prepare and submit all required submittals, shop drawings, product data and samples within 14 days of the receipt of this Agreement and prior to the ordering or fabricating said materials unless otherwise noted in this Agreement. Subcontractor agrees to make re-submittals within five (5) days. Subcontractor agrees to submit within fourteen (14) days of receipt of this Agreement, a schedule of all materials, fabrications, and equipment with a delivery lead time of more than five (5) days for Contractor's use in scheduling the work. Failure to submit this schedule constitutes confirmation that there are no lead time deliveries greater than five (5) days.

In the event any or all of said drawings, plans, specifications, samples or detail work shall be submitted by Contractor to Owner's Architect or Engineer for review, it is specifically understood that such review shall relate solely to general conformity with the job plans and that such review shall not be construed as an approval in detail of conformity of such drawings, plans, specifications, samples or detail work with the design drawings or specifications of the job. In the event that any such drawings, plans, specifications, samples or detail work as submitted by Subcontractor, whether or not they shall be approved by Owner's Architect or Engineer, shall deviate from or be inconsistent with in any particular the design drawings or the specifications of the job, and in the further event that any such deviations or inconsistencies shall impose upon Contractor any expense because of delays or extra work or otherwise, Subcontractor agrees to hold Contractor harmless from and to indemnify Contractor from any such expense. It is further agreed that should any such expense be imposed upon Contractor, Contractor may, at its option, withhold from Subcontractor any payments due or to become due to Subcontractor an amount sufficient fully to reimburse Contractor for any such expense. The provisions of this paragraph are in addition to and not in lieu of the remedies provided Contractor by Section 3 or Section 5 of this Agreement.

Subcontractor shall furnish a "Material Safety Data Sheet" for all materials furnished by Subcontractor.

SECTION 17 LAYOUT & SUPERVISION

Unless otherwise stated elsewhere in this Agreement, Contractor will set survey stakes as Contractor determines to be necessary to establish the lines and grades for the completion of the work specified in Section 2. Subcontractor shall give Contractor not less than two working days' written notice in advance of the commencement of the operations of Subcontractor which require such stakes. Such stakes shall be carefully preserved by Subcontractor. If such stakes are destroyed or damaged they will be replaced within 2 days of Contractor's notification. Subcontractor will be charged with the cost of such replacement if, in Contractor's judgment, the stakes were carelessly or willfully destroyed or damaged by Subcontractor's operations or were destroyed, damaged or removed by third parties during a delay in the commencement of Subcontractor's operations.

Subcontractor agrees to perform all layout work required to complete work in this Agreement, including layout and verification of proper placement of work installed by others for the performance of work in this Agreement. Subcontractor agrees to verify the adequacy of the substrate over which the subcontractor will be covering such substrate. If the substrate is not adequate, subcontractor will notify contractor prior to beginning work.

Subcontractor agrees to properly staff, equip and supervise the project so as to maintain the production schedule and quality control requirements established for the project. Subcontractor shall keep a representative at the job site during all times when Subcontractor's work is in progress, and such representative shall be authorized to represent and bind Subcontractor as to all phases of the work and shall be capable of communicating in the English language. Prior to commencement of the work, Subcontractor and Contractor shall agree on the identity of Subcontractor's representative. Subcontractor's representative shall be replaced only with Contractor's consent.

SECTION 18 NOTICE

Written notice, where required by the terms of this Agreement, may be accomplished by personal delivery of said notice or by use of the United States Mail or any standard form of communication including but not limited to FAX or E-mail. The written notice shall become effective upon the date stated therein, or, if no such date is stated, upon the expiration of the third day following the date upon which the delivery is completed.

Personal delivery is complete when the notice delivered to the Subcontractor or its representative at the project or at the office address of the Subcontractor appearing in this Subcontract. The Subcontractor shall at all times during its work on this project have a representative authorized to receive written notices present on the project site during all normal working hours. In the absence of such a representative, personal delivery is complete when the notice is delivered to any of Subcontractor's supervisors or workmen.

SECTION 19 CLEAN-UP

At all times during the course of construction, Subcontractor shall perform its work so as to maintain the site in a clean, safe and orderly condition, as determined by Contractor. Subcontractor agrees to remove all unused materials and all equipment, utilities and facilities furnished by Subcontractor, to clean up all refuse and debris, and to leave the premises clean, orderly and in good condition. Upon completion of the work under this Agreement, Subcontractor shall remove from the site all hazardous materials, temporary structures, debris and waste incident to its operation and clean all surfaces, fixtures, and equipment, affected by the performance of Subcontractors' scope of work. Subcontractor shall not clean equipment or tools over any storm drains.

Subcontractor is responsible for cleanup of debris generated by his operations and removal of same from the jobsite as directed by the Contractor. Debris boxes, if required, will be the responsibility of the Subcontractor unless specifically excluded in Exhibit A. Contractor will notify Subcontractor of designated cleanup days. Subcontractor shall be charged for any cleanup/disposal performed by Contractor (necessitated by Subcontractor's failure to properly execute this cleanup when required) at Contractor's standard hourly rates for a laborer.

SECTION 20 WAIVER OF BREACH

Waiver by Contractor of any breach hereof by Subcontractor shall not constitute a waiver of any subsequent breach of the same or any other provision hereof. If any provision of this Agreement, or any part thereof, shall at any time be held to be invalid, in whole or in part, under any applicable Federal, State, Municipal or other law, ruling or regulation, then such provision shall remain in effect to the extent permitted, and the remaining provisions hereof shall remain in full force and effect.

SECTION 21 DISPUTE RESOLUTION PROCEDURE

21.1 Preliminary Dispute Resolution Procedure and Agreement to Arbitrate

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

21.1.2. Settlement Negotiations. Subject to prime contract disputes under Section 21.1.1, and as for disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the prime contract, promptly upon notification by the Subcontractor of a dispute, the Contractor and Subcontractor shall meet to informally resolve such dispute. In the event that no resolution is achieved, the parties, prior to the initiation of any action or proceeding under this section, shall make a good faith effort to resolve the dispute by negotiation between representatives with decision-making power, who, to the extent possible, shall not have had substantive involvement in the matters of the dispute, unless the parties otherwise agree. To facilitate the negotiation, the parties agree either to fashion a procedure themselves or seek the assistance of a person or organization experienced in alternative dispute resolution procedures such as mediation, mini-trial or other similar procedures.

If the parties are unable to reach an Agreement through settlement negotiations and in the absence of an agreement on the manner in which alternate dispute resolution is to be accomplished, the parties shall submit their disputes to a neutral third party construction mediator. The mediation shall be nonbinding and shall be conducted as follows. Contractor shall propose a list of three mediators, from which Subcontractor within five working days of receipt of the list shall select the proposed mediator. The mediation shall be scheduled for a date within 60 days of Contractor's proposal of the candidates for mediator, unless Contractor agrees to a longer period before mediation. The cost of the mediation shall be shared pro rata.

21.2. Arbitration Procedures. Notwithstanding any dispute, and to the greatest extent permitted by law, Subcontractor agrees to continue with its performance and maintain the schedule of work pending resolution of any and all dispute, including disputes regarding payment. This Agreement constitutes an advance waiver by Subcontractor of any actual or alleged right to stop work, rescind, or abandon the project.

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, the following shall apply:

21.2.1. 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 Agreement and shall conform to the requirements of the arbitration provision set forth in the prime contract. For claims not involving the acts, omissions or otherwise the responsibility of the Owner under the prime contract, the parties hereto shall submit any and all disputes arising under or relating to the terms and conditions of the Subcontract to arbitration in accordance with the Construction Industry Rules of the American Arbitration Association. In either case, the demand for arbitration shall be made within a reasonable time after written notice of the claim, dispute or other matter in question has been given, and in no event shall it be made after the date when the institution of legal or equitable proceedings based on such claim dispute or other matter in question would be barred by the statute of limitations.

21.2.2. 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.

21.2.3. Work Continuation and Payment. Unless otherwise agreed in writing, Subcontractor shall carry on the work and maintain the schedule of work pending arbitration, and, if so, Contractor shall continue to make payments in accordance with this Agreement.

21.2.4. 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 materialmen 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 Agreement. Should Contractor enter into arbitration with the Owner or others regarding matters relating to this Agreement, Subcontractor shall be bound by the result of the arbitration to the same degree as the Contractor.

21.2.5. 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 mechanics' lien laws or under any applicable labor and material payment bonds unless such rights or remedies are expressly waived by it. Nothing in the preceding sentence shall preclude Contractor from obtaining a stay of a lawsuit by Subcontractor pending the conclusion of litigation or other alternate dispute resolution proceedings.

SECTION 22 LIENS

In case suit is brought on any claim or lien for labor performed or materials used on or furnished to the project, Subcontractor shall pay and satisfy any such lien or judgment as may be established by the decision or the court in said suit. Subcontractor agrees, within ten (10) days after written demand, to cause the effect of any such suit 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 in its discretion it may deem appropriate to cause said 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 litigate any such lien or suit provided it causes the effect thereof to be removed, promptly in advance, from the premises, and shall further do such things as may be necessary to cause Owner not to withhold any monies due to Contractor from Owner by reason of such liens or suits.

It is understood and agreed that the full and faithful performance of this Agreement on the part of Subcontractor (including the payment of any obligations due from Subcontractor to Contractor, and any amounts due to labor or materialmen furnishing labor or material for said 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 Agreement shall be impressed with a trust in favor of labor and materialmen furnishing labor and material to Subcontractor on the work herein subcontracted.

SECTION 23 PROVISIONS FOR INSPECTION

Subcontractor shall at all times furnish to Contractor and its representatives 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 materialmen where materials under this Agreement 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 Agreement 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.

SECTION 24 WARRANTY

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

Subcontractor warrants and guarantees the work and materials covered by this Agreement and agrees to make good, at Subcontractor's own expense, any defect in the materials or workmanship, including the restoration of work of Contractor or other Subcontractors that has been affected thereby and further agrees that 1) on demand of Contractor, Subcontractor will furnish and pay for a maintenance bond to indemnify Contractor for any loss that may be caused by breach of said warranty and guarantee; and, on demand, Subcontractor shall furnish and pay for all written guarantees and/or maintenance bonds required by the Contract Documents and/or specifications in connection with said Subcontractor's work; 2) unless and until Contractor is released from responsibility by Owner, Contractor may withhold payment from Subcontractor such sums as, at Contractor's sole discretion, are necessary to indemnify Contractor for any loss that may be caused by breach of said warranty or guarantee.

SECTION 25 USE OF CONTRACTOR'S EQUIPMENT

In the event Subcontractor shall use Contractor's equipment, materials, labor, supplies or facilities, Subcontractor shall reimburse Contractor at a predetermined rate, except as provided in Section 5.1.2. or 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 26 INDEPENDENT CONTRACTOR

Subcontractor is an independent contractor and shall, at its sole cost and expense, and without increase in the Contract Price, comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the work, obtain all necessary permits and licenses therefore, 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 remuneration's 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 27 WAIVER OF ATTORNEYS' FEES

Notwithstanding any other provision of this Agreement or applicable law, or any provisions of the Contract Documents that may be incorporated, neither Subcontractor nor Contractor shall be permitted to recover attorney's fees or costs of suit in any dispute or litigation. Subcontractor expressly waives the right to recover attorney's fees and costs of suit from Owner, Contractor and from Contractor's sureties. This waiver of the right to fees and costs, to the greatest extent permitted by law, shall be effective as to statutory rights such as those afforded by Civil Code Sections 3250 through 3252.

This provision shall not limit, impair or waive Contractor's rights to be defended by, to be indemnified by, to be held harmless by, to receive contribution from Subcontractor, and to receive the benefits of insurance furnished by Subcontractor or any other persons, with respect to attorney's fees, expert costs and other expenses.

SECTION 28 SPECIAL PROVISIONS

28.1 Public Projects (28.1.1 through 28.1.3 shall apply only on contracts for public works of improvement)

28.1.1 Progress Payments and Retention. Notwithstanding any other provision of this Agreement, on any public work of improvement: (1) the percentage to be withheld as retention from progress payments shall not exceed the percentage permitted by law; and (2) the time for disbursement of retention shall be no later than seven (7) days after payment of retention to Contractor by owner, provided that all other conditions to release of retention to Subcontractor have been satisfied. Nothing herein shall waive, limit or impair Contractor's rights to withhold payment under any basis authorized under this Agreement or applicable law, including without limitation, for disputed items, unpaid subcontractors, suppliers, workers or trust funds, damage to work of others, etc.

28.1.2 Delays Subject to the Provisions of Section 7102 of the Public Contract Code: If and to the extent that Section 7102 of the Public Contract Code requires that Subcontractor be compensated for delays: (1) recovery shall be permitted only for those circumstances recognized under the Contract Documents as compensable delays; (2) recovery shall only be allowed for those delays that are unreasonable under the circumstances involved and not within the contemplation of the parties, in light of the nature of the project, industry custom and practice, and other relevant factors; (3) recovery may only be had for those items of costs permitted under the prime contract, plus those additional items of costs, if any, that Section 7102 of the Public Contract Code requires be paid; (4) Subcontractor is bound by and must comply with all provisions of the prime contract and subcontract (and any portions thereof) that are not in conflict with Section 7102, including provisions concerning notice and certification of claims with respect to compliance with the False Claims Act. For purposes of Section 5, a claim that Section 7102 of the Public Contract Code requires be permitted, which is made in connection with a state or local public works project, and as to which all four of the foregoing conditions in the previous sentence have been satisfied, shall be referred to as an "Authorized 7102 Claim."

Except for an Authorized 7102 Claim, Subcontractor's sole remedy for delay, disruption or suspension shall be an extension of time, and Subcontractor shall not be entitled to recover compensation or damages for delays or for Impact Costs and Consequential Damages. Except for an Authorized 7102 Claim, Subcontractor waives any claim for Impact Costs and Consequential Damages.

28.1.3 Insurance Endorsements. Nothing in this Agreement shall require endorsements that conflict with the provisions of Insurance Code Section 11508.04.