



LONG FORM STANDARD SUBCONTRACT

SUBCONTRACT NO. @@@@
DIR PROJECT NO. @@@@

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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, but referenced, in this Agreement.
Revised in October 2016 (previous editions obsolete)*

PROJECT

@@@@@@@@@@@@

This Agreement is made at Fresno, California this [@@@] day of [@@@], 20@@ between:

CONTRACTOR: W. M. Lyles Co.
P.O. Box 4377
(Corporate Office: 1210 W. Olive Ave)
Fresno, California 93744 (93728)
Ph: (559) 441-1900
Fax: (559) 487-7949

and

SUBCONTRACTOR: [@@@]
[@@@]
[@@@]
[@@@]

Contractor has entered into a Prime Contract, awarded on [@@@] with:

OWNER: [@@@]
[@@@]
[@@@]

to perform the following work:

[@@@@@@@@@@@@@@@@]

that is financed by (if applicable)

CONSTRUCTION LENDER: [@@@]
[@@@]
[@@@]

Said work is to be performed in accordance with the Prime Contract and the Plans and Specifications. The Plans and Specifications have been prepared by:

ARCHITECT/ENGINEER: [@@@]
[@@@]
[@@@]

SECTION 1. ENTIRE CONTRACT

1.1 The phrase "Contract Documents" is defined to mean the plans, specifications and other contract documents attached to, or incorporated into the Prime Contract, and also includes but not limited to:

- A. This Subcontract and all attachments hereto
- B. The Prime Contract and Notice to Proceed between Owner and Contractor
- C. The Project Plans, Schedule, Specifications and any issued Addenda
- D. All applicable permits and licenses
- E. All documents incorporated by referenced in any of the documents listed above

for project known as [REDACTED]
and located at [REDACTED].

1.2 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 including previous proposals. The Contract Documents are incorporated in this Agreement by reference, and 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 Contractor.

SECTION 2. SCOPE

Subcontractor agrees to furnish all labor, supervision, materials, equipment and other facilities required to perform the work to completely furnish and install all [REDACTED] as further detailed in **Section 26** for the project in accordance with the Contract Documents. In the event of any dispute between Contractor and Subcontractor over the scope of Subcontractor's work under the Contract Documents, Subcontractor will not stop work but will prosecute the work diligently to completion and the dispute shall be submitted for resolution in accordance with Section 17 below.

SECTION 3. CONTRACT PRICE

Contractor agrees to pay Subcontractor for the strict performance of its work the sum of: [REDACTED] (\$ [REDACTED]), or as further detailed in Section 26 below 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 the Payment Schedule herein. The total sum of the Contract Price for the work includes all costs, taxes and fees and is not subject to escalation.

SECTION 4. PAYMENT SCHEDULE

4.1 Contractor agrees to pay to Subcontractor in monthly progress payments of **NINETY FIVE** percent (95%) of 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. Such monthly progress payments shall be made seven (7) days after receipt of payment from the Owner by Contractor. Final payment to Subcontractor shall be made seven (7) 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, Engineer, Architect, and Contractor, with funds received by Contractor from Owner in final payment for work under the prime contract.

4.2 Subcontractor agrees to furnish, when required by Contractor, any payroll affidavits, warranty, trust fund contributions, 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, in a 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. All progress and final payment invoicing, including other required documentation must be submitted to Contractor in a timely manner and no later than sixty (60) days after Subcontractor performs the work. After sixty (60) days, Subcontractor waives right to any claim for timely payment or other monies due related to such invoice. Contractor, at its sole discretion and upon forty-eight (48) hours notice, may make any payment due hereunder by joint check made payable to Subcontractor and any of its subcontractors, suppliers and/or materialmen who have performed work or furnished material under this Agreement. Prior to Subcontractor receiving any payments, the Contractor may require conditional and/or unconditional lien releases from the Subcontractor and its sub-subcontractors and suppliers and/or union trades. Any payment made hereunder prior to completion and acceptance of work, as referred to above, shall not be construed as evidence of acceptance or acknowledgement of completion of any part of Subcontractor's work.

4.3 As allowed by law, Contractor may withhold from any payment or retention up to 150% of the amount of any disputed item, including without limitation, amounts Contractor believes may be necessary to withhold to protect Contractor from any potential claims which may result from Subcontractor failing to comply with any provision contained herein.

4.4 If Owner or other responsible party delays making payment to Contractor from which payment to Subcontractor is to be made, Contractor and its sureties shall have a reasonable time to make payment to Subcontractor. "Reasonable time" shall be determined according to the 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. Through no fault of the Contractor, if Owner delays in making payment to Contractor and/or Subcontractor has not fully complied with and submitted any required invoice documentation to the satisfaction of the Contractor, the Subcontractor waives all rights related to California Government Code Sec 927, et seq.

SECTION 5. TIME

5.1 Time is of the essence of this Agreement. Subcontractor shall provide unit cost breakdown and scheduling information in a format acceptable to the Contractor within five (5) days of receipt of this Subcontract. Subcontractor shall cooperate and coordinate its work with all other trades on site. 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 in accordance with Contractor's progress schedule 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 such schedule. Contractor 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. 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 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 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 the Subcontractor has thus been delayed, but no allowance or extension shall be made unless a claim therefore 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.

5.2 All scheduling (crews, material and equipment deliveries, etc.) must be coordinated through the Contractor prior to starting work. Contractor will make periodic revisions to the duration and sequencing of its schedule to insure the overall project duration is not exceeded. Subcontractor shall continuously monitor the Contractor's schedule so as to be fully familiar with the timing, phasing, and sequence of operations of the Work. 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 Contractor's progress schedule.

SECTION 6. CHANGES IN THE WORK

6.1 Subcontractor shall make any and all changes in the work described in the Contract Documents and this Agreement as directed by Contractor in writing. Such change or written direction shall not invalidate this Agreement. If necessary, the contract 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 price or time. If Contractor and Subcontractor cannot agree on the amount of the addition or deletion, Subcontractor shall nonetheless timely perform the changed work 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. Subcontractor acknowledges that it is aware of California Government Code 12650 (False Claims Act) and reasonable costs of the changed work shall be made in accordance with; (1) the terms specifically addressed in the Prime Contract; (2) an agreed upon lump sum for the change or; (3) an agreed upon time and material/force account work for the change and an agreed upon sum for overhead and profit (markups) not to exceed 20% for labor, 15% for equipment and 10% for materials.

6.2 Subcontractor shall not make any changes in the work described herein or in any way cause or allow that work to deviate from the Contract Documents without written direction from Contractor. If Subcontractor makes any changes in the work described herein without written direction from Contractor, such change constitutes an agreement by Subcontractor that it will not be paid for the 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, damages, 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.

6.3 If a dispute arises between Contractor and Subcontractor about whether particular work is a change in the work described herein, Subcontractor shall 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 as allowed in the Prime Contract. In addition, Subcontractor shall submit its written claim for additional compensation for that work within five (5) days after such work is performed, unless a more stringent requirement is provided for in the Prime Contract, with sufficient detail for Contractor to make an evaluation of the merits of the claim. Subcontractor's failure to provide a written notice before proceeding with the work or to submit a written claim within the five (5) days constitutes an agreement by the Subcontractor that it will not be paid for the disputed work.

6.4 With regard to any claims arising from differing conditions, changes directed by Owner or others, or which otherwise are not solely the fault of Contractor; Subcontractor's sole and exclusive remedy shall be a claim for that portion of the additional compensation received by Contractor from Owner on account of such matters as is equitable under all of the circumstances. Subcontractor and Contractor shall cooperate in the prosecution of such claims, and Subcontractor shall pay a pro-rata share of the costs and expenses incurred in connection therewith, to the extent that said claim is made by Contractor on behalf of Subcontractor. Nothing herein shall require Contractor to pursue such a claim on behalf of Subcontractor.

6.5 No change, alteration, or modification to or deviation from this Agreement, the Contract Documents, Prime Contract, plans, or specifications shall release or exonerate, in whole or in part, any bond or any surety on any bond given in connection with this Agreement, and notice is required to be given to such surety of any such change, alteration, modification, or deviation.

SECTION 7. DAMAGES CAUSED BY DELAYS

7.1 If Subcontractor should default in performance of the work described herein or should otherwise commit any act which caused 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.

7.2 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 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, 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.

7.3 If the 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 the Subcontractor's claim to the Owner or other responsible party. The 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.

SECTION 8. BONDING OF SUBCONTRACTOR

If required by the Contractor with the execution of this Agreement, Subcontractor shall execute a labor and material bond and a performance bond, each in an amount equal to one hundred percent (100%) of the Subcontract Price. Said bonds shall be executed by a corporate surety admitted in California, acceptable to Contractor and shall be in a form satisfactory to Contractor. Contractor shall pay the initial bond premium only, up to @% of the Subcontract Amount, on said bonds unless otherwise provided herein or in the Contract Documents. The initial cost of the bond is in addition to the amounts otherwise indicated in this Agreement. Subcontractor shall provide an invoice for the bond premium to the Contractor for payment. Contractor will not pay an invoice from Subcontractor's surety company. If a Subcontractor's bond becomes invalid, Subcontractor shall provide a viable bond to replace the original bond at Subcontractor's expense.

Performance and Payment bonds are/are not required for this Subcontract Agreement.

SECTION 9. LIENS

In case suit is brought on any claim, lien or stop notice 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 of the court in said suit. Subcontractor agrees within five (5) days after written demand to cause the effect of any such suit, lien or stop notice to be removed from the premises, and in the event Subcontractor shall fail to do so, Contractor is authorized to use whatever means in its discretion including but not limited to satisfying by direct payment any lien, claim or stop notice and deducting amount(s) from the Subcontractor to cause said lien, stop notice 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 shall at all times indemnify and save Contractor and Owner harmless against all liability for claims and liens for labor performed or material and equipment used or furnished to be used on the job including all incidental and consequential damages resulting to Contractor or Owner from such claims or liens. Subcontractor may litigate any such lien or suit provided it causes the effect thereof to be removed, promptly in advance, from the premises, and still 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 lien 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 the 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 10. 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 11. MATERIALS AND WORK FURNISHED BY OTHERS

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. 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 agreement.

SECTION 12. PROTECTION OF WORK

Subcontractor shall effectually secure and protect the work done hereunder and assume full responsibility for the condition thereof until final acceptance by Owner and Contractor. Subcontractor shall be responsible for the protection of its own material and equipment from theft and/or vandalism. Subcontractor further agrees to provide such protection as is necessary to protect the work and the workmen of Contractor, Owner and other subcontractors from its operations. Subcontractor shall be liable for any loss or damage to any work in place or to any equipment and material on the job site caused by it or its agents, employees or guests.

SECTION 13. LABOR RELATIONS

13.1 Subcontractor shall keep a technically qualified English-speaking 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. Prior to commencement of the work, Subcontractor shall notify Contractor who Subcontractor's representative is to be, and in the event of any change of the representative, Subcontractor shall notify Contractor who the new representative is to be prior to such change becoming effective. Subcontractor acknowledges that Contractor has entered into labor agreements covering work at its construction job sites with the labor unions listed herein. Subcontractor shall maintain labor policies in conformity with the directions of the Contractor including but not limited to any jurisdictional disputes, strikes, labor lock-outs or claimed work issues that may arise throughout the Project. Should there be picketing on Contractor's job site, and Contractor establishes a reserved gate for Subcontractor's purpose; it shall be the obligation of Subcontractor to continue proper performance of its work without interruption or delay.

13.2 Subcontractor agrees to be bound to and comply with all the terms and conditions of the labor agreements listed in Section 24 below to the same degree and extent as if Subcontractor were a party to those agreements, including payments into the employee benefit trust funds required by the labor agreements listed herein, and including Subcontractor's submission to,

and Subcontractor's compliance with, the arbitration and other disputed resolution requirements of the labor agreements listed. Subcontractor agrees to comply with the terms and provisions contained in such agreements for resolution of jurisdictional disputes. In the absence of any such procedure, or if such procedure fails to promptly resolve any jurisdictional dispute, Subcontractor agrees, at its own cost and expense, upon request of Contractor to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board. Subcontractor acknowledges that terms and conditions of the labor agreements with the unions listed herein below may require that Subcontractor comply with additional labor agreements with unions affiliated with the AFL-CIO but not listed. When the terms and conditions of the below-referenced labor agreements so require, Subcontractor shall perform its job site work pursuant to all terms and conditions of an appropriate labor agreement with a union affiliated with the AFL-CIO. Subcontractor further promises and agrees that it will bind and require all of its subcontractors and their subcontractors performing job site work of the type covered by any of the labor agreements specified below to agree to all of the foregoing promises and undertakings, to the same effect as herein provided with respect to it.

13.3 Subcontractor hereby acknowledges that it is thoroughly familiar with all good faith (DBE/MBE/WBE/DVBE/UDBE) requirements pertaining to the project. If the Subcontractor claims status related to any DBE/MBE/WBE/DVBE/UDBE or other, 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 sub-subcontractor or supplier of the Subcontractor is designated as or is required to be a DBE/MBE/WBE/DVBE/UDBE or other, 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 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/DVBE/UDBE or other, Subcontractor shall not be entitled to any further compensation not already paid.

13.4 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.

SECTION 14. RECOURSE BY CONTRACTOR

14.1 Failure of Performance.

14.1.1 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 such assurance within five (5) days of the demand is cause for default of this Agreement.

14.1.2 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 this Section or is otherwise guilty of 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, 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 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 reasonable overhead, profit, 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.

(d) pay any monies due for Subcontractor's obligations herein to the extent required by and to the satisfaction of Contractor.

14.1.3 Termination for Default. If Subcontractor fails to commence and/or satisfactorily continue correction of a default within forty-eight (48) hours after receipt by Subcontractor of the notice issued under this Section, 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 to complete Subcontractor's 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 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 twenty percent (20%) 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.

14.1.4 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 4 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) a maximum of fifteen percent (15%) of the cost of the work referred to in item (1) above for the combined overhead and profit as allowed in 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 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.

14.1.5 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 Contractor or 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.

14.2 Bankruptcy.

14.2.1 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) hour's 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 the statutory time limits.

14.2.2 Interim Remedies. If Subcontractor 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 of work.

14.2.3 In the event of an emergency affecting the safety of persons or property, Contractor may proceed without notice. Contractor may offset against any sums due or to become due Subcontractor all costs incurred in pursuing any of the remedies provided herein, including, but not limited to, 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 Contract Price.

SECTION 15. INDEMNIFICATION

15.1 Subcontractor's Indemnification and Defense of Contractor. 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 statutes or public policy of

the State of California, Subcontractor shall defend, indemnify and save harmless Contractor, including its officers, directors, partners, joint venturers, agents, employees, affiliates, parents and subsidiaries, and each of them, of and from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity, of every kind and nature whatsoever ("Claims") arising out of or in connection with Subcontractor's obligations under this Agreement for, but not limited to:

- (a) Personal injury, including, but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to, any employees or agents of Subcontractor, Owner, Contractor, or any other subcontractor and/or damage to property of anyone (including loss of use thereof), caused or alleged to be caused in whole or in part by any act or omission of Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable.
- (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 or Owner arising out of Subcontractor's Work.
- (d) Claims and liens 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 the Labor Relations Section.
- (f) Failure of Subcontractor to comply with the provisions of the Insurance Section.
- (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.
- (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.

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.

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 of 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 16.4 and the builder's risk insurance provision of Section 16.6.2 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

All insurance documents must be in accordance with this Subcontract and the Prime Contract. No work shall be performed or payments made until the Subcontractor's insurance certificates, with the required endorsements, are received and approved. Any progress payment or final payment for services shall not limit the Subcontractor's compliance with any insurance requirements.

16.1 Casualty Insurance. Subcontractor shall, at its expense and as an integral part of its agreed Scope of Work and price herein, procure and maintain insurance on all of its operations with insurance that will be primary, contributory and stand in an unbroken chain toward any claim(s) that may arise in this Agreement with companies acceptable to Contractor, as follows:

16.1.1 Workers' Compensation and Employer's Liability Insurance. Workers' Compensation insurance by law shall be provided as required by any applicable law or regulation. Employer's Liability insurance shall be provided in amounts not less than the State mandatory requirements or: \$1,000,000 each accident for bodily injury by accident; \$1,000,000 policy limit for bodily injury by disease, \$1,000,000 each employee for bodily injury by disease. A waiver of subrogation endorsement in favor of Contractor and Owner must be provided.

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.

16.1.2 General Liability Insurance. Subcontractor shall carry primary Commercial General Liability insurance (Insurance Services Office, Form CG 00 01 or equivalent, as approved,) covering all operations by or on behalf of Subcontractor providing insurance for bodily injury liability and property damage liability for the limits of liability indicated herein or further specified in the Prime Contract including but not limited to coverage for: (1) premises and operations, (2) products and completed operations, (3) contractual liability, (4) broad form property damage (including completed operations), (5) explosion, collapse and underground hazards (including subsidence and any other earth movement), (6) personal injury liability, (7) independent contractors, and (8) construction means, methods, techniques, sequences and procedures including safety and field supervision. The limits of liability shall be not less than the amounts required of Subcontractor under the Contract Documents, but in no event less than: \$2,000,000 each occurrence (combined single limit for bodily injury and property damage), \$2,000,000 for personal injury liability, \$4,000,000 aggregate for products-completed operations, and \$4,000,000 general aggregate. The general aggregate limit shall apply separately to Subcontractor's work on a per project basis under this contract.

Items 1 through 8 above shall not be subject to any of the following limiting or exclusionary endorsements: (1) subsidence or earth movement, (2) prior acts or prior work, (3) action over – precluding indemnity for passive acts of Contractor contributing to injury of a Subcontractor's employee, (4) contractual limitation – eliminating cover for assumed liability, (5) supervisory or inspection service limitation, (6) insured vs. insured cross suits, (7) clauses terminating coverage after a designated period of time, (8) classification limitation limiting coverage for work to be performed, (9) defense inside limits provision, and (10) sub-subcontractor insurance coverage exclusions for failure to satisfy coverage conditions.

16.1.2.1 For Subcontracts Scope of Work in excess of \$1,000,000 an additional \$5,000,000 Excess Liability Insurance policy shall be maintained over the General Liability and Automobile coverages. Such Excess coverage shall, at a minimum, include

the items set forth herein. Higher limits of Excess Liability may be required by the Prime Contract and/or by the Contractor for additional scope items, hazardous work, or work identified to be unique to the project, at the sole discretion of the Contractor.

16.1.2.2 In addition, Subcontractor shall maintain primary and excess product liability and completed operations coverage through the expiration of the patent deficiency in construction statute of repose set forth in Section 337.1 of the California Code of Civil Procedure.

16.1.2.3 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. In addition, Subcontractor shall maintain primary and excess products liability and completed operations coverage for at least four years following completion of the Project and its acceptance by Owner. Certificates of Insurance requirements set forth in Section 16.2 apply on an annual basis.

16.1.2.4 Subcontractor shall maintain Riggers Liability as applicable to the Subcontractor's scope of work, if moving, lifting, lowering, rigging or hoisting of property or equipment is performed.

16.1.2.5 Contractor, its officers, directors and employees, Owner, and any other interested parties as designated by Contractor shall be named as additional insureds under the Commercial General Liability Policy, Auto Liability Policy, and 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 Insurance Services Office, Additional Insured Endorsement Form CG 2010/2037 or equivalent. No deviation from this requirement will be accepted without the express written consent of Contractor.

The duty to provide such additional insured coverage is independent of the defense and indemnity obligations set forth in Section 15. This Section 16 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.

16.1.3 Claims Made Insurance Provisions. Subcontractor shall not provide general liability insurance under any Claims Made Liability form without the express written consent of Contractor.

16.1.4 Self-insurance, large deductible program or self-insured retention (SIR) coverages are not acceptable under this Agreement and requires a separate agreement with the expressed written consent of the Contractor under an additional indemnity form prior to the Subcontractor starting any portion of its Scope of Work or operations.

16.1.5 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. Certificates of insurance required by this Contract shall include an Additional Insured endorsement.

16.1.6 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, the Subcontractor and/or the tier must obtain an applicable "Pollution Liability" policy with limits not less than \$1,000,000 (occ) and \$2,000,000 (agg) naming the Contractor and Owner as additional insured.

16.1.7 Professional Liability. If the Subcontractor and/or its subcontractors or suppliers, regardless of tier, perform or procure a designer, engineer, architect, surveyor or other design related professional for any part of its scope of work, Professional Liability coverage with minimum limits of \$2,000,000 shall be required. Additional coverage limit may be required at the sole discretion of the Contractor. Any professional liability insurance shall be primary, contributory and stand in an unbroken chain toward any error and omission claims that may arise in this Agreement.

16.2. Certificates of insurance, as evidence of the insurance required by this Contract and including the required "additional insured" and "completed operations" endorsement(s) shall be furnished by Subcontractor to Contractor. Additional Insured Endorsements are required and shall be furnished by Subcontractor to Contractor under the Commercial General Liability Policy, Automobile Liability Policy, and Excess Liability Policy. Certificates shall set forth deductible amounts in excess of \$5,000 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 and/or self-insured retentions of up to \$25,000 if Subcontractor is willing to post security, guaranteeing payment of losses and defense expenses for a period of one year after the project is completed. Standard ISO Form CG 00 01 exclusions will also be allowed. Allowance of any additional exclusions or coverage limiting endorsements is at the discretion of the Contractor. Regardless of the consent to 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). Subcontractor's certificates of insurance shall provide that there will be no cancellation or reduction of coverage without an unqualified, thirty (30) day, prior written notice to Contractor as evidenced by the applicable endorsement.

16.3 Contractor may take whatever actions are necessary to assure Subcontractor's compliance with its obligations under Section 16 of the Agreement. Should any insurance policy lapse or be canceled during the period of this Agreement, the 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 Agreement. In the event Subcontractor fails to maintain any part of the insurance coverage required, Contractor may, but is not required to, maintain such coverage and charge the expense to Subcontractor or may pursue other remedies herein. 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 defend, indemnify and hold harmless Contractor as set forth in Section 15, 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 this Agreement or by law. If higher limits or other forms of insurance are required in the Contract Documents, Subcontractor will comply with such requirements. If Subcontractor maintains higher limits than the minimums shown in this Section 16, Contractor and Owner shall be entitled to coverage for the higher limits maintained by Subcontractor.

16.4 Waiver of Subrogation. Contractor and Subcontractor waive all rights against each other and against all other subcontractors and Owner for loss or damage to the extent reimbursed by any 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, Automobile Liability and Worker's Compensation endorsements shall be provided to Contractor along with the certificates of insurance required by Section 16.

16.5 Subcontractor shall ensure that their sub-subcontractors of every tier also carry and maintain insurance compliant with the limits of liability and requirements specified in Section 16 in its entirety. 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. Contractor may also require that the sub-subcontractor name Contractor and Owner as additional insureds. Such naming shall be provided at no additional cost or expense to Contractor or Owner.

16.6 Property Insurance.

16.6.1 Contractor and Subcontractor waive all rights against each other and against all other subcontractors and Owner for loss or damage to the extent reimbursed by Builder's Risk or any other property or equipment insurance applicable to the work, except such rights as they may have to the proceeds of such insurance. If the 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.

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

16.6.3 Risk of Loss Insurance. If the Owner or Contractor has not purchased a Project policy identified in 16.6.2, the Subcontractor shall accept the risk of loss and/or provide applicable insurance coverage at its cost for all equipment and property obtained by or for Subcontractor, which is to become a part of the Work 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.

16.7 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 17. DISPUTE RESOLUTION PROCEDURE

17.1 Any dispute resolution 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.

17.2 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 and only obligation is to present any timely-filed claims by Subcontractor to the 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.

17.3 Any and all claims, controversies or disputes arising out of or relating to this agreement, or the breach thereof, which remain unresolved after good-faith and direct negotiations between the on-site Project Managers and the Corporate Officer(s) of the Companies involved (parties), shall then be submitted to confidential mediation with written notice in accordance with the rules and procedures for mediation then in effect and as solely determined by Contractor under either Judicial Arbitration and Mediation Service, Inc. (JAMS) for Mediation or the Construction Industry Mediation Rules of the American Arbitration Association (AAA). Mediation shall be a condition precedent to arbitration by either party. The condition precedent shall be satisfied if the parties have failed to conclude the mediation within forty-five (45) days from the date of the first mediation session. If any issues, claims or disputes remain unresolved after mediation concludes, the parties agree to submit remaining issues to binding arbitration in accordance with the rules and procedures then in effect and as solely determined by Contractor under either JAMS Arbitration Rules and Procedures or the AAA Arbitration Rules and Procedures. The parties further agree that the award of the arbitrator is binding upon the parties and that judgment upon the award rendered may be entered in any court of competent jurisdiction. The prevailing party in any dispute procedure or other legal proceeding related to this Agreement shall be entitled to recover all its reasonable costs and expenses including but not limited to expert fees, consultant fees, mediator's or arbitrators' fees, mediation or arbitration costs and expenses, and attorney fees. Unless otherwise agreed by the parties, the dispute procedure and/or legal proceeding shall take place in Fresno, California.

17.4 The intent of the parties shall be to resolve all disputes in one forum, whether it be a multi-party arbitration governed by the Prime Contract arbitration provisions or a two-party arbitration governed by this Agreement. In the event of a dispute involving the Owner, the Contractor, and one or more Contractors, Subcontractors or Suppliers, the claims and disputes of all parties shall be heard by the same arbitrator(s) in a single proceeding. If the Subcontractor's claim is derived from an act or omission of the Owner, the Subcontractor shall prepare and present Subcontractor's claim through the Contractor at Subcontractor's expense. The parties understand and expressly waive their right to a trial by jury, their right to a motion for new trial, and their right to appeal. The parties mutually intend by this provision to prevent a multiplicity of actions and the possibility of inconsistent results from different forums.

17.5 Work Continuation and Payment. Subcontractor shall carry on the supplying of material and/or work and maintain the schedule of delivery and/or work pending mediation or arbitration, and, if so, Contractor shall continue to make payments in accordance with this Subcontract Agreement.

17.6 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.

SECTION 18. SAFETY PRACTICES

18.1 The Subcontractor shall appoint an individual to act as the Health and Safety Officer for the project. The Subcontractor's Health and Safety Officer must have a complete knowledge of the safe work practices (including OSHA guidelines and regulations) governing the project. 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(s) of Owner and/or Contractor to the fullest extent.

18.2 Subcontractor shall conduct inspections to determine that safe working conditions and equipment exist and accepts 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 and statutes. Subcontractor agrees to indemnify Contractor and Owner and reimburse Contractor and Owner, for any citations received by Contractor or Owner under the multi-employer rule that are the responsibility of the Subcontractor or are received as a result of Subcontractor's noncompliance with the abovementioned laws, orders, citations, rules, regulations, standards and statutes.

18.3 When so ordered, Subcontractor shall stop any part of the work which Contractor deems unsafe until corrective measures satisfactory to Contractor have been taken. Subcontractor agrees that it shall not have nor make any claim for

damages growing out of such stoppages. Should the Subcontractor neglect to take such corrective measures, Contractor may do so at the cost and expense of the Subcontractor and may deduct the cost thereof from any payments due or to become due to the Subcontractor. Failure on the part of Contractor to stop unsafe practices shall in no way relieve the Subcontractor of its responsibility therefore.

18.4 Subcontractor must comply with all safety orders given by Contractor should jobsite conditions require special safety requirements. All employees, suppliers, and contractors who provide jobsite services on behalf of the Subcontractor shall furnish and wear protective clothing at all times on the jobsite. This clothing would include such items as hard-sole shoes suitable for the construction environment; shirts with sleeves, ANSI approved safety glasses, and hard hats. **ABSOLUTELY NO PERSONNEL WILL BE ALLOWED ON THE JOBSITE WITHOUT A HARD-HAT AND ANSI APPROVED SAFETY GLASSES. NO EXCEPTIONS.** As a result of Subcontractor safety violations, Contractor may issue written safety violation notices and deduct an amount up to \$100 for each safety violation from the Subcontract amount and/or terminate this Agreement for Subcontractor's failure to provide a safe workplace or correct any safety concerns, notices or violations.

18.5 Subcontractor must complete and return the Required Subcontractor Safety Program Information form (**See Attachment #2**) with all required Safety information indicated on the form. The Subcontractor Safety Information is required to be returned by Subcontractor with review and approval by the Contractor's Safety Director before Subcontractor performs any work on the jobsite. If requested, Subcontractor shall also attend a Subcontractor Orientation Meeting prior to performing any work on the jobsite.

18.6 Subcontractor shall report all accidents or incidents promptly and shall submit a written accident report and/or First Report of Injury form within twenty four (24) hours of such incident. All accidents which cause serious personal injury, damage, or death shall be reported immediately by telephone or in person to the Contractor. If any claim is made by anyone against the Subcontractor or any of its sub-subcontractors on account of any accident, the Subcontractor shall promptly report the facts in writing to the Contractor, providing full details of the claim.

SECTION 19. WARRANTY

Unless there is a more stringent requirement contained in the Prime Contract or technical specification, the Subcontractor warrants to Owner and Contractor that all materials and equipment 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 at a minimum period of one (1) year from the completion of the Project and/or in conformance with the Contract Document requirements. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty provided herein shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

SECTION 20. USE OF CONTRACTOR'S EQUIPMENT

In the event Subcontractor shall use Contractor's equipment, materials, labor, supplies or facilities, Subcontractor shall reimburse Contractor at a predetermined rate. Further, Subcontractor assumes full responsibility for any 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.

SECTION 21. ASSIGNMENT OF CONTRACT

Subcontractor shall not, without written consent of Contractor, assign, and transfer or sublet any portion or part of the work required by this Agreement, nor assigns 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 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 thereof, 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 its work so as to maintain the site in a clean, safe and orderly condition. Should the Subcontractor fail to maintain a clean site, the Contractor, at its sole discretion with written notice, may deduct from the Subcontract price an amount of up to \$250 per notice. 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, equipment, etc., relative to the performance of this Agreement.

SECTION 24. LABOR AGREEMENTS

The Contractor is signatory to the following labor agreements covering work on this project: Northern and Southern California Carpenters, Cement Masons, Laborers, and Operating Engineers.

SECTION 25. APPLICABLE LAWS AND REGULATIONS

The Subcontractor acknowledges that the listing provided in this Section by no means indicates all laws and regulations that the Subcontractor must comply with and additional laws, regulations or policies may be required as an inclusive part of the Subcontractors work. The Subcontractor shall comply with all Local, State, Federal, public and/or private laws including but not limited to City and/or District fees; Project Specific requirements, Cal OSHA and Federal OSHA Safety requirements; any applicable SWPPP Best Practices, California Labor Code Sections 1720.9, 1722.1, 1725.5, 1771, 1775, 1776, 1777.5, 1813 and 1815, NLRA/Exec. Order 13496, Davis Bacon Act requirements, Certified Crane Operator requirements; Air Pollution and Dust mitigation procedures, Prevailing Wage and Per-Diem Wages, Certified Payroll, Employment Utilization Reports, Affirmative Action, Equal Employment Opportunity, Proposition 65, Nondiscrimination, Affirmative Action, Non-Segregated Facilities, and the State of California – Department of Industrial Relations Division of Apprenticeship Standards Public Works Contract Award Information (DAS 140). For all Public Works projects, Subcontractor is required to be registered with the Department of Industrial Relations and such registration must remain valid throughout the duration of the Project. The Subcontractor agrees to indemnify and hold harmless the Contractor for any violations, which were caused by the Subcontractor’s failure to comply with the above.

SECTION 26. SPECIAL PROVISIONS (Including unit or time and material pricing, if applicable):

A. LABOR, MATERIAL, EQUIPMENT AND SUPERVISION

Subcontractor to provide a safe workplace and furnish all labor, material, equipment and supervision necessary to furnish and install the work indicated below, complete and in accordance with the Project Plans and Specifications:

@@@

1. @@@

TOTAL SUBCONTRACT PRICE \$ @.@@

The above work shall be completed in accordance with Specification Sections @@@, Drawing Numbers @@@ and Addenda @ through @.

The work and prices, as stated above, include: (1) Mobilization and Demobilization as required to perform the work; (2) State and Local Sales Taxes.

The following exclusions to the above work apply as applicable to the project conditions:

1. @@@

NOTE: SUBCONTRACTOR SHALL PERFORM NO WORK ON SITE PRIOR TO RETURN OF AND APPROVAL BY CONTRACTOR OF ALL REQUIRED CONTRACT DOCUMENTS INCLUDING, BUT NOT LIMITED TO, SUBCONTRACT AGREEMENT, PERFORMANCE AND PAYMENT BONDS, IF REQUIRED, AND INSURANCE CERTIFICATES.

B. PROJECT PLANS, SPECIFICATIONS AND PHOTOS

All material, equipment, and services supplied under this Subcontract shall be in strict compliance with the Plans and Specifications, including all Addenda. Subcontractor shall direct special attention to the following Specification Section(s): [@@@], and any other Specification Sections relevant to Subcontractor's scope of work. Plans and Specifications may be purchased from contractor for the cost of printing and shipping.

C. REPORTS

1. Daily reports must be provided to Contractor by 10:00am on the day following the work. Daily’s must identify crew, deliveries and type of work performed.

2. As required by the Project, Subcontractor and his subcontractors shall furnish weekly Certified Payroll Reports to Contractor at the Corporate address herein. As required by the California Labor Code, the Subcontractor shall pay not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations.

3. Subcontractor's payments will be withheld until required certified payroll reports are received and approved.

D. SUBMITTAL DATA

Subcontractor shall submit [@@@] ([@@@]) **copies** of a complete responsive submittal package(s) consisting of shop drawings, design calculations, samples, material data and other appurtenant literature as specified in **Section [@@@]**, to Contractor for Owner/Engineer's approval **no later than [@@@] ([@@@]) weeks** after receipt of this subcontract. Subcontractor shall specifically state any discrepancies or deviations from the Plans and Specifications in a cover letter to the submittal package; otherwise, it will be assumed there are no such discrepancies. All material submittals must be approved by the Owner/Engineer prior to starting work.

E. TECHNICAL DRAWINGS, SPARE PARTS LIST SPECIAL TOOLS AND AS-BUILT DRAWINGS

Subcontractor shall furnish [@@@] ([@@@]) **sets** of Operation and Maintenance Manuals with spare parts lists in strict accordance with **Section [@@@]** of the Project Specifications. These manuals must be submitted **within 45 days** after approval of submittals and prior to shipment of all materials to the jobsite. In addition, no payment of more than seventy-five (75%) percent of the Subcontract amount will be paid until these manuals are approved by the Engineer. Spare parts and special tools, as required by the Specifications, must be furnished by Subcontractor at no cost to Contractor, with shipment of all equipment in a box marked "Spare Parts and Special Tools."

F. QUALITY CONTROL

All quality control and applicable testing shall be coordinated through the Contractor's on-site Project Manager. Subcontractor must provide Contractor a minimum of five (5) days notice for quality control and/or testing and shall be responsible for any cost or expenses of retesting its work.

G. ATTACHMENTS

The following attachments are made a part of this Subcontract:

1. Attachment #1 – California Labor Code
2. Attachment #2 – Required Subcontractor Safety Program Information

Subcontractor agrees to comply with all of the above-referenced attachments and shall physically insert in each of his subcontracts the provisions of the above-listed Attachment(s) and, also, a clause requiring his subcontractors to include the same item in any lower-tier subcontracts which they may enter into, together with a clause requiring the inclusion of this item in any further subcontracts that may in turn be made. This item shall in no instance be incorporated by reference.

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 (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (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.

The parties expressly agree that this Agreement was jointly drafted, and that they both had the opportunity in good faith to negotiate the terms and conditions contained herein. The signatures below are from individuals authorized to bind the companies and/or corporations to the terms and conditions listed herein.

CONTRACTOR:

W. M. LYLES CO.

By _____

(Name / Title)

Date _____

SUBCONTRACTOR:

By _____

(Name / Title)

Date _____

**If required by your Corporation, provide (2) signatures*

*By _____

(Name/Title)

Date _____

Contractor's License No. _____

Public Works Contractor

Registration No. _____

Federal I.D. No. _____