



Contract #XXXXXX

MASTER SUBCONTRACT AGREEMENT

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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.



MASTER SUBCONTRACT AGREEMENT

This Master Subcontract Agreement (“Agreement”) is made at Sunnyvale, CA

this TBD day of TBD, between:

CONTRACTOR

Name SC BUILDERS, Inc.

Address 910 Thompson Place

City Sunnyvale, State CA Zip 94085

and

SUBCONTRACTOR

Name TBD

Address _____

City _____ State _____ Zip _____

On or about TBD, Contractor entered into a Prime Contract (“Prime Contract”) with:

OWNER

Name To be Determined by Separate Work Authorizations

Address TBD

City TBD, State TBD Zip TBD

to construct the following described Project (“Project”):

To be Determined by Separate Work Authorizations.

Said work is to be performed in accordance with the prime contract and the plans and specifications. Said plans and specifications have been prepared by or on behalf of:

To be Determined by Separate Work Authorizations.

ARCHITECT

Name To be Determined by Separate Work Authorizations

Address TBD

City TBD, State TBD Zip TBD



SECTION 1. ENTIRE CONTRACT

Contractor and Subcontractor are entering into this Agreement with the intent and understanding that it will serve as a master agreement governing all projects for which Contractor engages Subcontractor, unless another specific contract is in effect. Use of a master agreement will avoid the parties having to negotiate and execute a new, separate Agreement for each project. Instead, each separate project for which Subcontractor is engaged will be evidenced by a Work Authorization Form executed by both parties for that project and the Bid Documents for that project. The parties agree that this Agreement, without further acknowledgement, signature, or agreement, will govern all projects for which a notice of engagement is issued, regardless of the final amount payable to Subcontractor for the projects in question.

This Agreement does not create an agreement that Contractor will request, or that Subcontractor will perform, Work on any specific project. Should Contractor desire that Subcontractor perform work on a project to which this Agreement shall be applicable, it shall furnish a notice of engagement and Subcontractor shall communicate its acceptance, as set forth below. Contractor may give a notice of engagement either in writing or orally. Subcontractor shall be deemed to have accepted the notice of engagement in the following situations: (1) following receipt of a notice of engagement, Subcontractor communicates acceptance either orally or in writing; (2) following receipt of a notice of engagement, Subcontractor, within 72 hours, commences performance of the Work at the project to which the notice relates; or (3) Subcontractor commences performance of the Work at the project to which the notice relates more than 48 hours after receipt of a notice of engagement, and Contractor fails to instruct Subcontractor to cease further performance of the Work within 48 hours of Contractor's actual knowledge that Subcontractor has commenced performance. Simultaneously or subsequent to the issuance of the notice of engagement, Contractor shall issue a Work Authorization Form for execution by the parties.

The Work Authorization form will include terms, conditions, information and descriptions applicable to the specific project on which Subcontractor is to perform work. The Work Authorization form modifies and supplements the provisions contained in the Subcontract and all other Subcontract Documents incorporated therein by reference. In the event of any conflict, inconsistency or ambiguity between the terms and provisions of the Work Authorization form, on the one hand, and the Subcontract or any contract documents, on the other hand, the Work Authorization form shall take precedence. Contractor and Subcontractor agree that Subcontractor shall perform the Work, as described herein, in accordance with the terms and conditions set forth and in the Contract Documents. In the event Contractor fails to issue a Work Authorization form, or the Work Authorization form is not fully executed, any Work performed by Subcontractor at the request of Contractor shall nonetheless be governed by this Agreement. Contractor is under no obligation to hire Subcontractor to perform work on any particular project.

This document represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, proposals, stipulations, or agreements, either written or oral, including, without limitation, Subcontractor's bid form or proposal. All prior or contemporaneous agreements to be included in this Agreement are expressly identified herein. No agent or representative of either party has authority to make, and the parties shall not be bound by or liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments or modifications to the terms of this Agreement shall be valid unless reduced to writing and signed by both parties.

The Subcontract Documents consist of (1) this Agreement; (2) for each project for which a notice of engagement is issued, and as to that project only, the specifications, plans and other relevant documents for the project, including the contract between the Owner and Contractor and any other documents enumerated therein, including conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, manuals, supplements, schedules, Addenda issued prior to execution of the Agreement between the Owner and Contractor and Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement, and other Contract Documents, if any, listed in the Owner-Contractor Agreement (collectively, the "Prime Contract Documents"); (3) other documents incorporated by this Agreement or its Attachments; (4) Modifications to this Agreement issued after its execution; and (5) for the project for which it was issued only, the Work Authorization form relating to that project. These documents are as fully a part of the Subcontract as if were attached to this Agreement or retyped herein.

For each project, but solely with regard to the project to which they relate, the Prime Contract Documents are incorporated into this Agreement by reference, and Subcontractor and its subcontractors and suppliers shall be bound by the Prime Contract Documents insofar as they relate in any way, directly or indirectly, to the work required to be performed by this Agreement. Where, in the Prime Contract Documents, reference is made to Contractor, and the work or specifications therein pertains to Subcontractor's trade, craft, or type of work, then such work or specifications shall be interpreted to apply to Subcontractor instead of Contractor.



Anything mentioned in the specifications and not shown on the plans or drawings, or shown on the plans and drawings and not mentioned in the specifications, shall be deemed shown and mentioned in both.

SECTION 2. SCOPE

Subcontractor agrees to furnish all labor, materials, equipment and other facilities required to perform the work to complete under each Work Authorization:

for the project in accordance with the Contract Documents and as more particularly specified in the Subcontract Documents relating to each project for which a Work Authorization is issued:

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, the dispute to be submitted for resolution in accordance with Section 17 below.

SECTION 3. SUBCONTRACT PRICE

Contractor agrees to pay Subcontractor for the strict performance of its work on a project for which a Work Authorization has been issued the sums set forth in the Work Authorization, and to make payment in accordance with the Payment Schedule, Section 4.

SECTION 4. PAYMENT SCHEDULE/RETENTION

Contractor agrees to pay to Subcontractor in monthly progress payments of Ninety percent (90 %) 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. Subcontractor shall complete in its entirety and submit on or before the 20th of every month, Contractor's Subcontractor Payment Application, Subcontractor's own Invoice and any and all necessary Lien Releases. Monthly progress payments shall be made by Contractor seven (7) days after receipt of payment from the Owner. Final payment to Subcontractor shall be made after the Project has been fully completed in conformity with the Contract Documents and has been delivered to and accepted by Owner and Architect, with funds received by Contractor from Owner in final payment for Work under the Prime Contract. Subcontractor agrees to furnish, if and when required by Contractor, payroll affidavits, receipts, vouchers, lien releases from its subcontractors, suppliers and/or union trust funds performing Work or furnishing materials under this Agreement, all in form satisfactory to Contractor, and it is agreed that no payment hereunder shall be made, except at Contractor's option, until and unless such documents have been furnished. Contractor, at its option, may make any payment due hereunder by check made payable jointly to Subcontractor and any of its subcontractors, suppliers and union trust funds 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 acknowledgment of completion of any part of any Subcontractor's Work.

See SECTION 26 for continuation of PAYMENT SCHEDULE and Attachment 4 for SUBCONTRACTOR PAYMENT APPLICATION.

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

- (1) defective Work not remedied;
- (2) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to Contractor is provided by Subcontractor;
- (3) failure of the Subcontractor to make payments properly for labor, materials or equipment to its subcontractors and/or suppliers performing Work or furnishing materials under this Agreement;
- (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Subcontract Price;
- (5) damage to the Owner, Contractor or another subcontractor caused or alleged to be caused by Subcontractor;
- (6) reasonable evidence that the Work may not be completed within the time required by this Agreement;
- (7) reasonable evidence that the unpaid balance of the Subcontract Price will not be adequate to cover any liquidated or delay damages for which Subcontractor is responsible;
- (8) repeated failure to carry out the Work in accordance with the Contract Documents;
- (9) penalties assessed against Contractor or Subcontractor for failure of Subcontractor, or its subcontractors or suppliers to comply with state, federal or local laws and regulations;



- (10) failure by Subcontractor to submit insurance certificates and endorsements as required by Section 16, or failure by Subcontractor to maintain all required insurance;
- (11) failure by Subcontractor to submit required warranties, guarantees, as-built drawings and other documents required by the Contract Documents;
- (12) Failure by Subcontractor to submit any and all necessary paperwork to process payment including but not limited to: Contractor's Subcontractor Payment Application, Subcontractor's own Invoice or Lien Releases by the 20th of every month;

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

If 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.

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 5. TIME

Time is of the essence of this Agreement. Subcontractor shall provide Contractor with scheduling information and a proposed schedule for performance of its Work in a form acceptable to Contractor. 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, 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 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. 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 Agreement 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 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.

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, 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.



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.

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 desirable for Subcontractor. Subcontractor's price is based upon Contractor exercising the rights indicated in Sections 5 and 6, as well as those indicated above, and upon Subcontractor having planned to perform its Work under such circumstances. To the greatest extent permitted by law, Subcontractor's sole remedy for delay, disruption or suspension of the Work, including without limitation any delay, disruption or suspension caused by the fault or negligence of Owner, Contractor (or any agent or representative thereof), or from any other cause whatsoever, shall be an extension of the time for performance. Subcontractor shall not be entitled to, and hereby waives any and all 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, for any delay, disruption or suspension of the Work (collectively, "Impact Costs And Consequential Damages"), except to the extent of such sums as may be recovered on Subcontractor's account from Owner. Subcontractor further waives any and all claims against Contractor for damages or additional compensation which is related to, caused or contributed to by delay and/or disruption of Subcontractor's performance, or by any act, omission, or other conduct causing or contributing any Impact Costs And Consequential Damages (including negligent conduct on the part of Contractor or any other person). If Subcontractor wishes to seek compensation for Impact Costs And Consequential Damages of any kind, or for any other increase in the Subcontract Price, it must give the Contractor written notice no later than ten (10) days after the beginning of the underlying cause thereof, or such shorter period of time as may be provided by this Agreement. Failure to provide such written notice shall be a waiver of, and a conclusive defense to, any claim by Subcontractor. The requirement to give such notice in no way shall be deemed to authorize or provide entitlement to recovery for Impact Costs and Consequential Damages or for any other form of relief which may be sought by Subcontractor.

See SECTION 26 for additional TIME provisions.

SECTION 6. CHANGES IN THE WORK

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 Subcontract Price stated in Section 3 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 Work as changed by Contractor's written direction. Once Subcontractor receives Contractor's written direction, Subcontractor is solely responsible for timely performance of the Work as changed by the written direction.

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

Subcontractor shall not make any changes in the Work described in Section 2 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 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, 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.

If a dispute arises between Contractor and Subcontractor about whether particular Work is a change in the Work described in Section 2, Subcontractor shall timely perform the disputed Work and may give written notice of a claim for additional compensation for that Work. Such written notice of claim must be given within seven (7) days after such Work is performed. Subcontractor's failure to give written notice within the seven (7) days constitutes an agreement by Subcontractor that it will not be paid for the disputed Work.

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 provision 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.



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

SECTION 7. DAMAGES CAUSED BY DELAYS

If Subcontractor should default in performance of the Work 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. CLAIMS AND LIENS

If any suit is brought, or if any claim or lien is recorded or served for labor performed or materials used on or furnished to the Project under this Agreement, Subcontractor shall pay and satisfy any such claim, lien or judgment. Subcontractor agrees within ten (10) days after written demand to cause the effect of any such claim, 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 claim, lien or suit to be removed or dismissed and the cost thereof, together with actual attorneys' fees, shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may contest any such claim, lien or suit provided it causes the effect thereof to be removed, promptly in advance, from the premises, and shall further take such actions as may be necessary to cause Owner not to withhold any monies due to Contractor from Owner by reason of such claims, 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 payment of any amounts due to labor or material suppliers 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 material supplier furnishing labor and material to Subcontractor for the Work.

SECTION 10. PROVISIONS FOR INSPECTION

Subcontractor shall at all times furnish to Contractor and its representatives, as well as the Owner, Architect/Engineer and all governmental authorities with jurisdiction over the Work, safe and ample facilities for inspecting materials at the site of construction, shops, factories or any place of business of Subcontractor and its subcontractors and material suppliers where materials under this 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 and assume full responsibility for the condition thereof until final acceptance by Architect, Owner and Contractor. Subcontractor further agrees to provide such protection as is necessary to protect the Work and the workers of Contractor, Owner and other subcontractors from Subcontractor's operations.

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

SECTION 13. LABOR RELATIONS

13.1 Subcontractor shall keep a representative at the job site during all times when the Work is in progress, and such representative shall be authorized to represent Subcontractor as to all phases of the Work. Prior to commencement of the Work, Subcontractor shall notify Contractor with contact information for Subcontractor's representative, and in the event of any change of representative, Subcontractor shall notify Contractor with contact information for the new representative 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 in Section 25 and incorporated herein by reference.

Subcontractor agrees to comply with all of the terms and conditions of those labor agreements including trust fund payment into the respective labor trust funds set forth in the respective labor agreements, referred to in Section 25 insofar as Subcontractor may lawfully do so, and in particular agrees to comply with the terms and provisions of said agreements setting forth the jurisdiction and scope of work claimed by each of such crafts and the procedure contained therein for resolution of jurisdictional disputes. In the absence of any such procedure, or if such procedure fails to promptly resolve the jurisdictional dispute, Subcontractor agrees, at its own cost and expense, upon request of Contractor, to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board.

Subcontractor acknowledges that terms and conditions of the labor agreements listed in Section 25 may require that Subcontractor comply with additional labor agreements with unions affiliated with the AFL-CIO but not listed in Section 25. If the terms and conditions of the listed labor agreements so require, Subcontractor shall perform its job site Work pursuant to all terms and conditions of the labor agreement with a union affiliated with the AFL-CIO.

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

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

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

13.3 Subcontractor shall comply with and agrees to be bound by all applicable federal, state and local laws and regulations, including, but not limited to, all provisions of the Fair Labor Standards Act, the Americans with Disabilities Act, the federal Family and Medical Leave Act, the California Labor Code, the California Fair Employment and Housing Act and the California Family Rights Act. Attached hereto as Exhibit (N/A) are the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815. These provisions are incorporated by reference into this Agreement when payment of prevailing wages is required by contract or law, and Subcontractor agrees to comply with these provisions and all interpretations thereof by the Director of the Department of Industrial Relations insofar as they are applicable to Subcontractor. Upon request, Subcontractor shall submit certified payroll records to



Contractor no later than three (3) working days after labor has been paid. Prior to receiving final payment for Work performed on the Project, when payment of prevailing wages is required by contract or law, Subcontractor shall sign an affidavit under penalty of perjury that Subcontractor has paid the specified general prevailing rate of per diem wages to its employees for the proper craft needed to fulfill the obligations of this Agreement and all amounts due pursuant to Labor Code section 1813. Subcontractor further promises and agrees that it will bind and require all of its sub-subcontractors and their subcontractors performing any Work under this Agreement to agree to all of the foregoing promises and undertakings contained in this Section 13.3, to the same effect as herein provided.

SECTION 14. RECOURSE BY CONTRACTOR

14.1 Suspension:

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

14.1.2 Suspension by Contractor. The Contractor may, for its convenience, order Subcontractor in writing to suspend all or any part of the Work for such period of time as Contractor determines is appropriate. Phase Work or interruptions of the Work for short periods of time shall not be considered a suspension. Subcontractor, after receipt of Contractor's written order, shall notify Contractor in writing the effect of such order upon the Work. The Subcontract Price and/or the time for performance shall be adjusted by Subcontract Change Order for any increase in the price or time of performance of the Work caused by such suspension. No claim under this Section shall be allowed for any costs incurred more than fourteen (14) days prior to Subcontractor's written notice to Contractor. Neither the Subcontract Price nor the time for performance shall be adjusted for any suspension, to the extent that the suspension is due in whole or in part to the fault or negligence of Subcontractor or otherwise the responsibility of Subcontractor. If and to the extent the suspension is due to a cause for which Subcontractor would have been entitled only to a time extension under this Agreement, the Subcontract Price shall not be adjusted.

14.2 Failure of Performance:

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

14.2.2 Notice to Cure. If Subcontractor at any time refuses or neglects to supply enough properly skilled workers and proper materials, or fails to properly and diligently prosecute the Work, or fails to make prompt payment to its workers, sub-subcontractors or suppliers, or becomes delinquent with respect to contributions or payments required to be made to any health and welfare, pension, vacation, apprenticeship or other employee benefit program or trust, or fails to provide adequate assurance pursuant to Section 14.2.1, or is otherwise guilty of a material breach of a provision of this 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 the Work, or any part thereof which Subcontractor has failed to complete or perform, and charge the cost thereof to Subcontractor, who shall be liable for the payment of that cost and a markup of fifteen percent (15%) for overhead and profit, plus actual attorneys' fees incurred as a result of Subcontractor's failure of performance;

(b) contract with one or more additional contractors to perform such part of the Work as Contractor shall determine will provide the most expeditious completion of the total Work and charge the cost thereof to Subcontractor, who shall be liable for the payment of that cost and a markup of fifteen percent (15%) for overhead and profit plus actual attorneys' fees incurred as a result of Subcontractor's failure of performance; and



(c) withhold payment of any monies due Subcontractor pending corrective action to the extent required by and to the satisfaction of Contractor.

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

14.2.3 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 14.2. 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 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 Project.

In such case, Subcontractor shall be entitled to no further payment until the balance of the Work has been completed. At that time, all of the costs incurred by Contractor in performing 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 Subcontract Price.

14.2.4 Termination for Convenience. Contractor may, for its convenience, at any time and for any reason terminate Subcontractor's performance of the Work. 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 therefrom. Subcontractor shall thereafter do only such Work as may be necessary to preserve and protect the Work already in progress and to protect material and equipment on the job site or in transit thereto.

Subcontractor's remedy for termination under this subsection shall be limited to the following: (1) payment for that portion of the Subcontract Price due for all Work completed in conformity with this Agreement prior to termination; (2) payment for the cost of material and equipment ordered for the Work, which has been delivered to Subcontractor, or which Subcontractor is liable to accept delivery – this material and equipment shall become property of (and be at the risk of) Contractor when paid for by Contractor, and Subcontractor shall place the same at Contractor's disposal; plus (3) payment for other close-out costs and liabilities properly and reasonably incurred by Subcontractor related to the Work. 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. Subcontractor shall not be entitled to any claim or claim of lien against Contractor or Owner for any additional compensation or damages, such as, but not limited to, loss of anticipated profits, unallocated overhead or consequential damages, in the event of such termination and payment.

14.2.5 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 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.

14.3 Bankruptcy

14.3.1 Termination Absent Cure. Upon the appointment of a receiver for Subcontractor or upon Subcontractor making an assignment for the benefit of creditors or if Subcontractor seeks protection under the Bankruptcy Code or commits any other act of insolvency, Contractor may 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 by 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 the statutory time limits.

14.3.2 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. 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, reasonable overhead, profit and actual attorneys' fees incurred as a result of Subcontractor's non-performance. Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Price.

SECTION 15. INDEMNIFICATION

15.1 Subcontractor's Performance. With the exception that this Section 15 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 indemnify, defend and save harmless Contractor, including their officers, agents, directors, partners, members, 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 liability, 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. Subcontractor's duties under this section 15.1 shall apply to Claims for, but not limited to:

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

The indemnification requirements of (a) through (h) above shall extend to Claims occurring after this Agreement is terminated as well as while it is in force. Such indemnity provisions apply to the fullest extent of the law, regardless of any passively negligent act or omission of Contractor or 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 responsible to Contractor, or for defects in design furnished by such persons or for Claims that do not arise out of the Work.

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



15.2 Defense of Claims. Subcontractor shall:

(a) With respect to 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 Section 2782.05(e)(2). If after the final resolution of the Claim a determination is made that the defense costs allocated Subcontractor exceeds its proportional percentage of negligence, the parties agree to submit any defense reimbursement issues to the Claims Resolution Procedures set forth in Section 17. In the event Subcontractor fails to pay Contractor, within thirty (30) days of receipt of an invoice from Contractor, Subcontractor's allocated share of the defense fees and costs, Contractor shall have the right to pursue a claim against Subcontractor for any resulting compensatory damages, consequential damages, and reasonable attorney's fees. Moreover, Contractor shall be entitled to deduct any defense fees and costs allocated to Subcontractor from the amount due Subcontractor hereunder and withheld by Contractor.

(b) Subcontractor shall, at Subcontractor's own cost, expense and risk, defend (with counsel designated by Contractor) all Claims as defined in Section 15 that may be brought or instituted by third persons, including, but not limited to, governmental agencies or employees or 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 and builder's risk management provision of Section 16 may reduce the risk of loss and property damage indemnification obligations of Subcontractor.

15.4 No Limitation of Liability

Except as otherwise provided by the statutes or public policy of the State of California, Subcontractor's obligations under this Section are not affected by the insurance required of Subcontractor, pursuant to Section 16.

15.5 Subcontractor's Indemnification and Defense Obligation to Owner and Others

With the exception that this Section 15.5 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 indemnify and/or defend Owner and such other persons, but only with respect to Claims arising out of or in connection with Subcontractor's obligations under this Agreement.

15.6 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.

15.7 Construction of Section

Notwithstanding any of the provisions in 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 Agreement and the remaining provisions shall remain in full force and effect and shall be construed to provide for the maximum indemnification and defense obligation by Subcontractor permitted by law.

SECTION 16. INSURANCE

16.1 Before performing Work or conducting any activities at the site of the Project, Subcontractor shall, at its expense, procure and maintain insurance and required coverage on all its operations, in admitted companies having at least an A.M. Best rating of no less than A- VII (except for State Fund for Workers' Compensation coverage), or Contractor may consider



accepting coverage from a non-California admitted carrier with an A.M. Best rating of A or better, financial capacity of XII or better and in forms acceptable to the Contractor as follows:

16.1.1 Workers' Compensation and Employers Liability Insurance as required by any applicable law, regulation or statute including:

- (a) \$1,000,000 each accident for bodily injury by accident;
- (b) \$1,000,000 each employee for bodily injury by disease;
- (c) \$1,000,000 policy limit for bodily injury by disease;
- (d) Longshoreman's & Harbor Workers' Act coverage on any employees working under this jurisdiction;
- (e) Coverage for Jones Act exposure on any maritime exposure;
- (f) Waiver of Subrogation in favor of Contractor and Owner;

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

- (a) Premises and Operations;
- (b) Products and Completed Operations;
- (c) Broad Form Property Damage (including Completed Operations) shall be carried for one year following completion of the project;
- (d) Explosion, Collapse, Underground Hazards (including subsidence);
- (e) Contractual Liability including Subcontractor's bodily injury and property damage indemnity obligations assumed in Section 15;
- (f) Personal Injury Liability and Advertising Liability;
- (g) Severability of Interest Clause;
- (h) Liability of Independent Contractors;
- (i) Construction means, methods, techniques, sequences and procedures including safety and field supervision;
- (j) General Aggregate Limits of Insurance shall apply separately to the project;
- (k) "Claims Made" and "Modified Occurrence" policy forms are not acceptable;
- (l) "Risk Retention Groups" are not acceptable;
- (m) Any self-insured retention or deductible greater than \$25,000 must be declared to contractor at time of bid and approved by contractor;
- (n) Subcontractor shall maintain primary and excess products 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;
- (o) Coverage for action over including indemnity for passive acts of Contractor contributing to injury or Subcontractor's employees;
- (p) No exclusionary wording for insured vs. insured must apply;
- (q) Defense must apply in addition to the policy limits;
- (r) There shall be no coverage exclusions or restrictions for wildfires, including, but not limited to, an unplanned or uncontrolled fire, regardless of how or where the source of the fire originated.
- (s) There shall be no coverage exclusions or restrictions for Virus or Communicable Disease.

16.1.3 Minimum Limits of Liability shall not be less than:

- (a) \$1,000,000 each occurrence Bodily Injury and Property Damage combined;
- (b) \$1,000,000 for Personal Injury Liability;
- (c) \$2,000,000 aggregate on Products-&-Completed Operations;
- (d) \$2,000,000 General Aggregate;
- (e) If either defense costs are included in the General Aggregate limit or if the General Aggregate limit does not apply separately to this project, then the required General Aggregate limit is to be \$3,000,000. This additional limit can be provided by an umbrella policy.
- (f) Higher limits of liability may be required of subcontractor due to the nature of the Work being performed. Such additional limits may be provided by an Umbrella liability policy



16.1.4 Automobile Liability Insurance on a coverage form at least as broad as ISO form CA 0001, including:

- (a) Coverage on any automobile or on all owned, non-owned and hired automobiles;
- (b) Limit of liability shall not be less than \$1,000,000 Combined Single Limit for bodily injury and property damage;

16.1.5 Increased Liability Limits:

If higher limits or other forms of insurance are required by either the Owner, Contractor or Contract Documents or under paragraph 16.1.3 above, the Subcontractor will comply with such requirements by providing evidence of an umbrella or excess liability policy.

16.1.6 Additional Insured and Primary Insured Endorsement:

- (a) Under the General Liability policy the subcontractor shall add, **SC BUILDERS, Inc. and all parties as required by Owner contract as additional insured for all work performed under the written Master Subcontract Agreement.** The policy shall stipulate that the insurance afforded SC BUILDERS, Inc. and all parties as required by Owner contract as additional insured shall apply as primary insurance. Any other insurance carried by SC BUILDERS, Inc. and all parties as required by Owner contract will be excess only and will not contribute with Subcontractors insurance.
- (b) The additional insured coverage, including ongoing and completed operations, shall be provided by an endorsement providing coverage at least as broad as:
 - Additional Insured (Form B) ISO endorsement form CG 2010 1185, or equivalent, or;
 - A combination of Additional Insured ISO endorsement form CG 2010 1001, or later versions (any addition date) and Additional Insured endorsement form CG 2037 1001, or later versions (or equivalent);
- (c) Additional insured endorsements shall be provided for three (3) years following project completion.

16.1.8 Evidence of Coverage and Certificates of Insurance:

The Subcontractor shall furnish certificates to Contractor, in PDF format, before any Work is commenced hereunder by the Subcontractor. The Certificates of Insurance shall provide that there will be no cancellation or reduction of coverage without prior written notice to Contractor in accordance with the Subcontractor's policy provisions. In the event Subcontractor does not comply with the requirements of this section, Contractor, at its option, may provide insurance coverage to protect its interests and charge the Subcontractor for the cost of that insurance or Contractor may terminate this Agreement. The required insurance shall be subject to approval of Contractor, but any acceptance of insurance certificates by the Contractor shall in no way limit or relieve the Subcontractor of the duties and responsibilities assumed by the Subcontractor in this Agreement. Allowance of any additional exclusions or coverage limiting endorsements is at the discretion of Contractor, and Subcontractor's bid shall be subject to adjustment to compensate for the existence of such exclusions. Payment may be withheld, at the option of the Contractor, until such certificates have been furnished, or if upon receipt of a cancellation notice on a policy, until withdrawal of the notice or the reinstatement of the canceled policy. Copies of policies shall be furnished upon request.

16.1.9 Insurance Requirements for Sub-Subcontractors, Truckers, Vendors and Suppliers:

Subcontractor shall ensure that all tiers of their Subcontractors, Truckers, Vendors and Suppliers shall maintain insurance in like form and amounts, including the Additional Insured requirements set forth above, and they will provide Contractor evidence of Sub-Subcontractors, Truckers, Vendors and Suppliers insurance prior to their starting Work.

16.1.10 Professional Liability Exposure:

A Professional Liability Insurance Policy shall be carried by Subcontractor with limits of \$1,000,000 per Claim and \$2,000,000 aggregate if Work under this Agreement includes professional or design-build services. Evidence of coverage in the form of a Certificate of Insurance shall be provided prior to the start of the project. Coverage must allow for the reporting of claims for a



minimum of ten (10) years following completion of the project. However, if Owner or Contractor elects to purchase a project design policy, Subcontractor's policy will be endorsed to provide coverage once the design policy has been exhausted.

16.1.11 Aircraft/Helicopter Insurance:

If the Subcontractor or its Subcontractors 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.

16.1.12 Hazardous Materials and Pollution Liability:

- (a) If Subcontractors or their Subcontractors or Suppliers of any tier are either required to perform remediation of hazardous materials as those terms are defined in federal, state or local law, or if their operations create an exposure to hazardous materials, they must, in addition to the above requirements, carry 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 additional Insured. This policy shall have no exclusion for Microbial Matter (Mold).
- (b) If Subcontractor or their Subcontractors haul hazardous waste (including, without limitation, waste), the policy must extend pollution coverage to 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.

16.1.13 Builders Risk Clause:

Subcontractor shall insure, through an installation floater form of policy, secure and protect its Work and material from damage until final acceptance by Owner. Evidence of coverage in the form of a certificate of insurance shall be provided. All deductibles shall be the responsibility of Subcontractor.

16.1.14 Waiver of Subrogation:

Subcontractor waives all rights against Contractor, Owner, all other subcontractors, and their agents, officers, directors and employees, for recovery of damages to the extent such damages are covered by the Commercial General Liability and Workers' Compensation insurance required of Subcontractor. Contractor and Subcontractor waive all rights against each other and against all other subcontractors and Owner for loss of damage to property to the extent covered by any other insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance. If any applicable policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent. Copies of General Liability and Workers' Compensation endorsements shall be provided to Contractor along with the certificates of insurance required by Section 16.

16.1.15 Property Insurance:

Subcontractors of every tier shall procure and maintain at its own expense property and equipment insurance for Subcontractor's tools, equipment, temporary structures, Work in progress (if not covered in 6.1.9 above), and Work in transit or in temporary storage.

16.1.16 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.

16.1.17 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 within fifty feet of any railroad by Subcontractor.



16.1.18 Other Requirements:

- (a) Any acceptance of insurance certificates by Contractor shall in no way limit or relieve Subcontractor of its duties and responsibilities under this Agreement including the duty to defend, indemnify and hold harmless Contractor under other provisions hereof. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Subcontractor for liability in excess of such coverage nor shall it preclude Contractor from taking such other actions as is available to it under any other provision of this Agreement or law. If higher limits or other forms of insurance are required in the Prime Contract, Subcontractor will comply with such requirements.
- (b) Subcontractor shall be responsible for any deductible amount or any loss arising out of coverage denials by its insurance carrier(s).
- (c) Should any insurance policy lapse or be canceled during the contract period, Subcontractor shall, prior to the effective expiration or cancellation date, furnish 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.
- (d) Subcontractor's obligations for loss or damage arising out of Subcontractor's Work, is in no way limited to the types or amounts of insurance set forth above. To the extent Subcontractor maintains insurance greater than these minimum requirements Subcontractor agrees that such insurance shall be applicable to any of Subcontractor's liability obligations hereunder. In specifying minimum insurance requirements herein, neither Contractor nor Owner assert or recommend this insurance as adequate to Subcontractor's requirements. Subcontractor is solely responsible to inform itself of types or amounts of insurance it may need beyond these requirements to protect itself from loss, damage, or liability.

16.2 Failure of Contractor to enforce in a timely manner any of the provisions of this Section 16 shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of this Agreement. Any exceptions to the provisions of this Section 16 must be delineated in the Contract Documents.

SECTION 17. DISPUTE RESOLUTION PROCEDURE

17.1 Preliminary Dispute Resolution Procedure and Agreement to Arbitrate

17.1.1 Disputes under Prime Contract. Any dispute resolution procedure in the Prime Contract shall be deemed incorporated into 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 certificates, 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 Subcontractor the proportionate part of any sums paid by the Owner to which Subcontractor is entitled.

17.1.2 Settlement Negotiations. Subject to Prime Contract disputes resolution procedure under section 17.1.1, 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 substantive involvement in the matters of the dispute, unless the parties otherwise agree. To facilitate the negotiation, the parties agree to either fashion a procedure themselves or seek the assistance of a person or organization experienced in alternative dispute resolution procedures such as mediation or other similar procedures.

17.2 Arbitration Procedures (if applicable)



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 if arbitration is provided for in this Agreement, the following shall apply:

17.2.1 Notice of Demand. 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. The demand for arbitration shall be made within a reasonable time after written notice of the claim, dispute or other matter in question has been given, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim dispute or other matter in question would be barred by the applicable statute of limitations.

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

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

17.2.4 Consolidated Arbitration Proceedings. To the extent not prohibited by their contracts with others, the claims and disputes of Owner, Contractor, Subcontractor and other subcontractors 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.

17.2.5 No Limitation of Rights or Remedies. This Section shall not be deemed a limitation of any rights or remedies which Subcontractor may have under any Federal or State 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

Subcontractor shall ascertain the applicability of, and shall timely and fully comply with all laws, orders, citations, rules, regulations, standards and statutes 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.

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 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.

SECTION 19. WARRANTY

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

SECTION 20. USE OF CONTRACTOR'S EQUIPMENT

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



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

SECTION 21. ASSIGNMENT OF CONTRACT

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

SECTION 22. INDEPENDENT CONTRACTOR

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

SECTION 23. CLEAN-UP

At all times during the course of construction, Subcontractor shall perform its Work so as to maintain the site in a clean, safe and orderly 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, equipment, etc., relative to the performance of this Agreement.

SECTION 24. ATTORNEYS' FEES

In the event the parties become involved in litigation or arbitration with each other arising out of this Agreement or other performance thereof in which the services of an attorney or other expert are reasonably required, the prevailing party shall be fully compensated for the cost of its participation in such proceedings, including the cost incurred for attorneys' fees and experts' fees. Unless judgment goes by default, the attorneys' fee award shall not be computed in accordance with any court schedule, but shall be such as to fully reimburse all attorneys' fees actually incurred in good faith, regardless of the size of a judgment, it being the intention of the parties to fully compensate for all attorneys' fees and experts' fees paid or incurred in good faith.

SECTION 25. LABOR AGREEMENTS

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

CARPENTERS UNION
LABORERS UNION

SECTION 26. SPECIAL PROVISIONS (Including unit pricing, if applicable)

All Special Provisions will be included in the Work Authorizations.

Immediately upon execution of the Agreement, in accordance with GISO 5194, Subcontractor is required to submit Material Safety Data Sheets (MSDS) to SC BUILDERS, Inc. for all materials to be utilized in the execution of, or incorporated into this scope of Work.

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.

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, WHOSE ADDRESS IS:

Contractors State License Board
 Post Office Box 26000
 Sacramento, California 95826

CONTRACTOR: SC BUILDERS, Inc.

SUBCONTRACTOR:

By {{ es signer2 signature}}
 (Signature)

By {{ es signer1 signature}}
 (Signature)

 Samuel B. Abbey, President

 {{ es signer1 fullname}}, {{ es signer1 title}}
 (Name & Title)

 910 Thompson Place, Sunnyvale, CA 94085

 {{ es signer1 address}}
 (Address)

 767196
 (Contractor's License No.)

 {{ es signer1 address}}
 (Contractor's License No.)