

Attachment A
SWCS Master Subcontract
Project Requirements

Documents

Along with the signed Agreement please also return the below documents within one week to the Southwest Construction Service's main office. Payments will not be processed until all of the items listed above have been submitted and approved.

DIR Registration Number and Expiration Date:	DAS 140
Copy of Current Contractors License	DAS 142
Insurance Certificate	W-9 Completed
Fringe Benefit Statement	

Certified Payroll – Monthly Fringe Report and Training Fund Report

To find your current wage rate for your classification please visit www.dir.ca.gov. The Awarding Body (Owner) has registered the project with the DIR. Below is the information you will need to submit your certified payroll on a weekly basis. Certified Payroll is to be entered/uploaded to the DIR website. You will need to send our office **Two** Original copies of your certified payroll report with a printout of your CPR Online Submission. Fringe Report and Training Fund Report are to be turned in monthly with a copy of the canceled check. Payments will not be processed if these documents are not received.

Submittals

Contractors must submit in accordance with Southwest Construction Services Submittal Schedule. Send all Submittals to the main office via email to Nicole@swcs-inc.com. If samples and/or color selectors are required per your spec please mail 4 (four) to the main office. Do not send any submittals to the Architect of Owner unless specifically directed to do so. Be sure to include expected lead times with your data.

Request For Information (RFI) Submissions

RFIs should be faxed or emailed to Nicole to review and forward to the Architect. Allow sufficient time in submitting RFIs for reasonable response time.

Applications for Payment

Submit monthly payment requests to the Southwest Construction Services Main Office by the **20th** of the month for which work is being billed. Billings should project progress amounts through the end of the month. Subcontractors should submit their proposed "Schedule of Values" for billings with detailed breakdowns based upon the sequence of work to be completed by building for approval prior to submitting their initial billing. Email billing to Project Manager and Accounting Dept.

SUBCONTRACT

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The titles given to the Articles and paragraphs of this Subcontract are for ease of reference only and shall not be relied upon or cited for any other purpose.

**ARTICLE 1
SUBCONTRACT PRICE**

1.1 As full compensation for satisfactory performance of the Subcontract, Contractor agrees to pay Subcontractor in the manner described below, subject to all provisions of the Subcontract:

(a) the firm fixed-price of **as outlined in contract** subject to additions and deductions as provided for in the Subcontract.

**ARTICLE 2
SUBCONTRACT DOCUMENTS**

2.1 The Subcontract Documents, in order of precedence, consist of the following:

2.1.1 The executed Subcontract between Contractor and Subcontractor, including Exhibit A – Scope of work.

2.1.2 The Contract, consisting of the entire and integrated Agreement between Owner and Contractor, as more particularly though not exclusively specified in the General, Special, Supplementary and other Conditions, Drawings, Specifications, Addenda, reference standards or provisions of any nature.

2.2 Subcontractor certifies and agrees that it is fully familiar with all of the terms, conditions and obligations of the Subcontract Documents, the location of the job site, and the conditions under which the work is to be performed, and that it enters into this Subcontract based upon its investigation of all such matters and is in no way relying upon any opinions or representations of Contractor. It is further agreed that the Contract is incorporated into this Subcontract with the same force and effect as if it was set forth in full, and that Subcontractor and its subcontractors are bound by all terms of the Contract as they relate in any way, directly or indirectly, to the work covered by this Subcontract. 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.

2.3 Upon written request by Subcontractor, Contractor shall provide to Subcontractor, one copy of all portions of the Contract in the Contractor's possession. Upon written request by its subcontractors and suppliers, Subcontractor similarly shall make one copy of applicable portions of the Subcontract Documents available to its subcontractors and suppliers. Nothing shall prohibit Subcontractor from obtaining a copy of the executed Contract from Contractor at any time before the Subcontract is executed.

2.4 Nothing in the Subcontract shall be construed to create a contractual relationship between persons or entities other than Contractor and Subcontractor.

**ARTICLE 3
SCOPE OF SUBCONTRACT WORK**

3.1 Independent Contractor – Subcontractor shall provide all labor, materials, equipment and services necessary or incidental to perform its work as an “independent contractor,” in accordance with the Subcontract Documents.

3.2 Temporary Services – Contractor will provide to Subcontractor the following temporary services at the project site during the performance of this Subcontract at no charge to Subcontractor: **NA**

Subcontractor will provide, at its own expense, all other necessary temporary services for the completion of its work.

**ARTICLE 4
SURETY BONDING**

4.1 Copy of Contractor Bonds – Subcontractor is entitled to receive from Contractor, upon written request, copies of any payment and performance bonds furnished by Contractor for the project.

4.2 Subcontractor Bonds – Subcontractor surety bond requirements, if any, are as follows:

Subcontractor Performance and Payment Bonds

<input type="checkbox"/>	Required (Bond cost included in Price)
<input checked="" type="checkbox"/>	Not required
<input type="checkbox"/>	Subcontractor may be required to produce Bonds within 48 Hours of Contractor’s written request to do so

4.2.1 If a performance or payment bond, or both, are required of Subcontractor, such bonds shall name Contractor as obligee, be in the full amount of the Subcontract Price, and shall be in a form and by a surety acceptable to Contractor.

4.2.2 In the event Subcontractor shall fail to provide any required bonds within 48 hours of Contractor’s written notification to do so, Contractor may terminate this Subcontract for cause. All costs and expenses incurred by Contractor as a result of such a termination shall be paid by Subcontractor in accordance with the termination for cause article of the Subcontract.

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

**ARTICLE 5
PERFORMANCE OF WORK**

5.1 Schedule of Work – Subcontractor may provide Contractor with scheduling information it proposes for its work. If the information is provided 10 days before Contractor is required to submit the schedule to Owner or to proceed with the work, Contractor will consult with Subcontractor regarding such information and, if possible, incorporate the same into the schedule to Owner.

5.1.1 Contractor shall prepare the schedule for performance of the Contract and Subcontract (“progress schedule”) and may revise and update the progress schedule as the work progresses. It shall be Subcontractor’s obligation to conform to the progress schedule, as updated by Contractor. Subcontractor

shall prepare and obtain approval as required by the Contract for all shop drawings, details, samples; shall perform any required Subcontractor testing; and do all other things necessary and incidental to the prosecution of the Subcontract in order to comply with the progress schedule. Subcontractor shall coordinate the work covered by this Subcontract with Contractor and all other subcontractors with whom Subcontractor must interface for the proper and timely completion of Subcontractor's work. Contractor shall have the right to decide the time and order in which the various portions of the work shall be installed, the priority of the work of other subcontractors, and, in general, all matters representing the timely and orderly performance of the work of Subcontractor on the project.

5.1.2 Contractor shall have the right to determine and, if necessary, change the time, order and priority in which the various portions of the work shall be performed and all other matters relative to the timely and orderly performance of Subcontractor's work. Subcontractor shall be reasonably notified of all subsequent changes and additional details to the progress schedule. Both Contractor and Subcontractor shall be bound by the updated progress schedule.

5.2 Subcontract Performance – Subcontractor shall use its best care, skill and diligence in supervising, directing and performing its work. Subcontractor shall have responsibility and control over the performance of its work, including the construction methods, techniques, means and sequences for coordinating and completing the various portions of its work.

5.3 Use of Contractor's Equipment – Subcontractor, its agents, employees, subcontractors or suppliers shall use Contractor's equipment only with the express written permission of Contractor's designated representative and in accordance with Contractor's terms and conditions for such use.

5.4 Time is of The Essence – Time is of the essence for both parties, and they mutually agree to ensure the performance of their respective work and the work of their subcontractors and suppliers so that the entire project may be completed in accordance with the Contract and the updated progress schedule.

ARTICLE 6 SUBCONTRACT INTERPRETATION

6.1 Inconsistencies and Omissions – Should inconsistencies or omissions appear in the Contract, it shall be the duty of Subcontractor to so notify Contractor in writing within three (3) working days of Subcontractor's discovery. Upon receipt of such notice, Contractor shall inform Subcontractor as to the measures to be taken and Subcontractor shall comply with Contractor's instructions. If Subcontractor performs work knowing it to be contrary to any applicable laws, statutes, ordinances, building codes, rules or regulations without notice to Contractor and advance approval by appropriate authorities, including Contractor, then Subcontractor shall assume full responsibility for such work and shall bear all associated costs, charges, fees and expenses necessarily incurred to remedy the violation(s).

6.2 Disputes Over Responsibility For Performance – Subcontractor agrees that in the event a dispute should occur between Subcontractor and another subcontractor or Contractor as to who has the responsibility to perform a particular item of work or repair damage to any particular item of work, the determination of who shall perform the work shall be made by Contractor.

6.3 Law and Effect – The Subcontract shall be governed by the law of the State in which the project is located.

6.4 Severability and Waiver – The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision. The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of the Subcontract, or to exercise any right provided to it, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

6.5 Titles – The titles given to the Articles and paragraphs of the Subcontract, and the order of their placement, are for ease of reference only and shall not be relied upon or cited for any other purpose.

6.6 Entire Agreement – The Subcontract is solely for the benefit of the signatories and represents the entire and integrated agreement between the parties and, unless specifically stated otherwise, supersedes all prior negotiations, representations or agreements, either written or oral.

6.7 Waiver of Any Breach – Waiver of any breach, alleged breach, provision, covenant or condition of the Subcontract by Contractor shall not be construed as a waiver of the same or any other provision of the Subcontract on any other occasion, nor shall such waiver serve as an estoppel of any other right Contractor may have. Should any provision in the Subcontract, or its attachments, be held or declared void or invalid, all other provisions shall remain in full force and effect.

ARTICLE 7 SUBCONTRACTOR'S OBLIGATIONS

7.1 Responsibilities – Subcontractor shall furnish all labor, materials, equipment and services necessary or incidental to perform its work in accordance with the Subcontract Documents. If requested by Contractor, Subcontractor shall provide to Contractor a list of its proposed subcontractors and suppliers.

7.2 Compliance with Laws, Rules, Ordinances and Regulations – Subcontractor 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, pay all manufacturers' taxes, sales taxes, use taxes, and all federal and state taxes, insurance and contribution 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.

7.2.1 Subcontractor shall give adequate notices to all required parties pertaining to Subcontractor's work and secure and pay for all permits, fees, licenses, assessments, and inspections necessary to complete its work in accordance with the Subcontract Documents.

7.3 Site Visitation – Subcontractor acknowledges that it has visited the project site and visually inspected the general and local conditions which could affect its work. Any failure of Subcontractor to reasonably ascertain, from a visual inspection of the site, the general and local conditions which could affect its work will not relieve Subcontractor from its responsibility to properly complete its work without change in the Subcontract Price.

7.4 Shop Drawings, Samples, Product Data and Manufacturers' Literature – Subcontractor shall promptly submit to Contractor for approval all shop drawings, samples, product data, manufacturers' literature and similar submittals required by the Contract. Subcontractor shall be responsible to Contractor for the accuracy and conformity of its submittals to the Contract requirements. Subcontractor shall prepare and deliver its submittals to Contractor in a manner consistent with the progress schedule and in such time and sequence so

as not to delay Contractor or others in the performance of the Contract work. The approval of any Subcontractor submittal shall not be deemed to authorize deviations, substitutions or changes in the requirements of the Subcontract Documents unless express written approval is obtained from Contractor and Owner authorizing such deviation, substitution or change. In the event the Contract does not contain submittal requirements pertaining to Subcontractor's work, Subcontractor agrees upon request to submit to Contractor in a timely fashion for approval any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required.

7.4.1 Contractor, Owner and Architect are entitled to rely on the accuracy and completeness of any professional certifications required by the Subcontract Documents concerning the performance criteria of systems, equipment or materials, including all calculations and any governing performance requirements.

7.5 Coordination and Cooperation – Subcontractor shall:

- (a) cooperate with Contractor and all others whose work may interface with Subcontractor's work;
- (b) specifically note and immediately notify Contractor of any interference with Subcontractor's work; and
- (c) participate in the preparation of coordination drawings and work schedules involving Subcontractor's work.

7.6 Authorized Representative – Subcontractor shall designate in writing one or more competent contractor-approved persons who shall be the authorized Subcontractor representative(s) on-site and off-site. Such authorized representative(s) shall be the only person(s) to whom Contractor shall issue instructions, orders or directions, except in an emergency.

7.7 Communications – Subcontractor communications by and with Owner, Architect separate contractors and/or other subcontractors and suppliers of Contractor, regardless of tier, shall be through Contractor.

7.8 Tests, Inspections and Approvals – Subcontractor shall coordinate and notify Contractor of all required tests, inspections and approvals of Subcontractor's work so as not to delay the performance of the work. Subcontractor shall schedule and provide proper written notice to all required parties of such tests, inspections and approvals.

7.9 Workmanship – Every part of Subcontractor's work shall be executed in accordance with the Subcontract Documents in a workmanlike manner. All materials needed by Subcontractor shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the work, and shall be new except such materials as may be expressly provided in the Subcontract Documents to be otherwise.

7.10 Materials or Equipment Furnished by Others – In the event the scope of Subcontractor's work includes installation of materials or equipment furnished by others, it shall be the responsibility of Subcontractor to inventory, examine, store and install the items, with such skill and care as to ensure a satisfactory and proper installation. Subcontractor shall promptly notify Contractor in writing of any defective materials or equipment.

7.11 Substitutions – No substitutions shall be made by Subcontractor unless permitted in the Subcontract

Documents and only then upon Subcontractor first receiving all approvals required under the Subcontract Documents for substitutions. If Subcontractor initiates a substitution, deviation or change in the work which affects the scope of the work or the expense of other trades, Subcontractor shall be liable for all resulting expenses.

7.12 Warranty – Subcontractor warrants all materials and workmanship and agrees to replace at its sole cost and expense, and to the satisfaction of Contractor, any materials that are defective or improperly installed, and indemnifies Contractor from and against any liability, loss or damage arising from or relating to such materials and installation through the period of Subcontractor’s performance and for a period of one year from completion of the Contract. If the period of warranty is specified in excess of one year by the Contract, Subcontractor shall be bound for the longer period specified.

7.13 Uncovering of Work – If required in writing by Contractor, Subcontractor must uncover any portion of its work which has been covered. All costs associated with the uncovering and related work shall be borne as follows:

- (a) If the work was covered in violation of the Subcontract Documents or contrary to a written directive issued to Subcontractor by Contractor, the uncovering, any corrective work and restoration shall be at Subcontractor's expense.
- (b) If the work was not covered in violation of the Subcontract Documents or contrary to a written directive issued to Subcontractor by Contractor, the Subcontract shall be adjusted by change order for all costs of uncovering and restoring any work which proves to be installed in accordance with the Subcontract Documents.
- (c) If any uncovered work does not comply with the Subcontract Documents and Subcontractor is responsible for the nonconforming condition, Subcontractor shall be responsible for all costs of uncovering, correcting and restoring the work so as to make it conform to the Subcontract Documents.

7.14 Correction of Work – Subcontractor is required to correct in a timely fashion any of its work rejected by Contractor or Owner for failing to comply with the Subcontract Documents whether observed prior to the commencement of the warranty period(s) or during the warranty period(s). Subcontractor shall correct at its own cost and bear the expense of additional services for any nonconforming work for which it is responsible, and shall remain responsible even after the warranty period for fraud, misrepresentation or latent defects.

7.15 Cleanup – Subcontractor shall follow Contractor's cleanup directions, and:

- (a) at all times keep the building and premises free from debris resulting from Subcontractor’s work;
- (b) broom or rake clean each work area prior to discontinuing work in each area; and
- (c) Subcontractor’s work shall not be considered complete until Subcontractor removes from the site all temporary structures, debris and waste incident to its operation and cleans all surfaces, fixtures, equipment, etc., relative to the performance of its work.

If Subcontractor fails to immediately commence compliance with the above cleanup duties after written notification from Contractor of noncompliance, Contractor may implement appropriate cleanup measures without further notice and deduct the resulting costs from any amounts due or to become due Subcontractor under the Subcontract.

7.16 Safety – Subcontractor is responsible for prevention of accidents arising from or relating to its work. Subcontractor shall comply fully with all federal, state and local laws, orders, citations, rules, regulations, standards and statutes affecting or relating to the Subcontract or its performance. Subcontractor shall comply with the accident prevention and safety program of Owner and Contractor. Establishment of a safety program by Contractor shall not relieve Subcontractor of its safety responsibilities. Subcontractor shall establish its own safety program implementing safety measures, policies and standards conforming to those required by governmental authorities having jurisdiction and by Contractor and Owner. Subcontractor shall notify Contractor immediately following an accident and promptly confirm the notice in writing. A detailed written report shall be furnished to Contractor. Subcontractor shall indemnify and hold Contractor harmless from all fines, penalties or costs of abatement imposed on Contractor as a result of safety violations caused by Subcontractor's failure to comply with applicable safety requirements. Subcontractor shall notify Contractor of any unsafe condition it discovers or observes and shall stop work until informed by Contractor that it may resume work.

7.16.1 Should Subcontractor encounter any hazardous substances at the site which are potentially harmful to persons or property, Subcontractor shall take all steps required by the Subcontract Documents and by law to protect persons and property from injury or damage, including stopping Subcontractor's work in the affected area(s) and promptly notifying Contractor in writing of the conditions encountered at the site. Should Subcontractor be required to stop work in any area of the project as a result of hazardous substances located at the site, Subcontractor shall not resume work in the affected area(s) until the hazardous substances have been removed or made harmless, all necessary approvals to resume work are obtained and Contractor gives Subcontractor written direction to resume work.

7.16.2 All safety sheets, plans, submittals or other such documents required by law or the Subcontract Documents pertaining to materials or substances used or consumed in the performance of Subcontractor's work shall be submitted to Contractor by Subcontractor. Any such safety sheets, plans or submittals obtained by Contractor from other subcontractors or sources shall be made available to Subcontractor by Contractor.

7.17 Delegation or Subcontracting of Duties – Subcontractor is prohibited from delegating, transferring, conveying, subcontracting, relinquishing or otherwise disposing of the whole or any part of its duties under this Subcontract without the prior written approval of Contractor, which shall not be unreasonably withheld.

Subcontractor shall incorporate all terms of this Subcontract in any subcontracts or purchase orders with its subcontractors and suppliers.

7.18 Duty to Proceed – In the event of any dispute or controversy with Contractor, another subcontractor or other third party involved with the project, Subcontractor shall not cause or permit any delay or cessation of its work or cause delay or disruption to the work of any other subcontractor or Contractor on the project, but shall proceed with performance of its work pending resolution of such dispute or controversy. Contractor shall continue to make payments in accordance with the Subcontract. Subcontractor's obligation of duty to proceed arises whether or not Contractor issues a directive to proceed to Subcontractor for disputed work.

7.19 Workers – Contractor may order the removal from the job of any workers Contractor reasonable finds

disruptive, incompetent, in violation of safety requirements/programs or otherwise detrimental to the successful completion of the project.

7.20 Contractor Expending Money – Whenever any money is expended or costs or expenses are incurred by Contractor on behalf of or on account of Subcontractor, which amounts Subcontractor should have paid, and for which amounts Subcontractor is required to reimburse Contractor, or if Contractor continues or completes the work after default by Subcontractor, Subcontractor shall pay to Contractor interest at the rate of 10% per annum from the time said money is expended or said costs or expenses are incurred until those amounts are repaid to Contractor by Subcontractor. Nothing contained in this provision or Subcontract shall be construed as requiring Contractor to make any such expenditures, advance any such money, or incur any such expenses. In the event that the balance of the monies due pursuant to this Subcontract are insufficient to cover Contractor’s damages or exposure, then Contractor shall have the right to offset against monies owed Subcontractor on other projects, if any.

7.21 Protection of the Work – Subcontractor shall secure and protect the work done pursuant to this Subcontract until final acceptance by Contractor and Owner.

7.22 Subcontractor Business Type Designation - Subcontractor has represented itself as an entity that performs under a small business, a disadvantaged business or some other designation, as identified below, that requires Subcontractor to act within certain guidelines stipulated by various authorities. Subcontractor warrants that they will abide by the rules governing them as such. Further, Subcontractor will, upon reasonable notification, make available to Contractor or any of their affiliates, documentation that substantiates their compliance with the applicable regulations. If Subcontractor is operating as a large business with no designation, Subcontractor shall submit a Subcontracting Plan in accordance with Federal Acquisition requirements and the Subcontract scope.

Subcontractor designation(s) are as follows:

- Small Business Enterprise (i.e., 8(a) approved Mentor/Protégé JV, WBE, etc.)
Type: _____
- Disadvantaged Business Enterprise: (i.e., SDVOSB, WOSB, HUB Zone, etc.) Type: _____
- Minority Business Enterprise (i.e., Native Hawaiian, Native Alaskan, African American, Native American, Asian American, Hispanic American, etc.)
Type: _____
- Veteran-Owned Business
Type: _____

- Large Business (Submit Subcontracting Plan)
- Other (Define) _____
- None

WARNING: Any erroneous, incorrect and/or wrongful representations above and/or a failure to comply and follow all the applicable Federal Acquisition Regulations and/or Codes of Federal Regulations will potentially hold Subcontractor liable for criminal and/or civil penalties and/or subject the Subcontractor to debarment or suspension proceedings.

7.23 Subcontractor’s Warranty Re Applicable Performance Requirements -- Subcontractor warrants it is

familiar with the various codes, regulations, statues, agency approvals, licensing and all other requirements affecting its ability to function as a subcontractor on this project. Subcontractor further warrants it is in compliance with all requirements upon execution of this subcontract and will remain in compliance for the duration of this subcontract. Subcontractor acknowledges that failure to be in compliance may constitute a material breach in this subcontract and, along with its Surety, will be subject to the provisions and consequences provided in Articles 16 and 17 of this Subcontract.

ARTICLE 8 LABOR RELATIONS

8.1 General Provisions – Employment of labor by Subcontractor shall be effected under conditions which are satisfactory to Contractor. Subcontractor shall keep a representative at the job site during all times when Subcontractor’s work is in progress, and such representative shall be authorized to represent Subcontractor as to all phases of the work. Prior to commencement of the work, Subcontractor shall notify Contractor in writing who Subcontractor’s representative is to be, and in the event of any change of representative Subcontractor shall notify Contractor who the new representative is to be prior to such change becoming effective.

8.2 Reserved Gate Usage – Subcontractor shall notify in writing and assign its employees, material men and suppliers to such gates or entrances as may be established for their use by Contractor and in accordance with such conditions and at such times as may be imposed by Contractor. Strict compliance with Contractor’s gate usage procedures shall be required by Subcontractor who shall be responsible for such gate usage by its employees, material men, suppliers, subcontractors, and their material men and suppliers.

8.3 Staggered Days and Hours of Work and for Deliveries – Subcontractor shall schedule the work and the presence of its employees at the job site and any deliveries of supplies or materials by its material men and suppliers to the job site on such days, and such times and during such hours, as may be directed by Contractor. Subcontractor shall assume responsibility for such schedule compliance not only for its employees but for all its material men, suppliers and subcontractors, and their material men and suppliers.

8.4 Work Stoppages – Work stoppages (including sympathy strikes) or any other stoppage of work by employees performing work on, or delivering supplies or materials to, the job site shall not excuse any delay of Subcontractor in the proper performance of its work, regardless of whether the strike or other stoppage of work is attributed to union action or the action of an individual employee.

8.5 Default – Should Subcontractor default in the proper performance of its work, for reasons specified in this provision, Contractor may, as its option, terminate the Subcontract for cause in accordance with the termination for cause provision.

8.6 Applicable Prevailing Wage Projects: On any projects covered by prevailing wage laws, and applicable labor code rules and regulations, the following conditions apply:

(a). When required by law to be incorporated into the Subcontract, all applicable provisions of Labor Code sections, rules and regulations are attached to this Subcontract as an exhibit and are incorporated into this Subcontract by reference as though set forth in full.

(b). Contractor will periodically monitor the payment of prevailing rates by Subcontractor to its employees.

(c). Upon becoming aware of the failure of Subcontractor to pay prevailing rates, Contractor will

promptly take action to halt or rectify such failure, including, but not limited to, retaining sufficient funds due Subcontractor for work performed on the public works project.

(d). Prior to making final payment on the project to Subcontractor, Subcontractor shall be required to sign an affidavit under penalty of perjury that Subcontractor has paid the specified general prevailing rate of per diem wages to Subcontractors employees and all amounts due for all work pursuant to applicable prevailing wage on public works projects.

ARTICLE 9 INSURANCE

9.1 Subcontractor shall at all times carry on all operations hereunder Workers' Compensation and Employers Liability insurance covering all of its employees, General Liability, Commercial Automobile Liability and Property Damage insurance, including liability coverage for all operations, subcontract work, contractual obligations, product or completed operations, all owned vehicles, non-owned vehicles, and Umbrella or Excess Liability in forms, amounts and underwritten by insurance companies satisfactory to Contractor. Before Subcontractor performs any work at, or prepares or delivers materials to the site of construction, Subcontractor shall furnish certificates of insurance evidencing the foregoing insurance coverage's and such certificates shall provide that the insurance is in force and will not be cancelled without ten days written notice to Contractor. Subcontractor shall maintain all of the foregoing insurance coverage's in force until the work under this Agreement is fully completed. The requirement for carrying the foregoing insurance shall not derogate from the provisions for indemnification of Contractor by Subcontractor under Indemnity provisions of this Contract.

9.2 Commercial General Liability: Subcontractor shall supply a Certificate of Insurance showing evidence of Commercial General Liability coverage with the following minimum limits:

\$2,000,000 General Aggregate (Per Project)
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury Liability
\$1,000,000 Each Occurrence (combined single limit for bodily injury and property damage)

The certificate must have the **CG 2010 (11/85) ENDORSEMENT OR IT'S EQUIVELANT** attached, naming the following as additional insured: **SWCS, Inc., dba Southwest Construction Services owner(s), officials, employees, agents and subcontractors.**

The Additional Insured Endorsement must be attached to the certificate and state that this insurance is **PRIMARY** and **NON-CONTRIBUTORY** over any other insurance. Contractor insurance shall be excess or secondary, and not contributing with insurance obtained by said subcontractor to fulfill the insurance requirements herein, regardless of any language contained in any or all policies.

Subcontractor shall furnish Contractor with a **WAIVER OF SUBROGATION.**

Endorsements that limit or exclude coverage will need to be attached to the certificate. Subcontractor shall maintain Products/Completed Operations coverage for a period of ten (10) years following the completion of the project.

Defense costs afforded to Contractor shall be outside the policy limits.

Coverage shall contain no special limitation on the scope of protection afforded to Contractor, owner, or its officials, employees, agents and subcontractors.

Subcontractors performing Grading, Earthwork and/or Underground Utility activities shall **NOT** have risks relating to SUBSIDENCE excluded from coverage under their general liability and umbrella/excess policies.

Deductibles and Self-insured Retentions in excess of \$25,000 must be declared, and approved by Contractor. At the option of Contractor either: the insurer shall reduce or eliminated such deductibles or self-insured retentions as they respect to Contractor.

If Subcontractor employs sub-subcontractors in the performance of its work, Subcontractor agrees to obtain equivalent insurance provisions from its sub-subcontractors as required under this Agreement and provide a copy of their certificate of insurance to Contractor.

9.3 Commercial Automobile Liability

On an occurrence basis covering all Owned, Non-Owned, and Hired Vehicles for limits of liability of at least \$1,000,000. If Subcontractor at any time transports hazardous materials, Subcontractor shall carry \$1,000,000 auto pollution coverage including transporters liability.

9.4 Workers Compensation and Employers Liability

Including Occupational Disease insurance meeting all statutory requirements of the State in which the work is to be performed together with Broad Form All States Endorsement and containing Employers Liability insurance in an amount of at least \$1,000,000. Each Subcontractor shall supply a Certificate of Insurance containing the following minimum limits:

- \$1,000,000 Each Accident (bodily injury by accident)
- \$1,000,000 Disease – Policy Limit (bodily injury by disease)
- \$1,000,000 Disease – Each Employee (bodily injury by disease)

A **WAIVER OF SUBROGATION** shall be attached in favor of Contractor.

If Subcontractor or Independent Contractor is exempt from workers compensation, then Contractor shall be notified immediately with a statement as such.

9.4 Excess Liability

Subcontractor shall maintain a minimum of \$1,000,000 limit.

9.5 Professional Liability

All Subcontractors performing DESIGN, ENGINEERING, TESTING, SURVEYING, or other PROFESSIONAL SERVICES shall maintain PROFESSIONAL LIABILITY insurance. A Certificate of Insurance shall be supplied showing Professional Liability (Errors and Omissions) coverage with limits not less than \$1,000, 00 per claim and in the aggregate.

9.6 Pollution Liability

If the Subcontractor is providing any environmental remediation or consulting services, a Certificate of Insurance shall be supplied showing Pollution Liability coverage for claims arising from the release or removal of any hazardous materials or pollutants.

9.7 Property

All work covered by this agreement done at the site, or in preparing or delivering materials or equipment to the site, shall be at the sole risk of subcontractor until the completed work is accepted by Contractor.

9.8 Rating

All insurers shall have a minimum A.M. Best's rating of A VII and be admitted in California.

9.9 Cancellation Clause

ACORD 25, Version 2009/01 Certificates should have the words, "endeavor to" and "but failure to mail such notice shall...or representatives" crossed out. Written notice should be no less than 10-days.

ACORD 25, Version 2009/09 Certificates do not require crossed out wording nor should they include 10-day notice.

9.10 Certificates

All Certificates must be received by Contractor prior to the commencement of work. Subcontractor failure to send Certificate of insurance or maintain the insurance coverage's required pursuant to this Agreement shall be deemed a Subcontractor default. In such event, Contractor may terminate this Agreement and obtain damages from Subcontractor resulting from said default. Alternatively, Contractor may purchase such required insurance coverage and without further notice to Subcontractor, Contractor may deduct from sums due to Subcontractor any premium costs advanced by Contractor for such insurance.

9.11 Cancellation, Renewal or Modification – Subcontractor shall maintain in effect all insurance coverage required under the Subcontract at Subcontractor's sole expense and with insurance companies rated as required by Owner but no less than a Best rating of A- or better. All insurance policies shall contain a provision that the coverages afforded shall not be canceled or not renewed, nor restrictive modifications added, until at least thirty (30) calendar days' prior written notice has been given to Contractor. Certificates of Insurance and additional insured endorsements shall be filed with Contractor prior to the commencement of Subcontractor's work. In the event Subcontractor fails to obtain or maintain any insurance coverage required under the Subcontract, Contractor may purchase such coverage and charge its expense to Subcontractor, or terminate the Subcontract for cause in accordance with the termination for cause provision of the Subcontract.

9.12 Builders Risk Insurance – Builder's Risk Insurance

- Is provided by Contractor
- Is provided by Owner
- Is Not provided by Contractor or Owner

If Builder's Risk Insurance is provided by Contractor or Owner, upon written request by Subcontractor, Contractor shall provide Subcontractor with a copy of the Builder's Risk policy of insurance. It is up to the

Subcontractor to determine what, if any, portion of its work is covered at any given time. Contractor does not warrant coverage.

9.12.1 If Builder's Risk Insurance is provided by Owner or Contractor, then Contractor and Subcontractor waive all rights against each other and Owner, Architect, Architect's consultants and agents or employees of any of them, separate contractors, and all other subcontractors for loss or damage to the extent covered by Builder's Risk, except such rights as they may have to the proceeds of such insurance. However, this waiver shall not extend to the acts or omissions of Architect, Architect's consultants, and the agents or employees of any of them.

9.13 Endorsement – If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

ARTICLE 10 INDEMNIFICATION

10.1 General Indemnity – All work covered by the Subcontract done at the site of construction or in preparing or delivering materials or equipment, or any or all of them, to or from the site shall be at the risk of Subcontractor exclusively. To the fullest extent permitted by law, Subcontractor shall, with respect to all work which is covered by or incidental to the Subcontract, indemnify, hold harmless and defend Contractor from and against any and all allegations, losses, claims, actions, demands, damages, liabilities, or expenses (including costs, expenses and attorneys' fees), arising from or relating to the death or bodily injury to persons, injury to property, design defects (if design originated by Subcontractor), or other loss, damage or expense. Subcontractor's duty to indemnify shall include all damages caused or alleged to be caused in whole or in part by any negligent act or omission, whether active or passive, of: (a) Subcontractor; (b) anyone directly or indirectly employed by Subcontractor; (c) anyone for whose acts Subcontractor may be liable; or (d) Contractor. Subcontractor shall not be obligated to indemnify Contractor with respect to the sole negligence or willful misconduct of Contractor, its agents, servants or subcontractors who are directly responsible to Contractor, excluding Subcontractor.

10.2 Indemnification for Noncompliance with Laws – Subcontractor shall fully indemnify and hold Contractor harmless from all loss, costs and expenses attributable to any acts or omissions by Subcontractor which constitute a failure to comply with any laws, rules, ordinances and / or regulations of any governmental entity or agency.

10.3 Patents – Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented materials in Subcontractor's work. Subcontractor shall defend all suits for claims for infringement of any patent rights arising out of Subcontractor's work, which may be brought against Contractor or Owner, and shall be liable to Contractor and Owner for all loss, including all costs, expenses and attorneys' fees in any such suit.

ARTICLE 11 CHANGES

11.1 Performance – Subcontractor shall proceed with all written directions issued by Contractor so as not to delay the work. Subcontractor shall adhere strictly to the Subcontract Documents unless directed otherwise in writing. Subcontractor shall not make any changes or be entitled to any compensation for changes to

the work set forth in the Subcontract Documents, either as additions or deletions, without the written direction of Contractor.

11.2 Incorporating Changes – All provisions of this Subcontract shall apply to any changes, extras or reductions in a like manner and to the same extent as though said changes, extras or reductions were incorporated in the Subcontract.

11.3 Notification of Additional Costs or Time – Subcontractor shall within 5 days provide written notification to Contractor if a written direction could result in additional costs or time of performance. Within 7 days provide itemized detailed costs for said work so that Contractor has sufficient time to take actions to minimize any additional costs or time, and has sufficient time to provide notification to Owner in accordance with the Contract.

11.4 Submission of Cost Proposals and Requests for Time Extensions – Subcontractor shall submit its cost and request for time extension proposal(s) in sufficient time for Contractor to comply with any submission requirements of Owner. All such cost proposals shall itemize, in a form acceptable to Contractor, any change in costs or time for performance which result from any written direction issued by Contractor.

11.5 Cost Proposal Negotiations – At Subcontractor’s request, it shall be invited to attend and participate in all negotiations with Owner or others that relate to settlement or resolution of its cost proposals. At Contractor’s request, Subcontractor shall attend and participate in negotiations with Owner or others that relate to settlement or resolution of Subcontractor’s cost proposals.

ARTICLE 12 DELAYS

12.1 Excusable Delays – An excusable delay is one which is caused by circumstances or events beyond the control and without the fault or negligence of Contractor or Subcontractor, and which is recognized by the Contract as “excusable,” that is, a delay for which the contract time is extended but for which no compensation is allowed. To the extent excusable delays occur and affect Contractor’s and/or Subcontractor’s ability to complete their work in accordance with the updated progress schedule, the affected party’s time for performance shall be extended, but only to the extent such extensions are allowed by Owner.

12.2 Subcontractor Caused Delays – Subcontractor caused delays are delays caused by the failure of Subcontractor, or any party for which Subcontractor is responsible, to perform any portion of its work in accordance with the updated Master Schedule and or Look Ahead Schedule. If Subcontractor delays cause delay and/or disruption to the Contract work, Subcontractor shall be liable for all costs and damages sustained by Contractor or for which Contractor may be liable to Owner or any other party, including damages and liquidated damages. If

Subcontractor delays are only one of multiple causes for delay to the Contract work, Subcontractor shall only be liable for its proportionate share of any resulting damages.

12.3 Disputed Delays – If Subcontractor disputes the determination of the cause of any delay and wishes to pursue that dispute, it must comply with the Claims article of the Subcontract.

12.4 No Damage for Delays: In the event Subcontractor’s performance of this Subcontract is delayed or interfered with by the acts of Owner, Contractor or other subcontractors, or by other events for which Subcontractor is entitled to a time extension under the terms of the Contract, Subcontractor may request an

extension of time for the performance of same but shall not be entitled to any increase in the Subcontract price or to damages or additional compensation as a consequence of such delay or interference, except to the extent that the Contract entitles Contractor to compensation for such delays, and then only to the extent of any amounts that Contractor may, on behalf of Subcontractor, recover from Owner for such delay.

ARTICLE 13 CLAIMS

13.1 Claim – A claim is a written demand by Subcontractor seeking an adjustment in the Subcontract Price and/or time, or the recovery of withheld disputed funds.

13.2 Notification of Claims – Subcontractor shall immediately provide written notification to Contractor of any claims so that Contractor has sufficient time to take actions to minimize any additional costs or time, and has sufficient time to provide notification to Owner in accordance with the Contract.

13.3 Submission of Claims – Subcontractor shall submit its claims in sufficient time for Contractor to comply with any submission requirements of Owner. All such claims shall itemize, in a form acceptable to Contractor, any additional costs or time for performance being sought by Subcontractor.

13.4 Claims with Owner – To the extent Contractor determines Subcontractor's claim is one for which Owner may be liable, the following procedure shall apply:

- (a) Contractor will present Subcontractor's claim to Owner's first level designated representative. The decision of such representative will be conveyed in writing to Subcontractor and such decision shall be final unless Subcontractor notifies Contractor in writing of its desire to proceed further in sufficient time for Contractor to comply with any notification or submission requirements to Owner.
- (b) Upon receipt of Subcontractor's notice to proceed further, at Contractor's option, Subcontractor's claim may be further pursued with Owner. In such event, Contractor may allow Subcontractor to act in its own behalf and with its own consultants/attorneys at Subcontractor's cost to continue the required process and any subsequent administrative proceeding or litigation. If Contractor does not allow Subcontractor to act in its own behalf or it is procedurally impermissible for Subcontractor to proceed in its own behalf, and Contractor elects to allow the continued pursuit of Subcontractor's claim, then at the written request of Subcontractor, Contractor will proceed with the dispute on condition that Subcontractor pay to Contractor all of its actual costs arising out of such process, including but not limited to attorneys' fees, court costs and the costs of Contractor's personnel employed in pursuing the case against Owner.
- (c) If Contractor elects to not allow further pursuit of Subcontractor's claim against Owner, and Subcontractor disputes such decision, Subcontractor may pursue its claim pursuant to the Disputes Resolution Article of the Subcontract.
- (d) Nothing shall prevent Contractor from accepting a contract modification from Owner which preserves the rights of Subcontractor.

- (e) If because of Subcontractor's claim, Owner withholds any sums due Contractor, then Subcontractor shall pay to Contractor interest on the amounts so withheld at the rate of 10 percent per annum. If Owner withholds sums due Subcontractor as a result of a claim of Contractor, Contractor shall pay to Subcontractor interest on the amounts so withheld at the rate of 10 percent per annum.

ARTICLE 14 DISPUTES RESOLUTION

14.1 Claims Not Involving Owner – To the extent Subcontractor submits a claim which Contractor determines is one for which Owner may not be liable, or is one which Contractor elects to not allow Subcontractor to further pursue with Owner, or to the extent Contractor has a claim against Subcontractor, the following procedures shall apply and begin within 60 days of notification:

- (a) If the dispute cannot be settled through direct discussions, the parties shall attempt to settle the dispute by mediation before recourse to any other method of dispute resolution. Unless the parties agree otherwise, the mediation shall be conducted in accordance with the Construction Mediation Rules of the American Arbitration Association.
- (b) If mediation does not resolve the dispute, then the parties may agree to resolve the dispute through binding arbitration. If so, the arbitrator(s)' decision shall be enforceable in a court of law and judgment shall be entered in accordance with such decision.
- (c) If mediation does not resolve the dispute and the parties do not agree to resolution by binding arbitration, either party may proceed with any allowable resolution process.

14.2 Participation In Proceedings – If Contractor receives a claim from any other party and Contractor determines Subcontractor may be liable, in whole or in part, for such claim, Subcontractor shall participate in the disputes resolution process with Contractor and such other party. To the extent practical, Contractor will not agree to binding arbitration or any other form of resolution with the other party without Subcontractor's consent. If, however, Contractor could not have determined, by reasonable diligence, that Subcontractor may be liable for the other party's claim before binding arbitration or any other form of resolution was already agreed upon, Subcontractor shall participate in that arbitration or other form of resolution and shall be bound by the decision rendered in that proceeding.

ARTICLE 15 PAYMENT

15.1 Schedule of Values – Within 10 days of Contractor's request, Subcontractor shall prepare and submit to Contractor a Schedule of Values which breaks down Subcontractor's work into individual activities. Each activity contained in the Schedule of Values shall be assigned a monetary price such that the total of all such items shall equal the Subcontract Price. The Schedule of Values shall be prepared in such detail as may be required by Owner and/or Contractor.

15.2 Payment and Verification – Subcontractor is required to pay for all labor, materials and equipment used in the performance of Subcontractor's work through the most current period applicable to progress payments received from Contractor. Contractor may require reasonable evidence to show that all obligations relating to Subcontractor's work are current through all payments received from Contractor before releasing any payment due for Subcontractor's work.

15.3 Progress Payment Applications – Subcontractor's applications for payment shall be itemized and in accordance with Subcontractor's Schedule of Values and any other substantiating data as required in the Contract for Contractor's payment applications. Subcontract payment applications may include amounts for Subcontract change orders which have been fully executed by Subcontractor and Contractor. Subcontractor cannot include in its payment applications any amounts for changes which have not been fully executed by Subcontractor and Contractor, or for disputed work.

15.4 Stored Materials and Equipment – If allowed by Owner, applications for payment may include materials and equipment not incorporated into Subcontractor's work but suitably stored on or off the site. Approval of payment applications for materials and equipment stored on or off the site shall be conditioned on: (1) submission by Subcontractor of bills of sale and applicable insurance or such other procedures satisfactory to Owner and Contractor to establish the proper valuation and protection of the stored materials and equipment; (2) Owner's and/or Contractor's title to such materials and equipment; and (3) any other documents or procedures to protect Owner's and Contractor's interests, including during the transportation of such items to the site by Subcontractor.

15.5 Time for Submission of Application – Subcontractor's progress payment application shall be submitted to Contractor in sufficient time for Contractor to include it in Contractor's payment request to Owner. Contractor shall incorporate the amount of Subcontractor's progress payment application approved by Owner into Contractor's payment application to Owner for the same period and timely submit it to Owner. If requested by Subcontractor, Contractor shall inform Subcontractor of Owner's changes to Subcontractor's percentages of completion reflected on Subcontractor's payment application and/or other adjustments affecting Subcontractor.

15.6 Lien Waivers – Subcontractor shall provide, in a form satisfactory to Owner and Contractor, lien or claim waivers in the amount of the application for payment from Subcontractor, and its subcontractors, material men and suppliers for the completed work. Contractor may refuse to pay Subcontractor if Subcontractor fails to provide such waivers. If such waivers are conditional upon payment, Contractor may choose to make payment by issuance of joint checks to Subcontractor and its subcontractors, material men and suppliers. Subcontractor shall not be required to sign an unconditional waiver of lien or claim prior to receiving payment, or in an amount in excess of what it has been paid.

15.7 Application Reduction, Rejection or Nullification – Contractor may reduce or reject a Subcontractor payment application or nullify a previously approved Subcontractor payment application, in whole or in part, as may reasonably be necessary to protect Contractor from loss or damage based upon:

- (a) Subcontractor's failure to perform its work as required by the Subcontract Documents;
- (b) Loss or damage to Owner, Contractor or others to whom Contractor may be liable arising out of or relating to the Subcontract and caused by Subcontractor or its lower tier subcontractors or suppliers;

- (c) Subcontractor's failure to properly pay for labor, materials, equipment or supplies furnished in connection with its work;
- (d) Rejected, nonconforming or defective work which has not been corrected;
- (e) Reasonable evidence of delay in performance of Subcontractor's work such that the work will not be completed within the time allotted by the updated progress schedule, and that the unpaid balance of the Subcontract Price is insufficient to offset the liquidated damages or actual damages that may be sustained by Contractor as a result of the anticipated delay caused by Subcontractor;
- (f) Reasonable evidence demonstrating that the unpaid balance of the Subcontract Price is insufficient to cover the cost to complete Subcontractor's work;
- (g) Third party claims against Subcontractor or reasonable evidence demonstrating that third party claims are likely to be filed. Subcontractor can eliminate this basis by furnishing Contractor with adequate security in the form of a surety bond, letter of credit or other collateral or commitment which is sufficient to discharge such claims if established;
- (h) Owner's reduction, rejection or nullification of any part of a payment application;
or
- (i) Any other failure to comply with the terms and conditions of the Subcontract Documents.

Regardless of the above provisions, payment by Owner to Contractor for any sums claimed by Subcontractor is a condition precedent to Contractor's obligation to pay Subcontractor. Contractor shall give written notice to Subcontractor, at the time of reducing, disapproving or nullifying an application for payment, of the specific reasons for Contractor's action. When the above reasons for reducing, disapproving or nullifying an application for payment are removed, payment will be made for amounts previously withheld. Should Owner withhold any payments due Subcontractor for reasons unrelated to or due to no fault of Subcontractor's work or performance, the parties agree that Contractor shall release such payments to Subcontractor within a "reasonable time", as defined in the Payment Article.

15.8 Retention – Contractor may withhold from Subcontractor retention up to a rate of **5** percent, or as provided by law.

15.9 Payment Not Acceptance – Payment to Subcontractor does not constitute or imply acceptance of any portion of Subcontractor's work.

15.10 Final Payment Application – Contractor is required to incorporate Subcontractor's application for final payment into Contractor's next application for payment to the Owner only after the following occur:

- (a) acceptance of Subcontractor's work by Contractor and Owner;
- (b) if requested by Contractor, evidence acceptable to Contractor that all payrolls, bills for materials and equipment, and other indebtedness connected with

Subcontractor's work have been fully paid, or will be fully paid by issuance of joint checks in return for unconditional releases;

- (c) if requested by Contractor, consent of Subcontractor's surety to final payment;
- (d) satisfaction of close-out procedures as required by the Subcontract Documents.
- (e) If requested by Contractor, releases and waivers of liens, stop notices, bond rights, or any rights against Contractor, its surety or Owner, effective upon payment, to the extent and in such form as may be designated by Contractor.

15.11 Effect of Final Payment – Acceptance of final payment by Subcontractor shall constitute a waiver of claims by Subcontractor, except for claims reserved in a final release.

15.12 Pay When Get Paid: All payments are due by Contractor within seven (7) calendar days of receipt of payment from Owner for Subcontractor's approved and billed work. In the event Owner does not make payment to Contractor for Subcontractor's billed work and the Owner's failure or refusal to make such payment to Contractor is not for any reason related to Subcontractor's performance of its work under this Subcontract, then the parties agree that Contractor shall release such payment to Subcontractor within a "reasonable time". For the purposes of this provision, Contractor and Subcontractor agree that the term "reasonable time" is defined as the Contractor shall release payments to Subcontractor within seven (7) days after the Owner actually releases withheld funds to Contractor.

15.13 Lien Action – Except to the extent that the Contractor has received payment for the Subcontractor's work but has failed to make payment due to the Subcontractor, Subcontractor understands that it shall have a claim against the Contractor for payment of the subcontract price, or any other sums that may be due and payable hereunder, only to the extent that the Subcontractor has fully pursued its lien rights, if available, against the construction project for which the claim of non-payment is made, under the lien law of the state where the project is located, including a foreclosure action against same (the "Lien Action"), and then only to the extent that and for the amount that the Subcontractor ultimately recovers from the Owner, by virtue of the lien action, is less than the amount due the Subcontractor under this Subcontract. The Subcontractor hereby expressly waives any and all claims with respect to any unpaid sums against the Contractor under this Subcontract, unless and until the Lien Action is fully completed. This waiver shall in no way impair the Subcontractor's right to perfect and foreclose its lien against the construction project under the lien law of the state where the project is located in the event that it does not receive payment hereunder. The completion of the lien action is an express condition precedent to the Subcontractor's right to pursue any claim against the Contractor under this Subcontract.

ARTICLE 16 RECOURSE BY CONTRACTOR

16.1 Failure of Performance – If Subcontractor refuses or fails to fully and timely perform its obligations pursuant to the Subcontract, Contractor may, after twenty four (24) hours written notice to Subcontractor, commence and continue satisfactory correction of such failure, and without prejudice to any other rights or remedies, provide the most expeditious correction of the failure by whatever means Contractor deems appropriate and charge the resulting costs to Subcontractor. A failure to fully and timely perform shall include but not be limited to, failing to supply enough properly skilled workers or proper materials, failing to maintain performance in accordance with the updated progress schedule, failing to make prompt payment to

its workers, subcontractors or suppliers, disregarding laws, ordinances, rules, regulations or orders of any authority having jurisdiction, or otherwise failing or refusing to comply with any provision of the Subcontract. In the event of an emergency affecting the safety of persons or property, Contractor may proceed to commence and continue satisfactory correction of such failure without first giving twenty four (24) hours written notice to Subcontractor, but shall give prompt written notice of such action to Subcontractor.

ARTICLE 17 TERMINATION

17.1 Termination For Cause – If Subcontractor fails to perform any of its Subcontract obligations, Contractor may, after forty-eight (48) hours written notification and in lieu of or in addition to any other remedies, terminate the Subcontract. A separate written notice of termination shall be issued by Contractor to Subcontractor at the time the Subcontract is terminated. If such a termination occurs, Contractor shall have the right to take and use any materials, equipment, appliances or tools furnished by, belonging or delivered to Subcontractor and located at the project for the purpose of completing any remaining Subcontractor work.

In the event the Subcontract is terminated for cause, Subcontractor shall not be entitled to receive any further payment until the Contract work is completed. At that time, if the amounts earned but not paid Subcontractor before the termination exceed the expenses incurred by Contractor in completing Subcontractor's work, any excess shall be paid by Contractor to Subcontractor; but, if Contractor's expense to complete Subcontractor's work exceeds the amount earned and unpaid, Subcontractor shall promptly pay the excess amount to Contractor. The expense incurred by Contractor shall include Contractor's costs for completing the work, including overhead, profit and attorneys' fees, and any damages incurred by Contractor by reason of Subcontractor's default.

17.2 Termination By Owner – If Owner terminates the Contract, or any part which includes portions of Subcontractor's work, Contractor shall notify Subcontractor in writing and Subcontractor shall immediately stop the performance of the terminated work, follow Contractor's instructions regarding any shutdown and termination procedures, and mitigate all costs. If Owner's termination partially eliminates Subcontractor's work, Contractor may terminate the Subcontract in its entirety.

17.2.1 Contractor's liability to Subcontractor for any damages incurred or claims resulting from Owner termination for convenience shall be limited to the amount Owner is determined to be liable to Contractor for Subcontractor's damages. Contractor's liability to Subcontractor for Owner's termination for cause shall be determined pursuant to the Claims and Disputes Resolution Articles of the Subcontract.

17.3 Termination For Convenience -- The Contractor shall have the right at any time by written notice to the Subcontractor to terminate all or any part of this Subcontract without cause and require Subcontractor to cease its work hereunder. Upon notification of termination, Subcontractor shall immediately stop performance of the terminated work, follow Contractor's instructions regarding any shut down and termination procedures and mitigate all costs. In the event of such termination for convenience, the Subcontractor shall be entitled to payment pursuant to the terms of this Subcontract for all work performed up to the date of the termination. If no work has been performed by Subcontractor, then Subcontractor is not entitled to any payment as a result of the termination. Should it be found that Subcontractor is wrongfully terminated under this Subcontract or terminated solely for the Contractor's convenience, Subcontractor shall be entitled to only be paid for actual and verified work performed. Subcontractor will not seek and may not

recover anticipatory or lost profits, damages and/or consequential damages under any theory of recovery. Should the termination for convenience be partial, The Subcontractor shall notify the Contractor in writing within ten (10) working days after receipt of the Contractor's notice of termination of the effect of such termination upon the Subcontractor's work, and the Subcontract price or time shall be adjusted, by mutual agreement of Contractor and Subcontractor, by Subcontract Change Order for any change in time or cost of performance of this Subcontract caused by such termination.

ARTICLE 18 SUSPENSION OF WORK

18.1 Contractor may order Subcontractor in writing to suspend all or any part of Subcontractor's work for such period of time as Contractor deems appropriate. Contractor's liability to Subcontractor for any delay or disruption resulting from such suspension shall be determined pursuant to the Claims and Disputes Resolution Articles of the Subcontract.

ARTICLE 19 ASSIGNMENT OF SUBCONTRACT

19.1 Subcontractor shall not, without written consent of Contractor, assign its rights of all or any part of the Subcontract to others. Contractor may assign all or any part of the Subcontract to its bonding company or others for the Contractor's convenience.

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 the statute of limitation of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within the applicable statute of limitation from the date of the alleged violation. Any questions concerning a contractor may be referred to the Contractors' State License Board for the state where the project is located.

This Subcontract has important legal and insurance consequences. Consultation with an attorney and insurance consultant is encouraged with respect to its completion or modification.

END

