



## MASTER SUBCONTRACT AGREEMENT

THIS MASTER SUBCONTRACT AGREEMENT for construction services ("Master Agreement") is made and entered into on **(INSERT DATE)** by and between ANVIL BUILDERS INC ("Contractor") and **(INSERT NAME OF SUBCONTRACTOR)** ("Subcontractor").

In consideration of the mutual agreements hereinafter contained, Contractor and Subcontractor agree as follows:

### ARTICLE 1. MASTER AGREEMENT

**1.1 Contractor's Work:** From time to time, Contractor enters into construction contracts ("Prime Contract") with public and private owners or subcontracts with other general contractors for various construction projects.

**1.2 Master Agreement.** The Contractor and Subcontractor desire to enter into this Master Agreement to expedite and facilitate Contractor's ability to engage Subcontractor to perform work on projects where Contractor desires such services. The Parties intend this Master Agreement to define the rights and obligations of the Parties on any and all projects where Contractor has engaged Subcontractor to perform work after the date of this Master Agreement or where the Parties have otherwise agreed that this Master Agreement shall be applicable. Contractor has the right at any time to terminate this Master Agreement upon written notice to Subcontractor, provided, however, the Master Agreement shall continue to apply to any work on a particular project for which a PROJECT SUBCONTRACT AGREEMENT, hereinafter defined, has been entered into by the Parties.

**1.3. PROJECT SUBCONTRACT AGREEMENT.** This Master Agreement does not create an agreement that Contractor will request, or that Subcontractor will perform work on any particular project. This Master Agreement will only become applicable to a specific project when Contractor and Subcontractor have entered into a PROJECT SUBCONTRACT AGREEMENT, which Contractor and Subcontractor have signed evidencing their agreement to be bound to the terms and conditions contained in the PROJECT SUBCONTRACT AGREEMENT identifying the project where the work will be performed ("Project").

**1.4 Scope of Work:** The scope of work (the "Work") for a specific project will be set forth in the PROJECT SUBCONTRACT AGREEMENT.

**1.5 Contract Price:** Until otherwise agreed in writing, Subcontractor's compensation for performing the Work shall be set forth in the PROJECT SUBCONTRACT AGREEMENT. Payments shall be made in accordance with PROJECT SUBCONTRACT AGREEMENT and this Master Agreement.

### ARTICLE 2. CONTRACT DOCUMENTS

**2.1. Contract Documents Defined.** The "Contract Documents" consist of this Master Agreement, the PROJECT SUBCONTRACT AGREEMENT and those additional documents identified in the PROJECT SUBCONTRACT AGREEMENT. Unless expressly provided otherwise in the PROJECT SUBCONTRACT AGREEMENT, the Contract Documents do not



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include the notice to bidders, advertisement or invitation to bid, instructions to bidders, sample forms, Contractor's bid, portions of the Addenda relating to any of those documents, Subcontractor's bid or proposal, or any Submittals. The performance and payment bonds described below, if required by the PROJECT SUBCONTRACT AGREEMENT, shall be included in the Contract Documents.

**2.2. Intent of the Contract Documents.** The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. In the event there is a provision that cannot be given effect without nullifying another provision and such inconsistency cannot be harmonized or resolved in a manner that gives effect to all provisions, the order of priority set forth in the Prime Contract shall apply. The intent of the Contract Documents is to cause Subcontractor to provide, for not more than the Contract Price, for everything necessary for the full and proper execution of the Work including but not limited to all materials, labor, tools, equipment, fuels, plants, scaffolds, appliances, temporary lighting, supplies, supervision, and transportation. Subcontractor agrees to be bound to the Contractor in the same manner that the Contractor is bound to either the Owner or Prime Contractor under the Contract Documents. It is not intended that the Contract Documents include each and every sub-system, sub-component or detail necessary to complete the Work properly. Sub-systems, sub-components and details required or normally included as trade practice may not be specifically mentioned or shown. Nevertheless, Subcontractor shall be responsible for each sub-systems, sub-components and details of the Work. Portions of the Specifications may be abbreviated or simplified and may include incomplete sentences; they shall be interpreted in accordance with normal trade practices and omitted words or phrases shall be supplied as provided in the Contract Documents or by inference. Words and abbreviations which have well-known technical or trade meanings and are not otherwise specifically defined in the Contract Documents shall be construed in accordance with such meanings. All systems and components of the Work shall be consistent, operable and complete, except and only to the extent expressly shown or specified otherwise in the Contract Documents.

**2.3. Discrepancies, Errors and Omissions.** The Contract Documents are not complete in every detail and in some cases may show only the purpose and intent. Subcontractor shall comply with the reasonably inferable intent and meaning of the Contract Documents, taken as a whole, and shall not avail itself of any patent error, omission, discrepancy or ambiguity in the Contract Documents, or in the instructions given or work provided by others. Subcontractor shall notify the Contractor in writing immediately upon discovery of any such error, omission, discrepancy or ambiguity and the Contractor shall address the matter within a reasonable period of time, issuing a clarification or modification if appropriate. If Subcontractor proceeds with any Work-related activity involving an error, omission, discrepancy or ambiguity which Subcontractor knew of, or reasonably should have known of, without first giving such notice to Contractor, Subcontractor shall be responsible for all defects, delays, damages and additional costs to Owner and/or Contractor arising from or relating thereto, including without limitation all costs of correction, inspection, testing, supervision and project administration.

**2.4. Conflicts between Contract Documents.** In general, the Drawings complement the Specifications as to the scope, quality and workmanship of the Work. Anything referenced in the Specifications and not shown on the Drawings, or shown on the Drawings and not referenced in the Specifications, shall be of like effect as if shown or referenced in both. Work not particularly detailed, marked or specified shall be the same as similar Work that is detailed, marked or specified. In case of an omission, discrepancy or ambiguity in quantity or quality, Subcontractor shall provide the greater quantity or better quality, unless the Contractor approves the smaller quantity or lesser quality in advance in writing.



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In the absence of an order of precedent contained in the Contract Documents, where there are conflicts between large scale drawings and small scale drawings, large scale drawings shall take precedence. Figured dimensions shall take precedence over scaled dimensions, detailed information shall take precedence over general information, greater quantity shall take precedence over the smaller quantity, the better quality shall take precedence of the lesser quality and words shall take precedence over numbers unless obviously incorrect. Addenda, clarifications and modifications shall have the same order of precedence as the specific Contract Documents they are amending.

**2.5. Early Commencement of Work.** Subcontractor agrees that the Work performed by Subcontractor on the Project, prior to the date on which the PROJECT SUBCONTRACT AGREEMENT is fully executed, is subject to the terms and conditions of the Master Agreement and the Contract Documents, including but not limited to insurance and indemnity and that all representations and warranties made by Subcontractor herein are retroactive to the date on which Subcontractor commenced Work on the Project.

### **ARTICLE 3. PAYMENT**

**3.1. Scope of Payment.** Subject to all the terms and conditions of the Contract Documents, Contractor shall pay the Contract Price to Subcontractor in progress payments in accordance with the procedures set forth in this Article 3. Subcontractor accepts the Contract Price, as adjusted pursuant to the Contract Documents, as full and complete compensation : (a) for everything necessary for the full and proper execution of the Work, including but not limited to all materials, labor, tools, equipment, fuels, plants, scaffolds, appliances, temporary lighting, supplies, supervision, and transportation; (b) for all applicable Federal, State and local taxes, (c) for performing and completing all Work in accordance with the Contract Documents; (d) for all expenses incurred by Subcontractor for any purpose in connection with the performance and completion of the Work, or any of its other obligations under the Contract Documents; (d) for all loss or damage arising out of the nature of the Work to be performed or from the action of the elements or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the Work until its acceptance by the Owner and Contractor; (f) for all risks of every description connected with the Work; (g) for foreseen or unforeseen price increases in everything necessary for the Work, including but not limited to materials, equipment or labor and (g) for all expenses incurred by or in consequence of the suspension or discontinuance of the Work. Whenever the Contract Documents provide that Subcontractor is to do work, provide services or furnish materials for which no separate price is established in the PROJECT SUBCONTRACT AGREEMENT, it shall be understood that Subcontractor is to do such work, provide such services or furnish such materials without extra charge or allowance or direct payment of any sort, and that all costs of doing such work, providing such services or furnishing such materials, including without limitation on-site and off-site overhead costs and profit, are included in the Contract Price.

**3.2. Schedule of Values.** Unless provided by the Contractor, Subcontractor shall submit to Contractor for approval a schedule of values ("Schedule of Values") of the Work at the same time it returns the fully executed PROJECT SUBCONTRACT AGREEMENT. The Schedule of Values shall allocate the entire Contract Price among the various portions of the Work, and shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Contractor may require. The Schedule of Values, when approved by the Contractor in writing, shall be used as a basis for evaluating Subcontractor's Applications for Payment. Subcontractor shall submit to Contractor for approval with its monthly Application for Payment, an updated Schedule of Values which shall include the allocation of any Change Orders approved since the last submitted Schedule of Values.

**3.3. Application for Progress or Final Payment.** Subcontractor shall submit an Application for Payment ("Application") to the Contractor which is supported by such data substantiating Subcontractor's right to payment as the



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Contractor may require and reflecting the retainage provided elsewhere in the Contract Documents on or before the 20<sup>th</sup> of each month. The Application shall be in such form and contain such information and documentation as the Contractor may require. Absent written direction from the Contractor to the contrary, each Application, be it for a progress payment or final payment, shall be in the form of either (i) an AIA Document G702, Application and Certification for Payment, and supported by AIA Document G703, Continuation Sheet or (ii) the form required by the Contract Documents. The Application shall be accompanied by: **(1)** an updated Schedule of Values current through the date of the Work included in the current Application; **(2)** the applicable fully executed California Civil Code Section 8132 or 8136 conditional waiver and release upon progress or final payment form from Subcontractor, its suppliers and lower tier subcontractors providing materials or performing a portion of the Work which are included in the Application; **(3)** the applicable fully executed California Civil Code Section 8134 or 8138 unconditional waiver and release upon progress or final payment form from Subcontractor, its suppliers and lower tier subcontractor who received a payment in the preceding Application; **(4)** such evidence as the Contractor may, from time to time, request that Subcontractor's employees have received their full wages and benefits, each supplier and lower tiered subcontractor has received the funds allocated to it in any previous Application; provided, however, that Contractor shall have no duty to verify that any supplier or lower tier subcontractor has been paid; **(5)** proof of payment to union trust funds for previous month **(6)** separate written certification by Subcontractor signed under penalty of perjury that: (i) all matters set forth in the Application and other documentation submitted in connection with the Application are true and correct; (ii) all due and payable bills with respect to the Work have been paid or will be paid with the proceeds of such Application ; (iii) all changes in the Work subject to the Application have been properly recorded in the "as-built" documents; and (iv) to Subcontractor's knowledge, there are no unwritten change orders, or claims for "extras;" for which notice has not been presented to the Contractor in writing in accordance with the Contract Documents; and (v) there is no known basis for the recording any mechanic's lien, filing of any stop notice or claim against any applicable payment bond. The Application shall constitute a representation by Subcontractor to Contractor that the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that Subcontractor is entitled to payment in the amount requested.

**3.4 Progress Payments; Retentions.** Upon approval of an Application for Payment or approval of payment to Subcontractor in some other amount, Contractor shall pay Subcontractor the approved amount less ten percent (10%) retention or the retainage amount set forth in the Contract Documents, whichever is less, which shall be withheld from each progress payment to the Subcontractor. The retention shall be paid to Subcontractor upon satisfaction of all the conditions for final payment set forth in Section 3.6. Progress payments shall be made within 7 days of receipt of payment from Owner or within reasonable period of time as defined in Section 3.9. Contractor shall have the right, but not the obligation, to make payment either: (a) directly to Subcontractor; or (b) jointly to Subcontractor and any lower tiered subcontractor or supplier. No approval for payment, progress payment or partial or entire use or occupancy of the Work by either the Owner or Contractor shall constitute an acceptance of the Work or waiver of Subcontractor's duty to replace defective or deficient Work, including but not limited to materials or equipment. If subcontractor elects to bill for materials on hand (subject to owner approval), then invoices from suppliers must be submitted with payment application. All invoices must be emailed to [ap@anvilbuilders.com](mailto:ap@anvilbuilders.com)

**3.5. Grounds for Withholding Payment.** In addition to such other grounds as may be provided elsewhere in the Contract Documents, the Contractor may (i) reject an Application for Payment, or (ii) decline to make payment of, any monies otherwise payable to Subcontractor or (iii) may nullify all or any part of any Application for Payment previously approved, to such extent as may be necessary in the Contractor's opinion to protect it from loss because of:

- (a) Defective or deficient Work not remedied;



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- (b) Third party claims filed or reasonable evidence indicating probable filing of such claims against Contractor, Owner and/or general contractor;
- (c) Subcontractor's failure to make payments due its laborers, subcontractors or suppliers;
- (d) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- (e) Damage to Owner's property or Contractor's or other subcontractors' work unless fully covered by Subcontractor's insurance;
- (f) Reasonable evidence that the Work will not be completed within the time allowed for the Work in the Project Schedule and that the unpaid balance of the Contract Price will not be adequate to cover actual and/or liquidated damages;
- (g) Incomplete or missing documentation, including but not limited to the failure to provide an updated Schedule of Values, certificates of insurance, conditional or unconditional waiver and release forms, erroneous estimates of the value of the Work performed or other inaccurate or incomplete statements on an Application for Payment;
- (h) Failure to procure and/or maintain any required insurance in full force and effect;
- (i) Subcontractor's failure to perform any other material obligations under the Contract Documents;
- (j) Subcontractor becomes insolvent or should file or has filed against it a petition in bankruptcy or goes into liquidation or dissolution, either voluntarily or involuntarily or under a court order;
- (k) Penalties assessed against Contractor because of Subcontractor's failure to comply with state, federal or local laws and regulations; or
- (l) Incomplete certified payroll, including online uploading of documents;
- (m) Failure to maintain federal, state and local permits required for the work (including business tax registrations);
- (n) Failure to provide letters of good standing from unions;
- (o) Any other ground for withholding payment allowed by state or federal law, or as otherwise provided in the Contract Documents.

Contractor shall pay Subcontractor all amounts owing and not subject to dispute or offset when the ground or grounds for withholding payment from Subcontractor have been corrected or eliminated. Subcontractor shall be paid the amounts so withheld without interest. Contractor's failure or refusal to withhold any monies from Subcontractor shall in no way limit the obligations of any surety or sureties under any bonds or bonds furnished by Subcontractor under the PROJECT SUBCONTRACT AGREEMENT. The provisions of this Article 3 shall not diminish, but shall be in addition to, Contractor's rights and obligations under other provisions within the Contract Documents and/or applicable provisions of law pertaining to the payment or withholding of monies due to subcontractors.



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**3.6. Final Payment, Retention.** Upon receipt of Subcontractor's final Application for Payment and written certification that the Work is ready for final inspection and acceptance, the Contractor shall conduct a final inspection of the Work. When the Work has been accepted pursuant to the Contract Documents, the PROJECT SUBCONTRACT AGREEMENT has been fully performed and Subcontractor has satisfied all conditions for final payment, the Contractor shall approve the final Application for Payment.

Subcontractor shall have earned and be entitled to its final payment, which shall include the entire unpaid balance of the Contract Price, as adjusted by all approved change orders and all retentions, only upon the completion of all of the following events:

- (a) Subcontractor has completed all of its Work;
- (b) Contractor has approved the final Application for Payment received from Subcontractor;
- (c) Thirty-Five (35) days have elapsed after the recordation by Owner or its agent of the Notice of Completion and there are no mechanic's liens, stop notices or other encumbrances relating to the Work that are outstanding at such time;
- (d) Subcontractor has satisfied of all the conditions for final payment set out above, including but not limited to Section 3.3 and elsewhere in the Contract Documents; and
- (e) Contractor has received final payment from the Owner for the Work .

Contractor shall pay Subcontractor its final payment including retention within seven (7) days from the date the last of the five events set forth in subsections (a) through (e) immediately above occurs. Contractor shall have the right to make final payment either: (a) directly to Subcontractor; or (b) jointly to Subcontractor and any lower tiered subcontractor or supplier.

**3.7 Trust Funds.** Any and all funds paid to Subcontractor hereunder are hereby agreed by Subcontractor to constitute trust funds in the hands of Subcontractor to be applied first to the payment of claims of Subcontractor's laborers, suppliers, union trust funds and subcontractors arising out of the Work. The balance of said funds after the payment of all claims of Subcontractor's laborers, suppliers, union trust funds and subcontractors arising out of the Work shall be the property of the Subcontractor. Subcontractor shall provide letter of good standing with each monthly invoice.

**3.8. Waiver and Release.** Acceptance of final payment by Subcontractor shall constitute a waiver of all claims by Subcontractor against Owner and/or Contractor, except those previously made in writing and identified by Subcontractor as unsettled at the time it submits the final Application for Payment. No payment by Contractor, whether progress or final shall release Subcontractor or its surety or sureties, if any, from any of their obligations under the PROJECT SUBCONTRACT AGREEMENT, Contract Documents and/or the bonds.

**3.9. Reasonable Period of Time.** If Owner or other responsible party delays making payment to Contractor from which payment to Subcontractor is to be made, Contractor and its sureties, if any, shall have a reasonable period of time





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to make payment to Subcontractor. "Reasonable period of time" shall be determined according to the relevant circumstances, but in no event shall it 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. Subcontractor shall reimburse Contractor for its proportionate share of any attorney's fees, expert witness fees and court or arbitration, including mediation, costs incurred by Contractor in pursuing its legal remedies against the Owner or other responsible party to recover monies due Subcontractor.

#### **ARTICLE 4. TIME**

**4.1. Time.** Time is of the essence of this Master Agreement and each PROJECT SUBCONTRACT AGREEMENT. Contractor shall provide Subcontractor with the Project Schedule establishing the sequence and time requirements of all work activities for the Project including Subcontractor's Work. Subcontractor shall provide Contractor within ten (10) days after its receipt of the Project Schedule or set forth in the in the Prime Contract, scheduling information, including but not limited to work durations, planned procurement dates, planned submission dates of required shop drawings, project data and samples for Subcontractor's Work, (including the activities of its lower tiered subcontractors and suppliers). Based upon this information and similar such data from the other subcontractors, Contractor at its sole discretion may amend one or more work durations or sequences within the Project Schedule. Contractor, as necessary, may further revise such Project Schedule with the cooperation of Subcontractor as the Work progresses. Subcontractor acknowledges that revisions may be made in such Project Schedule and agrees to make no claim for acceleration or delay by reason of such revisions so long as such revisions are of the type normally experienced in work of this scope and complexity. In the event Subcontractor is unable to maintain progress in accordance with the Project Schedule by reason of events for which extensions of time are permitted in the Contract Documents, Subcontractor's time for completion shall be extended for a mutually agreed upon number of calendar days, expressly conditioned on Subcontractor's compliance with Section 4.8 and provided that an identical time extension is given by the Owner to Contractor. This time extension shall be the sole remedy for such delays. Subcontractor shall not be entitled to recover damages from Contractor except as provided in Article 6 Claims.

Subcontractor shall commence the Work under the PROJECT SUBCONTRACT AGREEMENT after receipt of notification from Contractor to proceed. It shall be Subcontractor's obligation to conform to the Project Schedule. Subcontractor shall prepare and obtain approval as required by the Contract Documents for all shop drawings, details, samples, and meet all other requirements necessary for the prosecution of the Work in conformance with the Project Schedule. Subcontractor shall coordinate the Work covered by the PROJECT SUBCONTRACT AGREEMENT with the work of all other subcontractors, Owner and Contractor in a manner that will facilitate the efficient and timely completion of the Project. Contractor shall have complete control of the Project Site on which the Work is to be performed and shall have the right to decide the time and order in which the various portions of the Work shall be installed and the priority of the work of other subcontractors and all matters representing the timely and orderly conduct of the Work by Subcontractor on the Project Site.

**4.3 Suspension of Work.** Contractor may, at any time, for its convenience suspend performance of all or any part of a PROJECT SUBCONTRACT AGREEMENT by giving not less than two (2) working days' notice to Subcontractor. The suspension may be continued by Contractor for a period of up to sixty (60) days during which period Contractor may at any time, by written notice, require Subcontractor to resume performance of the Work under the PROJECT SUBCONTRACT AGREEMENT. Contractor shall not be liable to Subcontractor for any damages, costs and/or expenses incurred during the period of suspension, with the exception for those costs that are incurred (1) for the purpose of safeguarding the Work, materials or equipment located at the Project site; (2) rented equipment that are maintained at



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the Project site at the request of Contractor; and (3) such other reasonable and unavoidable costs of shutting down the Work or reassembling personnel and/or equipment. If the Work is suspended based on a direction from or actions of the Owner, Subcontractor shall only be entitled to recovery those costs which Contractor can recover from the Owner under the Contract Documents.

**4.4. Material, Equipment and Labor Requirements.** Subcontractor, upon receipt of a written request from the Contractor, shall:

- (a) furnish Contractor with a list of major materials and equipment required for the Work, showing the name, address and telephone number of the supplier and the date on which such material and equipment is expected to be delivered to the Project Site;
- (b) furnish Contractor, upon issuance, a copy of each major purchase order and/or subcontract; and
- (c) furnish Contractor with notification immediately by telephone or e-mail with confirmation via fax within forty-eight (48) hours, if Subcontractor finds that any material or equipment cannot be delivered as required to maintain the then current Project Schedule.

**4.5. Scheduling Work Responsibility.** Subcontractor acknowledges and accepts responsibility to schedule and coordinate its Work with the Contractor, Owner, other subcontractors, governing agencies, testing and inspection entities so as to not delay the completion of the Project.

**4.6. Recovery Plan.** If Subcontractor, through its own fault or neglect, is not completing its Work in accordance with the then current Project Schedule, Contractor may order Subcontractor to increase its manpower or to work, at Subcontractor's expense, any overtime or additional shifts or take any other action necessary to expedite the Work in order to meet the Project Schedule's requirements for the Work.

In the event Subcontractor should fail to commence the above actions within one (1) working day after receiving notice from Contractor and to continue thereafter with diligence and promptness the actions necessary to meet the Project Schedule's requirement for the Work, then Contractor, without prejudice to any of its rights or remedies, shall have the right, but not the obligation, to any or all of the following remedies:

- (a) supply such number of workers, material, equipment and other facilities as Contractor deems necessary to perform those portions of the Work that have not been completed in accordance with the Project Schedule; and/or
- (b) subcontract with one or more additional subcontractors to perform those portions of the Work that have not been completed in accordance with the Project Schedule.

**4.7. Weather Requirements.** From time to time, weather may impact the completion of the Work and/or the Project. Subcontractor agrees to put forth reasonable efforts to coordinate and complete the Work under such conditions without delay to the overall completion date for the Project.





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**4.8. Delay Notice.** If at any time during the performance of the Work, Subcontractor has reason to believe that the Work (or any part of it) cannot be completed within then current Project Schedule, Subcontractor shall promptly, but in any event not later than two (2) working days after the date it first had cause to believe that the Work may be delayed, notify Contractor in writing of such possible delay. In this notice, Subcontractor shall indicate the amount of delay it believes will or could be incurred. Within seven (7) working days of the date Subcontractor first had cause to believe that Work may be delayed unless notice is required to be given in a shorter period of time in the Contract Documents, Subcontractor shall notify Contractor in writing of its proposed plan to complete the Work within then current Project Schedule which Contractor may accept or reject in its sole discretion

## ARTICLE 5. CHANGES

**5.1. Changes.** Contractor may, at any time by written directive and without notice to Subcontractor's surety, make changes in, additions to and/or deletions from the Work to be performed and materials and equipment to be furnished under the PROJECT SUBCONTRACT AGREEMENT, and for each change make an equitable adjustment in the Contract Price and Contract Time. If Subcontractor disagrees with such adjustment, Subcontractor shall (1) give Contractor notice of its disagreement in writing within two (2) working days from its receipt of Contractor's offered adjustment and (2) comply with Article 6 Claims' requirements for submission of a claim. Resolution of the disagreement over the adjustment to the Contract Price and/or Contract Time shall not excuse the Subcontractor from proceeding immediately with the performance of the Work as so changed. Any change or modification shall be subject to all the terms and conditions of the Contract Documents. No increase or decrease in the Contract Price or Contract Time shall be binding on Contractor unless agreed upon in writing. Subcontractor shall not make any changes in the Work without the prior written direction from the Contractor. If Subcontractor makes any change without the prior written direction, it agrees that (1) it waives all right to be paid for that changed work, even if it received oral directions from either the Contractor's job site personnel or the Owner or its representatives and (2) it shall be liable for any and all losses, costs, removal and replacement expenses, damages and/or liability of any nature whatsoever arising directly or indirectly from the unauthorized change.

**5.2. Extra Work Proposals.** All requests for proposals and quotations for changes to the scope of Work must be returned to Contractor within five (5) working days from receipt of the request.

**5.3. Time & Material ("T&M").** Any extra work, where a conventional proposal, estimate and change order would not be appropriate and which Contractor and Subcontractor have agreed shall be performed on a time and material basis or its equivalent, shall be documented by Additional Work Authorization ("AWA") form signed on a daily basis by Contractor's project manager and superintendent and Subcontractor. Signing of an AWA form by Contractor is for documentation of labor and/or materials and equipment only and does not constitute either entitlement or a commitment for payment.

**5.4. T&M Labor & Equipment Rates.** Subject to and expressly conditioned on (1) a fully executed AWA form and (2) the Owner's acceptance of (a) the extra work performed, (b) the labor & equipment hours sought by Subcontractor for performing the extra work, and (c) the labor & equipment rates set forth in **Exhibit T&M** to the PROJECT SUBCONTRACT AGREEMENT, Subcontractor shall be paid for those hours of labor and equipment documented on the signed AWA form. If the Owner disputes the extra work, the number of hours of labor or equipment incurred or the labor or equipment rates; Contractor, after negotiations with the Owner, shall present to Subcontractor the Owner's payment proposal which the Subcontractor can either accept or reject. If the Subcontractor accepts the Owner's proposal, Contractor shall, upon receipt of payment from the Owner, pay Subcontractor the amount received less retainage as provided elsewhere in the Contract Documents. If Subcontractor rejects the Owner's payment proposal for the extra work claimed, Subcontractor may make a claim for the extra work in accordance with Article 6 Claims.



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**5.5. Allowable Markup.** For changes in the Work approved by Contractor as provided herein, Subcontractor shall be paid for Overhead, General Conditions and Profit an amount provided in the Prime Contract. Work performed by subcontractor that is not reimbursed by the Owner shall be limited to 5% of the cost. In the absence of mark-up provision in the Prime Contract, Subcontractor shall be paid a markup for Overhead, General Conditions and Fee as follows:

Work Performed by Subcontractor's Own Forces:	15% of the Cost
Work Performed by lower tier subcontractors:	5% of the Cost

Cost for labor is limited too: base wage, fringes, governmental burdens and workers compensation

**5.6. Overtime.** Subcontractor shall work overtime or extra shifts to overcome any delays and shall be paid for overtime only if directed specifically, in writing, by Contractor for reasons other than delays caused by Subcontractor. Any extra compensation shall further be based on hours shown on AWA form which have been submitted to, and approved by Contractor on a daily basis. Only the premium portion of such approved overtime exclusive of any markups for overhead and/or fee shall be considered for any extra compensation.

**5.7. No Surety Release.** No change, alteration, or modification to or deviation from the PROJECT SUBCONTRACT AGREEMENT or the Contract Documents, whether made in the manner provided in this Article 5 or not, shall release or exonerate, in whole or in part, any bond or any surety on any bond given in connection with the PROJECT SUBCONTRACT AGREEMENT, and no notice is required to be given to such surety of any such change, alteration, modification, or deviation.

## **ARTICLE 6. CLAIMS**

**6.1. Claim Format.** Any claim for an equitable adjustment of the Contract Price and/or the Contract Time of performance, including but not limited to changes ordered by either the Owner or Contractor must be made in writing with detailed breakdown as required by the Contract Documents. Pricing must be prepared according to the labor rates and equipment rates established in the PROJECT SUBCONTRACT AGREEMENT.

**6.2. Claim Presentation.** Subcontractor agrees to make all claims for any additional compensation, damages and/or time extension for which the Owner is or may be liable in strict compliance with the Contract Documents including, without limitation, notice, documentation and methods/forums for dispute resolution required by the Contract Documents for like claims by Contractor to the Owner. Failure to comply with those claims presentation terms and conditions, including Subcontractor's failure to provide such notice and documentation to Contractor no later than two (2) working days before Contractor is required to provide such notice to the Owner, shall be deemed an absolute waiver of any such claims. In the event that the Contract Documents specifies the use of an alternative dispute resolution for such claims, Subcontractor hereby agrees to be bound by that resolution procedure.

**6.3. Claim Prosecution.** Upon the written request from Subcontractor, Contractor may institute an action or proceeding to recover any claim by Subcontractor or appeal on behalf of Subcontractor any ruling or decision of the Owner or permit the Subcontractor to take such action pursuant to a Pass Through Agreement, which would permit the Subcontractor to pursue its claim in the Contractor's name. In all cases, Subcontractor shall pay all costs attributable thereto, including attorney's fees, court or arbitration fees, and Contractor's staff time incurred by Contractor in or



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assisting with the prosecution of Subcontractor's claim. Subcontractor shall cooperate with Contractor at times during the prosecution of its claim, including making witnesses and documents available to Contractor as needed. Subcontractor shall post whatever security may be required by Contractor to cover Contractor's cost and expenses, including attorneys' fees, prior to and as a condition to either Contractor's proceeding on the Subcontractor's behalf or its execution of a Pass Through Agreement. Where Contractor is required to prosecute Subcontractor's claim, it shall make reasonable efforts to enable the Subcontractor to attend the Claim proceedings.

**6.4. Condition Precedent Agreement.** Subcontractor shall have no cause of action against Contractor and/or Contractor's surety for any claims for additional compensation or damages for which Owner is or may be liable, unless and until Owner has paid such claim. Such payment is an absolute condition precedent to Subcontractor filing a cause of action against Contractor and/or Contractor's surety in regard to such claim. Subcontractor shall be bound by the determination of the Owner, or in the event of an appeal or further action or proceeding by the determination of same. In the event any award of additional compensation or damages on any such claim does not identify or allocate an amount to Subcontractor, then Subcontractor shall be entitled only to its share of any actual net recovery, if any, as determined in Contractor's sole discretion, less overhead and profit to Contractor and less Contractor's expenses and attorneys' fees in handling said matter.

**ARTICLE 7. SHOP DRAWINGS AND SUBMITTALS** When shop drawings and/or submittals are required by the Contract Documents or on account of changes in the Work, Subcontractor shall prepare and supply the same to Contractor for approval by Owner. Subcontractor shall provide the required shop drawings and/or submittals in sufficient time to allow for the Owner or its design consultant's review, ordering, manufacturer's lead time, fabrication and shipping, such that they do not delay the completion of either the Work or the Project or as required by the prime contract for the project. Shop drawings and/or submittals rejected by the Owner or its design consultant for incompleteness or non-compliance with the Contract Documents shall not constitute grounds for delay to the Work. Subcontractor is expected to recoup all time lost due to late and/or rejected shop drawing or submittals at its own expense.

If any such shop drawings and/or submittals as submitted by Subcontractor, whether or not they are approved by Owner or design consultant, deviate from or are inconsistent with the Contract Documents, and in the further event that any such deviations or inconsistencies shall cause Contractor to suffer any damage or incur any cost or expense because of delays or extra work or otherwise, Subcontractor agrees to reimburse Contractor for any such damages that it suffered or costs and/or expenses that it incurred. If any such damage, cost or expense is imposed upon Contractor, Contractor may, at its option, withhold from Subcontractor any payments due or to become due to Subcontractor an amount sufficient fully to reimburse Contractor therefore. The provisions of this Article are cumulative of the remedies provided Contractor elsewhere in the Contract Documents.

## **ARTICLE 8. DELAYS**

**8.1. Subcontractor Caused Delays.** If Subcontractor should default in performance of the Work or should otherwise commit any act which causes delay to the completion of the Project, 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.

**8.2. Owner Caused Delays.** No claims for additional compensation or damages for delays, whether in the furnishing of material by Contractor, or delays by other subcontractors or Owner, will be allowed by Contractor. An extension of time for the completion shall be the sole remedy of Subcontractor; provided, however, that in the event, that Contractor obtains additional compensation from Owner on account of such delays, Subcontractor shall be entitled to



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such portion of the additional compensation so received by Contractor from Owner as is equitable under all of the circumstances. Nothing herein contained shall require Contractor to make any claim against Owner for such delays, and it is specifically agreed that the failure of Contractor to prosecute any such claim against Owner shall not entitle Subcontractor to any claim for damages against Contractor.

#### **ARTICLE 9. BONDS**

Concurrently with the execution of the PROJECT SUBCONTRACT AGREEMENT, Subcontractor shall, if required by PROJECT SUBCONTRACT AGREEMENT, provide a labor and material bond and a performance bond, each 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 reimburse Subcontractor for the premium on said bonds (up to 1.5%) unless otherwise provided in the PROJECT SUBCONTRACT AGREEMENT or in the Contract Documents. If the Subcontractor fails to provide the bonds specified within five (5) working days after demand by Contractor, Contractor shall have the right to terminate the PROJECT SUBCONTRACT AGREEMENT and Subcontractor shall have no right to payment for any work performed prior to termination. All Bonds must be completed on attached sample form **per Exhibit A.**

#### **ARTICLE 10. MECHANIC LIENS AND STOP NOTICES.**

Subcontractor shall not record a mechanic's lien against the Project Site or serve a stop notice on the Owner or any construction lender for any sum of money that is not due under the terms of the PROJECT SUBCONTRACT AGREEMENT. Subcontractor acknowledges that a recorded mechanic's lien or a stop notice served on the Owner and/or construction lender may disrupt the Project's finances and may have an adverse impact on Contractor's contractual relationship with the Owner or its other subcontractors. Therefore, if Subcontractor records a mechanic's lien or serves a stop notice, which is either not permitted by law, overstated or seeks a sum of money not yet due under the PROJECT SUBCONTRACT AGREEMENT; Contractor shall have the right to deduct from any sum of money due Subcontractor the cost of any bond obtained to release either the mechanic's lien and/or the stop notice and attorneys' fees incurred as a result of such lien, stop notice and/or payment bond claim.

If Subcontractor's subcontractors or suppliers record a mechanic's lien or serve a stop notice; Subcontractor shall cause such mechanic's lien and/or stop notice to be removed by means of either paying the claimed amount or posting a release bond within ten (10) days of its receipt of notification from Contractor to take such action. Provided that Subcontractor has been timely paid all its progress payments that are currently due it as of the time of notification, Subcontractor, at its expense, shall defend, indemnify and hold harmless the Owner, construction lender, if any, and Contractor from and against any such mechanic's liens and/or stop notices, including any legal action that is initiated by Subcontractor's subcontractors or suppliers to enforce either their mechanic's lien and/or the stop notice.

#### **ARTICLE 11. PROVISIONS FOR INSPECTION**

Subcontractor shall at all times furnish to Contractor and its representatives safe and adequate facilities for inspecting the Work and materials at the Project site or any place of business of Subcontractor, its subcontractors, suppliers or manufacturers where materials may be in storage, course of preparation or manufacture. 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 the PROJECT SUBCONTRACT AGREEMENT may be in the course of preparation or manufacture. Such reports shall



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show the progress of such preparation or 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.

#### **ARTICLE 12. MATERIALS AND WORK FURNISHED BY OTHERS**

In the event Subcontractor's 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 visually inspect, at the time of delivery or first access, the area constructed by others or the items provided by others and thereupon handle, store and install the items with such skill and care as to insure a satisfactory completion of the Work. Absent providing prior written notice to Contractor of any defect or deficiency discovered in the area constructed by others or material or equipment provided by others, Subcontractor's use of such items or commencement of Work in such areas shall be deemed to constitute acceptance of that area, material or equipment by Subcontractor. Loss or damage due to acts or omissions of Subcontractor shall be charged to the account of Subcontractor and deducted from monies otherwise due Subcontractor under the PROJECT SUBCONTRACT AGREEMENT.

#### **ARTICLE 13. PROTECTION OF WORK**

Subcontractor shall effectually secure and protect the Work done hereunder and assume full responsibility for the condition thereof until final acceptance by Owner and Contractor and any other entity set forth in the Contract Documents. Subcontractor further agrees to provide such protection as is necessary to protect the Work as well as the work of Contractor and other subcontractors from its operations. Subcontractor shall be liable for any loss or damage to its Work in place or materials on the Project Site as well as to Contractor's or other subcontractors' work in place or to any of their equipment and materials on the Project Site caused by it, its agents, employees, invitees, subcontractors or suppliers.

#### **ARTICLE 14. LABOR AGREEMENTS**

**14.1 Labor Agreements.** Subcontractor acknowledges that Contractor has entered into labor agreements covering work at its project sites, with the labor unions listed in this Section 14.1. Subcontractor hereby expressly agrees that all of the provisions of the applicable labor agreements are incorporated into this Master Agreement as if they were set forth in their entirety and cover the Work included in the PROJECT SUBCONTRACT AGREEMENT.

**Northern California District Council of Laborers Master Agreement  
and  
Operating Engineers Local 3 Master Agreement for Northern California  
and  
46 Northern California Counties Carpenters Master Agreement**

**14.2 Subcontractor Obligations.** Subcontractor agrees to comply with all of the terms and conditions of those labor agreements set forth in Section 14.1 above as if it were a party to said agreements including signatory status if required. Subcontractor further agrees to pay the wage rates, make the required trust fund payments into the respective labor trust funds, and observes the hours and all other terms and conditions set forth in the respective labor agreements referenced in Section 14.1 above. Subcontractor agrees to comply with the terms and provisions of said agreements setting forth the grievance and arbitration provisions. Furthermore, Subcontractor agrees to comply with the terms and provisions of said agreements setting forth the jurisdiction and scope of work therein for resolution of jurisdictional disputes. In the absence



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of any such procedure or if such procedure or if such procedure fails to promptly resolve the jurisdictional dispute, Subcontractor agrees, at its own cost and expense and upon request by 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.

**14.3 AFL-CIO.** Subcontractor acknowledges that terms and conditions of the labor agreements with the unions listed in Section 14.1 above may require that Subcontractor comply with additional labor agreements with unions affiliated with the AFL-CIO but not listed. When the terms and conditions of the referenced labor agreements so require, Subcontractor shall perform its Work pursuant to all terms and conditions of an appropriate labor agreement with a union affiliated with the AFL-CIO.

**14.4 Dual Gate.** Subcontractor agrees to work in unison with Contractor and other subcontractors and to be bound by the procedures to follow when a dual gate system has been established for the Project. Should there be picketing on the Project Site, and Contractor establishes a reserved gate for Subcontractor's purpose; it shall be the obligation of Subcontractor to use that reserve gate and to continue the proper performance of its Work without interruption or delay.

**14.5 Lower Tier Subcontractors.** Subcontractor further promises and agrees that it will bind and require all of its subcontractors and their subcontractors performing work at the Project Site covered by any of the labor agreements specified in Section 14.1 above to agree to all of the foregoing terms and conditions, to the same effect as herein provided with respect to Subcontractor.

**14.6 Other Collective Bargaining Agreements.** To the extent a Subcontractor is bound to any Collective Bargaining Agreement at the time of submitting its bid proposal, Subcontractor agrees to comply with the terms and conditions of said Collective Bargaining Agreement until completion of the Project

#### **ARTICLE 15. USE OR OCCUPANCY BY CONTRACTOR**

Whenever it may be useful or necessary for Contractor to do so, Contractor may occupy and use any portion of the Work which has been either partially or fully completed by Subcontractor before final inspection and acceptance thereof by Owner, but such use or occupancy shall not relieve Subcontractor of its guarantee of its Work, material and/or equipment nor of its obligation to make good, at its own expense, any defect in materials, equipment and workmanship which may occur or develop prior to Contractor's release from responsibility by Owner. Provided, however, Subcontractor shall not be responsible for the maintenance of such portion of the Work as may be used or occupied by Contractor, nor for any damage thereto that is due to or caused by the sole negligence of Contractor or Owner during such period of use or occupancy.

#### **ARTICLE 16. SUBCONTRACTOR REPRESENTATIVE**

Subcontractor shall have a full time qualified representative acceptable to the Contractor at the Project Site at all times when Subcontractor's Work is in progress. The representative shall attend all regularly or specially noticed meetings commencing two (2) weeks prior to the scheduled start of Subcontractor's Work and continuing thereafter until Subcontractor's Work has been completed and accepted by Contractor and Owner. The representative shall be authorized to represent and bind Subcontractor as to all phases of the Work. Prior to commencement of the Work, Subcontractor shall notify Contractor in writing who Subcontractor's representative will be, and in the event of any change, the new representative's name and qualifications prior to such change becoming effective.





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## **ARTICLE 17 EMPLOYMENT PROGRAMS AND REQUIREMENTS**

**17.1. Employment Programs.** Subcontractor hereby acknowledges that it is thoroughly familiar with all those employment programs and their requirements, including but not limited to DBE/MBE/WBE/DVBE/LBE and/or local hiring requirements, pertaining to the Project (collectively “Employment Programs”). If the Subcontractor claims specific certification, status or compliance under the Employment Programs, the Subcontractor shall take all steps necessary and shall make all necessary records available to the Contractor and the Owner to assure that Subcontractor possesses such certification or status and is in compliance with such Employment Programs. In the event that any lower tiered subcontractor or supplier of the Subcontractor is designated as or is required to have a specific certification, status or to have met other requirements under the Employment Programs, Subcontractor agrees to be responsible for insuring that said lower tiered subcontractors and/or suppliers meet and maintain all applicable requirements of the Employment Programs. Subcontractor acknowledges that Contractor is relying upon Subcontractor's representations regarding the validity of Subcontractor's or its lower tiered subcontractors' and suppliers' certification, status and compliance with the Employment Programs. Subcontractor, at its expense, shall be responsible for responding to any request for documentation of employment status or compliance with the Employment Programs from any public entity with jurisdiction over the Project. If Contractor is required to respond to such requests for information and/or documentation or enforcement actions by any public entity, Subcontractor shall reimburse Contractor for those fees and costs incurred by Contractor to have its attorneys and staff respond to those requests and/or enforcement action.

**17.2. Misrepresentation of Status or Compliance.** Any misrepresentation or loss of the employment certification or status or the lack of compliance with the requirements of the Employment Programs by the Subcontractor or any of its lower tier subcontractors or suppliers is a material breach of the PROJECT SUBCONTRACT AGREEMENT and grounds for immediate termination. In the event of such termination of the PROJECT SUBCONTRACT AGREEMENT, Subcontractor shall not be entitled to any compensation not already paid and shall indemnify Contractor against any penalties, fines or damages assessed against it by the Owner or any public entity due to such misrepresentations or loss of that certification or status or the lack of compliance with the requirements of the Employment Programs by the Subcontractor or any of its lower tier subcontractors or suppliers.

**17.3. Equal Opportunity.** Subcontractor shall comply with all equal employment opportunity and affirmative action requirements promulgated by any governmental authority, including, without limitations, the requirements of the Civil Rights Act of 1964, Presidential Executive Orders No. 10925, 11114 and 11246, the California Fair Employment Practices Act, the American with Disabilities Act of 1991 and the Family Medical Leave Act of 1993. 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 Fair Labor Standards Act provisions and California Code provisions covering the work.

**17.4. Certified Payroll and Field Reports.** Upon Contractor's request, Subcontractor, at its expense, shall prepare and submit (A) certified payroll reports and all other payroll records in the forms, format and procedures specified by the requesting public entity with a copy to Contractor no later than three (3) working days after its workers have been paid and (B) project foreman and/or superintendent field reports to Contractor no later than two (2) working days after Contractor's request. If Contractor is required to respond to a demand for or enforcement actions related to Subcontractor's or its subcontractors' certified payroll reports, Subcontractor shall reimburse Contractor for those fees and costs incurred by Contractor to have its attorneys and staff respond to those demands and/or enforcement action.

## **ARTICLE 18. CONTRACTOR'S REMEDIES**



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**18.1. Right to Adequate Assurance.** When reasonable grounds for insecurity arise with respect to Subcontractor's performance of the Work, Contractor may in writing demand adequate assurance of due performance. Subcontractor's failure to provide within two (2) working days of the demand such assurance of due performance as is adequate under the circumstances of the particular case is a material breach of the PROJECT SUBCONTRACT AGREEMENT.

**18.2. Notice to Cure.** If Subcontractor at any time (a) refuses or neglects to supply enough properly skilled workers and/or proper materials or equipment, or (b) fails to properly and diligently prosecute the Work covered by the PROJECT SUBCONTRACT AGREEMENT, or (c) fails to make prompt payment to its workers, subcontractors or suppliers, or (d) 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 (e) fails to provide adequate assurance pursuant to Section 18.1, or (f) has committed a material breach of a provision of the PROJECT SUBCONTRACT AGREEMENT, Contractor shall give Subcontractor written notice that within two (2) working days of its receipt of said notice, Subcontractor shall commence and continue satisfactory correction of such default or breach with diligence and promptness.

**18.3. Subcontractor Default.** If Subcontractor fails to commence, within two (2) working days after receipt from Contractor of the notice issued under Section 18.2, and diligently and promptly thereafter, correct the default or breach, then Contractor may pursue any remedies available by applicable law or statute and the Contract Documents, including but not limited to one or more of the following:

(i) withhold any sums due or thereafter to become due to Subcontractor under the PROJECT SUBCONTRACT AGREEMENT and during such period such withheld amounts shall not accrue interest;

(ii) provide and/or supplement any labor, materials and equipment as Contractor shall determine to cure such default and deduct the cost thereof from any money then due or thereafter to become due to Subcontractor under the PROJECT SUBCONTRACT AGREEMENT;

(iii) terminate the PROJECT SUBCONTRACT AGREEMENT, in which case all lower tiered subcontracts or purchase orders between Subcontractor and persons or entities providing labor, material or equipment pertaining to Subcontractor's Work shall be deemed assigned to Contractor, and Subcontractor hereby appoints Contractor as its attorney-in-fact to enforce the provisions of such subcontracts or purchase orders, provided that nothing herein shall obligate Contractor to accept the assignment of such subcontracts or purchase orders; and/or

(iv) take possession of all the materials to be installed belonging to Subcontractor at the Project Site without any further compensation to Subcontractor, and either complete the Work with its own forces or subcontract with any other subcontractor(s) to complete the Work and provide the material therefore; in which case if the unpaid portion of the Contract Price exceeds the charges, expenses and damages sustained by Contractor in completing the Work, such excess shall be paid by Contractor to Subcontractor in accordance with Article 3, but if such charges, expenses, and damages exceed said unpaid portion of the Contract Price, Subcontractor shall pay the difference to Contractor immediately upon written demand; or

(v) offset and apply any amounts due, including all costs incurred, Contractor as a result of such default against any earned but unpaid amounts owing to Subcontractor by Contractor under all open PROJECT SUBCONTRACT AGREEMENTS, including without limitation, any retainage held by Contractor and fifteen percent (15%) for overhead and ten percent



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(10%) for profit on all costs incurred by Contractor together with actual attorneys' fees incurred as a result of Subcontractor's default or breach.

Contractor's remedies are cumulative, and the exercise of one remedy shall not restrict Contractor, at the same time or thereafter, from exercising any other remedy set forth herein or provided by applicable law.

In the event a termination of the PROJECT SUBCONTRACT AGREEMENT for cause is found not to have been warranted under this or any other provision of the Contract Documents, the total compensation and damages that Subcontractor is entitled to recover on account of such termination shall be limited to the compensation that would have been payable to Subcontractor under the provisions of the PROJECT SUBCONTRACT AGREEMENT as if it had been terminated for Contractor's convenience pursuant to Section 18.4.

**18.4. Termination for Convenience.** Contractor may at its convenience and at any time and for any reason terminate Subcontractor's PROJECT SUBCONTRACT AGREEMENT. Termination shall be by service of written notice to Subcontractor at its regular 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, equipment and supplies in connection with the performance of the PROJECT SUBCONTRACT AGREEMENT, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Contractor or, at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived there from. Subcontractor shall thereafter do only such work as may be necessary to preserve and protect the Work already in progress and to protect material and equipment on the Project Site or in transit thereto.

Upon such termination, Subcontractor shall be entitled to payment only as follows: the lesser of (1) the amount owed pursuant to the Contract Documents or (2) the actual cost of the Work completed in conformity with the PROJECT SUBCONTRACT AGREEMENT, plus such other costs actually incurred by Subcontractor together with the mark up for overhead and profit as permitted by the Contract Documents and approved by Owner, and (3) if the Contract Documents do not allow for a markup for overhead and profit, Subcontractor shall receive fifteen percent (15%) of the cost of the Work referred to in item (2) above for overhead and profit. There shall be deducted from such sums as provided in this section the amount of any payments made to Subcontractor prior to the date of the termination of the PROJECT SUBCONTRACT AGREEMENT. In no event shall payment due hereunder exceed the amount due for approved units of work or percentage of completion of the Work. Subcontractor shall not be entitled to any claim or claim of lien against Contractor or Owner for any additional compensation, lost profit or other damages in the event of such termination and payment.

## **ARTICLE 19     BANKRUPTCY**

**19.1. Termination absent Cure.** Upon the appointment of a receiver for Subcontractor or upon Subcontractor making an assignment for the benefit of creditors, or if Subcontractor seeks protection under the Bankruptcy Code or commits any other act of insolvency, Contractor may, absent any applicable legal limitation, terminate the PROJECT SUBCONTRACT AGREEMENT upon giving two (2) working days written notice, by certified mail, to Subcontractor, its trustee, and its surety, if any, unless Subcontractor, the surety, or the trustee:



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- (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.

**19.2. Interim Remedies.** If Subcontractor is not performing in accordance with the Project Schedule at the time of the insolvency act, or at any subsequent time, Contractor, while awaiting the decision of Subcontractor or its trustee to reject or to accept the PROJECT SUBCONTRACT AGREEMENT and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under the Contract Documents as are reasonably necessary to maintain the Project Schedule. Contractor may offset against any sums due or to become due Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, 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 costs may exceed the unpaid balance of the Contract Price.

## **ARTICLE 20 HAZARDOUS MATERIALS**

Subcontractor and its Subcontractors shall use, handle, transport and dispose of all Hazardous Materials (as defined below) in compliance with all laws including but not limited to federal, state and local environmental, health or safety laws, including, but not limited to, all such statutes, regulations, rules, ordinances, codes, and rules of common law. Subcontractor further agrees that Subcontractor and its subcontractors shall not cause the discharge, release or disposal of any Hazardous Material on the Project Site. Subcontractor agrees to comply with Proposition 65 regarding warnings and the use of chemicals at the Project site and to not discharge or cause to be discharged any chemical on the Project site during the course of its Work, including cleaning any equipment at the Project Site. Subcontractor and its subcontractors shall, upon completion of performance of all duties under the PROJECT SUBCONTRACT AGREEMENT, remove all supplies, materials and waste containing any Hazardous Material from the Project Site. Subcontractor shall bear full financial responsibility, as between the parties of the PROJECT SUBCONTRACT AGREEMENT, for the compliance of Subcontractor and its subcontractors with the provisions of this Article 20. Should Subcontractor or its subcontractors discharge, release or dispose of any Hazardous Material on the Project Site in violation of this Article 20, Subcontractor shall immediately so inform Contractor in writing. In the event Subcontractor or its subcontractors encounter on the Project Site any pipeline, underground storage tank or other container, of any kind, that may contain a Hazardous Material, or encounter material reasonably believed to be a Hazardous Material, Subcontractor shall immediately stop work in the area affected and report the condition to Contractor in writing. Should Subcontractor or its subcontractors fail to take immediate steps to comply with the requirements of this Article 20 upon notice from Contractor, Subcontractor shall be in default of the PROJECT SUBCONTRACT AGREEMENT.

"Hazardous Material" means any substance: (1) the presence of which requires investigation or remediation under federal, state or local statute, regulation, ordinance, rule, code, order, action, policy or common law, or (2) defined as a "hazardous waste," "hazardous substance," pollutant or contaminant under any federal, state or local statute, regulation, ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. Sections 9601 et seq.) and/or the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.); or (3) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State or any political subdivision thereof; or (4) the presence of which on the Project Site causes or threatens to cause a nuisance upon the Project Site



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or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Project Site; or (5) which contains gasoline, diesel fuel or other petroleum hydrocarbons; or (6) which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde form insulation.

## **ARTICLE 21 INDEMNIFICATION & DEFENSE**

**21.1 Indemnity.** To the greatest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless Contractor, Owner, and Owner's architect and engineer, and any of their respective directors, officers, agents, employees, parents, affiliates, subsidiaries, partners, and representatives, and any other persons or entities designated to be indemnified in the Contract Documents (collectively, the "Indemnities") from and against all legal, arbitral; administrative or other proceedings, causes of action, penalties, assessments, fines, actions by governmental authorities, demands, liabilities, claims, damages, costs, losses and expenses, including but not limited to attorney's fees and costs ("Claims"), which arise out of or are in any way related to (i) this Master Agreement; (ii) PROJECT SUBCONTRACT AGREEMENT; (iii) actual or alleged actions or omissions by Subcontractor or any of its subcontractors, suppliers, vendors, employees, or persons for whom it is responsible, or (iv) Subcontractor's presence at the Project Site and/or its Work. Notwithstanding the foregoing, if any of the Contract Documents impose more stringent defense, indemnity, contribution or hold harmless obligations than are set forth herein, then the more stringent provisions shall apply, and Subcontractor shall owe the same defense, indemnity, contribution, and hold harmless obligations to Contractor as Contractor owes to Owner. Subcontractor's duty to defend Indemnities shall apply, and Subcontractor shall be required to furnish a defense, notwithstanding that there has not yet been a determination, adjudication, or finding of liability or fault on the part of Subcontractor or any party or person to be indemnified.

**21.2 Indemnity Limitations.** To the greatest extent permitted by law, the obligations of this Article 21 Indemnity shall apply regardless of whether or not the Claims were caused in part or contributed to by Indemnities; however, obligations specified above shall not extend to Claims to the extent they arise out of, pertain to, relate to: (a) the active negligence or willful misconduct of an Indemnitee, or any of their other agents, other servants, or other independent contractors who are responsible to them (b) to defects in design furnished by a specific Indemnitee, or (c) do not arise out of the Subcontractor's scope of Work. "

**21.3 Defense.** Subcontractor acknowledges the separate and independent duty to defend set forth in this Article 21 and California Civil Code 2782 and 2782.05, and shall defend the Indemnitees upon demand regardless of whether any indemnification obligations later arise. Subcontractor agrees that it shall, at its own cost, expense and risk, immediately upon tender, defend the Indemnitees in any and all Claims which may be brought or instituted against Indemnitees. In providing such defense, Subcontractor may appoint counsel of its choice, as provided by California Civil Code 2782 and 2782.05, however, such counsel shall be (i) experienced and capable of effectively handling the subject matter assigned, and (ii) free of all conflicts of interests, biases and prejudices against indemnified parties. Alternatively, as provided by California Civil Code 2782 and 2782.05, Subcontractor may elect to pay, within 30 days of receipt of an invoice from Contractor its allocable share of Contractor's defense fees and costs on an ongoing basis during the pendency of a claim subject to reallocation consistent with the limitations set forth in California Civil Code 2782 and 2782.05, and including any amounts reallocated upon final resolution of the Claims, either by settlement or judgment. Subcontractor shall provide written notice of its election to either defend the Indemnitees at its own cost, expense and risk or to reimburse the Contractor its allocable share of defense fees and costs within a reasonable time period following receipt of the written tender, and in no event later than 30 days following that receipt of the tender. Subcontractor's duty to defend the Indemnitees, as set forth above, shall arise immediately upon notification and demand by an Indemnitee to Subcontractor. If Subcontractor fails to timely and adequately provided the required



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notice and perform its obligations under this Article 21, Contractor shall have the all the rights, as set forth in California Civil Code 2782 and 2782.05, to pursue a claim against the Subcontractor for any resulting compensatory damages, interest on defense and indemnity costs, from the date incurred, consequential damages, and reasonable attorneys' fees incurred to recover these amounts. The obligations under this Article 21 are in no way limited or relieved by Subcontractor having obtained insurance, by the Insurance or other provisions of this Master Agreement or the PROJECT SUBCONTRACT AGREEMENT, and/or to the extent permitted by law, by the provisions of any workers compensation laws or regulations.

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

**21.7 Enforcement of Indemnity Rights.** Subcontractor shall reimburse Contractor and/or Owner for any and all legal expense incurred by either of them enforcing their indemnity and defense rights and Subcontractor's indemnity and defense obligations set forth in this Article 21, the PROJECT SUBCONTRACT AGREEMENT and the Contract Documents.

## **ARTICLE 22. INSURANCE**

**22.1 Insurance Obligations.** Prior to mobilizing to the Project Site and commencing any Work by or on behalf of Subcontractor relating to the Project, Subcontractor shall procure and maintain at its sole expense throughout the term specified in the PROJECT SUBCONTRACT AGREEMENT. The coverage shall be provided by insurers with Best's Ratings of A- or ratings required by the Contract Documents, whichever is better unless otherwise approved in writing in advance by the Contractor.

**22.2. Additional Insurance Conditions.** All insurances required under the PROJECT SUBCONTRACT AGREEMENT shall contain a waiver of subrogation as to the Contractor, the Owner and any other individuals or entities designated by the Owner in the Contract Documents to be included within the waiver. All liability policies required under the Contract Documents (except Worker's Compensation and Professional Liability) shall include a provision or endorsement naming as additional insureds the Contractor, Owner, their respective officers and employees and any other individuals or entities designated by the Owner in the Contract Documents to be named as additional insureds. Each policy shall stipulate that the insurance afforded to the additional insureds shall apply as primary insurance and that any other insurance carried by the additional insureds will be excess only and will not contribute to the primary insurance.

**22.3. Certificates of Insurance.** Certificates of Insurance and, at Contractor's request, certified copies of insurance policies, as evidence of the insurance required by the PROJECT SUBCONTRACT AGREEMENT, shall be furnished by





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Subcontractor to Contractor before Subcontractor mobilizes to the Project Site or performs any portion of the Work. The Certificates of Insurance shall provide by separate endorsement that there will be no cancellation or reduction of coverage without thirty (30) days prior written notice to Contractor.

The Subcontractor shall ensure that all its subcontractors shall procure and maintain insurance in like form including the Additional Insured requirements set forth in Section 22.2. Copies of the certificates must be provided to Contractor prior to those subcontractors performing any portion of the Work for Subcontractor.

**22.4. Acceptance of Subcontractor Insurance.** The required insurance shall be subject to the approval of the Contractor, but any acceptance of insurance certificates by Contractor shall in no way limit or relieve Subcontractor of the duties and responsibilities by said Subcontractor in the PROJECT SUBCONTRACT AGREEMENT. If higher limits or other forms of insurance are required in the Contract Documents, Subcontractor will comply with such requirements with no increase in the Contract Price.

**22.5. Failure of Subcontractor to Maintain Insurance.** Contractor may take such steps as are necessary to assure Subcontractor's compliance with its obligations under this Article 22 Insurance. In the event Subcontractor fails to maintain any insurance coverage required under the Contract Documents or the PROJECT SUBCONTRACT AGREEMENT, Contractor may purchase and maintain such coverage, but is not obligated to, and charge the cost of such insurance to Subcontractor.

**22.6. Failure of Contractor to Enforce.** Failure of Contractor to enforce in a timely manner any of the provisions of this Article 22 Insurance shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of the PROJECT SUBCONTRACT AGREEMENT. Any exceptions to the provisions of this Article 22 Insurance must be delineated in the PROJECT SUBCONTRACT AGREEMENT.

## **ARTICLE 23. DISPUTE RESOLUTION PROCEDURE**

**23.1. Disputes under General Contract Documents.** Any dispute resolution procedure in the Contract Documents shall be deemed incorporated in the PROJECT SUBCONTRACT AGREEMENT, and shall apply to any disputes arising hereunder, except disputes which have been waived by the making or acceptance of final payment or do not involve the Owner. Subject to compliance with all applicable laws, including but not limited to those relating to false claims, dispute and claim certifications, and cost and pricing data requirements, Contractor's sole obligation is to present any timely-filed claims by Subcontractor to Owner under such procedure or to permit Subcontractor to present its claims pursuant to a prior executed pass-thru agreement and, subject to the provisions of the Contract Documents, to pay to Subcontractor the proportionate part of any sums paid by the Owner to which Subcontractor is entitled.

**23.2. Settlement Negotiations.** Subject to dispute resolution procedures under Section 23.1 above, promptly upon notification by the Subcontractor of a dispute not involving the Owner, the Contractor and Subcontractor shall meet to informally resolve such dispute. In the event that a resolution is not achieved, the parties, prior to the initiation of any action or proceeding under this Article, shall make a good faith effort to resolve the dispute by negotiation between representatives with decision-making power, who, to the extent possible, shall not have had substantive involvement in the matters of the dispute, unless the parties otherwise agree. To facilitate the negotiation, the parties agree either to fashion a procedure themselves or seek the assistance of a person or organization experienced in alternative dispute resolution procedures, such as mediation or other similar procedures.



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**23.3 Disputes Under \$100,000.00.** If the controversy, dispute or claim is between the Contractor and Subcontractor and does not involve the Owner and in the aggregate does not exceed one hundred thousand Dollars (\$100,000.00) (Arbitration Claims), then such controversy, dispute or claim between the Contractor and Subcontractor shall be resolved through arbitration using a single arbitrator. All other controversies, disputes or claims shall be litigated in Superior Court in the City and County of San Francisco.

**23.4 Arbitration Rules.** All Arbitration Claims between the Subcontractor and the Contractor arising out of or related to the PROJECT SUBCONTRACT AGREEMENT or the breach thereof, and except for Arbitration Claims which have been waived by the making and acceptance of final payments, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. This agreement to arbitrate shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award rendered by the arbitrator(s) shall be final and judgement may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**23.5 Notice of Demand.** Notice of demand for arbitration shall be filed in writing with the American Arbitration Association and the other party. Demand form shall be that provided by American Arbitration Association. The demand for arbitration shall be made within a reasonable time after written notice of the Arbitration Claim has been given, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Arbitration Claim would be barred by the applicable statute of limitations.

**23.6 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.

**23.7. Work Continuation and Payment.** Unless otherwise agreed in writing, Subcontractor shall continue performing the Work and complying with the Project Schedule pending the resolution of the claim, and Contractor shall continue to make payments of undisputed sums to Subcontractor in accordance with the PROJECT SUBCONTRACT AGREEMENT.

**23.8. Consolidated Legal Proceedings.** To the extent not prohibited by their contracts with others, the claims and disputes of Owner, Contractor, Subcontractor and other subcontractors and suppliers involving a common question of fact or law shall be heard 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 the PROJECT SUBCONTRACT AGREEMENT and Subcontractor's claims or disputes.

**23.9. No Limitation of Rights or Remedies.** This Article shall not be deemed a limitation of any rights or remedies which either the Subcontractor or Contractor may have under any federal or state laws or under any applicable labor and material payment bonds, mechanic lien or stop notice rights unless such rights or remedies are expressly waived by it.

## **ARTICLE 24. SAFETY**

**24.1 Subcontractor Obligations.** Subcontractor shall comply fully 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



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and practices including the accident prevention safety program of Owner and/or Contractor. Subcontractor is solely responsible and liable for executing its Work in a safe and prudent manner, for establishing safety procedures and for protecting its employees and the public from property damage and/or injury during the performance of its Work under this Master Agreement and the applicable PROJECT SUBCONTRACT AGREEMENT. Safe Project conditions and safe working practices are solely the responsibility of Subcontractor and shall be followed at all times. Subcontractor, as controlling employer of its employees on multi-employer Projects shall be responsible with respect to the Subcontractor's employees and orders including, but not limited to Fed OSHA and Cal OSHA; for inspecting the Project site to determine that safe working conditions exist, for implementing and enforcing an injury and illness Prevent Program; for checking that all equipment, tool, ladders, scaffolding and material to be used on a Project are in safe working order; and for developing a fall protection plan for their employees. Subcontractor is specifically responsible and liable for all aspects of its use of work space jointly used by different subcontractors and Contractor, and Contractor specifically does not retain supervisory control of such joint use areas for purposes of liability for unsafe conditions. Subcontractor is responsible for providing first aid supplies, first aid, CPR and personal protective equipment for its employees. Subcontractor, its suppliers and subcontractors are required to provide a Safety Data Sheet (SDS) for any hazardous chemicals or materials containing hazardous chemicals brought to any Project site to Contractor together with documentation of its safety program. Subcontractor and Subcontractor's employees will not engage in any behavior which causes a risk to Subcontractor's employees or other persons on the Project site. If Subcontractor or any of its employees or agents creates any hazardous or dangerous condition, Subcontractor shall immediately, properly, and continuously take all steps necessary to warn and protect all others of such potential danger or hazard, including the erection and maintenance of any reasonably necessary guardrails and barricades. In addition to all other rights it may have, Contractor specifically reserves the right to demand removal from the Project of any employee of Subcontractor who engages in unsafe work practices.

**24.2 Substance Abuse Policy.** In keeping with Contractor's intention to provide a safe working environment for all of its employees, Contractor has established a Substance Abuse Policy for its employees and its subcontractors working at any Contractor jobsite. In summary, any Subcontractor's employee found to possess, sell, or use illegal or non-prescription drugs/alcohol or any controlled substance at any Contractor jobsite will be subject to immediate termination even for a first violation. It is the responsibility of Subcontractors to enforce this policy, including immediate termination of any of its employees found possessing, selling, or using illegal or non-prescription drugs/alcohol while on a Contractor jobsite and reporting same to the President. **THERE WILL BE NO EXCEPTION TO THE ABOVE ESTABLISHED POLICY.**

**NOTE TO SUBCONTRACTORS:** Any employee of a Subcontractor working on a Contractor jobsite found to possess, sell, or use illegal or non-prescription drugs/alcohol will be immediately discharged from the jobsite. Any incident with your employees in this regard can be detrimental to your continued relationship with Contractor.

**24.3 Injury Prevention Program.** Subcontractor shall provide its injury prevention program (IPP) to Contractor prior to the start of the Work and have weekly toolbox safety meetings with its workers and turn in copies of these reports to Contractor on a weekly basis.

**24.4 Safety Equipment.** Subcontractor will provide all necessary personal safety equipment, including hard hats for its employees. Lost time due to Subcontractor's employees being sent off the jobsite because of lack of safety



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equipment will not be a reason for not meeting the Project Schedule. Subcontractor's employees causing unsafe conditions or engaging in unsafe work practices will not be tolerated and may be sent off the jobsite at the discretion of the Contractor. Subcontractor will report to Contractor all accidents to or by Subcontractor's employee, its subcontractors or to equipment which occur at the jobsite. Copies of accident reports will be given to Contractor within 24 hours of the occurrence of the accident.

#### **ARTICLE 25. WARRANTY**

Subcontractor warrants and guarantees its Work against all deficiencies and defects in workmanship, equipment and/or materials. All Work not conforming to the requirements of the Contract Documents, including substitutions not properly approved and authorized, will be considered defective. Subcontractor agrees to promptly replace, correct, or otherwise remedy, at its sole cost and expense and to the satisfaction of the Owner and Contractor, any or all Work rejected by Owner or Contractor because of deficiencies or defects in the Work, including but not limited to installation or the materials or equipment that are part of the Work. Subcontractor guarantees that all of its Work will remain free of deficiency and defect for one (1) year after final acceptance of the Project by the Owner unless a longer period is required by the Contract Documents, in which case the longer warranty period will apply to the Work. This warranty as well as any warranty found in the Contract Documents is in addition to the other remedies Contractor has under the applicable PROJECT SUBCONTRACT AGREEMENT and California law.

#### **ARTICLE 26 LAYOUT RESPONSIBILITY**

Contractor shall establish axis lines and levels whereupon Subcontractor shall lay out and shall be strictly responsible for the accuracy of its Work and for any loss or damage to Contractor or other subcontractors engaged in work on the Project site by reason of failure of Subcontractor to set out or perform its Work correctly.

#### **ARTICLE 27. USE OF CONTRACTOR'S EQUIPMENT**

In the event Subcontractor shall use Contractor's equipment, materials, labor, supplies or facilities, Subcontractor shall **(1)** inspect the equipment materials, labor, supplies or facilities to insure that they are safe to operate or use; **(2)** agrees to accept the equipment, materials, labor, supplies or facilities "as-is"; **(3)** shall reimburse Contractor at a predetermined rate for their use; and **(4)** shall defend, indemnify and hold harmless Contractor from any claims for personal injury or death brought by any of Subcontractor's agents, employees, invitees or permittees who use Contractor's equipment, materials, labor, supplies or facilities. Further, Subcontractor assumes all responsibility for physical damage to such equipment, materials, labor, supplies or facilities used by Subcontractor or its agents, employees, invitees or permittees. In the event that Contractor's employees are used by Subcontractor, Subcontractor shall have full responsibility for the supervision of and the acts or omissions of Contractor's employees with regard to Subcontractor's use or employment of them.

#### **ARTICLE 28. ASSIGNMENT OF PROJECT SUBCONTRACT AGREEMENT**

Subcontractor shall not, without the prior written consent of Contractor, assign, transfer or sublet any portion or part of the Work required by the PROJECT SUBCONTRACT AGREEMENT, nor assign any payment hereunder to others. Contractor shall have all rights to assign all or any portion of the PROJECT SUBCONTRACT AGREEMENT to any third party without notice to or the consent of Subcontractor.



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#### **ARTICLE 29. INDEPENDENT CONTRACTOR**

Subcontractor is an independent contractor and shall, at its sole cost and expense, and without increase in the Contract Price, comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the Work and Project site; obtain all necessary permits and licenses therefore, pay all manufacturers' taxes, sales taxes, use taxes, processing taxes, and all federal and state taxes, insurance and contributions for social security and unemployment which are measured by wages, salaries, or other 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.

#### **ARTICLE 30. CLEAN-UP**

At all times during the performance of the Work, Subcontractor shall maintain the Project site and the immediately adjacent area surrounding the Project site in a clean, safe and orderly condition. Upon completion of the Work under the PROJECT SUBCONTRACT AGREEMENT, Subcontractor shall remove from the Project site all hazardous materials, temporary structures, equipment, debris and waste incident to its operation and clean all surfaces, fixtures, equipment, etc., relative to the performance of the Work.

As part of its obligations under the PROJECT SUBCONTRACT AGREEMENT and as part of the Contract Price, on a weekly basis on the day selected by Contractor, during the period that Subcontractor is performing its Work, and upon completing its Work, Subcontractor shall provide Contractor with one (1) employee who will work together with employees from the other subcontractors to perform general clean-up of the Project site under the direction of Contractor. If Subcontractor fails to provide one (1) employee for such work as required herein, Contractor shall be entitled to deduct from Subcontractor's next progress payment the sum of Two Hundred Fifty Dollars (\$250.00) for each week the Subcontractor fails to provide the required employee

#### **ARTICLE 31. ATTORNEYS' FEES**

In the event the parties become involved in litigation or arbitration with each other arising out of or related to the performance or non-performance of the PROJECT SUBCONTRACT AGREEMENT in which the services of an attorney or other expert are reasonably required, the prevailing party shall be fully compensated for the costs 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 the prevailing party for all attorneys' fees and expert's fees paid or incurred in good faith. In the case of a pass through claim, Subcontractor's recovery for attorneys' fees and other costs shall be limited to only those fees and costs actually recovered from the Owner.

#### **ARTICLE 32. PUBLIC WORK PROJECTS.**

Whenever the Work to be performed under the PROJECT SUBCONTRACT AGREEMENT is for a public entity, the work shall be governed by all applicable labor laws, regulations and standards issued or promulgated by a federal, state or other governmental authority having jurisdiction over the Work, including but not limited to, California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815. A copy of the six (6) Labor Code statutes are attached to the PROJECT SUBCONTRACT AGREEMENT.



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## ARTICLE 33 GENERAL PROVISIONS

**33.1 Governing Law.** Absent provisions within the Contract Documents to the contrary, this Master Agreement and PROJECT SUBCONTRACT AGREEMENT shall be governed by the laws of the State of California.

**33.2 Continuing Obligations.** The suspension, termination or completion of the PROJECT SUBCONTRACT AGREEMENT shall in no event terminate, prejudice or otherwise affect any rights arising out of or accruing in connection with this Master Agreement or the PROJECT SUBCONTRACT AGREEMENT which are attributable to events and circumstances occurring prior to such suspension, termination or completion. Without limiting the generality of the foregoing all insurance, indemnification, correction, warranty and other like obligations shall survive final completion and acceptance of the Work under any PROJECT SUBCONTRACT AGREEMENT or the earlier suspension or termination of a PROJECT SUBCONTRACT AGREEMENT.

**33.3 Construction and Severability.** If any portion of any provision of this Master Agreement or a PROJECT SUBCONTRACT AGREEMENT is found invalid or unenforceable, it is the intent of the parties that such provision shall be interpreted and/or rewritten, if necessary and legally permissible, to be consistent with the provision's original intent. If the provision cannot be interpreted or rewritten, it shall be deleted from the Master Agreement or PROJECT SUBCONTRACT AGREEMENT, whichever is applicable. Neither this Master Agreement nor any PROJECT SUBCONTRACT AGREEMENT shall be construed as though drafted by either Party, and the Parties specifically covenant that the rule of construction of an agreement against its drafter shall be inapplicable in the interpretation of this Master Agreement and any PROJECT SUBCONTRACT AGREEMENT.

**33.4 No Waiver.** Failure of Contractor to insist in any one or more cases upon strict performance of any terms, covenants or conditions of the Contract Documents and/or PROJECT SUBCONTRACT AGREEMENT shall not constitute a waiver or relinquishment of any term, covenant or condition with respect to any future performance required by the Contract Documents.

**33.5 Project Closeout Procedures.** Subcontractor must provide as built drawings and all other documentation as defined in the prime contract for project closeout. Any delay or failure to provide these documents will delay retention release payment until all documents have been provided.

**33.6 Signatures.** This Agreement may be signed in any manner that clearly evidences the Parties' intent to be bound, including by electronic means (subject to approval by Contractor). Contractor and Subcontractor may establish a procedure by which documents may be signed by the Parties using an electronic signature methodology designated by Contractor and agreed to by the Parties. Such electronic signature methodology will be considered binding and may be relied upon by both Parties for all purposes arising out of and relating to this Agreement.

**CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARDS. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR OF THE BOARD WHOSE ADDRESS IS:**

**CONTRACTORS' STATE LICENSE BOARD  
9821 BUSINESS PARK DRIVE  
SACRAMENTO, CA 95827-1703**





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**P. O. BOX 26999**

IN WITNESS WHEREOF, the parties hereto have executed this Master Subcontract Agreement by their proper officer or duly authorized agent.

Dated: \_\_\_\_\_ Dated: \_\_\_\_\_

**ANVIL BUILDERS INC**

**(INSERT SUBCONTRACTOR NAME)**

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Print Name:

Print Name:

Contractor's License No.: 952883 A&B

Contractor's License No.: \_\_\_\_\_



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# Exhibit A



CL #952883

Bond No. \_\_\_\_\_

Premium \_\_\_\_\_

\_\_\_\_\_

## SUBCONTRACT PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

That we \_\_\_\_\_ as Principal,

and \_\_\_\_\_ as Surety,

are held and firmly bound unto \_\_\_\_\_,

as Obligee, in the penal sum of \_\_\_\_\_

\_\_\_\_\_ DOLLARS (\$\_\_\_\_\_), lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE OBLIGATION IS SUCH, That Whereas, Principal entered into a certain subcontract (the "Subcontract"), which, together with all Subcontract documents, is incorporated herein by reference and shall be deemed a part hereof as fully as if set out herein, with Obligee dated \_\_\_\_\_, for \_\_\_\_\_

\_\_\_\_\_ being part of the work

covered by a contract (the "Contract") dated on or about \_\_\_\_\_, between

\_\_\_\_\_ hereinafter called Owner,

and Obligee for \_\_\_\_\_

which Contract, together with all Contract documents, and to the degree applicable to the Subcontract, is incorporated herein by reference and shall be deemed a part hereof as fully as if set out herein.

NOW, THEREFORE, if Principal shall pay promptly and in full the claims of all persons, firms or corporations, performing labor or furnishing equipment, materials, or supplies incurred in connection with the Subcontract, and shall indemnify and save harmless Obligee from all loss, liability, costs, damages, penalty, attorney's fees or expense, taxes, insurance premiums, any and all applicable contributions, allowances or other payments or deductions, however termed,



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Bond No. \_\_\_\_\_

required by statute or union labor agreement, including voluntary payment thereof by Obligee incurred in connection with the Subcontract or necessary to insure orderly prosecution of work under the Subcontract, then this obligation shall be of no effect, but otherwise it shall remain in full force and effect.

It is a condition hereof that any change, alteration, modification or amendment of any nature whatsoever that may be made to the Subcontract or to the Contract, their terms, their character, the scope of work to be performed pursuant thereto, the method of performance thereof, the time for completion thereof, or the manner, time, or amount of payment as provided therein, whether made under express agreement or not, may be made without notice to Surety and without affecting the obligations of Surety on this bond and without requiring the consent of Surety, and such change or changes shall not release Surety from any of its obligations hereunder, Surety hereby consenting to and waiving notice of any such change, alternation, modification or amendment.

Subject to the priority of Obligee with respect to recovery, persons, firms, or corporations who have supplied or furnished labor, material, machinery, equipment or supplies to Principal for use in the prosecution of the work provided for in the Subcontract shall have a direct right of action against Principal and Surety under this bond.

IN WITNESS WHEREOF, the said Principal and Surety have hereunto set their hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_

\* This bond must be executed by an officer of Surety or by a duly authorized Attorney-in-Fact. If executed by an Attorney-in-Fact, a properly notarized power of attorney from Surety showing such authority must be attached hereto.



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CL #952883

Bond No. \_\_\_\_\_

Premium \_\_\_\_\_

## SUBCONTRACT PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That we \_\_\_\_\_ as Principal,

and \_\_\_\_\_ as Surety,

are held and firmly bound unto \_\_\_\_\_

as Obligee, in the penal sum of \_\_\_\_\_

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE OBLIGATION IS SUCH, That Whereas, Principal entered into a certain subcontract (the "Subcontract"), which, together with all Subcontract documents, is incorporated herein by reference and shall be deemed a part hereof as fully as if set out herein, with Obligee dated \_\_\_\_\_, for \_\_\_\_\_

\_\_\_\_\_ being part of the work

covered by a contract (the "Contract") dated on or about \_\_\_\_\_, between

\_\_\_\_\_ hereinafter called Owner,

and Obligee for \_\_\_\_\_

which Contract, together with all Contract documents, and to the degree applicable to the Subcontract, is incorporated herein by reference and shall be deemed a part hereof as fully as if set out herein.

NOW, THEREFORE, if Principal shall fully indemnify and save harmless Obligee from all loss, liability, costs, damages, penalty, attorney's fees or expense which Obligee may incur by reason of Principal's failure to well and truly keep and perform each, every and all of the terms and conditions of the Subcontract on the part of Principal to be kept and performed, including but not limited to, completion within the time specified of all work covered by the Subcontract and performance of all obligations and guarantees of Obligee relating to such work under the





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Bond No. \_\_\_\_\_

Contract; then this obligation shall be of no effect, but otherwise it shall remain in full force and effect.

It is a condition hereof that any change, alteration, modification, or amendment of any nature whatsoever that may be made to the Subcontract or to the Contract, their terms, their character, the scope of work to be performed pursuant thereto, the method of performance thereof, the time for completion thereof, or the manner, time, or amount of payment as provided therein, whether made under express agreement or not, may be made without notice to Surety and without affecting the obligations of Surety on this bond and without requiring the consent of Surety, and such change or changes shall not release Surety from any of its obligations hereunder, Surety hereby consenting to and waiving notice of any such change, alternation, modification, or amendment.

It is a further condition hereof that no one other than Obligee and the successors, administrators, or assigns of Obligee shall have any right of action under this bond.

IN WITNESS WHEREOF, the Principal and Surety have hereunto set their hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_

\* This bond must be executed by an officer of Surety or by a duly authorized Attorney-in-Fact. If executed by an Attorney-in-Fact, a properly notarized power of attorney from Surety showing such authority must be attached hereto.