



MASTER SUBCONTRACT AGREEMENT (MSA)

TABLE OF CONTENTS

- 1. MASTER AGREEMENT**
- 2. SUBCONTRACT DOCUMENTS**
- 3. PAYMENT**
- 4. TIME**
- 5. CHANGES**
- 6. CLAIMS**
- 7. SHOP DRAWINGS AND SUBMITTALS**
- 8. DELAYS**
- 9. BONDS**
- 10. MECHANIC LIENS AND STOP NOTICES**
- 11. PROVISIONS FOR INSPECTION**
- 12. MATERIALS AND WORK FURNISHED BY OTHERS**
- 13. PROTECTION OF WORK**
- 14. USE OR OCCUPANCY BY CONTRACTOR**
- 15. SUBCONTRACTOR REPRESENTATIVE**
- 16. EMPLOYMENT PROGRAMS AND REQUIREMENTS**
- 17. CONTRACTOR'S REMEDIES**
- 18. BANKRUPTCY**
- 19. INDEMNIFICATION & DEFENSE**
- 20. INSURANCE**
- 21. DISPUTE RESOLUTION PROCEDURE**
- 22. SAFETY**
- 23. WARRANTY**
- 24. USE OF CONTRACTOR'S EQUIPMENT**
- 25. ASSIGNMENT OF AGREEMENT**
- 26. INDEPENDENT CONTRACTOR**
- 27. CLEAN-UP**
- 28. ATTORNEYS' FEES**
- 29. LABOR AGREEMENTS**
- 30. PUBLIC WORK PROJECTS**

THIS MASTER SUBCONTRACT AGREEMENT FOR CONSTRUCTION SERVICES (hereinafter "Master Agreement") is made and entered into this (*INSERT DATE*) by and between BBI-CON, Inc dba BBI Construction (hereinafter "Contractor") and (*INSERT NAME OF SUBCONTRACTOR*) (hereinafter "Subcontractor").

WITNESSETH:

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 with public and private owners for various construction projects.

1.2 SUBCONTRACTOR'S WORK: From time to time, Subcontractor provides work to and for Contractor, which is specifically described in the Project Agreements. With respect to such work, the Subcontractor agrees to furnish all materials, labor, tools, equipment, fuels, plants, scaffolds, appliances, temporary lighting, supplies, supervision, transportation and other things necessary to perform all work set forth in the Project Agreement.

1.3 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 to terminate the 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 Agreement has entered into by the Parties.

1.4. PROJECT 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 Agreement or Contractor has issued Subcontractor a Notice to Proceed (hereinafter "NTP"), which Subcontractor has signed evidencing its agreement to be bound to the terms and conditions contained in the applicable NTP and this Master Agreement for the work performed under NTP.

1.5 SCOPE OF WORK: The scope of Work for a specific project will be set forth in the Project Agreement.

1.6 SUBCONTRACT PRICE: Until otherwise agreed, Subcontractor's compensation for the Work shall be set forth in the Project Agreement. Payments shall be made in accordance with Project Agreement and this Master Agreement.

ARTICLE 2. SUBCONTRACT DOCUMENTS

2.1. Subcontract Documents Defined. THE "SUBCONTRACT DOCUMENTS" CONSIST OF THOSE DOCUMENTS IDENTIFIED IN THE AGREEMENT. UNLESS EXPRESSLY PROVIDED OTHERWISE IN THE GENERAL CONTRACT DOCUMENTS, THE SUBCONTRACT DOCUMENTS DO NOT INCLUDE ANY OTHER DOCUMENTS OR MATERIALS, SUCH AS (BY WAY OF EXAMPLE AND NOT BY WAY OF LIMITATION) THE NOTICE, ADVERTISEMENT OR INVITATION TO BID, INSTRUCTIONS TO BIDDERS, SAMPLE FORMS AND PROPOSALS, CONTRACTOR'S BID, PORTIONS OF THE ADDENDA RELATING TO ANY OF THESE, OR ANY SUBMITTALS. THE PERFORMANCE AND PAYMENT BONDS DESCRIBED BELOW, IF REQUIRED, SHALL BE INCLUDED IN THE SUBCONTRACT DOCUMENTS AND ARE PART OF THE AGREEMENT.

2.2. Intent of the Subcontract Documents. The Subcontract 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 General Contract Documents shall apply. The intent of the Subcontract Documents is to cause Subcontractor to provide, for not more than the Subcontract Price, all things necessary for the 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. It is not intended that the Subcontract 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 Subcontract Documents or by inference. Words and abbreviations which have well-known technical or trade meanings and are not otherwise specifically defined in the Subcontract 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 Subcontract Documents.

2.3. Discrepancies, Errors and Omissions. The Subcontract 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 Subcontract Documents, taken as a whole, and shall not avail itself of any manifest error, omission, discrepancy or ambiguity in the Subcontract 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, 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 Subcontract 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.

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, and words shall take precedence over numbers unless obviously incorrect. Addenda, Clarifications and Modifications shall have the same order of precedence as the specific Subcontract 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 Agreement is fully executed, is subject to the terms and conditions of the Subcontract 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 Subcontract Documents, Contractor shall pay the Subcontract Price to Subcontractor in progress payments in accordance with the procedures set forth in this Section 3. Subcontractor accepts the Subcontract Price, as adjusted pursuant to the Subcontract Documents, as full and complete compensation for: (a) 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) performing and completing all Work in accordance with the Subcontract Documents; (c) 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 Subcontract Documents; (d) 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; (e) all risks of every description connected with the Work; (f) foreseen or unforeseen price increases in everything necessary for the Work, including but not limited to materials, equipment or labor and (g) all expenses incurred by or in consequence of the suspension or discontinuance of the Work. Whenever the Subcontract Documents provide that Subcontractor is to do work, provide services or furnish materials for which no separate price is established in the 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 Subcontract 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 Agreement. The Schedule of Values shall allocate the entire Subcontract 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 Schedule of Values.

3.3. Application For Progress or Final Payment. Subcontractor shall submit an Application for Payment to the Contractor which is supported by such data substantiating Subcontractor's right to payment as the Contractor may require and reflecting the retainage provided elsewhere in the Subcontract Documents. The Application for Payment 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 for Payment, be it for a progress payment or final payment, shall be in the form of an AIA Document G702, Application and Certification for Payment, and supported by AIA Document G703, Continuation Sheet. The Application for Payment shall be

accompanied by: (1) an updated Schedule of Values current through the date of the Work included in the current Application for Progress Payment; (2) fully executed California Civil Code Section 3262 conditional waiver and release upon progress or final payment form from Subcontractor and each lower tier subcontractor performing Work which is the subject of the Application; (3) fully executed California Civil Code Section 3262 unconditional waiver and release upon progress payment from Subcontractor and each lower tier subcontractor performing Work for which payment was made in the preceding Application for Payment; (4) such evidence as the Contractor may, from time to time, request that each lower tiered subcontractor has received the funds allocated to it in any previous Applications for Payment; provided, however, that Contractor shall have no duty to verify that any lower tier subcontractors have been paid; (5) separate written certification by Subcontractor that: (i) all matters set forth in the Application for Payment and other documentation submitted in connection with the Application for Payment 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 for Payment; (iii) all changes in the Work subject to the Application have been properly recorded in the "as-built" documents; (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 Subcontract 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 for Payment 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 Subcontract 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 which shall be withheld from each progress payment for the Subcontractor. The retention shall be paid to Subcontractor upon satisfaction of all the conditions to final payment set forth in Section 3.6. Progress payments shall be made within 10 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. The first Application for Payment shall cover a period beginning on the date on which construction actually begins.

3.5. Grounds For Withholding Payment. In addition to such other grounds as may be provided elsewhere in the Subcontract Documents, the Contractor may decline to approve an Application for Payment, or Contractor may decline to make payment of, any monies otherwise payable to Subcontractor or the Contractor 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;
- (b) Third party claims filed or reasonable evidence indicating probable filing of such claims against Contractor and/or Owner;
- (c) Subcontractor's failure to make payments due lower tier subcontractors or for labor, materials or equipment;
- (d) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Subcontract 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 Subcontract Price will not be adequate to cover actual 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, 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 Subcontract 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 or Subcontractor for failure of Subcontractor to comply with state, federal or local laws and regulations; or
- (l) any other ground for withholding payment allowed by state or federal law, or as otherwise provided in the Agreement

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 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 Subcontract Documents and/or applicable provisions of law pertaining to the payment or withholding of monies due to subcontractors.

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 is determined to be acceptable under the Subcontract Documents, the 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 Subcontract 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 received and approved the final Application for Payment 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 Subcontract 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 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 payable to Subcontractor hereunder are hereby agreed by both Contractor and 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.

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 of 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 Agreement, Subcontract Documents 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 to make payment to Subcontractor. "Reasonable period of time" shall be determined according to the relevant circumstances, but in no event shall be less than the time Contractor, Contractor's sureties, and Subcontractor require to pursue to conclusion their legal remedies against Owner or other responsible party to obtain payment including (but not limited to) mechanics' lien remedies. 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 the 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, 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 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 its 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 Subcontract 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 Article 6 Claims 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 Agreement after notification from Contractor. It shall be Subcontractor's obligation to conform to the Project Schedule. Subcontractor shall prepare and obtain approval as required by the Subcontract Documents for all shop drawings, details, samples, and meet all other requirements necessary to the prosecution of the Work in conformance with the Project Schedule. Subcontractor shall coordinate the Work covered by the 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 Premises 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 Premises.

4.2. Material, Equipment and Personnel Requirements. Subcontractor shall:

(a) Furnish Contractor within ten (10) days from Contractor's request, or as required to maintain the Project Schedule, 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 jobsite;

(b) Furnish Contractor, upon issuance, a copy of each major purchase order and subcontract ; and

(c) Notify Contractor immediately by telephone and e-mail with confirmation via fax within seventy-two (72) hours, if Subcontractor finds that any material or equipment cannot be delivered as required to maintain the Project Schedule as updated by the Contractor.

4.3. Start Stops. Subcontractor acknowledges that specific start and stop dates will be announced as its Work progresses. Based on those start and stop dates, Subcontractor will schedule and coordinate the Work to insure compliance with the current Project Schedule.

4.4. Scheduling Responsibility. Subcontractor acknowledges and accepts responsibility to schedule and coordinate its Work with the Contractor, Owner, other subcontractors, governing agencies, testing and inspection entities.

4.5. Recovery Plan. If Subcontractor, through its own sole or partial fault or neglect, is not completing its Work in accordance with the Project Schedule, as updated by the Contractor, 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 twenty-four (24) hours 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 at Subcontractor's expense:

- (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.

4.6. Weather Requirements. From time to time, weather may impact the completion of the Work. 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.

4.7. 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, Subcontractor shall notify Contractor in writing of its proposed plan to complete the Work within the current Project Schedule which Contractor may accept or reject in its sole discretion.

ARTICLE 5. CHANGES

5.1. Changes. Subcontractor shall not make any changes in the Work without the prior written direction of the Contractor. If Subcontractor makes any unauthorized change, 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. Contractor may, at any time by written order 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 Agreement, and for each change make an equitable adjustment in the Subcontract Price and time of performance. If Subcontractor disagrees with such adjustment, Subcontractor shall comply with Article 6 Claims' requirements for submission of a claim. Resolution of the disagreement over the adjustment to the Subcontract Price and/or time of performance 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 Subcontract Documents. No increase or decrease in the Subcontract Price or time of performance shall be binding on Contractor unless agreed upon in writing.

5.2. Quotations. All requests for quotation for changes to the scope of Work must be returned to Contractor within three (3) working days from the issuance date of the request.

5.3. Time & Material. Any extra work, which Contractor and Subcontractor have agreed shall be performed on a time and material basis, shall be documented by work tags signed on a daily basis by either Contractor's project manager or superintendent. Signing of work tags 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. Subcontract Labor & Equipment Rates: Subject to and expressly conditioned on (1) properly signed extra work tags by Contractor's project manager or superintendent 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 Attachment SR to the Agreement, Subcontractor shall be paid for those hours of labor and equipment documented on the signed extra work tags in accordance with the rates set forth in Attachment SR. If the Owner disputes either the number of hours of labor or equipment or the rates set forth in Attachment SR; 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 Subcontract 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.

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 consistent with the General Contract Documents. In the absence of mark up provision in the General Contracts Documents, 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

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 daily time sheets 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 Agreement or the Subcontract Documents, whether made in the manner provided in this Article or not, shall release or exonerate, in whole or in part, any bond or any surety on any bond given in connection with the 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 Subcontract Price or time of performance, including but not limited to changes ordered by either the Owner or Contractor must be made in writing with detailed breakdown in the format as outlined below. Pricing must be prepared according to the labor rates and equipment rates established in the Agreement's Attachment SR.

Extra Work Pricing Format

Project Name: _____
 Work Performed by: _____
 Description of Work: _____
 Reason for Claim: _____
 Date Performed: _____ to _____
 Date Notified Contractor regarding Changes: _____
 Date of Report: _____

Labor: Hours x Hourly Wage	=	\$	_____
Material: Quantity x Unit Price	=	\$	_____
Equipment & Equipment Rental: Hours x Rate	=	\$	_____
Sub-Subcontractors (with separate breakdown in the same format)	=	\$	_____
Bond (if applicable)	=	\$	_____
Overhead & Profit (_____%)	=	\$	_____
Total		\$	_____

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 Subcontract Documents including, without limitation, notice, documentation and methods/forums for dispute resolution required by the General Contract Documents for like claims by Contractor upon 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 General 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 either institute an action or proceeding to recover any affirmative 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 either event, 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 assisting with the prosecution of Subcontractor's claim. Subcontractor shall cooperate with Contractor at times during the prosecution of the 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.

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 Subcontract 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. Shop drawings and/or submittals rejected by the Owner or its design consultant for incompleteness or non-compliance with the General 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 shall be approved by Owner or design consultant, deviate from or are inconsistent with the General 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 Subcontract Documents.

ARTICLE 8. DELAYS

8.1. Subcontractor Delays. Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages and liquidated damages in an amount no less than One Thousand Dollars (\$1,000.00) a day, sustained by Contractor, or for which Contractor may be liable to Owner or any other party because of Subcontractor's default or delay.

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, and in such event only, that Contractor obtains additional compensation from Owner on account of such delays, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor from Owner as is equitable under all of the circumstances. 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 Agreement, or at anytime upon 10 day's written notice to Subcontractor, Subcontractor shall, if required by Contractor, provide a labor and material bond and a performance bond, each in an amount equal to one hundred percent (100%) of the Subcontract Price. Said bonds shall be executed by a corporate surety acceptable to Contractor and shall be in a form satisfactory to Contractor. Contractor shall reimburse Subcontractor for the premium on said bonds unless otherwise provided herein or in the Subcontract 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 Agreement and Subcontractor shall have no right to payment for any work performed prior to termination.

ARTICLE 10. MECHANIC LIENS AND STOP NOTICES. Subcontractor shall not record a mechanic's lien against the Premises 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 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 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.

If Subcontractor's lower tiered 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 at the time of notification, Subcontractor 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 lower tiered subcontractors or suppliers to enforce either the 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 ample 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 Agreement may be in the course of preparation or manufacture. Such reports shall 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 examine, 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. Use of such items or commencement of Work by Subcontractor 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 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 Subcontract Documents. Subcontractor further agrees to provide such protection as is necessary to protect the work and the workmen of Contractor, Owner and other subcontractors from its operations. Subcontractor shall be liable for any loss or damage to 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, guests, lower tiered subcontractors or suppliers.

ARTICLE 14. 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 15. 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 weekly project or specially noticed meetings commencing two (2) weeks prior to the 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 is to be, and in the event of any change, the new representative's name and qualifications prior to such change becoming effective.

ARTICLE 16 – EMPLOYMENT PROGRAMS AND REQUIREMENTS

16.1. 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 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 subcontractor or supplier meets and maintains 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.

16.2. 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 Agreement and grounds for immediate termination. In the event of such termination of the 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.

16.3. Equal Opportunity. Subcontractor shall comply with all equal employment opportunity and affirmative action requirements promulgated by any governmental authority, including, but not limited to, the requirements and amendment of Title 7 of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the Americans with Disabilities Act of 1990, and the Family and 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 Labor Code provisions covering the performance of the Work.

16.4. 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 labor has 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 lower tiered 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 17. CONTRACTOR'S REMEDIES

17.1. 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 Agreement.

17.2. 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 Agreement, or (c) fails to make prompt payment to its workers, lower-tier 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 17.1, or (f) has committed a material breach of a provision of this 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.

17.3. Subcontractor Default. If Subcontractor fails to commence, within two (2) working days after receipt from Contractor of the notice issued under Section 17.2, and diligently thereafter, the correction of the default or breach, then Contractor may pursue any remedies available by common law or statute, 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 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 Agreement;

(iii) terminate the 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;

(iv) take possession of all the materials, tools, equipment and appliances belonging to Subcontractor at the Project site without any further compensation to Subcontractor, and either complete the Work or subcontract with any other person or persons to complete the Work and provide the material therefore; in which case if the unpaid portion of the Subcontract Price exceeds the charges, expenses and damages sustained by Contractor in completing the Work, such excess shall be paid by Contractor to Subcontractor, but if such charges, expenses, and damages exceed said unpaid portion of the Subcontract Price, Subcontractor shall pay the difference to Contractor immediately upon demand; or

(v) offset and apply any amounts due Contractor as a result of such default against any earned but unpaid amounts owing to Subcontractor by Contractor under the Agreement, including without limitation, any retainage held by Contractor.

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 Agreement is found not to have been warranted under this or any other provision of the Subcontract 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 Agreement as if the Agreement has been terminated for Contractor's convenience pursuant to Section 17.4.

17.4. Termination for Convenience. Contractor may at its convenience and at any time and for any reason terminate Subcontractor's services and work. 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 Agreement, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Contractor or, at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived therefrom. Subcontractor shall thereafter do only such work as may be necessary to preserve and protect the Work already in progress and to protect material and equipment on the 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 General Contract Documents or (2) the actual cost of the work completed in conformity with the Agreement, plus (2) such other costs actually incurred by Subcontractor as are permitted by the General Contract Documents and approved by Owner, and (3) if the General 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 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 18 BANKRUPTCY.

18.1. 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 Agreement upon giving forty-eight (48) hours written notice, by certified mail, to Subcontractor, its trustee, and its surety, if any, unless Subcontractor, the surety, or the trustee:

- (a) promptly cures all defaults;
- (b) provides adequate assurance of future performance;
- (c) compensates Contractor for actual pecuniary loss resulting from such defaults; and
- (d) assumes the obligations of Subcontractor within the statutory time limits.

18.2. 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 Agreement and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under the Subcontract 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 Subcontract Price.

ARTICLE 19 INDEMNIFICATION & DEFENSE

19.1. Subcontractor's Indemnity. With the exception that this Article 19 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the applicable laws of the State of California, Subcontractor shall indemnify and save harmless Contractor, Owner, including their respective officers, directors, partners, joint ventures, agents, employees, affiliates, parents and subsidiaries, as well as any other individuals or entities designated by the Owner in the General Contract Documents as being entitled to defense and indemnity and each of them, of and from any and all claims, including but not limited to demands, lawsuits, causes of action, damages, judgments, awards, costs, expenses, actual attorneys' and experts' fees, losses or liabilities, in law or in equity, of every kind and nature whatsoever (collectively "Claims") arising out of or in connection with the Agreement and/or Subcontractor's acts or omissions, including but not limited to:

- (a) Personal injury, including, but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to, any employees, invitees or agents of Subcontractor, its subcontractors or suppliers, Owner, Contractor, or any other subcontractor and/or damage to property of anyone (including loss of use thereof), caused or alleged to be caused in whole or in part by any act or omission of Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable regardless of whether such personal injury or damage is caused by a party indemnified hereunder;
- (b) Penalties imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance or statute, caused by the acts or omissions of Subcontractor or its lower tiered subcontractors or suppliers;
- (c) Infringement of any patent rights, which may be brought against the Contractor or Owner arising out Subcontractor's Work;
- (d) Claims and liens (see Article 10) for labor performed or materials used or furnished to be used on the Project, including all incidental or consequential damages resulting to Contractor or Owner from such claims or liens;
- (e) Subcontractor's failure to comply with the provisions of Article 20, Insurance and/or Article 29, Labor Agreement;
- (f) Any violation or infraction by Subcontractor or its lower tiered subcontractors or suppliers of any law, order, citation, rule, regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees, including, but not limited to, the use of Contractor's or others' equipment, hoists, elevators, or scaffolds (see Article 24);
- (g) Any failure or alleged failure to comply with the terms of the Agreement or the Subcontract Documents;
- (h) Damage to the Work or the work of Contractor, Owner or other subcontractors including the loss of use thereof; and
- (i) Submission of any false claim.

The indemnification provisions of (a) through (i) above shall extend to Claims occurring after the Agreement is terminated or completed as well as while it is in force. Such indemnity provisions apply regardless of any active and/or passive negligent act or

omission of Owner or Contractor or their agents or employees. Subcontractor, however, shall not be obligated under the Agreement to indemnify Owner or Contractor for Claims arising from the sole negligence or willful misconduct of Owner or Contractor or their agents, employees or independent contractors who are directly responsible to Owner or Contractor, or for defects in design furnished by such persons.

If and only if the Project is governed by California Civil Code §§895 et seq., then as to defect claims only, the foregoing indemnity is modified such that the Subcontractor is not obligated to indemnify Owner or Contractor for claims of construction defects ("Defect Claims") to the extent that such claims arise out of, pertain to, or relate to the negligence of the Owner, Contractor or their respective agents, servants, or independent contractors who are directly responsible to Owner or Contractor, 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 Work covered by the Agreement; however, Subcontractor shall nevertheless be obligated to defend Owner and Contractor from any such Defect Claims, subject to reallocation of those defense costs after final resolution of the claims pursuant to Civil Code §2782(d). Subcontractor's indemnity obligation under this Section is not affected by any insurance required by the Subcontract Documents.

19.2. Subcontractor Defense: Subcontractor, at its own cost, expense and risk, defend (with independent counsel reasonable acceptable and approved by Contractor) all Claims as defined in Section 19.1 that may be brought or instituted by third persons, including, but not limited to, governmental agencies or employees of Subcontractor, against Contractor and/or Owner including their respective officers, directors, partners, joint ventures, agents, employees, affiliates, parents and subsidiaries, as well as any other individuals or entities designated by the Owner in the General Contract Documents as being entitled to defense and indemnity and each of them; provided, as to Defect Claims only, upon final resolution of such Defect Claims, Contractor will reimburse Subcontractor for defense costs incurred in proportion to the negligence of the Owner, Contractor or their agents, servants, or independent contractors who are directly responsible to the Owner or Contractor, or for defects in design furnished by those persons, if any.

19.3 Judgments Subcontractor shall pay and satisfy any judgment or decree that may be rendered against Contractor or Owner including their respective officers, directors, partners, joint ventures, agents, employees, affiliates, parents and subsidiaries, as well as any other individuals or entities designated by the Owner in the General Contract Documents as being entitled to defense and indemnity, arising out of any such Claim or Defect Claim, whichever is applicable; and/or

19.4 Enforcement of Indemnity Rights. Subcontractor shall reimburse Contractor and/or Owner for any and all legal expense incurred by either of them enforcing the indemnity and defense rights and Subcontractor's indemnity and defense obligations granted in Article 19.

ARTICLE 20. INSURANCE 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 Subcontract Documents the insurance set forth in Attachment IR. The coverage shall be provided by insurers with Best's Ratings of A- or better unless otherwise approved in writing in advance by the Contractor.

20.1. Additional Conditions All insurances required under the 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 General Contract Documents to be included within the waiver. All liability policies required under the Subcontract 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 General Contract Documents to be named as additional insureds. The General Liability endorsement shall be at least as broad as form CG 2010 11-85 edition. 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.

20.2. Certificates of Insurance Certificates of Insurance and, at Contractor's request, certified copies of insurance policies, as evidence of the insurance required by the Agreement, shall be furnished by Subcontractor to Contractor before Subcontractor mobilizes to the Project site or performs any 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 tiers of its subcontractors shall procure and maintain insurance in like form including the Additional Insured requirements set forth in Section 20.1. Copies of the certificates must be provided to Contractor prior to those lower tiered subcontractors performing any portion of the Work.

20.3. 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 Agreement. If higher limits or other forms of insurance are required in the General Contract Documents, Subcontractor will comply with such requirements with no increase in the Subcontract Price.

20.4. 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 20 Insurance. In the event Subcontractor fails to maintain any insurance coverage required under the Subcontract Documents, Contractor may purchase and maintain such coverage, but is not obligated to, and charge the cost of such insurance to Subcontractor.

20.5. Failure of Contractor to Enforce Failure of Contractor to enforce in a timely manner any of the provisions of this Article 20 Insurance shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of the Agreement. Any exceptions to the provisions of this Article 20 Insurance must be delineated in the Agreement.

ARTICLE 21. DISPUTE RESOLUTION PROCEDURE

21.1. Disputes Under General Contract Documents. Any dispute resolution procedure in the General Contract Documents shall be deemed incorporated in the Agreement, and shall apply to any disputes arising hereunder, except disputes which have been waived by the making or acceptance of final payment. 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 permit Subcontractor to present the claims pursuant to a prior executed pass-thru agreement and, subject to the provisions of the Agreement, to pay to Subcontractor the proportionate part of any sums paid by the Owner to which Subcontractor is entitled.

21.2. Settlement Negotiations. Subject to dispute resolution procedures under Section 21.1 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 no resolution is achieved, the parties, prior to the initiation of any action or proceeding under this section, shall make a good faith effort to resolve the dispute by negotiation between representatives with decision-making power, who, to the extent possible, shall not have had substantive involvement in the matters of the dispute, unless the parties otherwise agree. To facilitate the negotiation, the parties agree either to fashion a procedure themselves or seek the assistance of a person or organization experienced in alternative dispute resolution procedures, such as mediation or other similar procedures.

21.3. 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 Agreement.

21.4. 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 Agreement and Subcontractor's claims or disputes.

21.5. No Limitation of Rights or Remedies. This Section 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 unless such rights or remedies are expressly waived by it.

ARTICLE 22. SAFETY Subcontractor shall comply fully with all laws, orders, citations, rules, regulations, standards and statutes affecting or relating to the safety of all workers who are working on the Project site, including but not limited to those with respect to occupational health and safety, the handling and storage of hazardous materials, accident prevention, safety equipment and practices including the accident prevention and safety programs of Owner and Contractor.

Subcontractor shall conduct inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for providing a safe place to work for its employees and for employees of its lower tiered subcontractors and suppliers, for adequacy of and required use of all safety equipment and for full compliance with the aforesaid laws, orders, citations, rules, regulations, standards and statutes.

ARTICLE 23. GUARANTEES 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 Subcontract Documents, including substitutions not properly approved and authorized, will be considered defective. Subcontractor agrees to replace, or otherwise remedy, at its sole cost and expense and to the satisfaction of the Owner and Contractor, any or all Work adjudged to be defective or improperly installed. 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. This provision is in addition to any warranty or guarantee contained in the General Contract Documents. Subcontractor shall promptly correct any of its Work that is rejected by the Owner or Contractor because of deficiencies or defects in the Work.

ARTICLE 24. 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 and indemnify Contractor from any claims for personal injury or death brought by any of Subcontractor's agents, employees 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 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 25. ASSIGNMENT OF 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 Agreement, nor assign any payment hereunder to others. Contractor shall have all rights to assign all or any portion of the Agreement to any third party without notice to Subcontractor.

ARTICLE 26. INDEPENDENT CONTRACTOR Subcontractor is an independent contractor and shall, at its sole cost and expense, and without increase in the Subcontract Price, comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the Work; obtain all necessary permits and licenses 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 27. 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 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 Agreement and as part of the Subcontract 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 28. 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 Agreement in which the services of an attorney or other expert are reasonably required, the prevailing party shall be fully compensated for the cost of its participation in such proceedings, including the cost incurred for attorneys' fees and experts' fees. Unless judgment goes by default, the attorneys' fee award shall not be computed in accordance with any court schedule, but shall be such as to fully reimburse all attorneys fees actually incurred in good faith, regardless of the size of a judgment, it being the intention of the parties to fully compensate the prevailing party for all attorneys' fees and experts 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 29. LABOR AGREEMENTS

Subcontractor acknowledges and agrees that the following labor agreements cover the Work on this Project:

**Northern California District Council of Laborers Master Agreement
and
Carpenters Master Agreement for Northern California**

Subcontractor hereby expressly agrees that all of the provisions of the applicable labor agreements are incorporated into the Agreement as if they were set forth in their entirety.

Subcontractor shall comply with all of the terms and conditions of those labor agreements as if it were a party to said agreements including signatory status if required. Subcontractor further shall pay the wage rates, make the required trust fund payments into the respective labor trust funds, and observe the hours and all other terms and conditions set forth in the respective labor agreements referenced below. 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 of any 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.

Subcontractor acknowledges that terms and conditions of the labor agreements with the unions listed herein may require that Subcontractor comply with additional labor agreements with unions affiliated with the AFL-CIO and/or the United Brotherhood of Carpenters and Joiners of America and/or the Laborers International Union of North America but not listed herein. 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 and/or the United Brotherhood of Carpenters and Joiners of America and/or the Laborers International Union of North America.

Should there be a labor dispute at the Project site and should a reserve gate or neutral access be established for Subcontractor and other subcontractors, it shall be the obligation of Subcontractor to have all of its employees and lower tier subcontractors use that reserve gate as well as to continue the proper performance of its Work without interruption or delay.

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

ARTICLE 30 PUBLIC WORK PROJECTS. Whenever the Work to be performed under the 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) California Labor Code statutes is set forth in Attachment PW(CA). A copy of the appropriate Code of Federal Regulations is set forth in Attachment PW(Fed).

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
P. O. BOX 26999**

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

Subcontractor	BBI-CON Inc. dba BBI Construction
By: _____	Contractor
Print Name: _____	By: _____
Title: _____	Print Name: _____
Subcontractor's License No: _____	Title: _____
	CA License No: <u>767890</u>