

CANNON BUILDING SERVICES, INC.

MASTER SUBCONTRACT AGREEMENT

THIS MASTER SUBCONTRACT AGREEMENT ("Agreement") is made and entered into effective as of _____ by and between **CANNON BUILDING SERVICES, INC.**, a California corporation ("Contractor") and _____ "Subcontractor"). The addresses and telephone numbers of Contractor and Subcontractor are set forth below:

CONTRACTOR ADDRESS: 1861 E. Miraloma Avenue
Placentia, CA 92870
PHONE #: (714) 630-9570
FAX #: (714) 630-9575
LICENSE #: 553842
CONTACT PERSON: Angela Foster

SUBCONTRACTOR ADDRESS:
PHONE #:
FAX #:
LICENSE #:
FEDERAL TAX ID #:
CONTACT PERSON:

The parties intend that the terms and conditions of this Agreement and all of the attachments hereto shall apply to all work and services performed by Subcontractor pursuant to any Project Authorization Agreement ("Project Agreement") that may be entered into between Contractor and Subcontractor. Unless and until a Project Agreement is executed and delivered by the parties, Subcontractor is not authorized to provide any work or services for any project and Contractor has no obligation to make any payments to Subcontractor for any work performed. All capitalized terms not otherwise defined herein shall have the meanings assigned to them in the General Conditions to Subcontract Agreement ("General Conditions") attached hereto as Exhibit "A" and incorporated herein. The form of Project Agreement is attached hereto as Exhibit "B", and such Project Agreement will contain, when executed and delivered by the parties, the authorization to perform work for a specific project, the time periods for performing such work in accordance with the progress schedule, the applicable Contract Documents and plans and specifications for such project and the Subcontract Price. The following documents are attached to and incorporated into this Agreement:

1. Exhibit "A" – General Conditions to Master Subcontract Agreement
2. Exhibit "B" – Form of Project Authorization Agreement and all Schedules attached thereto
3. Exhibit "C" – Billing and Payment Procedures and all Schedules attached thereto
4. Exhibit "D" – Insurance Requirements
5. Exhibit "E" – Amendment to Master Subcontract Agreement (As Issued)

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR (4) YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN TEN (10) YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA, 95826.

IN WITNESS WHEREOF, the parties hereto have executed this Master Subcontract Agreement as of the day and year written above.

"Contractor"

"Subcontractor"

CANNON BUILDING SERVICES, INC.
a California corporation

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT "A"

GENERAL CONDITIONS TO MASTER SUBCONTRACT AGREEMENT

1. OWNER Any references to "Owner" shall refer to the owner identified in the Project Agreement. Owner is an express third-party beneficiary of the Project Agreement. Owner has the right to enforce the provisions of the Project Agreement against Subcontractor. At any time Owner requests information it deems necessary from Subcontractor, Subcontractor agrees to provide such information within three (3) days of Owner's request. In the event Contractor's involvement in the Project terminates for any reason, Subcontractor, upon Owner's written request, will recognize Owner or any person or entity designated by Owner as the successor-in-interest to Contractor under any Project Agreement, but in no event shall Owner or such other entity be responsible for any default of Contractor or any liabilities under a Project Agreement arising prior to the date of Owner's notice to Subcontractor electing to continue Subcontractor's Work.

2. STATEMENT OF WORK. Subcontractor will furnish and pay for all labor, equipment, tools, machinery, scaffolding, utilities, consumable supplies, permits, supervision, materials and all taxes necessary to construct and complete upon the project identified in the Project Agreement ("Project"), in a first class, workmanlike and substantial manner, the work described in and reasonably inferable from the "Contract Documents" described any Project Agreement (collectively, the "Work"). Subcontractor shall perform the Work in strict compliance with the Contract Documents and all "Codes", as defined herein. If from time to time the Work is modified by written field authorizations, purchase orders or amendments mutually agreed upon, the terms and conditions of this Agreement shall apply to all such modifications. Subcontractor agrees to perform all such modifications as are reasonably within the scope of the Work or reasonably necessary to complete the Work. The fact that any part of the Work necessary to meet the requirements of Owner, Contractor and all governmental and private agencies having jurisdiction ("Agencies"), and the Contract Documents, is not specifically mentioned in this Agreement will not excuse Subcontractor from performance thereof if said Work to be performed is usual and normal in the craft or trade performed by Subcontractor or reasonably inferable from the Contract Documents. The Work includes in addition, but is not limited to, the immediate repair or replacement of defective or damaged workmanship and/or materials installed by Subcontractor upon being notified to make such repairs or replacements.

3. CODES. Subcontractor shall fully comply with all applicable statutes, ordinances, building codes, laws, manufacturers' and/or suppliers' specifications, rules and regulations and other requirements of all Agencies and of all craft unions involved (if any), including all decrees, resolutions, and other acts of any governmental authority, including Federal and State labor, prevailing wage and tax laws, which are or may be applicable to this Agreement and Subcontractor's performance hereunder (collectively, "Codes"). Subcontractor shall be solely responsible for determining the applicability and local effect and interpretation of all Codes affecting the Work. Subcontractor specifically understands that the violation of Codes may result in the imposition of monetary fines or other penalties by regulatory agencies. Subcontractor's acceptance of this Agreement indicates Subcontractor's acknowledgement that in the event of any violation of any such Codes, Subcontractor will be held solely responsible for any fines and penalties.

4. CONTRACT DOCUMENTS Subcontractor agrees to complete the Work in strict accordance with the "Contract Documents" (defined below) and with all requirements of the appropriate Agencies and to the satisfaction of the Contractor and Owner. The "Contract Documents" consist of the following, which, together with written modifications made in the manner provided therein and issued subsequent to the execution of the Agreement, form the entire agreement between the parties and shall be collectively referred to herein sometimes as the Contract:

1. The Master Subcontract Agreement.
2. These General Conditions.
3. The executed Project Authorization Agreement for each Project and all Schedules attached thereto.
4. Exhibit "C" – Billing and Payment Procedures and all Schedules attached thereto.
5. Exhibit "D" – Insurance Requirements.
6. Exhibit "E" – Amendment to Master Subcontract Agreement (As Issued)
7. Any other Exhibits or Schedules attached hereto or thereto and which are by this reference incorporated herein.

Any modification or updates to these Exhibits and Schedules during the term of this Agreement will be incorporated into the Project Agreement.

8. Any supplemental general conditions, special conditions, sequence sheets, preliminary information, details, profiles, deed restrictions, plans, specifications, addenda, amendments including, but not limited to, Contractor's Field Change Orders

for Extra Work ("Change Order") and all other instruments issued by or on behalf of Contractor and/or prepared by the architect for the Project, and all Codes applicable to the Work.

9. The terms and conditions of the prime contract between Owner and Contractor for the Project, to the extent that such terms and conditions are applicable in any way to the Work to be performed by Subcontractor under this Agreement.

All of the above-referenced documents are incorporated into this Agreement by this reference with the same force and effect as if the same were set forth at length herein. Subcontractor agrees that Subcontractor and its vendors, suppliers, materialmen and sub-subcontractors of every tier (collectively, "Sub-subcontractors") will be and are bound by any and all of the Contract Documents insofar as they relate in any part or in any way, directly or indirectly, to the Work. If there is any conflict between the terms of the Contract Documents including, without limitation, the descriptions of the Work contained therein, or any conflict between the Contract Documents and applicable Codes, Subcontractor must immediately bring the conflict to the attention of Contractor and the conflict shall be resolved in accordance with the terms of the General Conditions.

5. PERFORMANCE. Time is of the essence with respect to this Agreement and any Project Agreement. Subcontractor agrees to commence Work as directed in the Project Agreement. Subcontractor further agrees to proceed diligently and in strict accordance with Contractor's time schedule ("Schedule") and directions, and to employ at Subcontractor's expense whatever means Contractor deems necessary to meet this Schedule. Subcontractor shall not commence the Work, order any materials, employ any Sub-subcontractors or enter into any commitments affecting the Project or the property prior to Contractor's notice to proceed (which can be given only in writing) without Contractor's prior written consent. Subcontractor acknowledges that it is not entitled to payment for any Work performed unless it has received a written notice to proceed from Contractor. Should Subcontractor fail to perform its Work in strict accordance with the Schedule, and Contractor becomes liable to Owner for delay damages under the prime contract as a result of Subcontractor's delay, Subcontractor shall be liable to Contractor for all delay damages payable by Contractor to Owner.

6. SUBCONTRACT PRICE, PAYMENTS AND CHANGE ORDERS

A. For the full and strict performance of all of Subcontractor's obligations hereunder including without limitation all of the procedures and requirements of Exhibit "C", and so long as Subcontractor is not in default under this Agreement, Contractor shall pay Subcontractor the "Subcontract Price" described in the Project Agreement, and in accordance with the terms of Exhibit "C". The Subcontract Price is intended to include all increases in costs, foreseen or unforeseen, including, without limitation, taxes, labor, materials, and transportation costs, all of which are to borne by Subcontractor. All loss or damage arising from any Work performed under this Agreement through unforeseen or unusual obstructions, difficulties or delays which may be encountered in the prosecution of same, or through the action of the elements, shall be borne by Subcontractor.

B. The intent of this Agreement is to completely cover the scope of the Work and is to be a "No Extra" contract. It is agreed that all labor, materials and equipment furnished by Subcontractor shall be deemed to be included within the Subcontract Price even though the labor, materials and equipment are not specifically required or demanded in this Agreement or the Contract Documents, and that the same nevertheless shall be included within the scope of labor, materials and equipment properly and necessarily required for the performance of the Work. This provision is subject to only one exception, and none other: That the Subcontract Price does not include any labor, materials and equipment furnished by Subcontractor which are authorized and stated by Contractor in writing to be "Extra" and for which the sum to be paid in addition to the Subcontract Price is specified in a written "Change Order" executed by both Contractor and Subcontractor. Contractor, at any time during the progress of this Project, may order in writing, additions, changes, or modifications to the Contract Documents, and the value thereof, as mutually agreed, in such written Change Order, shall be added to or deducted from the Subcontract Price, as the case may be. Contractor shall at any time have the right to direct Subcontractor to perform any extra work. Subcontractor acknowledges that in the event of such extra work the time of completion will remain fixed unless expressly agreed to in writing.

C. In the event that Subcontractor and Contractor cannot arrive at a mutually satisfactory price or time extension for the requested extra work, the Contractor reserves the right to direct the Subcontractor, in writing, to proceed with the extra work on a time and material basis. The basis for payment of Extra Work on a "time and material" basis will be as follows: (a) actual cost of materials used at current market prices plus sales tax; (b) actual labor used at the prevailing wages, (c) actual cost of equipment used at agreed rental rates, (d) to the cost of (a), (b), and (c) an amount equal to the profit and overhead percentages as utilized by Subcontractor in its bid for the original scope of work under this contract, and (e) all material, equipment and labor used shall be verified by daily tickets duly signed as accepted by Contractor's representative. No payments shall be made unless such evidence is presented.

D. All Change Orders must be in writing, signed by Subcontractor and Contractor. Should Subcontractor do any work which Subcontractor considers "extra" without first obtaining a written Change Order, Subcontractor does so with the possibility of not receiving payment. Any adjustment in time or compensation contained in any Change Order shall fully dispose of all claims by Subcontractor for any adjustment in price and time as a result of the extra work referenced therein, on any basis whatsoever. If any Change Order does not contain any adjustment in compensation and/or time, the parties agree that such Change Order confirms the parties' agreement that there shall be no adjustment in compensation and/or time. Subcontractor agrees it shall submit a written claim for extras to Contractor within fifteen (15) calendar days after the occurrence of the event giving rise to such claim. Subcontractor's failure to strictly comply with this notice provision shall be deemed a waiver of Subcontractor's right to assert any such claim for extras.

E. Any payment made hereunder prior to completion and acceptance of the completed Work shall not be construed as evidence of acceptance by Contractor of any part of Subcontractor's Work; nor shall any payment hereunder, without compliance with the provisions of this Agreement by Subcontractor, be deemed a waiver by Contractor of such compliance. Construction in progress shall be subject to inspection and approval by the Agencies and by Contractor and its representatives. Progress payments shall be conditioned upon prior inspection and approval of the Work by such Agencies and by Contractor and its representatives.

7. **PRIOR AND RELATED WORK.** The Subcontractor, as a part of the Subcontract Price, shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly, and to fit it to, receive or be received by the work of other subcontractors, shown in or reasonably implied by the Contract Documents. Subcontractor agrees to protect the work of others from damage as a result of its operations. Should Subcontractor, or its Sub-subcontractors cause damage to any other subcontractors' work, Subcontractor agrees, upon demand, to compensate Contractor to the extent of such damage.

8. **SUBCONTRACTOR'S RESPONSIBILITY FOR THE WORK.** Subcontractor acknowledges and agrees that it has the sole and exclusive responsibility for the performance of the Work, including supervising and inspecting the Work to assure compliance with the Contract Documents and all Codes, and that Contractor's right to approve and inspect Subcontractor's Work imposes no duty on Contractor to discover or identify items not in compliance. Any inspection or approval by Contractor of the Work shall not be considered or construed as an inspection or approval of conditions not in compliance with the Contract Documents or Codes. Subcontractor shall cause its own fully-qualified quality control personnel to inspect and approve all Work performed by or on behalf of Subcontractor at all appropriate stages of construction, and shall promptly report in writing to Contractor any and all items relating to the Work, not in compliance with the Contract Documents and/or Codes. Subcontractor shall promptly take all corrective action necessary to bring the Work into compliance at its own expense, without an adjustment to the Subcontract Price. Subcontractor shall obtain a written acknowledgment signed by Contractor identifying any reported items which Contractor approves without correction, and shall keep and maintain a copy of the items so documented and acknowledged for ten (10) years from the date of completion of the project. The failure of Subcontractor to maintain full documentation in conformance with this section of any item not in compliance shall be deemed an express representation by Subcontractor that the Work and all related work has been performed in compliance with the Contract Documents and Codes.

9. **INSURANCE.** During the term of this Agreement, or for such longer period specified herein, Subcontractor shall comply with the insurance requirements set forth on Exhibit "D" attached hereto.

10. **WARRANTY.** Neither the final nor any progress payments shall relieve Subcontractor of responsibility for faulty materials or workmanship. Subcontractor warrants to Contractor that the materials and equipment furnished under the Agreement will be of good quality, without defects or faults and new unless otherwise expressly required or permitted by the Contract Documents, that the Work will be free from all faults and defects and conform with the requirements of the Contract Documents. Subcontractor's Work not conforming with these requirements, including substitutions not properly approved and authorized shall be referred to herein as "Defective Work". Without limiting any of Subcontractor's warranties and/or obligations otherwise imposed under and by this Agreement or by law, Subcontractor agrees to immediately, and without delay, at its sole cost and expense, repair or replace to the satisfaction of Contractor any and all Defective Work including, without limitation, all equipment and materials determined by Contractor to be faulty, defective or improperly installed including any portion of the Work damaged by the Defective Work. Subcontractor shall assure that any and all equipment, material and manufacturers warranties shall run to the benefit of and be assigned to Owner and Contractor. Subcontractor shall correct ("Corrective Work") Defective Work promptly upon delivery of notice ("Notice of Defect") from the Contractor to do so and in all events shall commence such correction not later than forty-eight (48) hours after delivery of such notice from Contractor (except in an emergency, Subcontractor shall immediately commence the correction of Defective Work). After receipt of the Notice of Defect and commencement of the corrective action, Subcontractor shall diligently and continuously complete the Corrective Work to the satisfaction of Contractor. If Subcontractor fails to commence the Corrective Work within the required 48-hour period, or fails to diligently and continuously work to complete the Corrective Work, Contractor shall have the right (but not the obligation) to perform the Corrective Work. In the event Contractor performs the Corrective Work, the cost of performing the Corrective Work Contractor plus a sum of 10% in excess of the actual cost of the Corrective Work for Contractor's overhead and profit, shall be immediately due and payable by Subcontractor to Contractor. The Subcontractor shall be responsible for enforcing any and all warranties given by Sub-subcontractors, suppliers or manufacturers. Subcontractor's obligations under this Warranty provision shall survive the expiration or any termination of the Agreement. This warranty, including all equipment and material warranties, shall inure to the benefit of both Contractor and Owner.

11. **INDEMNITY** 11.1 To the fullest extent permitted by law, Subcontractor agrees to protect, defend (at Subcontractor's sole expense and with counsel acceptable to Contractor and Owner), indemnify and hold Contractor, Owner, and their parent, subsidiary and affiliated entities, and all such parties' partners, shareholders, members, officers, directors, agents, representatives and employees and Owner's lender(s) (collectively, "Indemnitees") harmless from and against any and all losses, damages, liabilities, demands, expenses, costs, debts, causes of action, suits, penalties, fines, judgments, claims and liens (including mechanics' liens and stop notices), including, without limitation, attorneys' fees, consulting costs and court costs, including, without limitation, the cost of appellate proceedings and disbursements (collectively, "Claims"), including, without limitation, Claims for injury (bodily injury and/or personal injury) to or death of persons (including, without limitation, any employee of Subcontractor or an Indemnitee), loss of, loss of use of, or damage to property, arising out of, or relating in any way, directly or indirectly, to (i) the Work, or (ii) Subcontractor's breach or default of its obligations hereunder, including, without limitation, violation of or failure to comply with any Code, or (iii) Subcontractor's presence,

or activities conducted, in, at or about the Project, or any other act or omission by Subcontractor, its sub-subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable, and out of which any Claim arises. Subcontractor's obligations under this Paragraph 11 shall apply regardless of the nature of Subcontractor's conduct, acts or omissions. Actual or alleged negligence or fault on the part of Subcontractor is not a prerequisite to indemnification of the Indemnitees hereunder. Subcontractor's obligations under this Paragraph 11 shall apply regardless of the passive negligence of Indemnitees and regardless of whether liability without fault is imposed or sought to be imposed on Indemnitees, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement. Subcontractor shall not be obligated to indemnify an Indemnitee to the extent it is determined by a court of competent jurisdiction that the Claim arises from the active negligence, sole negligence or willful misconduct of the Indemnitee sought to be indemnified or its agents, servants or independent contractors who are directly responsible to it, other than Subcontractor, or for defects in design furnished by such persons, or for Claims that do not arise out of Subcontractor's scope of Work. Indemnitees' right to indemnification by Subcontractor under the foregoing shall be independent of Indemnitees' rights under the insurance to be provided under Exhibit "D". The Indemnitees shall be entitled to recover their reasonable attorneys' fees and costs incurred in enforcing this indemnification provision, and in defending against, or negotiating settlement of, any Claim.

11.1.1 Subcontractor shall be liable to the Indemnitees for any loss of or damage to the property of the Indemnitees resulting directly or indirectly from Subcontractor's performance of this Agreement, regardless of passive negligence of the Indemnitees, except to the extent that such liability is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement.

11.1.2 Subcontractor shall include in all agreements with Sub-subcontractors clauses substantially similar to Paragraph 11.1 above wherein the Sub-subcontractor agrees to indemnify Subcontractor and Indemnitees and wherein the Sub-subcontractor agrees to be liable to Indemnitees for loss of or damage to their property.

11.1.3 Subcontractor's duty to defend Indemnitees is entirely separate from, independent of and free-standing of Subcontractor's duty to indemnify Indemnitees, including without limitation, the defense of Indemnitees against claims for which Indemnitees (or any of them) may be strictly liable and applies whether the issue of Subcontractor's negligence, breach of contract or other fault or obligation has been determined and whether Indemnitees (or any of them) have paid any sums, or incurred any detriment, arising out of or resulting directly or indirectly from Subcontractor's performance of the Work. It is the parties' intention that Indemnitees (or any of them) shall be entitled to obtain summary adjudication of Subcontractor's duty to defend Indemnitees at any stage of any claim or suit within the scope of this Paragraph 11.

11.1.4 Payment to Subcontractor by any Indemnitee shall not be a condition precedent to enforcing such parties' right to a defense and indemnity.

11.1.5 All fees, costs and expenses to be paid by Subcontractor as indemnitor hereunder shall be made on a "paid as incurred" basis within thirty (30) days of the indemnitor's receipt of a statement or invoice therefore. Should the indemnitor object to any such fees, costs or expenses, the indemnitor shall nevertheless pay such fees, costs and expenses within such thirty (30) days which payment, if expressly stated in writing at the time of such payment to be "under protest", shall not prejudice the indemnitor's right to subsequently object to such fee, cost or expense paid under protest.

11.2 The contractual right of indemnification provided to the Indemnitees under this Paragraph 11 shall be cumulative to all rights of equitable indemnity to which the Indemnitees may otherwise be entitled; provided, however, that reservation of the right of equitable indemnity shall not apply to reduce or decrease any rights of indemnity provided to the Indemnitees pursuant to the terms of this Agreement and this Paragraph 11.

11.3 The obligations of Subcontractor pursuant to this Paragraph 11 are not to be construed to negate or reduce any other right or obligation or indemnification which would otherwise exist as to any party or person described in this Paragraph 11. The indemnity set forth in this Paragraph 11 shall not be limited by the insurance requirements of Exhibit "D", nor shall the provisions of Paragraph 11 be construed to limit Subcontractor's obligation to comply with the insurance obligations contained in Exhibit "D". The obligations of Subcontractor pursuant to this Paragraph 11 in connection with any Claims against any of the Indemnitees by any employee of Subcontractor, any sub-subcontractor, anyone directly or indirectly employed by Subcontractor, or anyone for whose acts Subcontractor may be liable, shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits, including, without limitation, under workers' compensation acts, disability benefit acts or other employee benefit acts, payable by or for Subcontractor, any sub-subcontractor, anyone directly or indirectly employed by Subcontractor, or anyone for whose acts Subcontractor may be liable. The provisions of this Paragraph 11 shall survive the termination or expiration of this Agreement.

12. PRIOR NEGOTIATIONS AND/OR REPRESENTATION. This Agreement supersedes all prior negotiations, proposals and understandings, verbal, written or otherwise, if any, of the parties hereto, and constitutes the entire and integrated agreement of the parties with reference to the Work to be performed on the Project.

13. MODIFICATIONS OF AGREEMENT. The terms and conditions of this Agreement are not subject to addition, change or modification unless such change, addition or modification is made in writing by a duly authorized representative of Contractor. No addition, change or modification made as herein provided shall void the Agreement.

14. SEVERABILITY. In the event that any provision or part of this Agreement shall be determined to be invalid, illegal, void or unenforceable, such provision or part shall be deemed severable from the remaining provisions and parts of this Agreement, which shall remain in full force and effect.

15. LABOR AND MATERIAL. All labor and material needed for the proper, safe and efficient performance of the Work shall be provided by Subcontractor at its sole cost and expense, including, but not limited to, any and all equipment, tools, ladders, scaffolding, implements, molds, bracing, models, hoisting and cartage and safety equipment. All materials furnished by the Subcontractor shall conform to Specifications and be new and of good quality and without fault or defect; all equipment used shall be without fault or defect and shall be maintained in first class condition. All Work shall be done and performed in a good and workmanlike manner. Contractor shall not be required to furnish any labor or materials of any sort except such as may be specifically set forth in writing elsewhere in the Agreement. Subcontractor agrees that it will not subcontract any of the Work herein defined in this Agreement without prior written approval of Contractor. It is understood and agreed that Contractor and Owner are and shall be intended third-party beneficiaries of all subcontracts, sub-subcontracts, purchase orders and all other agreements pertaining to the Work and Contractor shall have the right, but not the obligation, to bring an action for Defective Work against any Sub-subcontractor, manufacturer or material supplier responsible therefor.

16. CLEAN-UP. At all times during the course of construction, Subcontractor shall maintain to the satisfaction of Contractor, all work sites in a clean, neat and safe condition and shall comply promptly with any instructions from Contractor with respect thereto. At the end of each work day, or at other times when directed by Contractor, all rubbish, waste material and surplus material shall be removed from the Project. Upon completion of the Work, or at other times when directed by Contractor, Subcontractor shall remove from the Units and the surrounding areas and to the satisfaction of the Contractor, all of Subcontractor's rubbish, debris, materials, tools, temporary structures and equipment. If Subcontractor fails to do so within twenty-four (24) hours after notice from Contractor to do so, Contractor may remove the same to any place of storage or dumping ground, at Subcontractor's risk and expense and without incurring any responsibility to the Subcontractor for loss, damage or theft. All storage and removal costs thus incurred by Contractor shall be deductible from any payment or balance due Subcontractor hereunder.

17. THEFT AND LOSS. Contractor shall not be liable for any loss or damage to, or theft of, any materials, supplies, equipment and/or fixtures placed on the Project or furnished by or for Subcontractor. Title to materials, supplies, equipment and/or fixtures shall pass to Owner at such time as the items have been (a) fully installed and (b) accepted by Contractor. Prior to such time, title to such items remains with Subcontractor.

18. PROTECTION OF WORK. Subcontractor agrees to keep the Work protected from damage by the elements and from damage likely otherwise to be occasioned in the performance of construction work. All damage to the Work caused by its own forces prior to full completion and final acceptance of the Work, regardless of how it occurred, shall be promptly repaired or replaced by Subcontractor at its own expense. Any default of the Subcontractor in such protection or repairs may be remedied by the Contractor, and the cost deducted from any payment or balance due hereunder.

19. DAMAGE TO WORK. Should Subcontractor or its Sub-subcontractors damage the work or installation of Contractor or any other subcontractor, sub-subcontractor or materialmen, Subcontractor shall promptly pay to Contractor, or such other subcontractor, sub-subcontractor or materialmen, as the case may be, all costs incurred in connection with repairing the damage or replacing the damaged property, including, without limitation, any deductible or self-insured retention on Contractor's builder's risk insurance. Any default of Subcontractor in such protection or payment may be remedied by the Contractor, and the cost deducted from any payment or balance due Subcontractor hereunder. Subcontractor acknowledges that a certain amount of minor damage will occur to the Work as a result of carelessness and/or repairs by other trades and such is included as pickup work in the Subcontract Price included herein.

20. ADHERENCE TO SCHEDULE. Subcontractor, at all times during the progress of the Work, employ enough skilled workmen, and have on hand and maintain an adequate supply of materials and equipment to complete the Work in accordance with the Schedule established by Contractor. Subcontractor agrees to keep itself continuously informed of the progress of the Project, to cooperate fully in every way with Contractor and others performing work on the Project, to coordinate its Work sequence with the work of Contractor and Contractor's other subcontractors and sub-subcontractors, to conform to all usages in the building trades, and to do nothing to hamper the performance of others. Subcontractor is aware that Contractor must conform to a strict schedule and its failure to do so will cause it to incur certain costs and expenses. In the event the Subcontractor falls behind the schedule for its Work established by Contractor to such an extent that the Contractor in good faith determines that the Subcontractor will be unable to achieve completion of its Work in accordance with the Schedule, the Contractor may direct the Subcontractor to accelerate the progress of its Work, at the Subcontractor's sole cost, which acceleration costs shall not cause an adjustment to the Subcontract Price.

21. SUBCONTRACTOR'S SUPERVISION. Subcontractor, during the progress of the Work to be performed by it hereunder, shall furnish skilled labor, adequate and suitable materials and a qualified superintendent or foremen to act as the representative of Subcontractor on the site, with the right and power to obligate Subcontractor. Such superintendent or foreman shall, at all times, be

satisfactory to Contractor and shall not be changed without the written consent of Contractor. If such superintendent or foreman is unsatisfactory to Contractor, Subcontractor shall promptly replace such person.

22. DEFAULT AND TERMINATION

- A. Upon notification from Contractor by telecopier or by written notice that Subcontractor's performance under this Agreement and/or any Project Agreement is unsatisfactory, or upon notification that Subcontractor has failed to comply fully with the terms of this Agreement and/or any Project Agreement (including, without limitation, failure to perform the Work in accordance with Codes, and failure to make payments promptly to its subcontractors and suppliers), or that Subcontractor's Work needs correction or has been damaged, Subcontractor shall promptly take all action necessary to fully comply with the terms of this Agreement and/or any Project Agreement, and the requirements of Contractor. Should Subcontractor fail to do so within twenty-four (24) hours after such notification, Contractor may terminate Subcontractor's right to proceed with the Work under this Agreement and/or any Project Agreement. In the event of such termination, Subcontractor hereby authorizes Contractor to perform and complete the Work and in connection therewith, Contractor may (a) eject Subcontractor from the Project; (b) take possession of all of Subcontractor's materials, tools and equipment on the site; and (c) secure materials and employ workers necessary to complete the Work at Subcontractor's expense. Subcontractor shall not be entitled to receive any further payment hereunder as a result of such termination. If upon completion of the Project, the direct and indirect costs incurred by Contractor to complete the Work exceed the unpaid balance of the Subcontract Price, then the amount of the excess shall be a debt immediately due and owing from Subcontractor to Contractor. Contractor's indirect costs shall include, without limitation, an allowance for Contractor's general and administrative costs.
- B. Contractor reserves the right to terminate this Agreement and/or any Project Agreement without cause, for any reason, by delivering two (2) days prior written notice of such termination to Subcontractor. Such termination shall be effective two (2) days after the date of the written notice of termination from Contractor. In the event Contractor so terminates this Agreement and/or any Project Agreement, Contractor shall promptly pay Subcontractor (based on a pro-rata portion of the Subcontract Price based the percentage of completion of the Work), less amounts previously paid to Subcontractor for all Work actually completed by Subcontractor in conformity with this Agreement and/or any Project Agreement prior to Subcontractor's receipt of Contractor's notice of termination and for all materials ordered (unless such orders are cancelable) or procured by Subcontractor pursuant to this Agreement and/or any Project Agreement prior to Subcontractor's receipt of Contractor's notice of termination hereof, provided Subcontractor promptly delivers to Contractor: said materials; invoices or other evidence of payment therefor; properly executed mechanic's lien releases; and any and all other instruments and documents deemed reasonably necessary by Contractor to ensure that the Project is free from mechanics' liens, including without limitation joint endorsement by Subcontractor and any materialmen of checks in payment for such materials. Except as expressly provided above, Subcontractor shall not be entitled to recover, and hereby waives any claim for, any compensation or damages from Contractor in the event of any such termination of the Agreement and/or any Project Agreement, including without limitation lost profits or consequential damages.
- C. Subcontractor and Contractor acknowledge and agree that Contractor's continued confidence in the ability of a subcontractor to properly and expeditiously perform its work is a substantial and material concern to Contractor. Consequently, in the event Contractor and Subcontractor enter into or have entered into any other agreements, and Subcontractor defaults under this Agreement or under any other agreement, Contractor may, at Contractor's election, treat a default under this Agreement as a default under any other agreement, and Contractor may, at its election, treat a default under any other agreement as a default under this Agreement. In the event of any such default, Contractor may offset from amounts owing to Subcontractor under any other agreement or this Agreement any losses, damages, costs and expenses incurred by Contractor arising from such default.
- D. If at any time during the performance by Subcontractor of its duties and obligations under this Agreement and/or any Project Agreement, Contractor becomes dissatisfied with the progress of performance of Subcontractor, regardless of whether the causes for Contractor's dissatisfaction would otherwise constitute a default by the Subcontractor under this Agreement and/or any Project Agreement, Contractor may, at its election, declare remaining contracts for the project null and void, or, if this Agreement and/or any Project Agreement relates to a multi-phase project, Contractor may elect to reduce the scope of the work to be performed by Subcontractor hereunder to the phase then in progress, in which event the provisions of this Agreement and/or any Project Agreement relating to subsequent phases shall become null and void, and Contractor's sole obligation to Subcontractor shall be for payment to Subcontractor of the amounts which would be paid to Subcontractor in the event of a termination of this Agreement and/or any Project Agreement pursuant to Paragraph 22B, above.

23. ADDITIONAL ACTS OF DEFAULT. It shall be an act of default hereunder by Subcontractor if Subcontractor shall: (a) file a voluntary petition or have a petition in bankruptcy filed against it, (b) make an assignment for benefit of creditors, or (c) permit, or suffer on account of any material or labor and/or equipment rented and supplied to Subcontractor by third persons, a lien, stop notice or suit to be recorded or filed against the property on which this Project is located or against the Contractor, or permit or suffer any writ of attachment, garnishment, or execution, or similar process, to be levied or served upon Contractor in any action wherein Subcontractor

is a party, and Subcontractor shall fail to discharge or cause the release of such lien or process as required by this Agreement. If any such event shall occur, Contractor shall have right to exercise such remedies and rights as set forth in Paragraph 22 and elsewhere herein provided, or as provided under law.

24. **DELAYS.** If any delay in Subcontractor's performance is caused by Contractor, or any other subcontractor, sub-subcontractor or third party employed by Contractor, the same shall not be attributed to the Subcontractor. Nevertheless, as soon as the cause of such delay, or delays, is removed, the Subcontractor shall resume and continue performance in accordance with the Schedule herein established. Notwithstanding anything to the contrary in the Agreement or elsewhere in the Contract Documents, an extension of time in which Subcontractor shall perform its Work shall be Subcontractor's sole remedy for any delay in the Subcontractor's performance which is caused by Contractor or other parties for which Subcontractor is not responsible. In no event shall Subcontractor be entitled to an increase in the Subcontract Price or damages unless such delay shall be caused by acts constituting willful misconduct or intentional interference by the Contractor with Subcontractor's performance of the Work and then only to the extent that such acts continue after Subcontractor's notice to Contractor of such interference. Contractor's exercise of its rights with respect to ordering extra Work, regardless of the extent or number of such Extras, or Contractor's exercise of any of its remedies for suspension of the Work, or requirement of correction or re-execution of any defective Work, shall not under the circumstances be construed as intentional interference with Subcontractor's performance of the Work.

25. **EXCUSE FOR PERFORMANCE.** If Subcontractor claims that Contractor is in default hereunder, or that a subcontractor or sub-subcontractor employed by Contractor has delayed or failed to perform their Work properly or that any other condition has occurred which constitutes an excuse for Subcontractor's failing to perform the Work in a good and workmanlike manner in full and strict compliance with the terms and conditions hereof, it shall be the duty of Subcontractor to give Contractor immediate notice in writing of such condition. The failure of Subcontractor to give such written notice to Contractor within twenty-four (24) hours, shall prevent it from hereafter asserting such default, delay or condition as an excuse for its own performance under this Contract.

26. **ASSIGNMENT.** Subcontractor shall not, voluntarily or involuntarily, or by operation of law assign all, or any part, of this Agreement, nor any Work, nor any payments due or to become due hereunder, without first obtaining consent in writing from Contractor, which consent may be withheld in Contractor's sole and absolute discretion. Contractor shall have the absolute right to assign all or any portion of its right under this Agreement or in the Project to any party without the consent of Subcontractor.

27. **BOND REQUIREMENTS.** Subcontractor shall furnish, upon written request of Contractor, a corporate surety bond written by a surety company authorized to conduct business in the State of California, to guarantee the faithful performance of this Agreement and the payment for all Work and materials furnished under this Agreement. The bond shall be in an amount equal to the Subcontract Price. Contractor shall pay for such surety bond provided that the premium thereof does not exceed the then existing rate commonly charged by corporations conducting a surety business in the State of California. In the event that Contractor notifies Subcontractor prior to the submission of Subcontractor's bid that a surety bond will be required, Subcontractor shall include the premium of such bond in the price quoted and Subcontractor shall pay for the bond itself. Contractor shall have the right to demand such surety bond at any time during the progress of the job, and in the event of the failure of Subcontractor to furnish surety bond within five (5) business days after written demand by Contractor, Subcontractor will be deemed to be in default of this Agreement.

28. **SUSPENSION OF WORK.** Contractor in its sole and absolute discretion for any reason or no reason whatsoever may at any time, with or without cause, suspend performance of all or any part of the Work by giving not less than five (5) working days written notice to the Subcontractor. Such suspension may be continued by the Contractor for a period of up to ninety (90) days during which period Contractor may, at any time, by written notice, require Subcontractor to resume performance of the Work or terminate that portion of the Work which has been suspended. Contractor shall not be liable for any additional costs, damages or anticipated profits incurred by Subcontractor or its Sub-subcontractors and the Subcontract Price shall not be increased during the period of suspension, except the actual costs incurred by Subcontractor, excluding overhead and profit for (a) the purpose of safeguarding the Work and material and equipment in transit or at the worksite during the period of suspension, (b) Subcontractor's or its Sub-subcontractor's rented equipment which are maintained at the worksite, or (c) other reasonable and unavoidable costs of shutting down the Work, or reassembling personnel and equipment resulting directly from such suspension. In the event the Work on the Project ceases or is interrupted by fire, earthquake, acts of God, war or the existence of a state of war, any labor difficulties, shortages of materials, any government regulation prohibiting, preventing, or regulating the construction industry, or other causes beyond the control of Contractor, or if Contractor shall consider it inadvisable to proceed with the Work hereunder as a result of the above, then and in that event, this Agreement may be postponed or terminated in accordance with the provisions of Paragraph 22 at the option of the Contractor. If Contractor, in its opinion, postpones and later deems it advisable to resume the Work on the Project, Subcontractor agrees to promptly re-commence the Work upon receiving written notice from Contractor.

29. **CLAIMS, DEMANDS AND LIENS**

A. Subcontractor shall pay, or cause to be paid, in full, for all materials, labor, and any and all obligations incurred by it in the performance of this Agreement, or of its agents or other contractors or sub-subcontractors working under or through Subcontractor. As set forth in greater detail in Exhibit "C", any or all payments to Subcontractor are subject to delivery to Contractor of a full release of

liens and lien rights for all labor and materials furnished by Subcontractor, and of any other person or firm providing work, labor, materials, services and/or equipment to Subcontractor for work completed to the time of such payment. Subcontractor agrees to furnish Contractor with receipts, vouchers, and/or releases of claims of laborers, materialmen, and subcontractors performing or furnishing materials through Subcontractor under this Agreement, in a form satisfactory to Contractor, and it is agreed that no payment hereunder need be made, except at Contractor's option, until and unless all such releases and other documentation are furnished and Subcontractor fully and completely complies with all of the procedures and requirements of Exhibit "C". It is further agreed that all payments received by Subcontractor from Contractor shall be deemed to be and constitute a trust fund to be used and applied by Subcontractor first in payment for all materials, labor and any and all other obligations incurred in connection with the Work, prior to its use and application by Subcontractor for its own or for any other purpose.

B. If any laborer, materialman, person or firm, applying or providing labor, materials, or equipment or services to Subcontractor, or to any of its contractors, for the Work under this Agreement, shall make any claim or demand against Contractor, or the premises, or shall file any lien under the mechanic's lien law, or otherwise, against Contractor, or the premises, and Subcontractor shall not cause the discharge or release thereof within two (2) days, then, and in such event, Contractor shall have the right (but not the obligation) to pay or to retain out of monies due or to become due to Subcontractor a sum sufficient to pay and discharge in full any and all such claims, demands or liens and, in addition, the cost incurred by Contractor by reason thereof, including all of Contractor's attorneys' fees, investigation costs and litigation expenses. Any such sums paid or retained shall be an offset against any monies due or to become due to Subcontractor under this Agreement (or any other contract, if any, with Subcontractor) and to the extent thereof shall decrease or extinguish as the case may be, any obligation to Subcontractor. If Contractor shall make any payment on account of the foregoing in excess of the monies due Subcontractor at the time of such payment, Subcontractor shall immediately upon demand pay to Contractor a sum equal to such excess amount. Should Subcontractor wish to dispute any such lien or claim, it shall "bond around" such lien or claim in strict accordance with California law. The provisions of this paragraph shall be equally applicable to any claim or demand made by or lien filed by any governmental, taxing or other agency, pursuant to applicable laws of the State of California or of the United States.

30. PERMITS AND TAXES. Unless specifically excluded in any Project Agreement, Subcontractor, at its own expense and cost, shall apply for and obtain all necessary permits and inspections as required for this Work, and shall pay all taxes, including all State, Federal and other payroll taxes, including contributions and taxes assessed against employees on wages earned in connection with the Work, sales or use taxes, levied or imposed by law in connection with the Work.

31. SHOP DRAWINGS, SCHEDULES AND REPORTS. Subcontractor, at its own expense, shall furnish promptly, when requested by Contractor any number of prints of its shop drawings, schedules, reports or any other data that may be necessary in the opinion of the Contractor for distribution among other subcontractors, sub-subcontractors, and consultants and to the Contractor for proper prosecution or clarification of work. All shop drawings shall be in compliance with the Contract Documents.

32. SAMPLES. Subcontractor shall furnish, for the approval of Contractor, and at no additional cost, samples of its work when requested and the work done thereafter shall be in accordance with approved samples.

33. DEFENSE OF PATENTS. Subcontractor shall defend all suits or claims for infringement by it of any patent rights that may be brought against Contractor or Owner, arising out of the Work, and shall hold the Contractor and Owner harmless from loss on account thereof, except that Subcontractor shall not be responsible for such loss when a particular process or product of a particular manufacturer or manufacturers is specified.

34. USE OF CONTRACTOR'S EQUIPMENT. The use of any of Contractor's equipment or service, including, but not limited to, rigging, blocking, hoist, ladders, tools, or scaffolding by Subcontractor, given, loaned or rented to Subcontractor by Contractor shall be upon the distinct understanding that Subcontractor uses the Contractor's equipment or service, including temporary power and other similar services, at his own risk and takes the same "as is", and Subcontractor assumes all responsibility for and agrees to indemnify, defend, protect and hold Contractor harmless in accordance with the terms of the Agreement from the use thereof, whether such damage results to Subcontractor or its own employees or property or to other persons or other employees or properties of other persons. Nothing herein contained shall be deemed to permit any such use by Subcontractor without the prior written consent of Contractor.

35. INTERPRETATION OF CONTRACT DOCUMENTS: ERRORS AND OMISSIONS. In the event of any discrepancy between various Contract Documents, the plans and specifications dimensions shall take precedence over measurement by scale. A large-scale drawing shall take precedence over the smaller. In any case of discrepancy, whether actual or suspected between the figures, or the figures and the scale of the plans and specifications, the matter shall be submitted to the Contractor immediately. If the Subcontractor proceeds with the Work based on any such error without approved instructions from the Contractor, the Subcontractor shall make good any resulting damage or defects. The foregoing provisions include specification typographical errors and drawing notational errors where the intent is doubtful. Scaled and figured dimensions on plans are approximate. Before proceeding with the Work, Subcontractor shall check and verify dimensions and sizes, and assume responsibility for the proper fittings of his materials and equipment to other parts of other equipment and to the structure. Should the plans vary from the specifications, then the specifications

shall govern. Should there be any discrepancy between the plans and the specifications, or both, and any governmental laws or regulations, then those which are more stringent and/or maximum shall govern. Contractor assumes no responsibility for failure of the plans or specifications to meet with governmental laws or regulations, and it is conclusively presumed that Subcontractor is familiar with said governmental laws or regulations, regardless of the provisions of the plans or specifications. Subcontractor agrees that should any change be required by any Agency, such change shall be made by the Subcontractor without additional charge, the Contractor agreeing only that it will use its best efforts to have the plans and specifications meet with the requirement of said Agency. If any Contract Documents provide for a method of work contrary to any such laws and regulations, the Subcontractor shall be required to notify the Contractor, in writing, prior to the installation of the work.

36. LINES, GRADES AND MEASUREMENTS. Subcontractor shall verify the accuracy of all lines, levels and measurements and their relation to benchmarks, property lines, reference lines and dimensions which are governed by conditions already established, as they relate to the Work of the Subcontractor. No variation from specified lines or grades or dimensions shall be made except on written authority of Contractor.

37. INSPECTION/QUALITY CONTROL

A. Contractor shall have no obligation to inspect the Work. However, Owner, Owner's lender, Contractor, including without limitation, Contractor's safety inspector, the architect, and any other consultants and representatives of Contractor, Owner and the Agencies, may visit and inspect the Work and materials, or any part thereof, at any time, and Subcontractor shall provide safe and proper facilities therefor.

B. Subcontractor shall at all times during working hours keep a competent person in the immediate vicinity of the work areas to receive communications from Contractor and to supervise the performance of this Agreement. When Contractor determines that a work area is unsafe, Contractor may stop the part of the Work affected until the unsafe condition is corrected.

C. Contractor may condemn materials provided by Subcontractor and all parts of Subcontractor's Work that are unsound or defective or fail in any way to conform with the requirements of this Agreement, including but not limited to Subcontractor's failure to maintain the first class quality of the Work as required by this Agreement. Subcontractor shall begin to remove and replace such materials or Work within twenty-four (24) hours after receiving notice thereof from Contractor. Subcontractor shall bear all costs involved in the removal and replacement of such materials and Work and in the repair and replacement of any other materials and Work necessarily damaged by such removal and replacements. Contractor's failure to inspect the Work, to require corrective action, or to condemn materials shall in no way relieve Subcontractor from any obligation or liability hereunder, and Contractor shall have no obligation to inspect the Work.

D. Should any Contractor's representative inspect the Work provided by Subcontractor in relation to the Project pursuant to this Agreement, such Contractor's representative does so at intervals and to an extent exclusively within the discretion of Contractor, and solely in order for Contractor to become generally familiar with the progress and quality of the Work in relation to Subcontractor's payment requests and as otherwise herein contemplated. Contractor shall not thereby be obligated in any way to make any authoritative, exhaustive and/or continuous on-site inspections to determine and/or approve the quality or quantity of the Work of Subcontractor pursuant to this Agreement. While Contractor reserves the right to reject and require correction of any of Subcontractor's Work, Contractor shall in no way be responsible for, the construction means, methods, techniques and/or Subcontractor's safety precautions and programs as to any of Subcontractor's Work pursuant to this Agreement. Nor shall Contractor be in any way responsible for Subcontractor's failure to properly and timely carry out any of its Work pursuant to this Agreement. Subcontractor shall have at all times exclusive and total responsibility for the quality and timeliness of its Work pursuant to this Agreement. Any payment to Subcontractor by Contractor pursuant to this Agreement shall in no way be a representation that Contractor has made any knowledgeable, informed, exhaustive and/or continuous on-site inspections to determine the quality or quantity of Subcontractor's Work, nor shall any such payment constitute a representation that Contractor has reviewed and approved the construction means, methods, techniques, sequences or procedures of Subcontractor at the Project site pursuant to this Agreement. Neither the inspections referred to herein, nor the failure to inspect, nor any of Contractor's payments to Subcontractor pursuant to this Agreement, shall in any way relieve Subcontractor of its sole responsibility for properly carrying out its Work pursuant to this Agreement, or relieve Subcontractor of any liability or responsibility under law or otherwise.

38. REINSPECTION. The cost of any reinspection by any person having the right to make reinspections, whether by law or otherwise, shall be borne by Subcontractor in the event such reinspection was made necessary by failure of Subcontractor to complete the Work contracted for here in accordance with the aforesaid Contract Documents or within the time established by the Schedule of Contractor.

39. LABOR COMPLIANCE

A. In the event that Subcontractor is party to any collective bargaining agreement covering the employees of the Subcontractor or of any form used by Subcontractor to perform the Work herein noted, the Subcontractor will hold the Contractor and Owner harmless from any liability that they may incur under said collective bargaining agreements, including any liability to any Health and Welfare, Pension, Vacation, and Apprenticeship Fund contributions and similar payments required of it under any such agreement.

Contractor, at its option, may terminate this Agreement if Subcontractor or its Sub-subcontractors are charged by any of said Funds as being delinquent in payments to said Funds. Subcontractor further agrees that it will abide by the Procedural Rules and Regulations and Decisions of the National Joint Board for the Settlement of Jurisdictional Disputes. The failure of Subcontractor to abide by the provisions of this paragraph shall be deemed to constitute a substantial breach and Contractor shall have the right to cancel this Agreement.

B. Should there be picketing on the job site, and Contractor establishes a reserve gate system for Subcontractor's use, Subcontractor shall take steps to ensure that all of its employees use only the gate assigned for such purpose. Subcontractor shall at all times continue the performance of its Work, without interruption or delay as a result of any picketing on the job site.

C. Should the Owner or any Agencies require the submittal of certified payroll, verified payroll or other payroll information by Subcontractor, such reports must be submitted to Contractor within three (3) days after the payments referenced in each such report have been made.

D. Subcontractor and any lower tiered subcontractor shall pay not less than the minimum wage and premium pay when applicable pursuant to Industrial Welfare Commission Wage Order No. 16-2001 and Labor Code Sections 510, 511, 514 and 1197. Subcontractor and any lower tiered subcontractor may also be obligated to pay a higher wage and/or fringe or other benefit payments or contributions pursuant to a contractual agreement between an employee and the subcontractor, or pursuant to a collective bargaining agreement.

E. In order to protect Contractor from the liability established by Labor Code Section 218.7 for the performance of labor on the Project, the following measures have been established and are required of Subcontractor to verify that each worker on the Project has been properly paid:

- i. Subcontractor shall submit to Contractor on a monthly basis complete and accurate certified payroll, verified payroll or other payroll information for itself and for every lower tiered subcontractor operating under its direction, for each week when labor is performed on the Project. A "Statement of Non-Performance" shall be submitted to Contractor for any work week when labor is not performed. All payroll records shall be submitted on or before the fifth (5th) business day of each calendar month from the start of Subcontractor's work on the Project through the final calendar month when Subcontractor's work is 100% complete, whether or not Subcontractor works in a specific month.
- ii. In addition, daily reports that include the identity of each subcontractor, the project name, date, name of worker(s), beginning and ending time for each work period, and total hours worked by each employee shall be provided to the appropriate project representative of the Contractor at the end of each work week.
- iii. Subcontractor shall submit to Contractor a "Statement of Employer Payments" for itself and for every lower tiered subcontractor operating under its direction with the first submittal of certified payroll, verified payroll or other payroll information. Thereafter, an amended copy of this statement shall be submitted for any work period when wages, fringe benefits and/or payments have been changed or modified.
- iv. Subcontractor shall submit to Contractor, for itself and for every lower tiered subcontractor operating under its direction, a copy of a project-specific report of contributions paid to any applicable third-party trust fund, plan or program on the employee's behalf. The report shall include the identity of each employee, the last four digits of the employee's Social Security Number, hours worked, applicable total fringe benefit contribution rates per hour, total contributions owed per employee and the total amount of fringe benefits or contributions paid during the specified work period for all employees. A copy of the check paid to the applicable third-party trust fund, plan or program in the amount of total contributions that are due and owing or other satisfactory proof of payment shall be included with the report and shall be submitted to Contractor by the fifteenth (15th) day of the month following the work month.
- v. Contractor may coordinate with Subcontractor and/or any lower tiered subcontractor and the applicable trust fund(s) or third parties pursuant to a fund, plan or program which may include the verification of amounts due and the issuance of a joint check that will satisfy the Subcontractor's or lower tiered subcontractor's fringe benefits payment obligation.
- vi. Should Contractor receive notice from the Division of Labor Standards Enforcement, a trust fund, joint labor-management cooperation committee, or other interested party about Subcontractor's or any lower tiered subcontractor's failure to pay wages or fringe benefits in accordance with the above referenced statutes, Wage Order 16-2001, an employment contract or agreement, or a collective bargaining agreement, Contractor may retain sufficient sums from progress payments or retention to cover the alleged liability. Amounts retained may be held pending a final order, judgment, court order or dismissal of the case.
- vii. Upon request by Contractor, Subcontractor shall provide for itself and for any lower tiered subcontractor operating under its direction specified records or documents referenced in Labor Code Sections 226 (a), 1174 (b), (c) and (d), or California Code of Regulations Section 16000, "Payroll Records" within ten (10) days of Contractor's request.
- viii. Failure of Subcontractor to comply with the aforementioned requirements for itself and for every lower tier subcontractor operating under its direction, shall result in the withholding of Subcontractor's progress payment(s)

and may be deemed a material breach of the Agreement. Failure of Subcontractor, or any lower tiered subcontractor operating under its direction, to pay a wage claimant or a third party on a wage claimant's behalf in accordance with their agreement, shall result in the withholding of Subcontractor's progress payment(s) or retention and may be deemed a material breach of the Agreement.

- ix. Subcontractor agrees that the requirements of Paragraph 11, Indemnity, shall apply to any breach of the foregoing obligations imposed on Subcontractor.

40. WAIVER AND REMEDIES. The waiver by Contractor of any default or of any breach of the terms of this Agreement shall not be deemed a waiver of any subsequent breach. The remedies and rights of Contractor in the event of any breach hereof by Subcontractor, are cumulative and in addition to those given by law, and the expression herein of any specific right or remedy shall not be construed as limiting Contractor from exercising any other right or remedy it may have.

41. RELATIONSHIP. Nothing contained in this Agreement shall be deemed or construed to create the relationship of principal and agent or joint venture as between Contractor and the Subcontractor, it being agreed and understood that the only relationship between the parties is that of independent Subcontractor.

42. INTERPRETATION. The paragraph and section headings of this Agreement are for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Whenever the Agreement so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural. If any part or provision of this Agreement shall be declared invalid by any court of competent jurisdiction, the remaining parts and provisions hereof shall nevertheless remain in full force and effect.

43. ASSIGNS. Subject to Paragraph 26 above, the Agreement shall be binding upon and shall inure to the benefit of the respective heirs, successors, administrators and assigns of the respective parties.

44. NOTICES. All notices or other communications required or permitted hereunder shall be in writing, and shall be delivered or sent, as the case may be, by any of the following methods: (i) personal delivery; (ii) overnight commercial carrier or delivery service; (iii) registered or certified mail (with postage prepaid and return receipt requested); or (iv) telecopy/fax. Any such notice or other communication shall be deemed received and effective upon the earlier of (i) if personally delivered, the date of delivery to the address of the party to receive such notice; (ii) if delivered by overnight commercial carrier or delivery service, one day following the receipt of such communication by such carrier or service from the sender, as shown on the sender's delivery invoice from such carrier or service, as the case may be; (iii) if mailed with postage prepaid, seventy-two (72) hours after delivery to the U.S. Post Office, or when actually received, if sooner; or (iv) if given by telecopy/fax, when sent to the correct telecopy/fax number of the party to receive such notice. Any notice or other communication sent by telecopy/fax must be confirmed within forty-eight (48) hours by letter mailed or delivered in accordance with the foregoing. Any reference herein to the date of receipt, delivery, or giving, as the case may be, of any notice or other communication shall refer to the date such communication becomes effective under the terms of this paragraph. The addresses for purposes of the giving of notices hereunder are set forth on the first page of this Agreement. Notice of change of address shall be given by written notice in the manner detailed in this paragraph.

45. LICENSE. Subcontractor warrants that it is, and at all times during the performance of the Agreement, shall be duly licensed by the State in which work under this Agreement is to be performed as a contractor in all classifications required for the Subcontractor's full and complete performance of all of Subcontractor's obligations under this Agreement.

46. RISING COSTS. The Subcontract Price is intended to include all increases in the cost of Subcontractor's Work, foreseen or unforeseen, including, without limiting the generality of the foregoing, taxes, labor, materials, and transportation costs, all of which are to be borne solely by the Subcontractor.

47. WORK DURING DISPUTES. Notwithstanding the fact that a dispute, controversy, or question shall have arisen in the interpretation of any provision of this Agreement, the performance of any work, the delivery of any material, the payment of any monies to Subcontractor, or otherwise, the Subcontractor agrees that it will follow the written orders of Contractor, and Subcontractor will not directly or indirectly stop or delay any Work or part of Work on its part required to be performed, or stop or delay the delivery of any materials on its part required to be furnished hereunder, pending the determination of such dispute or controversy.

48. SAFETY LAWS

A. Subcontractor and its Sub-subcontractors, at their own cost and expense, shall protect their own employees, employees of Contractor and all other persons from risk of death, injury, or bodily harm arising out of or in any way connected with the Work to be performed hereunder, and Subcontractor and or its Sub-subcontractors shall strictly comply with all safety orders, rules,

regulations or requirements of all federal, state and local government agencies exercising safety jurisdiction over said Work, including, but not limited to, the federal and state OSHA Regulations, the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), the California Labor Code, the California Code of Regulations, and shall comply with all of Contractor's safety requirements, policies and rules. In particular, Subcontractor and its Sub-subcontractors will: (1) conduct periodic meetings of supervisory employees to discuss safety problems and accidents that have occurred and (2) require their supervisory employees to conduct "toolbox" or "tailgate" safety meetings, or equivalent, with their crews at least every 10 working days to emphasize safety.

B. All Subcontractor or Sub-subcontractor foremen are required to make daily safety inspections to determine unsafe practices, unsafe equipment and any violations of safety laws, regulations, safety orders, rules or requirements.

C. All Subcontractor or Sub-subcontractor supervisory personnel (superintendents, foremen, etc.) shall be responsible for preparing written reports on any accident occurring to an employee of the Subcontractor or any Sub-subcontractors. A copy of the accident report shall be transmitted to Contractor.

49. ENVIRONMENTAL COMPLIANCE

A. Subcontractor shall (i) not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Project site by Subcontractor, its agents, employees, sub-subcontractors or invitees without the prior written consent of Contractor, which Contractor shall not unreasonably withhold as long as Subcontractor demonstrates to Contractor's reasonable satisfaction that such Hazardous Material is necessary or useful to Subcontractor's Work and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Material so brought upon or used or kept in or about the Project site; (ii) immediately notify Owner and Contractor if it should discover any Hazardous Material on or under the Project site or within the improvements thereon. Subcontractor shall not take any action which may disturb any hazardous material found on or under the Project site or within the improvements thereon. Contractor shall notify Subcontractor what, if any, measures shall be taken by Subcontractor with respect to any Hazardous Material found and Subcontractor shall comply with such instructions. If Subcontractor breaches the obligations stated above, or if the presence of Hazardous Material on or under the Project site caused, released or permitted by Subcontractor results in contamination of the Project, or if contamination of the Project site by Hazardous Material otherwise occurs for which Subcontractor is liable to Owner and Contractor, then Subcontractor shall, to the fullest extent permitted by law, indemnify, defend and hold the Indemnitees harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation diminution in value of the Project and Project site, damages arising from any adverse impact on marketing of the Project and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the term of this Agreement as a result of such contamination. This indemnification by Subcontractor includes, without limitation, costs incurred in connection with any investigation of site conditions, or any clean-up, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Project site. Without limiting the foregoing, if the presence of any Hazardous Material on the Project site caused, permitted or released by Subcontractor results in any contamination of the Project site, Subcontractor shall promptly take all actions at its sole expense as are necessary to return the Project site to the condition existing prior to the introduction of any such Hazardous Material to the Project site; provided that Owner's and Contractor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Project site. The foregoing indemnity shall survive the expiration or earlier termination of this Agreement.

B. "Hazardous Material" means any substance: (1) the presence of which requires investigation or remediation under any present or future federal, state or local statute, regulation, ordinance, rule, code, order, action, policy or common law, or (2) which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant or contaminant under any present or future federal, state or local statute, regulation, rule or 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. Sections 6901 et. seq.); or (3) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of California or any political subdivision thereof; or (4) the presence of which on the Property causes or threatens to cause a nuisance upon the Property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Property; or (5) which contains gasoline, diesel fuel or other petroleum hydrocarbons; or (6) which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation.

50. EQUAL OPPORTUNITY. During the performance of this Agreement, Subcontractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. Subcontractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin. Subcontractor shall at all times comply with all Codes governing equal employment opportunity, including but not limited to the Civil Rights Act of 1964 and the California Fair Employment Practices Act.

51. CONTRACTOR'S PERFORMANCE. Any time under this Agreement Contractor performs work or services on behalf of Subcontractor whether as a result of a default, or otherwise, Subcontractor shall be liable for and shall pay Contractor the cost to perform such work including an amount of ten percent (10%) in excess of the actual cost to perform such work for Contractor's overhead and profit on such work.

52. SUBCONTRACTOR'S RELIANCE. Subcontractor acknowledges that it has satisfied itself by its own independent investigation and study regarding all the conditions affecting the site, the Work to be done and materials to be furnished, and the meaning and intention of the plans, specifications and conditions under which the work herein is to be done, and Subcontractor has read and understands the Contract Documents and has executed this Agreement based only on such investigation and study, and not in reliance upon any representation of Contractor, or its respective agents or employees.

53. DISPUTE RESOLUTION

A. All claims, disputes, and other matters arising out of this Agreement or the alleged breach hereof shall be settled by litigation by judicial reference in accordance with the provisions of Sections 638 through and including 645.1 of the California Code of Civil Procedure. This provision shall be deemed to be a reference agreement as that term is used in Section 638 of the Code of Civil Procedure. Upon the demand of one party hereto, the other shall forthwith execute any necessary documentation to voluntarily invoke the reference power of the Court. If a party shall fail, after reasonable demand, to execute such reasonable documentation, such party shall be liable to the other party for all costs incurred by the other party, including reasonable attorneys' fees, in obtaining an order of reference from the Court.

B. Notwithstanding the foregoing, if the prime contract between Contractor and Owner contains a dispute resolution clause which does not require that disputes be resolved by judicial reference, and a proceeding (including but not limited to an arbitration proceeding) is initiated under the prime contract which in any way allegedly involves this Agreement or the Work performed hereunder, then the parties agree to participate in and be bound by such proceeding pursuant to the terms of the prime contract.

C. In the event the parties become involved in litigation or some other form of dispute resolution procedure arising out of or related to this Agreement, or for the breach or alleged breach hereof, in which the services of an attorney or expert are reasonably required, the prevailing party in such litigation or proceeding shall be fully compensated for the cost of its participation in same, including the cost incurred by the prevailing party for attorneys' and experts' fees. The award of attorneys' and experts' fees to the prevailing party shall be such as to fully reimburse all such fees actually incurred in good faith, regardless of the size of the judgment, it being the intention of the parties to fully compensate for all attorneys' and experts' fees incurred in good faith.

54. COOPERATION WITH OTHER TRADES

A. Subcontractor shall protect its own materials and Work. Neither Owner nor Contractor shall be liable for any loss of, damage to, or theft of materials placed on the Project but not yet installed and accepted

B. Subcontractor shall coordinate its Work with the work of all other subcontractors performing work on the Project.

C. No extras will be allowed for any controversies arising between subcontractors. In the event any damage to the work of any other subcontractor is caused by or results from the performance by Subcontractor of the Work, Subcontractor shall immediately cause such damage to be remedied to the satisfaction of the subcontractor whose work was damaged, or if such subcontractor is no longer actively working on the Project, to the satisfaction of Contractor. All costs and expenses of remedying such damage shall be borne by Subcontractor. If Subcontractor does not so immediately cause such damage to be remedied, Contractor shall, in addition to all other remedies, have the right to cause such damage to be remedied at the sole cost and expense of Subcontractor, and in addition to paying, or reimbursing Contractor for the payment of, all such costs and expenses, Subcontractor shall pay to Contractor an amount equal to the greater of One Hundred Fifty Dollars (\$150.00) or ten percent (10%) of the total cost of remedying such damage to compensate Contractor for its general administrative costs incurred in connection with remedying such damage.

D. Subcontractor shall order Work so that progress will harmonize with that of all trades so that all work on the Project may proceed as expeditiously as possible. So far as possible, the Work has been indicated on the Contract Documents in such positions as to suit and accommodate the work of the other trades, but the work as indicated is largely diagrammatic and the correct finished positions of all equipment and materials cannot be indicated. Therefore, Subcontractor is hereby made directly responsible for the exact placing of all Work and the proper location and connection of all work in relation to the work of other trades. Subcontractor shall make a careful examination of all drawings and specifications and shall organize and lay out all its Work so that such Work will not interfere or be in conflict with or obstruct the work of the various trades. The Subcontractor shall be responsible for all damage caused directly or indirectly by its Work to the work of other subcontractors who have performed or are performing work on the site.

E. Subcontractor assumes full responsibility for the accuracy of all lines, levels and measurements and their relation to bench marks, property lines, reference lines and the work of the Contractor or other subcontractors. In all cases where dimensions are governed by conditions already established, the responsibility for correct knowledge of the conditions shall rest entirely on Subcontractor. No variation from specified lines or grades or dimensions shall be made except on written authority of Contractor. All Work shall be made to conform to actual, final conditions as they develop in the course of construction.

55. RECORDS AND AUDITS

A. Subcontractor and its Sub-subcontractors and vendors shall maintain true and correct records in connection with the Work and all transactions related thereto and shall retain all such records for at least forty-eight (48) months after completion of the

Work. No director, employee or agent of Subcontractor or any Sub-subcontractor or vendor of Subcontractor shall give or receive any commission, fee, rebate, gift or entertainment of significant cost or value in connection with the Work, or enter into any business arrangement with any employee or agent of Contractor, without prior written notification thereof to Contractor. Subcontractor shall promptly notify Contractor of any violation of this paragraph and any consideration received as a result of such violation shall be paid to or credited to Contractor. Furthermore, if Subcontractor violates this paragraph during the term of this Agreement, or if any violation of this paragraph that occurred prior to the date of this Agreement resulted directly or indirectly in Contractor's consent to enter into this Agreement with Subcontractor, Contractor may, at Contractor's sole option, terminate this Agreement at any time and, notwithstanding any other provision of this Agreement, pay no compensation or reimbursement to Subcontractor whatsoever for any work done. Any representative authorized by Contractor may audit any and all records of Subcontractor and any such contractor or vendor for the sole purpose of determining whether there has been compliance with this paragraph.

B. Contractor may from time to time and at any time after the date of this Agreement until forty-eight (48) months after completion of the Work audit all records of Subcontractor and its sub-subcontractors and vendors in connection with payments made on a cost reimbursement basis. Such audit may also cover Subcontractor's procedures and controls with respect to such reimbursable costs. Upon completion of this audit, Contractor shall pay Subcontractor any compensation due hereunder shown by the audit. Any amount by which the total payment by Contractor to Subcontractor exceeds the amount due Subcontractor as shown by the audit shall be returned to Contractor. Items of compensation such as fixed percentages or fixed lump sums shall not be subject to audit under this paragraph. Subcontractor shall assist Contractor in making the above audits. Subcontractor shall require, and shall require all sub-subcontractors and vendors to require, in all agreements in connection with the Work, the agreement of all parties thereto to comply with the provisions of this Paragraph.

56. CONFIDENTIALITY. Subcontractor shall keep confidential all plans, specifications and other information which comes into Subcontractor's possession with respect to Contractor, Owner and the Project, and Subcontractor shall not disclose such information to any third parties without Contractor's prior written approval in each instance.

57. DEATH OF SUBCONTRACTOR. If Subcontractor is a sole proprietor, his death shall automatically terminate this Agreement.

EXHIBIT "B"

FORM OF PROJECT AUTHORIZATION AGREEMENT

CONTRACT #:
MASTER SUBCONTRACT DATE:
SUBCONTRACTOR:
ADDRESS:
PHONE #:
FAX #:
LICENSE #:
PROJECT NAME:
PROJECT #:
TRADE:

THIS PROJECT AUTHORIZATION AGREEMENT ("Project Agreement") is made and entered into as of _____, by and between CANNON BUILDING SERVICES, INC. a California corporation ("Contractor") and _____ ("Subcontractor"), in connection with construction of a project known as _____ (the "Project"). The owner for the Project is _____ ("Owner"). Owner is an express third party beneficiary of this Project Agreement. Contractor desires to engage Subcontractor to perform _____ (description of work) on the Project. Initially capitalized words used in this Project Agreement and not otherwise defined herein shall have the meaning as defined in that certain Master Subcontract Agreement and General Conditions attached thereto dated _____, between Contractor and Subcontractor ("Master Agreement").

NOW, THEREFORE, the parties do hereby mutually agree as follows:

- A. Project Location. The Project is located in _____, California, at _____ (street address) _____.
- B. Contract Documents. Subcontractor shall perform the Work in strict compliance with the Contract Documents, which consist of this Project Agreement, the Master Agreement (including the General Conditions and Exhibits contained therein), Schedule "B-1", Scope of Work, attached hereto, the plans, specifications, progress schedule and other documents identified in Schedule "B-1", and Schedule "B-2", Subcontract Price, attached hereto. In addition, Subcontractor agrees to comply with any insurance requirements imposed by Owner which differ from, or are in addition to, the requirements set forth in Exhibit "D" to the Master Agreement.
- C. Scope of Work. Subcontractor shall furnish all labor, material, equipment, services and competent supervision incidental thereto necessary to perform all Work as shown on or reasonably inferable from the Contract Documents. Subcontractor shall perform all Work in accordance with the specifications and requirements of the City of _____, County of _____, or any other governmental agencies having jurisdiction thereof. Where provisions of pertinent codes and standards conflict with the specifications described herein, the more stringent provisions will govern.
- D. Subcontract Price. The Subcontract Price for the Work shall be as set forth in Schedule "B-2" attached hereto. Such amount shall include, but is not limited to, all the Work as described in the Contract Documents.
- E. Commencement and Completion of Work. Upon execution of this Project Agreement, Subcontractor shall immediately commence the Work in accordance with the Contract Documents, and shall complete the Work in accordance with the schedule established by Contractor.
- F. Project Representative. Contractor's representative is _____, whose telephone number is _____.

IN WITNESS WHEREOF, the parties hereto have executed this Project Agreement as of the date written above.

"Contractor"

"Subcontractor"

CANNON BUILDING SERVICES, INC.
a California corporation

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

SCHEDULE "B-1" TO PROJECT AUTHORIZATION AGREEMENT

FORM OF SCOPE OF WORK

Project Name:

Subcontractor Name:

PART I: CONTRACT DOCUMENTS

[LIST ALL PLANS AND SPECIFICATIONS APPLICABLE TO THIS SUBCONTRACT, BY DATE AND PAGE NOS.]

PART II: SPECIFIC INCLUSIONS

The Work specifically includes the following items, all of which are included in the Subcontract Price set forth on Schedule "B-2". All of the following, unless otherwise noted, include labor, material, equipment installation, supervision and all applicable taxes:

PART III: SCHEDULE

The schedule of Work to be performed shall include, but is not limited to, the following:

PART IV: OWNER INSURANCE REQUIREMENTS

In addition to the requirements set forth in Exhibit "D" to the Master Agreement, Subcontractor agrees to comply with the following insurance requirements of Owner for this Project:

SCHEDULE "B-2" TO PROJECT AUTHORIZATION AGREEMENT

SUBCONTRACT PRICE

Project Name:

Subcontractor Name:

[INCLUDE TOTAL SUBCONTRACT PRICE, AND ANY BREAKDOWN BY SEPARATE CATEGORIES OF WORK]

EXHIBIT "C"

BILLING AND PAYMENT PROCEDURES

1. **BILLING PROCEDURES.** On or before the 25th day of each month, Subcontractor shall deliver to the Contractor an itemized "Payment Request" in accordance with the procedures set forth below. Such Payment Request shall be submitted together with such supporting documentation substantiating the Subcontractor's right to payment, as may be required by this Exhibit "C".

A. All Payment Requests shall be based on Work actually completed by Subcontractor during the period for which payment is sought. Each Payment Request shall be accompanied by a schedule of values showing a breakdown of the various parts of Subcontractor's Work, and the percentage completion of that portion of the Work as of the date the payment is sought. Each Payment Request shall reflect a ten percent (10%) retainage; which amount will be held by Contractor until the Final Payment described below.

B. Subcontractor shall submit one (1) Payment Request per month for work performed thru the end of the month, for each Project Agreement with Contractor. All Payment Requests must be accompanied by the Conditional Waiver and Release Upon Progress Payment form attached hereto as Schedule "C-1", from Subcontractor and all of its Sub-subcontractors and suppliers who have supplied labor or materials to the Project for which payment is sought in the current Payment Request. In addition, Subcontractor must submit the Unconditional Waiver and Release Upon Progress Payment form attached hereto as Schedule "C-2" for all Work completed prior to the current Payment Request period from Subcontractor and all of its Sub-subcontractors and suppliers who have supplied labor or materials to the Project and as to which payment previously has been made by Contractor. These releases must coincide with the "date completed through" date on the Payment Request form and cannot be altered in any way either by reference to a particular period, job number, white out or other alteration.

C. Contractor may, in its discretion, make any payment (progress or final) due Subcontractor by check payable jointly to Subcontractor and to any materialmen, Sub-subcontractor, laborer or supplier entitled to payment for any portion of the Work.

D. It is mutually agreed between the Subcontractor and the Contractor that no payment made under this Agreement, shall be evidence of the performance of this Agreement, either wholly or in part, nor shall it be construed to be an acceptance of Defective Work or improper material, or an approval of any of the items in any requisition made or bill rendered.

E. Contractor will process billings once monthly. Payment Requests received by the 25th day of the month will be eligible for payment on the last day of the following month or a later day if Owner payment to Contractor is delayed. Payment Requests not received by such date may not be processed until the following month.

F. Subcontractor agrees to submit any additional documents or forms reasonably requested by Contractor, or by Owner or Owner's lender, in connection with Subcontractor's Payment Requests.

2. **PAYMENT WITHHELD.** Contractor shall be entitled to withhold payment to protect itself or Owner from loss on account of:

- A. defective Work not remedied, missing materials not furnished, cleanup not performed; or
- B. claims filed or reasonable evidence indicating the probable filing of claims in connection with the Work to be performed hereunder; or
- C. failure of the Subcontractor to make prompt payments to materialmen and laborers, including fringe benefits, or to supply the documentation required by Paragraph 39.E of the General Conditions; or
- D. any damage to another subcontractor or sub-subcontractor performing work on the Project; or
- E. any dispute or controversy between the Subcontractor and any other subcontractor or sub-subcontractor; or
- F. any dispute or controversy between the parties hereto concerning this Agreement; or
- G. failure to deliver written guarantees or warranties as required by this Agreement; or
- H. reasonable indication that the Work will not be completed on schedule, or within the contract time or for the unpaid balance of the Subcontract Price; or
- I. non-compliance with any insurance requirements; or
- J. non-compliance with safety requirements, Codes, laws, rules or regulations; or
- K. failure to obtain approvals by any Agencies or authority having jurisdiction over the Work to the extent Subcontractor is obligated to do so; or
- L. any failure to comply strictly with the terms of the Contract; or
- M. any lien or stop notice filed by Subcontractor or his Sub-subcontractors or materialmen not removed or rescinded in accordance with this Agreement; or

- N. in any other instance wherein the law authorizes the holding of payments; or
- O. a backcharge owing to Contractor under the Agreement; or
- P. failure by Subcontractor to timely submit to Contractor all Safety Inspection Reports and Safety Meeting Minutes; or
- Q. failure by Subcontractor to submit to Contractor a current Injury and Illness Protection Plan.

In the event payment is withheld, no monies will be owed Subcontractor until final completion has been accomplished and money owing has been determined by the Contractor, or sooner if the matter causing the funds to be withheld is resolved to the satisfaction of Contractor. No withholding hereunder shall entitle the Subcontractor to suspend or terminate Work under this Agreement. Any suspension or termination of work by Subcontractor may, at the Contractor's option, be a breach of contract.

3. PAYMENT OF FINAL DRAW AND RETENTION.

A. Final Draw Payment. Final payment constituting the unpaid balance of the Subcontract Price other than the Subcontractor's retention (as set forth in the Project Agreement) shall be due and payable upon Contractor's final approval of the Work, provided that, as a condition to such payment, the Subcontractor has first delivered to the Contractor evidence of the Subcontractor's payment of all Sub-subcontractors and the absence of any liens with respect to the Work. Specifically, as a condition to final payment (and before the retention billing is submitted to Contractor), Subcontractor shall deliver fully-executed Unconditional Waiver and Release Upon Progress Payment forms, using the form attached as Schedule "C-4", for all of Subcontractor's suppliers, subcontractors, and materialmen who have been paid in full for their work, labor, services or materials provided to the Project, and Conditional Waiver and Release Upon Final Payment forms, using the form attached as Schedule "C-3", (conditioned only upon final payment) from Subcontractor and from all Sub-subcontractors and material suppliers who have supplied labor or materials to the Project or who have otherwise been involved in Subcontractor's Work, and who have yet to be paid in full. In the event Subcontractor uses any union labor, final payment by Contractor to Subcontractor may, at Contractor's option, be further conditioned upon Contractor's receipt of a statement from any trust fund (as set forth in California Civil Code Section 3111.5) and shall not be made unless in Contractor's opinion all payroll affidavits and union dues receipts have been furnished by Subcontractor.

B. Retention Payment. Payment of Subcontractor's retention constituting the unpaid balance of the Subcontract Price shall be due and payable when all of the following have been satisfied: (i) Contractor's final approval of the Work including, but not limited to, final approval of all repair and "punch-list" work, (ii) Subcontractor has fully complied with all the terms and conditions of this Exhibit "C" (including specifically Paragraph 3A above) and the terms of the Contract, (iii) Subcontractor delivers a fully executed Conditional or Unconditional Waiver and Release Upon Final Payment forms as described above, and (iv) Contractor has approved Subcontractor's retention billing and all other matters in connection with the Work. Notwithstanding the foregoing to the contrary, Contractor shall release retention proceeds to Subcontractor within ten (10) days after receipt of retention proceeds from Owner, less one hundred fifty percent (150%) of (a) the amount of any items in dispute and (b) the cost of completing or correcting incomplete Work.

SCHEDULE "C-1"

**CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT
CALIFORNIA CIVIL CODE SECTION 8132**

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant: _____
Name of Customer: _____
Job Location: _____
Owner: _____
Through Date: _____

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _____
Amount of Check: \$ _____
Check Payable to: _____

Exceptions

This document does not affect any of the following:

- (1) Retentions.
 - (2) Extras for which the claimant has not received payment.
 - (3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:
Date(s) of waiver and release: _____
Amount(s) of unpaid progress payment(s): \$ _____
 - (4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.
-

Signature

Claimant's Signature: _____
Claimant's Title: _____
Date of Signature: _____

SCHEDULE "C-2"

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT
CALIFORNIA CIVIL CODE SECTION 8136

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _____

Amount of Check: \$ _____

Check Payable to: _____

Exceptions

This document does not affect any of the following: Disputed claims for extras in the amount of: \$ _____

Signature

Claimants Signature: _____

Claimant's Title: _____

Date of Signature: _____

SCHEDULE "C-3"

**UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT
CALIFORNIA CIVIL CODE SECTION 8134**

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: _____
Name of Customer: _____
Job Location: _____
Owner: _____
Through Date: _____

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment:

Exceptions

This document does not affect any of the following:

- (1) Retentions.
 - (2) Extras for which the claimant has not received payment.
 - (3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.
-

Signature

Claimant's Signature: _____
Claimant's Title: _____
Date of Signature: _____

SCHEDULE "C-4"

**UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT
CALIFORNIA CIVIL CODE SECTION 8138**

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: _____
Name of Customer: _____
Job Location: _____
Owner: _____

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full.

Exceptions

This document does not affect any of the following: Disputed claims for extras in the amount of: \$ _____

Signature

Claimant's Signature: _____
Claimant's Title: _____
Date of Signature: _____

EXHIBIT "D"

INSURANCE REQUIREMENTS

A. Subcontractor shall purchase and maintain, at its own expense, with an insurer or insurers acceptable to Contractor, at least the following minimum coverages during the term of this Agreement, and until expiration of any applicable warranties issued by Contractor, Owner and Subcontractor and, as provided herein, thereafter.

1) Workers' compensation insurance (statutory limits complying with the laws of the State of California) and employer's liability insurance with limits not less than \$1,000,000 bodily injury by accident (each accident), \$1,000,000 bodily injury by disease (policy limit), and \$1,000,000 bodily injury by disease (each employee). Such policies shall contain a waiver of subrogation in favor of Contractor, Owner, the Indemnitees, and other parties referred to in Paragraph N, below. Such insurance shall be in strict accordance with the applicable workers' compensation laws in effect during performance by Subcontractor pursuant to this Agreement or during performance by any supplier or sub-subcontractor. Subcontractor shall require each of its sub-subcontractors and suppliers to purchase and maintain insurance coverage as provided in this subparagraph, with the same waiver of subrogation in favor of Contractor, Owner and the Indemnitees.

2) Commercial general liability insurance, written on an occurrence policy form ("modified occurrence" and "claims-made" are not acceptable), including premises-operations (including explosion, collapse and underground coverage) and products-completed operations coverage, with limits of not less \$3,000,000 bodily injury and property damage per occurrence limit, \$3,000,000 general aggregate limit (with a "per project" endorsement specifying the Project), \$1,000,000 personal injury and advertising limit, and \$3,000,000 products-completed operations aggregate limit, and with deductibles or self-insured retentions acceptable to Contractor. All liability policies shall provide, without limitation, severability of interests (full separation of insureds), contractual liability coverage (including coverage to the maximum extent possible for the indemnification contained in this Agreement), broad form property damage coverage (including completed operations) and a duty to defend in addition to (without reducing) the limits of the policy(ies). The required limits may be provided by a combination of primary and umbrella and/or excess liability policies, all written on an occurrence policy form ("modified occurrence" and "claims made" forms are not acceptable), with umbrella/excess coverage at least as broad as the primary general liability insurance. Subcontractor agrees to maintain continuous coverage for the insurance required in this subparagraph in effect during the term of this Agreement and at least ten (10) years beyond the completion or termination of the Work hereunder or completion of the Project, whichever is later. Such policy shall contain a waiver of subrogation in favor of Contractor, Owner, the Indemnitees, and other parties referred to in Paragraph N, below. Subcontractor shall require each of its sub-subcontractors and suppliers to purchase and maintain insurance coverage as provided in this subparagraph, with the same waiver of subrogation in favor of Contractor, Owner and the Indemnitees.

3) Commercial automobile liability insurance, including, without limitation, liability arising out of all owned, non-owned, leased, and hired automobiles, trucks and trailers, or semi-trailers, including any machinery or apparatus attached thereto, with limits not less than \$1,000,000 each accident, or limits carried, whichever is greater, with deductibles or self-insured retentions acceptable to Contractor. The commercial automobile liability insurance shall be written on the most recent edition of ISO form CA 00 01 or equivalent acceptable to Contractor and shall include, without limitation, contractual liability coverage and additional insured status for Contractor and Owner. Subcontractor waives all rights against Contractor, Owner and the other Indemnitees for recovery of loss, injury and/or damages to the extent such loss, injury and/or damages are covered by the commercial automobile liability insurance maintained by Subcontractor. Such policy shall contain a waiver of subrogation in favor of Contractor, Owner, the Indemnitees, and other parties referred to in Paragraph N, below. Subcontractor shall require each of its sub-subcontractors and suppliers to purchase and maintain insurance coverage as provided in this subparagraph, with the same waiver of subrogation in favor of Contractor, Owner and the Indemnitees.

4) Subcontractor is required to purchase and maintain professional liability insurance if scope of work includes Architectural, Engineering or Design Services. Such insurance shall include full prior acts coverage sufficient to cover all claims arising out of the Work or services, with limits not less than \$1,000,000 per claim and \$2,000,000 annual aggregate, and with deductibles or self-insured retentions reasonably acceptable to Contractor. Such insurance shall include, without limitation, contractual liability coverage to the maximum extent possible for the indemnification contained in this Agreement. This insurance shall be maintained by Subcontractor continuously in effect during the term of this Agreement and at least ten (10) years beyond completion or termination of the Work or services or completion of the Project, whichever is later.

B. Contractor, Owner, Owner's lender(s), and such other persons and entities as may from time to time be designated by Contractor in writing, shall be named as additional insureds under the general liability insurance required above (including umbrella/excess policies) by issuance of both ISO Form CG 20 10 10 01 and CG 20 37 10 01 additional insured endorsements, or equivalents reasonably acceptable to Contractor. The additional insured endorsements shall contain a primary insurance clause stating: "It is further agreed that such insurance as is afforded by this policy for the benefit of the additional insureds shall be primary insurance, and any insurance maintained by or available to the additional insureds shall be excess and non-contributory with the insurance provided hereunder". The coverage provided to the additional insureds must be at least as broad as that provided to Subcontractor and may not contain any additional exclusionary language or

limitations applicable to the additional insureds. Subcontractor shall maintain such additional insured status for the referenced parties on the general liability and umbrella/excess liability policies continuously during the term of this Agreement and at least ten (10) years beyond the completion or termination of the Work hereunder or completion of the Project, whichever is later.

- C. All workers' compensation/employer's liability and automobile liability policies maintained by Subcontractor shall be primary coverage, and any coverage maintained by or available to Contractor or Owner shall be excess and non-contributory.
- D. Prior to commencing the Work, Subcontractor shall deliver to Contractor the endorsements and waivers of subrogation referred to in this Exhibit "D", as well as certificates of insurance evidencing the coverages referred to in this Exhibit "D". Promptly upon Contractor's request, Subcontractor shall deliver to Contractor a copy of any and all of the insurance policies and other insurance documents required by this Exhibit "D". In the case of policies expiring while Work is in progress, a renewal certificate with all applicable endorsements must be received at the business office of Contractor prior to the expiration of the existing policy or policies. Permitting Subcontractor to start Work, continue Work, or releasing any progress payment prior to compliance with these requirements shall not constitute a waiver thereof. If at any time the Subcontractor's insurance fails to meet the requirements stated herein all payments may be held until the deficiency has been resolved. Each certificate and endorsement must be executed by an authorized agent of the respective insurers. All certificates of insurance must provide Contractor with thirty (30) days advance written notice of cancellation or non-renewal (ten [10] days notice in the event of cancellation for non-payment of premium). The following wording from the cancellation provision of all said certificates will be lined through and initialed by an authorized agent of each insurer:

~~"CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES."~~

- E. Contractor reserves the right to require (1) higher limits and (2) additional insurance coverages if Contractor determines in its sole discretion that such higher limits and/or additional coverages are reasonably necessary for the protection of Contractor, Owner, and/or the Indemnitees. Such additional coverages shall be in form and with limits of liability, additional insured endorsements, and deductibles or self-insured retentions reasonably acceptable to Contractor. Subcontractor further agrees to comply with any insurance requirements imposed by any Owner which are different from, or in addition, to the requirements set forth in this Exhibit "D". Such additional or different requirements will be set forth on Schedule "B-1" to each Project Agreement.
- F. All insurance referred to in this Exhibit "D" to be carried by Subcontractor shall be maintained by Subcontractor at its sole expense, with insurance carriers qualified to do business in California and maintaining a rating of not less than A:VII from A.M. Best & Co., unless Contractor, in writing, in its sole discretion, accepts a lower Best's rating.
- G. In the event Subcontractor fails to secure or maintain any policy of insurance required hereby, Contractor at its sole discretion and election, may (i) secure such policy of insurance in the name of and for the account of Subcontractor and in such event, Subcontractor shall reimburse Contractor upon demand for the cost thereof; or (ii) terminate this Agreement, and Contractor shall retain all remedies hereunder for breach of this Agreement. Contractor shall have the right to offset the costs of any such insurance, including but not limited to premiums, against any sums payable to Subcontractor under this Agreement.
- H. None of the requirements contained herein as to types, limits and approval of insurance coverage to be maintained by Subcontractor are intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Subcontractor under this Agreement or at law, including, without limitation, Subcontractor's indemnification obligations and liability in excess of the limits of the coverages required herein. Neither receipt of certificates showing less or different coverage than requested, nor any other forbearance or omission by Contractor shall be deemed a waiver of, or estoppel to assert, any right or obligation regarding the insurance requirements herein. Subcontractor shall be solely responsible to pay any loss amount that lies within the deductible(s) or self-insured retention(s) of Subcontractor's policies, up to the maximum amount of the deductible(s) or self-insured retention(s).
- I. None of the requirements contained herein shall relieve Subcontractor, and its sub-subcontractors of any tier, of their respective obligations to exercise due care in the performance of their duties in connection with the Work or to complete the Work in strict compliance with this Agreement.
- J. In connection with any property insurance maintained by Owner or Contractor, Subcontractor agrees and acknowledges as follows:
- 1) Subcontractor and each of its sub-subcontractors, consultants and suppliers shall have the risk of loss as to all materials, supplies, equipment and/or fixtures until such time as such materials, supplies, equipment and/or fixtures have been installed or otherwise affixed permanently to the Project (and accepted by Contractor and/or Owner). Contractor and Owner shall not be liable for loss or damage to, or theft of, any materials, supplies, equipment and/or

fixtures prior to such time, whether such materials, supplies, equipment and/or fixtures are off the site, in transit, on the site, under the control of Contractor, Owner or otherwise.

- 2) Subcontractor and each of its sub-subcontractors, consultants and suppliers shall be solely responsible for any loss or damage to its or their personal property and that of their employees and workmen, including without limitation, property or materials created or provided pursuant to this Agreement, any subcontract or otherwise, its or their tools, equipment, clothing, fencing, forms, mobile construction equipment, scaffolding, automobiles, trucks, trailers or semi-trailers including any machinery or apparatus attached thereto, temporary structures and uninstalled materials, whether owned, used, leased, hired or rented by Subcontractor or any sub-subcontractor, consultant or supplier or employee or workmen (collectively, "Personal Property"). Subcontractor and its sub-subcontractors, consultants and suppliers, at its or their option and own expense, may purchase and maintain insurance for such Personal Property and any deductible or retention in relation thereto shall be its or their sole responsibility. Any such insurance shall be Subcontractor's and the sub-subcontractors', the consultants' and suppliers' and employees' and workmen's sole source of recovery in the event of loss or damage to its or their Personal Property. Any such insurance purchased and maintained by Subcontractor and any sub-subcontractor, consultant or supplier shall include a waiver of subrogation as to Contractor, Owner and the Indemnitees under this Agreement.
 - 3) In the event of theft, damage or destruction of the Work, Subcontractor will resupply or rebuild its Work without additional compensation and will look to its own resources or insurance coverages to pay for such resupply or rebuilding. Subcontractor will promptly perform, resupply or rebuild without additional compensation regardless of the pendency of any claim by Subcontractor against any other party, including Contractor, that such party is liable for damages, theft, destruction of the Subcontractor's Work. This subparagraph J(3) shall apply except to the extent that the cost of resupply or rebuilding is covered and paid by Contractor's builder's risk insurance; in such event, Contractor waives (to the fullest extent permitted by the builder's risk policy) all rights of subrogation against Subcontractor to the extent of such payment by Contractor's builder's risk insurance.
 - 4) Subcontractor waives all rights of recovery, whether under subrogation or otherwise, against Contractor, Owner, the Indemnitees, Owner's architect(s) and engineer(s), and each and every other contractor, subcontractor, sub-subcontractor and supplier performing work or services or furnishing labor or materials for the Project, and their respective members, parents, subsidiaries, partners, affiliates, officers, directors, shareholders, agents and employees for (a) loss or damage covered by Subcontractor's property insurance and (b) loss or damage to Subcontractor's Personal Property. Subcontractor shall require the same waivers from all sub-subcontractors, consultants and suppliers and from the insurers issuing property insurance policies relating to the Work or the Project or the Project Site purchased and maintained by all such sub-subcontractors, consultants and suppliers. The waivers of recovery, including, subrogation, referred to in this subparagraph shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium, directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property which is the subject of the loss or damage.
 - 5) If the policies of insurance referred to in this Article K require an endorsement to effectuate the waivers of subrogation required hereunder, the parties procuring such policies will cause them to be so endorsed at their own expense.
- K. For the purposes of this Exhibit "D", "Project Site" shall mean the Project, the real estate and adjacent and nearby areas where incidental operations are performed in connection with the Project, excluding permanent locations of any insured party, except Contractor and/or Owner.
- L. Subcontractor shall furnish each bidding and negotiating sub-subcontractor, consultant, supplier or other party a copy of this Exhibit "D", and shall make the same requirement of all with respect to their subcontracting or procurement procedures.
- M. Any type of insurance or any increase of its limits of liability not described above which Subcontractor requires for its protection, or on account of statute, shall be its own responsibility and at its own expense.
- N. With respect to any and all insurance Subcontractor is required to maintain pursuant to this Agreement, or does maintain, for this Project, including but not limited to that set forth herein, Subcontractor warrants that Subcontractor has the right to waive any and all rights of subrogation which Subcontractor's insurance carriers might have or claim against the Contractor, Owner and/or the Indemnitees, including without limitation, Contractor's and Owner's officers, agents, employees, affiliates, parents, subsidiaries and assigns, arising out of the Work and/or the Project, and any and all other subcontractors, sub-subcontractors, consultants, suppliers and other individuals and entities performing work or rendering services on behalf of Contractor or Owner in connection with the Project. Subcontractor hereby waives all such present and future rights of subrogation and to the fullest extent permitted by law, agrees to defend and indemnify the Contractor, Owner and the indemnitees, including Contractor's and Owner's officers, agents, employees, affiliates, parents, and subsidiaries from all such subrogation claims. Subcontractor shall require such waivers of its Sub-subcontractors, consultants and suppliers. Subcontractor's and its Sub-

subcontractors', consultants' and suppliers' policies shall provide such waivers by endorsement. A waiver of subrogation shall be effective as to any person or entity even though that person or entity (i) would otherwise have a duty of indemnification, contractual or otherwise, (ii) did not pay the insurance premium directly or indirectly and (iii) whether or not the person or entity had an insurable interest in the property damaged.