



**RODAN BUILDERS, INC.**

**MASTER SUBCONTRACT AGREEMENT**

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**THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS USE OR MODIFICATION. SOME CONSTRUCTION PRIME CONTRACTS MAY REQUIRE THE USE OF SPECIALIZED PROVISIONS NOT INCLUDED IN THIS FORM.**



## MASTER SUBCONTRACT AGREEMENT

This Master Subcontract Agreement (“Agreement”) is made at 3486 Investment Blvd., Suite B, Hayward, CA 94545

this \_\_\_\_\_ day of \_\_\_\_\_, 20 19, between:

### CONTRACTOR:

**RODAN BUILDERS, INC., 3486 Investment Blvd., Suite B, Hayward, CA 94545**

and

### SUBCONTRACTOR:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

### SECTION 1. MASTER AGREEMENT

Contractor and Subcontractor enter into this Agreement to facilitate Contractor’s ability to hire Subcontractor on various projects where Contractor has or may be awarded a Prime Contract by an Owner for work as a general contractor. This Agreement defines the rights of the Contractor and Subcontractor on any and all projects where Contractor engages Subcontractor to perform Work after the date of this Agreement. Unless terminated in writing as provided below, or subsequently amended in a writing signed by both parties, this Agreement shall remain valid and enforceable indefinitely. This Agreement does not create an obligation that Contractor will request or that Subcontractor will perform Work on any particular project (hereinafter referred to as a Specified Project), and shall only become applicable to a Specified Project when Contractor provides, and Subcontractor accepts, a Work Authorization.

### SECTION 2. WORK AUTHORIZATION

A Work Authorization is a separate request from Contractor to Subcontractor that Subcontractor agree to perform Work on a Specified Project. Contractor may give Subcontractor a Work Authorization either orally or in writing. Unless expressly modified therein, the Work Authorization shall be deemed to incorporate by reference and to include all terms and conditions of this Agreement. Subcontractor will be deemed to have accepted the Work Authorization if, following receipt thereof, Subcontractor communicates acceptance of the Work Authorization either orally or in writing to Contractor, or if Subcontractor commences performance of the Work for the Specified Project.

### SECTION 3. CONTRACT DOCUMENTS

This Agreement, including all documents attached hereto or incorporated herein by reference, is the entire agreement between Contractor and Subcontractor for each Specified Project, and supersedes all proposals, bids, quotations, and prior agreements. The phrase “Contract Documents” is defined to mean all plans, specifications, and other contract documents attached hereto or incorporated herein by reference, including, but not limited to, all documents included or referenced in the Prime Contract between Contractor and Owner.

Subcontractor certifies that it is fully familiar with all of the terms of the Contract Documents, the location of the job site, and the conditions under which the work is to be performed and that it enters into this Agreement based upon its investigation of all such matters and is not relying on any opinions or representations of Contractor. The Contract Documents are incorporated in this Agreement by reference, and Subcontractor, its subcontractors, suppliers and/or materialmen will be and are bound by the Contract Documents insofar as they relate in any way, directly or indirectly, to the Subcontractor’s Work. Subcontractor agrees to be bound to Contractor in the same manner and to the same extent as Contractor is bound to Owner under the Contract Documents, including, but not limited to, all applicable terms and provisions thereof. Where, in the Contract Documents, reference is made to Contractor, and the work or specifications therein pertain to Subcontractor’s trade, craft or type of work, such work or specifications shall be interpreted to apply to Subcontractor instead of to Contractor.

By executing a Work Authorization and/or commencing any Work for the Project, Subcontractor represents and acknowledges that Subcontractor has reviewed or been given ample opportunity to review the Prime Contract (or proposed form thereof if Owner has not yet issued a final form of the Prime Contract to Contractor), and Subcontractor agrees that the terms of the Prime Contract will have no effect on the cost or time of Subcontractor's performance of its Work.

#### **SECTION 4. SCOPE OF WORK**

Subcontractor's scope of Work for any Specified Project will be included in the Work Authorization. Unless otherwise specified, and with respect to such Work, Subcontractor agrees to furnish all labor, services, equipment, materials, installations, cartage, hoisting, supplies, insurance, scaffolding, tools, and other facilities of every kind and description required for the workmanlike, complete, prompt and efficient performance of all Work in accordance with the Work Authorization, Contract Documents, and this Agreement.

Subcontractor represents and warrants that it has carefully reviewed and is familiar with all of the terms of the Contract Documents as they pertain to the Work, including all laws, ordinances, building codes and regulations that relate to Subcontractor's performance thereof. Subcontractor understands and agrees that the plans and specifications for the Work are intended to be complementary, may only indicate the general requirements for the completion of the Work, and Subcontractor agrees to furnish and install all items expressly stated or reasonably inferable from the Contract Documents, wherever located therein, to produce the indicated results.

In the event of any dispute between Contractor and Subcontractor over the scope of Subcontractor's Work, Subcontractor will not stop work but will continue to prosecute the work diligently to completion, with the dispute to be submitted for resolution in accordance with Section 19 below.

#### **SECTION 5. SUBCONTRACT PRICE**

Subject to adjustment pursuant to the terms of this Agreement, Contractor agrees to pay Subcontractor for the strict performance of the Work the amount specified in the Work Authorization. All payments for the Work shall be made in accordance with the terms of this Agreement.

#### **SECTION 6. PAYMENT SCHEDULE**

Contractor agrees to pay to Subcontractor monthly progress payments for labor and materials which have been placed in position, with funds received by Contractor from Owner for work performed by Subcontractor as reflected in Contractor's applications for payment. Such monthly progress payments shall be made ten (10) days after receipt of payment from the Owner by Contractor. Final payment to Subcontractor shall be made ten (10) days after the entire work required by the prime contract has been fully completed in conformity with the Contract Documents and has been delivered to and accepted by Owner, Architect, and Contractor, with funds received by Contractor from Owner in final payment for work under the prime contract. Subcontractor agrees to furnish, if and when required by Contractor, payroll affidavits, receipts, vouchers, releases of claims for labor, and material, and agrees to furnish same from its subcontractors, suppliers and/or materialmen performing work or furnishing materials under this Agreement, all in form satisfactory to Contractor, and it is agreed that no payment hereunder shall be made, except at Contractor's option, until and unless such documents have been furnished. Contractor, at its option, may make any payment due hereunder by check made payable jointly to Subcontractor and any of its Subcontractors, suppliers and/or materialmen who have performed work or furnished materials under this Agreement. Any payment made hereunder prior to completion and acceptance of the work, as referred to above, shall not be construed as evidence of acceptance or acknowledgement of completion of any part of Subcontractor's work.

Draft billings are due by the 15<sup>th</sup> of each month and shall project percentage complete through the end of the current month. Billing percentages will be approved by Rodan based on Owners approval of billing percentages. Late billings will be processed in the next billing cycle. The promptness of all payments will be directly dependent upon Subcontractor's successful submission of all required, fully-executed documentation.

Upon completion of eighty percent (80%) of the portion of work per the subcontractor, progress payments may be withheld pending receipt of Guarantees and/or Warranties, As-Built Drawings, and Operation and Maintenance Manuals.

If owner or other responsible party delays in making any payment to Contractor from which payment to Subcontractor is to be made, Contractor and its sureties shall have a reasonable time to make payment to Subcontractor. "Reasonable time" shall be determined according to relevant circumstances, but in no event shall be less than the time Contractor, Contractor's sureties, and Subcontractor require to pursue to conclusion their legal remedies against Owner or other responsible party to obtain payment, including (but not limited to) mechanics' lien remedies.

If the Subcontractor asserts a claim which involves, in whole or in part, acts or omissions which are the responsibility of the Owner or another party, including but not limited to claims for failure to pay, an extension of time, delay damages, or extra work, Contractor will present the Subcontractor's claim to the Owner or other responsible party. The Subcontractor shall cooperate fully with the Contractor

in all steps taken in connection with prosecuting such a claim and shall hold harmless and reimburse the Contractor for all expense, including legal expense, incurred by Contractor which arise out of Contractor's submission of Subcontractor's claim to Owner or other responsible party. Subcontractor shall be bound by any adjudication or award in any action or proceeding resolving such a claim.

## **SECTION 7. TIME**

Time is of the essence of this Agreement. Subcontractor shall provide Contractor with scheduling information and a proposed schedule for performance of its work in a form acceptable to Contractor. Subcontractor shall conform to Contractor's progress schedule and all revisions or changes made thereto. Subcontractor shall prosecute its work in a prompt and diligent manner in accordance with Contractor's progress schedule without delaying or hindering Contractor's work or the work of other contractors or subcontractors. Subcontractor shall coordinate the work covered by this Agreement with that of all other contractors, subcontractors, suppliers and/or materialmen and of the Contractor, in a manner that will facilitate the efficient completion of the entire work. In the event Subcontractor fails to maintain its part of the Contractor's schedule, it shall, without additional compensation, accelerate the work as Contractor may direct until Subcontractor's work is in accordance with such schedule. Contractor shall have complete control of the premises on which the work is to be performed and shall have the right to decide the time and order in which various portions of the work shall be installed and the relative priority of the work of Subcontractor and other subcontractors, and, in general, all other matters pertaining to the timely and orderly conduct of the work of Subcontractor on the premises. Should Subcontractor be delayed in the prosecution or completion of the work by the act, neglect or default of Owner, Architect or Contractor, or should Subcontractor be delayed waiting for materials, if required by this Contract to be furnished by Owner or Contractor, or by damage caused by fire or other casualty for which Subcontractor is not responsible, or by the combined action of the workmen, in no way caused by or resulting from fault or collusion on the part of the Subcontractor, or in the event of a lock-out by Contractor, then the time herein fixed for the completion of the work shall be extended the number of days that Subcontractor has thus been delayed, but no allowance or extension shall be made unless a claim therefore is presented in writing to Contractor within 48 hours of the commencement of such delay, and under no circumstances shall the time of completion be extended to a date which will prevent Contractor from completing the entire project within the time allowed Contractor by Owner for such completion. No claims for additional compensation or damages for delays, whether caused in whole or in part by any conduct on the part of Contractor, including, but not limited to, conduct amounting to a breach of this Agreement, or delays by other subcontractors or Owner, shall be recoverable from Contractor, and the above-mentioned extension of time for completion shall be the sole remedy of Subcontractor, provided, however, that in the event Contractor obtains additional compensation from Owner on account of such delays, Subcontractors shall be entitled to such portion of the additional compensation so received by Contractor from Owner as is equitable under all of the circumstances. In the event that Contractor prosecutes a claim against Owner for additional compensation for any delay, Subcontractor shall cooperate fully with Contractor in the prosecution thereof and shall pay costs and expenses incurred in connection therewith, including actual attorneys' fees, to the extent that said claim is made by Contractor at the request of Subcontractor.

Subcontractor shall prepare and obtain approval as required by the Contract Documents for all shop drawings, details, samples, and do all other things necessary and incidental to the prosecution of its Work in conformance with Contractor's progress schedule.

Subcontractor acknowledges that it will have to perform Work in areas occupied by other forces, and that it will have to perform its Work in a sequence or manner to accommodate and facilitate the progress of the work as a whole, rather than in the manner most efficient desirable for Subcontractor. Subcontractor's price is based upon Contractor exercising the rights indicated in Sections 7 and 8, as well as those indicated above, and upon Subcontractor having planned to perform its work under such circumstances. To the greatest extent permitted by law, Subcontractor's sole remedy for delay, disruption or suspension of the work, including without limitation any delay, disruption or suspension caused by the fault or negligence of Owner, Contractor (or any agent or representative thereof), or from any other cause whatsoever, shall be an extension of the time for performance. Subcontractor shall not be entitled to, and hereby waives any and all claims for any productivity losses, efficiency losses, increased supervisory costs, home office overhead, extended job site overhead, disruption costs, "ripple effect" costs, trade stacking, compression, acceleration, consequential damages, damages of any other type, lost profits, lost opportunity costs, or similar damages or costs, however denominated, as well as any other monetary relief, for any delay, disruption or suspension of the work (collectively, "Impact Costs And Consequential Damages"), except to the extent of such sums as may be recovered on Subcontractor's account from Owner. Subcontractor further waives any and all claims against Contractor for damages or additional compensation which is related to, caused or contributed to by delay and/or disruption of Subcontractor's performance, or by any act, omission, or other conduct causing or contributing any Impact Costs and Consequential Damages (including negligent conduct on the part of Contractor or any other person). If Subcontractor wishes to seek compensation for Impact Costs and Consequential Damages of any kind, or for any other increase in the Contract Sum, it must give the Contractor written notice no later than ten (10) days after the beginning of the underlying cause thereof, or such shorter period of time as may be provided by this Agreement. Failure to provide such written notice shall be a waiver of, and a conclusive defense to, any claim by Subcontractor. The requirement to give such notice in no way shall be deemed to authorize or provide entitlement to recovery for Impact Costs and Consequential Damages or for any other form of relief which may be sought by Subcontractor.

## **SECTION 8. CHANGES IN WORK**

Subcontractor shall make no changes in the work described in the Contract Documents and this Agreement except as directed by Contractor in writing. Such change or written direction shall not invalidate this Agreement.

If necessary, the Subcontract Price and the time for Subcontractor's performance shall be adjusted by appropriate additions or deductions mutually agreed upon before the Subcontractor performs the changed work. Subcontractor shall supply Contractor with all documentation necessary within (14) days of request to substantiate the amount of the addition to or deduction from the price or time. If Contractor and Subcontractor cannot agree on the amount of the addition or deletion, Subcontractor shall nonetheless timely perform the work as changed by Contractor's written direction. Once Subcontractor receives Contractor's written direction, Subcontractor is solely responsible for timely performance of the Work as changed by the written direction.

T&M Sheets require authorization from Contractor's Project Manager. Field employees, including Contractor's superintendents, can only sign for verification of hours and quantities of materials. Contractor's field employees cannot and are not authorized to agree to additional costs or to authorize any changed work outside of the Subcontractor's scope of Work.

Payment for changed work shall be made in accordance with Section 6. Upon completion of approved changed work, a billing must be submitted by the 15<sup>th</sup> for the upcoming billing cycle. No billings will be accepted after (60) days of completion of approved changed work.

Subcontractor shall not make any changes in the Work or in any way cause or allow that work to deviate from the Contract Documents without written direction from Contractor. If Subcontractor makes any changes in the Work written direction from Contractor, such change constitutes an agreement by Subcontractor that it will not be paid for that changed work, even if it received verbal direction from Contractor or any form of direction, written or otherwise, from Owner or any other person or entity. In addition, Subcontractor shall be liable for any and all losses, costs, expenses, and liability of any nature whatsoever associated with or in any way arising out of any such change it makes without written direction from Contractor. If a dispute arises between Contractor and Subcontractor about whether particular work is a change in the Work, Subcontractor shall timely perform the disputed work. If Subcontractor intends to submit a claim for the disputed work, it shall give prompt written notice to Contractor before proceeding with the work. Subcontractor shall submit any claim for additional compensation for that work within ten (10) days after such work is performed, in writing, and in sufficient detail for Contractor to make an evaluation of the merits of the claim. Subcontractor's failure to either give the written notice before proceeding with the work or to submit the written claim within the ten (10) days constitutes an agreement by it that it will not be paid for the disputed work.

No change, alteration, or modification to or deviation from this Agreement, the Contract Documents, prime contract, plans, or specifications, whether made in the manner provided in this section or not, shall release or exonerate, in whole or in part, any bond or any surety on any bond given in connection with this Agreement, and no notice is required to be given to such surety of any such change, alteration, modification, or deviation.

## **SECTION 9. DAMAGES CAUSED BY DELAYS**

If Subcontractor should default in performance of the Work or should otherwise commit any act which causes delay to the Project or the inefficient performance of the Prime Contract work, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages and liquidated damages, sustained by Contractor, or for which Contractor may be liable to Owner or any other party because of Subcontractor's default.

## **SECTION 10. BONDING OF SUBCONTRACTOR**

Concurrently with the acceptance of the Work Authorization, Subcontractor shall, if required by Contractor, execute a labor and material bond and performance bond, in an amount equal to one hundred percent (100%) of the Subcontract Price. Said bonds shall be executed by a corporate surety acceptable to Contractor and shall be in a form satisfactory to Contractor. Contractor shall pay the premium on said bonds unless otherwise provided herein or in the Contract Documents.

## **SECTION 11. LIENS AND PAYMENT CLAIMS**

If at any time any claim of lien or stop payment notice is recorded or filed for labor performed or materials or equipment furnished or delivered to or for the Work by Subcontractors lower-tier subcontractors, suppliers, laborers, or any trust fund, Subcontractor shall within ten (10) calendar days after demand from Contractor, discharge and remove the lien or stop payment notice and/or post a release bond effective to release the Project and any payment from the claim of lien or stop payment notice. Assuming that Contractor is in compliance with its payment obligations under this Agreement, Subcontractor further agrees to indemnify, defend and hold harmless Contractors

from and against any costs or expenses, including reasonable attorneys' fees, associated with such claim of lien or stop payment notice, including but not limited to, the costs and expenses required to remove, expunge, or release such claim.

Contractor may, at its option, and for good cause, including but not limited to, Subcontractor's present or previous failure to make timely payments to its lower-tier subcontractors, suppliers, or laborers, may make any payment otherwise due under this Agreement by joint check. It is understood and agreed that Subcontractor's full and faithful performance of this Agreement (including the payment of any obligations due from Subcontractor to Contractor, and any amounts due to labor or materialmen furnishing labor or material for said work, and any associated unions or trust funds) is a condition precedent to Subcontractor's right to receive payment for the Work performed, and any monies paid by Contractor to Subcontractor under the terms of this Agreement shall be impressed with a trust in favor of labor and materialmen furnishing labor and material to Subcontractor on the Work herein subcontracted.

## **SECTION 12. PROVISIONS FOR INSPECTION**

Subcontractor shall at all times furnish to Contractor and its representatives safe and ample facilities for inspecting materials at the site of construction, shops, factories or any place of business of Subcontractor and its lower-tier subcontractors and materialmen where materials under this Agreement may be in course of preparation, process, manufacture or treatment. Subcontractor shall furnish to Contractor as often as required by Contractor, full reports of the progress of the work at any place where materials under this Agreement may be in the course of preparation or manufacture. Such reports shall show the progress of such preparation and manufacture in such details as may be required by Contractor, included, but not limited to, any plans, drawings or diagrams in the course of preparation.

## **SECTION 13. MATERIALS AND WORK FURNISHED BY OTHERS**

In the event the Work includes installation of materials or equipment furnished by others or to be performed in areas constructed or prepared by others, it shall be the responsibility of Subcontractor to examine and accept, at the time of delivery or first access, the items or other work so provided. In the event that Subcontractor's examination reveals defects or other deficiencies in the materials, equipment, or work of others, Subcontractor shall immediately and prior to continuing its own Work, report such condition to Contractor. Subcontractor's failure to examine and/or to report any such defects or deficiencies in the materials, equipment, or work provided by others prior to Subcontractor's performance of its own Work, shall constitute Subcontractor's acceptance of and responsibility therefor.

## **SECTION 14. PROTECTION OF WORK**

Subcontractor shall effectually secure and protect the Work done hereunder, and assumes full responsibility for the condition thereof until final acceptance by Architect, Owner, and Contractor. Subcontractor further agrees to provide such protection as necessary to protect the work and the workmen of Contractor, Owner, and other subcontractors from its operations. Subcontractor shall be liable for any loss or damage to work in place or to any equipment and materials at the Project caused by it or its agents, employees or guests.

## **SECTION 15. LABOR RELATIONS**

**15.1** Subcontractor shall keep a representative at the job site during all times when Subcontractor's Work is in progress, and such representative shall be authorized to represent and bind Subcontractor as to all phases of the Work. Prior to commencement of the work, Subcontractor shall notify Contractor who Subcontractor's representative is to be, and in the event of any change of representative. Subcontractor shall notify Contractor who the new representative is to be prior to such change becoming effective. Employment of labor shall be effected under terms and conditions that are satisfactory to Contractor. To the greatest extent permitted by law, Subcontractor shall at all times take all reasonable steps to ensure labor harmony and to prevent picketing.

Subcontractor acknowledges that Contractor has entered into labor agreements covering work at its construction job sites with the labor unions listed in Section 27 below and incorporated herein by reference.

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

Subcontractor acknowledges that terms and conditions of the labor agreements with the unions listed herein below may require that Subcontractor comply with additional labor agreements with unions affiliated with such unions but not listed. When the terms and conditions of the below-referenced labor agreements so require, Subcontractor shall perform its job site work pursuant to all terms and conditions of an appropriate labor agreement with a union affiliated with such unions.

Should there be picketing on Contractor's job site, and Contractor establishes a reserved gate for Subcontractor's purpose, it shall be the obligation of Subcontractor to continue the proper performance of its work without interruption or delay.

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

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

**15.3** Subcontractor shall comply with and agrees to be bound by all applicable federal, state and local laws and regulations, including, but not limited to, all provisions of the Fair Labor Standards Act, the Americans with Disabilities Act, the federal Family and Medical Leave Act, the California Labor Code, the California Fair Employment and Housing Act, and the California Family Rights Act. Upon request, Subcontractor shall submit certified payroll records to contractor no later than three (3) working days after labor has been paid.

## **SECTION 16. RECOURSE BY CONTRACTOR**

### **16.1 Failure of Performance.**

**16.1.1 Right to Adequate Assurance.** When reasonable grounds for insecurity arise with respect to Subcontractor's performance. Contractor may in writing demand adequate assurance of due performance. Subcontractor's failure to provide within seven (7) days of the demand such assurance of due performance as is adequate under the circumstances of the particular case is a default under Section 16.1.2 of this Agreement.

**16.1.2 Notice to Cure.** If Subcontractor at any time refuses or neglects to supply enough properly skilled workers and proper materials, or fails to properly and diligently prosecute the work covered by this Agreement, or fails to make prompt payment to its workers, sub-subcontractors or suppliers, or becomes delinquent with respect to contributions or payments required to be made to any health and welfare, pension, vacation, apprenticeship or other employee benefit program or trust, or fails to provide adequate assurance pursuant to Section 16.1.1, or is otherwise guilty of a material breach of a provision of this Agreement or any other agreement between Contractor and Subcontractor, and fails within forty-eight (48) hours after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, and to complete the cure of such default within the time period stated in Contractor's default notice, then Contractor, without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

- (a) supply such number of workers and quantity of materials, equipment and other facilities as Contractor deems necessary for the completion of Subcontractor's Work, or any part thereof which Subcontractor has failed to complete or perform, and charge the cost thereof to Subcontractor, who shall be liable for the payment of same including reasonable overhead, profit, and actual attorneys' fees incurred as a result of Subcontractor's failure of performance;
- (b) contract with one or more additional contractors to perform such part of Subcontractor's Work as Contractor shall determine will provide the most expeditious completion of the total work and charge the cost thereof to Subcontractor; and
- (c) withhold payment of any monies due Subcontractor under this or other Agreement pending corrective action to the extent required by and to the satisfaction of Contractor.

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

**16.1.3 Termination for Default.** If Subcontractor fails to commence and satisfactorily continue correction of a default within forty-eight (48) hours after receipt by Subcontractor of the notice issued under Section 16.1.2., and/or fails to complete the cure of such default within the time period stated in Contractor's default notice, then Contractor may terminate Subcontractor's right to perform under this Agreement and use any materials, implements, equipment, appliances or tools furnished by or belonging to Subcontractor's work without

any further compensation to Subcontractor for such use. Contractor may also furnish those materials and equipment, and/or employ such workers or subcontractors, as Contractor deems necessary to maintain the orderly progress of the work.

In such case, Subcontractor shall be entitled to no further payment until the balance of Subcontractor's work has been completed. At that time, all of the costs incurred by Contractor in performing Subcontractor's work, including a markup of fifteen percent (15%) for overhead and profit on such expenses, plus actual attorneys' fees as provided above, shall be deducted from any monies due or to become due Subcontractor. Subcontractor shall be liable for the payment of any amount by which such expenses may exceed the unpaid balance of the Subcontract Price. In the event that Contractor's termination of Subcontractor for default is deemed not to comply with the requirements of this Section, such termination of Subcontractor by Contractor shall be deemed to be a termination for convenience under Section 16.1.4.

**16.1.4 Termination for Convenience.** Contractor may at any time and for any reason terminate Subcontractor's services and Work at Contractor's convenience, including, but not limited to, Owner's suspension or termination of the Prime Contract. Termination shall be by service of written notice to Subcontractor's place of business.

Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the Work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Contractor or, at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived therefrom. Subcontractor shall thereafter do only such Work as may be necessary to preserve and protect the Work already in progress and to protect material and equipment on the job site or in transit thereto.

Upon such termination, Subcontractor shall be entitled to payment in accordance with Section 6 only as follows: (1) the actual cost of the Work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Subcontractor as are permitted by the Prime Contract and approved by Owner; plus (3) the maximum amount of fifteen percent (15%) of the cost of the Work referred to in item (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Subcontractor prior to the date of the termination of this Agreement. In no event shall payment due hereunder exceed the amount due for approved units of work or percentage of completion. Subcontractor shall not be entitled to any claim or claim of lien against Contractor or Owner for any additional compensation or damages in the event of such termination and payment, and in no event shall Subcontractor be entitled to anticipated profit or overhead on unperformed Work.

**16.1.5 Grounds for Withholding Payment.** Contractor may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to the extent necessary to protect Contractor from loss, including costs and actual attorneys' fees, on account of (1) defective work not remedied; (2) claims filed or reasonable evidence indicating probable filing of claim; (3) failure of Subcontractor to make payments properly to its subcontractors or for material, labor or fringe benefits; (4) a reasonable doubt that this Agreement can be completed for the balance then unpaid; (5) damage to another subcontractor; (6) penalties assessed against Contractor or Subcontractor for failure of Subcontractor to comply with state, federal or local laws and regulations; or (7) any other ground for withholding payment allowed by state or federal law, or as otherwise provided in this Agreement, including, but not limited to, Subcontractor's material breach of any other agreement with Contractor. When the above matters are rectified, such amounts as then due and owing shall be paid or credited to Subcontractor.

## **16.2 Bankruptcy.**

**16.2.1 Termination Absent Cure.** Upon the appointment of a receiver for Subcontractor or upon Subcontractor making an assignment for the benefit of creditors, or if Subcontractor seeks protection under the Bankruptcy Code or commits any other act of insolvency, Contractor may, absent any applicable legal limitation, terminate this Agreement upon giving forty-eight (48) hours written notice, by certified mail, to Subcontractor and its surety, if any. If an order for relief is entered under the Bankruptcy Code with respect to Subcontractor, Contractor may terminate this Agreement upon giving forty-eight (48) hours written notice, by certified mail, to Subcontractor, its trustee, and its surety, if any, unless Subcontractor, the surety, or the trustee:

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

**16.2.2 Interim Remedies.** If Subcontractor is not performing in accordance with the schedule of work at the time of entering an order for relief or at any subsequent time, Contractor, while awaiting the decision of Subcontractor or its trustee to reject or to accept this Agreement and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under this Section as are reasonably necessary to maintain the schedule or Work.



Contractor may offset against any sums due or to become due Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, reasonable overhead, profit and actual attorneys' fees incurred as a result of Subcontractor's non-performance of this Agreement or any other agreement with Contractor. Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Price.

## **SECTION 17. INDEMNIFICATION**

**17.1.1 Subcontractor's Performance.** With the exception that this Section 17 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the public policy of the State of California, Subcontractor shall indemnify, protect, defend and save harmless Contractor and Owner, including their officers, agents, directors, partners, members, employees, affiliates, parents and subsidiaries, and each of them ("Indemnitees"), of and from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or equity, of every kind and nature whatsoever ("Claims") arising out of or in any way relating to (i) this Agreement, (ii) either actual or alleged actions or omissions by Subcontractor or any of its subcontractors, suppliers, vendors, employees, or persons for whom it is responsible (regardless of whether the acts or omissions are actually negligent), or (iii) the Project to which this Agreement relates, including, but not limited to Claims for:

- (a) Personal injury, including, but not limited to, bodily injury, sickness or disease, or death to persons, including, but not limited to, any employees or agents of Subcontractor, Owner, Contractor, or any other subcontractor and/or damage to property of anyone (including loss of use thereof), caused or alleged to be caused in whole or in part by any actual or allegedly negligent act or omission of Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable regardless of whether such personal injury or damage is caused by a party indemnified hereunder.
- (b) Penalties, fees and costs imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance or statute, caused by the action or inaction of Subcontractor.
- (c) Infringement of any patent rights, which may be brought against the Contractor or Owner arising out of Subcontractor's work.
- (d) Claims, liens and stop payment notices (see Section 11) for labor performed or materials used or furnished to be used on the job, including all incidental or consequential damages resulting to Contractor or Owner from such claims or liens.
- (e) Subcontractor's failure to fulfill the covenants set forth in each subpart of Section 15, Labor Relations.
- (f) Failure of Subcontractor to comply with the provisions of Section 18.1, Casualty Insurance.
- (g) Any violation or infraction by Subcontractor of any law, order, citation, rule, regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees, including, but not limited to, the use of Contractor's or others' equipment, hoists, elevators, or scaffolds (see Sections 18 and 22).

The specific listing in clauses (a) through (g) above shall not in any way limit Subcontractor's agreement to defend and indemnify each Indemnitee for all acts and omissions of Subcontractor, and anyone for whom Subcontractor is responsible in the performance of the work and other obligations under this Subcontract. The separate duty to indemnify shall not apply to the extent of the Indemnitee's active negligence or willful misconduct, or for defects in design furnished by the Indemnitee. These defense and indemnity obligations shall extend to Claims occurring after this Agreement is terminated as well as while it is in force.

### **15.1.2 Subcontractor shall:**

- (a) At Subcontractor's own cost, expense and risk, defend all Claims as defined in Section 17.1.1 that may be brought or instituted by third persons, including, but not limited to, governmental agencies or employees of Subcontractor, against any Indemnitee;
- (b) Pay and satisfy any judgment or decree that may be rendered against any Indemnitee arising out of any such Claim; and/or
- (c) Reimburse any Indemnitee for any and all legal expense incurred by any of them in connection herewith or in enforcing the indemnity granted in this Section 17.

The duty to defend shall apply, and Subcontractor shall be required to furnish a defense, notwithstanding that there has not yet been an adjudication or finding of liability on the part of Subcontractor or any Indemnitee.

### **17.2 Risk of Loss.**

All work covered by this Agreement done at the site or in preparing or delivering materials or equipment, or any or all of them, to the site shall be at the risk of Subcontractor exclusively until the completed work is accepted by Contractor.

## SECTION 18. INSURANCE

**18.1 Casualty Insurance.** Subcontractor shall, at its expense, procure and maintain insurance on all of its operations, with companies acceptable to Contractor, and in the greater of the amounts required by the Prime Contract or as follows:

**18.1.1 Worker's Compensation and Employer's Liability Insurance.** Workers' Compensation insurance shall be provided as required by any applicable law or regulation. Employer's Liability insurance shall be provided in amounts not less than:

- \$1,000,000 each accident for bodily injury by accident
- \$1,000,000 policy limit for bodily injury by disease
- \$1,000,000 each employee for bodily injury by disease

If there is an exposure of injury to Subcontractor's employees under the U.S. Longshoreman and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

**18.1.2 General Liability Insurance.** Subcontractor shall carry primary Commercial General Liability insurance covering all operations by or on behalf of Subcontractor providing insurance for bodily injury and property damage liability for the limits of liability indicated below and including but not limited to coverage for:

- (1) premises and operations
- (2) products and completed operations will be maintained for three years following project completion.
- (3) contractual liability insuring tort obligations assumed by Subcontractor in this Contract
- (4) broad form property damage (including completed operations)
- (5) explosion, collapse and underground hazards (including subsidence and any other earth movement)
- (6) personal injury liability

The limits of liability shall be not less than the amounts required of Subcontractor under the Contract Documents, but in no event less than:

- \$1,000,000 each occurrence (combined single limit for bodily injury and property damage)
- \$1,000,000 for personal injury liability
- \$2,000,000 aggregate for products-completed operations
- \$2,000,000 general aggregate

The general aggregate limit shall apply separately to Subcontractor's work under this Contract. For subcontracts in excess of \$250,000 an additional \$5,000,000 Excess Liability Insurance policy shall be maintained over the General Liability coverage shall, at a minimum, include coverage for the exposures set forth in items 1-6 above.

Contractor, its officers, directors and employees, and Owner shall be named as additional insured's under the Commercial General Liability policy and Excess Liability policy and such insurance afforded the additional insured's shall apply are primary insurance. Any other insurance maintained by Contractor or Owner shall not be called upon to contribute with this insurance.

Coverage for the Contractor, its officers, directors and employees and the Owner as additional insured's shall be provided by an endorsement providing coverage at least as broad as Additional Insured (Form B) endorsement form **CG 2010 1185** as published by the Insurance Services Office (ISO) (or equivalent). Additional insured endorsement will be provided for three years following project completion.

All insurance under this Section 16 (including, but not limited to general liability, automobile liability, and workers' compensation and employer's liability insurance shall be provided by a California admitted carrier with an A.M. Best's Rating of A- or better, financial capacity VII or greater (except for State Fund of California for workers' compensation coverage). General liability insurance shall be written on a form at least as broad as ISO occurrence form CG 0001; Automobile Liability Insurance shall be provided pursuant to a coverage form at least as broad as ISO form CA 0001. Contractor reserves the right, in its sole and subjective discretion, to reject an insurer and require Subcontractor to obtain policies from another insurer.

**18.1.3. Claims Made/Self Insurance Provisions.** Subcontractor shall not provide general liability insurance under any Claims Made General Liability form without the express prior written consent of Contractor. Any self-insurance program providing coverage in excess of \$25,000 per occurrence requires the prior written consent of Contractor.

**18.1.4. Automobile Liability Insurance.** Subcontractor shall carry automobile liability insurance, including coverage for all owned hired and non-owned automobiles. The limits of liability shall be not less than \$1,000,000 combined single limit each accident for bodily injury and property damage.

**18.1.5.** Certificates of insurance, as evidence of the insurance required by this Contract and including the required “additional insured” endorsement(s) shall be furnished by Subcontractor to Contractor with its bid. Certificates shall set forth deductible amounts applicable to each policy and all exclusions or limitations not set forth in ISO Commercial General Liability Form CG 00 01. The Contractor may allow deductible provisions if Subcontractor is willing to increase retentions accordingly. Standard ISO Form CG 0001 exclusions will also be allowed. Allowance of any additional exclusions or coverage limiting endorsements is at the discretion of the Contractor and Subcontractor’s bid shall be subject to upward adjustment to compensate for the existence of such exclusions.

Regardless of the allowance of exclusions, coverage limitations or deductibles by the Contractor, the Subcontractor shall be responsible for any deductible amount or any loss arising out of coverage denials by his insurance carrier(s). The certificates of insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) day’s prior written notice to Contractor. Such thirty-day notice should be adequate to ensure replacement coverage is procured by Subcontractor.

**18.1.6** Subcontractor shall take such steps as are necessary to assure Subcontractor’s compliance with its obligations. Should any insurance policy lapse or be canceled during the contract period, Subcontractor shall, prior to the effective expiration or cancellation date, furnish the Contractor with evidence of renewal or replacement of the policy. Failure to continuously satisfy insurance requirements as herein provided is a material breach of contract. In the event Subcontractor fails to maintain any insurance coverage required, Contractor may, but is not required to, maintain such coverage and charge the expense to Subcontractor or terminate this contract.

**18.1.7** Any acceptance of insurance certificates by Contractor shall in no way limit or relieve Subcontractor of its duties and responsibilities under this Contract including the duty to indemnify and hold harmless Contractors set forth in Section 17. Indemnification.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Subcontractor for liability in excess of such coverage nor shall it preclude the Contractor from taking such other actions as is available to it under any other provision of the contract or law. If higher limits or other forms of insurance are required in the Contract Documents, Subcontractor will comply with such requirements.

**18.1.8.** Additional insured endorsements shall be obtained and furnished to Contractor for three years following completion of the Project, and shall include all coverage required hereunder, including completed operations coverage. Failure by Contractor to request such endorsements or to give notice of their not having been filed shall not waive this requirement.

Subcontractor shall not provide any liability coverage under a “wasting” policy or other form of policy that reduces the amount of coverage, in whole or in part, by amounts expended on defense of claims. The following additional requirements shall also be satisfied:

- (a) **Hazardous Materials.** If Subcontractor and/or its subcontractors or suppliers, regardless of tier, perform remediation of hazardous materials or if their operations create an exposure to hazardous materials as those terms are defined in federal, state or local law, Subcontractor and its subcontractors and suppliers must obtain a “Contractor’s Pollution Liability” policy with limits not less than \$1,000,000 per occurrence and not less than \$2,000,000 aggregate for Bodily Injury, Personal Injury and Property Damage, naming Contractor as an additional insured. If Subcontractor or its subcontractors or suppliers haul hazardous material (including, without limitation, waste), the policy must extend pollution coverage to the transportation of hazardous materials or pollutants by waste hauling vehicles. If Subcontractor is subject to the Motor Carrier Act of 1980, the Motor Carrier Act endorsement MCS-90 must be obtained and attached to the policy.
- (b) **Professional Liability.** Any Subcontractor performing work that includes any design/build work or services shall obtain a Professional Liability Insurance Policy. Design/build work includes, without limitation, design/build work with respect to mechanical, electrical, structural, plumbing and fire sprinkler systems. Evidence of coverage in the form of a Certificate of Insurance shall be provided prior to the start of the project. Subcontractor shall obtain coverage for a minimum of three years following completion of the project, either through continued purchase of policies for such years or through purchase of an extended reporting period. If Owner or Contractor elects to purchase a project design policy, Subcontractor’s policy shall be endorsed to indicate that Subcontractor’s policy shall provide coverage once the project design policy has been exhausted.
- (c) **Riggers Liability.** Should Subcontractor’s work involve the moving, lifting, lowering, rigging or hoisting of property or equipment, Subcontractor shall carry Rigger’s Liability Insurance to insure against physical loss or damage to the property or equipment.

- (d) **Aircraft Liability.** If Subcontractor (or its subcontractors or suppliers, regardless of tier) use any owned, leased, chartered or hired aircraft of any type in the performance of this contract, they shall maintain aircraft liability insurance in an amount of not less than \$10,000,000 per occurrence, including Passenger Liability. Evidence of coverage in the form of a certificate of insurance shall be provided prior to the start of the Project.
- (e) **Waiver of Subrogation.** Contractor and Subcontractor waive all rights against each other for loss or damage to the extent reimbursed by any property or equipment insurance applicable to the work, except such rights as they may have to the proceeds of such insurance. If any applicable policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.
- (f) **Work Near Railroads.** If Subcontractor (including any lower tier subcontractor or supplier) performs any work or conducts any operations within fifty feet of any railroad (including any light rail, fixed rail or other rail system), Subcontractor shall obtain an endorsement of its Commercial General Liability Policy to delete any exclusion, including the “Contractual Liability” exclusion, for work performed within fifty feet of a railroad. A copy of such endorsement shall be provided to Contractor prior to any work or operations by Subcontractor within fifty feet of any railroad.
- (g) **Requirements for Sub-subcontractors, Vendors, and Suppliers.** Subcontractor shall ensure that all tiers of its subcontractors, vendors and suppliers shall maintain insurance in like form and amounts, shall comply with the additional insured requirements as set forth above, and shall provide Contractor with evidence of insurance prior to commencing work.

## 18.2 Property Insurance.

**18.2.1 Waiver of Subrogation.** Contractor and Subcontractor waive all rights against each other and against all other subcontractors and Owner for loss or damage to the extent reimbursed by any property or equipment insurance applicable to the work, except such rights as they may have to the proceeds of such insurance. If any applicable policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

**18.2.2 Builder’s Risk.** Upon written request of Subcontractor, Contractor shall provide Subcontractor with a copy of the Builder’s Risk policy of insurance or any other property or equipment insurance in force for the project and procured by Contractor. Subcontractor shall satisfy itself as to the existence and extent of such insurance prior to commencement of Subcontractor’s work.

If Builder’s Risk insurance purchased by Owner or Contractor provides coverage for Subcontractor for loss or damage to Subcontractor’s work. Subcontractor shall be responsible for the insurance policy deductible amount applicable to damage Subcontractor’s work and/or damage to other work caused by Subcontractor.

If not covered under the Builder’s Risk policy of insurance or any other property or equipment insurance required by the Contract Documents, Subcontractor shall procure and maintain at its own expense property and equipment insurance for portions of Subcontractor’s work stored off the site or in transit.

If Owner or Contractor has not purchased Builder’s Risk or equivalent insurance required by the Contract Documents, Subcontractor shall procure and maintain at its own expense property and equipment insurance for portions of Subcontractor’s work stored off the site or in transit.

If Owner or Contractor has not purchased Builder’s Risk or equivalent insurance including the full insurable value of Subcontractor’s work, then Subcontractor may procure such insurance at its own expense as will protect the interests of Subcontractor and its subcontractors in the work. Such insurance shall also apply to any of Owner’s or Contractor’s property in the care, custody or control of Subcontractor.

**18.3** Failure of Contractor to enforce in a timely manner any of the provisions of this Section 18 shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of this Contract.

## **SECTION 19. DISPUTE RESOLUTION PROCEDURE.**

### **19.1 Preliminary Dispute Resolution Procedure and Agreement to Arbitrate**

**19.1.1** Disputes under Prime Contract. Any dispute resolution procedure in the Prime Contract shall be deemed incorporated in this Agreement, and shall apply to any disputes arising hereunder, except disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the Prime Contract, those which have been waived by the making or acceptance of final payment, and questions regarding the licensure of the Subcontractor. Subject to compliance with all applicable laws, including but not limited to those relating to false claims, dispute and claim certifications, and cost and pricing data requirements, Contractor's sole obligation is to present any timely-filed claims by Subcontractor to Owner under such procedure and, subject to the other provisions of this Agreement, to pay to Subcontractor the proportionate part of any sums paid by the Owner to which Subcontractor is entitled.

**19.1.2. Settlement Negotiations.** Subject to Prime Contract disputes under Section 19.1.1, and as for disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the Prime Contract, promptly upon notification by one party to the other of a dispute, Contractor and Subcontractor shall meet to informally resolve such dispute. In the event that no resolution is achieved, the parties, prior to the initiation of any action or proceeding under this section, shall make a good faith effort to resolve the dispute by negotiation between representatives with decision-making power, who, to the extent possible, shall not have had substantive involvement in the matters of the dispute, unless the parties otherwise agree. To facilitate the negotiation, the parties agree either to fashion a procedure themselves or seek the assistance of a person or organization experienced in alternative dispute resolution procedures such as mediation, minitrial or other similar procedures.

For those matters in which the aggregate amount in dispute is \$75,000 or greater, and in the absence of an agreement on the manner in which alternate dispute resolution is to be accomplished, the parties shall submit their disputes to a neutral third party construction mediator. The mediation shall be nonbinding and shall be conducted as follows. Contractor shall propose a list of three mediators, from which Subcontractor within five working days of receipt of the list shall select the proposed mediator. The mediation shall be scheduled for a date within 60 days of Contractor's proposal of the candidates for mediator, unless Contractor agrees to a longer period before mediation. The cost of the mediation shall be shared pro rata.

**19.2. Arbitration Procedures.** Notwithstanding any dispute, and to the greatest extent permitted by law, Subcontractor agrees to continue with its performance and maintain the schedule of work pending resolution of any and all dispute, including disputes regarding payment. This agreement constitutes an advance waiver by Subcontractor of any actual or alleged right to stop work, rescind, or abandon the project.

In the event the Prime Contract contains an arbitration provision or for disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the Prime Contract, the following shall apply:

**19.2.1. Notice of Demand.** For arbitration under the prime contract, notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and shall conform to the requirements of the arbitration provision set forth in the Prime Contract. For claims not involving the acts, omissions or otherwise the responsibility of the Owner under the Prime Contract, the parties hereto shall submit any and all disputes arising under or relating to the terms and conditions of the Agreement to arbitration in accordance with the Construction Industry Rules of the American Arbitration Association. In either case, the demand for arbitration shall be made within a reasonable time after written notice of the claim, dispute or other matter in question has been given, and in no event shall it be made after the date when the institution of legal or equitable proceedings based on such claim dispute or other matter in question would be barred by the statute of limitations.

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

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

**19.2.4. Consolidated Arbitration Proceedings.** To the extent not prohibited by their contracts with others, the claims and disputes of Owner, Contractor, Subcontractor and other subcontractors, suppliers and/or materialmen involving a common question of fact or law shall be heard by the same arbitrator(s) in a single proceeding. In this event, it shall be the responsibility of Subcontractor to prepare and present Contractor's case, to the extent the proceedings are related to Subcontractor's Work under this Agreement. Should Contractor enter into arbitration with the Owner or others regarding matters relating to Subcontractor's Work, Subcontractor shall be bound by the result of the arbitration to the same degree as the Contractor.

**19.2.5. No Limitation of Rights or Remedies.** This Section shall not be deemed a limitation of any rights or remedies which Subcontractor may have under any federal or state mechanics' lien or stop payment notice laws or under any applicable labor and material payment bonds unless such rights or remedies are expressly waived by it.

## **SECTION 20. COMPLIANCE WITH ALL LAWS AND SAFETY PRACTICES**

Subcontractor shall comply fully with all laws, orders, citations, rules, regulations, standards and statutes affecting or relating to this Agreement or its performance, including but not limited to those with respect to occupational health and safety, the handling and storage of hazardous materials, accident prevention, safety equipment and practices including the accident prevention and safety program of Owner and Contractor.

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

## **SECTION 21. WARRANTY**

Subcontractor warrants to Owner and Contractor that all materials furnished shall be new unless otherwise specified and that all work under this Agreement shall be performed in a substantial, good and workmanlike manner, shall be of best quality, free from faults and defects, and in strict conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty provided in this Section 21 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

## **SECTION 22. USE OF CONTRACTOR'S EQUIPMENT**

In the event Subcontractor uses Contractor's equipment, materials, labor, supplies or facilities, Subcontractor shall reimburse Contractor at a predetermined rate, except as provided in Section 16.1.2. or as otherwise stated herein. Further, Subcontractor assumes all responsibility for physical damage to such equipment, materials, labor, supplies, or facilities used by Subcontractor or its agents, employees, or permittees. In the event that Contractor's employees are used by Subcontractor, Subcontractor shall have full responsibility for all acts or omissions of Contractor's employees with regard to Subcontractor's use or employment of them. Subcontractor accepts any all of Contractor's equipment, materials, labor, supplies or facilities as furnished.

## **SECTION 23. ASSIGNMENT OF SUBCONTRACT**

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

## **SECTION 24. INDEPENDENT CONTRACTOR**

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

## **SECTION 25. CLEAN-UP**

At all times during the course of construction, Subcontractor shall perform its Work so as to maintain the site in a clean, safe and orderly condition. Upon completion of the Work under this Agreement, Subcontractor shall remove from the site all hazardous materials, temporary structures, debris and waste incident to its operation and clean all surfaces, fixtures, equipment, etc., relative to the performance of this Agreement. If Subcontractor fails to perform a clean-up function within four hours after notification from Contractor to do so, Contractor may proceed with that function as it judges necessary and in the manner it deems expedient, and the cost thereof shall be charged to Subcontractor and deducted from monies due to Subcontractor.

## **SECTION 26. ATTORNEYS' FEES**

In the event the parties become involved in litigation or arbitration with each other arising out of this Agreement or other performance thereof in which the services of an attorney or other expert are reasonably required, the prevailing party shall be fully compensated for

the cost of its participation in such proceedings, including the cost incurred for attorneys' fees and experts' fees. Unless judgment goes by default, the attorneys' fee award shall not be computed in accordance with any court schedule, but shall be such as to fully reimburse all attorneys' fees actually incurred in good faith, regardless of the size of a judgment, it being the intention of the parties to fully compensate for all attorneys' fees and experts' fees paid or incurred in good faith. In the case of a dispute under the Prime Contract dispute resolution provisions, Subcontractor shall be entitled to such attorneys' fees and other costs as may be provided for under the Prime Contract.

**SECTION 27. LABOR AGREEMENTS**

The Contractor is signatory to the following labor agreements:

- Carpenters
- Laborers
- Operating Engineers
- Drywall
- Latherers

**SECTION 28. SPECIAL PROVISIONS**

Layout and Finish Responsibility: Contractor shall establish principal axis lines and levels and Subcontractor shall lay out and shall be strictly responsible for the accuracy of Subcontractor's Work and for loss and damage to others engaged in work on the site by reason of any failure by Subcontractor to set out or perform its Work correctly. Subcontractor shall exercise prudence so that actual final conditions and details shall result in perfect alignment of finish surfaces.

Prevailing Wages and Davis-Bacon Act: On all projects subject to state or local prevailing wage requirements, Subcontractor shall comply with any applicable California prevailing wage laws. The provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 are attached hereto and incorporated herein by this reference. On all such projects, as a condition precedent to final payment, Subcontractor agrees to provide an affidavit that complies with the terms of Labor Code Section 1775(b)(4). Subcontractor acknowledges and agrees that it has performed its own investigation as to the applicability of California prevailing wage laws, the federal Davis-Bacon Act, or any similar laws, regulations, or contract requirements; Subcontractor shall comply with all applicable laws, regulations, or other requirements concerning payment of wages and conditions of employment, and record keeping in accordance therewith. Subcontractor agrees to furnish certified payrolls promptly upon demand and further agrees to cooperate fully in any effort by Contractor to verify compliance with labor laws and regulations, including requirements under the Davis-Bacon Act or the California Labor Code. Such cooperation shall include, without limitation, furnishing copies and originals of records and providing access to employees or witnesses for interviews and statements. In addition to and without derogation to any other rights that Contractor may enjoy, Contractor may withhold sufficient funds to protect Contractor against any claims related to labor requirements, including without limitation, requirements under the Davis-Bacon Act or the California Labor Code, owed by Subcontractor under this Agreement or any other agreement with Contractor. Subcontractor agrees that the amounts set forth as the Subcontract Price shall be deemed to be full compensation for compliance with such laws, regulations, or requirements, including payment of all applicable wage rates, and that no additional compensation will be owed to Subcontractor in the event that Subcontractor is required there under to pay higher wages or incur additional costs that Subcontractor contends that it did not anticipate.

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

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

**RODAN BUILDERS, INC.**

**COMPANY NAME**

By: \_\_\_\_\_ By: \_\_\_\_\_

Dan Oliver , C.F.O.

Individual, Title

CA LICENSE NO. 858119

Contractors State License No.