

LATHROP CONSTRUCTION ASSOCIATES, INC.
4001 Park Road, P.O. Box 2005
Benicia, CA 94510-0819
707/ 746-8000 Fax 707/ 746-8080
AN EQUAL OPPORTUNITY EMPLOYER
State of California License #415981

SUBCONTRACT # _____
Vendor No. _____

THIS SUBCONTRACT AGREEMENT (hereinafter called SUBCONTRACT) is made on _____, by and between LATHROP CONSTRUCTION ASSOCIATES, INC. (hereinafter called Contractor), and

Phone No. _____ (Fax No. _____), California License No. _____, Expir. Date _____ (hereinafter called Subcontractor).

On _____, Contractor entered into a prime contract (hereinafter called PRIME CONTRACT) with the _____ (hereinafter called OWNER), to construct _____ located at _____ (hereinafter called PROJECT), in accordance with the terms and conditions of the PRIME CONTRACT, and all plans, specifications and other contract documents attached to, referenced in or incorporated into the PRIME CONTRACT.

The PRIME CONTRACT, including any Plans, Specifications, Drawings and other documents incorporated therein, and any Modifications thereto made prior to execution of this SUBCONTRACT (hereinafter the CONTRACT DOCUMENTS) are incorporated as a part of this SUBCONTRACT as though fully set forth herein. Subcontractor agrees that all provisions of the CONTRACT DOCUMENTS insofar as they relate to the scope of work described below (or in Attachment A) to be performed by the Subcontractor under the terms of this SUBCONTRACT shall apply equally to the Subcontractor as they do to the Contractor, and as to all such terms, Subcontractor hereby expressly agrees to assume toward the OWNER and Contractor all obligations and responsibilities that the Contractor, by terms of the CONTRACT DOCUMENTS, has assumed toward the OWNER. Subcontractor agrees and acknowledges that it has reviewed in detail all of the terms and conditions of the CONTRACT DOCUMENTS, or that it has a full and complete opportunity to review the same, and that in entering into this SUBCONTRACT, Subcontractor is not relying upon any statements or representations of Contractor or OWNER with respect thereto, except as expressly set forth therein. As used herein, the term SUBCONTRACT DOCUMENTS means this SUBCONTRACT and the Attachments or Riders attached hereto, the CONTRACT DOCUMENTS, and all Modifications issued after execution of this SUBCONTRACT. As used herein, A "Modification" is (1) a written amendment to the CONTRACT signed by OWNER and Contractor, (2) a change order to the CONTRACT or this SUBCONTRACT, (3) a written interpretation issued by the OWNER or its Architect/Engineer pursuant to Section 24, or (4) a written order for a minor change in the work issued by the OWNER or its Architect/Engineer. To the extent that the CONTRACT DOCUMENTS contain terms, conditions and/or obligations that are greater or more stringent than those set forth in this SUBCONTRACT, Subcontractor shall comply with such greater or more stringent terms, provisions and/or obligations of the CONTRACT DOCUMENTS.

The scope of work to be performed hereunder is as follows:

FURNISH & INSTALL all labor, material, equipment, services, and all applicable taxes necessary to complete the following work for the PROJECT all in strict accordance with the SUBCONTRACT DOCUMENTS:

Spec Sections:

What is required by one of the SUBCONTRACT DOCUMENTS shall be deemed to be required by all.

FOR THE SUM OF: \$ _____ (hereinafter the Subcontract Price).

SEE ATTACHMENT 'A' AFFIXED HERETO AND MADE A PERMANENT PART HEREOF
SEE ATTACHMENT 'B' AFFIXED HERETO AND MADE A PERMANENT PART HEREOF
SEE ATTACHMENT 'C' AFFIXED HERETO AND MADE A PERMANENT PART HEREOF
SEE ATTACHMENT 'D' AFFIXED HERETO AND MADE A PERMANENT PART HEREOF

Vendor # _____
SUBCONTRACT # _____

FURTHER AGREEMENTS

SECTION 1 – SUBCONTRACT WORK. This SUBCONTRACT is forwarded to the above-named Subcontractor as an acceptance of the bid made to Contractor in connection with its compilation of the prime bid on the PROJECT, which job was bid on _____. It is agreed and understood that the posting of this SUBCONTRACT executed by Contractor through the regular mail shall constitute an acceptance of the bid made by Subcontractor, and that the execution of this SUBCONTRACT by said Subcontractor is made solely for the purpose of consummating Contractor's acceptance of the bid, completing the record, and memorializing the terms and conditions of the SUBCONTRACT. It is understood and agreed by the undersigned that Contractor has used and relied upon the bid of Subcontractor in connection with its compilation of the general bid on the PROJECT.

Subcontractor certifies that it is, and was at the time of its bid, hereinabove referred to, licensed to perform the work of this SUBCONTRACT (hereinafter the Subcontract Work) and thoroughly familiar with all of the terms, conditions and obligations, guarantees, and warranties of the above-referenced SUBCONTRACT DOCUMENTS, including without limitation, the CONTRACT DOCUMENTS and other materials necessary for properly performing the work of this SUBCONTRACT as well as the location of the jobsite and the conditions under which the work is to be performed. By this SUBCONTRACT, Subcontractor hereby agrees to furnish all materials, labor, tools, insurance, permits, certificates, guarantees and warranties necessary to construct, complete, repair and maintain, in a workmanlike manner, to the satisfaction of the OWNER and Contractor, all the Subcontract Work.

SECTION 2 – PAYMENT. Payments will be made to the Subcontractor in monthly progress payments of ninety percent (90%) of the value of the work completed and installed in its final position as measured and certified by the OWNER'S representative; provided, however, the amount of retention withheld shall not exceed the maximum amount permitted by law, and on public works of improvement with the State of California or any subdivision thereof, the percentage of retention withheld (when there are no additional reasons for withholding) shall not exceed the percentage for retention as set forth in the PRIME CONTRACT. Subject to the other provisions of this SUBCONTRACT, each monthly progress payment shall be made ten (10) days after receipt of payment from the OWNER by Contractor, but in no event later than the time required by law. Measurement & certification will be conducted in accordance with procedures established for the PROJECT, including those set forth in the CONTRACT DOCUMENTS. The decision of the OWNER's representative as to the amount of work done by the Subcontractor shall be final and binding on Contractor and the Subcontractor. Invoices for work completed during the preceding month shall be delivered to the Contractor's office in Benicia, California by the first (1st) of each month. The obligation to make any progress payment due or claimed to be due under this SUBCONTRACT is expressly conditioned upon: (1) the return of this SUBCONTRACT executed by Subcontractor, (2) delivery of appropriate lien releases for Subcontractor and each of its sub-subcontractors & suppliers regardless of tier, (3) delivery of Certificate(s) of Insurance as required by Section 7, and such other documents and evidence as Contractor may reasonably require to establish Subcontractor's compliance with all of the terms and conditions of the SUBCONTRACT DOCUMENTS. Final payment to Subcontractor will be due upon Subcontractor's satisfaction of all conditions to final payment set forth in this SUBCONTRACT and the CONTRACT DOCUMENTS, and within ten (10) days of Contractor's receipt of final payment from OWNER. On public works projects with the State of California or any subdivision thereof, the time period for payment of retention shall be within seven (7) days after receipt of retention by Contractor, provided that all conditions to payment to Subcontractor have been satisfied and subject to Contractor's right to withhold for the grounds set forth in this SUBCONTRACT or otherwise provided by law.

With each progress and/or final payment billing, Subcontractor must include a payment application, signed under penalty of perjury, which includes the following provision:

On its own behalf and on behalf of its directors, officers, employers, agents, partners, affiliates, subsidiaries, representatives, insurers, sureties, successors and assigns, the undersigned hereby certifies under penalty of perjury, warrants, and agrees that as an inducement for and in consideration of the payment referred to herein, that except as indicated in writing below, the undersigned, its directors, officers, employers, agents, partners, affiliates, subsidiaries, representatives, insurers, sureties, successors and assigns, and any of its subcontractors or suppliers (regardless of tier) do not have any claims, causes of action, damages, losses, costs or liabilities that it or they attribute to Contractor, Owner, or any third party, or for which Contractor, Contractor, or any third party is responsible, in whole or in part, directly or indirectly, and which in any way relate to the project designated above. This certification and warranty constitutes an accord and satisfaction, and Subcontractor states that Contractor may rely upon it in making payment. The only exceptions to Subcontractor's certification and warranty are:

1. Total Value of Unapproved Subcontractor Orders
2. Any Known Claims

Subcontractor waives and hereby releases all unapproved change orders and claims that are required to have been included as exceptions above. With regard to such matters, Subcontractor waives any and all rights provided under California Civil Code Section 1542, or any similar law or statute, which reads as follows: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

If the OWNER or other responsible party delays in making any payment to Contractor from which payment to Subcontractor is to be made, Contractor shall have a reasonable amount of time to make payment to Subcontractor. The parties agree that a "reasonable time" shall not be less than the time Contractor and Subcontractor require to pursue to conclusion their legal remedies against OWNER or other responsible party to obtain payment, including (but not limited to) mechanic's lien remedies.

Acceptance of final payment by Subcontractor represents that Subcontractor has been paid in full and that Subcontractor waives any and all claims and/or disputes of any kind for further compensation, except for any claims and/or disputes that Subcontractor has specifically identified to be reserved in a written attachment to Subcontractor's application for final payment to the Contractor. As a condition to final payment, Subcontractor shall also execute a full and final General Release form releasing Contractor from any and all claims and/or disputes, known and unknown, related to work performed by Subcontractor on the Project.

No payments shall be considered as evidence or acceptance of the performance of this SUBCONTRACT by the Contractor, either wholly or in part, and no payment shall be considered to be an acceptance of defective work or improper material.

All payments otherwise due Subcontractor are subject to withholding as set forth in Section 6 of this SUBCONTRACT.

SECTION 3 – PAYMENTS FOR MATERIALS AND LABOR. Subcontractor shall pay for all materials and labor whether supplied by it or its sub-subcontractors or suppliers regardless of tier, including sales taxes, and other taxes, ordered for or used on the PROJECT in connection with the performance of this SUBCONTRACT, and shall suffer no claim of lien, stop notice, payment bond claim or statutory withholding notice to be filed or served with respect to the work of this SUBCONTRACT. Subcontractor shall present to Contractor satisfactory evidence of any such payment, including without limitation, payroll affidavits, receipts, vouchers, releases of lien and releases of claim, all in the form satisfactory to Contractor, and it is agreed that no payment hereunder shall be made, except at Contractor's sole discretion, until and unless such documents have been furnished.

In case suit is brought on any claim or lien for labor performed or materials used on or furnished to the PROJECT pursuant to the SUBCONTRACT, Subcontractor shall pay and satisfy any such lien or judgment as may be established by the decision of the court in said suit. Subcontractor agrees within ten (10) days after written demand to cause the effect of any such suit or lien to be removed from the PROJECT, and in the event Subcontractor shall fail so to do, Contractor is authorized to use whatever means in its discretion it may deem appropriate to cause said lien or suit to be removed or dismissed and the cost thereof shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may litigate any such lien or suit provided it causes the effect thereof to be removed, promptly in advance, from the PROJECT, and shall further do such things as may be necessary to cause OWNER not to withhold any monies due to Contractor from OWNER by reason of such liens or suits.

SECTION 4 – AUTHORIZATION TO PAY SUPPLIERS AND SUB-SUBCONTRACTORS. Contractor is authorized to make payments on accounts stated by Subcontractor's suppliers and sub-subcontractors, regardless of tier, for materials supplied and work performed in connection with this SUBCONTRACT, and towards the satisfaction of any other of Subcontractor's liabilities for which the OWNER or Contractor may be legally responsible, by drafts executed jointly in favor of Subcontractor and said sub-subcontractors, suppliers and other claimants or directly to such sub-subcontractors, suppliers and other claimants as Contractor in its sole discretion deems appropriate. Nothing in this Section 4 shall obligate the Contractor to make such payments to said sub-subcontractors, suppliers or other claimants, nor shall this provision create any rights to any person or entity not a party to this SUBCONTRACT.

SUBCONTRACTOR SHALL ADVISE, IN WRITING, ALL SUB-SUBCONTRACTORS, SUPPLIERS OR OTHER CLAIMANTS OF ANY TIER OF THIS SECTION 4 PRIOR TO DIRECTING OR PERMITTING MATERIALS TO BE DELIVERED OR WORK TO BE PERFORMED BY SUCH SUB-SUBCONTRACTORS, SUPPLIERS OR OTHER CLAIMANTS.

SECTION 5 – UNION CONTRIBUTIONS. Subcontractor shall be fully and exclusively responsible for, and shall pay when due, any and all applicable contributions, allowances or other payments or deductions, however termed, required to be paid by Subcontractor under union labor agreements now, or hereafter, in force. Subcontractor agrees, as a material part of this SUBCONTRACT, to advise Contractor within

twenty-four (24) hours of receipt of any notice of default or arrearage received from any union trust fund or other union fiscal intermediary with respect to Subcontractor or its sub-subcontractors or suppliers, regardless of tier. In the event any such default or arrearage by Subcontractor, Subcontractor agrees that any payment from Contractor may be made payable directly to the creditor union trust fund or fiscal intermediary.

SECTION 6 – PAYMENTS WITHHELD. In addition to any other remedy provided to Contractor under this SUBCONTRACT, or as may be available under applicable law, Contractor may, in its sole and absolute discretion, withhold, or in the event of subsequently discovered evidence nullify, the whole or part of any payments due or to become due under this SUBCONTRACT, a reasonable amount, as determined by Contractor, as may be necessary to protect Contractor and OWNER from loss for any reason arising out of Subcontractor's responsibilities or performance under this SUBCONTRACT, including, but not limited to: (1) defective work not remedied; (2) filing of lawsuit, claim or arbitration proceeding or reasonable evidence indicating a probable filing of such proceedings, (3) failure of the Subcontractor to make payments properly for labor, materials or equipment, (4) reasonable doubt that the Subcontract Work can be completed for the unpaid balance of the Subcontract Price, (5) damage to another subcontractor's work or that of contractor, (6) costs incurred by Contractor resulting from Subcontractor's failure to complete the SUBCONTRACT in accordance with the most current Project Schedule, or (7) unsatisfactory prosecution of the Subcontract Work. When the aforementioned grounds are removed, payment shall be made for amounts withheld after deducting therefrom the administrative costs incurred by Contractor in responding to and managing such claims and disputes.

As a cumulative remedy, Contractor shall be entitled to withhold and to set off against any amounts owed to Subcontractor any liabilities, debts, or amounts owed to Contractor by Subcontractor (whether liquidated or contingent), including those that relate to or arise from other projects or contracts. Should one or more contracts now or hereafter exist between the parties hereto or with any affiliated corporation, then a breach by the Subcontractor of any contract may, at the option of the Contractor, be considered a breach of all contracts. In such event Contractor may terminate any or all of the contracts so breached or may withhold monies due or to become due on such contracts and apply the same toward payment of any damages suffered on that or any other contract.

SECTION 7 – INSURANCE. Subcontractor shall, at its own expense, comply with all of the insurance requirements and obligations set forth in Attachment 'B' hereto.

SECTION 8 – INDEMNIFICATION.

- A. To the greatest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless Contractor, OWNER, and OWNER's architect and engineer, and any of their respective sureties, directors, officers, agents, employees, parents, affiliates, subsidiaries, partners, and representatives, and any other persons or entities designated by any of them (collectively, the "Indemnitees") from and against all causes of action, penalties, assessments, fines, actions by governmental authorities, demands, liabilities, claims, damages, costs, losses and expenses, including but not limited to attorney's fees, consultant fees, and other legal costs ("Claims"), which arise out of or are in any way related (i) to this SUBCONTRACT; (ii) to actual or alleged actions or omissions by Subcontractor or any of its subcontractors, suppliers, vendors, employees, or persons for whom it is responsible, or (iii) Subcontractor's presence at the Project site and/or its Subcontract Work. Notwithstanding the foregoing, if any of the CONTRACT DOCUMENTS impose more stringent defense, indemnity, contribution or hold harmless obligations than are set forth herein, then the more stringent provisions shall apply, and Subcontractor shall owe the same defense, indemnity, contribution, and hold harmless obligations to Contractor as Contractor owes to Owner. Subcontractor's duty to defend Indemnitees shall apply, and Subcontractor shall be required to furnish a defense, notwithstanding that there has not yet been a determination, adjudication or finding of liability or fault on the part of Subcontractor or any party or person to be indemnified.
- B. To the greatest extent permitted by law, the obligations of this Section 8 shall apply regardless of whether or not the Claims were caused in part or contributed to by Indemnitees; however, obligations specified above shall not extend to: (a) Claims that arise out of, pertain to, relate to the active negligence or willful misconduct of Contractor, of a subcontractor to Contractor, OWNER, construction manager who is an Indemnitee, or any of their other agents, other servants, or other independent contractors who are responsible to them (b) to defects in design furnished by the Indemnitee, or (c) to the extent Claims do not arise out of the scope of work of Subcontractor. Items (a) through (c) in the preceding sentence shall be referred to in this provision as "Indemnity Limitations." Upon written tender by any Indemnitee, including Contractor, of a Claim, Subcontractor shall:
1. Defend the claim with counsel of its choice, who is reasonably qualified and experienced in such matters and does not have a conflict of interest in representing the tendering party, and Subcontractor shall maintain control of the defense for any claim or portion of claim to which the defense obligation applies. If Subcontractor elects to defend under this subparagraph 8.A.1, Subcontractor shall provide written notice of the election to the tendering party a reasonable time period following receipt of the written tender, and in no event later than 30 days following that receipt. Subject only to the limitations set forth above, the defense provided by Subcontractor shall be a complete defense of tendering

party of all Claims or portions thereof to the extent alleged to be caused by Subcontractor, including any vicarious liability claims the tendering party resulting from Subcontractor's scope of work, but not including claims resulting from the scope of work, actions, or omissions of the tendering party, or any other party. Any vicarious liability imposed upon the tendering party for Claims caused by Subcontractor electing to defend under this paragraph shall be directly enforceable against Subcontractor. Subcontractor shall promptly provide the tendering party with all information, documentation, or evidence, if any, relating to any assertion by Subcontractor that another party is responsible for the tendered Claim; or

2. Pay, within 30 days of receipt of an invoice from the tendering party, no more than a reasonable allocated share of the tendering party's defense fees and costs, on an ongoing basis during the pendency of the claim, subject to reallocation consistent with the limitations set forth above, and including any amounts reallocated upon final resolution of Claim, either by settlement or judgment. The tendering party shall allocate a share to itself to the extent a Claim is alleged to be caused by its work, actions, or omissions, and a share to each subcontractor to the extent that the Claim is alleged to be caused by Subcontractor's work, actions, or omissions, regardless of whether the party seeking a defense from Subcontractor actually tenders the claim to any particular subcontractor, and regardless of whether that Subcontractor is participating in the defense. Any amounts not collected from any particular subcontractor may not be collected from any other subcontractor.
- C. Notwithstanding any other provision of law, if Subcontractor fails timely and adequately to perform its obligations under Section 8.B.1, the party tendering the Claim shall have the right to recover from Subcontractor for any resulting compensatory damages, consequential damages, reasonable attorney's fees, consultant fees, and other legal costs. If Subcontractor fails to timely perform its obligations under Section 8.B.2, the party tendering the Claim shall have the right to recover from Subcontractor for any resulting compensatory damages, interest on defense and indemnity costs, from the date incurred, at the rate set forth in subdivision (g) of former Civil Code Section 3260 (now recodified at Civil Code Section 8818), consequential damages, and reasonable attorney's fees incurred to recover these amounts. The party tendering the Claim shall bear the burden of proof to establish both Subcontractor's failure to perform under either Section 8.B.1 or 2, and any resulting damages. In addition to the foregoing remedies, and without limitation or derogation of them, Subcontractor agrees to pay liquidated damages of \$250 per each day that Subcontractor fails to perform its obligations under either Section 8.B.1 or 2, which are intended to compensate the tendering party for loss of reputation, administrative costs, and other losses that are difficult to quantify and that are not adequately compensated under this provision and Section 2782.05 of the Civil Code. Subcontractor agrees that the sum of \$250 per day constitutes a reasonable estimate of such damages or losses.
 - D. The obligations under this Section 8 are in no way limited or relieved by Subcontractor having obtained insurance, by the Insurance or other provisions of this SUBCONTRACT, and/or to the extent permitted by law, by the provisions of any workers compensation law, regulation or arrangement. The obligations of Section 8 shall survive the expiration or termination of this SUBCONTRACT, as well as Subcontractor's completion of its other obligations.
 - E. If and only if a claim for defense or indemnity relates to a project that is governed by California Civil Code Sections 895 et seq. and Contractor is determined to be a "Builder" for purposes of California Civil Code Section 2782(d), then as to claims of construction defects ("Defect Claims") only, the foregoing indemnity is modified such that Subcontractor is not obligated to indemnify OWNER to the extent that such Defect Claims arise out of, pertain to, or relate to the negligence of the OWNER, or the OWNER's other agents, other servants, or other independent contractors who are directly responsible to OWNER, or for defects in design furnished by those persons, or to the extent the Defect Claims do not arise out of, pertain to, or relate to the scope of work covered by this SUBCONTRACT; however, Subcontractor shall nevertheless be obligated to defend OWNER and Contractor from any such Defect Claims, within five (5) days of obtaining knowledge of any such Defect Claims, subject to reallocation after final resolution of the claims pursuant to Civil Code Section 2782(d). Indemnity and defense obligations not affected or restricted by Civil Code Section 2782(d) or (e), such as for property damage not caused by construction defects or other matters not involving Defect Claims, shall not be limited, impaired or modified by the foregoing sentence, and such indemnity and defense obligations shall remain in full force and effect.
 - F. Notwithstanding the foregoing or any other provision of this SUBCONTRACT, if the "Claim" for which indemnity or defense is sought is in connection with a Skills and Trained Workforce Compliance project subject to the provisions of Section 2782(c) of the Civil Code and constitutes a "claim of construction defect" as defined by Section 2782(c) of the Civil Code, then the provisions of Attachment D hereto shall apply.

SECTION 9 – SURETY BONDS

Unless the Contractor expressly waives this requirement in writing, the Subcontractor shall execute and furnish to Contractor faithful performance and labor and material bonds. The bonds shall be issued by a California admitted surety acceptable to Contractor with an AM Best rating of A-VII or

better. The bonds shall be in a form satisfactory to CONTRACTOR with penal sums to be designated by Contractor, but not exceeding 100% of the Subcontract Price. Contractor, in its sole discretion, may require that Subcontractor bear all or part of the expense of the surety's premium. The performance bond shall cover all conditions of this SUBCONTRACT, including all costs and expenses associated with the indemnification and insurance provisions of this SUBCONTRACT, including the satisfaction of any self-insured retention.

The bonds shall be issued by a California admitted surety acceptable to Contractor with an AM Best rating of A-VII or better. The bonds shall be in a form satisfactory to CONTRACTOR and shall be provided within five (5) calendar days of demand with penal sums to be designated by Contractor, but not exceeding 100% of the Subcontract Price. Contractor, in its sole discretion, may require that Subcontractor bear all or part of the expense of the surety's premium. The performance bond shall cover all conditions of this SUBCONTRACT, including all costs and expenses associated with the indemnification and insurance provisions of this SUBCONTRACT, including the satisfaction of any self-insured retention.

SECTION 10 – LABOR RELATIONS

10.1 General. Employment of labor by Subcontractor shall be effected under conditions which are satisfactory to Contractor. Subcontractor shall keep a representative at the site of the PROJECT during all times when Subcontractor's work is in progress, and such representative shall be authorized to represent Subcontractor as to all phases of the Subcontract Work. Prior to commencement of the Subcontract Work, Subcontractor shall notify Contractor in writing of the name of its representative, and in the event of any change of representative, Subcontractor shall notify Contractor the name of the new representative prior to such change becoming effective.

10.2 Labor Agreements. Subcontractor acknowledges that Contractor has entered into labor agreements covering work at its construction jobsites with the labor unions identified in Attachment 'C' hereto. Subcontractor hereby expressly agrees that all of the provisions of the applicable labor agreements are incorporated into this SUBCONTRACT as if they were set forth herein in their entirety. Subcontractor acknowledges and agrees that Contractor has relied on its representations as set forth above in this Section 10.2. Subcontractor shall fully defend, indemnify and hold Contractor harmless from and against any claims, liabilities, losses, damages, costs, expenses, attorney's fees incurred in good faith, awards, fines or judgments arising out of or relating to any change or alteration in Subcontractor's union relationships or status in accordance with Section 8, above.

Subcontractor agrees to comply with all the terms and conditions of the labor agreements set in Attachment 'C' hereto, as if it were a party to said agreements including signatory status, if required. Subcontractor further agrees to pay the wage rates, make the required trust fund payments into the respective labor trust funds, and observe the hours and all other terms and conditions set forth in the respective labor agreement identified in Attachment 'C' hereto. Subcontractor agrees to comply with the terms and provisions of said labor agreements setting forth the grievance and arbitration provisions. 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 listing in Attachment 'C' hereto may require that Subcontractor comply with additional labor agreements with unions affiliated with the AFL-CIO and/or the United Brotherhood of Carpenters and Joiners of America and/or the Laborers International Union of North America, but listed in Attachment 'C' hereto. When the terms and conditions of said labor agreements so require, Subcontractor shall perform its jobsite work pursuant to all terms and conditions of an appropriate labor agreement with a union affiliated with the AFL-CIO and/or the United Brotherhood of Carpenters and Joiners of America and/or the Laborers International Union of North America.

Should there be picketing on Contractor's job site, and Contractor establishes a reserved gate or neutral access for Subcontractor's purpose, it shall be the obligation of Subcontractor to continue the proper performance of its work without interruption or delay. In the event of a strike resulting from a union jurisdictional dispute involving or affecting the labor employed by the Subcontractor, Contractor may, at its option, terminate the Subcontractor's right to perform in accordance with Section 12.1.2, below.

Subcontractor further promises and agrees that it will bind and require all of its sub-subcontractors, regardless of tier, and their subcontractors performing job site work of the type covered by any of the labor agreements in Attachment 'C' attached hereto to agree to all of the foregoing promises and undertakings, to the same effect as herein provided with respect to Subcontractor.

10.3 DBE/DVBE/MBE/WBE Requirements. Subcontractor hereby acknowledges that it is thoroughly familiar with all DBE/DVBE/MBE/WBE requirements pertaining to this SUBCONTRACT, to the extent any such requirements exist. If the Subcontractor claims status as a DBE/DVBE/MBE/WBE, 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 sub-subcontractor or supplier of the Subcontractor, regardless of tier, is designated as or is required to be a DBE/DVBE/MBE/WBE, Subcontractor agrees to be responsible for ensuring 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/DVBE/MBE/WBE, and that any misrepresentation of the status of Subcontractor or any of its sub-subcontractors or suppliers, regardless of tier, is a material breach of this SUBCONTRACT and grounds for immediate termination of Subcontractor's right to perform pursuant to Section 12.1.2, below. Notwithstanding anything else to the contrary contained in the SUBCONTRACT DOCUMENTS, in the event of termination as the result of material misrepresentation of the status of the Subcontractor as a DBE/DVBE/MBE/WBE, Subcontractor shall not be entitled to any compensation not already paid.

10.4 Compliance with Applicable Laws. 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. Subcontractor shall register with the Department of Industrial Relations, and maintain its registration in good standing, on any state or local public works project. Upon request, Subcontractor shall submit certified payroll records to Contractor no later than three (3) working days after labor has been paid, as well as any additional documentation or information that may be needed to verify that Subcontractor has paid all wages, benefits, contributions, apprenticeship council payments, and amounts owed to unions or trust funds. The provisions of California Labor Code Sections 1720.9, 1725.5, 1771, 1775, 1776, 1777.5, 1813 and 1815 are incorporated into this SUBCONTRACT when payment of prevailing wages is required by contract or law, and Subcontractor agrees to comply with these provisions and all interpretations thereof by the Director of the Department of Industrial Relations insofar as they are applicable to Subcontractor on the PROJECT. On 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). Additionally, on all projects subject to the California prevailing wage laws, Section 1720.9 of the Labor Code (AB 219) requires that any person or entity that engages in "the hauling and delivery of ready-mixed concrete" must: (1) comply with prevailing wage laws, including payment of prevailing wages and the submission of certified payroll reports; and (2) register with the Department of Industrial Relations, even if the person or entity is not a licensed contractor. Subcontractor agrees strictly to comply with these requirements when they apply, and Subcontractor's failure to comply shall constitute a material breach. In particular, and without limitation, on projects on which such statutes are applicable, Subcontractor agrees to comply with Division 2, Part 7, Chapter 1 of the California Labor Code, Section 1720 et seq. The CALIFORNIA PUBLIC WORKS LABOR CODE EXHIBIT attached hereto is fully incorporated into this SUBCONTRACT as though fully set forth herein.

SECTION 11 – LIABILITY FOR WORK IN PROGRESS AND JOBSITE REPRESENTATIVE

11.1 Liability for Work in Progress. Subcontractor shall be responsible for its own work, whether performed at the site of the PROJECT or in preparing or delivering materials or equipment to the site, property and/or materials, including, but not limited to, tools, equipment, scaffolding, job trailers, personal property, staging and vehicles and shall bear the risk of any loss or damage thereto exclusively. In the event of loss or damage, Subcontractor shall proceed promptly to make repairs or replacement of the damaged work, property and/or materials at its own expense, and as directed by the Contractor.

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

Subcontractor shall take all necessary precautions to protect its tools, equipment, and other property and shall be solely responsible for the any theft, loss or damage thereto.

11.2 Jobsite Representative. Subcontractor shall keep a representative at the jobsite during all times when the Subcontract Work is in progress, and such representative shall be authorized to represent Subcontractor as to all phases of the Subcontract Work. Prior to commencement of the Subcontract Work, Subcontractor shall notify Contractor of the name of Subcontractor's representative, and in the event of any change of representative, Subcontractor shall notify Contractor of the name of the new representative prior to such change becoming effective.

SECTION 12 – CONTRACTOR'S REMEDIES

12.1 Remedies for Failure of Performance.

12.1.1 Remedies Other than Termination for Default. If the Subcontractor at any time fails to supply enough properly skilled workers or supervisors or materials of the proper quality, or fails to keep the PROJECT clean at all times, or fails to promptly make any payments to its workers, suppliers, or sub-subcontractors or any payments required by private agreements or public laws or fails in any way to perform any of the terms of this SUBCONTRACT (an "Event of Default"), and fails within 48 hours after receipt of written notice by Contractor to cure the Event of Default, then Contractor, without prejudice to any rights or remedies, shall have the right to any or all of the following remedies:

- A. Supply the number of workers and quantity of materials, equipment and other facilities as Contractor finds necessary for the completion of the Subcontract Work, or any part thereof, which Subcontractor has failed to complete or perform and charge the cost, including 15% profit and overhead incurred as a result of the Event of Default, to Subcontractor.
- B. Contract with one or more additional contractors to perform such part of the Subcontract Work as Contractor shall determine will provide the most expeditious completion of the total work and charge the cost thereof to Subcontractor, including mark-up of fifteen percent (15%) for overhead and profit incurred as a result of Subcontractor's failure of performance; and
- C. Withhold payment of any monies due Subcontractor 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.

12.1.2 Termination for Default. In addition to the remedies set forth in Section 12.1, above, Contractor may, upon the provision of 48 hours written notice, terminate Subcontractor's right to perform under this SUBCONTRACT, and take possession of Subcontractor's materials, tools, equipment and machinery, without any compensation to Subcontractor, and supply such materials and equipment and employ such workers or subcontractors as Contractor deems necessary to complete the Subcontract Work and maintain the orderly progress of the PROJECT work. In the event of termination pursuant to this Section 12.1.2, Subcontractor shall not be entitled to any further payment until the Subcontract Work is completed. At that time, all costs incurred by Contractor in performing and completing the Subcontract Work, including 15% profit and overhead as provided above and damages incurred by reason of such default shall be deducted from the amounts due or to become due Subcontractor under this SUBCONTRACT, and

- A. If, at that time, the remaining unpaid balance of the Subcontract Price exceeds Contractor's costs to complete the Subcontract Work, as defined above, then the excess shall be paid to Subcontractor; or
- B. If, at that time, the remaining unpaid balance of the Subcontract Price is less than the Contractor's costs to complete the Subcontract Work, as defined above, then Subcontractor shall promptly pay the difference to Contractor.

A termination pursuant to this Section 12.1.2 that is subsequently determined to be wrongful or unjustified shall be treated as, and converted to, a termination for convenience pursuant to Section 12.2, below.

12.2. Termination for Convenience. Contractor may at any time and for any reason terminate Subcontractor's right to perform under SUBCONTRACT, or any portion thereof, at Contractor's convenience upon the provision of 48 hours written notice.

Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the Subcontract Work set forth in the notice, and placing of orders for materials, facilities and supplies in connection therewith, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts pertaining to the terminated work 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. With respect to the work subject to the notice under this Section 12.2, Subcontractor shall thereafter do only such work as may be necessary to preserve and such 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 this Section 12.2 only as follows: (1) the actual cost of the work terminated completed in conformity with this SUBCONTRACT; plus, (2) such other costs actually incurred by Subcontractor as are permitted by the PRIME CONTRACT and approved by OWNER; plus (3) five percent (5%) (but not more than allowed by the PRIME CONTRACT) 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 paragraph the amount of any payments made to Subcontractor on account of the work subject to the termination prior to the date of the termination. In no event shall the payment due hereunder exceed the amount due under this SUBCONTRACT 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.

SECTION 13 – PROJECT SCHEDULE

The Contractor will develop a construction schedule for the PROJECT and shall utilize it in planning, coordinating and performing work under the PRIME CONTRACT, including the work of

Subcontractor, other subcontractors, equipment vendors and suppliers (the "Project Schedule"). SUBCONTRACTOR shall assemble and provide all necessary information and dates concerning its activities and the activities of its sub-subcontractors, vendors and suppliers as required by Contractor for the production of the Project Schedule. Subcontractor shall prepare and submit such information in the form required by the Contractor within two (2) weeks of receipt of this SUBCONTRACT. The Project Schedule shall be updated, time to time, by Contractor.

Time is of the essence of this SUBCONTRACT. Subcontractor shall keep itself apprised of the progress of the work under the PRIME CONTRACT, and shall commence performance of its work, or any portion thereof, immediately upon being notified by Contractor, or as otherwise set forth in this SUBCONTRACT, and shall diligently continue such performance, including all things necessary and incidental thereto, until all of its work, or such portion as may be required by Contractor's most current Project Schedule, is completed to the satisfaction of OWNER and Contractor. Subcontractor shall prosecute its work in a prompt and diligent manner in accordance with Contractor's most current Project Schedule without delaying or hindering Contractor's work or the work of other contractors or subcontractors. Subcontractor shall carefully plan its work, anticipate the needs for and supply of workers and materials, and cooperate and coordinate its work 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. 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. Without limiting the foregoing, Subcontractor shall schedule its work and the presence of its employees at the site of the PROJECT and any deliveries of supplies or materials by its materialmen and suppliers to the site of the PROJECT on such days, and at such times and during such hours, as may be directed by Contractor. Subcontractor shall assume responsibility for such schedule compliance not only for its employees but for all of its materialmen, suppliers and sub-subcontractors regardless of tier. Notwithstanding anything else to the contrary contained in the SUBCONTRACT DOCUMENTS, work stoppages (including sympathy strikes) or other stoppage of work by employees performing work on, or delivering supplies or materials to, the jobsite shall not excuse any delay of Subcontractor in the proper performance of its work, regardless of whether the strike or other stoppage of work is attributed to union action or the action of any individual employee.

Should SUBCONTRACTOR fail in any respect to perform in accordance with Contractor's most current Project Schedule, at the request of Contractor, Subcontractor shall take some or all of the following actions at no additional cost to the OWNER or the Contractor:

- A. Increase construction manpower in such quantities and crafts as will eliminate the effects of Subcontractor's delay;
- B. Increase the number of working hours per shift, shifts per working day, working days per week, or the amount of construction equipment, or any combination of the foregoing sufficient to eliminate the effects of Subcontractor's delay; and/or
- C. Reschedule activities to ensure acceleration of the Subcontract Work sufficient to eliminate the effects of Subcontractor's delay.

If Subcontractor fails to take any of the above actions, after request by Contractor, said failure shall be considered an Event of Default pursuant to Section 12.1.1, above, of this SUBCONTRACT.

SECTION 14 – PATENT INFRINGEMENT

In addition to those indemnities set forth in Section 8, above, of this SUBCONTRACT, Subcontractor shall indemnify and hold Contractor harmless against any claim, suit or action or any alleged violation or infringement of patent, copyright or trademark rights which may be made against Contractor by reason of the use in connection with or as part of the performance of the Subcontract Work or the furnishing of the materials hereunder, of anything which is now or may hereafter be covered by patent, copyright, or trademark, and also against all expense, which Contractor may incur in defending or adjusting any such claim, suit or action.

SECTION 15 – SAFETY

Subcontractor shall comply with all local, state and federal laws, orders, citations, rules regulations, standards and statutes affecting or relating to this SUBCONTRACT or its performance hereunder, including those related to occupational health and safety, the handling and storage of hazardous materials, accident prevention, safety equipment and practices including the accident prevention and safety programs of Contractor or OWNER currently in effect, and the Owner's safety procedures if any. Subcontractor shall possess, and cause its lower tier subcontractors to possess, a satisfactory written Injury and Illness Prevention Program ("IIPP") including written programs that address any hazards unique to the Subcontractor's trade. The foregoing combined requirements shall constitute the minimum performance expected from SUBCONTRACTOR.

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

Subcontractor shall, within two (2) days after its knowledge thereof, notify Contractor in writing of any injury to any of its employees or employees of its sub-subcontractors or suppliers, regardless of tier, or of anyone else, occurring on or about the site of the PROJECT. Said written notice by Subcontractor shall contain all facts known to it pertaining to said injury.

SECTION 16 – CHANGE ORDERS

Subcontractor shall make any and all changes in the Subcontract Work, including additions, deletions, or other revisions, as directed by Contractor by properly executed written directive. Such change by written directive shall not invalidate this SUBCONTRACT. Subcontractor shall promptly perform the changed work as directed. Once Subcontractor has received Contractor's written directive, Subcontractor is solely responsible for timely performance of the work as changed by the written directive. If Contractor and Subcontractor cannot agree on the amount of the addition or deletion to the Subcontract Price resulting from a written directive, Subcontractor shall not be relieved of its obligation to perform the work as changed by Contractor's written directive.

A DIRECTIVE SHALL BE DEEMED PROPERLY EXECUTED IF, AND ONLY IF, IT IS IN WRITING AND IT HAS BEEN EXECUTED BY CONTRACTOR'S OFFICERS, PROJECT MANAGER, PROJECT SUPERINTENDENT OR PROJECT ENGINEER.

Within seven (7) days of first receiving a request for quotation or pricing information with respect to a change in the Subcontract Work, Subcontractor shall supply Contractor with all documentation necessary to substantiate the amount of the addition to or the deduction from the Subcontract Price or the time for Subcontractor's performance. Subcontractor shall provide quotations or documentation only to Contractor and not to OWNER.

Subcontractor shall not make any changes in the Subcontract Work, or in any way cause or allow that work to deviate from the SUBCONTRACT DOCUMENTS, without a properly executed written directive from Contractor. If Subcontractor makes any changes in the Subcontract Work without a proper written directive from Contractor, such change constitutes an agreement by Subcontractor that it will not be paid for the 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, damages, and liability of any nature whatsoever associated with or in any way arising out of any such change it makes without a proper written directive from Contractor.

If a dispute arises between Contractor and Subcontractor about whether a written directive or other occurrence entitles Subcontractor to additional compensation or time, or any dispute arises as to the amount of additional compensation or time to which Subcontractor is entitled, Subcontractor shall timely perform the disputed work and shall give written notice of a claim for additional compensation and/or increase in the time for its performance for that disputed work. Such written notice of claim must be given within the earliest of:

- A. Five (5) days after the beginning of the occurrence giving rise to the dispute.
- B. Two (2) working days in advance of the time Contractor is required to give notice of such claim under the CONTRACT DOCUMENTS; or
- C. Two (2) working days prior to Subcontractor's performance of the work which is the subject of the notice.

Subcontractor shall also comply with all other notice and claim requirements of the CONTRACT DOCUMENTS sufficiently in advance as to allow Contractor to timely comply with such requirements with respect to Subcontractor's claim. Subcontractor's failure to give written notice within the proper time limit, or to timely comply with the notice and claim requirements of the CONTRACT DOCUMENTS as set forth above, constitutes an agreement that Subcontractor will not be paid for the disputed work.

Any adjustment in Subcontractor's compensation under this SUBCONTRACT, or the time for performance hereunder, shall be allowed only to the extent allowed by OWNER, but in no event shall Subcontractor be allowed more than its costs, as defined below, and a mark-up for profit and overhead of ten percent (10%), including all sub-tier mark-ups. If OWNER allows only a single mark-up on the work of Subcontractor, it shall be allocated equally to Contractor and Subcontractor.

Costs are defined as the total of the following (unless otherwise defined in the CONTRACT DOCUMENTS in which case Subcontractor's costs shall in no event exceed the costs defined in the CONTRACT DOCUMENTS):

- A. gross wages or salaries, including authorized overtime of craft employees

directly employed on the extra work;

- B. the following additional payroll expenses of such employees directly employed on the extra work: premium cost of overtime labor; social security taxes; old age and unemployment contributions; such fringe benefits as are required pursuant to collective bargaining agreements; and payroll taxes levied by governmental agencies;
- C. material, including sales tax thereon, permanently incorporated into the extra work;
- D. rental cost of construction plant and equipment used directly in the performance of the extra work;
- E. utilities and consumable supplies used directly in the performance of the extra work;
- F. additional insurance required for the extra work;
- G. additional bond costs required for the extra work; and
- H. additional costs for royalties, permits and inspection fees required for the extra work.

The foregoing method of calculating adjustments in the compensation to be paid to Subcontractor for changes in the Subcontract Work shall also apply when the change in the work is not directed by, or otherwise involves, the acts or omissions of, the OWNER.

Payment of authorized and properly executed change orders will be made in accordance with Section 2 of this SUBCONTRACT.

No change, alteration or modification in or deviation from this SUBCONTRACT or the plans and specifications, whether made in the manner herein provided or not, shall release or exonerate, in whole or in part, any surety on any bond given in connection with this SUBCONTRACT and neither OWNER or Contractor shall be under any obligation to notify the surety or sureties of any such change.

SECTION 17 – DELAY

If Subcontractor is delayed solely by a cause absolutely beyond its control and which could have not been anticipated at the time of its execution of this SUBCONTRACT, Subcontractor shall be granted an extension of time, subject to the following conditions precedent:

- A. Subcontractor gives Contractor written notice within forty-eight (48) hours from the occurrence of the event giving rise to the delay;
- B. The CONTRACT DOCUMENTS allow a time extension for the cause of the delay set forth in Subcontractor's notice; and
- C. Contractor has been granted an equivalent time extension from the OWNER for the same delay.

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 SUBCONTRACT, 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, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor from OWNER as is equitable under all of the circumstances. 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 the costs and expenses incurred in connection therewith, to the extent that said claim is made by Contractor at the request of Subcontractor. Nothing in this Section shall obligate Contractor to prosecute a claim for delay damages.

If Subcontractor should default in performance of the work described in this SUBCONTRACT or should otherwise commit any act which causes any delay or interference to the PRIME CONTRACT work, or the work of other contractors or subcontractors, 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 or delay in performance. Subcontractor further agrees to defend, indemnify and hold Contractor harmless from and against any claims or actions brought by any of Contractor's other subcontractors, or the separate contractors of OWNER, alleging that Subcontractor caused any delay or interference with their work.

SECTION 18 – DISPUTES

18.1 Disputes Under CONTRACT. Any dispute resolution procedure in the CONTRACT DOCUMENTS shall be deemed incorporated into this SUBCONTRACT, and shall apply to any disputes arising hereunder, except disputes not involving the acts, omissions or otherwise the responsibility of the OWNER under the CONTRACT DOCUMENTS, and those which have been waived by the making or acceptance of final payment. Subject to compliance with all applicable laws, including but not limited to, those relating to false claims, dispute and claim certifications, and cost and pricing data requirements, Contractor's sole obligation is to present any timely-filed claims by Subcontractor to Owner under such procedure and, subject to the other provisions of this SUBCONTRACT, to pay to Subcontractor the proportionate part of any sums paid by the OWNER to which Subcontractor is entitled. Contractor shall act in good faith in passing through and prosecuting Subcontractor's claim but the final decision regarding the presentation and resolution of the claim shall be Contractor's and Subcontractor shall be bound by that decision. The Subcontractor shall bear its pro-rata share of any costs, including consultant fees incurred in good faith, required to process Subcontractor's claim pursuant to the CONTRACT DOCUMENTS. Notwithstanding any pending dispute resolution process involving Contractor and Subcontractor, unless otherwise agreed in writing, Subcontractor shall carry on the work and maintain the schedule of work pending such dispute resolution process, and if so, Contractor shall continue to make payments in accordance with this SUBCONTRACT.

18.2 Other Disputes. All claims not involving the acts or omission or otherwise the responsibility of the OWNER under the CONTRACT DOCUMENTS shall be resolved, in Contractor's sole and absolute discretion, by: (i) binding arbitration as set forth in Section 18.3, below, or (ii) litigation in a court of competent jurisdiction.

18.3 Arbitration Procedures. In the event the CONTRACT DOCUMENTS contain an arbitration provision or for disputes not involving the acts, omissions or otherwise the responsibility of the OWNER under the CONTRACT DOCUMENTS for which Contractor has elected arbitration as the dispute resolution mechanism, the following shall apply:

18.3.1 Notice of Demand. For arbitration under the CONTRACT DOCUMENTS, notice of the demand for arbitration shall be filed in writing with the other party to this SUBCONTRACT and shall conform to the requirements of the arbitration provision set forth in the CONTRACT DOCUMENTS. For claims not involving the acts or omission or otherwise the responsibility of the OWNER under the CONTRACT DOCUMENTS, the parties hereto shall submit any and all disputes arising under or relating to the SUBCONTRACT 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 institution of legal or equitable proceedings based on such claim dispute or other matter in question would be barred by the applicable statute of limitations.

18.3.2 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.

18.3.3 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 this SUBCONTRACT. Should Contractor enter into arbitration with the OWNER or others regarding matters relating to this SUBCONTRACT, Subcontractor shall be bound by the result of the arbitration to the same degree as the Contractor.

18.3.4 No Limitation of Rights or Remedies. This Section 18 shall not be deemed a limitation of any rights or remedies which Subcontractor may have under any federal or state mechanic's lien laws or under any applicable labor and material payment bonds unless such rights or remedies are expressly waived by it.

SECTION 19 – ATTORNEY'S FEES AND COSTS

Notwithstanding any other provision of this Agreement or applicable law, or any provisions of the CONTRACT DOCUMENT that may be incorporated, neither Subcontractor nor Contractor shall be permitted to recover attorney's fees or costs of suit in any dispute or litigation. Subcontractor expressly waives the right to recover attorney's and consultant fees, and other legal expenses, from OWNER, Contractor and from Contractor's sureties. This waiver of the right to fees and costs, to the greatest extent permitted by law, shall be effective as to statutory rights such as those afforded by Civil Code Sections 8558 or 9550 through 9566. This provision shall not limit, impair or waive Contractor's rights to be defended by, to be indemnified by, to be held harmless by, to receive contribution from Subcontractor, and to receive the benefits of insurance furnished by Subcontractor or any other persons, with respect to attorney's and consultant fees, costs and other legal expenses. No arbitrator or referee shall have jurisdiction to award fees, costs or expenses waived by this provision, but if for any reason this waiver of fees and costs is found to be invalid or unenforceable, then Contractor and its sureties shall be afforded the same rights as Subcontractor with regard to attorney's and consultant fees, costs and other legal

expenses.

SECTION 20 – INDEPENDENT CONTRACTOR

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

SECTION 21 – USE OF CONTRACTOR'S EQUIPMENT

Subcontractor, its agents, employees, sub-subcontractors or suppliers, regardless of tier, shall not use the Contractor's equipment without the express written permission of the Contractor's designated representative. In the event of use of Contractor's equipment by the Subcontractor, its agents, employees, sub-subcontractors or suppliers, regardless of tier, Subcontractor shall continue to act as an independent contractor and shall be fully responsible for and shall be deemed to have inspected any such equipment and accepts the use of such equipment in its "as-is" "as-furnished" condition and without any representation or warranty by Contractor, and hereby acknowledges that said equipment may be new or used and that Subcontractor takes full responsibility to check and verify that said equipment is safe and suitable for its intended use. Subcontractor shall ensure that its employees and agents shall be knowledgeable in the use of the equipment, and that they do not, and will not, rely on any direction, supervision or assistance with respect to Contractor's equipment from Contractor, OWNER or their respective agents or employees. 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. Further, Subcontractor assumes all responsibility for physical damage to such Contractor equipment, materials, labor, supplies, or facilities used by Subcontractor or its agents, employees, sub-subcontractors or suppliers, regardless of tier, and agrees to indemnify, defend and hold harmless Contractor, OWNER and their agents and employees for all costs, claims and/or penalties arising out of, resulting from, or in any way related to Subcontractor's use of Contractor's equipment pursuant to Section 8, above.

SECTION 22 – NO ASSIGNMENT BY SUBCONTRACTOR

The Subcontractor shall neither assign this SUBCONTRACT nor any amounts due or to become due hereunder without the written consent of the Contractor, nor subcontract the whole of the SUBCONTRACT, or any portion thereof, without the written consent of the Contractor.

SECTION 23 – PERMITS, LICENSES, INSPECTIONS AND TAXES

The Subcontractor shall obtain and pay for all necessary permits, licenses, inspections and taxes with respect to the Subcontract Work, and all Subcontract Work must conform in every particular with all local, State or Federal laws, codes, regulations or inspections which may apply, whether or not specifically mentioned in CONTRACT DOCUMENTS. Subcontractor recognizes, in connection with this Section, that the Subcontract Work must continue to be consistent with the most current Project Schedule supplied by the Contractor, and Subcontractor shall, in writing, advise the Contractor of any incident where any regulations or inspections tend to interfere with the orderly progression of the Subcontract Work.

SECTION 24 – INTERPRETATION OF CONTRACT DOCUMENTS

It is understood that ambiguities and inconsistencies may arise in and between drawings, specifications and other CONTRACT DOCUMENTS. In the event of any dispute concerning interpretation of the drawings, specifications, and other CONTRACT DOCUMENTS, the Subcontractor shall perform Subcontract Work and provide materials in conformity with the written decision of the Architect/Engineer. If the decision of the Architect/Engineer requires extra work or materials, Subcontractor shall provide notice of claim therefor in accordance with Section 16, above, and any additional compensation to which Subcontractor may be entitled on account thereof will be determined in accordance with procedures set forth in the appropriate provisions of the CONTRACT DOCUMENTS and this SUBCONTRACT.

SECTION 25 – DETAILS MATERIAL LISTS, SAMPLES, SUBMITTALS AND SHOP DRAWINGS

As applicable to the Subcontract Work, the Subcontractor agrees to furnish all details, material lists, samples or other submittals as called for in the CONTRACT DOCUMENTS, and to deliver same to Contractor within ten (10) days of the date of this SUBCONTRACT. Shop drawings applicable to the Subcontract Work, if any, shall be submitted by SUBCONTRACTOR within the time provided in the CONTRACT DOCUMENTS and in no event later than such time needed to obtain the required approvals (allowing sufficient time for reviews, corrections by Subcontractor and the required approvals) as to not delay the Subcontract Work. The quantity of shop drawings submitted shall adhere to the Contract Administration section of the Procedure Memorandum provided with this SUBCONTRACT. The

responsibility to supply said lists, samples, drawings, submittals, and shop drawings within the specified time is solely that of the Subcontractor, and the Subcontractor shall reimburse the Contractor for any expenses incurred by Contractor resulting from any delay in supplying these documents.

SECTION 26 – WARRANTY

Subcontractor, on behalf of itself and its sub-subcontractors and suppliers regardless of tier, warrants to OWNER and Contractor that all materials and equipment furnished under this SUBCONTRACT shall be new unless otherwise specified and that all Subcontract Work shall be performed in a good and workmanlike manner, shall be of good quality, free from faults and defects and in conformance with the CONTRACT DOCUMENTS. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective, and shall be corrected by Subcontractor, at its sole cost and expense, for a period of one-year following final completion of the PROJECT. Equipment and materials incorporated into the PROJECT shall be warranted for a period not less than the warranty provided by the manufacturer or supplier thereof, and all such written manufacture or supplier warranties shall be provided to Contractor upon the conclusion of the PROJECT, and Contractor's receipt thereof shall be a condition precedent to Subcontractor's receipt of final payment under this SUBCONTRACT. The warranty provided in this Section 26 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the CONTRACT DOCUMENTS.

SECTION 27 – POST-CONSTRUCTION REQUIREMENTS

When as-built drawings, guarantees, operating instructions and other post-construction documents are required by the CONTRACT DOCUMENTS, the Subcontractor agrees that such drawings, guarantees, instructions and documents shall be submitted (120) days prior to the completion of the Subcontract Work, or as otherwise required by Contractor. The provision of the post-construction documents set forth in this Section 27 by Subcontractor shall be a condition precedent to Contractor's obligation to make final payment to Subcontractor. Furthermore, it is agreed, in the event of the untimely performance of Subcontractor's obligations under this Section 27, that the Contractor may, at its sole discretion, take those steps necessary to obtain the post-construction documents, the costs of which shall be charged against the account of the Subcontractor.

SECTION 28 – EQUAL EMPLOYMENT OPPORTUNITIES AND SPECIAL INDEMNIFY CLAUSE FOR VIOLATIONS

Subcontractor shall, at his own expense, conform to the equal employment opportunity policies of Contractor and, in addition, shall comply with all equal employment opportunity requirements promulgated by any governmental authority including, without limitation, the requirements of the Civil Rights Act of 1964, 42 United States Code, Section 1983, Executive Orders 11246, 11275 and 11478, the California Fair Employment Practices Act, the California Plan, any other applicable statute or ordinances, plans or programs, standards and regulations which have been or shall be promulgated or approved by the parties or agencies which administer such Acts or Orders, (hereinafter collectively referred to as "EEO" laws). Subcontractor shall have and exercise full responsibility for compliance hereunder by himself, his agents, employees, sub-subcontractors and suppliers, regardless of tier, with respect to the Subcontract Work. Subcontractor shall directly receive and respond to, defend and be responsible for any citation, order, claim, charge or criminal or civil actions, arising by reason of the failure of Subcontractor or his agents, employees, sub-subcontractors and suppliers, regardless of tier, to so comply, regardless of whether such non-compliance results from active or passive acts or omissions or whether such non-compliance is the sole or a contributory cause of any of those matters against which Subcontractor is obligated hereunder to indemnify and hold harmless Contractor. Subcontractor shall indemnify and hold harmless Contractor from and against any liability loss (including any loss of profits or prospective advantage occasioned by the suspension, cancellation or termination of any contract, or Contractor's eligibility therefore), damage, costs, claims, awards, or judgments, fines, expenses, including litigation expenses, reasonable attorney's fees, claims or liability for harm to persons or property, expenses incurred pursuant to or attendant to any hearing or meeting or any other applicable costs which may be incurred by Contractor resulting from Subcontractor's failure to fulfill the covenants set forth in this Section.

In the event Subcontractor fails to comply with any of the aforementioned EEO laws, or any judgment, order or award issued by the Office of Federal Contract Compliance, United States Department of Labor, or any other federal, state or local agent or any court of law, or any other body responsible for the administration and/or enforcement of any EEO laws, within the period specified in any such laws, judgment, order or award, Contractor may, in his discretion, exercise the rights and remedies provided it under Section 12 of this SUBCONTRACT.

SECTION 29 – TENSES AND DEFINITIONS

The term "Subcontractor" shall include, wherever applicable, Subcontractor's agents and employees. Words used in this SUBCONTRACT in the present tense include the future as well as the present; the singular number includes the plural and the plural the singular; the word "person" includes a corporation and association as well as the natural person; and captions in paragraph headings are used herein for convenience only and are not part of this SUBCONTRACT and shall not be used in construing it.

SECTION 30 – OTHER CONTRACTS

Should one or more contracts now or hereafter exist between the Contractor and Subcontractor or with any affiliated corporation or company of Contractor, concerning this PROJECT, or any construction project, then a breach by the Subcontractor of any contract may, at the option of the Contractor, be considered a breach of all contracts. In such event, Contractor may terminate Subcontractor's right to perform under any or all of the contracts so breached, or may withhold monies due or to become due on any of such contracts and apply the same toward payment of any damages suffered on that or any other contract.

SECTION 31 – ADVERTISING/SIGNS

Subcontractor, its sub-subcontractors and suppliers, regardless of tier, and their employees shall not take photographs of the PRIME CONTRACT work, publish or display advertising matter of any description relating to the PROJECT, or display signs at or near the PROJECT without first obtaining the written consent of the Contractor.

SECTION 32 – INFORMATION REQUIRED BY OWNER

In addition to the information to be provided by Subcontractor pursuant to other provisions of this Subcontract, Subcontractor hereby agrees to provide at no additional cost to Contractor any information required by the OWNER, and further agrees that such information will be provided in a prompt and timely fashion so as not to disrupt the performance of this SUBCONTRACT or the PRIME CONTRACT.

SECTION 33 – INSPECTION AND ACCEPTANCE

Subcontractor shall provide appropriate facilities and access at all reasonable times for inspection by Contractor and/or OWNER of the work and materials provided under this SUBCONTRACT whether on site or offsite where such work or materials may be in preparation, manufacture, storage, or installation. Subcontractor shall replace or correct any work or materials rejected by Contractor and/or OWNER, as failing to comply with the requirements of the SUBCONTRACT DOCUMENTS. If the Subcontractor does not do so within a reasonable time, Contractor may exercise any or all of the remedies set forth in Section 12 of this SUBCONTRACT.

The Subcontract Work shall be accepted according to the CONTRACT DOCUMENTS. However, unless otherwise agreed to in writing, entrance and use by the OWNER or Contractor does not constitute acceptance of the Subcontract Work.

SECTION 34 – SUCCESSORS AND ASSIGNS

It is mutually agreed that this SUBCONTRACT shall bind the heirs, successors and assigns of each of the parties hereto.

SECTION 35 – SECTION AND ARTICLE HEADINGS

All section and article headings are used for convenience only, and such headings shall not affect the construction or interpretation of this SUBCONTRACT.

SECTION 36 – ENTIRE AGREEMENT

This SUBCONTRACT constitutes the entire and only contract between the parties with respect to the subject matter hereof, and includes all changes, addenda, and other modifications to date, and supersedes any prior proposals, quotations, representations, understandings, correspondence or agreements and cannot be modified, altered, amended, or changed, except by an instrument in writing signed by each of the parties hereto.

SECTION 37 -- SEVERABILITY

Should any provision of this SUBCONTRACT be found by a court of competent jurisdiction to be invalid, the remaining provisions shall be enforced as in full force and effect. Should any word, phrase, or provision be found by a court of competent jurisdiction to be invalid, Contractor and Subcontractor agree that only those words, phrases or provisions that create the conflict with applicable law shall be stricken and the remainder of the words, phrases or provisions of the affected Section and of this SUBCONTRACT shall remain in full force and effect.

SECTION 38 -- JURISDICTION

This SUBCONTRACT and the terms hereunder shall be governed in accordance with the laws of the State of California without regard to conflict of law principles. Subcontractor agrees that this SUBCONTRACT is executed in Solano County, California, and that venue for any action brought to enforce any of the terms and provisions of this SUBCONTRACT shall be proper only in the Superior Court for the State of California in and for the County of Solano, or if in Federal Court, including bankruptcy court, in the Northern District of California.

SECTION 39 – CALIFORNIA CONTRACTORS' STATE LICENSE BOARD

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, Contractor's State License Board, P. O. Box 26000, Sacramento, CA. 95826.

IN WITNESS WHEREOF the following designated individuals, who represent that they have now the present capacity and authority to enter into this SUBCONTRACT for their respective organizations, hereby promise and warrant for their organizations, to perform fully and in good faith as herein aforesaid.

Date: _____

LATHROP CONSTRUCTION ASSOCIATES, INC.

By: _____
Ricky J. Martellaro, President

Date: _____

Contractor's Name: _____

Signature

Type/Print Name, Title

DIR Registration Number