



Standard Form Subcontract Agreement

Job No.
Commitment No.

This Agreement is made between:

Subcontractor:
XXXXXXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXXX

and

Contractor:
UNGER CONSTRUCTION CO
PO BOX 160247
SACRAMENTO, CA 95816-0247

on this **XXX** day of **XXX**, **XXXX**.

The Contractor has entered into a contract (the "Prime Contract") with **XXX** ("Owner") to perform labor and furnish material for the construction of **XXX** (the "Project") pursuant to drawings, plans, and specifications prepared by **XXX** ("Architect") and other contract documents attached to and incorporated into the Prime Contract. A copy of the Prime Contract and the other Contract Documents enumerated therein has been made available to the Subcontractor.

The Construction Lender (if applicable) is: **XXX**

The Subcontractor and the Contractor agree as follows:

SECTION 1. EFFECTIVE DATE

This Agreement is effective on the date specified above, or the date Subcontractor first performs or supplies any labor, materials, or services relating to the Project, whichever occurs first. Subcontractor confirms that the work performed by Subcontractor on the project, prior to the date on which this Agreement is fully executed, if any, is subject to the terms and conditions of the contract documents and that all representations and warranties made by Subcontractor herein are retroactive to the date on which Subcontractor commenced work on the project.

SECTION 2. THE CONTRACT DOCUMENTS

2.1 The Contract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications issued subsequent to the execution of the Prime Contract affecting Subcontractor's scope of work, whether before or after the execution of this Agreement; (4) other documents listed in Section 3 of this Agreement; and (5) Modifications to this Agreement issued after execution of this Agreement. All of these are binding on the parties as if repeated herein. The Contract Documents represent the entire and integrated contract between the parties hereto. The Agreement supersedes prior negotiations, representations or agreements, either written or oral.

2.2 In the event of conflict in the Contract Documents, the provisions of this Agreement shall govern. Drawings and specifications are complementary and are to be taken and interpreted in conjunction with each other. Subcontractor shall promptly report to Contractor in writing any discrepancies or errors which come to his attention in the Contract Documents or this Agreement.

2.3 Subcontractor certifies that he 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 Subcontractor enters into this Agreement based upon his investigation of all such matters and is not relying on any opinions or representations of Contractor. Subcontractor and his subcontractors and suppliers will be and are bound by the Contract Documents insofar as they relate in any way, directly or indirectly, to the work covered by this Agreement. 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, to the extent of the work provided for in this Agreement, and that where, in the Contract Documents reference is made to Contractor, and the work or specifications therein pertains to Subcontractor's trade, craft, or type of work or specification, such reference shall be interpreted to apply to Subcontractor instead of Contractor.

2.4 The Contract Documents are to be interpreted neutrally as between Contractor and Subcontractor without favoring either party in case of ambiguity.

SECTION 3. SCOPE

3.1 Subcontractor agrees to furnish and pay for all supervision, labor, materials, tools, equipment, scaffolding, appliances, and all other items necessary to complete the following work consistent with the provisions of the Contract Documents ("Work"):

3.2 Subcontractor agrees that its duties with respect to the Work shall specifically include (i) furnishing materials and equipment in strict conformance to the Contract Documents, (ii) to layout, install and erect the Work to meet Contractor's schedule, as such schedule may be revised from time to time, (iii) to timely obtain and pay for all the necessary certificates and permits for installation and erection of the Work, (iv) to complete the Work to the satisfaction of the Owner, Architect and Contractor, (v) to furnish all scaffold and equipment (including equipment for hoisting) that may be necessary to complete the Work expeditiously and to provide traffic and safety controls at all times while using such equipment on the job site, (vi) to remove and replace any defective materials or work forthwith on notice from Architect or Contractor and to bear the expense of making good all work of others, including the Contractor, which is destroyed or damaged by such removal and replacement, (vii) to perform the work entirely at the Subcontractor's risk, (viii) to provide all proper and sufficient and necessary safeguards against all injuries and damage whatsoever, and to comply with all safety requirements imposed by law and by Contractor, (ix) to verify the dimensions given in the Contract Documents and to take such measurements as will assure the proper matching and fitting of the Work covered by this Agreement with contiguous work, (x) to perform all things normally performed by Subcontractor's trade in completing the Work whether or not specifically called forth in the Contract Documents; (xi) to lay out and be strictly responsible for the accuracy of its work, (xii) to promptly replace or repair any damaged Work, property or materials, (xiii) to protect the work of others and all workers on the Project site from its operations, (xiv) to assure that actual final conditions and details shall result in the specified alignment of finished surfaces, (xv) to provide a full-time competent superintendent acceptable to Contractor who shall have authority to act on behalf of Subcontractor and who shall attend all meetings as requested by Contractor and who shall supervise the work hereunder.

3.3 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 the work all in conformance with Contractor's progress schedule. Subcontractor shall submit a schedule of values for approval at the commencement of the work. Approval of shop drawings, submittals, details and samples by Contractor shall not relieve Subcontractor of his obligation to perform his work according to the terms and consistent with the intent of the Contract Documents.

3.4 The installation of the Subcontractor's work will be considered evidence of his acceptance of the conditions as being correct and to his approval. The entire responsibility for proper configurations and dimensions for prefabrications of any part of the work shall rest with Subcontractor.

3.5 In addition, the following are specifically incorporated herein by reference and are part of this Agreement:

<input type="checkbox"/>	Attachment A	Scope of Work
<input type="checkbox"/>	Attachment B	Document List
<input type="checkbox"/>	Attachment C	Project Specific Insurance Requirements
<input type="checkbox"/>	Attachment D	Subcontractor General Safety Practices / Minimum Performance Standards
<input type="checkbox"/>	Attachment E	Initial Project Schedule (subject to revision from time to time)
<input type="checkbox"/>	Attachment F	Prevailing Wage
<input type="checkbox"/>	Attachment G	Progress Billing Procedures & Form
<input type="checkbox"/>	Attachment H	Project Specific Requirements
<input type="checkbox"/>	Attachment I	Subcontractor Affidavit
<input type="checkbox"/>	Attachment J	Prime Contract
<input type="checkbox"/>	Attachment K	Subcontract Amendment for Integrated Project Delivery
<input type="checkbox"/>	Attachment L	Building Information Modeling (BIM) Protocol
<input type="checkbox"/>	Attachment M	Other:

SECTION 4. PAYMENT

4.1 For the full and satisfactory performance of the Work and Subcontractor's duties in compliance with the Contract Documents, Contractor will pay Subcontractor the sum of **XXXXXXXXXXXXXXXXXXXX** (the "Contract Sum") as follows, subject to adjustments made for changes in strict conformance with this Agreement:

<u>Cost Code</u>	<u>Scope of Work</u>	<u>Amount</u>
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Total Contract Sum:

4.2 Subcontractor understands and agrees that all payments to the Subcontractor for the Work are to be made from payments made by Owner from time to time to Contractor in respect of work performed by Subcontractor ("Project Funds"). Contractor shall make payments to Subcontractor within ten (10) days after receipt by Contractor of payment of Project Funds from Owner for the work of Subcontractor (or within such shorter period as may be required by law), provided Contractor has received the proper paperwork from Subcontractor i.e. certified payroll, insurance certificates, Subcontractor Progress Payment Request Form with executed attestation, Minimum Performance Standard Checklist, MSDS, IIPP, conditional and unconditional lien releases and any other documentation required by the Contract Documents as a condition for payment. 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.

4.3 In the event Contractor is not paid by Owner any sum claimed due by Subcontractor as provided in the Prime Contract, then Contractor's obligation to make payment to Subcontractor with respect to the time for payment to Subcontractor shall, in addition to any other conditions set forth in the Contract Documents, be subject to the following **conditions precedent**:

4.3.1 If Contractor does not pay Subcontractor sums claimed due under the Subcontract as a result of nonpayment by the Owner, Contractor shall be granted a reasonable time to pursue such payment from Owner, including such time as may be required to prosecute an action, or arbitration, to judgment. If any such nonpayment is thereafter "finally adjudged" (as hereinafter defined) to have been caused by a breach by Contractor of the Prime Contract, then Contractor shall pay to Subcontractor such sum as is due under this Subcontract, inclusive of and limited to simple interest thereon at the average prime interest rate for the calendar year preceding the breach, plus 1% per annum accruing from the date such sum was first due and owing to Subcontractor as set forth above. The term "finally adjudged" as used in this Paragraph (i) shall mean the date final judgment is entered in any action by Contractor against Owner for recovery of sums due under the Prime Contract.

4.3.2 If Contractor does not pay Subcontractor sums claimed due under the Subcontract as a result of nonpayment by the Owner and such nonpayment is caused by Owner's insolvency, bankruptcy, or lack of sufficient assets, or for reasons other than a breach by Contractor of the Prime Contract, then Subcontractor's right to payment shall be conditioned upon the passage of such time as may be reasonable and necessary for Contractor and Subcontractor to fully exercise and exhaust to final judgment their respective stop notice and mechanics lien rights and remedies for collection of sums unpaid by Owner, including during bankruptcy proceedings, together with the passage of such additional time as is reasonably necessary for execution by Contractor of any final judgment entered in its favor. Simple interest only on such sums as are due to Subcontractor under this Paragraph (ii) shall accrue and be payable to Subcontractor at the average prime interest rate for the

calendar year preceding the breach, plus 1% per annum commencing from the expiration of the reasonable time reserved to Contractor in this Paragraph (ii) for recovery and collection from Owner.

4.3.3 Subcontractor agrees to preserve and maintain its mechanics' lien and stop notice rights with respect to the project and to exercise and exhaust those rights in the event that Contractor does not pay Subcontractor sums due under the Subcontract as a result of payment default on the part of the Owner under the Prime Contract. Nothing contained herein shall be interpreted as releasing or waiving any statutory mechanic's lien, bond or stop notice right reserved to Subcontractor under the law. Contractor and Subcontractor mutually agree, to the maximum extent allowed by law, that each of them shall assume the risk of Owner insolvency to the extent of their respective interest in Project Funds. If Project Funds become unavailable due to Owner insolvency and Contractor's and Subcontractor's remedies for a mechanics lien or stop notice should prove insufficient to secure payment of outstanding amounts, any further payment obligation under this Agreement, beyond what may be available under such lien remedies, shall be excused.

4.4 Contractor shall retain from progress or other payments hereunder ten percent (10%) of the amount due until final acceptance of the work by the Architect and Owner and until ten (10) days after Contractor's receipt of final retention payment from the Owner. All billings for work performed during a calendar month shall be made on Contractor's standard form "Subcontractor Progress Payment Request" and "Conditional Waiver and Release Upon Progress Payment" and must include a schedule of values itemizing in detail work completed and materials and equipment put in place during such month. No other form of payment request will be accepted. Payment requests must be delivered to Contractor no later than the 20th of each month. All payment requests received after the 20th of the month will be included in the Contractor's following month's payment request.

4.5 Subcontractor, as requested by Contractor, shall furnish certified copies of all payrolls in the manner prescribed by Contractor. Contractor reserves the right to require mechanics' lien, stop notice, and bond claim release (including releases from lower tier subcontractors) and payment affidavits in duplicate with each application for progress payments and on final payment. Contractor also reserves the right to require Subcontractor to execute an Unconditional Waiver and Release form as to previously paid progress payments. No payment will be made until required releases and affidavits have been received and approved by Contractor.

4.6 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, if allowed in the Contract Documents and approved in advance by the Contractor, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by Subcontractor of bills of sale or such other procedures satisfactory to Contractor to establish Owner's title to such materials or equipment or otherwise protect Owner's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site.

4.7 Contractor may withhold or, on account of subsequently discovered evidence, may nullify, the whole or part of any payment to protect Contractor from loss on account of (i) defective work not remedied; (ii) third party claims filed or reasonable evidence indicating probable filing of such claims; (iii) failure of Subcontractor to make payments properly to its subcontractors or for materials, equipment, labor or fringe benefits; (iv) reasonable doubt that the work under this agreement can be completed for the balance of the Subcontract Price then unpaid; (v) damage to Contractor, a separate contractor or another subcontractor; (vi) reasonable doubt that the work under this agreement can be completed within the time required herein and that the balance of the subcontract price then unpaid would be sufficient to cover the actual or liquidated damages resulting from the anticipated delay; (vii) penalties assessed against Contractor or Subcontractor on account of Subcontractor's failure to comply with state, federal or local laws and regulations; (viii) persistent failure to carry out the work under this Subcontract in accordance with the Contract Documents; or (ix) any other ground for withholding payment allowed by state or federal law, or as otherwise provided in this Subcontract. When the reason(s) for withholding payment is/are rectified, such amounts as are then due and owing shall be paid or credited to Subcontractor.

4.8 Contractor reserves the right to make payment by joint check or by direct check to Subcontractor's materialmen or sub-subcontractors or to any other person or entity who has performed work or furnished materials under this Subcontract and may have a claim or a right of action against Contractor, Contractor's Surety, or the project under any law; provided, however, that Contractor shall not be obligated to exercise the right reserved herein for the benefit of any person or entity other than itself. Subcontractor agrees that Contractor shall have the right to determine the manner in which payment shall be made.

4.9 Any payment made hereunder prior to completion and acceptance of the work shall not be construed as evidence or acknowledgement of proper completion of any part of Subcontractor's work.

SECTION 5. TIME

5.1 Time is of the essence of this Agreement. Subcontractor shall provide Contractor with scheduling information if and when requested, in a form acceptable to Contractor, and shall conform to Contractor's progress schedules, including any changes made by Contractor in the scheduling of work. Subcontractor shall coordinate its work with that of all other contractors, subcontractors, suppliers and/or materialmen so as not to delay or damage their performance.

5.2 In the event Subcontractor fails to maintain his part of the Contractor's schedule, he 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.

5.3 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 workmen, in no way caused by or resulting from fault or collusion on the part of Subcontractor with others, or in the event of a lock-out by Contractor, then Subcontractor shall provide written notice as soon as possible, but in any event not later than five working days after the commencement of such delay in order to enable Contractor to mitigate the effect of any such delay. If Subcontractor provides such timely written notice, then the time allotted to Subcontractor to complete any affected portion of its 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 five working days 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, 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 costs and expenses incurred in connection therewith, including actual attorney's fees, to the extent that said claim is made by Contractor at the request of Subcontractor.

5.4 Should Subcontractor delay Contractor, any other Subcontractor, or anyone else on the Project, Subcontractor will indemnify Contractor and hold Contractor harmless for any damages, claims, demands, liens, stop notices, lawsuits, attorneys' fees, and other costs or liabilities imposed on Contractor connected with said delay by Subcontractor.

SECTION 6. CHANGES IN WORK

6.1 Subcontractor shall not make any changes in the work described in Section on "Scope" 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 described in Section on "Scope" without written direction from Contractor, such change constitutes an agreement by Subcontractor that he will not be paid for that changed work, even if he received verbal direction from Contractor or any form of direction, written or otherwise, from Owner or any 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 he makes without written direction from Contractor.

6.2 Contractor shall have the right by written order (change order or field work order), without notice to Subcontractor's surety, if any, and without invalidating this Agreement, to order changes consisting of additions, deletions, or revisions to the Scope of Work. A WRITTEN ORDER SHALL BE DEEMED PROPERLY EXECUTED IF, AND ONLY IF, IT IS IN WRITING AND IT HAS BEEN EXECUTED BY CONTRACTOR'S PROJECT MANAGER, PROJECT ENGINEER, OR PROJECT SUPERINTENDENT. The Subcontractor shall promptly, and prior to the commencement of such changed or revised Work, submit any claim for adjustment to the Contract Sum or time that might be required for Subcontractor to complete his Work. The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Contract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound. All changes in the Work ordered in writing by Contractor shall be deemed part of the Work hereunder and shall be performed in compliance with all provisions of the Contract Documents.

6.3 The value of any work to be added, deleted, or changed shall be determined in accordance with the Contract Documents.

6.4 Contractor shall have the right to inspect, copy and audit the books and records of Subcontractor and any sub-subcontractor making claims for reimbursement for actual field costs and allowances in order to verify the accuracy and allowability of all costs and allowances claimed.

6.5 Should the parties be unable to agree as to the value of the Work to be changed, added, or omitted, Subcontractor shall proceed with the Work promptly under written order of Contractor and any adjustment in compensation shall be determined in accordance with Section 9, "Claims."

SECTION 7. BONDING OF SUBCONTRACTOR

The Contractor, as a condition of entering into this Agreement, or at any time after entering into this Agreement, may require Subcontractor, within 10 days, to execute and furnish a labor, and material bond, and performance bond, in an amount to be designated by Contractor, but not exceeding one hundred percent (100%) of the Contract Price. Said bonds shall be executed by a corporate surety acceptable to Contractor and shall be in a form satisfactory to Contractor. Subcontractor shall be listed as a principal on such bonds and Subcontractor shall pay the premium on said bonds unless otherwise provided herein or in the Contract Documents. Contractor will reimburse the Subcontractor the amount of the premium up to a value of 1.5% of the bond amount. Subcontractor shall provide any collateral or security necessary to secure the bond. Subcontractor's failure to post a faithful performance or labor and material bond when requested shall constitute a material breach of this Subcontract and cause for termination of this Subcontract.

SECTION 8. LIENS

Subcontractor shall indemnify, defend and save Contractor and Owner harmless against all claims, liens, or stop notices for labor or materials furnished to Subcontractor on the job, including costs and expenses and all incidental or consequential damages resulting to Contractor or Owner from such claims or liens. Subcontractor agrees within ten (10) days after written demand, to cause the effect of any such suit or lien to be removed from the premises, 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, together with actual attorneys' fees, shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may litigate any such lien or suit provided he causes the effect thereof to be removed, promptly in advance, from the premises, 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 9. CLAIMS

9.1 If Subcontractor believes it is entitled to an increase in the Contract Sum, or additional time to complete its work, for any reason whatsoever, then, as a condition precedent to its right to present a claim, Subcontractor must deliver written notice of the claim to Contractor at the earliest opportunity and in sufficient time to permit Contractor to provide notice to the Owner in accordance with the Prime Contract. If Subcontractor makes a valid claim resulting from any act, omission or modification made by Owner, then Contractor's duty to Subcontractor is limited to passing on claims to the Owner and Subcontractor will be bound by Owner's determination and any adjustment in the Contract Sum shall be made only to the extent allowed by Owner, less Contractor's mark-up. Subcontractor will identify and document daily, in a manner required by the Contract Documents, any disputed, delayed or disrupted Work, as well as any work requested to be performed on a time and materials basis, and Subcontractor will submit cost records for such work to Contractor's project manager, project engineer, or project superintendent daily. The Contractor's signature on daily cost records presented by Subcontractor constitutes agreement that the work was done, but does not by itself constitute agreement that Subcontractor is entitled to an adjustment in the Contract Sum. Under no circumstances will Contractor's signature on any cost records presented by Subcontractor alter or supersede any of the terms or conditions of this Agreement. Any conflicting terms or conditions on Subcontractor's forms presented for signature at the Project site are of no force and effect.

9.2 If any dispute shall arise between Contractor and Subcontractor regarding performance of the work, any alleged change in the work, or a claim, Subcontractor shall timely perform the disputed work. Subcontractor's failure to give written notice of a claim within 21 days after commencement of the fact, event, or condition giving rise thereto constitutes an agreement by Subcontractor that it will receive no extra compensation or adjustment of time to complete its Work.

SECTION 10. INSPECTION AND PROTECTION OF WORK

10.1 Subcontractor shall make the work accessible at all reasonable times for inspection by the Contractor. Subcontractor shall, at the first opportunity, inspect all material and equipment delivered to the job site by others to be used or incorporated in the Subcontractor's work and give prompt notice of any defect therein. Subcontractor assumes full responsibility to protect the work done hereunder until final acceptance by the Architect, Owner and Contractor.

10.2 If any portion of the Work should be covered by Subcontractor contrary to the request of Contractor or architect, or to requirements specifically set forth in the Contract Documents, it must, if required by Contractor, be uncovered for observation by Contractor or architect, and shall be replaced at Subcontractor's sole expense.

10.3 Subcontractor shall, upon demand from Contractor, and at its own expense, promptly correct or remedy any portion of the Work found to be defective or not in accordance with the Contract Documents, whether the condition is discovered by Contractor before or after completion of the Project. If Subcontractor, after having received a written demand to correct defective or non-conforming work, fails to correct such condition, Contractor may correct such condition and charge Subcontractor for all costs and expenses incurred by Contractor. Subcontractor shall bear the cost of making good all work of Contractor or others destroyed or damaged by such correction or removal.

SECTION 11. LABOR RELATIONS

11.1 Subcontractor shall employ only competent, well-disciplined workers to perform the Work hereunder and Subcontractor agrees to immediately remove and replace any employee(s), including Subcontractor's superintendent, whom Contractor, Owner or Architect deems unsatisfactory. Subcontractor shall maintain labor relations policies in conformity with the directions of the Contractor and shall be bound to and comply with all of the terms and conditions, including trust fund contributions, required by those labor agreements applicable to work performed under this Agreement to which the Contractor is bound. Subcontractor is responsible for determining the applicable labor agreements which apply and for following the terms of such agreements.

11.2 Contractor has entered into labor agreements with the Cement Masons, Carpenters, and Laborers unions. Subcontractor shall, to the extent permissible under applicable laws, comply with the provisions of Contractor's collective bargaining agreements, including the provisions governing jurisdiction and scope of work and the procedures contained therein for the resolution of jurisdictional disputes. Subcontractor agrees that all of the provisions of the applicable labor agreements are incorporated into this Agreement as if they were set forth in their entirety. Subcontractor 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 applicable labor agreements. Subcontractor agrees to comply with the terms and provisions of said agreements setting forth jurisdiction and scope of work therein for resolution of jurisdictional disputes. If necessary, Subcontractor, at its own cost, agrees, to secure a final determination of any jurisdictional dispute by the National Labor Relations Board. Subcontractor shall similarly bind its lower tier Subcontractor's to comply with all provisions of the labor agreements. Subcontractor shall pay when due all contributions, allowances, and other payments, required by the labor agreements now or hereinafter in force. Subcontractor shall comply with any additional AFL-CIO affiliated union agreements as may be required by the Carpenters and Laborers agreements. Should there be picketing, Subcontractor shall continue the proper performance of its work without interruption or delay if Contractor establishes a reserved gate for Subcontractor's purpose. Subcontractor shall hold Contractor harmless from any and all costs, including but not limited to compensatory and liquidated damages, resulting from work stoppages or other labor disputes associated with Subcontractor, Subcontractor's employees or the Subcontractor(s) or suppliers of Subcontractor. Subcontractor shall comply with all equal employment opportunity, affirmative action requirements, and local hire requirements promulgated by any governmental authority, such as the requirements of the Civil Rights Act of 1964, Presidential Executive Orders, the California Fair Employment Practices Act, the Americans with Disabilities Act of 1991, and the Family and Medical Leave Act of 1993. Subcontractor shall comply with all applicable Federal, State and local laws and regulations, including, but not limited to, all Fair Labor Standards Act provisions and California Labor Code provisions covering the work.

SECTION 12. INDEMNIFICATION

12.1 Subcontractor assumes all risk and liability for damage to property, and injury or death to persons, arising from the Work of Subcontractor, its employees, agents, and independent contractors. Subcontractor will defend, indemnify and hold harmless Contractor, including its employees, directors, and officers from all claims, damage, injury, and liability arising or alleged to arise out of the operations to be performed under this Agreement ("Claims"), regardless of any active or passive negligent act or omission of Contractor, its officers, directors, employees or independent contractors. This indemnity will extend to Claims occurring or alleged after this Agreement is terminated as well as while it is in force, and includes, without limitation, claims for or relating to (a) personal injury, bodily injury, emotional injury, sickness, disease, or death of any person, (b) damage to property or loss of use thereof, (c) defective workmanship or design furnished by Subcontractor, its agents or independent contractors, (d) fines or penalties, (e) violation or infraction of any law, order, citation, rule, standard or ordinance including those relating to the occupational safety or health of persons, (f) Subcontractor's use of Contractor's or others' equipment, hoists, elevators or scaffolds, (g) Contractor's training of Subcontractor's employees, (h) an infringement of patent rights and, (i) labor performed or materials furnished to Subcontractor. Subcontractor will not be obligated to indemnify Contractor or Owner for Claims arising from the active negligence, sole negligence or willful misconduct of Contractor, its agents, servants or independent contractors who are directly responsible to Contractor for defects in design furnished by such persons. Subcontractor's indemnity obligations are in addition to the indemnity provisions of the prime contract; Subcontractor agrees to indemnify Contractor for any claims arising from Subcontractor's scope of work which are subject to the indemnification provisions of the prime contract to the same extent Contractor is obligated to the Owner.

12.2 Defense of Claims. Subcontractor shall:

12.2.1 At Subcontractor's own cost, expense and risk, defend (with independent counsel reasonably acceptable by Contractor) all Claims as defined in Section 12.1 that may be brought or instituted by third persons including, but not limited to governmental agencies, contractors, suppliers, property owners, passersby, or employees of Subcontractor) against Contractor.

12.2.2 With respect to any Claims against Contractor as to which Subcontractor owes to Contractor a defense obligation, Subcontractor hereby elects to proceed under California Civil Code Sections 2782(e)(2) and 2782.05(e)(2), and further agrees that upon final resolution of any such Claim, any reimbursement for defense fees and costs previously paid by Subcontractor shall be governed by such provisions of the California Civil Code.

12.2.3 Pay and satisfy any judgment or decree that may be rendered against Contractor or its agents or employees, or any of them, arising out of any Claim covered by this Section.

12.2.4 Reimburse Contractor or its agents or employees for any and all legal expense incurred by any of them in connection herewith or in enforcing the indemnity granted in this Section 12.

12.3 Subcontractor's Indemnification and Defense of Owner and Others. With the exception that this Section 12.3 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the statutes or public policy of the State of California, Subcontractor shall defend, indemnify, and save harmless Owner, including its officers, directors, partners, joint venturers, agents, employees, affiliates, parents and subsidiaries, and each of them, as well as any other persons that Contractor is required to indemnify and defend under the Contract Documents, of and from any and all Claims, to the same extent that Contractor is required to defend and/or indemnify Owner and such other persons, but only with respect to Claims arising out of or in connection with Subcontractors' obligations under this Subcontract.

12.4 Construction of Section. Notwithstanding any of the provisions of this Section 15, if it is finally determined by a court of competent jurisdiction that any of such provisions are void or unenforceable under governing law, then such provisions shall be deemed stricken from this Subcontract and the remaining provisions shall remain in full force and effect and shall be construed to provide for the maximum defense and indemnification obligation by Subcontractor permitted by law.

SECTION 13. INSURANCE

13.1 Subcontractor shall, at its expense, and prior to commencement of any work, procure and maintain insurance on all of its operations, with carriers acceptable to Contractor, and shall maintain such insurance without a lapse, as required by Attachment "C" and as follows. The policy(ies) shall comply with all general liability and additional insured requirements shown hereunder.

13.1.1 General Liability Insurance

- (a) Subcontractor shall carry primary Commercial General Liability insurance (Insurance Services Office, Form CG 00 01 or equivalent) covering all operations by or on behalf of Subcontractor providing insurance for bodily injury liability and property damage liability for the limits of liability indicated in Attachment C:

- \$1,000,000 Combined Single Limit Bodily Injury & Property Damage
 - \$1,000,000 Personal/Advertising Injury Liability
 - \$2,000,000 Products & Completed Operations Aggregate
 - \$2,000,000 General Aggregate limit as to each Project

- If higher limits are required in the Primary Contract, or by the Owner, Subcontractor will comply with such requirements by providing evidence of an umbrella or excess liability policy. Any self-insured retention or deductible in excess of \$25,000 must be declared to Contractor and be pre-approved in writing.

- (b) Coverage shall be on an "occurrence" basis. "Claims made" or a modified occurrence basis is not acceptable.
- (c) The policy must not contain a "sunset" provision limiting when a claim can be presented.
- (d) The coverage, at minimum, must include Bodily Injury, Property Damage, Premises/Operations, Products/Completed Operations, Personal Injury, Blanket Contractual Liability (with no modifications; sole negligence policies are not acceptable) and liability of independent contractors.
- (e) Any X, C, U exclusions must be deleted. Coverage for work performed by Subcontractors of any tier may not be excluded.

- (f) **Additional Insured Requirement.** Owner, Contractor and all others required by the Prime Contract Documents (collectively the "Additional Insureds") shall be named as Additional Insureds under the Commercial General Liability Policy required by this Section 13.1.1, and such insurance afforded the Additional Insureds shall apply as primary insurance with respect to Claims arising out of or in connection with Subcontractor's obligations under this Subcontract. Any other insurance maintained by Owner or Contractor shall be excess insurance and shall not be called upon to contribute to Subcontractor's primary or excess insurance carrier's duty to defend or indemnify Contractor and/or Owner. The additional insured coverage shall include a "separation of insureds" clause or Cross Liability endorsement stating that the limits of insurance apply separately to each Named Insured. The additional insured insurance coverage required by this Section shall be provided by Insurance Services Office Additional Insured Endorsement Forms CG 20 10 (11-85), or equivalent form, and shall include the following entities: Contractor, Owner, and all others required by the Prime Contract Documents (collectively the "Additional Insureds"). [Exception: when work is done that leaves no permanent structure/work at the project, Endorsement CG 20 10 (10-93) or equivalent may be used] Subcontractor's duty to provide such additional insured coverage is independent of the defense and indemnity obligations in Section 12, Indemnification. This Section 13.1(f) shall in no event, be construed to require that additional insured insurance coverage be provided to a greater extent than permitted under the statutes or public policy of the State of California. Additional insured coverage must include a waiver of rights of recover endorsement in favor of the Additional Insureds. Coverage for the Additional Insureds, shall be provided whether or not a claim is in litigation and shall be sufficient in scope to ensure coverage for liability related to any manifestation date within the applicable statutes of limitation and/or repose which pertain to any work performed by or on behalf of the Additional Insureds in relation to the Project.
- (g) It is hereby understood and agreed that such insurance as is afforded by Subcontractor's policies shall be primary and not contributory with any other insurance and shall provide a waiver of subrogation rights endorsement in favor of the Contractor and Owner. **ALL ENDORSEMENTS MUST STATE ON THE ENDORSEMENT THAT INSURANCE PROVIDED IS PRIMARY AND NON-CONTRIBUTORY.**
- (h) The failure of Contractor to enforce in a timely manner any of the provisions of this Section shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of this Agreement.

13.1.2 Automobile Liability Insurance

- (a) 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. If Subcontractor or any of its subcontractors haul hazardous waste, then Subcontractor must carry Automobile Liability Insurance with a \$1,000,000 combined single limit per accident for bodily injury and property damage applicable to all hazardous waste hauling vehicles. Contractor, Owner, and all others required by the Prime Contract Documents must be named as Additional Insureds. A waiver of rights of recovery endorsement in favor of the Additional Insureds is required. Coverage provided to the Additional Insureds shall be primary and shall not contribute with any insurance held by the Additional Insureds.

13.1.3 Workers' Compensation and Employer's Liability Insurance

- (a) Subcontractor must provide Workers Compensation insurance as required by any applicable law or regulation. If there is an exposure of injury to Subcontractor's employees under the U.S. Longshoreman and Harbor Worker's Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such coverage or claims. 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
- (b) The Workers' Compensation and Employer's Liability Insurance policy shall be endorsed with a waiver of subrogation in favor of Contractor and other named entities as indicated.

13.1.4 Umbrella/Excess Insurance

Subcontractor shall provide umbrella/excess insurance for the Commercial General Liability, Automobile Liability, and Employer's Liability coverages set forth above with minimum excess coverage listed in Attachment C for each occurrence. All excess insurance must follow form to the underlying Commercial General Liability, Automobile Liability, and Employers Liability policies. Coverage must be primary to all required Additional Insureds required in sections 13.1.1 and 13.1.2 above.

13.1.5 Subcontractor Installation Coverage

Subcontractor shall procure and maintain insurance coverage in the form of an installation floater to protect materials in transit and stored at the project location to be incorporated in the project and Subcontractors work product until such time as the Owner has accepted the work of Subcontractor.

13.1.6 Subcontractors Tools and Equipment

Subcontractor shall procure and maintain insurance coverage needed for their personal property and equipment located at the Project site or in transit. All work, subcontractors tools, and equipment necessary to complete the work covered by this Agreement, while stored in a temporary location, in transit, or on site, shall be at the sole risk of Subcontractor until final completion of the Project and the Work has been accepted by the Owner.

13.1.7 Professional Liability

If Subcontractor's work includes design/build services (e.g. design/build responsibility for mechanical, electrical, structural, plumbing, fire alarm or fire sprinkler systems) Subcontractor must obtain a Professional Liability Insurance Policy with limits not less than \$1,000,000 per claim, or such higher amounts as may be required by the Contract Documents as indicated in Attachment C. Such insurance shall be maintained for not less than **four** years following completion of the project and its acceptance by Owner.

13.1.8 Riggers Liability Coverage

If Subcontractor's work involves the rigging or hoisting of property, Subcontractor shall carry "Riggers Liability Insurance" at limits not less than \$1,000,000 each occurrence. The policy shall include the following entities as additional insured: Contractor, the Owner, and all others required by the Contract Documents.

13.1.9 Hazardous Materials

If Subcontractor's work includes the remediation of hazardous materials, or if Subcontractor's work creates an exposure to hazardous materials, as those terms are defined in federal, state or local law, Subcontractor and its sub-subcontractors and suppliers must maintain a "Contractor's Pollution Liability" policy with limits not less than \$1,000,000 per occurrence for Bodily Injury, Personal Injury and Property Damage, or such higher amounts as may be required by the Contract Documents as indicated in Attachment C. If Subcontractor's work includes the hauling of hazardous materials or pollutants (including waste), the policies must extend pollution coverage to the transportation of hazardous materials or pollutants. Subcontractor will attach any endorsements required by law, such as the MCS-90 endorsement required by the Motor Carrier Act of 1980, if applicable.

13.1.10 Contractual and/or Protective Railroad Liability

If required by the Prime Contract Documents, Subcontractor will provide coverage for Contractual and/or Protective Railroad Liability.

13.2 Subcontractor shall ensure that their sub-subcontractors of every tier also carry insurance with the limits of liability specified above. Contractor may require written proof that the requisite insurance is being carried. Such written proof shall be furnished to Contractor within ten (10) days after such request has been made. Contractor may also require that the sub-subcontractor name Contractor and Owner as additional insureds. Such naming shall be provided at no additional cost or expense to Contractor or Owner.

13.3 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. Subcontractor shall obtain from each of its insurers a waiver of subrogation in favor of Contractor and Owner with respect to losses arising out of or in connection with the work of Subcontractor.

13.4 Builder's Risk

If builder's risk insurance is purchased by Owner or Contractor for loss or damage to Subcontractor's work, tools, and/or equipment during the course of construction, Subcontractor shall be responsible for its proportionate share of any deductible amount to the extent a loss results from Subcontractor's negligence. Contractor will disclose the existence of builder's risk insurance, if any, in Attachment C, but it shall be Subcontractor's sole responsibility to satisfy itself as to the adequacy of such

insurance. If builders risk insurance is not provided for Subcontractor's Work, tools, or equipment by the Owner or Contractor, then Subcontractor must maintain such installation coverage to protect its work as required by paragraph 13.1.5.

13.5 Insurance Rating and Certificates of Insurance

13.5.1 Prior to commencement of the Work, Subcontractor shall provide Contractor with a Certificate of insurance, including all applicable endorsements, showing evidence that all required insurance is in place. Any acceptance of insurance certificates, or neglect to enforce this provision by Contractor shall in no way limit or relieve Subcontractor of its duties and responsibilities under this Agreement nor act as a waiver to enforcement of any of these provisions at a later date in the performance of this Agreement.

13.5.2 All insurance shall be provided by insurance companies with a rating of A- or better by AM Best's, with a financial size category of VIII or greater unless a higher rating is specified.

13.5.3 If available from insurance carrier, all policies shall be endorsed to notify the Contractor with 30 days prior written notice of cancellation and termination of Subcontractor's coverage thereunder. If not available, Subcontractor shall provide Contractor 30 days prior written notice of cancellation and termination of Subcontractor's coverage thereunder. Not less than two weeks prior to such expiration, cancellation or termination of any such policy, Subcontractor shall supply Contractor with a new and replacement Certificate of Insurance and Additional Insured Endorsement as proof of renewal of said original policy.

13.5.4 All Certificates and evidences of insurance must reference the Project Name and Contractor's Project Number for the Project.

13.6 The failure of Contractor to enforce in a timely manner any of the provisions of this Section 13-Insurance, shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of this Agreement.

SECTION 14. DISPUTE RESOLUTION

14.1 Any claim by Subcontractor involving the acts or omissions of the Owner or its agents or representatives, including without limitation the Architect, or that otherwise are the responsibility of the Owner under the prime contract, will be advanced by Contractor at its sole discretion in accordance with the dispute resolution procedure in the Prime Contract. If Contractor decides in good faith not to proceed with such claim, Subcontractor shall be entitled to proceed with its claim directly against the Owner or its agents. If the Contractor elects to advance Subcontractor's claim, Subcontractor's right of recovery on such claim shall be limited solely to that dollar amount and other relief, which is recovered by Contractor on behalf of Subcontractor from Owner. Contractor shall not be liable to the Subcontractor for any monies or other relief except those granted to Contractor by Owner for the benefit of Subcontractor. Monies recovered from Owner on behalf of Subcontractor shall be paid by Contractor to Subcontractor. Subcontractor hereby agrees to make no claim to further payment beyond the Subcontract Price arising out of the act, errors, or omissions of Owner or its agents or representatives, except to the extent that Contractor may receive funds from Owner on behalf of Subcontractor less costs and expenses incurred by Contractor in prosecuting such claims.

14.2 If a dispute arises out of or relating to this Agreement that does not involve the acts or omissions of the Owner or its agents or representatives, the Parties shall first endeavor to settle the dispute through direct discussion. Disputes not resolved by direct discussion shall be submitted to mediation upon final completion of the Project pursuant to the Construction Industry Mediation Rules of the American Arbitration Association. The parties shall select a mediator within 15 days of a written request for mediation by either party and shall bear the cost of mediation equally. Engaging in mediation is a condition precedent to any form of binding dispute resolution. If direct discussions and mediation do not successfully resolve the dispute, the Parties agree to submit the dispute to binding arbitration pursuant to the Construction Industry Rules of the American Arbitration Association in Sacramento, California. The arbitrator's decision shall be in accordance with the facts and California law and the arbitrator shall issue a reasoned decision on all contested issues. The arbitrator's decision shall be final and binding. The prevailing party in any dispute shall be entitled to recover all attorneys' fees, expert fees, and costs such party incurred relating to the dispute, subsequent to the mediation. If the dispute relates to a dispute with others involving a common question of fact or law, then to the extent not prohibited by their contracts with others, the parties agree that all claims and disputes shall be heard in a single proceeding.

SECTION 15. WARRANTY

Subcontractor warrants to Owner and Contractor that all materials and equipment furnished shall be new unless otherwise specified and that all work under this Agreement will 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. The warranty provided in this section shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

SECTION 16. USE OF CONTRACTOR'S EQUIPMENT

In the event Subcontractor shall use Contractor's equipment, materials, labor, supplies or facilities, Subcontractor shall reimburse Contractor at a predetermined rate, except as otherwise stated herein. Further, Subcontractor assumes all responsibility for physical damage to such equipment, materials, labor, supplies, or facilities used by Subcontractor or his 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 and all of Contractor's equipment, materials, labor, supplies or facilities as furnished.

SECTION 17. ASSIGNMENT

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 18. INDEPENDENT CONTRACTOR

Subcontractor is an independent contractor and shall, at his 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 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 19. SAFETY

19.1 Subcontractor shall comply fully with all laws, orders, citations, rules, regulations, standards and statutes with respect to occupational health and safety, the handling and storage of hazardous materials, accident prevention, safety equipment and practices including the accident prevention and safety program of Owner and Contractor (see Attachment D – Subcontractor General Safety Practices). 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 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, standards and statutes.

19.2 Subcontractor will immediately report any accident or injury to any of the employees, agents or servants of Subcontractor used or utilized on this project to Contractor's onsite manager, and will furnish Contractor with copies of all accident reports not later than the first business day following an accident.

19.3 Subcontractor shall furnish Contractor with current Material Safety Data Sheets for hazardous materials prior to delivery of any hazardous materials to the job site. The Subcontractor shall inform the Contractor in writing of any precautionary measures to be taken to protect employees.

19.4 Subcontractor agrees that it is Subcontractor's sole responsibility to employ labor in accordance with all applicable safety codes, including but not limited to State and Federal Safety Codes, and under conditions satisfactory to Contractor.

SECTION 20. CLEAN UP

At all times during the course of construction, Subcontractor shall perform his work so as to maintain the site in a clean, safe and orderly condition. Subcontractor is responsible for removal and disposal (including dumpsters) of all debris and waste generated by this agreement. If the clean up is not maintained on a daily basis, Contractor may perform the work necessary at the Subcontractor's expense. Subcontractor shall remove from the site all hazardous materials, temporary structures, debris and waste incident to his operation and clean all surfaces, fixtures, equipment, etc., relative to the performance of this Agreement.

SECTION 21. CONTRACTORS REMEDIES

21.1 Subcontractor shall be in default of this Agreement if Subcontractor or any of Subcontractor's subcontractors, suppliers, materialmen or laborers, shall at any time: (i) refuse or neglect to supply a sufficient number of properly qualified workers or a sufficient quantity of materials of proper quality; (ii) abandon Subcontractor's work or fail in any respect to promptly and diligently prosecute Subcontractor's work; (iii) fail to promptly pay any subcontractor, suppliers, materialmen, rental companies or laborers; (iv) fail to accelerate Subcontractor's work as required by Section 5.2 hereof; (v) give Contractor a reasonable basis to doubt that Subcontractor's work can be completed for the unpaid portion of the Subcontract Sum or within the required time; (vi) declare bankruptcy or make a general assignment for the benefit of creditors or files for bankruptcy, assigns assets for the benefit of creditors, becomes insolvent or be unable to pay its obligations as they mature; (vii) otherwise

fail to perform any of the agreements and obligations set forth in the Contract Documents; or (viii) default in the performance of any contract or agreement with Contractor, whether related to the Project or otherwise, then Subcontractor shall be in default herein.

21.2 In any such event of default, Contractor may pursue any remedies available in accordance with the Contract Documents, and/or by common law or statute, including but not limited to one or more of the following: (i) withhold any sums due or thereafter to become due to Subcontractor under the Subcontract and any other contract, whether related to the Project or otherwise, and during such period such withheld amounts shall not accrue interest; (ii) provide and/or supplement any labor and materials as Contractor shall determine to cure such default and deduct the cost thereof from any money then due or thereafter to become due to Subcontractor under the Subcontract or any other contract, agreement, or otherwise; (iii) terminate this Agreement, in which case all contracts whether written or oral between Subcontractor and persons or entities providing labor, material or equipment pertaining to Subcontractor's work shall be deemed assigned to Contractor, and Subcontractor hereby appoints Contractor as its attorney-in-fact to enforce the provisions of such contracts, provided that nothing herein shall obligate Contractor to honor such contracts; 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 incurred by Contractor relating to the default, 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 Contract Price, and shall pay Contractor said amount within 30 days of written demand therefore; (iv) take possession of all the materials, tools, equipment and appliances belonging to Subcontractor at the Project site without any further compensation to Subcontractor, and either complete Subcontractor's work or contract with any other person or persons to complete Subcontractor work and provide the material therefore; in which case if the unpaid portion of the amount to be paid under the Subcontract exceeds the charges, expenses and damages sustained by Contractor in completing the work or as a result of such defaults, such excess shall be paid by Contractor to Subcontractor, but if such charges, expenses, and damages exceed said unpaid portion, Subcontractor shall pay the difference to Contractor immediately upon demand; and/or (v) offset and apply any amounts due Contractor as a result of such default against any earned but unpaid amounts owing to Subcontractor by Contractor under the Subcontract including without limitation, any retainage held by Contractor, any amounts owed to Subcontractor under any other contract, whether related to the Project or otherwise.

21.3 Prior to exercising the remedies in this Section, Contractor shall provide Subcontractor written notice of default and not less than forty-eight (48) hours to cure such default. Subcontractor shall have the opportunity to remedy, to Contractor's satisfaction, the default, deficiency or failures which are the basis of Contractor's termination notice within the forty-eight (48) hour notice period. Contractor's remedies are cumulative, and the exercise of one remedy shall not restrict Contractor, at the same time or thereafter, from exercising any other remedy set forth herein or provided by applicable law.

21.4 In the event a termination of this Subcontract pursuant to Section 21.2 is found not to have been warranted under this or any other provision of this Subcontract, the total compensation and damages that Subcontractor is entitled to recover on account of such termination shall be limited to the compensation that would have been payable to Subcontractor under the provisions of this Subcontract as if the Subcontract has been terminated for Contractor's convenience pursuant to Section 21.5 at that point.

21.5 Contractor may at any time and for any reason terminate Subcontractor's services and work for Contractor's convenience. Such termination shall be by written notice to Subcontractor at Subcontractor's place of business. Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the work and the placing of orders for materials, equipment and supplies in connection with the performance of this Subcontract, 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 materials and equipment on the Project site or in transit thereto. Upon such termination for convenience, Subcontractor shall be entitled to payment of the following amounts, which shall constitute full satisfaction of all claims by Subcontractor for payment on account for work performed under this Agreement; (1) the actual cost of the work completed in the conformity with this Subcontract through the date of termination, not to exceed the pro rata portion of the Contract Sum based on the percentage of completion; plus (2) such other costs actually incurred by Subcontractor as are payable to Contractor under the Prime Contract and approved by Owner; plus (3) a reasonable sum, not to exceed 15% of the cost of the Work, for overhead and profit. There shall be deducted from the amount determined as provided in this subparagraph the amount of any payments made to Subcontractor prior to the date of termination. 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.

21.6 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 any other act of insolvency, Contractor may, absent any applicable legal limitation, terminate this Agreement 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: (i) promptly cures all defaults;

(ii) provides adequate assurance of future performance; (iii) compensates Contractor for actual pecuniary loss resulting from such defaults; and (iv) assumes the obligations of Subcontractor within the statutory time limits.

21.6.1 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 of 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. Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Contract Price and shall pay Contractor said amount within 30 days of written demand therefore.

SECTION 22. WAIVER

A non-exercise by Contractor of its remedies for any particular default by Subcontractor shall not be deemed a waiver of Contractor's rights and remedies, nor shall it affect or impair Contractor's rights in respect to any default, or subsequent default of the same or of a different nature.

SECTION 23. NOTICES

All notices provided hereunder shall be in writing and mailed to the other party at the address stated on the Subcontract Agreement, with a copy via e-mail to the intended recipient, the Contractor's project manager, and the Contractor's project superintendent. If the Contract Documents include an electronic or digital data protocol, Subcontractor will further provide notice as stated therein.

SECTION 24. SEVERABILITY

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be determined to be invalid, unenforceable, void, or voidable, then such portion shall be deemed severed from the other portions of this Section that are not void, voidable or illegal and such other portions shall be enforced in accordance with their terms.

SECTION 25. GOVERNING LAW AND VENUE

This Subcontract Agreement shall be construed and enforced in accordance with the laws of the State of California, and venue for any legal action shall be in Sacramento, California.

SECTION 26. ATTORNEYS' FEES

In the event the parties become involved in litigation or arbitration with each other arising out of this Agreement or the performance thereof in which the services of an attorney or experts 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 expert fees' paid or incurred in good faith.

SECTION 27. DESIGN BUILD

If Subcontractor's scope of work under this Agreement requires Subcontractor to design any portion of the work, then Subcontractor will have all necessary professional architectural and engineering design services performed by properly licensed and qualified architects or engineers. Subcontractor will coordinate its work under this Agreement with the design and construction performed by others. Subcontractor will prepare sufficient plans and specifications for coordination, construction and permit purposes. Subcontractor will give all notices and comply with all applicable laws, building codes, ordinances, regulations and orders of any public authority. Subcontractor will submit for the Contractor's and Owner's approval in accordance with the Project Schedule, all design development documents, working drawings, specified shop drawings, samples, data and specifications of materials proposed to be incorporated in the Work. The Subcontractor will provide copies of approved drawings in the form and quantity specified by the Contractor. Subcontractor will advise Contractor and other affected trades of all design development changes in a timely manner so as to preclude additional costs and conflicts with the work of others on the Project.

SECTION 28. SPECIAL PROVISIONS (Including unit pricing, if applicable):

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, California 95826.

SAMPLE

**SECTION 29. SIGNATURES FOR SUBCONTRACT AGREEMENT
XXXXXXX**

CONTRACTOR:
UNGER CONSTRUCTION CO
PO BOX 160247
SACRAMENTO, CA 95816-0247

(916) 325-5500

SUBCONTRACTOR:

By: _____
(Signature)

John Nunan

President

Date: _____

CONTRACTOR'S LICENSE NO. 301690

By: _____
(Signature)

Print Name: _____

Title: _____

Date: _____

CONTRACTOR'S LICENSE NO. _____

NOTE: This document has important legal consequences. Consultation with an attorney prior to execution of this document is encouraged. Some construction prime contracts may require the use of specialized provisions not included in this form.

