



SUBCONTRACT (CA)

(Long Form Subcontract Between General Contractor & Subcontractor)

This Subcontract is entered into on Subcontract Date Here at Escondido, California by and between **JR FILANC CONSTRUCTION COMPANY, INC.** (“Contractor”), with its principal office at 740 North Andreasen Drive, Escondido, CA 92029 and the following subcontractor (“Subcontractor”):

SUBCONTRACTOR NAME HERE

SUBCONTRACT NO. Enter SC # Here

Subcontractor Address #1

Subcontractor Address #2

Subcontractor Phone

Contractor has entered into a contract (“Contract”) with the following Owner (“Owner”):

Owner Name

Owner Address #1

Owner Address #2

To perform certain construction work, (“The Project”) as defined in the Subcontract Documents, at the project location known as:

Project Name Here **FCC Project # XXXXX**

Project Address #1 Here

Project Address #2 Here

Contractor desires to subcontract some of the Project work, as defined in Exhibit “B”, to the Subcontractor per the terms and conditions and for compensation to be calculated as described in this Subcontract. A brief description of the scope of work of this Subcontract is as follows:

Enter a brief Description of the Subcontracted Work Here

NOTE: This Subcontract is based on the Associated General Contractors, San Diego Standard Form Subcontract. With permission, Contractor has modified this document to fit its business and project needs and subcontracting policies. Subcontractor should read the entire document. This Subcontract has important legal and insurance consequences. Consultation with an attorney and insurance consultant is encouraged prior to its execution.

No handwritten, or typewritten modifications made to this document after its first printing by Contractor shall be considered valid or accepted unless the initials of both the Contractor and Subcontractor signing parties are affixed on the margin near to the modification(s).

SUBCONTRACT

TABLE OF ARTICLES

ARTICLE 1	SUBCONTRACT PRICE
ARTICLE 2	SUBCONTRACT DOCUMENTS
ARTICLE 3	SCOPE OF SUBCONTRACT WORK
ARTICLE 4	SURETY BONDING
ARTICLE 5	PERFORMANCE OF WORK
ARTICLE 6	SUBCONTRACT INTERPRETATION
ARTICLE 7	CONTRACTOR'S OBLIGATIONS
ARTICLE 8	SUBCONTRACTOR'S OBLIGATIONS
ARTICLE 9	LABOR RELATIONS
ARTICLE 10	INSURANCE
ARTICLE 11	INDEMNIFICATION
ARTICLE 12	CHANGES
ARTICLE 13	DELAYS
ARTICLE 14	CLAIMS
ARTICLE 15	DISPUTE RESOLUTION
ARTICLE 16	PAYMENT
ARTICLE 17	RECOURSE BY CONTRACTOR
ARTICLE 18	TERMINATION
ARTICLE 19	SUSPENSION OF WORK
ARTICLE 20	ASSIGNMENT OF SUBCONTRACT
ARTICLE 21	GENERAL PROVISIONS

ATTACHMENTS TO THIS SUBCONTRACT

EXHIBIT A	SUBCONTRACT DOCUMENTS
EXHIBIT B	SUBCONTRACTOR SCOPE OF WORK.
EXHIBIT C	TEMPORARY FACILITIES
EXHIBIT D	SAFETY PROCEDURES
EXHIBIT E	INSURANCE REQUIREMENTS
EXHIBIT F	FILANC BILLING REQUIREMENTS
EXHIBIT G	LABOR REQUIREMENTS

The titles given to the Articles and paragraphs of this Subcontract are for ease of reference only and shall not be relied upon or cited for any other purpose. All attachments to this Subcontract are incorporated herein by their reference.

**ARTICLE 1
SUBCONTRACT PRICE**

1.1 As full compensation for satisfactory performance of the Subcontract, Contractor agrees to pay Subcontractor the firm fixed-price of Enter Fixed Price Here Dollars (\$), subject to all provisions of the Subcontract including additions and deductions as provided for in the Subcontract.

**ARTICLE 2
SUBCONTRACT DOCUMENTS**

2.1 The Subcontract Documents consist of the following:

See **Exhibit “A”** – Subcontract Documents

2.2 Subcontractor certifies and agrees that it has visited the location of the job site and is fully familiar with all of the terms, conditions and obligations of the Subcontract Documents, and the conditions under which the work is to be performed, and that it enters into this Subcontract based upon its investigation of all such matters and is in no way relying upon any opinions or representations of Contractor. It is further agreed that the Contract is incorporated into this Subcontract with the same force and effect as if it was set forth in full, and that Subcontractor is bound to Contractor in the same manner and to the same extent that Contractor is bound to Owner by all terms of the Contract as they relate in any way, directly or indirectly, to the work covered by this Subcontract, and Subcontractor shall ensure that its subcontractors are likewise bound to such terms of the Contract.

2.3 Upon written request by Subcontractor, Contractor shall provide to Subcontractor one copy of all portions of the Contract in the Contractor’s possession, from which Contractor may redact information Contractor deems confidential including pricing. Upon written request by its subcontractors and suppliers, Subcontractor similarly shall make one copy of applicable portions of the Subcontract Documents available to its subcontractors and suppliers.

2.4 Nothing in the Subcontract shall be construed to create a contractual relationship between persons or entities other than Contractor and Subcontractor.

**ARTICLE 3
SCOPE OF SUBCONTRACT WORK**

3.1 Independent Contractor – Subcontractor shall provide all labor, materials, equipment and services necessary or incidental to perform its work as an “independent contractor,” in accordance with the Subcontract Documents.

3.2 Subcontract Work – Subcontractor shall perform the following scope of work:

See **Exhibit “B”** – Subcontractor Scope of Work

3.3 Temporary Services – Contractor will provide to Subcontractor the following temporary services at the project site during the performance of this Subcontract at no charge to Subcontractor:

See **Exhibit “C”** – Temporary Facilities

Subcontractor will provide, at its own expense, all other necessary temporary services for the completion of its work.

ARTICLE 4 SURETY BONDING

4.1 Copy of Contractor Bonds – Subcontractor is entitled to receive from Contractor, upon written request, copies of any payment and performance bonds furnished by Contractor for the project.

4.2 Subcontractor Bonds – Subcontractor surety bond requirements, if any, are as follows:

Subcontractor Performance and Payment Bond

Required Not Required To Be Determined Before Work Start

4.2.1 Upon Contractor’s request prior to the start of Subcontractor’s work, Subcontractor shall provide to Contractor documentation demonstrating the financial health and related project experience of the Subcontractor, including recent financial statements and other documentation to allow Contractor to decide whether or not bonds will be required of the Subcontractor. If the Subcontractor refuses to cooperate with such reasonable requests, then Contractor shall have the right to require performance and payment bonds as described in this Section and the premiums for such bonds are to be deemed included in the Subcontract Price.

4.2.2 If a performance or payment bond, or both, are required of Subcontractor, such bonds shall name Contractor as Obligee, (and others as Co-Obligee if required in the contract documents) be in the full amount of the Subcontract Price, and shall be in a form and by a surety acceptable to Contractor. If the premiums for such bonds are notably and expressly excluded from the Subcontract Price, then Contractor shall reimburse Subcontractor for the cost of such premiums, without markup.

4.2.3 In the event Subcontractor shall fail to provide any required bonds within 10 days of Contractor’s written notification to do so, Contractor may terminate this Subcontract for cause. All costs and expenses incurred by Contractor as a result of such a termination shall be paid by Subcontractor in accordance with the termination for cause article of the Subcontract.

4.2.4 No change, directive, clarification or communication regarding this Subcontract, whether made in the manner specified in the Subcontract 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 nor Contractor shall be under any obligation to notify the surety or sureties of any change, directive, clarification or communication with Subcontractor.

ARTICLE 5 PERFORMANCE OF WORK

5.1 Schedule of Work – Subcontractor shall provide its work within the time allocated in the progress schedule (“Schedule”) which shall be prepared by the Contractor and which may be modified or revised from time to time by Contractor to coordinate and sequence the remaining work. The Subcontractor shall cooperate with the Contractor throughout the project sequence and plan for the Subcontractor’s work however, the duration of time established for Subcontractor’s work may not be lengthened without the mutual consent of the Contractor and the Subcontractor. At the request of the Contractor, the Subcontractor shall provide a proposed schedule for its work in P6 or other electronic CPM format.

5.1.1 Subcontract Start Work Date – Subcontractor shall start its work within 48 hours of being notified by Contractor that its work shall commence. If Subcontractor starts work prior to the execution of this Subcontract, all terms and conditions of this Subcontract shall apply to such work retroactively.

5.1.2 Subcontractor shall prepare and obtain approval as required by the Contract for all shop drawings, details, samples; shall perform any required Subcontractor testing; and do all other things necessary and incidental to the prosecution of the Subcontract in order to comply with the progress schedule. Subcontractor shall coordinate the work covered by this Subcontract with Contractor and all other subcontractors with whom Subcontractor must interface for the proper completion of Subcontractor’s work in accordance with the Schedule.

5.1.3 Contractor shall have the right to determine and, if necessary, change the time, order and priority in which the various portions of the work shall be performed and all other matters relative to the orderly performance of Subcontractor’s work in accordance with the Schedule. Subcontractor shall be reasonably notified of all subsequent changes and additional details to the progress schedule. Both Contractor and Subcontractor shall be bound by the updated progress schedule.

5.1.4 If in the reasonable opinion of the Contractor, Subcontractor fails or will fail to maintain progress of its work according to the progress schedule, Contractor may demand and Subcontractor shall increase crew sizes, work overtime, and take other measures as necessary to maintain the progress required by the progress schedule at no additional cost to Contractor. Failure by the Subcontractor to recover such progress shall be grounds for default under this Agreement.

5.1.5 If Subcontractor is delayed in the performance of its work, through actions or inactions of Contractor, Owner, Engineer, or other Subcontractor, the sole remedy for such delay shall be an extension of time to complete the work for the amount of time that the Subcontractor was delayed. Subcontractor shall not be entitled to damages, costs, expenses or additional compensation related to or as a consequence of such delays, unless Contractor recovers such compensation from the Owner or other party on Subcontractor’s behalf.

5.2 Subcontract Performance – Subcontractor shall use its best care, skill and diligence in supervising, directing and performing its work. Subcontractor shall have responsibility and control over the performance of its work, including the construction methods, techniques, means and sequences for coordinating and completing the various portions of its work.

5.3 Use of Contractor’s Equipment – Subcontractor, its agents, employees, subcontractors or suppliers shall use Contractor's equipment only with the express written permission of Contractor's designated

representative and in accordance with Contractor's terms and conditions for such use. If Subcontractor uses any such Equipment or temporary facilities, (with or without express written permission) it assumes all risk of damage, injury or loss and shall fully defend and indemnify Contractor from any and all claims of such damage, injury or loss regardless of cause.

5.4 Time is of The Essence – Time is of the essence for both parties in performing this Subcontract, and they mutually agree to ensure the performance of their respective work and the work of their subcontractors and suppliers so that the entire project may be completed in accordance with the Contract and the updated progress schedule.

ARTICLE 6 SUBCONTRACT INTERPRETATION

6.1 Inconsistencies and Omissions – Subcontractor shall promptly and carefully review all of the Subcontract Documents, including any modifications or updates to the Subcontract documents issued throughout the project. Should inconsistencies, errors or omissions appear in the Contract, it shall be the duty of Subcontractor to so notify Contractor in writing within the earlier of three (3) working days of Subcontractor's discovery, or at least one (1) business day prior to the time required of Contractor under the Contract. Upon receipt of such notice, Contractor shall inform Subcontractor as to the measures to be taken and Subcontractor shall comply with Contractor's instructions. If Subcontractor performs work that it knows or should know is contrary to any applicable laws, statutes, ordinances, building codes, rules or regulations without notice to Contractor and advance approval by appropriate authorities, including Contractor, then Subcontractor shall assume full responsibility for such work and shall bear all associated costs, charges, fees and expenses necessarily incurred to remedy the violation(s).

6.2 Disputes Over Responsibility For Performance – Subcontractor agrees that in the event a dispute should occur between Subcontractor and another subcontractor or Contractor as to who has the responsibility to perform a particular item of work or repair damage to any particular item of work, the determination of such responsibility to perform the work shall be made by Contractor.

6.3 Law and Effect – The Subcontract shall be governed by the law of the State in which the project is located.

6.4 Severability and Waiver – The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision. The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of the Subcontract, or to exercise any right provided to it, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

6.5 Recoverable Fees and Costs – In any dispute or proceeding arising from or related to the Subcontract, or to recover on a surety bond or insurance policy furnished by Subcontractor, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, charges, and expenses (including expert fees and testing) expended or incurred.

6.6 Titles – The titles given to the Articles and paragraphs of the Subcontract, and the order of their placement, are for ease of reference only and shall not be relied upon or cited for any other purpose.

6.7 Entire Agreement – The Subcontract is solely for the benefit of the signatories and represents the entire and integrated agreement between the parties and, unless specifically stated otherwise, supersedes all prior negotiations, representations, proposals, quotes or agreements, either written or oral.

6.8 Waiver of Any Breach – Waiver of any breach, alleged breach, provision, covenant or condition of the Subcontract by Contractor shall not be construed as a waiver of the same or any other provision of the Subcontract on any other occasion, nor shall such waiver serve as an estoppel of any other right Contractor may have. Should any provision in the Subcontract, or its attachments, be held or declared void or invalid, all other provisions shall remain in full force and effect.

ARTICLE 7 CONTRACTOR'S OBLIGATIONS

7.1 Authorized Representative – Contractor shall designate one or more persons who shall be Contractor's authorized representative(s) on-site and off-site. Such authorized representative(s) shall be the only person(s) Subcontractor shall look to for instructions, orders and/or directions, except in an emergency.

7.2 Timely Communications – Contractor shall, with reasonable promptness, transmit to the appropriate parties all submittals, transmittals and written approvals relating to Subcontractor's work. Communications by and with Subcontractor's subcontractors and suppliers shall be through Subcontractor.

7.3 Owner Ability to Pay – Subcontractor shall have the right to review with Contractor all information that Contractor has obtained relative to Owner's financial ability to pay for the Contract work.

ARTICLE 8 SUBCONTRACTOR'S OBLIGATIONS

8.1 Responsibilities – Subcontractor shall furnish and pay for all labor, materials, equipment, services permits, taxes, licenses and fees necessary or incidental to perform its work as described in Exhibit B. If requested at any time by Contractor, Subcontractor shall provide to Contractor a list of its proposed subcontractors and suppliers.

8.2 Compliance with Laws, Rules, Ordinances and Regulations – Subcontractor shall, at its sole cost and expense, and without increase in the Subcontract Price, comply with all laws, statutes, ordinances, rules, regulations, building codes, erosion control plans, air quality management plans, storm water pollution prevention plans, recycling plans; and orders and directives of all public authorities including federal, state and local governments, and all utility services and other agencies having jurisdiction over the work or project, and all noise ordinances or limitations imposed by municipalities or Owner, pay all manufacturers' taxes, sales taxes, use taxes, and all federal and state taxes, insurance and contribution 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.

8.2.1 Subcontractor shall give adequate notices to all required parties pertaining to Subcontractor's work and secure and pay for all permits, fees, licenses, assessments, and inspections necessary to complete its work in accordance with the Subcontract Documents.

8.2.2 Subcontractor shall be compensated for additional costs resulting from laws, ordinances, rules, regulations and taxes enacted after the date of the Contract only to the extent such additional costs are paid to Contractor by Owner.

8.3 Site Visitation and Proceeding with Work

8.3.1 Subcontractor acknowledges that it has visited the project site and visually inspected the general and local conditions which could affect its work. Any failure of Subcontractor to ascertain, from a visual inspection of the site, the general and local conditions which could affect its work will not relieve Subcontractor from its responsibility to properly complete its work without change in the Subcontract Price.

8.3.2 By signing this Subcontract, Subcontractor represents and warrants that it does not know of nor does it suspect any design errors or omissions in the Subcontract Documents and that it does not know of nor does it suspect any site conditions that would cause delays in Subcontractor's performance of its work or that would cause an increase in the Subcontract price or duration of Subcontract work.

8.3.3 Before starting each portion of its work, Subcontractor shall carefully study and compare the various Subcontract Documents and other documents relative to that portion of its work, shall take field measurements of any existing conditions related to that portion of its work and shall observe any conditions at the site affecting it. Any errors, inconsistencies or omissions discovered or suspected by subcontractor shall be reported promptly in writing to Contractor as a request for information in such form as Contractor or Owner may require

8.3.4 If part of Subcontractor's work depends for proper execution or results upon construction or operations by Owner, Contractor or a separate subcontractor, Subcontractor shall, prior to proceeding with that portion of its work, promptly report in writing to Contractor any apparent or expected discrepancies or defects in such other construction or operations that would render it unsuitable for the proper execution and required results of Subcontractor's work. Failure of Subcontractor to provide this report shall constitute an acknowledgment that such others' completed or partially completed construction or operations are fit to receive Subcontractor's work.

8.4 Shop Drawings, Samples, Product Data and Manufacturers' Literature – Subcontractor shall promptly submit to Contractor for approval all shop drawings, samples, product data, manufacturers' literature and similar submittals ("Submittals") required by the Contract. Subcontractor shall be responsible to Contractor for the accuracy and conformity of its submittals to the Contract requirements. Subcontractor shall prepare and deliver its submittals to Contractor in a manner consistent with the progress schedule and in such time and sequence so as not to delay Contractor or others in the performance of the Contract work, or fifteen (15) working days prior to when Contractor must provide Submittals to Owner as defined on the Project Schedule, whichever is earlier. The approval of any Subcontractor Submittal shall not be deemed to authorize deviations, substitutions or changes in the requirements of the Subcontract Documents unless express written approval is obtained from Contractor and Owner authorizing such deviation, substitution or change. In the event the Contract does not contain submittal requirements pertaining to Subcontractor's work, Subcontractor agrees upon request to submit to Contractor for approval within 5 days any Submittal as may reasonably be requested. Quantity of Submittals required are two more than is required by the Contract, and in the format(s) as required by the Contract.

8.4.1 Contractor, Owner and Engineer are entitled to rely on the accuracy and completeness of any professional certifications required by the Subcontract Documents concerning the performance criteria of systems, equipment or materials, including all calculations and any governing performance requirements.

8.5 Coordination and Cooperation – Subcontractor shall:

- (a) cooperate with Contractor and all others whose work may interface with Subcontractor's work;
- (b) specifically note and immediately notify Contractor of any interference with Subcontractor's work; and
- (c) participate in the preparation of coordination drawings and work schedules involving Subcontractor's work.

8.6 Authorized Representative – Subcontractor shall designate in writing one or more competent contractor-approved persons who shall be the authorized Subcontractor representative(s) on-site and off-site. Such authorized representative(s) shall be the only person(s) to whom Contractor shall issue instructions, orders or directions, except in an emergency.

8.7 Communications – Subcontractor communications by and with Owner, Engineer, separate contractors and/or other subcontractors and suppliers of Contractor, regardless of tier, shall be through Contractor. No party, other than Contractor as provided herein, including Owner and Engineer shall be authorized to direct, change or modify any requirement of the Subcontract Documents. If Subcontractor receives such direction from any party other than Contractor, it shall immediately confer with the Contractor for clarification in writing.

8.8 Tests, Inspections and Approvals – Subcontractor shall coordinate and notify Contractor of all required tests, inspections and approvals of Subcontractor's work so as not to delay the performance of the work. Subcontractor shall schedule and provide proper written notice to all required parties of such tests, inspections and approvals.

8.9 Workmanship – Every part of Subcontractor's work shall be executed in accordance with the Subcontract Documents in the best and most workmanlike manner. All materials needed by Subcontractor shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the work, and shall be new except such materials as may be expressly provided in the Subcontract Documents to be otherwise.

8.10 Materials or Equipment Furnished by Others – In the event the scope of Subcontractor's work includes installation of materials or equipment furnished by others, it shall be the responsibility of Subcontractor to inventory, examine, store, protect and install the items, with such skill and care as to ensure a satisfactory and proper installation. Subcontractor shall promptly notify Contractor in writing of any defective materials or equipment.

8.11 Substitutions – No substitutions shall be made by Subcontractor unless permitted in the Subcontract Documents and only then upon Subcontractor first receiving all approvals required under the Subcontract Documents for substitutions. If Subcontractor initiates a substitution, deviation or change in the work which

affects the scope of the work or the expense of other trades, Subcontractor shall be liable for all resulting expenses.

8.12 Warranty – Subcontractor warrants all materials and workmanship and agrees to replace at its sole cost and expense, and to the satisfaction of Owner and Contractor, any materials or workmanship that are defective, non-conforming or improperly installed, and defends and indemnifies Contractor from and against any liability, loss or damage arising from or relating to such materials and installation through the period of Subcontractor's performance and for a period of one year from final completion of the Contract. If the period of warranty is specified in excess of one year by the Contract, Subcontractor shall be bound for the longer period specified. As a convenience for the Contractor and the Owner, Subcontractor shall execute a separate written warranty in a form acceptable to the Owner and Contractor reciting the terms of this warranty requirement. In the event of a conflict between this paragraph and any separately executed written warranty, the strictest interpretation in favor of the Contractor and Owner shall prevail.

8.13 Uncovering of Work – If required in writing by Contractor, Subcontractor must uncover any portion of its work which has been covered. All costs associated with the uncovering and related work shall be borne as follows:

- (a) If the work was covered in violation of the Subcontract Documents or contrary to a written directive issued to Subcontractor by Contractor, the uncovering, any corrective work and restoration shall be at Subcontractor's expense.
- (b) If the work was not covered in violation of the Subcontract Documents or contrary to a written directive issued to Subcontractor by Contractor, the Subcontract shall be adjusted by change order for all costs of uncovering and restoring any work which proves to be installed in accordance with the Subcontract Documents.
- (c) If any uncovered work does not comply with the Subcontract Documents and Subcontractor is responsible for the nonconforming condition, Subcontractor shall be responsible for all costs of uncovering, correcting and restoring the work so as to make it conform to the Subcontract Documents.

8.14 Correction of Work – Subcontractor is required to correct within 3 days of notice any of its work rejected by Contractor or Owner for failing to comply with the Subcontract Documents whether observed prior to the commencement of the warranty period(s) or during the warranty period(s). Subcontractor shall correct at its own cost and bear the expense of additional services for any nonconforming work for which it is responsible, and shall remain responsible even after the warranty period for fraud, misrepresentation or latent defects.

8.15 Cleanup – Subcontractor shall follow Contractor's cleanup directions, and:

- (a) at all times keep the building and premises free from debris resulting from Subcontractor's work;
- (b) broom or rake clean each work area prior to discontinuing work in each area; and

- (c) Subcontractor's work shall not be considered complete until Subcontractor removes from the site all temporary structures, debris and waste incident to its operation and cleans all surfaces, fixtures, equipment, etc., relative to the performance of its work.

If Subcontractor fails to immediately commence compliance with the above cleanup duties after written notification from Contractor of noncompliance, Contractor may implement appropriate cleanup measures without further notice and deduct the resulting costs from any amounts due or to become due Subcontractor under the Subcontract.

8.16 Safety

See **Exhibit "D"** – Safety Procedures

8.17 Delegation or Subcontracting of Duties – Subcontractor is prohibited from delegating, transferring, conveying, subcontracting, relinquishing or otherwise disposing of the whole or any part of its duties under this Subcontract without the prior written approval of Contractor, which shall not be unreasonably withheld. Prior to commencement of any delegated work, Subcontractor shall inform contractor in writing of any proposed subcontractor to whom such work will be delegated and Contractor shall inform Subcontractor within three (3) working days of any objection.

Subcontractor shall incorporate all terms of this Subcontract in any subcontracts or purchase orders with its subcontractors and suppliers.

8.18 Duty to Proceed – In the event of any dispute or controversy with Contractor, another subcontractor or other third party involved with the project, Subcontractor shall not cause or permit any delay or cessation of its work or cause delay or disruption to the work of any other subcontractor or Contractor on the project, but shall proceed with performance of its work pending resolution of such dispute or controversy. Contractor shall continue to make payments in accordance with the Subcontract.

8.19 Force Account Work – When directed in writing by Contractor, Subcontractor shall perform such additional work as directed by Contractor and Contractor shall pay to Subcontractor the actual costs of such directed work plus Subcontractor's overhead and profit at a combined rate specified in the Contract documents, which shall not exceed 15%.

8.20 Workers – Contractor may order the removal from the job of any workers the Contractor finds disruptive, incompetent, in violation of safety requirements/programs or otherwise detrimental to the successful completion of the project.

8.21 Contractor Expending Money – Whenever any money is expended or costs or expenses are incurred by Contractor on behalf of or on account of Subcontractor, which amounts Subcontractor should have paid, and for which amounts Subcontractor is required to reimburse Contractor, or if Contractor continues or completes the work after default by Subcontractor, Subcontractor shall pay to Contractor interest at the rate of 10% per annum from the time said money is expended or said costs or expenses are incurred until those amounts are repaid to Contractor by Subcontractor. Nothing contained in this provision or Subcontract shall be construed as requiring Contractor to make any such expenditure, advance any such money, or incur any such expenses. In the event that the balance of the monies due pursuant to this Subcontract are insufficient to

cover Contractor's damages or exposure, then Contractor shall have the right to offset against monies owed Subcontractor on other projects, if any.

8.22 Protection of the Work – Subcontractor shall secure and protect the work done pursuant to this Subcontract until final acceptance by Contractor and Owner.

8.23 Subcontractor Daily Report – Subcontractor shall prepare each day that it works on the project site a subcontractor daily report that records a) the number of Subcontractor employees, by trade classification and hours worked; b) a listing of all sub-subcontractors that worked on the project during the day, and a description of the work performed; c) any material or equipment deliveries to the site; d) a record of work accomplished by area of the project; e) a listing of any safety concerns observed, or accidents or incidents that occurred during the day; f) a listing of any issues that are interfering with the Subcontractor's performance of the work; g) any other data requested by the Superintendent. The subcontractor daily report must be completed and submitted to the Contractor's superintendent on the next work day. It is preferred that the subcontractor daily reports are submitted in electronic form, by e-mail or upload to the project's project management system.

8.24 Prohibited Jobsite Materials – At no time, shall the Subcontractor allow on the project site any alcohol, illegal drugs, drug paraphernalia, weapons, pornography, gambling materials, or other items not required for the proper performance of the work.

8.25 Prohibited Jobsite Activities – At no time, shall the Subcontractor allow any behavior by any of its employees, sub subcontractors, or vendors which is detrimental to the progress of the work and/or offensive to others including, gambling, cat calling, name calling, lewd gestures, hazing, teasing, harassment, or any other such disruptive behavior. This policy is to ensure maximum efficiency of the work and to protect other jobsite workers as well as third parties such as neighbors, and passers-by from unwanted harassment.

8.26 Initial Subcontract Compliance Items – Immediately upon the execution of this Subcontract agreement Subcontractor shall submit to the Contractor the following initial subcontract compliance items. Contractor's receipt and acceptance of these items is a prerequisite to the Subcontractor's performance of work at the jobsite and its right to be paid for any work performed under this Subcontract:

- a. A copy of this executed Subcontract Agreement
- b. A copy of the subcontractor's current contractor's license status (CSLB Web Page Status is OK)
- c. The Performance and Payment Bond, if required in Article 4.2
- d. Certificate(s) of Insurance and all required endorsements evidencing Subcontractor's compliance with the insurance requirements included in Article 10 and Exhibit "E".
- e. It's proposed Schedule of Values described in Article 16.1 and Exhibit "F"

ARTICLE 9 LABOR RELATIONS

9.1 General Provisions – Employment of labor by Subcontractor shall be effected under conditions which are satisfactory to Contractor. Subcontractor shall keep a representative at the job site during all times when Subcontractor's work is in progress, and such representative shall be authorized to represent Subcontractor as to all phases of the work. Prior to commencement of the work, Subcontractor shall notify Contractor in

writing who Subcontractor's representative is to be, and in the event of any change of representative Subcontractor shall notify Contractor who the new representative is to be prior to such change becoming effective.

9.1.1 Subcontractor acknowledges that Contractor has entered into labor agreements with certain labor unions covering work at its construction job sites in certain counties as follows:

	CA San Diego	CA 11 S Counties	CA 46 Northern	AZ All
• Carpenters	X	X	X	X
• Millwrights	X	X	X	X
• Laborers	X	X	X	
• Cement Finishers		X		

If requested by Subcontractor, Contractor shall provide copies of all such labor agreements to Subcontractor. Subcontractor agrees to comply with all of the terms and conditions of those labor agreements set forth above. Subcontractor agrees, at its own expense, upon request of Contractor, to take all lawful steps to secure a binding and final determination of any jurisdictional dispute by the National Labor Relations Board.

9.1.2 Subcontractor will require all of its subcontractors and their subcontractors performing job site work to comply with the labor agreements specified above, and labor agreements which are binding upon them.

9.1.3 Subcontractor will defend, indemnify and hold Contractor harmless from and against any liability, loss, damage, cost, claims, awards, judgments, fines, expenses, including litigation expenses, reasonable attorneys' fees and any other costs which may be incurred by Contractor resulting from Subcontractor's failure to comply with the above requirements.

9.2 Reserved Gate Usage – Subcontractor shall notify in writing and assign its employees, materialmen and suppliers to such gates or entrances as may be established for their use by Contractor and in accordance with such conditions and at such times as may be imposed by Contractor. Strict compliance with Contractor's gate usage procedures shall be required by Subcontractor who shall be responsible for such gate usage by its employees, materialmen, suppliers, subcontractors, and their materialmen and suppliers.

9.3 Work Stoppages – Work stoppages (including sympathy strikes) or any other stoppage of work by employees performing work on, or delivering supplies or materials to, the job site 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 an individual employee.

9.4 Prevailing Wage Laws – If the project is covered by a Federal or State prevailing wage decision, Subcontractor shall fully comply with all requirements of such prevailing wage laws and regulations. Subcontractor represents that it is familiar with such requirements and is fully prepared to administratively and practically comply with all such requirements (as defined in the regulations) including but not limited to:

- The proper classification of work performed and working rules for such classifications;
- The calculation and payment of prevailing wages and benefits.
- The proper timekeeping, recording and reporting of certified payrolls
- The proper apprentice training requirements, including journeymen to apprentice ratios.
- Sign and return Labor Law Requirements Form and Final Affidavit when due. **See Exhibit "G"**
- Progress or final payment may be withheld for failure to comply with these requirements.

9.4.1 Contractor shall provide to Subcontractor additional written materials it receives regarding the application of prevailing wages for the project.

9.4.2 Subcontractor shall fully indemnify and defend Contractor from and against any penalties, interest, fines, or withholdings it incurs as a result of Subcontractor's alleged or actual failure to comply with this Section. Contractor may withhold any such amounts from payments owed to Subcontractor.

9.4.3 If Subcontractor subcontracts any of its work to another sub-subcontractor it shall be liable for and shall ensure that such sub-subcontractor also complies with any such prevailing wage regulations.

9.5 Default – Should Subcontractor default in the proper performance of its work, for reasons specified in this provision, Contractor may, as its option, terminate the Subcontract for cause in accordance with the termination for cause provision.

ARTICLE 10 INSURANCE

10.1 Subcontractor's Insurance – Subcontractor shall carry for the benefit of the Owner and Contractor and other Indemnitees as defined below, all insurance as required in **Exhibit "E"** - Insurance. Additionally, proof of such insurance, in a form acceptable to Contractor, shall be provided to Contractor prior to Subcontractor's mobilization to the project site. Payment may be withheld by Contractor until all insurance requirements have been met by the Subcontractor. Subcontractor shall ensure that each of its subcontractors or suppliers who enter onto the Project sight shall have the same types and coverages and additional insureds as is required for Subcontractor under this Subcontract.

10.2 Other Insurance By Subcontractor – Contractor makes no representation that the limits or kinds of insurance listed in **Exhibit "E"** are adequate for the Subcontractor's purposes. Subcontractor shall carry any other insurance that it deems necessary for the proper operation of its business and may carry limits above those specified in the Subcontract Documents and Contract.

10.3 Cancellation, Renewal or Modification – Subcontractor shall maintain in effect all insurance coverage required under the Subcontract at Subcontractor's sole expense and with insurance companies rated as required by Owner but no less than a Best rating of A- or better. All insurance policies shall contain a provision that the coverages afforded shall not be canceled or not-renewed, nor restrictive modifications added, until at least thirty (30) calendar days' prior written notice has been given to Contractor. Insurance renewal shall be submitted by Subcontractor no later than date of expiration of such insurance policy. In the event Subcontractor fails to obtain or maintain any insurance coverage required under the Subcontract, including that which is required of Subcontractor's subcontractors, Contractor may, but shall not be obligated to, purchase such coverage and charge its expense to Subcontractor, or terminate the Subcontract for cause in accordance with the termination for cause provision of the Subcontract.

10.4 Builders Risk Insurance – Builder's Risk Insurance

- Is provided by Contractor
- Is provided by Owner
- Is not provided by Contractor or Owner

If Builder's Risk Insurance is provided by Contractor or Owner, upon written request by Subcontractor, Contractor shall provide Subcontractor with a copy of the Builder's Risk policy of insurance.

10.4.1 If Builder's Risk Insurance is provided by Owner or Contractor, then Contractor and Subcontractor waive all rights against each other and Owner, Engineer, Engineer's consultants and agents or employees of any of them, separate contractors, and all other subcontractors for loss or damage to the extent covered by Builder's Risk, except such rights as they may have to the proceeds of such insurance. However, this waiver shall not extend to the acts or omissions of Engineer, Engineer's consultants, and the agents or employees of any of them.

ARTICLE 11 INDEMNIFICATION

11.1 General Indemnity – All work covered by the Subcontract done at the site of construction or in preparing or delivering materials or equipment, or any or all of them, to or from the site shall be at the risk of Subcontractor exclusively. To the fullest extent permitted by law, Subcontractor shall, indemnify, hold harmless and defend Contractor, Owner, and all others to whom Contractor is obligated to defend and indemnify under the Contract (“Indemnitees”) from and against any and all allegations, losses, claims, actions, demands, damages, liabilities, or expenses (including costs, expenses and attorneys' fees) (“Claims”), arising from or relating to the work, operations or activities of the Subcontractor, anyone directly or indirectly employed by Subcontractor, its subcontractors or suppliers of any tier, or anyone for whose acts Subcontractor may be liable, including, but not limited to Claims related to (1) the death of or bodily injury to persons, (2) injury to or destruction of property, both real and personal, (3) design defects (if design originated by Subcontractor), (4) product defects, or (5) liquidated damages assessed against the Contractor to the extent caused by the Subcontractor failure to perform its work in accordance with the Schedule. Subcontractor's duty to defend and indemnify shall include all damages caused or alleged to be caused in whole or in part by any negligent act or omission of: (a) Subcontractor; (b) anyone directly or indirectly employed by Subcontractor; (c) anyone for whose acts Subcontractor may be liable; or (d) Contractor. However, Subcontractor shall not be obligated to indemnify or defend any Indemnitee with respect to the sole or active negligence, or willful misconduct, of that Indemnitee. With respect to any defense obligation owed by Subcontractor to Contractor, Subcontractor shall comply with Civil Code section 2782.05, subdivision (e), upon receipt of a written tender of claim by Contractor.

11.1.1 To the extent Paragraph 11.1, or any part of Paragraph 11.1, is found as a matter of law to be void or unenforceable, the contrary terms shall be deemed stricken and the balance of the paragraph shall be enforceable to the fullest extent permitted by law.

11.2 Indemnification for Noncompliance With Laws – Subcontractor shall fully defend, indemnify and hold Contractor harmless from all Claims and citations attributable to any acts or omissions by Subcontractor which constitute a failure to comply with any laws, rules, ordinances and / or regulations of any governmental entity or agency.

11.3 Intellectual Property Rights – Subcontractor shall pay all royalties and license fees which may be due on the inclusion of any patented or protected materials in Subcontractor's work. Subcontractor shall defend and indemnify the Indemnitees against all suits or claims for infringement of any patent or other intellectual property rights related to or arising out of Subcontractor's work, which may be brought against an

Indemnitee, and shall be liable to any Indemnitee for all loss, including all costs, expenses and attorneys' fees in any such suit or claim.

ARTICLE 12 CHANGES

12.1 Performance – Subcontractor shall proceed with all written directions issued by Contractor so as not to delay the work. Subcontractor shall adhere strictly to the Subcontract Documents unless directed otherwise in writing. Subcontractor shall not make any changes to the work set forth in the Subcontract Documents, either as additions or deletions, without the written direction of Contractor.

12.2 Incorporating Changes – All provisions of this Subcontract shall apply to any changes or extras in a like manner and to the same extent as though said changes or extras were incorporated in the Subcontract.

12.3 Types of Changes – Changes can be initiated by a) the Owner or Engineer, b) a Governmental authority, c) the Contractor. However, Subcontractor shall not proceed with any such changes unless directed to proceed in writing only by the Contractor. Such written direction may include the methodology for calculating the cost and time impact of the change, if any. No Change Order is created until a formal Change Order is executed in accordance with this Section.

12.4 Change Orders – When a change occurs, and the parties agree on the cost and time impacts of the change, a “Change Order” shall be executed by both parties to document the change to this Subcontract. Subcontractor may not bill for change order work until such change order is executed by both parties. Additionally, if Subcontractor makes a claim as provided elsewhere in this Subcontract, any agreement between the Contractor and Subcontractor to resolve the claim shall be included in a “Change Order”

12.5 Notification of Additional Costs or Time – Subcontractor shall provide written notification to Contractor within 3 days if a written direction or other event or occurrence could result in additional costs or time of performance so that Contractor has sufficient time to take actions to minimize any additional costs or time, and has sufficient time to provide notification to Owner in accordance with the Contract. In the event Subcontractor fails to provide notice as provided herein, then Subcontractor shall be deemed to have waived its right to seek additional compensation or time due to any such written direction, event or other occurrence.

12.6 Submission of Cost Proposals and Requests For Time Extensions – Subcontractor shall submit its cost proposal(s) in sufficient time for Contractor to comply with any submission requirements of Owner. All such cost proposals shall itemize, in a form acceptable to Contractor, any change in costs or time for performance which result from any written direction issued by Contractor or other event or occurrence.

12.7 Change Order Pricing – When a change does occur, Subcontractor shall apply pricing estimates for the impact of the Change which are commercially reasonable and not inflated. Subcontractor markup for overhead and profit shall not exceed the markup allowed under the Contract, or 15% in the absence of any specified rates. Subcontractor shall provide in its proposal, all assumptions, quantities, estimates and unit prices figured to calculate the impact. At the request of Contractor, Subcontractor shall meet with Contractor to review the calculations and agree on the change order amount. Change Order pricing may be based on any of the methods described below.

12.7.1 Lump Sum Agreement between the parties.

12.7.2 Application of Unit Prices as described in this Subcontract.

12.7.3 Application of Alternate Pricing as described in this Subcontract.

12.7.4 Time and Materials Costs – If a change order is to be calculated on a Time and Materials Basis, then the Subcontractor must comply with the following requirements to calculate such value:

- A) Subcontractor must keep daily records of all work performed relating to the Change. Such records shall include the names of all workers who worked on the Change, the hours worked by such workers, the materials and equipment consumed. The Daily record shall be signed by the Contractor's representative at the end of each work day to confirm Contractor's agreement with the hours worked and the materials and equipment consumed.
- B) Subcontractor shall provide pricing for all labor, materials equipment and tools used in the performance of the Change work at its actual costs for same. The Subcontractor may include a reasonable allowance for payroll taxes and insurance.
- C) Subcontractor must provide backup for all costs if requested by Contractor.
- D) Notwithstanding the foregoing, Subcontractor shall not include any item of cost that is not authorized under the Contract.

12.8 Reduction in Work – If a change is made that reduces the work of the Subcontractor, the Subcontractor shall provide a credit for the fair value of the work.

12.9 Dispute of Change Order Pricing – In the event the Contractor and Subcontractor cannot agree on a pricing method for a change, the Time and Materials method shall be used by the parties.

12.10 Cost Proposal Negotiations – For changes that are to be funded by the Owner, rather than the Contractor, the Contractor will not approve Subcontractor's pricing or time impacts until the Owner has also approved the same. At Subcontractor's request, it shall be invited to attend and participate in all negotiations with Owner or others that relate to settlement or resolution of its cost proposals. At Contractor's request, Subcontractor shall attend and participate in negotiations with Owner or others that relate to settlement or resolution of Subcontractor's cost proposals.

ARTICLE 13 DELAYS

13.1 Excusable Delays – An Excusable Delay is one which is caused by circumstances or events beyond the control and without the fault or negligence of Contractor or Subcontractor, and which is recognized by the Contract as “excusable” that is, a delay for which the contract time is extended, whether or not compensation by Owner is allowed. To the extent Excusable Delays occur and affect Contractor's and/or Subcontractor's ability to complete their work in accordance with the updated progress schedule, the affected party's time for performance shall be extended, but only to the extent such extensions are allowed by Owner.

13.2 Subcontractor Caused Delays – Subcontractor Caused Delays are delays caused by the failure of Subcontractor, or any party for which Subcontractor is responsible, to perform any portion of its work in

accordance with the updated progress schedule. Subcontractor shall take immediate action to recover from any Subcontractor Caused Delays, including working extra shifts, providing additional workers, and overtime work in an effort to recover and maintain the schedule. Failure to maintain the updated progress schedule or to recover from a Subcontractor Caused Delay when directed by Contractor, is considered a default of this Subcontract.

If Subcontractor Caused Delays cause delay and/or disruption to the Contract work, Subcontractor shall be liable for all costs and damages sustained by Contractor and for which Contractor may be liable to Owner and any other party, including consequential damages and liquidated damages. If Subcontractor Caused Delays are only one of multiple causes for delay to the Contract work, Subcontractor shall be liable for its proportionate share of any resulting costs and damages.

13.3 Contractor Caused Delays – Contractor Caused Delays are delays caused by the failure of Contractor, or any party for which Contractor is responsible, to perform any portion of its work in accordance with the updated progress schedule due to events or occurrences that are under the reasonable control of Contractor. If a Contractor Caused Delay is the sole cause of an actual delay and/or disruption to Subcontractor's work that cannot be avoided by Subcontractor by use of commercially reasonable means, Subcontractor shall, as its sole remedy, be entitled to a time extension equal to the impact of the Contractor Caused Delay.

13.4 Disputed Delays – If Subcontractor disputes the determination of the cause of any delay and wishes to pursue that dispute, it must comply with the Claims article of the Subcontract.

ARTICLE 14 CLAIMS

14.1 Claim – A claim is a written demand by Subcontractor seeking an adjustment in the Subcontract Price and/or time, or the recovery of withheld disputed funds.

14.2 Notification of Claims – Subcontractor shall provide written notification to Contractor of any claims so that Contractor has sufficient time to take actions to minimize any additional costs or time, and has sufficient time to provide notification to Owner in accordance with the Contract, but in no event later than 5 days after the occurrence of the event giving rise to the Claim. In the event Subcontractor fails to provide notice as provided herein, then Subcontractor shall be deemed to have waived its right to such claim.

14.3 Submission of Claims – Subcontractor shall submit its claims in sufficient time for Contractor to comply with any submission requirements of Owner. All such claims shall itemize, in a form acceptable to Contractor, any additional costs or time for performance being sought by Subcontractor. In the event Subcontractor fails to timely submit its itemized claim as provided herein, and such failure results in Contractor being barred from submitting the itemized claim to Owner, then Subcontractor shall be deemed to have waived its right to pursue such claim.

14.4 Claims with Owner – To the extent Contractor determines Subcontractor's claim is one for which Owner may be liable, the following procedure shall apply:

- (a) Contractor will present Subcontractor's claim to Owner per the Contract requirements. The determination of such submission will be conveyed in writing to Subcontractor and such decision shall be final unless Subcontractor notifies

Contractor in writing of its desire to proceed further in sufficient time for Contractor to comply with any notification or submission requirements to Owner.

- (b) Upon receipt of Subcontractor's notice to proceed further, at Contractor's option, Subcontractor's claim may be further pursued with Owner. In such event, Contractor may allow Subcontractor to act in its own behalf and with its own consultants/attorneys at Subcontractor's cost to continue the required process and any subsequent administrative proceeding or litigation. If Contractor does not allow Subcontractor to act in its own behalf or it is procedurally impermissible for Subcontractor to proceed in its own behalf, and Contractor elects to allow the continued pursuit of Subcontractor's claim, then at the written request of Subcontractor, Contractor will proceed with the dispute on condition that Subcontractor pay to Contractor all of its actual costs arising out of such process, including but not limited to attorneys' fees, court costs and the costs of Contractor's personnel employed in pursuing the case against Owner.
- (c) If Contractor elects to not allow further pursuit of Subcontractor's claim against Owner, and Subcontractor disputes such decision, Subcontractor may pursue its claim pursuant to the Disputes Resolution Article of the Subcontract.
- (d) Nothing shall prevent Contractor from accepting a contract modification from Owner which preserves the rights of Subcontractor.
- (e) If because of Subcontractor's claim, Owner withholds any sums due Contractor, then Subcontractor shall pay to Contractor interest on the amounts so withheld at the rate of 10 percent per annum.

ARTICLE 15 DISPUTE RESOLUTION

15.1 Dispute – To the extent Subcontractor submits a claim which Contractor determines is one for which Owner may not be liable, or is one which Contractor elects to not allow Subcontractor to further pursue with Owner, or to the extent Contractor has a claim against Subcontractor which is contested by the Subcontractor, (all of which shall be categorized as a “Dispute”), the following procedures shall apply:

15.1.1 Informal Dispute Resolution - If the dispute cannot be settled through direct discussions between the Contractor and Subcontractor’s assigned project personnel, either party may make a written demand that the dispute be “elevated” in accordance with this paragraph for review and discussion of the Company’s principals for an informal dispute resolution process. When such demand is made, the senior most officer (or owner) of the Contractor and the senior most officer (or owner) of the Subcontractor shall meet within 30 calendar days in a face-to-face meeting to discuss and attempt to resolve the matter. During the meeting, the parties may agree to any ground rules, procedures, additional meetings, time extensions, or any other dispute resolution process that suits their needs, as long as the agreement is mutual. The parties are each encouraged to consider alternatives to resolve the dispute including hiring a competent mediator to help the parties towards a solution, before proceeding with formal litigation.

In the interest of resolving disputes quickly and minimizing costs and disruption to the project, and to the parties, this first meeting shall be a condition precedent to the filing of any legal action or other formal dispute resolution process to resolve the dispute, except that litigation may be commenced in order to preserve any statutes of limitation that may relate to the dispute, and either party may petition or motion the court to stay such litigation pending the parties' compliance with this dispute resolution process. In the event that a party petitions or motions the court for such a stay, the other party irrevocably waives its right to object or oppose any such petition or motion.

Any settlement of a dispute shall be documented in writing and signed by both parties and shall be included in a formal Change Order to the Subcontract Agreement.

15.1.2 Formal Dispute Resolution. In the event that the informal dispute resolution process does not result in a settlement of the dispute, either party may commence a formal dispute resolution process. If any such specific process is defined by or required by the Contract and such process applies to the subject dispute, then such process shall be followed. In the absence of such pre-defined formal dispute resolution process, then litigation shall be the required method of dispute resolution between Contractor and Subcontractor. The laws of the State in which the project is located shall apply to any disputes and litigation may only be commenced in the state or federal courts of the County in which the project is located, and the parties hereby submit to such jurisdiction.

15.1.3 The requirement for the Informal Dispute Resolution Process and Mediation are material terms of the Subcontract and may be enforced by an action, petition or motion for specific performance in a state or federal court in the jurisdiction for the County in which the project is located, and the parties hereby submit to such jurisdiction.

15.2 Participation In Proceedings – If Contractor receives a claim from any other party and Contractor determines Subcontractor may be liable, in whole or in part, for such claim, Subcontractor shall participate in the dispute resolution process with Contractor and such other party. To the extent practical, Contractor will not agree to binding arbitration or any other form of resolution with the other party without Subcontractor's consent. If, however, Contractor could not have determined, by reasonable diligence, that Subcontractor may be liable for the other party's claim before binding arbitration or any other form of resolution was already agreed upon, Subcontractor shall participate in that arbitration or other form of resolution and shall be bound by the decision rendered in that proceeding.

ARTICLE 16 PAYMENT

16.1 Schedule of Values – Within 10 days of Contractor's request (or a lesser time if required under the Contract), Subcontractor shall prepare and submit to Contractor a Schedule of Values which breaks down Subcontractor's work into individual activities. Each activity contained in the Schedule of Values shall be assigned a monetary price such that the total of all such items shall equal the Subcontract Price. The Schedule of Values shall be prepared in a form (See Exhibit "F") and in such detail as may be required by Owner and/or Contractor.

16.2 Payment and Verification – Subcontractor is required to pay for all labor, materials and equipment used in the performance of Subcontractor's work through the most current period applicable to progress

payments received from Contractor. Contractor may require reasonable evidence to show that all obligations relating to Subcontractor's work are current through all payments received from Contractor before releasing any payment due for Subcontractor's work.

16.3 Progress Payment Applications – Subcontractor's applications for payment shall be itemized and in accordance with Subcontractor's Schedule of Values and any other substantiating data as required in the Contract for Contractor's payment applications. Subcontract payment applications may include amounts for Subcontract change orders which have been fully executed by Subcontractor and Contractor. Subcontractor cannot include in its payment applications any amounts for changes which have not been fully executed by Subcontractor and Contractor, or for disputed work.

16.4 Stored Materials and Equipment – If allowed by Owner, applications for payment may include materials and equipment not incorporated into Subcontractor's work but suitably stored on or off the site. Approval of payment applications for materials and equipment stored on or off the site shall be conditioned on: (1) submission by Subcontractor of bills of sale and applicable insurance or such other procedures satisfactory to Owner and Contractor to establish the proper valuation and protection of the stored materials and equipment; (2) Owner's and/or Contractor's title to such materials and equipment; (3) Consent of Subcontractor's surety; (4) Segregated and secured storage facilities in the US only; (5) Right for the Contractor and Owner to inspect stored materials at any time; and (6) any other documents or procedures to protect Owner's and Contractor's interests, including during the transportation of such items to the site by Subcontractor.

16.5 Time for Submission of Application – Subcontractor's progress payment application shall be submitted to Contractor in sufficient time for Contractor to include it in Contractor's payment request to Owner, or the last day of the calendar month which is being billed, whichever is earlier. Contractor shall incorporate the amount of Subcontractor's progress payment application approved by Owner into Contractor's payment application to Owner for the same period. If requested by Subcontractor, Contractor shall inform Subcontractor of Owner's changes to Subcontractor's percentages of completion reflected on Subcontractor's payment application and/or other adjustments affecting Subcontractor.

16.6 Lien Waivers – Subcontractor shall provide, in a form satisfactory to Owner and Contractor, lien or claim waivers in the amount of the application for payment from Subcontractor, and its subcontractors, materialmen and suppliers for the completed work. Contractor may refuse to pay Subcontractor if Subcontractor fails to provide such waivers. If such waivers are conditional upon payment, Contractor may choose to make payment by issuance of joint checks to Subcontractor and its subcontractors, materialmen and suppliers. Subcontractor shall not be required to sign an unconditional waiver of lien or claim prior to receiving payment, or in an amount in excess of what it has been paid.

16.8 Application Reduction, Rejection or Nullification – Contractor may reduce or reject a Subcontractor payment application or nullify a previously approved Subcontractor payment application, in whole or in part, as may reasonably be necessary to protect Contractor from loss or damage based upon:

- (a) Subcontractor's failure to perform its work as required by the Subcontract Documents;
- (b) Loss or damage to Owner, Contractor or others to whom Contractor may be liable arising out of or relating to the Subcontract and caused by Subcontractor or its lower tier subcontractors or suppliers;

- (c) Subcontractor's failure to properly pay for labor, materials, equipment or supplies furnished in connection with its work;
- (d) Rejected, nonconforming or defective work which has not been corrected;
- (e) Reasonable evidence of delay in performance of Subcontractor's work such that the work will not be completed within the time allotted by the updated progress schedule, and that the unpaid balance of the Subcontract Price is insufficient to offset the liquidated damages or actual damages that may be sustained by Contractor as a result of the anticipated delay caused by Subcontractor;
- (f) Reasonable evidence demonstrating that the unpaid balance of the Subcontract Price is insufficient to cover the cost to complete Subcontractor's work;
- (g) Third party claims against Subcontractor or reasonable evidence demonstrating that third party claims are likely to be filed. Subcontractor can eliminate this basis by furnishing Contractor with adequate security in the form of a surety bond, letter of credit or other collateral or commitment which is sufficient to discharge such claims if established;
- (h) Owner's reduction, rejection or nullification of any part of a payment application;
- (i) Subcontractors failure to submit Submittals and O&Ms in a timely manner per the Contract Documents;
- (j) Subcontractors failure to provide "As Builts" with the monthly pay request;
- (k) Subcontractor's failure to attend weekly planning meetings if required;
- (l) Subcontractor's failure to submit certified payroll in a timely manner; or
- (i) Any other failure to comply with the terms and conditions of the Subcontract Documents.

Contractor shall give written notice to Subcontractor, at the time of reducing, disapproving or nullifying an application for payment, of the specific reasons for Contractor's action. When the above reasons for reducing, disapproving or nullifying an application for payment are removed, payment will be made for amounts previously withheld.

16.9 Retention – Contractor may withhold from Subcontractor progress billings retention up to a rate of 10 percent, or as provided by law.

16.10 Payment Not Acceptance – Payment to Subcontractor does not constitute or imply acceptance of any portion of Subcontractor's work.

16.11 Final Payment Application – Contractor is required to incorporate Subcontractor's application for final payment into Contractor's next application for payment to the Owner only after the following occur:

- (a) acceptance of Subcontractor's work by Contractor and Owner;
- (b) if requested by Contractor, evidence acceptable to Contractor that all payrolls, bills for materials and equipment, and other indebtedness connected with Subcontractor's work have been fully paid, or will be fully paid by issuance of joint checks in return for unconditional releases;
- (c) if requested by Contractor, consent of Subcontractor's surety to final payment;
- (d) satisfaction of close-out procedures as may be required by the Subcontract Documents; and
- (e) if requested by Contractor, releases and waivers of liens, stop notices, bond rights, or any rights against Contractor, its surety or Owner, effective upon payment, to the extent and in such form as may be designated by Contractor.

16.12 Effect of Final Payment – Acceptance of final payment by Subcontractor shall constitute a waiver of claims by Subcontractor, except for claims reserved in a final conditional release.

ARTICLE 17 RECOURSE BY CONTRACTOR

17.1 Failure of Performance – If Subcontractor refuses or fails to fully and timely perform its obligations pursuant to the Subcontract, Contractor may, after two (2) working days written notice to Subcontractor, commence with correction of such failure, and without prejudice to any other rights or remedies, provide the most expeditious correction of the failure by whatever means Contractor deems appropriate and charge the resulting costs to Subcontractor. A failure to fully and timely perform shall include but not be limited to:

- Failure to correct defective work
- Failing to supply enough properly skilled workers or proper materials
- Failing to maintain performance in accordance with the updated progress schedule
- Disregarding laws, ordinances, rules, regulations or orders of any authority having jurisdiction
- Failing to make prompt payment to its workers, benefit funds, subcontractors or suppliers,
- Failure to hold harmless Contractor and Owner from claims of workers, benefit funds, subcontractors and suppliers of any tier working under this Subcontract
- Failure to follow prevailing wage and other State and Federal labor requirements.
- Failure to follow Contractor's safety directives
- Subcontractor becomes insolvent
- Subcontractor placed into receivership
- Subcontractor files a petition for relief in Bankruptcy Court
- Or otherwise failing or refusing to comply with any other provision of the Subcontract.

In the event of an emergency affecting the safety of persons or property, Contractor may immediately proceed to commence correction of such failure without first giving two (2) working days' written notice to Subcontractor, but shall give prompt written notice of such action to Subcontractor.

ARTICLE 18 TERMINATION

18.1 Termination For Cause – If Subcontractor fails to perform any of its Subcontract obligations, Contractor may, after seven (7) calendar days written notification and in addition to any other remedies, terminate the Subcontract. A separate written notice of termination shall be issued by Contractor to Subcontractor at the time the Subcontract is terminated. If such a termination occurs, Contractor shall have the right to take and use any materials, equipment, appliances or tools furnished by, belonging or delivered to Subcontractor and located at the project for the purpose of completing any remaining Subcontractor work. Subcontractor may not enter the site for any purpose and may not recover any property, materials, or equipment until released by Contractor.

In the event the Subcontract is terminated for cause, Subcontractor shall not be entitled to receive any further payment until the Contract work is completed. If Contractor's Expense to complete Subcontractor's work exceeds the amount unpaid under the Subcontract, Subcontractor shall promptly pay the excess amount to Contractor. The "Expense" incurred by Contractor shall include Contractor's costs for completing the work, including overhead, profit and attorneys' fees, and any damages incurred by Contractor by reason of Subcontractor's default.

18.2 Termination by Owner – If Owner terminates the Contract, or any part which includes any portion of Subcontractor's work, Contractor shall notify Subcontractor in writing and Subcontractor shall immediately stop the performance of the terminated work, follow Contractor's instructions regarding any shutdown and termination procedures, and mitigate all costs.

18.2.1 Contractor's liability to Subcontractor for any damages incurred or claims resulting from Owner termination for convenience shall be limited to the amount allowed under the Contract or the amount Owner is determined to be liable to Contractor for Subcontractor's damages. Contractor's liability to Subcontractor for Owner's termination of Contractor for cause shall be determined pursuant to the Claims and Disputes Resolution Articles of the Subcontract.

18.3 Termination By Contractor – Contractor shall have the right to terminate this Subcontract for convenience. Contractor shall notify Subcontractor in writing and Subcontractor shall immediately stop the performance of the terminated work, follow Contractor's instructions regarding any shutdown and termination procedures, and mitigate all costs.

18.3.1 Contractor's liability to Subcontractor resulting from termination for convenience shall be equal to the Subcontract Price prorated to the percentage of completion of the work properly performed and accepted by Contractor prior to termination, plus any demobilization reflected on Subcontractor's schedule of values, plus restocking or cancellation costs actually incurred by Subcontractor from its material suppliers, if any. In the event Subcontractor anticipates incurring restocking or cancellation charges for any materials, Subcontractor shall provide Contractor the opportunity to purchase any such materials at Subcontractor's cost instead of returning or cancelling such materials.

ARTICLE 19 SUSPENSION OF WORK

19.1 Contractor may order Subcontractor in writing to suspend all or any part of Subcontractor's work for such period of time as Contractor deems appropriate. Contractor's liability to Subcontractor for any delay or disruption resulting from such suspension shall be determined pursuant to the Claims and Disputes Resolution Articles of the Subcontract. If the suspension is directed or caused by Owner, Contractor's liability to Subcontractor shall be limited to the amount Owner is determined to be liable to Contractor for Subcontractor's damages.

ARTICLE 20 ASSIGNMENT OF SUBCONTRACT

20.1 Subcontractor shall not, without written consent of Contractor, assign its rights in the Subcontract to others, including factoring of any amounts to become due to the Subcontractor and any attempt to assign this Subcontract without such written consent shall be null and void. This Subcontract may be assigned by Contractor to its bonding company or the Owner without the consent of the Subcontractor.

ARTICLE 21 GENERAL PROVISIONS

21.1 Lien Free Project – At all times, Subcontractor shall defend, indemnify and hold harmless Owner, Lender and Contractor from and against all liens, stop payment notices, and payment bond claims, resulting from Subcontractor's performance of its work hereunder. Any such liens, stop payment notices, or payment bond claims shall be immediately removed and resolved, or bonded around to Owner's, Lender's and Contractor's satisfaction. Any and all costs sustained by Contractor due to Subcontractor's failure to immediately remove, resolve or bond around such liens, including the cost of paying the claim, shall be back-charged against amounts earned by Subcontractor. This paragraph shall not be held to prevent Subcontractor itself (but not its laborers, and material and equipment suppliers, and sub-subcontractors) from filing a lien, stop payment notice, or bond claim in the event of Contractor's default of its payment obligations hereunder.

21.2 Stop Work by Subcontractor – Subcontractor shall not have any right to stop work or terminate this Agreement except as provided in this Paragraph.

21.2.1 Subcontractor shall not have a right to stop work under this Agreement unless Contractor is in default of this Agreement by failing to pay Subcontractor within 7 days after Contractor has received payment from Owner for work that was properly performed and billed by Subcontractor, and for which Subcontractor has completed all requirements that entitle it to receive such payment. Subcontractor may terminate this Agreement by giving 10 day advance written notice to Contractor if such non-payment continues for 180 days after the Subcontractor stops work, unless contractor cures the non-payment within the 10 day notice period.

21.2.2 Subcontractor shall not have the right to stop work for payments not yet made because of change orders that have not yet been executed or any amounts in dispute. All such issues shall be resolved as provided elsewhere in this Agreement.

21.2.3 Notice Required – If Subcontractor wishes to exercise its right to stop work it shall give 7 day advance written notice to Contractor citing the condition giving rise to the stop work right and allowing Contractor the ability to cure such conditions, or provide a written reason allowed under this Agreement for non-payment.

21.2.4 Stop Work Effective Date – If Contractor has not cured the noticed condition, or provided a written reason allowed under this Agreement for non-payment within the 7-day period, or given a written reason why Subcontractor's claim is invalid, then Subcontractor shall have the right to stop work until such noticed conditions are cured or written reason allowed under the Agreement is provided.

21.2.5 Restarting Work – As soon as Contractor makes payment to Subcontractor or provides a written reason allowed under this Agreement why payment is not being made, Subcontractor shall immediately recommence work.

21.2.6 Extra Costs – Extra costs, if any, associated with stopping work may be submitted to Contractor as a claim for change order within 10 days of restarting and handled as provided in Article 14.

21.3 No Oral Agreements – Neither party is relying on any oral or other agreement which is not included in the written Subcontract Documents.

21.4 Close Out Submittals – As early as possible, and no later than upon completion of its onsite work, Subcontractor shall submit all as-builts, owner's manuals, operating manuals, labor and materials warranties, and provide all required training, spare parts, and attic stock, and any other such close out materials documents required by the Subcontract Documents. All such submissions must be acknowledged as received and accepted by the Owner before the submission is considered complete. Failure by Subcontractor to make timely close-out submittals may delay any remaining payments including final payment.

21.5 Quality Assurance – Subcontractor shall take proactive steps to ensure that all work performed will be of the quality and workmanship intended by the Subcontract Documents. Certain steps shall include, but not be limited to:

- A. Complete and Timely Subcontract Document Review.
Subcontractor shall immediately upon receipt, carefully review the Subcontract Documents for completeness and conformance with appropriate industry standard design, codes and construction techniques. If any errors, ambiguity or concerns arise from the Subcontractor's review of the Contract documents, the Subcontractor shall immediately provide to Contractor a written request for information (RFI) to clarify and answer the error, ambiguity or concern. Each separate issue shall be submitted in a separate RFI, and shall be submitted to Contractor well in advance of the construction of the affected area so that Contractor may obtain a proper response from the appropriate design professional before the issue can affect the progress of the job.

Subcontractor shall not knowingly proceed with erroneous, ambiguous or non-compliant work without such written direction, and if it does, it shall be liable for all costs associated with correcting the work, including any resulting damage caused therewith.

The same duty to carefully review documents prior to construction shall apply to all subsequent distributions of design and contract documents after the initial contract documents.

B. Submittal and Shop Drawing Process

Subcontractor shall not proceed with the installation of any material or product until and unless it has received a formal approved submittal for the work.

C. Use Only Approved Materials

The subcontractor shall ensure that only approved materials are utilized on the project. The subcontractors internal procedures must ensure that the Subcontractor's field representative is aware of the products approved for the project and that this person checks that only approved products are installed.

D. Follow Manufacturer Recommendations

Subcontractor shall ensure that all materials and products are installed and utilized in complete accordance with the manufacturer's recommendations

E. Quality Crafts-persons

Subcontractor shall assign quality crafts-persons experienced in the trade to the project who are capable of properly installing the materials as required by the contract documents. Apprentices and trainees shall always be carefully supervised by an experienced crafts-person.

F. Quality Supervision

Subcontractor shall provide onsite Quality Supervision of its work force every day. The onsite supervisor shall be fully conversant in the English language and fully capable of communicating with Subcontractor's field crews. The supervisor shall be fully qualified to understand the written plans and specifications and safety directives and given full authority to resolve field construction conflicts that may arise.

G. Written Reporting to Contractor

Subcontractor shall report to Contractor Superintendent in writing any problems immediately. Subcontractor shall not rely on verbal communication for resolving construction issues.

H. Daily Reporting Requirement

Subcontractor shall provide a Subcontractor Daily Report to Contractor Superintendent every day using the Contractor Daily Report Form, or a Subcontractor form approved by Contractor.

Any failure by Subcontractor to properly follow these minimum guidelines in its own internal quality assurance procedures and efforts shall cause the Subcontractor to be responsible for all costs sustained by Contractor that would have been avoided but for such Subcontractor's failure.

21.6 Cost Escalation – This is a lump-sum, fixed price agreement and Subcontractor agrees that it has contemplated and assumes the risk of any escalation in material, labor, taxes and other costs affecting Subcontractor's Scope Work under this Subcontract.

21.7 Signage & Publicity – This Agreement shall be confidential and not disclosed to any party other than what is necessary to carry out the obligations herein. Subcontractor shall post no signage at the Project site nor produce any media publicity of the project without first obtaining the written permission of Contractor and, if required, of Owner. All signage shall be subject to this paragraph including signs/logos painted on or affixed to the sides of trailers and other equipment.

21.8 Federal Projects – If the Project is on property owned or controlled by the US Federal Government or if the US Federal Government is providing funding for any part of the Project and therefore, the Project is deemed to be covered by federal law, then the Subcontractor agrees that it shall fully comply with all requirements for contracting and subcontracting on Federal projects. Subcontractor shall provide in a timely manner all reporting and monitoring and regulatory requirements described in the Federal Acquisition Regulations (FAR) applicable to the project and to the Subcontractor. All FAR requirements included in the Contracts are hereby included in this Subcontract by reference.

21.9 DBE/MBE/WBE/DVBE/UDBE/SBE Requirements – Subcontractor hereby acknowledges that it is thoroughly familiar with all DBE/MBE/WBE/DVBE/UDBE/SBE requirements relating to the Project if there are any such requirements contained in or referred to in the Contract Documents. If Subcontractor claims status as a DBE/MBE/WBE/DVBE/UDBE/SBE, Subcontractor shall fully comply with all requirements relating thereto, including but not limited to, maintaining necessary certifications so as to ensure that one hundred percent of the work, materials, equipment and services provided by Subcontractor is counted as DBE/MBE/WBE/DVBE/UDBE/SBE participation. If any of Subcontractor's suppliers or subcontractors of an tier, claims status as, has been designated as or is required to be a DBE/MBE/WBE/DVBE/UDBE/SBE, Subcontractor shall ensure that each such supplier or subcontractor meets all applicable requirements relating thereto. If Subcontractor has represented or indicated to Contractor, in this Agreement, the bid proposal Subcontractor submitted to Contractor, or otherwise, that Subcontractor (or any of its subcontractors or suppliers of any tier) will or can provide any amount of DBE/MBE/WBE/DVBE/UDBE/SBE participation, Subcontractor shall ensure that amount of DBE/MBE/WBE/DVBE/UDBE/SBE participation is actually provided in full compliance with all applicable requirements. Any breach of any of the provisions of this Section shall be deemed a material breach of this Agreement.

--- End of Section, Signature Page follows ---

SIGNATURE PAGE

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.

Representation By Subcontractor

Subcontractor warrants that it and all its subcontractors are properly licensed by the Contractors' State License Board of the State of California with the proper license classifications for performance of its work. Subcontractor further warrants that its license is and will remain current, active and in good standing all times during performance of its work.

This Subcontract has important legal and insurance consequences. Consultation with an attorney and insurance consultant is encouraged with respect to its completion or modification.

The parties have executed this Subcontract for themselves, their heirs, executors, successors, administrators and assigns at the place and on the day and year first written above.

SUBCONTRACTOR

CONTRACTOR

Firm: _____

Firm: JR Filanc Construction Company, Inc.

By: _____

By: _____

Print Name/Title: _____

Print Name/Title: _____

State Contractor's License # _____

CA Contractor's License #134877

Federal Tax I.D. # _____

AZ Contractor's License # ROC088901, ROC216888, ROC227062

State of Incorporation _____

Legal Entity Form (Check One):

- Individual
 Sole Proprietorship
 Partnership
 LLC
 Corporation