

SUBCONTRACT AGREEMENT

Subcontractor:

Subcontract No.:

Project:

Contact

Phone:

Fax No.

Project No:

Cost Code:

(S)

This Agreement is made this _____ day of _____, 20____, between:

CONTRACTOR

Name Monterey Mechanical Co.

Address 8275 San Leandro Street

City Oakland State CA Zip 94621

and

SUBCONTRACTOR

Name _____

Address _____

City _____ State _____ Zip _____

On or about the _____ day of _____, 20____

Contractor entered into a prime contract with:

OWNER

Name _____

Address _____

City _____ State _____ Zip _____

to perform the following work:

Said work is to be performed in accordance with the Prime Contract and the plans and specifications. Said plans and specifications have been prepared by or on behalf of:

ARCHITECT/ENGINEER

Name _____

Address _____

City _____ State _____ Zip _____

Revised on 5/12

SECTION 1. ENTIRE SUBCONTRACT

1.1 The Subcontract Documents consists of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and any other Contract Documents enumerated therein, including conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, manuals, supplements, schedules, Addenda issued prior to execution of the Agreement between the Owner and Contractor and Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement, and other Contract Documents, if any, listed in the Owner-Contractor Agreement; (3) other documents referenced in Section 30 of this Agreement; and (4) Modifications to this Agreement issued after its execution. These Subcontract Documents form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein.

1.2 The Prime Contract is incorporated in this Agreement by reference, and Subcontractor and its subcontractors and suppliers shall be bound by the Prime Contract documents insofar as they relate in any way, directly or indirectly, to the work required to be performed by this Agreement and where, in the Prime Contract documents reference is made to Contractor, and the work or specifications therein pertain to Subcontractor's trade, craft, or type of work, then such work or specifications shall be interpreted to apply to Subcontractor instead of Contractor.

1.3 Anything mentioned in the specifications and not shown on the plans or drawings, or shown on the plans and drawings and not mentioned in the specifications shall be deemed shown and mentioned in both. In the event of conflict or variance between any of the Subcontract departments, the order of precedence shall be as follows: (1) The Prime Contract; (2) Any drawings, or explanations furnished by Contractor hereunder; (3) Special Typewritten Terms of and attachments to this Agreement; (4) Printed Terms of this Agreement.

1.4 Subcontractor certifies that it has carefully examined the Subcontract Documents and is fully familiar with all of the terms and conditions thereof and has fully acquainted itself with job site conditions, that it has made all investigations essential to a full understanding of the work to be performed and the difficulties which may be encountered in performing the work and that it is not relying on any opinions or representations of Contractor; and, as between the parties hereto, Subcontractor will assume full and complete responsibility for all conditions relating to the work, the site and its surroundings, and all risks in connection therewith.

1.5 If any provision of this Subcontract, or any part thereof, shall at any time be held to be invalid in whole or in part under any applicable federal or state law, ruling or regulation, then such provision shall remain in effect only to the extent permitted, and the remaining provisions shall remain in force and effect.

1.6 Waiver by Contractor of any breach of any provision of this Subcontract by Subcontractor shall not constitute a waiver of any other or future breach of the same or any other provision hereof. No waiver by Contractor of any provision of this Agreement shall be effective unless provided for in an express, specific writing.

1.7 Subject to the provisions regarding assignments, the terms and conditions hereof shall inure to and be binding upon the parties hereto, their successors, assigns, executors, administrators and legal representatives. Wherever herein used, the singular shall include the plural and the neuter gender shall include the masculine and feminine.

1.8 This document represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, proposals, stipulations, or agreements, either written or oral. All prior or contemporaneous agreements to be included in this Agreement are expressly identified herein. No agent or representative of either party has authority to make, and the parties shall not be bound by nor liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments or modifications to the terms of this Agreement shall be valid unless reduced to writing and signed by both parties.

SECTION 2 SCOPE OF WORK TO BE PERFORMED

Subcontractor agrees to furnish all labor, materials, tools, equipment and other incidentals required to perform the following work described in the Subcontract Documents:

SECTION 3 SUBCONTRACT PRICE

The Contractor shall pay the Subcontractor for strict performance of the Subcontract work the sum of:

_____ (\$ _____) which includes all applicable taxes, subject to additions and deductions as may be directed in writing by Contractor, and shall make payment in accordance with the Payment Terms, Section 4, and the Additional Terms referenced below in Section 30:

SECTION 4 PAYMENT TERMS

4.1 From progress payment received by Contractor from Owner under the Prime Contract, Contractor shall, within ten (10) days after Contractor receives any such payment, pay to Subcontractor an amount equal to ninety percent (90%) of the amount which Owner's estimate shows to have been earned by Subcontractor on account of work done hereunder during the period covered by it and for which contractor has received payment.

4.2 Final payment to Subcontractor shall be made within thirty-five (35) days after final completion and acceptance of the entire work in writing by the Owner, Architect/Engineer, and Contractor, with funds received by Contractor from Owner in final payment for work under the Prime Contract. The acceptance by Subcontractor of final payment hereunder shall constitute a release by Subcontractor in favor of Contractor and its surety or all claims against Contractor and its surety arising under or by virtue of this Subcontract, except those claims previously submitted in writing by Subcontractor. No payments to Subcontractor shall operate as approval or acceptance of defective workmanship or materials. The estimate of Owner, or of Contractor if Owner makes no separate estimate, as to the amount of work done by Subcontractor shall be final and binding on Subcontractor. In the event of any overpayments, Subcontractor shall reimburse Contractor for any such overpayments after final quantities have been determined by Contractor or Owner or Contractor may retain for its own use current and future payments in an amount equal to the overpayment.

4.3 Contractor is not required to make any payment to Subcontractor unless Subcontractor shall previously have provided releases executed by all persons who might have mechanic's lien, stop notice or labor and material bond rights against the project arising out of the work performed under the Subcontract. Using Contractor's forms along with evidence of actual payment, as applicable, Subcontractor shall provide evidence of payment to all unions and union trust funds. In the event Subcontractor provides conditional releases from any of these persons identified above, Contractor may issue a joint check for the amount(s) indicated in such conditional release. Subcontractor shall provide, as a condition precedent to final payment, full and final lien waivers and releases from those suppliers and subcontractors claiming through Subcontractor.

4.4 Contractor may, at its discretion, pay all or any part of the Subcontract Price in a greater amount or at an earlier time than otherwise specified herein, either as an advance or otherwise, in which event, all other terms and conditions and any bonds furnished hereunder shall be unaffected thereby and shall remain in full force and effect.

4.5 Payments otherwise payable hereunder may be withheld in whole or in part by Contractor on account of: (1) defective materials or work not remedied, missing materials not furnished or cleanup not performed; (2) claims filed or reasonable evidence indicating probable filing of claims by unpaid suppliers, or for labor, materials or equipment to Subcontractor or unpaid union trust funds; (3) failure of Subcontractor to make payments properly to its subcontractors or for labor, materials or equipment, transportation or shipping costs, taxes, fees or other claims arising out of Subcontractor's work; (4) reasonable doubt that Subcontractor can complete the scope of work to be performed within the time required or for the balance of the Subcontract price then unpaid; (5) damage to another Subcontractor, and/or Contractor; (6) unsatisfactory prosecution of the work by the Subcontractor; (7) failure to deliver any required "as-built" drawings, written guarantees or warranties; (8) failure to obtain the approvals

required by any authority having jurisdiction over Subcontractor's work; (9) failure to provide Certificates of Insurance or subcontract bonds acceptable to Contractor, or (10) failure to provide Certified Payrolls, or (11) failure of Subcontractor to cure any default or to perform in accordance with this Agreement. If the foregoing conditions are removed to Contractor's satisfaction, the withheld payments shall be promptly made. If such conditions are not so removed, Contractor may on forty-eight (48) hour's notice to Subcontractor take such steps as in its judgment may be required to rectify the same and all costs and expenses incurred by Contractor therefore shall be paid by Subcontractor or be credited against payments otherwise payable to Subcontractor hereunder.

4.6 Subcontractor hereby agrees that all invoices to be considered for payment for a designated monthly pay period will be rendered in duplicate not later than the day of the month designated by the Contractor's representative, and in sufficient detail to enable processing. Invoices received by Contractor after the designated date will be considered as the next succeeding month's business and subject to payment as provided herein.

SECTION 5 TIME

5.1 Time is of the essence of this Agreement. The Subcontractor recognizes its responsibility to provide Contractor with timely and accurate schedule information for Subcontractor's work so that the Contractor may develop a plan for the entire work. The Subcontractor shall provide Contractor with scheduling information and a proposed schedule for performance of Subcontractor's work, both onsite and offsite, in a form acceptable to Contractor and shall include adequate time for and separately show the preparation and approval of shop drawings, samples, layout and product data as required by Section 24. Subcontractor shall commence work immediately upon being notified by Contractor, shall perform field work at such points as Contractor may from time to time designate, and shall conform to Contractor's progress schedule and detailed schedules and all revisions or changes made thereto. Subcontractor shall prosecute its work in a prompt and diligent manner and shall at all times furnish and have available sufficient and satisfactory equipment, materials, supplies and workmen to perform the work in accordance with Contractor's schedules without delaying or hindering Contractor's work or the work of other contractors or subcontractors.

5.2 Subcontractor shall coordinate the work covered by this Agreement with that of other contractors, subcontractors, and Contractor in a manner that will facilitate the efficient and timely completion of the entire work. In the event Subcontractor fails to maintain its part of the Contractor's schedule, Subcontractor 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 Contractor, Subcontractor and other subcontractors, and in general, all other matters pertaining to the timely and orderly conduct of the work of Subcontractor on the premises. Should Subcontractor be delayed in the prosecution or completion of the work by the act, neglect, or default of the Owner, Architect/Engineer or Contractor, or by damage caused by fire or other casualty for which Subcontractor is not responsible, or by the combined action of the workmen, in no way caused by or extending from fault or collusion on the part of Subcontractor, or in the event of a lock-out by Contractor, then the time herein fixed for the completion of the work may 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 forty-eight (48) hours of the commencement of such delay, and under no circumstances shall the time of completion be extended to a date which would prevent Contractor from completing the entire project within the time allowed Contractor by Owner for such completion.

5.3 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 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, and Contractor's determination as to Subcontractor's share of any award by Owner shall be binding and conclusive on Subcontractor. Subcontractor shall comply with and be bound by any notice, provisions and claims procedure, including arbitration, contained in the Prime Contract or required by Owner. In the event that Contractor prosecutes a claim against Owner for additional compensation for any delays, Subcontractor shall cooperate fully with Contractor in the prosecution thereof and shall pay costs and expenses incurred in connection therewith, including actual attorneys' fees and expert fees, to the extent that said claim is made by Contractor at the request of Subcontractor.

5.4 Subcontractor, in the event of any dispute or controversy with Contractor, Owner, or any other subcontractors over the scope of Subcontractor's work under the Subcontract Documents or over any other matter whatsoever shall not cause any delay or cessation in or of Subcontractor's work or the work of any other subcontractor, but shall proceed under this Agreement to prosecute the work diligently to completion, the dispute to be submitted for resolution in accordance with Section 17 below.

SECTION 6 CHANGES IN THE WORK

6.1 Subcontractor shall make any and all changes in the work described in the Subcontract Documents as directed by the Contractor in writing. Such change or written direction shall not invalidate this Agreement.

6.2 If necessary, the Subcontract Price and the time for Subcontractor's performance shall be adjusted by appropriate additions or deductions mutually agreed upon before Subcontractor performs the changed work. Subcontractor shall supply Contractor with a written cost or credit proposal for such revised work along with all documentation necessary to substantiate the amount of the addition to or deduction from the price and time, if any. If Contractor and Subcontractor cannot agree on the amount of the addition or deduction, Subcontractor shall nonetheless perform the changed work upon Contractor's written order and submit, within seven (7) days of receipt of such order, written notice to Contractor of a claim for compensation or for additional time and further adjustment shall be agreed upon in writing by the parties hereto, but Subcontractor shall not suspend or delay proceeding with the changed work pending such agreement.

6.3 No claim for additional compensation, whether for extra labor or materials furnished, changes or otherwise, shall be allowed by Contractor in favor of Subcontractor unless within seven (7) days after such claim arises Subcontractor has given contractor documentation to substantiate its claim.

6.4 If Owner shall order any changes or extra work, including additions, reductions or deletions in the work to be performed under this Agreement and Contractor complies with Owner's order by issuing a similar order in writing to Subcontractor, Subcontractor will perform the work as required in such order, and any adjustment in compensation or in time of performance shall be as the parties agree. If the parties are unable to agree, Subcontractor shall nevertheless proceed with such work and shall give prompt written notice of its claim for adjustment in compensation or in the time of performance. The amount of the compensation and the time of performance shall be adjusted only to the extent allowed by the Owner; provided, however, that in the event Contractor obtains additional compensation from the Owner on account of any changes or extra work ordered by the Owner, 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 and Contractor's determination as to Subcontractor's share of any award by Owner shall be binding and conclusive on Subcontractor. Subcontractor shall comply with and be bound by any notice provisions and claims procedure, including arbitration, contained in the Prime Contract or required by Owner. In the event that Contractor prosecutes a claim against the Owner for any adjustment in compensation and time of performance for any changes or extra work, Subcontractor shall cooperate fully with Contractor in the prosecution thereof and shall pay costs and expenses incurred in connection therewith, including actual attorneys' fees and expert fees, to the extent that said claim is made by Contractor at the request of Subcontractor.

6.5 If any change or extra work is performed on a "Force Account" or other prescribed basis under the Prime Contract, Subcontractor shall be entitled to receive all payments made in reimbursement of its direct costs allowable under the Prime Contract and the allowable markup or margin thereon.

6.6 Subcontractor shall not make any changes in the work described in Section 2 or in any way cause or allow the work to deviate from the Subcontract Documents without written direction from Contractor. If Subcontractor makes any change in the work described in Section 2 without written direction from the Contractor, then such change constitutes an agreement by Subcontractor that it need not be paid for that changed work, even if it received verbal direction from Contractor or any form of direction, written or otherwise, from Owner or any other person or entity. In addition, Subcontractor shall be liable for any and all losses, costs, expenses, damages, and liability of any nature whatsoever associated with or in any way arising out of any such change it makes without written direction from Contractor.

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

SECTION 7 DAMAGES CAUSED BY DELAYS

If Subcontractor should default in performance of the work described in Section 2 or should otherwise commit any act which causes delay to the Prime Contract work, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages and liquidated damages, sustained by Contractor, or for which Contractor may be liable to Owner or any other party because of Subcontractor's default.

SECTION 8 BONDING OF SUBCONTRACTOR

8.1 Concurrently with the execution of this Agreement, Subcontractor shall, unless waived in writing by Contractor, furnish a Performance Bond in an amount equal to the full Subcontract Price and a Labor and materials Payment Bond in an amount equal to the full Subcontract Price. Said bonds shall be executed on forms and by a surety or sureties satisfactory to Contractor. The Contractor shall bear the cost of bonds unless otherwise agreed. Subcontractor shall provide Contractor with a separate invoice for bond costs. No change, alteration or modification in or deviation from this subcontract, its terms, conditions, plans or specification, or in the manner, time or amount of payment as provided herein, whether or not made in the manner herein provided, shall release or exonerate, in whole or in part, any surety on any bond given in connection with this Subcontract. Said bonds shall extend to cover any extra work or changes performed by Subcontractor pursuant to this Subcontract.

8.2 In the event of any default by Subcontractor as defined in Section 14 hereof, no surety on any Performance Bond given in connection with this Subcontract shall, without the prior written consent of the Contractor, have the right to hire any other person, partnership or corporation to complete or in any way perform the work.

SECTION 9 LIENS

9.1 Subcontractor shall promptly pay or discharge in full or provide adequate security for payment of all claims of any persons, union trust funds, firms or corporations furnishing or claiming to have furnished labor, materials, tools, equipment, or incidentals used in, upon, or for the work, whether or not as to any such claim a lien or right of enforcement is established or attempted to be established upon or against the work, the real property upon which the work is situated, upon any bond furnished by Contractor or upon any monies payable to Contractor by Owner.

9.2 Further, in case suite on such claim is brought, Subcontractor shall defend said suite at its own cost and expense, and will pay and satisfy any such lien or judgment as may be established by the decision of the court in said suite. Subcontractor agrees within ten (10) days after written demand, to cause the effect of any suite, lien or stop notice to be removed from the premises, and in the event Subcontractor shall fail to do so, Contractor is authorized to use whatever means in its discretion it may deem appropriate to cause said suit, stop notice or lien to be removed or dismissed and the cost thereof, together with reasonable attorneys' fees shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may litigate any lien or suite above described provided Subcontractor 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. Notwithstanding anything to the contrary set forth above in this Section, Subcontractor shall not be construed to have foregone its lien rights in the event of a dispute over payments due for services rendered and materials furnished to the Project.

9.3 Contractor reserves the right to make payment by joint check or by direct check to Subcontractor and Subcontractor's suppliers or subcontractors or any person having a right of action against Contractor, its surety or Owner under any law, Subcontractor shall furnish, if requested by Contractor, sworn affidavits from time to time, in accordance with the form provided by Contractor, which shall state amounts due or to become due and amounts paid to suppliers and other parties contractually related with Subcontractor with respect to labor and materials furnished under this Agreement.

9.4 Subcontractor agrees and covenants that monies received for performance under this Agreement shall be used solely for the benefit of persons and firms supplying labor, materials, supplies, tools, machines, equipment, plant or services exclusively for this project in connection with this Agreement and having the right to assert liens or other claims against the land, improvements or funds involved in this project or against any bond or other security posted by Contractor or Owner, that any monies paid to Subcontractor pursuant to this Agreement shall immediately become and constitute a trust fund for the benefit of said persons and firms and shall not in any instance be directed by Subcontractor to any other purpose until all obligations arising hereunder have been fully discharged and all claims arising there from have been fully paid.

SECTION 10 INSPECTION AND CORRECTION

10.1 Subcontractor shall at all times furnish to Contractor, Owner or governmental authorities having jurisdiction over the work, safe and adequate facilities and full and free access for inspecting materials and performance of work at the site of construction, shops, factories or any place of business of Subcontractor and its subcontractors and material men where materials under this Agreement may be in course of preparation, process, manufacture or treatment. Subcontractor shall furnish to Contractor as often as required by Contractor, full reports on the progress of the work at any place where materials under this Agreement may be in the course of preparation or manufacture. Such reports shall show the progress of such preparation and manufacture in such detail as may be required by Contractor, including, but not limited to, any plans, drawings or diagrams in the course of preparation.

10.2 If any part of the work or any materials are determined by Owner, Contractor or governing authorities to be improper or defective, either during performance of the work or on or before final inspection or during any applicable guarantee period, Subcontractor shall, immediately upon being notified in writing by Contractor to do so, at its own expense, remove, dispose of and replace or otherwise correct, all defective materials and workmanship. If Subcontractor fails to correct defective material or workmanship promptly and completely, Contractor, at its option and in addition to any other remedies it may have, may correct the same with its own forces or by employing others and Subcontractor shall pay Contractor all costs, expenses and consequential damages connected therewith.

SECTION 11 MATERIALS AND WORK FURNISHED BY OTHERS

In the event the scope of work includes installation of materials or equipment furnished by others or work to be performed in areas to be constructed or prepared by others, it shall be the responsibility of Subcontractor to examine and accept, at the time of delivery or first access, the items so provided and thereupon handle, store and install the items with such skill and care as to insure a satisfactory completion of the work. Use of such items or commencement of work by Subcontractor in such areas shall be deemed to constitute acceptance thereof by Subcontractor and Subcontractor thereby waives any and all claims against Contractor for additional compensation or for damages resulting from any defects therein. Loss or damage due to acts of Subcontractor shall be charged to the account of Subcontractor and deducted from monies otherwise due under this Agreement.

SECTION 12 PROTECTION OF WORK

Subcontractor shall effectually secure and protect the work done hereunder and shall assume full responsibility for any and all risk of loss or damage to the work and all materials, tools, equipment, or incidentals until final acceptance thereof and release of responsibility therefore by Owner. Subcontractor shall protect the workmen, materials, tools, equipment and property of Owner, Contractor and others on the project against injury or damage in any way arising out of or connected with the operations conducted by Subcontractor hereunder or anyone acting under its direction or control, or on its behalf.

SECTION 13 LABOR RELATIONS

13.1 Subcontractor shall keep a representative at the job site during all times when Subcontractor's work is in progress, and such representative shall be authorized to represent Subcontractor as to all phases of the work. Prior to commencement of the work, Subcontractor shall notify Contractor of the identity of Subcontractor's representative, and in the event of any change of representative Subcontractor shall notify Contractor of the identity of the new representative prior to such change becoming effective.

13.2 Subcontractor shall enforce strict discipline and good order among its employees. Subcontractor shall, if requested to do so by Contractor, remove from the job site any employee that Contractor determines to be unfit, not skilled in the tasks assigned or otherwise objectionable.

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

13.4 Subcontractor agrees to comply with all of the terms and conditions of the labor agreements incorporated herein by Section 27 to the extent permissible under federal law and any applicable state laws, including trust fund payment into the respective labor trust funds set forth in the respective labor agreements, and in particular agrees to comply with the terms and provisions of said agreements setting forth the jurisdiction and scope of work claimed by each of such crafts and the procedure contained therein for resolution of jurisdictional disputes. In the absence of any such procedure, or if such procedure fails to promptly resolve the jurisdictional dispute and a work stoppage occurs or is threatened, Subcontractor agrees, at its own cost and expense, upon request of Contractor, to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board.

13.5 Subcontractor acknowledges that terms and conditions of the labor agreements with the unions listed hereunder may require that Subcontractor comply with additional labor agreements with unions affiliated with the AFL-CIO Building Trades but not listed. When the terms and conditions of the below-referenced labor agreements so require, Subcontractor shall be or become signatory to the appropriate labor agreement with a union affiliated with the AFL-CIO Building Trades, or, if permitted by the agreement, Subcontractor shall perform its job site work pursuant to all terms and conditions of an appropriate labor agreement without becoming signatory.

13.6 Subcontractor acknowledges that the status of its relationship with the unions affiliated with the AFL-CIO Building Trades is an important element of this Agreement. Any change in the status of said relationship occurring subsequent to the execution of this Agreement, which could affect the successful completion of the project, may constitute an act of default by the Subcontractor.

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

13.8 Subcontractor further promises and agrees to bind and require any further subcontractor(s) of any portion of the work covered by any of the labor agreements specified below to agree to all of the foregoing promises and undertakings, to the same effect as herein provided with respect to Subcontractor.

13.9 Subcontractor shall comply with all equal employment opportunity and affirmative action requirements contained in the Prime Contract or promulgated by any governmental authority, including, without limitation, the requirements of the Civil Rights Act of 1964. Subcontractor agrees that any further subcontracting of any portion of the work within the scope of this Agreement and any of Subcontractor's nonexempt suppliers shall be bound by and observe the provisions of this paragraph to the same extent as herein required of Subcontractor, and that a copy of this paragraph imposing such obligations upon the further subcontractor or nonexempt supplier shall be included in any further subcontract or purchase order.

13.10 Subcontractor shall comply with and agrees to be bound by all applicable federal, state and local laws and regulations, including, but not limited to, all Fair Labor

Standards Act provisions and State Labor Code provisions, specifically Sections 1771, 1775, 1776, 1777.5, 1813 and 1815, covering the work (Reference Attachment 1). Subcontractor agrees to submit certified payroll reports to Contractor not later than three (3) working days after labor has been paid.

13.11 As a condition precedent to final payment, Subcontractor shall submit an affidavit under penalty of perjury stating that the Subcontractor has paid the specified prevailing wages and any overtime wages and penalties.

SECTION 14 RECOURSE BY CONTRACTOR, DEFAULT, TERMINATION

14.1 Notice to Cure: If Subcontractor fails to commence work at the time required, or at any time refuses or neglects to furnish a sufficient number of properly skilled workers or a sufficient quantity of suitable materials or adequate equipment, or fails to properly and diligently prosecute the work covered by this Agreement or fails to make the progress required or to perform the work in the order and sequence directed, or fails to correct or replace any damaged or defective work or materials, or fails to make prompt payment to its workers, subcontractors or suppliers, or becomes delinquent with respect to contributions or payments required to be made to any health and welfare, pension, vacation, apprenticeship or other employee benefit program or trust, or is otherwise guilty of a material breach of a provision of this Agreement, then Subcontractor is deemed to be in default of its obligations under this Agreement; should thereupon Subcontractor fail within forty-eight (48) hours after the receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness (Notice to Cure), then Contractor, at its option and in addition to and without prejudice to any other rights or remedies afforded Contractor herein or by law, shall have the right to any or all of the following remedies:

(a) supply such number of workers and quantity of materials and other facilities as Contractor deems necessary for the correction of any such default and charge the entire cost thereof to Subcontractor, who shall be liable for the payment of said cost plus fifteen percent (15%) of said cost for overhead and profit, and reasonable attorneys' fees incurred as a result of Subcontractor's failure of performance.

(b) contract with one or more additional contractors to perform such part of Subcontractor's work as will provide for the most expeditious completion of the total work and charge the cost thereof to Subcontractor; and

(c) withhold payment of any monies due or hereafter to become due to Subcontractor pending corrective action to the extent required by and to the satisfaction of Contractor and Subcontractor shall immediately pay any unpaid balance to Contractor.

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

14.3 Termination for Default: If Subcontractor fails to commence and continue satisfactorily correction of a default within forty-eight (48) hours after receipt by Subcontractor of the Notice to Cure, then Contractor may terminate Subcontractor's right to perform under this Agreement and use any materials, implements, equipment, appliances or tools furnished by or belonging to Subcontractor to complete Subcontractor's work without any further compensation to Subcontractor for such use. Contractor also may furnish those materials and equipment, and/or employ such workers or subcontractors as Contractor deems necessary to maintain the orderly progress of the work. In such case, Subcontractor shall be entitled to no further payment until the balance of Subcontractor's work has been completed and accepted by the Owner. At that time, all of the costs incurred by Contractor in performing Subcontractor's work, plus a markup of fifteen percent (15%) for overhead and profit on such expenses, plus reasonable attorneys' fees incurred as a result of Subcontractor's failure of performance, shall be deducted from any monies due or to become due Subcontractor. Subcontractor shall be liable for the payment of any amount by which such expenses may exceed the unpaid balance of the Subcontract Price.

14.4 If at any time Contractor shall have reasonable doubt that Subcontractor has the ability to perform or complete the work in the time and manner required hereunder because of Subcontractor's financial condition, or insufficient manpower, equipment or materials, Subcontractor shall furnish adequate assurance of its ability to perform satisfactorily to Contractor within three (3) working days after written demand therefore by Contractor. The failure of Subcontractor to furnish such assurance shall be deemed a default hereunder and shall thereupon entitle Contractor, without further notice to Subcontractor, to exercise any appropriate remedy or remedies provided for hereunder.

14.5 Termination for Convenience: If the Owner, with or without cause, shall terminate the Prime Contract or shall stop or suspend work under the Prime Contract, or if Owner shall fail to pay when due any sum payable under the Prime Contract, Contractor may order Subcontractor to stop or suspend work under this Agreement and Contractor shall be liable to Subcontractor for the expenses or costs incurred as a result of any such termination or suspension only if and to the extent that Owner shall be liable to Contractor and pays Contractor therefore. The Subcontractor agrees that the Contractor may, on five (5) days written notice to the Subcontractor, terminate this Subcontract in whole or in part for the Contractor's convenience. Subcontractor's remedy for termination for Contractor's convenience is limited to the following: (1) Subcontractor shall be entitled to be paid pursuant to the prices set forth in Section 3 hereof for all work properly performed prior to termination, (2) Partial payment shall be made for lump sum items of work on the basis of the percentage complete of such items at the time of termination, (3) The Subcontractor shall be reimbursed for reasonable close-out costs, and (4) Subcontractor shall not be entitled to any compensation for loss of anticipated profit or unallocated overhead. Upon a determination by a court of competent jurisdiction that termination of Subcontractor or its successor in interest pursuant to any provisions of this Subcontract was wrongful, such termination will be deemed to be a termination for convenience of Contractor and Subcontractor's remedies shall be those set forth for termination for Contractor's convenience.

14.6 Bankruptcy-Termination Absent Cure: Upon the appointment of a receiver for Subcontractor or upon Subcontractor making an assignment for the benefit of creditors or if Subcontractor seeks protection under the Bankruptcy Code or commits any other act of insolvency, Contractor may terminate this Agreement upon giving forty-eight (48) hours written notice, by certified mail, to Subcontractor, its trustee, and its surety, if any, unless Subcontractor, the surety, or the trustee: (a) promptly cures all defaults; (b) provides adequate assurance of future performance; (c) compensates Contractor for actual pecuniary loss resulting from such defaults; and (d) assumes the obligations of Subcontractor within the statutory time limits.

14.7 Bankruptcy-Interim Remedies: If Subcontractor is not performing in accordance with the terms of this Agreement at the time of entering an order for relief, or at any subsequent time, Contractor, while awaiting the assurance of Subcontractor or its trustee of its intent and ability to perform hereunder, may avail itself of such remedies under this Section as are reasonably necessary to maintain the schedule of work.

14.8 Contractor may offset against any sums due or to become due Subcontractor all costs incurred in pursuing any of the remedies provided hereunder. Subcontractor shall be liable for the payment of any amount by which expense may exceed the unpaid balance of the Subcontract Price.

SECTION 15 INDEMNIFICATION

15.1 Upon the premise that this Section 15 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the public policy of the applicable jurisdiction, Subcontractor shall indemnify and save harmless Owner and Contractor, including their officers, agents, employees, affiliates, parents and subsidiaries, and each of them, of and from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liability, in law or in equity, of every kind and nature whatsoever ("Claims") arising out of or in connection with Subcontractor's operations to be performed under this Agreement for, but not limited to:

(a) Personal injury, including, but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to, any employees or agents of Subcontractor, Owner, Contractor, or any other subcontractor and/or damage to property of anyone (including loss of use thereof), caused or alleged to be caused in whole or in part by any negligent act or omission of Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable regardless of whether such personal injury or damage is caused by a party indemnified hereunder;

(b) Penalties imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance or statute, caused by the action or inaction of Subcontractor;

(c) Infringement of any patent, trademark, copyright or other intellectual property rights which may be brought against the Contractor or Owner arising out of Subcontractor's work;

(d) Claims and liens (see Section 9) for labor performed or materials used or furnished to be used on the project, including all bond premium costs and incidental or consequential damages resulting to Contractor or Owner from such claims or liens;

(e) Subcontractor's failure to fulfill the covenants set forth in each subpart of Section 13, Labor Relations;

(f) Failure of Subcontractor to comply with the provisions of Section 16, Insurance;

(g) Any violation or infraction by Subcontractor of any law, order, citation, rule, regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees, including but not limited to, the use of Contractor's or other's equipment, hoist, elevators, or scaffolds.

15.2 The indemnification provisions of (a) through (g) above shall extend to Claims occurring after this Agreement is terminated as well as while it is in force. Such indemnity provisions apply regardless of any active and/or passive negligent act or omission of Owner or Contractor or their agents or employees or independent contractors who are directly responsible to Owner or Contractor, or for defects in design furnished by such persons.

15.3 Subcontractor shall:

(a) At Subcontractor's own cost, expense and risk, defend all Claims as defined in this Section 15 that may be brought or instituted by third persons, including, but not limited to, governmental agencies or employees of Subcontractor, against Contractor or Owner or their agents or employees or any of them;

(b) Pay and satisfy any judgment or decree that may be rendered against Contractor or Owner or their agents or employees, or any of them, arising out of any such Claim; and

(c) Reimburse Contractor or Owner or their 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 15.

15.4 The indemnities set forth in this Section 15 shall not be limited by the insurance requirements set forth in Section 16.

SECTION 16 INSURANCE

16.1 Casualty Insurance: Prior to commencement of any operations by or on behalf of Subcontractor relating to the Project, and with respect to any and all such operations, Subcontractor shall, at its sole expense, procure and maintain and provide to Contractor Certificates of Insurance and, at Contractor's request, certified copies of policies, evidencing issuance of the following forms of insurance in companies and amounts of deductibles, if any, acceptable to Contractor. Certificates of Insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) days prior written notice to Contractor. All insurance shall be provided by carriers rated A-VII or better by A.M. Best.

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

\$1,000,000 each accident for bodily injury by accident;

\$1,000,000 policy limit for bodily injury by disease;

\$1,000,000 each employee for bodily injury by disease.

If there is exposure of injury to Subcontractor's employees under the U.S. Longshoreman's 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 injuries or claims.

16.3 General Liability Insurance: Subcontractor shall carry Comprehensive General Liability or Commercial General Liability insurance 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 below and including coverage for:

- (1) premises and operations;
- (2) products and completed operations;
- (3) contractual liability insuring the obligations assumed by Subcontractor in this Agreement;
- (4) broad form property damage (including completed operations);
- (5) explosion, collapse and underground hazards;
- (6) personal injury liability; and
- (7) liability which Subcontractor may incur as a result of operations, acts or omissions of its subcontractor, suppliers or material men, and their agents or employees.

Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limit, where applicable shall apply separately to Subcontractor's work under this Agreement. One of the following coverage forms is required:

- Comprehensive General Liability;

- Commercial General Liability (Occurrence);

16.4 Comprehensive General Liability: If Subcontractor carries a Comprehensive General Liability policy, the limits of liability shall not be less than a combined single limit for bodily injury, property damage and personal injury liability of: \$1,000,000 each occurrence; \$2,000,000 aggregate.

16.5 Commercial General Liability: If Subcontractor carries an Occurrence form Commercial General Liability policy, the limits of liability shall not be less than:

\$1,000,000 each occurrence (combined single limit for bodily injury and property damage);

\$1,000,000 for personal injury liability;

\$2,000,000 aggregate for products-completed operations;

\$2,000,000 general aggregate

\$1,000,000 Umbrella or Excess Policy

If the policy does not have an endorsement providing that the general aggregate limit applies separately to this project, or if defense costs are included in the general aggregate limit, then the required aggregate limit shall be \$3,000,000.

16.6 Automobile Liability Insurance: Subcontractor shall carry automobile liability insurance, including coverage for all owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage. If Subcontractor's general liability insurance is provided by a Commercial General Liability policy, then Subcontractor's automobile liability insurance policy shall include coverage for automobile contractual liability.

16.7 Property Insurance: Contractor and Subcontractor waive all rights against each other and against all other subcontractor and Owner for loss or damage to the extent reimbursed by Builder's Risk or any other property or equipment insurance applicable to the work, except such rights as they may have to the proceeds of such insurance. If the policies of insurance referred to in this Section require an endorsement of 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.

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

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

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

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

16.12 All insurance required under this Agreement shall be endorsed to contain a waiver of subrogation as to the Contractor and the Owner and their directors, officers and employees. The Contractor and the Owner and their directors, officers and employees shall be named as additional insureds on each policy required under this Agreement. Comprehensive General Liability additional insurance coverage shall be provided by ISO Form CG 2010 11/85 or equivalent. Each policy shall stipulate that the insurance afforded to the additional insured shall apply as primary insurance and that any other insurance carried by the Contractor or the Owner, or their directors, officers or employees will be excess only and will not contribute to the primary insurance.

16.13 The required insurance under this Section 16 shall be subject to the approval of Contractor, but any acceptance of insurance certificates by Contractor shall in no way limit or relieve Subcontractor of its duties and responsibilities under this Agreement. If higher limits or other forms of insurance are required in the Subcontract Documents, Subcontractor shall comply with such requirements.

16.14 Contractor may take such steps as are necessary to assure Subcontractor's compliance with its obligations under this Section 16. In the event Subcontractor fails to maintain any insurance coverage required under this Agreement, Contractor may maintain such coverage and charge the expense to Subcontractor, or terminate this Agreement.

16.15 Failure of Contractor to enforce in a timely manner any of the provisions of this Section 16 shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of this Agreement. Any exceptions to the provisions of this Section 16 must be delineated in this Agreement.

SECTION 17 DISPUTE RESOLUTION

17.1 Agreement to Arbitrate: All claims, disputes and matters in question arising out of or relating to this Agreement or the breach thereof, except for claims which have been waived by the making or acceptance of final payment, shall be decided by the claims procedure, including any arbitration clause, specified in the Prime Contract between Contractor and Owner. In the absence of an agreement to arbitrate in the Prime Contract, no claims or disputes shall be arbitrated unless provided for in this Agreement or mutually agreed upon by the Contractor and Subcontractor in writing.

17.2 Arbitration Procedure (if applicable): In the event the Prime Contract contains an arbitration provision or if arbitration is specifically provided for in this Agreement, the following shall apply:

(1) Notice of Demand: Notice of the Demand for Arbitration shall be filed in writing with the other party to this Agreement and shall conform to the requirements of the arbitration provisions set forth in the Prime Contract. The Demand for Arbitration shall be made within a reasonable time after written notice of the claim, dispute or other matter in question has been given, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

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

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

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

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

17.3 If requested by Contractor, Subcontractor agrees to certify under penalty of perjury any claim Subcontractor provides to Contractor. This certification shall include (1) the claim is made in good faith; (2) the supporting data is accurate and complete to the best of Subcontractor's knowledge and belief; and (3) the amount requested accurately reflects the contract adjustment for which the Subcontractor believes the Contractor or Owner is liable. Specific reference is made to California Penal Code Section 72 and California Government Code Section 12650, et seq., pertaining to false claims. Should Subcontractor refuse or otherwise fail to certify any claim within ten (10) days of Contractor's written request, Subcontractor agrees that Contractor may consider the Subcontractor's claim withdrawn.

SECTION 18 SAFETY PRACTICES

18.1 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. 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, regulations, standards and statutes.

18.2 Subcontractor shall provide Contractor copies of all completed forms, documents or other reports relating to injury, accident, near misses or employee health hazard exposures resulting from Subcontractor's operations on the project within forty-eight (48) hours after said occurrence.

18.3 If the project requires a SWPPP, it will be prepared by the Owner or Contractor. The Subcontractor will be provided a copy of the SWPPP. Subcontractor shall implement portions of the SWPPP applicable to his work and shall be solely responsible for his failure to comply with the SWPPP, including any fines, penalties or delay costs for non-compliance.

SECTION 19 WARRANTY

Subcontractor warrants to Owner, Architect and Contractor that the materials furnished and the work performed will strictly comply with the Subcontract Documents, including the Prime Contract and shall be satisfactory to Owner and Contractor. Subcontractor further guarantees its work to such extent and for such time as may be specified in the Prime Contract. Subcontractor warrants that all materials and equipment furnished shall be new unless otherwise specified and that all work under this Agreement shall be of good quality, free from faults and defects and fit for its intended use both as to workmanship and materials.

SECTION 20 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 provided in Section 14 or as otherwise stated herein. Further, Subcontractor assumes all responsibility for physical damage to such equipment, materials, labor, supplies or facilities used by Subcontractor or its agents, employees, or permittees. In the event that Contractor's employees are used by Subcontractor, Subcontractor shall have full responsibility for all acts or omissions of Contractor's employees with regard to Subcontractor's use of them. Subcontractor accepts any and all of Contractor's equipment, materials, labor, supplies or facilities as furnished.

SECTION 21 ASSIGNMENT AND SUBLETTING

Any assignment, transfer, subletting or delegation, by operation of law or otherwise, in whole or in part, by Subcontractor of this Agreement, of the work to be performed or of any claims arising hereunder without prior written consent of Contractor shall be void. Contractor shall not recognize, or be bound by any assignment of any right to payment earned or to be earned by performance hereunder by Subcontractor unless and until Contractor shall receive written notice which reasonably proves the assignment and identifies the rights assigned. Any assignment hereunder shall be subject to this Agreement and Contractor reserves all rights and remedies possessed by or available to Contractor by law or under this Agreement as against Subcontractor, its sureties and assigns, including, without limitation, rights of set-off, to retain monies, to amend or modify this Agreement, and to assert all other defenses and claims whether or not arising under this Agreement. The making of any assignment by Subcontractor or any consent thereto by Contractor shall in no event relieve Subcontractor or its sureties hereunder of any of their obligations, duties, responsibilities or liabilities. Any subletting hereunder shall be on the express condition that the further agreement shall be subject to the terms and conditions of this Agreement and Subcontractor shall incorporate all terms and conditions of this Agreement in any such further agreement.

SECTION 22 INDEPENDENT CONTRACTOR

22.1 Subcontractor is an independent contractor and not an agent of Contractor and represents that it is fully experienced and properly qualified as an expert to perform the class or classes of work required herein and that it is properly licensed, equipped, organized and financed to perform such work.

22.2 Subcontractor shall, at its sole cost and expense, and without increase in the Subcontract Price, comply with all applicable laws, ordinances, statutes, rules and regulations, whether federal, state, county or municipal, including, but not limited to those relating to wages, hours and working conditions; procure and pay for all permits, licenses and inspections required by any governmental authority for any of the work hereunder and furnish any bonds, security or deposits required by such authority to permit performance of the work; pay any and all taxes, excises, assessments or other charges, including sales and use taxes, levied by any governmental authority on or because of the work to be performed hereunder, or on any labor, materials, tools, equipment or incidentals used or supplied in the performance thereof; pay all taxes and contributions for social security and unemployment insurance and old age retirement benefits whether measured by wages, salaries or other remunerations paid to Subcontractor's employees, or by hours worked or otherwise, and whether levied under existing or subsequently enacted laws, rules or regulations; take all precautions which are necessary and adequate against any conditions created during the progress of Subcontractor's work hereunder which involve a risk of bodily harm to others or a risk of damage to property, including the property of Owner and Contractor.

22.3 Subcontractor shall, upon request and at its own expense, furnish evidence satisfactory to Contractor that any or all of the foregoing obligations have been fulfilled.

SECTION 23 CLEAN-UP

23.1 At all times during the course of construction, Subcontractor shall perform its work so as to maintain the site in a clean, safe and orderly condition. Upon termination or completion of its work, Subcontractor shall remove from the site all unused or excess materials, temporary structures, debris and waste incident to its operation and clean all surfaces, fixtures, equipment, etc., relative to the performance of this Agreement.

23.2 If Subcontractor fails to perform a clean-up function within twenty-four (24) hours after notification by the Contractor to do so, Contractor may proceed with that function as it deems necessary and in the manner it deems expedient, and Subcontractor agrees that the cost thereof shall be charged to Subcontractor and deducted from monies due under this Agreement. Notification to Subcontractor's representative shall be considered proper notice.

SECTION 24 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

Subcontractor agrees to furnish, with reasonable promptness and in such sequence as to cause no delay in the work or activities of other subcontractors, all shop drawings, product data and samples as may be required by the Subcontract Documents or Owner's agent for the complete installation of work within the scope of this Agreement. Subcontractor shall perform no portion of the subcontract work requiring submittal and review of shop drawings, product data, samples or similar submittals until the respective submittal has been approved. By submitting shop drawings, product data, samples, or similar submittals, Subcontractor represents that it has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Subcontract Documents. Subcontractor also agrees to provide such "as-built" drawings, maintenance and operation manuals, etc., as may be required in the Subcontract Documents.

SECTION 25 LAYOUT RESPONSIBILITY

Contractor shall establish principal axis lines and levels whereupon Subcontractor shall lay out and be strictly responsible for the accuracy of its work and for any loss or damage to other contractors engaged in work on the site by reason of failure of Subcontractor to set out or perform its work correctly. Subcontractor shall exercise prudence so that actual final conditions and details shall result in the alignment of finish surfaces required by the Subcontract Documents.

SECTION 26 NOTICES

Any notices hereunder shall be in writing and may be served personally on the superintendent or designated representative of the other party at the job site, or by mail. If service is registered or certified mail, postage prepaid, directed to the address shown in this Agreement, or as changed by notice in writing to the other party, such service shall be complete upon deposit. Any other service shall be complete upon receipt.

SECTION 27 LABOR AGREEMENTS (List labor agreements to which Contractor is signatory or enter NONE if Contractor has no labor agreements.)

Operating Engineers
Cement Masons
Sheet Metal Workers
Millwrights

Carpenters
Laborers
Plumbing & Pipefitting
Teamsters

SECTION 28 CONTRACTOR'S LICENSE

The following applies to any person or entity that engages in the business or acts in the capacity of a contractor within the State of California:
CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTOR'S STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR OF THE BOARD WHOSE ADDRESS IS:

CONTRACTOR'S STATE LICENSE BOARD
3132 BRADSHAW ROAD, POST OFFICE BOX 26000, SACRAMENTO, CALIFORNIA 95826

SECTION 29 CHOICE OF LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of California. If this Agreement concerns a project in which the Owner is an agency of the United States Government, then this Agreement shall be governed by and construed in accordance with applicable federal contract laws and regulations and the laws of the State of California shall apply only when there is an absence of federal law.

SECTION 30 ADDITIONAL TERMS: (including unit pricing if applicable)

Attached hereto are any additional terms and conditions, as set forth in pages SP-____1____ to SP-_____, which are included herein and by this reference are made a part of this Agreement as though set forth herein.

(corporate seal)

SUBCONTRACTOR

(Name of Subcontractor)

DATED: _____

BY: _____
(Name)

(Printed)

(Title)

(Subcontractor's License No. and Classification)

(corporate seal)

CONTRACTOR

(Name of Contractor)

DATED: _____

BY: _____
(Name)

(Printed)

(Title)

388361

(Contractor's License No.)

Subcontractor:

Subcontract No.:

Project:

Project No:

ADDITIONAL TERMS AND CONDITIONS

1 Scope of Work to be Performed - Section 2

1.1 Specifically included:

- 1.1.1
- 1.1.2
- 1.1.3

1.2 Specifically excluded:

- 1.2.1
- 1.2.2
- 1.2.3

2 Payment Terms - Section 4

- 2.1 Invoices for progress payments must be received by the Contractor by the 25th of each month.
- 2.2 Certified payrolls shall be submitted complete and correct to the Contractor's Oakland office, Attn.: Vy Nguyen.

3 Time - Section 5

- 3.1 To assist Contractor in preparing the construction schedule, the Subcontractor shall provide a construction schedule for its portion of the work within ten (10) days after tender of this Subcontract.
- 3.2 Failure to provide said information shall constitute acceptance of Contractor's determination of same.

4 Changes in the Work - Section 6

- 4.1 Changes to the Contract will be as set forth in Article 7 of the General Conditions of the Prime Contract.
- 4.2 Subcontractor Mark-up Percentage to be applied to any extra work performed on a "force account" basis only will be as follows:

Labor	15%
Material	12%
Equipment	12%

APPROVED:

SUBCONTRACTOR by:

_____ initials only

CONTRACTOR by:

_____ Initials only

Subcontractor:

Subcontract No.:

Project:

Project No:

5 Bonding - Section 8

5.1 Bonds are required. Expense for bonds shall be paid by Monterey Mechanical Co. Bonds shall be invoiced separately.

6 Labor Provisions - Section 13

6.1 Subcontractor shall comply with Prevailing Wage requirements set forth in Article 12 of the General Conditions.

7 Insurance - Section 16

- 7.1 Minimum requirements for insurance, as defined in the Subcontract Agreement Section 16 are:
 - a. Worker's Compensation and Employer's Liability - \$1 Million
 - b. General Liability - \$1 Million ea. Occurrence / \$2 Million Completed Operations Aggregate / \$2 Million General Aggregate (Occurrence Form)
 - c. Automobile Liability - \$1 Million
 - d. Umbrella or Excess Liability - \$1 Million
 - e. Waiver of Subrogation Endorsements – G/L, Auto & WC
 - f. Primary Wording
 - g. 30 day cancellation/reduction notice
 - h. Monterey Mechanical Co. named as Additionally Insured – G/L & Auto with Form CG 2010 11/85 or equivalent on G/L
 - i. Subcontract Number shall be referenced on all certificates
- 7.2 Additional requirements, as defined by Contract are:
 - a. (Owner) named as Additionally insured

8 Safety Practices - Section 18

- 8.1 The Contractor's Injury and Illness Prevention Program shall be complied with. The Subcontractor shall designate one competent on-site employee to be responsible for Subcontractor's safety activities.
- 8.2 Subcontractor shall comply with Section 01125 of Contract Documents.
- 8.3 Subcontractor shall provide to Contractor site-specific safety plans, procedures and controls.

9 Shop Drawings, Product Data and Samples - Section 24

9.1 Special attention shall be given to Section 01330 of the Contract documents in regard to submittal requirements. Contractor will not transmit any submittal for acceptance if not in compliance with this specification section and specific scope of work section requirements. Any additional costs or

APPROVED:

SUBCONTRACTOR by:

 initials only

CONTRACTOR by:

 Initials only

Subcontractor:

Subcontract No.:

Project:

Project No:

delays to the work associated with the Subcontractor's failure to comply with contract submittal requirements shall be borne by the Subcontractor.

- 9.2 Complete submittal information shall be transmitted to the Contractor within fourteen (14) days after tender of this Subcontract. Subcontractor shall submit nine (9) copies of submittal data, one (1) of which will be returned to the Subcontractor after Engineer's review.
- 9.3 Subcontractor shall certify on each submittal document that field conditions have been verified and the submittal complies with the Prime Contract.
- 9.4 Any deviations from the Prime Contract in Subcontractor's submittals shall be noted in writing at the time of transmittal.

10 Additional Conditions

APPROVED:

SUBCONTRACTOR by:

 initials only

CONTRACTOR by:

 Initials only