

**B. J. PERCH CONSTRUCTION, INC.**  
 7034 W. Pershing Ct., Suite A – Visalia, CA 93291  
 Phone: (559) 651-5800 – License # 835575

**SUBCONTRACTOR AGREEMENT**

SUBCONTRACTOR INFORMATION:

Subcontractor Name:	_____	Trade:	_____
Primary Contact:	_____	Our Vendor #:	_____
Address:	_____	Telephone:	_____
	_____	Facsimile:	_____
	_____	Cellular:	_____
Federal ID #:	_____	Pager:	_____
State Contractors License Number:	_____	Email:	_____
License Expiration Date:	_____		

PROJECT INFORMATION:

Project Name:	_____	Job No:	_____
Project Address:	_____	Subcontract No.:	_____
	_____	BJPC Project Manager:	_____
Owner's Name:	_____	Architect:	_____
Owner's Address:	_____	Architect's Address:	_____
	_____		_____

ATTACHMENTS:

<input type="checkbox"/>	A	Insurance Requirements	Date	<input type="checkbox"/>	G	Project Procedures Manual	Date
<input type="checkbox"/>	B	Scope of Work	Date	<input type="checkbox"/>	H	Subcontract Modifications	Date
<input type="checkbox"/>	C	Contract Documents	Date	<input type="checkbox"/>	I	Prevailing Wage/Certified Payroll Policy	Date
<input type="checkbox"/>	D	Contract Recapitulation	Date	<input type="checkbox"/>	J	Not used at this time	Date
<input type="checkbox"/>	E	Billing Procedures	Date	<input type="checkbox"/>	K	Not used at this time	Date
<input type="checkbox"/>	F	Project Schedule	Date	<input type="checkbox"/>	L	Not used at this time	Date

CONTRACT DOCUMENTS:

An index of the Contract Documents is attached hereto as Attachment B.

(Attachment B is not applicable for this agreement ).

THIS SUBCONTRACT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between B. J. Perch Construction, Inc., a California corporation (hereafter "Contractor") and \_\_\_\_\_ (hereafter "Subcontractor").

1. Definition of the "Work." Subcontractor agrees to furnish all labor, materials, equipment, and other facilities to complete the work (hereinafter referred to as the "Work") as described below at the end of this paragraph 1 and any documents (hereinafter referred to as the "Contract Documents") referenced above. Contractor agrees to pay Subcontractor for strict performance of the Work \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Subcontract Sum" or the "Subcontract Price") subject to additions and deductions in the Work as may be directed in writing by Contractor, and to make payment in accordance with the terms of this Subcontract. The Work to be performed by Subcontractor hereunder is described as follows: \_\_\_\_\_.

2. Obligations Under Contract Documents. The purpose of this Subcontract is to fix the obligations of Contractor and Subcontractor as to the performance by Subcontractor of the Work, as described herein. All Contract Documents identified above are expressly incorporated herein and made a part of this Subcontract. Upon Subcontractor's request, Contractor shall make copies of the Contract Documents available for review and reproduction, however, Contractor reserves the right to redact confidential, financial and trade secret information from the Contract Documents made available to Subcontractor. In the event of conflicts in the Contract Documents, the order of precedence, highest to lowest, shall be as follows: (1) All modifications and change orders; (2) Subcontract Agreement and Attachments; and (3) The Contract Documents. In the event that there is an inconsistency or conflict among any of the provisions of the Subcontract and the obligations and duties arising therefrom, the provision imposing the most stringent obligation on the part of the Subcontractor will control. Subcontractor acknowledges that this Subcontract is nonexclusive and that Contractor is free to contract with any other person or entity for the performance of work which is the same or similar to that described in this Subcontract. Subcontractor is also free to enter into contracts with any other person or entity for the provision of the same or similar work. Subcontractor will ensure that such other work does not interfere with Subcontractor's performance under the Work required under this Subcontract. This Subcontract shall not be construed as obligating Contractor to accept bids or issue other work to Subcontractor.

3. Prime Contract. Subcontractor certifies that it is fully familiar with all of the terms of the Contract Documents, the location of the job site, and the conditions under which the Work is to be performed and that it enters into this Subcontract based upon Subcontractor's investigation of all such matters and is not relying on any opinions or representations of Contractor. This Subcontract represents the entire agreement between Contractor and Subcontractor, and supersedes any prior oral or written agreements or representations. The Prime Contract between the Owner and Contractor is incorporated in this Subcontract by reference, insofar as it relates in any way, directly or indirectly, to the Work. Subcontractor agrees to be bound to Contractor in the same manner and to the same extent as Contractor is bound to Owner under the Prime Contract, including, but not limited to, all applicable terms and provisions thereof. Where, in the Prime Contract, reference is made to Contractor, and the work or specifications therein pertain to Subcontractor's trade, craft or type of work, such work or specifications shall be interpreted to apply to subcontractor instead of to Contractor.

4. Documentation. Subcontractor shall be responsible for providing Contractor with all correspondence, including purchase orders, invoice packets, payments and lien releases on a weekly basis at Contractor's office located at 7034 W. Pershing Ct., Suite A, Visalia CA 93291, or at such other location as directed by Contractor. Subcontractor's correspondence, records, vouchers, and books of account, insofar as work done or money expended under this Subcontract are concerned, will be open to Contractor inspection and audit, and Subcontractor shall deliver to Contractor such of these (or copies thereof) as are required for Contractor's permanent files. All Subcontractor invoices for progress or final payment for Work completed must be submitted, along with the

purchase orders issued by Contractor, and appropriate labor and lien releases, prior to the processing of any payments by Contractor.

5. Effective Date. Subcontractor confirms that any portion of the Work performed by Subcontractor on the Project, prior to the date on which this Agreement is executed by the Parties, is subject to the terms and conditions of the Contract Documents and that all obligations, representations and warranties made by Subcontractor herein are retroactive to the date on which Subcontractor commenced Work on the Project.

6. Performance of the Work.

(a) The “Subcontractor’s Work”, “Subcontract Work”, or “Work” includes all labor, services, materials, freight, packaging, supplies, hardware, fasteners, fixtures, tools, layout, engineering, value engineering, detailing, equipment, scaffolds, hoisting, administration, supervision, transportation, warehousing, storage and other facilities, permits, and all other items and services necessary for the proper and complete performance and acceptance of the Work and obligations set forth in the Contract Documents for the Project.

(b) Subcontractor agrees (1) that materials and equipment furnished by Subcontractor shall conform strictly to the Contract Documents; (2) to furnish all materials within the time specified herein, with all necessary certificates and permits for installation and erection of same, and to layout, install and erect same and complete said work within the time specified, according to the Contract Documents and to the satisfaction of the Owner, Architect and Contractor, (3) to furnish all scaffold and equipment (including equipment for hoisting) that may be necessary to do its work expeditiously and to provide traffic and safety controls at all times while using such equipment on the job site, (4) to remove and replace any defective materials or work forthwith on notice from Architect or Contractor and to bear the expense of making good all work of others, including the Contractor, which is destroyed or damaged by such removal and replacement, (5) to perform the work entirely at Subcontractor’s risk, (6) to provide all proper and sufficient and necessary safeguards against all injuries and damage whatsoever, and to comply with all safety requirements imposed by law, (7) to secure and pay for those permits required by the Contract Documents to be secured for the Work applicable to this Subcontract, (8) to provide a full-time competent superintendent acceptable to Contractor who shall have authority to act on behalf of Subcontractor and who shall attend all meetings as requested by Contractor and who shall supervise the work hereunder.

(c) Subcontractor shall prepare, and obtain approval as required by the Contract Documents for, all shop drawings, details, samples, and do all other things necessary and incidental to the prosecution of its work all in conformance with Contractor’s progress schedule. Subcontractor shall submit a schedule of values for approval at the commencement of the work. Approval of shop drawings, submittals, details and samples by Contractor shall not relieve Subcontractor of its obligation to perform its work according to the terms and consistent with the intent of the Contract Documents.

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

(e) Subcontractor shall, on an annual basis on a date to be determined by Contractor, provide information as required to comply with Contractor’s prequalification program. Subcontractor’s failure to provide the required information will be addressed as set forth in paragraph 28 of this Subcontract.

7. Schedule.

(a) Time is of the essence of this Agreement. Subcontractor shall provide Contractor with scheduling information and a proposed schedule for performance of its work in a form and by a date acceptable to Contractor. Subcontractor shall conform to Contractor’s reasonable progress schedule and all reasonable revisions or changes

made thereto, which Subcontractor recognizes shall be made for the benefit of the progress of Project, and not necessarily the Subcontractor or its Work, however, Contractor shall make all reasonable efforts to incorporate Subcontractor's reasonable request into any Project schedules. As such, Subcontractor shall prosecute its work in a prompt and diligent manner in accordance with Contractor's progress schedule without delaying or hindering Contractor's work or the work of other contractors or subcontractors. Subcontractor shall coordinate the Work covered by this Subcontract with that of all other contractors, subcontractors, and of Contractor, in a manner that will facilitate the efficient completion of the entire Project.

(i) Subcontractor agrees to notify Contractor, in writing within two (2) working days (or 24-hours prior to the time within which Contractor must provide notice to the Owner pursuant to the terms of the Prime Contract, whichever is earlier) of any delays or anticipated delays in the performance of the Work and to state the cause of said delays. If Subcontractor fails to provide the written notice in the time set forth in this provision, Subcontractor agrees that Subcontractor's failure shall constitute a waiver of all rights to recover any additional time or costs associated with all delays or anticipated delays for which timely notice was not given. If Contractor is properly notified, then, should the cause be a condition upon which the Owner permits extension of time in the Contract Documents, Contractor will apply for such extension.

(ii) In the event Subcontractor fails to maintain Subcontractors part of Contractor's schedule, it shall, without additional compensation, accelerate the work as Contractor may direct until the Subcontract Work is in accordance with such schedule. Contractor shall have complete control of the premises on which the Work is to be performed and shall have the right to decide the time and order in which various portions of the Work shall be installed and the relative priority of the Work of Subcontractor and the work of other subcontractors, and, in general, all other matters pertaining to the timely and orderly conduct of the Work of Subcontractor.

(b) No claims for additional compensation or damages for delays, including, but not limited to, force majeure delays, delays caused by third-party utilities, governmental bodies and regulatory authorities, delays caused by the Owner, Owner's agents, employees, or Owner's separate contractors, or any other delay beyond the Control of Contractor 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 to Subcontract Work, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor as is equitable under all of the circumstances. In the event that Contractor prosecutes a claim against Owner for additional compensation for any delay, Subcontractor shall cooperate fully with Contractor in the prosecution thereof and shall pay costs and expenses incurred in connection therewith, including actual attorneys' and consultants' fees and costs, to the extent that said claim is made by Contractor at the request of or for the benefit of Subcontractor.

(c) If Subcontractor should default in performance of the Work or otherwise commit any act which causes delay to Contractor's work, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including actual damages, consequential damages and any liquidated damages, sustained by Contractor, or for which Contractor may be liable to Owner or any other party because of Subcontractor's default or delay. Neither party shall be liable to the other for consequential or liquidated damages incurred directly by either party arising out of or related to a breach of this Subcontract, except that Subcontractor shall remain liable for indemnification and the duty to defend against any actual, consequential or liquidated damages that arise out of the Work of Subcontractor or a breach of this Subcontract that are assessed or claimed against Contractor by third parties, which includes, but is not limited to, the Owner, as well as for any such damages that are caused by an insurable event and covered by insurance.

(d) Subcontractor agrees to submit (1) on a weekly basis, and at the time of submission of progress payment requests, a report, in a form satisfactory to Contractor, itemizing on a weekly basis actual quantities of work performed and (2) on a daily basis a Subcontractor Daily Report for each day on the jobsite that indicates the daily

manpower and equipment employed by Subcontractor on the Project, as well as a description of the activities performed on that day.

8. Contingencies to Payment. Notwithstanding anything in this Subcontract to the contrary, Subcontractor's right to any payment under this Subcontract is expressly contingent and conditioned upon: (1) Contractor's determination that all Work to be performed hereunder has been completed satisfactorily; (2) if requested by Contractor, Subcontractor delivering to Contractor a full and complete release of all liens and claims of Subcontractor and any and all of Subcontractor's subcontractors and suppliers for materials, labor, equipment, work, tools, services, and other items furnished in connection with the Work; and (3) if requested by Contractor, Subcontractor delivering to Contractor an affidavit (in form satisfactory to Contractor) that provides that so far as Subcontractor is able to ascertain, no person or entity other than the persons or entities furnishing such waivers and releases, has a right to any such lien or claim for materials, labor, equipment, work, tools, services, or any other items furnished in connection with the Work. Notwithstanding anything in this Subcontract to the contrary, if requested by Contractor, Subcontractor's failure to supply these lien waivers and releases will negate any request for payment until such time as the lien waivers and releases are provided. If any lien or claim remains outstanding after all payments are made, Subcontractor shall refund to Contractor all monies that Contractor may be compelled to pay in discharging or resolving such lien or claim, including, without limitation, attorneys' fees and costs. If Subcontractor fails to make any such refund within fifteen (15) days of notice to Subcontractor from Contractor, Subcontractor shall be in breach of this Subcontract and Contractor may, in addition to any other rights and remedies, withhold from any sums due or to become due to Subcontractor under this or any other agreement such amount as may be required, in Contractor's sole discretion, to discharge or resolve any such lien or claim, and to reimburse Contractor for the applicable fees and costs incurred by Contractor. Subcontractor shall defend, indemnify and hold harmless Contractor and the Project owner from the operation and effect of any lien or encumbrance arising out of the performance of Subcontractor's Work, and shall turn over the Work to Contractor free and clear of all such liens and encumbrances. If any such lien or encumbrance is claimed by any person or entity performing any portion of Subcontractor's Work, Subcontractor shall, immediately upon verbal notice from Contractor, discharge the same by payment or posting a sufficient bond to transfer the lien or encumbrance from the real property to the bond. Subcontractor will receive payments from Contractor and will hold these payments and the rights to future payments from Contractor in trust for the benefit of, and to be first applied to payment of those subcontractors, laborers, equipment suppliers and material suppliers who have performed any portion of Subcontractor's Work, before using any portion of such payment for any other purposes.

9. Changes in the Work.

(a) Contractor may at any time, by written change order signed by Contractor's Project Manager only, and without notice to the surety or Sureties who issued Subcontractor's bonds, make changes in the Work to be performed hereunder, within the general scope hereof. If such changes cause an increase or decrease in the cost of the Work or in the required time for its performance, an equitable adjustment shall be made subject to the conditions of this paragraph. If Contractor and Subcontractor cannot agree on the cost or time of performance for the change order work, or if Contractor or Owner disagrees that any claimed work is change work, Subcontractor shall nevertheless timely perform the disputed work as directed by Contractor in accordance with the change and dispute provisions of this Subcontract and, if applicable, the Contract Documents.

(b) Subcontractor shall make no changes in the Work nor shall Subcontractor be entitled to any additional compensation unless first authorized in a change order signed by Contractor's Project Manager.

(c) No increase in compensation of the Subcontractor or extension of time for performance shall be allowed for change order work unless the Subcontractor makes application therefor, in writing, to Contractor within seven (7) days from the date on which Subcontractor receives a notification of change in the Work, (or three days prior to the time within which Contractor must submit a change order request or quotation to Owner pursuant to the terms of the Contract Documents, whichever is earlier), whether the notification instructs Subcontractor to proceed

or not-to-proceed with the work. Subcontractor's application must include a detailed breakdown of all costs and any schedule delays. Contractor shall have the right to, but is not obligated to, audit any information submitted by Subcontractor in connection with such application. If Subcontractor does not submit an application in this time period, Subcontractor shall be deemed to waive and release any claim for additional compensation and additional time required for the performance of work. The Contractor will quote the Owner accordingly and Subcontractor will be responsible to perform the changes defined in the change order with no adjustment to Subcontractor's compensation or time required for the performance of the Work.

(d) Notwithstanding any other provision of this Subcontract, to the maximum extent allowed by applicable law, Contractor will be liable to Subcontractor for any delay, disruption, loss of productivity, interference, acceleration or other damages to Subcontractor, resulting from or arising out of: (1) any acts or omissions by Owner, Architect, third-party utilities, governmental and regulatory authorities, or anyone from whom these parties may be responsible, (2) fire or other casualty, riots, strikes or other combined action of the workmen or others, (3) any acts of God, or (4) any other cause beyond Contractor's reasonable control, only if and to the extent Owner is liable to Contractor for such damages and actually pays Contractor for such damages. It is expressly understood that the only obligation Contractor has to Subcontractor under this provision is to pass on to Owner any claim Subcontractor has for such damages, and to pay to Subcontractor any amounts which Owner pays to Contractor as a result of such claim. Subcontractor will reimburse Contractor for all costs and expenses, including attorneys' and consultants' fees and costs, incurred in connection with presenting any such claim to Owner.

(e) If Subcontractor is performing disputed work pursuant to paragraph 9(a) above, the time and material cost associated with such work must be tracked and submitted to Contractor on a daily basis. Failure to provide any time and material tickets on a daily basis shall be agreement by the Subcontractor that work was not performed that day, and/or the work that was performed is not recoverable from Contractor. Any signature by Contractor employee on a time and material daily ticket shall mean Contractor is acknowledging receipt of the time and material ticket only, and such signature shall not be construed in and of itself as an admission that Contractor is accepting any such time or cost as extra work or that the cost associated with such time or material is otherwise due Subcontractor.

## 10. Payment.

(a) Contractor agrees, in consideration of the full and complete performance of the Work by the Subcontractor in accordance with the terms and provisions hereof, to pay or cause to be paid to the Subcontractor the Subcontract Sum. Subcontractor understands that all payments to Subcontractor will be made only from a special fund and a specific source, namely, from payments made by Owner from time to time to Contractor in respect of work performed by Subcontractor. Contractor shall make payments to Subcontractor within ten (10) days after receipt by Contractor of payment from Owner for the work of Subcontractor for which payment has been made (or within such shorter period as may be required by law).

(b) In the event Contractor is not paid by Owner any sum claimed due by Subcontractor, then Contractor's obligation to make payment to Subcontractor with respect to the time for payment to Subcontractor shall, in addition to any other conditions set forth in this Subcontract or the Contract Documents, be subject to the following conditions precedent:

(i) If Contractor does not pay Subcontractor sums claimed due under the Subcontract as a result of nonpayment by the Owner and such nonpayment is thereafter "finally adjudged" as (hereafter defined) to have been caused by a breach by Contractor of the Prime Contract, then Contractor shall pay to Subcontractor such sum as is due under this Subcontract, inclusive of and limited to simple interest thereon at the rate of ten percent (10%) per annum accruing from the date such sum was first due and owing to Subcontractor as set forth above. The term "finally adjudged" as used in this subparagraph (i) shall mean the date final judgment is entered in any action by Contractor against Owner for recovery of sums due under the Prime Contract.

(ii) If Contractor does not pay Subcontractor sums claimed due under the Subcontract as a result of nonpayment by the Owner and such nonpayment is caused by the Owner's insolvency, bankruptcy, or lack of sufficient assets, or for reasons other than a breach by Contractor of the Prime Contract as provided in subparagraph (i) above, then Subcontractor's right to payment shall be conditioned upon the passage of such time as may be reasonable and necessary for Contractor to fully exercise and exhaust to final judgment its legal, extra judicial and appellate rights and remedies for collection of sums unpaid by Owner, together with the passage of such additional time as reasonably necessary for execution by Contractor of any final judgment entered in Contractor's favor. Simple interest only on such sums as are due to Subcontractor under this subparagraph (ii) shall accrue and be payable to Subcontractor at the rate of ten percent (10%) per annum commencing from the expiration of the reasonable time reserved to Contractor in this subparagraph (ii) for recovery and collection from Owner.

(iii) Subcontractor agrees to preserve and maintain its mechanic's liens (of any sort as allowed by law, including but not limited to construction lien, or materialman's lien) and stop notice rights with respect to the Project and to exercise and exhaust those rights in the event that Contractor does not pay Subcontractor sums due under the Subcontract as a result of payment default on the part of the Owner under the Primate Contract.

(iv) Nothing contained herein shall be interpreted as releasing or waiving any statutory mechanic's lien (of any sort allowed by law including but not limited to construction lien or materialman's lien) bond or stop notice right reserved to Subcontractor under the law; provided however, that Subcontractor agrees in the event Subcontractor asserts a claim against any statutory or common law payment or performance bond issued in connection with the Project, the surety to such bond and the Contractor (if Contractor is a principal on the bond) shall have the right to assert as a defense to such claim, the nonoccurrence of any conditions to payments set forth in this Subcontract, including without limitation the failure or delay of payment to Contractor.

(v) If any portion of this paragraph 10 is determined to be void, voidable or illegal, such portion shall be deemed severed from the other portions of this paragraph 10 that not void, voidable or illegal and such other portions shall be enforceable in accordance with their terms.

(c) Contractor shall retain from progress or other payments hereunder ten percent (10%) of the amount due until after final acceptance of the Work by the Architect and Owner and until ten (10) days after Contractor's receipt of final retention payment from Owner. All billings for work performed during a calendar month shall be made on Contractor's standard forms "Progress Payment Request" and "Conditional Waiver and Release Upon Progress Payment" and must include a schedule of values itemizing in detail work completed and materials and equipment put in place during such month, and a current Change Order log itemizing approved change orders, submitted and outstanding quotes. No other form of payment request will be accepted. Payment requests must be delivered to Contractor sufficiently early as to not delay timely submission of Contractor's progress payment requests to Owner.

(d) Subcontractor, as requested by Contractor, shall furnish certified copies of all payrolls in the manner prescribed by Contractor. Contractor reserves the right to require mechanics' lien, stop notice, construction lien, materialman and bond claim releases (including releases from lower tier subcontractors) and payment affidavits in duplicate with each application for progress payments and on final payment. Contractor also reserves the right to require Subcontractor to execute an Unconditional Waiver and Release form as to previously paid progress payments if required by the Contract Documents or the Owner. Receipt by Contractor of all required releases and affidavits, and approval by Contractor of those documents, are conditions precedent to payment by Contractor to Subcontractor.

(e) Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, if allowed in the Contract Documents and approved in advance by the Contractor, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by Subcontractor of bills of sale or such other

procedures satisfactory to Contractor to establish Owner's title to such materials or equipment or otherwise protect Owner's interest, including applicable insurance and transportation to the site or those materials and equipment stored off the site.

(f) Contractor may withhold or, on account of subsequently discovered evidence, may nullify, the whole or part of any payment to protect Contractor from loss on account of (1) defective work not remedied; (2) third party claims filed or reasonable evidence indicating probably filing of such claims; (3) failure of Subcontractor to make payments properly to Subcontractor's subcontractors or for materials, equipment, labor or fringe benefits; (4) reasonable doubt that the work under this Agreement can be completed for the balance of the Subcontract Sum then unpaid; (5) damage to Contractor, a separate contractor or another subcontractor; (6) reasonable doubt that the Work under this Subcontract can be completed within the time required herein and that the balance of the Subcontract Sum then unpaid would be sufficient to cover the actual or liquidated damages resulting from the anticipated delay; (7) penalties assessed against Contractor or Subcontractor on account of Subcontractor's failure to comply with state, federal or local laws and regulations; (8) persistent failure to carry out the Work under this Subcontract in accordance with the Contract Documents; or (9) any other ground for withholding payment allowed by state or federal law, or as otherwise provided in this Subcontract. When the reason(s) for withholding payment is/are rectified, such amounts as are then due and owing shall be paid or credited to Subcontractor.

(g) Contractor reserves the right to make payment by joint check or by direct check to Subcontractor's materialmen or sub-subcontractors or to any other person or entity who has performed work or furnished materials under this Subcontract and may have a claim or a right of action against Contractor, Contractor's Surety, or the Project under any law; provided, however, that Contractor shall not be obligated to exercise the right reserved herein for the benefit of any person or entity other than itself. Subcontractor agrees that Contractor shall have the right to determine the manner in which payment shall be made. Contractor's payment by way of joint check or direct check to Subcontractor's materialmen or sub-subcontractors shall be applied as through the money had first been paid to Subcontractor. However, prior to making any payment by joint check or direct check, Contractor shall provide Subcontractor written notice of any such intent, and allow Subcontractor a reasonable opportunity to provide reasonable information why such funds are not due or owing to any sub-tier subcontractor or supplier.

(h) Any payment made hereunder prior to completion and acceptance of the Work shall not be construed as evidence or acknowledgment of proper completion of any part of Subcontractor's Work.

11. Waivers. Acceptance of Subcontractor's Work and payment therefore by Contractor under this paragraph shall not be construed as a waiver by Contractor for Work found defective and shall not release Subcontractor from liability under any warranty for defective Work or for any obligation to perform warranty service Work.

12. Materials and Equipment. Subcontractor shall be responsible for the receipt, delivery, unloading, storage, warehousing, protection, insurance, and all other risks of loss relating to any materials or equipment Subcontractor is to furnish, install, provide, or have provided to it under this Subcontract. Subcontractor shall immediately report in writing to Contractor any discrepancy, deficiency, variance from or violation of any laws, ordinances, rules, regulations or orders of any public authorities observed or known to Subcontractor in regards to the Work. Subcontractor shall be solely responsible for all construction under this Subcontract, including the techniques, sequences, procedures and means, and for coordination of all Work. Subcontractor shall supervise and direct all Work to the best of Subcontractor's ability and give such Work all attention necessary for such proper supervision and direction. Subcontractor shall perform all labor in a thorough and workmanlike manner, according to the highest standards of the trade. Subcontractor warrants that all labor done and any materials furnished by Subcontractor will meet or exceed all of Contractor's requirements. In any event, and in spite of any dispute, claim or controversy arising out of this Subcontract, Subcontractor shall proceed diligently with the Work, pending final determination pursuant to any disputes clause or pursuant to any other action taken with respect to any dispute, claim or controversy. Any deviations from the Work, and any Change Order resulting therefrom, must be authorized in writing by Contractor. All studies, designs, drawings, plans, specifications, etc., prepared by or under the direction

of Subcontractor shall be the property of Contractor and shall be delivered to Contractor on or before the completion of construction.

13. Cooperation. Subcontractor shall cooperate with all other subcontractors engaged by Contractor to the effect that their work shall not be impeded and shall give such other subcontractors access to the job site necessary to perform their contracts. Subcontractor shall perform the Work in a prompt and diligent manner whenever such Work, or any part of it, becomes available, or at such other time or times as Contractor may direct so as to promote the progress of the entire project. Subcontractor shall not delay or otherwise interfere with or hinder the work of any other subcontractor on the job. If the work or property of others is hindered, delayed, or damaged by Subcontractor, Subcontractor will pay for all costs and damages incurred by such other party and will cause all such damage to be corrected to the satisfaction of and without cost to Contractor. Any materials that are to be furnished by Subcontractor hereunder shall be furnished in sufficient time to enable Subcontractor to perform and complete Subcontractor's Work within the time or times provided for herein. Time is of the essence in this Subcontract.

14. Inspection Responsibilities. Subcontractor shall be responsible for inspecting any work of another subcontractor that may affect Subcontractor's own Work and shall report in writing to Contractor any defects in such work upon discovery of the defect prior to commencing any portion of the Work, or Subcontractor shall be deemed to have accepted such work as correct and fit to be accommodated into Subcontractor's own. If Subcontractor shall be delayed in the commencement, prosecution or completion of the Work or shall be obstructed or hindered in the orderly progress of the Work by any act, failure to act, omission, neglect or default of Contractor, any architect, any engineer, another contractor or subcontractor, or any of their respective agents or employees, or by any cause beyond the control of Subcontractor, then the time fixed for completion of the Work may be extended in the sole discretion of Contractor and only if Subcontractor notifies Contractor in writing within forty-eight (48) hours of the discovery of the cause of such delay. Subcontractor expressly agrees not to make, and hereby waives, any claim for damages on account of any delay, obstruction or hindrance for any cause whatsoever, including but not limited to, the aforesaid causes, and agrees that Subcontractor's sole right and remedy in the case of any delay shall be an extension of the time fixed for completion of the Work.

15. Qualifications. Subcontractor represents and warrants that Subcontractor is fully qualified in all respects to perform the Work and shall at all times maintain strict discipline among Subcontractor's employees. Subcontractor agrees not to employ for work on the project any person unfit or without sufficient skill to perform the job for which Subcontractor was retained. Subcontractor agrees that Contractor will not provide any training for Subcontractor or Subcontractor's employees, agents or subcontractors.

16. Design Build Work.

(a) If the Work described above in paragraph 1 is identified as being Design Build, a complete and operable system shall be provided by Subcontractor to Contractor which includes all work, although not shown or described, which may reasonably be inferred from the Contract Documents. It shall be Subcontractor's responsibility to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations, and shall comply with good engineering practices. Subcontractor agrees to prepare working drawings, plans, specifications, compliance documents and perform certifications and testing sufficient to secure permits and all final approvals as required by any and all government agencies having authority over the Project. Subcontractor agrees to perform said Work and each and every part and detail thereof in the best and workmanlike manner by qualified, careful and efficient workers and to use materials that are satisfactory for the purpose of which they are applied. Without limiting any other obligation hereunder, Subcontractor acknowledges that Subcontractor is performing the Work described above, on a design build basis. Subcontractor further warrants that Subcontractor's design shall meet the following criteria:

- (i) All technical or performance criteria described in the Contract Documents;

(ii) The design is consistent with, and has been coordinated with the Contract Documents including the drawings, the plans, and the specifications as well as the work of all other trades affected by the Work and/or performing work in the contiguous area. Subcontractor specifically agrees to coordinate Subcontractor's design with the Architect/Engineer and the Architect/Engineer's subconsultants, and with the work, including the shop drawings, and all other subcontractors working in the contiguous areas, including other design/build subcontractors. Subcontractor acknowledges that the design which is being contributed to by other entities is still evolving and being completed and that Subcontractor's design is independent and needs to evolve and be compatible with the final design of such other entities.

(iii) Subcontractor's design and construction work meets the standard of care for the design of such system which is customary in the industry in the location of the Project for design/build subcontractors holding themselves out as being experts in design/build construction for their trade(s) for this specific type of improvement project. Nothing in this subparagraph is intended to limit Subcontractor's obligations under other provisions of this Subcontract, including subparagraphs (i) and (ii), above.

(b) In the event that an Owner terminates a Design Build Project prior to commencement of any construction work, Contractor's liability for payment to Subcontractor for any preconstruction services under a Design Build Project shall arise only if Contractor is paid by Owner for such preconstruction services.

17. Licensing and Permits. Subcontractor shall, at Subcontractor's sole expense, hold and maintain all required licenses, obtain all required permits and shall comply with all laws and ordinances and the rules, regulations and orders of all public authorities relating to the performance of the Work. In the event of termination of this Subcontract, Subcontractor shall immediately transfer and assign to Contractor any and all applicable certificates, permits, contracts, subcontracts, and purchase orders. Subcontractor agrees that Contractor is not responsible for providing any tools or benefits for Subcontractor or Subcontractor's employees, agents or subcontractors.

18. OSHA. Subcontractor agrees to comply with requirements of the Occupational Safety and Health Act of 1970, as amended, and all other applicable federal, state and local health, safety, environmental and hazardous work laws, including without limitation, the prompt submission of material safety data sheets when required, and hereby releases Contractor of and from any and all liability of whatsoever nature because of any injury or injuries to Subcontractor, Subcontractor's employees, agents or subcontractors or any employees or agents of such subcontractors, or any other people doing work under an oral or written order or contract with Subcontractor. All persons on the job site are required to wear a hard hat.

19. Employees, Agents and Subcontractors of Subcontractor. Subcontractor agrees to, and hereby does, assume full responsibility for any and all acts, negligence or omission of Subcontractor's employees, agents and subcontractors and any and all employees and agents of Subcontractor's subcontractors, and any and all other persons doing work under an oral or written order or contract with Subcontractor.

20. Indemnification. To the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless Contractor and Contractor's principals, officers, directors, managers, members, agents and employees, of, from and against any and all claims, liabilities, including, without limitation, contractual liabilities, damages, losses and expenses, including but not limited to, attorney's fees, arising out of, resulting from or related to, the performance of the Work, or the performance of any construction or services required hereunder or performed by any subcontractors, laborers, materialmen or agents, on the construction site, or the project, provided that any such claim, liability, damage, loss or expense (1) is attributable to bodily injury, personal injury, sickness, disease or death, or to violations or alleged violations of the Occupational Safety and Health Act of 1970, as amended, or to regulations promulgated thereunder, or to violations or alleged violations of similar state laws and regulations, or to injury to or destruction of tangible property including the loss of use resulting therefrom, or to any defective work of Subcontractor, or to any breach by Subcontractor of this Subcontract, and (2) caused in whole or in part by any act, failure to act, or omission of Subcontractor, any subcontractor of Subcontractor, anyone directly or indirectly

employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder and regardless of whether or not it is caused in part by the negligence of a party indemnified hereunder; provided however, that no indemnified party shall be indemnified for the sole negligence or willful misconduct of such indemnified party. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other rights or obligations of indemnity which would otherwise exist as to any party or person described in this paragraph. In any and all claims against any party indemnified hereunder by any employee of Subcontractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor or any subcontractor under workers' or workmen's compensation acts, disability acts or other employee benefit acts. In addition, in no event shall Subcontractor's obligations hereunder be limited to the extent of any insurance available to or provided by Subcontractor. This hold harmless and indemnification provisions shall survive the termination of this Subcontract for the maximum period of time allowed by law. At its sole discretion, Contractor may withhold, from time to time, from any monies otherwise due Subcontractor hereunder or under any other contract or agreement, a sum of money which, in the sole judgment of Contractor, shall be sufficient to secure the performance of Subcontractor's obligations under this paragraph.

21. Warranties.

(a) Subcontractor represents and warrants to Contractor that all equipment and materials provided by Subcontractor and incorporated in the Work will be new, unless otherwise specified in the Contract Documents, and together with Subcontractor's Work shall be of good quality, free of defects and in conformity with the requirements of this Subcontract, the Contract Documents (including any and specifications contained therein) the building code, and law. It is understood between the parties hereto that all equipment, materials and Work not so in conformity shall be defective. Subcontractor specifically agrees that Subcontractor is responsible for the protection of the Work until final completion and that Subcontractor will make good or replace, at no expense to Contractor, any damage to the Work which occurs prior to said final completion. Inspection by Contractor shall not relieve Subcontractor of its obligations herein. All Subcontractor's work that is unsatisfactory to Contractor, in Contractor's reasonable judgment, shall be immediately repaired, removed and replaced with Subcontractor's Work of a quality approved by Contractor, without additional compensation to Subcontractor. Upon receiving notification from Contractor, Subcontractor agrees to remedy, repair, or replace, without cost to Contractor and to Contractor's satisfaction, all defects, damages, damages, repairs or imperfections appearing in Subcontractor's Work. **SUBCONTRACTOR FURTHER WARRANTS THAT ALL LABOR AND MATERIALS FURNISHED BY SUBCONTRACTOR SHALL BE FREE OF DEFECTS FOR A PERIOD BEGINNING AT THE DATE THAT THE PROJECT OF WHICH THE WORK IS A PART IS COMPLETED TO THE SATISFACTION OF THE OWNER, AND CONTINUES FROM SUCH DATE UNTIL THE LAST OF THE FOLLOWING TO OCCUR: (1) ONE YEAR; (2) FOR THE DURATION OF ANY LIMITED WRITTEN WARRANTY GIVEN BY CONTRACTOR TO THE OWNER; OR (3) THE DURATION OF ANY COMMON LAW OR STATE OR FEDERAL STATUTORY WARRANTIES OF SUCH OWNER, OR SUBSEQUENT PURCHASERS, OR ANY OTHER PERSON OR ENTITY, IF ANY. SUBCONTRACTOR AGREES TO MAKE, AT SUBCONTRACTOR'S SOLE EXPENSE, ALL REPAIRS AND CORRECT SUCH DEFECTS IN ORDER TO MEET ANY OF SUBCONTRACTOR'S WARRANTY OBLIGATIONS WITHIN EIGHT (8) HOURS OF NOTICE (ORAL OR WRITTEN) OF SUCH EFFECT IN AN EMERGENCY (DETERMINED BY CONTRACTOR IN CONTRACTOR'S SOLE DISCRETION) AND WITHIN FORTY-EIGHT (48) HOURS OF NOTICE ON A NON-EMERGENCY BASIS.**

(b) In addition, Subcontractor shall transfer any and all applicable manufacturer's warranties, together with all service and operation manuals for materials furnished by it under this Subcontract, to Contractor when the Work is completed or this Subcontract is terminated, whichever occurs first.

(c) The warranties contained herein are in addition to any other special warranties required by contract law, and such warranties do not abridge Contractor's right to assert claims for latent or patent defects in accordance with applicable law.

22. Work Defects. If Contractor notifies Subcontractor (orally or in writing) that any part of the Work is incorrect and does not conform to the terms of this Subcontract, Subcontractor shall immediately begin to correct such defective work and shall complete such corrected work within forty-eight (48) hours unless Contractor shall agree to a longer period. If Subcontractor refuses to perform any corrective work, Subcontractor shall waive the above described forty-eight (48) hour period. Subcontractor shall bear the entire cost of such corrective work, including any cost incurred by the disturbance of work completed by other Subcontractors.

23. Maintenance of Project Site. At all times during the course of performing the work under this Subcontract, Subcontractor shall perform its work, including any necessary clean-up, so as to maintain the Project site in a clean, safe and orderly condition. Upon completion of the work under this Subcontract, Subcontractor shall (a) clean all surfaces, fixtures, equipment and other items which are a part of the work under this Subcontract or may have been soiled by such work, and (b) remove from the job site and legally dispose of all temporary structures, debris, waste, and other items incidental to Subcontractor's operations, including all hazardous materials, which do not constitute a permanent part of the Project. Subcontractor shall follow all directions of Contractor in regard to clean-up both during the course of the work and at the completion of Subcontractor's work. Contractor shall be entitled to backcharge Subcontractor for the costs of clean-up if Subcontractor fails to clean up its work within two (2) working days after demand by Contractor.

24. Insurance Requirements. Before commencing the Work, and as a condition of any payment due under this Subcontract, Subcontractor shall at Subcontractor's own expense, obtain and maintain insurance on all of Subcontractor's operations during the life of this Subcontract including the following insurance coverages:

(a) Worker's Compensation and Employer's Liability insurance as required by state law to cover all employees of Subcontractor, and all subcontractors, laborers and agents of Subcontractor. 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; and

\$1,000,000 Each Employee for Bodily Injury by Disease.

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

(b) Commercial General Liability Insurance – Subcontractor shall carry on a primary and non-contributory basis, Commercial General Liability Insurance covering all operations by or on behalf of Subcontractor providing coverage on an occurrence form for bodily injury, personal injury and property damage for the limits of liability indicated below, including coverage for:

(i) Premises and Ongoing Operations;

(ii) Products and Completed Operations;

(iii) Contractual Liability;

- (iv) Personal and Advertising Injury; and
- (v) Liability of Independent Contractors.

The above shall not be subject to any of the following limitations and/or exclusions:

- (A) Subsidence or Earth Movement;
- (B) Third Party Action Over;
- (C) Cross Suits;
- (D) Sunset Clause – clauses terminating coverage after a designated period of time; and
- (E) Residential, Habitational and Multifamily Limitation or Exclusion if the Work includes such work.

(c) The Commercial General Liability Insurance described above in paragraph 24(b) shall, among other things, insure the hold harmless and indemnification agreements of Subcontractor running to Contractor pursuant to this Subcontract or any other agreement, and the minimum liability coverage amounts maintained by Subcontractor under such insurance shall be as follows:

- (i) General Aggregate Annual Limit..... \$2,000,000.00;
- (ii) Products/Completed Operations Aggregate Limit..... \$2,000,000.00;
- (iii) Personal & Advertising Injury Limits..... \$1,000,000.00;
- (iv) Each Occurrence ..... \$1,000,000.00; and
- (v) Deductible, per occurrence, no greater than ..... \$2,500.00.

The General Aggregate Limit shall apply separately for each project.

(d) Auto Liability insurance including coverage of all owned, leased, non-owned, and hired automobiles. The limits of liability shall not be less than \$1,000,000 combined single limits.

(e) Any other insurance that may be reasonably requested by Contractor from time to time.

(f) Subcontractor shall be responsible for payment of the deductible for any Builder’s Risk/Course of Construction Insurance (“Builder’s Risk”) claim regardless of whether such coverage is procured by the Owner, Contractor or Subcontractor. Subcontractor shall be responsible for payment of the deductible in proportion to Subcontractor’s percentage of responsibility of the entire loss (covered under the Builder’s Risk Policy), as calculated prior to the application of the policy deductible.

(g) Contractor may, at Contractor’s own option, insure either the General Liability and Excess, or the General Liability, Excess and Workers’ Compensation coverages by an Owner Controlled Insurance Program (OCIP) or Contractor’s Controlled Insurance Program (CCIP), commonly referred to as Project Wrap Up Insurance Program. If the Project is under a Contractor’s Project Wrap Up Insurance Program, then Subcontractor shall be responsible for payment of the deductible for any Workers’ Compensation and/or General Liability claim arising from Subcontractor’s Work under the Contractors’ Project Wrap Up Insurance Program in accordance with the Project Specific Insurance Manual issued for the Project. Subcontractor shall be responsible for payment of the

deductible in proportion to Subcontractor's percentage of responsibility of the entire loss (covered under the Contractors Wrap Up Insurance Program), as calculated prior to the application of the deductible.

Subcontractor shall add Contractor as an additional insured to Subcontractor's Commercial General Liability and Auto Liability Insurance policies. The Commercial General Liability Additional Insured Coverage shall be provided by Insurance Services Office (ISO) Additional Insured Endorsement Forms CG2010 0704 and CG2037 06704 for the Owner and Contractor and CG 2032 0704 for the Architect/Engineer or their equivalents with the approval of Contractor. Waiver of Subrogation in favor of Contractor is required for Commercial General Liability, Automobile Liability and Workers' Compensation insurance. Prior to commencing any work under this Subcontract, Subcontractor shall submit to Contractor copies of policies that confirm these insurance coverages. Upon request by Contractor, Subcontractor shall provide Contractor with copies of such policies of insurance.

No policy will permit cancellation without thirty (30) days prior written notice of cancellation to Contractor and the certificates of insurance shall reflect such notice obligation. Failure of Subcontractor to maintain complete insurance may be deemed a material breach allowing Contractor to terminate this Subcontract. In no case, however, shall Subcontractor's liability be lessened. In addition, Subcontractor shall not sublet or subcontract any part of this Subcontract without previously obtaining similar insurance from its subcontractors and suppliers.

If the Subcontract Work is to be performed within fifty (50) feet of any railroad, Subcontractor's commercial general liability insurance policy shall include an endorsement that deletes the exclusion for work performed within fifty (50) feet of a railroad. A copy of such endorsement shall be provided to Contractor prior to the commencement of the Work.

25. Payment of Taxes. Subcontractor shall pay all taxes required by law in connection with the Work under this Subcontract, including sales, use and similar taxes. **SUBCONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR WITHHOLDING TAXES, SOCIAL SECURITY TAXES AND STATE UNEMPLOYMENT TAXES FOR ALL EMPLOYEES OF SUBCONTRACTOR.**

26. Waiver of Stop Notices and Liens. **TO THE EXTENT NOT PROHIBITED BY LAW, SUBCONTRACTOR HEREBY WAIVES AND RELINQUISHES ANY AND ALL STATUTORY OR CONTRACTUAL RIGHTS THAT SUBCONTRACTOR MAY HAVE TO OBTAIN STOP NOTICES OR LIENS, MECHANIC'S OR OTHERWISE, AGAINST THE PROJECT OR IMPROVEMENTS THAT ARE THE WORK AND AGREES NOT TO FILE ANY SUCH NOTICE OR LIEN AGAINST SUCH PROPERTY OR IMPROVEMENTS FOR ANY LABOR, SERVICES, WORK, MATERIALS, EQUIPMENT, TOOLS OR OTHER ITEMS FURNISHED TO OR FOR CONTRACTOR. TO THE EXTENT NOT PROHIBITED BY LAW, SUBCONTRACTOR AGREES TO LOOK SOLELY TO SUBCONTRACTOR'S CONTRACTUAL RIGHTS FOR RECOVERY.**

27. Causes of Breach. **SUBCONTRACTOR SHALL BE IN BREACH OF THIS SUBCONTRACT IF:**

- (a) Subcontractor's Work is defective and not remedied as provided herein; or
- (b) Subcontractor does not make prompt and proper payments to its employees, agents and/or subcontractors; or
- (c) Subcontractor does not make prompt and proper payment for labor, services, work, materials or equipment furnished by third parties to it; or
- (d) Another subcontractor is damaged by an act or omission for which Subcontractor is responsible; or

(e) Subcontractor or any third party furnishing labor, services, work, materials, equipment, tools, or other items for the Work files any claim or lien against the property where the Work has been performed and such claim or lien has not been discharged or resolved within twenty-four (24) hours after notice thereof to Subcontractor, and Subcontractor has not posted a discourage bond within this twenty-four (24) hour period; or

(f) Subcontractor fails to perform warranty service on any of the Work; or

(g) Contractor is fined by any governmental agency on account of or arising out of Subcontractor's (or Subcontractor's subcontractors or agents) violation or alleged violation of any law, ordinance, regulation, administrative ruling and/or court order; or

(h) Subcontractor becomes insolvent or any petition for bankruptcy is filed with respect to Subcontractor; or

(i) Subcontractor fails to comply with any terms of this Subcontract.

28. Remedies. IF SUBCONTRACTOR IS IN BREACH OF THIS SUBCONTRACT, IN ADDITION TO ANY AND ALL OTHER REMEDIES AVAILABLE UNDER APPLICABLE LAW, CONTRACTOR, IN CONTRACTOR'S SOLE DISCRETION, MAY DO ANY OR ALL OF THE FOLLOWING:

(a) CONTRACTOR MAY IMMEDIATELY TERMINATE THIS SUBCONTRACT, OR OTHER VERBAL OR WRITTEN AGREEMENT WITH SUBCONTRACTOR AND ANY OTHER SUBCONTRACTOR AGREEMENT BETWEEN SUBCONTRACTOR AND CONTRACTOR AND DISMISS SUBCONTRACTOR FROM THE JOB SITE BY PROVIDING SUBCONTRACTOR WITH WRITTEN NOTICE OF SUCH TERMINATION;

(b) CONTRACTOR MAY ENGAGE OR EMPLOY OTHER SUBCONTRACTORS TO REMEDY SUBCONTRACTOR'S DEFECTIVE WORK, TO COMPLETE ANY PORTION OF THE WORK NOT COMPLETED BY SUBCONTRACTOR, PERFORM SUBCONTRACTOR'S WARRANTY SERVICE OBLIGATIONS OR OTHERWISE CURE SUBCONTRACTOR'S BREACH;

(c) CONTRACTOR MAY WITHHOLD FROM SUBCONTRACTOR ANY SUMS WHICH MIGHT BE DUE OR BECOME DUE TO SUBCONTRACTOR, WHETHER UNDER THIS SUBCONTRACT, OR ANY OTHER AGREEMENT, AND MAY CHARGE AGAINST ANY SUCH SUMS WITHHELD ALL SUMS EXPENDED OR COSTS INCURRED BY CONTRACTOR ARISING FROM THE ENGAGEMENT OF OTHER SUBCONTRACTORS AS PROVIDED IN (b) ABOVE OR OTHERWISE RELATING TO SUBCONTRACTOR'S BREACH, INCLUDING, BUT NOT LIMITED TO, CONTRACTOR'S OVERHEAD AND PROFIT; AND/OR

(d) CONTRACTOR MAY WITHHOLD FROM SUBCONTRACTOR FOR UP TO ONE (1) YEAR AN AMOUNT, WHICH AMOUNT SHALL NOT EXCEED FIVE PERCENT (5%) OF THE SUBCONTRACT PRICE FOR THE WORK, TO INSURE SUBCONTRACTOR'S PERFORMANCE OF WARRANTY SERVICE OBLIGATIONS. SHOULD SUBCONTRACTOR FAIL TO PERFORM SUCH WARRANTY SERVICE OBLIGATIONS, CONTRACTOR MAY CHARGE AGAINST SUCH AMOUNT WITHHELD ALL SUMS EXPENDED OR COSTS INCURRED BY CONTRACTOR ARISING FROM SUBCONTRACTOR'S FAILURE TO PERFORM SUCH WARRANTY SERVICE OBLIGATIONS.

CONTRACTOR WILL PROVIDE SUBCONTRACTOR WITH WRITTEN NOTICE OF ANY SUCH CHARGES OR WITHHOLDINGS MADE PURSUANT TO (c) OR (d) ABOVE WHEN MAKING FINAL PAYMENT TO SUBCONTRACTOR IF ANY SUCH FINAL PAYMENT IS DUE TO SUBCONTRACTOR UNDER THIS SUBCONTRACT.

29. Termination. This Subcontract may also be terminated and Subcontractor dismissed from the job site by Contractor at any time in its sole discretion, without cause and for Contractor convenience, by providing Subcontractor with written notice of such termination, and such termination shall be effective as of the time and date stated in such written notice. In the event of termination of the Subcontract pursuant to this paragraph, Contractor shall pay Subcontractor within thirty (30) days after effective date of termination, all sums, if any, due and owing Subcontractor for all labor incurred and all materials incorporated in the Work performed under this Subcontract prior to the effective date and time of termination. Subcontractor acknowledges and agrees that if Subcontractor is terminated pursuant to this paragraph, Subcontractor shall have no claim against Contractor for any additional sums, including, without limitation, any claims for material purchased but not used in the Work, or for lost profits or for anything else. The termination payment described herein is Subcontractor's sole remedy and in no event shall Subcontractor have any claim for consequential damages.

30. Insurance. With respect to any insurance Subcontractor may maintain for Subcontractor's Work, including but not limited to that set forth herein, Subcontractor warrants that Subcontractor has the right to waive any and all rights of subrogation which Subcontractor's insurance carriers might have or claim against Contractor, including its officers, managers, members, agents, employees, affiliates, parents and subsidiaries, arising out of Subcontractor's Work. Subcontractor hereby waives all such present and future rights of subrogation and agrees to defend and indemnify Contractor, including its officers, agents, employees, affiliates, parents and subsidiaries, arising out of Subcontractor's Work from all such subrogation claims. Subcontractor shall require of its subcontractors similar waivers. Subcontractor's policies of insurance and its subcontractors' policies of insurance shall provide such waivers by endorsement. A waiver of subrogation shall be effective as to a person or entity even though that person or entity had an insurable interest in the property damaged or person injured.

31. Indemnification. To the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless Contractor from all claims, demands, causes of action, damages, costs, expenses, losses or liabilities, in law or in equity, of every kind of nature whatsoever (including attorney's fees), arising out of or in any manner directly or indirectly connected with Subcontractor's Work, including but not limited to damages for bodily injury, sickness, disease, death, or from claims for damages to property, and losses resulting from defects in design or construction. This indemnification shall apply for any loss, which arises out of or is in any way connected with the acts or omissions of Subcontractor or any of Subcontractor's agents, representatives, material suppliers, employees, independent contractors, or sub-subcontractors. This indemnity shall be effective, regardless of whether the claim or loss is caused in some part by omissions, willful misconduct or negligent conduct (whether active or passive) on the part of Contractor, its agents, or its subcontractors. However, Subcontractor shall not be obligated to indemnify Contractor with respect those items for which indemnity is prohibited under California Civil Code § 2782(a). Subcontractor shall, in addition, at Subcontractor's own cost, expense and risk, defend any and all claims, demands, lawsuits, actions, or other legal proceedings (including, but not limited to, demands for mediation or arbitration) that may be brought by third persons against Contractor arising out of or in any manner directly or indirectly connected with Subcontractor's Work. This obligation to provide a defense shall be triggered immediately following the written tender of claim requesting defense provided by Contractor to Subcontractor in the manner specified in California Civil Code § 2782(d). Subcontractor may satisfy these defense obligations in accordance with the provisions of California Civil Code §§ 2782(d)(1) or 2782(d)(2). Should any monetary claim or legal action be instituted against Contractor, its principals, agents, employees, successors, assigns, parents or subsidiaries (the "Indemnified Parties") within ten (10) years, or thereafter if permitted by law, after completion of the Work, wherein the claim or action alleges a breach of warranty or defect or poor workmanship in construction, express or implied, or concerns any claim or complaint as to the Subcontractor's Work (or the work of any subcontractor hired by Subcontractor) where the work should have been performed by Subcontractor, Subcontractor shall indemnify and reimburse Indemnified Parties and be strictly liable to Indemnified Parties for any money paid by Indemnified Parties, or Indemnified Parties' insurance company, by way of an adverse award, judgment or settlement, to any claimant or plaintiff prevailing against Indemnified Parties, and Subcontractor shall pay Indemnified Parties' reasonable attorneys' fees and costs in defense of such claim or action all in strict accordance with the terms of this

indemnity provision. No release issued by Indemnified Parties may or shall be considered a defense of the claim or complaint alleging construction defects, or faulty workmanship and/or faulty or defective materials, or problems in construction not discovered during the course of construction. Subcontractor shall include in all agreements with subcontractors clauses substantially similar to this paragraph wherein the subcontractor agrees to indemnify Contractor and Indemnified Parties and wherein the subcontractor agrees to be liable to Indemnified Parties for loss of or damage to their property.

32. Compliance. Subcontractor agrees that all Subcontractor's Work to be performed hereunder and all actions by or on behalf of Subcontractor in pursuance thereof shall, at Subcontractor's own cost, comply with all federal, state, municipal and local laws, ordinances, rules, regulations, orders, codes, standards, notices and requirements, statutes, building codes, manufacturers' and/or suppliers' specifications and any other requirements of all governmental and private agencies having jurisdiction or craft unions involved (if any) (collectively, "Codes"), including among others, those relating to equal employment opportunity, minority business enterprise, women's business enterprise, disadvantage business enterprise, safety, prevailing wage regulations and all other laws with which Contractor must comply. Subcontractor shall be solely responsible for determining the applicability and local effect and interpretation of all Codes affecting the Subcontractor's Work. Subcontractor agrees to save harmless and indemnify Contractor from and against all loss, costs, expense injury, claims, proceedings, liability, damages, fines, penalties, or corrective measures, including legal fees and disbursements caused or occasioned by Subcontractor's or its employees' or agents' failure to comply, directly or indirectly with its responsibilities hereunder.

33. Arbitration. Any dispute or claim in law or equity arising out of this Subcontract, representations of Subcontractor or Contractor, specific performance, the existence and extent of any defects in the Work, the limited warranty, and the extent of any damages, sustained, shall be decided by neutral binding arbitration. Such arbitration shall be conducted by one of the following three methods, as may be mutually agreed upon between the parties, and if no method is mutually agreed upon, then the first of the following stated methods shall apply: (1) by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules; or (2) by arbitration administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures; or (3) through arbitration administered by the Better Business Bureau Serving the San Joaquin Valley, in accordance with the Better Business Bureau's Binding Arbitration Rules. Judgment on the Award may be enforced and confirmed pursuant to a petition filed under California Code of Civil Procedures Section 1285 et. seq. The parties expressly agree that this arbitration provision involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act, (9 U.S.C. §1, et seq.), now in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local law, ordinance, or judicial rule; and to the extent that any state or local law, ordinance, or judicial rule shall be inconsistent with any provisions of the rules of the arbitral association under which the arbitration proceeding shall be conducted, the latter rules shall govern the conduct of the proceeding. Notwithstanding the foregoing, the arbitrator shall not have the power to award punitive damages.

Notwithstanding the foregoing, if Contractor and any third party enter into arbitration with respect to any disputes for which indemnity obligations are owed under this Subcontract, Subcontractor shall participate in the arbitration proceedings governing such third party claims, in lieu of the rules of arbitration specified above. .

34. DBE/MBE/WBE/DVBD Requirement. Subcontractor hereby acknowledges that Subcontractor is thoroughly familiar with all DBE/MBE/ WBE/DVBD requirements pertaining to the Project. If Subcontractor claims status as a DBE/MBE/WBE/DVBE, Subcontractor shall take all steps necessary and shall make all necessary records available to Contractor to assure that Subcontractor is in compliance with such requirements. In the event that any sub-subcontractor or supplier of the Subcontractor is designated as or is required to be a DBE/MBE/WBE/DVBE, Subcontractor agrees to be responsible for insuring that said sub-subcontractor or supplier meets all applicable requirements. Subcontractor acknowledges that Contractor is relying upon Subcontractor's representations regarding the validity of Subcontractor's status, if any, as a DBE/MBE/WBE/DVBE and that misrepresentation of the status of Subcontractor or any of its sub-subcontractors or material suppliers is a material breach and grounds for immediate termination of this Subcontract. In the event of termination as a result of material

misrepresentation of the status of the Subcontractor as a DBE/MBE/WBE/DVBE, Subcontractor shall not be entitled to any compensation not already paid.

35. Applicable Law. Subcontractor shall comply with and agrees to be bound by all applicable federal, state and local laws and regulations, including, but not limited to, all provisions of the Fair Labor Standards Act, the Americans With Disabilities Act, the federal Family and Medical Leave Act, the California Labor Code, the California Fair Employment and Housing Act, and the California Family Rights Act. Attached hereto as part of Exhibit "B" are the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815. These provisions are incorporated by reference into this Subcontract when payment of prevailing wages is required by contract or law, and Subcontractor agrees to comply with these provisions and all interpretations thereof by the Director of the Department of Industrial Relations insofar as they are applicable to Subcontractor. Upon request, Subcontractor shall submit certified payroll records to Contractor within three (3) days of such notification but no longer than ten (10) days after such request has been submitted. Prior to receiving final payment for Work performed on the Project, when payment of prevailing wages is required by contract or law, Subcontractor shall sign an affidavit under penalty of perjury that Subcontractor has paid the specified general prevailing rate of per diem wages to Subcontractor's employees for the proper craft needed to fulfill the obligations of this Subcontract and all amounts due pursuant to Labor Code section 1813. Subcontractor further agrees that Subcontractor will bind and require all of its sub-subcontractors and their subcontractors performing any Work under this Subcontract to agree to all of the foregoing undertakings contained in this paragraph 35, to the same effect as herein provided.

36. Bonding Requirements. Concurrently with the execution of this Subcontract, or at any time during performance of the Work by Subcontractor and upon ten (10) days advance written notice to Subcontractor, Subcontractor shall, if required by Contractor, execute a labor and material bond and performance bond, each in an amount equal to one hundred percent (100%) of the Subcontract Price. Said bonds shall be executed by a corporate surety acceptable to Contractor and shall be in a form satisfactory to Contractor. Subcontractor shall pay the premium on said bonds unless otherwise provided herein or in the Contract Documents. If change order work results in an increase in the Subcontract Sum, Subcontractor shall provide bond riders evidencing that the penal sum of the bonds has been increased to equal the adjusted Subcontract Sum. The cost of such increase in bond coverage shall be at Subcontractor's expense and included in said change orders.

37. 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. Further, Subcontractor assumes liabilities connected therewith and responsibility for physical damage to such equipment, materials, labor, supplies, or facilities used by Subcontractor or Subcontractor's agents, employees, or permittees. In the event that Contractor's employees are used by Subcontractor, Subcontractor shall have full responsibility for all acts or omissions of Contractor's employees with regard to subcontractor's use or employment of them. Subcontractor accepts any and all of Contractor's equipment, materials, labor, supplies or facilities as furnished. The use by Subcontractor of Contractor's equipment or employees must be approved by Contractor.

38. Claims for Additional Compensation and Delay. A claim is a written demand or assertion by Subcontractor seeking an adjustment of the Subcontract's terms, payment of money, delay, extension of time or other relief with respect to the Subcontract. As a condition to bringing any Claim against Contractor, Subcontractor must first comply with all timely notice requirements set forth in the Contract Documents. Subcontractor shall timely submit any Claim to Contractor within three (3) working days after the occurrence of the event giving rise to the Claim (or two (2) days prior to the time within which Contractor must submit a pass-through request to the Owner pursuant to the terms of the Contract Documents, whichever is earlier). Claims affecting either the Subcontract Sum or Schedule must be in writing, and contain sufficient narrative detail and supporting documentation justifying all claimed costs and delays. All Claims shall be dated, signed and certified (if required by the Contract Documents) by an officer or duly authorized representative of Subcontractor. Any Claim not timely submitted shall be deemed waived and forever released by Subcontractor. Contractor shall have the right, but not the obligation, to audit any documentation submitted by Subcontractor in connection with a Claim.

Notwithstanding any other provision of this Subcontract, to the maximum extent allowed by applicable law, Contractor will be liable to Subcontractor on any Claim only if and to the extent Owner is liable to Contractor for the adjustment sought in such Claim. It is expressly understood that the only obligation Contractor has to Subcontractor under this provision is to pass on to Owner any Claim, and to pay to Subcontractor any amounts which Owner pays to Contractor as a result of such Claim. Subcontractor will reimburse Contractor for all costs and expenses, including attorneys' and consultants' fees and costs, incurred in connection with presenting any such Claim to Owner.

Unless otherwise agreed in writing, Subcontractor shall continue to prosecute Subcontractor's Work and maintain the Project Schedule pending resolution of any Claim.. Any failure of Subcontractor to continue diligent and timely prosecution of Subcontractor's Work shall be deemed a material breach of the Subcontract, entitling Contractor to all remedies provided hereunder, as well as other remedies which may exist as a matter of law.

39. Disputes and Dispute Resolution.

(a) Dispute. A Dispute shall arise when Contractor denies or otherwise challenges a timely Claim brought by Subcontractor or the parties have another form of disagreements arising from the Contract Documents (collectively "dispute"). A Dispute shall also include any Claim by a Subcontractor that Contractor believes, in Contractor's discretion, in whole or in part, disputes or claims between the Contractor and a third-party, including without limitation the Owner.

(b) Work Continuation and Payment. Subcontractor shall not delay or postpone any Work pending resolution of any Dispute except as the Contractor and Subcontractor may otherwise agree in writing. Pending final resolution of a Dispute, including exhaustion of all applicable dispute resolution procedures, Subcontractor shall proceed diligently with the performance of the Subcontract Work, including any disputed work, and based on such performance, Contractor shall continue to make payments for undisputed Work in accordance with the Contract Documents.

(c) Disputes Under the Prime Contract. If any Dispute between Subcontractor and Contractor arising out of or relating to this Subcontract ("Subcontract Dispute") pertain in any way to a claim, dispute, or matter in question between Contractor and Owner arising out of or relating to the Prime Contract ("Related Prime Contract Dispute"), then this Subcontract Dispute will be decided using the same procedures, forum, and process utilized for the Related Prime Contract Dispute, and the laws governing the resolution of Prime Contract Disputes, regardless of whether Subcontractor formally joins the process as a litigant or named party. Any and all claims of the Subcontractor related to a Related Prime Contract Dispute shall be handled in this manner. Subcontractor agrees to: (i) cooperate with Contractor, (ii) assist in the discovery and other preparations for the hearing, (iii) make Subcontractor's employees available for testimony before and after the hearing, (iv) share proportionately the legal fees and costs associated with the preparation for and execution of the hearing to the extent mutually agreed upon related to the amount of damage being pursued by the Contractor on Subcontractor's behalf, and (v) stay any action filed by the Subcontractor against Contractor as long as the Subcontractor's position is being diligently pursued by the Contractor in the hearing where the Related Prime Contract Dispute is being heard, and until all such appeals pertaining to the Related Prime Contract Dispute are exhausted. Subcontractor will be bound by the result so the dispute resolution procedure controlling the Related Prime Contract Dispute as it relates to Subcontractor, and such results shall be final. Nothing in this Subcontract shall allow Subcontractor to be a named party in a dispute forum being utilized by Contractor and Owner where that Subcontractor has no legal standing to litigate Subcontractor's disputes before that forum.

(d) Subcontractor Cooperation. In the event it is not possible to join a Related Prime Contract Dispute to the dispute resolution procedures between Owner and Contractor as provided in paragraph 39(c) above, Subcontractor agrees to enter into a liquidating agreement with Contractor and to cooperate fully with Contractor and to furnish all documents, statements, witnesses and other information required by Contractor for prosecution or

defense of Subcontractor's Claim by Contractor. Subcontractor shall pay or reimburse Contractor for all expenses and costs, including reasonable attorneys' and consultants' fees and costs, incurred in connection therewith to the extent of Subcontractor's interest in such Claim or dispute. Subject to compliance with all applicable laws, codes and regulations, including but not limited to those relating to false claims, dispute and claim certifications, and cost and pricing data requirements, Contractor's sole obligation with respect to Subcontractor's Claims is to act as a conduit in presenting any timely-filed Claims by Subcontractor to Owner under the dispute resolution procedures of the Prime Contract and, subject to the other provisions of this Agreement, to pay to Subcontractor the proportionate part of any sums actually paid by the Owner to which Subcontractor is entitled. Subcontractor further agrees to stay any action filed by the Subcontractor against Contractor as long as the Subcontractor's position is being diligently pursued by the Contractor pursuant to the liquidating agreement contemplated above in this paragraph 39(d), and until Contractor has fully exhausted all remedies pursuant to that liquidating agreement, including obtaining a judgment, arbitration award or appellate decision.

40. Warranty Period. Subcontractor expressly agrees that all warranties made by Subcontractor in this Subcontract shall survive this Subcontract in the event it is terminated or expires for any reason prior to the running of the full warranty period.

41. Entire Agreement. This Subcontract, together with any Contract Documents, constitutes the entire agreement between Subcontractor and Contractor and there are no agreements, oral or written, by and between the parties hereto, except as to Subcontractor's warranties under any prior or contemporaneous agreements with Contractor, which warranties are incorporated by reference herein for all purposes. This Subcontract may only be modified in a writing executed by both parties. This Subcontract, together with any Contract Documents referenced herein, does not create a partnership or other unincorporated association between the Subcontractor and Contractor. The relationship of Subcontractor to Contractor is that of an independent contractor, and not as the agent, employee or servant of Contractor. Subcontractor shall submit to Contractor a completed Federal Form W-9, verifying Subcontractor's legal status as an independent contractor.

42. Notices. All notices, requests, demands, and other communications required to or permitted to be given under this Subcontract shall be in writing and shall be conclusively deemed to have been duly given (1) when hand delivered to the other party; or (2) when received when sent by facsimile at the address and number set forth in this Subcontract (provided, however, that notices given by facsimile shall not be effective unless either (a) a duplicate copy of such facsimile notice is promptly given by depositing same in a United States post office with first-class postage prepaid and addressed to the parties as set forth in this Subcontract, or (b) the receiving party delivers a written confirmation of receipt for such notice either by facsimile or any other method permitted under this paragraph; additionally, any notice given by telex or facsimile shall be deemed received on the next business day if such notice is received after 5:00 p.m. (recipient's time) or on a nonbusiness day; or two (2) business days after the same have been deposited in a United States post office with first class, or certified mail return receipt requested postage prepaid and addressed to the parties as set as set forth in this Subcontract; or (4) the next business day after same have been deposited with a national overnight delivery service reasonably approved by the parties (Federal Express and DHL, UPS, WorldWide Express being deemed approved by the parties), postage prepaid, addressed to the parties as is set forth in this Subcontract with next-business-day delivery guaranteed, provided that the sending party receives a confirmation of delivery from the delivery service provider. Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this paragraph, and that any person to be given notice actually receives such notice. A party may change or supplement the addresses given in this Subcontract, or designate additional addresses, for purposes of this paragraph by giving the other party written notice of the new address in the manner set forth above.

43. Severability. If any term or provision of this Subcontract is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Subcontract, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Subcontract. If any provision or part thereof of this Subcontract is stricken in accordance with the

provisions of this paragraph, then this stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible. However, if either party in good faith determines that the finding of illegality or unenforceability adversely affects the material consideration for its performance under this Subcontract, then such party may, at its option, by giving written notice to the other, terminate the Subcontract. In such event the parties shall take such reasonable action to restore each party to the position it was in prior to the making of this Subcontract.

44. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to any requirements as to conflicts of laws.

45. Venue for Litigation. The parties hereto agree that all actions or proceedings arising in connection with this Subcontract shall be tried and litigated exclusively in the State and Federal courts located in the County of Tulare, State of California. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of this Subcontract in any jurisdiction other than that specified in this paragraph. Each party hereby waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulates that the State and Federal courts located in the County of Tulare, State of California, shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Subcontract. Each party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this paragraph by registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this Subcontract. Any final judgment rendered against a party in any action or proceeding shall be conclusive as to the subject of such final judgment and may be enforced in other jurisdictions in any manner provided by law.

46. Binding on Successors. The provisions of this Agreement shall apply to and bind the successors, administrators, and assigns, of the parties to this Agreement.

47. Construction of Agreement. The terms of this Agreement have been negotiated by the parties hereto and the language used in this Subcontract shall be deemed to be the language chosen by the parties hereto to express their mutual intent. This Subcontract shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under the Subcontract. No rule of strict construction will be applied against any person.

48. Warranty of Authority. The individuals executing this Subcontract on behalf of the parties hereto warrant and represent that they have the authority to execute and deliver this Subcontract on behalf of such party, and to bind such party to the timely performance of each and every term and provision of this Subcontract.

49. Assignment. Subcontractor shall not voluntarily or by operation of law assign hypothecate, give, transfer, mortgage, sublet, license, or otherwise transfer or encumber all or any part of Subcontractor's rights, duties, or other interests in this Subcontract or the proceeds thereof (collectively, Assignment), without Contractor's prior written consent.

50. Attorneys' Fees. If either party to this Agreement shall bring any action, suit, counterclaim, appeal, arbitration, or mediation for any relief against the other, declaratory or otherwise, to enforce the terms hereof or to declare rights hereunder (collectively, an Action), the losing party shall pay to the prevailing party a reasonable sum for attorneys' fees and costs (at the prevailing party's attorneys' then-prevailing rates as increased from time to time by the giving of advance written notice by such counsel to such party) incurred in bringing and prosecuting such Action and/or enforcing any judgment, order, ruling, or award (collectively, a Decision) granted therein, all of which shall be deemed to have accrued on the commencement of such Action and shall be paid whether or not such Action is prosecuted to a Decision. Any decision entered in such Action shall contain a specific provision providing for the

recovery of attorneys' fees and costs incurred in enforcing such Decision. The court or arbitrator may fix the amount of reasonable attorneys' fees and costs on the request of either party. For the purposes of this paragraph, attorneys' fees shall include, without limitation, fees incurred in the following: (1) postjudgment motions and collection actions; (2) contempt proceedings; (3) garnishment, levy, and debtor and third party examinations; (4) discovery; and (5) bankruptcy litigation. "Prevailing party" within the meaning of this paragraph includes, without limitation, a party who agrees to dismiss an Action on the other party's payment of the sums allegedly due or performance of the covenants allegedly breached, or who obtains substantially the relief sought by it.

51. Counterparts and Electronic Signatures. This Subcontract may be executed in any number of counterparts and all such counterparts, upon signature by all parties, shall be deemed to constitute a single agreement and the execution of one counterpart by any party shall have the same force and effect as if said party signed all of the other counterparts. In addition, any party may evidence execution of this Subcontract by facsimile transmission or electronic signature (as on a pdf attached to an email) to the other party or the other party's attorney and receipt of said facsimile or electronic signature shall be deemed receipt of an original. Notwithstanding any provision of law to the contrary, including § 255 and § 260 of the California Evidence Code, a signature evidenced by facsimile transmission shall be considered an original executed counterpart agreement. Upon demand, the original signed document which was evidenced by said facsimile transmission or electronic signature shall be delivered to the receiving party.

52. Attachments. The terms set forth on the Attachments hereto shall be incorporated into this Subcontract and shall be deemed a part of this Subcontract.

IN WITNESS WHEREOF, the parties have executed this Subcontract as of the day and year first above written.

Contractor:

B. J. Perch Construction, Inc.,  
a California corporation

Subcontractor:

\_\_\_\_\_  
\_\_\_\_\_

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

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

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_