



### SUBCONTRACT AGREEMENT

Subcontractor  
Contact Person  
Address  
Project  
Project Location  
Owner

Phone No.  
Fax No.

Subcontract No.

Date of this Agreement:

Subcontractor and Contractor, for the consideration hereinafter named, agree that this Subcontract Agreement ("Agreement") shall be effective on the date specified above, or the date the Prime Contract between Overaa and Owner is executed, whichever occurs first; except, however, if this Agreement is executed before Contractor and Owner enter into the Prime Contract, and Contractor and Owner fail to enter into the Prime Contract, Subcontractor shall perform no work in connection with the Project and this Agreement shall have no force or effect. Subcontractor assumes all obligations set forth herein on behalf of itself, its heirs, successors, assigns, and any of its agents and independent contractors.

**Section 1 - Entire Contract.** Subcontractor represents and certifies that it has had an adequate opportunity to inspect the Project site, that it assumes the risk of everything that a diligent inspection would disclose, and that it enters into this Agreement based upon its own investigation and evaluation and is in no way relying upon any investigation, statement or representation by Contractor or any of Contractor's officers, agents, employees or representatives. Subcontractor represents and certifies that it has carefully and thoroughly reviewed all of the Contract Documents and that it is fully familiar with and understands the Contract Documents. This Agreement includes the Subcontract General Conditions, and all of the other Contract Documents. This Agreement represents the entire and only agreement between Contractor and Subcontractor in connection with the Project, and supersedes any earlier oral or written agreements.

**Section 2 - Scope of the Work and Description.** Subcontractor shall well and sufficiently perform and furnish, in accordance with the highest standards, all work necessary to complete the following part or parts of the work of the Prime Contract in all respects as therein required of Contractor, and all work incidental thereto, all in accordance with the terms and conditions of the Contract Documents: including all labor, services, materials, submittals, supervision, coordination, administration, fees, taxes, design, layout, cleanup, installation, cartage, hoisting, supplies, insurance, equipment, scaffolding, utilities, tools, facilities and things of every kind and description required for or in connection with the work. Subcontractor's work is generally, though not exclusively, further described and/or specified as follows:

Except as explicitly excluded in this Agreement, Subcontractor shall perform all work coming within the general description of the designated sections, divisions, parts and portions of the Contract Documents, and Subcontractor's scope of work shall also include all work normally performed by Subcontractor's trade that is called for in the Contract Documents and all work that is incidental to complete the work of this Agreement.

**Section 3 - Contract Documents.** The "Contract Documents" include this Subcontract Agreement, the Subcontract General Conditions, the exhibits and addenda hereto, the Prime Contract and the following:

Whenever reference is made in this Agreement to the "Prime Contract," that reference shall be construed to include the prime contract between Contractor and Owner, its special, general, supplementary and other conditions and provisions, plans, specifications, addenda and modifications, the documents which are included or incorporated into the Prime Contract, and all other documents forming a part of the Prime Contract. All of the Contract Documents, including the Prime Contract, are fully incorporated into this Agreement with the same force and effect as though fully set forth. To the extent that the Prime Contract applies either directly or indirectly to the work to be performed by Subcontractor under this Agreement, Subcontractor agrees to be bound to Contractor in the same manner and to the same extent as Contractor is bound to Owner under the Prime Contract and, in that regard, where reference is made to Contractor in the Prime Contract, such reference shall be interpreted to apply to Subcontractor instead of Contractor. In the event of a conflict between the Subcontract General Conditions and the Prime Contract, the Subcontract General Conditions shall govern; except, however, in no event shall Subcontractor have any less of an obligation to Contractor with respect to its work than Contractor has to Owner.

**Section 4 - Compensation.** Contractor agrees to pay Subcontractor the sum of:

for the satisfactory performance and completion of the work and all duties, obligations, and responsibilities of Subcontractor under this Agreement.

**Section 5 - Special Provisions.**

\_\_\_\_\_  
SUBCONTRACTOR

\_\_\_\_\_  
C. OVERAA & CO.  
CONTRACTOR

By: \_\_\_\_\_  
[signature]

Contractor's License No. \_\_\_\_\_  
Subcontractor's Federal Taxpayer I.D. No. \_\_\_\_\_

By: \_\_\_\_\_  
[signature]

Contractor's License No. 106793

**PLEASE SIGN AND RETURN A COPY OF THIS CONTRACT.**

## SUBCONTRACT GENERAL CONDITIONS

**1. PAYMENTS.** Invoices for work completed during the preceding month shall be delivered to Contractor by the twentieth (20th) day of each month for submission to Owner. Progress payments will be made to Subcontractor with funds received from Owner on account of work performed by Subcontractor, as such funds are received from Owner. Progress payments will not exceed 90% of the value of Subcontractor's work in place as of the date of each invoice. Final payment to Subcontractor will be payable after the entire work required by the Prime Contract has been completed and accepted by Owner and Owner has made final payment to Contractor. Submittal and acceptance of required closeout documentation including, but not limited to, as-built drawings, releases of claims, warranties, and operating and maintenance manuals, is an integral part of the work to be performed by Subcontractor and is a condition precedent to final payment. If Owner, or other responsible party, delays in making final payment to Contractor or any other payment to Contractor from which payment to Subcontractor is to be made, then the time for payment to Subcontractor will be deferred for a reasonable amount of time. Contractor has the right to make any payment to Subcontractor by joint check to Subcontractor and any of Subcontractor's suppliers, materialmen, vendors or subcontractors or any person or entity who may have a right of action against Contractor or its surety under any law, or by direct check to any such supplier, materialman, vendor, subcontractor, person or entity. No such payment shall create any contractual relationship between Contractor and any person or entity.

Subcontractor agrees to furnish, if and when required by Contractor, a list of lower tier subcontractors, materialmen, manufacturers, vendors and suppliers, insurance certificates and insurance policies, complete documentation and copies of purchase orders for all major suppliers, materialmen, manufacturers and vendors, as-built drawings, all required warranties and manufacturer literature, certified payrolls, evidence that Subcontractor is current with union trust fund payments, receipts, vouchers, and releases of claims for itself and all lower tier subcontractors, suppliers, materialmen and vendors, all in a form satisfactory to Contractor, and it is agreed that no payment shall be made, except at Contractor's option, until and unless such documents have been furnished. By submitting any payment application, Subcontractor thereby certifies and represents that all required insurance has been obtained and remains in effect and that no notice of cancellation has been received by Subcontractor for any such insurance. Subcontractor, prior to and as a condition precedent to receiving final payment, shall sign an affidavit under penalty of perjury that Subcontractor has paid the specified general prevailing rates of per diem wages to its employees on the Project and any amounts due pursuant to California Labor Code Section 1813 when payment of such prevailing wages is required by contract.

Contractor utilizes the Textura Construction Invoicing and Payment system to streamline and expedite the subcontractor invoicing and payment process. Unless otherwise directed or authorized, in writing, by Contractor, all applications for payment and lien waivers for Subcontractor, shall be submitted to Contractor using the Textura payment management system prescribed by Contractor. Service fees charged by Textura for processing of electronic payments to Subcontractor shall be the responsibility of Subcontractor.

No payments shall constitute or imply, or be considered as evidence of, Contractor's acceptance or approval of Subcontractor's performance of this Agreement, either wholly or in part, and no payment shall be considered to be an acceptance or approval of defective or improper work. All payments to Subcontractor are subject to all other relevant provisions of this Agreement.

Subcontractor agrees that its acceptance of final payment hereunder shall release Contractor, Contractor's surety, and Owner from any and all actions, causes of action, claims, liability and damages arising out of or relating to this Agreement or the Project, and shall constitute a waiver of any and all of Subcontractor's rights under or in connection with this Agreement, notwithstanding Section 1542 of the Civil Code of California, which states: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

**2. SCHEDULE.** Time is of the essence of this Agreement. Subcontractor shall commence work within forty-eight (48) hours after notification and shall perform its work in a prompt and diligent manner in accordance with Contractor's schedule as such schedule is from time to time revised, without delaying the work of Contractor or other contractors and subcontractors. Contractor's schedule is not a representation by Contractor that Subcontractor will be able to perform its activities on certain dates. Subcontractor acknowledges Contractor's right to control the timing of the various portions of the work, including Contractor's right to suspend or delay construction. Subcontractor shall coordinate its work with that of Contractor and all other contractors and subcontractors in a manner that will facilitate the efficient completion of the entire project. Subcontractor must attend all coordination and other meetings as may be required by Contractor. All shop drawings, product data, samples and similar submittals required by the Contract Documents shall be delivered to Contractor not later than 30 calendar days after the effective date of this Agreement or sooner if required to meet Contractor's schedule. If Subcontractor fails to maintain its part of Contractor's schedule, it shall, without additional compensation, accelerate the work as Contractor directs.

**3. DELAYS.** If Subcontractor is delayed for any cause which is absolutely beyond the control of Subcontractor (and which is also absolutely beyond the control of Subcontractor's suppliers, materialmen, manufacturers, subcontractors and vendors, of any tier), it shall be granted an extension of time therefor, provided: a) Subcontractor gives written notice of delay to Contractor within forty-eight (48) hours from the start of the delay (or if the Prime Contract provides that notices of delay or requests for time extension are to be submitted at an earlier time, Subcontractor shall give Contractor all such notices and requests in a sufficient amount of time in advance of that required by Prime Contractor so as to enable Contractor, if it so chooses, to timely provide them to Owner pursuant to the provisions of the Prime Contract) in which Subcontractor advises Contractor of the delay and the reasons for the delay and requests that Subcontractor be granted a time extension because of the delay; b) the exclusive causes of the delay are ones for which a time extension is allowed under the terms of the Prime Contract; and c) Contractor has been successful in obtaining an equivalent time extension from Owner for the same delay. If Subcontractor fails to give the required written notice of delay to Contractor within forty-eight (48) hours from the start of the delay, Subcontractor waives any claim or right to a time extension for that delay, and further waives any other claim or right that Subcontractor might otherwise have in connection with that delay. Subcontractor shall be liable and responsible to Contractor for any and all losses, costs, expenses, liabilities and damages, including, without limitation, liquidated damages assessed by Owner, incurred by Contractor as a result of any delay in the performance of Subcontractor's work, except for delays for which Subcontractor is granted time extensions as provided above. No additional compensation or damages for any delay to Subcontractor's work, whether caused in whole or in part by Contractor, other subcontractors, or Owner, including, but not limited to, any delays constituting or resulting from any breach of this Agreement, shall be recoverable from Contractor, and the above-mentioned extension of time shall be the sole remedy of Subcontractor for any delay; except, however, if Contractor obtains additional compensation from Owner because of such a delay, Subcontractor shall be entitled to an equitable portion of the additional compensation received by Contractor. It shall be Contractor's sole discretion whether to pursue a claim against Owner for delay; Subcontractor agrees that Contractor's failure to submit, pursue or prosecute a claim for delay shall not entitle Subcontractor to any compensation or damages from Contractor. In the event that Contractor files, pursues or prosecutes a claim, lawsuit or arbitration proceeding against Owner which includes a claim for additional compensation requested by Subcontractor for any delay, Subcontractor shall cooperate fully with Contractor in the filing, pursuit and prosecution thereof and shall pay, to Contractor, Subcontractor's pro-rata share of the costs, fees and expenses incurred by Contractor in connection therewith, including actual attorneys' fees, costs and expenses.

**4. CHANGES; NOTICES.** Contractor has the right, by written directive, to direct Subcontractor to make changes to the work required by this Agreement including, but not limited to, alterations, revisions, modifications, additions, deletions, and/or omissions in or to the work (including, but not limited to, the right to increase or decrease the quantity of any item or portion of the work or to delete or add any work). Subcontractor agrees to adhere to any such changes in or to the work, without nullifying this Agreement, on receipt of a properly executed written directive from Contractor. A DIRECTIVE SHALL BE DEEMED PROPERLY EXECUTED IF, AND ONLY IF, IT IS IN WRITING AND IT HAS BEEN EXECUTED BY CONTRACTOR'S PROJECT MANAGER, PROJECT ENGINEER OR PROJECT SUPERINTENDENT. Contractor shall not pay any extra charges made by Subcontractor that have not been agreed upon in writing by Contractor. If Subcontractor makes any changes in the work without a properly executed written directive from Contractor, Subcontractor thereby waives any right to be paid for that changed work, even if it acted upon oral direction from Contractor, or any form of direction, written or otherwise, from Owner or any other person or entity. In addition, Subcontractor shall be liable for all damages or liability of any nature whatsoever associated with or in any way arising out of any such change it makes without a properly executed written directive from Contractor. If necessary, the contract price and the time of Subcontractor's performance will be adjusted by appropriate additions or deductions mutually agreed upon before Subcontractor performs the changed work. If a dispute arises between Contractor and Subcontractor about whether particular work is a change in the work, or what adjustment should be made to the contract price or time, Subcontractor shall nevertheless timely perform the disputed work upon receipt of a properly executed written directive from Contractor.

Subcontractor shall strictly and timely comply with the notice, protest and claims provisions of the Prime Contract, including, without limitation, any provisions of the Prime Contract concerning notices of potential claim, notices of claim, notices of disputed work, notices of dispute, notices of differing site condition, notices of delay, requests for change orders, requests for additional compensation, requests for time extensions, the submission of claims, the documentation of claims, the statement of claims, the updating of claims and potential claims, and the certification of claims and potential claims; except that, instead of submitting notices, protests, claims and other related documents to Owner, Subcontractor shall deliver them to Contractor in a sufficient amount of time in advance of that required by the Prime Contract so as to enable Contractor, if it so chooses, to timely provide them to Owner pursuant to the provisions of the Prime Contract. Subcontractor shall strictly and timely comply with the notice, protest and claims provisions of the Prime Contract regardless of whether or not the notice, protest or claim involves or relates to any act or omission of Owner and regardless of whether or not the notice, protest or claim involves or relates to anything for which Owner may be liable or responsible to Contractor. Subcontractor waives any claim or right to any damages, increase in compensation or other amount if it fails to strictly and timely comply with all of the applicable notice, protest and claim provisions of the Contract Documents.

In order for Subcontractor to be entitled to receive any increase in its compensation under this Agreement, or any damages or additional monies in connection with its work, for any reason whatsoever, Subcontractor must both: (a) deliver written notice to Contractor, before the affected work is performed, stating that Subcontractor is requesting additional compensation from Contractor and the reasons for that request, and (b) strictly and timely comply with all of the applicable notice, protest and claims provisions set forth in the Contract Documents including, without limitation, those set forth above in the immediately preceding paragraph, those set forth below in the immediately succeeding paragraph, and those set forth above in Section 3 of the Subcontract General Conditions. Otherwise, Subcontractor waives any claim or right to any such compensation, damages or monies.

Subcontractor will identify and document daily, in the manner required by the Contract Documents, any extra, changed or disputed work, as well as any work requested to be performed on a time and materials basis (hereinafter, such a document shall be referred to as a "Cost Record Document"). On a daily basis, Subcontractor will be responsible for obtaining the approving signature of Owner or Owner's representative on each Cost Record Document for any work so performed. After it obtains an approving signature from Owner or Owner's representative, Subcontractor will submit each Cost Record Document to Contractor's project manager or project engineer on a daily basis. The signature on any Cost Record Document or any similar document of Contractor's Project Manager or Project Engineer may constitute acknowledgement that the work was done, but does not constitute any agreement or admission that Subcontractor is entitled to an adjustment in the contract price. The signature of any other employee or agent of Contractor, including Contractor's Superintendent, shall be of no force nor effect, whatsoever. Under no circumstances will Contractor's signature on any such document alter or supersede any of the terms or conditions of this Agreement, or constitute an admission or agreement that Subcontractor is entitled to any adjustment in the contract price or time. Any conflicting terms or conditions on any Cost Record Document or other form or document shall be of no force or effect. Subcontractor's failure to timely submit Daily Cost Records for work constitutes an agreement by Subcontractor that there will be no increase to the contract price or contract time for or in connection with that work, and Subcontractor waives any right to any such increase by failing to timely submit the required Daily Cost Records.

There will be no increase to Subcontractor's contract price or time unless Subcontractor strictly and timely complies with all of the relevant notice, protest and claims procedures in the Contract Documents.

Contractor reserves the right to perform changes in the work with its own forces and to award contracts to others to perform changes in the work. It is further specifically agreed by Subcontractor, that no claim, dispute or controversy (including, but not limited to, those relating to the scope of Subcontractor's work, changes or alleged changes to Subcontractor's work, or the amount of compensation due Subcontractor) shall give Subcontractor any right to stop or suspend the performance of its work or interfere with the progress and performance of work required to be performed under this Agreement, and that Subcontractor shall proceed with its work as directed by Contractor notwithstanding any claim, dispute or controversy, and that any failure or refusal to do so will constitute a material breach of this Agreement.

**5. LAWS, PERMITS & TAXES.** Subcontractor is and shall at all times be an independent contractor in connection with Subcontractor's work pursuant to this Agreement. Subcontractor shall observe and comply with, and shall require that each of its subcontractors observe and comply with, all laws, rules, ordinances, codes and regulations of all governing bodies having jurisdiction over the work, including any affirmative action or local hire requirements, and shall satisfy all requirements of any inspectors. Subcontractor shall apply for, obtain and pay for all permits necessary or required for its work, and pay all manufacturer's taxes, sales taxes, use taxes, processing taxes, value added taxes, and each and every federal, state or local tax, insurance and/or contribution relating to Subcontractor's employees, whether levied now or in the future.

**5.1 Prevailing Wages.** The provisions of California Labor Code sections 1771, 1775, 1776, 1777.5, 1813, 1815 and the provisions of California Code of Regulations sections 16450 through 16464 are incorporated into this Agreement when payment of prevailing wages is required, and Subcontractor agrees to comply with, and that each of its subcontractors will comply with, these provisions and all interpretations thereof by the Director of the Department of Industrial Relations insofar as they are applicable to this project. When such documents are required; (1) Subcontractor agrees to submit, and to have each of its subcontractors submit, via LCPTracker, certified payroll reports to Contractor on a weekly basis no later than three (3) working days after labor has been paid; and (2) Subcontractor agrees to submit project foreman and/or superintendent field reports to Contractor no later than three (3) working days after Contractor's request. Subcontractor will be responsible for any and all penalties, fines, assessments (including, but not limited to Civil Wage and Penalty Assessments), damages, claims, administrative proceedings, and actions resulting from or relating to any alleged error or omission in the certified payroll reporting of Subcontractor or any of its subcontractors, any inadequate or delinquent payroll records from Subcontractor or any of its subcontractors, any alleged violation by Subcontractor or any of its subcontractors of any of the provisions of California Labor Code sections 1771, 1775, 1776, 1777.5, 1813 or 1815 or California Code of Regulations sections 16450 through 16464, or any alleged violation by Subcontractor or any of its subcontractors of any other applicable federal, state or local law or regulation.

**5.2 AB 1701.** The provisions of Labor Code §218.7 are incorporated into this Agreement when the Project is private work. Subcontractor shall provide with each payment application, via LCPTracker, payroll records for each of Subcontractor's workers showing: (a) gross wages earned; (b) total hours

worked; (c) the number of piece-rate units earned and applicable piece rate, if applicable; (d) all deductions; (e) net wages earned; (f) inclusive dates of the prior period for which the employee is paid; (g) the name of the employee and the last four digits of the worker's social security number or employee identification number; and (h) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Subcontractor shall require submission of the same information from sub-subcontractors of any tier. Contractor shall have the right upon reasonable notice to audit Subcontractor's payroll records. Subcontractor will be responsible for any and all penalties, fines, assessments (including, but not limited to Civil Wage and Penalty Assessments), damages, claims, administrative proceedings, and actions resulting from or relating to any alleged error or omission in the payroll reporting of Subcontractor or any of its subcontractors, any inadequate or delinquent payroll records from Subcontractor or any of its subcontractors, or any failure to pay any of its employees. Subcontractor shall insert into each of its sub-subcontracts this provision. Failure of Subcontractor or of any subcontractor of lower tier to comply with this provision will result in payment being withheld until there is full compliance.

**5.3 AB 3018.** The provisions of Public Contract Code §2600-§2603 are incorporated into this Agreement when applicable, and their text is attached as an Exhibit hereto. Subcontractor shall comply with all applicable requirements that it use or provide a Skilled and Trained Workforce. Subcontractor shall provide monthly reports showing compliance with the Skilled and Trained Workforce requirements. Contractor shall have the right upon request to audit Subcontractor's records for compliance with the Skilled and Trained Workforce requirements. If Contractor determines that Subcontractor is not in compliance with the Skilled and Trained Workforce requirements or if Subcontractor has not provided the required monthly reports, Contractor may, in addition to any other remedies available at law or under this contract, withhold 150 percent of any amounts then due to Subcontractor for periods when Subcontractor was out of compliance or for which timely monthly reports have not been received until the failure is corrected. Along with its application for Final Payment, Subcontractor shall provide Contractor with a declaration under penalty of perjury that the Subcontractor is compliant with the Skilled and Trained Workforce requirements, which declaration shall be a condition of distribution to Subcontractor of its Final Payment.

**6. INSURANCE.** Subcontractor, at its own expense, shall obtain and maintain insurance from companies approved by Contractor, as set forth in Addendum A to this Agreement, which is incorporated herein as though fully set forth. Contractor's review or acceptance of any insurance certificate or insurance policy shall in no way waive or release Subcontractor from any of its duties or responsibilities as provided in this Agreement; Subcontractor is still required to obtain and maintain the insurance required by this Agreement. Any failure by Subcontractor to obtain or maintain any of the required insurance shall constitute a material breach of this Agreement.

Subcontractor warrants that, if it is domiciled in a jurisdiction that requires the subcontractor to have a business license or business tax registration, the subcontractor has the required business license or business tax registration. Subcontractor will supply Overaa with a copy of such business license or business tax registration contemporaneously with its insurance information.

**7. CLEANING UP.** Subcontractor, on a daily basis, shall (1) keep the work site free from waste materials, packaging materials, and other rubbish generated from its work, and (2) shall clean and remove any mortar, plaster, paint, concrete, dirt or other excesses left by the execution of its work and make good all defects resulting therefrom. At the completion of its work in each area, Subcontractor shall perform such cleaning as may be required to leave the area "broom clean". At the entire completion of its work, Subcontractor shall remove all of its tools, equipment, scaffolds, shanties and surplus materials. Should Subcontractor fail to perform any of the foregoing to Contractor's satisfaction, Contractor shall have the right to perform and complete such work itself or through others and charge the cost thereof to Subcontractor. Contractor shall apportion Subcontractor's share of any clean-up costs and any such apportionment shall be final and binding unless manifestly unreasonable.

**8. RESPONSIBILITY FOR WORK.** If any of Subcontractor's work is dependent on or related to work of others, Subcontractor shall inspect such other work to determine if it is satisfactory for the performance of the work of this Agreement. If in Subcontractor's opinion such other work is unsatisfactory, Subcontractor shall immediately notify Contractor of the deficiencies discovered, in writing. Subcontractor warrants, by undertaking to perform its work, that such other work is satisfactory, and waives all claims against Contractor for additional compensation or damages from any deficiencies therein. Notwithstanding the dimensions given in the Contract Documents, Subcontractor is obligated to take such measurements as will ensure the proper matching and fitting of the work covered by this Agreement with contiguous work. Subcontractor shall lay out and shall be strictly responsible for the accuracy of its work. Actual final conditions and details shall result in proper alignment of finished surfaces. Review or approval of shop drawings or submittals by Contractor, Owner and/or Owner's representative shall not relieve Subcontractor of its obligation to perform its work in strict accordance with the Contract Documents, nor of its responsibility to properly match and fit its work with contiguous work. Subcontractor shall be responsible for any loss or damage to other contractors engaged in work on the site caused by Subcontractor's failure to set out or perform its work correctly. Subcontractor shall implement measures to prevent the generation of storm water pollution from its work, be responsible for the impacts of its work on storm water pollution prevention measures installed for the Project, be responsible to utilize installed measures, be responsible for the repair and/or replacement of such work damaged or removed by its operations and bear the cost of any fines or penalties assessed as a result of said damage, removal or misuse. Subcontractor shall protect and bear all risk of loss or damage to its work, materials and equipment until Owner's final acceptance of all work required by the Prime Contract and waives all rights against Contractor for loss or damage to Subcontractor's work, materials and equipment. Subcontractor shall promptly replace or repair any damaged work, materials or equipment. Subcontractor further agrees to protect the work, materials and equipment of others and all workers on the Project site from its operations. Contractor shall have discretion to apportion Subcontractor's share of any damage to the work of others and any such apportionment shall be final and binding unless manifestly unreasonable. If Contractor, in its discretion, decides to hire the services of a security service to protect the work, materials or equipment of Subcontractor and others, Contractor may apportion the cost thereof amongst all who are benefited thereby.

## **9. INDEMNITY AND DEFENSE.**

**9.1 Subcontractor's Indemnification and Defense of Contractor.** With the exception that this Subsection 9.1 shall in no event be construed to require indemnification or defense by Subcontractor to a greater extent than permitted under the statutes or public policy of the State of California, Subcontractor shall defend, indemnify and save harmless Contractor and each of its employees, directors, officers, sureties, partners, joint venturers, agents and representatives ("Indemnified Parties"), from and against any and all claims, demands, actions, legal proceedings, causes of actions, damages, injuries, expenses, losses, costs, attorney fees and liabilities, of whatsoever kind or nature, in any manner arising out of or relating to the work, operations, services or obligations performed or required to be performed by Subcontractor under or in connection with this Agreement ("Claims") regardless of any passively negligent act or omission of Contractor or any of its employees, directors, officers, sureties, partners, joint venturers, affiliates, agents, representatives or independent contractors, and regardless of whether or not Subcontractor is in any way negligent; except, however, Subcontractor will not be obligated to indemnify or defend Contractor to the extent Claims arise out of, pertain to or relate to the active negligence, sole negligence or willful misconduct of Contractor or any of the other Indemnified Parties or their agents, servants or independent contractors (other than Subcontractor) who are responsible to Contractor or any of the Indemnified Parties for defects in design furnished by such persons or entities, or to the extent Claims do not arise out of the scope of work of Subcontractor pursuant to this Agreement. This indemnity includes (except as set forth above in this paragraph), without limitation, Claims for or relating to (a) personal injury, bodily injury, emotional injury, sickness, disease or death of any person, (b) damage to property or loss of use thereof, (c) defective workmanship or design furnished by Subcontractor, its agents or independent contractors, (d) any violation or infraction of any law, order, citation, rule, regulation, statute, standard or ordinance including, without limitation, those relating to the occupational safety or health of persons, (e) claims, stop payment notices and liens for work, labor, materials and equipment used or furnished in connection with Subcontractor's work, (f) Subcontractor's use of Contractor's or others' equipment, hoists, elevators, or scaffolds, (g) failure of

Subcontractor or alleged failure of Subcontractor to comply with the provisions of Section 21 or Section 22 of these Subcontract General Conditions, (h) work or labor performed for or materials or equipment furnished to Subcontractor, (i) any failure or alleged failure of Subcontractor to perform any of its obligations under this Agreement, or (j) any violation or alleged violation of the California False Claims Act (California Government Code section 12650, et. seq.) or the Federal False Claims Act.

**9.2 Defense of Claims.** With respect to Claims against Contractor as to which Subcontractor owes to Contractor a defense obligation, Subcontractor shall defend, indemnify, and save harmless Owner, as well as any other persons and entities that Contractor is required to indemnify and/or defend under the Contract Documents, of and from any and all Claims (as defined in Subsection 9.1, above), to the extent that Contractor is required to defend, indemnify and/or save harmless Owner and such other persons and/or entities, but only with respect to Claims arising out of or in connection with the work, operations, services or obligations performed or required to be performed by Subcontractor under or in connection with this Agreement.

**9.3 Subcontractor's Indemnification and Defense of Owner and Others.** With the exception that this Subsection 9.3 shall in no event be construed to require indemnification or defense by Subcontractor to a greater extent than permitted under the statutes or public policy of the State of California, Subcontractor shall defend, indemnify, and save harmless Owner, as well as any other persons and entities that Contractor is required to indemnify and/or defend under the Contract Documents, of and from any and all Claims (as defined in Subsection 9.1, above), to the extent that Contractor is required to defend, indemnify and/or save harmless Owner and such other persons and/or entities, but only with respect to Claims arising out of or in connection with the work, operations, services or obligations performed or required to be performed by Subcontractor under or in connection with this Agreement.

**9.4 Risk of Loss.** All work, materials and equipment provided by Subcontractor pursuant to this Agreement shall be at the risk of Subcontractor exclusively.

**9.5 General Provisions Regarding Subcontractor's Indemnification and Defense Obligations.**

The indemnification provisions (including the defense provisions) of Subsections 9.1 and 9.3 are independent of each other, and the provisions of each of these Subsections are not limited by the other Subsection.

None of the provisions of this Section 9 impose on Subcontractor liability for the active negligence of Owner or its employees.

With respect to Claims by an employee of Subcontractor, Contractor or Owner, anyone directly or indirectly employed by Subcontractor, Contractor or Owner or anyone for whose acts Subcontractor, Contractor or Owner may be liable, the indemnification obligations under this Section 9 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable under workers' compensation acts, disability benefit acts or other employee acts.

Any termination of Subcontractor's right to proceed with its work or services shall not terminate or limit any of Subcontractor's indemnity or defense obligations, and the indemnification and defense requirements of this Section 9 shall extend to Claims occurring or asserted after any such termination, as well as prior to any such termination.

Subcontractor's indemnity and defense obligations as set forth in this Section 9 are independent of, in addition to, and not limited or affected by, any other indemnity or defense obligations which Subcontractor may have pursuant to any other provision of this Agreement or any of the other Contract Documents.

Except as otherwise provided by the statutes or public policy of the State of California, none of Subcontractor's indemnity or defense obligations under this Section 9 or elsewhere in the Contract Documents shall be limited or affected by, and do not limit or affect, any of the insurance requirements or provisions set forth in this Agreement or any of the other Contract Documents.

**9.6 Construction of Section.** Notwithstanding any of the provisions of this Section 9, if it is finally determined by a court of competent jurisdiction that any of such provisions are void or unenforceable under governing law, then such provisions shall be deemed stricken from this Agreement and the remaining provisions shall remain in full force and effect and shall be construed to provide for the maximum defense and indemnification obligations by Subcontractor permitted by law.

**9.7 AB 1701.** Subcontractor shall defend and indemnify and hold harmless Contractor against any claims for unpaid wages, fringe or other benefit payments or contributions, including interest, by or on behalf of any employee or alleged employee of Subcontractor or of any sub-subcontractor of any tier. Subcontractor shall insert this provision into each of its sub-subcontracts.

**10. WARRANTY.** Subcontractor hereby warrants to Owner and Contractor that (1) all materials and equipment furnished by it shall be new unless otherwise specified in the Contract Documents, (2) all work performed under this Agreement shall be performed in a good and workmanlike manner, (3) all work, materials and equipment provided pursuant to this Agreement shall be free from any faults or defects, and (4) all work, materials and equipment provided pursuant to this Agreement shall be in full and complete compliance with the Contract Documents. Subcontractor shall replace, at its cost and expense, all work, materials and equipment not fully conforming to these requirements, and shall be fully responsible for, and shall reimburse Contractor for, any and all costs, losses, attorney fees, expenses and damages resulting from any breach of this warranty or any other warranty provision in the Contract Documents applicable to Subcontractor's scope of work. The provisions of this section are in addition to, and not in limitation of, any other warranty or other provision in the Contract Documents.

**11. BONDS.** Contractor, as a condition of entering into this Agreement or at any time after entering into this Agreement, may require Subcontractor, within 10 days from Contractor's request, to furnish a faithful performance and labor and material bond from a surety acceptable to Contractor in an amount to be designated by Contractor, but not exceeding 100% of the contract price. Contractor shall pay the premium on any such bond directly to the bonding company after receipt of its invoice, up to 2% of the contract price. Subcontractor shall pay any premium in excess of 2%. Subcontractor's failure to furnish a faithful performance or labor and material bond when requested shall constitute a material breach of this Agreement and cause for termination of this Agreement. No change, alteration, addition, deletion or modification of or to any of the terms or provisions of the Contract Documents, or any of Subcontractor's obligations, and no change order, extension of time or directive given or agreed to by Contractor, shall in any manner release, discharge or exonerate, in whole or in part, the surety on any bond furnished by Subcontractor pursuant to or in connection with this Agreement, and no notice is required to be given to any such surety of any such change, alteration, addition, deletion, modification, change order, extension of time or directive.

**12. ASSIGNMENT; SUBCONTRACTS.** Subcontractor shall not assign or transfer this Agreement or any part thereof, or any monies due or to become due hereunder, without the prior written consent of Contractor. Any assignment or transfer without Contractor's prior written consent shall be void and of no effect and shall vest no right in the assignee or transferee against Contractor. If Subcontractor is given written consent, that consent shall not be valid unless Subcontractor shall bind its assignee or transferee to all of the terms and conditions of this Agreement. The making of any assignment by Subcontractor or any consent thereto by Contractor shall not release Subcontractor, or its sureties, of any of their respective obligations, duties, responsibilities or liabilities. Contractor's consent to any subcontracting by Subcontractor with a second tier subcontractor shall not create any

contractual relationship between Contractor and any second tier subcontractor to whom the work or any portion thereof is subcontracted. Subcontractor's suppliers, materialmen, sureties, subcontractors and vendors are not third party beneficiaries of this Agreement. If Subcontractor subcontracts any of the work to be performed under this Agreement, Subcontractor shall enter into a written subcontract with each of its subcontractors which incorporates all of the terms and conditions of this Agreement. Subcontractor agrees that Contractor may assign this Agreement to Owner, Contractor's surety, or Owner's replacement contractor.

**13. DEFAULTS BY SUBCONTRACTOR.** Subcontractor shall be deemed to be in default of this Agreement if Subcontractor (1) fails to commence work when required; (2) fails to prosecute the work diligently or to make the progress required; (3) fails to furnish a sufficient number of properly skilled workmen or a sufficient quantity of suitable materials or adequate equipment; (4) fails to perform the work in the order and sequence directed; (5) fails to correct or replace any damaged or defective work or materials; (6) becomes insolvent or subject to any receivership proceedings; (7) becomes subject to a tax lien or levy; (8) makes an assignment for the benefit of creditors; (9) fails to complete the work or any portion thereof within the time directed by Contractor; (10) becomes involved in any labor difficulty; or (11) commits a material breach of this Subcontract. Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages sustained by Contractor, or for which Contractor may be liable, because of Subcontractor's default. If Subcontractor is deemed to be in default, Contractor, at its option, shall have the right: (a) to provide all labor and materials necessary to correct the problem, or to contract with one or more additional contractors to perform such part of Subcontractor's work, and to deduct the cost thereof, plus fifteen percent (15%) overhead and profit, from any money then due or thereafter to become due to Subcontractor under this Agreement; or (b) to terminate Subcontractor's right to proceed with the work and, in that event, Contractor shall have the right to enter upon the premises of the Project and take possession of all of Subcontractor's materials, tools, machinery and equipment, and may employ others to finish the work and provide materials. Upon such termination, Contractor shall have the right to assume, at Contractor's sole option, any or all of Subcontractor's lower tier subcontracts and materialmen, supplier and vendor agreements and to derive the benefits therefrom. Contractor may deduct the cost of finishing Subcontractor's work from any money then due or thereafter to become due to Subcontractor under this Agreement, including, a mark-up for Contractor's profit and overhead in the amount of fifteen percent (15%). If the unpaid balance under this Agreement exceeds the expenses Contractor incurs in finishing Subcontractor's work, the excess shall be paid to Subcontractor; if the expenses incurred by Contractor exceed the unpaid balance, then Subcontractor shall promptly pay to Contractor the amount by which the expenses have exceeded the unpaid balance. In order to secure Subcontractor's payment, Contractor shall have a lien upon all of Subcontractor's materials, tools, machinery and equipment at the project site on the date of default. Contractor shall only exercise the rights listed under (a) and (b) above after giving Subcontractor two (2) working days written notice of its intent to exercise those rights. No further notice to Subcontractor shall be required if Subcontractor has failed to cure the problem during such notice period. Notice shall be sufficient and complete when delivered to Subcontractor at an address provided by Subcontractor by personal delivery or by email with acknowledgment by Subcontractor by reply email, by fax as shown by electronic confirmation of delivery, by certified mail with return receipt requested as shown by return receipt, or by recognized courier, such as FedEx or UPS, as shown by their tracking systems. If an emergency affecting the safety of persons or property occurs, no notice shall be required. Each of the rights and remedies granted to Contractor pursuant to this section or pursuant to any of other the provisions of this Agreement shall be in addition to and without prejudice to, and shall in no way limit, any other rights or remedies which Contractor may have pursuant to any other provision(s) of this Agreement, or pursuant to law or equity.

**14. TERMINATION.** Contractor reserves the right to terminate Subcontractor's work and services with or without cause. In the event of termination without cause, Subcontractor shall be entitled to payment of the lesser of the following: (a) the amount due hereunder for approved units of work or percentage of completion, less payments made prior to termination, or (b) the direct costs of the work actually completed in conformity with this Agreement, plus fifteen percent (15%) overhead and profit, less payments made prior to termination. Upon such termination, Contractor shall have the right to assume, at Contractor's sole option, any or all of Subcontractor's lower tier subcontracts and materialmen, supplier and vendor agreements and to derive the benefits therefrom.

**15. PAYMENT WITHHELD.** Contractor may withhold all or part of any payment, or nullify the whole or any part of any payment, to the extent necessary to protect Contractor from loss, damages, costs or liabilities caused by: (a) defective work not remedied; (b) claims filed or reasonable evidence indicating probable filing of claims against Subcontractor, Contractor, Contractor's surety or Owner relating to Subcontractor's work under this Agreement; (c) Subcontractor's failure to make payments properly to its subcontractors, materialmen, suppliers, vendors or employees for work, material, labor, or fringe benefits; (d) a reasonable doubt that this Agreement can be completed for the balance then unpaid; (e) damage to another subcontractor; (f) Subcontractor's failure to complete the Agreement in accordance with the Contract Documents; (g) unsatisfactory performance of the work by Subcontractor; (h) liens, stop payment notices or claims filed or submitted by Subcontractor's materialmen, suppliers, vendors or subcontractors, or any other person or entity who may have a right of action against Contractor or its surety under any law in connection with Subcontractor's work; (i) Subcontractor's failure to provide documents to Contractor which Subcontractor is required to provide pursuant to this Agreement; (j) any failure or alleged failure by Subcontractor to comply with any of the requirements or terms of this Agreement; or (k) any other ground for withholding payment provided in this Agreement or by applicable law. When the grounds are removed, such amounts as are then due and owing shall be paid or credited to Subcontractor.

**16. OTHER CONTRACTS.** If one or more other agreements exist now or later between the parties to this Agreement concerning this or any construction project, then a breach of this Agreement or any other such agreement may, at the option of Contractor, be considered a breach of all such agreements. In such event, Contractor may terminate Subcontractor's work and services under any or all such agreements or may withhold monies due or to become due in connection with any such agreement or agreements and apply the same toward payment of any damages suffered in connection with that or any other agreement.

**17. DISPUTES.** Subcontractor agrees that in the event any dispute arises between Subcontractor and Contractor, Subcontractor will continue to perform its work regardless of the nature of the dispute. If the Prime Contract provides for the arbitration of disputes between Contractor and Owner, then any and all disputes between Contractor and Subcontractor arising out of or in connection with, or relating to, this Agreement or Subcontractor's work on the Project, shall be arbitrated in accordance with the arbitration provisions and procedures set forth in the Prime Contract if, and only if, any of those disputes involve unresolved disputes between Contractor and Owner. Otherwise, disputes between Subcontractor and Contractor will not be arbitrated unless the parties agree otherwise or as required by law. If the Prime Contract provides for the mediation of disputes between Contractor and Owner, then any and all disputes between Contractor and Subcontractor arising out of or in connection with, or relating to, this Agreement or Subcontractor's work on the Project, shall be mediated in accordance with the mediation provisions and procedures set forth in the Prime Contract if, and only if, any of those disputes involve unresolved disputes between Contractor and Owner. Otherwise, disputes between Subcontractor and Contractor will not be mediated unless the parties agree otherwise or as required by law.

If Subcontractor strictly and timely complies with the notice, protest and claims provisions of the Contract Documents, and makes a valid claim resulting from any act of, omission of, or change made by Owner, or anything else for which Owner may be liable or responsible to Contractor pursuant to the Prime Contract, Contractor's duty to Subcontractor is limited to passing on the claim to Owner and Subcontractor will be bound by Owner's determination and any adjustment in Subcontractor's contract price shall be made only to the extent allowed by Owner or a final court judgment or arbitration award against Owner (not including Contractor's mark-up). In the event that Contractor files, pursues or prosecutes a claim, lawsuit or arbitration proceeding against Owner which includes a claim for additional compensation requested by Subcontractor, Subcontractor shall cooperate fully with Contractor in the filing, pursuit and prosecution thereof and shall pay to Contractor, Subcontractor's pro-rata share of the costs, fees and expenses

incurred by Contractor in connection therewith, including actual attorneys' fees, costs and expenses, and Contractor will not be liable or responsible to Subcontractor for any damages or additional compensation resulting from any act of, omission of, or change made by Owner, or for which Owner may be legally responsible to Contractor, unless Contractor recovers such amounts from Owner, and then, only to the extent that Contractor recovers such amounts from Owner. In no event shall Contractor be liable or responsible to Subcontractor for additional costs or damages incurred or allegedly incurred by Subcontractor as a result of any act of, omission of or change by Owner, or for which Owner may be legally responsible to Contractor, except to the extent that Contractor recovers such costs or damages from Owner.

**18. CLAIMS, STOP PAYMENT NOTICES AND LIENS.** If any lawsuit is brought, or if any claim, stop payment notice or lien is filed, recorded or served, for labor performed or materials or equipment furnished to the Project under this Agreement, Subcontractor shall promptly pay and satisfy such claim, stop payment notice, lien or judgment. Subcontractor agrees, within ten (10) days after written demand, to cause the effect of any such claim, lien or stop payment notice, or any legal proceeding to enforce any such claim, lien or stop payment notice, to be removed, and if Subcontractor fails to do so, Contractor may use whatever means in its discretion it deems appropriate to remove or dismiss the claim, lien, stop payment notice or legal proceeding and the costs thereof (including, without limitation, payments to the lien or stop payment notice claimant, attorney fees and the costs of obtaining a lien release bond or stop payment notice release bond) shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may contest any such claim, stop payment notice, lien or lawsuit provided it causes the effect thereof to be removed, promptly in advance, from the site of the Project, and further takes such action as may be necessary to cause Owner not to withhold monies, due to Contractor from Owner, by reason of such claims, stop payment notices, liens or lawsuits.

**19. INSPECTION AND AUDIT.** Subcontractor shall permit Contractor at all times to inspect materials at the site of construction, or any place where materials under this Subcontract may be stored or in course of preparation, and to furnish such evidence of the progress of such work as Contractor requires. No inspection or failure to make any inspection shall impair Contractor's right to later reject non-conforming material, or to avail itself of any other remedy that Contractor may be entitled to, notwithstanding Contractor's knowledge of the nonconformity, its substantiality, or the ease of its discovery. Subcontractor shall be liable for all inspection, reshipment and return costs for non-conforming materials. Subcontractor agrees to afford Contractor access to all of Subcontractor's correspondence, reports, books, receipts, contracts, memoranda, invoices, schedules, records and other documents relating to the work to be performed under this Agreement. Subcontractor will preserve all such documents for three years after final payment, or such longer period as may be required elsewhere in the Contract Documents or by law. Subcontractor agrees that Contractor and its agents and representatives will have the right, at any reasonable time, to inspect, copy or audit all such documents of Subcontractor.

**20. USE OF CONTRACTOR'S EQUIPMENT AND EMPLOYEES.** Subcontractor (including any of its agents, employees, suppliers, or sub-subcontractors) shall not use any machinery, equipment, tools, scaffolding, materials, hoists, lifts or other items owned, leased or under Contractor's control (hereinafter, in this section, all such items shall be referred to as "equipment") without the express written permission of Contractor's designated representative. Subcontractor shall be deemed to have inspected any such equipment and accepts the use of such equipment "as is." Subcontractor assumes all responsibility for physical damage to any such equipment used by Subcontractor or its agents, employees or permittees. In the event that Subcontractor uses any of Contractor's employees, Subcontractor shall have full responsibility for all acts and omissions of Contractor's employees with regard to Subcontractor's use of those employees. Subcontractor shall act as an independent contractor in using Contractor's equipment and employees, and shall be liable and responsible for any loss or damage (including personal injury or death) that may arise from or in connection with Subcontractor's use of Contractor's equipment or employees.

**21. LABOR CONDITIONS AND EMPLOYMENT PRACTICES.** Subcontractor shall replace any employee whom Contractor determines to be undesirable. Contractor has entered into labor agreements covering work at its jobsites with the following unions: Carpenters – 46 Northern California Counties and Laborers – Northern California District Council of Laborers. Subcontractor shall, to the extent permissible under applicable laws, comply with all of the provisions of Contractor's collective bargaining agreements as if it were a party to said agreements, including signatory status, if required. Subcontractor agrees that all of the provisions of the applicable labor agreements are incorporated into this Agreement as if they were set forth in their entirety. Subcontractor agrees to pay the wage rates, make the required trust fund payments into the respective labor trust funds, and to observe the hours and all other terms and conditions set forth in the applicable labor agreements. Subcontractor agrees to comply with the terms and provisions of said agreements setting forth the grievance and arbitration procedure and jurisdiction and scope of work therein for resolution of jurisdictional disputes. If necessary, Subcontractor agrees, at its own cost, to secure a final and binding determination of any jurisdictional dispute by the National Labor Relations Board. Subcontractor further promises and agrees that it will bind and require all of its subcontractors and their subcontractors performing jobsite work of the type covered by the Carpenters and Laborers agreement to agree to all of the promises and undertakings contained in this Section 21, to the same effect as herein provided with respect to Subcontractor. Subcontractor shall pay when due all contributions, allowances, and other payments, required by the labor agreements now or hereinafter in force. Subcontractor shall comply with any additional union agreements as may be required by the Carpenters and Laborers agreements. Should there be a labor dispute, Subcontractor shall continue the proper performance of its work without interruption or delay if Contractor establishes a reserve gate or neutral access for Subcontractor's purpose. If the project is subject to a Project Labor Agreement or similar program, Subcontractor shall comply with all requirements of such programs, including becoming bound to the Project Labor Agreement. Subcontractor shall comply with all equal employment opportunity, affirmative action requirements, and local hire requirements promulgated by any governmental authority, including, without limitation, the requirements of Title 7 of the Civil Rights Act of 1964 as amended, Presidential Executive Orders, the California Fair Employment and Housing Act as amended, the Americans with Disabilities Act of 1991 as amended, and the Family and Medical Leave act of 1993. Subcontractor shall comply with all applicable Federal, State and local laws and regulations, including, but not limited to, all Fair Labor Standards Act provisions and California Labor Code provisions covering the work.

**22. DBE/MBE/WBE/DVBE/UDBE/SBE REQUIREMENTS.** Subcontractor hereby acknowledges that it is thoroughly familiar with all DBE/MBE/WBE/DVBE/UDBE/SBE requirements relating to the Project if there are any such requirements contained in or referred to in the Contract Documents. If the Project Owner is the Federal Government or any agency thereof, Subcontractor hereby acknowledges its obligations to comply with the requirements of Executive Order 111246, section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974. If the Project is Federally Assisted, Subcontractor hereby acknowledges its obligation to comply with the requirements of Executive Order 111246. If either is true, Addendum B is attached and incorporated herein.

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

**23. SAFETY AND SECURITY.** Subcontractor shall comply with all laws and regulations regarding occupational safety and health, accident prevention, safety equipment, documentation and practices, including Labor Code § 6400 et seq., Title 8 of the California Code of Regulations §336.10 et seq., applicable Cal OSHA safety orders and the accident prevention and safety programs of Owner and Contractor. Subcontractor shall conduct inspections as necessary and required to determine that safe working conditions exist and shall accept sole responsibility to provide a safe work place for its employees, subcontractors, suppliers and others potentially exposed to its work. Further, Subcontractor shall be responsible for furnishing all safety materials and supplies required for its work including, but not limited to, all safety equipment, safety supplies, first aid supplies and drinking water. Subcontractor will report to Contractor all lost time, accidents, or injuries, to its employees and the employees of its sub-subcontractors within 24 hours of occurrence. Should Subcontractor fail to comply with these requirements, Contractor shall have the right to take all corrective measures necessary to assure Subcontractor's compliance. Subcontractor shall be responsible for all costs, fines, and enhanced penalties incurred by Contractor as a result of Subcontractor's failure to comply with these requirements. Failure on the part of Contractor to discover or correct such deficiencies shall in no way relieve Subcontractor of its responsibilities hereunder. Failure of Subcontractor to comply with these requirements shall constitute a material breach of this Agreement. Subcontractor shall comply with all programs mandated by the Contract Documents, by Owner or by governmental agencies including, but not limited to, site security access requirements, citizenship requirements, site specific training and other special training, drug testing, background checks, badging, and all similar requirements.

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

**25. ATTORNEYS' FEES.** The prevailing party in any litigation or arbitration arising out of or relating to this Agreement (including, but not limited to, any litigation or arbitration arising out of or relating to the interpretation of this Agreement, the enforcement of this Agreement or any performance or nonperformance of this Agreement) shall be entitled to recover from the non-prevailing party, all of the prevailing party's actual costs, expenses and attorneys' fees (including, without limitation, the fees, costs and expenses of expert witnesses and other consultants) arising out of or relating to the litigation or arbitration, including, without limitation, those incurred in enforcing or collecting any judgment or award. The award of costs, expenses and fees shall not be computed in accordance with any statute or court schedule, but shall be such as to fully reimburse all costs, expenses and attorneys' fees actually incurred in good faith, regardless of the size of the judgment or award, it being the intention of the parties to fully compensate for all costs, expenses, and attorneys' fees paid or incurred in good faith.

**26. MISCELLANEOUS PROVISIONS.**

- (A) **Controlling Law.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of California.
- (B) **Severability.** Contractor and Subcontractor agree that if any word, phrase or provision of this Subcontract is found to be unenforceable or in conflict with any applicable law, only those words, phrases or provisions that create such unenforceability or conflict should be stricken and the remainder of the words, phrases or provisions of this Agreement shall remain in full force and effect.
- (C) **Captions.** The captions in this Agreement have been inserted only for convenience of reference and are not a part of this Agreement, and shall have no effect upon the construction or interpretation of this Agreement.
- (D) **Successors.** The covenants, terms, conditions and restrictions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their personal representatives, heirs, successors, administrators and assigns.
- (E) **No Waiver.** Failure of Contractor to insist upon or enforce any of the terms, covenants or conditions of this Agreement shall not constitute a waiver of any such term, covenant or condition or any other term, covenant or condition of this Agreement. No waiver by Contractor of any term, covenant or condition of this Agreement shall be effective unless the waiver is in a writing which expressly waives the term, covenant or condition, and that writing is signed by Contractor. Any express waiver by Contractor of a failure of Subcontractor to perform or satisfy any term, covenant or condition of this Agreement shall only apply to the particular matter expressly waived and shall not constitute a waiver of the same or any other term, covenant or condition in the future.
- (F) **Time Is Of The Essence.** Time is of the essence as to this Agreement and all of its terms and conditions.
- (G) **Cumulative Remedies.** The rights and remedies created in this Agreement are cumulative and the use of one right or remedy shall not exclude or waive the right to use any other right or remedy.
- (H) **Amendments.** Except for written change orders issued by Contractor, this Agreement may only be amended or changed by written agreement, executed by both of the parties, which expressly amends this Agreement. Only the President or Chief Executive Officer of Contractor has the authority to execute and to bind Contractor to any amendment to this Agreement, waiver of any term, covenant or condition of this Agreement, or any agreement or modification to any agreement.
- (I) **Authority to Execute and Bind.** Each of the parties hereto represents and warrants that the person executing this Agreement on its behalf has full and complete legal authority to do so and thereby bind that party. Each person whose signature is affixed below hereby warrants and represents that he/she is legally authorized and empowered to execute this Agreement on behalf of the designated party, and thereby bind that party.
- (J) **Contract Documents.** The subcontractor is responsible to obtain the most current plans and specifications. In the event the project utilizes an electronic plan management system (Plangrid or other) the subcontractor will be required to use the system and to pay for all application fees and/or subscriptions.

**27. CONTRACTOR'S LICENSING LAW.** Subcontractor represents that it holds, and represents and covenants that at all times during the performance of its work under this Agreement Subcontractor will maintain, a valid, current and active California contractor's license appropriate for Subcontractor's work. Subcontractor further represents that each of its subcontractors holds, and represents and covenants that, at all times during the performance of its work, each of its subcontractors will maintain a valid, current and active California contractor's license appropriate for its work.



The failure of Subcontractor or any of its subcontractors to maintain a valid, current and active California contractor's license at all times during the performance of its work shall constitute a material breach of this Agreement.

**CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTOR'S STATE LICENSING BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTOR'S STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA 95826.**

**ADDENDUM A**

**C. OVERAA & CO**

**SUBCONTRACT INSURANCE REQUIREMENTS**

**Part I**

Subcontractor shall, at its expense and at no additional cost, procure and maintain insurance on all of its operations in companies with an A.M. Best's Insurance Rating of A-VIII or better or otherwise acceptable to Contractor. An exception may be available for the State Compensation Insurance Fund. The required evidence of insurance coverage must be furnished within 30 days of the date of the subcontract or prior to starting work whichever is sooner. Subcontractor will not be allowed to begin work until acceptable evidence of insurance has been received. Coverage provided shall be in effect for the life of the subcontract and after completion of the project through the expiration of all statuses of limitation and shall comply with the Insurance provisions of the General Contract and with the following minimum requirements. Should the Contract Documents require insurance coverages, limits, terms and conditions beyond the Insurance Requirements herein, Subcontractor shall procure and maintain insurance to satisfy said requirements. Furthermore, if the Contract Documents require participation in an Owner Controlled Insurance Program (OCIP) or Contractor Controlled Insurance Program (CCIP), Subcontractor shall fully participate and cooperate with Contractor and Insurance Program Administrator in compliance of the program requirements.

**1.1 Workers' Compensation and Employer's Liability Insurance**

Workers' Compensation Insurance shall be provided as required by any applicable law or regulation.

Employer's Liability Insurance shall be in an amount no less than \$1,000,000.00 for each accident for bodily injury, a \$1,000,000.00 policy limit for bodily injury by disease, and \$1,000,000.00 for each employee for bodily injury by disease.

All insurance policies shall include a Waiver of Subrogation Endorsement in favor of Contractor and the Project Owner.

If there is an exposure of injury to Subcontractor's employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or under law, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

**1.2 General Liability Insurance.** Subcontractor shall carry Commercial General Liability (Insurance Services Office, Form CG 00 01 or equivalent) insurance covering all operations by or on behalf of the subcontractor providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

- 1 Premises and Operations
- 2 Products and Completed Operations
- 3 Contractual Liability insuring the obligations assumed by Subcontractor in this Agreement
- 4 Broad Form Property Damage (including Completed Operations)
- 5 Explosion, Collapse, and Underground Hazards
- 6 Personal Injury Liability and Advertising Liability
- 7 Subsidence of land or earth movement
- 8 Policy shall not contain any provision or definition which would exclude coverage for claims brought by employees of any subcontractor or lower tier subcontractors.
- 9 Mold, Mildew or Fungus. In the event such exclusion is contained in the policy, subcontractor must assure Contractor that this exposure is covered within other policies of insurance and provide evidence of that policy

**A. Limits of Liability**

(1) Commercial General Liability Insurance, limits of liability shall not be less than:

- \$1,000,000 each occurrence (combined single limit for bodily injury and property damage)
- \$1,000,000 for Personal Injury Liability
- \$1,000,000 Aggregate for Products-Completed Operations
- \$2,000,000 General Aggregate

(2) The General Aggregate limit of liability must apply separately to this project. If the General Aggregate limits of liability do not apply separately to this project or if the defense costs are included in the General Aggregate, then the minimum General Aggregate shall be increased to \$5,000,000.

**B. Additional Insureds (Commercial General Liability policy – Coverage for the additional insured(s) shall be at least as broad as that afforded the first named insured):**

(a) The Contractor, its officers, directors, and employees, the Owner and any other parties required by Owner, shall be named as Additional Insureds and such coverage shall be provided by a policy provision or by an endorsement providing coverage at least as broad as Additional Insured endorsement form(s) below. The products-completed operations coverage shall be maintained through any statutory period inclusive of additional insured provisions in all future renewals of the coverage.

- (1) The additional insured coverage shall be provided by an endorsement providing coverage at least as broad as:
    - a. Additional Insured (Form B) endorsement form CG 2010 1185 (1985 version) as published by the Insurance Services Office (ISO) (or equivalent), or
    - b. A combination of Additional Insured endorsement form CG 2010 10 01 and Additional Insured endorsement form CG 2037 10 01 as published by the Insurance Services Offices (ISO) (or equivalent).
  - (b) The policy shall stipulate that the insurance afforded Contractor, its officers, directors and employees, and Owner as Additional Insureds shall apply as primary insurance and that any other insurance maintained by Contractor or Owner shall be excess only and shall not be called upon to contribute with this insurance.
  - (c) Should subcontractor's policy contain a "cross-suits" exclusion, such exclusion must not apply to any additional insureds.
  - (d) If any policy has a self-insured-retention, then that policy shall provide that the additional insureds may pay the SIR.
- C. If any Umbrella or Excess Liability policies are used to meet the limits of liability required by this agreement or are carried by subcontractor in addition to the requirements of this agreement, such higher limits shall be the required minimum limits and said policies shall be "following form" of the underlying primary policy inclusive of the additional insured and primary insurance requirements identified above.

### 1.3 Special Claims-Made Policy Form Provisions:

Subcontractor shall not provide a Commercial General Liability (Claims Made) policy without the express written consent of Contractor.

1.4 Automobile Liability (Bodily Injury and Property Damage) including coverage for all owned, hired and non-owned automobiles. The limits of liability shall be not less than \$1,000,000 Combined Single Limit each accident for Bodily Injury and Property Damage combined.

1.5 Professional Liability A \$1,000,000 Professional Liability Insurance Policy shall be carried by Subcontractor or his Sub-subcontractor if work under this subcontract includes professional or design-build services. Evidence of coverage in the form of a Certificate of Insurance shall be provided prior to the start of the project. Such evidence of coverage shall indicate a retroactive or prior acts date no later than the date such services begin. Coverage must allow for the reporting of claims for 2 years following completion of the work. If insurance is provided by an annual policy applicable to all operations then the Subcontractor shall maintain coverage for a minimum of two (2) years following substantial completion. If Owner of Contractor elects to purchase a project specific Professional Liability policy, Subcontractor's Professional Liability policy will be endorsed to provide excess coverage.

1.6 Riggers Liability: Should Subcontractors work involve the moving, lifting, lowering, rigging or hoisting of property or equipment, Subcontractor shall carry riggers liability insurance to insure against physical loss or damage to the property or equipment.

1.7 Aircraft & Helicopter Insurance: If the Subcontractor or his Subcontractors use any owned, leased, chartered or hired aircraft of any type in the performance of this contract, they shall maintain aircraft liability insurance in an amount of not less than \$10,000,000 per occurrence including Passenger Liability and Contractor and Owner shall be named as additional insureds. Evidence of coverage in the form of a certificate of insurance and additional insured endorsement shall be provided prior to the start of the project.

1.8 Certificates of Insurance, as evidence of the insurance required by this Agreement shall be furnished by Subcontractor to Contractor before any work hereunder is commenced by Subcontractor. The insurers for such insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) days prior written notice to Contractor and shall be evidenced on the certificate of insurance.

- a) The Certificate of Insurance furnished as evidence of Commercial General Liability insurance carried by the Subcontractor shall include a copy of the policy provision or the additional insured endorsement adding the Contractor and Owner as additional insured and shall provide that insurance for such additional insureds applies as primary insurance and that other insurance maintained by the Contractor or Owner shall not be called upon for contribution.
- b) A certificate of insurance with the additional insured endorsements shall be provided for a minimum of two years following project completion and subsequently will be provided upon written request of Contractor.
- c) Any self-insured retention or deductible greater than \$25,000 must be declared by subcontractor and approved by Contractor. Where a self-insured retention is used, a copy of the self-insured retention provision or policy endorsement shall be attached to the certificate of insurance provided.
- d) Where deductible or self-insured retention provisions of policies of insurance specify that only the named insured's costs trigger coverage, the language shall be broadened to include within the named insured's costs, all costs of defense and settlement obligations to any additional insured party.

1.9 In the event Subcontractor fails to maintain insurance coverage required under this Agreement, Contractor may maintain such coverage and charge the expense to Subcontractor, or terminate this Agreement.

2.0 The required insurance shall be subject to the approval of Contractor, but any acceptance of insurance certificates by Contractor shall in no way limit or relieve Subcontractor of the duties and responsibilities by him in this Agreement.

If higher limits or other forms of insurance are required in the Contract Documents, Subcontractor will comply with such requirements.

2.1 By requiring insurance herein, Contractor does not represent that coverage and limits will necessarily be adequate to protect Subcontractor and such coverage and limits shall not be deemed as a limitation on Subcontractor's liability under the indemnities granted to Contractor in this subcontract. To the extent Subcontractor maintains insurance greater than these minimum requirements, Subcontractor agrees that such insurance shall be applicable to any of Subcontractor's liability obligations hereunder.

In addition, Subcontractor's failure to secure any or all of the required insurance coverage shall not limit or eliminate Subcontractor's liability to Contractor, pursuant to this agreement, at law, or in equity.

Subcontractor shall ensure that all tiers of his Subcontractors shall maintain insurance in like form and amounts, including the Additional Insured requirements set forth in Paragraph "1 .2B." Copies of Certificates of Insurance shall be provided by each Sub-subcontractor prior to the start of their work on this project.

## 2.2 Protection of Work/Materials and Builders Risk Insurance:

Subcontractor shall insure, through an installation floater form of policy, secure and protect his work and material from damage or loss until final acceptance by Owner. All deductibles shall be the responsibility of Subcontractor.

3 Neither the forbearance nor omission by Contractor to require proof of *all provisions* of this insurance from Subcontractor before permitting Subcontractor to proceed or continue with the Work will be deemed as a waiver of Contractor's rights or Subcontractor's obligations regarding the provisions of insurance under the Subcontract. Any exceptions to the provision of this section must be delineated in the Contract Documents.

Subcontractor shall assure that all of its Subcontractor and Sub-subcontractors meet the same insurance requirements as set forth in this Addendum and that the Contractor and Owner are named as additional insureds as required by this Addendum.

## Part II

In addition to the insurance required by Part I of this Subcontract, Subcontractor shall also maintain and provide evidence in support of the following insurance with companies having an A.M. Best's Insurance Rating of A-VIII or better or otherwise acceptable to the Contractor when:

- (1) The Subcontractor's operations under the Subcontract require testing for, abatement, clean-up or treatment of pollutants (other than asbestos)
- (2) The Subcontractor will be bringing a significant amount of pollutants to the jobsite
- (3) There is a known exposure for disturbance of pollutants or hazardous materials at the jobsite which can be handled best by subcontracting with a Specialty Environmental contractor to perform work involving such pollutants or hazardous materials.

### 1.2.1 Contractor's Pollution Liability Insurance

Subcontractor shall carry Contractor's Pollution Liability Insurance covering all operations by or on behalf of Subcontractor providing insurance for bodily injury and property damage liability due to pollution, including mold, mildew or fungus.

Coverage must include pollution liability for all materials brought onto the project site and for remediation or disturbance of pollutants and hazardous materials found on the project site. Coverage shall be provided on an "occurrence" basis without a sunset clause. Claims Made coverage is not acceptable.

The limit of liability shall be not less than \$1,000,000 each occurrence or claim and \$1,000,000 in the aggregate.

#### Additional Insureds

The Contractor, its officers, directors and employees and owner shall be named as Additional Insureds. The policy shall be endorsed to stipulate that the insurance afforded the additional insureds shall apply as primary insurance and that any other insurance or self-insurance maintained by Contractor or Owner shall be excess only and shall not be called upon to contribute with this insurance.

### 1.4.1 Automobile Liability Insurance (Transportation of Pollutants or Hazardous Materials)

If autos owned or hired by Subcontractor will be used to transport Pollutants or Hazardous Materials, then paragraph 1.4 of Addendum A is amended by addition of the following:

"Coverage shall be included for liability arising out of the transportation of pollutants and hazardous materials. The policy shall be endorsed with an MCS 90 Endorsement (Federal Motor Carrier Act) and with Endorsement form CA9948 (Pollution Liability - Broadened Coverage) as published by the Insurance Services Office (ISO)."

## PART III

In addition to the insurance required by Addendum A, Part I or Part II of this Subcontract, Subcontractor shall also maintain and provide proper evidence of the following insurance with companies having an A.M.

Best's Insurance Rating of A-VIII or better or otherwise acceptable to the Contractor when the scope of the subcontract includes asbestos abatement work:

### 1.2.2 Asbestos Liability Insurance

The insurance required in Part I, Paragraph 1.2 and/or Part II of Addendum A shall include or be endorsed to include, or a separate Asbestos Liability Insurance policy shall be maintained by Subcontractor to cover bodily injury and property damage arising out of asbestos abatement or removal operations by or on behalf of Subcontractor as required by this Subcontract.

Coverage for such asbestos abatement or removal operations whether provided by the General Liability required by paragraph 1.2 of Addendum A or by a separate Asbestos Liability Insurance Policy maintained by Subcontractor is subject to the following requirements:

- (1) Coverage shall be provided on an "occurrence" basis without a sunset clause. Claims Made coverage is not acceptable.
- (2) Coverage for the asbestos abatement operations shall not be subject to pollution exclusion.
- (3) If there is an exclusion for claims by any insured against any other insured, such exclusion shall be deleted.
- (4) Coverage shall not be excluded for asbestos bodily injury to employees of the Owner, Contractor and Subcontractor if their designated job duties do not require them to be in the regulated asbestos abatement area.
- (5) Coverage for Contractual Liability arising out of Asbestos operations shall be provided on the same basis as afforded by the Comprehensive or Commercial General Liability Policy.
- (6) Coverage to be included for Products/Completed Operations for 2 years after completion of the asbestos abatement or removal work.
- (7) The policy shall include a Cross Liability, Severability of Interest or a Separation of Insureds provision.
- (8) The policy shall not contain any provision or definition which would serve to eliminate coverage for third-party action over claims.
- (9) If the policy or any endorsement contains a provision which limits or eliminates bodily injury or property damage coverage based on final air fiber clearance levels, the policy shall be modified so that it is consistent with the clearance level (F/CC) and the appropriate analytical testing protocol contained in the project specifications.

(10) Limits of Liability. The limit of liability shall not be less than combined single limits for bodily injury and property damage of \$1,000,000 each occurrence- \$1,000,000 aggregate for products-completed operations, \$1,000,000 general aggregate. The general aggregate limit shall apply separately to Contractors Asbestos Abatement operations under this contract.

(11) Additional Insureds

Owner and Contractor, their officers, directors and employees shall be named as additional insureds. The policy shall be endorsed to stipulate that the insurance afforded the additional insureds shall apply as primary insurance and that any other insurance or self-insurance maintained by Owner or Contractor shall be excess only and shall not be called upon to contribute with this insurance.

1.4.2 Auto Liability Insurance (Transportation of Hazardous Materials or Asbestos-Containing Materials)

If autos owned or hired by Subcontractor will be used to transport hazardous materials or asbestos-containing materials, then paragraph 1.4 of Addendum A is amended by addition of the following:

“Coverage shall be included for liability arising out of the transportation of hazardous materials and asbestos-containing materials. The policy shall be endorsed with an MCS 90 Endorsement (Federal Motor Carrier Act) and with Endorsement form CA9948 (Pollution Liability - Broadened Coverage) as published by the Insurance Services Office (ISO).”