

LATHROP CONSTRUCTION ASSOCIATES, INC.
4001 Park Road, P.O. Box 2005
Benicia, CA 94510-0819
707/ 746-8000 Fax 707/ 746-8080
AN EQUAL OPPORTUNITY EMPLOYER
State of California License #415981

SUBCONTRACT # _____
Vendor No. _____

THIS SUBCONTRACT AGREEMENT (hereinafter called SUBCONTRACT) is made on _____, by and between LATHROP CONSTRUCTION ASSOCIATES, INC. (hereinafter called Contractor), and

Phone No. _____ (Fax No. _____), California License No. _____, Expir. Date _____ (hereinafter called Subcontractor).

On _____, Contractor entered into a prime contract (hereinafter called PRIME CONTRACT) with the _____ (hereinafter called OWNER), to construct _____ located at _____ (hereinafter called PROJECT), in accordance with the terms and conditions of the PRIME CONTRACT, and all plans, specifications and other contract documents attached to, referenced in or incorporated into the PRIME CONTRACT.

The PRIME CONTRACT, including all General Conditions, Special Conditions, Addenda, Plans, Specifications, Drawings and other documents incorporated therein, and any Modifications thereto made prior to execution of this SUBCONTRACT (hereinafter the CONTRACT DOCUMENTS) are incorporated as a part of this SUBCONTRACT as though fully set forth herein. Subcontractor agrees that all provisions of the CONTRACT DOCUMENTS insofar as they relate to the scope of work described below (or in Exhibit A) to be performed by the Subcontractor under the terms of this SUBCONTRACT shall apply equally to the Subcontractor as they do to the Contractor, and as to all such terms, Subcontractor hereby expressly agrees to assume toward the OWNER and Contractor all obligations and responsibilities that the Contractor, by terms of the CONTRACT DOCUMENTS, has assumed toward the OWNER. Subcontractor agrees and acknowledges that it has reviewed in detail all of the terms and conditions of the CONTRACT DOCUMENTS, or that it has a full and complete opportunity to review the same, and that in entering into this SUBCONTRACT, Subcontractor is not relying upon any statements or representations of Contractor or OWNER with respect thereto, except as expressly set forth therein. As used herein, the term SUBCONTRACT DOCUMENTS means this SUBCONTRACT and the Exhibits or Riders attached hereto, the CONTRACT DOCUMENTS, and all Modifications issued after execution of this SUBCONTRACT. As used herein, A "Modification" is (1) a written amendment to the CONTRACT signed by OWNER and Contractor, (2) a change order to the CONTRACT or this SUBCONTRACT, (3) a written interpretation issued by the OWNER or its Architect/Engineer pursuant to Section 23, or (4) a written order for a minor change in the work issued by the OWNER or its Architect/Engineer. To the extent that the CONTRACT DOCUMENTS contain terms, conditions and/or obligations that are greater or more stringent than those set forth in this SUBCONTRACT, Subcontractor shall comply with such greater or more stringent terms, provisions and/or obligations of the CONTRACT DOCUMENTS.

The scope of work to be performed hereunder is as follows:

FURNISH & INSTALL all labor, material, equipment, services, and all applicable taxes necessary to complete the following work for the PROJECT all in strict accordance with the SUBCONTRACT DOCUMENTS:

Spec Sections:

What is required by one of the SUBCONTRACT DOCUMENTS shall be deemed to be required by all.

FOR THE SUM OF: \$ _____ (hereinafter the Subcontract Price).

SEE ATTACHMENT 'A' AFFIXED HERETO AND MADE A PERMANENT PART HEREOF
SEE ATTACHMENT 'B' AFFIXED HERETO AND MADE A PERMANENT PART HEREOF
SEE ATTACHMENT 'C' AFFIXED HERETO AND MADE A PERMANENT PART HEREOF

SUBCONTRACT# _____

Vendor # _____
SUBCONTRACT # _____

FURTHER AGREEMENTS

SECTION 1 – SUBCONTRACT WORK. This SUBCONTRACT is forwarded to the above-named Subcontractor as an acceptance of the bid made to Contractor in connection with its compilation of the prime bid on the PROJECT, which job was bid on _____. It is agreed and understood that the posting of this SUBCONTRACT executed by Contractor through the regular mail shall constitute an acceptance of the bid made by Subcontractor, and that the execution of this SUBCONTRACT by said Subcontractor is made solely for the purpose of consummating Contractor's acceptance of the bid, completing the record, and memorializing the terms and conditions of the SUBCONTRACT. It is understood and agreed by the undersigned that Contractor has used and relied upon the bid of Subcontractor in connection with its compilation of the general bid on the PROJECT.

Subcontractor certifies that it is, and was at the time of its bid, hereinabove referred to, licensed to perform the work of this SUBCONTRACT (hereinafter the Subcontract Work) and thoroughly familiar with all of the terms, conditions and obligations, guarantees, and warranties of the above-referenced SUBCONTRACT DOCUMENTS, including without limitation, the CONTRACT DOCUMENTS and other materials necessary for properly performing the work of this SUBCONTRACT as well as the location of the jobsite and the conditions under which the work is to be performed. By this SUBCONTRACT, Subcontractor hereby agrees to furnish all materials, labor, tools, insurance, permits, certificates, guarantees and warranties necessary to construct, complete, repair and maintain, in a workmanlike manner, to the satisfaction of the OWNER and Contractor, all the Subcontract Work.

SECTION 2 – PAYMENT. Payments will be made to the Subcontractor in monthly progress payments of ninety percent (90%) of the value of the work completed and installed in its final position as measured and certified by the OWNER'S representative. Subject to the other provisions of this SUBCONTRACT, such monthly progress payments shall be made ten (10) days after receipt of payment from the OWNER by Contractor. Measurement & certification will be conducted in accordance with procedures established for the PROJECT, including those set forth in the CONTRACT DOCUMENTS. The decision of the OWNER'S representative as to the amount of work done by the Subcontractor shall be final and binding on Contractor and the Subcontractor. Invoices for work completed during the preceding month shall be delivered to the Contractor's office in Benicia, California by the first (1st) of each month. The obligation to make any progress payment due or claimed to be due under this SUBCONTRACT is expressly conditioned upon: (1) the return of this SUBCONTRACT executed by Subcontractor, (2) delivery of appropriate lien releases for Subcontractor and each of its sub-subcontractors & suppliers regardless of tier, (3) delivery of Certificate(s) of Insurance as required by Section 7, and such other documents and evidence as Contractor may reasonably require to establish Subcontractor's compliance with all of terms and conditions of the SUBCONTRACT DOCUMENTS. Final payment to Subcontractor will be due upon Subcontractor's satisfaction of all conditions to final payment set forth in this SUBCONTRACT and the CONTRACT DOCUMENTS, and within ten (10) days of Contractor's receipt of final payment from OWNER.

If the OWNER or other responsible party delays in making any payment to Contractor from which payment to Subcontractor is to be made, Contractor shall have a reasonable amount of time to make payment to Subcontractor. The parties agree that a "reasonable time" shall not be less than the time Contractor and Subcontractor require to pursue to conclusion their legal remedies against OWNER or other responsible party to obtain payment, including (but not limited to) mechanic's lien remedies.

No payments shall be considered as evidence of acceptance of the performance of this SUBCONTRACT by the Contractor, either wholly or in part, and no payment shall be considered to be an acceptance of defective work or improper material.

All payments otherwise due Subcontractor are subject to withholding as set forth in Section 6 of this SUBCONTRACT.

SECTION 3 – PAYMENTS FOR MATERIALS AND LABOR. Subcontractor shall pay for all materials and labor whether supplied by it or its sub-subcontractors or suppliers regardless of tier, including sales taxes, and other taxes, ordered for or used on the PROJECT in connection with the performance of this SUBCONTRACT, and shall suffer no claim of lien, stop notice, payment bond claim or statutory withholding notice to be filed or served with respect to the work of this SUBCONTRACT. Subcontractor shall present to Contractor satisfactory evidence of any such payment, including without limitation, payroll affidavits, receipts, vouchers, releases of lien and releases of claim, all in the form satisfactory to Contractor, and it is agreed that no payment hereunder shall be made, except at Contractor's sole discretion, until and unless such documents have been furnished.

In case suit is brought on any claim or lien for labor performed or materials used on or furnished to the PROJECT pursuant to the SUBCONTRACT, Subcontractor shall pay and satisfy any such lien or judgment as may be established by the decision of the court in said suit. Subcontractor agrees within ten (10) days after written demand to cause the effect of any such suit or lien to be removed from the PROJECT, and in the event Subcontractor shall fail so to do, Contractor is authorized to use whatever means in its discretion it may deem appropriate to cause said lien or suit to be removed or dismissed and the cost thereof, together with actual attorneys' fees incurred, shall be immediately due and payable

to Contractor by Subcontractor. Subcontractor may litigate any such lien or suit provided it causes the effect thereof to be removed, promptly in advance, from the PROJECT, and shall further do such things as may be necessary to cause OWNER not to withhold any monies due to Contractor from OWNER by reason of such liens or suits.

SECTION 4 – AUTHORIZATION TO PAY SUPPLIERS AND SUB-SUBCONTRACTORS. Contractor is authorized to make payments on accounts stated by Subcontractor's suppliers and sub-subcontractors, regardless of tier, for materials supplied and work performed in connection with this SUBCONTRACT, and towards the satisfaction of any other of Subcontractor's liabilities for which the OWNER or Contractor may be legally responsible, by drafts executed jointly in favor of Subcontractor and said sub-subcontractors, suppliers and other claimants or directly to such sub-subcontractors, suppliers and other claimants as Contractor in its sole discretion deems appropriate. Nothing in this Section 4 shall obligate the Contractor to make such payments to said sub-subcontractors, suppliers or other claimants, nor shall this provision create any rights to any person or entity not a party to this SUBCONTRACT.

SUBCONTRACTOR SHALL ADVISE, IN WRITING, ALL SUB-SUBCONTRACTORS, SUPPLIERS OR OTHER CLAIMANTS OF ANY TIER OF THIS SECTION 4 PRIOR TO DIRECTING OR PERMITTING MATERIALS TO BE DELIVERED OR WORK TO BE PERFORMED BY SUCH SUB-SUBCONTRACTORS, SUPPLIERS OR OTHER CLAIMANTS.

SECTION 5 – UNION CONTRIBUTIONS. Subcontractor shall be fully and exclusively responsible for, and shall pay when due, any and all applicable contributions, allowances or other payments or deductions, however termed, required to be paid by Subcontractor under union labor agreements now, or hereafter, in force. Subcontractor agrees, as a material part of this SUBCONTRACT, to advise Contractor within twenty-four (24) hours of receipt of any notice of default or arrearage received from any union trust fund or other union fiscal intermediary with respect to Subcontractor or its sub-subcontractors or suppliers, regardless of tier. In the event any such default or arrearage by Subcontractor, Subcontractor agrees that any payment from Contractor may be made payable directly to the creditor union trust fund or fiscal intermediary.

SECTION 6 – PAYMENTS WITHHELD. In addition to any other remedy provided to Contractor under this SUBCONTRACT, or as may be available under applicable law, Contractor may, in its sole and absolute discretion, withhold, or in the event of subsequently discovered evidence nullify, the whole or part of any payments due or to become due under this SUBCONTRACT, a reasonable amount, as determined by Contractor, as may be necessary to protect Contractor and OWNER from loss for any reason arising out of Subcontractor's responsibilities or performance under this SUBCONTRACT, including, but not limited to: (1) defective work not remedied, (2) filing of lawsuit, claim or arbitration proceeding or reasonable evidence indicating a probable filing of such proceedings, (3) failure of the Subcontractor to make payments properly for labor, materials or equipment, (4) reasonable doubt that the Subcontract Work can be completed for the unpaid balance of the Subcontract Price, (5) damage to another subcontractor's work or that of contractor, (6) costs incurred by Contractor resulting from Subcontractor's failure to complete the SUBCONTRACT in accordance with the most current Project Schedule, or (7) unsatisfactory prosecution of the Subcontract Work. When the aforementioned grounds are removed, payment shall be made for amounts withheld after deducting therefrom the administrative costs incurred by Contractor in responding to and managing such claims and disputes.

SECTION 7 – INSURANCE. Subcontractor shall, at its own expense, comply with all of the insurance requirements and obligations set forth in Attachment 'B' hereto.

SECTION 8 – INDEMNIFICATION.

8.1. To the fullest extent permitted by law, Subcontractor shall and does agree, as a material condition of this SUBCONTRACT to indemnify, protect, and promptly and immediately defend and hold harmless ("Indemnification Obligation") Contractor, its agents, project owner, employees, officers, directors, shareholders, insurers and/or anyone acting on its or their behalf (the "Indemnitees"), from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses of any nature, kind or description asserted by any person or entity whomsoever ("Claims"), arising out of, caused by or resulting from the performance of Subcontractor's work or any part thereof. Except as otherwise expressly provided in this Section 8, the Indemnification Obligation shall apply whether or not the Claims arise from the negligence of the Indemnitees, as it is the expressed intention of the parties hereto, both Subcontractor and Contractor, that the Indemnification Obligation provided for in this paragraph obligates Subcontractor to indemnify, protect, defend and hold harmless the Indemnitees from the consequences of Indemnitees' own negligence. The Indemnification Obligation, however, does not apply to Claims arising from the sole negligence or willful misconduct of the Indemnitees or their agents, employees or independent contractors for whom they are directly responsible, or for defects in design furnished by such persons. Without limiting the foregoing, the Indemnification Obligation includes, but is not limited to, Claims for wrongful death, personal injury, disability, property damages, emotional distress, mental anxiety, lost income, lost profits, diminution in market value, and/or liens on the PROJECT. The Indemnification Obligation further extends to and includes any and all Claims, suits, expenses or damages arising out of or resulting from alleged or actual infringement or violation of any patent, copyright, trademark, license or right to use there under on the part of the Subcontractor, its materialmen, subcontractors or anyone acting on their behalf, in connection with the performance of the

work by Subcontractor. Further, Subcontractor acknowledges and agrees that its Indemnification Obligation extends beyond final completion of the work and acceptance by Owner, and as to all contractual matters to the fullest extent required by the CONTRACT DOCUMENTS.

8.2. In any and all claims for bodily and/or personal injury asserted against Contractor, or anyone acting on its behalf, by any employee of Subcontractor or any person acting on behalf of Subcontractor in the performance of the Subcontract Work described herein, the Indemnification Obligation shall not be limited in any way by any statutory or regulatory limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor under any Workers' Compensation statutes, disability benefits or employee benefit legislation. The Indemnification Obligation as set forth herein, shall not be amended or modified in any way by Workers' Compensation statutes, but instead represents a separate and independent express contractual undertaking by Subcontractor. It is the express intent of the parties hereto, including Subcontractor's Surety that all requirements of the CONTRACT DOCUMENTS, including Subcontractor's insurance and Indemnification Obligation, shall be and become the obligation of Surety.

8.3 Subcontractor's indemnification obligations as set forth in this Section 8 shall not in any way be limited by the insurance provisions of this SUBCONTRACT, nor by any other provision of the SUBCONTRACT DOCUMENTS.

SECTION 9 – SURETY BONDS

The Contractor may, as a condition of entering into this SUBCONTRACT or at any time after entering into this SUBCONTRACT, require the Subcontractor within five (5) calendar days to furnish faithful performance and labor and material bonds from a surety acceptable to Contractor with penal sums to be designated by Contractor, but not exceeding 100% of the Subcontract Price. So long as the surety's premium does not exceed 2% of the Subcontract Price, Contractor shall pay the premium on any such bonds directly to the bonding company after receipt of its invoice. Any premium in excess of 2% shall be paid by Subcontractor. The performance bond shall cover all conditions of this SUBCONTRACT, including all costs and expenses associated with the indemnification and insurance provisions of this SUBCONTRACT, including the satisfaction of any self-insured retention.

SECTION 10 – LABOR RELATIONS

10.1 General. Employment of labor by Subcontractor shall be effected under conditions which are satisfactory to Contractor. Subcontractor shall keep a representative at the site of the PROJECT during all times when Subcontractor's work is in progress, and such representative shall be authorized to represent Subcontractor as to all phases of the Subcontract Work. Prior to commencement the Subcontract Work, Subcontractor shall notify Contractor in writing of the name of its representative, and in the event of any change of representative, Subcontractor shall notify Contractor the name of the new representative prior to such change becoming effective.

10.2 Labor Agreements. Subcontractor acknowledges that Contractor has entered into labor agreements covering work at its construction jobsites with the labor unions identified in Attachment 'C' hereto. Subcontractor hereby expressly agrees that all of the provisions of the applicable labor agreements are incorporated into this SUBCONTRACT as if they were set forth herein in their entirety. Subcontractor acknowledges and agrees that Contractor has relied on its representations as set forth above in this Section 10.2. Subcontractor shall fully defend, indemnify and hold Contractor harmless from and against any claims, liabilities, losses, damages, costs, expenses, attorneys' fees incurred in good faith, awards, fines or judgments arising out of or relating to any change or alteration in Subcontractor's union relationships or status in accordance with Section 8, above.

Subcontractor agrees to comply with all the terms and conditions of the labor agreements set in Attachment 'C' hereto, as if it were a party to said agreements including signatory status, if required. Subcontractor further agrees to pay the wage rates, make the required trust fund payments into the respective labor trust funds, and observe the hours and all other terms and conditions set forth in the respective labor agreement identified in Attachment 'C' hereto. Subcontractor agrees to comply with the terms and provisions of said labor agreements setting forth the grievance and arbitration provisions. Subcontractor agrees to comply with the terms and provisions of said agreements setting forth the jurisdiction and scope of work claimed by each craft, and the procedure contained in such agreements for resolution of jurisdictional disputes. In the absence of any such procedure, or if such procedure fails to promptly resolve any jurisdictional dispute, Subcontractor agrees, at its own cost and expense, upon request of Contractor to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board.

Subcontractor acknowledges that terms and conditions of the labor agreements with the unions listing in Attachment 'C' hereto may require that Subcontractor comply with additional labor agreements with unions affiliated with the AFL-CIO and/or the United Brotherhood of Carpenters and Joiners of America and/or the Laborers International Union of North America, but listed in Attachment 'C' hereto. When the terms and conditions of said labor agreements so require, Subcontractor shall perform its job site work pursuant to all terms and conditions of an appropriate labor agreement with a union affiliated with the AFL-CIO and/or the United Brotherhood of Carpenters and Joiners of America and/or the Laborers International Union of North America.

Should there be picketing on Contractor's job site, and Contractor establishes a reserved gate or

neutral access for Subcontractor's purpose, it shall be the obligation of Subcontractor to continue the proper performance of its work without interruption or delay. In the event of a strike resulting from a union jurisdictional dispute involving or affecting the labor employed by the Subcontractor, Contractor may, at its option, terminate the Subcontractor's right to perform in accordance with Section 12.1.2, below.

Subcontractor further promises and agrees that it will bind and require all of its sub-subcontractors, regardless of tier, and their subcontractors performing job site work of the type covered by any of the labor agreements in Attachment 'C' attached hereto to agree to all of the foregoing promises and undertakings, to the same effect as herein provided with respect to Subcontractor.

10.3 DBE/DVBE/MBE/WBE Requirements. Subcontractor hereby acknowledges that it is thoroughly familiar with all DBE/DVBE/MBE/WBE requirements pertaining to this SUBCONTRACT, to the extent any such requirements exist. If the Subcontractor claims status as a DBE/DVBE/MBE/WBE, Subcontractor shall take all steps necessary and shall make all necessary records available to the Contractor and the OWNER to assure that Subcontractor is in compliance with such requirements. In the event that any sub-subcontractor or supplier of the Subcontractor, regardless of tier, is designated as or is required to be a DBE/DVBE/MBE/WBE, Subcontractor agrees to be responsible for ensuring that said sub-subcontractor or supplier meets all applicable requirements. Subcontractor acknowledges that Contractor is relying upon Subcontractor's representations regarding the validity of Subcontractor's status, if any, as a DBE/DVBE/MBE/WBE, and that any misrepresentation of the status of Subcontractor or any of its sub-subcontractors or suppliers, regardless of tier, is a material breach of this Agreement and grounds for immediate termination of Subcontractor's right to perform pursuant to Section 12.1.2, below. Notwithstanding anything else to the contrary contained in the SUBCONTRACT DOCUMENTS, in the event of termination as the result of material misrepresentation of the status of the Subcontractor as a DBE/DVBE/MBE/WBE, Subcontractor shall not be entitled to any compensation not already paid.

10.4 Compliance with Applicable Laws. Subcontractor shall comply with and agrees to be bound by all applicable federal, state and local laws and regulations, including, but not limited to, all provisions of the Fair Labor Standards Act, the Americans With Disabilities Act, the Federal Family and Medical Leave Act, the California Labor Code, the California Fair Employment and Housing Act, and the California Family Rights Act. Upon request, Subcontractor shall submit certified payroll records to Contractor no later than three (3) working days after labor has been paid. The provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 are incorporated into this SUBCONTRACT when payment of prevailing wages is required by contract or law, and Subcontractor agrees to comply with these provisions and all interpretations thereof by the Director of the Department of Industrial Relations insofar as they are applicable to Subcontractor on the Project. The CALIFORNIA PUBLIC WORKS LABOR CODE EXHIBIT attached hereto is fully incorporated into this SUBCONTRACT as though fully set forth herein.

SECTION 11 – LIABILITY FOR WORK IN PROGRESS AND JOBSITE REPRESENTATIVE

11.1 Liability for Work in Progress. Subcontractor shall be responsible for its own work, whether performed at the site of the PROJECT or in preparing or delivering materials or equipment to the site, property and/or materials, including, but not limited to, tools, equipment, scaffolding, job trailers, personal property, staging and vehicles and shall bear the risk of any loss or damage thereto exclusively. In the event of loss or damage, Subcontractor shall proceed promptly to make repairs or replacement of the damaged work, property and/or materials at its own expense, and as directed by the Contractor.

Subcontractor shall effectually secure and protect the work done hereunder and assume full responsibility for the condition thereof until final acceptance by OWNER and Contractor. Subcontractor further agrees to provide such protection as is necessary to protect the work and the workmen of Contractor, OWNER and other contractors and subcontractors from its operations. Subcontractor shall be liable for any loss or damage to any work in place or to any equipment and materials on the job site caused by it or its agents, employees or guests.

Subcontractor shall take all necessary precautions to protect its tools, equipment, and other property and shall be solely responsible for the any theft, loss or damage thereto.

11.2 Jobsite Representative. Subcontractor shall keep a representative at the jobsite during all times when the Subcontract Work is in progress, and such representative shall be authorized to represent Subcontractor as to all phases of the Subcontract Work. Prior to commencement of the Subcontract Work, Subcontractor shall notify Contractor of the name of Subcontractor's representative, and in the event of any change of representative, Subcontractor shall notify Contractor of the name of the new representative prior to such change becoming effective.

SECTION 12 – CONTRACTOR'S REMEDIES

12.1 Remedies for Failure of Performance.

12.1.1 Remedies Other than Termination for Default. If the Subcontractor at any time fails to supply enough properly skilled workers or supervisors or materials of the proper quality, or fails to keep the PROJECT clean at all times, or fails to promptly make any payments to its workers, suppliers, or sub-subcontractors or any payments required by private agreements or public laws or fails in any way to perform any of the terms of this Agreement (an "Event of Default"), and fails within 48

hours after receipt of written notice by Contractor to cure the Event of Default, then Contractor, without prejudice to any rights or remedies, shall have the right to any or all of the following remedies:

- A. Supply the number of workers and quantity of materials, equipment and other facilities as Contractor finds necessary for the completion of the Subcontract Work, or any part thereof, which Subcontractor has failed to complete or perform and charge the cost, including 15% profit and overhead and actual attorney fees incurred as a result of the Event of Default, to Subcontractor.
- B. Contract with one or more additional contractors to perform such part of the Subcontract Work as Contractor shall determine will provide the most expeditious completion of the total work and charge the cost thereof to Subcontractor, including mark-up of fifteen percent (15%) for overhead and profit, plus actual attorneys' fees incurred as a result of Subcontractor's failure of performance; and
- C. Withhold payment of any monies due Subcontractor pending corrective action to the extent required by and to the satisfaction of Contractor.

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

12.1.2 Termination for Default. In addition to the remedies set forth in Section 12.1, above, Contractor may, upon the provision of 48 hours written notice, terminate Subcontractor's right to perform under this SUBCONTRACT, and take possession of Subcontractor's materials, tools, equipment and machinery, without any compensation to Subcontractor, and supply such materials and equipment and employ such workers or subcontractors as Contractor deems necessary to complete the Subcontract Work and maintain the orderly progress of the PROJECT work. In the event of termination pursuant to this Section 12.1.2, Subcontractor shall not be entitled to any further payment until the Subcontract Work is completed. At that time, all costs incurred by Contractor in performing and completing the Subcontract Work, including 15% profit and overhead and actual attorney fees as provided above and damages incurred by reason of such default shall be deducted from the amounts due or to become due Subcontractor under this SUBCONTRACT, and

- A. If, at that time, the remaining unpaid balance of the Subcontract Price exceeds Contractor's costs to complete the Subcontract Work, as defined above, then the excess shall be paid to Subcontractor; or
- B. If, at that time, the remaining unpaid balance of the Subcontract Price is less than the Contractor's costs to complete the Subcontract Work, as defined above, then Subcontractor shall promptly pay the difference to Contractor.

A termination pursuant to this Section 12.1.2 that is subsequently determined to be wrongful or unjustified shall be treated as, and converted to, a termination for convenience pursuant to Section 12.2, below.

12.2. Termination for Convenience. Contractor may at any time and for any reason terminate Subcontractor's right to perform under SUBCONTRACT, or any portion thereof, at Contractor's convenience upon the provision of 48 hours written notice.

Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the Subcontract Work set forth in the notice, and placing of orders for materials, facilities and supplies in connection therewith, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts pertaining to the terminated work upon terms satisfactory to Contractor or, at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived therefrom. With respect to the work subject to the notice under this Section 12.2, Subcontractor shall thereafter do only such work as may be necessary to preserve and such work already in progress and to protect material and equipment on the job site or in transit thereto.

Upon such termination, Subcontractor shall be entitled to payment in accordance with this Section 12.2 only as follows: (1) the actual cost of the work terminated completed in conformity with this SUBCONTRACT; plus, (2) such other costs actually incurred by Subcontractor as are permitted by the PRIME CONTRACT and approved by OWNER; plus (3) five percent (5%) (but not more than allowed by the PRIME CONTRACT) of the cost of the work referred to in item (1) above for overhead and profit. There shall be deducted from such sums as provided in this paragraph the amount of any payments made to Subcontractor on account of the work subject to the termination prior to the date of the termination. In no event shall the payment due hereunder exceed the amount due under this SUBCONTRACT for approved units of work or percentage of completion. Subcontractor shall not be entitled to any claim or claim of lien against Contractor or Owner for any additional compensation or damages in the event of such termination and payment.

SECTION 13 – PROJECT SCHEDULE

The Contractor will develop a construction schedule for the PROJECT and shall utilize it in planning, coordinating and performing work under the PRIME CONTRACT, including the work of Subcontractor, other subcontractors, equipment vendors and suppliers (the "Project Schedule"). SUBCONTRACTOR shall assemble and provide all necessary information and dates concerning its activities and the activities of its sub-subcontractors, vendors and suppliers as required by Contractor for the production of the Project Schedule. Subcontractor shall prepare and submit such information in the form required by the Contractor within two (2) weeks of receipt of this SUBCONTRACT. The Project Schedule shall be updated, time to time, by Contractor.

Time is of the essence of this SUBCONTRACT. Subcontractor shall keep itself apprised of the progress of the work under the PRIME CONTRACT, and shall commence performance of its work, or any portion thereof, immediately upon being notified by Contractor, or as otherwise set forth in this SUBCONTRACT, and shall diligently continue such performance, including all things necessary and incidental thereto, until all of its work, or such portion as may be required by Contractor's most current Project Schedule, is completed to the satisfaction of OWNER and Contractor. Subcontractor shall prosecute its work in a prompt and diligent manner in accordance with Contractor's most current Project Schedule without delaying or hindering Contractor's work or the work of other contractors or subcontractors. Subcontractor shall carefully plan its work, anticipate the needs for and supply of workers and materials, and cooperate and coordinate its work with that of all other contractors, subcontractors, suppliers and/or materialmen and of the Contractor, in a manner that will facilitate the efficient completion of the entire work. Contractor shall have complete control of the premises on which the work is to be performed and shall have the right to decide the time and order in which various portions of the work shall be installed and the relative priority of the work of Subcontractor and other subcontractors, and, in general, all other matters pertaining to the timely and orderly conduct of the work of Subcontractor on the premises. Without limiting the foregoing, Subcontractor shall schedule its work and the presence of its employees at the site of the PROJECT and any deliveries of supplies or materials by its materialmen and suppliers to the site of the PROJECT on such days, and at such times and during such hours, as may be directed by Contractor. Subcontractor shall assume responsibility for such schedule compliance not only for its employees but for all of its materialmen, suppliers and sub-subcontractors regardless of tier. Notwithstanding anything else to the contrary contained in the SUBCONTRACT DOCUMENTS, work stoppages (including sympathy strikes) or other stoppage of work by employees performing work on, or delivering supplies or materials to, the jobsite shall not excuse any delay of Subcontractor in the proper performance of its work, regardless of whether the strike or other stoppage of work is attributed to union action or the action of any individual employee.

Should SUBCONTRACTOR fail in any respect to perform in accordance with Contractor's most current Project Schedule, at the request of Contractor, Subcontractor shall take some or all of the following actions at no additional cost to the OWNER or the Contractor:

- A. Increase construction manpower in such quantities and crafts as will eliminate the effects of Subcontractor's delay;
- B. Increase the number of working hours per shift, shifts per working day, working days per week, or the amount of construction equipment, or any combination of the foregoing sufficient to eliminate the effects of Subcontractor's delay; and/or
- C. Reschedule activities to ensure acceleration of the Subcontract Work sufficient to eliminate the effects of Subcontractor's delay.

If Subcontractor fails to take any of the above actions, after request by Contractor, said failure shall be considered an Event of Default pursuant to Section 12.1.1, above, of this SUBCONTRACT.

SECTION 14 -- PATENT INFRINGEMENT

In addition to those indemnities set forth in Section 8, above, of this SUBCONTRACT, Subcontractor shall indemnify and hold Contractor harmless against any claim, suit or action or any alleged violation or infringement of patent, copyright or trademark rights which may be made against Contractor by reason of the use in connection with or as part of the performance of the Subcontract Work or the furnishing of the materials hereunder, of anything which is now or may hereafter be covered by patent, copyright, or trademark, and also against all expense, including attorney fees, which Contractor may incur in defending or adjusting any such claim, suit or action.

SECTION 15 -- SAFETY

Subcontractor shall comply with all local, state and federal laws, orders, citations, rules regulations, standards and statutes affecting or relating to this SUBCONTRACT or its performance hereunder, including those related to occupational health and safety, the handling and storage of hazardous materials, accident prevention, safety equipment and practices including the accident prevention and safety programs of Contractor or OWNER currently in effect, and the Owner's safety procedures if any. Subcontractor shall possess, and cause its lower tier subcontractors to possess, a satisfactory written Injury and Illness Prevention Program ("IIPP") including written programs that

address any hazards unique to the Subcontractor's trade. The foregoing combined requirements shall constitute the minimum performance expected from SUBCONTRACTOR.

Subcontractor shall conduct inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for providing a safe place to work for its employees and for employees of its sub-subcontractors and suppliers, for adequacy of and required use of all safety equipment and for full compliance with the aforesaid laws, orders, citations, rules, regulations, standards and statutes.

Subcontractor shall, within two (2) days after its knowledge thereof, notify Contractor in writing of any injury to any of its employees or employees of its sub-subcontractors or suppliers, regardless of tier, or of anyone else, occurring on or about the site of the PROJECT. Said written notice by Subcontractor shall contain all facts known to it pertaining to said injury.

SECTION 16 – CHANGE ORDERS

Subcontractor shall make any and all changes in the Subcontract Work, including additions, deletions, or other revisions, as directed by Contractor by properly executed written directive. Such change by written directive shall not invalidate this SUBCONTRACT. Subcontractor shall promptly perform the changed work as directed. Once Subcontractor has received Contractor's written directive, Subcontractor is solely responsible for timely performance of the work as changed by the written directive. If Contractor and Subcontractor cannot agree on the amount of the addition or deletion to the Subcontract Price resulting from a written directive, Subcontractor shall not be relieved of its obligation to perform the work as changed by Contractor's written directive.

A DIRECTIVE SHALL BE DEEMED PROPERLY EXECUTED IF, AND ONLY IF, IT IS IN WRITING AND IT HAS BEEN EXECUTED BY CONTRACTOR'S OFFICERS, PROJECT MANAGER, PROJECT SUPERINTENDENT OR PROJECT ENGINEER.

Within seven (7) days of first receiving a request for quotation or pricing information with respect to a change in the Subcontract Work, Subcontractor shall supply Contractor with all documentation necessary to substantiate the amount of the addition to or the deduction from the Subcontract Price or the time for Subcontractor's performance. Subcontractor shall provide quotations or documentation only to Contractor and not to OWNER.

Subcontractor shall not make any changes in the Subcontract Work, or in any way cause or allow that work to deviate from the SUBCONTRACT DOCUMENTS, without a properly executed written directive from Contractor. If Subcontractor makes any changes in the Subcontract Work without a proper written directive from Contractor, such change constitutes an agreement by Subcontractor that it will not be paid for the changed work, even if it received verbal direction from Contractor or any form of direction, written or otherwise, from OWNER or any other person or entity. In addition, Subcontractor shall be liable for any and all losses, costs, expenses, attorney fees, damages, and liability of any nature whatsoever associated with or in any way arising out of any such change it makes without a proper written directive from Contractor.

If a dispute arises between Contractor and Subcontractor about whether a written directive or other occurrence entitles Subcontractor to additional compensation or time, or any dispute arises as to the amount of additional compensation or time to which Subcontractor is entitled, Subcontractor shall timely perform the disputed work and shall give written notice of a claim for additional compensation and/or increase in the time for its performance for that disputed work. Such written notice of claim must be given within the earliest of:

- A. Five (5) days after the beginning of the occurrence giving rise to the dispute.
- B. Two (2) working days in advance of the time Contractor is required to give notice of such claim under the CONTRACT DOCUMENTS; or
- C. Two (2) working days prior to Subcontractor's performance of the work which is the subject of the notice.

Subcontractor shall also comply with all other notice and claim requirements of the CONTRACT DOCUMENTS sufficiently in advance as to allow Contractor to timely comply with such requirements with respect to Subcontractor's claim. Subcontractor's failure to give written notice within the proper time limit, or to timely comply with the notice and claim requirements of the CONTRACT DOCUMENTS as set forth above, constitutes an agreement that Subcontractor will not be paid for the disputed work.

Any adjustment in Subcontractor's compensation under this SUBCONTRACT, or the time for performance hereunder, shall be allowed only to the extent allowed by OWNER, but in no event shall Subcontractor be allowed more than its costs, as defined below, and a mark-up for profit and overhead of ten percent (10%), including all sub-tier mark-ups. If OWNER allows only a single mark-up on the work of Subcontractor, it shall be allocated equally to Contractor and Subcontractor.

Costs are defined as the total of the following (unless otherwise defined in the CONTRACT

DOCUMENTS in which case Subcontractor's costs shall in no event exceed the costs defined in the CONTRACT DOCUMENTS):

- A. gross wages or salaries, including authorized overtime of craft employees directly employed on the extra work;
- B. the following additional payroll expenses of such employees directly employed on the extra work: premium cost of overtime labor; social security taxes; old age and unemployment contributions; such fringe benefits as are required pursuant to collective bargaining agreements; and payroll taxes levied by governmental agencies;
- C. material, including sales tax thereon, permanently incorporated into the extra work;
- D. rental cost of construction plant and equipment used directly in the performance of the extra work;
- E. utilities and consumable supplies used directly in the performance of the extra work;
- F. additional insurance required for the extra work;
- G. additional bond costs required for the extra work; and
- H. additional costs for royalties, permits and inspection fees required for the extra work.

The foregoing method of calculating adjustments in the compensation to be paid to Subcontractor for changes in the Subcontract Work shall also apply when the change in the work is not directed by, or otherwise involves, the acts or omissions of, the OWNER.

Payment of authorized and properly executed change orders will be made in accordance with Section 2 of this SUBCONTRACT.

No change, alteration or modification in or deviation from this SUBCONTRACT or the plans and specifications, whether made in the manner herein provided or not, shall release or exonerate, in whole or in part, any surety on any bond given in connection with this SUBCONTRACT and neither OWNER or Contractor shall be under any obligation to notify the surety or sureties of any such change.

SECTION 17 -- DELAY

If Subcontractor is delayed solely by a cause absolutely beyond its control and which could have not been anticipated at the time of its execution of this SUBCONTRACT, Subcontractor shall be granted an extension of time, subject to the following conditions precedent:

- A. Subcontractor gives Contractor written notice within forty-eight (48) hours from the occurrence of the event giving rise to the delay;
- B. The CONTRACT DOCUMENTS allow a time extension for the cause of the delay set forth in Subcontractor's notice; and
- C. Contractor has been granted an equivalent time extension from the OWNER for the same delay.

No claims for additional compensation or damages for delays, whether caused in whole or in part by any conduct on the part of Contractor, including, but not limited to, conduct amounting to a breach of this SUBCONTRACT, or delays by other subcontractors or OWNER, shall be recoverable from Contractor, and the above-mentioned extension of time for completion shall be the sole remedy of Subcontractor; provided, however, that in the event Contractor obtains additional compensation from OWNER on account of such delays, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor from OWNER as is equitable under all of the circumstances. In the event that Contractor prosecutes a claim against OWNER for additional compensation for any delay, Subcontractor shall cooperate fully with Contractor in the prosecution thereof and shall pay the costs and expenses incurred in connection therewith, including actual attorneys' fees, to the extent that said claim is made by Contractor at the request of Subcontractor. Nothing in this Section shall obligate Contractor to prosecute a claim for delay damages.

If Subcontractor should default in performance of the work described in this SUBCONTRACT or should otherwise commit any act which causes any delay or interference to the PRIME CONTRACT work, or the work of other contractors or subcontractors, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages and liquidated damages, sustained by Contractor, or for which Contractor may be liable to OWNER or any other party, because of Subcontractor's default or delay in performance. Subcontractor further agrees to defend, indemnify and

hold Contractor harmless from and against any claims or actions brought by any of Contractor's other subcontractors, or the separate contractors of OWNER, alleging that Subcontractor caused any delay or interference with their work

SECTION 18 – DISPUTES

18.1 Disputes Under CONTRACT. Any dispute resolution procedure in the CONTRACT DOCUMENTS shall be deemed incorporated into this SUBCONTRACT, and shall apply to any disputes arising hereunder, except disputes not involving the acts, omissions or otherwise the responsibility of the OWNER under the CONTRACT DOCUMENTS, and those which have been waived by the making or acceptance of final payment. Subject to compliance with all applicable laws, including but not limited to, those relating to false claims, dispute and claim certifications, and cost and pricing data requirements, Contractor's sole obligation is to present any timely-filed claims by Subcontractor to Owner under such procedure and, subject to the other provisions of this SUBCONTRACT, to pay to Subcontractor the proportionate part of any sums paid by the OWNER to which Subcontractor is entitled. Contractor shall act in good faith in passing through and prosecuting Subcontractor's claim but the final decision regarding the presentation and resolution of the claim shall be Contractor's and Subcontractor shall be bound by that decision. The Subcontractor shall bear its pro-rata share of any costs, including attorney fees and consultant fees incurred in good faith, required to process Subcontractor's claim pursuant to the CONTRACT DOCUMENTS. Notwithstanding any pending dispute resolution process involving Contractor and Subcontractor, unless otherwise agreed in writing, Subcontractor shall carry on the work and maintain the schedule of work pending such dispute resolution process, and if so, Contractor shall continue to make payments in accordance with this SUBCONTRACT.

18.2 Other Disputes. All claims not involving the acts or omission or otherwise the responsibility of the OWNER under the CONTRACT DOCUMENTS shall be resolved, in Contractor's sole and absolute discretion, by: (i) binding arbitration as set forth in Section 18.3, below, or (ii) litigation in a court of competent jurisdiction.

18.3 Arbitration Procedures. In the event the CONTRACT DOCUMENTS contain an arbitration provision or for disputes not involving the acts, omissions or otherwise the responsibility of the OWNER under the CONTRACT DOCUMENTS for which Contractor has elected arbitration as the dispute resolution mechanism, the following shall apply:

18.3.1 Notice of Demand. For arbitration under the CONTRACT DOCUMENTS, notice of the demand for arbitration shall be filed in writing with the other party to this SUBCONTRACT and shall conform to the requirements of the arbitration provision set forth in the CONTRACT DOCUMENTS. For claims not involving the acts or omission or otherwise the responsibility of the OWNER under the CONTRACT DOCUMENTS, the parties hereto shall submit any and all disputes arising under or relating to the SUBCONTRACT to arbitration in accordance with the Construction Industry Rules of the American Arbitration Association. In either case, the demand for arbitration shall be made within a reasonable time after written notice of the claim, dispute or other matter in question has been given, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim dispute or other matter in question would be barred by the applicable statute of limitations.

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

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

18.3.4 No Limitation of Rights or Remedies. This Section 18 shall not be deemed a limitation of any rights or remedies which Subcontractor may have under any federal or state mechanics' lien laws or under any applicable labor and material payment bonds unless such rights or remedies are expressly waived by it.

SECTION 19 – INDEPENDENT CONTRACTOR

Subcontractor is an independent contractor and shall, at its sole cost and expense, and without increase in the Subcontract Price, comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the work; obtain all necessary permits and licenses therefor, pay all royalties and license fees associated with the work, pay all manufacturers' taxes, sales taxes, use taxes, processing taxes associated with the work, and pay all federal and state taxes, insurance and contributions for social security and unemployment which are measured by wages, salaries, or other remunerations paid to Subcontractor's employees, whether levied under existing or subsequently enacted laws, rules or regulations. Subcontractor, upon request, shall furnish evidence satisfactory to Contractor that any or all of the foregoing obligations have been fulfilled.

SECTION 20 -- USE OF CONTRACTOR'S EQUIPMENT

Subcontractor, its agents, employees, sub-subcontractors or suppliers, regardless of tier, shall not use the Contractor's equipment without the express written permission of the Contractor's designated representative. In the event of use of Contractor's equipment by the Subcontractor, its agents, employees, sub-subcontractors or suppliers, regardless of tier, Subcontractor shall continue to act as an independent contractor and shall be fully responsible for and shall be deemed to have inspected any such equipment and accepts the use of such equipment in its "as-is" "as-furnished" condition and without any representation or warranty by Contractor, and hereby acknowledges that said equipment may be new or used and that Subcontractor takes full responsibility to check and verify that said equipment is safe and suitable for its intended use. Subcontractor shall ensure that its employees and agents shall be knowledgeable in the use of the equipment, and that they do not, and will not, rely on any direction, supervision or assistance with respect to Contractor's equipment from Contractor, OWNER or their respective agents or employees. In the event that Contractor's employees are used by Subcontractor, Subcontractor shall have full responsibility for all acts or omissions of Contractor's employees with regard to Subcontractor's use or employment of them. Further, Subcontractor assumes all responsibility for physical damage to such Contractor equipment, materials, labor, supplies, or facilities used by Subcontractor or its agents, employees, sub-subcontractors or suppliers, regardless of tier, and agrees to indemnify, defend and hold harmless Contractor, Owner and their agents and employees for all costs, claims and/or penalties arising out of, resulting from, or in any way related to Subcontractor's use of Contractor's equipment pursuant to Section 8, above.

SECTION 21 – NO ASSIGNMENT BY SUBCONTRACTOR

The Subcontractor shall neither assign this SUBCONTRACT nor any amounts due or to become due hereunder without the written consent of the Contractor, nor subcontract the whole of the SUBCONTRACT, or any portion thereof, without the written consent of the Contractor.

SECTION 22 – PERMITS, LICENSES, INSPECTIONS AND TAXES

The Subcontractor shall obtain and pay for all necessary permits, licenses, inspections and taxes with respect to the Subcontract Work, and all Subcontract Work must conform in every particular with all local, State or Federal laws, codes, regulations or inspections which may apply, whether or not specifically mentioned in CONTRACT DOCUMENTS. Subcontractor recognizes, in connection with this Section, that the Subcontract Work must continue to be consistent with the most current Project Schedule supplied by the Contractor, and Subcontractor shall, in writing, advise the Contractor of any incident where any regulations or inspections tend to interfere with the orderly progression of the Subcontract Work.

SECTION 23 – INTERPRETATION OF CONTRACT DOCUMENTS

It is understood that ambiguities and inconsistencies may arise in and between drawings, specifications and other CONTRACT DOCUMENTS. In the event of any dispute concerning interpretation of the drawings, specifications, and other CONTRACT DOCUMENTS, the Subcontractor shall perform Subcontract Work and provide materials in conformity with the written decision of the Architect/Engineer. If the decision of the Architect/Engineer requires extra work or materials, Subcontractor shall provide notice of claim therefor in accordance with Section 16, above, and any additional compensation to which Subcontractor may be entitled on account thereof will be determined in accordance with procedures set forth in the appropriate provisions of the CONTRACT DOCUMENTS and this SUBCONTRACT.

SECTION 24 – DETAILS MATERIAL LISTS, SAMPLES, SUBMITTALS AND SHOP DRAWINGS

As applicable to the Subcontract Work, the Subcontractor agrees to furnish all details, material lists, samples or other submittals as called for in the CONTRACT DOCUMENTS, and to deliver same to Contractor within thirty (30) days of the date of this SUBCONTRACT. Shop drawings applicable to the Subcontract Work, if any, shall be submitted by SUBCONTRACTOR within the time provided in the CONTRACT DOCUMENTS and in no event later than such time needed to obtain the required approvals (allowing sufficient time for reviews, corrections by Subcontractor and the required approvals) as to not delay the Subcontract Work. All shop drawings submitted shall include no less than one (1) reproducible and six (6) copies of each drawing being submitted. The responsibility to supply said lists,

samples, drawings, submittals, and shop drawings within the specified time is solely that of the Subcontractor, and the Subcontractor shall reimburse the Contractor for any expenses incurred by Contractor resulting from any delay in supplying these documents.

SECTION 25 -- WARRANTY

Subcontractor, on behalf of itself and its sub-subcontractors and suppliers regardless of tier, warrants to OWNER and Contractor that all materials and equipment furnished under this SUBCONTRACT shall be new unless otherwise specified and that all Subcontract Work shall be performed in a good and workmanlike manner, shall be of good quality, free from faults and defects and in conformance with the CONTRACT DOCUMENTS. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective, and shall be corrected by Subcontractor, at its sole cost and expense, for a period of one-year following final completion of the PROJECT. Equipment and materials incorporated into the PROJECT shall be warranted for a period not less than the warranty provided by the manufacturer or supplier thereof, and all such written manufacture or supplier warranties shall be provided to Contractor upon the conclusion of the PROJECT, and Contractor's receipt thereof shall be a condition precedent to Subcontractor's receipt of final payment under this SUBCONTRACT. The warranty provided in this Section 25 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the CONTRACT DOCUMENTS.

SECTION 26 -- POST-CONSTRUCTION REQUIREMENTS

When as-built drawings, guarantees, operating instructions and other post-construction documents are required by the CONTRACT DOCUMENTS, the Subcontractor agrees that such drawings, guarantees, instructions and documents shall be submitted two (2) weeks prior to the completion of the Subcontract Work, or as otherwise required by Contractor. The provision of the post-construction documents set forth in this Section 26 by Subcontractor shall be a condition precedent to Contractor's obligation to make final payment to Subcontractor. Furthermore, it is agreed, in the event of the untimely performance of Subcontractor's obligations under this Section 26, that the Contractor may, at its sole discretion, take those steps necessary to obtain the post-construction documents, the costs of which shall be charged against the account of the Subcontractor.

SECTION 27 -- EQUAL EMPLOYMENT OPPORTUNITIES AND SPECIAL INDEMNIFY CLAUSE FOR VIOLATIONS

Subcontractor shall, at his own expense, conform to the equal employment opportunity policies of Contractor and, in addition, shall comply with all equal employment opportunity requirements promulgated by any governmental authority including, without limitation, the requirements of the Civil Rights Act of 1964, 42 United States Code, Section 1983, Executive Orders 11246, 11275 and 11478, the California Fair Employment Practices Act, the California Plan, any other applicable statute or ordinances, plans or programs, standards and regulations which have been or shall be promulgated or approved by the parties or agencies which administer such Acts or Orders, (hereinafter collectively referred to as "EEO" laws). Subcontractor shall have and exercise full responsibility for compliance hereunder by himself, his agents, employees, sub-subcontractors and suppliers, regardless of tier, with respect to the Subcontract Work. Subcontractor shall directly receive and respond to, defend and be responsible for any citation, order, claim, charge or criminal or civil actions, arising by reason of the failure of Subcontractor or his agents, employees, sub-subcontractors and suppliers, regardless of tier, to so comply, regardless of whether such non-compliance results from active or passive acts or omissions or whether such non-compliance is the sole or a contributory cause of any of those matters against which Subcontractor is obligated hereunder to indemnify and hold harmless Contractor. Subcontractor shall indemnify and hold harmless Contractor from and against any liability loss (including any loss of profits or prospective advantage occasioned by the suspension, cancellation or termination of any contract, or Contractor's eligibility therefore), damage, costs, claims, awards, or judgments, fines, expenses, including litigation expenses, reasonable attorney's fees, claims or liability for harm to persons or property, expenses incurred pursuant to or attendant to any hearing or meeting or any other applicable costs which may be incurred by Contractor resulting from Subcontractor's failure to fulfill the covenants set forth in this Section.

In the event Subcontractor fails to comply with any of the aforementioned EEO laws, or any judgment, order or award issued by the Office of Federal Contract Compliance, United States Department of Labor, or any other federal, state or local agent or any court of law, or any other body responsible for the administration and/or enforcement of any EEO laws, within the period specified in any such laws, judgment, order or award, Contractor may, in his discretion, exercise the rights and remedies provided it under Section 12 of this SUBCONTRACT.

SECTION 28 -- TENSES AND DEFINITIONS

The term "Subcontractor" shall include, wherever applicable, Subcontractor's agents and employees. Words used in this SUBCONTRACT in the present tense include the future as well as the present; the singular number includes the plural and the plural the singular; the word "person" includes a corporation and association as well as the natural person; and captions in paragraph headings are used herein for convenience only and are not part of this SUBCONTRACT and shall not be used in construing it.

SECTION 29 -- OTHER CONTRACTS

Should one or more contracts now or hereafter exist between the Contractor and Subcontractor or with any affiliated corporation or company of Contractor, concerning this PROJECT, or any construction project, then a breach by the Subcontractor of any contract may, at the option of the Contractor, be considered a breach of all contracts. In such event, Contractor may terminate Subcontractor's right to perform under any or all of the contracts so breached, or may withhold monies due or to become due on any of such contracts and apply the same toward payment of any damages suffered on that or any other contract.

SECTION 30 – ADVERTISING/SIGNS

Subcontractor, its sub-subcontractors and suppliers, regardless of tier, and their employees shall not take photographs of the PRIME CONTRACT work, publish or display advertising matter of any description relating to the PROJECT, or display signs at or near the PROJECT without first obtaining the written consent of the Contractor.

SECTION 31 – INFORMATION REQUIRED BY OWNER

In addition to the information to be provided by Subcontractor pursuant to other provisions of this Subcontract, Subcontractor hereby agrees to provide at no additional cost to Contractor any information required by the OWNER, and further agrees that such information will be provided in a prompt and timely fashion so as not to disrupt the performance of this SUBCONTRACT or the PRIME CONTRACT.

SECTION 32 – INSPECTION AND ACCEPTANCE

Subcontractor shall provide appropriate facilities and access at all reasonable times for inspection by Contractor and/or OWNER of the work and materials provided under this SUBCONTRACT whether on site or offsite where such work or materials may be in preparation, manufacture, storage, or installation. Subcontractor shall replace or correct any work or materials rejected by Contractor and/or OWNER, as failing to comply with the requirements of the SUBCONTRACT DOCUMENTS. If the Subcontractor does not do so within a reasonable time, Contractor may exercise any or all of the remedies set forth in Section 12 of this SUBCONTRACT.

The Subcontract Work shall be accepted according to the CONTRACT DOCUMENTS. However, unless otherwise agreed to in writing, entrance and use by the OWNER or Contractor does not constitute acceptance of the Subcontract Work.

SECTION 33 – SUCCESSORS AND ASSIGNS

It is mutually agreed that this SUBCONTRACT shall bind the heirs, successors and assigns of each of the parties hereto.

SECTION 34 – SECTION AND ARTICLE HEADINGS

All section and article headings are used for convenience only, and such headings shall not affect the construction or interpretation of this SUBCONTRACT.

SECTION 35 – ENTIRE AGREEMENT

This SUBCONTRACT constitutes the entire and only contract between the parties with respect to the subject matter hereof, and includes all changes, addenda, and other modifications to date, and supersedes any prior proposals, quotations, representations, understandings, correspondence or agreements and cannot be modified, altered, amended, or changed, except by an instrument in writing signed by each of the parties hereto.

SECTION 36 -- SEVERABILITY

Should any provision of this SUBCONTRACT be found by a court of competent jurisdiction to be invalid, the remaining provisions shall be enforced as in full force and effect. Should any word, phrase, or provision be found by a court of competent jurisdiction to be invalid, Contractor and Subcontractor agree that only those words, phrases or provisions that create the conflict with applicable law shall be stricken and the remainder of the words, phrases or provisions of the affected Section and of this SUBCONTRACT shall remain in full force and effect.

SECTION 37 -- JURISDICTION

This SUBCONTRACT and the terms hereunder shall be governed in accordance with the laws of the State of California without regard to conflict of law principles. Subcontractor agrees that this SUBCONTRACT is executed in Solano County, California, and that venue for any action brought to enforce any of the terms and provisions of this SUBCONTRACT shall be proper only in the Superior Court for the State of California in and for the County of Solano, or if in Federal Court, including bankruptcy court, in the Northern District of California.

SECTION 38 – CALIFORNIA CONTRACTORS' STATE LICENSE BOARD

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (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, CA. 95826.

IN WITNESS WHEREOF the following designated individuals, who represent that they have now the present capacity and authority to enter into this SUBCONTRACT for their respective organizations, hereby promise and warrant for their organizations, to perform fully and in good faith as herein aforesaid.

Date: _____

LATHROP CONSTRUCTION ASSOCIATES, INC.

Signature

Type/Print Name, Title

Date: _____

Contractor's Name: _____

Signature

Type/Print Name, Title

SAMPLE

Subcontract Agreement # 108_- between Lathrop Construction Associates, Inc. and

INCLUDES, BUT NOT NECESSARILY LIMITED TO, THE FOLLOWING:

EXHIBITS:

1. Procedure Memorandum
2. Subcontract Insurance Requirements
3. Certified Payroll Reporting Forms
4. Public Works Fringe Benefit Statement
5. Subcontractor Affidavit Form
6. Training Fund Contributions
7. Public Works Contract Award Information, Form DAS 0140 (Rev. 1/04)

SPECIAL PROVISIONS:

1. Subcontract Agreement and Insurance Certificates must be returned, fully executed, no later than (10 days) after receipt of this subcontract.
2. Craft / Trade & Wage Determination Rates provided no later than (7 days) after receipt of this subcontract.
3. Submittals shall be furnished to Lathrop Construction Associates, Inc. (complete in accordance with project specification requirements), with information required for architectural review and approval, no later than (10 days) after receipt of this subcontract.
4. Closeout Items (O&M Manuals, Record Drawings) shall be submitted timely and before completion of the project; Final Record Drawings – within 10-days of completion of your work.
5. Comply with certified payroll requirements.
6. Provide three copies of MSDS for all materials to be used on the project (under this subcontract) within five days after award and/ or before any new chemicals are brought to the site.
7. CSU does not recognize substantial completion or beneficial occupancy. The project is either complete or it is not. To avoid liquidated damages, all close-out submittals, test reports, etc. are due and must be accepted before completion.

WORK INCLUDED, BUT NOT LIMITED TO THE FOLLOWING:

1. Comply with all requirements of the "PROCUREMENT AND CONTRACTING REQUIREMENTS", and "GENERAL REQUIREMENTS", including Division 0 and 1 that relate to your scope of work.
2. Maintain a safety program and designate a responsible person in writing to Lathrop Construction Associates, Inc.
3. Traffic control as required for your work with access plans submitted for approval prior to deliveries.
4. Dust control for your work.
5. Tire and street clean and wash for your work.
6. Fire watch as required for your work.
7. Noise control per Specification Section _____.
8. Project record documents (in Autocad format if required).
9. Mockups (as required).
10. LEED requirements for your scope of work per Specification Section _____ (if required)
11. Tree and plant protection for your scope of work per Specification Section _____ (if required)
12. Parking for your work force. There will be no parking on campus.
13. Daily housekeeping and cleanup including dumpsters as needed. Compliance with Contractor's Indoor Air Quality Plan and Waste Management Plan.
14. Coordination with other subcontractors and owner furnished items including coordination drawings and three-dimensional models.
15. Progress schedules and reports as required and requested.
16. Scaffold/access/hoisting equipment to perform your work.
17. Other necessary items required and incidental to completing your work as indicated on the drawings and designated in the specifications.
18. Provide certified test results and warranties as required.
19. Caulking / fire caulking / fire stopping / sound caulking of penetrations for your work.
20. Furnish and install access doors required for your work.
21. Removal from site of your excavation spoils.
22. Physical layout for all backing and/or blocking required for your work.
23. Special and offsite inspection requests that generate unusual costs will be the responsibility of the subcontractor.
24. Housekeeping per all agency requirements (in addition to Lathrop Construction Associates, Inc.'s requirements).
25. All fees associated with the Department of Justice (DOJ) clearance (if required).
26. Compliance with established haul routes.
27. Daily reports turned in at the end of each work day.
28. Inspector of Record (IOR) and Lathrop Construction Associates, Inc. may sign tags for extra work. Signature by Inspector or Lathrop Construction only verifies time and material, not entitlement.
29. Dewatering of subcontractor work.
30. Survey stakes provided for subcontractor work are the responsibility of subcontractor as soon as they are placed. Subcontractor should protect them as needed.
31. Removal and replacement of temporary fence as required to perform your work.
32. General Conditions 7.05 Assignment of Subcontracts.

33. General Conditions 4.01.d – preservation and availability of records
34. Subcontractor shall provide all equipment necessary to perform start-up and initial checkout and for required functional performance testing.
35. Subcontractor shall assist, perform and comply with commissioning requirements.

CLARIFICATIONS

1. Lathrop Construction Associates, Inc. will provide access to the building. Subcontractor shall be responsible to distribute all labor/materials and equipment into and through the building from this access. Subcontractor shall be responsible to maintain this access, clean, and accessible as provided by Lathrop Construction Associates, Inc. All damage to the access by your firm shall be charged to your subcontract.

Any deviation from this requirement must be presented and approved in writing by Lathrop Construction Associates, Inc. Failure by the subcontractor to utilize, and maintain the access will subject the subcontractor to all costs associated in restoring adjacent grades, SWPPP restorations, agency fines, costs for contamination to underground sewer and storm systems.

2. Gradall/skytrack equipment will not be permitted or allowed during wet/winter months. Additionally, subcontractor shall be responsible for all repairs to SWPPP and grades destroyed by usage of this equipment.
3. Lathrop Construction Associates, Inc. will provide temporary power reasonably distributed throughout the site. Subcontractor will be responsible for labor, materials, equipment, etc. to distribute temporary power to specific subcontractor work areas. (Temporary power will not be provided for welding of structural steel, miscellaneous metals, metal deck, or jobsite trailers).
4. There is little to no room for staging materials at the project site. Material deliveries must be coordinated with the superintendent. Material deliveries must be placed with the permission of the superintendent where directed by the superintendent. Material deliveries must arrive at the project site within designated working hours and comply with approved haul routes and traffic plans. Material deliveries must arrive after submission of associated MSDS sheets and in compliance with LEED storage / delivery requirements.
5. Man-Lifts / Scissor Lifts / Etc. will not be allowed inside the buildings without the permission of the superintendent. Permission will only be granted when requested in writing.
6. Lathrop Construction Associates, Inc. and / or others will implement the Water Pollution Control and Erosion Control measures for the project site. Subcontractor, however, shall correct and/or replace all Water Pollution Control and Erosion Control measures that are altered or damaged by Subcontractor while performing their work. Additionally, Subcontractor shall be responsible for all Water Pollution Control and Erosion Control that is required to perform their work.

WORK EXCLUDED:

ACCEPTED AS PRESENTED ON BEHALF OF

LATHROP CONSTRUCTION ASSOCIATES, INC.

BY: _____ DATE: _____
Ricky J. Martellaro, President

SUBCONTRACTOR'S NAME

BY: _____ DATE: _____

ATTACHMENT 'B'
Insurance Requirements and Obligations

I. Liability Insurance Coverages. Subcontractor shall, at its expense, procure, and maintain insurance on all of its operations, in companies authorized to transact business in the State of California with a Best's Insurance Rating of A-VII or better or otherwise acceptable to Contractor, as follows:

1.1 Workers Compensation and Employer's Liability Insurance as required by any applicable law or regulation.

Employers Liability Insurance shall have policy limits of no less than \$1,000,000 each accident for bodily injury, \$1,000,000 bodily injury by disease, and \$1,000,000 each employee for bodily injury by disease.

The foregoing policies shall be endorsed to include a waiver of subrogation in favor of the Contractor and the 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 laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

1.2 Comprehensive or Commercial General Liability 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 without limitation, coverage for:

- Premises and Operations.
- Products and Completed Operations.
- Contractual Liability insuring the indemnity obligations assumed by Subcontractor in this Agreement.
- Broad Form Property Damage (including Completed Operations).
- Explosion, Collapse, Subsidence and Underground Hazards, and
- Personal Injury Liability.

Subcontractor's Commercial General Liability insurance policy (including the additional ensured endorsements as set forth below) shall remain in effect throughout the duration of the PROJECT and, through renewals thereof, for a period of ten (10) years following the completion of the PROJECT.

A. Policy Limits – All Policy Forms. The policy limits of Subcontractor's Comprehensive or Commercial General Liability insurance policy shall not be less than:

- \$3,000,000 each occurrence (combined single limit for bodily injury and property damage.)
- \$3,000,000 for Personal Injury Liability
- \$3,000,000 Aggregate for Products-Completed Operations (coverage shall be maintained through all statutory periods inclusive of additional insured provisions in all future renewals of the coverage).

- \$3,000,000 General Aggregate

The "general aggregate" limit shall apply separately to Subcontractor's work under this SUBCONTRACT.

- B. Occurrence Based Forms Only. Subcontractor's Comprehensive or Commercial General Liability Policy shall be an occurrence based policy. "Claims Made" or "Modified Occurrence" based policies are not acceptable.
- C. Additional Insured. The following shall be added to Subcontractor's Comprehensive or Commercial General Liability Policy as additional insureds: Contractor and its officers, directors & employees; the OWNER and its officers, directors and employees, and such other persons or entities as are identified in the CONTRACT DOCUMENTS (hereafter the "Additional Insureds"). The Additional Insureds shall be added to the Subcontractor's Commercial General Liability Policy by a policy provision or by an endorsement providing coverage at least as broad as Additional Insured (Form B) Endorsement Form CG2010 (11/85) as published by the Insurance Services Office (ISO). The policy shall be endorsed to stipulate that the insurance afforded the Additional Insureds shall apply as primary insurance and that any other insurance maintained by the Additional Insureds shall be excess only and shall not be called upon to contribute. Coverage provided to the Additional Insureds by the policy provision or endorsement shall cover on-going operations and shall provide completed operations coverage for the period of for ten (10) years following the completion of the PROJECT.
- 1.3. Automobile Liability Insurance. Throughout the duration of the PROJECT, Subcontractor shall carry automobile liability insurance, including coverage for all owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 Combined Single Limit each accident for Bodily Injury and Property Damage combined.
- 1.4. Commercial Crime/Employee Dishonesty Insurance, with policy limits of \$500,000 and providing blanket employee dishonesty coverage, including an endorsement for third party liability.
- 1.5. Professional Liability/Professional Services Insurance, if Subcontractor's work includes professional design, design assist, design-build or certification services. Said insurance shall cover the professional services which Subcontractor is to provide under this SUBCONTRACT, with limits of not less than Two Million Dollars (\$2,000,000) per claim and in the aggregate. Such insurance shall be maintained during the term of this SUBCONTRACT and for a period of at least ten (10) years after the PROJECT is completed. Said professional liability insurance shall not have a retroactive date or, if a retroactive date is included, such retroactive date shall be prior to the date that Subcontractor first performs services pursuant to this SUBCONTRACT.
- 1.6. Contractor's Pollution Liability Insurance, if Subcontractor's work, including that of its sub-subcontractor or suppliers at any tier, includes bringing pollutants to the job site, their operations create a potential pollution exposure, including without limitation, mold or fungi exposures, their work concerns the building envelope, or as deemed necessary by Contractor. Said insurance policy shall cover all of its operations, and include coverage for mold and fungi. Said insurance policy shall have policy limits of not less than Two Million Dollars (\$2,000,000) per occurrence, and Two Million Dollars (\$2,000,000) in the annual aggregate. If Subcontractor or its sub-subcontractors or suppliers of any tier are required to perform remediation of hazardous materials as those terms are defined in federal, state, or local law, or if their operations involve an exposure to hazardous

materials, they must carry a Contractor's Pollution Liability policy with limits not less than Five Million Dollars (\$5,000,000) per occurrence and Five Million (\$5,000,000) annual aggregate. The Owner and Contractor must be named as Additional Insured on this policy. If Subcontractor or their Subcontractors haul hazardous material, the policy must extend pollution coverage to the transportation of hazardous materials or pollutants by waste hauling vehicles. If Subcontractor is subject to the Motor Carrier Act of 1980, the Motor Carrier Act endorsement MCS-90 must be obtained and attached to the policy. The Additional Insureds shall be added as additional insureds to Subcontractor's Contractors Pollution Liability Insurance Policy, and such additional insured status shall provide the Additional Insureds with the same coverage as is provided to Subcontractor under said policy. The policy shall stipulate that the insurance afforded the Additional Insureds shall apply as primary insurance and that any other insurance carried by the Additional Insureds will be excess only and will not contribute. The insurance policy required by this Section 1.6 shall be maintained during the performance of this SUBCONTRACT and for a period of at least ten (10) years after the PROJECT is completed.

- 1.7. Aircraft/Helicopter Insurance, if Subcontractor or its sub-subcontractors at any tier use any owned, leased, chartered or hired aircraft of any type in the performance of this SUBCONTRACT, with policy limits of not less than Ten Million Dollars (\$10,000,000) per occurrence including Passenger Liability.
- 1.8. Crane, Riggers and Scaffolding Liability Insurance, if Subcontractor's work involves the moving, lifting, lowering, rigging or hoisting of property or equipment belonging to other parties or the erection of scaffolding, with policy limits of at least Three Million Dollars (\$3,000,000) per occurrence and in the general aggregate and providing coverage for third party liability and physical loss or damage to the property or equipment not owned by the Subcontractor, and with policy limits of no less than .

II. Additional Liability Insurance Requirements.

- 2.1. Certificates of Insurance, as evidence of the insurance required by this SUBCONTRACT, shall be furnished by Subcontractor to Contractor before any work hereunder is commenced by Subcontractor, and the provision of said Certificates of Insurance shall be a condition precedent to Contractor's obligation to pay any sums whatsoever to Subcontractor under the SUBCONTRACT. The Certificates of Insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) days prior written notice to Contractor. The Certificates of Insurance shall be accompanied by the copy of the policy provisions or endorsements adding the Additional Insureds as additional insureds to the appropriate policies and shall provide that insurance for the Additional Insureds applies as primary insurance and that other insurance maintained by the Additional Insureds will be excess only and shall be called upon for contribution, equitable or otherwise.
- 2.2. Procurement by Contractor. In the event Subcontractor fails to maintain any insurance coverage required under this SUBCONTRACT, Contractor may maintain such coverage and charge the expense to Subcontractor, or exercise any of the remedies provided in Section 12 of the SUBCONTRACT.
- 2.3. Insurance Required Under CONTRACT DOCUMENTS. If higher limits or other forms of insurance are required in the CONTRACT DOCUMENTS, Subcontractor will comply with such requirements.
- 2.4. Self-Insured Retention and Deductibles. With respect to each of the insurance policies required to be procured and maintained by Subcontractor as set forth in this Attachment 'B,' any self insured retention or deductible greater than \$25,000 must be declared by the

Subcontractor and approved by Contractor prior to commencing work and shall be disclosed within the certificates of insurance provided. 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. 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. Contractor reserves the right to require a surety bond, letter of credit or other form of security in an amount equal to the self insured retention at no additional cost to Contractor.

III. Property Insurance.

3.1. Property Insurance for Subcontractor Equipment. Subcontractor shall procure and maintain at its own expense property and equipment insurance for Subcontractor's own tools, equipment and temporary structures.

3.2 Builder's Risk Insurance.

- A. Upon written request of Subcontractor, Contractor shall provide Subcontractor with a copy of the Builder's Risk Policy of insurance or any other property or equipment insurance in force for the PROJECT and procured by Contractor. Subcontractor shall satisfy itself as to the existence and extent of such insurance prior to commencement of the Subcontract Work.
- B. If Builder's Risk insurance purchased by the OWNER or Contractor provides coverage for Subcontractor for loss or damage to the Subcontract Work, Subcontractor shall be responsible for the insurance policy deductible amount applicable to damage to Subcontractor's work and/or damage to other work caused by Subcontractor.
- C. If not covered under the Builder's Risk policy of insurance or any other property or equipment insurance required by the CONTRACT DOCUMENTS, Subcontractor shall procure and maintain at its own expense property and equipment insurance for portions of the Subcontract Work stored off the site or in transit.
- D. If the Owner or Contractor has not purchased Builder's Risk or equivalent insurance including the full insurable value of Subcontract Work, then Subcontractor may procure such insurance at its own expense as will protect the interests of Subcontractor, and its sub-subcontractors in the Subcontract Work. Such insurance shall also apply to any of OWNER's or Contractor's property in the care, custody, or control of Subcontractor.
- E. Contractor and Subcontractor waive all rights against each other and against all other subcontractors and OWNER for loss or damage to the extent covered by Builder's Risk or any other property or equipment insurance applicable to the PROJECT, except such rights as they may have to the proceeds of such insurance. If the policies of insurance referred to in this Attachment 'B' require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

IV. OTHER INSURANCE REQUIREMENTS

- 4.1 Sub-Subcontractor Insurance. SUBCONTRACTOR SHALL REQUIRE THAT ALL OF ITS SUB- SUBCONTRACTORS, REGARDLESS OF TIER, COMPLY WITH THE SAME INSURANCE REQUIREMENTS AS ARE REQUIRED OF SUBCONTRACTOR UNDER THIS ATTACHMENT 'B' AND THAT THE ADDITIONAL INSURED'S ARE NAMED AS ADDITIONAL INSURED'S TO EACH SAID SUB-SUBCONTRACTORS POLICIES AS APPLICABLE.
- 4.2 No Waiver. The insurance required by this Attachment 'B' shall be subject to the approval of Contractor, but neither said approval nor the acceptance of certificates of insurance by Contractor shall in any way limit or relieve Subcontractor of the duties and responsibilities under this Attachment 'B'. Failure of Contractor to enforce in a timely manner any of the provisions of this Attachment 'B' shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of the SUBCONTRACT. Any exceptions to the provisions of this Attachment 'B' must be delineated in the SUBCONTRACT DOCUMENTS.
- 4.3 Termination and Indemnity. If Subcontractor fails to comply with any of the provisions of this Attachment 'B': (i) may terminate Subcontractor's right to perform under the SUBCONTRACT pursuant to Section 12.1.2, thereof, and (ii) Subcontractor shall, at its own cost, defend, indemnify and hold harmless the Additional Insureds from and against any and all liability, damages, losses, claims, demands, actions, causes of action, costs, including attorney's fees and expenses, or any of them, to the extent that Contractor would have been protected for such matters by insurance had Subcontractor complied with all of the provisions of this Attachment 'B.'
- 4.4 No Limitation of Liability. Neither the insurance required under this Attachment 'B,' nor the limits thereof, shall be construed to constitute any limit whatsoever on the Subcontractor's liability to Contractor, whether such liability is imposed by virtue of the SUBCONTRACT or otherwise.

LATHROP CONSTRUCTION ASSOCIATES, INC.

Date: _____

Signature

Type/Print Name and Title

Contractor's Name: _____

Date: _____

Signature

Type/Print Name and Title

SAMPLE

ATTACHMENT 'C'
Labor Agreements

1. Labor Agreements: The Contractor is signatory to the following labor agreements covering work on this Project:

CEA/Carpenters Master Labor Agreement for Northern California
CEA/Laborers Master builders Agreement for Northern California

2. (Applicable to Project Labor Agreements Only): The Contractor is signatory to the following Project Labor Agreement covering work on this Project:

_____ Project Labor Agreement

(Project Name)

Subcontractor agrees to execute the applicable _____

(Name of binding document, such as "Letter of Assent" or "Agreement to be Bound")

to become bound to the Project Labor Agreement set forth above.

Date: _____

LATHROP CONSTRUCTION ASSOCIATES, INC.

Signature

Type/Print Name and Title

Contractor's Name: _____

Date: _____

Signature

Type/Print Name and Title