

Subcontractor agrees that should any change be required by any governmental authority, such change shall be made by Subcontractor without increase in the Contract Price, Contractor agreeing only that it will use its best efforts to have the Contract Documents meet with the requirement of governmental authority. If any of the Contract Documents provide for work contrary to any such laws and regulations, Subcontractor shall be required to notify Contractor in writing, prior to the correction of such Contract Documents, to comply with the applicable law or regulation, and Subcontractor shall not perform any such work until the corrected Contract Documents have been approved in writing by Contractor.

9. **ADJUSTMENT FOR CHANGES:** In the absence of agreement as to the amount of the adjustment to be made for any changed, or alleged changed or extra work, any adjustment to the Contract Price which may be due on account thereof shall be determined as follows: (a) when a change results in an increase in costs or extra work is involved, the Contract Price will be increased on the basis of the increase in direct costs actually incurred by Subcontractor to perform the changed or extra work, plus a mark-up thereon of fifteen percent (15%) on labor and ten percent (10%) on materials as an allowance for all indirect costs, field supervision, tools, general and administrative expense, overhead (including any home office overhead) and profit; (b) in the event of any deletion or other change which results in a decrease in costs, the Contract Price will be decreased on the basis of the direct costs which would have been incurred by Subcontractor had the change not occurred, plus the profit which would have been earned; provided, however, that if any deleted work is a separately priced item of work under the Subcontract, the Contract Price will be decreased on the basis of such stated price; and (c) when both increases and decreases covering related work or substitutions are involved in any one change, the mark-up allowance shall be figured on the basis of the net increase, if any, with respect to such change. Direct costs as used in this Section shall be limited to the following: (a) cost of materials, including any applicable sales tax and transportation expense applicable thereto; (b) cost of labor for the workmen consisting of wages, and fringe benefits and other labor burden expenses actually paid to or on behalf of the workmen; and (c) a reasonable rental value for use of equipment, but individual pieces of equipment having a replacement value of \$500.00 or less shall be considered to be tools and no payment will be made therefore.

As to work approved by Contractor to be performed on a time and material basis, the Subcontractor's billing shall be based on actual hours as verified by daily work tickets, which must be approved by Contractor's field superintendent within 24 72 hours of the work being performed. Contractor's field superintendent's signature on daily work tickets are strictly to verify the labor and equipment hours are accurate as shown on the daily work tickets in no way constitute any approval nor agreement that Subcontractor will be paid for additional work. Any work performed over and above the "Not to Exceed" amount stated on the Authorization for Extra Work and which does not comply with Section 7 shall be considered done at no charge to the Contractor.

Any changed and/or extra work requested by Contractor, whether disputed or authorized, that requires hourly equipment rental shall be performed at the rates as follows:

(a) For Subcontractor's owned equipment, the rate shall be rental rate as set forth in the most recent publication of the State of California Business, Transportation, and Housing Agency, Department of Transportation, Division of Construction, Labor Surcharge and Equipment Rental Rates. These rental rates will be for equipment "Operated and Maintained" and include Subcontractor's overhead and profit, all applicable payroll taxes including Federal and State Unemployment Insurance, FICA, Worker's Compensation, and Union Benefits.

(b) For non-owned equipment rented from third parties, compensation shall be the actual invoice cost plus 10% for overhead and profit and such costs shall be substantiated by an invoice from the supplier.

If the Subcontractor elects to work overtime for any reason not requested by the Contractor, no premium compensation shall be paid. If the Subcontractor is requested by the Contractor to operate on a premium time basis, Subcontractor shall be compensated for the premium costs only, as applies to the overtime hours, which are additional to the concurrent operating hours of the Subcontractor. In the event the Contractor decides to have the Subcontractor work on a premium time basis for an extended time period the above rates shall be negotiated by the Contractor and Subcontractor.

10. **TAXES:** The Contract Price includes the payment by Subcontractor of any tax under California Sales or Use Tax Law, or any amendments thereto, or any law now existing, or which may thereafter be adopted by Federal, State, local or other governmental authority, taxing the materials, services required, or labor furnished, or any other tax levied by reason of the work performed or to be performed hereunder.

11. **COMMENCEMENT AND COMPLETION OF THE JOB: TIME IS OF THE ESSENCE** of this Agreement. Subcontractor to commence the Job on the date specified by the Contractor and shall prosecute and complete the work undertaken in a prompt and diligent manner and in accordance with "Contractor's Sequence Schedule" and all revisions made thereto, and shall not delay, interfere with or hinder the work of Contractor or any other subcontractor. Upon request by Contractor, Subcontractor shall furnish to Contractor a schedule or scheduling information in such form as Contractor may require relating to the work to be performed under this Agreement. The time given Contractor to perform all its work under its contract with the Owner shall not be the time Subcontractor has to perform its work nor evidence of same, but Subcontractor shall be required to perform its work in strict accordance with Contractor's progress schedule. If Contractor shall deem it necessary, Subcontractor, at its own expense and on demand of Contractor, shall provide additional work forces, overtime, additional shifts and shall expedite the furnishing of material so as to meet the progress schedule. Contractor shall have the sole right to establish the time and order in which the various portions of the entire project work shall be performed, and, in case of conflicts, to establish priority of work performance as between Contractor, Subcontractor and other subcontractors.

The Subcontractor agrees that he is aware that the Project will be constructed in phases. Before fabrication and/or placing orders for non-standard or special materials, Subcontractor shall contact Project Superintendent as to starting date, production and scheduling. Subcontractor agrees to commence the several parts thereof at such times, and proceeding therewith in such order as directed by Contractor's superintendent, and agrees to finish the several parts and the whole of the Job as provided herein, so that, in conjunction with other trades engaged thereon, he will assure the uninterrupted progress of the Project. In the event Contractor's work schedule should be changed, Subcontractor will proceed in strict accordance with Contractor's directions. Any changes in the schedule shall be made in writing as specified in Section 7. Subcontractor will cooperate with related work and will not interfere in any manner with the work of Contractor or other subcontractors. In the event of any conflicts in the work schedule of Subcontractor and Contractor or any other Subcontractor, Contractor shall decide which work shall have precedence and the decision of Contractor shall be final. Any construction sequence or progress schedule furnished by Contractor to Subcontractor shall be solely for Contractor's benefit, and Subcontractor makes no representation that access or work will be ready for Subcontractor at the times indicated therein; nevertheless, Subcontractor must be ready and able to perform the Job within the time period indicated in any such schedule. Subcontractor shall not be entitled to recover from Contractor any additional compensation or damages on account of any delay or disruption to Subcontractor's performance of the Job, whether caused in whole or in part by Contractor or others, including conduct on the part of Contractor which may amount to a breach of this Subcontract.

12. **LINES, GRADES AND MEASUREMENTS:** Subcontractor assumes full responsibility for the proper interpretation and interpolation of all lines, levels and measurements and their relation to bench marks, property lines, reference lines and the work of the Contractor or other subcontractors. In all cases where dimensions are governed by conditions already established, the responsibility for correct knowledge of the conditions shall rest entirely on Subcontractor. No variation from specified lines or grades or dimensions shall be made except on written authority of Contractor. All work shall be made to conform to actual, final conditions as they develop in the course of construction.

Initial

13. **RELATED WORK:** By commencement of work hereunder, Subcontractor acknowledges that all related, adjacent or dependent work, services, utilities or materials are acceptable to him. Unless the Subcontractor reports prior damage in writing to the Contractor, Subcontractor hereby waives any and all claims for damages or extras with respect to defects in or failure of such work, services, utilities or materials.

14. **INTERRUPTION OF WORK:** If, as a result of fire, earthquake, act of God, war, strikes, picketing, boycott, lockouts or other causes or conditions beyond the control of Contractor, Subcontractor discontinues the Job prior to its completion, then Subcontractor shall resume work as soon as conditions permit, or if Subcontractor shall discontinue work because Contractor shall consider it inadvisable to proceed with the Job, then Subcontractor will resume the job promptly upon receiving written notice from Contractor to do so, and Subcontractor shall not be entitled to any damages or compensation on account of cessation of work as a result of any of the causes mentioned above.

15. **INSPECTION AND APPROVALS:** The Job or any portion of the Job shall be subject to inspection and approval by all applicable governmental authorities, Contractor and Contractor's representatives. Subcontractor shall be required to furnish for the approval of all governmental authorities, Contractor and Contractor's representatives such samples, shop drawings and patterns as may be required for the Job, and all work hereunder shall be in accordance therewith. Subcontractor shall provide sufficient, safe and proper facilities during the progress of the Job for all such inspections in the field, at shops or any place where materials required hereunder are in the course of preparation, manufacture, treatment or storage. It is agreed that any change or correction required as a result of any such inspections shall be made by Subcontractor without additional charge, unless otherwise specifically agreed upon by Contractor in writing. Subcontractor shall request all inspections for his work and obtain approval of same. If additional testing and/or inspections are required of Subcontractor's work due to Subcontractor's fault or an act of God, Subcontractor agrees to compensate Contractor any additional costs incurred for testing and inspections.

16. **BOND REQUIREMENTS:** Within ten (10) days after the execution of this Agreement, if required by Contractor, Subcontractor shall furnish to Contractor a Performance Bond and/or a Labor and Materials Bond in a form satisfactory to Contractor, each in an amount equal to the full amount of the Contract Price. A Corporate Surety Company licensed to do business in the State of California shall execute each bond. Subcontractor, by its execution hereof, warrants that it can obtain said bonds at a cost of not more than one percent (1%) of the principal amount thereof. If Subcontractor fails to so furnish any required bond, Contractor may, at its option, terminate this Subcontract without any liability of any kind to Subcontractor. In the event Contractor requires Subcontractor to furnish either or both of the bonds mentioned above, Contractor shall pay the cost thereof. It is agreed that no change, alterations or modification in or deviation from this Subcontract or the Contract Documents, whether made in the manner herein provided for or not, shall release or exonerate in whole or in part, any surety on any bond given in connection with this Subcontract, and each and every surety bond required hereunder shall so provide.

17. **CORRECTION AND REMOVAL OF DEFECTS IN MATERIAL OR WORK:** All defects in material used or work performed under this Subcontract as designated by City or County inspectors or Contractor, upon inspection and brought to the attention of Subcontractor shall immediately be corrected by Subcontractor to the satisfaction of Contractor and the designating person. If any workmanship or materials are declared in writing by Contractor or any applicable governmental authority to be unsound or improper then, within twenty-four (24) hours after service upon him of written notice from Contractor or the appropriate governmental authority to that effect, Subcontractor shall proceed with due diligence to remove from the site all such materials, whether installed or incorporated in the Job or not, and shall remove all such portions of the unsound or improper work. Subcontractor shall also restore or repair any work of other trades damaged by such a removal. In the event that all or any portion of such work shall be of such a nature, or the time available to complete the whole work shall be so limited, that in the judgment of Contractor it would be inexpedient to order the same replaced or corrected, Contractor, at its option, may deduct from the payment due or to become due to Subcontractor an amount that shall represent the difference between the fair and reasonable value of such work and its value had it been executed in conformity with the Contract Documents.

18. **UNSATISFACTORY WORK:** Upon written notification from the Contractor that Subcontractor's work is in any respect unsatisfactory, needs correction, is not in compliance with the Contract Documents, or that the Job has been damaged, Subcontractor shall, within twenty-four hours of such notification, proceed with due diligence to take all action necessary to correct or repair the Job.

19. **DAMAGE TO WORK:** Should Subcontractor damage the work or installation of Contractor or any other subcontractor, Subcontractor shall promptly pay to Contractor or such subcontractor, as the case may be, all costs incurred in repairing the damage. Subcontractor and his suppliers shall not be permitted to drive any vehicle over any curb or sidewalk on the Project at any time by any means, and Subcontractor shall take all action necessary to ensure that his suppliers comply fully with the requirements of this Section and shall be fully responsible for all damage to curbs and sidewalks caused by his vehicles or those of his suppliers. Subcontractor shall be responsible for maintaining and protecting the Job and bear the risk of any damage thereto until such time as the entire Project is completed and accepted. All damage to the Job occurring prior to full completion and final acceptance of the Project as a whole, regardless of who caused such damage or how it occurred, shall be promptly repaired or replaced by Subcontractor at his own cost and expense.

20. **HOLD HARMLESS:** Subcontractor will hold Contractor harmless from any and all damages caused by defective workmanship or materials, and delays caused thereby, and will pay and reimburse Contractor for any and all such damages. In the event any dispute arises as to Subcontractor's workmanship or the quality of materials furnished, the decision of Contractor reasonably made and arrived at shall be binding.

21. **GUARANTEE:** Subcontractor guarantees Contractor and all future owners of the Project, or any portion thereof, against any loss or damage arising from any defect in materials and workmanship furnished under this Subcontract for a period of one (1) year from the date of final acceptance of the Project as a whole. Upon written notification of defects from Contractor or any such owner, Subcontractor shall proceed within twenty-four (24) hours of such notice with due diligence, at his own expense, to replace any defective material or perform any labor necessary to correct any defect in the Job. Upon failure of Subcontractor to do so, Contractor, or the affected owner, may furnish or secure, at Subcontractor's expense, such materials or labor as are necessary to bring the Job up to the required standard, all costs thus incurred thereupon becoming a debt immediately due and payable by Subcontractor, which debt Subcontractor shall pay to Contractor within fifteen (15) days after written demand from Contractor or the affected owner. This special one-year guarantee provided herein shall be deemed to be in addition to other contractual and statutory warranties of performance and not in lieu thereof.

22. **DELAY IN PERFORMANCE:** TIME IS OF THE ESSENCE of this Subcontract. Contractor may, from time to time, establish specific schedules for the pace and rate of performance of this Subcontract work and other portions of the Project work, including without limitation, benchmark dates or intermediate completion dates for various portions of the Project, a completion date for the entire Project, specific number of units to be completed within a given time period, and the numbers of qualified workers necessary, as determined by Contractor, to maintain the pace or rate of work established by Contractor. Subcontractor acknowledges his understanding that Contractor, in entering into this Subcontract, is relying on Subcontractor's ability and willingness to perform his work at the pace or rate as may be established by Contractor from time to time. Subcontractor shall prosecute the Job in accordance with



Contractor's Construction Sequence Schedule and any revisions made thereto, and shall not delay the completion of the Project nor interfere with or hinder the work of Contractor or any other subcontractor.

23. **SUBCONTRACTOR DEFAULT/TERMINATION:** In the event Subcontractor, at any time, fails to properly and diligently prosecute the Job, fails to pay its workers, sub-subcontractors or suppliers, or otherwise breaches a material provision of this Subcontract, and such failure or default is not corrected within forty-eight (48) hours after receipt of written notice from Contractor to do so, then Contractor may, at its option:

(a) Without taking over the work, provide necessary labor and materials or employ any other person or persons, including another contractor, to finish the work and provide the materials therefor at the expense of Subcontractor; or

(b) Terminate Subcontractor's right to further perform under the Subcontract and complete the Job at the expense of Subcontractor. If Contractor so terminates Subcontractor's right to perform under the Subcontract, Contractor shall have the right to use any materials, tools or equipment furnished by or belonging to Subcontractor to complete the Job without any compensation to Subcontractor for such use, and Subcontractor shall not be entitled to receive any further payment under the Subcontract until the entire Project has been completed, at which time, if the unpaid balance of the amount to be paid under the Subcontract exceeds the expense incurred by Contractor in finishing the Job and any damages sustained by Contractor as a result of Subcontractor's default, such excess will be paid to Subcontractor, but if such expense and damages shall exceed the unpaid balance, Subcontractor shall pay the difference to Contractor.

As used in this section, "expense" shall mean the actual cost incurred by Contractor, plus a markup allowance of 15% on such cost.

24. **DEFENSE OF PATENTS:** Subcontractor shall defend all suits or claims for infringement of any copyright or any patent right that may be brought against Contractor, the Owner or the Architect arising out of the Job, and shall hold Contractor, the Owner or the Architect harmless from loss on account thereof, except that Subcontractor shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer(s) is specified for use by the Contract Documents.

25. **CUTTING, FITTING AND PATCHING; WORK OF OTHERS:** Subcontractor shall, as a part of the Contract Price, do all cutting, fitting and patching of his work that may be required to make its several parts come together properly and to fit it to receive or be received by the work of other subcontractors, shown in or reasonably implied by the Contract Documents. Subcontractor agrees to protect the work of others from damage as a result of his operations. Should Subcontractor cause damage to any separate subcontractor on the work, then Subcontractor agrees to compensate promptly such subcontractor to the extent of his damage as provided in Section 19.

26. **CLAIMS OF SUBCONTRACTOR FOR DELAY OR DAMAGE:** Subcontractor expressly waives any and all rights to make claim or be entitled to receive any compensation or damages for failure of Contractor or other subcontractors to have related portions of the Job completed in time for the work of Subcontractor to proceed.

27. **INSURANCE:** The Subcontractor and his sub-subcontractors shall during the continuance of the work under this Agreement, including extra work in connection therewith, procure and maintain in force, at their sole cost and expense, insurance coverage in the limits and under the terms specified below. The insurance to be furnished by Subcontractor shall be issued by a company or companies acceptable to Contractor and authorized to transact business in the State of California. Subcontractor shall, within ten (10) days after the execution of this Subcontract or prior to his commencement of any work (whichever occurs first), provide to Contractor certificates of insurance evidencing that the required insurance coverage is in full force and effect, and each certificate shall provide, by endorsement, that the coverage therein provided shall not be cancelled, reduced or otherwise materially changed without thirty (30) days prior written notice to Contractor. In the event the coverage evidenced by any such certificate is cancelled, reduced or otherwise materially changed, Subcontractor shall procure new coverage and furnish to Contractor a new certificate conforming to the insurance requirements specified herein at least five (5) days before the effective date of such change. If Contractor fails to procure and maintain any insurance coverage required by this Subcontract, Contractor may, in addition to other remedies, procure such insurance and charge the expense to Subcontractor or terminate the Subcontract. All policies must be written by insurance companies whose rating in the most recent Best's Rating Guide, is not less than AV. All coverage forms must be acceptable to Owner and Contractor. If requested, Subcontractor shall provide certified copies of all such policies to Owner and or Contractor within 30 days of such request. Contractor reserves the right but shall have no obligation, to procure the insurance or any portion thereof, for which Subcontractor is herein responsible and which is described in this section.

Contractor shall notify Subcontractor if Contractor exercises its right whereupon Subcontractor's responsibility to carry such insurance shall cease and all the premiums and other charges associated with such insurance shall be refunded to Contractor. Contractor further reserves the right at any time, with thirty (30) days written notice to the Subcontractor, to require that Subcontractor resume the procurement and maintenance of any insurance for which Contractor has elected to become responsible pursuant to this section. In such event, the sums paid to Subcontractor by Contractor shall increase to the extent of any previously agreed and implemented reduction (as noted above) attributable to Contractor's prior assumption of the particular insurance coverages. Such refund shall be equitably pro-rated based upon Subcontractor's completed work at the time of such adjustment.

Subcontractor agrees to include in his agreement, with his Sub-subcontractors all provisions mentioned in Section 27 herein and shall require of any and all of their Sub-subcontractors to maintain similar insurance per Section 27 herein. Contractor reserves the right, in its sole discretion, to require higher limits of liability coverage if, in Contractor's opinion, operations by or on behalf of the Subcontractor create higher than normal hazards and, may require that the Subcontractor name additional parties having interest as additional insureds. All policies required by this Agreement must contain a Waiver of Subrogation in favor of the Owner and Contractor. In the event that materials or any other type of personal property ("personal property") is acquired for the Project or delivered to the Project site, Subcontractor agrees that it shall be solely responsible for such property until it becomes a fixture on the Project, or otherwise is installed and incorporated as a final part of the Project. Such responsibility shall include, but not be limited to, theft, fire, vandalism and use by unauthorized persons. Compliance or failure to comply by the Subcontractor with the requirements included in Section 27 as to carrying insurance and furnishing certificates, shall not relieve the Subcontractor of his liabilities and obligations under this section. Insurance coverages and limits required are as follows:

1. Workers' Compensation Employer's Liability Insurance:

- Coverage A. Statutory Benefits
- Coverage B. Employer's Liability
- Bodily Injury by accident \$1,000,000 each accident
- Bodily Injury by disease \$1,000,000 policy limit
- Bodily Injury by disease \$1,000,000 each employee
- Coverage must include a waiver of subrogation endorsement.

2. Commercial Auto Coverage: Auto Liability limits of not less than \$1,000,000 each accident, combined Bodily Injury and Property Damage Liability insurance including but not limited to owned autos, hired or non-owned autos.

3. Comprehensive General Liability or Commercial General Liability:

a) Comprehensive General Liability:

The limits of liability shall not be less than:

Combined Single Limit: \$2,000,000  
Bodily Injury/Property Damage per Occurrence

OR

b) Commercial General Liability:

The limits of liability shall not be less than:

Each Occurrence Limit	\$1,000,000
Personal Advertising Injury Limit	\$1,000,000
Products/Completed Operations Aggregate Limit	\$1,000,000
General Aggregate Limit	\$2,000,000

(other than Products/Completed Operations)

The policy forms must include:

- a) Premises and Operations coverage with no explosion, collapse, or underground damage (XCU) exclusions.
- b) Products and Completed Operations coverage. (Subcontractor agrees to maintain this coverage for 10 years following the acceptance of his work by the contractor or until all applicable Statutes of Limitations expire, whichever length of time is longer.) Subcontractor further agrees to continue naming Contractor and any other parties in interest as Additional Insured(s) for the entire length of time as described above.
- c) Blanket contractual coverage or its equivalent.
- d) Broad Form Property Damage coverage including completed operations or its equivalent.
- e) An endorsement naming Owner and any other parties in interest as additional insured(s) under the coverage specified under Insurance Requirement 3. Such endorsement shall contain the following provision:

"It is understood and agreed that G Companies Construction, Inc., Bank of the West, Murrieta Village Walk L.P., its officers, directors, agents, servants, employees, divisions, subsidiaries, partners, shareholders and affiliated companies are additionally named as insureds under this policy, with respect to legal liability or claims caused by, arising out of, or relating to the acts or omissions, work or work product, of the named insured or of others performed on behalf of the named insured."

The above endorsement shall be acceptable as well as ISO forms CG2010B 11/85 or CG2026 11/85 or equivalent. ISO forms CG2010A or CG2010B 10/93 or their equivalent ARE NOT ACCEPTABLE. Any form that limits coverage to "ONGOING OPERATIONS" or otherwise does not grant additional insured status under the products/completed operations coverage IS NOT ACCEPTABLE. If the Subcontractor conducts a thorough search of available insurance companies who offer General Liability coverage and it is determined that ISO forms CG2010B 11/85 or CG2026 11/85 or their equivalent are unavailable, then ISO CG2010A or CG2010B 10/93 or their equivalent may be considered by the Contractor.

- f) Subsidence coverage (if requested by Contractor).
- g) An endorsement stating: "Such coverage as is afforded by this policy for the benefit of the additional insured(s) is primary and any other coverage maintained by such additional insured(s) shall be non-contributing with the coverage provided under this policy."
- h) Coverage is to be on an "occurrence" form. "Claims Made" and "Modified Occurrence" forms are not acceptable except where "Professional Liability Coverage" is required.
- i) An endorsement stating that any aggregate limits apply on a "per project" and on a "per location" basis.
- j) No exclusions relating to "residential construction" as it pertains to apartments. All certificates of insurance furnished to Contractor must contain a notation that the policy does not contain an apartment exclusion.

28.

**INDEMNIFICATION:**

Subcontractor shall protect, defend, indemnify and hold free and harmless Contractor, Owner and Lender, and their officers, directors, employees, representatives, and agents, from any and all obligations, liability, liens, claims, demands, loss, damage, costs, expenses (including attorney fees and all costs to enforce this indemnification), or causes of action whatsoever (hereinafter referred to as "Claims") in any way connected with or arising out of or alleged to arise out of the performance by Subcontractor of the Job and this Subcontract for, but not limited to, the following:

(i) Claims, including alleged defects in the construction of the Job, by the owner or future owners of the Property for damages to the Property (including loss of use thereof), the improvements thereon, and property appurtenant thereto, or any part thereof.

(ii) Claims for personal injury, including but not limited to, bodily injury; death, emotional injury, sickness or disease, sustained by any person (including any employees or agents of Subcontractor, Contractor, Owner) or for property damage of any kind, caused or alleged to be caused in whole or in part by any act or omission of Subcontractor, his sub-subcontractors, suppliers or anyone directly or indirectly employed by anyone of them or anyone for whose conduct they may be liable, whether or not such injury or damage is caused by a party indemnified hereunder. The aforesaid indemnity obligation of Subcontractor shall apply regardless of any active and/or passive negligent act or omission on the part of Contractor or Owner; however, such obligation shall not apply to Claims arising from the sole negligence or willful misconduct of Contractor or Owner or from defects in design furnished by Owner.

(iii) Claims and liens for unpaid labor performed or materials used or furnished to be used on the Job, including all incidental or consequential damages resulting to Contractor from such claims or liens.

(iv) Claims, fines or penalties that may arise from any violation or infraction by Subcontractor of any safety, employment or other governmental law, regulation, or order.

(v) In case any suit or other proceedings shall be brought against Contractor or any other party indemnified hereunder concerning any Claims to which Subcontractor's indemnity obligation applies, Subcontractor shall, upon demand by Contractor, assume the defense thereof and defend the indemnified party at Subcontractor's own expense, and Subcontractor shall pay all costs and any judgment that may be rendered therein against an indemnified party.

(vi) Indemnity Not Limited - In any and all claims against the Indemnitees by any employee of the Subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose act any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any Workers' or Workers' Compensation acts, disability benefit acts or other employee benefit acts. Said indemnity is intended to apply during the period of this Contract and shall survive the expiration or termination of the Contract until such time as action or account of any matter covered by such indemnity is barred by the applicable statute of limitations.

29.

**INDEPENDENT CONTRACTOR:**

Subcontractor is an independent contractor and is solely responsible and liable for payment of all federal and state taxes and insurance and contributions for social security and unemployment which are measured by wages, salaries or other remuneration paid to Subcontractor's employees.

30.

**CLEANUP AND STORAGE:**

Subcontractor shall maintain, to the satisfaction of Contractor, all work sites in a clean, neat and safe condition and shall comply promptly with any instructions from Contractor with respect thereto. As the Job is completed, Subcontractor shall remove from the site thereof, to the satisfaction of the Contractor, all of Subcontractor's rubbish, debris,



materials, tools and equipment and, if Subcontractor fails to do so promptly, Contractor may remove the same to any place of storage or any dumping ground, all at Subcontractor's risk and expense and without incurring any responsibility to Subcontractor for loss, damage or theft. Subcontractor shall dispose of debris in dumpsters provided by the Contractor and as directed by its job superintendent. Subcontractor shall remove any surplus material or debris not placed in dumpsters completely from the Project. Upon completion of work, Subcontractor shall remove all surplus material and debris from the site.

31. **USEABLE EXCESS MATERIALS:** To the extent applicable, Subcontractor shall move, as the Job or any portion thereof is completed, from the site thereof to the site or sites of the next work to be completed by Subcontractor, all useable excess materials, particularly materials supplied by Contractor. All materials supplied by Contractor shall be considered useable, unless Contractor advises Subcontractor to the contrary in writing. All excess costs suffered by Contractor by reason of Subcontractor's failure to use such useable materials in subsequent and succeeding work shall be charged against, and paid for by, Subcontractor and may be deducted from any payment or balance due Subcontractor hereunder.

32. **USE OF CONTRACTOR'S EQUIPMENT:** The use of any of Contractor's equipment, rigging, blocking, hoist or scaffolding by Subcontractor, whether loaned or rented to Subcontractor by Contractor, shall be upon the distinct understanding that Subcontractor shall accept and use the equipment, rigging, blocking or scaffolding at his own risk and takes the same "as is", and Subcontractor assumes all responsibility for and agrees to hold Contractor harmless from all claims or damages whatsoever resulting from the use thereof, whether such damage results to Subcontractor or its own employees or property or to other persons or the employees or properties of other persons and regardless of any active and/or passive negligent act or omission on the part of Contractor or Owner; however, such obligation shall not apply to claims or damages arising from the sole negligence or willful misconduct of Contractor or Owner. Nothing herein contained shall be deemed to permit any such use by Subcontractor without the prior written consent of Contractor.

33. **PERMITS AND LAWS:** Subcontractor shall promptly obtain, at his expense, and before commencing any portion of the Job, all permits and licenses required for the Job. Subcontractor shall comply with all laws, ordinances, rules, regulations, orders and requirements of the applicable city and county government, the State and Federal government, and of any board or commission or any other duly qualified body having jurisdiction, which shall or might affect or apply to the Job, including State of California Occupational Safety and Health Standards Board. Subcontractor shall exhibit each such required permit or license to Contractor upon its request.

34. **PREVAILING WAGES AND PAYROLL RECORDS:** In the absence of a controlling collective bargaining agreement, Subcontractor understands and agrees that the wages to be paid by Subcontractor to laborers and mechanics employed by Subcontractor in the construction of this Project, or any part thereof, shall be a wage not less than the wages prevailing for corresponding classes of laborers and mechanics employed on construction of a similar character in the locality of the work to be performed hereunder, said prevailing wages to be payable in the manner and in accordance with all applicable Federal, State, County, City and local wage laws. As a condition precedent to any payment hereunder, Subcontractor shall submit to Contractor with each and every report of the work completed as required, a certificate in a form acceptable to Contractor certifying that he has complied with the provisions of this section. Subcontractor hereby authorizes Contractor to inspect and make copies of Subcontractor's books, payrolls and accounts with respect to this Subcontract, from time to time, for the purpose of verifying that Subcontractor is paying prevailing wages to his laborers and mechanics. Subcontractor shall maintain payroll records during the entire course of the Job, and Subcontractor shall preserve said payroll records for a period of not less than three (3) years from the date of completion of the Job. Subcontractor's payroll records shall contain the name and address of each employee who works for Subcontractor on this Project, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. Subcontractor agrees that upon failure to fully comply with the provisions of this Section 34, Contractor may withhold from the Subcontractor any payment or advances payable to Subcontractor hereunder. Subcontractor further agrees that any failure to fully comply with the terms of this Section shall be deemed a material breach of this Subcontract. Subcontractor shall keep fully informed of all existing and future State and Federal laws and county and municipal ordinances and regulations which in any manner affect those engaged and employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. The Subcontractor shall at all times observe and comply with, and shall cause all the Subcontractor's agents and employees to observe and comply with all existing and future laws, ordinances, regulations, orders and decrees of bodies or tribunals having jurisdiction or authority over the work, and shall protect and indemnify the Contractor, and all its employees thereof connected with the work against any claim or liability arising from or based on the violation of any law, ordinance, regulation, order, or decree, whether by the Subcontractor or the Subcontractor's employees. In particular, but not limited to, Subcontractor shall comply with the provisions of Sections 1774 and 1775 of the California Labor Code.

35. **ASSIGNMENT:** Subcontractor shall neither assign nor subcontract the whole or any portion of this Subcontract without first obtaining in each and every instance permission in writing from Contractor, and then only subject to, and upon the same terms and conditions, as the provisions of this Subcontract. Any permission granted by Contractor shall not be deemed permission to any subsequent assignment or subcontract. Any assignment or subcontract by Subcontractor made without the consent of Contractor as herein provided shall be null and void and shall at the option of Contractor be grounds for termination of this Subcontract. Any such assignment or subcontract shall contain all of the provisions of this Subcontract and shall require the assignee or subcontractor thereafter to be directly liable to Contractor in all respects as herein required of Subcontractor. Any assignment of this Subcontract or assignments of payments permitted by Contractor shall be submitted to the Contractor for its prior written approval and shall not be binding upon Contractor until so approved. No assignment shall relieve Subcontractor from his duties, obligations and liabilities hereunder, unless specifically relieved in writing by Contractor.

36. **LIENS:** Subcontractor shall pay when due all claims for labor or materials incurred by him in the performance of this Subcontract. Should any sub-subcontractor, supplier, trust fund, or other party providing labor or materials for the Job record a claim of lien against the Property or file a stop notice with the Owner, upon demand of Contractor, Subcontractor shall no later than ten (10) days from receipt of the demand and at its own expense procure, furnish and record an appropriate statutory release bond which will extinguish or remove any such lien or stop notice, or shall otherwise satisfy and discharge such claim. In the event Subcontractor shall fail to do so, Contractor is hereby authorized to use whatever means it may deem best to cause the lien or stop notice to be extinguished or removed, and the cost thereof, including reasonable attorneys' fees incurred by Contractor, shall become immediately due from Subcontractor to Contractor. Subcontractor may contest any such claim, provided that he first shall cause the lien or stop notice related thereto to be extinguished or removed.

37. **INSOLVENCY OR BANKRUPTCY:** In the event Subcontractor becomes insolvent, is unable to pay his current obligations or commits any act of bankruptcy, Subcontractor shall be considered as being disabled from performing the Job, and this Subcontract may be terminated at the option of Contractor upon twenty-four (24) hours written notice to Subcontractor. If an order for relief is entered under the Bankruptcy Code as to Subcontractor, Contractor may likewise terminate this Subcontract upon giving forty-eight hours written notice to Subcontractor, its trustee, and its surety, if any, unless Subcontractor, its trustee, or surety promptly cures all defaults, provides adequate assurance of future performance, compensates Contractor for losses sustained from such defaults, and timely assumes the obligations of Subcontractor. Subcontractor hereby authorizes all financial institutions, materialmen and individuals to disclose to Contractor Subcontractor's financial status, credit and manner of meeting obligations. Subcontractor shall file with



Contractor within thirty (30) days after the execution of this Subcontract a full and complete financial statement of Subcontractor's present financial status, and Subcontractor shall file with Contractor quarterly, complete, up-to-date financial statements on or before the thirtieth (30th) day of January, April, July and October of each year during the term hereof, and at such other times as Contractor may require. Should Subcontractor fail for any reason to file any financial statements as hereinabove required, Contractor may at its option, terminate this Subcontract. All financial statements shall be statements certified by a public accountant.

38. **DEATH OF SUBCONTRACTOR:** If Subcontractor is a sole proprietor, his death shall automatically terminate this Subcontract.

39. **JOB SITE SUPERINTENDENT:** During the performance of the Job, Subcontractor shall furnish to the jobsite skilled labor, adequate and suitable materials and a qualified superintendent or foreman to act as the representative of Subcontractor on the Project, with the right and power to obligate Subcontractor. Such superintendent or foreman shall at all times be satisfactory to Contractor and shall not be changed without the written consent of Contractor. Upon oral or written notice from Contractor that such superintendent or foreman is unsatisfactory to Contractor, Subcontractor shall promptly replace him with a person satisfactory to Contractor.

40. **LIST OF SUPPLIERS:** At Contractor's request, Subcontractor shall, within ten (10) days of execution of this Subcontract, provide in writing a list of names and addresses of all sub-subcontractors, materialmen and other suppliers who will supply labor, materials or equipment to Subcontractor for the Job. The written list of suppliers shall, upon receipt by Contractor, be attached to this Subcontract and shall be made a part hereof. Subcontractor shall not have the right to change any of the suppliers without first obtaining written permission of Contractor. Subcontractor warrants that the list of suppliers who will supply Subcontractor shall be the only suppliers for Subcontractor for the Job.

41. **DELIVERY RECEIPTS ON MATERIALS:** Upon Contractor's request, Subcontractor shall furnish Contractor with a duplicate copy of all delivery receipts for materials delivered to Subcontractor at or for use on the Job within twenty-four (24) hours after each delivery.

42. **TIME OF ESSENCE AND WAIVER:** All time limits stated in this Subcontract are of the essence to this Subcontract. A waiver by Contractor of any breach of any one of the terms or conditions herein contained shall not be construed as a waiver of any subsequent breach. Any consent by Contractor to a delay in the performance of Subcontractor of any obligations to be performed by Subcontractor shall be applicable only to the particular transaction to which it relates, and it shall not be applicable to any other obligation or transaction. Delay in the enforcement of any remedy by Contractor in the event of a breach of any term or condition hereof, or the exercise by Contractor of any right hereunder, shall not be construed as a waiver.

43. **UTILITIES:** Contractor shall furnish at his own expense all utilities, including, but not limited to, electrical power, lighting and water needed to properly perform the Job. Subcontractor to provide electrical cords, light standards (for task purposes) and water hoses for attachment to Contractor provided utilities.

44. **DATA FURNISHED BY SUBCONTRACTOR:** When requested by Contractor, Subcontractor shall, at his own expense, furnish promptly any number of prints, of his shop drawings, schedules, reports, or any other data that may be necessary in the operation of Contractor for distribution among other subcontractors and to Contractor for proper performance or clarification of work.

45. **SUBCONTRACTOR'S WARRANTIES AND REPRESENTATIONS:** As a material inducement to Contractor to enter into this Subcontract, Subcontractor warrants and represents as follows:

- (a) Subcontractor is familiar with all requirements of the Subcontract and Contract Documents.
- (b) Subcontractor has investigated the Project and has satisfied himself regarding the character of the work and local condition: that may affect it or its performance.
- (c) Subcontractor is satisfied that the Job can be performed and completed as required in this Subcontract.
- (d) Subcontractor accepts all risk directly or indirectly connected with the performance of this Subcontract.
- (e) Subcontractor warrants that in entering into this Subcontract he has not been influenced by any statement or promise of Contractor or its representatives but only by the Contract Documents.
- (f) Subcontractor is financially solvent.
- (g) Subcontractor is experienced and competent to perform this Subcontract.
- (h) Subcontractor is qualified, licensed in good standing and authorized to do business as a contractor in the State of California.

(i) Subcontractor is familiar with all general and special laws, ordinances, and regulations that may affect the Job, its performance, or those persons employed therein.

(j) Subcontractor is familiar with the tax and labor regulations and with rates of pay that will affect the work hereunder.

(k) All work shall be performed by mechanics skilled in this type of work and as required by the County, State of California Occupational Safety and Health Standards Board and any other related governing public agencies, and shall provide adequate protection necessary for the safety, health and well being of his employees and others for his period of contracted work.

46. **PUBLICITY:** Subcontractor shall not disclose or make public to any news media or any persons associated with the news media or by advertisement or by public release of any kind or nature the fact that Subcontractor has entered into this Subcontract with Contractor, unless such public release is first approved in writing by Contractor.

47. **CONFLICT OF LAW:** The laws of the State of California shall govern the interpretation, validity and construction of the terms and conditions of this Subcontract.

48. **SEVERABILITY:** Should any provisions of this Subcontract, or any part thereof, prove to be invalid or otherwise unenforceable, then such provision shall remain in effect to the extent permitted, and the other provisions of this Subcontract shall remain in full force and effect.

49. **PLACE OF PERFORMANCE:** Execution of this Subcontract shall be at Contractor's Principal place of business in the City of Newport Beach, County of Orange, State of California and the County of Orange, State of California, shall be deemed the place of performance of this Subcontract for all legal purposes.

50. **HEIRS AND ASSIGNS:** This Subcontract shall inure to the benefits of and be binding on the heirs, executors, administrators and successors of the respective parties hereto, and the assigns of Contractor.

51. **NOTICES:** All notices, statements, demands, applications and other communications to be given by a party under or pursuant to the Subcontract shall be in writing. Service of any such writing may be accomplished by personal service of said writing, by use of first class mail, by Federal Express or other overnight service, or by facsimile transmission. The writing shall become effective at the time the writing is received by the party being served. Personal service may be made by delivering the writing to the senior representative of the recipient party at the Project site or to a person in charge at the office of the recipient party. Service by mail or facsimile transmission shall be sent to the recipient party at its office address specified in the Subcontract, or to such other address as either party may designate for itself by written notice to the other. A duplicate hard copy of any writing served on a party by facsimile transmission shall also be sent to such party, on the same day or as soon as possible thereafter, by first class mail or overnight service; such writing shall, nevertheless, become effective at the time the facsimile transmission is received.

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