

Sample Subcontract

CALIFORNIA SAMPLE MASTER SUBCONTRACT FOR CALIFORNIA REGIONAL OFFICES ONLY NOT APPLICABLE FOR OTHER REGIONAL OFFICES

Job No.:	001	BONDS REQUIRED:
Subcontract No.:	001-1	To be determined by separate Work Authorization
Phase Code(s):		

This Master Subcontract ("Agreement") is made as of MM/DD/YYYY, ("Effective Date"), between xyz Construction, A General Partnership ("XYZ"), and Subcontractor, in connection with various projects during the term of the Master Subcontract, as XYZ may award in its sole judgment.

CONTRACTOR: XYZ Construction, A General Partnership, California Regional Offices

SUBCONTRACTOR XYZ Elevator Company

OWNER Bob Smith Incorporated

PROJECT Bob's Garage

ARCHITECT John Doe Architectural Firm

<p>THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS USE OR MODIFICATION. SOME CONSTRUCTION PRIME CONTRACTS MAY REQUIRE THE USE OF SPECIALIZED PROVISIONS NOT INCLUDED IN THIS FORM.</p>

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SECTION 1. ENTIRE AGREEMENT; INVESTIGATION; PRIME CONTRACT; DEFINITIONS

- 1.1. **Entire Agreement:** This Agreement, including all documents attached hereto or incorporated herein by reference, is the entire agreement between XYZ and Subcontractor with respect to the Work and the Project, and supersedes all proposals, negotiations, stipulations, understandings, agreements, representations and warranties, if any, between XYZ and Subcontractor with respect to the Work and the Project which precede or accompany the execution of this Agreement. The Agreement is also referred to as the Subcontract.
- 1.2. **Applicability of Contract Documents to Subcontractor:** Subcontractor and its subcontractors and suppliers shall be bound by the terms of the Contract Documents, including without limitation the Prime Contract, insofar as they relate in any way to the Work of this Agreement. Subcontractor further agrees to be bound to XYZ in the same manner and to the same extent as XYZ is or will be bound to Owner under the terms of the Prime Contract, to the extent the terms relate in any way, to the Work or Subcontractor's obligations under this Agreement.
- 1.3. **Investigation by Subcontractor:** Subcontractor represents and warrants that it has carefully reviewed, and is thoroughly familiar with, all of the terms of the Subcontract Documents, the plans and specifications as they pertain to the Work, the location of the Project site, and the conditions under which the Work is to be performed by Subcontractor and all laws, ordinances, building codes or regulations that in any way relate to the work to be performed under this Subcontract. Subcontractor enters into this Agreement based upon its investigation of all relevant matters, including without limitation, investigations, testing, and observations of any existing conditions related to or affecting the Work. Subcontractor is not relying on any opinions or representations of XYZ or any person purporting to act on XYZ's behalf. If Subcontractor discovers any apparent or actual error, omission, code compliance issue, or deficiency in such documents, location, or conditions (any of the foregoing, a "Deficiency"), Subcontractor shall, on or before the earlier of (a) five (5) Days after Subcontractor first becomes aware of a Deficiency, or (b) two (2) Business Days prior to the last day upon which XYZ must report a Deficiency under the Prime Contract, notify XYZ in writing of the existence or possible existence of each Deficiency in detail and take any other actions otherwise required of XYZ under the Prime Contract. If Subcontractor believes that additional cost or time is involved because of modifications to the Work as a result of one or more Deficiencies as to which Subcontractor has given notice to XYZ pursuant to this Section 1.3, then, subject to the provisions of the Prime Contract, Subcontractor may request a Change Order pursuant to Section 6. If XYZ has any obligation under the Prime Contract regarding any investigation, testing or inspection of the site and the conditions under which the Work is to be performed, Subcontractor assumes those obligations and shall be solely responsible for all costs, expenses and damages that may result from Subcontractor's failure to perform or properly perform such investigation, testing or inspection.
- 1.4. Prime Contract.
- 1.4.1. **Prime Contract Not Yet Executed:** If, as of the execution of a Work Authorization, the Prime Contract has not been executed by XYZ and Owner, the terms and conditions of the draft of the Prime Contract referenced in Attachment 1, as they relate in any way to the Work, are nonetheless incorporated within the Work Authorization as a Subcontract Document. Upon execution of the Prime Contract and written request by Subcontractor, XYZ shall make the executed Prime Contract available to Subcontractor. If the Subcontractor believes that the Prime Contract, as executed, affects the cost or time of Subcontractor's performance of the Work, then Subcontractor may request a Change Order in accordance with Section 6 below.
- 1.4.2. **Prime Contract Executed:** By executing a Work Authorization and/or commencing the Work, Subcontractor represents and acknowledges that Subcontractor has reviewed or has been given ample opportunity to review the Prime Contract and the terms of the Prime Contract have no affect on the cost or time of Subcontractor's performance of the Work.
- 1.5. **Definitions:** In this Agreement, the following definitions apply.
- 1.5.1. **Business Day:** "Business Day" means all calendar days except weekends and federal holidays.
- 1.5.2. **Contract Documents:** "Contract Documents" means all of the documents included or referenced as part of the Prime Contract between XYZ and Owner for work at the Project.
- 1.5.3. **Day:** "Day" means calendar day.
- 1.5.4. **Key Personnel:** "Key Personnel" means the Subcontractor's representative and any of its personnel named as Key Personnel in the Subcontract Documents.

- 1.5.5. Prime Contract: "Prime Contract" means that certain contract between XYZ and Owner for work at the Project, including all documents included or referenced therein.
- 1.5.6. Project Schedule: "Project Schedule" means XYZ's schedule for the Project at the effective date of the Agreement, as identified in Attachment 4 to the Agreement.
- 1.5.7. Subcontract Documents: "Subcontract Documents" means the entire Agreement, as described in Section 1.1. The Subcontract Documents are enumerated in Attachment 1 and Attachment 1A.
- 1.5.8. Work: "Work" refers to work to be performed by Subcontractor under this Agreement in accordance with Section 2, and subject to such changes as may be made pursuant to Section 6 below,

SECTION 2. SCOPE OF WORK

- 2.1. Subcontractor agrees to furnish all labor, services, materials, equipment and other facilities required to timely and properly perform the Work, which is generally described as:

Bob's Garage

and more particularly described in separate Work Authorizations , subject to such changes as may be made pursuant to Section 6 below. The Work shall be performed in accordance with the Subcontract Documents and the applicable Work Authorizations.

- 2.2. It is understood that drawings and specifications indicate the general scope of the project and, as such, the drawings and specifications do not necessarily indicate or describe all work required for the full performance and completion of the Work. This Subcontract is executed and awarded and each Work Authorization is executed and awarded on the basis of such documents with the understanding that the Subcontractor is to furnish and install all items reasonably inferable as required for the proper completion of the Work without adjustment to the Subcontract Price. In the event of a dispute between XYZ and Subcontractor over the scope of the Work under the Subcontract Documents and the applicable Work Authorizations, Subcontractor shall not cease performing the Work but will continue to perform the Work diligently to completion as directed by XYZ, with any dispute to be resolved in accordance with Section 17 below.
- 2.3. In the event that Subcontractor's Work requires design or engineering services, this Section 2.3 shall apply
- 2.3.1. XYZ employs the Subcontractor as an independent contractor, to design and construct a part of project(s) for which XYZ has contracted with the Owner. The Subcontractor's portion of the Project, hereinafter referred to as the "Work," is set out in the Agreement and the applicable Work Authorization(s) as issued for such project(s), at the sole discretion of XYZ. The Subcontractor agrees to perform such Work under the general direction of XYZ and subject to the final approval of the Owner, in accordance with the Agreement and the applicable Work Authorization(s).
- 2.3.2. In the performance of its design Work, Subcontractor shall:
- 2.3.2.1. Furnish by properly licensed and qualified architects or engineers all necessary professional architectural and engineering design services for the design of the Work;
- 2.3.2.2. Furnish all labor and materials, along with competent supervision, shop drawings and samples, tools, equipment, scaffolding, permits and fees necessary for the construction of the Work;
- 2.3.2.3. Give all notices and comply with all applicable laws, building codes, ordinances, regulations, and orders of any public authority.
- 2.3.2.4. The Subcontractor shall submit for XYZ's and Owner's approval in accordance with the Project Schedule, design development documents, working drawings, specified shop drawings and samples, and data and specifications of materials proposed to be incorporated in the Work. The Subcontractor shall provide copies of approved drawings in the form and quantity specified by XYZ. Subcontractor shall notify XYZ and other affected trades of all design development changes in sufficient time to preclude additional costs and conflicts with work of others on the Project. Subcontractor shall be liable for the extra costs incurred for its failure to provide such timely notice.

- 2.3.2.5. The Work performed under this Agreement shall be coordinated by the Subcontractor with the design and construction work performed by others outside of this Agreement. Sufficient plans and specifications prepared by the Subcontractor under this Agreement will be furnished for coordination, construction, and permit purposes.

SECTION 3. SUBCONTRACT PRICE

- 3.1. XYZ agrees to pay to Subcontractor for the performance of the Work in strict compliance with the Subcontract Documents the Subcontract Price defined by and in accordance with the terms indicated by the checked box below:
- 3.2. Compensation Basis:
- Lump Sum of One Hundred Nineteen Thousand Dollars (\$ 119,000.00)
- Cost-Reimbursable, Not-to-Exceed (NTE): XYZ shall pay the total of Subcontractor's Reimbursable Cost of Work in accordance with Section 4.5, plus a Fee of _____ covering Subcontractor's overhead and profit, not to exceed Dollars (\$) (the "NTE Amount"). The NTE Amount is not guaranteed by Subcontractor. Subcontractor shall notify XYZ when 75% of the NTE Amount has been incurred.
- Cost-Reimbursable with a Guaranteed Maximum Price (GMP): XYZ shall pay the total of Subcontractor's Reimbursable Cost of Work in accordance with Section 4.5, plus a Fee of _____ covering Subcontractor's overhead and profit, the sum of which is guaranteed by Subcontractor not to exceed the GMP of _____ Dollars, (\$ _____),
- 3.3. The Subcontract Price is payable in accordance with the payment schedule set forth in Section 4 below and is subject to additions or deductions for changes in the Work as may be directed in writing by XYZ under Section 6 below.

SECTION 4. PAYMENTS

- 4.1. Timing: Subject to the terms and provisions of Section 4.5, XYZ agrees to pay to Subcontractor monthly progress payments for work actually completed by Subcontractor under this Agreement, less retention, to the extent XYZ receives funds from Owner for Work performed by Subcontractor as reflected in XYZ's applications for payment. The retention shall be Ten Percent (10%), or as required under the Prime Contract. The monthly progress payments shall be made within the last to occur of: a) ten (10) Business Days after XYZ receives payment from Owner or b) a reasonable time after the receipt by XYZ of all information required of Subcontractor under Section 4.2 below. Subcontractor shall, in turn and in the same manner, make progress payments to its suppliers and subcontractors upon payment to Subcontractor from XYZ for Work performed and materials furnished by suppliers and subcontractors, to the extent of their respective interests therein. The final payment to Subcontractor, including any retention, shall be made pursuant to the terms of the Prime Contract, or in the absence of an applicable provision under the Prime Contract, within ten (10) Business Days after the Work has been fully completed and has been delivered to and accepted by Owner, Architect, and XYZ, to the extent XYZ receives funds from Owner in final payment for work performed under the Prime Contract
- 4.2. Subcontractor's right to receive compensation under this Agreement is not conditioned upon Owner's payment to XYZ under the Prime Contract. If Owner or other responsible party delays making any payment to XYZ from which payment to Subcontractor is to be made, and provided that such delay is not due to the fault of Subcontractor, XYZ and its sureties shall have a reasonable time to make payment to Subcontractor. A "reasonable time," as used herein, shall be determined according to the relevant circumstances, but in no event shall it be less than the time required for XYZ, XYZ's sureties, and Subcontractor to fully pursue their legal remedies to conclusion against Owner or any other responsible parties to obtain payment, including, without limitation, mechanic's lien remedies. Any payment made prior to completion and acceptance of the Work, as referred to above, shall not be construed as evidence of acceptance of any part of the Work. If XYZ has provided a payment and/or performance bond, the obligations of XYZ and its surety to make payment (whether a progress payment or final payment) pursuant to such bonds are similarly subject to the conditions and timing set forth above. To that extent, XYZ's surety is an express third party beneficiary of this Subcontract
- 4.3. Payment Applications: As a condition precedent to XYZ's obligation to make any payment to Subcontractor under this Section 4.3, Subcontractor shall furnish to XYZ: a) a written request for payment in the form and content required by XYZ; and b) if and when required by XYZ, payroll affidavits, receipts, vouchers, applicable releases for claims by Subcontractor, or materialmen,

suppliers, union trustees and trust funds, and subcontractors hired by Subcontractor in the forms set forth in Attachment B, stop notice releases, and any other information or documents reasonably requested by XYZ or required to be provided to Owner under the Prime Contract. The format and content of all submissions to XYZ under this Section 4.3 shall be satisfactory to XYZ. The Subcontractor shall be required to organize and code its schedule of values, all payment requests, and invoices as directed by XYZ prior to their submittal for payment. Subcontractor shall submit its proposed schedule of values to XYZ for approval within two weeks of Work Authorization award, which approval shall be required for Subcontractor's submittal of its first Application for Payment hereunder. Payment for all materials stored offsite is solely at the discretion of XYZ. Any monies paid by XYZ to Subcontractor under the terms of this Agreement shall be held in trust by Subcontractor in favor of third parties furnishing labor and material to Subcontractor with respect to the Work. Subcontractor shall mark all payments made to its subcontractors and suppliers by identifying the Project referenced in this Agreement and including language on its remittances that limits the application of its payments to outstanding balances on the Project referenced in the Agreement.

- 4.4. Joint Checks: XYZ, at its option, and for good cause including but not limited to Subcontractor's past or present failure to make timely payments to sub-subcontractors, materialmen or suppliers, may make any payment due under this Section 4.4 by check made payable jointly to Subcontractor and any sub-subcontractors, materialmen, and suppliers hired by Subcontractor who have performed work or furnished materials under this Agreement.
- 4.5. Cost-Reimbursable Payments: To the extent that Subcontractor is entitled to reimbursement of any costs incurred in the performance of the Work ("Reimbursable Costs"), including without limitation Work performed for a Subcontract Price based on costs incurred plus a fee (whether or not subject to a not-to-exceed amount), or any claim for additional compensation pursuant to Section 6 below, payment of such Reimbursable Costs shall be made in accordance with the cost reimbursement terms of the Prime Contract, or in the absence of such Prime Contract terms, in accordance with (by separate Work Authorization) to the Agreement. Subcontractor shall maintain, in a manner and quality satisfactory to XYZ and Owner, accounting records for Reimbursable Costs including, without limitation, supplier and subcontractor invoices, material receiving reports, purchase orders, payrolls, and other such documentation necessary to fully substantiate each reimbursement request. Those records shall be subject to audit by XYZ, Owner, or the designated representative of either, with prior notification to Subcontractor, for a period of five (5) years following completion of the Work, or longer if required by the Prime Contract.
- 4.6. At any times reasonably requested by XYZ, Subcontractor shall furnish notarized evidence that all labor, materials, and other costs for which it has received payment from XYZ have been paid in full. Subcontractor agrees to provide XYZ with evidence satisfactory to XYZ showing payment by Subcontractor of any and all contributions for health and welfare payments, payroll taxes and other contributions which may be required by law
- 4.7. Insurance and Bond Requirements: Subcontractor shall not commence work on the project site and no payments shall be due or payable to Subcontractor, and no payments will be made to Subcontractor under this Agreement and an applicable Work Authorization unless and until Subcontractor satisfies all of Subcontractor's obligations to provide insurance and performance and payment bonds pursuant to the terms of this Agreement and said Work Authorization.

SECTION 5. TIME

- 5.1. Project Schedule: Coordination: Time is of the essence in the performance of Subcontractor's Work and other obligations under this Agreement. Prior to performing any Work, Subcontractor shall provide XYZ with scheduling information and a proposed schedule for performance of the Work, which shall include a projection of man-hours and crew sizes, all in forms acceptable to XYZ. Subcontractor's proposed schedule shall conform to the Project Schedule and all revisions or changes made to it from time-to-time. Subcontractor shall provide timely, accurate schedule input on a weekly basis, in a format acceptable to XYZ and when directed by XYZ, Subcontractor shall revise and update Subcontractor's activities reflected in XYZ's then current schedule. The Project Schedule is not a representation by XYZ that Subcontractor will be able to perform its activities on certain dates. Subcontractor shall perform the Work in a prompt and diligent manner in accordance with XYZ's schedule, as updated from time to time, without delaying or hindering XYZ's work or the work of other contractors or subcontractors. Subcontractor's performance of Work outside normal work days and times must be pre-approved by XYZ and shall be at no additional expense to XYZ unless otherwise agreed. Subcontractor shall coordinate the Work with that of XYZ and all other contractors and subcontractors,

in a manner that will facilitate the efficient completion of the entire Project. XYZ shall have complete control of the premises on which the Work is to be performed and all matters relating to the timely and orderly completion of the Work. XYZ shall have the right to decide the relative priority of the Work compared to the work of other subcontractors on the Project and the time and order in which various portions of the Work shall be performed by Subcontractor. Subcontractor must attend all coordination and other required meetings as XYZ may schedule from time to time. If Subcontractor fails to maintain progress in accordance with the current schedule, it shall, without additional compensation, accelerate the Work as XYZ may direct until the Work is in accordance with such schedule.

52. Delays and Time Extensions: The time fixed for the completion of the Work under this Section 5.2 shall only be extended by the number of Days Subcontractor has been delayed, through no fault of Subcontractor, in its performance or completion of the Work by one or more of the following events: a) the act, neglect or default of Owner, Architect, or XYZ; b) delays directly resulting from any fire or other casualty for which Subcontractor is not responsible; c) labor unrest to the extent excusable as a delay by the Prime Contract provisions and, in no way caused by or resulting from the fault or collusion on the part of Subcontractor; d) a lock-out by XYZ; or e) other causes which XYZ determines may justify delay; provided, however, no extension shall be made unless Subcontractor presents to XYZ a written claim for an extension within 48 hours of the commencement of a delay, and under no circumstances shall the time of completion be extended to a date which will prevent XYZ from completing the entire Project within the time allowed XYZ by Owner for that completion. Any such time extension shall be limited to the Days that Subcontractor's overall duration of performance is extended by the foregoing events.
53. Damages for Delays: If Subcontractor has incurred delay damages as a result of delays caused by events under Section 5.2, it may request a Change Order pursuant to Section 6. Notwithstanding anything to the contrary in this Agreement, Subcontractor's rights to receive additional compensation under this Section 5.3 shall be subject to any applicable provisions of the Prime Contract, and any additional compensation allowed shall be payable in accordance with the above Section 4.5 and the Prime Contract. Subcontractor shall not be entitled to compensation for delay damages to the extent that delays caused by the events in Section 5.2 are concurrent with delays caused by Subcontractor or someone for whom Subcontractor is responsible. If delays caused by the events described in Section 5.2 are caused by any reason other than the acts of XYZ that interfere with Subcontractor's performance of the Work, Subcontractor shall only be entitled to additional compensation if XYZ receives compensation from the Owner for delays sustained by Subcontractor, and only in the amount of the compensation received by XYZ from the Owner, less any mark-up included by XYZ in the claim for additional compensation made on behalf of the Subcontractor to the Owner.

SECTION 6. CHANGES IN THE WORK

- 6.1. Changes: Subcontractor shall make any and all changes in the Work described in this Agreement as directed by XYZ in writing. Such change or written direction shall not invalidate this Agreement. If necessary, the Subcontract Price and the time for Subcontractor's performance shall be adjusted by Change Order, documenting mutually agreed additions or deductions. Subcontractor shall supply XYZ with all documentation necessary to substantiate the amount of the addition to or deduction from the Subcontract Price and or time required to perform the Work. If XYZ and Subcontractor cannot agree on the amount of the addition or deletion, Subcontractor shall nonetheless timely perform the Work as changed by XYZ's written direction. At XYZ's sole discretion, such changed work shall be performed on a time and material, lump sum, or unit price compensation basis. Once Subcontractor receives XYZ's written direction, Subcontractor is solely responsible for timely performance of the Work as changed by the written direction. The foregoing notwithstanding, if the change is directed by the Owner, the adjustment in the Subcontract Price shall be limited to the amount approved by the Owner for such change attributed to the Work to be added to or deleted from the Work performed by Subcontractor under this Subcontract.
- 6.2. Written Authorization Required: Subcontractor shall not make any changes in the Work or in any way cause or allow that Work to deviate from the Agreement without written direction from XYZ. If Subcontractor makes any changes in the Work without written direction from XYZ, such change constitutes an agreement by Subcontractor that it has waived its right to claim for compensation or an extension of time for such change, and that it will not be paid for that changed work, even if it received verbal direction from XYZ or any form of direction, written or otherwise, from Owner or any other person or entity. In addition, Subcontractor shall be liable for any and all losses, costs, expenses, damages, and liability of any nature whatsoever associated with or in any way arising out of any such change made by Subcontractor without written direction from XYZ.

- 6.3. Change Quotation Pricing: Subcontractor shall submit change quotation pricing in the form and format required by XYZ. If the Prime Contract sets forth rates, unit prices, and/or mark-ups to be applied to the changes affecting a subcontractor, Subcontractor shall utilize such rates, prices, and mark-ups in submitting a change quotation price. Otherwise, such rates, prices and mark-ups shall be as stipulated in 1) Attachment 2; or 2) in the absence of such rates in Attachment 2, as detailed in the Bid Form submitted by Subcontractor and accepted by XYZ; or 3) in the absence of any such rates, by other agreement of XYZ and Subcontractor. Subcontractor's markups on direct costs in change quotations shall be limited to the rates defined in Attachment 2.
- 6.4. Direct Costs: Overhead: Direct Costs shall mean craft labor, materials, equipment, subcontracted work, and other direct costs incurred in direct performance of the changed work. Overhead shall include all indirect costs, including, but not limited to, detailing, engineering, purchasing, shop burden, tools, equipment, trucks, trucking costs, non-productive labor, and Project Management costs (onsite and offsite). No multipliers for any soft costs shall be allowed in calculation of the direct costs of, or rates for, the Work. All supervision (e.g., General Foreman, Superintendent, Project Manager, etc.) above the level of working foreman will be included in the Subcontractor's markups for Overhead and Profit.
- 6.5. Time and Materials Changes:
- 6.5.1. For any work performed on a time and material basis, Subcontractor shall submit, EACH DAY, time and material (T&M) tickets for signature by XYZ's authorized representative. XYZ's authorized representative shall be its Project Manager, or the delegated representative designated in writing. The signature of XYZ's authorized representative will constitute acknowledgment that the work was performed pursuant to XYZ's direction, and that the time and material quantities indicated on the T&M Ticket appear to be correct. The signature of XYZ's authorized representative shall not be deemed to constitute agreement that the work of the T&M Ticket has been performed properly in accordance with the requirements of the Agreement, which shall remain Subcontractor's responsibility. Further, the signature of XYZ's authorized representative shall not by itself be deemed conclusive evidence of XYZ's agreement that Subcontractor is entitled to payment for the amount(s) shown on the T&M Ticket. Subcontractor shall not be entitled to payment for any work claimed to have been performed under this Subcontract when the T&M Tickets documenting such work have not been duly signed by XYZ's authorized representative.
- 6.5.2. Subcontractor's T&M Tickets shall include, at a minimum, the following information:
- a. The date on which the work was performed.
 - b. A detailed description of the work performed.
 - c. The location of the work performed.
 - d. The name of the XYZ Representative authorizing such work to be performed.
 - e. Names, Man-hours, and Labor Rates actually paid by Subcontractor for all labor performed, with separate identification of straight and overtime hours.
 - f. Descriptions and costs for each item of materials used to perform the work.
 - g. Descriptions and costs for each item of equipment used to perform the work.
 - h. The signature of XYZ's Authorized Representative.
 - i. The signature of Subcontractor's authorized representative.
 - j. XYZ Tracking Number
- 6.5.3. For such work provided on a T&M basis, Subcontractor shall provide within fourteen days of completion of the work, or earlier if so directed by XYZ, full and complete documentation and cost detail, in a format approved by XYZ, for all T & M costs incurred and for which Subcontractor shall request reimbursement.
- 6.6. Scope Disputes: If a dispute arises between XYZ and Subcontractor about whether there exists a change in the Work, Subcontractor shall timely perform the disputed work if and as directed by XYZ in writing. Subcontractor shall give written notice of its intent, if any, to claim for additional compensation for that work pursuant to Section 17. **Such written notice of claim must be given prior to performance of the disputed work.** Subcontractor's failure to give written notice and submit its claim accordingly constitutes an agreement that Subcontractor will not be paid for the disputed work and a

waiver of claims therefor. If XYZ and Subcontractor cannot agree on the value of the disputed work, Subcontractor shall nonetheless timely perform that work if and as directed by XYZ in writing and, the Subcontractor shall document all costs of such disputed work on either a time and material, or unit price compensation basis as determined by XYZ. In the event it is later determined that such disputed work is agreed to be a change to the Subcontract, the method determined by XYZ to track the cost of the disputed work shall be the basis of determining the change amount.

- 6.7. Surety: No change, alteration, or modification to or deviation from the Agreement, whether made in the manner provided in this provision or not, shall release or exonerate, in whole or in part, any bond or any surety on any bond given in connection with this Agreement, and no notice is required to be given to such surety of any such change, alteration, modification, or deviation.
- 6.8. Claims: If Subcontractor timely gives XYZ written notice of a claim for additional compensation pursuant to Section 6.6 above, the format and content of such claim shall conform to the requirements set forth in this Section 6.8 and shall be otherwise satisfactory to XYZ. Claims submitted hereunder must be submitted within the earlier of thirty (30) Days after notification of intent to claim, or such earlier time as may be required by the Prime Contract. Claims by Subcontractor must provide sufficient details and attached supporting documentation for XYZ to determine the validity of the claim, including but not limited to: a description of the alleged change, a demonstration of contractual entitlement; a detailed breakdown of the costs; the dates on which the costs were actually incurred; a time impact analysis for any time request, and a demonstration of how the disputed Work resulted in the incurrence of the claimed costs. If XYZ rejects the claim in whole or in part, the claim may be resolved in accordance with the resolution procedures set forth in Section 17 below. XYZ shall, upon request, be entitled to review and audit Subcontractor's project records and actual cost data relating to Subcontractor's claim.
- 6.9. Unforeseen Conditions: If Subcontractor encounters conditions at the Project site which are a) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Subcontract Documents, or b) an unknown physical condition of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Agreement or (c) conditions which differ materially from those which should have been discovered if Subcontractor had performed the investigations, testing or inspections required to be performed by XYZ under the Prime Contract which Subcontractor agreed to perform pursuant to Section 1.3 above (in each case, an "Unforeseen Condition"), then Subcontractor shall deliver to XYZ notice of the Unforeseen Condition promptly before it is disturbed and in no event later than twenty-four (24) hours after first observance of the conditions. If the Prime Contract provides for procedures governing the discovery of an Unforeseen Condition, XYZ and Subcontractor shall comply with those procedures. To the extent the Prime Contract does not provide those procedures, the following shall apply: XYZ shall cause a prompt investigation of the Unforeseen Condition, which may in XYZ's discretion include a request to Owner and/or Architect to undertake the investigation. Provided that the Unforeseen Condition was not discoverable during the course of Subcontractor's review and investigation of the Agreement and field conditions pursuant to Section 1.3 above, and if XYZ, or Owner and Architect, as the case may be, determines the conditions at the Project site differ materially and causes an increase or decrease in the Subcontractor's cost of, or time required for, performing any part of the Work, an adjustment will be made to the Subcontract Price or time for performing the Work, or both, subject to allowability per the Prime Contract. The amount of the adjustment to the Subcontract Price and or time for performance of the Work, if any, shall in any event be limited to the amount of additional costs and or time which XYZ receives from Owner on Subcontractor's behalf based upon the claim submitted by Subcontractor. If XYZ, Owner, or Architect, as the case may be, determines that the conditions at the Project site are not materially different from those indicated in the Subcontract Documents or from those which should have been discovered by Subcontractor by performing investigations, testing, or inspections required by the Prime Contract, no equitable adjustment will be made to the Subcontract Price or time for performing the Work. Claims by Subcontractor in opposition to XYZ's determination must be made within the earlier of: a) twenty-one (21) Days after XYZ has given notice of the decision; or b) two (2) Business Days prior to the last day that XYZ may oppose a similar determination under the Prime Contract. Subcontractor's rights under this Section 6.9 are subject to XYZ's rights to oppose any determination by Owner or Architect under the Prime Contract or other agreement. Subject to the limitations herein, if XYZ and Subcontractor cannot agree on an adjustment to the Subcontract Price or time for performing the Work, the adjustment shall be resolved in accordance with Section 17.

SECTION 7. DAMAGES CAUSED BY DELAYS

- 7.1. If Subcontractor defaults in its performance of the Work or otherwise commits any act or omission which causes delay to XYZ or other subcontractors or suppliers or the Project, or causes the completion of the Project to be delayed, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages and liquidated damages, sustained by XYZ, or for which XYZ may be liable to Owner or any other party because of Subcontractor's default or act or omission.

SECTION 8. BONDING OF SUBCONTRACTOR

- 8.1. Concurrently with the execution of this Agreement, Subcontractor shall, if required by XYZ, provide a payment bond and/or performance bond, each in an amount equal to one hundred percent (100%) of the Subcontract Price. These bonds shall be executed by a corporate surety acceptable to XYZ and shall be in a form satisfactory to XYZ. XYZ shall pay the premium on these bonds, without markup, and such amount is included in the Subcontract Price.

SECTION 9. LIENS

- 9.1. Satisfaction of Liens: Provided XYZ is not in default of its payment obligations to Subcontractor, if an action is brought on any claim or lien, by any party for whom Subcontractor is responsible, for labor or services performed or equipment and materials provided in connection with the Work (a "Lien"), Subcontractor shall pay and satisfy the Lien as may be required by the court having jurisdiction in the action.
- 9.2. Removal of Action or Lien: Within ten (10) Days after XYZ delivers to Subcontractor a written demand to cause any Lien to be removed from the premises Subcontractor shall cause the Lien to be removed or dismissed, or shall bond around the Lien. If Subcontractor fails to do so, XYZ may take whatever steps it may deem in its sole discretion appropriate to cause the Lien to be removed or dismissed, including posting a bond for removal of the lien. All costs incurred by XYZ relating to the foregoing, together with actual attorneys' fees, plus a markup of fifteen percent (15%) overhead, shall be immediately due and payable to XYZ by Subcontractor. Subcontractor may litigate the Lien, provided it causes the effects of the Lien to be promptly removed from the Project to the satisfaction of XYZ and Owner. Subcontractor shall also take whatever steps that may be necessary to cause Owner not to withhold any monies due to XYZ from Owner by reason of the Lien.
- 9.3. Condition Precedent: The full and faithful performance of this Agreement on the part of Subcontractor (including the payment of any obligations due from Subcontractor to XYZ, and any amounts due to labor or materialmen furnishing labor or material for the Work, or union trustees or trust funds) is a condition precedent to Subcontractor's right to receive payment for the Work. Any monies paid by XYZ to Subcontractor under the terms of this Agreement shall be held in trust by Subcontractor in favor of third parties furnishing labor and material to Subcontractor with respect to the Work.

SECTION 10. PROVISIONS FOR INSPECTION

- 10.1. All Work is subject to inspection. Subcontractor shall at all times furnish to Owner, Architect, XYZ and their representatives, building inspectors and other governmental or private inspectors or their designees, safe and ample facilities for inspecting materials at the Project site, shops, factories or any place of business of Subcontractor and its subcontractors and materialmen where materials under this Agreement may be in the course of preparation, process, manufacture or treatment. Special inspections shall be scheduled by Subcontractor and coordinated with XYZ. Subcontractor shall be responsible for notifying the proper inspectors and XYZ not less than 1 work day prior to the required inspection, unless a longer period of time is required by the Prime Contract. Subcontractor shall be responsible for all additional fees, penalties, and expenses associated with non-complying work. Subcontractor shall furnish to XYZ as often as required by XYZ, full reports of the progress of the Work at any place where materials under this Agreement may be in the course of preparation or manufacture. These reports shall show the progress of that preparation and manufacture in such details as may be required by XYZ, including, but not limited to, any plans, drawings, or diagrams in the course of preparation.

SECTION 11. MATERIALS AND WORK FURNISHED BY OTHERS

- 11.1. If the Work includes installation of materials or equipment furnished by others or work to be performed in areas to be constructed or prepared by others, Subcontractor shall immediately examine the items or areas to ensure they are of acceptable quality or condition for the Work. If Subcontractor reasonably concludes the items or areas are so acceptable, Subcontractor shall secure, handle, store and install the items with that skill and care as to ensure completion of the Work in accordance with this Agreement. The use of these items or commencement of any Work by Subcontractor in those areas shall constitute

Subcontractor's acceptance of them. Subcontractor shall be liable for any loss or damage caused by the acts of Subcontractor, or those for whom Subcontractor is responsible, and XYZ may deduct any such amount from monies otherwise due Subcontractor under this Agreement.

SECTION 12. PROTECTION OF WORK

- 12.1. Subcontractor shall secure and protect the Work performed and assume full responsibility for the condition of the Work until final acceptance by Architect, Owner, and XYZ. Subcontractor shall also provide protection as is necessary to protect the Work and the workmen of XYZ, Owner and other subcontractors and suppliers from Subcontractor's operations. Subcontractor shall be liable for any loss or damage to any work in place or to any equipment and materials at the Project site caused by Subcontractor or its agents, employees or guests, or by Subcontractor's failure to secure and protect the Work until it is accepted.

SECTION 13. LABOR RELATIONS

- 13.1. Representative: Prior to the commencement of any Work, Subcontractor shall designate a responsible representative at the Project site. The representative shall be available at the Project site at all times when the Work is in progress. Subcontractor's representative shall be authorized to represent Subcontractor as to all phases of the Work, and to act on behalf of Subcontractor. The representative, as well as other Subcontractor personnel named as such in Attachment 2, if any, shall be considered Key Personnel, who shall not be re-assigned or removed from the Project without prior approval of XYZ. In addition, Subcontractor's personnel assigned to the Project shall be fit, experienced, and competent to perform their tasks and shall work in a safe, courteous, and cooperative fashion with XYZ and the other participants who are present at the site at any given time. Subcontractor shall promptly remove from the Project any of Subcontractor's personnel who fail to satisfy these requirements or are otherwise objectionable to XYZ or Owner and shall replace them with personnel who will satisfy these requirements, at no additional costs or delay to the Project or XYZ.
- 13.2. DBE/MBENVBE/DVBE/S BE: Subcontractor represents and warrants that it has reviewed and is thoroughly familiar with all DBE/M BENVBE/DVBE/SBE requirements pertaining to the Project, if any. If Subcontractor claims status as a DBE/MBE/WBE/DVBE/SBE, the Subcontractor shall make all necessary records available to XYZ and Owner to confirm that status and Subcontractor's compliance with those requirements. If any sub-subcontractor or supplier of Subcontractor is designated or is required to be a DBE/MBE/WBE/DVBE/SBE, Subcontractor shall be responsible to ensure that the sub-subcontractor or supplier meets all applicable requirements. XYZ is relying on Subcontractor's representations regarding the validity of Subcontractor's status, if any, as a DBE/MBENVBE/DVBE/SBE. Misrepresentation of the status of Subcontractor or any of its sub-subcontractors or suppliers as a DBE/MBENVBE/DVBE/SBE is a material breach of this Agreement and grounds for immediate termination. If this Agreement is terminated due to a material misrepresentation of the status of Subcontractor or any sub-subcontractor or supplier of Subcontractor as a DBE/MBEJWBE/DVBEJSBE, Subcontractor shall not be entitled to any compensation not already paid under this Agreement and XYZ shall be entitled to any excess costs and expenses related to completing the Work, in accordance with Section 14.1.3.
- 13.3. Employment Laws: Subcontractor shall comply with all equal employment opportunity and affirmative action requirements promulgated by any governmental authority, including, without limitation, the requirements of the Civil Rights Act of 1964, as amended; Presidential Executive Orders No. 10925, 11114 and 11246; the California Fair Employment and Housing Act, as amended; the Americans with Disabilities Act of 1990, as amended; and the Family and Medical Leave Act of 1993. Subcontractor shall comply with and agrees to be bound by all applicable federal, state, and local laws and regulations, including, but not limited to, all Fair Labor Standards Act provisions and California Labor Code provisions covering the Work. Upon request, Subcontractor agrees to submit certified payroll reports to XYZ no later than three (3) working days after labor has been paid.
- 13.4. Labor Agreements: Subcontractor acknowledges that XYZ has entered into labor agreements covering work at its construction jobsites in the indicated California Counties with the labor unions listed below:
- San Diego County
- Laborers' International Union of North America, Local No. 89
 - Southwest Regional Council of Carpenters and its affiliated Local Unions
- 11 Southern California Counties: Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, Santa Barbara, San Luis Obispo, and Ventura

- Southern California District of Laborers and its affiliated Local Unions
- Southwest Regional Council of Carpenters and its affiliated Local Unions

46 Northern California Counties: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Sonoma, Solano, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo and Yuba

- Carpenters 46 Northern California Counties Conference Board on behalf of the Northern California Carpenters Regional Council (NCCRC) and affiliated Local Unions having jurisdiction in the 46 California Counties
- District Council of Plasterers and Cement Northern Masons of California and Its affiliated Local Unions No. 300 and 400
- Northern California District Council of Laborers of the Laborers' International Union of North America, AFL-CIO

Alameda, Contra Costa, San Mateo, Santa Cruz, San Benito, San Francisco, Marin, Sonoma, Solano and Napa Counties

- District Council 16 of the International Union of Painters and Allied Trades, AFL-CIO

Subcontractor hereby expressly agrees that all of the provisions of the applicable labor agreements are incorporated into this Agreement as if they were set forth in their entirety.

13.4.1. Subcontractor shall: (i) comply with all of the terms and conditions of the applicable labor agreements set forth in this Section 13.4 as if it were a party to said agreements including signatory status if required. (ii) 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 applicable labor agreements referenced in this Section 13.: (iii) comply with the terms and provisions of said agreements setting forth the grievance and arbitration provisions: (iv) comply with the terms and provisions of said agreements setting forth the jurisdiction and scope of work therein for resolution of jurisdictional disputes. In the absence of any such procedure or if such procedure fails to promptly resolve the jurisdictional dispute, Subcontractor agrees, at its own cost and expense and upon request by XYZ, to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board.

13.4.2. Subcontractor acknowledges that terms and conditions of the labor agreements with the unions listed in this Section 13.4 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 but not listed herein. When the terms and conditions of said labor agreements so require, Subcontractor shall perform its jobsite 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.

13.4.3. Subcontractor further promises and agrees that it will bind and require all of its subcontractors and their subcontractors performing jobsite Work of the type covered by any of the labor agreements specified herein to agree to all of the foregoing promises and undertakings, to the same effect as herein provided with respect to Subcontractor.

13.5. Labor: If Subcontractor is signatory to any labor agreements, Subcontractor agrees to comply with all of the terms and conditions of labor agreements including trust fund payment into the respective labor trust funds set forth in the respective labor agreements, insofar as Subcontractor may lawfully be required to do.

13.5.1. Should there be a labor dispute on XYZ's jobsite and should a reserved gate or neutral access be established, it shall be the obligation of Subcontractor to continue the proper performance of its Work without interruption or delay.

13.5.2. Prior to Final Payment to the Subcontractor, when requested by XYZ, Subcontractor agrees to provide a letter from the labor trust funds for unions which Subcontractor is signatory to that indicates the date through which Subcontractor is current to in their trust fund payments obligations. Said date shall be no more than 60 days in arrears of Subcontractor's request for final payment.

- 13.5.3. Subcontractor further promises and agrees that it will bind and require all of its subcontractors and their subcontractors performing jobsite work to agree to all of the foregoing promises and undertakings, to the same effect as herein provided with respect to subcontractor.

SECTION 14. RECOURSE BY XYZ

14.1. Failure of Performance:

- 14.1.1. Right to Adequate Assurance: If, at any time during Subcontractor's performance of the Work under this Agreement, XYZ has what XYZ, in its sole discretion, believes to be reasonable grounds for insecurity with respect to Subcontractor's performance, XYZ may, at its election, give Subcontractor written demand for adequate assurance of due performance. Such demand shall be issued and considered received in accordance with Section 25, Notices, If Subcontractor fails to provide such assurance that is reasonably acceptable to XYZ within ten (10) Days after that Subcontractor's receipt of written demand, Subcontractor shall be in default under Section 14.1.2 below.
- 14.1.2. Notice to Cure; Default; Remedies: If Subcontractor at any time (i) refuses or neglects to supply enough properly skilled workers and proper materials, or fails to properly and diligently perform the Work, (ii) fails to make prompt payment to its workers, sub-subcontractors, or suppliers, including without limitation any payment required to be made to any employee benefit program or trust, (iii) is in breach of any representation or warranty made by it in this Agreement, (iv) is in breach of any covenant made by it in this Agreement, (v) fails to perform in strict accordance with XYZ's safety requirements (including any Corrective Actions Plans agreed to between XYZ and Subcontractor as a prerequisite of XYZ's qualification of Subcontractor), or (vi) commits or fails to commit any act that would constitute a default under the Prime Contract by either XYZ or Subcontractor, then Subcontractor shall be deemed to be in default under this Agreement. If Subcontractor commits a default, and fails to commence and continue satisfactory correction of the default within forty-eight (48) hours after receipt of a written Notice thereof from XYZ, then XYZ, without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:
- a. take steps to cure the default, including without limitation the supplying of workers, material, and equipment as XYZ deems necessary for the orderly and timely performance of the Work. Subcontractor shall pay all costs incurred by XYZ to cure the default, plus a markup of fifteen percent (15%) overhead and profit on all expenses incurred by XYZ in the performance of the Work, plus actual attorneys' fees;
 - b. contract with one or more additional contractors to perform all or part of the Work and charge to Subcontractor all resulting costs incurred by XYZ;
 - c. use any materials, implements, equipment, appliances or tools furnished by or belonging to Subcontractor to complete the Work, or furnish those items to other contractors to complete the Work, without additional compensation to Subcontractor; and/or
 - d. withhold payment of any monies due Subcontractor pending corrective action to the extent required by and to the satisfaction of XYZ and/or offset against any monies due Subcontractor any amounts incurred by XYZ to cure the default.
 - e. The foregoing remedies are cumulative and XYZ shall not be deemed to have elected a particular remedy to the exclusion of the others. In the event of an emergency affecting the safety of persons or property, XYZ may proceed as above without notice.
- 14.1.3. Termination for Default: In addition to any other remedies available to XYZ, including without limitation any applicable remedies specified in Section 14.1.2 above, if Subcontractor fails to commence and satisfactorily continue correction of any default, or if Subcontractor is in breach of any representation or warranty made by it under this Agreement or any document furnished by it pursuant to this Agreement, then XYZ may immediately terminate Subcontractor's right to proceed under this Agreement. Subcontractor shall not be entitled to any further payments until the balance of the Work has been completed. At such time as the balance of the Work has been completed, all of the costs incurred by XYZ in performing the balance of the Work, including a markup of fifteen percent (15%) for overhead and profit on such costs, plus actual attorneys' fees, shall be deducted from any amounts due or to become due Subcontractor. In addition to any other remedies available to XYZ, Subcontractor shall be liable for the payment of the

amount by which the expenses incurred by XYZ to cure the default (plus the markup) exceeds the unpaid balance of the Subcontract Price within ten (10) days of demand for same by XYZ.

14.1.3.1. In the event a termination for default is later determined by competent authority to have been made wrongfully or without sufficient cause, then the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of XYZ pursuant to Section 14.2. Subcontractor shall have no greater rights than if a Termination for Convenience had been effected, to include as appropriate, Subcontractor's recovery rights specified therefor. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by Subcontractor.

14.1.4. If XYZ elects in its sole discretion, and effective only upon termination of Subcontractor's right to proceed under this Agreement pursuant to this Section 14 in combination with written direction of XYZ, Subcontractor assigns to XYZ all lower tier subcontracts and purchase orders for the Work. Subcontractor agrees to include provisions in its tier subcontracts and purchase orders for such assignment without further consent of such tier subcontractors or vendors.

14.2. Termination for Convenience: XYZ may at any time and for any reason terminate this Agreement at XYZ's convenience by delivering to Subcontractor a written Notice of termination.

14.2.1. Upon receipt of a Notice of termination under this Section 14.2, Subcontractor shall, unless the notice directs otherwise, immediately discontinue performing the Work and placing orders for materials, facilities, and supplies in connection with its performance under this Agreement. Subcontractor shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to XYZ, or at the option of XYZ, give XYZ the right to assume those obligations directly, including all benefits to be derived from them. Subcontractor shall, if directed by XYZ in writing, thereafter perform that work as may be necessary to preserve and protect the work already in progress and to protect material and equipment at the Project site or in transit thereto.

14.2.2. Upon termination under this Section 14.2., Subcontractor shall be entitled to payment for the Work only as follows, subject to any limitations imposed by the Prime Contract: (i) the actual cost of the Work completed in conformity with this Agreement as verified by XYZ's audit plus 15% as overhead and profit; plus (ii) any other costs actually incurred by Subcontractor as are permitted by the Prime Contract and approved by XYZ and/or Owner. Any payments made to Subcontractor prior to the date of the termination shall be deducted from any sums payable to Subcontractor under this subparagraph. Subcontractor shall not be entitled to any claim or lien against XYZ or Owner for any additional compensation or damages in the event of such termination and payment.

14.3. Grounds for Withholding Payment: XYZ may withhold payment under this Agreement or, on account of subsequently discovered evidence, nullify the whole or part of any previous payment, whenever XYZ deems it necessary in order to protect itself from loss, including without limitation costs and attorneys' fees, due to: a) defective Work not remedied; b) claims filed or reasonable evidence indicating a probable filing of a claim by any third party or any employee, independent contractor, sub-subcontractor, or supplier who performed work on behalf of Subcontractor against the Work or Project; c) failure of Subcontractor to make proper payments to its sub-subcontractors, suppliers, or other persons employed in connection with the Work or any employee benefit program or trust; d) a reasonable doubt by XYZ that the Work can be completed by Subcontractor in accordance with this Agreement for the balance then unpaid; e) damage caused by Subcontractor or its own sub-subcontractors, suppliers or agents to another subcontractor or supplier; f) penalties assessed against XYZ or Subcontractor for failure of Subcontractor to comply with federal, state, or local laws and regulations; g) grounds under which Owner may elect to withhold payment under the Prime Contract; h) Subcontractor's failure, or XYZ's reasonable anticipation that Subcontractor will fail, to comply with any provision under this Agreement, including clean-up; i) Subcontractor's failure to timely submit any report (including complete Subcontractors' Daily Reports), submittal, or lien release required pursuant to this Agreement, and/or j) any other ground for withholding payment allowed by federal, state or local law or as provided in this Agreement. In any of those events, any amounts then due and owing to Subcontractor shall be paid or credited to it upon the event being rectified to XYZ's full satisfaction.

14.4. Bankruptcy:

14.4.1. Termination Absent Cure. To the fullest extent permitted by applicable law upon (i) the appointment of a receiver for Subcontractor, (ii) Subcontractor making an assignment for the benefit of creditors, (iii) Subcontractor seeking protection under the Bankruptcy Code, or becomes insolvent, or committing any other act of insolvency, or (iv) a bankruptcy proceeding is filed against Subcontractor, XYZ may terminate this Agreement upon giving forty-eight (48) hours written Notice to Subcontractor and its surety, if any. If an order for relief is entered under the Bankruptcy Code with respect to Subcontractor, XYZ may terminate this Agreement by giving forty-eight (48) hours written Notice, to Subcontractor, its trustee, and its surety, if any, unless Subcontractor, the surety, or the trustee:

- a. promptly cures any and all defaults and compensates XYZ for actual loss resulting from the defaults;
- b. assumes the obligations of Subcontractor within the statutory time limits;
- c. provides to XYZ adequate assurance of future performance;

14.4.2. Interim Remedies. XYZ may setoff against any sums due or to become due Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, reasonable overhead, profit and actual attorneys' fees incurred as a result of Subcontractor's non-performance, Subcontractor shall be liable for the payment of any amount by which that expense may exceed the unpaid balance of the Subcontract Price, in addition to any other remedies available to XYZ.

SECTION 15. INDEMNIFICATION AND DUTY TO DEFEND

15.1. Subcontractor's Performance:

15.1.1. To the maximum extent permitted by law, Subcontractor shall defend, indemnify and hold harmless Owner, XYZ, and its Joint Venture and Joint Venture Partners if any, including their respective owners, officers, agents, employees, partners, parents, affiliates and subsidiaries, and other entities, if any, which XYZ is obligated to indemnify, defend or hold harmless pursuant to the provisions of the Prime Contract and each of them, (collectively, "Indemnitees"), of and from any and all claims, allegations, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of or related to Subcontractor's performance and/or Scope of Work under this Agreement ("Claims"), including, but not limited to, Claims for:

- a. Personal injury, including, but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to, any employees or agents of Subcontractor, Owner, XYZ, or any other subcontractor and/or damage to property of anyone (including loss of use thereof), caused or alleged to be caused in whole or in part by any act or omission of Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable regardless of whether that personal injury or damage is caused by a party indemnified hereunder.
- b. Defects or omissions in Subcontractor's workmanship or materials provided pursuant to this Agreement.
- c. Penalties imposed on account of the violation of any law, order, building code, citation, rule, regulation, standard, ordinance, or statute, caused by the action or inaction of Subcontractor.
- d. Infringement of any patent, trademark, or other proprietary right which may be brought against XYZ or Owner arising out of Subcontractor's Work.
- e. Claims and liens (see Section 9) for labor performed or materials used or furnished to be used for the Work, including all incidental or consequential damages resulting to XYZ or Owner from such claims or liens.
- f. Subcontractor's failure to comply with any covenants made by it in this Agreement.
- g. Subcontractor's breach of any representation or warranty made by it in this Agreement or in any document furnished by it pursuant to this Agreement.
- h. Any liabilities, losses or expenses arising out of or relating to any other act (or failure to act) by Subcontractor for which XYZ must indemnify Owner under the Prime Contract.

- i. Any violation or infraction by Subcontractor of any law, order, building code, citation, rule, regulation standard, ordinance or statute in any way relating to the occupational health or safety of employees, including, but not limited to, the use of XYZ's or others' equipment, hoists, elevators, or scaffolds.

These indemnity provisions apply regardless of any concurrent negligent act or omission of the Indemnitees. Subcontractor, however, shall not be obligated under this Agreement to indemnify Indemnitees for Claims arising from the sole negligence, active negligence, or willful misconduct of Indemnitees, or independent contractors who are directly responsible to Owner or XYZ, or for defects in design furnished by these persons.

15.1.2. Subcontractor shall:

- a. At Subcontractor's own cost, expense and risk, defend all Claims as defined in Section 15.1.1 that may be brought or instituted by third persons, including, but not limited to, governmental agencies or employees of Subcontractor, against XYZ or Owner or their agents or employees or any of them;
 - b. Pay and satisfy any judgment or decree that may be rendered against XYZ or Owner or their agents or employees, or any of them, arising out of any such Claim; and/or
 - c. Reimburse XYZ or Owner or their agents or employees for any and all expenses incurred by any of them in connection herewith or in enforcing the defense obligations and indemnity granted in this Section 15, including, without limitation, actual attorneys' fees.
- 15.2. Risk of Loss: All Work performed at the Project site or in preparing or delivering materials or equipment, or any or all of them, to the site shall be at the risk of Subcontractor exclusively until the Work as completed is accepted by XYZ, except to the extent that such risk is covered by Builder's Risk insurance, if any, provided by XYZ or Owner.
- 15.3. No Limitation of Liability: The indemnities set forth in this Section 15 shall not be limited by the insurance requirements set forth in Section 16.
- 15.4. Survival: The provisions set forth in this Section 15 shall survive the termination or expiration of this Subcontract and the completion of the work.

SECTION 16. INSURANCE

- 16.1. Subcontractor shall, at no increase in the Subcontract Price, comply with the Subcontract insurance provisions set forth in Attachment A and in the Prime Contract. In the event of any conflict, inconsistency or ambiguity between the provisions of Attachment A and the Prime Contract, the more stringent, greater and or broader Subcontractor insurance requirements, limits and coverages shall govern.

SECTION 17. DISPUTE RESOLUTION PROCEDURES

- 17.1. Means of Resolution: The dispute resolution procedures of the Prime Contract (which procedures are incorporated herein as if fully set forth) shall apply to disputes arising hereunder if such disputes involve or are alleged to involve acts or omissions of the Owner or its representatives or involve a dispute between Owner and XYZ, related in any manner to the Work, it being the intent of XYZ and Subcontractor that in these enumerated circumstances, Owner, XYZ and Subcontractor shall participate together in the same dispute resolution proceeding. Subcontractor agrees to join in any dispute resolution proceeding between XYZ and Owner, if requested by XYZ. If the dispute does not involve acts or omissions of the Owner or its representatives, does not involve a dispute between Owner and XYZ related, in any manner to the Work, or if there is no dispute resolution procedure in the Prime Contract, then all claims, disputes and matters in question arising out of or relating to this Agreement (a "Dispute"), except for claims which have been waived by Subcontractor by the acceptance of final payment or otherwise hereunder, shall be decided by the claims procedure set forth in Section 17.2.
- 17.2. Dispute Resolution Procedure:
- 17.2.1. Dispute Notice: If either XYZ or Subcontractor (the "Disputing Party") determines that a dispute exists arising out of or related to, or allegedly arising out of or related to, this Subcontract or the Work (Dispute"), that party shall provide written notice of the Dispute to the other, setting forth the nature of the Dispute with specific details or, in the case of a Dispute relating to changes in the Work, the details in the form described in Section 6.8 followed by the claim for additional compensation (in either case a "Dispute Notice").

- 17.2.2. Informal Resolution: For a reasonable period commencing on the day the Dispute Notice is delivered by the Disputing Party to the other, but not to exceed thirty (30) days thereafter, the parties shall in good faith attempt to resolve the Dispute. If the parties are unable to resolve the Dispute during this period, the Disputing Party may proceed with mediation as provided under Section 17.2.3 unless the parties agree otherwise.
- 17.2.3. Mediation: Upon the failure of the parties to resolve the Dispute under Section 17.2.2, the Disputing Party may require that the Dispute be submitted to non-binding mediation in accordance with the mediation provisions of the American Arbitration Association's construction industry rules ("AAA") or such other provisions as the parties may mutually agree to by delivering a written notice thereof (the "Mediation Notice") to the other party although the parties shall not be required to select the mediator from the AAA panel, The parties shall use their best efforts to commence mediation promptly after the Disputing Party delivers the Mediation Notice to the other. In this event, each party shall in good faith attempt to resolve the Dispute in mediation, with each party bearing its own costs and expenses and the fees of the mediator being shared equally. If the parties are still unable to resolve the Dispute within a reasonable time, but in no event exceeding fifteen (15) days after the first day the mediation proceeding commences, the Disputing Party may require that the Dispute be submitted to binding arbitration under Section 17.2.4
- 17.2.4. Arbitration: To the extent the parties are unable to resolve any Dispute in mediation; the Dispute may be resolved in XYZ's sole discretion, in binding arbitration conducted by a single, neutral arbitrator. Unless the parties mutually agree otherwise, the arbitration shall be conducted according to the arbitration provisions of the American Arbitration Association's Construction Industry Rules. The arbitration shall determine all rights and obligations under this Agreement and the award of the arbitrator shall be final, binding, and enforceable. Any award issued pursuant to this provision may be enforced in a court of competent jurisdiction, and each party hereby consents to that jurisdiction. Exclusive venue for any arbitration, and the State or Federal courts where any award can be enforced, shall be in the locality in which the project is located.
- 17.3. Disputes Involving Owner: Subcontractor shall not be entitled to receive any greater amount from XYZ than XYZ receives from Owner on account of Subcontractor's claim(s), less any markups or costs to which XYZ is otherwise entitled, and Subcontractor shall accept such amount, if any, received by XYZ from Owner as a full accord and satisfaction of all such claims for or on account of acts or omissions of Owner or its representatives. If Subcontractor fails to prosecute claims relating to acts or omissions of Owner through the dispute resolution procedures of the Prime Contract, or fails in any way to adhere to claims procedures contained in the Prime Contract, it shall be barred from asserting such claims against XYZ in any other proceeding or through any other procedures, including, but not limited to, those under Section 17.2 above. Subcontractor shall be solely responsible for complying with the requirements set forth for XYZ under the Prime Contract with respect to any claims by or against Subcontractor. Subcontractor shall reimburse XYZ for any expenses incurred by XYZ, including actual attorneys' fees, for XYZ's prosecution of a claim against Owner on behalf of, and at the request of, Subcontractor. If Owner makes a claim against XYZ for which Subcontractor is alleged to be responsible, Subcontractor shall defend such claims in accordance with the provisions of the Prime Contract. If Subcontractor fails to defend such claims, XYZ shall have the right to defend such claim at Subcontractor's sole expense.
- 17.4. Work Continuation and Payment: Notwithstanding the existence of any Dispute, Subcontractor shall continue performing the Work and maintain the schedule of Work as set forth in the Project Schedule pending resolution under this Section 17. To the extent Subcontractor continues to perform the Work despite the existence of a Dispute, XYZ shall continue to make payments in accordance with this Agreement, subject to its right to withhold payment under Section 14.3 above.
- 17.5. Consolidated Proceedings: To the extent a Dispute involves a common question of fact or law with any other dispute or claim between XYZ and Owner under the Prime Contract, the Dispute shall be resolved in accordance with any applicable resolution provisions under the Prime Contract. In this event, Subcontractor shall be responsible for preparing and presenting XYZ's case, to the extent the resolution proceedings are related to this Agreement. If XYZ enters into any arbitration or other proceeding with Owner or others regarding matters relating to this Agreement, Subcontractor shall be bound by the result of the arbitration or proceeding to the same degree as XYZ. Further, Subcontractor specifically agrees that it shall be a proper party to such arbitration or proceeding and shall be responsible to compel its subcontractors or suppliers to be parties to such arbitration or proceeding. Subcontractor shall have the obligation to join any arbitration between Owner and XYZ which involves, in any respect, the Work performed by Subcontractor. Nothing in this Section 17 shall require XYZ to participate in any

arbitration with Subcontractor if there is a dispute between Owner and XYZ involving Subcontractor's Work and Owner and XYZ are not parties to an agreement requiring binding arbitration to resolve the dispute

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

SECTION 18. COMPLIANCE WITH LAWS; SAFETY PRACTICES

- 18.1 Subcontractor shall comply fully with all laws, orders, building codes, citations, rules, regulations, standards and statutes pertaining to the Work (collectively, "Laws"), including, without limitation, Laws bearing on or 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 program of Owner and XYZ. Subcontractor is responsible for ensuring that its subcontractors and suppliers, and their employees, comply with XYZ's site safety requirements and the requirements of any Corrective Actions Plans agreed to between XYZ and Subcontractor as a prerequisite of XYZ's qualification of Subcontractor. Subcontractor shall conduct inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for: a) providing a safe place to work for its employees and for employees of its subcontractors and suppliers; b) the adequacy of and required use of all safety equipment; and c) full compliance with the Laws. Subcontractor shall have sole responsibility for providing a safe workplace in performing its Work and for its agents, employees, representatives, laborers, subcontractors and independent contractors, and shall be solely responsible for ensuring that it complies with all applicable safety laws and regulations. If XYZ believes the Subcontractor is not performing its Work in compliance with any applicable safety laws or regulations or the aforementioned Corrective Action Plan, XYZ reserves the right to stop Subcontractor's Work until corrective action is taken by Subcontractor. If Subcontractor fails to take corrective action, XYZ, in its discretion, shall have the right, but not the obligation, to take corrective action and to backcharge the cost or expense thereof against Subcontractor.

SECTION 19. WARRANTY

- 19.1. Subcontractor warrants to Owner, Architect, and XYZ that all materials and equipment furnished shall be new, unless otherwise explicitly specified in the Subcontract Documents and that all Work shall be of good quality, free from faults and defects and in full conformance with the Agreement. All Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. The warranty provided in this Section 19 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Agreement. The representations and warranties in this Section 19 shall survive the termination or completion of this Agreement. In addition to the foregoing warranties, Subcontractor shall be required to provide all warranties required in the Prime Contract to be provided by XYZ that relate, in any manner, to the Subcontractor's Work.

SECTION 20. USE OF XYZ'S EQUIPMENT

- 20.1. If Subcontractor shall use XYZ's equipment, materials, labor, supplies, or facilities, Subcontractor shall reimburse XYZ for such use at rates acceptable to XYZ except as otherwise stated herein. Furthermore, Subcontractor assumes all responsibility for physical damage to any and all equipment, materials, labor, supplies, or facilities used by Subcontractor or its agents, employees, or permittees. If XYZ's employees are used by Subcontractor, Subcontractor shall have full responsibility for all acts or omissions of XYZ's employees with regard to Subcontractor's use of them. Subcontractor accepts any and all of XYZ's equipment, materials, labor, supplies, or facilities as furnished, without any express or implied warranties by XYZ with respect thereto. Subcontractor shall execute XYZ's Indemnity Agreement for Use of XYZ Equipment prior to use of such equipment. A copy of this form will be made available to Subcontractor upon request.

SECTION 21. ASSIGNMENT OF CONTRACT

- 21.1. Subcontractor shall not, without the prior written consent of XYZ, assign, transfer, or sublet any portion or part of the Work, nor assign any payment, claims, or rights hereunder to any third party. XYZ may assign this Subcontract to its surety.
- 21.2. XYZ may assign this Agreement to Owner or its designated assignee in accordance with the terms of the Prime Contract, subject to the prior rights of any surety obligated by this Agreement

- 21.3. No assignment of any funds becoming due or payable to Subcontractor hereunder shall be binding upon XYZ unless XYZ has received written notice of and a true copy of such assignment, XYZ has agreed to such assignment, and unless the assignees have acknowledged in writing that such assignment is subject to the terms and provisions of this subparagraph. Each assignment of funds becoming due or payable hereunder shall be subject to all of the provisions of this Subcontract and the Contract Documents and the rights of Subcontractor's employees, suppliers and subcontractors to be paid first and in full out of any funds paid hereunder. All funds received by any assignee under any such assignment shall be received and held by it in trust for the benefit of Subcontractor's employees, suppliers and subcontractors on the Project to the extent of all amounts due them on or in connection with the Project. All such employees, suppliers and subcontractors shall be paid in full all sums due them on or in connection with the Project before any funds paid hereunder received by such assignee or paid or applied on any other obligation of Subcontractor or for any other purpose. If an assignment is approved hereunder and subsequent to that assignment it is determined that Subcontractor's employees, suppliers or subcontractors on the Project have not been paid any amount that may be due and owing to them, the assignee shall pay to such employees, suppliers and subcontractors the full amount of all sums due and owing to such employees, suppliers and subcontractors in connection with the Project. If the assignee does not pay said amounts, assignee shall be liable to XYZ for any amounts paid by XYZ to such employees, suppliers and subcontractors and assignee, by accepting the assignment, shall be responsible for reimbursing XYZ for all costs, expenses and attorney's fees incurred by XYZ in recovering from the assignee all of the funds paid by XYZ to any employees, suppliers and subcontractors of Subcontractor. This Section 21,3 is for the benefit and protection of XYZ and may be enforced by it.
- 21.4. In the event of any such assignment, XYZ shall have the right to make any payments becoming due hereunder to Subcontractor and such assignee and/or one or more of Subcontractor's subcontractors and/or suppliers jointly.

SECTION 22. INDEPENDENT CONTRACTOR

- 22.1. Subcontractor is an independent contractor: Subcontractor shall have no authority to bind XYZ in any respect. Subcontractor shall, at its sole cost and expense, and without increase in the Subcontract Price: (a) fully comply with all Laws (as defined in Section 18); (b) obtain all necessary trade specific permits, fees and licenses required for the Work; and (c) pay all income taxes, gross receipts taxes, manufacturers' taxes, sales taxes, use taxes, processing taxes, and all federal, state and local 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 XYZ that any or all of the foregoing obligations have been fulfilled.

SECTION 23. CLEAN-UP

- 23.1. At all times during the course of construction, Subcontractor shall perform the Work so as to maintain the Project site in a clean, safe and orderly condition, and in the condition required under the Agreement. Upon completion of the Work, Subcontractor shall remove from the Project site all hazardous materials, temporary structures, and equipment, unused materials, debris and waste incident to its operation, and Subcontractor shall clean all surfaces, fixtures, equipment, etc., relative to the performance of this Agreement, in the manner required of XYZ under the Prime Contract
- 23.2. Clean up shall be performed on a daily basis by each Subcontractor. If in the opinion of XYZ, Subcontractor is not properly performing cleanup, XYZ will issue to Subcontractor a twenty-four (24) hour noncompliance Notice. If at the end of twenty-four (24) hours the Subcontractor has not satisfactorily accomplished the cleanup, XYZ will perform such cleanup work and costs incurred by XYZ, at XYZ's standard rates, plus 15% shall be the responsibility of Subcontractor and such amounts shall be deducted from Subcontractor's current Application for Payment and the Subcontract Price shall be reduced accordingly. Subcontractor agrees that twenty-four (24) hours is a reasonable time for notice, due to the safety considerations associated with a worksite that is not appropriately cleaned.

SECTION 24. ATTORNEYS' FEES

- 24.1. In the event of any arbitration or litigation arising out of or related to the enforcement or interpretation of any of the terms and provisions of this Agreement, breaches thereof, or the Work performed thereunder, the prevailing party shall be entitled to recover all costs, expenses, and attorney's fees (including expert witness and other consultants' fees and costs) incurred in relation to such arbitration, litigation, and appeal or other post-award proceedings. Unless judgment goes by default, the attorneys' fee award

shall not be computed in accordance with any court schedule, but shall be such as to fully reimburse all attorneys' fees actually incurred in good faith, regardless of the size of a judgment, it being the intention of the parties to fully compensate for all attorneys' fees and experts' fees paid or incurred in good faith. The prevailing party shall be the party whose last offer of settlement is closer to the award of the arbitrators or court. If the difference between the judgment and the last offer of each party is equal, neither party shall be considered the prevailing party. For purposes of this provision, an offer of settlement must be in writing and delivered to the other party at least fifteen (15) days prior to the commencement of arbitration or trial. If either party makes no written offer of settlement, the amount of such party's final claim is considered to be its final offer of settlement. Any timely offer of settlement supersedes any offer previously made by that party. This provision shall not waive or alter any applicable rule of evidence, except to the extent of determining the prevailing party.

SECTION 25. NOTICES

- 25.1. Each notice and other communication required or permitted to be given under this Agreement ("Notice") must be in writing. Notice is duly given to, and considered received by, the designated representative of the other party upon the earlier of: (a) hand delivery to the other party, (b) delivery to the other party when sent by facsimile to the fax number for that party, and validated by a send-confirmation page from the sending fax machine, (c) delivery by email; if receiver's system allows, the sender shall obtain a delivery receipt indicating that the email was successfully delivered to the other party;; (d) three (3) Business Days after the Notice has been deposited with the United States postal service as first class certified mail, return receipt requested, postage prepaid, and addressed to the party as set forth on the first (1st) page of each Work Authorization, or (e) the next Business Day after the Notice has been deposited with a reputable overnight delivery service, postage prepaid, addressed to the party as set forth on the first (1st) page of each Work Authorization with next-business-day delivery guaranteed, provided that the sending party receives a confirmation of delivery from the delivery-service-provider. Each party shall make a reasonable, good faith effort to ensure that it will accept or receive Notices to it that are given in accordance with this paragraph. A party may change its address for purposes of this paragraph by giving the other party(ies) written notice of a new address in the manner set forth above.

SECTION 26. GOVERNING LAW

- 26.1. This Subcontract shall be governed by, and shall be interpreted in accordance with, the laws as stipulated in the Prime Contract, or if not so stipulated, the laws of the state and locality in which the project is located without regard to any state's choice or conflict of law statutes.

SECTION 27. DELIVERABLES AND CLOSE-OUT DOCUMENTATION

- 27.1. All submittals and deliverables required to be submitted by Subcontractor under the Agreement shall be submitted by the dates required by XYZ. All final closeout documentation shall be submitted by Subcontractor not later than 15 days after the earlier of demobilization from the site or final acceptance of Subcontractor's Work by XYZ, Architect, and Owner.

SECTION 28. SPECIAL PROVISIONS

- 28.1. Severability: Every term, condition or provision of this Agreement is severable from others. If a court or an arbitrator of competent jurisdiction holds any term, condition or provision of this Agreement to be invalid, unenforceable or illegal in whole or in part for any reason, the validity and enforceability of the remaining terms, conditions or provisions, or portions of them, will not be affected.
- 28.2. Agreement Term: This Master Subcontract expires on 12/31/2019, unless modified by the parties hereto by Change Order. This agreement remains in effect for any and all Work performed under any California Regional Office's Work Authorizations with Effective Dates prior to the expiration date of the agreement which have been issued for execution prior to said expiration date.

SECTION 29. WORK PRIOR TO EXECUTION

- 29.1. Notwithstanding the fact that this Agreement is entered into between XYZ and Subcontractor as of the Effective Date on the Title Page, a portion of the Work may have been performed prior to such date. All Work shall be governed by the terms and conditions of this Agreement and shall be deemed to be a part of the Work. Without limiting the above, any of Subcontractor's liabilities and obligations to XYZ hereunder shall apply to all the Work, notwithstanding the fact that the Work may have been performed prior to the date of this Agreement pursuant to prior negotiations, representations, agreements, understandings or otherwise. Notwithstanding a later signing by XYZ or Subcontractor, this Agreement is deemed effective not later than the time Subcontractor first commences any of the Work.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR OF THE BOARD, WHOSE ADDRESS IS:

Contractors State License Board
Post Office Box 26000
Sacramento, California 95826

IN WITNESS WHEREOF, XYZ and Subcontractor agree to the terms of this Subcontract by providing the signatures of their duly authorized representatives below:

CONTRACTOR:
XYZ CONSTRUCTION, A GENERAL PARTNERSHIP

SUBCONTRACTOR:

(Signature)

(Signature)

(Typed/Printed Name)

(Typed/Printed Name)

(Title)

(Title)

Contractor's License No.:

Subcontractor's License No.:

**ATTACHMENT 1
LIST OF THE SUBCONTRACT DOCUMENTS
TO THE MASTER SUBCONTRACT AGREEMENT BETWEEN
XYZ CONSTRUCTION, A GENERAL PARTNERSHIP
CALIFORNIA REGIONAL OFFICES
AND**

This Attachment is incorporated into the above referenced Master Subcontract between the parties, as the parties desire to amend said document. In the event of any conflict, inconsistency, or ambiguity between the terms and provisions of this Attachment and those of the above referenced Master Subcontract Agreement between the parties, this Attachment shall govern.

Master Subcontract Documents. The following documents are collectively and individually referred to throughout the Master Subcontract as "Subcontract Documents."

1. This XYZ Master Subcontract agreement, dated 01/01/2014, including the following attachments:
 - a. Attachment 1 - List of Subcontract Documents, dated 01/01/2014.
 - b. Attachment 3 - Supplemental Conditions, Sample Only, undated
 - c. Attachment A - Project Insurance Requirements, dated 01/01/2014.
 - d. Attachment B - Billing Package, for reference only, undated
 - e. Attachment C - XYZ Environmental Health and Safety Plan, Rev 8, October 2012.
 - f. Attachment D - Work Authorization — Sample Only, undated
 - g. Amendment No. 1 — dated 01/01/2014

- End of Attachment 1 -

**SAMPLE
ATTACHMENT 3
SUPPLEMENTAL CONDITIONS
TO THE MASTER SUBCONTRACT AGREEMENT BETWEEN
XYZ CONSTRUCTION, A GENERAL PARTNERSHIP
CALIFORNIA REGIONAL OFFICES
AND**

This Attachment is incorporated into the above referenced Subcontract between the parties, as the parties desire to amend said document. In the event of any conflict, inconsistency, or ambiguity between the terms and provisions of this Attachment and those of the above referenced Subcontract Agreement between the parties, this Attachment shall govern.

SECTION 1: PRIME CONTRACT

1.1 Subcontract Clauses required by the Prime Contract: The following is a listing of specific clauses in the Prime Contract that are required to be inserted into the subcontract agreements on this Project. This listing does not in any way limit or change the applicability of the entire Prime Contract.

[Modification of this sub-section to be determined by the Prime Contract via separate Work Authorization]

1.2 Other Pertinent Prime Contract Requirements: The following is a listing of other pertinent Prime Contract requirements that are highlighted for Subcontractor's information and convenience and do not in any way limit or change the applicability of the Prime Contract.

[Modification of this sub-section to be determined by the Prime Contract via separate Work Authorization]

SECTION 2: MANAGEMENT/COORDINATION

[Modification of the **below** items to be determined by separate Work Authorization]

2.1 Kickoff Meeting: Subcontractor's Key Project and other personnel as required by XYZ, as a minimum, shall attend a mandatory two (2) hour kickoff meeting prior to the commencement of Subcontractor's work on the site. The purpose of this meeting is to familiarize everyone with the site, go over Project communication procedures, verify scope of Work inclusions and exclusions, review the Project's safety and logistics plan, coordinate submittal and Work schedules, and to discuss other issues that XYZ and or Subcontractor consider appropriate.

2.2 Job Progress & Coordination Meetings: XYZ will conduct regular job progress meetings to ensure clear communications and a smooth flow of the work. The Subcontractor's on-site supervision and any management or detailing resources and other personnel, as required are required to attend and participate in these meetings and provide appropriate information in order to allow for the timely monitoring and flow of the Work. Below is a schedule of planned meetings:

Meeting	Recurrence	Approximate Duration
Subcontractor Progress Meeting	weekly	1 hours
MEP Coordination	weekly	2 hours

2.3 Documents Supplied: If the Plans and Specifications for construction differ significantly from the bid documents, Subcontractor/Supplier will be issued one (1) new set of Plans and Specifications upon Subcontract award. Printing and reproduction costs of any additional copies will be the responsibility of the Subcontractor/Supplier. Revised Plans and Specifications will be issued to the Subcontractor/Supplier in the same manner; printing and reproduction cost of any additional copies will be the responsibility of the Subcontractor/Supplier.

SECTION 3: LOGISTICS / SITE SPECIFIC RULES

[**Modification** of the below items to be determined by separate Work Authorization]

3.1 Parking: [option 1] There **will** be no onsite parking due to limited site access. Any and all costs associated with offsite parking are the sole responsibility of the Subcontractor. XYZ will not be providing a

shuttle service to any offsite parking areas. [option 2] Parking of vehicles, including employee vehicles and trailers is limited to locations designated by XYZ.

- 3.2 Site Offices and Trailers: [option 1] There will be no onsite offices or trailers due to limited site access. Costs for all site offices, trailers, and break facilities for Subcontractor's personnel are the responsibility of the Subcontractor. This includes all costs associated with power, telephone, data, water, sewer, etc. hookup, consumption, maintenance, and removal. [option 2] Onsite offices and trailers are limited to locations designated by XYZ. Costs for all site offices, trailers, and lunch break facilities for Subcontractor's personnel are the responsibility of the Subcontractor. This includes all costs associated with power, telephone, data, water, sewer, etc. hookup, consumption, maintenance, and removal.
- 3.3 Work Hours: All Work is to occur during normal working hours, typically 7:00 a.m. to 3:30 p.m., Monday through Friday. However, the jobsite shall be accessible for Work Monday to Saturday 7:00am to 7:00 pm if scheduled through XYZ, three (3) working days in advance, and if allowed by City work ordinances. Subcontractor shall comply with all local and county ordinances as well as Owner and XYZ rules and regulations with respect to off hour Work activities, such as, but not limited to special permitting requirements, and noise/dust level limitations.
- 3.4 Overtime: If Subcontractors anticipate utilizing multiple shifts, overtime or if there are any off hour requirements to fulfill Subcontractor's scope of Work or meet the Project Schedule, Subcontractor's performance of Work outside normal work days and times must be pre-approved by XYZ and shall be at no additional expense to XYZ unless otherwise agreed pursuant to Section 5.1 of the Subcontract. A XYZ Supervisor must be on-site at all times there is work performed by subcontractors. Therefore, XYZ shall be informed of all multiple shifts, overtime and off hours work at least three (3) days prior to the Work whether it is a part of your base scope or if it becomes necessary during the course of construction for whatever reason. NOTE: Should the requirement for a XYZ Supervisor to be onsite result in added costs to XYZ, the costs shall be backcharged against the Subcontractor's Contract amount.
- 3.5 Traffic Control: Subcontractor is required to provide all traffic control provisions including but not limited to permit costs, flaggers, trench plates, barricades and other temporary measures as determined necessary by local governing agencies and XYZ to accommodate continued, safe vehicular and pedestrian traffic at all times when it is impacted by their Work. This includes impacts caused by any work, deliveries, or other activities in and around the construction site, or in the public right-of-way.
- 3.6 Site Access, Deliveries, and Storage of Materials: Site access shall be at the locations provided by XYZ. All material deliveries, storage areas, stockpiles, and/or jobsite facilities are to be coordinated with XYZ supervision at least three (3) business days prior to delivery to site. [option 1] Only material that can be readily used within the next five (5) work days, and can be safely stored, will be allowed on site.
- 3.7 Central Power/Water Connection: XYZ will provide one (1) central point on the site for connection to temporary site utilities (power/water). In addition, temporary lighting which meets CAL/OSHA requirements and temporary convenience power (aka: spider boxes) will be provided within the building for Subcontractors use. Any additional power or lighting required shall be provided by the Subcontractor.
- 3.8 Power for Tools and Lighting: Power provided shall be adequate for small hand type tools and lighting only. Power required for such heavy duty requirements as welding must be furnished and paid for by the Subcontractor.
- 3.9 Site Sanitation Facilities: XYZ will provide site sanitation facilities in accordance with the requirements of the municipality having jurisdiction.
- 3.10 Equipment and Storage Layout: Subcontractor shall submit any layout, cut sheet or loading documentation as required to obtain approvals from the engineer of record prior to any materials/equipment being stored or operated on a supported deck. Storage of equipment or materials shall not exceed loading limits or damage the Project or work in progress.
- 3.11 Street Cleanup:** Subcontractor is responsible to maintain clean paved areas free from dirt and debris created/generated as a result of the performance of the Subcontractors' scope of Work. This includes any areas in the public right-of-way and the construction site. Areas will be cleaned by Subcontractor per local governing official direction and/or within twenty-four (24) hours of notification by XYZ.
- 3.12 Dust Control:** Subcontractor is responsible for dust control within their Work areas and in other areas impacted from dust generated from their activities.
- 3.13 Debris Dumpsters:** [option 11] Subcontractor shall be required to provide their own dumpsters or other method of debris removal from the Project site. Subcontractor dumpster location on site shall be coordinated and approved by XYZ prior to delivery. Subcontractors shall review Project specific waste

management plan for potential recycling requirements. [option 2] Subcontractor will share in prorated costs as allocated by XYZ and use dumpster provided by XYZ.

314 Fuel-Powered Equipment: No gas or other fuel-powered equipment may be used in enclosed buildings without prior written permission from the XYZ superintendent and implementation of adequate building exhaust measures at the Work area.

SECTION 4: MEANS AND METHODS

[Modification of the below (toms to be determined by separate Work Authorization)]

41 Layout: One control line in each direction of the building per floor, and one bench mark per floor will be provided by XYZ. Beyond that, general layout, engineering, surveying, and staking required to perform the Work is to be provided by the Subcontractor, XYZ will provide baseline control of lines and grades, if necessary.

4.2 Hoisting: All hoisting of materials and equipment shall be provided by the Subcontractor requiring the hoisting to complete their portion of the work, unless otherwise noted in the specified provision hereof. [option 1] XYZ will not have a forklift on site. [option 2] XYZ will have a forklift onsite for a limited duration. Subcontractors may use the XYZ forklift for hoisting purpose provided that the forklift meets hoisting capacity requirements, the operator is certified to operate the forklift, and the subcontractor reimburses XYZ for the costs.

4.3 Tower Crane, Manlift, and Hoisting: While available on site, the Tower Crane and Manlift Hoist will be available to subcontractors to have materials lifted. Subcontractor is responsible to coordinate requests for lifting and hoisting with XYZ Supervision. Due to other commitments, lifting and/or hoisting for subcontractors may only be available during off hours. All overtime costs including that of the hoisting equipment, the manlift or crane operator, XYZ supervisory personnel, and subcontractor' employees is the responsibility of the Subcontractor requiring the hoisting. Once the Tower Crane and Manlift Hoist are removed (see XYZ's Project Schedule — Attachment 4), all hoisting of materials and equipment shall be provided by the Subcontractor requiring the hoisting to complete their portion of the work. Prior to any crane being brought on-site, crane certifications and a Pre-Task Plan shall be submitted to Project Supervision. The rigging contractor/provider must participate in the preparation of the Pre-Task Plan. [eliminate if no tower crane or manlift planned for project]

4.4 Firesafing: Firesafing, fire caulking, and blocking of penetrations through fire rated assemblies will be the responsibility of the Subcontractor that requires the penetration to perform their Work.

4.5 Fasteners: The Subcontractor will be responsible for all fasteners, adhesives, hangers, support, bracing, brackets, or other means of supporting methods that may be required in order to complete the Work.

4.6 Cutting, Chipping and Drilling: The Subcontractor shall coordinate and will be responsible for all cutting, chipping and drilling required for proper installation of their Work and will be responsible for repairs, patching and corrections to structural elements, fireproofing, finish work, and finishes damaged by their operations.

4.7 Scaffolding, Ladders and Work Platforms: Subcontractors shall furnish and maintain their own scaffolding, runways, stairs, ladders, rigging, and hoisting as required to complete their portion of the Work.

4.8 Elevated Deck Sleeves/Blockouts/Inserts (Prior to Concrete Deck Pours): Subcontractor is responsible for furnishing and installing all sleeves, blockouts and insert material required to perform their Work in a timely manner so as to ensure adherence to the concrete pour schedules. They shall also be responsible for furnishing dimension drawings complete with layout and size requirements to XYZ Supervision in sufficient time to permit coordination with other trades layout prior to incorporation into the Work. Subcontractor is responsible for monitoring the associated concrete placement to assure proper final position of their embedded items.

4.9 Elevated Deck Penetrations (Existing Concrete Decks): Whenever sleeves or inserts are required in existing elevated decks by a subcontractor to complete their work, the Subcontractor shall be responsible for all sawcutting, core drilling, x-raying for rebar positions, protection, slurry control, clean-up and other measures as required to perform the work as well as furnishing setting, and protecting their own sleeves or inserts.

SECTION 5: DELIVERABLES / CLOSEOUT

[Modification of the below items to be determined by separate Work Authorization]

5.1 Long-Lead Items: The successful Subcontractor will be required to submit a listing of all long-lead items (over forty-five (45) calendar days) and a detailed construction schedule indicating man-hours and

durations that will comply with the original schedule (Attachment 4). This submittal will occur within three (3) days after receipt of a Contract. Within seven (7) days after such submittal, the Subcontractor will submit a procurement schedule and copies of purchase orders for the long lead and major equipment purchases, together with the manufacturer's name, location, phone, and facsimile numbers, and the responsible contact for each item. Subcontractor will provide updates and status this information on a regular basis as determined by XYZ. Subcontractor shall make XYZ aware of any and all missed delivery timeframes and provide remedies to bring such timeframes back in line with the needs of the schedule.

5.2 Submittals: Subcontractor is responsible for all catalog cut sheets, manufacturer's brochures, shop drawings, and as-builts as indicated for this scope of Work. The Subcontractor/Supplier will complete and forward submittals to XYZ, as required or as necessary to prevent any delay to the Project. Submittals must be provided in a timely manner to expedite material procurement. Costs necessary to expedite deliveries to conform to Project Schedule are included in the Subcontract Price. Submittals must be clearly identified on each page as to which item is being submitted. Submittals will be forwarded in the following quantities:

Submittal	Hard Coov	Soft COM,
Shop Drawings	6 bond copies	1
Product Data Sheets	6	1
Samples	6	N/A
Certificates & Misc. Documents	6	1

XYZ will return one copy to the Subcontractor once approved by design team and Owner.

5.3 Maintain "Record Drawings": The Subcontractor will maintain "Record Drawings" of the Work at all times. Record Drawings will be available for inspection by XYZ. Up-to-date Record Drawings will be turned in monthly. Mechanical, Electrical, Plumbing, and Fire Sprinkler Subcontractors will also submit CAD diskettes/CDs of Record Drawings conditions. The Subcontractor's failure to maintain current Record Drawings will be grounds for withholding progress payments. Record Drawings will identify any/all deviations from design locations in line, grade, quantity. type, material used, etc. Upon completion of the Work, a reproducible copy of the Record Drawings will be submitted to XYZ as part of this Subcontractor's Close Out package.

5.4 Close Out: The Subcontractor will complete all Project closeout requirements within fifteen (15) days of completion of scope of Work. Printing and reproduction costs will be the responsibility of the Subcontractor. The Subcontractor will submit to XYZ complete set of close-out documents prior to issuance of final payment.

5.5 O&M Manuals: Subcontractor shall provide Operation and Maintenance Manuals as required by the Project Specifications with the submission of material submittals. Several trades will be required to submit a review copy with the submittal for approval by the Engineer of Record. Upon approvals, four (4) additional sets shall be delivered to XYZ. All other trades shall include O & M Manuals with each submittal copy. Below is a schedule of copies each trade will be required to submit.

Trade	Review Copy	Submittal Copy	Soft Copy
CSA Trades	0	1	
Mechanical	1	4	
Electrical	1	4	

SECTION 6: QUALITY

6.1 Zero Defects Program: Subcontractor shall implement quality standards and strive to correct all non-compliant Work prior to Substantial Completion through participation in the Project Zero Defects Program. There will be regularly scheduled inspections of the Project by the Owner, architect, consultants, XYZ, and Subcontractors to review mock-ups, samples, first installed Work, and final Work in place. A list of Work deemed not in compliance with the Project quality standards will be distributed within twenty-four (24) hours of the inspections. Subcontractor shall immediately commence with correcting non-compliance Work and notify the XYZ Superintendent when the item(s) have been corrected and ready for re-inspection.

6.2 Quality Control Inspector & Plan: The Subcontractor shall designate a qualified Quality Control Inspector from its Project team or an outside consultant to perform inspections of the Subcontractor's Work. Prior to the commencement of each major definable portion of the Subcontractor's Work, the Quality Control Inspector shall present to XYZ their written plan to establish QA/QC requirements for submittals, material &

equipment tests, specification compliance, inspection frequency, material control, acceptable installation standards, mock-ups, benchmarks, and to outline Work completion, approval, and turnover procedures.

6.3 Site Observation Reports (SOR): Separate from the Zero Defect Program Inspections, SORs may be issued by XYZ or initiated by the Subcontractor's to identify deficient Work. The Subcontractor shall outline corrective measures in a written response to XYZ of all SOR's within twenty-four (24) hours of issue. Critical SOR items related to safety, schedule, or equipment startup shall be separately identified with a written plan that remedies the issue within a maximum of five (5) working days from date of issue.

6.4 Mock-Ups: Subcontractors shall be required to install all items associated with their Work in the following Project mock-ups designated by XYZ. (Optional)

Describe Mock-Up Here
Describe Mock-Up Here

SECTION 7: PROJECT SPECIFIC REQUIREMENTS FOR ALL TRADES (Optional Section)
[Modification of the below items to be determined by separate Work Authorization]

7.1 Project Requirement #1: _____

- End of Attachment 3 -