

WEBCOR/OBAYASHI JOINT VENTURE
LONG FORM SUBCONTRACT – TRANSBAY TRANSIT CENTER PROJECT

Job Name: Transbay Transit Center Project
Job Number: 30100.01

Subcontract No.: 3010086R1
Trade: Metal Ceiling

This Agreement ("Subcontract" or "Agreement") is made this _____ day of _____, _____, between:

CONTRACTOR ("Contractor"):

WEBCOR/OBAYASHI JOINT VENTURE
1751 Harbor Bay Parkway, Suite 200
Alameda, CA 94502
Phone: (510) 748-1900 Fax: (510) 748-7800

**WEBCOR/OBAYASHI JOINT VENTURE JOB
SITE OFFICE
175 Beale Street
San Francisco, CA 94105
Phone: (415) 978-5700 Fax: (510) 476-3030**

and:

TRADE SUBCONTRACTOR ("Subcontractor"):

NAME: _____
Address: _____
City, State, Zip: _____
Phone: _____ **Fax:** _____

On or about the 17th day of March, 2009, Contractor entered into Prime Contract No.08-04-CMGC-000 with:

TRANSBAY JOINT POWERS AUTHORITY ("TJPA")
201 Mission Street, Suite 2100
San Francisco, CA 94105
Phone: (415) 597-4620 Fax: (415) 597-4615

to perform the following project:

Contract No. 08-04-CMGC-000 for the performance of certain CM/GC services related to the construction of the Transbay Transit Center Building and Related Structures (the “Project”) as more fully set forth in the Contract Documents. The Project generally consists of neighborhood utility relocation, demolition of existing structure and ramps, construction of the Transit Center Building, and construction of the Bus Ramps connecting the Transit Center Building to the Bus Storage Facility and the West Approach to the Oakland-San Francisco Bay Bridge, and the interconnection and coordination with the Transit Tower. The Project is located over four blocks (from Fremont to Second Streets) between Mission and Natoma Streets in the City and County of San Francisco.

Said work is to be performed in accordance with the Prime Contract and the Plans and Specifications. Said Plans and Specifications have been prepared by or on behalf of:

ARCHITECT (Transit Center Building and Bus Ramps):
PELLI CLARKE PELLI ARCHITECTS
 1056 Chapel St.
 New Haven, CT 06510
 Phone: (203) 777-2515 Fax: (203) 787-2856

ENGINEER (Utility Relocation):

AECOM
405 Howard Street
San Francisco, CA 94105
Phone: (415) 365-3200 Fax: (415) 267-4957

SECTION 1. ENTIRE CONTRACT

The phrase "Contract Documents" is defined to mean and include the following:

Long Form Subcontract

Contract Documents, as defined in Section 8, 8.1, "Contract Document List", of Exhibit A – Trade Subcontractor Proposal Package Manual and Forms – Contract #3010086R1, Trade Package # TG08.6R1: Metal Ceiling Package; dated February 24, 2015, Rev 0 ("Exhibit A"). Should a conflict exist between this Long Form Subcontract and the Contract Documents, Exhibit A shall take precedence.

Subcontractor certifies that he is fully familiar with all of the terms of the Contract Documents, the location of the job site and the conditions under which the work is to be performed (including, without limitation, existing field conditions, utility locations, and current, local construction practices) and that he enters into this Agreement based upon his investigation of all such matters and documents and is not relying on any opinions or representations of Contractor. This Agreement and the Contract Documents defined above represent the entire agreement. The Contract Documents are incorporated in this Agreement by reference, and Subcontractor and its Lower-Tier Subcontractors will be and are bound by the Contract Documents insofar as they relate in any way, directly or indirectly, to the work covered by this Agreement. Subcontractor agrees to be bound to Contractor in the same manner and to the same extent as Contractor is bound to the Owner under the Contract Documents, to the extent of the work provided for in this Agreement, and that where, in the Contract Documents reference is made to Contractor, and the work or specifications therein pertains to Subcontractor's trade, craft, or type of work, then such work or specification shall be interpreted to apply to Subcontractor instead of Contractor, and shall include all work, materials and equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as necessary to properly execute and complete such work. In the event that there is a conflict between Contract Documents, the more stringent of the documents shall apply. The prime contract between the Owner and Contractor is available for review at the Contractor's main office at 1751 Harbor Bay Parkway, Ste. 200, Alameda, CA 94502.

Subcontractor understands that this Agreement is for work that is partially funded by the federal government, and that there may be certain federal requirements as set forth in the Contract Documents that apply to Subcontractor's work under this Agreement, and that it is fully aware of all such requirements that affect its work and shall comply with them.

SECTION 2. SCOPE

Subcontractor agrees to furnish all labor, materials, equipment and other facilities (collectively "Services" or "Work") required to complete the work for the Project in accordance with the Contract Documents. Scope of Work – The Work is not necessarily defined in one particular portion of the plans and specifications or Contract Documents. Subcontractor will perform all of the work that falls within the general area of this Subcontract, regardless of the fact that the work to be performed may be distributed throughout the plans and specifications, and Contract Documents, as well as all incidental work reasonably necessary to complete this Subcontract. The work to be performed by the Subcontractor is generally described as follows:

Metal Ceiling, per Contract Documents

In the event of any dispute between Contractor and Subcontractor. Subcontractor will not stop work but will prosecute the work diligently to completion, the dispute to be submitted for resolution in accordance with section 17 of this Agreement.

SECTION 3. CONTRACT PRICE

Contractor agrees to pay Subcontractor for the strict performance of its work, the sum of: (\$), subject to conditions and deductions for changes in the work as may be directed in writing by Contractor in accordance with Section 6, and to make payment in accordance with Section 4.

SECTION 4. PAYMENT SCHEDULE

4.1 Except as otherwise provided in this Subcontract and except that this section shall in no event be construed to violate the public policy of the State of California, it is agreed that progress payments to Subcontractor shall only be made for acceptable work performed by Subcontractor as reflected in Contractor's Application for Payment. Payment is due only after Subcontractor furnishes services, actually performed, according to the terms of this Subcontract, regardless of any defaults attributable to the Owner or Contractor. Payment is payable either upon Owner approval of the Payment Application and subsequent Owner payment, or, in the event of Owner's non-payment, when Subcontractor has complied with paragraph 4.1.2 below.

Approval of Contractor's Application for Payment and payment for the work reflected therein by Owner shall be a condition precedent that must occur before Contractor will be obligated to pay Subcontractor. Subsequent to Owner approval of Contractor's Application for Payment, Contractor shall pay Subcontractor upon receipt of payment from the Owner, Subcontractor's portion of said payment allowed to Contractor less any percentage retained under the contract between the Contractor and the Owner. Upon receipt of payment from the Owner, and Subcontractor compliance with Paragraphs (4.2) and (4.3) below, Contractor will pay Subcontractor the said contract sum on or about the 30th day of the month following the months in which the work was performed, provided however, Contractor may retain as part security for Subcontractor's fulfillment of this Contract, an amount equal to the amount retained by Owner with respect to Subcontractor's work for the purpose of Subcontract progress payment. Final payment shall only be made to Subcontractor from sums received by Contractor as final payment from the Owner, subject to the above provisions and also Paragraphs (4.2), (4.3) and (4.4) below. Within ten (10) business days after the award of the Subcontract, but in any event no later than Subcontractor's first payment request, Subcontractor shall furnish to Contractor a billing breakdown or schedule of values for Contractor's approval for use in approving invoices and percentages

of completed work. Subcontractor's schedule of values shall include a line item for each portion of the Work, and shall be incorporated into Exhibit "G". Notwithstanding anything to the contrary set forth in the Subcontract Agreement, and provided that Subcontractor has complied in full with its subcontract obligations, Contractor shall pay Subcontractor within 10 days of receipt of payment from Owner in accordance with applicable state and federal law.

- 4.1.2 In the event the Owner fails, neglects or refuses to pay the Contractor for any reasons whatsoever (except on account of defaults solely attributable to the Contractor), then payment shall not be payable to Subcontractor until the events hereinafter set forth occur. In the event of non-payment by the Owner to the Contractor, the Contractor shall notify the Subcontractor in writing. Assuming Subcontractor has satisfied all conditions precedent to receiving payment, Subcontractor agrees that Contractor shall make progress payments and final payments otherwise to Subcontractor for Work undisputedly performed properly by the earlier of: (1) seven (7) days after Contractor being paid by the Owner for amounts payable to Subcontractor on account of work done by Subcontractor on the Project, or (2) the Contractor, Subcontractor and Owner exhausting all processes prescribed in the Prime Contract for Contractor to seek and receive payment for Subcontractor's Work. The parties expressly acknowledge and agree that the timing of payments to Subcontractor under the conditions of this paragraph is reasonable. Subcontractor agrees that the liability of the surety on Contractor's payment bond, if any, for payment to Subcontractor, is subject to the same conditions precedent as are applicable to Contractor's liability to Subcontractor.
- 4.1.3 Grounds for Withholding Payment. Contractor may withhold, or on account of subsequently discovered evidence, nullify the whole or part of any payment to the extent necessary to protect Contractor from loss, including costs and attorney's fees, on account of (1) defective work not remedied; (2) claims filed or reasonable evidence indicating probable filing of claim; (3) failure of Subcontractor to make payments properly to his subcontractors or for material, labor or fringe benefits; (4) a reasonable doubt that this Agreement can be completed for the balance then unpaid; (5) damage to another subcontractor; (6) penalties assessed against Contractor or Subcontractor for failure of Subcontractor to comply with State, Federal or local laws and regulations; or (7) any other ground for withholding payment allowed by State or Federal law, or as otherwise provided in this Agreement.
- 4.1.4 In the event the Owner fails, neglects or refuses to pay the Contractor for any reasons whatsoever (except on account of defaults solely attributable to the Subcontractor), Contractor and Subcontractor agree to pursue their rights to payment from the Owner.
- 4.1.5 In the event the Subcontractor does not submit to the Contractor such monthly estimates by the date provided in the subcontract, then (unless the Contract Documents provide otherwise) the Contractor may at his option include in his monthly estimate to the Owner for Work performed during the preceding months such amount as he may deem proper for the Work for the Subcontractor for the preceding month and the Subcontractor agrees to accept such approved portion thereof in lieu of monthly payment based upon the Subcontractor's estimate. In the event Subcontractor submits such monthly estimate to Contractor within the time described above, the Contractor may at his discretion modify Subcontractor's estimate in accordance with Contractor's own estimate of the value of the Subcontractor's Work performed during the preceding month, and the Subcontractor agrees to accept Contractor's estimate thereof in lieu of monthly payments based on the Subcontractor's estimate.
- 4.1.6 Progress payments to the Subcontractor shall be made only for the Work performed by the Subcontractor as reflected in the Subcontractor monthly estimate. Approval of the Subcontractor's monthly estimate, in whole or in part shall be a condition precedent which must occur before the Contractor will be obligated to pay the Subcontractor. Approval and payment of Subcontractor's monthly estimate is specifically agreed not to constitute or imply acceptance by the Contractor or the OWNER of any portion of the Subcontractor's Work. Subcontractor agrees that upon partial or full payment he will deliver to Contractor applicable releases of mechanics lien rights for that portion paid on the form attached as Exhibit "C".
- 4.2 Subcontractor shall prepare and present to Contractor, for its approval, on or before the 18th day of each calendar month ("Current Month"), projected through the last day of the month, a complete invoice using Contractor's format (Exhibit's "C" & "G" referenced above in Section 1). Contractor is not required to make any payment to Subcontractor unless Subcontractor shall previously have provided such supporting documentation as may be required by Contractor, the OWNER, Architect, or any party authorized under the Prime Contract. Such documentation may include, without limitation, copies of requisitions from Subcontractor's subcontractors and material suppliers, payroll affidavits, receipts and vouchers, and conditional lien releases for the Current Month and unconditional lien releases for all work completed prior to the Current Month executed by all persons and companies who might have mechanic's lien, stop notice or labor and material bond rights against the Project and arising out of work performed under the Subcontract, using Contractor's forms along with evidence of payment as applicable to all unions and union trust funds. Subcontractor shall promptly notify Contractor if Subcontractor's actual costs for the Current Month are not consistent with the projected costs initially set forth in Subcontractor's invoice. If necessary, Subcontractor shall promptly make all required changes to its invoice to ensure that Contractor's payment application submitted to the Owner accurately reflects Subcontractor's actual costs. Contractor may prepare and issue a joint check for the amount(s) indicated.
- 4.3 Contractor may withhold monthly progress payments, in accordance with applicable laws, in order to protect Contractor and/or the Owner from loss because of any event of default under this Subcontract. When the grounds for the default are cured by Subcontractor to Contractor's satisfaction, and the funds are paid to Contractor by the Owner, payment shall be made for the amounts withheld because of them.
- 4.4 Subject to; Paragraphs 4.1.1, 4.1.2, 4.1.3, 4.1.4, 4.1.5, above, the removal of all grounds for withholding, the delivery by Subcontractor to Contractor of (i) Subcontractor's signed Guarantee, (ii) as-built plans, (iii) operation and maintenance manuals required by the Contract Documents, and (iv) satisfactory proof that all claims, including taxes, growing out of the work hereunder (and any liens related thereto) have been released including, specifically, Contractor's receipt of fully executed lien releases from Subcontractor and all of its Lower-Tier Subcontractors and material suppliers involved in its Work, the balance owing to Subcontractor under the terms of this Subcontract shall be due and payable thirty (30) days after completion and acceptance of the entire Project and ten (10) days after receipt of same from the Owner; provided Contractor shall promptly release retention to the extent that Owner releases retention under the Contract Documents with respect to Subcontractor's work. Final payment

may, at the Owner's or Contractor's option, be made in the form of checks made jointly payable to Subcontractor and any Lower-Tier Subcontractor, materialman, laborer or supplier entitled to payment out of the funds of the final payment. Furthermore, provided that Subcontractor has complied in full with subcontract obligations, Contractor will withhold no more retention from Subcontractor than the amount of retention that is being withheld from Contractor by Owner with regard to Subcontractor's work, and shall promptly reduce retention withheld from Subcontractor, by a like percentage, when reduced to Contractor by Owner. See Prime Contract (Document 00 07 00) Article 9.04.

- 4.5 Any and all funds payable to Subcontractor hereunder are hereby declared to constitute trust funds in the hands of Subcontractor, to be applied first to the payment of claims of its subcontractors, architects, engineers, surveyors, laborers and materialmen arising out of the described work, to claims for utilities furnished and taxes imposed, and to the payment of premiums on surety bonds and other bonds filed and premiums on insurance accruing during the construction of the described work, before application to any other purpose.
- 4.6 Monthly Progress Invoices and all appropriate documentation must be submitted to the jobsite office on or before the 18th of each month for processing as per Section 4 of the Subcontract.
- 4.7 In accordance with, and subject to any restrictions set forth in, the Prime Contract provisions, Subcontractor must obtain advance written approval to receive payment for materials or equipment delivered to the jobsite but not yet incorporated into the work. Payments for materials stored on or off the site shall be conditional upon submission by Subcontractor of bills of sale or such other procedures satisfactory to the Owner to establish Owner's title and to protect Owner's interest in the materials or equipment.

SECTION 5. TIME

- 5.1 Time is of the essence of this Agreement. Subcontractor shall provide Contractor with scheduling information and a proposed schedule for performance of his work in a form acceptable to Contractor. Subcontractor shall plan and sequence its Work to conform to Contractor's Concept schedule (Exhibit "I") and all reasonable revisions or changes made thereto by Contractor. Subcontractor shall prosecute his Work in a prompt and diligent manner in accordance with Contractor's progress schedule without delaying or hindering Contractor's work or the work of other contractors or subcontractors. Subcontractor shall coordinate the Work covered by this agreement with that of all other contractors, subcontractors, and of the Contractor, in a manner that will facilitate the efficient completion of the entire Project work. In the event Subcontractor fails to maintain his part of the Contractor's schedule, he shall, without additional compensation and at its own cost, accelerate the work as Contractor may direct until Subcontractor's work is in accordance with such schedule. Contractor shall have complete control of the premises on which the work is to be performed and shall have the right to decide the time and order in which various portions of the work shall be installed and the relative priority of the work of Subcontractor and other subcontractors, and, in general, all other matters, pertaining to the timely and orderly conduct of the work of Subcontractor on the premises. Should Subcontractor be delayed in the prosecution or completion of the work by the act, neglect or default of the Owner, Architect or Contractor, then the time herein fixed for the completion of the work shall be extended the number of days the Subcontractor has thus been delayed, but no allowance or extension shall be made unless a detailed written notice of delay is presented in writing to Contractor within three (3) working days of the commencement of such delay, and under no circumstances shall the time provided for Subcontractor's completion of its Work be extended to a date which will prevent Contractor from completing the entire Project within the time allowed Contractor for such completion.
- 5.2 To the fullest extent permitted under applicable law, no claims for additional compensation or damages for delays, whether caused in whole or in part by any conduct on the part of Contractor, including, but not limited to, conduct amounting to a breach of this Agreement, or delays by other subcontractors or the Owner, shall be recoverable from Contractor, and the above-mentioned extension of time for completion shall be the sole remedy of Subcontractor; provided, however, that in the event Contractor obtains additional compensation from Owner on account of such delays, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor from the Owner as is equitable under all of the circumstances. In the event that Contractor prosecutes a claim against the Owner for additional compensation for any delay, Subcontractor shall cooperate fully with Contractor in the prosecution thereof and shall pay costs and expenses incurred in connection therewith, including actual attorney's fees, to the extent that said claim is made by Contractor at the request of Subcontractor.
- 5.3 Subcontractor shall prepare and obtain approval as required by the Contract Documents for all shop drawings, details, samples, and do all other things necessary and incidental to the prosecution of his work in conformance with Contractor's progress schedule. Subcontractor will prepare daily, and submit to Contractor, the Subcontractor Daily Activity Report.
- 5.4 If the time periods in the Prime Contract are shorter for the giving of notices of delay (Section 5), notices of claims (Section 6), demands for relief in the case of disputes (Section 17), or notices to correct a default (Section 14), then the shorter period shall govern.
- 5.4.1 To the extent that Contractor is required to review and/or approve the Subcontractor's notices and/or other contract submissions prior to giving the submission to the Owner, Subcontractor must ensure that it provides the required submission to Contractor a reasonable period of time prior to the deadline for submission to the Owner set forth in the Prime Contract. This requirement is intended to ensure that the Contractor has a reasonable amount of time to fulfill its contractual obligation to review and/or approve the Subcontractor's submission prior to submission to the Owner. A list of some of the key timing requirements set forth in the Prime Contract and the corresponding timing requirements applicable to the Subcontractor are set forth below:
 - A. Change Order Requests and Proposed Change Orders (Prime Contract Section 6.03): Section 6.03.A requires Contractor to submit a written Change Order Request (COR) within 21 days of receipt of the Clarification or other written directive. The Subcontractor shall submit a COR to Contractor within 14 days. Section 6.03.D requires Contractor to submit a PCO cost proposal and PCO time adjustment proposal, if applicable, within 10 days of receipt of a PCO. The Subcontractor shall submit a PCO cost proposal and PCO time adjustment proposal, if applicable, to Contractor within 6 days.

B. Claims (Prime Contract Section 13.02): Section 13.02.A requires Contractor to submit notices of potential claims within 10 days of the event giving rise to the claim. The Subcontractor shall submit such notice to Contractor within 6 days. Section 13.02.B requires Contractor to submit a certified claim within 45 days of submission of the notice of potential claim. The Subcontractor shall submit its certified claim to Contractor within 25 days.

SECTION 6. CHANGES IN THE WORK

- 6.1 Subcontractor shall make any and all changes to the work described in the Contract Documents and this Agreement as directed by Contractor in writing. Such change or written direction shall not invalidate this Agreement.
- 6.2 If necessary, and in accordance with the other provisions of this Subcontract, the Contract Price stated in Section 3 and the time for Subcontractor's performance shall be adjusted by appropriate additions or deductions mutually agreed upon before Subcontractor performs the changed work. Subcontractor shall supply Contractor with all documentation necessary to substantiate the amount to or deduction from the price or time. If Contractor and Subcontractor cannot agree on the amount of the addition or deletion, Subcontractor shall nonetheless timely perform the work as changed by Contractor's written direction. Once Subcontractor receives Contractor's written direction, Subcontractor is solely responsible for timely performance of the work as changed by the written direction.
- 6.3 Payment for changed work shall be made in accordance with Section 4.
- 6.4 Subcontractor shall not make any changes in the work described in Section 2 or in any way cause or allow that work to deviate from the Contract Documents without written direction from Contractor. If Subcontractor makes any changes in the work described in Section 2 without written direction from Contractor, such change constitutes an agreement by Subcontractor that he will not be paid for that changed work, even if he received verbal direction, written or otherwise, from the 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 he makes without written direction from Contractor.
- 6.4.1 Unless agreed to otherwise, any changes in the work which arise from a Subcontractor's Additional Work Authorization (AWA), will require the signatures of both the Contractor's Project Manager and the Superintendent. Each AWA will require these two signatures by the Contractor, in addition to that of the Subcontractor. An AWA is intended to cover work performed on a time and material basis or equivalent. An AWA is only to be used under circumstances where Subcontractor and Contractor agree that a conventional proposal, estimate and change order would not be appropriate. See Prime Contract General Conditions (Document 000700), Article 6.07 for additional Owner requirements.
- 6.5 If Subcontractor discovers a condition or situation that it believes constitutes a change to its Work, or otherwise requires a change to the Contract Documents, Subcontractor shall provide written notice of the change within five (5) calendar days from discovering such changed condition. If a dispute arises between Contractor and Subcontractor about whether particular work constitutes a change to the Work, Subcontractor shall timely perform the disputed work and give written notice of any claim for additional compensation for that work within five (5) days after such work was performed. Subcontractor's failure to perform the work or failure to give timely notice of the change and claim constitutes an agreement by him that he will not be paid for the disputed work.
- 6.6 No change, alteration, or modification to or deviation from this Agreement, the Contract Documents, prime contract, plans, or specifications, 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.

SECTION 7. DAMAGES CAUSED BY DELAYS

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

Subcontractor's liability for liquidated damages arising out of Subcontractor's default in performance of the work or breach of any provision of this Agreement shall be limited to amounts, if any, assessed against Contractor by the Owner and shall be further limited to the extent of Subcontractor's comparative fault for such losses.

SECTION 8. BONDING OF SUBCONTRACTOR

Concurrently with the execution of this Agreement, Subcontractor shall, if required by Contractor, supply a labor and material bond and a performance bond, in an amount equal to one hundred percent (100%) of the Contract Price. Such bonds shall be in forms satisfactory to Contractor and shall be executed by a U.S. Treasury listed corporate surety acceptable to Contractor and admitted as a surety insurer in the State of California. The premium cost for such bonds is included in the Contract Price.

No change, alteration or modification to, or deviation from, the Contract Documents, including this Subcontract, the Prime Contract, plans, or specifications, whether made in the manner provided for in this Subcontract or not, shall release or exonerate, in whole or in part, any

bond or any surety on any bond given in connection with this Subcontract, and no notice is required to be given to such surety of any such change, alteration, modification, or deviation.

See the Prime Contract General Conditions (Document 000700), Article 10.02.D for additional requirements.

SECTION 9. LIENS

- 9.1 In case suit is brought on any claim, stop notice or lien for labor performed or materials used on or furnished to the Project ("Claim"), Subcontractor shall pay and satisfy any such Claim as may be established by the decision of the court in said suit. Subcontractor agrees within ten (10) days after written demand to cause the effect of any such Claim or lien to be removed from the premises, and in the event Subcontractor shall fail to do so, Contractor is authorized to use whatever means in its discretion it may seem appropriate to cause said lien or Claim to be removed or dismissed and the cost thereof, together with actual attorney's fees, shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may litigate any such Claim or suit provided he causes the effect thereof to be removed, promptly in advance, from the premises, and shall further do such things as may be necessary to cause Owner not to withhold any monies due to Contractor from Owner by reason of such liens or Claims.
- 9.2 It is understood and agreed that the full and faithful performance of this Agreement on the part of Subcontractor (including the payment of any obligations due from Subcontractor to Contractor, and any amounts due to labor and materialmen furnishing labor or material for said work) is a condition precedent to Subcontractor's right to receive payment for the work performed, and any monies paid by Contractor to Subcontractor under the terms of this Agreement shall be impressed with a trust in favor of labor and materialmen furnishing labor and material to Subcontractor on the work herein subcontracted.

SECTION 10. PROVISIONS FOR INSPECTION

Subcontractor shall at all times furnish to Contractor and his representatives safe and ample facilities for inspecting materials at the site of construction, shops, factories or any place of business of Subcontractor and his subcontractors and materialmen where materials under this Agreement may be in course of preparation, process, manufacture or treatment. Subcontractor shall furnish to Contractor as often as required by Contractor, 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. Such reports shall show the progress of such preparation and manufacture in such details as may be required by Contractor, including, but not limited to, any plans, drawings or diagrams in the course of preparation.

SECTION 11. MATERIALS AND WORK FURNISHED BY OTHERS

In the event 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, it shall be the responsibility of Subcontractor to examine and accept, at the time of delivery or first access, the items so provided and thereupon handle, store and install the items with such skill and care as to insure a satisfactory completion of the Work. Use of such items or commencement of work by Subcontractor in such areas shall be deemed to constitute acceptance thereof by Subcontractor. Loss or damage due to acts of Subcontractor shall be charged to the account of Subcontractor and deducted from monies otherwise due under this Agreement.

SECTION 12. PROTECTION OF WORK

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

SECTION 13. LABOR RELATIONS AND LABOR AGREEMENTS

- 13.1 Contractor is signatory to the following unions: Carpenters, Cement Finishers, Laborers, and Operating Engineers. In accordance with this Section, Subcontractor shall comply with the terms and conditions of these agreements.
- 13.2 Subcontractor shall keep a representative at the job site during all times when Subcontractor's work is in progress, and such representative shall be authorized to represent Subcontractor as to all phases of the work. Prior to commencement of the work, Subcontractor shall notify Contractor who Subcontractor's representative is to be, and in the event of any change of representative Subcontractor shall notify Contractor who the new representative is to be prior to such change becoming effective.
- 13.3 Subcontractor acknowledges that Contractor has entered into labor agreements covering work at its construction jobsites with the labor unions listed in Section 13.1 above. 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 Subcontractor agrees to comply with all of the terms and conditions of those labor agreements set forth in Section 13.1 above as if it were a party to said agreements including signatory status if required. Subcontractor further agrees to pay the wage rates, make the required trust fund payments into the respective labor trust funds, and observe the hours and all other terms and conditions set forth in the respective labor agreements referenced in Section 13.1 above. Subcontractor agrees to comply with the terms and provisions of said agreements setting forth the grievance and arbitration provisions. Furthermore, Subcontractor agrees to 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 or if such procedure fails to promptly resolve the jurisdictional dispute, Subcontractor agrees, at its own cost and expense and upon request by Contractor,

to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board.

- 13.5 Subcontractor acknowledges that terms and conditions of the labor agreements with the unions listed in Section 13.1 above may require that Subcontractor comply with additional labor agreements with unions affiliated with the AFL-CIO but not listed. When the terms and conditions of the below-referenced labor agreements so require, Subcontractor shall perform his job site work pursuant to all terms and conditions of an appropriate labor agreement with a union affiliated with the AFL-CIO.
- 13.6 Subcontractor acknowledges that Contractor is a member of the Construction Employers' Association, and Subcontractor agrees to work in unison with Contractor and other subcontractors and to be bound by the procedures to follow when establishing a dual gate system. Should there be picketing on Contractor's job site, and Contractor establishes a reserved gate for Subcontractor's purpose, it shall be the obligation of Subcontractor to continue the proper performance of his work without interruption or delay.
- 13.7 Subcontractor further promises and agrees that he will bind and require all of his subcontractors and their subcontractors performing job site work of the type covered by any of the labor agreements specified in Section 13.1 above to agree to all of the foregoing promises and undertakings, to the same effect as herein provided with respect to him.
- 13.8 Subcontractor shall comply with all equal employment opportunity and affirmative action requirements promulgated by any governmental authority, including, without limitations, the requirements of the Civil Rights Act of 1964, Presidential Executive Orders No. 10925, 11114 and 11246, the California Fair Employment Practices Act, the American with Disabilities Act of 1991 and the Family 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 Code provisions covering the work. Upon request, Subcontractor agrees to submit certified payroll reports to contractor no later than three (3) working days after labor has been paid.
- 13.9 To the extent a Subcontractor is bound to any Collective Bargaining Agreement at the time of submitting its bid proposal, Subcontractor agrees to comply with the terms and conditions of said Collective Bargaining Agreement until completion of the project.

SECTION 14. RECOURSE BY CONTRACTOR

14.1 Termination for Default

14.1.1 Notice to Cure. If Subcontractor at any time refuses or neglects to supply enough properly skilled workers and proper materials, or fails to properly and diligently prosecute the work covered by this Agreement, or fails to make prompt payment to his workers, sub-subcontractors or suppliers, or becomes delinquent with respect to contributions or payments required to be made to any health and welfare, pension, vacation, apprenticeship or other employee benefit program or trust, or is otherwise guilty of a material breach of a provision of this Agreement, and fails within forty-eight (48) hours after receipt of written notice (letter, facsimile, or email) to commence and continue satisfactory correction and curing of such default with diligence and promptness, then Contractor, without prejudice to any legal or equitable rights or remedies, shall have the right to any or all of the following remedies:

- (a) supply such number of workers and quantity of materials, equipment and other facilities as Contractor deems necessary for the completion of Subcontractor's Work, or any part thereof which Subcontractor has failed to complete or perform, and charge the cost thereof to Subcontractor, who shall be liable for the payment of same including fifteen percent (15%) for overhead and profit, and actual attorney's fees incurred as a result of Subcontractor's failure of performance;
- (b) contract with one or more additional contractors to perform such part of Subcontractor's Work as Contractor shall determine will provide the most expeditious completion of the total work and charge the cost including overhead and profit thereof to Subcontractor; and
- (c) withhold payment of any monies due Subcontractor pending corrective action to the extent required by and to the satisfaction of Contractor.
- (d) Terminate for default Subcontractor's rights under this Agreement and use any materials, implements, equipment, appliances or tools furnished by or belonging to Subcontractor to complete Subcontractor's Work without any further compensation to Subcontractor for such use. Contractor also may furnish those materials and equipment, and/or employ such workers or subcontractors as Contractor deems necessary to maintain the orderly progress of the Work. In such case, Subcontractor shall be entitled to no further payment until the balance of Subcontractor's Work has been completed. At that time, all of the costs incurred by Contractor in performing Subcontractor's Work, including a markup of fifteen percent (15%) for overhead and profit on such expenses, plus actual attorney's fees as provided above, shall be deducted from any monies due or to become due Subcontractor. Subcontractor shall be liable for the payment of any amount by which such expenses may exceed the unpaid balance of the Contract Price.

In the event of an emergency affecting the safety of persons or property, Contractor may proceed as above without first providing a Notice to Cure.

14.1.2 In the event Contractor terminates Subcontractor for default, and it is subsequently determined in a civil action or arbitration that the termination for default was improper, Contractor's liability to Subcontractor shall be no greater than it would be if Contractor would have terminated Subcontractor for convenience pursuant to Paragraph 14.3. Moreover, the damages, if any, Subcontractor

shall be entitled to shall be limited to the compensation, if any, Subcontractor would be entitled to in the event of a termination for convenience pursuant to Paragraph 14.3 below.

14.2 Bankruptcy

14.2.1 Termination Absent Cure. Upon the appointment of a receiver for Subcontractor or upon Subcontractor making an assignment for the benefit of creditors or if Subcontractor seeks protection under the Bankruptcy Code or commits any other act of insolvency, Contractor may terminate this Agreement without notice upon giving written notice to Subcontractor and its surety, if any. If an order for relief is entered under the Bankruptcy Code with respect to Subcontractor, Contractor may terminate this Agreement upon written notice to Subcontractor, its trustee, and its surety, if any, unless Subcontractor, the surety, or the trustee:

- (a) promptly cures all defaults;
- (b) provides immediate and adequate assurance of future performance;
- (c) compensates Contractor for actual pecuniary loss resulting from such defaults;
- (d) assumes the obligations of Subcontractor under this Agreement within the statutory time limits.

14.2.2 Interim Remedies. If Subcontractor is not performing in accordance with the Contractor's progress schedule at the time of entering an order for relief, or at any subsequent time, Contractor, while awaiting the decision of Subcontractor or its trustee to reject or to accept this Agreement and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under this Section as are reasonably necessary to maintain the schedule of work including:

- (a) Contractor may offset 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 attorney's fees incurred as a result of Subcontractor's non-performance.
- (b) Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Contract Price.

14.3.1 Termination for Convenience. Contractor may at any time and for any reason terminate Subcontractor's services and work for Contractor's convenience. Cancellation shall be by service of written notice to Subcontractor's place of business. Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the work and placing orders for materials, facilities and supplies in connection with the performance of this Agreement, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Contractor, or at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived therefrom. Subcontractor shall thereafter do only such work as may be necessary to preserve and protect the work already in progress and to protect material and equipment on the job site or in transit thereto. Upon such termination, Subcontractor shall be entitled to payment in accordance with Section 4 only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Subcontractor as are permitted by the prime contract and approved by Owner; plus (3) fifteen percent (15%) of the cost of the work referred to in subparagraph (1) above for overhead and profit (subject to any limitations set forth in the Prime Contract) or the profit earned if the contract had been fully performed, whichever one is less. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Subcontractor prior to the date of the termination of this Agreement. Subcontractor shall not be entitled to any claim or claim of lien against Contractor or the OWNER for any additional compensation or damages in the event of such termination for convenience and payment. Notwithstanding the foregoing, Contractor may terminate Subcontractor's services and work for Contractor's convenience only if the Owner terminates either the Prime Contract or this Subcontract Agreement for convenience.

14.3.2. If the Prime Contract between Contractor and the OWNER is terminated for the convenience of the OWNER, the termination settlement under this Subcontract shall be as provided in the Prime Contract. Subcontractor shall not be entitled to receive any greater amount than Contractor may on behalf of Subcontractor recover from the OWNER for such termination.

SECTION 15. INDEMNIFICATION

15.1.1 Subcontractor's Performance. With the exception that this Section 15 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the public policy of the State. Subcontractor shall indemnify, defend and save harmless the OWNER and Contractor, including their officers, agents, employees, affiliates, parents and subsidiaries, and each of them, of and from any and all claims, demands, causes of action, damages, costs, expenses, actual attorney's fees, losses or liability, in law or in equity, of every kind and nature whatsoever ("Claims") arising out of or in connection with Subcontractor's operations to be performed under this Agreement for, but not limited to:

- (a) Personal injury, including, but not limited to, bodily injury, sickness or disease, or death to persons, including, but not limited to, any employees or agents of Subcontractor, the Owner, Contractor, 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 such personal injury or damage is caused by a party indemnified hereunder.
- (b) Penalties imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance or statute, caused by the action or inaction of Subcontractor.
- (c) Infringement of any patent rights which may be brought against the Contractor or Owner arising out of Subcontractor's work, unless such process or work which is alleged to infringe is specifically required by the Contract Documents.

- (d) Claims and liens (see Section 9) for labor performed or materials used or furnished to be used on the job, including all incidental damages resulting to Contractor or Owner from such claims or liens.
- (e) Subcontractor's failure to fulfill the covenants set forth in each subpart of Section 13, Labor Relations
- (f) Failure of Subcontractor to comply with the provisions of Section 16.1, Casualty Insurance.
- (g) Any violation or infraction by Subcontractor of any law, order, 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 Contractor's or other's equipment, hoist, elevators, or scaffolds (See Sections 16 and 20).

The indemnification of (a) through (g) above shall extend to Claims occurring after this Agreement is terminated as well as while it is in force. Such indemnity provisions apply regardless of any active and/or passive negligent act or omission of the OWNER or Contractor or their agents or employees. Subcontractor, however, shall not be obligated under this Agreement to indemnify OWNER or Contractor for Claims arising from the sole negligence or willful misconduct of Owner or Contractor or their agents, employees or independent contractors who are directly responsible to OWNER or Contractor, or for defects in design furnished by such persons.

15.1.2 Subcontractor shall:

- (a) At Subcontractor's own cost, expense and risk, and through counsel of Contractor's selection, Subcontractor shall defend all Claims that may be brought or instituted by third persons, including, but not limited to, governmental agencies or employees of Subcontractor, against Contractor or the OWNER or their agents or employees or any of them. Subcontractor's duty to defend the OWNER and Contractor is independent and distinct from Subcontractor's duties to indemnify and hold harmless specified herein;
- (b) Pay and satisfy any judgment or decree that may be rendered against Contractor or OWNER or their agents or employees, or any of them, arising out of any such Claim; and/or
- (c) Reimburse Contractor or the OWNER or their agents or employees for any and all legal expense incurred by any of them in connection herewith or in enforcing the indemnity granted in this Section 15.

15.2 Risk of Loss

All work covered by this Agreement done at the 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 completed work is accepted by Contractor.

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 Hazardous Material

- 15.4.1 Subcontractor and its Lower-Tier Subcontractors shall use, handle, transport and dispose of all Hazardous Materials (as defined below) in compliance with all federal, state and local environmental, health or safety laws, including, but not limited to, all such statutes, regulations, rules, ordinances, codes, and rules of common law. Subcontractor further agrees that Subcontractor and Lower-Tier Subcontractors shall not cause the discharge, release or disposal of any Hazardous Material on the job site. Subcontractor and its Lower-Tier Subcontractors shall, upon completion of performance of all duties under this Subcontract, remove all supplies, materials and waste containing any Hazardous Material from the job site. Subcontractor shall bear full financial responsibility, as between the parties of this Subcontract, for the compliance of Subcontractor and its Lower-Tier Subcontractors with the provisions of this paragraph. Should Subcontractor or its Lower-Tier Subcontractors discharge, release or dispose of any Hazardous Material on the site in violation of this paragraph, Subcontractor shall immediately so inform Contractor in writing. In the event Subcontractor or its Lower-Tier Subcontractors encounter on the site any pipeline, underground storage tank or other container, of any kind, that may contain a Hazardous Material, or encounter material reasonably believed to be a Hazardous Material, Subcontractor shall immediately stop work in the area affected and report the condition to Contractor in writing. Should Subcontractor or its Lower-Tier Subcontractors fail to take immediate steps to comply with the requirements of this paragraph upon notice from Contractor, Subcontractor shall be in default of this Subcontract.

- 15.4.2 "Hazardous Material" means any substance: (1) the presence of which requires investigation or remediation under federal, state or local statute, regulation, ordinance, rule, code, order, action, policy or common law, or (2) defined as a "hazardous waste," "hazardous substance," pollutant or contaminant under any federal, state or local statute, regulation, ordinance or amendments thereto including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. Sections 9601 et seq.) and/or the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.); or (3) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State or any political subdivision thereof; or (4) the presence of which on the Property causes or threatens to cause a nuisance upon the Property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Property; or (5) which contains gasoline, diesel fuel or other petroleum hydrocarbons; or (6) which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde form insulation.

SECTION 16. INSURANCE

16.1 Casualty Insurance Subcontractor shall, at its expense, procure and maintain insurance on all of its operations, in insurance companies with a Best's Insurance Rating of A- or better and Class VIII or better or otherwise acceptable to Contractor, as follows:

16.1.1 Workers' Compensation and Employer's Liability Insurance. Workers' Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's Liability insurance shall be provided in amounts not less than:

\$1,000,000 each accident for bodily injury by accident
\$1,000,000 policy limit for bodily injury by disease
\$1,000,000 each employee for bodily injury by disease

If there is an exposure of injury to Subcontractor's employees under the Federal Employers Liability coverage shall be included for such injuries or claims.

16.1.2 General Liability Insurance. Subcontractor shall carry Comprehensive General Liability or Commercial General Liability insurance provided on the ISO CGL Form No. CG 00 01 10 01 or equivalent, covering all operations by or on behalf of Subcontractor providing insurance for bodily injury liability and property damage liability of the limits of liability indicated below and including coverage for:

- (a) premises and operations;
- (b) products and completed operations maintained continuously for a period of ten (10) years following completion of construction or the applicable statutory period for which Subcontractor is liable for its work, whichever is greater;
- (c) contractual liability insuring the obligations assumed by Subcontractor in this Agreement;
- (d) broad form property damage (including completed operations);
- (e) explosion, collapse and underground hazards; and
- (f) personal injury liability (with deletion of the exclusion for liability assumed under contract).

16.1.2.1 If Subcontractor carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage and personal injury liability of:

\$1,000,000 each occurrence
\$1,000,000 in aggregate

16.1.2.2 If Subcontractor carries an Occurrence form Commercial General Liability policy, the limits of liability shall be not less than:

\$1,000,000 each occurrence (combined single limit for bodily injury and property damage)
\$1,000,000 for personal injury only
\$1,000,000 aggregate for products-completed operations
\$2,000,000 general aggregate

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

16.1.2.3 Special Claims Made Policy Form Provisions. Subcontractor shall not provide general liability insurance under any Claims Made Commercial General Liability form or Modified Occurrence Policy form without the express prior written consent of Contractor.

16.1.2.4 Additional Insured. With respect to whichever General Liability policy form is furnished as required above, Contractor, its officers, directors and employees and the OWNER shall be named as additional insureds. The policy shall be endorsed to stipulate that the insurance afforded the additional insureds shall apply as primary insurance and that any other insurance maintained by Contractor or Owner shall be excess only and shall not be called upon to contribute with this insurance.

Coverage for the Contractor, its officers, directors and employees and the OWNER as additional insureds shall be provided by a policy provision or by an endorsement providing coverage utilizing ISO form CG 10 11 85 or ISO form CG 20 10 07 04 in conjunction with ISO form CG 20 37 07 04.. Additional entities that must be named as an additional insured are listed in the sample insurance form attached hereto (See Exhibit "D"). Blanket additional insured endorsements which attempt to limit the scope or time period of coverage will not be accepted. With respect to all other liability insurance policies (with the exception of Professional Liability), similar endorsements naming Contractor, its officers, directors and employees and the Owner shall be included with the required certificate of insurance.

16.1.2.5 Self-Insured Retention. If the commercial general liability policy contains a Self-Insured Retention (SIR), the amount of the SIR must be clearly identified on the certificate of insurance, but in no event shall it exceed \$25,000. Contractor reserves the right to reject any policy utilizing an SIR or require the Subcontractor to provide a bond securing an amount equal to the SIR at no additional cost to Contractor.

Subcontractor shall satisfy any SIR immediately upon Contractor's demand to affect coverage for claims arising out of or in connection with Subcontractor's operations under this Agreement. Subcontractor's failure to immediately satisfy the SIR upon Contractor's demand shall constitute a material breach of this Subcontract Agreement.

The policy provision or additional insured endorsement providing additional insured coverage to Contractor shall expressly provide that Contractor, as an Additional Insured, shall have the right to pay any SIR under the policy. Accordingly, language similar to that provided below is expressly prohibited:

"Payments by others, including but not limited to additional insureds or insurers, do not serve to satisfy the self-insured retention. Satisfaction of the self-insured retention as a condition precedent to our liability applies regardless of insolvency or bankruptcy by [named insured]."

Subcontractor shall be fully responsible for any and all amounts paid by Contractor to satisfy the SIR, and Contractor shall have the right to immediately deduct such amounts from any amounts otherwise due and owing to Subcontractor.

16.1.3 Automobile Liability Insurance. Subcontractor shall carry automobile liability insurance, including coverage for all owned, hired and non-owned automobiles. The limits of liability shall be not less than \$1,000,000 combined single limit each accident for bodily injury and property damage. Coverage shall apply to all owned, hired and non-owned automobiles.

16.1.4 Certificates of Insurance (as per Exhibit "D" referenced above in Section 1), as evidence of the insurance required by this Agreement, shall be furnished by Subcontractor to Contractor before any work hereunder is commenced by Subcontractor. The certificates of insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) days prior written notice to Contractor or ten (10) days in the event of non-payment of premium. The words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be crossed out on the certificate.

The Certificate of Insurance furnished as evidence of Comprehensive General Liability or Commercial General Liability insurance carried by the Subcontractor shall include a copy of the policy provision or the additional insured endorsement adding the Contractor and the OWNER as Additional Insured and shall provide that insurance for such additional insureds applies as primary insurance and that other insurance maintained by the Contractor or Owner shall not be called upon for contribution.

16.1.5 Contractor may take such steps as are necessary to assure Subcontractor's compliance with his obligations under this Section 16. In the event Subcontractor fails to maintain any insurance coverage required under this Agreement, Contractor may maintain such coverage and charge the expense to Subcontractor, or terminate this Agreement.

16.1.6 The required insurance shall be subject to the approval of Contractor, but any acceptance of insurance certificates by Contractor shall in no way limit or relieve Subcontractor of the duties and responsibilities by him in this Agreement. If higher limits or other forms of insurance are required in the Contract Documents, Subcontractor will comply with such requirements.

16.2 Property Insurance

16.2.1 Contractor and Subcontractor waive all rights against each other and against all other subcontractors and the Owner for loss or damage to the extent reimbursed by Builder's Risk or any other property or equipment insurance applicable to the work, except such rights as they may have to the proceeds of such insurance. If the policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver or subrogation, the Owners of such policies will cause them to be so endorsed or obtain such consent.

16.2.2 Upon written request of Subcontractor, Contractor shall provide Subcontractor with a copy of the Builder's Risk policy of insurance or any other property or equipment insurance in force for the project and procured by Contractor. Subcontractor shall satisfy himself as to the existence and extent of such insurance prior to commencement of Subcontractor's work.

16.2.3 If Builder's Risk insurance purchased by the Owner or Contractor provides coverage for Subcontractor for loss or damage to Subcontractor's work, Subcontractor shall be responsible for the insurance policy deductible amount applicable to damage to Subcontractor's work and/or damage to other work caused by Subcontractor.

16.2.4 If not covered under the Builder's Risk policy of insurance or any other property or equipment insurance required by the Contract Documents, Subcontractor shall procure and maintain at his own expense property and equipment insurance for portions of Subcontractor's work stored off the site or in transit. Subcontractor is solely responsible for loss or damage to its personal property including, without limitation; tools, equipment, scaffolding, temporary structures or property or materials created or provided under the Subcontract until delivered and accepted or installed at the Project site. Any insurance provided by Subcontractor shall include a waiver of subrogation from insurers in favor of Contractor and Owner.

16.2.5 If the Owner or Contractor has not purchased Builder's Risk or equivalent insurance including the full insurable value of Subcontractor's work, then Subcontractor may procure such insurance at his own expense as will protect the interests of Subcontractor, and his subcontractors in the work. Such insurance shall also apply to any of the Owner's or Contractor's property in the care, custody or control of Subcontractor.

16.3 Failure of Contractor to enforce in a timely manner any of the provisions of this Section 16 shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of this Agreement. Any exceptions to the provisions of this Section 16 must be delineated in the Contract Documents.

16.4 Professional Liability Insurance. All Subcontractors providing design-build or design-assist services in conjunction with their work shall provide the following coverage and limits of insurance: Professional Liability Insurance (Errors and Omissions) with a limit no less than \$1 Million per claim and \$2 Million policy aggregate containing a deductible no greater than \$50,000 per claim. Contractor reserves the right to reject any policy utilizing an SIR or require the Subcontractor to provide a bond securing an amount equal to the SIR at no additional cost to Contractor. Coverage shall be maintained continuously by Subcontractor for the duration of the project and ten (10) years following completion of construction or the applicable statutory period for which Subcontractor is liable for its work, whichever is greater. The retroactive date of such policy must be on or before the first date Subcontractor began providing professional services in conjunction with the work.

- 16.5 Contractors Pollution Liability (CPL) Insurance. If Subcontractor's scope of work includes the removal, treatment, handling or hauling of hazardous materials, Subcontractor will provide pollution liability coverage to respond to claims arising out of all hazardous material and hazardous waste remediation, storage, transportation, and disposal. Such insurance shall be written on an occurrence basis and Contractor shall be included as an insured party under the policy. Coverage shall extend to bodily injury, property damage, completed operations and clean-up costs with limits of not less than \$2,000,000 each occurrence and \$2,000,000 Million policy aggregate.
- 16.6 Waivers of Subrogation. All required insurance coverages shall contain provisions stipulating that the insurers waive all of their rights of recovery by subrogation against Contractor and Owner which shall be evidenced by endorsement in conjunction with the required certificates of insurance. Subcontractors shall require similar waivers of subrogation from each of its Subcontractors of every tier.
- 16.7 Insurance Requirements of Lower-Tier Subcontractors. Subcontractor shall ensure that its Lower-Tier Subcontractors of any tier procure and maintain insurance in like form and amounts and include the required additional insured endorsements and waivers of subrogation. Certificates of insurance and endorsements must be provided prior to Lower-Tier Subcontractors entering the project site.
- 16.8 Deductibles/Self-Insured Retention: Subcontractor shall be fully responsible for satisfying all deductibles and self-insured retentions under the Subcontractor's insurance policies applicable to the Work.
- 16.9 Additional Insurance Requirements. Please refer to the Prime Contract between the Contractor and the Owner for any additional insurance requirements that may be applicable to Subcontractor's scope of work (See Prime Contract Document 00 08 05). Additional insurance requirements applicable to Subcontractor's specific scope of work may also be included in Exhibit A to this Subcontract Agreement. In the event that applicable insurance requirements set forth elsewhere in the Contract Documents conflict with the insurance requirements set forth above, the more stringent insurance requirements providing the highest limits and greatest protection to Owner and Contractor shall apply.

SECTION 17. CLAIMS RESOLUTION PROCEDURE

- 17.1 Resolution of Disputes Involving Owner. All claims, disputes and matters in question, involving the Owner, arising out of, or relating to this Subcontract Agreement for a Particular Project or the breach thereof, except for claims which have been waived by the making or acceptance of final payment, shall be decided by the claims procedure, including any arbitration clause, specified in the prime contract between Contractor and Owner for the Particular Project. Pass-through claims will be pursued by the Contractor at the expense of Subcontractor, and Subcontractor will reimburse Contractor for the costs of legal and consulting services Contractor deems necessary to protect the interests of Contractor in connection with the processing of such claims. Without limiting any indemnity obligations elsewhere in this Subcontract, Subcontractor will indemnify Contractor against any cost or expense incurred by Contractor in connection with any claim of Subcontractor, including, without limitation, any response to an allegation of a false claim. Subcontractor shall be provided a reasonable opportunity to participate in all dispute proceedings under the Prime Contract and involving the Owner related to this Subcontract Agreement.
- 17.2 Arbitration Procedures. If, in the sole judgment of the Contractor, the controversy, dispute or claim is principally between the Contractor and Subcontractor and does not involve the Owner, then such controversy, dispute or claim between the Contractor and Subcontractor shall be determined as hereinafter provided:
- If any party has a claim, dispute, or any other unresolved matter written notice of the claim, dispute or other matter in question must be given to the other party as a precondition to proceeding with any claim against that party. Such written notice must be given within a reasonable time after party is aware of claim, dispute or other matter.
- 17.2.1 All claims, disputes and other matters in question between the Subcontractor and the Contractor arising out of or related to the Agreement or the breach thereof, except as specifically governed by the foregoing provisions, and except for claims which have been waived by the making and acceptance of final payments, or the failure to provide timely written notice, shall be decided by litigation; provided the parties agree to take all good faith efforts to resolve such disputes through informal dispute resolution procedures prior to instituting formal litigation, including but not limited to, discussions between the parties' principals with authority to resolve such disputes, and non-binding mediation.
- 17.2.2 The Subcontractor agrees to continue performance of the subcontract Work and shall proceed in accordance with the directives of the Contractor in the event of a dispute or controversy. It being understood and agreed that any controversy between the parties shall not be deemed a basis to delay or suspend the work, unless directed otherwise by the Contractor.
- 17.2.3 Notice of Demand. Notice of demand for arbitration shall be filed in writing with the American Arbitration Association and the other party to the Master Subcontract Agreement for a Particular Project. Demand form shall be that provided by American Arbitration Association. The demand for arbitration shall be made within a reasonable time after written notice of the claim, dispute or other matter in question has been given, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
- 17.2.4 Award. The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

- 17.2.5 Work Continuation and Payment. Unless otherwise agreed in writing, Subcontractor shall carry on the work and maintain the schedule of work pending arbitration or other legal proceedings, and, if so, Contractor shall continue to make payments in accordance with this Long Form Subcontract Agreement.
- 17.2.6 Consolidated Arbitration Proceedings. To the extent not prohibited by their contracts with others, the claims and disputes of Owner, Contractor, Subcontractor and other subcontractors involving a common question of fact or law shall be heard by the same arbitrator(s) in a single proceeding. In this event, it shall be the responsibility of Subcontractor to prepare and present Contractor's case, to the extent the proceedings are related to this Agreement. Should Contractor enter into arbitration with the Owner or others regarding matters relating to this Subcontract Agreement, Subcontractor shall be bound by the result of the arbitration to the same degree as the Contractor.
- 17.2.7 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 mechanic's lien laws or under any applications labor and material payment bonds unless such rights or remedies are expressly waived by him.

SECTION 18. SAFETY PRACTICES

- 18.1 Subcontractor shall comply fully with all laws, orders, citations, rules, regulations, standards and statutes with respect to occupational health and safety, the handling and storage of hazardous materials, accident prevention, safety equipment and practices including the accident prevention safety program of Owner and Contractor. Subcontractor shall conduct inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for providing a safe place to work for its employees and for employees of its subcontractors and suppliers of material and equipment, for adequacy of and required use of all safety equipment and for full compliance with the aforesaid laws, orders, citations, rules, regulations, standards and statutes. It is the responsibility of subcontractor to provide documentation to Contractor of Safety Program, Compliance with Subcontractor Program and submission of MSDS Forms.
- 18.2 Substance Abuse Policy. In keeping with Contractor's intention to provide a safe working environment for all of its employees, Contractor has established a Substance Abuse Policy for its employees and Subcontractors working at any Contractor jobsite, including the separate jobsites for Contractor's joint venture partners: Webcor and Obayashi. A copy of our Substance Abuse Policy which includes testing with reasonable cause, is available for review at any Contractor's jobsite or corporate office. In summary, any employee or Subcontractor's employee found to possess, sell, or use drugs/alcohol or any controlled substance at any Contractor jobsite will be subject to immediate termination even for a first violation. It is the responsibility of all employees and Subcontractors to enforce this policy, including immediate termination of any individual found possessing, selling, or using drugs/alcohol while on a Contractor jobsite and reporting same to the President. THERE WILL BE NO EXCEPTION TO THE ABOVE ESTABLISHED POLICY.
- NOTE TO SUBCONTRACTORS: Any employee of a Subcontractor working on a Contractor project found to possess, sell, or use drugs/alcohol will be immediately discharged from the jobsite. Any incident with your employees in this regard can be detrimental to your continued relationship with Contractor, including each joint venture partner.**
- 18.3 Subcontractor agrees to comply with the current California Occupational Health & Safety Act. Subcontractor additionally agrees to comply with Proposition 65 regarding warnings and use of chemicals at the jobsite and to not discharge or cause to be discharged any chemical on the premises during the course of his work or cleaning of his equipment at the jobsite.
- 18.4 Subcontractor shall provide their injury prevention program (IPP) to Contractor at the start of the job and have weekly toolbox safety meetings with their workers and turn in copies of these reports to Contractor on a timely basis.
- 18.5 Subcontractor will provide all necessary personal safety equipment, including hard hats for his workers. Lost time due to Subcontractor's workmen being sent off the jobsite because of lack of safety equipment will not be a reason for not meeting the Contractor's schedule. Subcontractor's workmen causing unsafe conditions or engaging in unsafe work practices will not be tolerated and may be sent off the jobsite at the discretion of the Contractor. Subcontractor will report to Contractor all accidents to or by Subcontractor's personnel or equipment which occur at this jobsite. Copies of accident reports will be given to Contractor within 24 hours of the occurrence.

SECTION 19. WARRANTY

- 19.1 Subcontractor warrants to Owner and Contractor that all materials and equipment furnished shall be new unless otherwise specified and that all work under this Agreement shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. 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 Contract Documents.

SECTION 20. USE OF CONTRACTOR'S EQUIPMENT

In the event Subcontractor shall use Contractor's equipment, materials, labor, supplies or facilities, Subcontractor shall reimburse Contractor at a predetermined rate, except as provided in Section 14 or as otherwise stated herein. Further, Subcontractor assumes all responsibility for physical damage to such equipment, materials, labor, supplies, or facilities used by Subcontractor or his agents, employees, or permittees. In the event that Contractor's employees are used by Subcontractor, Subcontractor shall have full responsibility for all acts or omissions of Contractor's employees with regard to Subcontractor's use or employment of them. Subcontractor accepts any and all of Contractor's equipment, materials, labor, supplies or facilities as furnished.

- 20.1 Notwithstanding any provision of the construction contract or any bid document to the contrary, if at the request of Subcontractor, Contractor permits Subcontractor personnel to use Contractor's equipment such as hoisting equipment, safety planks, ladders, and scaffolds, Subcontractor will indemnify Contractor and hold Contractor harmless from any and all liability, claims, actions, demands, damages, and expenses, including without limitation, reasonable attorneys' fees arising out of injury to persons or property in any connected with such use of Contractor's services, facilities, or equipment.

SECTION 21. ASSIGNMENT OF CONTRACT

Subcontractor shall not, without written consent of Contractor, assign, delegate, subcontract, transfer, or sublet any portion or part of the work required by this Agreement, nor assign any payment hereunder to others.

SECTION 22. INDEPENDENT CONTRACTOR

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

SECTION 23. CLEAN-UP

At all times during the course of construction, Subcontractor shall perform his work so as to maintain the site in a clean, safe and orderly condition. Upon completion of the work under this Agreement, Subcontractor shall remove from the site all hazardous materials, temporary structures, debris and waste incident to his operation and clean all surfaces, fixtures, equipment, etc., relative to the performance of this Agreement.

- 23.1 Subcontractor will be required, at all times, to keep the premises free from accumulation of waste materials or rubbish caused by its operations and the operations of its Lower-Tier Subcontractors. If Subcontractor fails to comply within 24 hours of a warning by the Contractor Superintendent, the clean-up will be performed by Contractor and charged to the Subcontractor. **Debris boxes will be provided for Subcontractor use.**

SECTION 24. SPECIAL PROVISIONS

- 24.1 Unless otherwise directed, Subcontractor agrees to send all materials and correspondence directly to the **job site** and not to the main office in Alameda.
- 24.2 Subcontractor agrees to submit Certificates of Insurance as evidence of insurance coverage to the Contractor directly.
- 24.3 Subcontractor will provide a warranty for its work, in accordance with the contract documents, on the form attached hereto as Exhibit "B". The duration of the warranty will be for a minimum period of two years unless a longer period is noted in the contract documents, in which case the longer period will apply. The start date of the warranty will commence on the date of substantial completion of the project and specific acceptance of the work performed under this subcontract. This warranty is in addition to the other remedies Contractor has under this Contract and California law.
- 24.4 Subcontractor agrees to attend weekly construction coordination meetings at the jobsite.
- 24.5 Unless expressly stated otherwise in the Contract Documents, the Contract price shall include all governmental agency fees, testing fees, licensing fees, individual trade permit fees, and all applicable sales and use taxes.
- 24.6 Scope shall include all unloading and hoisting of Subcontractor's own material and equipment.
- 24.7 Scope shall include scaffolding, high reach equipment, or platforms, as required to execute this subcontract.
- 24.8 Subcontractor includes complete coordination with other trades. No additional monies will be paid for extra work caused by lack of coordination.
- 24.9 Subcontractor includes shop drawings and submittals as required for all its work as specified by the contract documents or other applicable standards.
- 24.10 Subcontractor is required to submit, in writing, any Lower-Tier Subcontractors for approval by Contractor.
- 24.11 All deliveries of materials to the jobsite shall be cleared with the Contractor's superintendent (minimum 48 hours notice) with respect to date, time, and unloading or storage location.
- 24.12 The scope of work of this subcontract shall include all work reasonably inferable for work of this nature whether specifically shown or referenced in the contract documents.
- 24.13 This Subcontract shall be covered by the law of place where the project is located.

- 24.14 Prevailing Wage/Certified Payroll, and Apprentice Requirements: All persons performing labor on this Project will be paid not less than the highest prevailing rate of wages for the labor so performed as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations, and when federal funds are involved, the current General wage Determination Decisions, as determined by the U.S. Secretary of Labor . Subcontractor shall provide certified payroll reports on a weekly basis with respect to all persons performing labor on the Project, and shall require its subcontractors to fulfill this same requirement. Subcontractor shall also comply with the requirements of the State Apprenticeship Program and San Francisco Administrative Code, section 6.21(o). See Prime Contract (Document 00 05 20) Article 8 and General Conditions (Section 00 07 00) Article 11. Subcontractor shall indemnify Contractor for any penalties incurred as a result of Subcontractor's failure to fulfill these requirements.
- 24.15 False Claims and Other Violations: Under San Francisco Administrative Code section 6.22M, any Subcontractor or supplier who fails to comply with the terms of the Prime Contract as applies to their respective scopes of work, who violates any provisions of San Francisco Administrative Code Chapter 6, who submits false claims, or who violates against any governmental entity a civil or criminal law relevant to its ability to perform under or comply with the terms and conditions of this Agreement, may be declared an irresponsible bidder and debarred according to the procedures set forth in San Francisco Administrative Code section 6.80, et seq.
- (i) Subcontractor warrants that it shall, prior to submittal to Contractor, thoroughly analyze all payment applications, change order requests, claims and statements in support thereof and by its submission of same certifies that all information therein is true and accurate to the best of Subcontractor's knowledge and belief. Subcontractor is also directed to the claim certification requirements set forth in Section 13.02(C) of the General Conditions (Document 00 07 00) of the Prime Contract for this Contract which shall apply to Subcontractor and its lower tier Subcontractors/Suppliers with respect to submission of claims in the same manner that Contractor is required to certify its claims to the Owner.
 - (ii) A Subcontractor or Supplier who submits a false claim may be subject to monetary penalties, investigation, and prosecution as set forth in San Francisco Administrative Code section 6.80, et seq., California Government Code Section 12650, et seq., and the Federal False Claims Act.
 - (iii) Subcontractor shall indemnify Contractor to the maximum extent afforded under applicable law against any losses or liabilities arising out of or in connection with Subcontractor's violation of the applicable laws related to the submission of false claims as set forth in subparagraph A, above.
- 24.16 Earned Income Credit (EIC) Forms. San Francisco Administrative Code Chapter 12O requires that employers provide their employees with IRS Form W-5 (the Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below.
- (i) Subcontractor shall provide EIC Forms to each Eligible Employee at each of the following times: (a) within thirty days following the date on which this Subcontract becomes effective (unless Subcontractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (b) promptly after any Eligible Employee is hired by Subcontractor; and (c) annually between January 1 and January 31 of each calendar year during the term of the Subcontract.
 - (ii) Failure to comply with any requirement contained in subparagraph (i) above shall constitute a material breach by Subcontractor of the terms of this Subcontract. If, within twenty-five days after Subcontractor receives notice of such a breach, Subcontractor fails to cure such breach or, if such breach cannot reasonably be cured within such period, Subcontractor fails to commence such cure to completion, Contractor may pursue any rights or remedies available under this Subcontract or applicable law.
 - (iii) Any subcontract entered into by Subcontractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this Section 24.16.
- 24.17 Assignability of Subcontracts. All lower tier subcontracts and purchase agreements of suppliers and lower-tier suppliers shall provide that they are freely assignable to the Contractor and/or the TJPA.
- 24.18 Audit. Contractor reserves its right to review, obtain copies of, and audit any and all of Subcontractor's financial information and documents concerning the project and any associated jobsite or home office overhead expenses.

CONTRACTORS, INCLUDING SUBCONTRACTOR AND LOWER-TIER SUBCONTRACTORS, ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTOR'S STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR OF THE BOARD, WHOSE ADDRESS IS:

Contractor's State License Board
Post Office Box 26000
Sacramento, CA 95826

Dated: _____ Dated: _____

CONTRACTOR

SUBCONTRACTOR

WEBCOR/OBAYASHI JOINT VENTURE

By: _____
(Signature – Webcor/Obayashi Joint Venture)

Printed Name: _____

Title: _____

1751 Harbor Bay Parkway, Suite 200
Alameda, CA 94502
Contractor's License No.: 928731A, B, C-8

By: _____
(Signature)

Printed Name: _____

Title: _____

Address
City, State, Zip:
Contractor's License No.: _____