

STANDARD SUBCONTRACT

This Agreement is made at Richmond, Contra Costa County, California, this xxth day of xxx, 2016, between **Alten Construction, Inc.**, hereinafter called CONTRACTOR, whose address is 720 12th Street, Richmond, CA 94801 and **Subcontractor Name**, whose address is **Address**, hereinafter called SUBCONTRACTOR.

On or about the **xxth day of xx, 2014** Contractor entered into a prime contract with the **xxxxxxx** called OWNER, whose address is **xxxxxxxxxxxxx** to perform the following construction work at **Project Name**, whose address is **xxxxxxxxxxxxxxx**.

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 ARCHITECT: **Firm Name**, whose address is **xxxxxxxxxxxxxxxxxxxxxxx**.

The effective date of this agreement is understood to be the day the subcontractor starts work, OR the date the subcontract is signed by the CONTRACTOR, whichever is sooner.

SECTION 1. ENTIRE CONTRACT

The phrase "Contract Documents" is defined to mean and include **Plans Dated xxxx & Specifications Dated xxxxx**. 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 and that he enters into this Agreement based upon his investigation of all such matters and is not relying on any opinions or representations of Contractor. This Agreement represents the entire agreement. The Project Contract Documents are incorporated in this Agreement by reference, and Subcontractor and his 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 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. Subcontractor agrees that it will perform the full scope of its work and these subcontract terms for the Subcontract Price, and verified that it is able to do so based on its review, investigation and familiarity with the Contract Documents, job site, and work conditions.

SECTION 2. SCOPE

Subcontractor agrees to furnish all labor, materials, installation, equipment, and other facilities required to perform the work to complete the following for the project in accordance with the Contract Documents and as more particularly specified in the **Project Manual/Specification Book dated xxxxx**.

Section number: xxx; and all related sections as per project specification sections.

Also all related Sections but not limited to the General Conditions and Sections for Submittals, Material and Equipment, Substitutions, Cleaning and Closeout Procedures, and Warranties.

- 1. Addenda:**
- 2. Alternates: xxxxxx were accepted by Owner.**
- 3. Two (2) Hard Copies of the Subcontractors IIPP must be submitted to the Contractor upon execution of this contract.**
- 4. All Material Substitutions must be made to the District within xx Days of Notice Proceed (which is dated xxxxx).**
- 5. All Submittals must be prepared and processed within xx days of issuance of Notice to Proceed (which is dated xxx). A nominal fee of \$50/day will be charged to the Subcontractor for every calendar day past the original due date for all submittals as defined by the Contract Documents. The same shall apply to revisions and resubmittals that that are submitted after the time allotted by the Contract Documents.**
- 6. Subcontractor is responsible to warranty its work for a period of xx years per General Conditions 00700. Subcontractor is also responsible for any and all guarantees and warranties as defined in its individual and related specification section(s).**

In the event of any dispute between Contractor and Subcontractor over the scope of Subcontractor's work under the Contract Documents, 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 below. In the event of any conflict or ambiguity between any parts of the Contract Documents, Subcontractor shall perform to the more stringent standard at no additional cost to Contractor, absent other written direction from Contractor. Subcontractor warrants it has reviewed the Contract Documents in full and will call out any potential conflict or ambiguity in writing in advance of execution of the Subcontract.

SECTION 3. CONTRACT PRICE

Contractor agrees to pay Subcontractor for the strict performance of his work, the sum of: **xxxxxxx dollars (\$ xxxx.00)**, or as set out in Section 25 below, subject to additions and deductions for changes in the work as may be directed in writing by Contractor, and to make payment in accordance with the Payment Schedule, Section 4.

SECTION 4. PAYMENT SCHEDULE AND ACCOUNTING RECORDS

Contractor agrees to pay to Subcontractor in monthly progress payments of **Ninety-five percent (95%)** of labor and materials which have been placed in position, with funds received by Contractor from Owner for work performed by Subcontractor as reflected in Contractor's applications for payment. Contractor shall make such monthly progress payments seven (7) days after receipt of payment from the Owner. Payment is contingent upon A) receipt of funds from Owner by Contractor, and B) SUBCONTRACTOR and all (Suppliers & Tier Subcontractors) providing the standard conditional and unconditional lien releases, insurance certificates, approved certified payroll, proof of paid fringes and execution of this contract. Subcontractor shall agree to furnish, if and when required by Contractor, payroll affidavits, receipts, vouchers, releases of claims for labor, material, and from his subcontractors performing work or furnishing materials under this Agreement, all in form satisfactory to Contractor, and it is agreed that no payment hereunder shall be made, except at Contractor's option, until and unless such documents have been furnished. Contractor, at his option, may make any payment due hereunder by check made payable jointly to Subcontractor and any of his subcontractors, suppliers and material men who have performed work or furnished materials under this Agreement. Any payment made hereunder prior to completion and acceptance of the work, as referred to above, shall not be construed as evidence of acceptance or acknowledgment of completion of any part of any Subcontractor's work. Contractor shall make such monthly progress payments ten (10) days after receipt of payment from the owner.

The Subcontractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred including, without limitation, reasonable substantiation of all expenses incurred based on actual costs and all property, materials and supplies acquired for the purposes of performing the Work and all terms and conditions of the Agreement. Furthermore, the Subcontractor shall cause its affiliated or associated companies, if any, and its agents and its Subcontractors of any tier to maintain such controls, records and accounts. The Contractor and Contractor's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Subcontractors, Sub-subcontractors records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, calculations, schedules, leases, licenses, contracts, receiving reports, delivery tickets, payrolls, time sheets, expense reports, vendor quotations and data, journals, ledgers, data stored upon computers, and other data relating to the Work and/or any extra or additional work or changes to the Work, subcontracts, Sub-subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. Further, within 5 business days after Contractor's demand, Subcontractor shall deliver a written statement of all outstanding project payables, vendors, material suppliers, employees and lower tier subcontractors, verified as substantially true and accurate. The Subcontractor shall preserve these records for a period of Four (4) years after final payment, or for such longer period as may be required by law.

Final payment to Subcontractor shall be made: after the entire work required by the prime contract has been fully completed in conformity with the Contract Documents and has been delivered to and accepted by Owner, Architect and Contractor; with funds received by Contractor from Owner in final payment for work under prime contract within seven days from the time that all or any portion of the retention proceeds are received by the original contractor, the original contractor shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the retention received.

Nothing herein shall create a condition, which would be unlawful or void under applicable law. If such an unlawful or void condition were to be created by this Agreement, then the Agreement shall be reformed and construed to allow Contractor a reasonable period of time to pursue payment from Owner or other responsible parties (whether formally or informally, or through litigation) before payment shall be due to Subcontractor.

Subcontractor acknowledges that its right to seek payment directly from Contractor in litigation and to make a claim against a payment bond (if applicable) provides an adequate remedy. Accordingly, to the greatest extent permitted by law, Subcontractor agrees not to file stop notices or record mechanic's liens prior to when payment would be due to Subcontractor, except when it is strictly necessary to do so to preserve stop notices or record liens would expire within less than 5 days because the project has been completed. In the event that Subcontractor prematurely files a stop notice or records a mechanic's lien before payment is due, when it is not necessary to do so in order to preserve its lien or stop notice rights because the project has been completed, then Subcontractor agrees that payment shall not be due until a reasonable period of time after the stop notice or lien has been released by Subcontractor. If Subcontractor violates this obligation, then it agrees it shall not be deemed a prevailing party, and it further agrees to reduce the amount it is owed by the cost of any release bond or other measures required to obtain a release of the stop notice or lien.

SECTION 5. ASSIGNMENT OF CONTRACT

Subcontractor shall perform with its own organization all work required by this agreement. "It's own organization" shall be construed to include only workers employed and paid directly by the subcontractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the Subcontractor. **Subcontractor shall not, without written consent of Contractor, assign, transfer, or sublet any portion or part of the work required by this Agreement, nor assign any payment hereunder to others. Failure to provide 48-hour written notice of assignment will be considered a breach of this contract.** If Subcontractor is given written consent to assign, transfer or sublet any portion or part of the work, Subcontractor shall bind its subcontractors, assignees or subletors to all of the terms and provisions of this Agreement. Subcontractor shall furnish all copies of subcontracts of any tier to Contractor. No assignment, subcontract, or sublet shall be valid unless Subcontractor has fully complied with the provisions of this paragraph. Contractor may assign or transfer the whole part of this Agreement, and its rights to hereunder, to any corporation, individual or partnership.

Subcontractor represents to Contractor that it has not sold or assigned its receivables that will be due under this agreement to a third party assignee (factoring company) and does not now anticipate selling its receivables due under this agreement to a third party assignee during the term of this Agreement. If Subcontractor assigns the receivables due under this Agreement to a third party assignee (factoring company), Subcontractor agrees to immediately give written notice of such assignment to Contractor, and to contemporaneously tender to Contractor a copy of all correspondence between Subcontractor and such assignee/factoring company, including a copy of the applicable contract(s) between Subcontractor and its assignee/factoring company.

SECTION 6. TIME

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 conform to Contractor's progress schedule and all revisions or changes made thereto. Subcontractor shall participate in weekly jobsite coordination meetings by ensuring that at least one lead person from his crew is in attendance. 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 work. In the event Subcontractor fails to maintain his part of the Contractor's schedule, he shall, without additional compensation, accelerate the work as Contractor may direct until Subcontractor's work is in accordance with such schedule, without additional compensation. In addition to all other remedies, in the event Subcontractor fails to diligently prosecute the work or meet the project schedule, Contractor shall have the right to supplement crews of Subcontractor and deduct the cost of same, along with reasonable overhead and mark up, from subcontractor. 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 Owner, Architect of Contractor, or should Subcontractor be delayed waiting for materials, if required by this Contract to be furnished by Owner or Contractor, or by damage caused by fire or other casualty for which Subcontractor is not responsible, or by the combined action of the workmen, in no way caused by or resulting from fault or collusion on the part of Subcontractor, or in the event of a lock-out by Contractor, then the time herein fixed for the completion of the work shall be extended the number of days that subcontractor has thus been delayed, but no allowance or extension shall be made unless a claim therefore is presented in writing to Contractor within 48 hours of the commencement of such delay, and under no circumstances shall the time of completion be extended to a date which will prevent Contractor from completing the entire project within the time allowed Contractor by Owner for such completion.

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 the Agreement, or delays by other subcontractors or Owner, shall be recoverable from Contractor, and the above-mentioned extension of time for completion shall be the sole remedy of Subcontractor; provided, however, that in the event Contractor obtains additional compensation from Owner on account of such delays, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor from Owner as is equitable under all of the circumstances. In the event that Contractor prosecutes a claim against Owner for additional compensation for any delay, Subcontractor shall cooperate fully with Contractor in the prosecution thereof and shall pay costs and expenses incurred in connection therewith, including actual attorneys' fees, to the extent that said claim is made by Contractor at the request of Subcontractor. 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. Any resolution of such claim by contractor with Owner shall be binding and conclusive upon Subcontractor.

DAMAGES CAUSED BY DELAYS

If Subcontractor should default in performance of the work described in Section 2 or should otherwise commit any act which causes delay to the prime contract work, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages and liquidated damages, sustained by Contractor, including but not limited to damages for which Contractor may be liable to Owner or any other party because of Subcontractor's default.

SECTION 7. CHANGES IN THE WORK

Subcontractor shall make any and all changes in 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.

*** All Change Order Requests are to be broken out per Individual Line items, Labor (Hours and rate), Material (Including quantities), Equipment, Tax and Overhead & Profit.**

If necessary, 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 of the addition to or deduction from the price or time. **These price changes from the Subcontractor shall be sent to the Contractor within 5 business days of the Subcontractor receiving the direction of change.**

If Contractor and Subcontractor cannot agree on the amount of the addition or deletion, Subcontractor shall nonetheless timely perform the work as changed upon Contractor's written direction to proceed or the failure to reach an agreement on the amount of the addition or deletion. Once Subcontractor receives Contractor's written direction, Subcontractor is solely responsible for timely performance of the work as changed by the written direction. Payment for changed work shall be made in accordance with Section 4. Where agreement is reached over changed work, such change order shall be conclusive and constitutes a waiver by Subcontractor of any other sums, claims, time impacts or other costs not expressly stated in the change order, which arise from the changed work.

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 from Contractor or any form of 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.

If a dispute arises between Contractor and Subcontractor about whether particular work is a change in the work described in Section 2, Subcontractor shall timely perform the disputed work and may give written notice of a claim for additional compensation for that work. Such written notice of claim must be given within ten (10) days after such work is performed. Subcontractor's failure to give written notice within the ten (10) days constitutes an agreement by him that he will not be paid for the disputed work.

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 8. BONDING OF SUBCONTRACTOR

If required by Contractor at any point prior to, during, or after execution of this agreement, Subcontractor shall, execute a labor and material bond and performance bond, in an amount equal to one hundred percent (100%) of the Contract Price. Said bonds shall be executed by a corporate surety acceptable to Contractor and shall be in a form satisfactory to Contractor. Contractor shall pay the premium on said bonds up to 2% of face amount of bond unless otherwise provided herein or in the Contract Documents.

SECTION 9. LIENS

In case a lien, stop notice, or payment bond claim is asserted against Contractor, Owner or Lender by Subcontractor or any of its employees, vendors, suppliers or subcontractors ("Claim"), or suit is brought on any claim or liens for labor performed or materials used on or furnished to the project, Subcontractor shall pay and satisfy any such lien, claim or judgment as may be established by the decision of the court in said suit. Subcontractor agrees within ten (10) days after written demand to cause the effect of any such suit, stop notice, payment bond claim or lien to be removed from the premises, and project, and in the event Subcontractor shall fails to do so, Contractor is authorized to use whatever means in its discretion if may deem appropriate to cause said lien or suit 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 lien, stop notice or bond 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 moneys due to Contractor from Owner by reason of such liens or suits.

Stop Payment Notice – an improper or erroneous stop payment notice filed by the Subcontractor will result in a 15% fee charged to your account of the improper or erroneous amount. This amount will be assessed to the Subcontractor's account in addition to any related costs for removing such notice.

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 or 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 moneys 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 scope of 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 moneys otherwise due under this Agreement.

SECTION 12. PROTECTION OF WORK

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

SECTION 13. LABOR RELATIONS

13.1 Subcontractor must provide experienced and competent personnel for supervision at the job site during all times when Subcontractors 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 the 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. Contractor, at its sole discretion, may request to have field and/or management immediately removed and replaced with an individual acceptable to Contractor.

Subcontractor acknowledges that Contractor has entered into labor agreements covering work at his construction job sites with the labor unions listed in Section 23 below and incorporated herein by reference, and that such Labor Agreements are therefore incorporated herein by this reference. Subcontractor agrees to comply with all of the terms and conditions of those labor agreements including trust fund payment into the respective labor trust funds set forth in the respective labor agreements, referred to in Section 23 below insofar as Subcontractor may lawfully do so, and in particular agrees to comply with the terms and provisions of said agreements setting forth the jurisdiction and scope of work claimed by each of such crafts and the procedure contained therein for resolution of jurisdictional disputes. In the absence of any such procedure, or if such procedures fails to promptly resolve the jurisdictional dispute, Subcontractor agrees, at his own cost and expense, upon request of Contractor, to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board.

Subcontractor acknowledges that terms and conditions of the labor agreements with the unions listed herein below 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.

Should there be picketing on the Contractor's jobsite, and the Contractor establishes a reserved gate for the Subcontractor's purposes, it shall be the obligation of the Subcontractor to continue the proper performance of its work without interruption

or delay. Should the Subcontractor's presence or activity cause a labor-related problem at the construction site, the Subcontractor shall bear the full costs thereof. Subcontractor shall also promptly obtain, and pay the full costs of, any court orders necessary to restrain acts in violation of the law resulting from Subcontractor's presence or activities. Subcontractor shall be bound by all relevant local, state and federal laws governing labor relations, and shall fully indemnify and hold Contractor harmless from and against claims, liability loss, damage, cost, expenses, including attorney's fees actually incurred in good faith, awards, fines or judgments arising by reason of any violation of such laws, or failure to fulfill the covenants set forth in this paragraph. 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 this Agreement, to agree to all of the foregoing promises and undertakings, to the same effect as herein provided with respect to Subcontractor.

13.2 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.

13.3 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 Contractor no later than three (3) working days after labor has been paid. All such submitted reports are subject to audit by Contractor upon demand, including review of bank payroll records to verify compliance.

13.4 Subcontractor shall comply with and agrees to be bound by all applicable federal, state and local laws and regulations, including, but not limited to, all provisions of the Fair Labor Standards Act, the Americans With Disabilities Act, the federal Family and Medical Leave Act, the California Labor Code, the California Fair Employment and Housing Act, and the California Family Rights Act. Attached hereto as Exhibit "A" are the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815. These provisions are incorporated by reference into this Subcontract when payment of prevailing wages is required by contract or law, and Subcontractor agrees to comply with these provisions and all interpretations thereof by the Director of the Department of Industrial Relations insofar as they are applicable to Subcontractor. Upon request, Subcontractor shall submit certified payroll records to Contractor no later than three (3) working days after labor has been paid. Prior to receiving final payment for Work performed on the Project, when payment of prevailing wages is required by contract or law, Subcontractor shall sign an affidavit under penalty of perjury that Subcontractor has paid the specified general prevailing rate of per diem wages to its employees for the proper craft needed to fulfill the obligations of this Subcontract and all amounts due pursuant to Labor Code section 1813. Subcontractor further promises and agrees that it will bind and require all of its sub-subcontractors and their subcontractors performing any Work under this Subcontract to agree to all of the foregoing promises and undertakings contained in this Section 13.3, to the same effect as herein provided.

13.5 If this project involves Public Work, Subcontractor shall comply with and agrees to be bound by California Labor Code sections 1725.5 and 1771.1, Labor Code section 1771.1(a) provides that a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of California Public Contract Code section 4104, or engage in the performance of any contract for public work unless currently registered and qualified to perform public work pursuant to Section 1725.5. Subcontractor represents that as of the date of execution of this Agreement, Subcontractor is registered and qualified to perform public work pursuant to California Labor Code section 1725.5 and that attached hereto as Exhibit "B" is confirmation of Subcontractor's current registration status. Subcontractor shall maintain its registration and qualification pursuant to Labor Code section 1725.5 at all times during the performance of the Work. On request, Subcontractor shall supply evidence of such registration to Contractor.

13.6 If this project is designated one for which California Prevailing Wages are required, Subcontractor is obligated to register with the State of California Department of Industrial Relations for such purposes, and shall affix a copy of proof of registration to this Subcontract.

SECTION 14. RECOURSE BY CONTRACTOR

14.1 Failure of Performance

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 to commence and continue satisfactory correction of such default with diligence and promptness, then Contractor, without prejudice to any 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 the same including reasonable overhead, profit, and actual attorneys' fees incurred as a result of Subcontractor's failure of performance;

(b) contract with one or more additional contractors to perform such part of Subcontractors work as Contractor shall determine will provide the most expeditious completion of the total work and charge the cost thereof to Subcontractor; and

(c) withhold payment of any moneys due Subcontractor pending corrective action to the extent required by and to the satisfaction of Contractor.

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

14.1.2 Termination for Default. If Subcontractor fails to commence and satisfactorily continue correction of a default within forty-eight (48) hours after receipt by Subcontractor of the notice issued under Section 14.1.1, then Contractor may terminate Subcontractor's right to perform 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 cost incurred by Contractor in performing Subcontractor's work, including a markup of fifteen percent (15%) for overhead and profit on such expenses, plus actual attorneys' fees as provided above, shall be deducted from any moneys due or to become due Subcontractor for such use. 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 a termination for default is adjudicated as improper, Subcontractor's damages shall be limited to the amounts set forth under Section 14.1.3, as if a Termination for Convenience.

14.1.3 Termination for Convenience. Contractor may at any time and for any reason terminate Subcontractor's services and work at 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 of 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. 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 Owner for any additional compensation or damages in the event of such termination and payment.

14.1.4 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 attorneys' 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; (7) material default or termination of Subcontractor, (8) any other ground for withholding payment allowed by State or Federal law, or as otherwise provided in this Agreement. When the above matters are rectified, such amounts as then due and owing shall be paid or credited to Subcontractor.

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 upon giving forty-eight (48) hours written notice, by certified mail, to Subcontractor and its surety, if any. If an order of relief is entered under the Bankruptcy Code with respect to Subcontractor, Contractor may terminate this Agreement by giving forty-eight (48) hours written notice, by certified mail, to Subcontractor, its trustee, and its surety, if any, unless Subcontractor, the surety, or the trustee:

(a) promptly cures all defaults;

- (c) provides adequate assurance of future performance;
- (d) compensates Contractor for actual pecuniary loss resulting from such defaults; and
- (e) assures the obligations of Subcontractor within the statutory time limits.

14.2.2 Interim Remedies. If Subcontractor is not performing in accordance with the schedule of work 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. Contractor may offset against any sums due of 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 such expense may exceed the unpaid balance of the Contract Price.

SECTION 15. INDEMNIFICATION

15.1 Subcontractor Performance

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 of California, Subcontractor shall defend, indemnify and save harmless 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 action, damages, costs, expenses, actual attorneys' 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, emotional injury, sickness or disease, or death to persons, including, but not limited to, any employee or agents of Subcontractor, 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.

(d) Claims and liens (see Section 9) for labor performed or materials used or furnished to be used on the job, all incidental or consequential 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 provisions of (a) through (g) above shall extend to Claims occurring after this Agreement is terminated as well as while it is in force, and during and after performance of any work or operations by Subcontractor. Such indemnity provisions apply regardless of any passive negligent act or omission of 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 do the following:

(a) Irrespective of the scope of indemnity, unless an act arises from the willful misconduct or sole negligence of Contractor, at Subcontractor's own cost, expense and risk, Subcontractor shall defend all Claims as defined in Section 15.1 that may be brought or instituted by third persons, including, but not limited to, governmental agencies or employees of Subcontractor, against Contractor or Owner or their employees or any of them;

(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 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.

(d) Contractor shall have the right to approve the choice of legal counsel to defend its interests under this indemnity, which consent shall not be unreasonably withheld.

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.

SECTION 16. INSURANCE

16.1 Casualty Insurance

Subcontractor and all lower tier subcontractors shall, at their own expense, procure and maintain insurance on all of his operations, in companies acceptable to Contractor, as follows:

16.1.1 Worker's Compensation and Employer's Liability Insurance. Worker's 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

** Waiver of subrogation is required and endorsement is to be attached to the certificate.

If there is an exposure of injury to Subcontractor's employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, 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 covering all operations by or on behalf of Subcontractor providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

- (1) premises and operations;
- (2) products and completed operations;
- (3) contractual liability insuring the obligations assumed by Subcontractor in this Agreement;
- (4) broad form property damage (including completed operations);
- (5) explosion, collapse, and underground hazards; and
- (6) personal injury liability.

Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limit, where applicable, shall apply separately to Subcontractor's work under this Agreement.

One of the following coverage forms is required:

Comprehensive General Liability

Commercial General Liability (Occurrence)

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; \$2,000,000 aggregate. Contractor, his officers, directors, and employees and Owner shall be named as additional insureds under the Comprehensive General Liability insurance policy. The policy shall stipulate that the insurance afforded the additional insureds shall apply as primary insurance and that any other insurance carried by the Contractor, his officers, directors, and employees or Owner will be excess only and will not contribute with this insurance.

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 liability

\$1,000,000 aggregate for products-completed operations
\$2,000,000 general aggregate

If the policy does not have an endorsement providing that the general aggregate limit applies separately to this project, or if defense costs are included in the general aggregate limit, then the required aggregate limits shall be \$2,000,000.

Contractor, his officers, directors, and employees, and Owner shall be named as additional insureds under the Occurrence Form CG-2010-11/85 or its equivalent (equivalent is the CG2010 0704 and the CG203 together) as published by the Insure and Property Damage Combine. The policy shall stipulate that the insurance afforded the additional insureds shall apply as primary insurance and that any other insurance carried by the Contractor, his officers, directors, and employees or Owner will be excess only and will not contribute with this insurance.

16.1.2.3 No Subcontractor policy can contain a self insured retention (SIR).

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 not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage. If Subcontractor's General Liability insurance is provided by a Commercial General Liability policy (whether the Occurrence or the Claims Made form), then Subcontractor's automobile liability insurance policy shall include coverage for automobile contractual liability.

16.1.4 Pollution Insurance If Subcontractors are required to perform remedial hazardous material operations such as asbestos containing materials, contaminated soil etc., they must, in addition to the above requirements, carry a "Contractor's Pollution Liability" policy with limits not less than 2,000,000 per occurrence and not less than \$2,00,000, aggregate for Bodily Injury, Personal Injury and Property Damage naming Contractor and Owner as additional insured including contractual liability coverage. If Subcontractor or their lower tier subcontractors haul hazardous waste they must carry Automobile Liability Insurance with a \$2,000,000 combined single limit per occurrence for Bodily Injury and Property Damage applicable to all hazardous waste hauling vehicles and include MCS 90.

16.1.5 Professional Liability A \$1,000,000. Professional Liability insurance policy shall be carried if Subcontractor or their lower tier subcontractor is to provide design or design/build services to the project. Such insurance shall include coverage for contractual liability. Evidence of coverage in the form of a Certificated of insurance shall be provided prior to the start of work to Contractor and such coverage shall be maintained for two (2) years following the completion of the project.

16.1.6 Certificates of insurance, as evidence of the insurance required by this Agreement shall be furnished by Subcontractor to Contractor before any work hereunder is commenced by Subcontractor. The certificates of insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) days prior written notice to Contractor.

16.1.7 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.

16.1.8 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

Contractor and Subcontractor waive all rights against each other and against all other subcontractors and 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 of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

Upon written request of Subcontractor, the 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.

If Builder's Risk insurance purchased by 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.

If not covered under 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 Subcontractor's work stored off the site or in transit.

If 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 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.

SECTION 17. CLAIMS RESOLUTION PROCEDURE

17.1 Agreement to Arbitrate

At the sole election and option of Contractor, in writing to Subcontractor, all claims, disputes and matters in question arising out of, or relating to this Agreement 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. In the absence of an agreement to arbitrate in the prime contract, and absence of Contractor's written election to have Subcontractor joined in such owner disputes resolution or arbitration above, no claims or disputes between Contractor and Subcontractor shall be arbitrated unless separately elected in writing by Contractor at its sole election, option and discretion, in which case), binding arbitration shall take place before the American Arbitration Association under its Construction Industry Rules. If Contractor demands mediation, Subcontractor shall comply and participate with the mediation sought through the American Arbitration Association under its Mediation selection provisions under its Construction Industry Rules, to take place expeditiously within 60 days of demand.

17.2 Condition Precedent and Sole Remedy as to Pass Through Claims. Subcontractor agrees to cooperate with Contractor as to any Pass Through Claims including certification under penalty of perjury under the False Claims Act, and at request of Contractor, provision of an opinion letter of a licensed engineer, architect and/or attorney for Contractor's benefit that the Claim has been thoroughly reviewed as such professional has determined such claim is not false. Additionally, subcontractor's sole remedy for pass through claims is approved and paid funds from Owner for such claim, absent which, Contractor shall have no liability to Subcontractor for such claims. Should Contractor pursue such a claim, Contractor may deduct its costs of pursuit including legal and expert costs before delivery of received funds attributable to Subcontractor's claim, or require Subcontractor to retain counsel and experts to prosecute the claim in Contractor's name. If Subcontractor has not provided a bond for performance, then as a condition precedent to pursuit of a claim, in addition to all other requirements, Contractor may require provision of an indemnity bond from a licensed surety rated A- or better, in an amount reasonably calculated to reflect the costs involved and legal risks if the claim after merits review is not sustained by a trier of fact, that indemnifies contractor as to any damages, counterclaims or legal exposure, including fines, false claims penalties, and attorneys fees from assisting in prosecution of subcontractor's claim or claims; Contractor may also withhold sufficient other contract funds (other than the claim amounts sought) from Subcontractor with or without provision of such indemnity bond to reasonably protect Contractor from such risks. Contractor may also seek an independent expert review of subcontractor's claim at Subcontractor's expense, at any time, after ten days notice to Subcontractor, in order to assure itself of the merit to the claim, its costs, and its documentation and back up.

17.2.1 Notice of Demand. Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and shall conform to the requirements of the arbitration provision set forth in the prime contract. 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.

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

17.2.3 Work Continuation and Payment. Unless otherwise agreed in writing, Subcontractor shall carry on the work and maintain the schedule of work pending arbitration, and, if so, Contractor shall continue to make payments in accordance with this Agreement.

17.2.4 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 faults others regarding matters relating to this Agreement. Subcontractor shall be bound by the result of the arbitration to the same degree as Contractor.

SECTION 18. SAFETY PRACTICES

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 and 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.

Per OSHA regulations, Subcontractor must have a copy of their IIPP on site and readily available at all times. In addition to this legal requirement, Subcontractor must also furnish hard copies of their IIPP to the Contractor for keeping in the site trailer. Subcontractor will provide these copies of the IIPP before beginning any work on site.

SECTION 19. WARRANTY

Subcontractor warrants to Owner, Architect 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 defects and in strict 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

With the exception that this Section 20 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the public policy of the State of California, Subcontractor shall defend, indemnify and save harmless 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 action, damages, costs, expenses, actual attorneys' 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 equipment owned or on rent by Contractor in which Contractor rents, leases or loans to a subcontractor. Such indemnification applies to personal injury, including, but not limited to bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to, any employee or agents of Subcontractor, 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.

Additionally, Subcontractor agrees to pay for any and all costs associated with damage to the equipment which is shown to have occurred while in use by Subcontractor and/or Subcontractor's suppliers, tiered subs, or anyone for whose acts Subcontractor may be liable.

The indemnification provisions herein shall extend to Claims occurring after this Agreement is terminated as well as while it is in force, and during and after performance of any work or operations by Subcontractor.

Such indemnity provisions apply regardless of any passive negligent act or omission of 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.

Subcontractor's insurance as set forth in Section 16 shall be applicable to this Section 20 and apply as primary insurance and that any other insurance carried by Contractor will be excess only and will not contribute.

SECTION 21. 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, use 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, whether levied under existing or subsequently enacted laws, rules or regulations. Subcontractor, upon request, shall furnish evidence satisfactory to Contractor that any or all the foregoing obligations have been fulfilled.

SECTION 22. CLEAN-UP

At all times during the course of construction, the Contractor will work to provide a clean, safe and orderly environment for all trades. Subcontractor shall perform his work so as to maintain this clean, safe and orderly environment. This includes but is not limited to the Subcontractor performing daily cleanup of debris created by his activities. If Contractor has to clean up for Subcontractor, charges will be made to the Subcontractor for the cost of such clean up.

When applicable, waste management practices shall be in place for separating construction debris. Subcontractor is required to participate in that effort by separating and appropriately disposing of his construction debris in accordance with the Waste Management Plan.

Upon completion of the work under the Agreement, Subcontractor shall remove from the site all temporary structures, debris and waste incident to his operation and clean all surfaces, fixtures, equipment, etc., relative to the performance of this Agreement. If the Subcontractor fails to perform a clean-up function within two (2) days after notification from the Contractor, Written or Oral, to do so, Contractor may proceed with that function as it judges necessary in the manner it may deem expedient, and the cost thereof shall be charged to Subcontractor and deducted from monies due under the agreement.

SECTION 23. LABOR AGREEMENTS

Alten Construction, Inc. is signatory to the Carpenters Union & Laborer's Union.

SECTION 24. NPDES PERMIT COMPLIANCE

Subcontractor's attention is directed to the State of California's National Discharge Elimination System Permit (NPDES Permit). On projects larger than One (1) acre, the Contractor shall prepare a Storm Water Pollution Prevention Program (SWPPP) plan and submit the plan to the State Water Quality Control Board. The State of California requires that the Subcontractor comply with this SWPPP plan.

Furthermore the State of California has regulations that may be more stringent than this Subcontract Agreement, the agreement with the Owner, or the submitted SWPPP plan; Subcontractor shall be responsible for complying with all State of California NPDES regulations.

The Subcontractor shall comply with the SWPPP plan and shall implement all requirements as relating to their trade. The SWPPP plan typically provides direction for the control of storm water, irrigation water, pipe flushing water, excavation dewatering, and pollution control (among others). The Subcontractor shall receive no separate payment or compensation for the implementation of the SWPPP plan. The Subcontractor shall: Read and be thoroughly familiar with all of the requirements of the SWPPP; Read and be thoroughly familiar with the State of California's NPDES Permit; Implement the SWPPP plan; Inspect and monitor all Work and storage areas for compliance; Complete any and all corrective measures as may be directed by the Qualified SWPPP Practitioner (QSP), Qualified SWPPP Developer (QSD), Contractor, or Regulatory Agencies; Complete any and all corrective measures within the Three (3) day requirement of the NPDES Permit.

Availability: The baseline SWPPP plan will be electronically transmitted to the Subcontractor once approved by the State; After approval by the State, the updated SWPPP plan will be available in paper format at the jobsite construction trailer; The California NPDES Permit is available on the internet at http://www.swrcb.ca.gov/water_issues/programs/stormwater/constpermits.shtml.

The Subcontractor shall be solely responsible for his area and scope of work; The Subcontractor shall be solely responsible for any and all fines, penalties, or damages which result from failure to comply with the requirements of the State of California's NPDES, or the SWPPP plan. The SWPPP plan is a minimum requirement; The State of California's NPDES Permit may require more stringent measures than those shown on the SWPPP plan.

SECTION 25. SPECIAL PROVISIONS (Including unit pricing, if applicable) Subcontractor agrees it assumes the following obligations and shall adhere and perform these terms:

- 1) Subcontractor shall be liable for any assessed, or potentially assessed, Liquidated Damages in the amount of \$XXXX per Calendar Day and Per Milestone for failure to achieve substantial completion for each of the milestone duration dates as outlined in Special Conditions 00800, page 5, paragraph 1.4/A AND Liquidated Damages in the amount of \$XXXX per Calendar Day and per Milestone for failure to achieve final completion for each of the milestone duration dates as outlined in Special Conditions 00800, page 5, paragraph 1.4/B.
- 2) Please refer to the Milestone Schedule (Special Conditions 00800, page 1, paragraph 1.2).
- 3) A CCIP (Contractor Controlled Insurance Program) may be utilized for this project, therefore an "Insurance Cost Calculation Worksheet (ICCW)" is required from each subcontractor to determine the cost to be deducted from your contract for General Liability Insurance Only. Alten Construction, Inc., San Francisco Unified School District, the Office of Public School Construction, State of California (when the Project is a State-funded Project), Board of Education, DLM Architecture, the District's Consultants and all authorized agents and representatives, and members, directors, officers, trustees, agents and employees of any of them are named as additional insured for all liability arising out of the operations by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents

and employees against liability for bodily injuries, deaths or property damage or destruction arising in any respect directly or indirectly in the performance of the contract. General Liability is \$1M per Occurrence, \$2M General Aggregate, \$2M Product Liability & Completed Operations; Auto Liability is \$1M for either "Any Auto" or Combination of "All Owned"/"Hired"/"Non-Owned". Primary & Non-Contributory Wording is required for General Liability, Excess Liability & Auto Liability, and Waivers of Subrogation are required for General Liability & Worker's Compensation.

- 4) This is a Prevailing Wage project. Weekly certified payroll reports and non-performance reports are required. Failure to comply will result in delay of payment and/or possible back charges.
- 5) This project is subject to a "Project Labor Agreement (PLA)." Please refer to Specification Section 00355. Note: there are local hire requirements in the PLA. Refer to Article III of Specification 00355: at least 25% of project work hours shall be by residents; 50% of apprentice hours shall be by residents. A signed Letter of Assent and Craft Work Assignments will be required of each subcontractor prior to commencement of work.
- 6) This project, and all future projects are subject to budget trailer SB854, a budget trailer signed into state law June 20, 2014 that requires all subcontractors bidding and/or working on a bond funded or public works project to be registered with the DIR; according to DIR Public Works Funding Legislation- SB 854. Should any subcontractor fail to comply, they will responsible for any and all assessed penalties or fees arising out noncompliance of the above referenced legislation.
- 7) All Subcontractors shall be bound to the terms of Assembly Bill 219. AB 219 requires the payment of prevailing wages for the hauling and delivery of ready-mixed concrete to public works project advertised for bid and awarded on or after July 1, 2016.
- 8) This is a prevailing wage project. All contractors and subcontractors must submit weekly certified payroll reports and non-performances electronically to the Labor Commissioner at: <https://apps.dir.ca.gov/ecpr/das/altlogin> . Failure to comply will result in delay of payment/ and or possible back charges
- 9) Alten requires subcontractors to use LCP Tracker, a web based system, to submit certified payroll reports. Hard copies will not be accepted. No exceptions.
- 10) All Progress Payment invoices must be submitted to Alten Construction, Inc. **IN THE APPROVED SOV FORMAT** and no later than the 20th of each month. If subcontractor invoices are not submitted by the 20th of each month, Alten Construction, Inc. will not process Subcontractor's billing. All Changes Orders are to be listed separately.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR OF THE BOARD, WHOSE ADDRESS IS: CONTRACTORS STATE LICENSE BOARD, 3132 BRADSHAW ROAD, POST OFFICE BOX 26000, SACRAMENTO, CALIFORNIA 95826

ALTEN CONSTRUCTION, INC.

SUBCONTRACTOR NAME

By: _____

By: _____

Dated: _____

Dated: _____

720 12th Street

(Address)

Richmond, CA 94801

Contractor's License No.: _____

Contractor's License No.: 705713

Corporation

Expiration date: _____

- Corporation Partnership
 Sole Proprietorship

Tax ID# _____

Note: Failure to execute and return this contract within thirty days shall be considered your agreement to perform the work on the terms stated herein.