



S. C. ANDERSON INC.

P. O. Box 81747 • Bakersfield, CA 93380-1747 • (661) 392-7000 • FAX (661) 391-9999
2160 Mars Court, Bakersfield, CA 93308

SUBCONTRACT AGREEMENT

PROJECT NO. : _____

PROJECT NAME: _____

THIS AGREEMENT, (hereinafter referred to as "Subcontract" or "Agreement"), entered into this XX day of XXXXXXXXXX, 2013, between S.C. ANDERSON, INC., (hereinafter referred to as "Contractor"), whose address is P.O. Box 81747, Bakersfield, California 93380-1747, and XXX, (hereinafter referred to as "Subcontractor"), whose address is: XXX.

Definitions:

- (a) "Agreement" is defined as this Subcontract and is entered into in connection with the following "Project".
- (b) "Project" is defined as the work of improvement located at: _____ [Name and address]
- (c) "Owner" is defined as: _____ [Name and address].
- (d) "General Contractor" referred to as direct contractor in Cal. Civil Code Section 8170 is defined as: _____ [Name and address]
- (e) "Construction Lender" is defined as: _____ [Name and address]
- (f) "Architect" is defined as _____ [Name and address]
- (g) "Construction Documents" are defined as plans, specifications, drawings, general conditions, special conditions, addenda, and general contract, all of which form a part of the contract between Owner and Contractor dated _____, hereinafter collectively referred to as the "Prime Contract" or "contract documents".

WITNESSETH: In consideration of the sums herein agreed to be paid and the terms, conditions and covenants to be by the parties kept and performed, it is agreed as follows:

1. THE WORK

(a) Subcontractor agrees to furnish all materials, labor, tools, equipment, appliances, permits, supervision, coordination, installations, cartage, supplies, scaffolding, certificates, and instruction, and parts manuals therefor to do and complete, in a prompt, efficient, and workmanlike manner and as directed by and to the satisfaction of Contractor, all work necessary as hereinafter described, for that certain Project for, Owner. Said work to be in accordance with the Construction Documents, which are hereby made a part of this Subcontract (which together with this Subcontract are hereinafter referred to as the "contract documents") are all available for examination by the Subcontractor at all reasonable times at the office of Contractor. In the event of any conflict between this Subcontract and the contract documents relating to Subcontractor's work, the provision requiring the higher level of quality, quantity, or workmanship shall apply. Scope of work includes the above, as well as all work that could reasonably be implied from the entire plans and specifications which would customarily be performed or furnished by a Subcontractor performing the aforementioned work.

(b) The Subcontractor represents and agrees that it has: carefully examined and understands the other contract documents, has investigated the nature, locality, and site of the work and the conditions and difficulties under which it is to be performed, and that it enters into this Subcontract on the basis of its own examination, investigation, and evaluation of all such matters and not in reliance upon any opinions or representations of Contractor, or of the Owner, or of any of their respective officers, agents, servants, or employees. Subcontractor shall not contract with any other person or entity, except employees, for the performance of Subcontractor's work hereunder without the prior written consent of Contractor.

(c) The materials to be furnished and the work to be performed by Subcontractor are: Provide all labor, material, and equipment necessary to furnish and install (*Insert scope of work title*)

Complete per (*Insert plans and specification reference or attachment*)

Scope of work specifically includes, but is not limited to, (*Insert detailed scope of work narrative*)

Subcontractor to diligently pursue the work to allow for overall completion of each phase and total contract in accordance with Contractor's schedule, which is available upon request. Subcontractor is responsible for all its own cleanup and haul off. Subcontractor shall effectually secure and protect the work done hereunder and assume full responsibility for the condition thereof until final acceptance by Architect, Owner, General Contractor and Contractor. Subcontractor further agrees to provide such protection as is necessary to protect the work and the workmen of Contractor, General Contractor, Owner, and other subcontractors from operations.

(d) With respect to the work to be performed and furnished by the Subcontractor hereunder, the Subcontractor agrees to be bound to the Contractor by each and all of the terms and provisions of the Prime Contract including liquidated damages, if any, and to assume toward the Contractor all of the duties, obligations, and responsibilities that Contractor, by the Prime Contract, assumes toward the Owner, and that Contractor shall have the same rights and remedies against the Subcontractor as the Owner, under the terms and provisions of the Prime Contract, has against Contractor with the same force and effect as though every such duty, obligation, responsibility, right, or remedy were set forth herein in full. The terms and provisions of the Subcontract are intended to and shall be in addition to and not in substitution for any of the terms and provisions of the Prime Contract.

2. PRICE

(a) Contractor agrees to pay Subcontractor for this work (including all taxes levied against such work or borne by Subcontractor as a result thereof) the sum of:

***** Dollars and 00/100*****(\$.00)*****

hereinafter referred to as "Subcontract price," subject to additions and deductions for changes as may be agreed upon, provided that no payments are to be made unless Subcontractor's rate of progress, work done, and material furnished are as herein agreed upon. Payment shall be made as follows:

(b) Invoices submitted to and approved by the Contractor by the 25th of the month shall be paid, less ten percent (10%) retention, on the 30th of the following month. (All such invoices must be dated and signed by Subcontractor and shall clearly identify the work done by Subcontractor including a designation of the project number, as noted in this Subcontract, and a statement as to the percentage of completion of each subcontract component, if any, as set forth herein.

(c) Subcontractor understands, acknowledges, and agrees that Contractor receives payment from Owner according and pursuant to inspections made by Owner and pursuant to percentages of completion determined or confirmed by Owner or its designated representatives.

(d) Contractor shall make progress payments to Subcontractor based upon Application for Payment in accordance with the percentage of completion of Subcontractor's work, as determined by Owner or its agents as specified in the Prime Contract. Such progress payments shall be made only with sums received by Contractor from Owner for work performed by Subcontractor as reflected in Contractor's Applications for Payment and shall be made within ten (10) days of receipt of such funds by Contractor.

(e) Final payment of the balance owed to Subcontractor shall be due ten (10) days after receipt by Contractor of final payment from Owner for Subcontractor's work.

(f) Payment to Contractor by Owner, General Contractor or other responsible party is a condition precedent to payment to Subcontractor. In the event a dispute arises between the Contractor, General Contractor, Subcontractor, and/or Owner, as to the work performed by this Agreement, Subcontractor shall not have a right to additional compensation from Contractor unless and until the dispute is resolved. While the dispute is pending, Subcontractor shall only receive payment for the work performed as per the requirements and provisions of this Agreement, as though the requirements and provisions of this Agreement are as contended by the Contractor. This provision applies to both progress payments and final payment. Said payments shall be in sole discretion of Contractor.

(g) Timing of Payment in the Event of Dispute or Nonpayment by Owner. If Owner or other responsible party delays making any payment to Contractor, or refuses to make any payment to Contractor, from which payment to Subcontractor is to be made, Contractor and its sureties (where applicable) shall have a reasonable time to make payment to Subcontractor of any amounts actually due and owing to Subcontractor. "Reasonable Time" shall be determined according to the relevant circumstances and law, but in no event shall be less than the time Contractor, Contractor's sureties, and Subcontractor require to pursue to conclusion their legal remedies against Owner or other responsible party to obtain payment, including (but not limited to) Mechanic's Lien/Stop Notice remedies. Despite such delay in payment Subcontractor agrees and warrants that it will make payments and keep current all payments to its subcontractors and suppliers.

(h) In the event the actions or inactions of Subcontractor or its subcontractors and suppliers shall be a contributor or alleged contributor to the Owner's nonpayment of any sum hereunder, the costs of collection efforts and any consequential loss or damages resulting from such nonpayment shall be the responsibility of Subcontractor, and shall be an obligation of Subcontractor and may, without limitation, be used as an offset against any sum owed to Subcontractor. In the sole discretion of Contractor. No funds relating to Subcontractor's portion shall be due or payable until such collection efforts have been exhausted, and the full extent of Contractor's costs, losses, and damages have been determined. These requirements shall apply to both progress and final payments.

(i) Subcontractor's applications for payment must be accompanied by (1) conditional releases in compliance with California Civil Code sections 8132 [progress] or 8136 [final] properly executed by Subcontractor and its laborers, subcontractors, material suppliers, and/or equipment lessors for all mechanic's lien, stop notice, or payment bond rights for labor, services, materials, and/or equipment furnished to the Project up to and including the date of the application; and (2) unconditional releases in compliance with California Civil Code sections 8134 [progress] or 8138 [final] properly executed by Subcontractor and its laborers, subcontractors, material suppliers, and/or equipment lessors for all mechanic's lien, stop notice, or payment bond rights for labor, services, materials, and/or equipment furnished to the Project up to and including the date of the prior application for payment. Failure to supply proper releases will result in delay of payment. Contractor may, at its option, make any payment or portion thereof by joint check payable to Subcontractor and any of its subcontractors, suppliers, material men, and/or equipment lessors.

(j) 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 the Subcontractor to Contractor, and any amount due to labor or materialmen furnishing labor or material for said work) is a condition precedent to Subcontractor's right to receive payment for 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.

(k) 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 actual attorneys' fees, on account of

- (i) Defective work not remedied;
- (ii) Third party claims filed or evidence indicating probable filing of such claims unless security acceptable to Contractor is provided by Subcontractor;
- (iii) Failure of Subcontractor to make payments properly for labor, materials, or equipment to its subcontractors and/or suppliers performing work or furnishing materials under this Subcontract;
- (iv) Reasonable evidence that Subcontractor's work cannot be completed for the unpaid balance of this Subcontract price;
- (v) Damage to the Owner, Contractor, or another subcontractor caused or alleged to be caused by Subcontractor;
- (vi) Evidence that Subcontractor's work may not be completed within the time required by this Agreement;
- (vii) Evidence that the unpaid balance of this Subcontract price will not be adequate to cover any liquidated or delay damages for which Subcontractor is responsible;
- (viii) Failure to carry out the work in accordance with the Agreement;
- (ix) Penalties assessed against Contractor or Subcontractor for failure of Subcontractor, or its subcontractors or suppliers, to comply with state, federal, or local laws and regulations;
- (x) Failure by Subcontractor to submit insurance certificates and endorsements as required by this Agreement, or failure by Subcontractor to maintain all required insurance;
- (xi) Failure by Subcontractor to submit required warranties, guarantees, as-built drawings, and other documents required by the Agreement;
- (xii) Any breach by Subcontractor of this Agreement; and
- (xiii) Any other reason Contractor determines is a reasonable basis for withholding payment.

Any amounts so withheld or nullified shall be considered not due to Subcontractor under this Agreement. When Subcontractor remedies any of the above reasons for withholding, subject to the approval and satisfaction of Contractor, Contractor shall pay within seven (7) days the amount previously withheld for that reason less offset for costs incurred by contractor and actual damages.

(l) In case suit is brought on any claim or lien for labor performed or materials used on or furnished to the Project, Subcontractor shall pay and satisfy any such lien or judgment as may be established by the decision of the court in said suit. Subcontractor agrees within ten (10) days after written demand to cause the effect of any such suit or lien to be removed from the premises, and in the event Subcontractor shall fail so to do, Contractor is authorized to use whatever means in its discretion it may deem appropriate to cause said lien or suit to be removed or dismissed and the cost thereof, together with actual attorneys' fees, shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may litigate any such lien or suit provided it causes the effect thereof to be removed, promptly in advance, from the premises, and still further do such things as may be necessary to cause Owner not to withhold any monies due to Contractor from Owner by reason of such liens or suits.

3. PERFORMANCE

(a) Subcontractor shall prepare and submit to Contractor such shop drawings, samples, specimens, and other data as may be necessary to describe completely the details and construction of the work. Approval of such shop drawings, samples, specimens, or other data by Contractor and/or the Architect shall not relieve Subcontractor of its obligation to perform the work in strict accordance with the plans, specifications, additional provisions hereof, and the other contract documents not its responsibility or for the proper matching and fitting of the work with contiguous work. Subcontractor shall make the initial submission of all such shop drawings, samples, specimens or other data to Contractor twenty-one (21) calendar days from the date of the execution of this Subcontract or such earlier time as is provided in the Prime Contract. All proposed substitutions of materials specified in the contract documents and all claims that another material is equal to, and may be used in place of, a material specified in the contract documents must be submitted to the Contractor, or the Contractor's designee, within twenty-one (21) calendar days from the date of this Subcontract or at such earlier time as provided in the Prime Contract, with a substitution warranty signed by Subcontractor.

(b) Subcontractor agrees that within seven (7) days of request from Contractor, Subcontractor will provide Contractor with a Schedule of Values which itemizes the Subcontractor's bid on the work to be performed under this Subcontract. Subcontractor agrees to proceed with said work promptly upon notification by Contractor to do so and at all times to prosecute its work continuously with all reasonable speed in such manner as not to delay the progress of any other work and to complete the entire work covered by this Subcontract. Subcontractor agrees to cooperate with Contractor and other subcontractors to the end that several works to be performed by Contractor, Subcontractor and other subcontractors may proceed concurrently, in accordance with the Construction Schedule including revisions.

(c) Subcontractor warrants and presents for the benefit of Contractor and Owner that Subcontractor possesses valid and current contractor's licenses covering all the work to be performed hereunder. Subcontractor certifies that it has the necessary material under its control to be delivered to the job site when required and a sufficient crew of qualified workers to execute this Subcontract properly, without delay, when required by Contractor, in accordance with the construction schedule including revisions.

(d) Subcontractor represents that it is fully familiar with all ordinances, codes, rules, and regulations of any agency having jurisdiction that apply to the work, and that Subcontractor will comply with them in performing the work.

(e) Any obvious uncertainty or inconsistency in the plans or specifications shall be brought to the attention of the Contractor prior to proceeding with Subcontractor's work thereon and such uncertainty or inconsistency shall be resolved and performed as directed by Contractor. Non-performance by reason of alleged defective work by other subcontractors' trades or crafts will not be recognized unless brought to the attention of the Contractor prior to commencement of Subcontractor's work.

(f) Subcontractor agrees to consolidate its debris daily at a place designated by Contractor and to remove its debris from the job site immediately after completion of each phase of its work or as required by Contractor. Because Subcontractor's failure to timely consolidate and/or remove its debris creates a hazard and impedes the efficiency of other crafts, it is agreed that Contractor, without notice shall have the right, but not the obligation, to do Subcontractor's cleanup work at cost and in such event Subcontractor agrees to immediately pay such cost to Contractor.

(g) Subcontractor agrees that Contractor's equipment will be available to Subcontractor only at the Contractor's discretion for such term and at such rental as shall be mutually agreeable. Subcontractor will use such equipment only for the purposes of performing Subcontractor's work under the Subcontract. By acceptance of the equipment, Subcontractor agrees that said equipment is in satisfactory condition for the performance of Subcontractor's work. During the time said equipment is in Subcontractor's possession or under Subcontractor's control, Subcontractor shall, at Subcontractor's expense, keep the equipment in good working order and condition, and shall bear the sole responsibility for all loss or damage to the equipment occasioned by fire, theft, accident, neglect, or abuse. This Paragraph shall not operate to otherwise extinguish any liability of Subcontractor to Contractor under this Subcontract. All liabilities of every kind and nature resulting from the use of said equipment (including Subcontractor's use of such equipment while being operated by an employee of Contractor or a third party) shall be borne by Subcontractor. Subcontractor shall keep said equipment free from all liens and claims by third parties. Contractor shall not at any time be responsible for loss of or damage to materials, tools, equipment, appliances or other personal property owned, rented, or used by the Subcontractor or of anyone employed by it in the performance of the Work, however caused.

(h) Time is of the essence with respect to this Subcontract, and the Subcontractor shall complete the several portions and the whole of the work at or before the time or times specified in the Prime Contract and in accord with the directions of Contractor and the construction schedule, including any additions, deletions, or alterations thereto. Subcontractor agrees to notify contractor within seventy-two (72) hours of any delay that impacts their scope of work, including associated costs and/or damages. Failure to notify the Contractor of said delay within seventy two (72) hours of the occurrence relieves the Owner and/or Contractor of any responsibility of the delay and all associated costs.

(i) Before commencing work, Subcontractor will satisfy itself as to the location of all utilities that may affect or interfere, directly or indirectly, with Subcontractor's work. Subcontractor will fully protect all utilities, and keep them from interfering, directly or indirectly, with Subcontractor's work. Subcontractor will fully protect all utilities, and keep them operating at all times.

(j) 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 monies otherwise due under this Agreement.

4. WARRANTY

(a) Subcontractor hereby warrants all material and workmanship provided under this Subcontract for a period of one (1) year from the date of acceptance of the Project as a whole by the Owner, or for such longer period and to the full extent as may be required of Contractor by the terms of the Prime Contract or for the longest time permitted by California Law. Subcontractor shall promptly amend and make good any defective materials or workmanship to the entire approval and acceptance of the Owner, the Architect, and the Contractor. If Subcontractor refuses or neglects to proceed at once with the correction of the defective or rejected material or workmanship, after receiving notice to do so,

Contractor shall have the right and power to have the defects remedied or changes made at the expense of the Subcontractor, and Subcontractor agrees to pay immediately the cost thereof to Contractor.

(b) Subcontractor warrants that all services shall be of good quality and workmanship, free from faults and defects and in conformance with the applicable plans and specifications.

(c) If any claims are made against Contractor, or damages or expenses are incurred by Contractor, on account of the performance or failure or defects in the performance of Subcontractor, or any acts of Subcontractor or its employees or subcontractors, Subcontractor shall be liable to Contractor for the amount thereof, and Contractor shall have the right, in addition to any and all other rights and remedies, to withhold the amount otherwise due or to become due to Subcontractor thereunder equal to the amount of such claims, damages, and expenses.

5. TIME EXTENSIONS AND DELAYS

(a) If Subcontractor is delayed and/or incurs additional labor in the performance of its work by conditions that could not be foreseen by Subcontractor and that are beyond the reasonable control of Subcontractor, Subcontractor's sole remedy shall be an extension of time equal to the period of delay and not compensated for additional labor unless:

(i) Subcontractor has given Contractor written notice of the commencement of delay and/or labor impact within seventy-two (72) hours of its occurrence.

(ii) Subcontractor has tracked the additional costs associated with said delay and/or labor impact by maintaining actual detailed records from the date the foregoing notice was provided to the Contractor until the delay and/or labor impact ends. With regard to delays, said detailed records shall be maintained daily and include, at a minimum, the specific work activity(ies) that are delayed and the specific cause of delay. With regard to labor impacts, said detailed records shall be maintained and submitted to Contractor daily and include, at a minimum, the specific work activity(ies) where labor impacts are occurring, the actual names, dates, and hours of the workers' performing the impacted work, and the cause thereof. It is within the contemplation of the Subcontractor that this clause will be construed as a forfeiture clause against the Subcontractor in the event that detailed records are not maintained and submitted as required above as to any and all delays and/or labor impacts to Subcontractor's work.

(b) In the event that Contractor, in its sole discretion, should seek compensation from the Owner as a result of any delay and/or labor impact, and Subcontractor has provided Contractor with the required notice and detailed records described above, Subcontractor shall be entitled to its equitable portion of any amount recovered by Contractor, minus a pro rata share of the cost of pursuing said claim. Said pro rata share shall be determined by the Contractor, in its sole discretion. This provision shall not be construed to require the Contractor to pursue any delay or labor inefficiency claim against the Owner or any other party. This decision shall be in the sole discretion of the Contractor and binding on the Subcontractor.

(c) If this Project is not a public work of improvement, 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 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.

6. CHANGES

(a) Contractor shall have the right, without notice to any surety and without invalidating this Subcontract, to require extra work to be done or to make changes in work required by the Subcontract and the plans and specifications under which it is performed by altering, adding to or deducting there from in writing. All Changes ordered by Contractor but which originate with or are requested by Owner will be compensated for by Contractor but only to the extent a commensurate adjustment in compensation or time is allowed Contractor by Owner.

(b) All Changes directed by Contractor will be compensated for by Contractor as mutually agreed in writing by Subcontractor and Contractor but in the event no agreement can be reached, in an amount not greater than Subcontractor's Actual costs consisting of Labor Costs, Materials Costs, Equipment Costs and Markup for performing the Change Work and any impact that the Changed Work has on the Work. If no agreed upon compensation is established by a written change order prior to the changed work being preformed the Subcontractor must track and report the Actual Costs as set forth below.

(c) Actual Costs. If the Changed Work specifies that Subcontractor will be paid based on actual costs basis, Contractor will pay the Subcontractor on the basis of the labor, equipment and materials Subcontractor uses in performing the changed work, according to the following terms and conditions:

(1) **"Labor Costs"** means the hourly rates actually paid for direct non-supervisory labor performing the changed work

(2) **"Equipment Costs"** means the amount actually paid for equipment utilized in the changed work. The Equipment Cost shall include labor expenses for operators of the equipment, equipment rental costs, maintenance, repairs, fuel expenses, depreciation, insurance and other indirect costs, general and administrative expense and profit.

(3) **"Materials Costs"** means costs Subcontractor incurs for those materials that are incorporated into the end product of the changed work, or that are used or consumed directly in connection with the furnishing of the changed work. If the Subcontractor furnishes its own materials, the price to be paid for such materials shall not exceed the Subcontractor's established catalog or market price, adjusted to reflect the quantities being acquired, and actual cost of any modifications necessary because of contract requirements. To the extent able, the Subcontractor shall (i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and (ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. The Subcontractor shall give credit to the Contractor for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Subcontractor. The Contractor will not pay Mark up to the Subcontractor on materials, except as expressly provided herein.

(4) **"Other Costs"**. Contractor shall pay no costs, except as specified in this section. Contractor shall not pay for supplies and incidental services which is not specified above, or other direct or indirect costs, including but not limited to travel, lodging, sub-subcontractors, outside consultants, accounting, computer usage charges, postage, messenger, delivery and copying costs.

(5) Subcontractor shall take all steps necessary to mobilize, coordinate, and supervise its laborers and equipment and shall diligently proceed with changed work and expedite its completion in the most efficient means practicable.

(6) Daily Job Reports. Daily Job Reports showing Subcontractor's labor costs, equipment costs and materials costs incurred for all changed work shall be submitted to Contractor each day and shall be signed by Contractor's designated job

site representative. Failure to submit daily job reports waives any reimbursement by the Subcontractor. The Subcontractor shall substantiate the Daily Job Report by submitting monthly recap reports that include (i) individual daily job timekeeping records, (ii) records that verify that each labor cost, equipment cost and materials cost was incurred and utilized in the changed work and (iii) receipts and invoices for rental equipment and materials costs. Failure to provide Daily Job Reports or Monthly recap reports waives any right Subcontractor has to compensation for changed work not reported daily or monthly.

Subcontractor shall perform any such extra work, change or omission only upon written authorization from Contractor and upon receiving such written authorization Subcontractor shall proceed with such work and/or change in accordance with Contractor's instructions to Subcontractor whether or not the price adjustment has yet been determined and agreed upon. No officer, employee or agent of Contractor is authorized to direct any extra or changed work by oral order.

7. TERMINATION/SUSPENSION

(a) **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.

- (i) 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 written direction of Contractor.
- (ii) Upon such termination, Subcontractor shall be entitled to payment 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 Owner Contract or General Contract and approved by Owner, plus (3) fifteen percent (15%) of the cost of the work referred to in item or as determined by the Prime contract whichever is less, (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. In no event shall payment due hereunder exceed the amount due for approved units of work or percentage of completion. Subcontractor shall not be entitled to any claim or claim of lien against Contractor or Owner for any additional compensation or damages in the event of such termination and payment.

(b) **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 Notice of Default, 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 work.

- (i) 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 attorneys' 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.
- (ii) If the contract, or any part thereof, shall terminate, that portion of this Subcontract shall terminate without further obligation of Contractor. However, This Subcontract shall continue in full force and effect with respect to all other portions of the Subcontract not terminated.
- (iii) 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, absent any applicable legal limitation, terminate this Agreement upon giving forty-eight (48) hours written notice, by certified mail, to Subcontractor, its trustees, and its surety, if any, unless Subcontractor, the surety, or the trustee:
 - a. Promptly cures all defaults;
 - b. Provides adequate assurance of future performance;
 - c. Compensates Contractor for actual pecuniary loss resulting from such defaults; and
 - d. Assumes the obligations of Subcontractor within the statutory time limits.

8. INSURANCE/BONDS

(a) Subcontractor shall, within five (5) days of signing this Subcontract, but before performing any Work, provide Contractor with certificates of insurance from an insurance company with an AM Best rating of A-7 or better, indicating coverage for Commercial General Liability, Commercial Auto Liability, claims under Workers' compensation, disability benefit, and other similar employee benefit acts which are applicable to the work to be performed in accordance with the Contract Documents and for the following minimum limits:

Commercial General Liability		Commercial Auto	
Bodily Injury	<u>\$ 1 Million per occurrence / 2 Million Aggregate</u>	Bodily Injury	<u>\$ 1 Million Combined Single Limit</u>
Property Damage	<u>\$ 1 Million per occurrence / 2 Million Aggregate</u>	Property Damage	<u>\$ 1 Million Combined Single Limit</u>
Workers' Compensation	\$ Legal Limit		

If any 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 \$ 2,000,000.00.

(b) CGL coverage shall be written on ISO Occurrence form CG00011093 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury. Use of any CGL form covering defense costs within the limits of insurance requires the prior written consent of the Contractor.

(c) General Contractor, Contractor, Owner, and all other parties required of the General Contractor, shall be included as additional insureds on the CGL, using ISO Additional Insured Endorsement CG20101185 or an endorsement providing equivalent coverage to the additional insureds. This contract requires that coverage afforded the additional insured(s) under any form other than CG20101185 must be as broad as coverage that would be provided under CG20101185. This insurance for the additional insureds shall be as broad as the coverage provided for the named insured Subcontractor. Subcontractor must also cause its policy to be amended to provide that the coverage afforded to

the additional insured is primary to and noncontributing with any other insurance, self-insurance or deductible amount maintained by or provided to the additional insured. Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Subcontractor's Commercial General Liability Policy, as well as a copy of the policy's endorsement providing coverage to the additional insured on a primary and non-contributing basis.

(d) Claims Made/Self-Insurance Provisions. Subcontractor shall not provide general liability insurance under any Claims-Made General Liability form without express prior written consent of Contractor. Any self-insurance program coverage in excess of \$25,000 per occurrence requires the prior written consent of the Contractor.

(e) 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 the Subcontractor's work and/or damage to other work caused by Subcontractor.

(f) If Subcontractor's work, or a portion thereof, is not covered under the Builder's Risk policy of insurance or any other property or equipment insurance required by the Contract Documents, Subcontractor shall procure and maintain at its own expense property and equipment insurance for portions of Subcontractor's work not covered, including material stored off the job site or in transit.

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

(h) Subcontractor shall, within five (5) days of the same time period, furnish a certificate of insurance in the amount of \$1,000,000.00 to protect itself and Contractor from claims arising out of the performance of professional services caused by any errors, omissions, or negligent acts for which Subcontractor is legally liable. Contractor shall be named as additional insured.

(i) Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the work. These certificates and the insurance policies required by Section 8 shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Subcontractor with reasonable promptness in accordance with the Subcontractor's information and belief.

(j) The Contractor and Subcontractor waive all rights against each other and any of their subsidiaries, agents, and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to all paragraph 8 subparts or other property insurance applicable to the Work. The insurance policies shall each provide waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to person or entity even though that person or entity would otherwise have a duty of indemnification, contractual, or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

(k) Subcontractor shall carry automobile liability insurance, including coverage for all owned, hired and non-owned automobiles.

(l) If the Prime Contract requires additional insurance types or limits of insurance higher than the minimum limits outlined above, or broader coverage than outlined above, the requirements of the Prime Contract shall apply to the extent that they impose additional requirements or exceed the minimum requirements above.

(m) Within five (5) days of a request by Contractor made at any time prior to the completion of the work and at Contractor's expense, Subcontractor shall furnish a performance and/or labor and materials payment bond from a surety and in a form satisfactory to Contractor which shall not cost Contractor more than one and two-tenths (1.2%) of the Subcontract price provided in Paragraph 2 hereinabove.

(n) Subcontractor shall require that any third party who contracts with Subcontractor to do any work involving this contract shall carry insurance in the amounts and of the types that this paragraph requires Subcontractor to carry.

9. LABOR

(a) Subcontractor shall keep a representative capable of reading, writing and speaking English at the job site during all times when Subcontractor's work is in progress, and such representative shall possess a comprehensive knowledge of Subcontractor's responsibilities and be authorized to represent and bind 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.

(b) Employment of labor by Subcontractor shall be under conditions which are satisfactory to Contractor. Subcontractor shall use its best efforts to prevent the occurrence of any labor dispute, including, but not by way of limitation, any strike, slowdown, picketing or other labor difficulty, occurring at the job site by reason of the activities of Subcontractor, its employees, subcontractors, suppliers or material carriers. Subcontractor shall immediately inform Contractor of any facts which reasonably cause Subcontractor to expect the occurrence of any such labor dispute. 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 its work without interruption or delay. If any such labor dispute occurs, Subcontractor shall keep Contractor informed of the progress of such labor dispute and shall cooperate fully with Contractor to resolve such labor dispute. If Subcontractor fails to prevent any such labor dispute, Contractor shall have the right, in addition to any other rights or remedies provided by this Subcontract or other contract documents or by law, after forty-eight (48) hours written notice mailed or delivered to the last known address of Subcontractor, to terminate this Agreement or any part thereof or the employment of Subcontractor for all or any portion of the work, and for the purpose of completing the work, to take possession of the premises and finish Subcontractor's work by whatever means it may deem expedient. In the event of such termination, the rights and obligations of Contractor and Subcontractor shall be determined the same as if this Subcontract were terminated under the provisions of Paragraph 7 hereinabove.

(c) Pursuant to California Labor Code Section 1775, if a worker employed by Subcontractor on a public works project is not paid the general prevailing per diem wages by the subject Subcontractor, the prime contractor of the project is not liable for the penalties under subdivision (a) of Labor Code Section 1775 unless the prime contractor had knowledge of that failure of the Subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

- (i) The contract executed between the Contractor and the Subcontractor for the performance of work on the public works project shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815.
- (ii) The Contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the Subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.
- (iii) Upon becoming aware of the failure of the Subcontractor to pay its workers the specified prevailing rate of wages, the Contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the Subcontractor for work performed on the public works project.
- (iv) Prior to making final payment to the Subcontractor for work performed on the public works project, the Contractor shall obtain an affidavit signed under penalty of perjury from the Subcontractor that the Subcontractor has paid the specified

general prevailing rate of per diem wages to its employees on the public works project and any amounts due pursuant to Section 1813.

(d) The California Labor Code Sections referred to in Section 9(c)(i) above are attached to this Subcontract Agreement, as Attachment 1. Subcontractor shall initial his/her or its acknowledgement of review of the foregoing California Labor Code Sections at the bottom of each page of said attachments. Concurrent with the execution of this Agreement, Subcontractor shall be responsible for reviewing the attached Sections, including any modification, Addendums, or other adjustments made by the State of California.

10. GOVERNMENTAL REGULATIONS

(a) Subcontractor agrees that the prevention of accidents to workers engaged upon or in the vicinity of the job site is Subcontractor's responsibility. Subcontractor agrees to comply with all laws, ordinances, rules, regulations, codes, orders, notices and requirements concerning safety including all requirements of Contractor's standard safety program and any additional or special safety standards which may be established by Contractor or Owner during the progress of the work. Subcontractor agrees to pay for all fines or penalties levied against the Subcontractor, Contractor and Owner for any and or all Cal or Fed/OSHA, OSHPOD, Air Quality Control Board, Public Works and/or any other Governmental regulatory agency, as a result of subcontractor noncompliance.

(b) Subcontractor agrees that all work to be performed hereunder and all actions by or on behalf of Subcontractor in pursuance thereof shall comply with all federal, state, municipal and local laws, ordinances, rules, regulations, orders, codes, standards, notices and requirements, including, without being limited thereto, those relating to discrimination in employment, fair employment practices, or equal opportunity. Subcontractor shall take whatever action may be required by Contractor to comply with Contractor's affirmative action plan for equal employment opportunity as the same may be amended from time to time; the Subcontractor shall at any time upon demand furnish such proof as Contractor may require showing such compliance and the correction, at Subcontractor's sole cost and expense of any violations.

11. INDEMNITY

(a) With the exception that this Section 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 hold harmless Contractor and Owner and/or General Contractor, including their officers, agents, employees, affiliates, parents, and subsidiaries (hereinafter "Indemnitees"), and each of them, from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses, or liabilities, in law or in equity, of every kind and nature whatsoever ("Claims") arising out of or related to Subcontractor's operations to be performed under this Subcontract, including, but not limited to:

- (i) Personal injury, including, but not limited to, bodily injury, emotional injury, sickness, or disease, or death to persons, including, but not limited to, the employees or agents of Subcontractor, Owner and/or General Contractor, 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 whose acts Subcontractor may be liable regardless of whether such personal injury or damage is caused by a party indemnified hereunder.
- (ii) Penalties imposed on account of the violation of any law, ordinance, citation, rule, regulation, standard, ordinance, or statute, caused by the action or inaction of Subcontractor or any directly or indirectly employed by Subcontractor.
- (iii) Infringement of any patent rights which may be brought against the Contractor or Owner and/or General Contractor arising out of or related to Subcontractor's work.
- (iv) Claims and liens for labor performed or materials used or furnished to be used on the Project, including all incidental and consequential damages resulting to Contractor or Owner and/or General Contractor from such claims or liens.
- (v) Economic loss or damage incurred by Contractor or Owner and/or General Contractor arising out of or related to Subcontractor's work, including, but not limited to, consequential damages, delay damages, and/or liquidated damages.
- (vi) Subcontractor's failure to fulfill the covenants set forth in each subpart of Section 9, Labor.
- (vii) Failure of Subcontractor to comply with the provisions of Section 8, Insurance.
- (viii) Any violations 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 others' equipment, hoists, elevators, or scaffolds.
- (ix) Any failure or alleged failure to comply with the terms of this Subcontract or the Contract Documents.
- (x) Damage to property or loss of use thereof.

(b) The indemnification provisions of these Sections above shall extend to Claims occurring after this Subcontract is terminated as well as while it is in force.

(c) Notwithstanding the foregoing, if the Prime Contract imposes more stringent defense, indemnity, contribution or hold harmless obligations than are set forth herein, then the more stringent provisions shall apply, and Subcontractor shall owe the same defense, indemnity, contribution, and hold harmless obligations to Contractor as Contractor owes to Owner and/or General Contractor.

(d) The obligations of this Section shall apply to the fullest extent permitted by law, regardless of any passively negligent act or omission of the Indemnitees. Subcontractor, however, shall not be obligated to indemnify the Indemnitees for Claims arising from the active negligence, sole negligence, or willful misconduct of the Indemnitees. The obligations of this Section are in no way limited or relieved by Subcontractor having obtained insurance, by the provisions of the Insurance section and/or to the extent permitted by law by the provisions of any workers compensation law, regulation or arrangement.

(e) With respect to any Claims as to which Subcontractor owes Indemnitees a defense obligation, Subcontractor having considered its options available at law, hereby elects to proceed under California Civil Code sections 2782(e)2 and/or 2782.05(e)2. Subcontractor shall reimburse Indemnitees for any and all legal expenses incurred by any of them in connection herewith or in enforcing the indemnity granted in this Section.

(f) Subcontractor shall:

- (i) At Subcontractor's own cost, expense, and risk, defend all Claims that may be brought or instituted by third persons, including, but not limited to, governmental agencies or employees of Subcontractor, against Indemnitees, or any of them;
- (ii) Pay and satisfy any judgment or decree that may be rendered against Indemnitees, or any of them, arising out of any such Claim;
- (iii) Reimburse Indemnitees, or any of them, for any and all legal expense incurred in connection herewith or in enforcing the indemnity granted in this Section.

(g) Subcontractor is strictly prohibited from using tools and equipment either owned by or under the control of Contractor, and Subcontractor shall indemnify and hold Contractor harmless from the use of Contractor's tools and equipment to the full extent provided under this Subcontract herein above.

12. DISPUTES

For purposes of this Subcontract, Contractor and Subcontractor agree as follows with respect to any disputes, as hereinafter defined:

(a) In addition to all other notice requirements of this Agreement, should any dispute arise between Contractor and Subcontractor regarding performance of the work, or any alleged change in the work, Subcontractor shall give written notice of a claim for additional compensation for the disputed work within seventy two (72) hours after commencement of the disputed work. Subcontractor's failure to give written notice within the seventy two (72) hour period constitutes an agreement by Subcontractor that it will receive no extra compensation for the disputed work.

(b) If any dispute arises between Contractor and Subcontractor and which also involves Owner, and if in order to resolve the dispute or establish the rights and duties as between Contractor and Owner, Contractor is required to pursue procedures established by law or established by the Prime Contract for resolution of disputes between Contractor and Owner, then Subcontractor shall follow and participate in such procedures for the purpose of resolving all the rights, obligations and liabilities of Owner, Contractor, and Subcontractor relating to such a dispute. Any final decision under such procedures shall be binding upon Contractor and Subcontractor to the same extent it is binding upon Contractor and Owner. Subcontractor agrees to furnish all documents, statements, witnesses and other information required by Contractor for such purposes and to pay or reimburse Contractor for all expenses and costs incurred in connection therewith. It is expressly understood that Contractor shall never be liable to Subcontractor to any greater extent than the Owner is liable to Contractor. In the event any such dispute involves any one or more of Contractor's other subcontractors, Contractor and Subcontractor herein shall take such steps as are necessary to consolidate their respective claims with those of such other subcontractors in a single procedure under the provisions of this subparagraph (b), so that the rights and liabilities of all parties to such dispute may be finally resolved by such single procedure.

(c) A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than five (5) working days preceding the time by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those which the Contractor is bound under the Contract Documents.

(d) In the event that the Claim is determined to be, in the Contractor's sole discretion, only between the Subcontractor and Contractor, Subcontractor agrees that it is required, as a condition precedent to taking any legal recourse against Contractor, to:

(i) Attempt to informally negotiate the Claim with the Contractor at the field level; and if negotiations are unsuccessful,

(ii) Participate in private mediation with an agreed upon mediator, or if agreement cannot be reached, in accordance with JAMS, Inc.'s Rules of Mediation, as specified below, costs equally shared by the Contractor and Subcontractor.

(e) For purposes of this Section, "dispute" is defined as any claim or disagreement arising out of or relating to the rights, duties, and/or obligations of the parties under this Subcontract involving Contractor and Subcontractor or involving Contractor, Subcontractor and Owner or their agents, employees, representatives or contractors, including, but not by way of limitation, any claim or disagreement that concerns or relates to any authorized or claimed extra change or modification under this Subcontract.

(f) No dispute shall interfere with the progress of construction and the Subcontractor agrees to proceed with its work as directed, despite disputes it may have against Contractor, the Owner or other parties.

(g) It is the intent of the parties to this Subcontract that this Section shall be interpreted broadly to carry out its purpose of obtaining final resolution of disputes through a single procedure so as to avoid a multiplicity of actions and the risk of inconsistent decisions. However, this Paragraph 12 shall not be construed to inhibit or prevent the Contractor from exercising his right to terminate this Subcontract in accordance with this Subcontract.

13. DISPUTE RESOLUTION

(a) Mediation of Disputes. If efforts to resolve the dispute fail at the field level, all disputes or claims in law or equity arising out of this Agreement, the performance of work under this Agreement or any resulting transaction, including without limitation, any and all disputes regarding the interpretation or enforcement of this Agreement or any provision herein, any claim for breach of any provision of this Agreement, liquidated damages, representations by Subcontractor, Owner or Contractor, the existence and extent of any construction defects in the Project, warranties, and the right, entitlement, amount or existence of any damages sustained shall be subject to mediation.

(i) The parties shall agree upon a mediator. If a mediator is not agreed upon within ten (10) days, the parties shall endeavor to resolve their claims by mediation with a JAMS, Inc. mediator, and shall be in accordance with JAMS, Inc.'s mediation rules. Request for mediation shall be filed in writing with the other party to the Contract and with JAMS, Inc. The request may be made concurrently with the filing of a demand for arbitration, but in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. The parties shall share the mediator's fees and any filing fees equally. The mediation shall be held in Kern County, California. Agreements reached in mediation shall be enforceable as settlements in any court having jurisdiction thereof.

(ii) If the parties do not settle the dispute at mediation, or if the dispute cannot be resolved through mediation, then all such disputes shall be resolved by litigation in Kern County or by binding arbitration, as specified below, at the sole discretion and determination of Contractor. If after mediation Subcontractor desires to proceed in the dispute resolution process, Subcontractor shall demand Arbitration as set forth below, by providing a written demand for Arbitration to Contractor. Contractor shall have 30 days to accept or reject Subcontractor's demand for Arbitration in writing. If Contractor accepts Subcontractor's demand for Arbitration, arbitration shall proceed as set forth below. If Contractor rejects Subcontractor's arbitration demand the matter shall proceed by Subcontractor's filing a complaint in the Superior Court of the County of Kern.

(b) The following matters are subject to Subcontractor submitting the matter to arbitration: any dispute or claim in law or equity arising out of this Agreement, the performance of work under this Agreement or any resulting transaction, including without limitation, any and all disputes regarding the interpretation or enforcement of this Agreement or any provision herein, any claim for breach of any provision of this Agreement, liquidated damages, representations by Subcontractor, Owner or Contractor, the existence and extent of any construction defects in the Project, warranties, and the right, entitlement, amount or existence of any damages sustained can be submitted to binding arbitration by a JAMS, Inc. arbitrator and shall proceed according to JAMS, Inc.'s arbitration rules. The arbitrator(s) shall not have the power to award punitive damages.

In the event that a party must commence an action in State or Federal Court in order to preserve or enforce a right conferred by applicable law, that party may do so, but the parties agree that continuation of the action shall be stayed pending the outcome of arbitration, or litigation in the Superior Court of the County of Kern and the Court shall retain jurisdiction solely for the purpose of judicial review of the arbitration award, or entry and enforcement of any judgment upon the award rendered by the arbitrator or the outcome of the Kern County Superior Court.

(c) Attorney's Fees. In the event either party brings any action to enforce or interpret any of the terms, covenants, or conditions of the Subcontract, or by reason of any breach or default under this Agreement, the party prevailing in such action shall be entitled to recover all costs

and attorney's fees incurred in bringing or defending such action, and in the event any judgment is secured by such prevailing party, all such costs or attorney's fees shall be included in any such judgment in any such action or proceedings, such costs and fees to be set by the arbitrator or court.

14. REMEDIES

If Subcontractor fails to comply with this Subcontract in any respect, including, but not by way of limitation, any act of bankruptcy or insolvency by Subcontractor, or any failure to perform his work properly or at a speed which would permit its completion within the time allotted, in accordance with the Contract Schedule including revisions, Contractor shall, without releasing or waiving its rights against Subcontractor's sureties, have the following remedies in addition to, and without prejudice to any other remedies it may have under this Subcontract, the Prime Contract or law:

(a) Contractor may terminate this Subcontract if notice specifying the particulars of such failure has been given to Subcontractor and such failure is not remedied by Subcontractor within forty-eight (48) hours after service of such notice. In such event, Contractor may complete the work or cause the work to be completed by others, and Subcontractor shall repay immediately all costs and damages sustained by Contractor on account of Subcontractor's failure. Contractor may, at Contractor's option, use or reject any and all materials and equipment at the job site or at the Subcontractor's plant.

(b) Contractor may, without terminating this Subcontract, furnish such labor and/or materials as is necessary to complete Subcontractor's work or to prevent or resolve labor disputes. In such event, Subcontractor shall immediately pay to Contractor all the costs thereof, including compensation and liability insurance.

(c) The Contractor's determination of default made in good faith shall be conclusive as to Contractor's right to proceed as provided herein.

(d) In the event this Subcontract is terminated as provided in this Paragraph 13, Subcontractor shall not be entitled to receive any further payment until said work is finished. If the unpaid balance of the Subcontract price shall exceed the expense of finishing the work, including compensation for additional managerial, legal or administrative services and all claims against Contractor in connection therewith, such excess shall be paid to Subcontractor. If such expenses and claims shall exceed such unpaid balance, the Subcontractor shall immediately pay the difference to Contractor.

15. CONTRACTOR'S RIGHT TO OFFSET

With respect to any damages, costs or expenses of any kind sustained by Contractor by reason of Subcontractors breach of this Subcontract and with respect to any costs, expenses or other amounts owing by Subcontractor to Contractor pursuant to this Subcontract, Contractor shall be entitled to deduct the same from any payments then or thereafter due or becoming due to Subcontractor under this Subcontract. If any damages, costs, expenses, claims or other amounts owing by Subcontractor pursuant to this Subcontract shall exceed the unpaid balance of the Subcontract price, Contractor shall be entitled to offset such excess against any funds in Contractor's possession belonging to or claimed by Subcontractor or against any sums now or then due or becoming due Subcontractor from any source whatsoever.

16. RESPONSIBILITY AND COORDINATION OF THE WORK

(a) The Subcontractor shall be responsible to the Contractor for acts and omissions of the Subcontractor and their agents and employees, and all other persons performing any portion of the Work under a contract with the Subcontractor. The Subcontractor shall not be relieved of the obligation to perform the Work in accordance with the Contract Documents either by activities or duties of the Contractor, Construction Manager, Owner, Owner's Inspector or the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Subcontractor. The Subcontractor shall be responsible for all necessary or appropriate coordination of the work and component parts thereof so that substantial completion of the work will be achieved within the Contract time and the work will be completed for the Purchase Order price.

(b) Subcontractor shall be responsible to make written request for shop drawings, cut sheets or any other data on installations that may affect the work so that it may properly coordinate the work with others, and if it fails to do so, Subcontractor shall be responsible for any additional costs due to lack of coordination.

(c) The coordination of the work is a material obligation of the Contractor hereunder and shall include without limitation, conducting regular coordination meetings with Subcontractors and Material Suppliers, sequencing its operation with that of the operations of Subcontractors and Material Suppliers, and adapting its planned means, methods and sequences of construction operations as necessary to accommodate field or changed conditions at the job site.

(d) The Subcontractor shall effectually secure and protect the work done hereunder and assume full responsibility for the condition thereof until final acceptance by the Architect, Owner and Contractor. The Subcontractor further agrees to provide such protection as is necessary to protect the work and the workmen of the Contractor, Owner and other subcontractors from his operations. The 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 its agents, employees or guests.

17. RECORDS RETENTION

(a) Subcontractor must retain and maintain easily available all records pertaining to Subcontractor's performance of its obligations under this agreement.

- (i) Records include, but are not limited to, any books, reports, accounts, estimates, documents, detailed financial information, verified payrolls, invoices, or any other documentation or evidence, as well as any documents utilized in the preparation of Proposals, Invoices, Disputes, litigation and any Claims. Records must be maintained in accordance with industry standards and have generally accepted accounting principles and practices consistently applied.
- (ii) These records do not include any work product that is the result of Subcontractor's collaboration with legal counsel or any of Subcontractor's confidential or proprietary information that does not fall within the definition above.
- (iii) Contractor and/or its designated representative will have access upon twenty-four (24) hours advance written notice, at all times during Subcontractor's normal business hours, to all of Subcontractor's records for the purpose of inspection, audit and copying. Subcontractor will, at no cost to Contractor, provide access to proper facilities for such purposes. Records must be retained and maintained available throughout the period of the performance of Subcontractor's scope of work and for five (5) years after all the obligations of the parties under this Agreement have been met or until five (5) years after final settlement of all disputes, claims or litigation to which the records relate, whichever is later.

18. MISCELLANEOUS

(a) This Subcontract document represents the entire agreement of the parties, and it shall supersede and not be modified by any proposal, bid, estimate, conversation, submittal, or other form of communication between Subcontractor and Contractor before the date when this Subcontract is fully executed, whether or not such proposal, bid or estimate is signed by either or both of the parties hereto. This Subcontract cannot be modified by oral agreements, and may be modified only by a writing signed by both parties after the date of this Subcontract.

(b) This Subcontract or the monies becoming due under this Subcontract shall not be assigned in whole or in part, voluntarily or involuntarily, without the written permission of the Contractor. Any such assignment shall not release Subcontractor from his duty to Contractor to discharge his obligations and liabilities under this Subcontract and assignee shall take subject to all rights of Contractor provided in this Subcontract.

(c) Any and all notices, demands or other matters required or permitted by this Subcontract or by law to be served on or given to or delivered to either party by the other party to this Subcontract shall be in writing and shall be deemed duly served, given or delivered when personally delivered to the party to whom it is addressed (or to a supervisory employee of such party), or in lieu of such personal service, when deposited in the United States mail, first class postage prepaid and addressed as provided in the introductory paragraph of this Subcontract.

(d) In the event either party hereto shall prevail in any action, arbitration, or other proceeding concerning this Subcontract, such party shall be entitled to receive from the other party all court costs, a reasonable sum as attorney's fees and all other expenses incurred therein and the preparation thereof.

(e) The waiver by Contractor of a breach of any term, covenant or condition contained in this Subcontract shall not be treated as a continuing waiver of such term, covenant, or condition or as a waiver of a future breach of the same or any other term, covenant or condition contained in this Subcontract. All rights and remedies under this Subcontract shall be cumulative and are in addition to, and not in derogation of, all other rights and remedies. All such rights and remedies may be exercised either successively or concurrently. If any term, provision, covenant or condition of this Subcontract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

(f) Subcontractor is prohibited, unless written authorization is provided by Contractor, from erecting or maintaining Subcontractor advertisement signage at or near the job site.

(g) The section headings and captions of the Subcontract are for reference only, and are not to be construed in any way as a part of this Subcontract.

(h) Subcontractor is and shall remain an independent contractor in the performance of the services and is not and shall not be an employee, partner or joint venturer of Contractor or be subject to any direction, control or supervision by Contractor in the performance of the services.

(i) This Subcontract shall be governed by and construed according to the laws of the State of California. This contract was entered into in Kern County California and any lawsuit or arbitration shall be instituted in that county.

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

**CONTRACTORS STATE LICENSE BOARD
9821 BUSINESS PARK DRIVE
SACRAMENTO, CA 95827**

IN WITNESS WHEREOF, the parties have executed this Subcontract in duplicate as of the day and year first above written.

SUBCONTRACTOR

S. C. ANDERSON, INC.
CONTRACTOR

By: _____

By: _____

Title: _____

Title: _____

California State License Number: _____

441769
California State License Number: _____

Federal Identification Number: _____

State EDD Number: _____

NOTE: THIS CONTRACT HAS IMPORTANT LEGAL CONSEQUENCES. CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION.