

SUBCONTRACT AGREEMENT

Sub Agreement # **XX**

Date:
Subcontractor:
Address:
Telephone:
Fax :
Owner:
Address:
Project:
Address:

Sinianian Development, Inc. (Herein "Contractor") and **Sub Name** (Herein "Subcontractor") agree that the Work as specified herein shall be performed by Subcontractor in accordance with all the provisions set forth below:

1. CONTRACT DOCUMENTS

1.1 The term “Contract Documents” is defined to mean and include the prime or general contract between the Contractor and Owner for construction of the above-referenced Project, including but not limited to, all plans, drawings, specifications, schedules, addenda, general and special or supplementary conditions or provisions, amendments, soils reports, maps and more specifically described herein below as:

1.2 Construction Specifications for the **Project**

1.3 Standard Specifications for Public Works Construction

1.4 Construction Drawings dated: **Date prepared by Architect** indexed as follows:

- Project**
List each sheet based on sheet index in plans (XX Sheets)
- General
 - Civil
 - Landscape
 - Architectural
 - Structural
 - Mechanical
 - Electrical
 - Telecommunications
 - Plumbing
 - Fire Alarm
 - Fire Protection

Other

Addenda listed

1.5 Subcontractor certifies that it is thoroughly familiar with all the terms and conditions of the Contract Documents and the execution of this Subcontract shall be deemed its acknowledgment that it has read and acknowledged the same. This Subcontract supersedes all prior written or verbal agreements represents the full and entire agreement between the parties. The Contract Documents are hereby incorporated into and made a part of this Subcontract by reference.

- 1.6 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 Subcontract, and that where reference is made to Contractor in the Contract Documents, 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.
- 1.7 Subcontractor has thoroughly reviewed the Contract Documents from beginning to end to ascertain if any limitations, qualifications or exclusions are necessary to qualify its price, schedule or scope of work obligations due to omissions, errors, ambiguities, conflicts or violations of applicable laws or codes in the Contract Documents. Furthermore, subcontractor understands that the subcontractor's particular branch of the work may be scattered throughout different parts of the Plans & Specifications, it being the Prime purpose of this Agreement to provide for the entire performance and completion of this Subcontractor's particular branch of subcontract Work. Any additional or unanticipated work, costs, expenses or time extensions arising from or related to the subsequent corrections, changes or clarification arising out of such errors, ambiguities, conflicts, or violations in the Contract Documents (i) which Subcontractor observes prior to execution of this Subcontract, or (ii) which Subcontractor should have observed prior to execution of this Subcontract in the exercise of reasonable care and diligence shall not be permitted unless such limitations, qualifications or exclusions are expressly listed and entitled as "Qualifications" or "Exclusions" in this Subcontract. Any references contained in the Subcontract to specific quantities of work to be provided by Subcontractor shall be construed as included for illustrative purposes only and shall not be interpreted as a limitation upon Subcontractor's responsibility to provide additional work or quantities of work, if necessary in order to complete its work in accordance with the Contract Documents.
- 1.8 Subcontractor confirms that the Work performed by Subcontractor on the Project, prior to the date on which this Agreement is fully executed, is subject to the terms and conditions of the Contract Documents and that all representations and warranties made by Subcontractor herein are retroactive to the date on which Subcontractor commenced work on the Project.

2. THE SUBCONTRACT WORK

- 2.1 Subcontractor agrees, at its sole expense, to furnish all labor, materials, services, equipment, tools, transportation, barricades, shop drawings, submittals, layout, insurance, bonds, taxes, escalation costs, permits, fees, overhead and profit required for the complete supply and installation of all **Scope** in accordance with Contract Documents, hereinafter referred to as the "Work". The Work is to be performed in strict compliance with all governing codes and existing conditions to include but not limited to DSA, City, State, Federal, County and/or Local Codes, Regulations and/or Ordinances. The Work shall include but is not limited to:

Specification Sections:

Division 01 – General Requirements

Division XX – XXXXX

Section 0XXXX – XXXX

Related sections as listed in the Specifications and as required for the complete and proper performance of your scope of work

Inclusions: Subcontractor agrees the following inclusions are a part of Subcontractor's Work:

- 1.) Furnish all labor, material, equipment, tools, transportation and incidentals to complete all **SCOPE** as described in the Contract Documents. Complete work that is currently shown, and that which can be reasonably anticipated to be included for this Project. No exclusion from limitations in plans and specifications shall be reason for omitting the appurtenances or accessories necessary to complete this work. No Change Orders shall be issued to Subcontractor unless the Owner revises the scope of work shown on the Contract Documents.
- 2.) Any reference in the Contract Documents to "Contractor", "General Contractor", "by Others" or similar references addressing work related to Subcontractor's scope of work shall be Subcontractor's responsibility.
- 3.) Subcontractor is responsible for complying with ASTM, ANSI, AAMA, AMA, all applicable DSA (Department State Architect), City, County, State and Federal ordinances, codes and regulations.
- 4.) Subcontractor is responsible for the timely submission of all required submittals (including LEED submittals) as outlined in the Contract Documents and prior to commencing any work.

- 5.) Subcontractor is solely responsible for all dimensional and level correctness of all its work. Subcontractor must immediately notify the Contractor in writing if any errors, omissions or discrepancies in the Contract Documents are discovered.
 - 6.) Subcontractor is responsible for verifying all dimensions and site conditions prior to start of work.
 - 7.) Subcontractor must coordinate, with at least 72-hour notice, all inspections and testing required for compliance with the appropriate agencies.
 - 8.) Subcontractor is responsible for re-inspection or retesting due to Subcontractor's failure to comply with any contract requirement necessary to pass the initial inspection or test.
 - 9.) Subcontractor is responsible for the storage, unloading, truck delivery, route and staging, and coordinating all items with the Contractor.
 - 10.) Subcontractor is responsible for all necessary move-ins required to perform scope of work.
 - 11.) Subcontractor is responsible to unload and protect materials stored on site per specifications.
 - 12.) Subcontractor is responsible for costs resulting from rejected submittals.
 - 13.) Subcontractor is responsible to comply with and participate in SWPPP and LEED and follow all guidelines as they pertain to the Work.
 - 14.) Subcontractor is responsible to comply with State Labor Code.
 - 15.) Subcontractor is responsible to submit all its suppliers and subcontractors' invoices and releases; failure to comply will be a justification to withhold payments.
 - 16.) Subcontractor is responsible to submit certified payrolls weekly in PDF, hard copy and per SBCC District's requirements; failure to comply will be a justification to withhold payments.
 - 17.) The Affidavit of Payment of Prevailing Wages and Utilization of Apprentices (attached hereto as Attachment "A") is required to be reviewed, signed and returned as part your executed subcontract agreement.
 - 18.) At the end of each working day, Subcontractor is responsible to stock all of its materials, equipment and tools in order and to dispose all of its trashes to the bin provided by the Contractor. Failure to comply with this will result in Contractor back charging the subcontractor for the clean up rate of \$120.00 per hour.**
 - 19.) Subcontractor is responsible to provide initially the electronic (PDF) copy of the submittals. Upon approval, Subcontractor shall provide five (5) sets of hard copies of the approved submittals. Failure to submit the required number of hard copies will result in SDI back charging the subcontractor at the following rates: Coordination Fee - \$10.00 per occurrence; 8 1/2" X 11" – B & W - \$.30 per sheet, Color - \$1.10 per sheet; 8 1/2" X 14" – B & W - \$.50 per sheet, Color - \$1.50 per sheet; 11" X 17" – B & W - \$1.00 per sheet, Color – \$2.25 per sheet; 24" X 36" – B & W – 5.00 per sheet, Color – will be sent back to sub for copies to be made; 30" X 42" – B & W - \$8.00 per sheet, Color – Will be sent back to sub for copies to be made.
 - 20.) There are three active construction contracts at Crafton Hills College. Crafton Hills College dictates and enforces the rules of use to access the site and to ensure the construction activities do not interfere with the college traffic. Violators may be asked to leave the site and/or ticketed by the campus police. No parking and/or waiting time is allowed by delivery trucks on Campus Drive, which leads to the site entrance. Subcontractors shall be responsible for all deliveries and must coordinate and ensure compliance. Subcontractors shall provide proper instructions to delivery agents and alert them of the campus requirements.
- 2.2 Subcontractor agrees that it is currently licensed pursuant to the California Contractors License Board and will maintain such license for the duration of the Work on the Project. Subcontractor further agrees that any lower tier subcontractor employed by Subcontractor will also be licensed pursuant to the California Contractors License Board.
- 2.3 If there is a conflict between the Contract Documents and the exclusions, qualifications and/or clarifications listed in Paragraph 2.1 hereinabove or elsewhere in this Agreement, the Contract Documents shall prevail and bind Subcontractor to the Work it is required to perform pursuant to Paragraph 2.1.

3. SUBCONTRACT AMOUNT

- 3.1 Contractor shall pay Subcontractor as full consideration for the Work, subject to additions and deductions for Changes as provided below, the sum of: **XXX Hundred XXX Thousand Dollars (\$000,000).**

4. PROSECUTION OF THE WORK

- 4.1 Time is of the essence. Subcontractor shall provide Contractor within ten (10) days after receipt by Subcontractor of this Agreement scheduling information for the Work, including durations (including the

activities of its subcontractors, vendors and suppliers), planned crew sizes, planned procurement dates, planned submission dates of required shop drawings, project data and samples for the Work. Based upon this information and similar such data from the other Subcontractors, Contractor shall prepare the Schedule of the Work establishing the sequence and time requirements of all work activities (“the Project Schedule”). Contractor, as may be necessary, may revise the Project Schedule as the Work progresses. Subcontractor acknowledges that revisions may be made in the Project Schedule and agrees to make no claim for acceleration or delay by reason of such revisions so long as such revisions are of the type normally experienced in Work of this scope and complexity. In the event Subcontractor is unable to maintain progress in accordance with the Project Schedule by reason of event for which extensions of time are permitted in the Contract Documents, Subcontractor's time for completion shall be extended for a reasonable, mutually agreed upon time, provided that a time extension is given by the Owner to Contractor, and further, provided that notification of delay is given as provided herein.

4.1.1 Whenever it becomes apparent to Contractor that any activity completion date of Subcontractor may not be met or if Subcontractor performs Work in a manner which causes delays to the critical sequence of the Project Schedule, Subcontractor shall immediately, upon written notice from Contractor, take some or all of the following actions at no additional cost to Contractor:

- .1 Increase manpower in such quantities as will substantially eliminate the backlog of work and put Subcontractor's Work back on schedule.
- .2 Increase the number of working hours per shift, shifts per working day, working days per week, or the amount of equipment, or any combination of the foregoing which will substantially eliminate the backlog of work and put Subcontractor's Work back on schedule.
- .3 Reschedule activities to achieve maximum practical concurrency of accomplishment of activities and put Subcontractor's Work back on schedule.

If Subcontractor fails to take any of the above actions within twenty-four (24) hours after receiving written notice from Contractor, Contractor may take action to attempt to put Subcontractor's Work back on schedule and deduct the entire cost of such actions from the amounts due or to become due Subcontractor.

4.2 Within ten (10) days after receipt by Subcontractor of this Agreement (or at an earlier time if required by Contractor), Subcontractor shall furnish Contractor with its list of proposed sub-subcontractors, equipment suppliers and the source and fabricator of all materials, including any proposed to be supplied or fabricated by Subcontractor, each of which are subject to Contractor's approval, along with the description and the dollar amount of the corresponding item of Work. Subcontractor shall bind its sub-subcontractors, equipment and material suppliers to all requirements set forth in this Agreement, the Project Schedule and the other Contract Documents. In those instances where the initially accepted supplier fails to submit Shop Drawings, Product Data or Samples which meet the Specifications, the additional costs (price increases and other costs due to delays in placing order) to furnish the specified equipment and/or material shall be borne by Subcontractor.

4.3 Contractor shall have complete control of the premises on which the Work is to be performed and shall have the right to decide in its sole discretion the time or 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.

4.4 Subcontractor hereby represents that it has reviewed and inspected the site of the Project, and has investigated and satisfied itself as to the conditions affecting the Work including, but not limited to, those bearing upon transportation, disposal, handling and storage of materials, availability of qualified labor, water, electric power, roads, and uncertainties of weather, river stages, tides, and the physical conditions of the site and the type of equipment and facilities needed preliminary to and during the performance of the Work. In addition Subcontractor shall have verified all elevations and field-measured the site to be familiar with the conditions prior to commencing the Work. Subcontractor has satisfied itself as to existing and known information concerning the surface and subsurface conditions of the site through a physical inspection of the site and a review of all exploratory reports prepared for the Owner or Contractor, as well as from information presented by the Contract Documents. Contractor assumes no responsibility for any data, conclusions or interpretations

contained in the Contract Documents and any failure by Subcontractor to acquaint itself with such available information will not relieve it from responsibility for estimating properly the difficulty, cost or complexity of successfully performing the Work for the Subcontract Amount and in accordance with the Project Schedule.

- 4.5 Subcontractor shall prosecute the Work in a prompt and diligent manner in accordance with the Project Schedule without hindering the work of Contractor or any other subcontractor. If work or property of others is hindered, delayed or damaged by Subcontractor, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages and liquidated damages, sustained by Contractor, or for which Contractor may be liable to Owner or any other party because of Subcontractor's default and, if applicable, Subcontractor will cause all such damage to be corrected to the satisfaction of and without cost to the Contractor and Owner. Should any subcontractor sustain any loss through (1) any wrongful or negligent act or omission of any other subcontractor, or (2) failure of any subcontractor to perform its contractual undertakings, the subcontractor so affected shall have no claim or cause of action against Contractor for such loss, but shall have a claim or cause of action against the responsible subcontractor to recover any and all loss sustained for which the responsible subcontractor does consent to such a cause of action by execution of its Subcontract Agreement. The phrase "act or omissions" as used herein shall be defined to include, but not be limited to any unreasonable interruption or delay caused by any such subcontractor.
- 4.6 Subcontractor agrees to notify Contractor, in writing within 48 hours, of any delays or anticipated delays in the performance of the Work and to state the cause of said delays. If Contractor is so notified, then, should the cause be a condition upon which the Owner permits extension of time in the Contract Documents, Contractor will apply for such extension. This time extension shall be the sole remedy for such delays. Subcontractor shall not be entitled to recover damages from Contractor for any delays not solely caused by Contractor and subject to the provisions of this Paragraph 4.6 if Contractor is not fully compensated by the Owner. Subcontractor shall have no right or claim against Contractor for any additional costs, expenses or damages resulting there from (including, without limitation, claims for extended overhead, loss of productivity or other "impact" costs) and Subcontractor hereby conclusively waives any right thereto. In the event Subcontractor fails to provide such written notice, Subcontractor shall be conclusively deemed to have waived any right to an extension of time.
- 4.7 Subcontractor acknowledges that the requirements of this Subcontract for timely submission of written notice of delays, anticipated delays, requests for extensions of time for delays or related claims are not mere technicalities, but are vitally necessary in order for Contractor to be able to promptly identify, prioritize and mitigate losses or delays associated with those circumstances which have become critical to Contractor's achieving completion within the time and price constraints of the Contract Documents. Accordingly, Subcontractor agrees that failure by it to comply with the formal notice requirements of this Subcontract shall be conclusively deemed to constitute prejudice to Contractor, thereby waiving Subcontractor's rights for extensions of time or claims regardless of whether the circumstances giving rise to such requests for extensions or claims were otherwise within the actual or presumed knowledge of Contractor by other means or from other sources, such as but not limited to verbal notices, meeting minutes, job site reports or other informal verbal or written communications.
- 4.8 Subcontractor shall continuously monitor the timely performance of its Work and provide the Contractor with a written status, upon request, showing current progress of shop drawings, submittals, manufacturing, fabrication, shipping and any other aspects of the Work.
- 4.9 No claims for additional compensation or damages for delays, including, but not limited to, delays by other subcontractors or the Owner, shall be recoverable from Contractor, and an extension of time for completion of the Project 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, but under no circumstances will the subcontractor receive any portion of any granted delay compensation in an amount in excess of the subcontractor's contract amount as a percentage of the total contract amount. 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, but not limited to attorney's fees and costs for expert witnesses, to the extent that said claim is made by Contractor at the request of or for the benefit of Subcontractor.

- 4.10 Subcontractor shall secure and pay for all permits, fees, bonds, deposits, utility charges, assessments, citations, and licenses required for and in connection with the Work, unless expressly excluded from Subcontractor's Work under this Agreement. If Subcontractor fails to pay any of the aforementioned expenses, Contractor may, at its sole discretion, pay such expense and demand the same from Subcontractor at or after final payment or withhold the same from progress payments otherwise due to Subcontractor.
- 4.11 Subcontractor shall comply with federal, state and local tax laws, social security acts and unemployment compensation acts, as applicable to its Work and shall maintain suitable forms, books and records and save Owner and Contractor harmless from the payment of any taxes, contributions or penalties incurred or caused by Subcontractor or by its sub-subcontractors or suppliers/vendors of any tier. Subcontractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Architect's approval of shop drawings, product data or samples unless Subcontractor has specifically informed the Architect in writing of such deviation at the time of submission and the Architect has given written approval to the specific deviation. Subcontractor shall not be relieved from responsibility for errors or omissions in the shop drawings, product data or samples by the Architect's approval thereof.
- 4.12 Subcontractor shall comply with all laws, statutes, rules and regulations by any appropriate governing body having jurisdiction over the Work regarding wages and benefits, hours and working conditions, certified payroll, worker health and safety, workmen's compensation, nondiscrimination and equal opportunity and affirmative action.
- 4.13 Subcontractor shall engage labor which will provide execution of the Work with other trades in a manner that shall not cause labor interruption or picketing, and shall, in the event of picketing or other form of labor dispute at the site of the Project, continue the proper performance of its Work without interruption or delay. Should the Work of Subcontractor cause labor interruption or picketing, Subcontractor acknowledges and agrees that Contractor is entitled to all remedies provided in this Agreement, including Article(s) 4.1 and 12.
- 4.13.1 In the event that Subcontractor or any of its subcontractors causes or is involved in any dispute with any union or other appropriate governing agency during the performance of the Work for matters including, but not limited to delinquency in payment(s) for health and welfare benefits, pension contributions, vacation or apprenticeship fund contributions, dues, or fringe benefits, the Subcontractor agrees that such action is a material breach of this Subcontract and that Contractor is entitled to all remedies provided in this Agreement, including Article(s) 4.1 and 12.
- 4.14 Subcontractor shall carry on Subcontractor's Work and maintain its progress during any dispute and/or legal proceedings.
- 4.15 Subcontractor shall employ a competent Project Manager, Foreman and necessary assistants for performance of the Work. The Project Manager or Foreman and necessary assistants, shall be in attendance at the Project site during the progress of the Work. These personnel shall be satisfactory to Contractor and shall not be changed except with the consent of the Contractor, unless they prove to be unsatisfactory to Subcontractor or Contractor or cease to be in Subcontractor's employ. The Project Manager and Foreman shall represent Subcontractor and all communications given to the Project Manager or Foreman shall be binding, as if given to Subcontractor. The Project Manager or Foreman shall attend all coordination, scheduling and safety meetings where Subcontractor's Work is involved and as required by the Contractor.
- 4.16 Subcontractor shall be responsible for and will prepare for performance of the Work, including without limitation thereto, shop drawings, samples and tests, field dimensions, determination of labor requirements and ordering of materials as required to meet the Project Schedule. Approval of Shop Drawings and samples submitted which are not in accordance with the Contract Documents will not relieve Subcontractor from its obligation to comply with the Contract Documents. Subcontractor shall notify Contractor when portions of the Work are ready for inspection.
- 4.17 Subcontractor is responsible for establishing capability to communicate with Contractor electronically via the Internet for email, certain document distribution and other uses as determined by Contractor.

- 4.18 Subcontractor shall cooperate with Contractor and subcontractors whose work may interfere with Subcontractor's Work and participate in the preparation of coordinated drawings and work schedules in areas of congestion, specifically noting and advising Contractor of any interference by other subcontractors, sub-subcontractors and/or vendors/suppliers of other subcontractors. Subcontractor shall be solely responsible to obtain all field measurements or shop drawings necessary to insure the proper fit or function of its Work. Subcontractor shall check the correctness of all adjacent, covered and contiguous work. Failure to detect or report apparent discrepancies, defects or deficiencies, prior to commencing the Work, will relieve the Contractor of any claims by Subcontractor resulting from such discrepancies, defects or deficiencies and shall entitle Contractor to require Subcontractor to replace such Work or work of other trades as may be necessary or incidental to the remediation of such discrepancies, defects or deficiencies.
- 4.19 Subcontractor shall maintain at the site, one copy of all Drawings (including as-built drawings), Specifications, Addenda, approved Shop Drawings, Change Orders and Modifications in good order and marked currently to record all changes made during construction relating to Subcontractor's Work, and review and acceptance of current as built drawings are a condition of processing progress payments.
- 4.19.1 Subcontractor shall submit all shop drawings as one complete set as required by the Contract Documents. All other submittals shall accompany the shop drawings. All submittals shall contain the following information:
- a) Date of submission and the dates of any previous submissions.
 - b) Project title and number.
 - c) Contract identification.
 - d) Names of Contractor, supplier or manufacturer.
 - e) Identification of the product, with specification number.
 - f) Field dimensions clearly identified as such.
 - g) Relation to adjacent or critical features of the work or materials.
 - h) Applicable standards such as ASTM, ANSI, Trade Standard or Federal specification number.
 - i) Identification or revisions on resubmittals.
- 4.20 If Contract Documents require a final set of Record Drawings and Operating and Maintenance Manuals upon completion of the Project, receipt by Contractor of the materials is an express condition precedent prior to processing Subcontractor's final payment for the Work.
- 4.21 Subcontractor shall strictly comply and require the same strict compliance by its employees, sub-subcontractors and suppliers with all Federal, State, and Local laws, rules, ordinances and/or regulations governing the acquisition, possession, usage notification procedures, storage, and disposal of hazardous materials of any nature utilized, produced or that are a by-product of the performance of this Agreement, and shall pay and shall indemnify and hold Contractor and the others harmless, as provided in Article 13 hereof from any and all associated costs and claims.
- 4.22 Subcontractor will not assign this Agreement, in whole or in part, nor subcontract the whole or any part of the Work to be performed hereunder without the prior written consent of Contractor, with the exception of those subcontractors listed by Subcontractor and furnished to Contractor as provided herein. Subcontractor hereby consents to the assignment of this Agreement by Contractor to the Owner provided that the assignment is effective only after termination by Owner of Contractor and written notice of the termination by the Owner.
- 4.23 At all times during the course of performing the Work, Subcontractor shall perform its Work, including all necessary clean-up, so as to maintain the Project site in a clean, safe and orderly condition. Upon completion of the Work, Subcontractor shall (a) clean all surfaces, fixtures, equipment and other items which are a part of the work under this Subcontract or may have been soiled by such work, and (b) remove from the job site and legally dispose of all temporary structures, debris, waste, and other items incidental to Subcontractor's operations, including all hazardous materials, which do not constitute a permanent part of the Project. Subcontractor shall follow all directions of Contractor in regard to clean-up both during the course of the Work and at the completion of the Work. Contractor shall be entitled to backcharge Subcontractor for the costs of clean-up if Subcontractor fails to clean up its work within twenty-four (24) hours after demand by Contractor.

- 4.24 Subcontractor shall be responsible for dust control of their operations in accordance with regulations set forth in the applicable governmental authorities and in compliance with the Contract Documents. If Subcontractor fails to comply with this paragraph within twenty-four (24) hours after receipt of notice of non-compliance from Contractor, Contractor may perform such necessary activities and deduct the cost for the same from any amounts due to Subcontractor. All fines assessed by governmental authorities for violation due to non-compliance with the above will be the responsibility of the violating subcontractor.
- 4.25 Subcontractor agrees that in the case of repairs to newly finished surfaces (not covered by Property Insurance), the cost of said repairs for which responsibility cannot be ascertained shall be prorated to subcontractors in proportion to the manpower employed during the period when damage occurred.
- 4.26 Subcontractor shall comply with all Quality Requirements of the Contract Documents and fully participate in Contractor's Quality Program. This shall include creation and execution of Subcontractor Site Specific Quality Plans. The Subcontractor Site Specific Quality Plan shall focus on planning and verification of installation in accordance with the Contract Documents, coordination procedures with other trades, test procedures and providing Contractor copies of associated codes, standards, and guidelines referenced in completing the Work.
- 4.27 It is understood and acknowledged by Subcontractor that scheduling for the Project may require temporary omission and "leap-frogging" of portions of the Work at locations to be designated by the Contractor. All fill-in and "comeback" required for those previously omitted areas or openings shall be completed at the direction of the Contractor and are to be included in this Subcontract. Subcontractor shall not be entitled to costs for demobilization and re-mobilization of its workers or equipment or other costs for escalation of labor, materials, equipment and services as a result of the Contractor directing the Work to proceed in a certain manner at its discretion.
- 4.28 Subcontractor is responsible for submitting certified payroll reports with statement of compliance weekly or as requested by Contractor and/or Owner in strict conformance with the requirements of the appropriate governing agency relating to the Work and all current wage determination rates as designated for the Work. Receipt of Subcontractor's certified payroll reports by the Contractor is a condition precedent for payment of progress payments to Subcontractor for the Work. Subcontractor is responsible for any and all costs associated with certified payroll compliance; failure to comply will be a justification to withhold payments.
- 4.29 Subcontractor shall not communicate with Owner, Architect or Owner's representative or any of their respective representatives, verbally or in writing, without the express consent of the Contractor or in the presence of Contractor.
- 4.30 Subcontractor is responsible for the requirements of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815. In addition, prior to receiving final payment Subcontractor will sign under penalty of perjury the Public Works Prevailing Wage Affidavit that Subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the project and any amounts due pursuant to Section 1813 of the California Labor Code.

5. CHANGES IN THE WORK

- 5.1 Contractor and Subcontractor agree that the Contractor may add to or deduct from the amount of Work covered by this Agreement, and any changes so made in the amount of Work involved, or any other parts of this Agreement, shall be by a written amendment setting forth in detail the changes involved, the value thereof and back-up information provided by the Subcontractor setting forth the costs of the change, which shall be mutually agreed upon between Contractor and Subcontractor and executed by both ("Change Order"). Subcontractor agrees to proceed with the Work as changed when so ordered in writing by the Contractor so as not to delay the progress of the Work, and without any determination of the value thereof, unless the Contractor specifically requires a proposal of cost be returned and accepted by Contractor before the change is affected. At all times, if the Contractor requests a proposal of cost for a change, Subcontractor shall promptly comply with such request.
- 5.2 When a change to the Subcontract Amount is made, the value of the change shall be computed by the Subcontractor and submitted to the Contractor in sufficient time to enable the Contractor to comply with the procedures set forth in the Contract Documents for such changes to the Subcontract Amount. Before

proceeding with any additional work, Subcontractor must have already obtained Change Order from Contractor or the Contractor may provide immediate direction to proceed on a written memorandum describing in detail the additional items of work to be performed. In the event the Subcontractor has not been issued a Change Order from the Contractor for a lump sum amount, the Subcontractor shall proceed with the work on a time and material basis and maintain accurate daily time and material records for the work performed on forms provided by the Contractor. The Subcontractor must obtain the signature of the Contractor and Owner, when applicable, on the time and materials records which shall be presented to the Contractor and the Owner on the same day as the work performed upon completion of the work described therein. Time and material records, even if signed by Contractor and Owner, when applicable, do not constitute a “Change Order” until the Contractor and the Owner, when applicable, establish that the work performed by the Subcontractor is not part of the Work in the Agreement.

- 5.3 Subcontractor shall be entitled to receive no extra compensation for extra Work or materials or changes of any kind regardless of whether the same was ordered by Contractor, Owner, Architect, or any of their respective representatives unless a Change Order or written directive therefor has been issued in writing by Contractor and subject to 5.5 below. If extra work was ordered by the Contractor and Subcontractor performed same but did not receive a written order therefor, Subcontractor shall be deemed to have waived any claim for extra compensation therefore, regardless of any written or verbal protests or claims by Subcontractor. Subcontractor shall be responsible for any costs incurred by Contractor for changes of any kind made by Subcontractor that increase the cost of the work for either Contractor or other subcontractors when Subcontractor proceeds with the change without a written order therefor.
- 5.4 Any increase or decrease in the amount to be paid or credited under this Paragraph 5 shall not exceed the amount of such increase, decrease or credit that is approved by Owner and for which Contractor receives payment from Owner for such work, less any amounts allowed for Contractor’s overhead, profit, bond premium, and work performed by Contractor or others in connection therewith. In the case of changes authorized to be performed on a “time and materials” basis, Subcontractor’s right to compensation shall be to reasonable costs of performing the change plus such markup as allowed by Paragraph 5.5; provided however, that such compensation shall in no event exceed such amount as is allowed by the Contract Documents, approved by Owner, and received by Contractor.
- 5.5 A request for a Change Order by Subcontractor shall consist of an itemized cost estimate outlining the changes in the Work and detailed documentation justifying any proposed changes in time and additional costs. This estimate shall be computed using estimating procedures acceptable to the Contractor and in accordance with the terms of the Contract Documents. Estimates for materials, labor and equipment shall be reasonable when evaluated against the standard of the industry for the locale of the Project. Markups for overhead and profit shall not exceed any limits set forth in the Contract Documents. Contractor shall have the right, in the event there is no agreement upon the price or other terms for the change prior to its performance, to direct Subcontractor in writing to perform the change without an agreed price or other terms, in which event Subcontractor shall perform such work and maintain time and material records as described in Paragraph 5.2 and shall receive as its full compensation for such change reimbursement of its actual costs as allowable under the Contract Documents, together with such overhead and profit markup thereon as is permitted by the Contract Documents. In the event the Subcontractor’s allowable markup for overhead and profit is not set forth in the Contract Documents, Subcontractor shall be entitled to no more than a markup of fifteen percent (15%) of the cost of the Work performed by the Subcontractor’s own forces and five percent (5%) of the cost of Work performed by its sub-subcontractors or suppliers.
- 5.6 Subcontractor agrees to review and submit to Contractor within ten (10) working days after receipt of a change estimate request an itemized quotation. Contractor shall enter “No Change” as to the Subcontract Amount and the time allowed to complete the Work on Subcontractor’s behalf in the event quotation is not received within the 10-day period. In addition, Subcontractor shall notify the Contractor within ten (10) calendar days of receipt of plan clarifications and/or responses to requests for information which have a cost impact upon his work. Non-receipt of such notice within the aforesaid ten (10) calendar days shall relieve the Contractor and Owner from claims for resultant additional costs or extension of completion time.

6. TEMPORARY PROVISIONS AND SAFETY

- 6.1 Subcontractor shall take all reasonable or required safety precautions with respect to its Work and for the protection of adjacent work and adjoining properties from damage arising out of Subcontractor's activities on the site, shall comply with safety measures as specified in the Contract Documents, and with all applicable laws, ordinances, rules, regulations or orders of any public agency for the safety of persons or property. Subcontractor shall immediately report to the Contractor any injury to an employee occurring at the Project site. Any workman who, after one warning, continues to disregard any applicable safety or health regulation whether the same be issued by Contractor or by any governing authority shall be subject to permanent ejection by Contractor from the job site.
- 6.2 Subcontractor shall promptly provide all lay out and engineering to perform the proper installation of its Work in the best workmanlike manner by qualified, careful and efficient workers using materials and equipment which are satisfactory and safe for the purpose that they are being used. Layout of work will be from control lines established by the Contractor.
- 6.3 Subcontractor shall provide all parking facilities and/or expenses or charges for its employees, sub-Subcontractors or others in connection with the performance of its Work. Onsite parking will be permitted at the sole discretion of the Contractor.
- 6.4 Space for storage on the project is limited. Storage space will be allocated as deemed necessary by Contractor. In the event an allocated storage area should become unavailable for any reason during construction, Subcontractor shall relocate his stored materials, equipment, refuse and temporary facilities to another location on the project as directed by Contractor at no additional cost to Owner or Contractor.
- 6.5 Storage and trailers will not be allowed on the sidewalk and/or street in order to accommodate material deliveries. Detailed schedules and diagrams regarding the date, time, unloading and storage area location for materials and equipment shall be submitted and subject to the approval of the Contractor.
- 6.6 Subcontractor will be responsible for unloading its material and equipment and must have flagmen and / or off-duty policemen as needed to direct pedestrian and vehicle traffic. Subcontractor shall obtain street use permits as required and specifically when making material deliveries. If Subcontractor utilizes any street areas for any purpose, these areas are to be cleaned daily to the satisfaction of the Contractor. Loading and unloading equipment and materials shall be in conformance with the State of California Department of Transportation including posting "truck crossing" warning signs placed 300 feet in advance of the operation in each direction. Flag persons shall be required at the jobsite entry/exit to assist trucks and equipment in and out of the project area. It is the responsibility of the Subcontractor to provide flag persons and warning signs in compliance with the latest edition of "Work Area Traffic Control Handbook."
- 6.7 The Subcontractor shall provide adequate protection as required for public property, private property, utilities and materials and shall be responsible for the safety of workmen in accordance with applicable codes, laws, and regulations of government agencies of jurisdiction. Any damage caused by Subcontractor's negligence shall be corrected by Subcontractor in a manner approved by the Contractor, Architect, and/or the Owner at no additional cost.
- 6.8 Subcontractor will be responsible for the protection of Subcontractor's material during delivery, unloading, hoisting, while in storage, during erection and until accepted by the Contractor, Owner, Architect and Engineer. This also includes materials furnished by other Subcontractors or Vendors which are turned over to Subcontractor for installation by Subcontractor.
- 6.9 Subcontractor will be responsible for the safety and protection of his own work, including the covering of any open holes, shafts, etc., so as to avoid any unnecessary safety hazards; others will be responsible for providing required safety and protection for their own operation.

7. OVERTIME

- 7.1 If periodic or selective overtime is required by the Contractor for reasons not arising from the acts or omissions of Subcontractor, such overtime will be performed by Subcontractor, at the written direction of the Contractor, and only the premium portion of such approved overtime, exclusive of any markups or fee, shall be due the Subcontractor. Notwithstanding the foregoing, should the Subcontractor fail to perform the Work

in accordance with the Project Schedule as determined by the Contractor, due to circumstances for which Subcontractor is not entitled to, or has waived the right to, an extension of time under this Agreement, the Subcontractor will, at its sole expense, work all overtime necessary to maintain the pace of the Project Schedule or to recapture the time lost, and such overtime, without regard to whether Contractor has or has not given written direction for such overtime, shall be the sole expense of Subcontractor.

8. PAYMENT

- 8.1 Subject to the conditional payment provisions set forth in this Subcontract, including without limitation the provisions of Paragraph 8.2, progress payment will be made to Subcontractor in an amount equal to ninety five percent (95%) of the value of labor and materials incorporated by the Subcontractor into the Work through the preceding month and, where permitted by the Contract Documents, the value of materials stored on the Project site or other locations agreed upon in writing and stored in a manner and on terms acceptable to Owner, Architect and Contractor. Each payment shall be less the aggregate of any previous payments in accordance with the provisions in the Contract Documents regarding payment of retention to Contractor by the Owner.
- 8.2 In the event Contractor is not paid by Owner any sum claimed due by Subcontractor, then Contractor's obligation to make payment to Subcontractor with respect to the time for payment to Subcontractor shall, in addition to any other conditions set forth in this Subcontract or the Contract Documents, be subject to the following conditions precedent:
1. If Contractor does not pay Subcontractor sums claimed due under the Subcontract and such nonpayment is thereafter "finally adjudged" (as hereafter defined) to have been the result of a breach by Contractor of the Prime Contract, then Contractor shall pay to Subcontractor such sum as is due under this Subcontract, inclusive of and limited to simple interest thereon at the rate of 10% per annum accruing from the date such sum was first due and owing to Subcontractor under Paragraph 8.1 or Paragraph 8.12, as applicable. The term "finally adjudged" as used in this Paragraph 8.2.1 shall mean the date final judgment is entered in any action by Contractor against Owner for recovery of sums due under the Prime Contract.
 2. If Contractor does not pay Subcontractor sums claimed due under the Subcontract and such nonpayment is for reasons other than a breach by Contractor of the Prime Contract as provided in Paragraph 8.2.1 above, then Subcontractor's right to payment shall be conditioned upon the passage of such time as may be reasonable and necessary for Contractor to fully exercise and exhaust to final judgment its legal, extrajudicial and appellate rights and remedies for collection of sums unpaid by Owner, together with the passage of such additional time as reasonably necessary for execution by Contractor of any final judgment entered in its favor. Simple interest only on such sums as are due to Subcontractor under this Paragraph 8.2.2 shall accrue and be payable to Subcontractor at the rate of 10% per annum commencing from the expiration of the reasonable time reserved to Contractor in this Paragraph 8.2.2 for recovery and collection from Owner.
 3. Nothing contained herein shall be interpreted as releasing or waiving any statutory mechanic's lien, bond or stop notice right reserved to Subcontractor under the law; provided however, that Subcontractor agrees in the event Subcontractor asserts a claim against any statutory or common law payment or performance bond issued in connection with the Project, the surety to such bond and the Contractor (if Contractor is a principal on the bond) shall have the right to assert as a defense to such claim, the nonoccurrence of any conditions to payments set forth in this Subcontract, including without limitation the failure or delay of payment by Owner to Contractor.
 4. If any portion of this Paragraph 8.2 is determined to be void, voidable or illegal, such portion shall be deemed severed from the other portions of this Paragraph 8.2 that are not void, voidable or illegal and such other portions shall be enforceable in accordance with their terms.
- 8.3 Subcontractor shall, within thirty (30) days after execution of the Subcontract, and before the first application for payment, submit to the Contractor a Schedule of Values of the various parts of the Work aggregating to the total Subcontract Amount in such form and detail as requested and acceptable by the Contractor or Owner. The Subcontractor shall provide such additional evidence as needed to substantiate the correctness of the values stated and such schedule of values shall become the basis for payment once it is approved, unless it is later found to be in error.

- 8.4 Contractor or Architect shall estimate the progressive value of the Subcontractor's Work and such estimate shall be binding on the Subcontractor and shall establish the value of Work completed and stored.
- 8.5 Subcontractor shall submit "Applications for Payment" in accordance with the terms of the Contract Documents, complete with sufficient documentation to permit verification. Payment for material or equipment not incorporated into the Work, but delivered and suitably stored shall only be made when such a condition is permitted by, and in strict accordance with, the Contract Documents so as to fully protect Owner's or Contractor's title and rights of possession. Such documentation accompanying Applications for Payment shall include, without limitation, Unconditional and/or Conditional Waivers or Releases of Lien, Stop Notice and Bond Rights in such form as required by the Contract Documents executed by Subcontractor and by all of its sub-Subcontractors and suppliers, of every tier. If such forms are not received for the previous month, no monies will be paid until their status is confirmed.
- 8.6 Subcontractor shall pay for all materials, equipment, labor or other costs used in, or in conjunction with, the performance of its Work through the period covered by the previous payment. No further progress payment will become due until Subcontractor has furnished satisfactory evidence to verify compliance with this requirement.
- 8.7 Payment to the Subcontractor shall not be considered as acceptance or approval of any Work and all Work shall remain subject to final inspection and approval as provided by the Contract Documents.
- 8.8 Any payment due may be withheld by the Contractor as a result of: defective Work by the Subcontractor; pending or actual claims filed against the Subcontractor; failure of the Subcontractor to make prompt payment for material, labor, taxes, insurance, fringe benefits or any other expense incidental to the Work; reasonable doubt that the Subcontract Work can be completed for its remaining unpaid balance, or within the time remaining for the work; or any other breach of the Subcontract by Subcontractor.
- 8.9 Contractor shall have right to offset after 10 day written notice against sums claimed by Subcontractor any monies or damages due to Contractor whether arising out of this Subcontract or any other contract between Contractor and Subcontractor in respect to the Project or any other project.
- 8.10 [Omitted]
- 8.11 All sums received by Subcontractor from Contractor under this Agreement are received in trust for the express use and purpose of paying in full for all labor, material, and appliances furnished to Subcontractor in the performance of this Subcontract. No title to any payment, or any part of it, shall vest in Subcontract, or be used for any other purpose, until Subcontractor has first paid in full for all labor and materials furnished to date to Subcontractor by all persons who have supplied labor, material, or other things used in the Work under this Subcontract. Any sums paid directly by Contractor to Subcontractor's sub-Subcontractors or suppliers, of any tier, as a result of Subcontractor's failure to make payment to them as required by this Subcontract, shall be deemed to be payments made for the purpose of discharging Contractor's obligations under the Prime Contract and shall not be construed as acknowledgment or admission that such monies were at any time due or owing to Subcontractor.
- 8.12 "Final Payment" shall be the unpaid balance of the Subcontract Amount and retention, if applicable, and shall become due only when the Work described in this Subcontract is fully completed and in accordance with the requirements of the Contract Documents.
- 8.13 In addition to any other requirements of this Subcontract and the Contract Documents, Final Payment shall not become due unless and until the following conditions precedent to the Final Payment have been satisfied:
1. Approval and acceptance of Subcontractor's Work by Owner, Architect and Contractor.
 2. Delivery to the Contractor of all manuals, drawings, guarantees, and warranties for material and equipment furnished by the Subcontractor, or any other documents required by the Contract Documents;
 3. Furnishing satisfactory evidence to Contractor that all labor and material accounts incurred by the Subcontractor in connection with its Work have been paid in full.

4. Furnishing a complete Unconditional Waivers and Releases Upon Final Payment and Releases of Lien, Stop Notice and Bond Rights upon Final Payment in such form as is satisfactory to Contractor executed by Subcontractor and its sub-subcontractors and suppliers, of every tier.
5. Receipt of Final Payment for Subcontractor's Work by Contractor from Owner.
6. Written consent of surety to final payment.
7. Affidavit of Payment of Prevailing Wages and Utilization of Apprentices is signed and returned.

9. LIENS AND THIRD PARTY CLAIMS

- 9.1 Subcontractor agrees to remove and release all liens, stop notices, bond claims and claims of any kind asserted by any third party or by sub-subcontractors, suppliers or persons, of any tier, furnishing labor or material in connection with the Work. Should Subcontractor fail to remove such lien or claim with ten (10) days of Contractor's written notification, Contractor shall have the right, whether or not such lien or claim is valid or invalid, to take whatever means it determines to be appropriate to cause said lien or claim to be removed or released, including direct payments for labor, material, supplies or equipment, and/or procurement of appropriate release bonds and shall deduct all costs associated with such action, including without limitation attorney's fees and fees for procurement of a bond, from any sums due Subcontractor.
- 9.2 This Subcontract is not entered into and intended to be for the benefit of any third parties and there shall be no third party beneficiaries hereto. Neither this subcontract nor any course of conduct on payment to Subcontractor or any sub-Subcontractors or suppliers, or any tier, shall be construed as creating any relationship or benefit to any third party or entity not a party hereto.

10. INSURANCE AND INDEMNIFICATION

- 10.1 Subcontractor shall maintain in effect at all times, at a minimum, and at its sole expense, such insurance as is required by the Contract Documents as will protect it from claims under the Workers' Compensation laws of the state in which the Work is being performed, as well as public liability and property damage insurance (occurrence form) in such amounts and for such coverage as prescribed by the Contract Documents, including such additional coverage which the Subcontractor would reasonably assume necessary to fully protect its interest in the Work. In the event the Contract Documents do not specify the amounts of insurance coverage to be provided by Subcontractor, then such coverage shall be as follows:
1. Workers' Compensation and Employers' Liability Insurance for protection of Subcontractor's employees, as required by applicable law;
 2. Automobile Liability, including owned, non-owned, and hired cars, trucks, and vehicles, as required by applicable law but not less than \$1,000,000.00 each occurrence, \$2,000,000 aggregate each occurrence;
 3. Comprehensive bodily injury and property damage liability except automobile as required by applicable law but not less than \$1,000,000 each occurrence, \$2,000,000 aggregate each occurrence.
 4. Commercial General Liability Insurance to be in effect with respect to Subcontractor, Contractor and Owner, and as will protect Subcontractor, Contractor and Owner from any and all claims for damages which may arise from operations under this Subcontract, which insurance shall be in the amount of not less than \$1,000,000.00 per occurrence, \$2,000,000 aggregate each occurrence against liability for damages because of injuries, including death, suffered by persons and in the amount of not less than \$1,000,000.00 per occurrence, \$2,000,000 aggregate each occurrence against liability for damages to property.
 5. Carrier must be A.M. Best rated A- or better; A.M. Best Financial Size Category VII or higher; and authorized under California law to transact business in the State of California and authorized to issue insurance policies in the State of California (admitted carrier).
- 10.2 Prior to commencing work, Subcontractor shall provide a certificate of insurance acceptable to Contractor which shall evidence that Subcontractor has purchased all coverage required by the Subcontract or the Contract Documents (whichever is applicable). Subcontractor shall not change, modify or cancel any policy without at least thirty (30) days prior written notice to the Contractor. All insurance policies maintained by Subcontractor pursuant to the Contract Documents shall name Owner and Contractor, and all of Owner and Contractor's affiliated companies, and any other party Owner or Contractor requests, as an additional insured in all applicable insurance policies, with respect to any and all potential liabilities arising out of the Work under this Agreement. The additional insured endorsement provided by Subcontractor for the Project shall be primary

and any insurance maintained by such additional insured, as applicable, shall be excess insurance only and not contributing. Subcontractor's insurance policy shall include a "severability of interest" clause or a "cross liability." Subcontractor's insurance policies shall provide that an act or omission of one of the named insured shall not reduce or avoid coverage to the other named insured and shall afford coverage for all claims based on acts, omissions, injury, and damage, which claims occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. Such coverage shall also contain endorsements: (a) deleting any employee exclusion on personal injury coverage; (b) including employees as additional insured; (c) deleting any liquor liability exclusion; (d) elimination of any exclusion regarding loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to by insurers as the "XCU" hazards; (e) such insurance, subject to all of its other terms and conditions, applies to the liability assumed by Subcontractor under this Agreement. Should Subcontractor fail to provide the insurance required herein, Contractor shall have the right, but not the duty, to provide such insurance and deduct the costs for such insurance from any payments due the Subcontractor and/or to treat such failure as a material breach of this Subcontract entitling the Contractor to terminate this Agreement for good cause.

- 10.3 All Subcontractors' insurance policies shall contain an endorsement providing the Contractor and Owner at least thirty (30) days written notice before termination, cancellation, reduction of coverage or lapse of any insurance policies. In the event of threatened cancellation or lapse of any policy for nonpayment of premium, Contractor may pay the same on behalf of the Subcontractor and charge such payment to the Subcontractor or deduct the same from payments otherwise due to Subcontractor.
- 10.4 The insurance required pursuant to Paragraph 10 must be written by an A.M. Best A-IX or better-rated insurance carrier acceptable to Contractor and Owner and licensed to do business in the State in which the Work is performed at the time the policy(ies) are issued.
- 10.5 To the fullest extent permitted by law, Subcontractor shall defend, indemnify, and hold harmless Contractor, Owner and Architect and all of their consultants, agents and employees from and against all claims, liabilities, damages, losses, penalties, intellectual property law violations and expense, including, but not limited to, attorneys fees and court costs, arising out of or resulting from the performance, or failure in performance, of Subcontractor's Work and obligations as provided in the Contract Documents, including any extra work and from any claim, liability, damage, loss or expense which is (a) attributable to bodily injury, sickness, disease, or death, or patent infringement, or to injury to or destruction of tangible or intangible property including the loss of use resulting there from, and (b) caused whole or in part by the performance of the Subcontractor's Work, the breach of any obligations of Subcontractor hereunder, or any negligent act or omission of the Subcontractor or anyone directly or indirectly employed by it or anyone for whose acts Subcontractor may be liable, or is caused by or arises out of the use of any products, material or equipment furnished by Subcontractor, regardless of whether it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 10.6.
- 10.6.1 In any and all claims against the Contractor, the Owner, the Architect, or any person or entity indemnified hereunder by the Subcontractor or any of its subcontractors, consultants, agents or employees, either directly or indirectly employed by the Subcontractor, or anyone for whose acts the Subcontractor may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor. The indemnification by Subcontractor shall apply regardless of any concurrent or contributory negligence of any person, including the Contractor; provided however, that Subcontractor shall not be obligated hereunder to indemnify Contractor and its consultants, agents, and employees from and against their respective sole negligence or willful misconduct. Contractor shall be entitled to recovery of any attorney's fees incurred as a result of Subcontractor's failure to provide the defense and indemnity required by this Paragraph 10.6.
- 10.6 All indemnification obligations of the Subcontractor under this Agreement shall remain in full force and effect as to claims occurring after this Agreement is terminated or completed, and shall not be limited by the insurance requirements contained herein. All insurance companies providing coverage under this Agreement must be acceptable to the Contractor.

11. CLAIMS AND DISPUTES

- 11.1 In the event Subcontractor claims that it is entitled to damages or additional compensation, or in the event that Subcontractor disputes any determination made by Owner, Subcontractor shall, within the time allowed by the Contract Documents, prepare its claims or contentions in writing and in the manner prescribed in the Contract Documents, for presentation by Contractor to Owner. Subcontractor shall be bound by the Owner's ruling or decision on all such matters to the same extent that Contractor is bound, and Subcontractor shall have no right to receive payment from Contractor on any such claim or contention in any sum greater, or in the case of multiple claimants in a percentage greater than the subcontractor's claim to the whole claim, than that allowed and paid to Contractor by Owner.
- 11.2 Except as provided in Paragraph 11.3 below, in the event that a dispute, disagreement or controversy arises with respect to the performance of either party under this Subcontract or the interpretation of any provision of this Subcontract, which the parties are unable to resolve, it shall be fully and finally resolved at the completion of the Project and shall not result in the stoppage by the Subcontractor of the Work or any extra work as directed by the Contractor or Owner. The Subcontractor shall reserve its rights with regard to any such disputes and proceed with the Work through completion.
- 11.3 The provisions of Paragraph 11.2 shall not apply in the event (i) the dispute involves or relates to matters in dispute between Contractor and Owner in which case the method for resolution of the dispute between Contractor and Subcontractor shall be governed solely by the dispute resolution procedures set forth in the Contract Documents or, if there are no such procedures, by litigation; or (ii) the dispute between Contractor and Subcontractor involves any other third person or entity to whom Contractor may be liable or against whom Contractor asserts a related claim and who cannot be, or refuses to be, joined as a party to the arbitration between Contractor and Subcontractor.
- 11.4 In the event of a dispute resolution proceeding between Contractor and Owner which is related to a dispute between Contractor and Subcontractor, Subcontractor hereby consents to its being joined as a party in and bound by any dispute resolution procedure set forth in the Contract Documents.
- 11.5 In the event a dispute arises between the Owner and Contractor which under the terms of the Contract Documents, Contractor is obligated to arbitrate and which is arbitrated, then, at the sole election of the Contractor to be exercised in Contractor's discretion, Subcontractor shall, upon written demand by Contractor to Subcontractor and without necessity of a prior court order, join said arbitration and shall be bound, to the same extent as the Contractor is to the Owner, to any award entered pursuant thereto. In the event such arbitration includes the collection of sums claimed by Subcontractor or the defense of any claims relating to the Work, Subcontractor shall be responsible for and shall pay prior to commencement of the arbitration any and all arbitration fees including the arbitrator's fees on the basis of the percentage that the sums claimed bear to the total sum in controversy in the arbitration. Contractor shall not be obligated to arbitrate controversies arising under or relating to their subcontract unless and except Contractor elects to arbitrate in accordance with Paragraph 11.2 hereof.
- 11.6 In the event any dispute arises between General Contractor and Subcontractor relating to or arising under this Subcontract, including issues of arbitrability, which are not the subject of any arbitration between Owner and Contractor, then Contractor shall have the right to elect, in its sole discretion, that such dispute be submitted without necessity of prior court order to binding arbitration in accordance with the California Code of Civil Procedure.

12. DEFAULT AND TERMINATION

- 12.1 Should Subcontractor fail and default at any time to supply a sufficient number of properly skilled workmen or sufficient materials and equipment of the proper quality, or fail in any respect to prosecute the Work with promptness and diligence, or fail to promptly correct defective Work, fail to provide the insurance, indemnity or bonds required herein, or fail in the performance of any of Subcontractor's duties, responsibilities or obligations herein contained, after giving twenty-four (24) hours' notice to Subcontractor, the Contractor may, at its option, provide such labor, materials and equipment and to deduct the entire cost thereof, together with all loss or damage occasioned thereby, from any money then due or thereafter to become due to Subcontractor under this Agreement.

- 12.1.1 To remedy deficiencies of Subcontractor, the Contractor shall be entitled to take over or to cause others to take over any work being performed and to be performed under this Agreement, or any part thereof, together with any tools and equipment, and any appliances, materials and supplies ordered or fabricated, whether at the jobsite or elsewhere, and to complete such work for the account of Subcontractor by whatever method the Contractor deems reasonably practical and expedient; in this regard. Subcontractor acknowledges that it is reasonable to employ a substitute contractor upon a cost-plus or time and material basis to complete partially performed construction work; in such event, no further payments to Subcontractor shall be made until said work is completed and accepted and paid for by Owner; then, if the unpaid balance of the Subcontract Amount exceeds the entire cost of completing said work, such excess shall be paid to Subcontractor upon the condition precedent, as provided in Paragraph 8.2 above; however, if at any time such entire cost exceeds such unpaid balance as paid by the Owner to the Contractor, Subcontractor, or its Surety if Subcontractor has provided bonds per Paragraph 13 of this Agreement, shall immediately pay the amount of such insufficient balance to the Contractor. Amounts remaining after the Contractor's receipt of all payments from the Owner relating to this Agreement and payment to the Contractor of the entire cost of Subcontractor's default from the balance of the Subcontract Amount and the amounts paid, as provided above, to Contractor by Subcontractor, or its Surety if Subcontractor has provided bonds per Paragraph 13 of this Agreement, shall be paid without interest to Subcontractor by the Contractor.
- 12.1.2 Any attempt by Subcontractor to cure any such claimed default during the notice period must be, in the Contractor's opinion, bona fide and effective to correct or substantially assure correction of the default in order to merit rescission of the notice of default. All warranties shall survive any default hereunder and Subcontractor shall remain responsible to the Contractor for such warranty obligations.
- 12.1.3 Whenever the term "entire cost" is used in connection with work performed and material, services, etc. furnished by the Contractor or others for the account of Subcontractor, such term shall include all sums paid and obligations incurred to do the Work and furnish the materials, services, personnel cost, etc. or have the same done or furnished by others, including, but not limited to, reasonable overhead and profit, related or resulting claims, damages or losses of any nature., lost interest earnings or other financing costs, and all litigation expense, court costs, attorneys' fees and any other necessary or expedient expenses of any nature reasonably incurred in connection with or incidental to such work. The Contractor may backcharge and deduct the entire cost against Subcontractor's earnings under this Agreement and the Subcontract Amount, and if the entire cost exceeds said Subcontractor's earnings and Subcontract Amount received from the Owner, Subcontractor, or its Surety if Subcontractor has provided bonds per Paragraph 13 of this Agreement, shall immediately pay Contractor the amount of such excess.
- 12.2 If Subcontractor at any time shall refuse or neglect to supply sufficient properly skilled workmen, or materials or equipment of the proper quality and quantity, or fail in any respect to prosecute the Work with promptness and diligence, or cause by any action or omission the stoppage or interference with the work of the Contractor or other subcontractors, or fail in the performance of any of Subcontractor's duties, responsibilities, or obligations herein contained, or be unable to meet its debts as they mature, the Contractor may at its option at any time matter serving written notice of such default with direction to cure in a specific period, but not less than two (2) working days, and Subcontractor's failure to cure the default, terminate Subcontractor's employment by delivering written notice of termination to Subcontractor. Thereafter, the Contractor may take possession of the plant and work, materials, tools, appliances and equipment of Subcontractor, whether at the jobsite or elsewhere, and through itself or others provide labor, equipment and materials to prosecute Subcontractor's Work on such terms and conditions as shall be deemed necessary and shall deduct the entire cost thereof, including without restriction thereto all charges, expenses, losses, costs, damages, and attorney's fees, incurred as a result of Subcontractor's failure to perform, from any money then due or thereafter to become due to Subcontractor under this Agreement.
- 12.3 If Contractor so terminates Subcontractor, Subcontractor shall not be entitled to any further payments until Subcontractor's Work has been completed and accepted by the Owner. In the event that the unpaid balance due exceeds the Contractor's entire cost, the difference shall be paid to Subcontractor, however, if at any time such entire cost exceeds such unpaid balance as paid by the Owner to the Contractor, Subcontractor, or its

Surety if Subcontractor has provided bonds per Paragraph 13 of this Agreement, shall immediately pay the amount of such insufficient balance to the Contractor. Amounts remaining after the Contractor's receipt of all payments from the Owner relating to this Agreement and payment to the Contractor of the entire cost of Subcontractor's default and termination from the balance of the Subcontract Amount and the amounts paid, as provided above, to the Contractor by Subcontractor, or its Surety if Subcontractor has provided bonds per Paragraph 13 of this Agreement, shall be paid without interest to Subcontractor by the Contractor.

- 12.4 In the event of the termination of the Contractor by the Owner for any reason whatsoever, so long as Owner is providing the financing for the Project, Subcontractor shall perform under the subcontract for the benefit of Owner in accordance with the terms and conditions of this Agreement.
- 12.5 Contractor may at any time and for any reason terminate Subcontractor's services and the Work for Contractor's convenience. Such termination shall be by written notice to Subcontractor at Subcontractor's place of business. Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the Work and the placing of orders for materials, equipment and supplies in connection with the performance of the Work, 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 Project site or in transit thereto.
- 12.5.1 Upon such termination, Subcontractor shall be entitled to payment of the following amounts, which shall constitute full satisfaction of all claims by Subcontractor for payment on account for work performed under this Subcontract: (1) the actual cost of the work completed in conformity with this Subcontract through the date of termination; plus (2) such other costs actually incurred by Subcontractor as are payable to Contractor under the Prime Contract and approved by Owner; plus (3) a reasonable sum for overhead and profit. There shall be deducted from the amount determined as provided in this subparagraph the amount of any payments made to Subcontractor prior to the date of termination.
- 12.5.2 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.
- 12.6 In no event shall Subcontractor have a claim for damages, lost profits or otherwise due to termination of this Subcontract by Contractor. In the event any termination by Contractor under Paragraph 12.1 is determined to be wrongful, then such termination shall be deemed to be a termination under Paragraph 12.5.

13. BONDING OF SUBCONTRACTOR

- 13.1 If the subcontract amount is greater than \$250,000.00 then the Subcontractor hereby agrees to furnish, concurrently with the execution hereof, a performance bond in an amount equal to the full Subcontract Amount and a payment bond in an amount equal to the full Subcontract Amount with a corporate Surety or Sureties listed in the most current United States Department of the Treasury-Federal Register. Bonds shall contain terms and be in a form satisfactory to the Contractor conditioned upon faithful performance by Subcontractor of each and all of the provisions hereof. Contractor reserves the right to require performance and payment bonds on any subcontract even though not required by the Contract Documents. If Subcontractor fails to provide the bonds specified herein within three (3) days after demand by Contractor, Contractor shall have the right to terminate this Agreement and Subcontractor shall have no right to payment for any work performed prior to such termination. Contractor reserves the right to waive any or all of these requirements at its discretion.
- 13.2 If change order work results in an increase in the Subcontract Amount, Subcontractor shall provide bond riders evidencing that the penal sum of the bonds has been increased to equal the adjusted Subcontract Amount. The cost of such increase in bond coverage shall be at Subcontractor's expense and included in said change orders.

14. HAZARDOUS MATERIALS

- 14.1 Subcontractor acknowledges California Proposition 65 "Asbestos Notification Law and Safe Drinking Water and Toxic Enforcement Act of 1986" and is in compliance with its rules and regulations.
- 14.2 Subcontractor agrees that in performing its Work, it will not create, use or dispose of any hazardous chemicals or substances in an unlawful or hazardous manner and shall be solely responsible for the lawful, proper and safe handling, storage and removal of all hazardous wastes, chemicals and substances which are introduced to the site, or removed from the site, by Subcontractor's performance of the Work. The term "hazardous wastes, chemicals or substances" shall mean those materials and substances prohibited, proscribed, or the use of which is controlled by any agency of the federal government or the applicable state or local agency having jurisdiction over such matters. Subcontractor shall comply with all federal, state and local regulations dealing with the use, storage or disposal of all hazardous wastes, chemicals and substances. Subcontractor shall be responsible for any and all claims and damages resulting from its use, handling, storage, removal and disposal of such hazardous wastes, chemicals or substances from the Project, and will defend and hold Contractor harmless from any and all liability and cost associated with such use, handling, storage, removal, remediation, and disposal including all associated attorney's fees and costs and costs of all cleanup operations wherever and whenever required by any governmental authority or Contractor.

15. WARRANTY

- 15.1 Subcontractor warrants that all material and equipment incorporated in its Work will be new, unless otherwise specified, and that all Work provided under this Subcontract shall be of good quality, free from faults and defects and in conformance with the Contract Documents and for the amount of time designated in the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Subcontractor agrees to replace, at its exclusive expense, all Work adjudged by Architect, Owner or Contractor to be defective or improperly installed. Such guarantee shall include all costs incurred to remove, repair or replace the work of other trades, as necessary, to gain access to, repair or replace such defective materials or workmanship as well as any costs incurred by the Contractor or Owner for damages to finishes, fixtures, furnishings, or any other portions of the Project, caused either wholly or in part by elements of the Work. This warranty is in addition to and not in limitation of any other warranty or remedy required by law or the Contract Documents.

16. GENERAL PROVISIONS

- 16.1 This Subcontract contains the entire agreement between the parties and supersedes all prior verbal or written agreements, written or verbal proposals, and representations. This Subcontract may not be amended or modified, except as provided herein. The captions, titles and paragraph headings used in this Subcontract are inserted only as a matter of convenience and reference and in no way define, limit or describe the scope or intent of this Subcontract. If any term, provision, covenant, or condition of this Subcontract is held to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and shall in no way be affected, impaired or invalidated. Whenever the word "including" is used in this Subcontract, it shall mean "including, without limitation".
- 16.2 Any notice to be given pursuant to this Subcontract may be served personally on the superintendent, foreman, or other person in charge of work for either party of the job site or may be served personally or by certified mail, telegram, electronic mail or facsimile transfer to the address of the parties as set forth on Page 1 of this Subcontract or to the Project Manager, Superintendent and/or any other person with appropriate authority in the employ of the Subcontractor. The effective date of giving any notice by regular mail shall be the date on which the notice is deposited in U.S. mail. In all other cases, the effective date of giving notice shall be the date of actual receipt.
- 16.3 The laws of the State in which the Project is located shall govern this Subcontract, unless otherwise provided in the contract between Contractor and Owner.
- 16.4 Neither this Subcontract nor any course of conduct on payment to Subcontractor or any of Subcontractor's sub-Subcontractors or suppliers, of any tier, shall be construed as creating any relationship or benefit to any third person or entity not a party hereto.

- 16.5 If any portion or provision of this Subcontract is determined judicially to be invalid or unenforceable, it is to be judicially rewritten so as to make such provision valid and enforceable if permissible. In the event of partial invalidity, all other provisions are to be enforced as written and such partial invalidity shall only affect the invalid provision(s) and not the entirety of this Agreement.
- 16.6 The Subcontract Price and the other provisions and terms of this Subcontract have been negotiated and agreed to by experienced, knowledgeable and consenting persons in an arms-length negotiation. The Parties to this Agreement shall each be deemed to have drafted this Agreement, such that no ambiguity in this Agreement, if any, shall be construed against the other.
- 16.7 Owner, Contractor and entities and agencies designated by Owner or Contractor shall have access to and the right to audit and the right to copy at the requesting party's cost all of Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work. Subcontractor shall preserve all such records and other items for a period of at least ten (10) years after final payment by Owner under the terms of the contract between Contractor and Owner.

IN WITNESS WHEREOF, the parties have executed this Subcontract the day and year written hereinabove.

Sub Name

SINANIAN DEVELOPMENT, INC.

By _____
 A () Corporation, () Partnership, () Individual

By _____
 Sinan Sinanian,
 Co-President - CA License # 455273

By _____
 (Name / Title)

Tax I.D. No. _____

Contractor License No: _____

Expiration Date: _____

City Business License
 Tax No. (If Applicable) _____

Expiration Date: _____

DATED: _____

DATED: _____