



AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR

AGREEMENT made as of the ___ day of _____, 20_____.

BETWEEN:

Contractor: J.R. Lennen Construction, Inc.
73605 Dinah Shore Drive, Suite 1330
Palm Desert, CA 92211

Will hereinafter be referred to as "Contractor"

AND

Subcontractor: Company name
Address
City, State zip

(Insert Company Name) will hereinafter be referred to as "Subcontractor"

THIS AGREEMENT RELATES TO THE FOLLOWING:

Project: Name
Address
City, State zip

Owner: Name
Address
City, State zip

Landlord: Name
Address
City, State zip

Architect: Name
Address
City, State zip

Lender: None

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THE CONTRACTOR AND SUBCONTRACTOR AGREE AS FOLLOWS:

ARTICLE 1 CONTRACT DOCUMENTS

1.1 The Subcontractor shall complete the work described in the Contract Documents for the Project. The Contract Documents consist of:

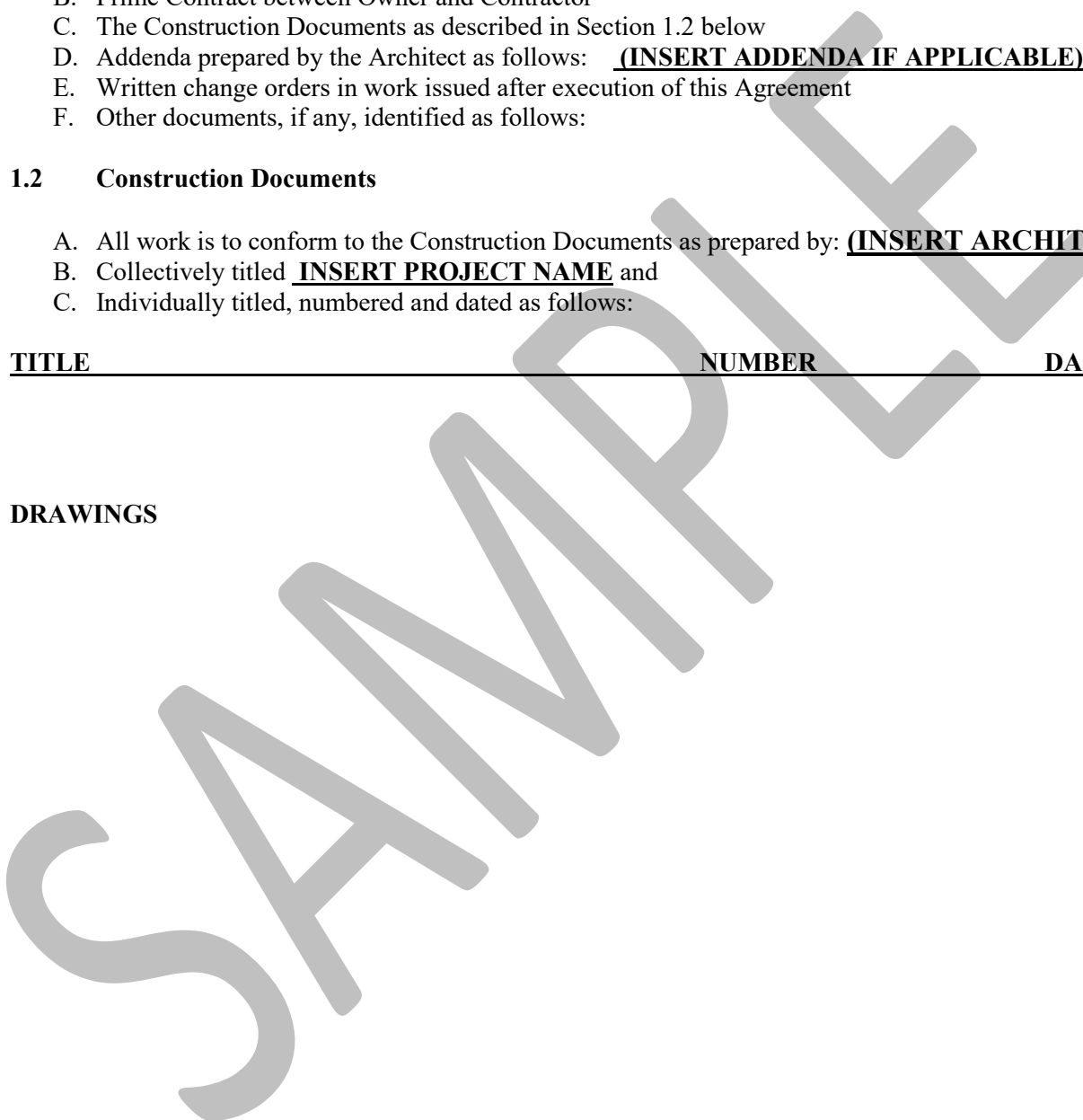
- A. This Agreement signed by Contractor and Subcontractor
- B. Prime Contract between Owner and Contractor
- C. The Construction Documents as described in Section 1.2 below
- D. Addenda prepared by the Architect as follows: **(INSERT ADDENDA IF APPLICABLE)**
- E. Written change orders in work issued after execution of this Agreement
- F. Other documents, if any, identified as follows:

1.2 Construction Documents

- A. All work is to conform to the Construction Documents as prepared by: **(INSERT ARCHITECT)**
- B. Collectively titled **INSERT PROJECT NAME** and
- C. Individually titled, numbered and dated as follows:

<u>TITLE</u>	<u>NUMBER</u>	<u>DATE</u>
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DRAWINGS



1.3 Contract Document Exhibits to this Agreement are as follows:

- A. Exhibit A Construction Schedule
- B. Exhibit B Insurance Sample Certificate
- C. Exhibit C Billing Application for Payment
- D. Exhibit D Subcontractor’s Statement
- E. Exhibit E Owner’s Progress Lien Waivers
- F. Exhibit F Owner’s Final Lien Waivers
- G. Exhibit G Project Contact Form
- H. Exhibit H Warranty
- I. Exhibit I Subcontractor Layout Guide

ARTICLE 2 DESCRIPTION OF THE WORK

2.1 Subcontractor agrees to furnish at its own cost and expense all labor, equipment, scaffolding, power, taxes, fees, materials, supplies, and other things necessary to perform and complete, in accordance with this Agreement, Prime Contract, Drawings, Specifications, General Conditions, Addenda, and Modifications to the Prime Contract, the following portion of the Prime Contract (copy upon request) and all work incident to it:

(INSERT SCOPE OF WORK HERE) PER YOUR SCOPE OF WORK DATED (INSERT DATE)

Work for the referenced project is required to be done in strict accordance with the Contract Documents as described above. The description of the work to be performed or material to be furnished by Subcontractor by reference to a section or sections of the drawings or specifications, shall not limit Subcontractor’s obligation to perform only such work or furnish only such materials as are described in that section or sections, if work or material that is within the general description of the section or sections is required of the Subcontractor by trade practice or by any other provision or section of the drawings or specifications. Subcontractor shall furnish all material and perform all work coming within the general description of the designated section or sections, and reference to such section or sections is solely for convenience in describing Subcontractor’s work. Any dispute between Subcontractors over responsibility for divisions or categories of work shall be resolved by Contractor, whose decision shall be final.

ARTICLE 3 INCOMPLETE DETAILS

3.1 The work to be performed by the Subcontractor includes that work specifically set forth in this Agreement, as well as any and all other work reasonably inferable from the Contract Documents to include work which is necessary to have a properly working and totally acceptable scope of work for this Agreement. Subcontractor shall take all field measurements necessary to perform its work. Contractor makes no warranty either expressed or implied as to the sufficiency of the Construction Documents furnished by the Owner. The Subcontractor shall furnish all required samples and shop drawings in order to insure that the Subcontractor’s Scope of Work is complete in every detail and free from any gaps, duplications or omissions.

ARTICLE 4 INCORPORATION OF PRIME CONTRACT

4.1 To the extent that they apply to the work to be performed by Subcontractor under this Agreement, the provisions of the Prime Contract, Drawings, Specifications, Addenda, Change Orders, and other documents forming a part of the Prime Contract are incorporated into this Agreement with the same force and effect as though set forth in full. Whenever reference is made in this Agreement to the Prime Contract documents, that reference shall be construed to include the Prime Contract, Drawings, Specifications, Change Orders, and all other documents forming a part of the Prime Contract. Subcontractor shall be bound to Contractor to the same extent that Contractor is bound to Owner, by all terms and provisions of the Prime Contract, and by all decisions, rulings, and interpretations of Owner or its authorized representative. Copies of the Prime Contract documents are available for review at Contractor’s office. If a conflict occurs between the Prime Contract and this Agreement, this Agreement shall control.

ARTICLE 5 DATE OF COMMENCEMENT & SUBSTANTIAL COMPLETION DATE

5.1 Commencement Date for the Project shall be: START DATE and the Substantial Completion Date for the Project shall be: COMPLETION DATE

5.2 Liquidated Damages clause (if any): **None**

ARTICLE 6 CONTRACT SUM

6.1 This work is to be performed for the lump sum price, including all applicable taxes, of:
INSERT CONTRACT SUM IN WORDS HERE DOLLARS AND 00/100-----
(\$ 0.00)

ARTICLE 7 PAYMENT TERMS AND REQUIREMENTS

7.1 Contractor shall pay Subcontractor to perform all work and services as well as furnish all materials, appliances, equipment, and tools that Subcontractor is obligated to use and furnish under this Agreement.

7.2 Payment Schedule Will Be as Follows:

- A. Contractor shall pay the Subcontractor monthly progress payments in accordance with this Agreement.
- B. Invoices for monthly progress payments shall be in writing and shall state the estimated percentage of the work in this Agreement that has been satisfactorily completed.
- C. Invoices shall be submitted to Contractor on or before the 25th day of each month via e-mail.
- D. With each progress billing, Subcontractor shall submit all items described in section 7.3.
- E. Progress payments shall be paid to Subcontractor on the 15th of the month following receipt of payment applications. A 10% Retention will be withheld from each application for payment.
- F. Retention payment shall be released upon receipt of all items as described in section 8.2.
- G. **All invoicing documents must be submitted together. Any incomplete billings submitted may be rejected and payment(s) may be delayed until the following billing cycle.**

7.3 Documents Required with Each Progress Billing:

- A. Billing Application for Payment (Exhibit C)
- B. Subcontractor's Statement (Exhibit D)
- C. Conditional Upon Progress lien release on the **required owner's form** for suppliers and/or sub-subcontractors
- D. Conditional Upon Progress lien release on the **required owner's form** for Subcontractor
- E. Unconditional Upon Progress lien release on the **required owner's form** for suppliers and/or sub-subcontractors paid **prior** to current invoice
- F. Subcontractor shall submit an **original, notarized,** Unconditional Upon Progress lien release on the **required owner's form** no more than **five (5)** days following payment.
- G. When billing 90%, conditional upon final lien releases on the **required owner's form** for both labor and materials are **required**.

7.4 **Effect of Payments.** No payment made under this Agreement shall operate as an acceptance of any part of Subcontractor's work or as Contractor's admission that this Agreement, or any part of it, has been complied with, if the facts are otherwise.

7.5 **Payments in Trust.** All sums received by subcontractor from Contractor under this Agreement will be held in trust by Subcontractor for the express use and purposes of:

- A. Paying in full for all labor, material, equipment, and appliances furnished to Subcontractor in performing this Agreement and;

- B. If required, making payments to labor union trust funds established under a collective bargaining agreement.

No title to any payment or any part of it shall vest in Subcontractor or be used for any other purpose until Subcontractor has first paid in full for all such labor, material, equipment, and appliances furnished by that date to Subcontractor.

7.6 Price Escalation. This Agreement includes any and all price escalation throughout the duration of the Project. Any increase in the cost of labor, materials, equipment and/or any other expenses after execution of this Agreement, will be absorbed by Subcontractor and will not result in an increase in the Contract Sum.

ARTICLE 8 RELEASES / PROOF OF PAYMENT / RETENTION

8.1 Before Contractor is required to make any payment under this Agreement, Subcontractor will furnish to Contractor, in a statutory form satisfactory to Contractor, releases showing that all work, equipment, and materials furnished under the Agreement have been paid in full or that claims for such payments have been properly released. Subcontractor will permit Contractor to audit its payroll accounts periodically to determine whether amounts for fringe benefits and payroll taxes have been paid.

8.2 Retention payment shall be released **upon receipt** of the following:

- A. Acceptance of Project completion by Owner
- B. Punchlist completion
- C. As-builts in **electronic format** (if applicable)
- D. Certified Air Balance Reports (if applicable)
- E. O&M Manuals (if applicable)
- F. Warranty **on required owner's form**
- G. Copy of City Business License
- H. Unconditional upon Final lien waiver(s) from any/all suppliers and/or sub-subcontractors on the **required owner's form**
- I. **Notarized, original** Unconditional Upon Final lien waiver from Subcontractor with whom this Agreement is made on the **required owner's form**
- J. Owner's release of said retention to Contractor

ARTICLE 9 REVISIONS / CHANGES

9.1 When Contractor so orders in writing, the Subcontractor shall make any and all changes in the work, which are in the general scope of this Agreement. Adjustments to the contract price or contract time, if any, resulting from such changes shall be set forth in a Subcontract Change Order pursuant to the Contract Documents. No adjustment shall be made for any changes performed by the Subcontractor that have not been ordered in writing by Contractor's Corporate Office. **NO FIELD AUTHORIZATIONS WILL BE ACCEPTED OR APPROVED.**

9.2 As Contractor, the Owner or Architect provide additional information or revisions, Subcontractor shall review and notify Contractor within two (2) calendar days of any costs or schedule changes to this Agreement. If no response is received within this time frame, it will be assumed that no additional costs or time extensions shall apply. Any changes, which are made without prior written authorization of Contractor's Corporate Office, shall be done at Subcontractor's own risk and payment for such changes is not guaranteed. All revisions causing potential cost increases to the Subcontractor must be approved prior to commencement of said work.

9.3 Compensation for extra work shall be by one or more of the following methods at the option of Contractor:

- A. Unit prices contained within the Scope of Work
- B. Alternate prices contained in the Scope of Work
- C. Negotiated Lump Sums

- D. Negotiated unit prices
- E. Cost plus compensation
- F. Hourly rates, Straight & Premium Time

9.4 In the case of cost plus compensation, costs shall be defined as and specifically include the following:

- A. Cost of materials, including sales tax and cost of delivery
- B. Cost of labor in the field, including social security, old age and unemployment insurance
- C. Worker's Compensation and General Liability costs
- D. Bond premiums and rental value of the power tools and equipment at rates not to exceed those contained in the Associated Equipment Distributors Construction Equipment Rental Rates, Latest Edition

9.5 Overhead and Profit shall include the following: Costs to prepare estimates or shop drawings, wages of superintendents, project managers, non-working foreman (unless specifically included in the scope of work), timekeepers, watchmen and clerks; also hand tools, incidentals, general office expenses, interest expense, warranty expenses and all other expenses not included in "costs" as defined above. Unless otherwise stipulated in the Prime Contract, the following percentages for Overhead and Profit are approved to be added to costs:

- A. For any work performed by Subcontractor's own forces, shall not exceed 10% for Overhead and Profit.
- B. For work performed by sub-subcontractor, shall not exceed 5% for Overhead and Profit of the amount due the sub-subcontractor.
- C. To facilitate checking of quotations for extra or credits, all proposals must be accompanied by complete itemization of cost including labor, materials, equipment and sub-subcontractors.
- D. For field changes, time and material tickets signed by Contractor's superintendent at the jobsite are to verify actual hours worked, materials and equipment used and must be signed within twenty-four (24) hours of completing the work. The verification that the work is additional work outside of the contractual scope is subject to approval by Contractor's Corporate Office. No changes shall be approved without such itemization.

ARTICLE 10 LIENS / BONDS

10.1 In the event that Contractor receives a Notice or Claim of Lien or Stop Notice from a sub-subcontractor or a material supplier of Subcontractor, Contractor shall have the right to require Subcontractor to bond over the lien in any amount of 150% of the claim. Should Subcontractor not be justified in refusing to pay the claim, after three (3) days written notice to the Subcontractor, Contractor shall have the right to pay a sum sufficient to discharge such lien or obligation and charge the same against any amount owed Subcontractor. Contractor shall also have the right to require the Subcontractor to furnish and pay for a Lien Release Bond in an amount not less than 150% the sum of any final lien waivers the Subcontractor fails to provide or the amount of any lien claims. Provided payment is made for work properly performed, Subcontractor agrees to defend, Hold Harmless and indemnify Contractor and Owner against all loss, damages, judgments and expenses, including attorney fees, which Contractor or Owner may sustain in connection with any lien or claim.

ARTICLE 11 SUBCONTRACTOR INVESTIGATION

11.1 Subcontractor has thoroughly examined all Drawings and Specifications and has examined the jobsite and ascertained the conditions for itself. Subcontractor enters into this Agreement relying on its own information and investigation and not on any statements or representations that may have been made by Contractor, Owner, Architect, or Engineer.

ARTICLE 12 SUBCONTRACTOR'S LICENSE NOTIFICATION

12.1 California Contractors are required by law to be licensed and regulated by the Contractors State License Board, which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within 4 years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the alleged violation. Any questions concerning a

contractor may be referred to the Registrar, Contractors State License Board, Post Office Box 26000, Sacramento, CA 95826. (California Projects Only)

12.2 Subcontractor will obtain and maintain any/all license(s) required by Federal, State and Local Laws and Ordinances, to perform the work under this Agreement. Contractor shall have the right to demand a copy of license(s) at any time during the Project and if Subcontractor fails to furnish a copy of the license within three (3) calendar days after Contractor's written demand, then Subcontractor shall be deemed to be materially in default.

ARTICLE 13 BOND REQUIREMENTS

13.1 Subcontractor shall furnish, on Contractor's written request, a Corporate Surety Bond written by a Surety Company, authorized to write surety business in the state where the Project is located, to guarantee the faithful performance of this Agreement and the payment for all work and materials furnished under this Agreement. The bond shall be in an amount required by Contractor but shall not exceed the full amount of this Agreement. Contractor shall pay for the surety bond if its premium does not exceed standard rates. If Contractor notifies Subcontractor before submitting Subcontractor's bid that a surety bond will be required, then Subcontractor shall include the premium of that bond in its price. Contractor shall have the right to demand such surety bond at any time during the job, and if Subcontractor fails to furnish a surety bond within 15 days after Contractor's written demand, then Subcontractor shall be deemed to be materially in default.

ARTICLE 14 TAXES, LICENSES AND FEES

14.1 Subcontractor shall pay all taxes, licenses, and fees of every nature that may be imposed or charged by any governmental authority on labor, material, or other things used by Subcontractor in performing the work or on the transaction between Contractor and Subcontractor. If Subcontractor fails to pay any tax, license, or fee required to be paid by this paragraph, then Contractor may pay it and Subcontractor shall be back-charged the sum, plus Contractor's administrative fees, to Contractor on demand.

ARTICLE 15 LAWS, ORDINANCES AND PERMITS

15.1 In performing the work, Subcontractor shall comply with all laws and ordinances, give authorities timely and proper notices, secure and pay for all necessary permits, inspections and tests required for the work performed under this Agreement. The general building permit shall be obtained and paid for by others.

ARTICLE 16 INDEMNIFICATION

16.1 Subcontractor shall indemnify and hold harmless Contractor and Owner against all claims, demands, costs, attorney fees, and liability of every nature arising from injury to person or property or the economic interests of any party resulting from or alleged to result from Subcontractor's operations, performance or non-performance of this Agreement.

16.2 Such indemnity shall extend to all claims, demands, and liability arising from the activities of Subcontractor and its sub-subcontractors and suppliers while engaged in performing the work to be done under this Agreement. This Indemnity Agreement applies to claims, demands, and liability for injuries occurring after completion of the Project as well as during the performance of the Project and extends to claims, demands, and liability for injury contributed to by the negligence or other misconduct of Owner or Contractor, if the injury is alleged to be or is caused in part by the negligence or misconduct of Subcontractor or of its sub-subcontractors, employees, agents, or suppliers. No indemnity will be provided against claims, demands, or liability that arises from the sole negligence or willful misconduct of the party to be indemnified under this indemnity provision.

ARTICLE 17 INSURANCE

17.1 Subcontractor shall obtain, and until final project payment and acceptance by Owner and Contractor, shall maintain, Worker's Compensation Insurance, Employers' Liability Comprehensive General Liability Insurance with Contractual Coverage, Automobile Liability Insurance and such other insurance as to the extent required and

specified herein. **The Comprehensive General Liability Insurance shall include Contractor, Owner, and others if required in the Contract Documents, as Additional Insured by Separate Endorsement.** All insurance shall be carried in a company or companies authorized to do business in the state where this Project is located (minimum AM Best rating A-VIII) and are acceptable to Contractor. Upon request, Subcontractor shall furnish Contractor with a duplicate copy of each policy.

17.2 Subcontractor shall furnish to Contractor a Certificate of Insurance and Additional Insured Endorsement in duplicate as required under the provision herein. Such certificate shall list the various coverage's and shall contain, in addition to any provisions herein required, a provision that the policy shall not be reduced in scope of coverage or cancelled and that it shall be automatically renewed upon expiration and continued in full force until final acceptance by Owner and Contractor, of all work covered by this Agreement and the Prime Contract, unless Contractor and Owner are given written notification at least 30 days prior by certified or registered mail.

17.3 Subcontractor shall not commence work until all insurance has been obtained, nor shall Subcontractor permit the commencement of any of its work, which is sublet before its sub-subcontractors have provided proof of insurance equivalent to that required by this Agreement.

17.4 If Subcontractor fails to provide or maintain any of the insurance referenced herein, Contractor may, two (2) working days after the issue of notice to do same and at the option of Contractor, terminate this Agreement or Contractor shall have the right to obtain all insurance referred to herein for and in the name of the Subcontractor and the cost of such insurance, plus Contractor administrative fees, shall be deducted in full from any payment otherwise due to Subcontractor.

17.5 Subcontractor shall, at its own expense, provide all aforementioned insurance as set forth below:

Comprehensive General Liability insurance shall be sufficient in scope to insure but not limited to:

- A. Operations/Premises Liability (including Elevator Liability)
- B. Independent Contractor's Protective Liability/Owner's Protective Liability
- C. Completed Operations and Products Liability (Contractor shall maintain in effect for a period of two (2) years after the date of the final payment)
- D. Contractual Liability. Shall be sufficient in scope to insure the Indemnification Agreement set forth in the General Conditions
- E. Personal Injury Liability
- F. Broad Form Property Damage Liability including Completed Operations Endorsement
- G. Explosion, Collapse, and Underground Damage Liability Endorsement; this is, removal of exclusions

17.6 Bodily Injury Liability Insurance in the amount of: \$1,000,000 each occurrence, \$2,000,000 General Aggregate (claims made insurance is not acceptable), and \$2,000,000 Products/Completed Operations Aggregate. Subcontractor's insurance shall be "Primary and Non-Contributory" to insurance carried by Contractor.

17.7 The Subcontractor shall provide Automobile Insurance on all Owned, Non-Owned, or Hired Automobiles to be used by Subcontractor for the furtherance of this work for the limits of \$1,000,000 per accident.

17.8 Worker's Compensation and Employer's Liability Insurance with limits as set forth under state statute regulations governing each and every worker employed in, about, or upon the work, as provided in each and every statute applicable to Worker's Compensation and Employer's Liability (at a limit of not less than \$1,000,000).

17.9 The insurance limits stated herein are minimum unless those required in the Prime Contract are more, in which case the limits of the Prime Contract shall be the minimum.

17.10 Compliance with the foregoing requirements as to the carrying of the insurance shall not relieve Subcontractor from Liability. It is understood and agreed that the insurance coverage and limits required above

shall not limit the extent of Subcontractor's responsibilities and Liabilities specified within the Contract Documents or by law.

17.11 Neither the procurement nor the maintenance of any type of insurance by Owner or Contractor shall in any way be construed or be deemed to limit, discharge, waive, release Subcontractor from any of the obligations and risks imposed upon Subcontractor by this Agreement or to be limitation on the nature or extent of such obligations or risks.

17.12 Contractor makes no representation that the amounts of insurance required of Subcontractor are adequate to protect Subcontractor. In the event Subcontractor believes any such insurance coverage is insufficient, Subcontractor shall provide, at its sole expense, such additional insurance, as Subcontractor deems adequate. In no event shall the limits of the coverage maintained by Subcontractor be considered as limiting Subcontractor's Liability under this Agreement. Any insurance not described above which Subcontractor desires is its own responsibility and at its own expense.

17.13 Contractor may furnish, erect, or provide equipment, appurtenances and devices, motorized or otherwise, for its use to complete its Contract with Owner. Should Subcontractor use such items, Subcontractor agrees to insure against claims or injury or damage caused by such items while in Subcontractor's care, custody or control by naming Contractor as an insured party. Liability limits shall be the same as stated above. Physical Damage Insurance against damage to the items themselves shall be on a "Replacement Cost" basis. Subcontractor shall be responsible for any deductible under its insurance policies. It is understood and agreed that authorization is hereby granted to Contractor to withhold payments to Subcontractor until a properly executed Certificate of Insurance and Endorsement providing insurance as required herein, accompanied by a signed Agreement, are received by Contractor. The failure of Contractor to withhold such payments or obtain the required Certificates of Endorsement shall not be deemed as a waiver of Subcontractor's obligation to provide the insurance required under this Agreement. Subcontractor hereby waives any Rights of Subrogation against Contractor, the Owner, the Architect, and any other ADDITIONAL INSUREDS as required by this Agreement.

ARTICLE 18 SAFETY REGULATIONS

18.1 Subcontractor, Subcontractor's employees, sub-subcontractors, and their employees shall comply with all applicable Federal, State, Local, and any other legally required Safety and Health standards, orders, rules, regulations, and other laws. Subcontractor shall bear full financial responsibility, as between the parties to this Agreement, for the compliance of all persons mentioned in the previous sentence. If Subcontractor, Subcontractor's employees, Subcontractor's subcontractors, or their employees fail to comply, then Contractor may give notice of default to Subcontractor, and Subcontractor shall correct improper conditions within twenty-four (24) hours after Contractor issues Subcontractor a written notice of noncompliance or within the time of an abatement period specified by any government agency, whichever period is shorter. Subcontractor's failure to cure the default within twenty-four (24) hours after notice shall give Contractor the following options:

- A. Without terminating this Agreement or Subcontractor's obligation, Contractor may perform such portion of the work or may furnish any material, equipment, or other item required as Contractor in its sole discretion may deem necessary to avoid non-compliance with any applicable Safety or Health Laws. The cost of materials, equipment, or other items shall be deducted from the subcontract price, and, if the cost of such work or materials or other items exceeds the balance, then the excess shall be immediately due and owing from Subcontractor to Contractor.
- B. Without terminating this Agreement, Contractor may eject Subcontractor from the jobsite, and Contractor shall have the further option of performing all or a portion of the work itself or having the work performed wholly or partly by others. This right to eject Subcontractor shall not be construed to deny Contractor any other right or remedy at law or in equity.

18.2 Subcontractor shall be liable for all damages suffered by Contractor by reason of Subcontractor's default, and Contractor's exercise of the option to eject Subcontractor shall not relieve Subcontractor of that Liability.

18.3 Subcontractor agrees to submit all necessary Material Safety Data Sheets MSDS-OSHA Form 20, or equivalent for all Hazardous Substances introduced on the job site and shall inform Contractor's office prior to its introduction to the job site. Subcontractor must be in compliance with the OSHA Hazard Communication Standard 1926.59. It is imperative that the Materials Safety Data Sheets be on file in Contractor's office prior to Subcontractor's starting to work on the site.

ARTICLE 19 SCHEDULE / COORDINATION

19.1 Subcontractor is obligated to perform work in accordance with the schedule as follows:

- A. Subcontractor is required to prepare its detailed schedule within the scope of the preliminary master schedule so as not to impede the stated project completion time.

19.2 Subcontractor's assistance and input, with detailed breakdown of work items and duration for each, is required to develop an agreeable and accurate final Master Construction Schedule. Subcontractors shall submit a statement outlining start date(s), completion date(s) and estimated times for delivery of the major components of its work. Schedules shall be in the form of a bar chart and indicate duration in weeks. The schedule shall indicate, in detail, the status and progress of shop drawings and submittals, fabrications, deliveries and installation start/complete dates for the various stages of work. Subcontractor shall provide a detailed schedule within five (5) working days from receipt of this Agreement.

19.3 Subcontractor shall cooperate and coordinate its work with all other contractors and furnish them all details and information required for proper coordination of work. Subcontractor shall designate a single representative assigned to the Project who will be responsible for attending meetings, monitoring schedules and coordinating all activities. Subcontractor's representative shall have the authority to commit the Subcontractor to solutions and/or actions as agreed in these meetings. Regularly scheduled Progress Meetings shall be held weekly, unless otherwise scheduled. It shall be the responsibility of each subcontractor to attend these meetings to determine the status of the project and to report on the status of its work.

19.4 It is expressly understood that scheduling requirements may require temporary omissions and out of sequence work as designated by Contractor's superintendent. All "come back" work required for this or other out of sequence work, including re-mobilization, shall be completed on a timely basis and at no additional cost to Contractor unless otherwise authorized by Contractor.

ARTICLE 20 COMMENCEMENT AND PROGRESS OF WORK; DELAY

20.1 Subcontractor will keep itself fully informed of the progress of the work under the Prime Contract, and as soon as the Project requires work to be performed under this Agreement for its continued progress, Subcontractor will promptly begin work. Subcontractor will prosecute the work diligently to completion and will conform to any progress schedule established by Contractor. Subcontractor will coordinate work with Contractor and other Subcontractors so that there will be no delay to, or interference with other work on the project. If Subcontractor fails to comply with any requirement of this paragraph and Contractor incurs loss or damage because of delay or disruption or becomes liable for damages because of delay in completing the project, then Subcontractor shall reimburse Contractor for the portion of the loss, damage, or liability incurred by Contractor in connection with the project as may be attributable to Subcontractor's delay or lack of coordination in performance. When Contractor's liability for damages is attributable to more than one subcontractor, Contractor shall allocate the total of such damages between the various subcontractors responsible for it, and Contractor's allocation made in good faith shall be binding on all parties. If Subcontractor contends that any act of Owner or of Contractor or any other job condition or event has caused Subcontractor to experience delay, disruption, or inefficiency in performing the work, then Subcontractor shall give written notice of such conditions to two (2) days after commencement of the conditions for which relief is claimed.

ARTICLE 21 TIME

21.1 Time is of the essence: Subcontractor shall supply a sufficient number of competent workers and shall cooperate with Contractor and other subcontractors in the scheduling and performance of its work to complete the work within the schedule, established by Contractor. Subcontractor shall commence its work upon notification from Contractor which may be adjusted from time to time to allow for proper coordination of all trade's work in accordance with the schedule established by Contractor.

21.2 Extensions of time for delays not caused by the Subcontractor or not within the Subcontractor's control shall be strictly governed by the terms of the Contract Documents. Subcontractor must give Contractor notice of any potential delay within three (3) days, or as otherwise stipulated within the Contract Documents, after such occurrence with an estimate of the additional time needed to overcome the delay. In no event shall Subcontractor be entitled to any consideration for delays if it fails to give Contractor written notice of the delay and such potential claims shall be deemed waived. Anything in the Contract Documents or this Agreement to the contrary notwithstanding, an extension of time hereunder shall be Subcontractor's exclusive remedy in the event of a delay, no matter how or by whom caused and Subcontractor specifically waives any right it may otherwise have to an increase in contract price or damages because of any delays. However, should Owner pay Contractor for any excusable delays to Subcontractor's work, Contractor shall adjust this Subcontractor's price accordingly.

21.3 When ordered in writing by Contractor, Subcontractor shall perform base Subcontract work during overtime hours. In the event overtime work is required because of Subcontractor's own delays to the project schedule, (i.e. insufficient manpower, submitting shop drawings and other submittals too late for approval per the Project Schedule, etc.) no additional compensation shall be granted. In the event overtime is required because of the delays of others, Subcontractor shall be compensated for the **net** increased labor costs **only**. Additionally, if others are forced into overtime to maintain project completion date due to the delays of Subcontractor, Subcontractor is to be back charged the net amount of overtime for labor costs only.

ARTICLE 22 PERFORMANCE / ASSIGNMENTS / AMENDMENTS / SUB-SUBCONTRACTORS

22.1 Subcontractor shall not assign, sublet, or transfer this Agreement, or any part of it, nor shall Subcontractor make any assignment or transfer of funds payable to Subcontractor or under this Agreement without Contractor's **prior** written consent.

22.2 Subcontractor agrees not to sub-subcontract more than 5% of this Agreement without **prior** written consent of Contractor. For all proposed sub-subcontractors in excess of 5%, Subcontractor shall furnish Contractor AIA Documents A-305 or equal to Subcontractor's Qualification Statement, not less than five (5) working days prior to final execution of any sub-subcontractor agreement. In accordance with the Contract Documents as defined in Article 1, Subcontractor agrees they shall not contract with any such proposed person or entity to which the Owner, Contractor or Architect has a reasonable objection.

22.3 Subcontractor agrees that any part of work performed for the Subcontractor by an approved sub-subcontractor shall be pursuant to a written subcontract between the Subcontractor and each sub-subcontractor. Said written subcontract shall contain provisions that:

- A. Require the work to be performed in accordance with the requirements of the Contract Documents set forth in this Agreement.
- B. Require the sub-subcontractor to carry and maintain Liability Insurance Coverage in accordance with the Contract Documents.
- C. Require the sub-subcontractor to agree to the Master Construction Schedule determined by Contractor.
- D. **Upon receipt of payment from Contractor, the Subcontractor shall promptly disburse from such payment the sums due and owing to any sub-subcontractor and/or material supplier for their work included in Contractor's payment to Subcontractor.**

22.4 Any assignment, subletting or delegation, by operation of law or otherwise, in whole or in part, by Subcontractor of any portion of its rights, duties or obligations under this Agreement, including without limitation any sums that may be or become due to Subcontractor, without the prior written consent of Contractor shall be void.

22.5 Contractor shall not recognize or be bound by any assignment of any right to payment earned or to be earned by performance hereunder unless and until Contractor shall receive written notice, which reasonably proves the assignment and identifies the rights assigned. Any assignment hereunder shall be subject to, and Contractor reserves, all rights and remedies possessed by or available to Contractor by law or under this Agreement as against Subcontractor, its sureties and assigns including, without limitation, rights to set-off, retain moneys, to amend or modify this Agreement, and to assert all other defenses and claims whether or not arising under this Agreement.

22.6 The making of any assignment by Subcontractor or any consent thereto by Contractor shall in no event relieve Subcontractor or its sureties hereunder of any of their obligations, duties, responsibilities or liabilities.

22.7 All notices provided hereunder shall be in writing and shall be sent by facsimile, overnight delivery, registered or certified mail, to the other party at the address stated on this Agreement.

ARTICLE 23 DEFAULT BY SUBCONTRACTOR

23.1 If Subcontractor fails to perform in accordance with this Agreement, Contractor shall give Subcontractor notice of such default, including a description of the default. If Subcontractor fails to cure the default within twenty-four (24) hours after the notice (time being of the essence), then Contractor, without terminating this Agreement or Subcontractor's obligation, may eject Subcontractor from the job and perform the subcontract work itself or have it performed by others, and the cost of the work shall be deducted from the subcontract price. If the cost of such work exceeds the difference between the subcontract price and the amount paid to Subcontractor, that excess shall be immediately due and owing from Subcontractor to Contractor.

23.2 Subcontractor shall be liable for all damages suffered by Contractor because of any default, and Contractor's exercise of the option to eject Subcontractor shall not relieve Subcontractor of such liability. Subcontractor shall have no right to receive any further payment after default until the work has been completed and Contractor's damages, if any, have been ascertained. Contractor will look to the Subcontractor for 150% payment of all damages which it incurs.

ARTICLE 24 CONTRACT TERMINATION

24.1 It is agreed that should the Prime Contract for the Project concerning which this Agreement is written be terminated or the progress of the work delayed due to conditions which Contractor cannot control, Contractor may terminate this Agreement without any liability to the Subcontractor and the Subcontractor shall be entitled to payment for materials and/or labor approved and accepted by Contractor and by Owner (including all materials specifically manufactured pursuant to this Agreement at the date of its termination), and actually paid to Contractor by Owner. Subcontractor shall also be entitled to payment for any unavoidable cancellation or restocking charges for materials orders.

ARTICLE 25 SUBCONTRACTOR CLAIMS

25.1 Subcontractor's Claims. If Subcontractor claims that it is entitled to damages or to additional compensation, or disputes any decision made by Owner or Owner's representative, then it shall, within the time allowed by this Agreement, prepare its claims in writing, as required by this Agreement, for presentation by Contractor to Owner. Subcontractor shall be bound by Owner's 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 than that allowed and paid to Contractor by Owner.

ARTICLE 26 NOTICES

26.1 Any notice under this Agreement must be served on Contractor's Corporate Office in Palm Desert, CA.

ARTICLE 27 ARBITRATION

27.1 Any controversy arising from or related to the performance or interpretation of this Agreement or any sub-subcontract is subject to arbitration. Owner, Contractor and all subcontractors, sub-subcontractors, material suppliers, and other parties concerned with the construction of the Project are bound, each to the other, by this arbitration clause, as long as the party has signed this Agreement or any contract that incorporates this Agreement by reference, or any other agreement to be bound by this arbitration clause. The arbitration shall take place in California before one (1) arbitrator, chosen by mutual agreement of the parties.

27.2 If the Prime Contract between Owner and Contractor contains an arbitration provision, arbitration shall be held in accordance with that provision. On demand of the arbitrator or any party to an arbitration initiated under such provisions, Subcontractor and all parties bound by this provision agree to join in and become parties to and be bound by such arbitration proceedings.

27.3 If any party refuses or neglects to appear at or to participate in arbitration proceedings after reasonable notice, the arbitrator may decide the controversy in accordance with whatever evidence is presented by the participating party or parties.

ARTICLE 28 SHOP DRAWINGS AND SUBMITTALS

28.1 Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and Similar Submittals required by the Contract Documents with reasonable promptness and in such sequences as to cause no delay in the work or in the activities of Contractor or other subcontractors.

ARTICLE 29 KEY PERSONNEL

29.1 Subcontractor hereby agrees that key personnel assigned to the project shall remain for the duration of this work; reassignment or removal of said key personnel will require Contractor's approval. Subcontractor shall at all times, have a **competent** superintendent, approved by Contractor, on the jobsite who shall be authorized to receive instructions from Contractor and make such decisions as may be necessary for the prompt and efficient performance of this agreement.

ARTICLE 30 ACCESS / PARKING

30.1 The use of and access to the site shall be restricted to those areas and limited to those temporary roads authorized and designated by Contractor's on-site superintendent. Parking on the job site is restricted to company vehicles and equipment and only if allowed by Contractor's superintendent. Subcontractor employees are to park in the designated areas.

ARTICLE 31 JOBSITE OFFICES / STORAGE

31.1 The project may have limited space available for storage; therefore, any on-site storage shall require prior approval from Contractor's superintendent. Subcontractor's jobsite trailers, materials, tools and equipment may be stored on the jobsite at locations approved by Contractor and must be removed or relocated when directed. Subcontractor shall use for this purpose, only the minimum space that is absolutely required for proper performance of the work. Any damage or losses resulting from storage of material, tools and equipment shall be remedied at the cost of the Subcontractor. Subcontractor shall be responsible for erection, dismantling, maintenance, utilities, security, etc. that they may deem necessary in setting up their trailers, sheds and storage area.

31.2 Subcontractor may establish a temporary office at the job site except that the exact size and location of said facilities shall be subject to the approval of Contractor's superintendent. The temporary office along with any electrical, telephone or similar service for this field office shall be the responsibility of the Subcontractor. As the work progresses, Subcontractor agrees to relocate and/or remove said facilities upon seventy-two (72) hours written notice from Contractor.

ARTICLE 32 HOISTING AND SCAFFOLDING

32.1 Subcontractor agrees to be solely responsible for all hoisting of materials and all scaffolding necessary for the performance of its own work unless otherwise agreed upon by Contractor. Unless expressly provided for in the Scope of Work, no provisions for hoisting or scaffolding shall be provided by Contractor. Any scaffolding or hoisting equipment used by Subcontractor must conform to all local code requirements including but not necessarily limited to those of State and Federal OSHA requirements. All cranes employed by Subcontractor shall have maintenance logs current as of the date on the job site. All logs shall be readily available for review by Contractor upon request.

ARTICLE 33 DAILY REPORTS

33.1 Each Subcontractor shall submit daily reports to Contractor's superintendent on a weekly basis. At a minimum, the daily report should state the number of tradesmen working on the Project each day, a brief description of the day's activities and a two-day look ahead for scheduling purposes. The report should also identify any inspections, problems or otherwise pertinent information. In addition, the report should identify any accidents that occurred during the day, if any. An authorized representative of Subcontractor must sign the daily reports every day.

ARTICLE 34 MATERIAL DELIVERY

34.1 Material delivery to the job site shall be handled in accordance to the following:

- A. Cost of all shipping of materials, freight to the jobsite and insurance of same to be the responsibility of the Subcontractor.
- B. Subcontractor must notify Contractor's Superintendent forty-eight (48) hours **prior** to delivering any materials. Copies of the delivery ticket shall be stamped, showing the actual time and date shipment was received.
- C. Each shipment of materials shall contain a packing slip with the correct nomenclature of the contents of the box or carton. The packing slip containing this information must be so marked. At the time of the shipment, one copy of said packing slip shall be forwarded to the destination of the shipment to alert Contractor's supervisor as to what materials are in transit so that arrangements can be made at least forty-eight (48) hours **in advance** to receive, allocate and store said materials.
- D. If Subcontractor fails to adhere to the foregoing notification and other requirements, Contractor reserves the right to refuse, warehouse or return to the carrier the shipment in question. All related costs incurred by Contractor, i.e. handling, storage protection, etc., shall be borne by the Subcontractor.

ARTICLE 35 TEMPORARY FACILITIES

35.1 Temporary facilities furnished by Contractor for this Subcontractor's use on the site shall be limited to the following:

- A. Temporary sanitary services for Subcontractor's personnel to be provided unless otherwise coordinated.
- B. Temporary non-potable water service only after the permanent tap is made at the water main unless otherwise coordinated. Water will be available at a minimum of one location, adjacent to the construction area. It shall be the Subcontractor's responsibility to provide hook-ups and extensions as required and to coordinate with Contractor's Superintendent.
- C. Temporary power and lighting for the building shall be specific to OSHA standards and provided by the electrical contractor for all Contractor's use. If special or additional services are required, arrangements

through Contractor's superintendent will be necessary. However, the contractual relationship shall be directly between the on-site electrical contractor and the Subcontractor.

- D. Temporary power shall be limited to 120-volt, single-phase temporary electric service in the construction area only after temporary or permanent power is established on the job site. If temporary power is not available or is insufficient for the Subcontractor, Subcontractor shall furnish generators at its own expense. The Subcontractor shall be required to provide extension cords for all power tools in accordance with OSHA standards.

ARTICLE 36 SUBCONTRACTOR'S TOOLS AND EQUIPMENT

36.1 Subcontractor shall assume all risks and liability for damage or loss to all materials, tools, or equipment not incorporated in the work and which belong to it or are under its care, custody or control.

ARTICLE 37 CLEAN UP

37.1 Subcontractor must provide clean up and disposal of debris resulting from its work on a daily basis in order to keep the project clean, orderly and hazard free. Material shall be placed in dumpsters provided by Contractor. Location of dumpsters shall be at Contractor's discretion.

37.2 Upon completion of the work and prior to leaving the site, Subcontractor must receive approval and acceptance by Contractor that all final clean-up requirements have been met and that the area is ready for final inspection. When directed in writing by Contractor, Subcontractor agrees to clean-up all debris attributable to its work within twenty-four (24) hours-notice for any given work area, or accept the appropriate back charges for clean-up performed by Contractor or other subcontractors which shall be billed to Subcontractor on a monthly basis no later than the following month in which the charges are incurred.

ARTICLE 38 OWNER'S WORK FORCES

38.1 Contractor and Subcontractors are advised that the Owner may, at their discretion, employ other contractors or employees of the Owner to perform work on this Project. In such event, Subcontractor shall cooperate in scheduling activities in order that the work of all parties can be completed on a timely basis.

38.2 Subcontractor hereby agrees not to perform any work directly for the Owner, or its agents, on the Project while under contract with Contractor without Contractor's prior approval, which shall not be unreasonably withheld. Failure to abide by this provision shall be considered a material breach of this Agreement.

ARTICLE 39 LAYOUT AND ENGINEERING

39.1 Subcontractor shall perform layout and if specified in scope of work, engineering, as required to complete the work within the scope of its respective Scope of Work from vertical and horizontal principal control lines and grades established by Contractor.

ARTICLE 40 PROTECTION OF WORK AND PROPERTY

40.1 Subcontractor shall protect its work and be responsible in all circumstances for its good condition until final acceptance of the Project. Subcontractor shall also protect adjacent property from injury arising from its work.

40.2 The work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Subcontractor or sub-subcontractors; and Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction.

40.3 Subcontractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property as described above caused in whole or in part by the

Subcontractor or its sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and not attributable to the fault or negligence of the Subcontractor.

ARTICLE 41 ENVIRONMENTAL COMPLIANCE

41.1 Subcontractor agrees to comply with Pollution and Environmental Protection Regulations for the use of water and other services. Subcontractor further agrees to discharge wastes and storm water drainage from the Project site and to comply with whatever "Environmental Impact" Commitments may have been made by the Owner in securing approval to proceed with construction of this Project. All waste materials and substances (i.e. solvents, cleaners, waste oils, etc.) shall be handled and/or disposed in full compliance with all applicable Federal, State, and Local Statutes, Regulations, Ordinances and Rules by Subcontractor.

ARTICLE 42 CUTTING AND PATCHING

42.1 Subcontractor shall perform cutting, patching, fire safing and caulking, as required to complete the work within the scope of this Agreement.

ARTICLE 43 DEWATERING

43.1 Subcontractors who are performing either excavation, trenching, utility and/or concrete work are responsible for keeping their excavations free of water during construction.

ARTICLE 44 LABOR RELATIONS AND SUBCONTRACTOR EMPLOYEES

44.1 Subcontractor acknowledges that Labor Agreements with one (1) or more Labor Unions may cover work at this Project. To the extent such Labor Agreements exist, Subcontractor and its sub-subcontractors will contract only with persons or entities that are party to the appropriate covered Labor Agreement with the appropriate Labor Union.

44.2 If Subcontractor or any sub-subcontractor causes or is the subject of any picketing or other economic action or labor trouble on the job or is listed by the administrative office of a Health and Welfare, Pension, Vacation, or Apprenticeship Fund as being delinquent in payment to that fund, regardless of the job in connection with which the alleged delinquency occurred, then Subcontractor will be deemed to be in default under this Agreement and may be ejected from the job.

ARTICLE 45 TESTING

45.1 Subcontractor shall be responsible for costs of retesting and correcting or replacing work that fails the Owner's testing or that of local authorities. This Subcontractor is also responsible for all costs incurred by other trades due to testing failure of its work.

ARTICLE 46 RECORD DOCUMENTS

46.1 Subcontractor is required to maintain an up-to-date set of "As-Built" Drawings at all times. At the completion of the Subcontractor's work, Subcontractor shall provide Contractor the number of copies of "As-Built" Drawings that are required per the Contract Documents and one (1) additional copy for Contractor's use. Subcontractor is also to provide copies of Owner's Operational/Instructional/Maintenance Manuals and training as required by the Project specifications.

ARTICLE 47 PUNCH LIST

47.1 All punch list work shall be completed in accordance with the schedule or within seven (7) calendar days, whichever is the lesser. Subcontractor shall give written notification to Contractor upon completion of punch list.

ARTICLE 48 WARRANTY

48.1 Subcontractor guarantees its work and shall Hold Harmless Owner and Contractor against all loss or damage arising from any defect in materials, equipment, or workmanship furnished under this Agreement for the same period of time as stated in the Prime Contract. On Contractor’s notification, Subcontractor shall promptly replace defective material and perform labor necessary to correct any defect in the work. Subcontractor shall pay for all work that may be incurred in correcting the defects under the warranty. If Subcontractor fails to make necessary repairs and replacements promptly, Owner or Contractor may, at Subcontractor’s expense, furnish necessary materials or labor, and Subcontractor shall pay their cost on demand.

ARTICLE 49 INTEGRATION

49.1 This Agreement supersedes all written or oral agreements, if any, between the parties and constitutes the entire and only Agreement pertaining to the work to be performed under this Agreement. Except as provided for change orders, this Agreement can be modified only in writing signed by both parties.

ARTICLE 50 BANKRUPTCY

50.1 If Subcontractor becomes bankrupt or makes an assignment for the benefit of creditors, or if a receiver is appointed, then Subcontractor shall be deemed to be materially in default under this agreement.

ARTICLE 51 GOVERNING LAW

51.1 This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. This paragraph does not prevent the application of the Federal Arbitration Act to any dispute that may arise under this Agreement.

ARTICLE 52 MISCELLANEOUS PROVISION

52.1 Contractor and Subcontractor agree that emailed and/or facsimiled signed documents will be considered original and binding with the exception of the following:

- A. Original, notarized Unconditional Upon Progress lien release from Subcontractor
- B. Original, notarized Unconditional Upon Final lien release from Subcontractor

Subcontractor:

Company Name

Signature

Print Name & Title

Date

Contractors License #

Contractor:

J.R. Lennen Construction, Inc.

Company Name

Signature

Jack Lennen, President

Print Name & Title

Date

798968

Contractors License #