

# AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR



This Subcontract is made between

## CONTRACTOR

Seals Construction, Inc.  
9410 W. Placer Ave.  
Visalia, CA 93291

## and SUBCONTRACTOR

«FirmName»  
«FirmAddress»  
«FirmCity», «FirmState» «FirmZip»

On or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, Contractor entered into a Prime Contract with «Owner» to construct the Project known as «ProjectDescription», located at «JobAddress», «JobCity», «JobState» «JobZip».

## SECTION 1 ENTIRE CONTRACT

Contract Documents is defined to mean this Subcontract Agreement, including any and all plans, specifications, addenda, attachments, exhibits, and other documents attached to or incorporated into the Prime Contract, (which is incorporated herein by reference) for the Project. Plans, specifications, addenda, and other documents have been prepared by or on behalf of «ArchEngName». The Project is to be constructed in accordance with the Prime Contract.

Subcontractor certifies that it is fully familiar with all of the terms of the Prime Contract, the location of the job site, and the conditions under which the Work is to be performed and that it enters into this Subcontract based upon its investigation of all such matters and is not relying on any opinions or representations of Contractor. This Subcontract represents the entire agreement between Contractor and Subcontractor, and supersedes any prior oral or written agreements or representations. The Prime Contract is incorporated in this Subcontract by reference, insofar as it relates in any way, directly or indirectly, to the Work. Subcontractor agrees to be bound to Contractor in the same manner and to the same extent as Contractor is bound to Owner under the Prime Contract, including, but not limited to, all applicable terms and provisions thereof. Where, in the Prime Contract, reference is made to Contractor, and the work or specifications therein pertain to Subcontractor's trade, craft or type of work, such work or specifications shall be primarily interpreted to apply to Subcontractor. Contract attachments and exhibits listed below are included into this Subcontract.

ATTACHMENT	TITLE	FOR YOUR USE	SUBMIT FOR REVIEW
A	Scope of Work		With contract
B	Recapitulation		With contract
C	Procedures Manual	X	
C-1	Subcontractor Action Personnel		Before start of work
C-2	Submittal & Procurement Log		Before start of work
C-3	Subcontractor Daily Report		Weekly, as needed
C-4	Hourly Labor Cost		Before start of work
D	Safety & Health Policy	X	
D-1	Safety Acknowledgement and Agreement		Before start of work

## SECTION 2 SCOPE

Subcontractor agrees to furnish all labor, materials, equipment, services and other facilities required to complete the «SLDescription» scope of work as described in the Prime Contract.

In the event of any dispute between Contractor and Subcontractor over the scope of the Work under the Contract Documents, Subcontractor will not stop Work but will prosecute the Work diligently to completion as directed by Contractor, and the dispute will be submitted for resolution in accordance with Section 17.

## SECTION 3 SUBCONTRACT PRICE

Contractor agrees to pay Subcontractor for the strict performance of the Work the sum of («TotalSubcontract») or as set out in Section 26, subject to additions and deductions for changes in the Work as may be directed in writing by Contractor, and to make payment in accordance with Section 4.



**SECTION 4 PAYMENT SCHEDULE/RETENTION**

If this box is checked then a payment management system will be used on this project and a Payment Application, along with all applications for payment and supporting documents for Subcontractor, shall be submitted electronically to Contractor.

Unless otherwise directed or authorized, in writing by Contractor, all applications for payment and supporting documents, (including but not limited to lien releases, sworn statements, and the like) for Subcontractor, shall be in electronic format and shall be submitted to Contractor using a payment management system prescribed by the Contractor. Subcontractor shall be responsible for any fees and costs owed associated with Subcontractor's use of the payment management system, and is responsible for confirming the costs that will be associated with billing for this Project. Subcontractor shall include a similar provision in its sub-subcontracts and Purchase Orders.

Contractor agrees to pay Subcontractor, in monthly progress payments, for labor and materials which have been placed in position by Subcontractor, with funds received by Contractor from Owner for Work performed by Subcontractor, as reflected in Contractor's applications for payment to Owner. Such monthly progress payments shall be made by Contractor within seven (7) calendar days after receipt of payment from Owner. Final payment to Subcontractor shall be made after the Project has been fully completed in conformity with the Contract Documents and has been delivered to and accepted by Owner and Architect, with funds received by Contractor from Owner in final payment. Subcontractor agrees to furnish, if and when required by Contractor, payroll affidavits, receipts, vouchers, releases of claims for labor and material, and agrees to furnish same from its subcontractors, suppliers and/or material suppliers performing Work or furnishing materials under this Subcontract, all in form satisfactory to Contractor, and it is agreed that no payment hereunder shall be made, except at Contractor's option, until and unless such documents have been furnished. Contractor, at its option, may make any payment due hereunder by check made payable jointly to Subcontractor and of its subcontractors and/or suppliers who have performed Work or furnished materials under this Subcontract. Any payment made hereunder prior to completion and acceptance of the Project, as referred to above, shall not be construed as evidence of acceptance or acknowledgement of completion of any part of the Work, or waiver of any Contractor's rights.

Contractor's monthly progress payments to Subcontractor shall be subject to retention as follows:

- If the Project is a private work of improvement, Contractor shall be entitled to retain \_\_\_ percent (\_\_\_%) of the value of all Work included in any monthly progress payment to Subcontractor. This amount retained shall be paid with the final payment to Subcontractor.
- If the Project is a public work of improvement, and if Contractor requested performance and payment bonds from Subcontractor in the solicitation for bids and Subcontractor failed or refuse to provide such bonds, then Contractor shall be entitled to retain \_\_\_ percent (\_\_\_%) of the value of all Work included in any monthly progress payment to Subcontractor. This amount retained shall be paid with the final payment to Subcontractor.
- If the Project is a public work of improvement, and if Contractor did not request performance and payment bonds from Subcontractor in the solicitation for bids, then Contractor shall be entitled to retain \_\_\_ percent (\_\_\_%) as specified in the Prime Contract of the value of all Work included in any monthly progress payment to Subcontractor. This amount retained shall be paid with the final payment to Subcontractor.
- If the Project is a public work of improvement, and if Contractor requested performance and payment bonds from Subcontractor in the solicitation for bids and Subcontractor provided such bonds, then Contractor shall be entitled to retain \_\_\_ percent (\_\_\_%) as specified in the Prime Contract of the value of all Work included in any monthly progress payment to Subcontractor. This amount retained shall be paid with the final payment to Subcontractor.

Payment of stored materials will be considered on an individual basis and is subject to Owner's approval. Payment for materials not stored at the jobsite will be considered if request is accompanied by evidence of insurance and bonding. Furnish inventory list, copies of shipping tags, and pictures of stored materials as back up to your request. Contractor, Owner, or Inspector/Authority Having Jurisdiction may choose to inspect the stored materials as a payment review step. If accepted, Subcontractor will be reimbursed for the value of the stored material only with no profit mark-up. Owner is paying for an installed product and therefore will only recognize profit once the material is installed.

Contractor may withhold all or part of any payments claimed by Subcontractor, or, on account of subsequently discovered evidence, may nullify all or part of and any amounts previously paid, for any of the following reasons:

- (1) defective Work not remedied;



- (2) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to Contractor is provided by Subcontractor;
- (3) failure of the Subcontractor to make payments properly for labor, materials or equipment to its subcontractors and/or suppliers performing Work or furnishing materials under this Subcontract;
- (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Subcontract Price;
- (5) damage to the Owner, Contractor, or another subcontractor caused or alleged to be caused by Subcontractor;
- (6) reasonable evidence that the Work may not be completed within the time required by this Subcontract;
- (7) reasonable evidence that the unpaid balance of the Subcontract Price will not be adequate to cover any liquidated or delay damages for which Subcontractor is responsible;
- (8) repeated failure to carry out the Work in accordance with the Contract Documents;
- (9) penalties assessed against Contractor or Subcontractor for failure of Subcontractor, or its subcontractors or suppliers, to comply with state, federal or local laws and regulations;
- (10) failure by Subcontractor to submit insurance certificates and endorsements as required by Section 16, or failure by Subcontractor to maintain all required insurance; or
- (11) failure by Subcontractor to submit required warranties, guarantees, as-built drawings and other documents required by the Contract Documents.

Any amounts so withheld or nullified shall be considered not due to Subcontractor under this Subcontract. When Subcontractor remedies any of the above reasons for withholding to the extent Contractor has received payment from the Owner, Contractor shall pay within seven (7) calendar days the amount previously withheld for that reason.

If Owner or other responsible party delays making payment to Contractor from which payment to Subcontractor is to be made, Contractor and its sureties shall have a reasonable time to make payment to Subcontractor. "Reasonable time" shall be determined according to the relevant circumstances, but in no event shall be less than the time Contractor, Contractor's sureties, and Subcontractor require to pursue to conclusion their legal remedies against Owner or other responsible party to obtain payment including (but not limited to) mechanic's lien remedies.

If Subcontractor asserts a claim which involves, in whole or in part, acts or omissions which are the responsibility of Owner or another party, including but not limited to claims for failure to pay, extensions of time, delay damages, or extra Work, Contractor will present Subcontractor's claim to Owner or other responsible party. Subcontractor shall cooperate fully with Contractor in all steps taken in connection with prosecuting such claim and shall hold harmless and reimburse Contractor for all expense, including legal expense, incurred by Contractor which arise out of Contractor's submission of Subcontractor's claim to Owner or other responsible party. Subcontractor shall be bound by any adjudication or award in any action or proceeding resolving such claim.

#### SECTION 5 TIME

Time is of the essence of this Subcontract. Subcontractor shall provide Contractor with scheduling information and a proposed schedule for performance of the Work in a form acceptable to Contractor. Subcontractor shall conform to Contractor's progress schedule and all revisions or changes made thereto. Subcontractor shall prosecute the Work in a prompt and diligent manner in accordance with Contractor's progress schedule without delaying or hindering Contractor's work or the work of other contractors or subcontractors. Subcontractor shall coordinate the Work with that of Contractor and all other contractors, subcontractors, and/or material suppliers, in a manner that will facilitate the efficient completion of the entire Project. In the event Subcontractor fails to maintain its part of the Contractor's schedule, it shall, without additional compensation, accelerate the Work as Contractor may direct until the Work is in accordance with such schedule. Contractor shall have the right to decide the time and order in which various portions of the Project shall be installed and the relative priority of the Work, and, in general, all other matters pertaining to the timely and orderly conduct of the work required to complete the Project. Should Subcontractor be delayed in the prosecution or completion of the Work by the act, neglect or default of Owner, Architect or Contractor, or should Subcontractor be delayed waiting for materials, if required to be furnished by Owner or Contractor, or by damage caused by fire or other casualty for which Subcontractor is not responsible, or by the combined action of the workmen, in no way caused by or resulting from fault or collusion on the part of Subcontractor, then the time herein fixed for the completion of the Work shall be extended the number of days that Subcontractor has been delayed, but no allowance or extension shall be made unless a claim therefore is presented in writing to Contractor within three (3) business days of the commencement of such delay, and under no circumstances shall the time of completion be extended to a date which will prevent Contractor from completing the entire Project within the time allowed Contractor by Owner for such completion.

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No claims for additional compensation or damages for delays, whether caused in whole or in part by any conduct on the part of Contractor, including, but not limited to, conduct amounting to a breach of this Subcontract, or delays by other subcontractors or Owner, shall be recoverable from Contractor, and the above-mentioned extension of time for completion shall be the sole remedy of Subcontractor; provided, however, that in the event Contractor obtains additional compensation from Owner on account of such delays, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor from Owner as is equitable under all of the circumstances. In the event that Contractor prosecutes a claim against Owner for additional compensation for any delay, Subcontractor shall cooperate fully with Contractor in the prosecution thereof and shall pay costs and expenses incurred in connection therewith, including actual attorneys' fees, to the extent that said claim is made by Contractor at the request of Subcontractor.

### SECTION 6 CHANGES IN THE WORK

Subcontractor shall make any and all changes in the Work as directed by Contractor in writing. Such changes shall not invalidate this Subcontract.

If necessary, the Subcontract Price and the time for Subcontractor's performance shall be adjusted by appropriate additions or deductions mutually agreed upon before Subcontractor performs the changed Work. Subcontractor shall supply Contractor with all documentation necessary to substantiate the amount of the addition to or deduction from the Subcontract Price or time. If Contractor and Subcontractor cannot agree on the amount of the addition or deletion, Subcontractor shall nonetheless timely perform the Work as changed by Contractor's written direction. Once Subcontractor receives Contractor's written direction, Subcontractor is solely responsible for timely performance of the Work as changed by the written direction.

Payment for changed Work shall be made in accordance with Section 4.

If a dispute arises between Contractor and Subcontractor about whether particular Work is a change in the Work, or if Contractor and Subcontractor are unable to agree on an appropriate adjustment for changed Work, Subcontractor shall timely perform the disputed Work, upon receiving written direction from Contractor. If Subcontractor intends to submit a claim for the disputed Work, it shall give prompt written notice to Contractor before proceeding with the Work. Subcontractor shall submit its written claim for additional compensation or extension of time to complete Subcontractor's Scope of Work for that Work within three (3) business days after such Work is performed, in sufficient detail for Contractor to make an evaluation of the merits of the claim. Subcontractor's failure either to give the written notice before proceeding with the disputed Work or to submit the written claim within three (3) business days after discovery of the facts and circumstances giving rise to the claim constitutes an agreement by it that it will not be paid for the disputed Work.

No change, alteration, or modification to or deviation from this Subcontract, the Contract Documents, Prime Contract, plans, specifications, and addenda, whether made in the manner provided in this Section or not, shall release or exonerate, in whole or in part, any bond or any surety on any bond given in connection with this Subcontract, and no notice is required to be given to such surety of any such change, alteration, modification, or deviation.

The modification in the Subcontract Price and/or the time for performance stated in a Subcontract Change Order shall unequivocally comprise the total price and time adjustment due or owed by Contractor to Subcontractor for the Work and changes defined therein, and shall represent full and final compensation for all increases or decreases in direct, indirect and consequential costs, overhead, profit and time required to perform the entire Work under this Subcontract arising directly or indirectly from the Work and changes defined therein, including additional and/or extended overheads, delay, acceleration, loss of momentum and cumulative impacts on all other Work.

### SECTION 7 DAMAGES CAUSED BY DELAYS

If Subcontractor should default in performance of the Work or should otherwise commit any act which causes delay to the Prime Contract work, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages and liquidated damages, sustained by Contractor, or for which Contractor may be liable to Owner or any other party because of Subcontractor's default.

### SECTION 8 BONDING OF SUBCONTRACTOR

Concurrently with the execution of this Subcontract, or at any time during performance of the Work by Subcontractor and if required in the solicitation for bids upon ten (10) calendar days advanced written notice to Subcontractor,



Subcontractor shall, if required by Contractor, execute a labor and material bond and a performance bond, each in an amount equal to one hundred percent (100%) of the Subcontract Price. Said bonds shall be executed by a corporate surety acceptable to Contractor and shall be in a form satisfactory to Contractor. Contractor shall pay the premium on said bonds unless otherwise provided herein or in the Contract Documents.

#### **SECTION 9 CLAIMS & LIENS**

If any suit is brought, or if any claim or lien is recorded or served, for labor performed or materials used on or furnished to the Project under this Subcontract, as long as Contractor has made payment of all amount due under this Subcontract, Subcontractor shall pay and satisfy any such claim, lien or judgment. Subcontractor agrees within ten (10) calendar days after written demand to cause the effect of any such suit, claim or lien to be removed from the premises, and in the event Subcontractor shall fail so to do, Contractor is authorized to use whatever means it may deem appropriate to cause said claim, lien or suit to be removed or dismissed and the cost thereof, together with actual attorneys' fees, shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may contest any such claim, lien or suit provided it causes the effect thereof to be removed, promptly in advance, from the premises, and shall further take such actions as may be necessary to cause Owner not to withhold any monies due to Contractor from Owner by reason of such claims, liens or suits.

It is understood and agreed that the full and faithful performance of this Subcontract on the part of Subcontractor (including payment of any obligations due from the Subcontractor to Contractor and payment of any amounts due to labor or material suppliers furnishing labor or material for the Work) is a condition precedent to Subcontractor's right to receive payment for the Work performed, and any monies paid by Contractor to Subcontractor under the terms of this Subcontract shall be impressed with a trust in favor of labor and material suppliers furnishing labor and materials to Subcontractor for the Work.

#### **SECTION 10 PROVISIONS FOR INSPECTION**

Subcontractor shall at all times furnish to Contractor and its representatives, as well as Owner, Architect/Engineer and all governmental authorities with jurisdiction over the Work, safe and ample facilities for inspecting materials at the site of construction, shops, factories or any place of business of Subcontractor and its subcontractors and material suppliers where materials under this Subcontract may be in course of preparation, process, manufacture or treatment. Subcontractor shall furnish to Contractor as often as required by Contractor, full reports of the progress of the Work at any place where materials under this Subcontract may be in the course of preparation or manufacture. Such reports shall show the progress of such preparation and manufacture in such details as may be required by Contractor, including, but not limited to, any plans, drawings or diagrams in the course of preparation.

#### **SECTION 11 MATERIALS AND WORK FURNISHED BY OTHERS**

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

#### **SECTION 12 PROTECTION OF WORK**

Subcontractor shall effectually secure and protect the Work and assume full responsibility for the condition thereof until final acceptance by Inspector/Authority Having Jurisdiction, Architect/Engineer, Owner and Contractor. Subcontractor further agrees to provide such protection as is necessary to protect the work and the workers of Contractor, Owner and other subcontractors from Subcontractor's operations. Should the Subcontractor cause damage to the Work or property of the Owner, the Contractor or others, the Subcontractor shall promptly remedy such damage to the satisfaction of the Contractor, or the Contractor may, after two (2) business days written notice to the Subcontractor, remedy the damage and deduct its cost from any amounts due or to become due the Subcontractor, unless such costs are recovered under applicable property insurance.

Subcontractor shall be liable for any loss or damage to any work in place or to any equipment and materials on the job site caused by it or its agents, employees or guests.

#### **SECTION 13 LABOR RELATIONS**

## AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR



13.1 Subcontractor shall keep a representative at the job site during all times when the Work is in progress, and such representative shall be authorized to represent and bind Subcontractor as to all phases of the Work.

Prior to commencement of the Work, Subcontractor shall provide Contractor with contact information for Subcontractor's representative, and in the event of any change of representative, Subcontractor shall provide Contractor with contact information for the new representative, prior to the change becoming effective.

Subcontractor agrees to be bound and to comply with all the terms and conditions of the labor agreements listed in Section 25 to the same degree and extent as if Subcontractor were a party to those agreements, including payments into the employee benefit trust funds required by the labor agreements listed in Section 25, and including Subcontractor's submission to, and Subcontractor's compliance with, the arbitration and other dispute resolution requirements of the labor agreements listed in Section 25. Subcontractor agrees to comply with the terms and provisions contained in such agreements for resolution of jurisdictional disputes. In the absence of any such procedure, or if such procedure fails to promptly resolve any jurisdictional dispute, Subcontractor agrees, at its own cost and expense, upon request of Contractor, to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board.

Subcontractor acknowledges that terms and conditions of the labor agreements listed in Section 25 may require that Subcontractor comply with additional labor agreements with unions affiliated with the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) but not listed in Section 25. If the terms and conditions of the listed labor agreements so require, Subcontractor shall perform the Work pursuant to all terms and conditions of the labor agreement with a union affiliated with the AFL-CIO.

Should there be picketing on the job site, and Contractor establishes a reserved gate for Subcontractor's use; Subcontractor shall continue the proper performance of the Work without interruption or delay.

13.2 Subcontractor hereby acknowledges that it is thoroughly familiar with all DBE/MBE/WBE/DVBE requirements pertaining to the Project. If Subcontractor claims status as a DBE/MBE/WBE/DVBE, Subcontractor shall take all steps necessary and shall make all necessary records available to Contractor and Owner to assure that Subcontractor is in compliance with such requirements. In the event that any sub-subcontractor or supplier of the Subcontractor is designated as or is required to be a DBE/MBE/WBE/DVBE, Subcontractor agrees to be responsible for insuring that said sub-subcontractor or supplier meets all applicable requirements. Subcontractor acknowledges that Contractor is relying upon Subcontractor's representations regarding the validity of Subcontractor's status, if any, as a DBE/MBE/WBE/DVBE and that misrepresentation of the status of Subcontractor or any of its sub-subcontractors or material suppliers is a material breach and grounds for immediate termination of this Subcontract. In the event of termination as the result of material misrepresentation of the status of the Subcontractor as a DBE/MBE/WBE/DVBE, Subcontractor shall not be entitled to any compensation not already paid.

13.3 Subcontractor shall comply with and agrees to be bound by all applicable federal, state and local laws and regulations, including, but not limited to, all provisions of the Fair Labor Standards Act, the Americans With Disabilities Act, the federal Family and Medical Leave Act, the California Labor Code, the California Fair Employment and Housing Act, and the California Family Rights Act. California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 are incorporated into this Subcontract when payment of prevailing wages is required by contract or law, and Subcontractor agrees to comply with these provisions and all interpretations thereof by the Director of the Department of Industrial Relations insofar as they are applicable to Subcontractor. Upon request, Subcontractor shall submit Labor Compliance documents to Contractor within three (3) business days of such notification but no longer than ten (10) business days after such request has been submitted. Prior to receiving final payment for Work performed on the Project, when payment of prevailing wages is required by contract or law, Subcontractor shall sign an affidavit under penalty of perjury that Subcontractor has paid the specified general prevailing rate of per diem wages to its employees for the proper craft needed to fulfill the obligations of this Subcontract and all amounts due pursuant to Labor Code section 1813. Subcontractor further promises and agrees that it will bind and require all of its sub-subcontractors and their subcontractors performing any Work under this Subcontract to agree to all of the foregoing promises and undertakings contained in this Section to the same effect as herein provided.

## SECTION 14 RECOURSE BY CONTRACTOR

### 14.1 Suspension.



**14.1.1 Suspension by Owner for Convenience.** Should Owner, for its convenience, suspend the entire Project or any part which includes the Work, and such suspension is not due to any act or omission of Contractor, or any other person or entity for whose acts or omissions Contractor may be liable, Contractor shall notify Subcontractor in writing and, upon receiving notification, Subcontractor shall immediately suspend the Work. Subcontractor, after receipt of Contractor's notice, shall notify Contractor in writing in sufficient time to permit Contractor to provide timely notice to Owner in accordance with the Prime Contract of the effect of such order upon the Work. To the extent provided in the Prime Contract and to the extent Contractor recovers such on Subcontractor's behalf, the Subcontract Price and the time for performance shall be equitably adjusted by Subcontract Change Order for the cost and delay resulting from any such suspension. Contractor agrees to cooperate with Subcontractor, at Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension and to permit Subcontractor to prosecute the claim, in the name of Contractor, for the use and benefit of Subcontractor.

**14.1.2 Suspension by Contractor.** The Contractor may, for its convenience, order Subcontractor in writing to suspend all or any part of the Work for such period of time as Contractor determines is appropriate. Phased work or interruptions of the Work for short periods of time shall not be considered a suspension. Subcontractor, after receipt of Contractor's written order, shall notify Contractor in writing the effect of such order upon the Work. The Subcontract Price and/or the time for performance shall be adjusted by Subcontract Change Order for any increase in the price or time of performance of the Work caused by such suspension. No claim under this Section shall be allowed for any costs incurred more than fourteen (14) calendar days prior to Subcontractor's written notice to Contractor. Neither the Subcontract Price nor the time for performance shall be adjusted for any suspension, to the extent that the suspension is due in whole or in part to the fault or negligence of Subcontractor or otherwise the responsibility of Subcontractor. If and to the extent the suspension is due to a cause for which Subcontractor would have been entitled only to a time extension under this Subcontract, the Subcontract Price shall not be adjusted.

**14.2 Failure of Performance.**

**14.2.1 Right to Adequate Assurance.** When reasonable grounds for insecurity arise with respect to Subcontractor's performance, Contractor may in writing demand adequate assurance of due performance. Subcontractor's failure to provide within ten (10) calendar days of the demand such assurance of due performance as is adequate under the circumstances of the particular case is a default under Section 14.2.2.

**14.2.2 Notice to Cure.** If Subcontractor at any time refuses or neglects to supply enough properly skilled workers and proper materials, or fails to properly and diligently prosecute the Work, or fails to make prompt payment to its workers, sub-subcontractors or suppliers, or becomes delinquent with respect to contributions or payments required to be made to any health and welfare, pension, vacation, apprenticeship or other employee benefit program or trust, or fails to provide adequate assurance pursuant to Section 14.2.1, or is otherwise guilty of a material breach of a provision of this Subcontract, and fails within two (2) business days after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then Contractor, without prejudice to any other rights or remedies, shall have the right to any or all of the following remedies:

- (a) supply such number of workers and quantity of materials, equipment and other facilities as Contractor deems necessary for completion of the Work or any part thereof which Subcontractor has failed to complete or perform, and charge the cost thereof to Subcontractor, who shall be liable for the payment of that cost and a markup of fifteen percent (15%) for overhead and profit, plus actual attorneys' fees incurred as a result of Subcontractor's failure of performance;
- (b) contract with one or more additional contractors to perform such part of the Work as Contractor shall determine will provide the most expeditious completion of the entire Project and charge the cost thereof to Subcontractor, who shall be liable for the payment of that cost and a markup of fifteen percent (15%) for overhead and profit, plus actual attorneys' fees incurred as a result of Subcontractor's failure of performance; and
- (c) withhold payment of any monies due Subcontractor pending corrective action to the extent required by and to the satisfaction of Contractor. In the event of an emergency affecting the safety of persons or property, Contractor may proceed as above without notice to Subcontractor.

**14.2.3 Termination for Default.** If Subcontractor fails to commence and satisfactorily continue correction of a default within two (2) business days after receipt by Subcontractor of a notice issued under Section 14.2.2, then Contractor may terminate Subcontractor's right to perform under this Subcontract and use any materials, implements, equipment, appliances or tools furnished by or belonging to Subcontractor to complete the Work without any further compensation



to Subcontractor for such use. Contractor also may furnish those materials and equipment, and/or employ such workers or subcontractors as Contractor deems necessary to maintain the orderly progress of the Project.

In such case, Subcontractor shall be entitled to no further payment until the balance of the Work has been completed. At that time, all of the costs incurred by Contractor in performing the Work, and a markup of fifteen percent (15%) for overhead and profit on such costs, plus actual attorneys' fees as provided above, shall be deducted from any monies due or to become due Subcontractor. Subcontractor shall be liable for the payment of any amount by which such expenses may exceed the unpaid balance of the Subcontract Price.

**14.2.4 Termination for Convenience.** Contractor may, for its convenience at any time and for any reason, terminate Subcontractor's performance of the Work. Cancellation shall be by service of written notice to Subcontractor's place of business.

Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the Work and placing of orders for materials, facilities and supplies in connection with the performance of this Subcontract, 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.

Subcontractor's remedy for termination under this subsection shall be limited to the following:

- (1) payment of that portion of the Subcontract Price due for all Work properly completed in conformity with this Subcontract prior to termination
- (2) payment for the cost of material and equipment ordered for the Work, which has been delivered to Subcontractor, or which Subcontractor is liable to accept delivery; this material and equipment shall become the property of (and be at the risk of) Contractor when paid for by Contractor, and Subcontractor shall place the same at Contractor's disposal, including any required attic stock; and
- (3) payment for other close-out costs and liabilities properly and reasonably incurred by Subcontractor related to the Work. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Subcontractor prior to the date of the termination of this Subcontract. In no event shall payment due hereunder exceed the amount due for approved units of Work or percentage of completion. Subcontractor shall not be entitled to any claim or lien against Contractor or Owner for any additional compensation or damages, such as but not limited to loss of anticipated profits, unallocated overhead or consequential damages in the event of such termination and payment.

### 14.3 Bankruptcy.

**14.3.1 Termination Absent Cure.** Upon the appointment of a receiver for Subcontractor or upon Subcontractor making an assignment for the benefit of creditors, or if Subcontractor seeks protection under the Bankruptcy Code or commits any other act of insolvency, Contractor may, absent any applicable legal limitation, terminate this Subcontract upon giving two (2) business days written notice, by certified mail, to Subcontractor, its trustee, and its surety, if any, unless Subcontractor, the surety, or the trustee, within the notice period:

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

**14.3.2 Interim Remedies.** If Subcontractor is not performing in accordance with the Contractor's schedule at the time of entering an order for relief, or at any subsequent time, Contractor, while awaiting the decision of Subcontractor or its trustee to reject or to accept this Subcontract and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under this Section as are reasonably necessary to maintain the Contractor's schedule. Contractor may offset against any sums due or to become due Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, and reasonable overhead, profit and actual attorneys' fees incurred as a result of Subcontractor's non-performance. Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Price.



**SECTION 15 INDEMNIFICATION**

**15.1 Subcontractor's Indemnification and Defense of Contractor.** With the exception that this Section shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the statutes or public policy of the State of California, Subcontractor shall defend, indemnify, and save harmless Contractor, including its officers, directors, partners, joint-venturers, agents, employees, affiliates, parents and subsidiaries, and each of them, of and from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity, of every kind and nature whatsoever ("Claims") arising out of or in connection with Subcontractor's obligations under this Subcontract. Subcontractor's duties under this Section shall apply to Claims for, but not limited to:

- (a) Personal injury, including, but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to, any employees or agents of Subcontractor, Owner, Contractor, or any other subcontractor and/or damage to property of anyone (including loss of use thereof) caused or alleged to be caused in whole or in part by any act or omission of Subcontractor, its employees, agents, sub-subcontractors and others for whom Subcontractor is responsible.
- (b) Damages and penalties imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance or statute, caused by the action or inaction of Subcontractor.
- (c) Infringement of any patent rights which may be brought against the Contractor arising out of the Work.
- (d) Claims and liens (see Section 9) for labor performed or materials used or furnished to be used in performance of the Work, including all incidental or consequential damages resulting to Contractor from such claims or liens.
- (e) Subcontractor's failure to fulfill the covenants set forth in each subpart of Section 13.
- (f) Failure of Subcontractor to comply with the provisions of Section 16.
- (g) Any violation or infraction by Subcontractor of any law, order, citation, rule, regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees, including, but not limited to, the use of Contractor's or others' equipment, hoists, elevators, or scaffolds (see Sections 18 and 20).
- (h) Any failure or alleged failure to comply with the terms of this Subcontract or the Contract Documents.

The indemnification requirements of this Section shall extend to Claims occurring after this Subcontract is terminated as well as while it is in force. Such indemnity provisions apply to the fullest extent permitted by law, regardless of any passively negligent act or omission of Contractor, or its agents or employees. Subcontractor, however, shall not be obligated to indemnify Contractor for Claims arising from the active negligence, sole negligence, or willful misconduct of Contractor, or its agents, employees or independent contractors who are directly responsible to Contractor, or for defects in design furnished by such persons, or for Claims that do not arise out of the Work.

Except as otherwise provided by the statutes or public policy of the State of California, Subcontractor's obligations under this Section do not affect, and are not affected by, the insurance required of Subcontractor pursuant to Section 16.

With respect to Claims by an employee of Subcontractor, anyone directly or indirectly employed by Subcontractor or anyone for whose acts it may be liable, the indemnification obligation under this Section shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

Subcontractor shall promptly pay and satisfy any judgment or decree that may be rendered against Contractor or its agents or employees, or any of them, arising out of any Claim covered by Section 15.

**15.2 Defense of Claims.**

- (a) With respect to any Claims against Contractor as to which Subcontractor owes to Contractor a defense obligation, Subcontractor, having considered its options available at law, hereby elects to proceed under California Civil Code Sections 2782(e)(2) and/or 2782.05(e)(2), and further agrees that upon final resolution of any such Claim, any reimbursement for defense fees and costs previously paid by Subcontractor shall be governed by such provisions of the California Civil Code and the provisions of Section 17.
- (b) Subcontractor shall, at Subcontractor's own cost, expense and risk, defend (with counsel designated by Contractor) all Claims as defined in Section 15.1 that may be brought or instituted by third persons, including, but not limited to, governmental agencies or employees of Subcontractor, against Contractor, subject to the provisions of Civil Code Sections 2782(e)(2) and/or 2782.05(e)(2).



- (c) Subcontractor shall reimburse Contractor or its agents or employees for any and all legal expense incurred by any of them in connection herewith or in enforcing the indemnity granted in Section 15.

**15.3 Risk of Loss.** All Work done at the site or in preparing or delivering materials or equipment, or any or all of them, to the site shall be at the risk of Subcontractor exclusively until the completed Work is accepted by Contractor and Owner. The parties recognize that the waiver of subrogation provision of Section 16.10 and the builder's risk insurance provision of Section 16.12 may reduce the risk of loss and property damage indemnification obligations of Subcontractor.

**15.4 Subcontractor's Indemnification and Defense of Owner and Others.** With the exception that this Section shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the statutes or public policy of the State of California, Subcontractor shall defend, indemnify, and save harmless Owner, including its officers, directors, partners, joint-venturers, agents, employees, affiliates, parents and subsidiaries, and each of them, as well as any other persons that Contractor is required to indemnify and defend under the Contract Documents, of and from any and all Claims, to the same extent that Contractor is required to defend and/or indemnify Owner and such other persons, but only with respect to Claims arising out of or in connection with Subcontractor's performance under this Subcontract.

**15.5 Sub-subcontractor Indemnity.** Subcontractor shall ensure that its sub-subcontractors of every tier also fully indemnify and defend Contractor, Owner and any other persons that Contractor is required to indemnify and defend under the Contract Documents, to the same extent that Contractor is required to indemnify and defend such persons.

**15.6 Construction of Section.** Notwithstanding any of the provisions of Section 15, if it is finally determined by a court of competent jurisdiction that any of such provisions are void or unenforceable under governing law, then such provisions shall be deemed stricken from this Subcontract and the remaining provisions shall remain in full force and effect and shall be construed to provide for the maximum defense and indemnification obligation by Subcontractor permitted by law.

## SECTION 16 INSURANCE

**16.1 Subcontractor's Insurance.** Before commencing the Work, and as a condition of any payment due under this Subcontract, Subcontractor shall, at its own expense, procure and maintain insurance on all of its operations under this Subcontract whether the operations are by the Subcontractor or by anyone for whose acts Subcontractor may be liable. Insurance companies must be authorized to do business in the State of California and be A.M. Best's rated A-VII or better. Such coverage shall be acceptable to Contractor, which acceptance shall not be unreasonably withheld, and shall include coverage as follows:

- (a) **Workers' Compensation and Employer's Liability Insurance.** Workers' Compensation insurance shall be provided as required by any applicable law or regulation. Employer's Liability insurance shall be provided in amounts not less than:
- \$1,000,000 each accident for bodily injury by accident
  - \$1,000,000 policy limit for bodily injury by disease
  - \$1,000,000 each employee for bodily injury by disease

If there is an exposure of injury to Subcontractor's employees under the U.S. Longshore and Harbor Workers' Compensation Act, Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims as set forth in Section 26.

- (b) **Commercial General Liability Insurance.** Subcontractor shall carry primary Commercial General Liability insurance, Insurance Services Office (ISO) form CG 0001 1001, covering all operations by or on behalf of Subcontractor providing insurance for bodily injury, personal injury, and property damage for the limits of liability indicated below including but not limited to coverage for:
- (1) Premises and Operations
  - (2) Products and Completed Operations
  - (3) Contractual Liability including Subcontractor's bodily injury and property damage indemnity obligations assumed in Section 15
  - (4) Explosion, Collapse and Underground Hazards (Including Subsidence and Any Other Earth Movement)



- (5) Personal Injury Liability
- (6) Liability of Independent Contractors
- (7) Construction means, methods, techniques, sequences and procedures including safety and field supervision

Items 1-7 above shall not be subject to any of the following limiting or exclusionary endorsements:

- subsidence or earth movement
- prior acts or prior work
- action over - precluding indemnity for passive acts of Contractor contributing to injury of a Subcontractor's employee
- contractual limitation - eliminating cover for assumed liability
- supervisory or inspection service limitation
- insured vs. insured cross suits
- clauses terminating coverage after a designated period of time
- residential or habitational limitation if the Work includes residential or habitational work
- classification limitation limiting coverage for work to be performed
- defense inside limits provision
- sub-subcontractor insurance coverage exclusions for failure to satisfy coverage conditions

The limits of liability shall be not less than the amounts required of Subcontractor under the Contract Documents, but in no event less than:

- \$1,000,000 Each Occurrence (Combined Single Limit for Bodily Injury and Property Damage)
- \$1,000,000 for Personal Injury Liability
- \$2,000,000 Aggregate for Products-Completed Operations
- \$2,000,000 General Aggregate

The general aggregate limit shall apply separately to the Work or each Project.

(c) **Automobile Liability Insurance.** Subcontractor shall carry Automobile Liability insurance, including coverage for all owned, leased, hired, non-owned and any automobiles. The limits of liability shall be not less than \$1,000,000 combined single limit each accident for bodily injury and property damage. Contractor, its officers, directors and employees, Owner, Architect and any other interested parties required by the Contractor shall be included as additional/designed insureds on the auto policy per ISO form CA 2048 or an equivalent form.

(d) **Excess Liability Insurance.** A minimum of \$1,000,000 Excess Liability Insurance policy shall be maintained over the General Liability and Automobile Liability coverage. Such Excess coverage shall, at a minimum, include the items set forth in Paragraph (b) 1-7 above, and the insurance for such items shall not be subject to any of the limiting or exclusionary policy provisions or endorsements specified in Paragraph (b). Higher limits of liability may be required, and any such requirement is set forth in Section 26.

If the Work is to be performed within fifty (50) feet of any railroad, Subcontractor's Commercial General Liability policy shall be endorsed to delete the exclusion for work performed within fifty (50) feet of a railroad. A copy of such endorsement shall be provided to Contractor prior to commencement of work.

**16.2 Duration of Insurance.** Subcontractor shall maintain all insurance required by Section 16 at all times during the performance of the Work, and for such longer periods as set forth in the Contract Documents. In addition, Subcontractor shall maintain primary and excess products liability and completed operations coverage for at least ten (10) years following completion of the Project and its acceptance by Owner. Certificates of Insurance requirements set forth in Section 16.6 apply on an annual basis.

**16.3 Additional Insured Requirement.** Contractor, Owner, Architect, and any other entity which Contractor is required to name as an additional insured under the Prime Contract shall be named as additional insureds under the Subcontractor's Commercial General Liability policy required by Section 16, and such insurance afforded the additional insureds shall apply as primary insurance. Any other insurance maintained by Owner or Contractor shall be excess insurance and shall not be called upon to contribute to Subcontractor's primary or excess insurance carrier's duty to defend or indemnify unless required by law. The excess insurance required above shall also afford additional insured



protection to Owner, and Contractor and any other entity which Contractor is required to name as an additional insured under the Prime Contract. Such additional insurance coverage shall be provided by Subcontractor at no additional cost or expense to Contractor.

The primary additional insured insurance coverage required by this Section shall be provided by Insurance Services Office (ISO) Additional Insured endorsements CG 2010 0413 and CG 2037 0413 for the Owner and Contractor and CG 2032 0413 for the Architect/Engineer, or similar, or similar form(s) with the express written permission of Contractor with coverage not less broad. The duty to provide such additional insured coverage is independent of the defense and indemnity obligations set forth in Section 15. This Section shall, in no event, be construed to require that additional insured insurance coverage be provided to a greater extent than permitted under the statutes or public policy of the State of California.

**16.4 Sub-subcontractor Insurance.** Subcontractor shall ensure that its sub-subcontractors of every tier also carry insurance with the limits of liability specified above. Contractor may require written proof that the requisite insurance is being carried. Such written proof shall be furnished to Contractor within ten (10) calendar days after such request has been made. Any such insurance coverage required of sub-subcontractors shall name Contractor, Owner, and Architect as additional insureds, in the same manner as required by Section 16.3, at no additional cost or expense to Contractor.

**16.5 Supplementary Liability Provisions.**

- (a) Subcontractor shall not provide General Liability insurance under any Claims Made or Modified Occurrence General Liability form without the express written consent of Contractor.
- (b) Any self-insurance program providing coverage in excess of \$25,000 per occurrence requires the express written consent of Contractor.
- (c) The Contractor may allow deductible provisions and/or self-insured retentions of more than \$25,000 per occurrence if Subcontractor is willing to post security, guaranteeing payment of losses and defense expenses for a period of one (1) year after the Project is completed.
- (d) Standard ISO form CG 0001 11001 exclusions will be allowed. Allowance of any additional exclusions or coverage-limiting endorsements is at the discretion of the Contractor. (e) If the Work is of a substantial maritime nature, special maritime coverages such as U.S. Longshore and Harbor Workers' Compensation Act, Jones Act and Protection and Indemnity coverage shall be required as set forth in Section 26.
- (e) If consolidated wrap-up type liability and excess coverage is adopted for the Project, then such wrap-up program liability requirements, including builder's risk programs, are set forth in Section 26.
- (f) If the Work includes design/build work or services, Subcontractor shall obtain Professional Liability coverage as set forth in Section 26.
- (g) Increased Limits of Liability, if any, are set forth in Section 26.
- (h) If the Work involves the moving, lifting, lowering, rigging or hoisting of property and/or equipment, Subcontractor shall obtain Rigger's Liability coverage to insure against loss or damage to such property or equipment.
- (i) If Subcontractor or its subcontractors or suppliers use any owned, leased, borrowed, chartered or hired aircraft of any type in the performance of the Work, then Aircraft Liability coverage shall be maintained, as set forth in Section 26.
- (j) If the Work involves the remediation of, or creates an exposure to, any hazardous materials, Subcontractor shall maintain Contractor's Pollution Liability coverage, as set forth in Section 26.

**16.6 Certificates of Insurance.** As evidence of the insurance required by this Subcontract, Certificates of Insurance, including the required additional insured and other endorsements, shall be furnished to Contractor prior to the performance of any Work. Endorsements are to be furnished with each Certificate of Insurance. All Certificates of Insurance shall reference each endorsement number, the Project name and address, and the Agreement number. Such information is to be provided in the ACORD description of operations section of the certificate. Delivery of such certificates and endorsements shall be a condition of any payment due under this Subcontract. Certificates shall set forth deductible amounts in excess of \$5,000 applicable to each policy. Contractor has the right to require agent-certified copies of any of the required policies. If such request is made, such policies shall be furnished to Contractor within ten (10) calendar days. Receipt by Contractor of any certificate of insurance or additional insured endorsement which does not comply with the requirements of Section 16 shall not act as a waiver to enforcement of such requirements at a later date.



**16.7 Responsibility for Deductible.** Regardless of the consent to exclusions, coverage limitations or deductibles by Contractor, Subcontractor shall be responsible for any deductible amount or any loss arising out of coverage denials by its insurance carrier(s).

**16.8 Maintenance/Cancellation of Insurance.** Contractor may take whatever actions are necessary to assure Subcontractor's compliance with its obligations under Section 16. Should any insurance policy lapse or be canceled during the performance of the Work, or thereafter, Subcontractor shall, prior to the effective expiration or cancellation date, furnish the Contractor with evidence of renewal or replacement of the policy. Failure to continuously satisfy the insurance requirements herein is a material breach of this Subcontract. In the event Subcontractor fails to maintain any of the insurance coverage required, Contractor may, but is not required to, maintain such coverage and charge the expense to Subcontractor or terminate this agreement. There will be no cancellation or reduction of coverage of any required insurance without an unqualified, thirty (30) day, prior written notice to Contractor. Such notice may be sent by Subcontractor's insurance carrier, insurance broker, or Subcontractor.

**16.9 Subcontractor's Duties.** Any acceptance of insurance certificates by Contractor shall in no way limit or relieve Subcontractor of its duties and responsibilities under this Subcontract including the duty to defend, indemnify and hold harmless Contractor, Owner and others persons as set forth in Section 15. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Subcontractor from liability in excess of such coverage nor shall it preclude Contractor from taking such other actions as are available to it under any other provision of this Subcontract or by law.

**16.10 Waiver of Subrogation.** Subcontractor waives all rights against Contractor, Owner, Architect, all other subcontractors, and their agents, officers, directors and employees, for recovery of damages to the extent such damages are covered by the Commercial General Liability, Automobile Liability, Excess Umbrella, and Workers' Compensation insurance required of Subcontractor. Contractor and Subcontractor waive all rights against each other and against all other subcontractors and Owner for loss or damage to property to the extent covered by any other insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance. If any applicable policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent. Copies of General Liability, Automobile Liability, Excess Umbrella, and Worker's Compensation endorsements shall be provided to Contractor along with the certificates of insurance required by Section 16.6.

**16.11 Owner's Property Insurance.** Property insurance is to be provided on the completed Project by Owner, through a policy or policies other than those insuring the Project during the construction period.

**16.12 Builder's Risk Insurance.**

Builder's Risk insurance is provided for the Project. Such insurance shall apply to any of Owner's or Contractor's property in the care, custody or control of Subcontractor. Subcontractor shall be responsible for the first \$5,000 of insurance policy deductible amount applicable to damage to the Work and/or damage to other work caused by Subcontractor.

Builder's Risk insurance is not provided for the Project. The extent of Builders Risk or other property insurance available to Subcontractor (if any) during the course of construction is specified in Section 26.

**16.13 Supplementary Insurance.** If not provided by Builder's Risk coverage, Subcontractor shall maintain in full force and effect property insurance for all equipment, and property obtained by or for Subcontractor which is to become a part of the Work during installation and while such equipment and property is stored at the jobsite, at temporary locations, or while in transit to the Project from such temporary locations. Subcontractor shall also be responsible for insuring Subcontractor's owned, rented or borrowed equipment. Once the Work is accepted by Contractor, Owner or Contractor shall provide Project insurance and appropriate waivers of subrogation shall apply.

**SECTION 17 DISPUTE RESOLUTION PROCEDURE**

**17.1 Preliminary Dispute Resolution Procedure and Agreement to Arbitrate.**

**17.1.1 Disputes Under Prime Contract.** Any dispute resolution procedure in the Prime Contract shall be deemed incorporated in this Subcontract, and shall apply to any disputes arising hereunder, except for disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the Prime Contract, and those which have been



waived by the making or acceptance of final payment. Subject to compliance with all applicable laws, including but not limited to those relating to false claims, dispute and claim certifications, and cost and pricing data requirements, Contractor's sole obligation is to present any timely-filed claims by Subcontractor to Owner under such procedure and, subject to the other provisions of this Subcontract, to pay to Subcontractor the proportionate part of any sums paid by the Owner to which Subcontractor is entitled.

**17.1.2 Settlement Negotiations.** Subject to Prime Contract dispute resolution procedures under Section 17.1.1, and as to disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the Prime Contract, promptly upon notification by the Subcontractor of a dispute, the Contractor and Subcontractor shall meet to informally resolve such dispute. In the event that no resolution is achieved, the parties, prior to the initiation of any action or proceeding under this Section, shall make a good faith effort to resolve the dispute by negotiation between representatives with decision-making power, who, to the extent possible, shall not have had substantive involvement in the matters of the dispute, unless the parties otherwise agree. To facilitate the negotiation, the parties agree either to fashion a procedure themselves or seek the assistance of a person or organization experienced in alternative dispute resolution procedures, such as mediation or other similar procedures.

**17.2 Arbitration Procedures.** In the event the Prime Contract contains an arbitration provision or for disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the Prime Contract, or allocation issues pertaining to Section 15.2(a) which were resolved by the trier of fact in any underlying litigation or binding dispute resolution, the following shall apply:

- (1) **Notice of Demand.** For arbitration under the Prime Contract, notice of the demand for arbitration shall be filed in writing with the other party to this Subcontract and shall conform to the requirements of the arbitration provision set forth in the Prime Contract. For claims not involving the acts or omission or otherwise the responsibility of the Owner under the Prime Contract, the parties hereto shall submit any and all disputes arising under or relating to the terms and conditions of this Subcontract to arbitration in accordance with the Construction Industry Rules of the American Arbitration Association then in effect. In either case, the demand for arbitration shall be made within a reasonable time after written notice of the claim, dispute or other matter in question has been given, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim dispute or other matter in question would be barred by the applicable statute of limitations.
- (2) **Award.** The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.
- (3) **Work Continuation and Payment.** Unless otherwise agreed in writing, Subcontractor shall carry on the Work and maintain the Contractor's schedule pending arbitration, and if so, Contractor shall continue to make payments in accordance with this Subcontract.
- (4) **Consolidated Arbitration Proceedings.** To the extent not prohibited by their contracts with others, the claims and disputes of Owner, Contractor, Subcontractor and other subcontractor's suppliers and/or material suppliers involving a common question of fact or law shall be heard by the same arbitrator(s) in a single proceeding. In this event, it shall be the responsibility of Subcontractor to prepare and present Contractor's case, to the extent the proceedings are related to this Subcontract. Should Contractor enter into arbitration with the Owner or others regarding matters relating to this Subcontract, Subcontractor shall be bound by the result of the arbitration to the same degree as the Contractor.
- (5) **No Limitation of Rights or Remedies.** This Section shall not be deemed a limitation of any rights or remedies which Subcontractor may have under any federal or state mechanic's lien laws or under any applicable labor and material payment bonds unless such rights or remedies are expressly waived by it.

**SECTION 18 COMPLIANCE WITH ALL LAWS AND SAFETY PRACTICES**

Subcontractor shall ascertain the applicability of, and shall timely and fully comply with all laws, orders, citations, rules, regulations, standards and statutes affecting or relating to this Subcontract or its performance, including but not limited to those with respect to occupational health and safety, the handling and storage of hazardous materials, accident prevention, use of safety equipment, and safety practices, including the accident prevention and safety programs of Owner and Contractor. Subcontractor shall conduct regular inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for providing a safe place to work for its employees and for employees of its subcontractors and suppliers of material and equipment, for adequacy of and required use of all safety equipment and for full compliance with the aforesaid laws, orders, citations, rules, regulations, standards, statutes and programs.



If Contractor determines, in its sole discretion, that Subcontractor's activities are unsafe or that Subcontractor's safety record is unacceptable, Contractor may suspend performance of the Work until such matters are corrected, or may declare Subcontractor to be in default under Section 14.2.2.

**SECTION 19 WARRANTY**

Subcontractor warrants to Owner and Contractor that all materials and equipment furnished shall be new unless otherwise specified and that all Work under this Agreement shall be performed in a good and workmanlike manner, shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty provided in this Section shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

**SECTION 20 USE OF CONTRACTOR'S EQUIPMENT**

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

**SECTION 21 ASSIGNMENT OF CONTRACT**

Subcontractor shall not, without the prior written consent of Contractor, assign, transfer or sublet any portion or part of the Work, nor assign any payment hereunder to others.

**SECTION 22 INDEPENDENT CONTRACTOR**

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

**SECTION 23 CLEAN-UP**

At all times during the course of construction, Subcontractor shall perform the Work so as to maintain the Project site in a clean, safe and orderly condition. Subcontractor shall make provisions to minimize and confine dust and debris resulting from its construction activities. Upon completion of the Work, Subcontractor shall remove from the site all hazardous materials, temporary structures, debris and waste incident to its operation and clean all surfaces, fixtures, equipment, etc., affected by the performance of the Work.

If the Subcontractor fails to commence compliance with cleanup duties within two (2) business days after written notification from the Contractor of non-compliance, the Contractor may implement appropriate cleanup measures without further notice and the cost thereof shall be deducted from any amounts due or to become due the Subcontractor in the next payment period.

**SECTION 24 ATTORNEY'S FEES**

In the event the parties become involved in litigation or arbitration with each other arising out of this Subcontract or other performance thereof not including claims arising out of the Prime Contract in which the services of an attorney or other expert are reasonably required, the prevailing party shall be fully compensated for the cost of its participation in such proceedings, including the cost incurred for attorney's fees and expert's fees. Such attorney's fee award shall not be computed in accordance with any court schedule, but shall be such as to fully reimburse all attorney's fees actually incurred in good faith, regardless of the size of a judgment, it being the intention of the parties to fully compensate for all attorney's fees and expert's fees paid or incurred in good faith. In the case of a dispute of claims arising out of under the Prime Contract dispute resolution provisions, Subcontractor shall be entitled to such attorney's fees and other costs as may be provided for under the Prime Contract.



**SECTION 25 LABOR AGREEMENTS**

The Contractor is signatory to the 46 Northern California Counties Carpenters Master Labor Agreement. The Agreement is available upon request.

**SECTION 26 SPECIAL PROVISIONS**

**26.1 Coordination.** The Subcontractor shall:

- (a) cooperate with the Contractor and all others whose work may interface with the Subcontract Work;
- (b) specifically note and immediately advise the Contractor of any such interface with the Subcontract Work; and
- (c) participate in the preparation of coordination drawings and work schedules in areas of congestion.

**26.2 Subcontractor's Representative.** The Subcontractor shall designate a person, subject to Contractor's approval, who shall be the Subcontractor's authorized representative. This representative shall be the only person to whom the Contractor shall issue instructions, orders or directions, except in an emergency.

**26.3 Correction of Work.**

**26.3.1** If the Inspector/Authority Having Jurisdiction, Architect/Engineer or Contractor rejects the Subcontract Work or the Subcontract Work is not in conformance with the Contract Documents, the Subcontractor shall promptly correct the Subcontract Work whether it had been fabricated, installed or completed. The Subcontractor shall be responsible for the costs of correcting such Subcontract Work, any additional testing, inspections, and compensation for services and expenses of the Inspector/Authority Having Jurisdiction, Architect/Engineer and Contractor made necessary by the defective Subcontract Work.

**26.3.2** The Subcontractor agrees to promptly correct, after receipt of a written notice from the Contractor, all Subcontract Work performed under this Agreement which proves to be defective in workmanship or materials within a period of one (1) year from the date of Substantial Completion of the Prime Contract Work or for a longer period of time as may be required by specific warranties in the Contract Documents. Substantial Completion of the Subcontract Work, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Project, or a designated portion, for the use for which it is intended. If, during the one (1) year period, the Contractor fails to provide the Subcontractor with prompt written notice of the discovery of defective or nonconforming Subcontract Work, the Contractor shall neither have the right to require the Subcontractor to correct such Subcontract Work nor the right to make claim for breach of warranty. However, nothing herein shall constitute a waiver of any claim for patent or latent defective construction. If the Subcontractor fails to correct defective or nonconforming Subcontract Work within a reasonable time after receipt of notice from the Contractor, the Contractor may correct such Subcontract Work pursuant to Subparagraph 14.2.1.

**26.4 Substitutions.** No substitutions shall be made in the Subcontract Work unless permitted in the Contract Documents, and only upon the Subcontractor first receiving all approvals required under the Contract Documents for substitutions.

**26.5 Submittals.** Subcontractor is responsible for their submittals' compliance with applicable Contract Documents and for any delays occasioned by lack of such compliance.

**26.5.1** The Subcontractor promptly shall submit for review to the Contractor all shop drawings, samples, product data, manufacturers' literature and similar submittals required by the Contract Documents. Submittals shall be submitted in electronic form, if requested. The Subcontractor shall be responsible to the Contractor for the accuracy and conformity of its submittals to the Contract Documents. The Subcontractor shall prepare and deliver its submittals to the Contractor in a manner consistent with the Progress Schedule and in such time and sequence so as not to delay the Contractor or others in the performance of the Work. The approval of any Subcontractor submittal shall not be deemed to authorize deviations, substitutions or changes in the requirements of the Contract Documents unless express written approval is obtained from the Contractor and Owner authorizing such deviation, substitution or change. Such approval shall be promptly memorialized in a Subcontract Change Order with in seven (7) calendar days following approval by the Contractor and, if applicable, provide for an adjustment in the Subcontract Amount or Subcontract Time. In the event that the Contract Documents do not contain submittal requirements pertaining to the Subcontract Work, the Subcontractor agrees upon request to submit in a timely fashion to the Contractor for review any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by the Contractor, Owner or Architect/Engineer.



**26.5.2** The Contractor, Owner, and Architect/Engineer are entitled to rely on the adequacy, accuracy and completeness of any professional certifications required by the Contract Documents concerning the performance criteria of systems, equipment or materials, including all relevant calculations and any governing performance requirements

**26.6 Claims Relating to Contractor.** The Subcontractor shall give the Contractor written notice of all claims within fourteen (14) calendar days of the Subcontractor's knowledge of the facts giving rise to the event for which claim is made. Thereafter, the Subcontractor shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) calendar days after giving notice, unless the Parties agree upon a longer period of time. The Contractor shall respond in writing denying or approving, in whole or in part the Subcontractor's claim no later than fourteen (14) calendar days after receipt of the Subcontractor's documentation of claim. All unresolved claims, disputes and other matters in question between the Contractor and the Subcontractor shall be resolved in the manner provided in Section 17.

**26.7 Liquidated Damages.** If the Contract Documents furnished to the Subcontractor provide for liquidated damages or other damages for delay beyond the completion date set forth in the Contract Documents that are not specifically addressed as a liquidated damage item in this Agreement, and such damages are assessed, the Contractor may assess a share of the damages against the Subcontractor in proportion to the Subcontractor's share of the responsibility for the damages. However, the amount of such assessment shall not exceed the amount assessed against the Contractor. This Paragraph shall not limit the Subcontractor's liability to the Contractor for the Contractor's actual damages caused by the Subcontractor.

**26.8 Substantiation of Adjustment Regarding Changes.** If the Subcontractor does not respond promptly or disputes the method of adjustment, the method and the adjustment shall be determined by the Contractor on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Subcontract Amount, an allowance for overhead and profit of the percentage provided in Paragraph 26.8.6, or if none is provided 5% for Sub-tiered Subcontractors, 15% for Labor, Materials and Equipment or the amount allowed in the Prime Contract, whichever is less. The Subcontractor shall maintain for the Contractor's review and approval an appropriately itemized and substantiated accounting of all items attributable to the Subcontract Change Order:

- (1) Labor costs, including Social Security, health, welfare, retirement and other fringe benefits as normally required, and state workers' compensation insurance;
- (2) Costs of materials, supplies and equipment, whether incorporated in the Subcontract Work or consumed, including transportation costs;
- (3) Costs of renting machinery and equipment other than hand tools;
- (4) Costs of bond and insurance premiums, permit fees and taxes attributable to the change; and
- (5) Costs of additional supervision and field office personnel services necessitated by the change.
- (6) Adjustments shall be based on net change in Subcontractor's reasonable cost of performing the changed Subcontract Work plus, in case of a net increase in cost, an agreed upon sum for overhead and profit.

**26.9 Schedule of Values.** As a condition to payment, the Subcontractor shall provide a schedule of values satisfactory to the Contractor not more than five (5) calendar days from the date of issuance of this Agreement.

**26.10 Time of Application for Payment.** The Subcontractor shall submit progress payment applications to the Contractor no later than the twentieth (20th) day of each payment period for the Subcontract Work performed up to and including the last day of the month indicating work completed and, to the extent allowed under Section 4, materials suitably stored during the preceding payment period. No other form of payment request will be accepted. Payment requests received after the due date will be processed the following pay period.

**26.11 Final Payment.**

**26.11.1 Waiver of Claims.** Final payment shall constitute a waiver of all claims by the Subcontractor relating to the Subcontract Work, but shall in no way relieve the Subcontractor of liability for the obligations assumed under this agreement, or for faulty or defective work or services discovered after final payment, nor relieve the Contractor for claims made in writing by the Subcontractor as required by the Contract Documents prior to its application for final payment as unsettled at the time of such payment.



**26.12 Continuing Obligations.** Provided the Contractor is making payments on or has made payments to the Subcontractor in accordance with the terms of this Agreement, the Subcontractor shall reimburse the Contractor for any costs and expenses for any claim, obligation or lien asserted before or after final payment is made that arise from the performance of the Subcontract Work. The Subcontractor shall reimburse the Contractor for costs and expenses including attorney's fees and costs and expenses incurred by the Contractor in satisfying, discharging or defending against any such claims, obligation or lien including any action brought or judgment recovered. In the event that any applicable law, statute, regulation or bond requires the Subcontractor to take any action prior to the expiration of the reasonable time for payment referenced in Section 4 in order to preserve or protect the Subcontractor's rights, if any, with respect to mechanic's lien or bond claims, then the Subcontractor may take that action prior to the expiration of the reasonable time for payment and such action will not create the reimbursement obligation recited above nor be in violation of this Agreement or considered premature for purposes of preserving and protecting the Subcontractor's rights.

**26.13 Payment Use Restriction.** Payments received by the Subcontractor shall be used to satisfy the indebtedness owed by the Subcontractor to any person furnishing labor or materials, or both, for use in performing the Subcontract Work through the most current period applicable to progress payments received from the Contractor before it is used for any other purpose. In the same manner, payments received by the Contractor from the Owner for the Subcontract Work shall be dedicated to payment to the Subcontractor. This provision shall bear on this Agreement only, and is not for the benefit of third parties. Moreover, it shall not be construed by the Parties to this Agreement or third parties to require that dedicated sums of money or payments be deposited in separate accounts, or that there be other restrictions on commingling of funds. Neither shall these mutual covenants be construed to create any fiduciary duty on the Subcontractor or Contractor, nor create any tort cause of action or liability for breach of trust, punitive damages, or other equitable remedy or liability for alleged breach.

**26.14 Payment Use Verification.** If the Contractor has reason to believe that the Subcontractor is not complying with the payment terms of this Agreement, the Contractor shall have the right to contact the Subcontractor's subcontractors and suppliers to ascertain whether they are being paid by the Subcontractor in accordance with this Agreement.

**26.15 Partial Lien Waivers and Affidavits.** As a prerequisite for payments, the Subcontractor shall provide, in a form satisfactory to the Owner and Contractor, partial lien or claim waivers in the amount of the application for payment and affidavits covering its subcontractors and suppliers for completed Subcontract Work. Such waivers may be conditional upon payment. In no event shall Contractor require the Subcontractor to provide an unconditional waiver of lien or claim, either partial or final, prior to receiving payment or in an amount in excess of what it has been paid.

**26.16 Subcontractor Payment Failure.** Upon payment by the Contractor, the Subcontractor shall promptly pay its subcontractors and suppliers the amounts to which they are entitled. In the event the Contractor has reason to believe that labor, material or other obligations incurred in the performance of the Subcontract Work are not being paid, the Contractor may give written notice of a potential claim or lien to the Subcontractor and may take any steps deemed necessary to assure that progress payments are utilized to pay such obligations, including but not limited to the issuance of joint checks. If upon receipt of notice, the Subcontractor does not (a) supply evidence to the satisfaction of the Contractor that the moneys owing have been paid; or (b) post a bond indemnifying the Owner, the Contractor, the Contractor's surety, if any, and the premises from a claim or lien, the Contractor shall have the right to withhold from any payments due or to become due to the Subcontractor a reasonable amount to protect the Contractor from any and all loss, damage or expense including attorneys' fees that may arise out of or relate to any such claim or lien.

**26.17 Subcontractor Assignment of Payments.** The Subcontractor shall not assign any moneys due or to become due under this Agreement, without the written consent of the Contractor, unless the assignment is intended to create a new security interest within the scope of Article 9 of the Uniform Commercial Code. Should the Subcontractor assign all or any part of any moneys due or to become due under this Agreement to create a new security interest or for any other purpose, the instrument of assignment shall contain a clause to the effect that the assignee's right in and to any money due or to become due to the Subcontractor shall be subject to the claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Subcontract Work.

**26.18 Payment Not Acceptance.** Payment to the Subcontractor does not constitute or imply acceptance of any portion of the Subcontract Work.



**SECTION 27 DESIGN BUILD**

To the extent that project elements delineated in the drawings and specifications designed for the Project will be on a Design/Build basis (also referred to as deferred approvals), the subcontractor shall be responsible for the following:

- (1) preparing Architectural, Engineering and other drawings and specifications for all design/build components required under its subcontract;
- (2) complying with the Project requirements and space limitations;
- (3) pro-actively coordinating and interfacing with other trades and others consultants, and
- (4) obtaining approvals from authorities having jurisdiction over the Project.

The Subcontractor shall be the Design Professional of Record for its portion of the Work. Subcontractor shall ensure that all Design Professionals for Design/Build work shall carry sufficient claims made professional liability coverage with a minimum limit of \$1,000,000 per claim and in the aggregate. The Subcontractor assumes responsibility for the design, installation and performance of the design/build systems.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR (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 TEN (10) YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE CONTRACTORS STATE LICENSE BOARD, PO BOX 26000, SACRAMENTO, CA 95826.

WHEREFORE, this Subcontract is executed by Contractor and Subcontractor on the dates set forth above their signatures below.

Contractor name	Seals Construction, Inc.	Subcontractor name	
Printed name	Matt Seals	Printed name	
Signed		Signed	
Mailing address	PO Box 6670 Visalia, CA 93290	Mailing address	
Physical address	9410 W. Placer Ave. Visalia, CA 93291	Physical address	
Contractor license #	949738	Contractor license #	
Tax ID number	27-1340885	Tax ID number	