



## SUBCONTRACT AGREEMENT

Standard Form

This Subcontract is entered into on the "Effective Date" between Contractor and Subcontractor for construction of a portion of the Project.

The Project is being constructed by Contractor through written agreement ("Contract") with Owner executed on the "Contract Date". By execution of this Subcontract, Subcontractor is bound and obligated to the Contractor to the same extent that the Contractor is bound to the Owner under the Contract and therefore assumes all of the same obligations, liabilities, and responsibilities that the Contractor has assumed toward Owner with respect to Subcontractor's "Work".

All defined terms are capitalized and the definitions are included in **Exhibit 1**.

<b>Effective Date</b>	[insert date]
<b>Subcontractor's Work</b>	[insert trade]
<b>The Project is:</b>	[insert name of project] [insert street address] [city, zip]
<b>Contract Date</b>	[insert date of Prime Contract]
<b>The Owner is:</b>	[insert name of firm] [insert street address] [city, zip]
<b>The Architect is:</b>	[insert name of firm] [insert street address] [city, zip]

<b>Contractor</b> KCS WEST, INC. 250 East 1st Street, Suite 600 Los Angeles, CA 90012 Phone 323-269-0020, Fax 213-972-4076	<b>Subcontractor</b> [insert name of subcontractor] [insert street address] [city, zip] [phone, fax]
Executed By: _____ [insert name, title]	Executed By: _____ [insert name, title]
	License No. _____

**FOR GOOD AND VALUABLE CONSIDERATION, CONTRACTOR AND SUBCONTRACTOR AGREE TO THE TERMS AND CONDITIONS OF THIS SUBCONTRACT.**

## BUSINESS TERMS SHEET

The key business terms are set forth below and incorporated into this Subcontract.

<b>Contractor's Authorized Representative</b>	[insert name of project manager] [direct phone] [cell phone]
<b>Contractor's Superintendent</b>	[insert name] [direct phone] [cell phone]
<b>Subcontractor's Authorized Representative</b>	[insert name, title] [direct phone] [cell phone]
<b>Subcontract Price</b>	\$ _____ <input type="checkbox"/> union trade <input type="checkbox"/> non-union trade
<b>Change Order Mark-Up</b>	
Subcontractor for self-performed Work	_____% Overhead and ____% Profit
Subcontractor for Work performed by tiers	5% Profit
Tier- Subcontractor	10% Overhead and 5% Profit
<input type="checkbox"/> <b>Payment and Performance Bonds</b>	_____%
<input type="checkbox"/> <b>Design/Build Work</b>	Exhibit 8 applicable and Professional Liability Insurance Required.
<b>Fees</b> (see Section 5.2)	<input type="checkbox"/> Plan check for Design-Build Work. <input type="checkbox"/> Trade permit(s) for Work under this Subcontract. <input type="checkbox"/> Special permits for Work under this Subcontract. <input type="checkbox"/> Licenses and fees for Work under this Subcontract. <input type="checkbox"/> Taxes—all taxes for Work under this Subcontract.
<b>Retention</b>	<input type="checkbox"/> 10% through completion of Project <input type="checkbox"/> Special terms apply per Exhibit 3
<b>Minimum Insurance Limits</b>	
<input type="checkbox"/> Contractor Controlled Insurance Program ("CCIP")	<input type="checkbox"/> Subcontractor Enrolled <input type="checkbox"/> Subcontractor to carry offsite CGL, workers compensation, and automobile liability per CCIP Manual, limits set forth below under traditional coverage, and per Exhibit 6. <input type="checkbox"/> "Excluded Party" per §1.4 of Exh. 6 (traditional coverage applies)
<input type="checkbox"/> Owner Controlled Insurance Program ("OCIP")	<input type="checkbox"/> Subcontractor Enrolled <input type="checkbox"/> Subcontractor to carry offsite CGL, workers compensation, and automobile liability per OCIP Manual, limits set forth below under traditional coverage, and per Exhibit 6. <input type="checkbox"/> "Excluded Party" per §1.4 of Exh. 6 (traditional coverage applies)
<input type="checkbox"/> Traditional Insurance Coverage (pollution liability coverage is dependent on trade) (include professional liability if design-build trade)	Subcontractor to carry all insurance as required below and in accordance with Exhibit 6.

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Workers Compensation/Employers' Liability <i>(req'd regardless of CCIP, OCIP or traditional coverage)</i>	California Statutory Limits Employers' Liability \$1,000,000 each accident
Commercial General Liability <i>(traditional)</i>  Offsite Commercial General Liability <i>(CCIP or OCIP)</i>	\$1,000,000 per occurrence \$2,000,000 in aggregate \$1,000,000 personal/advertising injury \$2,000,000 products/completed operations coverage
Automobile <i>(req'd regardless of CCIP, OCIP or traditional coverage)</i>	\$1,000,000 each accident
Excess Liability Insurance <i>(req'd regardless of CCIP, OCIP or traditional coverage)</i>	\$ _____ <i>(insert \$2M, \$3M, or \$5M)</i>
Tools and Equipment <i>(req'd regardless of CCIP, OCIP or traditional coverage)</i>	Fair Market Value
<input type="checkbox"/> Contractors Pollution Liability	\$1,000,000 per claim \$2,000,000 in aggregate
<input type="checkbox"/> Professional Liability <i>(req'd for design build)</i>	\$1,000,000 per claim \$2,000,000 in aggregate
<b>Additional Insureds</b>	KCS West, Inc. <i>[insert name of owner and others] (if lender, include lender)</i> Any entity designated for additional insured status in the prime contract
<b>Subcontractor's Billing Address</b>	<i>[insert name of subcontractor]</i> <i>[insert street address]</i> <i>[city, zip]</i>
<b>Contacts for Notices per Section 13.3</b>	
<b>Contractor</b>	KCS West, Inc. 250 East 1st Street, Suite 600 Los Angeles, CA 90012 Attn: Robert Stein, V.P. of Operations
<b>Subcontractor</b>	<i>[insert name of subcontractor]</i> <i>[street address]</i> <i>[city, state, zip]</i> Attn: <i>[insert name and title]</i>
<b>Lender for Project</b>	[Yes/No] If yes, <i>[insert name and address of lender]</i>
<input type="checkbox"/> <b>Non-Disclosure Agreement</b>	See Exhibit 9
<input type="checkbox"/> <b>Project Labor Agreement</b>	See Exhibit 10
<b>Project Manual</b>	Version <i>[insert version]</i> , Dated <i>[insert date]</i>

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## EXHIBITS

The following Exhibits are incorporated into this Subcontract.

<b>Exhibit 1</b>	<b>Definitions</b>
<b>Exhibit 2</b>	<b>Construction Documents</b>
<b>Exhibit 3</b>	<b>Scope of Work</b>
<b>Exhibit 4</b>	<b>Project Schedule</b>
<b>Exhibit 5</b>	<b>Site Logistics Plan</b>
<b>Exhibit 6</b>	<b>Insurance Requirements</b>
<b>Exhibit 7</b>	<b>Calculation of Change Orders (Direct Costs, Overhead and Profit)</b>
<b>Exhibit 8</b>	<b>Design/Build Work</b>
<b>Exhibit 9</b>	<b>Non-Disclosure Agreement</b>
<b>Exhibit 10</b>	<b>Project Labor Agreement</b>
<b>Exhibit 11</b>	<b>Other</b>

## PROJECT MANUAL

The following forms and information are included in the Project Manual at the Project site office and also posted to Contractor's website at [www.kcswest.com](http://www.kcswest.com). By execution of this Subcontract, Subcontractor acknowledges that it has reviewed and become familiar with all forms and policies included in the Project Manual and will adhere to Contractor's protocol while performing its Work. The Project Manual is incorporated into this Subcontract by reference as though set forth in full.

<b>Tab 1</b> <b>Tab 1-A</b> <b>Tab 1-B</b> <b>Tab 1-C</b>	<b>Form Application for Payment</b> Joint Check Agreement (Tier-Sub) Joint Check Agreement (Supplier) W-9 Form
<b>Tab 2</b>	<b>California Lien Waivers and Releases</b>
<b>Tab 3</b>	<b>Subcontractor Warranty Form</b>
<b>Tab 4</b>	<b>Payment and Performance Bond Forms</b>
<b>Tab 5</b>	<b>Request for Information Form</b>
<b>Tab 6</b>	<b>Request for Substitution Form</b>
<b>Tab 7</b>	<b>Daily Construction Report Form</b>

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<b>Tab 8</b>	<b>Field Work Order Form</b>
<b>Tab 9</b> <b>Tab 9-A</b> <b>Tab 9-B</b>	<b>Change Order</b> Change Order Form Close Out Change Order Form
<b>Tab 10</b>	<b>Consent of Surety Form</b>
<b>Tab 11</b>	<b>Site Safety &amp; Health Plan</b>

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## 1. WORK

**1.1 General Description of the Work.** Subcontractor will provide all labor, services, materials, tools, equipment, hoisting, and other appurtenances necessary for proper completion of the Work. All Work will be performed timely in an efficient and workmanlike manner in accordance with the Scope of Work set forth in **Exhibit 3** and the Contract Documents described in Section 2. Subcontractor has reviewed all plans, specifications, surveys, environmental reports, soils, reports etc. listed as Construction Documents in **Exhibit 2** in preparation of the Subcontract Price and acknowledges that the Construction Documents do not indicate or describe all details, code requirements, connections, means, methods, or other work required for the proper performance and Completion of the Work. Subcontractor represents that it has included all costs necessary for the proper performance of its Work.

**1.2 Compliance with the Law.** Subcontractor will comply with all local, state, and federal laws applicable to conducting its business and performing Work in the State of California including all applicable licensing, building codes, ordinances, and regulations.

## 2. CONTRACT DOCUMENTS

**2.1 Definition.** The Contract Documents consist of the Contract (inclusive of all exhibits) and this Subcontract inclusive of the Definitions set forth in **Exhibit 1**; the Construction Documents described in **Exhibit 2**; the Scope of Work described in **Exhibit 3**; the Project Schedule included as **Exhibit 4**; the Site Logistics Plan included as **Exhibit 5**; the Insurance Requirements described in **Exhibit 6**; the Calculation of Change Orders described in **Exhibit 7**; if so indicated in the Business Terms Sheet, the Design/Build Work provisions in **Exhibit 8**; the Project Manual available at the Project site and posted to the Contractor's website; and all subsequent modifications to the Contract Documents issued through executed Amendment or Change Order.

**2.2 Precedence.** The Contract Documents are intended to be inclusive and complementary. Subcontractor will provide prompt written notice to Contractor of any conflicts among the various Contract Documents with respect to Subcontractor's Work. If there is a conflict between various Contract Documents, the most stringent requirement, the highest standard, or the provision imposing a greater duty or obligation on Subcontractor will govern. If there is a conflict between the terms and conditions of the Contract and this Subcontract, the terms and conditions of the Contract govern.

**2.3 Acknowledgement.** Subcontractor acknowledges it has carefully examined and understands the Subcontract and the other Contract Documents and that it has reported any errors, ambiguities, and inconsistencies to the Contractor in writing. Subcontractor represents that it enters into this Subcontract on the basis of its own examination, investigation, and evaluation and not in reliance upon any opinions or representations of the Owner, Contractor, Architect, or any of their respective officers, agents, servants, or employees.

## 3. COMPENSATION

**3.1 Lump Sum.** Subcontractor's full and complete compensation for providing all Work in strict accordance with the Contract Documents is the lump sum amount (Subcontract Price) set forth in the Business Terms Sheet. The Subcontract Price includes all costs associated with the Work including overhead and profit and is only subject to increases and decreases for approved Change Orders under Section 6.

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## 4. SCHEDULE

**4.1 Contract Time.** The Contract Time is the time allotted under the Project Schedule (**Exhibit 4**) for Subcontractor to achieve Completion of the Work, which is subject to revisions through an executed Change Order.

**4.2 Commencement and Prosecution of the Work.** Subcontractor will commence the Work when notified to do so by Contractor and will diligently prosecute and complete its Work within the Contract Time pursuant to the most current Project Schedule without additional cost to Contractor unless Subcontractor is entitled to a Change Order for delay under Section 4.4. Subcontractor will coordinate its Work with other work being performed on the Project (including Owner's separate contractors, if any) and will complete its Work in an efficient manner avoiding delays, impediments, obstructions, hindrances or interference with the commencement, progress or completion of the whole or any part of the Project.

**4.3 Project Scheduling.** The Contractor with the assistance of its subcontractors will create 3-week work plans for the performance of the upcoming work and document all subcontractor work performed during the prior 3 week period. Subcontractor will continuously monitor the Project Schedule and 3-week work plans and understand the timing, phasing and sequencing of operations of its Work and the work of other subcontractors and separate contractors. The work plans will be used as a tool to reflect reliable commitments made in look ahead meetings, evaluate any upcoming constraints or schedule slippages, identify workable backlog and collaborate on methods for labor efficiency. Work flow will be scheduled based on providing information, material and resources as required by the user of the information, material or resources, optimizing the flow of work through the Project and reducing bottlenecks and activity that will not advance the Project Schedule.

**4.4 Delays.** If Subcontractor is delayed in the commencement, prosecution or Completion of the Work by: (i) changes in the Work that were not specified, illustrated, or reasonably inferable from the Contract Documents; (ii) Unforeseen and Differing Site Conditions; (iii) Contractor's suspension of the Work or Project; (iv) acts or omissions of Owner, its consultants or separate contractors, or (v) other causes beyond the Subcontractor's reasonable control, which could not have been anticipated and for which the Contractor is able to recover under the Contract, then the Subcontractor's Contract Time may be extended for such reasonable time as Subcontractor can demonstrate after taking into account any concurrent delays caused by Subcontractor. Notwithstanding the above, Subcontractor will not be entitled to an extension of Contract Time unless (i) the critical path of the most current approved Project Schedule is also impacted extending the Substantial Completion Date of the Project; and (ii) Subcontractor notifies Contractor in writing of the cause or causes of the delay within **2 business days** of commencement of the delay, and demonstrates that it could not have anticipated or avoided the delay and has used all commercially available means to minimize the consequences of the delay. Failure to provide timely notice constitutes waiver of delay claim.

**4.4.1 Subcontractor Caused Delays.** If the progress of the Work or the Project is delayed, disrupted, hindered, obstructed, or interfered with by any fault or neglect, or act or failure to act by the Subcontractor or any of its employees, tier-subcontractors or suppliers and the delay causes additional cost, expense, liability or damage to any other Project Team Member (including legal fees and disbursements incurred by any of them, whether incurred in defending claims arising from the delay or in seeking reimbursement and indemnity from Subcontractor and its surety (if applicable)), or any damages or additional costs or expenses for which the Contractor may or will become liable, then Subcontractor and its surety

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(if applicable) will be financially responsible. Subcontractor's financial responsibility will include all costs for necessary acceleration and recovery as well as damages assessed against Contractor under the Contract and any additional compensation paid by Contractor to other Project Team Members. To the extent liquidated damages are assessed against Contractor pursuant to the Contract, Subcontractor will be responsible for its proportionate share of liquidated damages based on Subcontractor's or its tier-subcontractors' or suppliers' fault, act, or omission. Subcontractor will indemnify and hold the Contractor and Owner harmless from all alleged or actual claims, liabilities, and damages arising out of or resulting from any delay, interference or disruption to the critical path of the most current approved Project Schedule or to any other Project Team Members' time, that is caused by Subcontractor's or its tier-subcontractors' or suppliers' negligent acts or omissions in accordance with Article 9.

**4.4.2 Other Subcontractor Caused Delays.** If Subcontractor is delayed, interfered with, or disrupted by the acts or omissions of another subcontractor and the Subcontractor's Contract Time is impacted, the Subcontractor will provide written notice to Contractor within **2 business days** of the delay inclusive of a description of the cause of the delay, the impact, and the subcontractors involved. If the Contractor believes that the claim is valid, it will seek compensation on Subcontractor's behalf from the subcontractors involved in the delay. Subcontractor will only be entitled to the amount that Contractor determines, in its sole discretion, is reasonable and only to the extent that Contractor is able to recover such costs from those subcontractors less any costs incurred by Contractor in obtaining the recovery. The 2 business days' notice and receipt of recovery by Contractor from other allegedly responsible subcontractors is an express condition precedent to any right of Subcontractor to additional time or compensation.

**4.4.3 Contractor's Right to Schedule the Work.** Contractor has the right to re-schedule or re-sequence the Work in order to maintain the Substantial Completion Date and Subcontractor will perform its Work in accordance with the revised schedule.

**4.5 Recovery Plan.** The Subcontractor will notify the Contractor within **2 business days** of any slippage in the 3-week work plan as a result of its Work and must submit a detailed recovery plan for evaluation and approval by the Contractor. All costs associated with the recovery will be the responsibility of Subcontractor unless Subcontractor is entitled to an extension of its Contract Time under Section 4.4.

**4.6 Acceleration of Schedule.** Any time Subcontractor is behind schedule in performance of the Work, Contractor may direct Subcontractor, at its own cost and expense, to perform overtime Work, use extra labor, machinery and equipment, transfer its labor, machinery and equipment to other portions of the Work, expedite deliveries or use any other means or methods necessary to recover the most current Project Schedule. Contractor may direct Subcontractor to perform additional overtime Work and Contractor will pay, without overhead or profit, the cost of the premium time portion of wages only (including any additional amount Subcontractor is required to pay into a fringe benefit fund for the premium time). Contractor will not be liable for any other costs allegedly expended, damages or other expenses, including any alleged loss of productivity or inefficiency on account of directed or constructive acceleration.

## **5. RESPONSIBILITIES**

**5.1 License.** Subcontractor warrants that it is authorized to do business in the State of California and is properly licensed by all necessary governmental, public and other authorities having jurisdiction over the Project for performance of the Work.

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**5.2 Permits, Fees, and Taxes.** Subcontractor will secure and pay for all permits, fees and licenses necessary for the execution of the Work, as set forth in the Business Terms Sheet, and will pay all local, state and federal taxes in connection with the Work. All costs for permits, fees and taxes are included in the Subcontract Price. When required by Contractor, Subcontractor will furnish satisfactory evidence showing that all such payments have been made.

**5.3 Standard of Care.** Subcontractor will supervise and direct the Work using Subcontractor's best skill and attention and all Work will be performed in a timely workman-like manner consistent with the degree of care and skill customarily exercised by California state licensed specialty contractors experienced in performing Work of similar size, scope and complexity.

**5.4 Site Investigation.** Subcontractor represents that it has visited the Project site, has reviewed and analyzed the Contract Documents and is familiar with the local conditions under which the Work is to be performed and has included all cost necessary for proper Completion of the Work within its Subcontract Price.

**5.5 Site Representative.** Subcontractor will provide a qualified superintendent or foreman who is fluent in English and authorized to receive orders and make decisions regarding the Work. Subcontractor will submit qualifications of the site representative and other key personnel of Subcontractor to Contractor for review and approval before assignment to the Project. The site representative must have all necessary equipment and technology as required by Contractor to effectively communicate. Subject to Contractor's right to demand removal of any personnel under Section 5.12, the superintendent or foreman may not be changed without Contractor's approval except in cases of termination from employment, sickness or death.

**5.6 Site Logistics.** Subcontractor will schedule and coordinate delivery and storage of equipment and materials and the sequencing of its Work per the requirements of Article 4 and pursuant to the Site Logistics Plan (**Exhibit 5**). All delivery and storage of equipment will be coordinated through Contractor's superintendent.

**5.7 Communications.** Subcontractor may communicate directly with other Project Team Members for coordination purposes only. However, Contractor must be copied on all written communications regarding coordination efforts and all resolutions to field conditions and coordination issues must be documented in writing and approved by Architect and Contractor prior to installation. All other communications regarding the Project must flow through the Contractor.

**5.8 Reports and Meetings.** Subcontractor's superintendent or foreman will report to the Project superintendent prior to commencing any Work on the Project and report again after any extended absence from the Project in order to advise the Project superintendent of the particular phase of the Work Subcontractor is about to perform. Subcontractor's superintendent or foreman is required to attend meetings scheduled by Contractor for the purpose of scheduling, coordination, safety, and other Project activities.

**5.9 Daily Construction Reports.** Subcontractor must submit Daily Construction Reports (DCR) to Contractor's superintendent on a daily basis pursuant to the Daily Construction Report Form included in the Project Manual. If the DCR includes information about any potential Claim for interruption, hindrance or delay impacts or additional costs, Subcontractor must provide written notice to the Contractor's project manager within 2 business days. All Claims for delay impacts are subject to the provisions set forth in Article 4. Failure to

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provide Contractor's project manager with 2 business days' written notice of any Claim included in a DCR constitutes a waiver of Claims.

**5.10 Means and Methods.** Subcontractor is solely responsible for all construction means, methods, techniques, sequences, and procedures and for safety precautions and programs in connection with the Work. Subcontractor expressly acknowledges that the Contractor is not responsible for the proper performance of Subcontractor's Work. Subcontractor is entirely responsible for the acts and omissions of its agents or employees, tier-subcontractors, suppliers, any of their agents or employees, or any other persons performing any Work on behalf of Subcontractor.

**5.11 Coordination of the Work.** All Work must be coordinated through the Contractor well in advance of when the Work is scheduled to be performed. Before starting each portion of the Work, Subcontractor will: (i) review and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Contractor and other subcontractors' Submittals that may affect proper installation of the Work; (ii) field measure existing conditions related to that portion of the Work; and (iii) observe any conditions at the site directly affecting that portion of the Work, reporting any improper conditions and defects to the Contractor. Errors, inconsistencies, or omissions in the Construction Documents discovered by Subcontractor will be timely reported to Contractor as a request for information or clarification to avoid delay in the Contract Time. Contractor will have a reasonable amount of time to review any errors, inconsistencies, omissions or improper conditions and defects and have any improperly installed work remedied by the appropriate subcontractor and Subcontractor will not be entitled to a Claim for a delay unless the Claim fits within one of the conditions set forth in Section 4.4 and only if all of the requirements under Section 4.4 have been met.

**5.11.1 Coordination With Other Subcontractors' Work.** Subcontractor will coordinate its Work with any existing conditions and the work of other subcontractors, suppliers and Owner's separate contractors. If proper installation of Subcontractor's Work is dependent on the proper installation of others' work on the Project, the Subcontractor will carefully examine the other work to determine whether it is properly installed before proceeding with the Work. Subcontractor will promptly report to Contractor, in writing, any improper conditions and/or defects that were either known, should have been known, or were reasonably discoverable, and allow Contractor a reasonable amount of time to have the improper work remedied. Upon installation of subsequent Work, Subcontractor will be deemed to have accepted all existing conditions unless it provided written notice to Contractor as detailed above and Contractor directed the Work to be completed.

**5.11.2 Constructability and Efficiency.** Throughout the construction process, Subcontractor will analyze the Construction Documents and Project field conditions and make recommendations to the Contractor whenever opportunities exist to improve the 3-week work plan or most current Project Schedule, labor efficiency or Project cost and will alert Contractor if the design details adversely affect constructability, Project cost or schedule. Subcontractor will continually collaborate with the other Project Team Members to reduce Project costs and schedule through maximizing performance, minimizing the number of Change Orders, and incorporating approved value engineering ideas.

**5.11.3 Field Measurements.** It is the responsibility of the Subcontractor to take field measurements to ensure the proper matching and fitting of its Work with existing conditions and the work of others and to point out any dimensioning errors on the Construction Documents before that relevant portion of the Work is commenced.

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**5.11.4 Layout and Protection.** Subcontractor is responsible for its own layout. Subcontractor will preserve and protect all established line and grade benchmarks and will not cause damage to other subcontractors' benchmarks or lay-out points. Any additional surveying or layout caused as a result of Subcontractor's failure to take the necessary precautions to protect the data will be performed at Subcontractor's own cost and expense.

**5.11.5 Cutting and Patching.** Subcontractor will be responsible for all cutting and patching required in the prosecution of the Work. Subcontractor will not damage or endanger a portion of the Work or partially or completed construction of other work by excavating, cutting, patching or otherwise altering the construction. Subcontractor will promptly notify Contractor before cutting, patching or modifying any construction work.

**5.11.6 Building Information Modeling.** If Building Information Modeling is required by the Contract Documents and Subcontractor's Scope of Work (**Exhibit 3**), the Subcontractor will collaborate with the Contractor and Architect regarding creation of a detailed BIM execution plan which will be incorporated into the Subcontract through Amendment in the form of a BIM Agreement. The BIM Agreement, among other things, will identify and develop: (i) the modeling goals, level of detail, and administration; (ii) BIM communication protocol; (iii) standards for organization, display and information in the BIM models; (iv) hardware and software requirements for the master Model, subsidiary Models and clash detection; and (v) liability for electronic communications.

**5.12 Labor.** Subcontractor will provide qualified, skilled labor necessary for proper performance of its Work. Subcontractor's employees will not interfere with another person's work performance, or engage in sexual harassment or other conduct that creates an intimidating, hostile, or offensive working environment. Contractor has the sole discretion to remove any unskilled, unqualified, disruptive, or disrespectful labor or personnel from the Project site and Subcontractor will promptly provide a qualified replacement.

**5.13 Materials and Equipment.** All materials and equipment required under the Contract Documents will be new and of good quality. No substitutions will be accepted on this Project unless the Contractor and Architect have evaluated the substitution with the Owner and the substitution has been approved in writing. Materials will be furnished in ample quantities and procured in time to ensure uninterrupted progress of the Work. All materials and equipment will be properly stored and protected as required by the Contract Documents and the risk of loss will be borne by Subcontractor until completed Work is accepted by Contractor and Owner.

**5.13.1 Storage.** Storage of equipment and materials will be coordinated through the Contractor and in accordance with the Site Logistics Plan (**Exhibit 5**). Subcontractor will maintain and keep its storage area clean, safe and secure.

**5.14 Subcontracts and Purchase Orders.** Those portions of the Work that Subcontractor does not customarily perform with its own personnel will be performed by a tier-subcontractor under written subcontract. All written subcontracts must include the Contract Documents and bind the tier-subcontractor to the Subcontractor to the same extent that the Subcontractor is bound to the Contractor under this Subcontract. Each subcontract agreement will preserve and protect the rights of the Owner and Contractor under the Contract Documents with respect to the portion of the Work performed by the tier-subcontractor so that subcontracting the Work does not prejudice the Contractor. Any tier-subcontractors employed by the Subcontractor must possess the appropriate California state licenses and certifications required for performance of the Work and carry out their portion of the Work using the same degree of skill and care established in Section 5.3. The tier-subcontractor and its employees

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are obligated to carry out their portion of the Work in strict accordance with the Contract Documents and to include the following pass-through provisions in subcontracts. Purchase orders must also be in writing.

**5.14.1 Conflicting Terms.** All conflicts arising out of any subcontract will be resolved in accordance with the terms and conditions of Section 2.2.

**5.14.2 Compliance with Labor Code Section 218.7 (f) (1) and (2).** If a tier-subcontractor is subject to a collective bargaining agreement, the subcontract must require tier-subcontractor to comply with the requirements set forth in Sections G.1 and G.2 of **Exhibit 3**.

**5.14.3 Assignment.** Each subcontract will include an assignment provision. The assignment provision will allow for assignment of subcontracts to Contractor upon termination of Subcontractor for cause provided Contractor accepts assignment by written notification to subcontractor.

**5.14.4 Claims and Dispute Resolution.** All tier-subcontractors will be bound to the same claims and dispute resolution procedures set forth in Article 11.

**5.14.5 Insurance.** Subcontractor will cause tier-subcontractors, through written subcontract, to carry appropriate insurance pursuant to provisions set forth in Section 8.1 and **Exhibit 6**.

**5.14.6 Indemnity.** Subcontractor will cause its tier-subcontractors, through written subcontract, to include the indemnification provisions set forth in Article 9 that pertain to Subcontractor's obligations and to indemnifying and defending the Owner and Contractor from all claims, damages and liability arising from the performance of the Work.

**5.15 Submittal Requirements.** Subcontractor will timely submit all Submittals to the Contractor as required by the Contract Documents to avoid delays in the Work. Subcontractor will not submit any Submittal that is merely a tracing or copy of any of the Construction Documents. Each Submittal will be prepared by the Subcontractor, a tier-subcontractor, or supplier and will be submitted according to the Contract Documents. Any Submittals that are not required by the Contract Documents may be returned by the Architect or Contractor without action.

**5.15.1 Electronic Submission.** Submittals will be delivered to Contractor in an electronic format capable of being read and transmitted to Architect for review. To the extent BIM is being utilized, the electronic format must be capable of being integrated into the Model.

**5.15.2 Review of Submittals.** By reviewing and transmitting a Submittal to the Contractor, Subcontractor represents that it has coordinated the information contained within the Submittal with the existing field conditions, the Contract Documents, and requirements of the Work and other contiguous work, and that all original engineering, if required, has been performed by a qualified California State licensed professional engineer. Subcontractor is responsible for all dimensions, correct fabrication, accurate fit, and for making its Work conform to the requirements of the Contract Documents. Submittals that are not marked as reviewed for compliance with the Contract Documents and approved by the Subcontractor may be returned by the Contractor or Architect without action. When determining deadlines for submission of Submittals, Subcontractor should take into account that Contractor requires a minimum of **5 business days** to review Submittals before transmitting to the Architect for approval. Review of Shop Drawings by the Contractor or Architect will not constitute an undertaking by the

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Contractor or Architect to identify deficiencies in the Submittal and does not relieve the Subcontractor of its responsibility under this Section 5.15 or elsewhere in the Contract Documents.

**5.15.3 Approval of Submittals.** Upon return of any Submittal, Subcontractor will make any correction required by Architect or Contractor in accordance with the Contract Documents and, within 5 business days or less, furnish corrected resubmissions to Contractor for further review and transmission to the Architect for approval. Subcontractor will not perform any Work for which the Contract Documents require a Submittal until the respective Submittal has been approved. Upon receipt of approval, Contractor will file a final corrected copy, return one final corrected copy, and furnish other copies as may be needed for distribution to the field. If Subcontractor fails to timely submit or resubmit Submittals required to maintain the most current Project Schedule, Subcontractor will be liable for all costs, expenses, and damages resulting from the delay under Section 4.4. The Subcontractor will maintain “as-built” drawings and other Submittals as required by the Contract Documents. As-built drawings must be updated at least monthly.

**5.16 Lean Requirements.** Contractor may establish a lean construction management and communications plan in accordance with the techniques developed by the Lean Construction Institute. Subcontractor represents that it is familiar with Lean principles and will cooperate with Contractor and other subcontractors in applying Lean Construction principles to its Work and the Project.

**5.17 Testing and Inspections.** Tests, inspections and approvals of portions of the Work required by the Subcontract, the Contract Documents, or by laws, ordinances, rules, regulations or orders of any public authorities having jurisdiction over the Project will be coordinated by the Subcontractor through the Contractor. When portions of the Work are ready for inspection, the Subcontractor will notify the Contractor by submitting an inspection request. The Contractor will make arrangements for tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority with jurisdiction over the Project. Subcontractor must provide access to all Work requiring inspection.

**5.17.1 Covered Work Prior To Inspection.** If a portion of the Work is covered contrary to the Contractor’s request or prior to inspection, it will be uncovered for inspection and examination by the Contractor or other proper authorities and be replaced at the Subcontractor’s sole expense, including any costs for delays to other subcontractors’ work, without change in the Contract Time.

**5.17.2 Correction of Non-Conforming Work.** Within **24** hours of receiving notice, the Subcontractor will commence correction of Work that is rejected by the Contractor, Architect, or inspector for failing to conform to the requirements of the Contract Documents, including any work that is destroyed or damaged construction (whether completed or partially completed) caused by the Subcontractor’s correction or removal of the non-conforming Work, whether discovered before or after Completion of the Work and whether or not fabricated, installed or completed. Subcontractor will bear all costs associated with correction of non-conforming Work, including damages and costs for delays to other subcontractors’ work, without change in the Contract Time.

**5.18 Protection of the Work and Other Property.** Subcontractor will protect its materials, equipment and Work, as well as the work of other subcontractors, from all damage caused by Subcontractor’s operations including, but not limited to, damage from weather, theft,

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vandalism, etc. Subcontractor will either repair the damages or be financially responsible for any loss, repair by a third party, or damages incurred to the Project as a result of its operations.

**5.19 Safety Requirements.** The Subcontractor will give notice and comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons, or property or their protection from damage, injury or loss. Subcontractor is solely responsible for safety of its employees and injury to others performing Work at the site arising out of or resulting from Subcontractor's failure to comply with all applicable laws bearing on the safety of persons, safety violations, failure to comply with CalOSHA procedures, as well as any procedures or requirements set forth in the Site Safety and Health Plan (SSHP). Subcontractor acknowledges that it has reviewed and familiarized itself with the SSHP set forth in Tab 11 of the Project Manual and will comply with the SSHP at all times during the performance of its Work. Contractor's management and coordination of the SSHP does not extend to direct control over or charge of the acts or omissions of the Subcontractor, its tier-subcontractors, agents or employees or any other person performing portions of the Work. The following is included for convenience only and is not an exhaustive list of the requirements under the SSHP.

**5.19.1 Safety Meetings.** Subcontractor is required to attend all weekly safety meetings conducted by the Contractor in accordance with the SSHP.

**5.19.2 Alcohol and Drug Free.** Pursuant to the SSHP, the use of drugs and alcohol are strictly prohibited at the Project site. Contractor reserves the right to require drug testing of Subcontractor's employees prior to commencement of Work onsite and after accidents unless otherwise prohibited by law or by collective bargaining agreement.

**5.19.3 Signage.** In accordance with the SSHP, Subcontractor will erect and maintain reasonable safeguards for safety and protection, including installing barricades and barriers, posting danger signs and other warnings against hazards, and promulgating safety regulations.

**5.19.4 Accidents and Reporting.** Subcontractor will promptly notify and report all accidents to Contractor in accordance with the procedures set forth in the SSHP that arise from the Work and/or result in death, personal injury, or fire.

**5.20 Hazardous Substances or Materials.** Subcontractor is not responsible for the discovery, presence, handling, removal or disposal of, or exposure of persons to a pre-existing Hazardous Substance or Material in any form at the Project site unless abatement is included in Subcontractor's Work or unless Subcontractor's or any of its tier-subcontractors' or suppliers' action or inaction exacerbates the situation or causes further damage. Subcontractor will not bring onto the site or use any Hazardous Substances or Materials unless specified in the Construction Documents, and only provided that Subcontractor complies with all safety regulations and procedures under applicable law for the handling and disposal of such Hazardous Substances or Materials. If Subcontractor encounters a material reasonably believed to be a Hazardous Substance or Material on site, Subcontractor will immediately stop Work in the affected area and verbally report the condition to Contractor followed by written communication and undertake any precautionary measures directed by Contractor. Work will not resume in the affected area until the Hazardous Substance or Material is rendered harmless or removed, as determined by a licensed laboratory retained by the Owner. Subcontractor agrees that it will not have or make any claim for damages due to Work stoppages arising from unsafe conditions. Failure on the part of the Contractor to stop unsafe practices does not relieve or diminish the Subcontractor's safety responsibilities for its Work. Nothing contained

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above limits Subcontractor's liability or indemnification under Section 9.1 for damages arising out of or resulting from Subcontractor's, or its employees' or tier-subcontractors' use of, or negligent mishandling of, a Hazardous Substance or Material or exacerbation of an existing condition during the performance of its Work.

**5.20.1 Safety Data Sheets (SDS).** The Hazard Communication Standard (Title 29, Code of Federal Regulations, Part 1910, as amended) specifies a list of compounds. Subcontractor will identify and report any compound that appears on the list to the Contractor pursuant to the procedures in the SSHP (Project Manual, Tab 11). The SDS must contain all information required by Title 29; all hazardous compounds must be clearly labeled as to content, with appropriate warnings noted, and name and address of the manufacturer listed; and all employees using these compounds must be trained in protective handling and potential hazards before materials arrive on site.

**5.21 Unforeseen and Differing Site Conditions.** Subcontractor will provide prompt written notice to Contractor upon discovering Unforeseen and Differing Site Conditions. Notice must be provided before conditions are disturbed and in no event later than **5 business days** after first observing the condition(s). Contractor will promptly investigate the conditions and, if they differ materially, the Contractor will recommend adjustment in the Subcontract Price or Contract Time, or both to Owner. Subcontractor's recovery is subject to Contractor's ability to recover under the Contract. If Contractor or Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract Documents is justified, the Contractor will notify Subcontractor in writing, stating the reasons. Claims by Subcontractor in opposition to Owner or Contractor's determination must be made within **5 business days** after the date of the notice of decision. If Owner agrees that the conditions encountered are materially different, the Subcontract Price and/or Contract Time (if any) will be adjusted through Change Order to the extent that Contractor is able to recover for Subcontractor's Claim under the Contract.

**5.22 Punch List.** When Subcontractor considers its Work or a portion of the Work substantially complete it will notify Contractor and the Contractor will issue a Completion List setting forth incomplete or unsatisfactory items and a schedule for their completion. The Completion List will be promptly corrected by Subcontractor. Upon Subcontractor's completion of the Work included on the Completion List, the Contractor will schedule a walk through with the Owner and design team to review completed Work for conformance with the Contract Documents. All further incomplete or unsatisfactory items will be included on a punch list. The Contractor will schedule and monitor the progress of all punch list Work and conduct inspections to determine whether Subcontractor has achieved Completion of the Work. Correction of all non-conforming Work will be in accordance with Section 5.17.2.

**5.23 Clean-Up.** Subcontractor will perform its Work so as to maintain the site in a clean, safe and orderly condition, and will sweep all areas where Work is performed on a daily basis. Subcontractor will protect material, equipment, filters, ducts, plenums or other systems (as may be applicable) to avoid contamination with dust, moisture, solvents or construction debris, and Subcontractor will provide daily rubbish removal and recycle of waste. Upon Completion of the Work, or when Subcontractor's tools, equipment, and materials are no longer required on site for completing the Subcontractor's Work, Subcontractor will remove from the Project site all materials, temporary structures, debris and waste incident to its operation and clean all surfaces, fixtures, and equipment installed as part of its Work. If Subcontractor fails to maintain its Work area in a clean and safe manner and fails to clean up its Work area within **48**

**hours** after demand by Contractor, then Contractor may perform the necessary clean up and Subcontractor will be back-charged for Contractor's expense.

**5.24 Failure to Perform Work.** If at any time Subcontractor fails to perform Work in accordance with the Contract Documents then Contractor may, after **48 hours'** notice to Subcontractor and failure of Subcontractor to commence curing its performance to the satisfaction of Contractor, perform the necessary Work with other forces and materials, and Subcontractor will be back-charged for Contractor's expense.

**5.25 Commissioning and Training.** To the extent applicable to Subcontractor's Work, Contractor will schedule and oversee the Subcontractor's final testing and start-up of utilities, operational systems and equipment and assist the Owner with the building commissioning. Subcontractor will provide adequately trained staff and cause its tier-subcontractors, equipment manufacturers and/or vendors to provide adequately trained staff during the duration requested to complete all necessary commissioning related to the Work. During commissioning and before Final Completion, Contractor will oversee Subcontractor's operation, adjustment and balancing of all equipment, and training of Owner's employees in the correct operation and maintenance of equipment.

**5.25.1 Close-Out.** Before Completion of the Work and in accordance with the Contract Documents, Subcontractor will transmit to Contractor all required as-built drawings, operation and maintenance manuals, references, and warranties (Close-Out Documentation) in electronic form with clear identifiable file names for each component of the Close-Out Documentation. In addition, Subcontractor will provide all attic stock, keying schedule, special tools, etc., to Contractor for transmission to Owner. All Close-Out Documentation is subject to review by Architect or Owner as required by the Contract Documents.

## **6. CHANGES**

**6.1 Change Orders.** A Change Order is a mutually agreed written order adjusting either the Subcontract Price or Contract Time or both. All changes in the Work will only be authorized by an executed Change Order and performed under the applicable conditions of the Contract Documents. A Change Order signed by the Subcontractor indicates final agreement to changes in the Subcontract Price or Contract Time and that the adjustments in the Change Order fully and completely resolve any claim by Subcontractor regarding compensation or time arising from or related to the subject of the Change Order. Change Orders for additional Work are limited to changes in the scope of the Work that was either not required, illustrated or reasonably inferable from the Contract Documents, or an extension in Contract Time under Article 4. Likewise, deductive Change Orders will be executed for any reduction in Subcontractor's scope of Work or Contract Time.

**6.2 Owner or Contractor Initiated Changes.** Subcontractor must submit a rough order of magnitude of the change to Contractor within **2 business days** receipt of the scope of a proposed change order and a complete cost proposal, including any change in Contract Time, within **5 business days** of receipt unless a longer period of time is requested and agreed to by the Contractor.

**6.3 Subcontractor Initiated Changes.** Subcontractor must give Contractor's Representative written notice of a proposed change within **2 business days** of discovery of the facts or circumstances giving rise to the proposed change order and a rough order of magnitude of the proposed change. Subcontractor must complete its proposed cost proposal, including

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any change in Contract Time, within **5 business days** of the initial notice unless a longer period of time is requested and agreed to by the Contractor.

**6.4 Submission.** All Claims for additional compensation will be presented in writing to Contractor and approved by the Owner before the expense is incurred unless Contractor authorizes otherwise in writing. Contractor will review all proposed change orders and make a recommendation to the Owner if Contractor agrees that the proposed change order is valid. Contractor will notify Subcontractor if it disagrees with the proposed change order.

**6.5 Pricing.** Methods used for determining adjustments to Subcontract Price include: (i) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation of the Direct Costs, Overhead and Profit as set forth in this Section 6.5 and further defined in **Exhibit 7**; (ii) Work performed on a time and material basis plus overhead and profit, if any, as set forth in Section 6.5.1 and **Exhibit 7**; or (iii) Work performed on a time and material basis with a not to exceed amount, subject to Section 6.5.1 and **Exhibit 7**. If the Work is performed on a time and material basis, Subcontractor will keep and present an itemized accounting for the Work performed based on daily time tickets executed by the Project superintendent, material and equipment invoices, and other supporting data substantiating the amount of the Change Order. All time and material costs will be broken down by Direct Costs, Overhead and Profit. Regardless of the pricing method used, Subcontractor must use the labor rates and unit prices established in its Scope of Work (**Exhibit 3**).

**6.5.1 Overhead and Profit.** Subcontractor's percentages for overhead and profit for self-performed Work on additive and deductive Change Orders are set forth in the Business Terms Sheet. Subcontractor's overhead and profit percentages will be multiplied by the subtotal of Direct Costs associated with the Change Order (Project Manual, Tab 9).

**6.5.2 Payment and Performance Bonds.** If Subcontractor is bonded, the potential change order must include payment and performance bond costs pursuant to the percentage set forth in the Business Terms Sheet.

**6.5.3 Extensions of Time.** If the Contract Time is extended due to a permitted delay under Section 4.4, the Change Order may include the cost of Subcontractor's resulting additional labor costs, subject to the rates and labor requirements in **Exhibit 3**, plus overhead and profit on those added costs per the Business Terms Sheet. Subcontractor's extension of time and adjustment of the Subcontract Price will be limited to the same extension of time that Contractor is able to recover under the Contract and only to the extent that the extension is related to Subcontractor's portion of the Work.

**6.5.4 Deductive Changes.** The amount of credit for deductive Change Orders resulting in a net decrease to the Subcontract Price will be the actual net decrease based on the decrease of the Direct Costs pursuant to one of the pricing methods set forth in Section 6.5 plus a decrease in the profit per the Business Terms Sheet. When both additions and credits covering related Work or substitutions are involved in a proposed change, the Change Order will be determined on sum of the net increase and decrease. There will not be a decrease in overhead for deductive Change Orders unless the Contract Time is reduced as a result of the change and the Contractor is subject to a reduction for overhead under the Contract.

**6.6 Allowances.** To the extent that any Allowances are required under this Subcontract, each Allowance item is set forth on a separate line item in **Exhibit 3**. Each Allowance item is included in the Subcontract Price. Allowance prices are all inclusive,

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including but not limited to labor, materials, equipment, delivery and unloading, storage, hoisting, tools, overhead and profit. Subcontractor will make charges against these Allowance items only when specifically approved by Contractor, who will in turn maintain a strict accounting of the charges to each Allowance. Allowance items will be reconciled through Change Order after completion of the design, and the overhead and profit will be adjusted with the percentages for overhead and profit included in the Business Terms Sheet. All unused Allowance amounts will accrue 100% to Owner through Contractor.

**6.7 Continued Performance.** No Work will be allowed to lag pending the adjustment through Change Order, but will be promptly executed as directed, even if a dispute arises.

**6.8 Failure to Reach Agreement.** If Contractor and Subcontractor cannot agree on the value of the proposed change order, or if the Owner disapproves the proposed change, Subcontractor will proceed with the Work promptly under direction of the Contractor. If Subcontractor wishes to pursue its claim, it must provide Contractor with notice of Claim per the requirements in Article 11. No Claim will be considered after the Work in question has been performed unless a written Change Order has been executed or timely written notice of Claim has been made. Subcontractor will not be entitled to claim or to bring suit for damages, whether for loss of profits or otherwise, on account of an omission of any item or portion of Work covered by the executed Change Order.

**6.9 Omitted Work.** If Subcontractor omits Work that is included in the Contract Documents, Contractor will have the right to withhold from payments due or to become due in an amount which, in the Contractor's opinion, is equal to 150% of the value of Work that was omitted until the Work is performed.

**6.10 Contract Time Impacts and Extended Costs.** Subcontractor will not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is allowable under Article 4 and claimed in a proposed change order. No Claims will be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. Nothing contained in this Section will be construed as restricting the rights and remedies of Subcontractor in violation of California State law. If this provision is determined to conflict with California State law, the provision will be amended to provide the greatest protection to the Contractor allowed under the law.

**6.11 Surety.** All changes, additions or omissions in the Work ordered in writing by Contractor are part of the Work and will be performed and furnished in strict accordance with all of the terms and provisions of this Subcontract and the other Contract Documents. Subcontractor will keep its surety informed of all modifications to this Subcontract. The obligations of Subcontractor's surety are not to be reduced, waived or adversely affected by the issuance of Change Orders even if Subcontractor fails to inform the surety of the Change Order(s) and the Contractor will not be required to obtain consent of surety for any Subcontract modifications.

## **7. PAYMENT**

**7.1 Progress Payments.** On or before the 20th of the month, Subcontractor will submit a properly itemized invoice for payment with all required documentation. The initial invoice for payment must include a completed W-9 Form (Project Manual, Tab 1). Each invoice for payment must be submitted in accordance with the Form Application for Payment included in

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the Project Manual and an itemized breakdown of the Work performed during the month along with California State conditional waivers and release of claims for all amounts included in the invoice, and all documentation necessary to substantiate that the amounts billed, including a reasonable projection of the amounts to be incurred before the end of the billing cycle. If Subcontractor is subject to a collective bargaining agreement, Subcontractor must submit certified payroll records as required per Sections G.1 and G.2 of **Exhibit 3**. Invoices must be signed by a corporate officer of Subcontractor attesting to its accuracy and Contractor will be allowed to rely upon the Subcontractor's statement of accuracy as well as Subcontractor's certification that it has paid all tier-subcontractors and suppliers prior amounts due and owing from amounts previously received. The amount of each progress payment will not exceed the percentage of completion allowed to Contractor by Owner or Architect for Subcontractor's Work, less the specified retention. Subcontractor will comply with any additional certified payroll requirements required by Owner or Contractor under the Contract. Provided that Subcontractor's invoices were properly and timely submitted, Contractor will make monthly progress payments on all undisputed Work within 10 business days' receipt of payment from Owner. Payment will be remitted to an address indicated in the Business Terms Sheet.

**7.1.1 Schedule Of Values.** Within 20 calendar days of the Effective Date, Subcontractor will submit a schedule of values to Contractor based on its Subcontract Price and the Contract Time for Completion of the Work. The schedule of values, when approved by Contractor, and Contractor's observations and evaluation of the Work actually performed will be used as a basis for review of Subcontractor's monthly invoices.

**7.1.2 Retention.** Contractor will withhold 10% retention on the entire amount of the monthly invoice. Contractor will pay Subcontractor its share of retention payment from the Owner after Final Completion of the Project, unless the Contractor, in its sole discretion, agrees to release Subcontractor's retention earlier upon satisfactory Completion of the Work.

**7.1.3 Change Orders.** Subcontractor may include Work that has been authorized through executed Change Order.

**7.1.4 Stored Materials.** Payments for materials or equipment not incorporated into the Work, but delivered and suitably stored on-site, will only be made where permitted by, and in accordance with, the terms and conditions of the Contract Documents. Where the Contract Documents permit payment for materials stored off-site, Subcontractor may request payment, which will only be made if first approved by Contractor and provided that a UCC-1 Statement is executed, and proof of insurance and the UCC-1 Statement is provided to Contractor with Subcontractor's application for payment. The risk of loss will remain on the Subcontractor for all materials and equipment stored off-site.

**7.1.5 Performance and Payment to Tier-Subcontractors and Suppliers.** Upon submission of a monthly invoice, Subcontractor warrants that all Work included in the invoice has been performed in accordance with the Contract Documents and certifies that title to all Work covered by the invoice will pass to the Owner no later than the time of payment free and clear of all stop payment notices, claims, security interests, mechanics' liens or other encumbrances. Subcontractor will provide all necessary back-up substantiating the amounts due and owing, including payroll, material and equipment invoices etc., and executed conditional waivers and release of claims for all Work included in the monthly invoice. Upon receipt of payment, Subcontractor will provide an unconditional waiver and release for the Work performed and paid to date. Waivers must comply with the requirements of California Civil Code section 8132 and 8134, as may be amended. Contractor, in its sole discretion, may decide to make payment by joint check or by direct payment to tier-subcontractors and suppliers

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pursuant to the terms and conditions of the Joint Check Agreements set forth in the Project Manual.

**7.2 Final Payment.** Final Payment, including payment of the retention, if unencumbered, will be paid to Subcontractor after Final Completion of the Project. Final Payment is without prejudice to Contractor's rights and remedies for Subcontractor's or its tier-subcontractors' failure to comply with Labor Code section 218.7 (to the extent applicable) and other applicable law governing the payment of wages (inclusive of fringe benefits) to workers and employees performing portions of the Work.

**7.2.1 Conditions Precedent to Final Payment.** In addition to any other requirements of this Subcontract and the Contract Documents, Final Payment will not become due unless and until the following conditions precedent to Final Payment have been satisfied:

- (a) approval and acceptance of Subcontractor's Work by Contractor;
- (b) training of appropriate Owner personal for operations and maintenance of equipment and delivery to Contractor of all manuals, "as built" drawings, guarantees, and warranties for material and equipment furnished by Subcontractor, as well as any other Close-Out Documentation required by the Contract Documents;
- (c) Contractor's receipt from Owner of final payment for Subcontractor's Work;
- (d) furnishing to Contractor of satisfactory evidence by Subcontractor that all labor, applicable taxes, fees and fringe benefits, and material accounts incurred by Subcontractor in connection with the Work have been paid in full;
- (e) evidence that required insurance will remain in force after Final Payment and will not be canceled or allowed to expire prior to at least 30 calendar days written notice to Contractor;
- (f) Subcontractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- (g) Surety, if any, has consented to payment; and
- (h) Subcontractor has furnished all required conditional and unconditional waivers and release as required under California Civil Code sections 8136 and 8138, as may be amended.

**7.3 Payments Withheld.** Contractor may refuse to approve an invoice or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or any part of a prior invoice to cover: (a) defective or non-conforming Work not remedied; (b) third-party claims filed against Contractor or the Project or reasonable evidence indicating probable filing of the claims; (c) failure of Subcontractor to make timely payments to its tier-subcontractors and suppliers for labor, materials, or equipment; (d) damage to Owner, its separate contractors or other subcontractors if Subcontractor or any of its tier-subcontractors are potentially responsible; (e) failure of Subcontractor to carry out the Work according to the Contract Documents; (f) reasonable doubt that the Work can be completed within the remaining balance of the Subcontract Price; (g) failure of Subcontractor to comply with scheduling requirements under Article 4 or provide sufficient manpower to prosecute the Work; (h) disputed

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amounts included in the invoice for payment or insufficient documentation, erroneous estimates for value of the Work performed, or other incorrect statements included in the invoice; (i) failure of Subcontractor to comply with jobsite procedures regarding safety, hazardous materials, storage and clean-up; (j) failure of union Subcontractor or its union tier-subcontractors to timely provide information requested by Contractor pursuant to Labor Code section 218.7 and Sections G.1 and G.2 of **Exhibit 3**; and (k) discrepancies discovered through audit or otherwise in the certified payroll (to the extent applicable) and fringe benefit information. Contractor will have the right to withhold from payments due or to become due up to 150% of any amount that Contractor disputes in good faith. Contractor, in its sole discretion, may decide to make payment by joint check or by direct payment to tier-subcontractors and suppliers pursuant to the terms and conditions of the Joint Check Agreements set forth in the Project Manual.

**7.4 Stop Payment Notices and Mechanics' Liens.** If any stop payment notice is served upon the Owner or made against the Project funds or a mechanics' lien is recorded against the Project, by any person claiming that the Subcontractor or any of its tier-subcontractors or suppliers has failed to make payment for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work, or if at any time there is evidence of nonpayment or of any mechanics' lien or stop payment notice for which, if established, the Contractor might become liable and that is chargeable to the Subcontractor, the Subcontractor will procure a release bond pursuant to the applicable California Civil Code requirements commencing with 8172, et. seq., provided that Subcontractor was paid for the labor, materials or equipment at issue. If Subcontractor fails to post a bond as required, the Contractor will have the right to retain from any payment then due or thereafter to become due an amount that it deems sufficient to: (a) satisfy, discharge and/or defend against any mechanics' lien or stop payment notice action that may be brought or judgment that may be recovered; (b) make good any nonpayment, damage, failure or default; or (c) compensate Contractor for procuring and posting the release bond and dealing with the claim. If the amount retained is insufficient to cover the amount of the claim, the Subcontractor will be liable for the difference and will make payment to the Contractor immediately upon written notice.

**7.5 Payment Not Acceptance Of Work.** Approval of an invoice (progress or final) or partial or entire use of occupancy of the Project by the Owner will not be used as conclusive evidence that the Work was properly performed or constitute acceptance of Work that is not in accordance with the Contract Documents.

**7.6 Risk of Late Payment or Non-Payment By Owner.** Subcontractor acknowledges that there is a risk that the Owner may make late payments or may, under certain circumstances such as insolvency, not make the required payments to Contractor pursuant to the Contract. Subcontractor agrees to share in the risk of late payments or non-payment by the Owner to Contractor by pursuing its mechanic lien and/or stop payment notice rights against the property before filing a claim against the Contractor or its surety in connection with the Project. If Owner or other responsible party delays in making any payment to Contractor from which payment to Subcontractor is to be made, Contractor and its sureties will have a reasonable time to make payment to Subcontractor after receipt of payment or conclusion of Contractor's legal remedies against Owner and other responsible parties, including (but not limited to) mechanic's lien or stop payment notice remedies.

**7.7 Audit Rights.** To the extent required by the Contract, Subcontractor's Project records may be subject to audit at any time throughout the duration of a Project pursuant to the terms and conditions of the Contract. The audit will take place during normal business hours

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and will be coordinated with Subcontractor. The audit may require inspection and copying of any and all information, materials and data of every kind and character, including without limitation, payroll records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent or foreman reports, drawings, receipts, vouchers and memoranda, and all other agreements, sources of information and matters that may, in the Contractor's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under the Contract Documents.

**7.7.1** If Subcontractor or its tier-subcontractors are subject to a collective bargaining agreement, Contractor also has the right, but not an obligation, to audit Subcontractor's and its tier-subcontractors' payroll records throughout the duration of the Project and for a period of 1 year after recordation of a notice of completion, recordation of a cessation of labor; or actual completion of the Project to corroborate that both the certified payroll and fringe benefit certifications furnished by Subcontractor or its union tier-subcontractors as part of the payment application are complete and accurate. Subcontractor agrees to fully cooperate with the audit and will cause its union tier-subcontractors through written agreement to also cooperate and comply. Subcontractor agrees that Contractor's rights and remedies under this Section and applicable law are not prejudiced if Contractor elects not to perform payroll audits.

## **8. INSURANCE AND BONDING**

**8.1 Insurance Requirements.** The Subcontractor will procure insurance coverage in the amounts set forth in the Business Terms Sheet and pursuant to **Exhibit 6**. If the Business Terms Sheet indicates that there is a CCIP or OCIP, Subcontractor will enroll in the wrap coverage and procure other insurance as required by the Business Terms Sheet and as further described in either the CCIP or OCIP Manual (as applicable), and **Exhibit 6**. Before commencing Work, Subcontractor will provide evidence of enrollment in the CCIP or OCIP (as applicable) as well as certificates of insurance and endorsements to Contractor as evidence of proper insurance and evidence of Owner's and Contractor's (as well as any other party required to be an additional insured under the Contract) additional insured status on all liability policies except for worker's compensation and professional liability (if required).

**8.2 Payment and Performance Bonds.** If required by the Business Terms Sheet or otherwise required by Contractor through subsequent Change Order prior to Subcontractor mobilizing for construction at the site, Subcontractor will provide payment and performance bonds on forms and with a surety acceptable to Contractor for the full amount of this Subcontract. If bonds are required by the Business Terms Sheet, all costs associated with bond premiums are included in the Subcontract Price. Without limiting the responsibilities of Subcontractor and its surety under the terms of this Subcontract, Subcontractor and its surety agree to promptly pay all lawful claims of subcontractors, material men, laborers, persons, firms or corporations for labor or services performed or materials, suppliers, machinery equipment, rentals, fuels, oils, tools, appliances, insurance and other items furnished, used or consumed in connection with the prosecution of the Work including Change Orders.

## **9. INDEMNIFICATION AND DEFENSE**

**9.1 Subcontractor's Indemnity.** To the fullest extent permitted by law, Subcontractor will defend (with counsel acceptable to Contractor), indemnify and hold the Owner, Contractor, Architect and their respective officers, board members, directors, partners, members, employees, affiliates, parents and subsidiaries ("Indemnitees") harmless from and against any and all claims, demands, causes of action, damages, costs, expenses, attorneys'

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and expert witnesses' fees, losses or liabilities, in law or equity, arising out of or in any way relating to actual or alleged acts or omissions in the performance of the Work by the Subcontractor, its employees, tier-subcontractors, and suppliers or anyone that Subcontractor and its tier-subcontractors are responsible regardless of whether the actual or alleged Claim was caused, in part, by an Indemnitees' negligence. Notwithstanding the above, the Subcontractor will not be required to defend, indemnify and hold harmless the Indemnitees to the extent of their active negligence or willful misconduct. The indemnification obligations set forth in this Section will not be limited in any way by the amount or type of damages, compensation or benefits payable by or for Subcontractor under the Workers' Compensation Acts, disability benefit acts or other employee benefit acts. Subject to this Section 9.1, Subcontractor's indemnification and defense obligations include, but are not limited to, the following types of Claims:

**9.1.1 Personal Injury and Property Damage.** Personal injury, including bodily injury, sickness or disease, or death to any persons, employees or agents of Indemnitees or any third parties and/or damage to tangible property (including loss of use) caused or alleged to be caused in whole, or in part, by any actual or alleged negligent act or omission of the Subcontractor, its tier-subcontractors, suppliers, or anyone directly or indirectly employed by any of them for whose acts they may be liable.

**9.1.2 Breach of Subcontract.** Breach of any material terms or conditions of the Subcontract that causes damage, cost or expense to an Indemnitee.

**9.1.3 Subcontractor Caused Delays.** Delays, interference or disruption to the critical path of the most current Project Schedule or to any other subcontractors' or Owner's separate contractors' time, that is caused by Subcontractor's negligent acts or omissions or any of its tier-subcontractors, suppliers or anyone directly or indirectly employed by any of them for whose acts they may be liable.

**9.1.4 Violations of the Law.** Penalties, fees and costs imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance or statute, including but not limited to, rules and regulations imposed by Cal-OSHA or other safety violations or standards, as well as any union subcontractor's or tier-subcontractors' failure to comply with Labor Code section 218.7 and other applicable law governing the payment of wages (inclusive of fringe benefits) to workers and employees performing portions of the Work.

**9.1.5 Insurance and Bonding.** Failure of Subcontractor to comply with the insurance and bonding provisions set forth in Article 8. Insurance requirements and limits included in this Subcontract do not limit Subcontractor's indemnification and defense obligations or other Subcontractor liability.

**9.1.6 Liens and Stop Payment Notices.** Mechanics' lien or stop payment notice claims for labor performed or materials and equipment furnished for the Project, including incidental or consequential damages suffered by an Indemnitee as a result of the claim provided that Subcontractor has been paid for the portion of the Work at issue.

**9.1.7 Infringement of Intellectual Property.** Infringement of any intellectual property right including patents, copyrights or license, which may be brought against Indemnitees as a result of the Work.

**9.1.8 Hazardous Materials.** Claims or liability for damages arising out of or resulting from Subcontractor's, or its employees' or tier-subcontractors' use of, or negligent

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mishandling of, a Hazardous Substance or Material or exacerbation of an existing condition during the performance of its Work.

**9.1.9 False Claims.** Subcontractor's false claims with respect to Subcontract Price adjustments or any false or fraudulent statement regarding performance of the Work, application for payment, or otherwise contrary to legal standards governing false claims.

**9.2 Duty to Defend.** Subcontractor will defend all Claims defined in Section 9.1 at its own cost and expense and satisfy any judgment or decree that may be rendered against any Indemnitee arising out of a Claim, or reimburse Indemnitee(s) for any and all legal or expert witness expenses incurred by any of them in connection with the Claim or in enforcing the indemnity granted in this Article. The duty to defend will apply, and Subcontractor will be required to furnish a defense, regardless of whether the matter has been adjudicated.

**9.3 Enforcement.** Nothing contained in Article will be construed to impose any obligation in conflict with current California State law. In the event of a conflict with Civil Code section 2782, et seq., as may be amended, the Subcontract will be modified to allow indemnification and defense of Contractor to the greatest extent permitted by law.

## **10. WARRANTY**

**10.1 Warranty.** Subcontractor warrants that all Work will be of good quality, free from defects, and conforming to the Contract Documents and applicable law. For a period of 1 year commencing from the Substantial Completion Date of the Project or the date of repair, whichever is later, and for longer periods specified in the applicable Construction Documents for certain equipment manufacturers or suppliers, Subcontractor will repair or replace any and all deficient or defective Work, provided that the Work was properly maintained and used, together with any other work that is damaged during repair or replacement and will provide any other required services related to the repair, without expense to Owner or Contractor. Subcontractor's warranty excludes improper or insufficient maintenance, improper operation (other than by Subcontractor), and normal wear and tear. Subcontractor will procure all tier-subcontractor and manufacturer express warranties required under the applicable Construction Documents and will transmit the warranties to Contractor before Completion of the Work. Establishment of the 1 year express warranty period for correction of the Work relates only to the Subcontractor's specific obligation to correct defective or non-conforming Work, and has no relationship to statute of limitations periods for legal claims arising from the Contract Documents. The warranty provided in this Section 10.1 will be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents. To the extent the Contract calls for a longer warranty period on workmanship, the period in the Contract governs.

## **11. DISPUTE RESOLUTION**

**11.1 Claims.** All Claims between Subcontractor and Contractor arising from the Contract Documents that are not resolved through the Change Order process will be resolved per Article 11, subject to Section 11.2 and 11.4. Claims submitted by Subcontractor must certify that the Claim is being made in good faith, that the supporting data is accurate and complete to the best of Subcontractor's knowledge and belief, and that the amount requested accurately reflects the adjustment Subcontractor believes should be authorized. Subcontractor acknowledges that the Project is being constructed in accordance with the Contract and the Contract Documents. To the extent that there is a conflict between the provisions set forth in

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this Article 11 and the dispute resolution procedures set forth in the Contract, the dispute resolution procedures in the Contract will govern. Sections 11.4 and 11.5 apply to all Claims.

**11.2 Contractor Agrees With Claim.** If Contractor agrees with Subcontractor's request for Change Order but the Owner rejects or disputes the Change Order, the dispute will be subject to the dispute resolution procedures set forth in the Contract and Contractor may pursue the Claim or may allow the Subcontractor to directly pursue its Claim. It is a condition precedent that Subcontractor comply with all timing requirements related to delay or Change Order Work in order to perfect Subcontractor's Claim and Subcontractor must submit all requested back-up and documentation necessary to present its portion of the Claim upon Contractor's request and in advance of any time period stated in the Contract so Contractor can comply with the timing requirements in its Contract for presenting a Claim. Failure to comply with all timing and the certification requirements under Section 11.1 constitutes a waiver of Claim.

**11.2.1 Costs Associated With Bringing Claim.** Subcontractor will bear all costs of prosecuting or defending its Claim and will indemnify the Contractor against any counterclaim arising in whole or in part out of the Subcontractor's performance of the Work pursuant to Section 9.1 and, at the Contractor's request, will undertake defense of the Claim utilizing counsel acceptable to the Contractor per Section 9.2. If Contractor pursues a Claim on Subcontractor's behalf, a senior executive with the authority to bind Subcontractor must be readily available to discuss any compromise or settlement that Contractor may be able to reach with Owner on their behalf, or the right to object to the compromise or settlement is waived and Contractor's decision regarding compromise, settlement, or discontinuation of any Claim or dispute resolution will be final and binding upon Subcontractor.

**11.2.2 Subcontractor Recovery.** Contractor agrees to pay to Subcontractor, and the Subcontractor agrees to accept from Contractor, in full and complete satisfaction and discharge of its Claim the amount recovered and collected by the Contractor from the Owner or any other party to the action on account of the Subcontractor's Claim. The amount of damages paid to Subcontractor will exclude Contractor's portion of the Claim, as well as the Subcontractor's portion of the costs and expenses incurred by the Contractor in resolving the Claim (including attorney's fees, consulting charges, Contractor's personnel costs).

**11.3 Contractor Disputes Claim.** If Contractor disputes or rejects the Subcontractor's request for a Change Order, then the Subcontractor may proceed with notice of Claim to Contractor and the dispute will be resolved in accordance with the following procedures.

**11.3.1 Notice.** Subcontractor may initiate the dispute resolution procedures with Contractor by providing 10 business days written notice of a potential Claim. The notice must certify that the Claim is being made in good faith and that the amount requested is accurately reflected, provide reasonable detail of the nature of the Claim and back-up substantiating the amount requested, a statement about the remedy sought, and request informal resolution through business negotiations per Section 11.3.2. The notice will be executed by a senior executive of Subcontractor in charge of the Project or an officer or general partner of Subcontractor having overall responsibility for the conduct of Subcontractor's affairs. In the absence of certification, the alleged Claim will be null and void constituting a waiver of Claim.

**11.3.2 Business Negotiation.** If the Claim is not resolved between Subcontractor and Contractor within 10 business days receipt of the notice, Contractor and Subcontractor will notify their respective senior executives (with similar or equivalent

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organizational stature) who have not been personally involved in the Project and who have no direct responsibility for the administration of the Subcontract. Each designated senior executive will have the authority to settle or compromise the Claim conclusively. The senior executives will meet at a mutually agreeable time and place to exchange relevant information and attempt to amicably resolve the Claim.

**11.3.3 Mediation.** If the parties are unable to reach a voluntary agreement or resolution of the dispute through business negotiation under Section 11.3.2 within 10 business days of meeting, then either party may demand that the controversy or dispute be submitted to mediation. Before agreeing to mediation, each party will execute a disclosure confirming that each party understands the confidential nature of the mediation proceedings and materials pursuant to California Evidence Code section 1129. All claims arising out of, or related to, Section 11.3 are subject to mediation prior to the institution of legal or equitable proceedings by either party. Request for mediation will be filed in writing with the other party and the mediator. The parties will share the mediator's fee and any filing fees equally. Agreements reached in mediation will be enforceable as settlement agreements in any court having jurisdiction over the matter. If the parties are unable to resolve the dispute by mediation, then the parties may proceed by filing a claim under the civil process.

**11.4 Joinder.** Subcontractor consents to joinder of Owner, Architect and other design professionals, other subcontractors and suppliers and any other party that Contractor deems necessary to resolve claims filed by or against Contractor that arise out of similar facts, issues or incidents and are related to the Project to prevent inconsistent dispute resolution awards or judgments. Subcontractor agrees to be bound by the decision of any court, arbitration panel or other tribunal to the full extent to which Contractor is bound.

**11.5 Continuation of the Work.** Subcontractor must diligently continue to prosecute the Work, including all disputed Work, provided that Contractor continues to provide payment for undisputed Work per Article 7, regardless of the existence of a dispute or Claim or the pendency of any dispute resolution procedure or pendency of any civil action.

**11.6 Civil Action.** Subcontractor agrees to not commence any civil actions for recovery of Claims until the dispute resolution process has been completed unless it is necessary to preserve Subcontractor's legal rights for payment for Work performed pursuant to California State mechanic's lien and stop payment notice laws, or to prevent Subcontractor's claim from being time barred by the statute of limitations.

## **12. TERMINATION AND SUSPENSION**

**12.1 Suspension of the Work.** If the Project is suspended by Contractor, Subcontractor will be compensated for Work performed before receipt of notice of the suspension. The notice of suspension will set forth the reason for suspension and the effective date of suspension. If the Project is resumed, and provided that the suspension was not caused or due to any fault or neglect of the Subcontractor, then the Subcontractor's compensation may be equitably adjusted through Change Order.

**12.2 Termination For Convenience.** Contractor may terminate the Subcontract for convenience upon written notice at any time before Completion of the Work. The notice will state the extent and effective date of termination. Subcontractor will be entitled to receive payment for all Work performed based on a percentage of Work properly completed through the effective date of termination. Subcontractor will not be entitled to payment of profit on Work not

properly performed, anticipated lost profits, or unabsorbed overhead. All disputes over termination will be resolved under Article 11.

**12.3 Termination For Cause.** Contractor may terminate the Subcontract for cause upon **7 business days'** written notice if the Subcontractor is in breach of any term or provision of this Subcontract and fails to commence curing the breach to Contractor's satisfaction within the 7 business day time frame. The notice will set forth the reason for termination and the effective date of termination. If Contractor terminates Subcontract for cause, the Subcontractor will not be entitled to receive any further payments until after Final Completion of the Project and only to the extent that the cost of completing the Work (inclusive of all costs, expenses, and damages arising from Subcontractor's default) does not exceed the Subcontract Price and that the Work was completed within the Contract Time. Upon notice of termination for cause, Contractor (i) will take possession of all materials and equipment procured specifically for the Work; (ii) may accept assignment of any subcontracts, purchase orders, and equipment rental agreements; (iii) will finish the Work by whatever reasonable method Contractor deems expedient; and (iv) may pursue any Claim against the Subcontractor under Article 11. Subcontractor will not be entitled to payment of profit on Work not properly performed, anticipated lost profits, or unabsorbed overhead. Nothing stated in this paragraph prevents Contractor from pursuing and recovering any damages allowed by law from Subcontractor arising out of the breach of this Subcontract. If a court of competent jurisdiction deems that termination of the Subcontractor was wrongful or otherwise improper, the termination will be deemed a termination for convenience under Section 12.2.

### **13. MISCELLANEOUS PROVISIONS**

**13.1 Confidentiality.** Subcontractor agrees to maintain Project information as confidential to the extent provided in the Contract. If this Subcontract includes a Non-Disclosure Agreement (**Exhibit 10**), Subcontractor will execute and comply with those provisions.

**13.2 Governing Law.** This Subcontract is governed and construed in accordance with the laws of the State of California without regard to the principles of the conflict of laws. Both parties agree that any claim or enforcement of a judgment or alternative dispute award will be filed with the appropriate court of law and in accordance with the venue (if any) stated in the Contract.

**13.3 Notice.** Any notice required to be given by the Contract Documents will be in writing and deemed effective upon personal delivery or email with return receipt requested, or 3 business days after being sent either via registered or certified mail return receipt requested or by overnight commercial courier providing next business day delivery, addressed to the respective parties identified in the Business Terms Sheet.

**13.4 Severability.** The terms and conditions of this Subcontract will be interpreted in accordance with their plain meaning, and not strictly for or against either party. Any rule of construction or interpretation to the contrary will be of no force or effect with respect to this Subcontract. If a court of competent jurisdiction finds any term or provision of this Subcontract to be void or unenforceable for any reason such term or provision will be deemed severed, and the remainder of the Subcontract will remain in full force and effect according to its terms and provisions, to the maximum extent permitted by law.

**13.5 Waiver.** No action or failure to act by the Contractor waives any right or duty afforded it under the Contract Documents and an action or failure to act will not constitute

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approval of or acquiescence in a breach of the Contract Documents, unless specifically agreed to in writing by the Contractor.

**13.6 Assignment of Contract.** The Contractor and Subcontractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Subcontract and to the partners, successors, assigns and legal representatives of the other party with respect to all covenants of this Subcontract. The Subcontractor may not assign this Subcontract without the written consent of the Contractor. Contractor may assign this Subcontract to the Owner. Also, Subcontractor will cooperate with Contractor regarding any assignment to Owner's lender for the purpose of construction financing for the Project.

**13.7 Modifications.** All modifications to the terms and conditions set forth in this Subcontract must be in writing and signed by an authorized representative of both parties.

**13.8 Counterparts.** This Subcontract may be executed in counterparts, each of which will be deemed an original, and all of which when taken together will constitute one instrument.

**13.9 Section Headings.** The section headings contained in this Subcontract are for reference purposes only and will not in any way affect the meaning or interpretation of this Subcontract.

**13.10 Time is of the Essence.** Time is of the essence with respect to each and every provision of this Subcontract and the Contract Documents.

**13.11 Legal Citations.** Legal citations to statutory requirements are included in the Subcontract are for convenience and an omission of any statutory requirement or incorrect citation will not relieve the Subcontractor from compliance with the law.

**13.12 No Third Parties.** Contractor and Subcontractor have entered into this Subcontract solely for their respective benefit, and no third party will be entitled to any benefit or remedy including, without limitation, tier-subcontractors, suppliers or anyone working directly or indirectly for either of them, as well as any individual employee or agent of either the Contractor or Subcontractor.

**13.13 Relationship of the Parties.** Subcontractor's relationship with Contractor is that of an independent contractor whose involvement in a Project is to act in the capacity of a California state licensed specialty contractor and not as an agent, fiduciary, partner, member of, subsidiary of, or otherwise affiliated with Contractor.

**13.14 Non-Discrimination/Equal Employment Opportunity.** Neither Subcontractor or any of its tier-subcontractors or suppliers will discriminate in any manner against any individual because of race, color, religion, national origin, age, sex, political affiliation, marital status, or disability. Subcontractor and its tier-subcontractors and suppliers will comply with all applicable laws, rules and regulations concerning the prohibition of discrimination in employment.

**13.15 Mutual Waiver of Consequential Damages.** Contractor and Subcontractor agree to waive all claims against each other for any consequential damages, as defined under California law, that may arise out of or relate to this Subcontract. Consequential damages include, but are not limited to damages such as unabsorbed overhead, loss of business, the services of or productivity of employees, loss of reputation, principal office overhead and

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expenses, loss of unearned profits, and loss of bonding capacity. Notwithstanding the above, there is no waiver of consequential damages or liquidated damages to the extent such damages are allowed under the Contract and Subcontractor will remain liable for all such damages incurred by Contractor to the extent of Subcontractor's proportionate share of liability.

**13.16 Survival.** The following provisions will survive termination of this Subcontract: Sections 5.1 and 5.3 and Articles 7 through 12, and Section G of **Exhibit 3**.

**13.17 State Licensing.** CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS STATE LICENSE BOARD, WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CA 95826.

**13.18 Ownership of Documents.** Subcontractor will not own or claim a copyright in the Construction Documents or other documents prepared by the Architect or other design consultants. The Construction Documents and other documents prepared by the Architect or other design consultants are furnished to the Subcontractor for use solely with respect to this Project and are not to be used by Subcontractor on other projects or for additions to this Project outside the scope of this Subcontract. To the extent that this Subcontract requires Subcontractor to use BIM, the ownership rights of any models will be determined in accordance with a separate BIM Agreement.

**13.19 Electronic Signature.** The Parties agree that an electronic signature is an acceptable form of signature for written communications with Contractor or Subcontractor and will have the same force and effect as the use of a manual signature.

**13.20 Exhibits.** The Exhibits referred to in this Subcontract and set forth in the front of the Subcontract are incorporated by reference as though set forth in full.

**13.21 Entire Agreement.** This Subcontract and Contract Documents constitute the entire agreement between the Contractor and Subcontractor and supersede any and all contemporaneous or prior oral and written negotiations, representations, or agreements by the parties with respect to the subject matter.

**13.22 Execution.** This Subcontract is executed as of the Effective Date by the authorized representatives of Contractor and Subcontractor pursuant to the signatures on page 1 of the Subcontract.