

# SUBCONTRACT

**SUBCONTRACTOR:**

XYZ, Inc.  
1 XYZ Lane  
Happy Place, CA 00000

FedEx: address here

Phone XXX-XXX-XXXX  
Fax XXX-XXX-XXXX

**AND**

**DIABLO CONTRACTORS, INC.**  
**A CALIFORNIA CORPORATION**  
**7 Crow Canyon Court, Suite 100**  
**San Ramon, CA 94583**  
**Phone 925-552-8250**  
**Fax 925-552-8254**

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# SUBCONTRACT

This "Subcontract" or "Agreement" is entered into this 00th day of Month, 2011 by and between Diablo Contractors, Inc., hereinafter called "Contractor," whose address is 7 Crow Canyon Court, Ste. 100, San Ramon, CA 94583, and XYZ, Inc. hereinafter called "Subcontractor," whose address is 1 XYZ Lane, Happy Place, CA (PUT STREET ADDRESS HERE – NO POBOX).

**SECTION 1. PROJECT DESCRIPTION.**

Contractor has entered into a Prime Contract, dated XX/XX/XXXX with Caltrans, hereinafter called "Owner," to furnish all labor, materials, supplies and equipment to complete in a workmanlike manner a project known as XX-XXXXXXXX, Bridge Work in the Bay Area,  
(Project Number and Name)

hereinafter called "Project," located at Bay Area, CA, hereinafter called "Premises," the scope of work, hereinafter called the "Work," as described in Section 2.

**SECTION 2. SCOPE OF WORK.**

Subcontractor shall furnish all labor, material, supplies and equipment, and perform all work necessary to complete the following part or parts of the Work of the Prime Contract in all respects as is therein required of Contractor, and all Work incidental thereto, as follows:

Bid Item	Description	Unit	Qty	Unit Cost	Total
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
				CA Sales Tax Included	
				Shipping/Handling Included	
				Total	\$ -

**a) Contract items:**

1.

**b) Include:**

1.

**c) Exclude:**

1.

**d) Subcontractor:**

1.

**e) Contractor:**

1.

**f) Other terms and conditions:**

1.

The Work described above shall be all in accordance with the terms and conditions of the Prime Contract including the General Conditions, Drawings, Specifications and other Documents, which by reference, are made part of said Prime Contract, all of which shall be considered part of the Subcontract by this reference thereto, and Subcontractor agrees to be bound to Contractor and Owner by the terms and Provisions thereof.

Diablo Contractors, Inc. must receive a signed contract no later than (15) calendar days from the date of this Subcontract or this Subcontract will become null and void. Schedule shall be determined by Diablo Contractors, Inc. and agreed by **XYZ, Inc.**

Subcontractor accepts exclusive liability for any and all sales tax or use tax which may be assessed against materials, equipment or labor used in this part of Work, regardless of whether the rates or application of such taxes may have changed since Subcontractor submitted a bid. Any tax issues that may emerge will be the sole responsibility of the Subcontractor; and the fees, penalties, or tax amount shall not be charged in addition to the Subcontract Price.

**If applicable, date is noted (the following Exhibits are an integral part of this Subcontract):**

**Attached Exhibit "A" – Contractor, (Supplemental Contract Provisions), (01/28/10).**

**Attached Exhibit "B" – Contractor, (Labor requirements), (01/11).**

**Attached Exhibit "C" – Contractor, (Sworn Affidavit and CA Labor Code Provisions), (09/10).**

**Attached Exhibit "D" – Contractor, (Specifications), (None).**

**SECTION 3. CONTRACT DOCUMENTS.**

This document represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, proposals, stipulations, or agreements, either written or oral, including, without limitation, Subcontractor's bid form or proposal. All prior or contemporaneous agreements to be included in this Subcontract are expressly identified herein. No agent or representative of either party has authority to make, and the parties shall not be bound by or liable for, any statement, representation, promise or agreement not set forth herein. No changes, amendments or modifications to the terms of this Subcontract shall be valid unless reduced to writing and signed by both parties.

The Subcontract consist of (1) this Agreement; (2) the specifications, plans and other relevant documents for the project listed above, including the contract between Owner and Contractor ("Prime Contract") and any other documents enumerated therein, including conditions of the contract (general, supplementary and other conditions), drawings, specifications, manuals, supplements, schedules, addenda issued prior to execution of the agreement between Owner and Contractor and bulletins, RFI responses, and modifications issued subsequent to the execution of the agreement between Owner and Contractor, whether before or after the execution of this Subcontract, and other Contract Documents, if any, listed in Prime Contract (collectively, the "Contract Documents"); (3) other documents incorporated into this Subcontract or its attachments; and (4) Modifications to this Subcontract issued after its execution. These documents are as fully a part of this Subcontract as if were attached to this Subcontract or retyped herein.

The Subcontractor represents and agrees that it has carefully examined and understands this Subcontract, Prime Contract and Contract Documents. Subcontractor has investigated the nature, locality and site of the Work and the conditions and difficulties under which it is to be performed and that it enters into this Subcontract on the basis of its own examination, investigation and evaluation of all such matters and not in reliance upon any opinions or representations of Contractor, or of any of their respective officers, agents, servants, or employees.

With respect to the work to be performed and furnished by the Subcontractor hereunder, the Subcontractor agrees to be bound to Contractor by each and all of the terms and conditions of the Prime Contract and the other Contract Documents, and to assume toward Contractor all of the duties, obligations and responsibilities that Contractor by those Contract Documents assumes toward the Owner, and the Subcontractor agrees further that Contractor shall have the same rights and remedies as against the Subcontractor as the Owner under the terms and conditions of the Prime Contract and the other Contract Documents has against Contractor with the same force and effect as though every such duty, obligation, responsibility, right or remedy were set forth herein in full. The terms and conditions of this Subcontract with respect to the Work to be performed and furnished by the

Subcontractor hereunder are intended to be and shall be in addition to and not in substitution for any of the terms and conditions of the Prime Contract and other Contract Documents.

This Subcontract, including all attachments, the conditions of the Prime Contract, and the Contract Documents are intended to supplement and complement each other and shall, where possible, be thus interpreted. If however, any provision of this Subcontract conflicts with a provision of the Prime Contract and the Contract Documents, the provision imposing the greater duty or obligation on the Subcontractor shall govern.

Any oral or written agreement between Contractor and Subcontractor which conflicts or is inconsistent with this Subcontract, or any supplemental agreements hereto, shall forthwith terminate. This Subcontract prevails over any conflicts that arise between Contractor and Subcontractor.

#### **SECTION 4. WORK TO BE PERFORMED.**

Subcontractor acknowledges that it has read and is familiar with the Prime Contract and Contract Documents and agrees to comply with and perform all provisions thereof applicable to Subcontractor.

It is agreed that the materials and equipment to be furnished and Work to be done by Subcontractor will be as described in [Section 2](#) for this Project. Regardless of the conditions of the Prime Contract, the Subcontractor shall furnish and pay for all layout, backing, testing, hoisting of men and materials, temporary heat, power and lighting required for Work to be performed under this Subcontract. If materials and equipment are to be furnished but are not required to be installed under this Subcontract, such materials and equipment are to be delivered F.O.B. jobsite.

Equipment used by the Subcontractor and/or their lower-tier subcontractor(s) must meet all local air quality district(s) and Air Resource Board ("ARB") regulations as required by law as posted on the ARB website: [www.arb.ca.gov](http://www.arb.ca.gov). Any violation and/or penalty resulted from ARB enforcement is the sole responsibility of the Subcontractor. All fees must be paid immediately and corrective actions must be taken as required by the ARB and the local air quality district(s). In the event that there is a disagreement among agencies in regards to the regulations, the more stringent rule or law prevails.

Subcontractor and all lower-tier subcontractor(s) need to be compliant with all environmental guidelines that may affect the region in the Prime Contract. All fees, penalties, and corrective actions are the responsibility of the Subcontractor.

#### **SECTION 5. PAYMENTS.**

Contractor shall pay Subcontractor for furnishing the materials and equipment and performing the Work the sum of           \$XXX,XXX.XX           (hereinafter called Subcontract Price) subject to additions and deductions for changes agreed upon or determined as hereinafter provided. Partial payments will be made to Subcontractor in an amount equal to 90% of the value of completed work in the schedule of values and materials and equipment incorporated in the construction as estimated by Owner's Representative, less previous payments, such partial payments shall become due to Subcontractor **10** days after Contractor receives payment from Owner. Upon complete performance of this Subcontract by Subcontractor and final approval and acceptance thereof by Owner, Contractor will make final payment to Subcontractor of the balance due under this Subcontract within **45** days after full payment for such work and materials has been received by Contractor from Owner. However, if a progress and/or final payment from Owner for the work is not received by Contractor, through no fault of Subcontractor, Contractor will make payment to Subcontractor after Contractor has been afforded a reasonable period of time to obtain payment from Owner through either litigation or arbitration.

"Reasonable time" shall be determined according to the relevant circumstances, but in no event shall be less than the longest period of time required by either Contractor or the Subcontractor to pursue to conclusion (including collection) their legal remedies against Owner or other responsible party to obtain payment, including (but not limited to) mechanic's lien remedies or other related and similar remedies.

No partial payment to Subcontractor shall operate as approval or acceptance of Work done or materials and equipment furnished under this Subcontract. If Subcontractor is to be paid for Work on a unit price basis, Subcontractor agrees to be bound by Owner's measurement of the quantity of Work; however, if Owner does not

provide any measurement of work or is incorrect, Subcontractor agrees to be bound by Contractor's measurement of the work. Any partial payment or payments made by Contractor to Subcontractor will be subject to final audit and adjustment and Subcontractor agrees to reimburse Contractor for any overpayment. Acceptance by Subcontractor of final payment shall release Contractor and its surety of all claims arising under or by virtue of this Subcontract except those claims previously submitted in writing by Subcontractor. As between the parties hereto and except as expressly provided otherwise in this Subcontract, Subcontractor accepts the price as full compensation for doing all work and furnishing all materials and equipment contemplated and embraced in this Subcontract; for all loss or damage arising out of the nature of the work aforesaid or from the action of the elements or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by Owner; for all risks of every description connected with the work; for all expense incurred by or in consequence of the suspension or discontinuance of the work; and for faithfully completing work and the whole thereof in the manner and according to the requirements of Contractor and Owner and Owner's Representative.

Contractor may deduct from any amounts due or to become due to Subcontractor any sum or sums owing by Subcontractor to Contractor whether or not arising under this Subcontract and in the event of any breach by Subcontractor of any terms or conditions of this Subcontract, or in the event of the assertion by other parties of any claim of lien against Contractor or its surety or the construction site arising out of Subcontractor's performance of this Subcontract, Contractor shall have the right, but is not required, to retain out of any payments due or to become due to Subcontractor an amount sufficient to completely protect Contractor from any and all loss, damage or expense there from until the situation has been remedied or adjusted by Subcontractor to the satisfaction of Contractor.

Contractor reserves the right to make payment by joint check or by direct check to Subcontractor and to Subcontractor's material men or lower-tier subcontractor(s) or any person who has right of action against Contractor or its surety under any law. Contractor reserves the right to determine the manner and amount of payment to be made.

Subcontractor shall furnish, if requested by Contractor, sworn affidavit's under penalty of perjury, from time to time, in accordance with the form provided by Contractor, which shall state amounts due or to become due and amounts paid to suppliers, its laborers and other parties contractually related with Subcontractor with respect to labor and materials furnished or to be furnished under this Subcontract.

Contractor agrees to pay Subcontractor for said Work subject to additions and deductions as herein provided, payable as work progresses, on estimates made and approved by Contractor and within ten (10) days after Contractor actually receives payment from Owner on account of Subcontractor's Work. Contractor shall be entitled to withhold at its option ten percent (10%) of each estimate until final payment and may withhold any payment until Subcontractor has furnished Contractor with suitable evidence (which may include affidavits) that Subcontractor has paid in full for all labor including union benefits, materials, supplies, taxes, withholding and other obligations in connection with the Work included in this Subcontract, written acceptance by the engineer, full payment therefore by Owner, and receipt of Unconditional/Conditional Waivers and Releases.

Contractor may in addition withhold from any payment or retention up to 150% of the amount of any disputed item, including without limitation, amounts Contractor believes may be necessary to withhold to protect Contractor from any potential claims which may result from Subcontractor failing to furnish appropriate waivers and releases for itself or any lower-tier subcontractor(s) or supplier(s).

Subcontractor agrees and covenants that money received for the performance of the Work shall be used solely for the benefit of persons and firms supplying labor, materials, supplies, tools, machines, equipment, plant or services exclusively for the Project in connection with this Subcontract and having the right to assert liens or other claims against the land, improvements or funds involved in the Project or against any bond or other security posted by Contractor or Owner, that any money paid to Subcontractor pursuant to this Subcontract shall immediately become and constitute a trust fund for the benefit of said persons and firms, and shall not in any instance be directed by Subcontractor to any other purpose until all obligations arising there under have been fully discharged and all claims arising there from have been fully paid. Subcontractor agrees, as a condition precedent to payment hereunder, to furnish Contractor with such partial or final releases of claims or waivers of Lien as Contractor may from time to time request.

Monthly payments to Subcontractor will not be released until Contractor received all the current paperwork as follows:

- a) Company Contractor's License and Business Licenses
- b) Company Safety Program and Code of Safe Practices
- c) Company Substance Abuse Policy
- d) Company EEO and Affirmative Action Policy
- e) Company W9 form
- f) Company's contact information for various departments including, but not limited to, Contracts, Insurance, EEO, Labor, Claims and Project Management
- g) Weekly Safety Meeting minutes with signatures of Subcontractor's employees
- h) Evidence that workers are trained in the use of Hazardous materials they will use for the Work
- i) Monthly Work Force Reports
- j) Evidence that Subcontractor's As-Built drawings are current
- k) Current Insurance Certificates
- l) Releases from Unions and all lower-tier subcontractor(s)/vendor(s)
- m) Weekly basis: Email a scanned copy of the Weekly Certified Payroll Reports with Statement of Compliance, Fringe Benefit Statement, any apprenticeship labor information and all necessary paperwork to **labor@diablocontractors.com** and send the originals with wet signatures to our main office. Fringe Benefit Statement must be submitted with the first Certified Payrolls and again when there are changes to the fringe benefits. Certified Payroll Reports must comply and meet prevailing wage as determined by DLSR, webpage: [http://www.dir.ca.gov/DLSR/statistics\\_research.html](http://www.dir.ca.gov/DLSR/statistics_research.html).

Any legal name change would require all new documents furnished to Contractor to reflect the new Subcontractor's name. All terms and conditions in this Subcontract between the Subcontractor and Contractor are to remain the same.

In the event the Subcontractor has been purchased by another company, the new company will assume all the terms and conditions of this Subcontract and will perform the Work to completion satisfactory to Contractor and Owner without additional charge to the Subcontract Price.

Subcontractor must notify all lower-tier subcontractor(s) and/or vendor(s) of the terms and conditions of this Agreement. All lower-tier subcontractors must acknowledge and comply with the same obligations as the Subcontractor for all the terms and conditions in this Subcontract.

Subcontractor shall submit a schedule of values to Contractor with the signed Subcontract for approval.

All billings must be submitted by the 15<sup>th</sup> day of each month unless otherwise amended in writing. All billings must show the Contractor job number and description. Billings not received by the 15<sup>th</sup> of the billing period month will be processed in the following month's billing.

Labor and equipment rates must be submitted and approved. The approved rates will be made part of this Subcontract and used for pricing any changes in the scope of Work.

If at any time Contractor, at its sole discretion, shall determine that Subcontractor's financial condition has become unstable or unsatisfactory, Subcontractor shall furnish additional security satisfactory to Contractor within three days after written demand, therefore, is delivered to Subcontractor. If Subcontractor fails to timely furnish said additional security, Contractor shall have the option to terminate Subcontractor's right to proceed or to initiate such other action as Contractor may, at its sole discretion, deem necessary for the protection or preservation of its interest and the prevention of delay in the progress of Work on the Project, including but not limited to the Work to be performed by Subcontractor hereunder. In the event of such cancellation, the rights of Contractor shall be the same as if Subcontractor had willfully refused to further perform the Subcontract.

With regards to the Safety and Substance Abuse policies, Subcontractor and/or lower-tier subcontractor(s) must provide a more stringent than or at least parallel to Contractor's policies.



## **SECTION 6. RETAINAGE REDUCTION.**

If at any time prior to final payment, hereunder, Owner reduces the amount of retainage held from Contractor, Contractor may, at its sole discretion, without the consent of Subcontractor's Surety, reduce accordingly the retained percentage withheld from Subcontractor.

## **SECTION 7. CHANGES AND EXTRA WORK.**

Contractor may, at any time by written order and without notice to Subcontractor's Surety, make changes in, additions to, and omissions from the Work to be performed and materials and equipment to be furnished under this Subcontract, and shall make an appropriate adjustment in the Subcontract Price and time of performance. If Subcontractor shall disagree with such adjustment, Subcontractor shall give written notice to Contractor, and any further adjustment shall be agreed upon in writing by the parties hereto, but Subcontractor shall immediately proceed with the performance of the Work as so changed. Any change or modification shall be subject to all the terms and conditions of this Subcontract.

If Owner shall order any changes or extra work, including additions, reductions or deletions, in the Work to be performed hereunder or within the general classification of any Work to be performed hereunder, Subcontractor will upon written order of Contractor perform the work required, and any adjustment in compensation or in the time for performance shall be as the parties agree. If the parties are unable to agree, Subcontractor shall nevertheless proceed with such work and shall give prompt written notice thereof to Contractor. The amount of compensation and the time of performance shall be adjusted only to the extent allowed by Owner. Subcontractor shall comply with and be bound by any notice conditions and claims procedure, including arbitration, contained in the Prime Contract or required by Owner. If any claim of Subcontractor is presented to Owner together with claims of Contractor or others, Contractor's determination as to Subcontractor's share of any award by Owner shall be binding and conclusive on Subcontractor.

Any claim for adjustment of the Subcontract Price or time of performance must be made in writing and given to Contractor in such time that Contractor has at least three (3) working days in which to satisfy the notice requirements of the Contract Documents. No increase or decrease in the Subcontract Price or time of performance shall be binding on Contractor unless agreed upon in writing.

All requests for quotation for changes to the scope of Work must be returned to Contractor no later than three (3) working days from the issuance date of the request. Contractor will assign a reference number to each change. The Contractor reference number must be referenced when submitting a quotation.

Subcontractor must obtain written authorization from the Contractor Project Manager for any extra work prior to incurring any expenses. Any costs incurred on a time and material basis **must be accompanied by work tags signed on a daily basis** by a Contractor authorized representative and Owner's authorized representative. Signing of work tags is for documentation of labor and/or materials and equipment only and does not constitute a commitment for payment or associated expenses.

Allowable Subcontractor mark-up on direct cost for authorized changes in the Work beyond the scope of this Subcontract shall be subject to approval by Contractor.

## **SECTION 8. PROGRESS OF WORK AND ORDER OF PERFORMANCE.**

Time is of the essence of this Subcontract Work. Subcontractor shall furnish all materials, labor, tools, equipment, and supplies necessary for the performance of this Subcontract in a proper, efficient, and workmanlike manner and so as to perform the Work in accordance with and within the time specified in progress schedules designated or prepared by Contractor and submitted to Subcontractor or any revisions thereof. Subcontractor shall prosecute the Work in a prompt and diligent manner whenever such Work, or any part of it, becomes available, or at such other time or times as Contractor may direct, and so as to promote the general progress of the entire construction, and shall not interfere with or hinder the Work of Contractor or any other Subcontractor(s). If Contractor shall deem it necessary, Subcontractor, at its own expense and on demand by Contractor, shall provide additional work forces, overtime or additional shifts and shall expedite the furnishing of materials and equipment so as to meet the applicable progress schedule. Any materials and equipment that are to be furnished by Subcontractor hereunder shall be furnished in sufficient time to enable Subcontractor to perform and complete its Work within the time or times required under this Subcontract. Subcontractor shall



reimburse Contractor for any and all damages suffered by or assessed against Contractor, including liquidated damages, which are attributable to or caused by Subcontractor's failure to furnish the materials or to perform the Work required by the Subcontract within the time fixed or in the manner provided for herein. Payment of such damages shall not release Subcontractor from its obligation to otherwise fully perform this Subcontract. Upon written request by Contractor, Subcontractor shall furnish to Contractor within thirty (30) days of receipt of Contractor demand for payment such evidence as Contractor may require relating the Subcontractor's ability to fully perform this Subcontract in the manner and within the time specified herein.

Subcontractor shall personally supervise the Work or have a competent foreperson or superintendent satisfactory to Contractor on site at all times during Subcontractor's performance with authority to act for Subcontractor.

Subcontractor is to maintain at all times a safe and clean work area. The frequency and method of Subcontractor clean-up shall be such that other trades are not negatively impacted and access to the work area is not restricted, unsafe conditions are not created and Owner is satisfied with the appearance of the Work. All debris, packing materials, scraps, dunnage, etc., associated with the Subcontractor's Work is to be removed offsite by Subcontractor (including dump fees, if applicable). The costs of this clean up and removal is included within the Subcontract Price.

Subcontractor is required to provide **complete** submittals in accordance with the Contract Documents and Contractor in a time frame which allows for Owner/Architect review, ordering, fabrication, manufacturer's lead time, shipping, etc., such that they do not delay the completion of the Work. Submittal rejected by the Owner/Architect for incompleteness or non-compliance with the documents does not constitute grounds for delay to Subcontractor's Work. Subcontractor is expected to recoup all time lost due to late submittals at its own expense.

**Submittal Quantities: (per Prime Contract or Contract Documents)**

- |                                |   |
|--------------------------------|---|
| <b>Shop Drawings:</b>          | <b>(1) Correctable Translucent Reproducible<br/>(5) Bluelines</b> |
| <b>Product Data:</b>           | <b>(6) Copies</b>   |
| <b>Samples:</b>                | <b>(3) Sets</b>   |
| <b>Work Plans and Reports:</b> | <b>(3) Sets</b>   |

Subcontractor is to provide sufficient labor, materials, and equipment to meet all milestone dates and final completion date of the construction schedule(s) to be forwarded by transmittal and subsequently made part of this Subcontract.

Subcontractor shall keep as-built record Plans current and accurate to reflect actual Work progress. Contractor may periodically inspect record Plans. Non current and/or inaccurate Plans will constitute basis for withholding progress payments until Plans are updated or corrected by Subcontractor.

Subcontractor is responsible to provide drinking water for its own work force.

Subcontractor is responsible for their employee parking. On site parking is not available unless authorized in writing by Contractor.

Subcontractor shall provide daily work reports indicating the number of workers, location of work, and type of work. This report must be submitted on a daily basis for review by the Contractor Project Manager.

Subcontractor must comply with all Local, State, Federal and National codes, ordinances, laws, and authorities having jurisdiction at the time this Subcontract is fully executed.

Subcontractor is responsible for the behavior and conduct of Subcontractor's employees and lower-tier subcontractor(s) under employ of Subcontractor. If Contractor, at its sole discretion, shall determine that Subcontractor or any persons under employ of Subcontractor are conducting themselves in a manner deemed to be unacceptable to the operations of the Project, this person(s) will be banned from the Premises for the duration of the Project.

If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by Subcontractor, its lower-tier subcontractor(s) or anyone directly or indirectly employed by them, Subcontractor shall, prior to exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to Contractor in sufficient detail and time to permit compliance with such laws by Contractor, other lower-tier subcontractor(s) and employer(s) on the site.

Subcontractor agrees to satisfactorily complete all punch list items within 10 days from receipt of punch list from Contractor. Contractor reserves the right after 10 days have lapsed, and the punch list is not satisfactorily completed, to complete punch list items at the expense of the Subcontractor.

Subcontractor must turn over all Operation and Maintenance Manuals, Guarantees, Warranties and As-built Plans within fourteen (14) days after Contract Work is complete. Subcontractor agrees to a deduct from monies due to Subcontractor of \$500 per day for each day these items are not delivered in satisfactory condition to Contractor within thirty (30) days after receipt of Contractor demand for payment.

If Subcontractor fails to comply with the conditions herein as to character and time of performance, and the failure is not corrected within forty-eight hours after written request by Contractor to Subcontractor, Contractor may, without prejudice to any other right or remedy, take over and complete the performance of the Subcontract at the expense of Subcontractor, or Contractor may, without taking over the Work, furnish the necessary materials and may employ any other person(s) including another subcontractor to finish the Work and provide the materials therefore, all without liability on the part of Contractor for any damage, wear and tear, depreciation, theft, action of the elements, acts of God, fire, flood, vandalism, or other injury or damage to said materials, tools, and appliances and in case of such discontinuance of Subcontractor's employment by Contractor, Subcontractor shall not be entitled to receive any further payment under this Subcontract until the said Work shall be wholly finished and Contractor shall have received payment in full therefore from Owner, at which time, if the unpaid balance of the amount to be paid under this Subcontract exceeds the expenses incurred by Contractor in finishing the Work, such excess shall be paid by Contractor to Subcontractor; but if such expense shall exceed such unpaid balance, then Subcontractor shall pay the difference to Contractor. As used in this Section the Work "expense" shall mean actual cost to Contractor plus fifteen percent (15%) for overhead. The expense incurred by Contractor as herein provided, either for furnishing materials or for finishing the Work, and any damages incurred as a result of such default, shall be chargeable to and paid by Subcontractor and Contractor shall have a lien upon all materials, tools and appliances taken possession of, as aforesaid, to secure the payment thereof.

Upon the appointment of a receiver for Subcontractor or upon Subcontractor making an assignment for the benefit of creditors, or if Subcontractor seeks protection under the Bankruptcy Code or commits any other act of insolvency; Contractor may, absent any applicable legal limitation, terminate this Agreement upon giving forty-eight (48) hours written notice to Subcontractor and its surety, if any. If an order for relief is entered under the Bankruptcy Code with respect to Subcontractor, Contractor may terminate this Agreement by giving forty-eight (48) hours written notice to Subcontractor, its trustee, and its surety, if any, unless Subcontractor, the surety, or the trustee:

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

In the event a dispute arises between Subcontractor and Contractor, Subcontractor expressly agrees that it will continue to perform its Work regardless of the nature of the dispute. To the greatest extent permitted by law, Subcontractor waives any right to rescind or to suspend performance.

## **SECTION 9. DELAYS, EXTENSIONS OF TIME, STOPPAGE OR SUSPENSION OF WORK, DISPUTES.**

If Subcontractor's performance of the Work is delayed or interfered with by acts of Owner, Contractor or other subcontractors, Subcontractor may request an extension of time for the performance of same, as hereinafter provided. Subcontractor may be entitled to an increase in the Subcontract Price or to damages or additional

compensation as a consequence of such delays. If a progress schedule is furnished by Contractor to Subcontractor, it shall be solely for Contractor's benefit; however, Subcontractor must be ready to perform at the times indicated in the progress schedule(s). Contractor makes no representation that it will be ready for Subcontractor at the times indicated in said schedule(s) regardless of whether delays may be within the control of Contractor. As required by Contractor, Subcontractor shall submit to Contractor progress schedules for the Work or at Contractor's election, cooperate in the preparation of a progress schedule for the Work.

No allowance of an extension of time, for any cause whatever, shall be granted to Subcontractor unless Subcontractor shall have made written request upon Contractor for such extension within forty-eight hours after the commencement of the delay **and** Contractor and Subcontractor have agreed in writing upon the allowance of additional time to be made. If such extension of time is requested because of Owner caused delays or delays allowable under the Prime Contract, any extension of time shall be granted to Subcontractor only to the extent allowed by Owner.

If Owner, with or without cause, shall terminate the Prime Contract or shall stop or suspend Work under the Prime Contract, or if Owner shall fail to pay when due any sum payable under the Prime Contract, Contractor may terminate the Subcontract or order Subcontractor to stop or suspend Work hereunder and Contractor shall be liable to Subcontractor for any such termination, stoppage or suspension only to the extent that Owner shall be liable to Contractor therefore. Contractor will pay to Subcontractor the value of Work that Subcontractor has completed before the Work was terminated stopped or suspended but only to the extent that Owner shall be liable to Contractor for such Work of Subcontractor. If payment for the reasonable value of the Work is not received by Contractor from the Owner, Contractor will make payment to Subcontractor after Contractor has been afforded a reasonable period of time to obtain payment from Owner through either litigation or arbitration.

In the event of any dispute or claim between Contractor and Owner which directly or indirectly involves the Work required to be performed by Subcontractor under this Subcontract or in the event of any dispute or claim between Contractor and Subcontractor which directly or indirectly involves a claim against Owner for the either additional compensation or an extension of time under the Prime Contract, Subcontractor agrees to be bound to Contractor and Contractor agrees to be bound to Subcontractor to the same extent that Contractor is bound to Owner by the terms of the Prime Contract and by all decisions, findings, or determinations made there under, whether by the person so authorized in the Prime Contract, or by an administrative agency or court of competent jurisdiction or by arbitration, whether or not Subcontractor is a party thereto. If any dispute or claim is prosecuted or defended by Contractor, and Subcontractor is not directly a party or litigant, Subcontractor agrees to cooperate fully with Contractor and to furnish all documents, statements, witnesses, and other information required by Contractor for such purpose, at no cost to Contractor and shall pay or reimburse Contractor for all expenses and costs, including reasonable attorneys' fees, incurred in connection therewith to the extent of Subcontractor's interest in such claim or dispute. It is expressly understood and agreed in connection with the determination of such claims or disputes that, as to any and all Work done and agreed to be done by Subcontractor, and as to any and all materials or services furnished or agreed to be furnished by Subcontractor, and as to any and all damages, if any, incurred by Subcontractor in connection with the Work, Contractor shall never be liable to Subcontractor to any greater extent than Owner is liable to Contractor.

If Subcontractor should commit any act which causes delay to the Project, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages and liquidated damages sustained by Contractor, or for which Contractor may be liable to Owner or any other party because of Subcontractor's actions.

In the event of a dispute, Subcontractor shall comply with Contractor's written directives and shall continue performance in accordance with this Subcontract. It is further specifically agreed by the parties hereto that no claim, dispute or controversy shall interfere with the progress and performance of Work required to be performed under this Subcontract and that Subcontractor shall proceed as directed by Contractor in all instances with the Work under the Subcontract and that any failure of Subcontractor to comply herewith and to proceed with the Work shall automatically be deemed a breach of this Subcontract entitling Contractor to all remedies available in the event of breach.

## **SECTION 10. ARBITRATION.**

Subcontractor and Contractor agree that in the event that Contractor and Owner or another third party selects

arbitration or another forum for the resolution of disputes, Subcontractor agrees to participate in and be bound by any decision or award given in arbitration or other forum.

**SECTION 11. RESPONSIBILITY FOR THE WORK.**

Subcontractor shall be responsible for its own Work, property, and materials until completion and final acceptance of the Prime Contract and release of responsibility by Owner, and shall bear the risk of any loss or damage until such acceptance. In the event of loss or damage, Subcontractor shall proceed promptly to make repairs or replacement of the damaged Work, property, or materials at its own expense, as directed by Contractor. Subcontractor waives all rights Subcontractor might have against Contractor for loss or damage to Subcontractor's Work, property, or materials.

**SECTION 12. INDEMNIFICATION – SUBCONTRACTOR'S PERFORMANCE.**

To the greatest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless Contractor, Owner, and Owner's architect and engineer, and any of their respective directors, officers, agents, employees, parents, affiliates, subsidiaries, partners, and representatives, and any other persons or entities designated by any of them (collectively, the "Indemnitees") from and against all actions, penalties, assessments, fines, actions by governmental authorities, demands, liabilities, claims, damages, costs, losses, and expenses, including but not limited to attorneys' fees and costs, which arise out of or are in any way related (i) to this Subcontract, (ii) to actual or alleged actions or omissions by Subcontractor or any of its lower-tier subcontractor(s), supplier(s), vendor(s), employee(s), or person(s) for whom it is responsible, or (iii) to the project(s) to which the Subcontract relates (all collectively referred to as "Liabilities"), including but not limited to, the following:

1. Bodily injury including, but not limited to, bodily injury, sickness or disease, emotional injury or death to persons, including, but not limited to the public, any employees or agents of the Subcontractor, Contractor, owner, consultants, or other subcontractors and;
2. Damage to property of anyone including loss of use thereof; caused or alleged to be caused in whole or in part by any negligent or otherwise legally actionable act or omission of the Subcontractor or anyone directly or indirectly employed by the Subcontractor or anyone for whose acts the Subcontractor may be liable.

Except as otherwise provided by law, the indemnification provisions above shall apply regardless of the existence or degree of fault of Indemnitees.

The Subcontractor's obligation to defend and indemnify shall not be excused because of the Subcontractor's inability to evaluate liability or because the Subcontractor evaluates liability and determines that Subcontractor is not liable to the claimant. The Subcontractor will respond within 30 days to the tender of any claim for defense and indemnity by the Contractor, unless this time has been extended by the Contractor. If the Subcontractor fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Subcontractor under and by virtue of the contract as shall reasonably be considered necessary by the Contractor, may be retained by the Contractor until disposition has been made of the claim or suit for damages, or until the Subcontractor, accepts or rejects the tender of defense, whichever occurs first.

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

The obligations of this Section shall apply notwithstanding the passive or active negligence or other fault of the Indemnitees; however, obligations specified above shall not extend to any Liabilities arising out of the sole negligence or willful misconduct of the person to be indemnified, defended, or held harmless. The obligations of this Section are in no way limited or relieved by Subcontractor having obtained insurance, by the provisions of [Section 13](#), and/or to the extent permitted by law by the provisions of any Workers' Compensation law, regulation, or arrangement.

With respect to third party claims against the Subcontractor, the Subcontractor waives any and all rights of any

type to express or implied indemnity against the Contractor, its directors, officers, employees, or agents.

### **SECTION 13. INSURANCE.**

Before performing Work or conducting any activities at the site of the Project, Subcontractor shall comply with all of the insurance provisions set forth below. Commencing to perform Work constitutes a representation by Subcontractor that it is in compliance with this Section. Subcontractor shall, at his expense, procure and maintain insurance on all of his operations, in companies acceptable to Contractor, as follows:

- (a) **Workers' Compensation and Employer's Liability Insurance.** Workers' Compensation insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 policy limit for bodily injury by disease and death, and \$1,000,000 each employee for bodily injury by disease and death. Workers' Compensation insurance shall be written for not less than the statutory limits and shall include Employers' Liability Insurance at a limit of not less than one million dollars (\$1,000,000). Said policy shall include a Waiver of Subrogation Endorsement in favor of Diablo Contractors, Inc.

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

- (b) **General Liability Insurance.** Subcontractor shall carry Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of Subcontractor providing insurance for Bodily Injury Liability and Property Damage Liability for the Limits of Liability indicated below and including coverage for:

- (1) Premises and Operations;
- (2) Products and Completed Operations;
- (3) Contractual Liability insuring tort obligations assumed by Subcontractor in this Subcontract;
- (4) Broad Form Property Damage (including Completed Operations);
- (5) Explosion, Collapse, and Underground Hazards (including subsidence and any other earth movement); and
- (6) Personal Injury Liability, including asbestos exposure.

The General Liability Insurance shall include a Waiver of Subrogation Endorsement in favor of Diablo Contractors, Inc.

Except with respect to Bodily Injury and Property Damage included within the Products and Completed Operations Hazards, the Aggregate limits, where applicable, shall apply separately to Subcontractor's Work under this Subcontract.

One of the following coverage forms is required:

- (1) Comprehensive General Liability
- (2) Commercial General Liability (Occurrence form only)

- (b.1) The limits of liability shall be not less than the amounts required of Contractor under the Prime Contract, but in no event less than the following:

If Subcontractor carries a **Comprehensive General Liability** policy, the Limits of Liability shall not be less than a combined single limit for Personal Injury and Bodily Injury Liability and Property Damage as follows:

- (1) Personal Injury and Bodily Injury:
  - a) \$1,000,000 each person
  - b) \$2,000,000 each occurrence



- (2) Property Damage:
  - a) \$1,000,000 each occurrence

(b.2) The limits of liability shall be not less than the amounts required of Contractor under the Prime Contract, but in no event less than the following:

If Subcontractor carries a **Commercial General Liability** policy (Occurrence form only):

- (1) The limits of liability shall not be less than:
  - a) \$2,000,000 each occurrence (combined single limit for Bodily Injury and Property Damage)
  - b) \$1,000,000 for Personal and Advance Injury Liability
  - c) \$2,000,000 Aggregate for Products-Completed Operations
  - d) \$2,000,000 General Aggregate, if per Project Aggregate applies, otherwise \$5 MIL required

(2) Commercial General Liability policy needs to have General Aggregate limit to apply for each project. If the policy does not have an endorsement providing that the General Aggregate limit applies separately per Project or if Defense Costs are included in the Aggregate limits, then the required Aggregate limits shall be \$5,000,000.

A "Modified Occurrence" form is not acceptable.  
A "Claims Made" form of policy is not acceptable.

(b.3) With respect to whichever General Liability policy form is furnished under subparagraphs (b.1) or (b.2) above, Contractor, its officers, directors and employees, and Owner shall be named as additional insureds under the General Liability policy and Excess Liability policy and such insurance afforded the additional insureds shall apply as primary insurance. Any other insurance maintained by Contractor or Owner shall not be called upon to contribute with this insurance. Coverage for Contractor, its officers, directors and employees and Owner as additional insureds shall be provided by an endorsement providing coverage at least as broad as Additional Insured (Form B) Endorsement form CG 2010 1185 (1985 version) as published by the Insurance Services Office (ISO) (or equivalent). Additional Insured Endorsements shall be provided for three years following project completion.

General Liability insurance shall be written on a form at least as broad as ISO occurrence form CG 0001. Contractor reserves the right, in its sole and subjective discretion, to reject an insurer and require Subcontractor to obtain policies from another insurer.

(c) **Automobile Liability Insurance.** Subcontractor shall carry automobile liability insurance, including coverage for all owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit for each accident for Bodily Injury and Property Damage. If Subcontractor's General Liability insurance is provided by a Commercial General Liability policy then Subcontractor's Automobile Liability insurance policy shall include coverage for Automobile Contractual Liability. This policy must also include Contractor, Owner, and their respective officers, directors and employees as additional insureds.

The Automobile Liability Insurance shall include a Waiver of Subrogation Endorsement in favor of Diablo Contractors, Inc.

(d) **Pollution Liability.** If Subcontractor or their lower-tier subcontractor(s) are required to perform remedial hazardous material operations such as asbestos containing materials, lead paint, contaminated soil, etc., then they must in addition to the above requirements, carry a "Contractor's Pollution Liability" policy with limits not less \$5,000,000 per occurrence and not less than \$5,000,000 Aggregate for Bodily Injury and Property Damage, naming Contractor, Owner, their respective officers, directors and employees as additional insureds. If Subcontractor or their lower-tier subcontractor(s) haul hazardous waste, then they must carry Environmental Automobile Liability Insurance with a \$5,000,000 combined single limit per occurrence for Bodily Injury and Property Damage applicable to all hazardous waste hauling vehicles and include the MCS90 Endorsement. This policy must also include Contractor, Owner, and their respective officers, directors and employees as additional insureds.

- (e) **Professional Liability.** Any Subcontractor performing work that includes any design/build work or services shall obtain a Professional Liability insurance policy. The limits of liability shall be not less than the amounts required of Contractor under the Prime Contract, but in no event less than \$1,000,000 each claim and \$2,000,000 Aggregate. Design/build work includes, without limitation, specialized professionals disciplines such as Architects, Engineers, Pollution Abatement Contractors, Surveyors, etc. or any design/build work with respect to mechanical, electrical, structural, plumbing and fire sprinkler systems. Evidence of coverage in the form of a Certificate of Insurance shall be provided prior to the start of the Project. Subcontractor shall obtain coverage for a minimum of three years following completion of the Project, either through continued purchase of policies for such years or through purchase of an extended reporting period. If Owner or Contractor elects to purchase a project design policy, Subcontractor's policy shall be endorsed to indicate that Subcontractor's policy shall provide coverage once the project design policy has been exhausted.
- (f) **Riggers Liability.** Should Subcontractor's Work involve the moving, lifting, lowering, rigging or hoisting of property or equipment, Subcontractor shall carry Rigger's Liability insurance to insure against physical loss or damage to the property or equipment. The limits of liability shall be not less than \$1,000,000 each claim and \$2,000,000 Aggregate. In addition, an occurrence form Umbrella Liability policy not less than \$5,000,000 each occurrence and \$5,000,000 Aggregate must be provided to supplement the Rigger's Liability insurance coverage. This Umbrella Liability policy must also include Contractor, Owner, and their respective officers, directors and employees as additional insureds and shall include a Waiver of Subrogation Endorsement in favor of Diablo Contractors, Inc.
- (g) **Aircraft Liability.** If Subcontractor (or its subcontractor(s) or supplier(s), regardless of tier) use any owned, leased, chartered or hired aircraft of any type in the performance of this contract, they shall maintain Aircraft Liability insurance in an amount of not less than \$10,000,000 per occurrence, including Passenger Liability. Evidence of coverage in the form of a Certificate of Insurance shall be provided prior to the start of the Project.
- (h) **Protection of Work/Materials and Builders Risk Insurance.** Subcontractor shall obtain and maintain an Installation Floater form of policy; Subcontractor shall pay for all deductibles and waives any right to reimbursement or subrogation with respect to such insurance. Subcontractor shall secure and protect its Work and materials from damage or loss until final acceptance by Owner. The same limit applies as required by Prime Contract.
- (i) **Work Near Railroads.** If Subcontractor (including any lower-tier subcontractor(s) or supplier(s)) performs any Work or conducts any operations within fifty feet of any railroad (including any light rail, fixed rail, or other rail system), Subcontractor shall obtain an endorsement of its Commercial General Liability policy to delete any exclusion, including the "Contractual Liability" exclusion, for Work performed within fifty feet of a railroad. A copy of such endorsement shall be provided to Contractor prior to any Work or operations by Subcontractor within fifty feet of any railroad. The same limit applies as required by Prime Contract.
- (j) **Evidence of Coverage.** Certificates of insurance shall set forth deductible amounts applicable to each policy and all exclusions or limitations not set forth in ISO Commercial General Liability Form CG 0001. Contractor may allow deductible provisions if Subcontractor is willing to increase retentions accordingly. Standard ISO Form CG 0001 exclusions will also be allowed. Allowance of any additional exclusions or covering limiting endorsements is at the discretion of Contractor, and Subcontractor's bid shall be subject to adjustment to compensate for the existence of such exclusions.

Regardless of the allowance of exclusions, coverage limitations or deductibles by Contractor, Subcontractor shall be responsible for any deductible amount or any loss arising out of coverage denials by its insurance carrier(s). The certificate of insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) day's prior written notice to Contractor.

Any acceptance of insurance certificates by Contractor shall in no way limit or relieve Subcontractor of its duties and responsibilities under this Subcontract including the duty to indemnify and hold harmless



Contractor under other provisions thereof. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Subcontractor for liability in excess of such coverage nor shall it preclude Contractor from taking such other actions as is available to it under any other provision of this Subcontract or law.

Subcontractor shall provide, as evidence of coverage, actual Additional Insured Endorsements. Subcontractor shall take such steps as necessary to assure Subcontractor's compliance with its obligations. Should any insurance policy lapse or be canceled during the contract period, Subcontractor shall, prior to the effective expiration or cancellation date, furnish Contractor with evidence of renewal or replacement of the policy. Failure to continuously satisfy insurance requirements as herein provided is a material breach of contract. In the event Subcontractor fails to maintain any insurance coverage required, Contractor may, but is not required to, maintain such coverage to protect Owner and Contractor and charge the expense to Subcontractor or terminate this Subcontract.

Subcontractor shall furnish all required Certificate(s) of Insurance before any Work is commenced hereunder by Subcontractor or lower-tier subcontractor(s). The required insurance shall be subject to the approval of Contractor.

- Certificates shall be issued in duplicate, if necessary.
- "Modified Occurrence" and "Claims Made" forms are NOT ACCEPTABLE for any policies.
- Certificates shall show in the description the operation, project name, job number and location to which they apply.
- Certificates shall list the certificate holder/address as follows:
  - Diablo Contractors, Inc.
  - 7 Crow Canyon Court, Suite 100
  - San Ramon, CA 94583
- Cancellation clause should be no less than 30 days, also the language in cancellation conditions must be crossed out: "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the Company, its agents, or representative."
- Certificates shall be accompanied by Additional Insured Endorsement form with primary wording requirements and Waiver of Subrogation Endorsements in favor of Diablo Contractors, Inc.
- Certificates and all endorsements (if applicable) must be signed by an authorized representative of the carrier.
- All endorsements must include policy number as stated on the Certificate of Insurance
- The above insurance coverage shall be issued by a company satisfactory to Contractor.

Limits of policies must meet those required by Prime Contract in reference. If higher limits or other forms of insurance are required in the Prime Contract or by Owner, Subcontractor will comply with such requirements at no additional cost to Contractor.

The SCHEDULE section of endorsements must state the following: "Diablo Contractors, Inc. and job operation information in this Agreement. Contractor, Owner, and their respective officers, directors, agents, and employees are named as additional insureds." Or, if not made available then, a "blanket" language is acceptable as follows: "As required by written contract or agreement."

Additional Insured Endorsements shall be maintained and furnished to Contractor for three years following completion of the Project. Prefer receipt of Additional Insured Endorsement forms shall be on the CG 20 10 11 85 as published by the Insurance Services Office (ISO). If providing Additional Insured Endorsement form on CG 20 10 10 01, then must accompanied with form CG 20 37 10 01 as published by the ISO. All insurance including, but not limited to General Liability, Automobile Liability, and Workers' Compensation and Employer's Liability insurance shall be provided by a California admitted carrier with an A.M. Best's Rating of A- or better, financial capacity VII or greater, except for State Fund of California for Workers' Compensation coverage; however, in Contractor's sole subjective discretion, Contractor may be willing to accept coverage from a non-California admitted carrier with an A.M. Best rating of A or better, financial capacity of XII or better.

Subcontractor shall not provide any liability coverage under a "wasting" policy or other form of policy that

reduces the amount of coverage, in whole or in part, by amounts expended on defense of claims.

Contractor and Subcontractor waive all rights against each other and against all other subcontractor(s) and Owner for loss or damage to the extent covered by Builder's Risk or any other property or equipment insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance. If the policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a Waiver of Subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

The requirement for carrying insurance hereunder is cumulative and shall not be in derogation of other provisions of this Subcontract. The Subcontract's policies shall stipulate that their insurance will operate as primary insurance and that no other insurance affected by Contractor will be called on to contribute to a loss covered there under.

Subcontractor shall ensure that all tiers of its subcontractor(s), vendor(s) and supplier(s) shall maintain insurance in like form and amounts, shall comply with the additional insured requirements as set forth above, and shall provide Contractor with evidence of insurance prior to commencing Work.

Failure of Contractor to enforce in a timely manner any of the provisions of this Section shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of this Subcontract.

#### **SECTION 14. BONDS.**

Unless waived in writing, Subcontractor shall furnish a Performance Bond and a Payment Bond in an amount equal to the full Subcontract Price. Such bonds shall be on forms satisfactory to Contractor and with a Surety satisfactory to Contractor. No change, alteration or modification in or deviation from this Subcontract, its terms, conditions, plans or specifications, or in the manner, time, or amount of payment as provided herein, whether or not made in the manner herein provided, shall release or exonerate, in whole or in part, any surety on any bond given in connection with this Subcontract. Said bonds shall extend to and cover any extra work or changes performed by Subcontractor pursuant to this Subcontract. Contractor shall directly pay bond premium to surety to a maximum of one and one-half percent (1.5 %) of the Subcontract Price. **Subcontractor's bond rate is X.XX%. (REMOVE IF HIGHER THAN 1.5%)**

#### **SECTION 15. OBLIGATIONS OF SUBCONTRACTOR.**

Subcontractor specifically obligates itself to Contractor in the following respects (and this Subcontract is made upon such express conditions) to wit:

- (a) To protect, hold free and harmless, defend and indemnify Owner and Contractor, their respective members, officers, shareholders, directors, and employees from any and all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, including attorneys' fees and expert witnesses' fees resulting from any alleged or actual infringement or violation of any patent or patent right arising in connection with this Subcontract and anything done thereunder.
- (b) To protect, hold free and harmless, defend and indemnify Contractor, including its members, officers, directors, and employees, from all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, including attorneys' fees and expert witness fees, arising from injury to or death sustained by any person (including Subcontractor's employees) or damage to property of any kind, which injury, death or damage arises out of or is in any way connected with the performance of the Work. Subcontractor's aforesaid indemnity and save harmless agreement shall apply to any acts or omissions, or negligent conduct, whether active or passive, on the part of Contractor or Subcontractor (or their agents, subcontractors or employees); except that said agreement shall not be applicable to injury, death, or damage to property arising from the sole negligence or willful misconduct of Contractor, its officers, agents, servants, or independent contractors (other than Subcontractor) who are directly responsible to Contractor. This indemnification agreement shall extend to claims asserted after termination, for whatever reason, of this Subcontract.
- (c) To pay for all materials, equipment, including repairs thereof and parts, fuel and labor, including sales taxes and other taxes, ordered for or used in the Work by Subcontractor and shall suffer no claim of lien

or statutory withholding notice to be filed or served with respect to the Work and shall present, on demand, to Contractor satisfactory evidence of any such payment. Subcontractor accepts exclusive liability for any and all sales tax or use tax which may be assessed against materials, equipment or labor used in this part of the Work, regardless of whether the rates or application of such taxes may have changed since Subcontractor submitted a bid.

- (d) To warrant and guarantee that the Work and materials covered by this Subcontract shall be in accordance with the Contract Documents and agrees to make good, at its expenses, any defect in materials or workmanship, including the restoration of Work of Contractor or other Subcontractors that has been affected thereby. Subcontractor further agrees that on demand of Contractor, Subcontractor will furnish and pay for a maintenance bond to indemnify Contractor for any loss that may be caused by breach of said warranty and guarantee; and, on demand, Subcontractor shall furnish and pay for all written guarantees and/or maintenance bonds required by the Prime Contract in connection with the Work. Unless and until Contractor is released from responsibility by Owner, Contractor may withhold payment from Subcontractor such sums as, at Contractor discretion, are necessary to protect and indemnify Contractor for any loss that may be caused by breach of said warranty or guarantee.
- (e) To obtain and pay for all permits, licenses, and official inspections made necessary by the Work and to comply with all codes, laws, ordinances, and regulations bearing on the Work and the conduct thereof.
- (f) To be fully and exclusively responsible for, and to pay when due, any and all applicable contributions, allowances or other payments or deductions, however termed, required by Union labor agreements or required by law now or hereafter in force.
- (g) Subcontractor shall indemnify Contractor against, and save it harmless from any and all loss, damage, costs, expenses and attorneys' fees and expert witnesses' fees suffered or incurred on account of any breach of the aforesaid obligations and covenants, and any other terms and conditions of this Subcontract and any dispute arising out of Subcontractor's performance of the Work. Subcontractor's aforesaid indemnity and save harmless agreement shall apply to any acts or omissions, or negligent conduct, whether active or passive, on the part of Contractor or Subcontractor (or their agents, lower-tier subcontractor(s) or employee(s)); except that said agreement shall not be applicable to any loss, damage, costs and expenses arising from the sole negligence or willful misconduct of Contractor, its officers, agents, servants, or independent contractors of Contractor (other than Subcontractor.) This indemnification agreement shall extend to claims asserted after termination, for whatever reason, of this Subcontract. At any time before final settlement or adjudication of any loss, damage, liability, claim, demand, suit or cause of action for which Subcontractor in this Subcontract agrees to indemnify and save harmless Contractor, Contractor may withhold from any payments due or to become due under this Subcontract the reasonable value thereof, as determined solely by Contractor.
- (h) To recognize Contractor as sole representative to Owner. All communication will be done directly with Contractor and any violations will be subject to a \$10,000 fine per occurrence.

## **SECTION 16. TERMINATION.**

Should Subcontractor at any time breach this Subcontract or fail to prosecute the said Work with promptness, diligence and efficiency, or fail to perform any of the requirements hereof, Contractor may after forty-eight (48) hours written notice, proceed as follows:

1. Provide such materials, supplies, equipment and labor as may be necessary to complete said Work, pay for same and deduct the amount so paid from any money then or thereafter due Subcontractor;
2. Withhold payment of any estimate in the event Subcontractor be in default under this Subcontract or any provision hereof, other provisions of this Subcontract notwithstanding; and/or
3. Terminate the employment of Subcontractor, enter upon the premises and take possession, for use in completing the Work, of all the materials, supplies, tools, equipment, and appliances of Subcontractor thereon and complete the Work or have same completed by others and be liable

to Subcontractor for no further payment under the Subcontract until final payment is due and then only if and to the extent that the unpaid balance of the amount to be paid under this Subcontract exceeds the expense of Contractor in finishing the Work.

If the amount expended by Contractor under [Section 16](#) (a)(1) above or the cost of completing the Work under [Section 16](#) (a)(3) above exceeds the unpaid balance of the Subcontract price herein stated, Subcontractor shall pay Contractor such excess within seven (7) calendar days of issuance of invoice.

Should Subcontractor at any time fail to pay for all labor, materials or supplies used by Subcontractor in said Work when due, Contractor at its option may pay for same and charge to Subcontractor or may, at its discretion and with the consent of Subcontractor, pay at any time claims for labor, material, and supplies used in the Work.

Should Subcontractor default in any of the provisions of this Subcontract and should Contractor employ an attorney to enforce any provision hereof, or to collect damages for breach of the Subcontract, or to recover on the bond mentioned in [Section 14](#) above, Subcontractor and its surety agree to pay Contractor such reasonable attorneys' fees as it may expend. As against the obligations here contained, Subcontractor and its surety waive all rights of exoneration.

In its sole discretion and to the extent permitted by law, Contractor may terminate this Subcontract without cause. In the event of such a termination, Subcontractor shall be paid only for its actual out-of-pocket direct costs in connection with the Project to the extent that these have not already been paid for by Contractor. In no event shall the total amount paid to Subcontractor after a termination without cause (including all prior payments) exceed the price as set forth in [Section 5](#) as multiplied by the percentage of completion of Subcontractor's Work. Upon a termination for convenience, Subcontractor shall not be entitled to any lost profits or consequential damages, or any recovery other than that set forth previously in this subsection (e). If Contractor is found to have terminated this Subcontract improperly under any other section, such as subsection (a), then the termination shall be deemed to have been a termination without cause, and Subcontractor's remedies shall be limited accordingly.

The rights and remedies granted to Contractor under this Section and pursuant to the other provisions of this Subcontract shall be cumulative and are not intended to be in lieu of any legal right or remedy which Contractor may have against Subcontractor for breach of this Subcontract or default hereunder, afforded by State or Federal law.

## **SECTION 17. LIENS.**

Subcontractor shall at all times maintain the Project in a good condition, free and clear of all claims, encumbrances or liens, and shall hold harmless and indemnify Contractor and Owner from all claims, encumbrances, and liens growing out of the performance of this Subcontract; and Subcontractor, at its own cost and expense (including attorneys' fees), shall defend all suits to establish such claims, and shall pay any such claim or lien so established. In the event that a lien or claim is made against the Project, Owner, or Contractor, Subcontractor agrees that within forty-eight (48) hours of written notice, to have such claim, lien or encumbrance removed from the job and to place with Owner and Contractor adequate security to insure compliance with this provision.

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

**SECTION 18. USE OR OCCUPANCY BY CONTRACTOR.**

Whenever it may be useful or necessary to Contractor to do so, Contractor may occupy and use any portion of the Work which has been either partially or fully completed by Subcontractor before final inspection and acceptance thereof by Owner, but such use or occupancy shall not relieve Subcontractor of its guarantee of the Work, material, and equipment nor of its obligation to make good, at its own expense, any defect in materials, equipment and workmanship which may occur or develop prior to Contractor's release from responsibility by Owner. Provided, however, Subcontractor shall not be responsible for the maintenance of such portion of the Work as may be used or occupied by Contractor, nor for any damage thereto that is due to or caused by the sole negligence of Contractor during such period of use. Subcontractor agrees further that if it shall cause any stains, blemishes, imperfections, marks or damage of any sort whatsoever, whether to its Work or to the Work of Contractor or to the work of another subcontractor, it will immediately remedy the damage so caused to the satisfaction of Contractor. Subcontractor further agrees when so required by Contractor to do any and all cutting and patching necessary in connection with Subcontractor's portion of the Work and agrees further that such cutting and patching shall match other Work performed under the Prime Contract.

**SECTION 19. DAMAGE TO OTHER WORK.**

The Work provided for in this Subcontract constitutes only a part of the Work being performed for Owner by Contractor and other subcontractors. Subcontractor, therefore, agrees to perform the Work called for in this Subcontract in such a manner that it will not injure or damage any other Work performed by Contractor or any other subcontractor, and further agrees to pay Contractor for any damage that may be caused to such other Work by Subcontractor or by its agents or employees. If the performance of any item of Work by Subcontractor is related to or dependent upon any other item of Work performed or materials furnished by others, Subcontractor warrants, by undertaking to perform his Work that such other items are satisfactory and acceptable, and waives all claims against Contractor for additional compensation or for damages resulting from any defects therein.

**SECTION 20. INDEPENDENT CONTRACTOR.**

Subcontractor represents that it is, or prior to the start of Work hereunder that it will become, an Independent Contractor and an employing unit subject, as an employer, to all applicable Unemployment Compensation statutes and Federal and State statutes including Workers' Compensation statutes relating to payroll retention and contributions so as to relieve Contractor of any responsibility or liability for treating Subcontractor's employees as employees of Contractor for the purpose of keeping records, making reports, and payment of Unemployment Compensation taxes or contributions or payroll contributions and retentions, and payment of Workers' Compensation Insurances. Subcontractor agrees to indemnify, defend and hold Contractor harmless and reimburse it for any expense or liability incurred under said statutes in connection with employees of Subcontractor, including a sum equal to benefits paid to those who were Subcontractor's employees, where such benefit payments are charged to Contractor under any Merit Plan or to its individual Reserve Account pursuant to any State Unemployment Compensation statute or other statute, regulation or requirement, including Workers' Compensation statutes.

Subcontractor further agrees as regards (a) the production, purchase and sale, furnishing and delivering, pricing and use or consumption of materials, supplies and equipment, (b) the hire, tenure or conditions of employment of employees and their hours of work and rates of and the payment of their wages, and (c) the keeping of records, making of reports, and the payment, collection, and deduction of Federal, State, and Municipal taxes and contributions, that Subcontractor will keep and have available all necessary records and make all payments, reports, collections and deductions, and otherwise do any and all things so as to fully comply with all Federal, State, and Municipal laws, ordinances and regulations in regard to any and all said matters insofar as they affect or involve Subcontractor's performance of this Subcontract, all so as to fully relieve Contractor from and protect it against any and all responsibility or liability therefore or in regard thereto.

**SECTION 21. OWNER'S REPRESENTATIVE.**

The words "Owner's Representative" as used herein refer to the person appointed by Owner to supervise the Work in behalf of Owner.



## **SECTION 22. ASSIGNMENT AND SUBLETTING.**

Any assignment, subletting or delegation, by operation of law or otherwise, in whole or in part, by Subcontractor of this Subcontract, of the Work to be performed or of any claims arising hereunder without the prior written consent of Contractor shall be void. Contractor shall not recognize or be bound by any assignment of any right to payment earned or to be earned by performance hereunder by Subcontractor unless and until Contractor shall receive written notice, which identifies the proposed assignee and the rights to be assigned. Any assignment hereunder shall be subject to, and Contractor reserves all rights and remedies possessed by or available to Contractor by law or under this Subcontract as against Subcontractor, its sureties and assigns, including, without limitation, rights of set-off, to retain monies, to amend or modify this Subcontract, and to assert all other defenses and claims whether or not arising under this Subcontract. The making of any assignment by Subcontractor or any consent thereto by Contractor shall in no event relieve Subcontractor or its sureties hereunder, of any of their obligations, duties, responsibilities or liabilities under this Subcontract.

Any subletting hereunder shall be on the express condition that the sub-subcontract shall be subject to the terms and conditions of this Subcontract and Subcontractor shall incorporate all terms and conditions of this Subcontract in any such sub-subcontract.

## **SECTION 23. COMPLIANCE WITH LAWS, PERMITS, SAFETY PROGRAMS AND CALOSHA.**

Subcontractor shall at its sole expense obtain and pay all necessary permits and licenses pertaining to the Work and shall comply with all Federal, State, Municipal, and Local laws, OSHA, ordinances, codes, rules, regulations, standards, and requirements including but not limited to those relating to state contractor license requirements, safety, discrimination in employment, fair employment practices or equal employment opportunity, applicable local, disadvantaged, or minority preference or hiring programs, and with the requirements of the American Insurance Association whether or not provided for by the plans, specifications, general conditions or other Contract Documents without additional charge or expense to Contractor. Subcontractor agrees to hold harmless and indemnify Contractor from and against any and all fees, including attorneys' fees, occasioned directly or indirectly by Subcontractor's failure to comply with any said law, OSHA, ordinances, rules, regulations, standards, orders, notices or requirements or to correct said violations.

At its sole expense, Subcontractor shall institute and maintain a safety program to the extent such a program is required by applicable law and OSHA requirements. Subcontractor at its sole expense shall fully cooperate with and adhere to any safety program or requirements of Contractor, whether such program is a stand-alone program or is a program modified to conform to Owner's safety program. All personnel of Subcontractor, its subcontractors and suppliers are required when appropriate to wear hard hats, safety vests, and any other necessary safety garments or devices, while visiting or working at a construction site in any way related to this Subcontract. To the greatest extent permitted by law, Subcontractor agrees to defend and indemnify Contractor, and any of its directors, partners, officers, employees, affiliates, subsidiaries, successors and assigns, from any OSHA or other regulatory penalties, fines, sanctions, assessments, or claims, including any increased penalties, fines, sanctions, assessment, or claims that result from Contractor's prior record or history. The foregoing defense and indemnity obligation shall apply notwithstanding negligence or fault on the part of the persons to be indemnified, to the greatest extent permitted by Section 2782 of the Civil Code. Failure to comply with safety requirements may result in termination under [Section 16](#) of this Subcontract.

Subcontractor shall comply fully with all laws, orders, citations, rules, regulations, standards, and statutes with respect to OSHA, Occupational Health and Safety Administration, accident prevention, safety equipment and practices, including the accident prevention and safety program of Owner and Contractor. Subcontractor shall conduct inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for providing a safe place to work for its employees and for employees of its lower-tier subcontractor(s) and supplier(s) of material and equipment, for adequacy of and required use of all safety equipment and for full compliance with the aforesaid laws, orders, citations, rules, regulations, standards, and statutes. Subcontractor shall inform Contractor of all reports of injury or claims by its employees or third parties.

Subcontractor shall provide material safety data sheets and safety program (this must include a program on Hazardous Communication) to Contractor prior to performing any Work. Subcontractor shall provide evidence that workers are trained in the use of the materials they will use for the Work.

Subcontractor shall indemnify, defend and save harmless Contractor, its officers, directors, agents and

employees from claims, penalties, damages, liability, loss, costs, and expenses, including attorneys' fees, arising from injury or death resulting there from, caused or alleged to have been caused by any violation or infraction by Contractor or Subcontractor of any law, order, citation, rule, regulations, standard or statutes in any way relating to the occupational health or safety of employees, including but not limited to the use of Contractor's or other's equipment, hoist, elevators, or scaffolds, unless caused by the sole negligence or willful misconduct of Contractor.

Subcontractor shall be responsible for and shall defend Contractor against any citations issued against Contractor and shall indemnify Contractor from any fines, penalties, or damages (collectively "fines") assessed against Contractor by the Occupational Safety and Health Administration or any similar public entity (collectively "OSHA") on account of a Subcontractor violation of one or more occupational safety and health standards, California Health and Safety Code sections, California Occupational Safety and Health Regulations, or any other safety orders, special orders and/or regulations which OSHA has cited the Subcontractor. Subcontractor shall have the right to appeal such citations and/or fines at its sole expense. Contractor shall cooperate with Subcontractor in its appeal of any citations and/or fines. In the event Subcontractor either fails to timely appeal the citations and/or fines or the citations and/or fines are upheld after an appeal hearing, Subcontractor shall promptly pay the Contractor the amount of the fines.

Subcontractor must comply with the Subcontractor's Safety Procedures which is incorporated herein by reference as though fully set forth herein.

Subcontractor will comply with all provisions of "Proposition 65" (California State Drinking Water Act of 1986, California statutes) which shall include, but not be limited to, posting with the prior written submission to, at the time submittals are made and with the written permission of Contractor, any required notices. Subcontractor shall not use or bring on to the project any of the chemicals or compounds listed by the California State Attorney General from time to time under the provisions of Proposition 65 (the List) without delivering a clear written notice, at the time submittals are written, to Contractor and Owner informing them of the dates and locations where such items shall be delivered, used, or stored. Notwithstanding anything to the contrary contained or indicated herein or in any of the Contract Documents or purchase orders or anywhere else, Subcontractor shall not incorporate into the Work, or allow to be incorporated into the Work, any of the items on such list without specific advanced written notice having first been delivered to Contractor prior to Subcontractor becoming actually contractually obligated to purchase or take delivery thereof from its suppliers, and then only to the extent Contractor gives clear written approval of the uses proposed in the notice. The notice shall contain clear descriptions of the type, amount, uses, locations and content of such items incorporated into or used in said Work. Subcontractor expressly acknowledges and agrees that it shall indemnify and hold harmless Contractor and Owner from any and all claims, demands, suits, or liability of whatsoever nature by reason of the use or possession of the items set forth on the list on the Project.

In order to secure a safe work environment on Contractor's jobsites or premises, Subcontractor and lower-tier subcontractor(s) shall authorize Contractor to take disciplinary and enforcement actions upon their employee(s) if there is any suspect or indication of drug or alcohol abuse. Subcontractor shall provide to Contractor a copy of its Substance Abuse policy that is more stringent than or at least parallel to Contractor's policy.

#### **SECTION 24. CLAIMS.**

If any dispute arises between Contractor and Subcontractor involving performance of this Work or any alleged change in the Work, Subcontractor shall timely perform the disputed Work and shall give written notice of a claim for additional compensation for the Work within ten (10) days after commencement of the disputed Work. Subcontractor's failure to give written notice within ten (10) days constitutes an agreement by Subcontractor that it will receive no extra compensation for the disputed Work.

Notwithstanding the foregoing, if the Prime Contract contains notice provisions that are more stringent than those contained in this Subcontract, then Subcontractor shall comply with the provisions of the Prime Contract and, in addition, shall give Contractor sufficient notice to comply with the provisions of the Prime Contract.

With regard to claims arising from differing conditions, changes directed by Owner or others, or which otherwise are not solely the fault of Contractor, Subcontractor's sole and exclusive remedy shall be a claim for that portion of the additional compensation received by Contractor from Owner on account of such matters as is equitable



under all of the circumstances. Subcontractor agrees to be bound by Owner's determination and by the determination in any proceeding in which Owner is involved, regardless of whether Subcontractor was a party to such proceeding. Subcontractor and Contractor shall cooperate in the prosecution of such claims, and Subcontractor shall pay a pro rata share of the costs and expenses incurred in connection therewith, to the extent that said claim is made by Contractor on behalf of Subcontractor. Nothing herein shall require Contractor to pursue such a claim on behalf of Subcontractor. Payment of any and all claims shall be subject to the terms of [Section 5](#) of this Subcontract.

## **SECTION 25. LABOR LAWS.**

Subcontractor agrees to be bound and comply with all applicable labor laws, regulations and standards issued or promulgated by a Federal, State, Local, or other government authority having jurisdiction over the Project. In the event that there is a disagreement among agencies in regards to the prevailing wage, the more stringent rule or law prevails. Subcontractor further agrees to be bound by and comply with all applicable Fair Employment Practices and Equal Opportunity Provisions and Regulations of Federal, State, or other governmental authority having jurisdiction over the Project. Subcontractor acknowledges that it has read said laws, regulations, standards and conditions and is familiar with the terms thereof. Subcontractor agrees that its lower-tier subcontractor(s) shall observe and be bound by said conditions to the same extent as herein required of Subcontractor. Where required by either the law or Contract Documents, Subcontractor shall provide Contractor with certified payroll reports for its inspection and records. If Contractor discovers that Subcontractor has violated any prevailing wage requirements, Contractor shall retain out of any payments due or to become due Subcontractor an amount sufficient to completely protect it from any and all loss, damages or expenses there from until the situation has been remedied by Subcontractor to the satisfaction of Contractor. Subcontractor shall be responsible for and shall defend Contractor against any claims, penalties and/or assessments made against Contractor and shall indemnify Contractor from any fines, penalties or damages (collectively "fines") assessed against Contractor by any Federal, State or Local agency or any similar public entity on account of a Subcontractor violation of one or more applicable Fair Employment Practices and Equal Opportunity Provisions and Regulations of Federal, State or other governmental authority having jurisdiction over the Project, and/or prevailing wage regulations. Subcontractor shall have the right to appeal any such claims, penalties, assessments and/or fines at its sole expense. Contractor shall cooperate with Subcontractor in its appeal of any claims, penalties, assessments, and/or fines. In the event Subcontractor either fails to timely appeal the claims, penalties, assessments and/or fines or they are upheld after an appeal hearing, Subcontractor shall promptly pay the Contractor the amount of the fines.

Subcontractor shall furnish sworn affidavit under penalty of perjury in accordance with the form provided by Diablo Contractors, Inc., reference Exhibit "C", which shall state that Subcontractor complies with the California Prevailing Wage Law, California Labor Code Sections 1720 through 1815, and the regulations defined in the Union Master Labor Agreement(s) (MLA). Upon discovery of any deficiencies or errors to the Certified Payroll Reports or from audits (Union, Owner, or any authorized entities), Subcontractor shall comply without additional payment by Contractor at any given time and/or after project completion. Subcontractor is, also, held responsible and liable to Subcontractor's lower-tiered subcontractor(s) as required of Subcontractor to Contractor. Sworn affidavit must be submitted to Contractor before final payment is released.

Labor Codes: Sections 1720-1743

<http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=27830116515+0+0+0&WAISaction=retrieve>

Labor Codes: Sections 1770-1781

<http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=27830116515+2+0+0&WAISaction=retrieve>

Labor Codes: Sections 1810-1815

<http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=27873821410+0+0+0&WAISaction=retrieve>

Subcontractor, as a part of the obligations assumed by it in this Subcontract, accepts exclusive liability for all taxes and contributions required of Contractor or Subcontractor by the Federal Social Security Act and the Unemployment Compensation Law or similar law in any state with respect to the employees of Subcontractor in the performance of the Work herein provided for, and agrees to furnish Contractor with suitable written evidence that it has been authorized to accept such liability. Subcontractor further agrees that if it cannot furnish said evidence or should fail to do so prior to beginning its Work, Contractor may, at its option, pay or reserve for

payment said taxes and contributions and deduct the amount paid or reserved from payments due, or to become due, to Subcontractor. Subcontractor agrees to hold harmless, defend and indemnify Contractor against all liability in respect to said employees under said act or law.

Subcontractor hereby acknowledges that it is thoroughly familiar with all Disadvantaged Business Enterprise (“DBE”)/Minority Business Enterprise (“MBE”)/Women’s Business Enterprise (“WBE”)/Disabled Veterans Business Enterprise (“DVBE”)/Underutilized Disadvantaged Business Enterprise (“UDBE”)/Small Business Enterprise (“SBE”)/Local Business Enterprise (“LBE”) requirements pertaining to the Project. If the Subcontractor claims status as a DBE/MBE/WBE/DVBE/UDBE/SBE/LBE, the Subcontractor shall take all steps necessary and shall make all necessary records available to Contractor and the Owner to assure that Subcontractor is in compliance with such requirements. In the event that any lower-tier subcontractor(s) or supplier(s) of the Subcontractor is designated as or is required to be a DBE/MBE/WBE/DVBE/UDBE/SBE/LBE, Subcontractor agrees to be responsible for insuring that said lower-tier subcontractor(s) or supplier(s) meet all applicable requirements. Subcontractor acknowledges that Contractor is relying upon Subcontractor’s representations regarding the validity of Subcontractor’s status, if any, as a DBE/MBE/WBE/DVBE/UDBE/SBE/LBE, and that misrepresentation of the status of Subcontractor or any of its lower-tier subcontractor(s) or material supplier(s) is a material breach of the Subcontract and grounds for immediate termination. In the event of termination, as the result of material misrepresentation of the status of the Subcontractor as a DBE/MBE/WBE/DVBE/UDBE/SBE/LBE, Subcontractor shall not be entitled to any compensation not already paid. Subcontractor shall be responsible for and shall defend Contractor against any claims, penalties, and/or assessments made against Contractor and shall indemnify Contractor from any fines, penalties or damages (collectively “fines”) assessed against Contractor by any Federal, State or Local agency or any similar public entity on account of a Subcontractor violation of one or more DBE/MBE/WBE/DVBE/UDBE/SBE/LBE regulations. Subcontractor shall have the right to appeal any such claims, penalties, assessments and/or fines at its sole expense. Contractor shall cooperate with Subcontractor in its appeal of any claims, penalties, assessments, and/or fines. In the event Subcontractor either fails to timely appeal the claims, penalties, assessments and/or fines or they are upheld after an appeal hearing, Subcontractor shall promptly pay the Contractor the amount of the fines.

## **SECTION 26. DRAWINGS, PLANS, SPECIFICATIONS.**

When drawings, plans, specifications, samples, or detail work shall be required by the Subcontract, or shall otherwise be required by Contractor to be submitted by Subcontractor, whether on account of Work required to be done hereunder or on account of changes in Work, Subcontractor agrees to supply the same promptly to Contractor for approval by Owner. If any such drawings, plans, specifications, samples, or detail work as submitted by Subcontractor, whether or not they shall be approved by Owner, deviate from or are inconsistent with the Contract Documents, and in the further event that any such deviations or inconsistencies shall cause Contractor to suffer any damage or incur any cost or expense because of delays or extra work or otherwise, Subcontractor agrees to reimburse Contractor therefore. If any such damage, cost or expense be imposed upon Contractor, Contractor may, at its option, withhold from Subcontractor any payments due or to become due to Subcontractor an amount sufficient fully to reimburse Contractor therefore. The provisions of this paragraph are cumulative of the remedies provided Contractor by [Section 4](#) of this Subcontract.

## **SECTION 27. SETTING OF STAKES.**

Contractor will set such stakes as Contractor determines to be necessary to establish the lines and grades for the completion of the Work. Subcontractor shall give Contractor not less than two working days' written notice in advance of the commencement of the operations of Subcontractor, which required such stakes. Subcontractor shall carefully preserve such stakes. If such stakes are destroyed or damaged, they will be replaced at Contractor’s earliest convenience. Subcontractor will be charged with the cost of such replacement if, in Contractor’s judgment, the stakes were negligently or willfully destroyed or damaged by Subcontractor’s operations or were destroyed, damaged or removed by third parties during a delay by Subcontractor in the commencement of its operations.

## **SECTION 28. NOTICES.**

Any notice, where required by the terms of this Subcontract, shall be in writing and may be served by personal delivery or by mail, email, facsimile, or any standard form of telegraphic communication.

Personal delivery is complete when the notice is delivered to Subcontractor or its representative at the Project or at the office address of Subcontractor appearing in the Subcontract. Subcontractor shall at all times during its Work on this Project have a representative authorized to receive written notices present on the Project site during all normal working hours. In the absence of such a representative, personal delivery is complete when the notice is delivered to any of Subcontractor's supervisors or workmen, or in their absence, left in a conspicuous place on the Project site in the area of Subcontractor's Work. If notice is mailed to the Subcontractor, it shall be deemed received three (3) days from the date the notice, with postage pre-paid, is deposited in the United States Mail System.

## **SECTION 29. LABOR AGREEMENTS.**

Subcontractor, to the extent permissible under Federal and any applicable State laws, shall comply with, observe, and be bound by all the terms and conditions of any labor agreements executed by Contractor or on Contractor's behalf, specifically including the terms and conditions of such agreements providing (a) for the assignment of Work or the settlement of jurisdictional disputes through the Rules, Regulations and Procedures of the National Joint Board for Settlement of Jurisdictional Disputes in the Building and Construction Industry or any other agreed method for the determination of Work assignments or the settlement of jurisdictional disputes, (b) for the adjustment of any other disputes or grievances, (c) for hiring and union-security and (d) for the making of payments into or under health and welfare or other fringe benefit funds or plans, to the extent that the terms and conditions of such agreements can legally be applied to the Work to be done hereunder. Subcontractor agrees that if any portion of such Work is further subcontracted, such lower-tier subcontractor shall be bound by and observe the terms and conditions of such agreements to the same extent as is herein required of Subcontractor, and that any express provision imposing such obligations upon the lower-tier subcontractor will indemnify, defend and save Contractor harmless from and against any liability, claim, loss, damage or cause of action resulting in any way, directly or indirectly, from its failure to comply with the requirements of this paragraph.

Subcontractor acknowledges that Contractor is a signatory to one or more collective bargaining agreement(s). Prior to the start of any Work, Subcontractor shall contact Contractor and verify the collective bargaining agreements that will be applicable to the Project. Subcontractor and all lower-tier subcontractor(s) shall perform all Work covered by Contractor's collective bargaining agreement(s) applicable to the Project under the terms of said agreement(s) and shall become signatory to the applicable agreement(s) as a condition of performing Work. In addition, Subcontractor and its subcontractor(s), supplier(s), vendor(s), and employee(s) shall comply with the terms of any Project Labor Agreement that may apply to the Project. In the event that there is a disagreement among agencies in regards to the prevailing wage, the more stringent rule or law prevails. Failure to perform in accordance with this provision shall constitute a material breach of contract. The price to be paid under this Subcontract shall be deemed full compensation for compliance with this Section, and no further compensation shall be afforded for such compliance.

See [EXHIBIT "B" for labor agreement requirements.](#)

## **SECTION 30. DEFAULT.**

If Subcontractor at any time refuses or neglects to supply enough properly skilled workers and proper materials, or fails to properly and diligently prosecute the Work, or fails to make prompt payment to its worker(s), lower-tier subcontractor(s), or supplier(s) or becomes delinquent with respect to contributions or payments required to be made to any health and welfare, pension, vacation, apprenticeship or other employee benefit program or trust, or fails to provide adequate assurance pursuant to [Section 8](#) or is otherwise guilty of a material breach of a provision of the Subcontract, and fails within forty-eight (48) hours after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then Contractor, without prejudice to any rights or remedies, shall have to right to any or all of the following remedies:

- (a) supply such number of workers and quantity of materials, equipment (including use of Subcontractor's equipment) and other facilities as Contractor deems necessary for the completion of Subcontractor's Work, or any part thereof which Subcontractor has failed to complete or perform, and charge the cost thereof to Subcontractor, who shall be liable for the payment of same including reasonable overhead, profit, and actual attorneys' fees incurred as a result of Subcontractor's failure of performance;
- (b) contract with one or more additional contractors to perform such part of Subcontractor's Work as

Contractor shall determine will provide the most expeditious completion of the total Work and charge the cost thereof to Subcontractor including reasonable overhead, profit, and actual attorneys' fees incurred as a result of Subcontractor's failure of performance;

- (c) withhold payment of any monies due Subcontractor pending corrective action to the extent required by and to the satisfaction of Contractor.

In the event of an emergency affecting the safety of persons or property, Contractor may proceed as above without notice to Subcontractor.

If Subcontractor fails to commence and satisfactorily continue correction of a default within forty-eight (48) hours after receipt by Subcontractor of the notice issued above, then Contractor may terminate Subcontractor's right to perform under the Subcontract and use any materials, implements, equipment, appliances or tools furnished by or belonging to Subcontractor to complete Subcontractor's Work without any further compensation to Subcontractor for such use. In such case, Subcontractor shall be entitled to no further payment until the balance of Subcontractor's Work has been completed. At that time all of the costs incurred by Contractor in performing Subcontractor's Work, including reasonable overhead, profit, and actual attorneys' fees incurred shall be deducted from any monies due or to become due to Subcontractor. Subcontractor shall be liable for the payment of any amount by which such expenses may exceed the unpaid balance of the Subcontract Price.

### **SECTION 31. SEVERABILITY.**

To the best knowledge and belief of the parties, this Subcontract now contains no provision that is contrary to Federal or to State law or any ruling or regulation of a Federal or State agency. Should, however, any provision of this Subcontract at any time during its term be in conflict with any such law, ruling or regulation, then such provision shall continue in effect only to the extent permitted. If any provision of this Subcontract is thus held inoperative, the remaining provisions of this Subcontract shall nevertheless remain in full force and effect to the extent permitted by law.

### **SECTION 32. CLEAN UP.**

Subcontractor shall remove from the premises, as often as directed by Contractor, all rubbish and surplus material which may accumulate from the prosecution of said Work and should Subcontractor fail to do so, Contractor may, at its option, remove same without further notice at Subcontractor's expense.

Upon termination or completion of its Work, Subcontractor agrees to remove all unused materials and all equipment, utilities, and facilities furnished by Subcontractor, to clean up all refuse and debris, and to leave the premises clean, orderly and in good condition.

### **SECTION 33. NON-WAIVER.**

Waiver by Contractor of any breach hereof by Subcontractor shall not constitute a waiver of any subsequent breach of the same or any other provision hereof. If any provision of this Subcontract, or any part thereof, shall at any time be held to be invalid, in whole or in part, under any applicable Federal, State, Municipal, or other law, ruling or regulation, then such provision shall remain in effect to the extent permitted, and the remaining provisions hereof shall remain in full force and effect.

### **SECTION 34. ENTIRE SUBCONTRACT.**

This Subcontract along with any documents incorporated by reference herein contains all covenants, stipulations, and conditions agreed upon by the parties hereto. No agent or representative of either party has authority to make, and the parties shall not be liable for, any statement, representation, promise or agreement not set forth herein. Any changes, amendments or modifications of this Subcontract must be made in writing and signed by both parties. Words used in this Subcontract in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular.

If any term of this Subcontract is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the Subcontract's terms shall remain in full force and effect and shall not be affected.

**SECTION 35. APPLICABLE LAW.**

The definitions used, interpretation of this Subcontract, and the rights of all parties hereunder, shall be construed under and governed by the laws of the State of California. The parties agree that, pursuant [Section 2](#) above, the Subcontract was signed first by Subcontractor and the signed second and after the first signing by Contractor at its office in San Ramon, California, that said office is the principal place of business of Contractor, and that they therefore agree the only place of venue to enforce any obligation arising under the Subcontract shall be Contra Costa County, California.

**SECTION 36. BINDING ON SUCCESSORS.**

Subject to the terms of [Section 22](#) above. *The terms and conditions of this Subcontract shall inure to and be binding upon the parties hereto, and their successors, assigns, executors, administrators, agents and legal representatives.*

**SECTION 37. SECTION TITLES.**

Section Titles in the Subcontract are for convenience only and shall not be construed to modify, expand or limit the provisions of the Section to which they refer.

**Additional Provisions:** (If space not adequate, attach additional pages, which by this reference are made a part of this Subcontract.)

ATTACHMENTS ARE HEREBY MADE A PART OF THIS SUBCONTRACT.

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

**CONTRACTORS' STATE LICENSE BOARD  
P. O. BOX 26000  
SACRAMENTO, CA 95826**

**OR**

**9821 BUSINESS PARK DRIVE  
SACRAMENTO, CA 95827**

IN WITNESS WHEREOF, the parties hereto have executed this Subcontract by their proper officers or duly authorized agents.

**Contractor:**

**Subcontractor:**

**Diablo Contractors, Inc.**

**XYZ**

By \_\_\_\_\_

By \_\_\_\_\_

Print Name Arthur D. Brandt

Print Name \_\_\_\_\_

Title President

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Address 7 Crow Canyon Court, Ste # 100

Address \_\_\_\_\_

San Ramon, CA 94583

Telephone (925) 552-8250

Telephone \_\_\_\_\_

Fax (925) 552-8254

Fax \_\_\_\_\_

Contractors' License Number  
732283

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Contractors' License Number  
  
(if required)

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