



7 Crow Canyon Court  
 Suite 100  
 San Ramon, California 94583  
 (925) 552-8250  
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# Diablo Contractors, Inc.

## Purchase Order

Vendor: **XYZ, INC.**  
 1577 First Street  
 Coachella, CA 92236  
 (877) 762-8462  
 (866) 420-1708(fax)

Contractor's Job No. **XX**  
 Owner's Contract- **XX-XXXXX**

Purchase Order Number	<b>1</b>
Revision Number	<b>0</b>
Rider Number	<b>0</b>
Supplemental Number	<b>0</b>

This "Purchase Order" ("PO") or "Agreement" is made and entered into this 00th day of Month, 2012 by and between: **Diablo Contractors, Inc.** ("Contractor") and **XYZ, INC.** ("Vendor").

Contractor has entered or is about to enter into Contract No. **XX-XXXXX** with California Department of Transportation ("Owner") for the **XXXXX Improvements**, which contract, together with all addenda, supplements, amendments, changes or additions thereto is called the "Prime Contract."

Contractor and Vendor agree as follows:

- SCOPE OF WORK AND/OR MATERIAL TO BE PROVIDED (hereinafter "Work" or "Material")**, Vendor shall furnish all labor, material, supplies and equipment, and perform all work necessary to complete the following at the price(s) set forth opposite each item within the dates stated below.

<u>Bid Item</u>	<u>Description</u>	<u>Unit</u>	<u>Qty</u>	<u>Unit Cost</u>	<u>Total</u>	<u>Start/Delivery Date</u>
1	Field Technical Support & Training	LS	1.00	\$ 20,000.00	\$ 20,000.00	8/10/2010
CA sales tax included						
Shipping/handling included						
Total					\$ 20,000.00	

- Contract items:
  - Approximate amount of material contract (based on estimated quantity);
  - Work shall be on as needed basis;
  - Schedule shall be determined by Contractor and agreed by Vendor;
- Include:
  -
- Exclude:
  -
- Vendor:
  -
- Contractor:
  -
- Other terms and conditions:
  -

Contractor and Vendor agree that Vendor shall perform the Work, as described above, in accordance with the terms and conditions set forth in the Prime Contract. It is the responsibility of the Vendor to acknowledge, understand and comply with the Prime Contract, that is, if applicable, to the Work that is to be performed by the Vendor.

Vendor 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 Vendor submitted a bid. At any time any tax issues that may emerge will be the sole responsibility of the Vendor and the fees, penalties, or tax amount shall not be charged in addition to the Total Price as listed above.

Vendor acknowledges that it has read the Prime Contract and all plans and specifications, and is familiar therewith and agrees to comply with and perform all provisions thereof applicable to Vendor.

It is agreed that the materials and equipment to be furnished and Work to be done by Vendor will be as described in this Section. Regardless of the conditions of the Prime Contract, the Vendor 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 Agreement. If materials and equipment are to be furnished but are not required to be installed under this Agreement, such materials and equipment are to be delivered F.O.B. jobsite.

Equipment used by the Vendor and/or their lower-tier vendor(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 Vendor. 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.

Vendor and all lower-tier vendor(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 Vendor.

If applicable, date is noted, the following Exhibits are an integral part of this PO:

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.

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<b>Ship to</b>	<u>Jobsite</u>	<b>Via</b>	<u>Project Manager:</u>
<b>Deliver to</b>	<u>N/A</u>	<b>With freight allowed to</b>	<u></u>
<b>Mail invoices to</b>	<u>7 Crow Canyon Court, Ste 100, San Ramon, CA 94583</u>		

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2. **COMPLETE AGREEMENT.** This PO consists of this Agreement, and the applicable terms, conditions, plans and specifications of the Prime Contract. Vendor's acceptance is limited to the terms and conditions contained in this PO. Commencing performance to making deliveries or any acknowledgment of this Agreement by Vendor shall constitute an acceptance of the terms of the Agreement by Vendor. Contractor is to be bound only by the terms and conditions of this PO notwithstanding any proposals, terms or conditions additional to or different from those accompanying Vendor's performance or acknowledgement.

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, Vendor's bid form or proposal. All prior or contemporaneous agreements to be included in this Agreement 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 Agreement shall be valid unless reduced to writing and signed by both parties.

Vendor hereunder is 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 the Contract Documents.

This Agreement, 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 Agreement conflicts with a provision of the Prime Contract and the Contract Documents, the provision imposing the greater duty or obligation on the Vendor shall govern. Any oral or written agreement between Contractor and Vendor which conflicts or is inconsistent with this Agreement, or any supplemental agreements hereto, shall forthwith terminate. This Agreement prevails over any conflicts that arise between Contractor and Vendor.

Contractor shall have the same rights and privileges as against Vendor herein as Owner in the Prime Contract has against Contractor.

3. **CHANGES AND RIGHT TO TERMINATE.** Changes will be binding on Contractor only if in writing and signed by the Contractor.

a. Contractor, for its convenience may by written change order make any change, including, without limitation, additions or deductions in quantities ordered, changes in the specifications or drawings, changes in the time of delivery, or termination; Contractor may terminate or suspend at its convenience all or any portion of this order not shipped as of the date of termination or suspension of the order. In the event of any change or termination, there shall be an equitable price adjustment by Contractor. If Vendor maintains that Contractor's adjustment is not equitable, the price change shall be negotiated. In the event the parties cannot agree, the final determination shall be made in accordance with the dispute resolution provision of this Agreement. However, if unit prices have been designated as to materials maintained in the normal course of Vendor's business as standard stock, such unit prices shall control all price adjustments for quantity changes. No change or termination shall relieve Contractor or Vendor of any of their obligations as to any material shipped prior to Vendor's receipt of the change, termination or suspension order. Any claim for adjustment by Vendor hereunder must be asserted in writing within the (10) days from the dated the change or termination is ordered.

b. If the Owner shall order the Contractor to change, adjust, substitute, add to, delete from, suspend, or terminate the work included in this PO or Agreement, Vendor shall comply with Owner's order and the price or time of performance hereunder shall only be adjusted as allowed by Owner. If requested by Owner, Vendor agrees to be bound to and by the dispute resolution procedure of the Prime Contract.

c. In the event of a termination for default, Contractor may, in addition to all other rights and remedies, purchase substitute items or services elsewhere and hold Vendor liable for any and all excess costs incurred, including attorneys' fees and experts' and consultants' fees actually incurred.

4. **PAYMENTS.** The price herein specified shall, unless otherwise expressly stated within the terms of this Agreement, include all taxes and duties of any kind levied by Federal, State, municipal, or other governmental authorities, which either party is required to pay with respect to the production, sale, use or shipment of the material covered by this agreement, and all charges for packing, loading unloading and shipping. If transportation costs are designated as part of the cost to Contractor, only actual transportation costs shall be included. Damage to goods not packed to insure proper protection shall be charged to Vendor.

Vendor's invoice shall set forth the items delivered to the project site, the date of delivery, the unit cost and total costs of the items invoiced. Vendor's right to payment is subject to the same payment provision enforced upon Contractor by the terms of the Prime Contract. The obligation of Contractor to make any payment hereunder is subject to the condition precedent of payment by Owner to Contractor, except payment withheld by the culpable acts or omission of Contractor. In the event Owner does not make payment for reasons not arising out of Contractor's culpable acts, Vendor agrees its sole remedy shall be against the Owner of the project.

Contractor may deduct from any amounts due or to become due to Vendor any sum or sums owing by Vendor to Contractor whether or not arising under this Agreement and in the event of any breach by Vendor of any terms or conditions of this Agreement, 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 Vendor's performance of this Agreement, Contractor shall have the right, but is not required, to retain out of any payments due or to become due to Vendor 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 Agreement to the satisfaction of Contractor.

Vendor shall furnish, if requested by Contractor, sworn affidavits 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 Vendor with respect to labor and materials furnished or to be furnished under this Agreement.

Contractor reserves the right to make payment by joint check or by direct check to Vendor and to Vendor's material men and lower-tier vendor(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.

Material ONLY Vendor will not be obligated to provide the following listed items with the exception of W-9 and Business License. However, if any work is performed by the Vendor, then Vendor is required to provide, prior to starting field work at the project location, all the following items:

- Company Contractor's License and Business Licenses
- Company Safety Program and Code of Safe Practices
- Company Substance Abuse Policy
- Company EEO and Affirmative Action Policy
- Company W9 form
- Company's contact information for various departments including, but not limited to, Contracts, Insurance, Accounting, EEO, Labor, Claims and Project Management
- Weekly Safety Meeting minutes with signatures of Vendor's employees
- Evidence that workers are trained in the use of Hazardous materials they will use for the Work
- Monthly Work Force Reports
- Current Insurance Certificates
- Releases from Unions and all lower-tier vendor(s)
- 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 Vendor's name. All terms and conditions in this Agreement between the Vendor and Contractor are to remain the same.

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

Vendor's payments will not be released until Contractor received all the current paperwork for the above items.

Vendor must notify all lower-tier vendor(s) of the terms and conditions of this Agreement. Lower-tier vendor(s) must acknowledge and comply with the same obligations as the Vendor for all the above items, as well as, all the terms and conditions in this Agreement.

If at any time Contractor, at its sole discretion, shall determine that Vendor's financial condition has become unstable or unsatisfactory, Vendor shall furnish additional security satisfactory to Contractor within three days after written demand, therefore, is delivered to Vendor. If Vendor fails to timely furnish said additional security, Contractor shall have the option to terminate Vendor'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 Vendor hereunder. In the event of such cancellation, the rights of Contractor shall be the same as if Vendor had willfully refused to further perform the Agreement.

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

5. **RISK OF LOSS.** Notwithstanding the terms of shipment, the risk of loss shall pass to Contractor only after delivery to the jobsite or other place designated in writing by Contractor.

6. **DELIVERY.** Time is of the essence of this Agreement. If no delivery date is specified on the face of this order, all deliveries of materials shall conform to the date or time specified in writing from time to time by Contractor's representative. Should delivery for any reason fail to be timely, Vendor shall be liable for all damages suffered by Contractor as a result of such failure, including, without limitation, any liquidated damages under Contractor's Prime Contract. In no event shall Vendor be entitled to an extension beyond that allowed to Contractor under the terms of Prime Contract.
7. **DEFAULTS.** If Vendor fails to perform any of its obligations hereunder, Contractor shall be entitled to all remedies provided by law. If Vendor becomes insolvent or makes an assignment for the benefit of creditors, or files or becomes subject to receivership or reorganization or bankruptcy proceedings, or becomes involved in labor difficulties, which in Contractor's opinion threaten Vendor's ability to perform in a timely manner, Contractor may, in addition to any other rights or remedies it may have hereunder or at law, terminate the PO upon written notice to Vendor; such termination shall be deemed a termination for default. Contractor's failure to notify Vendor of a rejection of nonconforming materials or to specify with particularity any defect in nonconforming materials after rejection or acceptance thereof will not bar Contractor from pursuing any remedies for breach which it may otherwise have.
8. **INSPECTION.** Contractor shall have the right to inspect and test the materials at Vendor's plants anytime prior to shipment and to conduct additional inspection at any time after arrival at the project sites. The making or failure to make any inspection of, or payment for, or acceptance of the materials shall not impair Contractor's right to later reject nonconforming materials, or to avail itself of any other remedy to which Contractor may be entitled notwithstanding Contractor's knowledge of the nonconformity, its substantiality, or the ease of its discovery. Vendor shall be liable for all inspections, reshipment and return costs on nonconforming materials. Vendor shall not replace returned materials unless so directed by Contractor in writing.
9. **WARRANTIES.** Vendor warrants to Contractor that it has fully and carefully reviewed the provisions, specifications, drawings, samples, or to their descriptions contained in this Agreement and in the Prime Contract. Vendor warrants to Contractor of the materials that the same shall be free from all defects, shall be of the quality specified, shall be fit and appropriate for the purpose intended and shall conform to the provisions, specifications, performance standards, drawings, samples or other descriptions contained herein or in the Prime Contract. Vendor further warrants that the materials will be complete in all respects necessary to make the materials fully functional if installed in accordance with the Prime Contract. All warranties implied by law or usage of trade are incorporated into this Agreement and shall apply to services and materials ordered. Vendor guarantees Contractor that the materials rendered shall be free of any and all defects in workmanship and materials which may develop for the period set forth in the Prime Contract. Vendor's warranty shall in all respects meet the terms of the warranty requirements of the Prime Contract and guarantees specified herein and implied by law or usage of trade. Contractor's remedies pursuant to this paragraph are in addition to, and not a limitation on all other remedies allowed by law.
10. **INFRINGEMENT.** Vendor shall pay all royalties and licensing fees arising in connection with the sale or use of materials hereunder. Vendor further undertakes and agrees to defend, at Vendor's expense, all suits, actions or proceedings in which Contractor, is successors, assigns, customers or users of its customer's products are made defendants for actual or alleged infringement of any U.S. or foreign letters patent, copyrights or trademarks resulting from the use or purchase of any material furnished under this Agreement; and Vendor agrees to pay or discharge any and all judgments or decrees which may be rendered in any such suit, action, or proceeding against such defendants therein.
11. **COMPLIANCE WITH LAWS, PERMITS, SAFETY PROGRAMS, CAL/OSHA.** Vendor's performance shall in all ways strictly conform to all applicable laws, regulations, safety order, labor laws and agreements and working conditions to which it is subject. This includes, but is not limited to all State, Federal, and Local non-discrimination in employment provisions and all applicable provisions required by the Prime Contract and by Contractor's own internal safety program and all Local regulations and building codes. Vendor shall execute and deliver all documents as may be required to effect or evidence of compliance.

Vendor 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.

In order to secure a safe work environment on Contractor's jobsites or premises, Vendor and lower-tier vendor(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. Vendor shall provide to Contractor a copy of its Substance Abuse policy that is more stringent than or at least parallel to Contractor's policy.

12. **INDEMNIFICATION – VENDOR'S PERFORMANCE.** To the greatest extent permitted by law, Vendor 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 attorney's fees and costs, which arise out of or are in any way related (i) to this Agreement, (ii) to actual or alleged actions or omissions by Vendor or any of its lower-tier vendors, suppliers, employees, or persons for whom it is responsible, or (iii) to the project(s) to which the Agreement relates (all collectively referred to as "Liabilities"), including but not limited to, the following:
- A. 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 Vendor, Contractor, owner, consultants, or other vendors and;
  - B. 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 Vendor or anyone directly or indirectly employed by the Vendor or anyone for whose acts the Vendor 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 Vendor's obligation to defend and indemnify shall not be excused because of the Vendor's inability to evaluate liability or because the Vendor evaluates liability and determines that Vendor is not liable to the claimant. The Vendor 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 Vendor 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 Vendor 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 Vendor, 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 Vendor 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 Vendor having obtained insurance, by the provisions of [Section 15](#) 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 Vendor, the Vendor waives any and all rights of any type to express or implied indemnity against the Contractor, its directors, officers, employees, or agents.

13. **ASSIGNMENTS, SETOFF.** Any assignment, subletting or delegation, by operation of law or otherwise, in whole or in part, by Vendor of this Agreement, 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 Vendor 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 Agreement as against Vendor, its sureties and assigns, including, without limitation, rights of set-off, to retain monies, to amend or modify this Agreement, and to assert all other defenses and claims whether or not arising under this Agreement. The making of any assignment by Vendor or any consent thereto by Contractor shall in no event relieve Vendor or its sureties hereunder, of any of their obligations, duties, responsibilities or liabilities under this Agreement.

In the event of any transfer, hypothecation or assignment by Vendor, without Contractor's consent, of the right to receive all or any part of any payments due or to become due hereunder, Contractor may, at any time thereafter withhold any or all monies or payments due or to become due hereunder until final payment is due and all conditions precedent to such payment are satisfied. Contractor may, at its option setoff any amounts otherwise due from Contractor to Vendor under this PO against any delinquent amounts or liabilities which are due to Contractor or its commonly controlled affiliates from Vendor.

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

14. **APPLICABLE LAW.** The definitions of terms used, interpretation of this Agreement and the rights of all parties hereunder, shall be construed under and governed by the laws of State of California.

Whenever Contractor is not the ultimate consumer of the materials, all rights, benefits and remedies conferred upon Contractor hereunder shall accrue and be available to and are for the express benefit of any successors in interest to the materials, including the ultimate consumer of the materials. The materials means the supplies, drawings, data and other properties and all services, including design, delivery, installation, inspection and testing specified or required to furnish the materials or services ordered.

The parties agree that, pursuant **Section 1** above, the Agreement was signed first by Vendor 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.

15. **INSURANCE.** Before performing Work or conducting any activities at the site of the Project, Vendor shall comply with all of the insurance provisions set forth below. Commencing to perform Work constitutes a representation by Vendor that it is in compliance with this Section. Vendor 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 Vendor's employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations or statues applicable to maritime employees, coverage shall be included for such injuries or claims.

(b) **General Liability Insurance.** Vendor shall carry Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of Vendor 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 Vendor 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 Vendor'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 Vendor 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:

- \$1,000,000 each person
- \$2,000,000 each occurrence

(2) Property Damage:

- \$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 Vendor carries a Commercial General Liability policy (Occurrence form only):

(1) The limits of liability shall not be less than:

- \$2,000,000 each occurrence (combined single limit for Bodily Injury and Property Damage)
- \$1,000,000 for Personal and Advance Injury Liability
- \$2,000,000 Aggregate for Products-Completed Operations
- \$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, Diablo Contractors, Inc., 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 Diablo Contractors, Inc., 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 Vendor to obtain policies from another insurer.

(c) **Automobile Liability Insurance.** Vendor 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 Vendor's General Liability insurance is provided by a Commercial General Liability policy then Vendor's Automobile Liability insurance policy shall include coverage for Automobile Contractual Liability. This policy must also include Diablo Contractors, Inc., 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 Vendor or their lower-tier vendor(s) are required to perform remedial hazardous material operations such as asbestos containing materials, lead paint, contaminated soil, etc., 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 Diablo Contractors, Inc., Owner, their respective officers, directors and employees as additional insureds. If Vendor or their lower-tier vendor(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 Diablo Contractors, Inc., Owner, and their respective officers, directors and employees as additional insureds.

(e) **Professional Liability.** Any Vendor 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. Vendor 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, Vendor's policy shall be endorsed to indicate that Vendor's policy shall provide coverage once the project design policy has been exhausted.

(f) **Riggers Liability.** Should Vendor's Work involve the moving, lifting, lowering, rigging or hoisting of property or equipment, Vendor 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 Diablo Contractors, Inc., 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 Vendor (or its vendor(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.** Vendor shall obtain and maintain an Installation Floater form of policy; Vendor shall pay for all deductibles and waives any right to reimbursement or subrogation with respect to such insurance. Vendor 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 Vendor (including any lower-tier vendor(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), Vendor 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 Vendor 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 Vendor 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 Vendor'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, Vendor 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 Vendor shall in no way limit or relieve Vendor 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 Vendor 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.

Vendor shall provide, as evidence of coverage, actual Additional Insured Endorsements. Vendor shall take such steps as necessary to assure Vendor's compliance with its obligations. Should any insurance policy lapse or be canceled during the contract period, Vendor 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 Vendor 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 Vendor or terminate this Subcontract.

Vendor shall furnish all required Certificate(s) of Insurance before any Work is commenced hereunder by Vendor or lower-tier vendor(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, Vendor 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 accompany 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.

Vendor 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 Vendor waive all rights against each other and against all other vendor(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.

(k) **Requirements for lower-tier Vendor(s).** Vendor shall ensure that all tiers of its vendor(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.

(l) **No Waiver.** 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.

16. **BONDS.** Vendor shall supply bonds as required by Contractor. 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 Agreement, 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 Agreement. **Vendor's bond rate is X.XX%.**

17. **CLAIMS.** In the event of any dispute or claim between Contractor and Owner which directly or indirectly involves the Work required to be performed by Vendor under this Agreement or in the event of any dispute or claim between Contractor and Vendor which directly or indirectly involves a claim against Owner for the either additional compensation or an extension of time under the Prime Contract, Vendor agrees to be bound to Contractor and Contractor agrees to be bound to Vendor 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 Vendor is a party thereto. If any dispute or claim is prosecuted or defended by Contractor, and Vendor is not directly a party or litigant, Vendor 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 attorney's fees, incurred in connection therewith to the extent of Vendor'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 Vendor, and as to any and all materials or services furnished or agreed to be furnished by Vendor, and as to any and all damages, if any, incurred by Vendor in connection with the work, Contractor shall never be liable to Vendor to any greater extent than Owner is liable to Contractor.

In the event of a dispute, Vendor shall comply with Contractor's written directives and shall continue performance in accordance with this Agreement. 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 Agreement and that Vendor shall proceed as directed by Contractor in all instances with the work under the Agreement and that any failure of Vendor to comply herewith and to proceed with the work shall automatically be deemed a breach of this Agreement entitling Contractor to all remedies available in the event of breach.

18. **COMPLIANCE WITH LICENSE LAW.** Vendors who are Contractors are required by law to be licensed and regulated by the Contractors' State License Board. 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**

19. **DISPUTES.** 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.

20. **LABOR LAWS AND AGREEMENTS.** Vendor 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. Vendor 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. Vendor acknowledges that it has read said laws, regulations, standards and conditions and is familiar with the terms thereof. Vendor agrees that its lower-tier vendor(s) shall observe and be bound by said conditions to the same extent as herein required of Vendor. Where required by either the law or the Contract Documents, Vendor shall provide Contractor with certified payrolls for its inspection and records. If Contractor discovers that Vendor has violated any prevailing wage requirements, Contractor shall retain out of any payments due or to become due Vendor an amount sufficient to completely protect it from any and all loss, damages or expenses there from until the situation has been remedied by Vendor to the satisfaction of Contractor. Vendor 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 Vendor 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. Vendor shall have the right to appeal any such claims, penalties, assessments and/or fines at its sole expense. Contractor shall cooperate with Vendor in its appeal of any claims, penalties, assessments, and/or fines. In the event Vendor either fails to timely appeal the claims, penalties, assessments and/or fines or they are upheld after an appeal hearing, Vendor shall promptly pay the Contractor the amount of the fines.

Vendor, as a part of the obligations assumed by it in this Agreement, accepts exclusive liability for all taxes and contributions required of Contractor or Vendor by the Federal Social Security Act and the Unemployment Compensation Law or similar law in any state with respect to the employees of Vendor 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. Vendor 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, Vendor. Vendor agrees to hold harmless, defend and indemnify Contractor against all liability in respect to said employees under said act or law.

Vendor, 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. Vendor agrees that if any portion of such work is further subcontract, such lower-tier vendor(s) shall be bound by and observe the terms and conditions of such agreements to the same extent as is herein required of Vendor, and that any express provision imposing such obligations upon the lower-tier vendor(s) 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.

Vendor 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 Vendor 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), Vendor shall comply without additional payment by Contractor at any given time and/or after project completion. Vendor is, also, held responsible and liable to Vendor's lower-tiered vendor(s) as required of Vendor to Contractor. Sworn affidavit must be submitted to Contractor before final payment is released.

Vendor acknowledges that Contractor is a signatory to one or more collective bargaining agreement(s). Prior to the start of any Work, Vendor shall contact Contractor and verify the collective bargaining agreements that will be applicable to the Project. Vendor and all lower-tier vendor(s) shall perform all work covered by 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, Vendor and its vendors, suppliers, vendors, and employees shall comply with the terms of any Master Labor Agreement that may apply. All fringe benefits paid to funds shall be current at all times. Should Contractor at its sole discretion establish a reserve gate system on the project, Vendor warrants that its employees and suppliers will use the reserve gate(s) designated for their use by Contractor. Vendor further agrees to perform notwithstanding the presence of pickets

at gate(s) reserved for Vendor's employees and suppliers. Failure to perform in accordance with this provision shall constitute a material breach of contract. The price to be paid under this Agreement 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.

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

**Contractor:**

**Vendor:**

**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

Contractors' License Number  
\_\_\_\_\_

(if required)