

MASTER SUBCONTRACTOR AGREEMENT

This Master Subcontractor Agreement (“*MSA*”) is entered into effective as of last date referenced on the signature page below (the “*Effective Date*”) by and between Supernova, Inc. (“*Contractor*”), a Wyoming Corporation, and _____ (“*Subcontractor*”), a _____. Each of Contractor and Subcontractor shall be referred to herein as “*Party*” or collectively as the “*Parties*.”

In consideration of the mutual agreements, representations, and warranties set forth in this MSA, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree, as follows:

SECTION 1. PRIME CONTRACT. Contractor may enter into an agreement (“*Prime Contract*”) with an individual or corporation (each an “*Owner*”) to construct a project(s) (“*Project*”) located at a specific location(s) (“*Site*”). Contractor may, but is not obligated to, request Subcontractor to perform certain work under the Prime Contract pursuant to a Statement of Work (“*SOW*”) executed by the Parties hereafter. Subcontractor is to perform all work required by the SOW(s) in accordance with the applicable Prime Contract, including without limitation, all conditions of the Prime Contract (general, supplementary and other conditions, if any) and all drawings, specifications, and addenda thereto for the Project described therein, including without limitation all modifications or amendments to the Prime Contract and any documents incorporated by reference therein.

SECTION 2. SCOPE OF WORK. Subcontractor shall furnish all the necessary materials, labor, tools, equipment, scaffolds, appliances, supplies, all applicable taxes, and other things necessary to perform work described in the SOW (the “*Work*”). Subcontractor will furnish material of the best quality called for in the plans, specifications and contract documents (the “*Contract Documents*”) for the Project, approved by all governmental authorities having jurisdiction and will use first class workmanship. Subcontractor accepts the SOW price or prices set forth therein as full compensation for doing the Work; for all loss or damage arising out of the nature of the Work to be performed until its acceptance by the Owner; for all risks of every description connected with the Work, and for faithfully completing the Work and the whole thereof in the manner and according to the requirements of the MSA Documents as defined in Section 5 below. Subcontractor shall immediately report in writing any discrepancy or errors in the plans and specifications in the SOW and Prime Contract or the Work. The entire responsibility for proper dimensions for completion of the Work shall rest with the Subcontractor.

SECTION 3. DESIGN-BUILD. If Subcontractor is required by the SOW to provide design or engineering services such design-build services shall be performed, at all times, by professional architects and engineers licensed, and registered under the laws of California. All drawings, specifications and other design or construction documents prepared by either the architect or engineer shall be signed by such professional(s) and stamped with their seal. If required by the Prime Contract, all drawings, and/or specifications, and other design and construction documents prepared by the architect or engineer shall be property of the Owner. All subcontractors and sub-tier consultants of Subcontractor must jointly and severally have and maintain professional liability insurance in amounts and with companies per the terms of this MSA and acceptable to Contractor.

SECTION 4. PROJECT PRICE. Contractor shall pay the sum specified in each SOW (“*Project Price*”) subject to additions and deductions for changes agreed upon or determined as provided in the MSA Documents.

SECTION 5. MSA DOCUMENTS. The MSA Documents consist of (1) the Prime Contract and all documents incorporated by reference therein, (2) MSA; (3) the exhibits attached to this MSA and subsequent SOW(s); and (4) all Change Orders issued by Contractor to Subcontractor. These documents form the MSA Documents, and are as fully a part of each SOW as if attached thereto. The MSA, including all exhibits attached hereto, the SOW, Prime Contract and Change Orders issued to Subcontractor are intended to supplement and complement each other and shall, where possible, be thus interpreted. If however, any provision of the MSA, the SOW, and/or Change Orders conflicts with the Prime Contract, the provision imposing the greater duty or obligation on the Subcontractor shall govern. Wherein the Prime Contract, reference is made to Contractor, and the work or specifications therein pertain to the Subcontractor’s trade, craft, or type of work, such work or specifications shall be interpreted to apply to Subcontractor rather than Contractor. 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 every term and condition of the Prime Contract, and to assume toward Contractor all of the duties, obligations and responsibilities that Contractor by the Prime Contract 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 Prime Contract has against Contractor with the same force and effect as though each and every duty, obligation, responsibility, right or remedy were set forth herein in full.

SECTION 6. EXHIBITS. The following exhibits and attachments to this MSA shall govern all Work to be performed pursuant hereto:

Exhibit A	Form of SOW
Exhibit B	Insurance Requirements

The following form a part of each SOW and shall be completed subsequent hereto:

Attachment A	Drawings, Specifications and Contract Documents
Attachment B	Scope of Work
Attachment C	Project Price and Schedule

SECTION 7. ENTIRE AGREEMENT. The MSA 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. Words used in this MSA in the present tense include the future as well as the present; the singular number includes the plural and the plural the singular. This MSA can only be changed through a written document signed by both Parties and supersedes any proposals, submittals, or other document in connection with a Project.

SECTION 8. LICENSING. Subcontractor hereby warrants that it is, and will remain current and in the same name stated in this MSA, a licensed Contractor as required in the State of California.

SECTION 9. CONFIDENTIALITY. Without the Owner's and Contractor's prior written consent, Subcontractor shall not divulge information concerning any Project(s) to anyone other than those parties directly involved in the ordinary course of construction of the Project. All written and verbal communications with the Owner, architect, and engineer for the Project(s) shall only be through Contractor. These provisions shall survive termination of this MSA.

SECTION 10. PERMITS. Subcontractor shall, at its own cost and expense, apply for and obtain all necessary permits related to the Work. All Work performed, and all materials furnished by Subcontractor under this MSA shall comply strictly with the laws and by-laws in force in the locality in which the Work is done, and Subcontractor will comply promptly with all laws, by-laws, regulations, rules and orders of the local, state, and/or federal government and of any and all of its departments and bureaus. Subcontractor will be responsible for any violation of any such laws, by-laws, rules, and orders and will indemnify Contractor and Owner for any loss or damage, including reasonable attorney fees and costs related thereto, arising from or resulting to it by reason of any such violation. Subcontractor shall notify Contractor of the delivery of all permits, licenses or certificates required and agree, upon demand, to deliver copies of the same to Contractor. If Subcontractor observes that the drawings and specifications are at variance with any applicable codes, laws, by-laws, rules or regulations, or protective covenants, Subcontractor shall immediately notify Contractor in writing. If the Subcontractor performs any Work knowing it to be contrary to such codes, laws, by-laws, rules, regulations or protective covenants, Subcontractor shall bear all costs and expenses arising therefrom to effect correction of the Work.

SECTION 11. PAYMENTS.

11.1. Progress payments will be made to Subcontractor in an amount equal to 90% of the value of completed Work as estimated by the Owner. If the Owner does not provide an estimate of the completed Work, Subcontractor agrees to be bound by Contractor's estimate of the Work completed, less previous payments. Such progress payments shall become due to Subcontractor ten (10) days after Contractor receives payment from the Owner. Upon complete performance of the Work by Subcontractor and final approval and acceptance of the Work thereof by the Owner, Contractor will make final payment to Subcontractor of the balance due under the MSA within seven (7) calendar days after full payment for the Work 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 the Owner through either litigation or arbitration.

11.2. Unless a different day is specified in the Prime Contract, all progress and final billings must be submitted by Subcontractor to Contractor by the 25th day of each month. All billings must include the SOW number and Project name. Progress billings not received by the 25th day of the billing month will be processed in the following month's billing.

11.3. As a condition precedent to any monthly progress payments being made to Subcontractor by Contractor, Subcontractor shall provide Contractor with (1) a fully executed SOW; (2) properly completed progress payment application; (3) all certificates of insurance; (4) any other documents which are required under the MSA and Prime Contract for the Work; (5) California Civil Code Section 3262 Conditional Waiver and Release Upon Progress Payment form for itself, its subcontractors and suppliers who provided labor, materials, equipment or supplies that are covered by the current payment application; and (6) an Unconditional Waiver and Release Upon Progress Payment form for itself, its subcontractors and suppliers who provided labor, materials, equipment or supplies that were covered by the prior month's payment application. Each payment application must be supported by such data substantiating Subcontractor's right to payment as Contractor may require, including an affidavit certifying that all sub-subcontractors and material-men of the Subcontractor have been paid to the date covered by the most recent partial payment. No payment under an SOW shall be proof of performance of an SOW, either in whole or in part, nor shall any payment be construed as an acceptance of defective Work or materials.

11.4. Title to all Work, materials, and equipment will pass to Contractor upon Subcontractor's delivery thereof to the Site, free and clear of all liens, claims, security interests, or encumbrances (hereinafter referred to as "*liens*"); and Subcontractor warrants and guarantees that no Work, materials, or equipment delivered to the Site will have been acquired by the Subcontractor or by any other person performing the Work at the Site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or lien thereon is retained by the seller or otherwise imposed by the Subcontractor or such other person.

11.5. Subcontractor is expressly prohibited from accepting payment for the Work from Owner, Owner's agents, or Owner's financial institution or assigns without the express written consent of Contractor.

SECTION 12. PAYMENT FOR LABOR AND SUPPLIES.

12.1. Subcontractor shall promptly make payments to all persons supplying Subcontractor with labor, material, and supplies used or to be used in the prosecution of the Work or in connection therewith. Any payments not made by the Subcontractor when earned or due; may be made by Contractor and the amounts thereof deducted from any money at any time earned or due the Subcontractor under this MSA.

12.2. Unless the Prime Contract contains provisions governing time and material rates for extra work; the Subcontractor's proposed time and material rates for any future change order work must be submitted and approved by Contractor at least five (5) working days prior to the execution of the SOW. The agreed upon time and material rates will be attached to the SOW and used for pricing any future changes in the scope of the Work. If the Subcontractor fails to provide its proposed time and material rates as required in its entirety Contractor will then determine the proper time and material rates for extra work based on industry averages.

12.3. No partial payment to Subcontractor shall operate as approval or acceptance of Work done or materials and equipment furnished under the MSA Documents. If the Prime Contract provides for payment of Work to be performed 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, 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 within thirty (30) days of demand. Acceptance by Subcontractor of final payment shall release the Owner, Contractor and its surety, if any, from all claims arising under or by virtue of the MSA except those claims previously submitted in writing by Subcontractor to Contractor.

12.4. Contractor may deduct from any amounts due or to become due to Subcontractor any sum or sums owing by Subcontractor to Contractor arising under the MSA, the Prime Contract or any other SOW with Contractor. Contractor shall have the further 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 arising directly or indirectly from (1) any breach by Subcontractor of the MSA, or (2) the assertion by the Subcontractor's own subcontractors, suppliers or employees of any claim, including but not limited to a mechanic's lien, stop notice, and/or bond claims against Contractor, its surety, Owner, the Work

and/or the Site. When the situation giving rise to the withholding has been remedied or adjusted by Subcontractor to the satisfaction of Contractor, the withheld monies shall be paid to Subcontractor.

12.5. Contractor reserves the right to make payment by joint check or by direct check to Subcontractor and its suppliers, subcontractors or any person or entity for whom Subcontractor is responsible for, who has a right of action against the Owner, Contractor, its surety, if any, the Work or the Site under any law. Contractor reserves the right to determine the manner and amount of payment to be made.

12.6. Subcontractor shall furnish, if requested by Contractor, sworn affidavits under penalty of perjury with each billing that shall state amounts due or to become due and amounts paid to its laborers, subcontractors, suppliers and/or other parties contractually related with Subcontractor who provided labor, materials, supplies and/or equipment for use on the Project.

12.7. Subcontractor agrees and covenants that any money paid to it pursuant to the MSA shall immediately become and constitute a trust fund for the benefit of persons and firms supplying labor, materials, supplies, tools, machines, equipment, plant, or services exclusively for the Work. Such monies shall not in any instance be directed by Subcontractor to any other purpose until all obligations arising under the MSA, including but not limited to mechanic liens, stop notices and/or payment bond claims have been fully discharged.

SECTION 13. FINAL PAYMENT.

13.1. As a condition precedent to the final payment being made to Subcontractor by Contractor, Subcontractor shall provide Contractor with (1) any required as-built drawings; (2) any required written warranties and/or guarantees; (3) the Owner's or its architect's written confirmation that Subcontractor has completed its punch list work; (4) any other documents which are required under the MSA and the Prime Contract for the acceptance of the Work and the Project by the Owner; (5) California Civil Code Section 3262 Conditional Waiver and Release Upon Final Payment form for itself, its subcontractors and suppliers who provided labor, materials, equipment or supplies that are covered by the final payment application; and (6) an Unconditional Waiver and Release Upon Progress Payment form for itself, its subcontractors and suppliers who provided labor, materials, equipment or supplies that were covered by the prior month's payment application.

13.2. 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 in the form of a payment bond or posting of cash collateral in an amount satisfactory to Contractor within three (3) working 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 with the Work 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 completion of the Project, including but not limited to the Work to be performed by Subcontractor hereunder. In the event of such termination, the rights of Contractor shall be the same as if Subcontractor had willfully refused to perform the MSA.

SECTION 14. TAXES. Subcontractor is an independent contractor and shall be responsible for all payments of taxes, contributions and premiums payable on its employees and on its operations under Worker's Compensation laws, the Federal Social Security Act, health and welfare benefit plans, gross business taxes, sales and use taxes and any other taxes, contributions and premiums which become payable by Subcontractor.

SECTION 15. RETENTION REDUCTION. If at any time prior to final payment hereunder Owner reduces the amount of retention 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 16. CHANGES AND EXTRA WORK.

16.1. Contractor may, at any time by written order and without notice to Subcontractor's surety, make changes in, additions to and/or deletions from the Work to be performed and materials and equipment to be furnished under the MSA, and for each change make an equitable adjustment in the Project Price and time of performance. If Subcontractor shall disagree with such adjustment, Subcontractor shall give written notice of its disagreement to Contractor within two (2) working days of its receipt of the written order. Resolution of the disagreement over the adjustment to the Project Price and/or time of performance shall not excuse the Subcontractor from proceeding immediately with the performance of the Work as so changed. Any change

or modification shall be subject to all the terms and conditions of the MSA Documents. No increase or decrease in the Project Price or time of performance shall be binding on Contractor unless agreed upon in writing.

16.2. If the Owner shall request any changes or extra work, including additions, reductions or deletions, in the Work to be performed on a Project or within the general classification of any Work to be performed hereunder; Subcontractor shall upon Contractor's written order promptly perform the changed and/or extra work, and any adjustment in compensation or in the time for performance shall be as the Parties agree in writing. If the Parties are unable to agree; Subcontractor shall nevertheless proceed promptly with the performance of such changed or extra work. Subcontractor shall give written notice of its disagreement to Contractor within three (3) working days of its receipt of the written order. The amount of compensation and the time of performance shall be adjusted only to the extent allowed by the 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 settlement or judgment or award against Owner shall be binding and conclusive on Subcontractor.

16.3. Any claim for adjustment of the Project Price or time of performance due to changes ordered by either the Owner or Contractor must be made in writing. The claim notice shall be given to Contractor in such time that Contractor has time to satisfy the notice requirements of the Prime Contract. If Contractor does not receive written claim notice from Subcontractor in time to comply with the Prime Contract's notice requirements, Subcontractor agrees that it waives and releases its claim.

16.4. All requests for quotation for changes to the scope of Work must be returned to Contractor within two (2) working days from the issuance date of the request. Subcontractor must obtain written authorization from an authorized representative of Contractor before performing any changed or extra work. Any extra work, which Contractor and Subcontractor have agreed shall be performed on a time and material basis, shall be documented by work tags signed on a daily basis by an authorized representative of Contractor. Signing of work tags by Contractor's field personnel (foreman, etc.) is for documentation of labor and/or materials and equipment only and does not constitute either entitlement or a commitment for payment.

16.5. Allowable Subcontractor mark-up on direct costs for authorized changes in the Work shall be either the mark up permitted in the Prime Contract or fifteen percent (15%) on the direct labor and material costs and five percent (5%) on its subcontractor's costs, whichever is less.

16.6. Subcontractor understands that no employee or other representative of Contractor has authority to waive compliance with this MSA, except as authorized by Contractor's President in writing. Subcontractor's failure to comply with the provisions of this Section 16 shall constitute a material breach of this MSA with all the remedies of Contractor provided for herein.

SECTION 17. EXAMINATION OF PRIME CONTRACT AND SITE. As pertains to each SOW, Subcontractor represents that it has carefully examined all of the documents comprising the MSA Documents and is familiar with the terms and conditions thereof, and has fully acquainted itself with all conditions of the Site relevant to the Work, that it has made all investigations essential to a full understanding of the difficulties which may be encountered in performing the Work; and that, as between the Parties hereto and except as expressly provided otherwise in the MSA, Subcontractor will complete the Work for the Project Price and within the Project Schedule and assumes full and complete responsibility for completion of the Work. Access to the Site is restricted and storage and lay down areas are limited.

SECTION 18. TIME.

18.1. Time is of the essence for this MSA, including the SOW(s). Subcontractor shall furnish all materials, labor, tools, equipment, and supplies necessary for the performance of the Work in a proper, efficient, and workmanlike manner and in accordance with and within the time specified in the Project Schedule contained in the SOW, including any milestones designated by Contractor and any revisions thereto. Subcontractor represents that it will carefully examine the Project Schedule for the Work and the Project and that it can perform the Work within the time allowed.

18.2. 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, so as to insure the completion of the Work and the Project within the latest Project Schedule. Subcontractor shall not interfere with or hinder the work of Contractor or any other subcontractor on the Project. If Subcontractor falls behind the Project Schedule for its Work due to its own fault, 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 current Project 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 the Work within the time or times provided in the MSA Documents.

18.3. 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 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 the SOW.

SECTION 19. SHOP DRAWINGS AND SUBMITTALS.

19.1. When shop drawings or submittals are required by the MSA Documents or on account of changes in the Work, Subcontractor shall prepare and supply the same to Contractor for approval by Owner. Subcontractor shall provide the required shop drawings or submittals in sufficient time to allow for the Owner and/or the architect's review, ordering, manufacturer's lead time, fabrication and shipping, such that they do not delay the completion of either the Work or the Project. Shop drawings or submittals rejected by the Owner or architect for incompleteness or non-compliance with the Prime Contract shall not constitute grounds for delay to the Work. Subcontractor shall be responsible for all time lost due to late and/or rejected shop drawing or submittals at its own expense.

19.2. If any such shop drawings or submittals as submitted by Subcontractor, whether or not they shall be approved by Owner or architect, deviate from or are inconsistent with the MSA 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 for any such damages suffered, or costs and expenses incurred. If any such damage, cost or expense is imposed upon Contractor, Contractor may, at its option, withhold from Subcontractor any payments due, or to become due to Subcontractor, an amount sufficient to fully reimburse Contractor, therefore. The provisions of this section are cumulative of the remedies provided Contractor elsewhere in the MSA Documents.

SECTION 20. SUBCONTRACTOR DEFAULT.

20.1. Subcontractor shall be in default under this MSA if, at any time, whether before or after final payment, Subcontractor does, any of the following:

- a) refuses or neglects to supply sufficient number of skilled workers, supplies, materials and/or equipment to complete the Work or any punch list;
- b) refuses or fails to prosecute the Work or any punch list in accordance with the Project Schedule;
- c) refuses or fails to timely and properly pay its own laborers, subcontractors and/or suppliers, who have performed or supplied labor, material and or equipment for the Work;
- d) becomes insolvent, has a receiver appointed to administer its affairs, or files or has filed against it a petition in bankruptcy or goes into liquidation or dissolution, either voluntarily or involuntarily or under a court order;
- e) breaches any material term of the MSA; or
- f) Owner or architect determine that the Work or any portion of it is not in accordance with the Prime Contract.

20.2. In the event of a Subcontractor default in Section 20.1 above, Contractor may elect to give notice in writing via facsimile transmission or certified mail of such default, specifying the same, and if Subcontractor, within a period of (48) hours after receipt of such notice, shall not cure its default, then Contractor shall have full power and authority, without process of law and without violating this MSA, to take the prosecution of the Work out of the hands of Subcontractor and complete it with Contractor's own forces, or contract with other parties for its completion, or use such other measures that in Contractor's opinion are necessary for its completion. Upon such notice by Contractor to Subcontractor, the obligations of Subcontractor's subcontractors, materialmen, laborers and equipment suppliers, SOW and Work shall be deemed assigned to Contractor as stated in this Section 20 and the SOW shall be deemed a bill of sale of all Work performed and materials delivered to the Site.

20.3. Neither by the taking over of the Work nor by its completion, in accordance with the terms of this MSA, shall Contractor forfeit its right to recover damages from the Subcontractor or from Subcontractor's surety for Subcontractor's failure to complete the Work or for Subcontractor's delay in such completion, including any liquidated damages that may be assessed by Contractor as provided. The costs, including legal expenses, and reasonable attorney's fees, incurred by Contractor in

enforcing any provision of this MSA, or in exercising any of Contractor rights and remedies, including the completion of the Work, shall be borne and paid on demand by the Subcontractor to Contractor. Should the costs incurred by Contractor in taking over and completing the Work be less than the Project Price that would have become payable under this MSA if said Work had been completed by the Subcontractor, then the Subcontractor shall be entitled to the difference, and should costs exceed the Project Price, then the Subcontractor and Subcontractor's surety shall be liable to Contractor for the amount of such excess. Upon the taking over of the Work by Contractor as herein provided for, no further payment shall be made to the Subcontractor until the Work is completed, and any monies due or that may become due the Subcontractor under this MSA shall be withheld and may be applied by Contractor to payment for labor, materials, supplies and equipment used for the Work, and to the payment of rental charges on equipment used for the Work, and to the payment of any excess cost to Contractor of completing the Work, including without limitation reasonable overhead and profit.

20.4. As used in this Section 20, "*costs*" shall mean actual cost to Contractor to complete the Work plus fifteen percent (15%) of those actual costs for overhead and profit. The expenses incurred by Contractor as herein provided, either for furnishing labor, equipment, and/or materials or for finishing the Work, and any damages, including attorneys' fees, incurred as a result of such default, shall be chargeable to and paid by Subcontractor.

20.5. An improper termination for default shall be considered termination for convenience pursuant to Section 23. Any sum or sums chargeable to Subcontractor under this Section 20 or any other provisions of this MSA may at the election of Contractor be deducted from any payment or payments otherwise due or becoming due to Subcontractor hereunder, or under any other contract between Subcontractor and Contractor, and Contractor may take any and all legal remedies available at law against Subcontractor and recover damages. In the event that Contractor takes over all or a portion of the Work, there shall be no liability on its part for any damage, wear and tear, depreciation, theft, action of the elements, acts of God, fire, flood, vandalism, or other injury or damage to the Work or Subcontractor's materials, implements, equipment, appliances or tools.

20.6. In the event of a Subcontractor default, Contractor shall (1) have the right to enter upon the site of the Work and take possession, for the purpose of completing the Work, all of Subcontractor's materials, tools equipment and appliances thereon and (2) have a lien upon all of Subcontractor's materials, tools, equipment and appliances taken possession of, as aforesaid, to secure the payment thereof.

SECTION 21. DELAYS AND EXTENSIONS OF TIME. If Subcontractor's performance of the Work is delayed or interfered with by acts of Owner, Contractor or other subcontractors; it may request an extension of time for the performance of same. No extension of time, for any cause whatever, shall be granted to Subcontractor unless Subcontractor (a) shall have made written request upon Contractor for such time extension within two (2) working days after the commencement of the delay and (b) Contractor and Subcontractor have agreed in writing upon the additional time to be added to the MSA. 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 or the Prime Contract.

SECTION 22. OWNER TERMINATION OR SUSPENSION. If the Owner, with or without cause, shall (1) terminate the Prime Contract, (2) suspend work under the Prime Contract, or (3) fail to pay when due any sum payable under the Prime Contract, Contractor may terminate the SOW for such Work or order Subcontractor to suspend Work hereunder and Contractor shall be liable to Subcontractor for any such termination or suspension only to the extent that the 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 value of the Work performed prior to termination 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.

SECTION 23. TERMINATION FOR CONVENIENCE.

23.1. Contractor may at any time and for any reason terminate this MSA, an SOW or any portion thereof at Contractor's convenience. Termination shall be by service of written notice to Subcontractor, who shall, unless the notice directs otherwise, immediately discontinue the Work and placing of orders for materials, facilities, and supplies in connection with the performance of all applicable SOWs or portions thereof. Subcontractor shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Contractor, or at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived therefrom. Subcontractor shall thereafter do only such

Work as may be necessary to preserve and protect the Work already in progress and to protect material and equipment on the Site or in transit thereto.

23.2. Upon such termination for convenience as described in Section 23.1 above, Subcontractor shall be entitled to payment only as follows: (1) the lesser of (a) the percentage of the Work completed pursuant to the SOW or (b) actual cost to the Subcontractor for the Work completed in conformity with this MSA; (2) such other costs actually incurred by Subcontractor due to the termination as are permitted by the Prime Contract and approved by Owner; and (3) a percentage of the Work completed multiplied by SOW price for overhead and profit as provided in the Prime Contract or fifteen (15%), whichever is less. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Subcontractor prior to the date of the termination. Subcontractor shall not be entitled to any claim or claim of lien against Contractor or Owner for any additional compensation or damages, including but not limited to claims for lost profits.

SECTION 24. DISPUTES.

24.1. 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 the MSA, or in the event of any dispute or claim between Contractor and Subcontractor which directly or indirectly involves a claim against Owner for either additional compensation, or an extension of time, under the MSA Documents, 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 thereunder, 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.

24.2. If any dispute or claim is prosecuted or defended by Contractor, 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. To the extent said dispute or claim involves Subcontractor; it shall pay or reimburse Contractor for its proportionate share of the expenses and costs, including reasonable attorney's fees, incurred in connection therewith. 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 the Owner is liable to Contractor.

24.3. It is further specifically agreed by the Parties hereto that no claim, dispute, or controversy shall interfere with the progress and performance of the Work required under this MSA. Subcontractor shall proceed as directed by Contractor in all instances with the Work under the SOW(s) and that any failure of Subcontractor to comply herewith and to proceed with the Work shall automatically be deemed a breach of the MSA entitling Contractor to all remedies available in the MSA Documents and law.

24.4. The laws of the state of California shall govern this MSA and the performance, interpretation, construction and enforcement thereof, without regard to conflicts of laws principles.

24.5. All disputes arising out of or relating to this MSA will be subject to binding arbitration in _____, California in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association ("**ABA**"). Notice of the demand for arbitration will be filed in writing with the other Party and with the ABA. The arbitrator(s) shall not have the authority to award any relief which could not be awarded by the courts of the State of California. The award of the arbitrator(s) shall be final and binding and judgment may be entered on the award in accordance with applicable law in any court having jurisdiction. The agreement to arbitrate will be specifically enforceable in accordance with applicable law in any court having jurisdiction.

24.6. Should any arbitration, suit or action be commenced in connection with any dispute in question between the Parties arising out of or related to this MSA or the Work, to obtain an interpretation of or to enforce any provision of this MSA, to rescind this MSA, or to enforce or collect any award obtained during arbitration or any judgment or decree of any court relating to this MSA or the Work, the prevailing Party shall be entitled to recover its attorneys' and expert witnesses' fees and other costs, disbursements and expenses incurred in the arbitration, at trial, on review for appeal and on appeal, as well as on review for reconsideration and on reconsideration at any stage in the process, as the arbitrator(s) or court may adjudge reasonable. It is also agreed that any damage, loss, cost, or expense, including counsel fees, suffered or incurred by Contractor, by reason or in consequence of the Subcontractor's failure to perform an SOW fully shall be chargeable to and paid by the Subcontractor.

SECTION 25. PASS-THROUGH CLAIMS. On any public works project, which requires Contractor to certify a pass-thru claim for additional compensation and/or time prior to its submission to the public entity, Contractor shall be entitled to charge Subcontractor an hourly rate of One Hundred Fifty Dollars (\$150.00) for each hour spent reviewing Subcontractor's proposed pass-through claim, including all required documentation supporting such pass-thru claim up to a maximum of eight (8) hours in order to determine if the pass-thru claim can be certified. If Subcontractor refuses or fails to timely provide Contractor with any and all documents requested by Contractor to review Subcontractor's pass-thru claim; Contractor shall have no obligation to either certify and/or submit Subcontractor's pass-thru claim to the public entity. In such case, Subcontractor waives and releases any claim against Contractor that could have been asserted against the public entity. Contractor review of Subcontractor's pass-thru claim shall not relieve Subcontractor of its sole responsibility to ensure that its pass-thru claim complies with the requirements of the Prime Contract and is not false.

SECTION 26. RESPONSIBILITY FOR THE WORK. Subcontractor shall be responsible for its Work, property, and materials until completion and final acceptance of the Project and release of responsibility by Owner, and shall bear the risk of any loss or damage to its Work 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 the Work, property, or materials.

SECTION 27. INSURANCE.

27.1. Subcontractor shall, at its cost and expense, procure and maintain insurance on all of its operations with carriers and in amounts acceptable to Contractor and as required by the Prime Contract and in accordance with Exhibit B attached to and made part of the MSA. The failure of Contractor to enforce in timely manner any of the provisions of this Section 27 shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of the MSA. The required coverage and limits of insurance shall not in any way limit the liability of the Subcontractor.

27.2. No Subcontractor or its sub-tier suppliers or subcontractors may enter onto a Site prior to submitting all insurance documentation, forms, and endorsements required by this section. In the event that Work is performed prior to submitting insurance certificates and endorsements that are in accordance with the provisions of this Section 27, Subcontractor will incur a back charge from Contractor equal to 15% of the Work performed. Further, Contractor reserves the right to provide insurance coverage on behalf of the Subcontractor to protect its interests, and charge the Subcontractor for the cost of that insurance. The providing of insurance by Contractor, however, shall not relieve the Subcontractor of its responsibility under this MSA, including the indemnification and hold harmless provisions of the MSA Documents. Additionally, should Contractor find it necessary to purchase insurance on behalf of the Subcontractor, the Subcontractor shall be responsible for the cost of insurance premiums and deductibles of such insurance and any exclusions contained therein shall be the responsibility of the Subcontractor.

27.3. Subcontractor shall ensure that its sub-tier subcontractors and suppliers of materials, equipment and labor, maintain insurance in the same amounts and terms as provided by this MSA. Proof of insurance renewals must be received by Contractor at least 15 days prior to expiration of existing coverage. Payment may be withheld to Subcontractor, at the option of Contractor, until such certificates and endorsements have been furnished, or if upon receipt of a cancellation notice on a policy, until withdrawal of the notice or the reinstatement or replacement of the cancelled policy.

SECTION 28. BONDS. If required by the SOW, Subcontractor shall furnish a performance bond and a payment bond, each in an amount equal to the full Project Price. Such bonds shall be on forms furnished by Contractor and with a surety satisfactory to Contractor. No change, alteration or modification in or deviation from the MSA, its terms, conditions or the Prime Contract, 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 the MSA. Said bonds shall extend to and cover any extra work or changes performed by Subcontractor pursuant to the MSA.

SECTION 29. AUDIT AND INSPECTION. Contractor shall have the right at reasonable times and places, to inspect, copy and audit any of Subcontractor's books, accounts, time cards, records of transactions, estimates, schedules, correspondence or any records or documents which may have a possible bearing on the performance of such Work. Further right of examination for all of the Work shall include inspection at all reasonable times of the Subcontractor's place of business, or such parts thereof as may be engaged in the performance of the MSA. The Subcontractor shall retain all accounts, documents, and records relevant to

this MSA for ten years after completion of the Work, unless a longer period is required by law or by the Prime Contract. With each requisition, the Subcontractor shall submit certificates indicating all bills from its suppliers and subcontractors for work and materials performed during the previous month on which payments have been made by Contractor have been paid as a condition for payment of the current requisition by Contractor.

SECTION 30. LEGAL OBLIGATIONS. Subcontractor shall obtain and pay for all necessary licenses pertaining to the Work and shall comply with all federal, state, municipal and local laws, ordinances, codes, rules, regulations, standards, orders, notices and requirements governing the Project, the Work, and the performance of the Work, whether or not provided for by the MSA Documents without additional charge or expense to Contractor.

SECTION 31. INDEMNITY.

31.1. Subcontractor shall defend, indemnify and hold harmless the Owner, Contractor, their officers, shareholders, directors and employees from and against any and all liability, including but not limited to, penalties, fines, costs, losses, damages, expenses, causes of action, claims or judgments, including attorney's fees and expert witness fees (collectively "**Claims**") arising out of or resulting from:

(a) any alleged or actual infringement or violation of any patent or patent right arising in connection with this MSA Documents and anything done there under;

(b) any injury to or death sustained by any person (including Subcontractor's own employees) or damage to property of any kind, which injury, death or damage arises from or in any way connected with the Subcontractor's performance of the Work, including but not limited to Subcontractor's use of Contractor's or other Subcontractors' equipment, hoists, elevators, and/or scaffolds;

(c) any breach by Subcontractor of any of the obligations and covenants, and any other terms and conditions of the MSA Documents;

(d) any violation by Subcontractor of one or more occupational safety and health standards, regulations, or orders. Subcontractor shall have the right to appeal such citations at its sole expense. Contractor shall cooperate with Subcontractor in its appeal of any Citations. In the event Subcontractor either fails to timely appeal the Citations and/or Citations are upheld after an appeal hearing, Subcontractor shall promptly satisfy the Citations; and

(e) any submission by Subcontractor of false claims as defined by the applicable California or United States false claim statutes and/or code.

31.2. Subcontractor's aforesaid obligation of indemnity and defense shall not extend to that portion of the Claims that is caused by the sole negligence or willful misconduct of Contractor, its officers, shareholders, directors, and/or employees. These obligations of defense and indemnification shall survive and extend to Claims asserted after termination, for whatever reason, of any of the MSA Documents.

SECTION 32. WARRANTY. Subcontractor warrants and guarantees the Work shall be performed in a good and workmanlike manner, free from defects and in strict conformance with the MSA Documents and that materials shall be new unless otherwise specified in the MSA 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 of a period of two (2) years commencing on the date the Project is accepted by the Owner, unless a longer period is stated in the Prime Contract. If required by the MSA Documents, Subcontractor will, at its own expense, furnish and pay for a maintenance bond to indemnify Contractor for any loss that may be caused by any Subcontractor breach of said warranty and guarantee. Unless and until Contractor is released from responsibility by Owner, Contractor may withhold payment from Subcontractor such sums, at Contractor sole discretion, are necessary to protect and indemnify Contractor for any loss that may be caused by Subcontractor's breach of said warranty. All warranties shall be for the protection of Owner and Contractor, its successors and assigns against defective workmanship and materials. Should any defect appear during the period of the warranty, the Subcontractor shall repair any defects, replacing all material appliances, and equipment affected thereby and shall repair damage done to the Work or the work of others, without cost to Owner or Contractor.

SECTION 33. USE OR OCCUPANCY BY CONTRACTOR. Whenever it may be useful or necessary for 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 its Work, material and/or 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 or Owner during such period of use.

SECTION 34. DAMAGE TO OTHER WORK. The Work provided for in the MSA constitutes only a part of the work being performed for Owner by Contractor and other subcontractors. Subcontractor, therefore, agrees to perform the Work 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, its subcontractors, suppliers, 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 the 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. Subcontractor agrees further that if it shall cause any stains, blemishes, imperfections, marks or damage of any sort whatsoever, whether to the Work, Contractor's own work or 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 the Work and agrees further that such cutting and patching shall match other work performed under the MSA Documents.

SECTION 35. INDEPENDENT CONTRACTOR.

35.1. 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, Davis –Bacon Act, or California Prevailing Wages Law.

35.2. 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 MSA, all so as to fully relieve Contractor from and protect it against any and all responsibility or liability there for or in regard thereto.

SECTION 36. MECHANIC LIENS AND STOP NOTICES.

36.1. Subcontractor and its sub-tier subcontractors shall not record a mechanic's lien or serve a stop notice on the Owner or any construction lender for any sum of money that is not due under the terms of the MSA. Subcontractor acknowledges that a recorded mechanic's lien or a stop notice served on the Owner and/or construction lender may disrupt the Project's finances and may have an adverse impact on Contractor's contractual relationship with the Owner or its other subcontractors. Therefore, if Subcontractor records a mechanic's lien or serves, a stop notice, which is either not permitted by law, overstated or seeks a sum of money not yet due under the MSA, Contractor shall have the right to deduct from any sum of money due Subcontractor the cost of any bond obtained to release either the mechanic's lien and/or the stop notice.

36.2. If Subcontractor's own sub-tier subcontractors or suppliers record a mechanic's lien or serve a stop notice, Subcontractor shall cause such mechanic's lien and/or stop notice to be either satisfied or removed by means of posting or lease bond within ten (10) days of its receipt of notification from Contractor to take such action. Provided that Subcontractor has been timely paid all its progress payments that have been earned at the time of notification, Subcontractor shall defend, indemnify and

hold harmless the Owner and Contractor from any against any such mechanic's liens and/or stop notices, including any legal action that is initiated to enforce either the mechanic's lien and/or the stop notice.

36.3. It is agreed that no lien shall at any time be filed against the Project, or any part thereof, for work for which Subcontractor has been paid, by Subcontractor or any sub-tier subcontractors or suppliers or other persons employed or furnishing labor, services, equipment, or material to Subcontractor or any sub-tier subcontractors and suppliers. This clause shall be inserted in all of Subcontractor's purchase orders and lower tier statement of work agreements. If at any time after Contractor has paid Subcontractor the sums due under this MSA, any of Subcontractor's sub-tier subcontractors, laborers, mechanics or materialmen files any mechanics liens or any such pre-existing mechanics liens remain filed, the Subcontractor shall, within ten (10) days after request by Contractor and at Subcontractor's expense, have such lien discharged by payment, release, filing of a bond required by law, or otherwise.

SECTION 37. ASSIGNMENT AND SUBLETTING. All Subcontractor's sub-tier subcontractors shall be bound by this MSA's terms and conditions, including insurance requirements. Furthermore, Subcontractor shall be required to obtain final, unconditional lien releases from all sub-tier subcontractors and suppliers prior to receiving final payment from Contractor. Subcontractor shall incorporate all terms and conditions of the MSA Documents in any such sub-tier subcontract. This MSA and any payment due hereunder and any part or the whole of the Work to be done hereunder, shall not be assigned or sublet without the written consent of Contractor, and any attempt to do so by the Subcontractor shall be held to amount to a repudiation and a refusal of performance of this MSA by the Subcontractor and grounds for default per Section 20 of this MSA.

SECTION 38. SAFETY. Subcontractor shall comply fully with all laws, orders, citations, rules, regulations, standards and statutes with respect to occupational health and safety, accident prevention, safety equipment and practices, including the accident prevention and safety program of Owner, if any, Contractor's Injury and Illness Prevention Program (IIPP), which is available upon request. Subcontractor shall conduct inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for providing safe working conditions and equipment for its employees and for employees of its sub-tier subcontractors and suppliers, 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 agrees that it will dismiss any worker from the Site who refuses to follow safety and Site rules. Subcontractor agrees to insert the provisions of this clause in all subcontracts and purchase orders and that it will insure that all of its sub-tier subcontractors and sub-tier vendors comply with the requirements of this clause. Subcontractor will pay any OSHA or other safety fines levied against Contractor due to the Subcontractor's negligence. Subcontractor shall provide material safety data sheets (MSDS) and safety program (this must include a program on Hazardous Communication) to Contractor prior to performing any portion of the Work on the Site. Subcontractor shall provide written documentation that its employees are trained in the use of equipment and/or materials they will use for the work, which use requires OSHA certification.

SECTION 39. HARMONIOUS OPERATIONS. Subcontractor agrees to perform all Work with labor that will Work harmoniously with other elements of labor involved in the Work. Subcontractor agrees not to participate in, or accede to, any cessation of Work, which may occur as a result of any labor dispute. In the event that any labor dispute or difficulty is created by or results from the operations of the Subcontractor in connection with the Work, Contractor may, at its option, terminate and cancel this MSA or any SOW under Section 23 above and shall have all of the rights and remedies provided thereof.

SECTION 40. LABOR LAWS. Subcontractor agrees to be bound by and comply with all applicable labor laws, regulations and standards issued or promulgated by all federal, state and other government authorities having jurisdiction over the Work and/or the Project, including but not limited to, Fair Labor Standards Act, the Americans With Disabilities Act, the Federal Family and Medical Leave Act, the California Labor Code, the California Fair Employment and Housing Act, and the California Family Rights Act. Subcontractor represents that it is an Equal Opportunity Employer, and agrees that it is bound by Executive Order 11246 as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended and the Rehabilitation Act of 1973, as amended. Subcontractor acknowledges that it has read said laws, regulations, standards, and conditions and is familiar with the terms thereof. Subcontractor agrees that its subcontractors shall observe and be bound by said obligations and requirements to the same extent as herein required of Subcontractor. Where required by either the law or the Prime Contract, Subcontractor shall provide Contractor with certified payrolls for its inspection and records within three (3) working days after payments to its employees have been made. If Contractor discovers, or has reason to believe, the Subcontractor has violated any 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 therefrom until the violation has been remedied by Subcontractor to the satisfaction of Contractor. Subcontractor shall 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.

SECTION 41. SUBCONTRACTOR REPRESENTATIVE. Subcontractor shall at all times during its Work on the Project have a representative present on the Site that is authorized to receive, and act on behalf of the Subcontractor to receive written notices. Prior to the start of its Work, Subcontractor shall notify Contractor of the name and cell phone number of its on-site representative. Subcontractor shall not replace its on-site representative without giving three (3) working days' prior written notice to Contractor of the change and the name and contact information for the new on-site representative.

SECTION 42. SOLICITATION OF CONTRACTOR'S EMPLOYEES. During the performance of this MSA and for a period of two (2) years from the date of the last SOW executed by the Parties, Subcontractor shall not solicit, attempt to solicit, induce, or otherwise cause any of Contractor's employee to terminate his or her employment in order to become an owner, partner, employee, consultant or independent contractor of Subcontractor.

SECTION 43. UNFAIR COMPETITION PROHIBITION. The names and addresses of Contractor's current and potential customers, including points of contact within a customer's organization, and information on the customers' present and future construction requirements are its trade secrets. To the extent Subcontractor obtains these trade secrets with or without Contractor's consent, Subcontractor shall keep these trade secrets confidential. Subcontractor shall not engage in any unfair competition during the performance of the MSA and for a period of two (2) years from the date of the last SOW executed by the Parties, by using, reproducing, and/or disclosing to any other person or company, those trade secrets. The term, "*customer*" as used in this Section 43, shall mean any person, company or other entity who at any time during a period of three years prior to the execution of this MSA and during the performance of this MSA purchased or received from Contractor any construction services, including consultation, or had commenced negotiations with Contractor for the purchase or receipt of such services.

SECTION 44. SURVEYING BENCHMARKS AND BASELINES. Contractor will set such survey benchmarks and baselines 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 five (5) working days' written notice in advance of the commencement of its operations, which required such survey benchmarks. Subcontractor shall carefully preserve such survey benchmarks. If such stakes are destroyed or damaged; they will be replaced at Contractor's earliest convenience. If, in Contractor's judgment, the survey benchmarks 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; Subcontractor shall reimburse Contractor the cost of such replacement.

SECTION 45. NOTICES. Any notice, where required by the terms of the MSA, shall be in writing, and may be served by email, personal delivery, United States Mail System, or facsimiles. Personal delivery shall be deemed complete when the notice is delivered to Subcontractor's representative at the Project or at the office address of Subcontractor appearing in the MSA. In the absence of such a representative, personal delivery is complete when the notice is delivered to any of Subcontractor's supervisors, or in their absence, left in a conspicuous place on the Site in the area of Subcontractor's work. If notice is mailed to the Subcontractor, it shall be deemed received three (3) working days from the date the notice, with postage pre-paid, is deposited in the United States Mail System. If the notice is sent by facsimile; it shall be deemed received on the date shown on the facsimile transmittal receipt.

SECTION 46. PUBLIC WORK PROJECTS. Whenever the Work to be performed under the MSA is for a public entity, the Work shall be governed by all applicable labor laws, regulations and standards issued or promulgated by a federal, state or other governmental authority having jurisdiction over the Work, including but not limited to, California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 and Federal Davis Bacon Act, Exhibit I contains information regarding required statutes.

SECTION 47. SEVERABILITY. To the best knowledge and belief of the Parties, this MSA 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 the MSA at any time during its term be in conflict with any law, ruling or regulation, then such provision shall continue in effect only to the extent legally permitted. If any provision of the MSA is thus held inoperative, the remaining provisions of the MSA shall nevertheless remain in full force and effect to the extent permitted by law. Should any provision of an SOW be invalid as a matter of law, such invalidity shall affect only such provision and shall not invalidate or affect the remaining provisions of the SOW.

SECTION 48. CLEAN UP. Subcontractor shall perform its Work as herein required so that the Site shall at all times be neat, orderly, and free from debris. 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 Site clean, orderly and in good condition. Subcontractor shall daily clean and remove from the site all rubbish and debris resulting from Subcontractor's Work and shall clean up to the satisfaction of Contractor, all dirt, grease, machine marks, etc. from the site, walls, ceiling, floors, fixtures, etc. deposited or placed by, or resulting from all Subcontractor's Work. In the event the Subcontractor fails to clean up as stated above, Contractor, after 24 hours notice to Subcontractor, reserves the right to perform the clean and charge the Subcontractor the cost thereof plus overhead and fee of 15%.

SECTION 49. 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 the MSA, 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 50. SECTION TITLES: Section titles are for convenience only and shall not be construed to modify, expand, or limit the provisions of the section to which they refer.

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**

IN WITNESS WHEREOF, the Parties hereto have executed this MSA by their proper officer or duly authorized agent.

By Contractor:

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Contractor's License Number: _____

By Subcontractor:

Company Name: _____

Address: _____

Tel: _____

Fax: _____

Contractor's License Number: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT A TO MSA
STATEMENT OF WORK

Statement of Work No: _____

Project Name: _____

Site: _____

This Statement of Work ("**SOW**") is made as of _____ by and between _____ Contractor ("**Contractor**"), and _____ ("**Subcontractor**") with reference to the following:

1. **MSA:** Pursuant to that certain Master Subcontractor Agreement dated _____ between Contractor and Subcontractor ("**MSA**"), the Parties agreed that any Work performed by Subcontractor would be in accordance with the MSA. Upon mutual execution of this SOW the Subcontractor shall provide the Work described herein in accordance with this SOW and the MSA. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the MSA.
2. **Contract Documents:** The drawings, specifications and contract documents for this Project and the contact information for the Project superintendent, Owner and lender (collectively, the "**Contract Documents**"), as the case may be, are identified as follows:

 See Attachment "A" incorporated by reference herein.
3. **Scope Of Work:** Subcontractor shall perform the following Work:

 See Attachment "B" incorporated by reference herein.
4. **Project Price and Schedule:** The compensation and timeline for performing the Work shall be:

 See Attachment "C" incorporated by reference herein.
5. **Commencement:** Subcontractor shall commence the Work hereunder within three (3) days of Subcontractor's receipt from Contractor of either a written notice to proceed or a purchase order, executed and delivered by Contractor. Following commencement, Subcontractor shall diligently prosecute the Work to completion in accordance with the Project Schedule. Unless and until a notice to proceed is issued and delivered in accordance with this SOW, Subcontractor is not authorized to commence any Work or services in connection with the Project.
6. **Termination:** Contractor reserves the right to terminate this SOW, without cause, upon notice to Subcontractor pursuant to Section 23 of the MSA. In no event shall Contractor be responsible for Subcontractor's lost profits or consequential damages.

Subcontractor:

DATE _____
BY _____
TITLE _____

Contractor

DATE _____
BY _____
TITLE _____

EXHIBIT B TO MSA **INSURANCE REQUIREMENTS**

Before beginning any Work under the MSA, Subcontractor's certificate of insurance evidencing the required coverage below must be on file with Contractor. Payment for Work performed under the MSA will not be owed until evidence of the specific insurance coverage and limits indicated below has been received by Contractor.

1. Employer's Liability and Workmen's Compensation. Subcontractor shall carry employer's liability and workmen's compensation insurance, providing coverage for the Work in amounts not less than:

- (a) \$1,000,000 each accident for bodily injury by accident
- (b) \$1,000,000 policy limit for bodily injury by disease
- (c) \$1,000,000 each employee for bodily injury by disease

In the event the Work contemplates work on board a ship or in a dock area, such insurance policy shall specifically provide that it has been endorsed to cover the United States Longshoremen's and Harbor Worker's Compensation Act. Such employer's liability or workmen's compensation policy shall include a waiver of subrogation endorsement in favor of Contractor.

2. General Liability. Subcontractor shall carry Commercial General Insurance covering all operations and Work performed 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:

- (a) premises and operations
- (b) products and completed operations
- (c) contractual liability insuring the obligations assumed by Subcontractor in this Agreement
- (d) broad form property damage (including completed operations)
- (e) personal injury liability
- (f) explosion, collapse, underground and subsidence hazards.
- (g) severability of interest clause.
- (h) aggregate limit to apply specifically to this project.
- (i) mold, mold claims, remediation of mold, personal injuries caused by mold, and all property damage caused by mold.

Such insurance will be provided by a coverage form no less restrictive than and with limits of liability no less than that required under the MSA Documents and in no event less than:

- (a) \$1,000,000 each occurrence (combined single limit for bodily injury and property damage)
- (b) \$1,000,000 for personal injury liability
- (c) \$2,000,000 aggregate for Products-Completed Operations
- (d) \$2,000,000 general aggregate

The general aggregate limit shall apply separately to Subcontractor's Work under each SOW. Such policy shall provide contractual liability coverage for all Work performed for Contractor; coverage for completed operations (products); and coverage for explosion, collapse and injury to or destruction of wires, conduits, pipes, mains, sewers and other similar property, or any apparatus in connection therewith, under the surface of the ground.

3. Additional Insured Requirement. The General Liability policy described in Section 2 above shall be endorsed to include Owner, Contractor and its employees, officers and owners as additional insured. The form of such additional insured endorsement shall be CG 20 10 (11/85), or its equivalent, with primary wording (stipulating that Owner's and Contractor's insurance will be excess only and will not contribute to Subcontractor's insurance).

4. Automobile. Subcontractor shall carry Automobile Liability insurance, including coverage for all owned, hired and non-owned vehicles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage.

5. Professional Liability Exposures. Subcontractor shall carry a \$2,000,000 Professional Liability insurance policy with a two year repute period for claims if Subcontractor or its subcontractor is to provide design/build services to the Project.

6. Builders Risk and Equipment Floater. If Subcontractor desires builder's risk coverage for fire and extended coverage, or equipment floater insurance to cover and protect Subcontractor's own equipment, Subcontractor shall purchase such insurance coverage at its own expense.

7. Installation Floater. Subcontractor shall carry an installation floater insurance policy covering damage to equipment and materials furnished by Contractor and being installed by Subcontractor, if the Prime Contract requires Contractor to furnish any materials to be installed by Subcontractor.

8. Excess Liability. Subcontractor shall carry excess liability, providing coverage where the Work is to be performed in amounts not less than: \$2,000,000 each occurrence and \$2,000,000 aggregate.

9. Certificates. A certificate or certificates of insurance shall be furnished by Subcontractor to Contractor prior to the commencement of the Work, with the premiums paid in advance, indication insurance coverage as required herein. In the event any such insurance or policy expires prior to the completion of the Work, Subcontractor shall furnish a new certificate or certificates covering renewal policies, which certificate or certificates shall be delivered to Contractor prior to the expiration date of the prior policies. The insurance evidenced by such certificates shall be in a company acceptable to Contractor, with a rating of B+ or higher by Best. Such certificates of insurance shall provide that Contractor will be given at least thirty days written notice in the event of cancellation or material change in any policy described in such certificate.

10. Other Insurance. In addition to the above requirements, Subcontractor shall carry any other insurance required by law of the place where the Work is to be done. If the MSA Documents shall require any greater limits than those required above or shall require any other or additional type of insurance with respect to the Work, the requirements made herein above shall be treated as modified so as to require compliance by Subcontractor therewith. If Subcontractor shall sublet any of such Work to a third party, Subcontractor shall see to it that such third party shall carry such insurance and furnish evidence thereof. Subcontractor's obtaining of the insurance required by this exhibit shall in no manner lessen or affect Subcontractor's obligations as set forth herein, or in any of the other provisions of the MSA Documents. The provisions herein above shall insure to the benefit of Contractor's insurance carriers.

11. General.

- a. Claims made or Modified Occurrence policies are not acceptable.
- b. Subcontractor will modify its insurance policy by endorsement, to stipulate that its General Liability insurance coverage applicable to the additional insureds is primary insurance and that any other insurance carried by the Subcontractor will be excess only and will not contribute with this insurance.
- c. The products liability and completed operations coverage provided for in the Commercial General Liability policy shall be maintained by Subcontractor for a minimum of five years following completion of the Work.
- d. In the event of any reduction or exhaustion of an aggregate annual limit of liability or any general aggregate policy limit of liability, Subcontractor shall then obtain additional insurance to replenish the limits of liability herein provided.
- e. Certificates of insurance, as evidence of the insurance required by the MSA Documents and including the required "additional insured" and "primary insurance" endorsements, shall be furnished by Subcontractor to Contractor before any Work is commenced by Subcontractor.
- f. The required insurance shall be subject to the approval of Contractor, but any acceptance of insurance certificates by Contractor shall in no way limit or relieve Subcontractor of the duties and responsibilities by it in the MSA.
- g. Subcontractor is required to have its insurance company name the Owner, Contractor and its employees, officers and owners as additional insured. This may be accomplished by amending the certificate of insurance and requesting the ISO Bureau Endorsement Form CG20 10 (11/85) or its equivalent to be included with the certificate of insurance. *The following language must be used on the additional insured endorsement:* The insurance afforded to the additional insured is primary insurance and is non contributory. If the additional insured has other insurance which is applicable to the loss on an excess or contingent basis, the amount of the Company's liability under this policy shall not be reduced by the existence of such other insurance".