

**W. L. BUTLER CONSTRUCTION, INC.
Subcontract Agreement**

Subcontract No.: **{Projects.Number}**

This Agreement is made this (day) day of (Month), (Year) between:

CONTRACTOR:

W. L. BUTLER CONSTRUCTION, INC.
Street Address #2
City, State ZIP

Phone: (650) 361-1270
Fax: (650) 361-8544

and:

SUBCONTRACTOR:

{ToCompany.Name}
{ToContact.DisplayAddress} Address #2
City, State Zip

Phone: {ToContact.Tel}
Fax: {ToContact.Fax}

Contractor has entered into a prime contract with:

PROJECT OWNER:

Owner Owner2
Address
City, State ZIP

PROPERTY/PARTICIPATING OWNER:

PPOwner
PPAddress
PPCity

LENDER:

Lender
Address
City, State ZIP

to perform work and services for the following **PROJECT:**

{Projects.Name}

located at

**{Projects.Address}
Address2
City, State Zip**

SECTION 1. CONTRACT

Subcontractor agrees to furnish at Subcontractor's own cost and expense all labor, material, equipment, supplies and personal property of every type and description, and to diligently and fully perform all work hereinafter described for construction of the Project in strict compliance with the Contract Documents for this Project. The phrase "Contract Documents" is defined to mean and include (a) this Subcontract Agreement ("Agreement"), (b) the plans, drawings, specifications, and all written modifications thereto made in accordance with this Agreement, (c) any work, purchase or change orders issued during the course of the work, (d) all exhibits, attachments, addenda or other documents incorporated into this Agreement and referred to herein; and (e) any written modifications or supplements to this Agreement by the parties subsequent to the date of execution of this Agreement.

The Exhibits incorporated into this Agreement are as follows: Exhibit "A" (Scope of Work), Exhibit "B" (Drawing and Specification List), Exhibit "C" (Project Schedule), Exhibit "D" (Subcontractor Change Order Request).

Subcontractor certifies and warrants that it has read and is fully familiar with all the terms and provisions of the Contract Documents, the location and conditions of the job site, and that Subcontractor is satisfied by its own investigation regarding all the conditions affecting the work to be done and materials to be furnished and that Subcontractor agrees to perform the work described in this Agreement in strict accordance with the Contract Documents based upon such investigation and research and not upon any estimate, opinions, representations or other information received from Contractor or any other person. Based on Subcontractor's independent investigation, Subcontractor agrees and acknowledges that the Contract Price in this Agreement is just and reasonable compensation for all work to be performed by Subcontractor pursuant to this Agreement. This Agreement represents the entire agreement between the parties hereto and no estimate or bid nor any verbal agreement or conversation between the parties hereto or with any other person, either before or after the execution of this agreement, shall affect or modify any of the provisions or obligations set forth herein. Subcontractor, its subcontractors, suppliers and/or material men will be and are bound by the Contract Documents insofar as they relate in any way, directly or indirectly, to the work covered by this Agreement. Subcontractor agrees to be bound to Contractor in the same manner and to the same extent as Contractor is bound to Owner under the prime contract and prime contract documents (collectively "Prime Contract"), including, but not limited to, all applicable terms and provisions thereof. Wherein in the Prime Contract reference is made to the Contractor, and the work or specifications therein pertain to the Subcontractor's trade, craft, and/or scope of work, such work or specifications shall be interpreted to apply to the Subcontractor in place of and instead of to Contractor. The Prime Contract between Owner and Contractor will reside in Contractor's office and will be made available for Subcontractor's review upon written request to Contractor. Subcontractor accepts full responsibility and warrants to perform the work outlined in this Agreement to the satisfaction of Owner and Contractor under the Prime Contract. Subcontractor further agrees to accept all responsibility and liability for its work on behalf of the Contractor based on the Prime Contract, which is familiar to Subcontractor and which is incorporated into this Agreement by this reference, to the fullest extent allowable by law.

SECTION 2. CONTRACT PRICE

Contractor agrees to pay Subcontractor for the strict performance of its work the sum of: **{Contracts.OrigValue}** (**{Contracts.OrigValue}** "**NumToText**"), subject to additions and deductions for changes in the work as may be directed in writing by Contractor pursuant to Section 6, and to make payment in accordance with the Payment Schedule, Section 4. This price is to include sales tax and is subject to a ten percent (10%) retention. **At Contractor's option, a three percent (3%) discount may be taken if Contractor forwards payment to Subcontractor within 15 days of receipt and acceptance of Subcontractor's compliant invoice as defined in Section 4.2 below and Subcontractor has submitted required certificates of insurance and endorsements.**

SECTION 3. SCOPE

Subcontractor agrees to furnish all necessary management, supervision, labor, equipment, power, supplies, materials, permits, machinery, tools, cartage, insurance, engineering, testing, services, facilities, and any other act or thing ("labor and materials") required to diligently and fully perform and complete the work described herein in strict compliance with the Contract Documents and the Prime Contract. Subcontractor shall exert its best efforts, skill and judgment and shall exercise all due diligence to complete the work in accordance with the highest standards of the industry and in the most expeditious, sound and economical manner.

In the event the work to be performed by Subcontractor shall be described by reference to a section of the Contract Documents, such reference shall not be deemed to limit the Subcontractor's obligation to perform only such work, but rather the work shall include any item of labor and materials reasonably inferred from the Contract Documents, necessary to achieve the intended result, and/or customarily furnished by a Subcontractor performing work in this trade, whether or not such work is shown or mentioned in the Contract Documents. All work performed by Subcontractor shall conform strictly to the Contract Documents, and all extra work and changes shall be made pursuant to and in strict compliance with this Agreement. The Contract Documents shall not include any proposals, bid, correspondence or agreements dated, made or alleged to have been made between Contractor and Subcontractor prior to the date of this Agreement unless specifically identified and incorporated in writing herein.

Promptly after the execution of this Agreement, Subcontractor shall furnish the Contractor with (1) a list of material suppliers that will deliver materials to the job site, (2) a list of subcontractors that will perform work at the site, and (3) an estimate of the cost of such materials and subcontract work.

In the event of any dispute between Contractor and Subcontractor regarding the scope of Subcontractor's work as defined in this Agreement, Subcontractor will not stop work but will prosecute the work in the most expeditious, sound, diligent and economical manner. The dispute shall be submitted for resolution in accordance with Section 17 of this Agreement.

Subcontractor acknowledges that prior to entering this Agreement, it was responsible for and did investigate and familiarize itself with the Contract Documents; all laws, ordinances, and regulations applicable to its work; the availability of personnel, workmen, materials, supplies, equipment, power, commodities, utilities, fuel, etc., and with respect to each of the foregoing, the cost and suitability thereof; if applicable, with the certifications, supervision, prevailing wages, benefits and contributions that may be required by law and/or existing labor agreements; the character and content of purchase orders and arrangements for supplies and material to be furnished for the use of Subcontractor; the site, conditions, all options, considerations and restrictions, lease agreements, surrounding, and underground conditions; prevailing weather and climatic conditions and history; and any other factors which may affect Subcontractor's work under this Agreement. Subcontractor further represents that it is responsible for and has inspected the Project site, familiarized itself with the conditions under which the work is to be performed, checked all figures, dimensions and measurements set forth in the Contract Documents related to Subcontractor's work, correlated its observations with the requirements of the Contract Documents, and shall immediately report any discrepancies or omissions to Contractor. Subcontractor warrants and agrees that it has investigated all such matters and familiarized itself therewith to the extent that Subcontractor, in its sole discretion, deems necessary. Failure to comply with this provision, and any additional costs resulting from such non-compliance shall be the sole responsibility of and charged to Subcontractor. Subcontractor further agrees that Contractor shall not be liable to Subcontractor on any claim for additional payment or additional time or any claim whatsoever if such claim directly or indirectly results from Subcontractor's failure to investigate or familiarize itself sufficiently with the conditions under which this Agreement is to be performed, including the foregoing, or from any misunderstanding thereof on the part of the Subcontractor.

Commencing any work or phase of work shall constitute acceptance of the terms and conditions of this Agreement and of the Contract Documents, of the conditions that may affect the work, and of the surface over which the work is being performed.

SECTION 4. PAYMENT SCHEDULE

(4.1) It is agreed that progress payments to Subcontractor shall be made with funds from Owner for work performed by Subcontractor as reflected in Contractor's billings to Owner and only when such funds are received by Contractor from Owner. It is the intent of the parties and understood that receipt by the Contractor from the Owner of funds for work performed by Subcontractor shall be a condition precedent to each payment due to Subcontractor becoming payable pursuant to the provisions of this section, and no recourse against the Contractor or its sureties may be made except as otherwise stated herein when Contractor receives such a payment from Owner, and Subcontractor complies with paragraph (4.2). Contractor agrees to pay Subcontractor said payment sum ten (10) days following payment from Owner. All of the above referenced conditions are conditions precedent to any money due to Subcontractor becoming payable. Contractor shall retain an amount equal to or up to ten percent (10%) of the requested amount (retainage) of the value of the work completed by Subcontractor as determined by Contractor and/or Owner. Final payment, including retainage monies, shall be made to subcontractor ten (10) days after the entire work required by the prime contract has been fully completed in conformity with the Contract Documents, said work has been delivered to and accepted by Owner, architect (if applicable) and Contractor and Contractor has received funds from Owner in final payment for the work under the prime contract. Final payment to Contractor by Owner shall be a condition precedent which must occur before final payment due to Subcontractor becomes payable. Subcontractor understands, acknowledges and agrees to accept the risk that amounts due to Subcontractor may be significantly delayed due to delays in payment from Owner to Contractor. Subcontractor agrees to furnish, if and when required by Contractor or Owner, payroll affidavits, receipts, vouchers, releases of claims for labor and material, and if applicable any required prevailing wage documentation, and agrees to furnish same from its subcontractors, suppliers and/or materialmen performing work or furnishing materials under this Agreement, all in form satisfactory to Contractor. At Contractor's option, Contractor may make any payment due hereunder by check made payable jointly to Subcontractor and any of its subcontractors, suppliers and/or materialmen who have performed work or furnished materials under this Agreement. Subcontractor shall provide Contractor with all necessary documentation pursuant to Section 4.2 within thirty (30) days of its completion of work or shall forfeit any and all rights to additional/final payments as allowable by law.

Any payment made hereunder shall not be construed as evidence of acceptance of any part of the work or materials furnished by Subcontractor. No payment shall constitute a waiver by Contractor of any right to require fulfillment of all terms of this Agreement in strict accordance with this Agreement and the Contract Documents. All sums received by Subcontractor under this Agreement are received in trust for the express use and purpose of paying in full all labor and materials furnished to Subcontractor in the performance of this Agreement. No title to any payment, or any part of it, shall vest in Subcontractor or be used for any other purpose, until Subcontractor has first paid in full all labor and materials furnished as of the date of the invoice to Subcontractor by all persons who may have supplied labor and/or materials used in the work described herein.

(4.2) Subcontractor shall prepare and present to Contractor, for its approval, in such reasonable time as to enable Contractor to apply for payment from Owner, and by no later than the twenty-fifth (25th) day of the month, an original invoice using Contractor's specified format. Contractor is not required to make any payment to Subcontractor unless Subcontractor provides such supporting documentation as may be required by Contractor, Owner, Architect, or any construction lender which has provided financing in connection with the work pursuant to the Prime Contract. Subcontractor acknowledges and agrees that its invoice will not be deemed complete until it complies with the following:

- a) Invoice must be on Contractor's specified form or AIA form and must reference the Subcontract number of this Agreement.

- b) Invoice must show current contract amount, percentage completed to date, previous billing amount, gross billing amount, 10% retainage and current net invoice amount.
- c) The first progress billing must be accompanied by a conditional waiver and release upon progress payment .
- d) Subsequent invoices must be accompanied by an unconditional waiver and release upon progress payment from Subcontractor and any and all of sub-subcontractors, material suppliers and equipment suppliers and a conditional waiver and release upon progress payment lien release showing the net invoice amount.
- e) Final billing must be accompanied by a conditional waiver and release upon final payment and an unconditional waiver and release for previous progress payments from Subcontractor. Unconditional waiver and release upon final payment from sub-subcontractors, material suppliers and equipment suppliers.
- f) If applicable, all invoices must be accompanied by any backup documentation specified by Contractor and/or by all prevailing wage documentation required by the Contract Documents, the Prime Contract and/or by law.

(4.3) Contractor will not issue final payment until Subcontractor has complied with the following:

- (a) Subcontractor must provide Contractor with warranties, guarantees, manuals, "as-built" drawings, and technical data, as required by the specifications in the quantities indicated.
- (b) Subcontractor must return all plans and specifications to Contractor.
- (c) Subcontractor must leave premises free of any and all liens and claims chargeable to the Subcontractor.

SECTION 5. TIME

Time is of the essence of this Agreement. Subcontractor shall provide Contractor with scheduling information and a proposed schedule for performance of its work in a form acceptable to Contractor. Subcontractor shall conform to Contractor's progress schedule and all revisions or changes made thereto. Subcontractor shall prosecute its work in a prompt and diligent manner in accordance with Contractor's progress schedule without delaying or hindering Contractor's work or the work of other contractors or subcontractors. Subcontractor shall coordinate the work covered by this Agreement with that of all other contractors, subcontractors, suppliers and/or materialmen and of the Contractor, in a manner that will facilitate the efficient completion of the entire work. In the event Subcontractor fails to maintain its part of the Contractor's schedule, it shall, without additional compensation, accelerate the work as Contractor may direct until Subcontractor's work is in accordance with such schedule. Contractor shall have complete control of the premises on which the work is to be performed and shall have the right to decide the time and order in which various portions of the work shall be installed and the relative priority of the work of Subcontractor and other subcontractors, and, in general, all other matters pertaining to the timely and orderly conduct of the work of Subcontractor on the premises. Should Subcontractor be delayed in the prosecution or completion of the work by the act, neglect or default of Owner, Architect or Contractor, or should Subcontractor be delayed waiting for materials, if required by this Contract to be furnished by Owner or Contractor, or by damage caused by fire or other casualty for which Subcontractor is not responsible, or by the combined action of the workers, in no way caused by Subcontractor or those for whom Subcontractor is responsible, or resulting from fault or collusion on the part of Subcontractor, or in the event of a lock-out by Contractor, then the time herein fixed for the completion of the work shall be extended the number of days that Subcontractor has been delayed but no allowance or extension shall be made unless a claim therefore is presented in writing to Contractor within forty-eight (48) hours of the commencement of such delay, and under no circumstances shall the time of completion be extended to a date which will prevent Contractor from completing the entire project within the time allowed Contractor by Owner for such completion.

No claims for additional compensation or damages for delays, whether caused in whole or in part by any conduct on the part of Contractor, including, but not limited to, conduct amounting to a breach of this Agreement, or delays by other subcontractors or Owner, shall be recoverable from Contractor. The extension of time for completion outlined above, shall be the sole remedy of Subcontractor; provided, however, that in the event Contractor obtains additional compensation from Owner on account of such delays, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor from Owner as is equitable under all of the circumstances.

Subcontractor shall prepare and obtain approval as required by the Contract Documents for all shop drawings, details, samples and do everything necessary and incidental to the prosecution of its work in conformance with Contractor's progress schedule.

If the time periods in the Prime Contract are shorter for the giving of notices of delay (Section 5), notices of claims (Section 6), demands for the release of any lien, suit, encumbrance or stop notice (Section 9), or notices to correct a default (Section 14), then the shorter period shall govern.

SECTION 6. CHANGES IN THE WORK

Subcontractor shall make any and all changes in the work described in the Contract Documents and this Agreement as directed by Contractor in writing. Such change or written direction shall not invalidate this Agreement. If any such written directive results in a material change in the scope of the work, the contract price stated in Section 2 and the time for Subcontractor's performance shall be adjusted by appropriate additions or deductions mutually agreed upon before Subcontractor performs the changed work. Subcontractor shall supply Contractor with all documentation necessary to substantiate the amount of the addition to or deduction from the price or time. If Contractor and Subcontractor cannot agree on the amount of the addition or deletion, Subcontractor shall nonetheless timely perform the work as changed by Contractor's written direction. Once Subcontractor receives Contractor's written direction, Subcontractor is solely responsible for timely performance of the work as changed by the written direction.

Payment for changed work shall be made in accordance with Section 4. No payment shall be made to Subcontractor greater than the contract amount unless an authorized change order has been issued by Contractor and executed by both Contractor and Subcontractor.

Subcontractor shall not make any changes in the work described herein or in any way cause or allow that work to deviate from the Contract Documents without written direction from Contractor. If Subcontractor makes any unauthorized changes in the work described herein without written direction from Contractor, Subcontractor understands and agrees that it will not be paid for that changed work, even if it received direction, verbal, written or otherwise, from Owner or any other person or entity. In addition, Subcontractor shall be liable for any and all losses, costs, expenses, damages and liability of any nature whatsoever associated with or in any way arising out of any such unauthorized change including but not limited to any additional costs or expenses incurred by Contractor for increased work or expenses of other trades affected by the unauthorized work of Subcontractor. Nothing contained in this Agreement shall be construed to modify Contractor's right to eliminate any portion of the work which Contractor deems unnecessary for the completion of the work as a whole or to make such changes as Contractor may deem necessary.

If a dispute arises between Contractor and Subcontractor about whether particular work is a change in the original scope of work described in Section 2, Subcontractor shall timely perform the disputed work. If Subcontractor intends to submit a claim for the disputed work, it shall give prompt written notice to Contractor before proceeding with the work. In addition, Subcontractor shall submit its written claim for additional compensation for that work within ten (10) days after receiving notice of such work, with sufficient detail for Contractor to make an evaluation of the merits of the claim. Subcontractor's failure either to give the written notice before proceeding with the work or to submit the written claim within the ten (10) days after

receiving notice of such work constitutes an acknowledgement by Subcontractor that it will not be paid for the disputed work, and a waiver of Subcontractor's right to payment for said work.

Subcontractor's sole and exclusive responsibility for the performance of this Subcontract is to the Contractor, and it is agreed that all of Subcontractor's dealings with the Owner's authorized agent, the Owner, or any other parties named in the Contract Documents shall be through the Contractor. No claims of any nature will be recognized, nor shall Contractor be liable on account thereof, unless all matters pertaining to such claim have been directed through Contractor's office. The Subcontractor further agrees that neither it, nor its representatives on the Project, shall make any agreement, written or oral, with the Owner's authorized agent or with the Owner, or with representatives of either, pertaining to any phase of the performance of this Agreement.

In the event Contractor prosecutes a claim against Owner for additional compensation for extra work, delay or any other kind of claim relating to Subcontractor's scope of work, Subcontractor shall cooperate fully with Contractor in the prosecution thereof, and shall pay costs and expenses incurred in connection therewith, including actual attorneys' fees and expert fees, to the extent that said claim is made by Contractor at the request of Subcontractor. In the event Subcontractor resists or declines to accept any claim, offset, or demand for credit asserted by Owner against Contractor which relates to Subcontractor's scope of work, Subcontractor shall cooperate fully with Contractor in the defense thereof, and shall pay costs and expenses incurred in connection therewith, including actual attorneys' fees and expert fees, to the extent that said defense is made by Contractor at the request of Subcontractor. Contractor shall have the right to offset or deduct from any amount owing to Subcontractor, the cost Contractor has incurred, or reasonably anticipates it shall incur, in prosecuting a claim against Owner on behalf of Subcontractor, or in defending a claim asserted by Owner against Contractor which relates to Subcontractor's work. This paragraph shall impose no obligation on Contractor to prosecute a claim against Owner on behalf of Subcontractor or defend against a claim asserted by Owner against Contractor relating to Subcontractor's scope of work. Contractor and Subcontractor acknowledge that the cost and expense to prosecute or defend against the type of claims and liability referred to above can be significant. Moreover, the uncertainty of outcome or result can make proceeding to trial or arbitration of claims and/or liabilities referred to above an unreasonable risk for Contractor. Therefore, Subcontractor expressly acknowledges and agrees that Contractor shall have the right, at its sole discretion, to settle with Owner any claim, demand or liability arising out of, or in any way connected with this Subcontract and Subcontractor shall be bound by the terms and conditions of any such settlement to the same degree as Contractor. Subcontractor shall indemnify Contractor for the full amount of any settlement with Owner including attorneys' fees, expert fees and expenses incurred in connection with the defense or settlement of any such claims.

To assist in the documentation of any claim the Subcontractor may have, Contractor authorizes its Project Superintendent to sign extra work orders or similar documentation submitted by Subcontractor to Contractor relating to said claims provided, however, that notwithstanding any language contained in the Subcontractor's extra work orders or similar documentation to the contrary, such signature by Contractor's Project Superintendent shall only represent the following:

- (a) That Subcontractor presented documentation to Contractor concerning a claim for work performed on the Project;
- (b) To the best of Contractor's knowledge at the time of signing such documentation, the hours and/or materials represented therein appeared to have been worked and/or used on the Project;
- (c) By signing such documentation, Contractor does not waive or release any right to dispute or object to the Subcontractor's claim that it is entitled to additional compensation, an extension of time, or that the hours worked and/or materials used were reasonable for the work performed therein.

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

Subcontractor acknowledges and agrees that Contractor's Superintendent does not have authority to waive any terms, conditions or requirements set forth in this provision, in this Agreement, and/or in the Contract Documents or the Prime Contract.

SECTION 7. DAMAGES CAUSED BY DELAYS

If Subcontractor should default in performance of the work described herein or should otherwise commit any act which causes delay to the project or the work described in the Prime Contract, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages and liquidated damages, sustained by Contractor, or for which Contractor may be liable to Owner or any other party because of Subcontractor's default. Further, whether or not liquidated damages and/or consequential damages are so assessed, Subcontractor agrees to pay to Contractor such other additional damages as the Contractor may sustain by reason of any such delay directly or indirectly attributable to or caused by Subcontractor, including, but not limited to, recovery of Contractor's overhead and expense related to managing and supervising the Project during or equal to any period of time resulting from such delay of Subcontractor; and Subcontractor further agrees that neither the payment of such damages nor any liability incurred for the payment of such damages shall release the Subcontractor from his obligation to otherwise fully perform this Agreement.

SECTION 8. BONDING OF SUBCONTRACTOR

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

SECTION 9. LIENS

Subcontractor agrees to maintain the Project, the property on which it is located, the site and any improvements thereon, any work or materials furnished pursuant to this Agreement, and any payments due to Owner and/or Contractor, free and clear of any liens, claims of lien, suits, encumbrances and/or stop notices, to the fullest extent allowable by law. Subcontractor agrees within ten (10) days after written demand to cause the effect of any such lien, claim, suit, encumbrance and/or stop notice to be removed, and in the event Subcontractor shall fail so to do, Contractor is authorized to use whatever means in its discretion it may deem appropriate to defend, dismiss, resolve, remove or dismiss same, and the cost thereof, together with actual attorneys' fees, shall be immediately due and payable to Contractor by Subcontractor. In case suit is brought on any claim, lien, encumbrance or stop notice labor performed or materials used on or furnished to the project, Subcontractor shall pay and satisfy any such amount or judgment as may be established by the decision of the court and/or arbitrator in said suit, or through settlement. Subcontractor may litigate any such lien or suit provided it causes the effect thereof to be removed, promptly in advance, from the premises and/or Project, and shall do such further things as may be necessary to cause Owner not to withhold any monies due to Contractor from Owner by reason of such liens, suits, encumbrances or stop notices.

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

SECTION 10. PROVISIONS FOR INSPECTION

Subcontractor shall at all times furnish to Contractor and its representatives safe and ample facilities for inspecting materials at the site of construction, shops, factories or any place of business of Subcontractor and its subcontractors and materialmen where materials under this Agreement may be in course of preparation, process, manufacture or treatment. Subcontractor shall furnish to Contractor as often as required by Contractor, full reports of the progress of the work at any place where materials under this Agreement may be in the course of preparation or manufacture. Such reports shall show the progress of such preparation and manufacture in such details as may be required by Contractor, including, but not limited to, any plans, drawings or diagrams in the course of preparation. Subcontractor shall be charged for all costs and expenses incurred in connection with reinspections necessitated by unacceptable materials or workmanship.

SECTION 11. MATERIALS AND WORK FURNISHED BY OTHERS

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

SECTION 12. PROTECTION OF WORK

Subcontractor shall effectively secure and protect the work done hereunder and assume full responsibility for the condition thereof until final acceptance by Architect, Owner and Contractor. Subcontractor further agrees to provide such protection as is necessary to protect the work and the workers of Contractor, Owner and other subcontractors from its operations. Subcontractor shall repair or replace, at its own expense, any property, surfaces, structures or conditions damaged as a result of, or arising out of Subcontractor's work.

Subcontractor is solely responsible and liable for executing its work in a safe and prudent manner, for establishing safety procedures, and for protecting its employees and the public from property damage and/or injury during the performance of this Agreement. Safe job site conditions and safe working practices are solely the responsibility of Subcontractor and shall be followed at all times. Any unsafe conditions or working practice caused by or attributable to Subcontractor, or relating to Subcontractor's scope of work, shall be immediately remedied by and at the sole expense of Subcontractor, and Contractor shall not be liable to Subcontractor's employees or any other third party for unsafe conditions related to or caused by Subcontractor's performance of this Agreement. Subcontractor is specifically responsible and liable for all aspects of its use of work space jointly used by different subcontractors, and Contractor specifically does not retain supervisory control of such joint use areas for purposes of liability for unsafe conditions.

SECTION 13. LABOR RELATIONS

Subcontractor shall maintain a competent superintendent acceptable to Contractor on the job at all times when Subcontractor's work is in progress to ensure that the work is completed in strict accordance with the Contract Documents, and the superintendent shall be authorized to represent Subcontractor as to all phases of the work. Subcontractor shall notify Contractor prior to the commencement of the work who Subcontractor's superintendent shall be and shall give prior notice to Contractor before any changes of superintendent shall become effective. Subcontractor shall remove any employee from the job who is unacceptable to Contractor.

Subcontractor shall comply with and agrees to be bound by all applicable federal, state and local laws and regulations, including, but not limited to, all provisions of the Fair Labor Standards Act, the Americans With Disabilities Act, the federal Family and Medical Leave Act, the California Labor Code, the California Fair Employment and Housing Act, the California Family Rights Act, all immigration and work authorization laws and regulations, and all other laws and regulations relating to the employment relationship, including compensation, benefits, workers compensation, and wage and hour requirements.

SECTION 14. RECOURSE BY CONTRACTOR

14.1 Failure of Performance

14.1.1 Right to Adequate Assurance. When reasonable grounds for insecurity arise with respect to Subcontractor's performance, Contractor may in writing demand adequate assurance of due performance. Subcontractor's failure to provide within twenty-four (24) hours of the demand such assurance of due performance as is adequate under the circumstances of the particular case is a default under Section 14.1.2 of this Agreement.

14.1.2 Default. Subcontractor shall be in default of this Agreement if at any time during the progress of work Subcontractor shall be adjudged a bankruptcy, or shall file or there is filed against it any proceeding under the Federal Bankruptcy laws, or shall make a general assignment for the benefit of creditors, or shall become insolvent or have a receiver appointed on account of its insolvency, or shall become delinquent with respect to contributions of payments required to be made to any health, welfare, pension, vacation, apprenticeship or other employee benefit program or trust, or fails to provide adequate assurance pursuant to Section 14.1.1 or if Subcontractor fails or refuses to supply sufficient properly skilled workers or sufficient materials of proper quality, or otherwise fails or refuses to prosecute diligently the work described herein or shall fail to perform fully any of the provisions of this Agreement. Upon the occurrence of any such events of default, Contractor shall give written notice of such default to Subcontractor and its surety, if any. If Subcontractor fails to cure said default within twenty-four (24) hours after giving of such notice, Contractor shall, at its option and without prejudice to any right or remedy it may have at law or in equity, have the right to any or all of the following remedies:

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

- (b) withhold payment to Subcontractor pending corrective action to the extent required by and to the satisfaction of Contractor.

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

14.1.3 Termination for Default. If Subcontractor fails to commence and satisfactorily continue correction of a default within twenty-four (24) hours after receipt by Subcontractor of the notice issued under Section 14.1.2, then Contractor may terminate Subcontractor's right to perform under this Agreement and use any materials, implements, equipment, appliances or tools furnished by or belonging to Subcontractor to complete Subcontractor's work without any further compensation to Subcontractor for such use. Contractor also may furnish those materials and equipment, and/or employ such workers or subcontractors as Contractor deems necessary to maintain the orderly progress on the work.

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

14.1.4 Termination for Convenience. Contractor may at any time and for any reason terminate Subcontractor's services and work at Contractor's convenience with seven (7) calendar day notice. Cancellation shall be by service or written notice to Subcontractor's place of business. The effective date of termination shall be seven (7) calendar days after service of written notice

Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Contractor or, at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived there from. 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 job site or in transit thereto.

Upon such termination, Subcontractor shall be entitled to payment in accordance with Section 4 only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus (2) such other costs actually incurred by Subcontractor as are permitted by the prime contract and approved by Owner. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Subcontractor prior to the date of the termination of this Agreement. In no event shall payment due hereunder exceed the amount due for approved units of work or percentage of completion. Subcontractor shall not be entitled to any claim of lien against Contractor or Owner for any additional compensation or damages in the event of such termination and payment.

14.1.5 Grounds for Withholding Payment. Contractor may withhold or, on account or subsequently discovered evidence, nullify the whole or part of any payment to the extent necessary to protect Contractor from loss, including costs and actual attorneys' fees, on account of (1) defective work not remedied; (2) claims filed or reasonable evidence indicating probable filing of claim; (3) failure of Subcontractor to make payments properly to its subcontractor or for material, labor or fringe benefits; (4) a reasonable doubt that this Agreement can be completed for the balance then unpaid; (5) damage to the Project or to another subcontractor; (6) penalties assessed against Contractor or Subcontractor for failure of Subcontractor to comply with state, federal or local laws and regulations; or (7) any other ground for withholding payment allowed by state or federal law, or as otherwise provided in this Agreement. When the above matters are rectified, such amounts as then due and owing shall be paid or credited to Subcontractor. Such withholdings may be made by Contractor whether or not said sums are in any way related to this Agreement or Project. Contractor may apply such deducted funds to any account, related or unrelated to this Agreement or Project, wherein the obligations of the Subcontractor have not been discharged as determined by the Contractor, and wherein the Contractor's interest are directly or indirectly involved. In the event Subcontractor is in default of, or breaches or fails to comply with any provision, covenant or requirement of this Agreement; or in the event that any person or entity asserts, or indicates that he will assert, any lien, claim, demand, or charge against the Project or land or improvements or funds related to the Project, or against the Owner, the Contractor or any surety, arising from Subcontractor's performance of this Agreement, the Contractor may withhold out of any payments due or to become due to the Subcontractor such amounts as the Contractor, in its discretion, may deem sufficient to completely protect and indemnify the Contractor and the Owner from any and all loss, damage and/or expense therefrom, including attorney's fees and litigation costs, until the condition requiring such measures has been remedied by Subcontractor to the satisfaction of Contractor. If the offending condition is not remedied by Subcontractor within a reasonable period of time, Contractor may, at its option, proceed to make application of the withheld funds in whatever manner Contractor may, in its discretion, determine as being in the best interest of itself and/or the Owner.

14.2 Distress/Insolvency.

14.2.1 Distress. If at any time the Contractor in his sole discretion shall determine that Subcontractor's financial condition has become impaired, unstable or unsatisfactory, the Subcontractor shall furnish additional security satisfactory to the Contractor within twenty-four (24) hours after written demand thereof is mailed or delivered to Subcontractor and in default of furnishing said additional security the Contractor shall have the option to terminate this Subcontract or to initiate such other action as the Contractor may, in its sole discretion, deem necessary for the protection of its interests and/or the prevention of delay in the efficient and orderly progress of work on the Project, including, but not limited to, that portion of the work to be performed by Subcontractor hereunder. In the event of such termination, the rights of the Contractor shall be the same as if the Subcontractor had willfully refused to further perform this Subcontract.

14.2.2 Insolvency/Termination. Upon the appointment of a receiver for Subcontractor or upon Subcontractor making an assignment for the benefit of creditors, or if Subcontractor seeks protection under the Bankruptcy Code or commits any other act of insolvency, Contractor may, absent any applicable legal limitation, terminate this Agreement upon giving twenty-four (24) hours written notice to Subcontractor and its surety, if any. If an order for relief is entered under the Bankruptcy Code with respect to Subcontractor, Contractor may terminate this Agreement by giving twenty-four (24) hours written notice to Subcontractor, its trustee, and its surety, if any, unless Subcontractor, the surety, or the trustee:

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

14.2.3 Interim Remedies. If Subcontractor is not performing in accordance with the schedule of work at the time of entering an order for relief, or at any subsequent time, Contractor, while awaiting the decision of Subcontractor or its trustee to reject or to accept this Agreement and to provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under this Section as are reasonably necessary to maintain the schedule of work.

Contractor may offset against any sums due or to become due to Subcontractor for all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, reasonable overhead, profit and attorney's fees incurred as a result of Subcontractor's non-performance.

Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Contract Price.

SECTION 15. INDEMNIFICATION

15.1.1 Subcontractor's Performance. With the exception that this Section 15 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the law and public policy of the State of California, Subcontractor shall defend (with counsel of Contractor's choice), protect, indemnify and hold harmless Owner and Contractor, including their officers, directors, agents, employees, affiliates, parents and subsidiaries, and each of them, of and from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities in law or in equity, of every kind and nature whatsoever ("Claims") arising out of or in connection with Subcontractor's operations to be performed under this Agreement including, but not limited to:

- (a) Personal injury claims, including, but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to, any employees or agents of Subcontractor, Owner, Contractor or any other subcontractor and/or damage to property of anyone (including loss of use thereof), caused or alleged to be caused in whole or in part of any act or omission of Subcontractor or anyone directly employed by Subcontractor or anyone for whose acts Subcontractor may be liable regardless of whether such personal injury or damage is caused by a party indemnified hereunder unless caused solely by the party(ies) indemnified hereunder;
- (b) Property damage or injury of any kind or nature whatsoever caused by, resulting from, arising out of or occurring in connection with the execution of the work by Subcontractor or in any other way relating to Subcontractor's performance of this Agreement, including but not limited to any loss arising from the breach of an implied warranty at law, except to the extent, if any, expressly prohibited by statute, should any claims for such damage or injury be made or asserted, whether or not such claims are based upon Contractor's and/or Owner's alleged active or passive negligence or participation in the wrong or upon any alleged breach of any statutory duty or obligation on the part of the Contractor and Owner unless caused solely by the negligence of Owner or Contractor;
- (c) Penalties imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance or statute, caused by the action or inaction of Subcontractor;
- (d) Infringement of any patent rights which may be brought against the Contractor or Owner arising out of Subcontractor's work;
- (e) Claims and liens (See Section 9) for labor performed or materials used or furnished to be used on the job, including all incidental or consequential damages resulting to Contractor or Owner from such claims or liens;
- (f) Subcontractor's failure to fulfill the covenants set forth in each subpart of Section 13, Labor Relations;
- (g) Failure of Subcontractor to comply with the provisions of Section 16.1, Casualty Insurance;
- (h) Any violation or infraction by Subcontractor of any law, order, citation, rule, regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees, including, but not limited to, the use of Contractor's or others' equipment, hoists, elevators, or scaffolds (see Sections 16, 18 and 20).

Each of the foregoing paragraphs in this Section creates independent duties on the part of Subcontractor which extend to all claims, liability, losses, damages, costs and expenses (including reasonable attorneys fees) arising before or after the completion of the work performed by Subcontractor while this Agreement is in force as well as after its termination

Such indemnity provisions apply regardless of any active and/or passive negligent act or omission of Owner or Contractor or their agents or employees. Subcontractor, however, shall not be obligated under this Agreement to indemnify Owner or Contractor for Claims arising from the sole negligence or willful misconduct of Owner or Contractor or their agents, employees or independent contractors who are directly responsible to Owner or Contractor. It is the intent of parties that this section creates a **"type one" indemnity agreement** inuring to the benefit of Contractor and Owner as defined by California law.

15.1.2 Subcontractor shall:

- (a) At Subcontractor's own cost, expense and risk, defend all Claims as defined in Section 15.1.1 that may be brought or instituted by third persons, including, but not limited to, governmental agencies or employees of Subcontractor, against Contractor or Owner or their agents or employees or any of them;
- (b) Pay and satisfy any judgment or decree that may be rendered against Contractor or Owner or their agents or employees, or any of them, arising out of any such Claim; and/or
- (c) Reimburse Contractor or Owner or their agents or employees for any and all legal expense incurred by any of them in connection herewith or in enforcing the indemnity granted in this Section 15.

15.2 Risk of Loss.

All work covered by this Agreement done at the site or in preparing or delivering materials or equipment, or any or all of them, to the site shall be at the risk of Subcontractor exclusively until the completed work is accepted by Contractor.

15.3 No Limitation of Liability.

The indemnities set forth in this Section 15 shall not be limited by the insurance requirements set forth in Section 16.

Contractor and Owner encourage, recommend and advise Subcontractor to consult an attorney regarding the force, effect and implications of this section as well as the provisions of the entire Agreement.

SECTION 16. INSURANCE

16.1 Casualty Insurance.

Subcontractor shall, at its expense, procure and maintain insurance on all of its operations, with companies acceptable to Contractor and provide proof of insurance to Contractor prior to jobsite mobilization, as follows:

16.1.1 Workers' Compensation and Employers Liability Insurance Worker's Compensation insurance shall be provided as required by California Law. Subcontractor and its insurance carriers agree to waive all rights of subrogation against the Contractor, Owner and all other indemnitees named in the Contract Documents, and subcontractor's insurance policies shall contain an endorsement requiring such waiver of subrogation. Employer's Liability insurance shall be provided in amounts not less than:

- \$1,000,000 each accident for bodily injury by accident
- \$1,000,000 policy limit for bodily injury by disease
- \$1,000,000 each employee for bodily injury by disease

16.1.2 General Liability Insurance. Subcontractor shall carry Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of Subcontractor providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

- (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.

The limits of liability shall be not less than the amounts required of Subcontractor under the Contract Documents, but in no event less than:
\$1,000,000 each occurrence (combined single limit for bodily injury and property damage)
\$1,000,000 for personal injury liability
\$2,000,000 aggregate for Products-Completed Operations
\$2,000,000 general aggregate

The general aggregate limit shall apply separately to Subcontractor's work under this Agreement.

Additional Insured Endorsement. W.L. Butler Construction, Inc., its officers, directors and employees; the Owner; their directors, officers and employees shall be named as additional insureds under the Comprehensive General Liability or Commercial General Liability policy for any liability arising out of the performance of work. Coverage for the Contractor, its officers, directors and employees, and the Owner as additional insureds shall be provided by a policy provision or by an endorsement providing coverage at least as broad as Additional Insured (Form B) endorsement form CG20101185 as published by the Insurance Services Office (ISO). Any costs related to such endorsement shall be borne by Subcontractor without reimbursement.

Subcontractor will modify their insurance policy by endorsement, to stipulate that their General Liability insurance coverage applicable to the additional insureds is primary insurance and that any other insurance carried by the Contractor will be excess only and will not contribute with this insurance.

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 (5) years following completion of the work provided for herein.

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.

16.1.3. Claims Made Policy Form Provisions. Subcontractor shall not provide general liability insurance under any Claims Made General Liability form without the express prior written consent of Contractor.

16.1.4 Automobile Liability Insurance. 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.

16.1.5 Professional Liability Exposures. Subcontractor shall carry a \$1,000,000 Professional Liability insurance policy with a two year reputational period for claims if Subcontractor or its subcontractor is to provide design/build services to the project.

16.1.6 Aircraft and Crane Insurance. If the Subcontractor or their Subcontractors use any owned; leased, chartered or hired aircraft of any type (including helicopters) in the performance of this contract, they shall maintain aircraft liability insurance in an amount 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 to the Contractor prior to the start of work if subcontractor, or their subcontractors use any owned, leased, chartered or hired crane of any type, they shall maintain general liability insurance in an amount not less than \$5,000,000 per occurrence. Evidence of coverage in the form of a Certificate of Insurance shall be provided to Contractor prior to start of work.

16.1.7 Certificates of insurance, as evidence of the insurance required by this Agreement and including the required "additional insured" and "primary insurance" endorsements, shall be furnished by Subcontractor to Contractor before any work hereunder is commenced by Subcontractor. The certificates of insurance shall provide that there will be no cancellation or reduction of coverage without 30 days prior written notice to the Contractor.

16.1.8 Contractor may take such steps as are necessary to assure Subcontractor's compliance with its obligations under this Section 16. In the event Subcontractor does not comply with the insurance requirements outlined in this Agreement, Contractor may, at its option, provide such coverage to protect its interests and charge the Subcontractor for the cost of that insurance, or terminate this Agreement.

16.1.9 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 this Agreement. If higher limits or other forms of insurance are required in the Contract Documents, Subcontractor will comply with such requirements.

16.1.10 Sub-subcontractor Requirements. Subcontractors shall require that any and all tiers of its subcontractors shall maintain insurance in like form and amounts including the additional insured endorsement naming Contractor and Owner.

16.1.11. "Modified Occurrence" Policy. "Modified Occurrence" insurance policies will not be accepted under any circumstances.

16.2 Property Insurance. Contractor and Subcontractor waive all rights against each other and against all other subcontractors and Owner for loss or damage to the extent reimbursed by Builder's Risk or any other property and 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.

Under written request of Subcontractor, Contractor shall provide Subcontractor with a copy of the Builder's Risk policy of insurance or any other property or equipment insurance in force for the project and procured by Contractor. Subcontractor shall satisfy itself as to the existence and extent of such insurance prior to commencement of Subcontractor's work.

If Builder's Risk insurance purchased by Owner or Contractor provides coverage for Subcontractor for loss or damage to Subcontractor's work, Subcontractor shall be responsible for the insurance policy deductible amount applicable to damage to Subcontractor's work and/or damage to other work caused by Subcontractor.

If not covered under the Builder's Risk policy of insurance or any other property or equipment insurance required by the Contract Documents, Subcontractor shall procure and maintain at its own expense property and equipment insurance for portions of Subcontractor's work stored off the site or in transit.

If Owner or Contractor has not purchased Builder's Risk or equivalent insurance including the full insurable value of Subcontractor's work, then Subcontractor may procure such insurance at its own expense as will protect the interests of Subcontractor and its subcontractors in the work. Such insurance shall also apply to any of Owner's or Contractor's property in the care, custody or control of Subcontractor.

16.3 Failure of Contractor to enforce in a timely manner any of the provisions of this Section 16 shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of this Agreement. Any exceptions to the provisions of this Section 16 must be delineated in the Contract Documents.

SECTION 17. DISPUTE RESOLUTION PROCEDURE

17.1 Preliminary Dispute Resolution Procedure and Agreement to Arbitrate

17.1.1 Disputes under Prime Contract. Any dispute resolution procedure in the prime contract shall be deemed incorporated in this Agreement and shall apply to any disputes arising hereunder, except those disputes involving acts, omissions or the responsibility of the Owner under the prime contract, those which have been waived by the making or acceptance of final payment, and questions regarding the licensure of the Subcontractor. Subject to compliance with all applicable laws, including but not limited to those relating to false claims, disputes, claim certifications, cost and pricing data requirements, Contractor's sole obligation is to present any timely-filed claims by Subcontractor to Owner under such procedure and, subject to the other provisions of this Agreement, to pay to Subcontractor the proportionate part of any sums paid by the Owner to which Subcontractor is entitled.

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

17.2 Arbitration Procedures.

In the event the prime contract contains an arbitration provision for disputes not involving the acts, omissions or the responsibility of the Owner under the prime contract, the following shall apply:

17.2.1 Notice of Demand. For arbitration under the prime contract, notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and shall conform to the requirements of the arbitration provision set forth in the prime contract. For claims not involving the acts, omissions or the responsibility of the Owner under the prime contract, the parties hereto shall submit any and all disputes arising under or relating to the terms and conditions of the Subcontract to arbitration in accordance with the Construction Industry Rules of the American Arbitration Association. In either case, the demand for arbitration shall be made within a reasonable time after written notice of the claim, dispute or other matter in question has been given, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim dispute or other matter in question would be barred by the applicable statute of limitations.

17.2.2 Award. The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

17.2.3 Work Continuation and Payment. Unless otherwise agreed in writing, Subcontractor shall carry on the work and maintain the schedule of work pending arbitration and Contractor shall continue to make payments in accordance with this Agreement.

17.2.4 Consolidated Arbitration Proceedings. To the extent not prohibited by contracts with others, the claims and disputes of Owner, Contractor, Subcontractor and other subcontractors, suppliers and/or materialmen involving a common question of fact or law shall be heard by the same arbitrator(s) in a single proceeding. In this event, it shall be the responsibility of Subcontractor to prepare and present Contractor's case, to the extent the proceedings are related to this Agreement. Should Contractor enter into arbitration with the Owner or others regarding matters relating to this Agreement, Subcontractor shall be bound by the result of the arbitration to the same degree as the Contractor.

17.2.5 No Limitation of Rights or Remedies. This Section shall not be deemed a limitation of any rights or remedies available to Subcontractor under any federal or state mechanics' lien laws or under any applicable labor and material payment bonds unless such rights or remedies are expressly waived by Subcontractor.

SECTION 18. COMPLIANCE WITH ALL LAWS AND SAFETY PRACTICES

Subcontractor shall comply fully with all laws, orders, citations, rules, regulations, standards and statutes affecting or relating to this Agreement or its performance, including but not limited to those with respect to occupational health and safety, the handling and storage of hazardous materials, accident and illness prevention, safety equipment and practices including the accident and/or illness prevention and safety program of Owner and Contractor, and compliance with all applicable environmental rules and regulations, including those relating to sediment and erosion control, storm water discharge, and air, ground and water quality. Subcontractor shall conduct inspections and monitoring to determine that compliance with all of the foregoing and that safe working conditions and equipment exist, and Subcontractor accepts sole responsibility for providing a safe work environment for its employees and for employees of its subcontractors and suppliers of material and equipment, and for any person or entity that may be affected by Subcontractor's work, for adequacy of and required use of all safety protective measures and equipment, and for full compliance with the aforesaid laws, orders, citations, rules, regulations, standards and statutes.

In keeping with Contractor's intention to provide a safe working environment for all of its employees, agents, subcontractors and material and equipment suppliers, the Contractor enforces a strict substance abuse policy. Any employee found to possess, sell or use drugs/alcohol or any controlled substance at any W. L. Butler Construction, Inc. job site will be subject to immediate termination. It is the responsibility of all employees and Subcontractors to enforce this policy, including immediate termination of any individual found possessing, selling, or using drugs/alcohol while on the job site and reporting the same to Contractor. **THERE WILL BE NO EXCEPTION TO THE ABOVE ESTABLISHED POLICY.**

SECTION 19. WARRANTY

Subcontractor warrants to Owner and Contractor that all goods, materials, and equipment furnished as part of the work shall conform to the Contract Documents and/or other descriptions furnished by Contractor and that the goods, materials and equipment shall be merchantable, free from defect, new, of good workmanship and quality, and fit for any particular purpose for which the goods, materials or equipment are required. Subcontractor further warrants that all work under this Agreement shall be performed to the highest standard and in a workmanlike manner, shall be of good quality, free of fault and defects and in conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved or authorized, shall be considered defective. The warranty provided in this section shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents. All such warranties shall survive inspection, testing and acceptance of the goods and shall extend to future performance of the goods or materials. If the goods or materials fail to conform to the Contract Documents and/or other descriptions, Subcontractor shall promptly replace same. No payment or acceptance by Contractor shall constitute a waiver of the foregoing, nor shall anything herein be construed to exclude or limit any warranties implied by law. All materials shall be free of hazardous substances including, but not limited to, asbestos.

Subcontractor will provide a warranty for its work, in accordance with the Contract Documents. The duration of the warranty will be for a minimum period of one year unless a longer period is noted in the Prime Contract and/or Contract Documents, in which case the longer period will apply. The start date of the warranty will commence on the date of substantial completion of the project and specific acceptance of the work performed under this Subcontract, or such other later date that may be provided for in the Prime Contract and/or Contract Documents. This warranty is in addition to the other remedies Contractor has under this Contract and California law. Upon receipt of notification from Contractor, Subcontractor shall correct at Subcontractor's sole cost and expense any defects or deficiencies in the materials or workmanship which arise during the period of Subcontractor's warranty/guarantee. If Subcontractor shall fail to correct the defects and/or deficiencies within seventy-two (72) hours of receipt of notice from Contractor, Contractor may without further notice provide the labor and materials necessary to correct the defects and/or deficiencies and the cost thereof shall be charged to the Subcontractor. In the event there are not sufficient funds to satisfy such deduction, Subcontractor shall reimburse Contractor for such cost immediately upon receipt of written demand from Contractor.

SECTION 20. USE OF CONTRACTOR'S EQUIPMENT

In the event Subcontractor shall use Contractor's equipment, materials, labor, supplies or facilities, Subcontractor shall reimburse Contractor at a predetermined rate, except as provided in Section 14.1.2 or as otherwise stated herein. Further, Subcontractor assumes all responsibility for physical damage to such equipment, materials, labor, supplies, or facilities used by Subcontractor or its agents, employees, or permittees. In the event that Contractor's employees are used by Subcontractor, Subcontractor shall have full responsibility for all acts or omissions of Contractor's employees with regard to Subcontractor's use or employment of them. Subcontractor accepts any and all of Contractor's equipment, materials, labor, supplies or facilities as furnished.

If, at the request of Subcontractor, Contractor permits Subcontractor personnel to use Contractor's equipment, owned or rented, such as hoisting equipment, safety planks, ladders and scaffolds, Subcontractor will indemnify Contractor and hold Contractor harmless from any and all liability, claims, actions, demands, damages, and expenses, including without limitation, reasonable attorneys' fees arising out of injury to persons or property in any connection with such use of Contractor's services, facilities, or equipment.

Subcontractor agrees to indemnify Contractor and hold Contractor harmless from any and all liability, claims, actions, demands, damages, and expenses, including without limitation, reasonable attorneys' fees arising out of injury to persons or property in any connection with such use of any equipment, tools or devices within the control of Subcontractor, whether owned, rented, leased or borrowed by Subcontractor.

SECTION 21. ASSIGNMENT OF CONTRACT

Subcontractor shall not, without written consent of Contractor, assign, transfer, or sublet any portion or part of the work required by this Agreement, nor assign any payment hereunder to others.

SECTION 22. ASSUMPTION OF PRIME CONTRACT

The work to be done hereunder is a portion of the work required of the Contractor under the Prime Contract referred to herein. Subcontractor hereby assumes the same obligations and responsibilities with respect to its performance under this Agreement that Contractor assumes towards Owner under the Prime Contract, and shall require that all of its subcontracts and suppliers assume the same obligations and responsibilities with respect to each of their respective performances. Insofar as applicable, Subcontractor shall be bound by all the terms and conditions of the Prime Contract and shall strictly comply therewith. All rights and remedies reserved by Owner under the Prime Contract shall apply to and be possessed by Contractor in its dealings with Subcontractor. If there is any conflict between this Agreement and any provision in the Prime Contract, the Prime Contract shall control.

SECTION 23. INDEPENDENT CONTRACTOR

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

SECTION 24. CLEAN-UP

At all times during the course of construction, Subcontractor shall perform its work so as to maintain the site in a clean, safe and orderly condition. Subcontractor is responsible for daily and continuous clean-up and cartage of debris relating to its work, at its own expense. Upon completion of work under this Agreement, Subcontractor shall remove from the site all hazardous materials, temporary structures, debris and waste incidental to its operation and clean all surfaces, fixtures, equipment, etc., relative to the performance of this Agreement.

SECTION 25. ATTORNEYS' FEES

In the event the parties become involved in litigation or arbitration with each other anyway related to or arising out of this Agreement or other performance thereof in which the services of an attorney or other expert are reasonably required, the prevailing party shall be fully entitled to and compensated for the cost of its participation in such proceedings, including the cost incurred for attorneys' fees and experts' fees. In the case of a dispute under the prime contract dispute resolution provisions, Contractor shall be entitled to such attorneys' fees and other costs as may be provided for under the prime contract.

SECTION 26. NOTICES

Written notice, where required by the terms of this Agreement, may be accomplished by: (i) personal delivery, with such notice effective upon receipt; (ii) recognized overnight courier service, with such notice effective on the date and time delivery is made or attempted, whichever is earlier; (iii) United States Postal Service first class certified mail, return receipt requested, with such notice effective when received or when delivery is first attempted, whichever is earlier. Notices to Contractor and/or Subcontractor shall be sent to the addresses shown on the first page of this Agreement.

SECTION 27. GENERAL PROVISIONS

Subcontractor shall provide all necessary personal safety equipment required by local, state or federal agencies or law including but not limited to OSHA requirements including hard-hats for their workers. Lost time due to Subcontractor's workers being sent off the job site because of lack of safety equipment will not be a reason for not meeting the Contractor's schedule. Subcontractor's workers causing unsafe conditions or engaging in unsafe work practices will not be tolerated and may be required to leave the job site at the discretion of the Contractor. Subcontractor will report to Contractor all accidents to or by Subcontractor's personnel or equipment which occur at this job site. Copies of accident reports will be given to Contractor within 24 hours of the occurrence.

Subcontractor will procure and pay for all permits and inspections required by public authority for any part of the work and to furnish any bonds, securities or deposits required by such authority to permit performance of the work.

Subcontractor shall abide by and conform to any and all procedures and schedules established by Contractor, including those which may be necessitated by acts of God, Subcontractor's failure to comply with this agreement, or other reasons unknown at this time.

In the event any one or more of the provisions of this Agreement, or any portion thereof, shall for any reason be held to be invalid, illegal or otherwise unenforceable in any respect, such provision, or portion thereof, shall be severed herefrom, and such invalidity illegality or unenforceability shall not affect any other provision hereof and the remainder of the provisions of this Agreement shall continue in full force and effect without impairment.

This Agreement and the covenants contained herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs and administrators, executors, permitted assigns and successors in interest.

Without limiting the survival of any express provision to that effect, the terms of Section 15 (Indemnification) and Section 16 (Insurance) shall be continuing covenants which shall survive during the performance of the work pursuant to this agreement and or the termination of this Agreement.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT IS FILED WITHIN THREE (3) YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS STATE LICENSE BOARD, P. O. BOX 26000, SACRAMENTO, CALIFORNIA 95826.

Please complete the portion below and sign to acknowledge acceptance of this Subcontract Agreement in its entirety. Return the signed Subcontract Agreement to our office for full execution and a finalized copy will be returned for your records.

Dated: _____

Dated: _____

SUBCONTRACTOR

CONTRACTOR

{ToCompany.Name} _____

W. L. Butler Construction, Inc.

(Company) _____

Street Street2

Address Address2 _____

Redwood City, CA 94063

(Address) _____

City, State ZIP _____

By _____

By _____

(Name)

(Name)

Title _____

Title Ref.No. {Projects.Number}/{Contracts.CSICode}

License No. _____

License No. 355353