

LONG FORM STANDARD SUBCONTRACT

TRADE CODE:

This Agreement is made between BEVILACQUA & SONS, GENERAL CONTRACTOR (Contractor) and (Subcontractor) as named above. The work described in Section 2 below shall be performed in accordance with the prime contract between BEVILACQUA & SONS (Contractor) and (Owner) as named below, in accordance with all plans, specifications and other contract documents attached to or named herein and/or incorporated into the prime contract for the project.

Project Owner:

Job #:

Date:

Said work is to be performed in accordance with the prime contract and the plans and specifications. Said plans and specifications have been prepared by or on behalf of:

ARCHITECT:

SECTION 1. ENTIRE CONTRACT The phrase "Contract Documents" is defined to mean and include:

PLANS AND SPECIFICATIONS BY:

Subcontractor certifies that he has reviewed and is fully familiar with all of the terms of the Contract Documents, the location of the job site, and the conditions under which the work is to be performed and that he enters into this Agreement based upon his investigation of all such matters and is not relying on any opinions or representations of Contractor. This Agreement represents the entire agreement. The Contract Documents are incorporated in this Agreement by reference, and Subcontractor and his subcontractors 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 Contract Documents, to the extent of the work provided for in this Agreement, and that where, in the Contract Documents reference is made to Contractor, and the work or specifications therein pertains to Subcontractor's trade, craft, or type of work, then such work or specification shall be interpreted to apply to Subcontractor instead of Contractor.

SECTION 2. SCOPE Subcontractor agrees to furnish all labor, materials, equipment and other facilities required to perform the work to complete including the clean up and removal of own trade related debris:

In the event of any dispute between Contractor and Subcontractor over the scope of Subcontractor's work under the Contract Documents, Subcontractor will not stop work but will prosecute the work diligently to completion, the dispute to be submitted for resolution in accordance with Section 17 below.

SECTION 3. CONTRACT PRICE Contractor agrees to pay Subcontractor for the strict performance of his work, the sum of:

or as set out in Section 26 below, subject to additions and deductions for changes in the work as may be directed in writing by Contractor, and to make payment in accordance with the Payment Schedule, Section 4.

SECTION 4. PAYMENT SCHEDULE Contractor agrees to pay to Subcontractor in monthly progress payments of NINETY percent (.90%) of labor and materials which have been placed in position, with funds received by Contractor from Owner for work performed by Subcontractor as reflected in Contractor's applications for payment. Such monthly progress payments shall be made ten (10) days after receipt of payment from the Owner by Contractor. Final payment to Subcontractor shall be made ten (10) days after the entire work required by the prime contract has been fully completed in conformity with the Contract Documents and has been delivered to and accepted by Owner, Architect, and Contractor, with funds received by Contractor from Owner in final payment for work under the prime contract. Subcontractor agrees to furnish, if and when required by Contractor, payroll affidavits, receipts, vouchers, releases of claims for labor, material, and from his subcontractors performing work or furnishing materials under this Agreement, all in form satisfactory to Contractor, and it is agreed that no payment hereunder shall be made, except at Contractor's option, until and unless such documents have been furnished. Contractor, at his option, may make any payment due hereunder by check made payable jointly to Subcontractor and any of his subcontractors, suppliers and materialmen who have performed work or furnished materials under this Agreement. Any payment made hereunder prior to completion and acceptance of the work, as referred to above, shall not be construed as evidence of acceptance or acknowledgement of completion of any part of any Subcontractor's work.

4.1 Lien Releases

4.1.1 Lien Release. The first application for payment shall include a conditional lien release in accordance with local lien laws and in a form acceptable to Owner, and conditional only upon payment of the requested amount. Each subsequent application for payment shall include a final unconditional lien release for the amount of the previous application for payment AND a conditional lien release conditional only upon payment of the current application for payment amount. The final application for payment shall include the unconditional lien release for the prior application for payment, and a final lien release conditioned only on payment of the final amount.

The Contractor shall include such conditional and unconditional lien releases for any Subcontractors included in each application for payment, including any Subcontractors final application for payment.

#### 4.2 Payroll Records

Payroll Records. Pursuant to California Labor Code Section 218.7 Subcontractor as a condition of receiving any monthly progress payments will furnish payroll records that support Subcontractors monthly payroll request. Failure to submit such records with each Subcontractor monthly pay request will give Contractor the absolute right to withhold the payroll requested in monthly pay request until ten (10) days after receipt of satisfactory payroll records and payment from owner.

**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 his 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 his 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, and of the Contractor, in a manner that will facilitate the efficient completion of the entire work. In the event Subcontractor fails to maintain his part of the Contractor's schedule, he 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 workmen, in no way caused by 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 thus been delayed, but no allowance or extension shall be made unless a claim therefor is presented in writing to Contractor within 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, and the above-mentioned extension of time for completion 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. In the event that Contractor prosecutes a claim against Owner for additional compensation for any delay, Subcontractor shall cooperate fully with Contractor in the prosecution thereof and shall pay costs and expenses incurred in connection therewith, including actual attorneys' fees, to the extent that said claim is made by Contractor at the request of Subcontractor.

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

**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 necessary, the contract price stated in Section 3 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.

Subcontractor shall not make any changes in the work described in Section 2 or in any way cause or allow that work to deviate from the Contract Documents without written direction from Contractor. If Subcontractor makes any changes in the work described in Section 2 without written direction from Contractor, such change constitutes an agreement by Subcontractor that he will not be paid for that changed work, even if he received verbal direction from Contractor or any form of direction, 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 change he makes without written direction from Contractor.

If a dispute arises between Contractor and Subcontractor about whether particular work is a change in the work described in Section 2, Subcontractor shall timely perform the disputed work and may give written notice of a claim for additional compensation for that work. Such written notice of claim must be given within ten (10) days after such work is performed. Subcontractor's failure to give written notice within the ten (10) days constitutes an agreement by him that he will not be paid for the disputed work.

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 provision 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.

**SECTION 7. DAMAGES CAUSED BY DELAYS** If Subcontractor should default in performance of the work described in Section 2 or should otherwise commit any act which causes delay to the prime contract work, 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.

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

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 his representatives safe and ample facilities for inspecting materials at the site of construction, shops, factories or any place of business of Subcontractor and his 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.

**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 account of Subcontractor and deducted from monies otherwise due under this Agreement.

**SECTION 12. PROTECTION OF WORK** Subcontractor shall effectually 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 workmen of Contractor, Owner and other subcontractors from his operations. Subcontractor shall be liable for any loss or damage to any work in place or to any equipment and materials on the job site caused by him or his agents, employees or guests.

### **SECTION 13. LABOR RELATIONS**

13.1 Subcontractor shall keep a representative at the job site during all times when Subcontractor's work is in progress, and such representative shall be authorized to represent Subcontractor as to all phases of the work. Prior to commencement of the work, Subcontractor shall notify Contractor who Subcontractor's representative is to be, and in the event of any change of representative Subcontractor shall notify Contractor who the new representative is to be prior to such change becoming effective.

Subcontractor acknowledges that Contractor has entered into labor agreements covering work at his construction job sites with the labor unions listed in Section 25 below and incorporated herein by reference.

Subcontractor agrees to comply with all of the terms and conditions of those labor agreements including trust fund payment into the respective labor trust funds set forth in the respective labor agreements, referred to in Section 25 below insofar as Subcontractor may lawfully do so, and in particular agrees to comply with the terms and provisions of said agreements setting forth the jurisdiction and scope of work claimed by each of such crafts and the procedure contained therein for resolution of jurisdictional disputes. In the absence of any such procedure, or if such procedure fails to promptly resolve the jurisdictional dispute, Subcontractor agrees, at his own cost and expense, upon request of Contractor, to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board.

Subcontractor acknowledges that terms and conditions of the labor agreements with the unions listed hereinbelow may require that Subcontractor comply with additional labor agreements with unions affiliated with the AFL-CIO but not listed. When the terms and conditions of the below-referenced labor agreements so require, Subcontractor shall perform his job site work pursuant to all terms and conditions of an appropriate labor agreement with a union affiliated with the AFL-CIO.

Should there be picketing on Contractor's job site, and Contractor establishes a reserved gate for Subcontractor's purpose, it shall be the obligation of Subcontractor to continue the proper performance of his work without interruption or delay.

Subcontractor further promises and agrees that he will bind and require all of his subcontractors and their subcontractors performing job site work of the type covered by any of the labor agreements specified below to agree to all of the foregoing promises and undertakings, to the same effect as herein provided with respect to him.

13.2 Subcontractor shall comply with all equal employment opportunity and affirmative action requirements promulgated by any governmental authority, including, without limitation, the requirements of the Civil Rights Act of 1964.

13.3 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 Fair Labor Standards Act provisions and California Labor Code provisions covering the work. Upon request, Subcontractor agrees to submit certified payroll reports to Contractor no later than three (3) working days after labor has been paid.

### **SECTION 14. RECOURSE BY CONTRACTOR**

#### **14.1 Failure of Performance**

14.1.1 **Notice to Cure.** If Subcontractor at any time refuses or neglects to supply enough properly skilled workers and proper materials, or fails to properly and diligently prosecute the work covered by this Agreement, or fails to make prompt payment to his workers, sub-subcontractors or suppliers, or becomes delinquent with respect to contributions or payments required to be made to any health and welfare, pension, vacation, apprenticeship or other employee benefit program or trust, or is otherwise guilty of a material breach of a provision of this Agreement, and fails within forty-eight (48) hours after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then Contractor, without prejudice to any rights or remedies, shall have 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; (b) contract with one or more additional contractors to perform such part of Subcontractor's work as Contractor shall determine will provide the most expeditious completion of the total work and charge the cost thereof to Subcontractor; and (c) withhold payment of any monies due Subcontractor pending corrective action to the extent required by and to the satisfaction of Contractor. In the event of an emergency affecting the safety of persons or property, Contractor may proceed as above without notice.

14.1.2 **Termination for Default.** If Subcontractor fails to commence and satisfactorily continue correction of a default within forty-eight (48) hours after receipt by Subcontractor of the notice issued under Section 14.1.1., 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 of 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 incurred by Contractor in performing Subcontractor's work, including 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 Subcontractor. Subcontractor shall be liable for the payment of any amount by which such expenses may exceed the unpaid balance of the Contract Price.

14.1.3 **Termination for Convenience.** Contractor may at any time and for any reason terminate Subcontractor's services and work at Contractor's convenience. Cancellation shall be by service of written notice to Subcontractor's place of business.

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 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 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; plus (3) fifteen percent (15%) of the cost of the work referred to in subparagraph (1) above for overhead and profit. 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. Subcontractor shall not be entitled to any claim or claim of lien against Contractor or Owner for any additional compensation or damages in the event of such termination and payment.

14.1.4 **Grounds for Withholding Payment.** Contractor may withhold, or on account of subsequently discovered evidence, nullify the whole or part of any payment to the extent necessary to protect Contractor from loss, including costs and 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 his subcontractors 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 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.

#### 14.2 **Bankruptcy**

14.2.1 **Termination Absent Cure.** 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 terminate this Agreement upon giving forty-eight (48) hours written notice, by certified mail, to Subcontractor and its surety, if any. If an order for relief is entered under the Bankruptcy Code with respect to Subcontractor, Contractor may terminate this Agreement by giving forty-eight (48) hours written notice, by certified mail, 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.

14.2.2 **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 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 Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, reasonable overhead, profit and actual attorneys' 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**

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15.1 **Subcontractor's Indemnification and Defense of Contractor.** With the exception that this Section 15.1 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the statutes or public policy of the State of California, Subcontractor shall defend, indemnify, and save harmless Contractor, including its officers, directors, partners, joint venturers, 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 obligations under this Subcontract. Subcontractor's duties under this Section 15.1 shall apply to Claims for, but not limited to:

- (a) Personal injury, 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 by any act or omission of Subcontractor, its employees, agents, sub-subcontractors and others for whom Subcontractor is responsible.
- (b) Damages and 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.
- (c) Infringement of any patent rights which may be brought against the Contractor arising out of the Work.
- (d) Claims and liens (see Section 9) for labor performed or materials used or furnished to be used in performance of the Work, including all incidental or consequential damages resulting to Contractor from such claims or liens.
- (e) Subcontractor's failure to fulfill the covenants set forth in each subpart of Section 13.
- (f) Failure of Subcontractor to comply with the provisions of Section 16.
- (g) 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 18 and 20).
- (h) Any failure or alleged failure to comply with the terms of this Subcontract or the Contract Documents.

The indemnification requirements of this Section 15.1 shall extend to Claims occurring after this Subcontract is terminated as well as while it is in force. Such indemnity provisions apply to the fullest extent permitted by law, regardless of any passively negligent act or omission of Contractor, or its agents or employees. Subcontractor, however, shall not be obligated to indemnify Contractor for Claims arising from the active negligence, sole negligence, or willful misconduct of Contractor, or its agents, employees or independent contractors who are directly responsible to Contractor, or for defects in design furnished by such persons, or for Claims that do not arise out of the Work. Except as otherwise provided by the statutes or public policy of the State of California, Subcontractor's obligations under this Section do not affect, and are not affected by, the insurance required of Subcontractor pursuant to Section 16.

With respect to Claims by an employee of Subcontractor, anyone directly or indirectly employed by Subcontractor or anyone for whose acts it may be liable, the indemnification obligation under this Section shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

Subcontractor shall promptly pay and satisfy any judgment or decree that may be rendered against Contractor or its agents or employees, or any of them, arising out of any Claim covered by this Section 15.

#### **15.2 Defense of Claims.**

- (a) With respect to any Claims against Contractor as to which Subcontractor owes to Contractor a defense obligation, Subcontractor, having considered its options available at law, hereby elects to proceed under California Civil Code Sections 2782(e)(2) and/or 2782.05(e)(2), and further agrees that upon final resolution of any such Claim, any reimbursement for defense fees and costs previously paid by Subcontractor shall be governed by such provisions of the California Civil Code and the provisions of Section 17.

(b) Subcontractor shall, at Subcontractor's own cost, expense and risk, defend (with counsel designated by Contractor) all Claims as defined in Section 15.1 that may be brought or instituted by third persons, including, but not limited to, governmental agencies or employees of Subcontractor, against Contractor, subject to the provisions of Civil Code Sections 2782(e)(2) and/or 2782.05(e)(2).

(c) Subcontractor shall reimburse Contractor or its 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.

**15.3 Risk of Loss.** All Work 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 and Owner. The parties recognize that the waiver of subrogation provision of Section 16.10 and the builder's risk insurance provision of Section 16.12 may reduce the risk of loss and property damage indemnification obligations of Subcontractor.

**15.4 Subcontractor's Indemnification and Defense of Owner and Others.** With the exception that this Section 15.4 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the statutes or public policy of the State of California, Subcontractor shall defend, indemnify, and save harmless Owner, including its officers, directors, partners, joint venturers, agents, employees, affiliates, parents and subsidiaries, and each of them, as well as any other persons that Contractor is required to indemnify and defend under the Contract Documents, of and from any and all Claims, to the same extent that Contractor is required to defend and/or indemnify Owner and such other persons, but only with respect to Claims arising out of or in connection with Subcontractor's performance under this Subcontract.

**15.5 Sub-subcontractor Indemnity.** Subcontractor shall ensure that its sub-subcontractors of every tier also fully indemnify and defend Contractor, Owner and any other persons that Contractor is required to indemnify and defend under the Contract Documents, to the same extent that Contractor is required to indemnify and defend such persons.

**15.6 Construction of Section.** Notwithstanding any of the provisions of this Section 15, if it is finally determined by a court of competent jurisdiction that any of such provisions are void or unenforceable under governing law, then such provisions shall be deemed stricken from this Subcontract and the remaining provisions shall remain in full force and effect and shall be construed to provide for the maximum defense and indemnification obligation by Subcontractor permitted by law.

## **SECTION 16. INSURANCE**

16.1 Subcontractor may not commence work on the Project until such time as it has delivered to Contractor satisfactory certificates of insurance, for insurance Subcontractor is required to provide hereunder and Subcontractor shall be solely responsible for any delays caused by the failure to deliver said certificates of insurance.

16.2 **Casualty Insurance.** Subcontractor shall, at his expense, procure and maintain insurance on all of his operations, in companies acceptable to Contractor, as set forth in the following sections. Certificates and endorsements must reference a specific job. "All Operations" certificates are not acceptable. Job number and project name is noted on the attached sample certificate and must be included on the actual documents furnished. No payment will be released until the Subcontractor shall have satisfied all of the insurance requirements set forth herein.

16.2.1 **Workers' Compensation and Employer's Liability Insurance.** Workers' Compensation must be provided and show the Employer's Liability limits in the amounts required and that the statutory benefits of the State of California are provided. Workers' Compensation insurance shall be provided as required by any applicable law or regulation. Employer's Liability insurance shall be provided in amounts not less than: \$1,000,000 each accident for bodily injury by accident; \$1,000,000 policy limit for bodily injury by disease; \$1,000,000 each employee for bodily injury by disease. If there is an exposure of injury to Subcontractor's employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims. As respects the Workers' Compensation, a waiver of subrogation in favor of the Contractor will be required which must be evidenced by an endorsement to the Workers' Compensation policy and attached to the Certificate of Insurance.

16.2.2 **General Liability Insurance.** All certificates shall indicate the coverage is provided on an "Occurrence" basis. The Commercial General Liability box, Occurrence box and all of the dollar limit amounts under general liability must be filled in. Subcontractor shall carry Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of Subcontractor providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for: (1) premises and operations; (2) products and completed operations; (3) contractual liability insuring the obligations assumed by Subcontractor in this Agreement; (4) broad form property damage (including completed operations); (5) explosion, collapse and underground hazards; (6) personal injury liability and (7) Owner's and Contractor's Protective Liability.

Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limit, where applicable, shall apply separately to Subcontractor's work under this Agreement and the aggregate limits shall not be impaired except by occurrences related to this project.

One of the following coverage forms is required: (i) Comprehensive General Liability (1973 Occurrence Form) (ii) Commercial General Liability (Occurrence).

16.2.2.1 If Subcontractor carries a Comprehensive General Liability policy, the limits of liability shall not be less than a combined single limit for bodily injury, property damage and personal injury liability of: \$1,000,000 each occurrence; \$2,000,000 aggregate. Contractor, his officers, directors and employees and Owner shall be named as additional insureds under the Comprehensive General Liability insurance policy. The policy shall stipulate that the insurance afforded the additional insureds shall apply as primary insurance and that any other insurance carried by Contractor, his officers, directors and employees or Owner will be excess only and will not contribute with this insurance.

16.2.2.2 If Subcontractor carries an Occurrence form Commercial General Liability policy, the limits of liability shall be not less than: \$1,000,000 each occurrence (combined single limit for bodily injury and property damage); \$1,000,000 for personal and advertising injury liability; \$2,000,000 aggregate for products-completed operations; \$2,000,000 general aggregate.

If the policy does not have an endorsement providing that the general aggregate limit applies separately to this project, or if defense costs are included in the general aggregate limit, then the required aggregate limits shall be \$2,000,000.

Contractor, his officers, directors and employees, and Owner shall be named as additional insureds under the Occurrence form Commercial General Liability policy. The policy shall stipulate that the insurance afforded the additional insureds shall apply as primary insurance and that any other insurance carried by Contractor, his officers, directors and employees or Owner will be excess only and will not contribute with this insurance. The additional insured endorsement must be attached to the certificate. Notation on the Acord form is not acceptable. The primary wording paragraph above (or its equivalent), must be on the endorsement form.

16.2.3 **Automobile Liability Insurance.** The Automobile Liability boxes must designate "Any Auto" which includes owned, non-owned and hired automobile liability. Subcontractor shall carry automobile liability insurance, including coverage for all owned, hired and non-owned automobiles. The limits of liability shall be not less than \$1,000,000 combined single limit each accident for bodily injury and property damage. If Subcontractor's general liability insurance is provided by a Commercial General Liability policy, then Subcontractor's automobile liability insurance policy shall include coverage for automobile contractual liability.

16.2.4 Certificates of insurance and endorsements, as evidence of the insurance required by this Agreement, 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 thirty (30) days prior written notice to Contractor. A 30 day notice of cancellation or material change is required, and written or modified to a form which binds the insurer to provide such 30 day notice. For non-payment of premium, the standard 10 day notice is acceptable. All Sub-subcontractors working on the jobsite must meet the same insurance requirements as Subcontractor, prior to starting work on the site. It is the responsibility of the Subcontractor to see that Sub-subcontractors' insurance is in place.

16.2.5 Contractor may take such steps as are necessary to assure Subcontractor's compliance with his obligations under this Section 16. In the event Subcontractor fails to maintain any insurance coverage required under this Agreement, Contractor may maintain such coverage and charge the expense to Subcontractor, or terminate this Agreement.

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

16.3 **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 or equipment insurance applicable to the work, except such rights as they may have to the proceeds of such insurance. If the policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

Upon 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 himself as to the existence and extent of such insurance prior to commencement of Subcontractor's work. Subcontractor shall have the right to substitute a Certificate or Evidence of Property Insurance in lieu of the actual policy.

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 his 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 his own expense as will protect the interests of Subcontractor, and his 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.

16.4 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. CLAIMS RESOLUTION PROCEDURE**

17.1 **Agreement to Arbitrate** All claims, disputes and matters in question arising out of, or relating to this Agreement or the breach thereof, except for claims which have been waived by the making or acceptance of final payment, shall be decided by the claims procedure, including any arbitration clause, specified in the prime contract between Contractor and Owner. In the absence of an agreement to arbitrate in the prime contract, no claims or disputes shall be arbitrated unless provided for in this Agreement or mutually agreed upon by Contractor and Subcontractor in writing.

17.2 **Arbitration Procedures (if applicable)** In the event the prime contract contains an arbitration provision or if arbitration is provided for in this Agreement, the following shall apply:

17.2.1 **Notice of Demand.** 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. 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 more than (2) years after the claim first arises. .

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, if so, Contractor shall continue to make payments in accordance with this Agreement.

17.2.4 **Consolidated Arbitration Proceedings.** To the extent not prohibited by their contracts with others, the claims and disputes of Owner, Contractor, Subcontractor and other subcontractors 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 which Subcontractor may have 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 him.

**SECTION 18. SAFETY PRACTICES** Subcontractor shall comply fully with all laws, orders, citations, rules, regulations, standards and statutes with respect to occupational health and safety, the handling and storage of hazardous materials, accident prevention, safety equipment and practices including the accident prevention and safety program of Owner and Contractor. Subcontractor shall conduct inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for providing a safe place to work for its employees and for employees of its subcontractors and suppliers of material and equipment, for adequacy of and required use of all safety equipment and for full compliance with the aforesaid laws, orders, citations, rules, regulations, standards and statutes. **Without limiting the generality of foregoing, Subcontractor shall comply with the provisions of California Labor Code Sections 6401.7 and shall provide Contractor with a copy of the written injury and illness prevention program required thereunder prior to the commencement of any work by Subcontractor pursuant to this Agreement and from time to time as Contractor may request. Contractor shall have the right to require Subcontractor to make any changes in Subcontractor's written injury and illness prevention program which Contractor deems in its sole discretion shall be made, and Subcontractor shall promptly make such changes required by Contractor at Subcontractor's sole cost and expense. No change in Subcontractor's written injury and illness prevention program required by Contractor shall be construed by Subcontractor as a representation or warranty by contractor that such change, if made, will bring Subcontractor's written injury and illness prevention program into compliance with California Labor Code Section 6401.7 or any other statute or regulation related thereto or implementing same.**

**SECTION 19. WARRANTY** Subcontractor warrants to Owner, Architect and Contractor that all materials and equipment furnished shall be new unless otherwise specified and that all work under this Agreement shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty provided in this Section 19 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

**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 his 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 Subcontractors use or employment of them. Subcontractor accepts any and all of Contractor's equipment, materials, labor, supplies or facilities as furnished.

**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. INDEPENDENT CONTRACTOR** Subcontractor is an independent contractor and shall, at his 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 therefor, 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 remunerations 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 23. CLEAN-UP** At all times during the course of construction, Subcontractor shall perform his work so as to maintain the site in a clean, safe and orderly condition. Upon completion of the work under this Agreement, Subcontractor shall remove from the site all hazardous materials, temporary structures, debris and waste incident to his operation and clean all surfaces, fixtures, equipment, etc., relative to the performance of this Agreement.

**SECTION 24. ATTORNEYS' FEES** In the event the parties become involved in litigation or arbitration with each other 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 compensated for the cost of its participation in such proceedings, including the cost incurred for attorneys' fees and experts' fees. Unless judgment goes by default, the attorneys' fee award shall not be computed in accordance with any court schedule, but shall be such as to fully reimburse all attorneys' fees actually incurred in good faith, regardless of the size of a judgment, it being the intention of the parties to fully compensate for all attorneys' fees and experts' fees paid or incurred in good faith.

**SECTION 25. LABOR AGREEMENTS** (List labor agreements to which Contractor is signatory or enter NONE if Contractor has no labor agreements.)

**SECTION 26. SPECIAL PROVISIONS** (Including unit pricing, if applicable)

**SECTION 27. BILLING INSTRUCTIONS** All progress billings must be in the Contractor's office by the 15th of the month for monies to be distributed the following month, providing the Contractor has been paid by the Owner. Anticipate what percentage of work will be installed by the last day of the month and submit your bill early. Any requests for payment received after the 20th of the month cannot be honored, unless previous arrangements are made with the Contractor's Accounting Department. Requests for progress payments shall only be considered to the extent that labor and materials are in place and approved.

The Contractor's Job Number must appear on all invoices. A Conditional Lien Release must accompany the Subcontractor's each billing. **Unconditional Lien Releases from the Subcontractor, any suppliers and Union Trust Funds substantiating prior payment must accompany all subsequent billings before any additional monies will be disbursed.**

All invoices must be accompanied by a Progress Payment Request. The Progress Payment request form is not an invoice and any Progress Payment Request forms submitted without an invoice will not be processed.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR OF THE BOARD, WHOSE ADDRESS IS: Contractors State License Board, P.O. Box 26000, Sacramento, CA 9582

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**CONTRACTOR:**  
BEVILACQUA & SONS, INC.  
GENERAL CONTRACTORS

**SUBCONTRACTOR:**  
\_\_\_\_\_

By: \_\_\_\_\_  
(Name)  
451 Victory Ave., Suite 5  
So. San Francisco, CA 94080  
(650) 616-4900  
Fax (650) 616-4904  
California Contractor License No. 732067

By: \_\_\_\_\_  
(Name)  
\_\_\_\_\_  
(Address)  
\_\_\_\_\_  
(Contractor's License No.)

**NOTE:** This document has important legal consequences. Consultation with an attorney prior to execution of this document is encouraged. Some construction prime contracts may require the use of specialized provisions not included in this form.

March 5, 2004, REVISED

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