

























### 3.9 Labor.

3.9.1 Skilled Workers. Subcontractor, and its tier-subcontractors, will provide qualified, well-disciplined, skilled workers to perform the Work. Subcontractor's employees will not interfere with another person's work performance, or engage in sexual harassment or other conduct that creates an intimidating, hostile, or offensive working environment. Unger has the sole discretion to immediately remove and replace any unskilled, unqualified, disruptive, or disrespectful labor or personnel, including Subcontractor's superintendent or foreman, and Subcontractor will promptly provide a qualified replacement. Nothing in this contract shall be construed to limit the Subcontractor's authority to hire and fire its own employees.

3.9.2 Unger's Labor Agreements. Unger is signatory with the Cement Masons, Carpenters, and Laborers unions. Subcontractor will be bound by Unger's collective bargaining agreements to the extent applicable to Subcontractor's Work. Information on Unger's collective bargaining agreements may be found in **TAB 4** of the Project Manual. If applicable to Subcontractor's Work, Subcontractor will utilize labor, tier-subcontractors, and suppliers in compliance with Unger's union agreements and, if necessary, will secure a final determination of any jurisdictional dispute by the National Labor Relations Board at its own cost and expense. If applicable to Subcontractor's Work, Subcontractor will pay when due all contributions, allowances, and other payments, required by Unger's collective bargaining agreements and will comply with any additional AFL-CIO affiliated union agreements as may be required by the Cement Masons, Carpenters, and Laborers agreements. If there is picketing at the site, Subcontractor will continue to perform its Work without interruption or delay provided Unger establishes a reserved gate for Subcontractor's use.

(a) Prevailing Wage. If Project is subject to prevailing wage per the Business Terms Sheet, Subcontractor will comply with California State prevailing wage laws pursuant to California Labor Code Sections 1771, et. seq. and as further defined in TAB 1B of the Project Manual.

(b) Compliance with Labor Code Sections 218.7 (f) (1) and (2). If Subcontractor is subject to a trade union agreement, Subcontractor will comply with Labor Code Sections 218.7 (f) (1) and (2). Unger will have the right to request that Subcontractor submit certified payroll records in accordance with Labor Code section 218.7 (f) (1) and 226 (a) as part of its payment request. Subcontractor will certify under penalty of perjury that records maintained and submitted by Subcontractor and its tier-subcontractors are true and accurate. If Subcontractor is delinquent in the payment or payments to the appropriate health and welfare, pension, vacation and apprenticeship fund or funds, regardless of the job in connection with which the delinquency occurred, Unger will have the right to first deduct the full amount of the delinquency from payments to be made to Subcontractor under this Subcontract. Unger will also have the right to pay the amounts so deducted directly over to the appropriate fund or funds. (PM, TAB 1B)

**3.10 Materials and Equipment.** All materials and equipment required under the Subcontract Documents will be new and of good quality. No substitutions will be accepted on this Project unless Unger and Architect or engineer of record have evaluated the substitution with the Owner and the substitution has been approved in writing. Materials will be furnished in ample quantities and procured in time to ensure uninterrupted progress of the Work. Subcontractor will inspect all material and equipment delivered to the site to be used or incorporated in the Work upon delivery and will promptly notify Unger of any defects. Subcontractor assumes full responsibility to protect completed Work until final acceptance by the Architect or engineer of record (if applicable), Owner, and Unger. All materials and equipment will be properly stored and protected as required by the Subcontract Documents and the risk of loss will be borne by Subcontractor until completed Work is accepted by Unger and Owner.

3.10.1 Storage. Storage of equipment and materials will be coordinated through Unger and in accordance with the Site Logistics Plan (Exhibit 6). Subcontractor will maintain and keep its storage area clean, safe and secure.

**3.11 Testing and Inspection.** Tests, inspections and approvals of portions of the Work required by the Subcontract, the Subcontract Documents, or by laws, ordinances, rules, regulations or orders of any public authorities having jurisdiction over the Project will be coordinated by the Subcontractor through Unger. When portions of the Work are ready for inspection, the Subcontractor will notify Unger by submitting an inspection request. Unger will make arrangements for tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority with jurisdiction over the Project. Subcontractor must provide access to all Work requiring inspection.

3.11.1 Covered Work Before Inspection. If a portion of the Work is covered contrary to Unger's request or prior to inspection, it will be uncovered for inspection and examination by Unger or other proper authorities and be replaced at the Subcontractor's sole expense, including any costs for delays to other subcontractors' work, without change in the Subcontract Time.

3.11.2 Correction of Non-Conforming Work. Within 24 hours of receiving notice, the Subcontractor will commence correction of Work that is rejected by Unger, an inspector, Architect, or an engineer of record for failing to conform to the requirements of the Subcontract Documents. Correction of the Work will include replacement of any work that is destroyed or damaged (whether completed or partially completed) as a result of Subcontractor's correction or removal of the non-conforming Work whether discovered before or after Completion of the Work and whether or not fabricated, installed or completed. Subcontractor will bear all costs associated with correction of non-conforming Work, including damages and costs for delays to other subcontractors' work, without change in the Subcontract Time.

**3.12 Protection of the Work and Other Property.** Subcontractor will protect its materials, equipment and Work, as well as the work of other subcontractors, from all damage caused by Subcontractor's operations including, but not limited to, damage from weather, theft, vandalism, etc. Subcontractor will either repair the damages or be financially responsible for any loss, repair by a third party, or damages incurred to the Project as a result of Subcontractor's operations. Subcontractor will construct and maintain proper barricades, caution signage, and protection as needed to safeguard against hazards, injury, or damage associated with the Work.

**3.13 Safety Requirements.** Subcontractor will comply fully with all California State and Federal laws, orders, citations, rules, regulations, standards and statutes with respect to occupational health and safety, the handling and storage of a Hazardous Substance or Material, accident prevention, safety equipment and practices and will comply with Unger's Safety, Health, and Environmental Subcontractor Required Safety Information ("SHEI") (See, PM, **TAB 2**). Subcontractor will conduct safety 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 tier-subcontractors and suppliers. Subcontractor will ensure the adequacy of all safety equipment related to its Work, and its required use and safe operation. Subcontractor acknowledges that it has reviewed and familiarized itself with the SHEI set forth in **TAB 2** of the Project Manual and will comply with the SHEI at all times during the performance of its Work. Unger's management and coordination of the SHEI does not extend to direct control over or charge of the acts or omissions of the Subcontractor, its tier-subcontractors, agents or employees or any other person performing portions of the Work and Subcontractor remains the "Controlling Employer" as defined under Cal-OSHA with respect to performance of its Work.

**3.14 Hazardous Substance or Material.** Subcontractor will not bring onto the site or use any Hazardous Substance or Material unless specified in the Construction Documents, and only provided that

Subcontractor complies with all safety regulations and procedures under applicable law for the handling and disposal of such Hazardous Substance or Material. If Subcontractor encounters a material reasonably believed to be a Hazardous Substance or Material on site, Subcontractor will immediately stop Work in the affected area and verbally report the condition to Unger followed by written communication, and undertake any precautionary measures directed by Unger. Work will not resume in the affected area until the Hazardous Substance or Material is rendered harmless or removed, as determined by a licensed laboratory. Subcontractor agrees that it will not have or make a claim for damages due to Work stoppages arising from unsafe conditions. Failure on the part of Unger to stop unsafe practices does not relieve or diminish the Subcontractor's safety responsibilities for its Work. Nothing contained above limits Subcontractor's liability or indemnification under Article 8 for damages arising out of or resulting from Subcontractor's, or its employees' or tier-subcontractors' use of, or negligent mishandling of, a Hazardous Substance or Material or exacerbation of an existing condition during the performance of its Work.

**3.15 Unforeseen and Differing Site Conditions.** Subcontractor will provide prompt written notice to Unger upon discovering Unforeseen and Differing Site Conditions. Notice must be provided before conditions are disturbed and in no event later than 2 business days after first observing the condition(s). If Unger, Architect, engineer of record, or Owner determines that the conditions at the site are not materially different from those indicated in the Subcontract Documents and that no change in the terms of the Subcontract Documents is justified, Unger will notify Subcontractor in writing, stating the reasons. Claims by Subcontractor in opposition to the determination must be made within 5 business days after the date of the notice of decision. If Owner agrees that the conditions encountered are materially different, the Subcontract Price and/or Subcontract Time (if applicable) will be adjusted through Subcontract Change Order to the extent that Unger is able to recover for Subcontractor's claim under the Prime Contract.

**3.16 Punch-List.** Subcontractor will notify Unger when it considers its Work or a portion of the Work substantially complete and Unger will issue a Punch List setting forth incomplete or unsatisfactory items and a schedule for their completion. The Punch List will be promptly corrected by Subcontractor. Unger will schedule a walk through with the Owner, Architect, and engineer of record (if applicable) upon Subcontractor's completion of the Work included on the Punch List to determine if the Work is in conformance with the Subcontract Documents. Unger will schedule and monitor the progress of all punch list Work and conduct inspections to determine whether Subcontractor has achieved Completion of the Work. Correction of all non-conforming Work will be in accordance with Section 3.11.2.

**3.17 Clean Up.** Subcontractor will maintain the area where Work is being performed in a clean, safe and orderly condition, and will sweep all areas where Work is performed on a daily basis. Subcontractor will protect material, equipment, filters, ducts, plenums or other systems (as may be applicable to its Work) to avoid contamination with dust, moisture, solvents or construction debris. Splatter from wet materials such as drywall mud, fireproofing, paint, etc., will be removed with a floor scraper, mop, or other means, as often as necessary to prevent jobsite slip and fall hazards, and to keep the jobsite neat and orderly. Subcontractor is responsible for removal and proper disposal (including dumpsters and recycle bins) of all debris, waste, and recyclables generated while performing the Work. If Subcontractor fails to maintain the its Work area in a clean and safe manner, Unger may perform the necessary clean up and Subcontractor will be back-charged for Unger's expense. Upon Completion of the Work, or when Subcontractor's tools, equipment, and materials are no longer required on site, Subcontractor will remove from the site all Hazardous Substance or Material, temporary structures, debris and waste incident to Subcontractor's operation and will clean all surfaces, fixtures, equipment, etc.

**3.18 Commissioning and Training.** To the extent applicable to Subcontractor's Work, Unger will schedule and oversee the Subcontractor's final testing and start-up of utilities, operational systems

and equipment and assist the Owner with the building commissioning. Subcontractor will provide adequately trained staff and cause its tier-subcontractors, equipment manufacturers and/or vendors to provide adequately trained staff during the duration requested to complete all necessary commissioning related to the Work. During commissioning and before Final Completion, Unger will oversee Subcontractor's operation, adjustment and balancing of all equipment, and training of Owner's employees in the correct operation and maintenance of equipment.

**3.19 Project Close-Out.** Before Completion of the Work, Subcontractor will transmit to Unger all required close out documentation such as record drawings, as-built drawings, operation and maintenance manuals, references, and warranties, as well as attic stock, keying schedule, special tools, etc. as required by the Subcontract Documents. Unless otherwise required by the Construction Documents, the close out documentation will be submitted in electronic form with clear identifiable file names for each component of the close-out documentation before Completion of the Work.

## 4. COMPENSATION.

**4.1 Lump Sum.** Unger will pay Subcontractor the lump sum Subcontract Price set forth in the Business Terms Sheet for performance of the Work. The Subcontract Price includes all costs associated with the Work including overhead and profit and is only subject to increases and decreases for approved Subcontract Change Orders per Article 6. To the extent that the Subcontract Price includes Allowances, unit prices, or alternates, those items must be identified in the Scope of Work (Exhibit 2). Allowance prices are all inclusive, including but not limited to labor, materials, equipment, delivery and unloading, storage, hoisting, and tools. Overhead and profit will be determined at the time of reconciliation of the Allowance amount through executed Subcontract Change Order per Section 6.3.4.

## 5. TIME.

**5.1 Subcontract Time.** Subcontractor acknowledges that timely performance of the Work is critical to the success of the Project. The Subcontract Time is the time allotted in the Project Schedule (Exhibit 5) as amended, for Subcontractor to achieve Completion of the Work. The Subcontract Time may only be extended through executed Subcontract Change Order for a delay per Section 5.4 and Article 6. All notice periods and times for performance will be strictly observed and enforced.

**5.2 Commencement and Prosecution of the Work.** Subcontractor will commence the Work when notified to do so by Unger and will diligently prosecute and complete its Work within the Subcontract Time pursuant to the current Project Schedule without additional cost to Unger unless Subcontractor is entitled to a Subcontract Change Order for delay per Section 5.4 and Article 6.

**5.3 Project Scheduling.** The Project Schedule is set forth in Exhibit 5. The Project Schedule is a master schedule that includes a critical path and the Substantial Completion Date and date for Final Completion of the Project. Unger will update and maintain the Project Schedule as necessary. All Work will be performed in accordance with the 3-week work plans.

5.3.1 Subcontractor will attend and participate in scheduling meetings with Unger and its other subcontractors to establish 3-week work plans to review upcoming construction performance requirements and document all work performed during the prior 3-week period. Subcontractor is expected to participate collaboratively with Unger and other trades to find ways to eliminate waste and add value to the overall Project. Subcontractor's representative(s) must be qualified and capable of making reliable commitments with respect to their manpower, procurement, scheduling and performance of the Work, as well as making reasonable requests of others to improve productivity, increase efficiency, enhance safety, and assure the value and quality of the Work. Subcontractor will continuously monitor the current Project Schedule and 3-week work plans and understand the timing, phasing, and sequencing of

operations of its Work and the work of other subcontractors and separate contractors, and will make reliable commitments with respect to performance of its Work. Unger will decide the sequence of the Work and may require Subcontractor to perform part of its Work in one area while delaying a portion of its Work in another area to suit the needs of the overall current Project Schedule.

**5.4 Delays.** If Subcontractor is delayed in the commencement, prosecution or Completion of the Work by: (i) changes in the Work that were not specified, illustrated, or reasonably inferable from the Subcontract Documents; (ii) Unforeseen and Differing Site Conditions; (iii) Unger's suspension of the Work or Project; (iv) acts or omissions of Owner, its consultants or separate contractors, or (v) other causes beyond the Subcontractor's commercially reasonable control, which could not have been anticipated and provided that Unger is able to recover for the condition under the Prime Contract, then the Subcontract Time may be extended for such reasonable time as Subcontractor can demonstrate, and for which Unger can recover from Owner, after taking into account any concurrent delays caused by Subcontractor. Notwithstanding the above, Subcontractor will not be entitled to an extension of time unless (i) the critical path of the current Project Schedule is also impacted extending the Substantial Completion Date of the Project; and (ii) Subcontractor notifies Unger in writing of the cause or causes of the delay within 2 business days of commencement of the delay, and demonstrates that it could not have anticipated or avoided the delay and has used all commercially available means to minimize the consequences of the delay. Failure to provide timely notice constitutes waiver of delay claim. To the extent a claim is made by Unger at the request of Subcontractor for delay, Subcontractor will cooperate fully with Unger per Section 11.2.

**5.4.1 Subcontractor Caused Delays.** If the progress of the Work or the Project is delayed, disrupted, hindered, obstructed, or interfered with by any fault or neglect, or act or failure to act by the Subcontractor or any of its employees, tier-subcontractors or suppliers and the delay causes additional cost, expense, liability or damage to Unger then Subcontractor and its surety (if applicable) will be financially responsible. Subcontractor's financial responsibility will include all costs for necessary acceleration and recovery as well as damages assessed against Unger under the Prime Contract, or any damages or additional costs or expenses for which Unger may or will become liable (including additional compensation paid by Unger to other Project Team Members), legal fees, and disbursements whether incurred in defending claims arising from the delay or in seeking reimbursement and indemnity from Subcontractor and its surety (if applicable)).

**5.4.2 Other Subcontractor Caused Delays.** If Subcontractor is delayed, interfered with, or disrupted by the acts or omissions of another subcontractor and the Subcontract Time is impacted, the Subcontractor will provide written notice to Unger within 2 business days of the delay inclusive of a description of the cause of the delay, the impact, and the subcontractors involved. If Unger believes that the claim is valid, it will seek compensation on Subcontractor's behalf from the subcontractors involved in the delay. Subcontractor will only be entitled to the amount that Unger determines, in its sole discretion, is reasonable and only to the extent that Unger is able to recover such costs from those subcontractors less any costs incurred by Unger in obtaining the recovery. The 2 business days' notice and receipt of recovery by Unger from other allegedly responsible subcontractors is an express condition precedent to any right Subcontractor may claim for additional time or compensation.

**5.5 Recovery Plan.** Subcontractor will notify Unger within 2 business days of any slippage in the 3-week work plan as a result of its Work and must submit a detailed recovery plan for evaluation and approval by Unger. All costs associated with the recovery will be the responsibility of Subcontractor unless Subcontractor is entitled to an extension of its Subcontract Time under Section 5.4.

**5.6 Acceleration of Schedule.** If Subcontractor fails to perform its Work in accordance with the current Project Schedule, Unger may direct Subcontractor, at its own cost and expense, to perform overtime Work, use extra labor, machinery and equipment, transfer its labor, machinery and equipment to



other portions of the Work, expedite deliveries or use any other means or methods necessary to recover the current Project Schedule. Unger may also direct Subcontractor to perform overtime Work because it is in the best interest of the Project and Unger will pay, without overhead or profit, the cost of the premium time portion of wages only (including any additional amount Subcontractor is required to pay into a fringe benefit fund for the premium time).

**5.7 Liquidated Damages.** If liquidated damages are included in the Business Terms Sheet, Subcontractor will be responsible for its proportionate share of liquidated damages set forth in the Prime Contract based on Subcontractor's and its tier-subcontractors' and suppliers' fault, act, or omission and to the extent liquidated damages are assessed against Unger. Subcontractor's payment of its proportionate share of assessed liquidated damages represents a reasonable estimate of fair compensation for the losses that reasonably may be anticipated. Nothing contained in this Section precludes Unger from recovery for actual damages caused by reasons other than the Subcontractor's failure to perform its Work within the Subcontract Time including, but not limited to, claims for actual losses incurred due to breach of contract, negligence, defective Work, injury to persons or property, or third party claims. Subcontractor will indemnify and hold Unger and Owner harmless from all alleged or actual claims, liabilities, and damages arising out of or resulting from any delay, interference or disruption to the critical path of the current Project Schedule that is caused by Subcontractor's or its tier-subcontractors' or suppliers' negligent acts or omissions in accordance with Article 8.

**5.8 Subcontract Time Impacts and Extended Costs.** Subcontractor will not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is allowable under Article 5 and claimed in a proposed change order. No claims will be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. Nothing contained in this Section will be construed as restricting the rights and remedies of Subcontractor in violation of California State law. If this provision is determined to conflict with California State law, the provision will be amended to provide the greatest protection to Unger allowed under the law.

## 6. CHANGES.

**6.1 Subcontract Change Orders.** Owner, Architect or engineer of record (as applicable), and Unger have the right to make changes in the Work including additions, deletions, or modifications to the Construction Documents, as well as adjustments to the time for Completion of the Work. All changes in the Work will only be authorized by an executed Subcontract Change Order and performed under the applicable conditions of the Subcontract Documents. Subcontractor will be subject to any limitations on change orders included in the Prime Contract. A Subcontract Change Order signed by Subcontractor indicates final agreement to changes in the Subcontract Price, Subcontract Time, or both, and will fully and completely resolve any claim by Subcontractor (inclusive of tier-subcontractors and suppliers) regarding compensation or time arising from or related to the subject of the Subcontract Change Order. Subcontractor cannot rely on oral statements when performing changes to its Work. It is further agreed that no one other than Unger's Representative will have the authority to direct Subcontractor to make changes. If Owner, Architect or engineer of record, or other individual or entity directs Subcontractor to make a change, Subcontractor will promptly notify Unger. All disputes arising from Subcontract Change Orders will be subject to the dispute resolution process set forth in Article 11.

**6.2 Submission of Change.** Subcontractor must provide notice and a rough order of magnitude of a Subcontractor change to Unger within 2 business days of receipt of information from Unger that Subcontractor believes constitutes a change in the Work or Subcontractor's knowledge of a changed condition that impacts the Work. Subcontractor will provide a complete cost proposal, including any change in Subcontract Time, within 5 business days unless a longer period of time is requested and agreed to by Unger.

**6.3 Pricing.** Subcontract Change Order value will be determined by one of the following pricing methods. The amount for additive or deductive Subcontract Change Order will be the net increase or decrease (as applicable) in the Subcontract Price. When both additions and credits related to a change are involved, the Subcontract Change Order, (including the addition and credits of overhead and profit), will be determined on the sum of the net increase or decrease (as applicable). Regardless of the pricing method used, Subcontractor must use the labor rates and unit prices established in its Scope of Work (Exhibit 2). If Subcontractor is bonded, the potential Subcontract Change Order must include payment and performance bond costs pursuant to the percentage set forth in the Business Terms Sheet.

**6.3.1 Lump Sum Amount.** If Unger agrees to a lump sum adjustment, the lump sum amount must be properly itemized and supported by sufficient substantiating data to permit evaluation of labor, materials, equipment, bonding (if required), and overhead and profit. Once mutually agreed upon, the lump sum amount will be the value of the Subcontract Change Order.

**6.3.2 Time and Materials.** If Unger directs the Work to proceed on a time and materials basis, Subcontractor will track the actual costs of the Work as the Work progresses. The adjustment may also be on a time and material with a cap that cannot be exceeded. Subcontractor will keep and present an itemized accounting for the Work performed based on daily time tickets executed by Unger's superintendent, material and equipment invoices, and other supporting data substantiating the amount of the Subcontract Change Order. All time and material costs will be broken down by labor, materials, equipment, bonding (if required), and overhead and profit.

**6.3.3 Overhead and Profit.** Subcontractor's percentage for overhead and profit for Work on additive and deductive Subcontract Change Orders is set forth in the Business Terms Sheet. Subcontractor's overhead includes costs for general and administrative expenses including: (i) salaries and other compensation of Subcontractor's personnel stationed at the home office and not specifically assigned to the Project and management support; (ii) expenses of Subcontractor's home office such as rent, utilities, etc.; (iii) costs related to blueprinting, computers, software, applications, systems, data processing, and support, devices, servers, printers, copiers, plotters, cell phones, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site, digital cameras etc.; (iv) cost for small tools valued at less than \$500 (v) additional drafting and detailing time unless change requires re-submission of Shop Drawings; (vi) cost of insurance required under the Subcontract, and (vii) any bonuses paid to Subcontractor's employees, tier-subcontractors, and suppliers. Subcontractor's overhead and profit percentage will be multiplied by the subtotal of labor, materials, equipment, and bonding (if required).

**6.3.4 Allowances.** Subcontractor will make charges against the Allowance items only when specifically approved by Unger. Allowance items will be reconciled through Subcontract Change Order after completion of the design. The reconciled amount must be properly itemized and supported by sufficient substantiating data to permit evaluation the additive or deductive Subcontract Change Order. All unused Allowance amounts will accrue 100% to Owner through Unger.

**6.4 Continued Performance.** No Work will be allowed to lag pending the adjustment through Subcontract Change Order but will be promptly executed as directed, even if a dispute arises

**6.5 Omitted Work.** If Subcontractor omits Work that is included in the Subcontract Documents, Unger will have the right to withhold from payments due or to become due in an amount which, in Unger's opinion, is equal to 150% of the value of Work that was omitted until the Work is performed.

**6.6 Surety.** All changes, additions or omissions in the Work ordered in writing by Unger are part of the Work and will be performed and furnished in strict accordance with all of the terms and provisions of this Subcontract and the other Subcontract Documents. Subcontractor will keep its surety informed of all modifications to this Subcontract. The obligations of Subcontractor's surety are not to be reduced, waived or adversely affected by the issuance of Subcontract Change Orders even if Subcontractor fails to inform the surety of the Subcontract Change Order(s) and Unger will not be required to obtain consent of surety for any Subcontract Change Orders or Amendments.

## **7. PAYMENT.**

**7.1 Progress Payments.** Subcontractor will electronically submit monthly payment requests no later than the date of the month set forth in the Business Terms Sheet and per the Billing Procedures and Forms set forth in TAB 1 of the Project Manual. Retention will be per the terms and conditions set forth in the Business Terms Sheet and the Progress Billing Procedures set forth in **TAB 1** of the Project Manual. Invoices must be signed by a corporate officer of Subcontractor attesting to its accuracy and Unger will be allowed to rely upon the Subcontractor's statement of accuracy, as well as Subcontractor's certification that it has paid all tier-subcontractors and suppliers prior amounts due and owing from amounts previously received from Unger. Upon submission of a monthly invoice, Subcontractor warrants that all Work included in the invoice has been performed in accordance with the Subcontract Documents and certifies that title to all Work covered by the invoice will pass to the Owner no later than the time of payment free and clear of all stop payment notices, claims, security interests, mechanics' liens or other encumbrances. Provided that Subcontractor's invoices were properly and timely submitted, Unger will make monthly progress payments on all undisputed Work within 10 business days' receipt of payment from Owner, subject to Section 7.7 below.

**7.1.1 Union Trades.** Subcontractor must submit certified payroll records pursuant to California Labor Code section 218.7(f)(1) if requested by Unger. Subcontractor and its tier-subcontractors that are subject to a collective bargaining agreement must certify under penalty of perjury that records maintained and submitted are true and accurate. The payroll records will be certified and submitted to Unger per the Progress Billing Procedures set forth in **TAB 1** of the Project Manual.

**7.1.2 Change Orders.** Subcontractor may bill for Work incorporated by Subcontract Change Order after the Subcontract Change Order is executed and the Work is performed.

**7.2 Payment to Tier-Subcontractors.** Subcontractor is responsible for paying its tier-subcontractors and suppliers within 7 days' receipt of payment from Unger. Unger, in its sole discretion, may decide to make payment by joint check or by direct payment to tier-subcontractors and suppliers.

**7.3 Unger's Right To Withhold Payments.** Unger may withhold or, on account of subsequently discovered evidence, may nullify, the whole or part of any payment to protect Unger from loss on account of: (i) defective Work not remedied; (ii) any third party claims filed or reasonable evidence indicating probable filing of third party claims; (iii) failure of Subcontractor to make proper payments to its tier-subcontractors or suppliers; (iv) claims filed by an agent, employee, or any other persons performing any portion of the Work on behalf of Subcontractor, or trust fund of Subcontractor, tier-subcontractors, or suppliers; (v) failure to timely provide information required per California Labor Code section 218.7; (vi) disputed invoiced amounts, insufficient documentation, erroneous estimates of the value of the Work performed, or discrepancies discovered through audit or otherwise in the certified payroll (to the extent applicable) and fringe benefit information; (vii) reasonable doubt that the Work can be completed for the balance of the Subcontract Price or within the Subcontract Time; (viii) damage to Unger's work, or a separate contractor's or another subcontractor's work; (ix) failure of the Subcontractor to comply with 3-week work plans and scheduling requirements set forth in Article 5; (x) penalties assessed against Unger or Subcontractor on account of Subcontractor's failure to comply with state,

federal or local laws and regulations; (xi) failure to carry out the Work in accordance with the Subcontract Documents; (xii) failure of Subcontractor to comply with jobsite procedures, safety, storage, or clean-up requirements; or (xiii) Subcontractor's breach of any term or provision of the Subcontract. Unger will have the right to withhold up to 150% of any amount that Unger disputes in good faith. When the reason for withholding payment is rectified, Unger will release amounts then due and owing after taking into account any off-set amounts or damages paid by or sustained by Unger.

**7.4 Stop Payment Notices and Mechanic's Liens.** Subcontractor will procure a release bond pursuant to the applicable California Civil Code requirements commencing with 8172, et. seq., provided that Subcontractor was paid by Unger for the portion of the Work at issue under any of the following circumstances: (i) if any stop payment notice is served upon the Owner or made against the Project funds or a mechanics' lien is recorded against the Project by any person or union trust claiming that the Subcontractor or any of its tier-subcontractors or suppliers has failed to comply with their respective collective bargaining agreement or failed to make payment for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work; or (ii) if at any time there is evidence of nonpayment of any mechanics' lien or stop payment notice for which, if established, Unger might become liable and that is chargeable to the Subcontractor. If Subcontractor fails to post a bond as required, Unger will have the right to retain from any payment then due or thereafter to become due an amount that it deems sufficient to: (i) satisfy, discharge and/or defend against any mechanics' lien or stop payment notice action that may be brought or judgment that may be recovered; (ii) make good any nonpayment, damage, failure or default; or (iii) compensate Unger for procuring and posting the release bond and dealing with the claim. If the amount retained is insufficient to cover the amount of the claim, Subcontractor will be liable for the difference and will make payment to Unger immediately upon written notice.

**7.5 Final Payment.** Final Payment, including payment of the retention, if unencumbered, will be paid to Subcontractor after Final Completion of the Project. Final Payment is without prejudice to Unger's rights and remedies for Subcontractor's or its tier-subcontractors' failure to comply with Labor Code section 218.7 (to the extent applicable) and other applicable law governing the payment of wages (inclusive of fringe benefits) to workers and employees performing portions of the Work.

7.5.1 Conditions Precedent to Final Payment. In addition to any other requirements of this Subcontract and the Subcontract Documents, Final Payment will not be due and owing until the following conditions precedent have been satisfied: (i) final approval and acceptance of the Work by Unger, Owner, Architect, and engineer of record (if applicable); (ii) delivery of record documents and other close-out documentation required by this Subcontract and the Subcontract Documents; (iii) receipt of final conditional waivers and receipts per California Civil Code section 8136 and satisfactory evidence that all labor (including taxes, fees, fringe benefits, or insurance, each as applicable) and material and equipment accounts incurred by Subcontractor in connection with the Work have been paid in full; (iv) evidence that completed operations insurance will remain in force after Final Payment and will not be canceled or allowed to expire for 10 years without prior written notice to Unger; and (v) surety, if any, has consented to Final Payment.

**7.6 Payment Not Acceptance of the Work.** Any payment made hereunder before completion and acceptance of the Work will not be construed as evidence or acknowledgement of proper completion of any part of Subcontractor's Work.

**7.7 Risk of Late Payment or Non-Payment By Owner.** Subcontractor, and its tier-subcontractors, acknowledges that there is a risk that the Owner may make late payments or may, under certain circumstances such as insolvency, not make the required payments to Unger pursuant to the Prime Contract. Subcontractor agrees to share in the risk of late payments or non-payment with Unger by: (i) timely recording a mechanics lien against the property or pursuing its stop payment notice rights

against the Project funds and timely foreclosing on its lien and/or stop payment notice rights by filing a civil action directly against Owner and lender (if applicable); and (ii) granting Unger a reasonable time to pursue legal action and payment from Owner before prosecuting an action solely against Unger. Subcontractor will cooperate with Unger in pursuing payment from Owner. For purposes of this Section 7.7, a reasonable time is the time required for Unger to legally pursue a judgment through civil action, judicial reference, or arbitration against Owner or lending institution. Subcontractor agrees that if Unger is not able to recover against Owner, Subcontractor will negotiate an equitable settlement with Unger in good faith and without mark-up for overhead and profit or interest.

**7.8 Audit Rights.** Subcontractor's Project records may be subject to audit at any time throughout the duration of a Project pursuant to the terms and conditions of the Prime Contract. The audit will take place during normal business hours and will be coordinated with Subcontractor. The audit may require inspection and copying of any and all information, materials and data of every kind and character, including without limitation, payroll records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent or foreman reports, drawings, receipts, vouchers and memoranda, and all other agreements, sources of information and matters that may, in Unger's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under the Subcontract Documents.

7.8.1 If Subcontractor or its tier-subcontractors are subject to a collective bargaining agreement, Unger also has the right, but not an obligation, to audit Subcontractor's and its tier-subcontractors' payroll records throughout the duration of the Project and for a period of 1 year after recordation of a notice of completion, recordation of a cessation of labor; or actual completion of the Project to corroborate that both the certified payroll and fringe benefit certifications furnished by Subcontractor or its union tier-subcontractors as part of the payment application are complete and accurate. Subcontractor agrees to fully cooperate with the audit and will cause its union tier-subcontractors through written agreement to also cooperate and comply. Subcontractor agrees that Unger's rights and remedies under this Section and applicable law are not prejudiced if Unger elects not to perform payroll audits.

## 8. DEFENSE AND INDEMNIFICATION.

**8.1 Subcontractor's Defense and Indemnification.** To the fullest extent permitted by law, Subcontractor will defend (with counsel acceptable to Unger), indemnify and hold the Owner, Unger, Architect, lender (if applicable), and their respective officers, board members, directors, partners, members, employees, affiliates, parents and subsidiaries ("Indemnitees") harmless from and against any and all claims, demands, causes of action, damages, costs, expenses, attorneys' and expert witnesses' fees, losses or liabilities, in law or equity, arising out of or in any way relating to actual or alleged acts or omissions in the performance of the Work by Subcontractor, its employees, tier-subcontractors, and suppliers or anyone for whom Subcontractor and its tier-subcontractors are responsible regardless of whether the actual or alleged claim was caused, in part, by an Indemnitees' negligence. Notwithstanding the above, Subcontractor will not be required to defend, indemnify and hold harmless the Indemnitees to the extent of their respective active negligence or willful misconduct. The defense and indemnification obligations set forth in this Section will not be limited in any way by the amount or type of damages, compensation or benefits payable by or for Subcontractor under the Workers' Compensation Acts, disability benefit acts or other employee benefit acts. Subject to this Section 8.1, Subcontractor's indemnification and defense obligations include, but are not limited to, the following types of claims:

8.1.1 Personal Injury and Property Damage. Personal injury, including bodily injury, sickness or disease, or death to any persons, employees or agents of Indemnitees or any third parties and/or damage to tangible property (including loss of use).

8.1.2 Breach of Subcontract. Breach of any material terms or conditions of the Subcontract that causes damage, cost or expense to an Indemnitee.

8.1.3 Subcontractor Caused Delays. Delays, work stoppage, labor disputes, interference, or disruption to the critical path of the current Project Schedule or to any other subcontractors' or Owner's separate contractors' time.

8.1.4 Violation of the Law. Penalties, fees and costs imposed on account of the violation of any law, order, citation, rule, regulation, code, standard, ordinance or statute, including but not limited to, building code violations, rules and regulations imposed by Cal-OSHA or other safety violations or standards, as well as any union subcontractor's or tier-subcontractors' failure to comply with Labor Code section 218.7 and other applicable law governing the payment of wages (inclusive of fringe benefits) to workers and employees performing portions of the Work.

8.1.5 Insurance and Bonding. Failure of Subcontractor to comply with the insurance and bonding provisions set forth in Article 9. Insurance requirements and limits included in this Subcontract do not limit Subcontractor's indemnification and defense obligations or other Subcontractor liability.

8.1.6 Liens and Stop Payment Notices. Mechanics' lien or stop payment notice claims for labor performed or materials and equipment furnished for the Project, including incidental or consequential damages suffered by an Indemnitee as a result of the claim provided that Subcontractor has been paid for the portion of the Work at issue.

8.1.7 Infringement of Intellectual Property. Infringement of any intellectual property right including patents, copyrights or license, which may be brought against Indemnitees as a result of the Work.

8.1.8 Hazardous Substance or Material. Claims or liability for damages arising out of or resulting from Subcontractor's, or its employees' or tier-subcontractors' use of, or negligent mishandling of, a Hazardous Substance or Material or exacerbation of a pre-existing condition during the performance of its Work.

8.1.9 False Claims. Subcontractor's false claims with respect to Subcontract Price adjustments or any false or fraudulent statement regarding performance of the Work, application for payment, or otherwise contrary to legal standards governing false claims.

**8.2 Duty to Defend.** Subcontractor will defend all claims defined in Section 8.1 at its own cost and expense and satisfy any judgment or decree that may be rendered against any Indemnitee arising out of a claim, or reimburse Indemnitee(s) for any and all legal or expert witness expenses incurred by any of them in connection with the claim or in enforcing the indemnity granted in this Article 8. The duty to defend is immediate and will apply, and Subcontractor will be required to furnish a defense, regardless of whether the matter has been adjudicated.

## **9. INSURANCE AND BONDING.**

**9.1 Insurance Requirements.** Subcontractor will procure insurance coverage in the amounts set forth in the Business Terms Sheet and pursuant to Exhibit 4. If the Business Terms Sheet indicates that there is an owner controlled insurance program ("OCIP"), Subcontractor will enroll in the OCIP coverage and procure other insurance as required by the Business Terms Sheet and as further described in the OCIP manual (as applicable), and Exhibit 4. Before commencing Work, Subcontractor will provide proof of insurance or evidence of enrollment in the OCIP (as applicable). Proof of insurance includes certificates of insurance as well as endorsements evidencing proper insurance coverage and additional

insured status on all liability policies except for worker's compensation and professional liability (if required).

**9.2 Bonding Requirements.** If required by the Business Terms Sheet or otherwise required by Unger through subsequent Subcontract Change Order, Subcontractor will provide payment and performance bonds on forms and with a surety acceptable to Unger for the full amount of this Subcontract before mobilizing for construction at the site. If bonds are required by the Business Terms Sheet, all costs associated with bond premiums are included in the Subcontract Price. Without limiting the responsibilities of Subcontractor and its surety under the terms of this Subcontract, Subcontractor and its surety agree to promptly pay all lawful claims of subcontractors, material men, laborers, persons, firms or corporations for labor or services performed or materials, suppliers, machinery equipment, rentals, fuels, oils, tools, appliances, insurance and other items furnished, used or consumed in connection with the prosecution of the Work including Subcontract Change Orders.

## **10. WARRANTY.**

**10.1 Warranty on Workmanship.** Subcontractor warrants that all Work will be new unless otherwise specified in the Subcontract Documents, and of good quality, free from defects, and in conformance with the Subcontract Documents and applicable law. All Work not conforming to these requirements, including substitutions not properly approved and authorized, will be considered defective. For a period of 1 year commencing from the Substantial Completion Date of the Project or the date of repair, whichever is later, and for longer periods specified in the Construction Documents (Exhibit 3) for certain equipment manufacturers and suppliers, Subcontractor will promptly cure the defective and non-conforming Work by repair or replacement and will provide any other required services related to the repair or replacement at its sole cost and expense. Subcontractor's warranty on workmanship does not extend to improper or insufficient maintenance, ordinary wear and tear, or damage caused by improper use. If Subcontractor fails to commence repairs or replacement required within 10 days, or diligently prosecute repair to completion, any such repairs or replacement may be performed by others, and Subcontractor will be responsible for reimbursing Unger or Owner (as applicable) for the cost of the repairs or replacement. Subcontractor will execute a written "warranty" as provided in the Subcontract Documents, if any, before receiving Final Payment and will procure all tier-subcontractor and manufacturer express warranties required under the applicable Construction Documents and transmit the warranties to Unger before Completion of the Work. Establishment of the 1 year express warranty period for correction of the Work relates only to the Subcontractor's specific obligation to correct defective or non-conforming Work, and has no relationship to statute of limitations periods for claims arising from the Subcontract Documents. The warranty provided in this Section is in addition to and not in limitation of any other warranty or remedy required by law or by the Subcontract Documents.

## **11. DISPUTE RESOLUTION.**

**11.1 Claims.** All claims between Subcontractor and Unger arising from the Subcontract Documents that are not resolved through the Subcontract Change Order process in Article 6 will be resolved per this Article 11. Claims submitted by Subcontractor must certify that the claim is being made in good faith, that the supporting data is accurate and complete to the best of Subcontractor's knowledge and belief, and that the amount requested accurately reflects the adjustment Subcontractor believes should be authorized. Subcontractor acknowledges that the Project is being constructed in accordance with the Prime Contract and the Subcontract Documents. To the extent that there is a conflict between the provisions set forth in this Article 11 and the dispute resolution procedures set forth in the Prime Contract, the dispute resolution procedures in the Prime Contract will govern. Sections 11.4 and 11.5 apply to all claims.

**11.2 Involving Owner and Other Parties.** Any claim arising from the Project involving the acts or omissions of the Owner, Architect, engineer of record, or other parties, will be advanced by Unger at its sole discretion in accordance with the dispute resolution procedure set forth in the Prime Contract. Subcontractor will bear all costs of prosecuting or defending its claim and will indemnify Unger against any counterclaim arising in whole or in part out of the Subcontractor's performance of the Work pursuant to Section 8.1 and, at Unger's request, will undertake defense of the claim utilizing counsel acceptable to Unger per Section 8.2. If Unger decides in good faith not to proceed with Subcontractor's claim, Subcontractor is entitled to proceed with its claim directly against the Owner or its agents.

11.2.1 If Unger elects to advance Subcontractor's claim, Subcontractor's right of recovery on the claim will be limited solely to the dollar amount and other relief recovered by Unger on behalf of Subcontractor minus the Subcontractor's portion of the costs and expenses incurred by Unger in resolving the claim (including attorney's fees, consulting charges, and Unger's personnel costs). Unger is not liable to the Subcontractor for any monies or other relief except those granted to Unger by Owner for the benefit of Subcontractor. It is a condition precedent that Subcontractor comply with all timing requirements related to delay or changes in the Work in order to perfect Subcontractor's claim and Subcontractor must submit all requested back-up and documentation necessary to present its portion of the claim upon Unger's request and in advance of any time period stated in the Prime Contract. Failure to comply with all timing and the certification requirements constitutes a waiver of claim. A senior executive with the authority to bind Subcontractor must be readily available to discuss any compromise or settlement that Unger may be able to reach with Owner on Subcontractor's behalf, or the right to object to the compromise or settlement is waived and Unger's decision regarding compromise, settlement, or discontinuation of any claim or dispute resolution will be final and binding upon Subcontractor.

**11.3 Between Unger and Subcontractor.** If the dispute is just between Unger and Subcontractor and does not involve any other party related to the Project, Subcontractor may initiate the dispute resolution procedures with Unger by providing 10 business days written notice of a potential claim. The notice must certify that the claim is being made in good faith and that the amount requested is accurately reflected, provide reasonable detail of the nature of the claim and back-up substantiating the amount requested, a statement about the remedy sought, and request informal resolution through business negotiations. If the Parties are unable to resolve the dispute through information business negotiations or by mediation, then the parties may proceed with the claim through judicial reference in accordance with California Code of Civil Procedure section 638 through 645.2.

11.3.1 Business Negotiations. Upon receipt of written notice, Unger and Subcontractor will notify their respective senior executives who have not been personally involved in the Project and who have no direct responsibility for the administration of the Subcontract. Each designated senior executive will have the authority to settle or compromise the claim conclusively. The senior executives will meet at a mutually agreeable time and place to exchange relevant information and attempt to amicably resolve the claim. If the dispute is not resolved through informal business negotiations, either Party may demand mediation per Section 11.3.2.

11.3.2 Mediation. Mediation is not mandatory. Before agreeing to mediation, each party to the mediation will execute a disclosure confirming that the party understands the confidential nature of the mediation proceedings and materials pursuant to California Evidence Code section 1129. Request for mediation will be filed in writing with the other Party and with the American Arbitration Association or another mutually agreed independent mediator. If the mediation is before the American Arbitration Association, it will be conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. The Parties will select a mediator within 15 days and will share the mediator's fee and any filing fees equally. Agreements reached in mediation will be enforceable as settlement agreements in any court having jurisdiction over the matter. If the Parties are



unable to resolve the dispute by mediation, then the Parties may proceed with the claim through judicial reference per Section 11.3.3.

**11.3.3 Judicial Reference.** A demand for judicial reference must be made within the time frame for filing a civil action and under no circumstance after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations. The referee must be a retired judge of the State of California with significant experience in construction disputes, who will hear, determine and try all claims arising from this Subcontract in accordance with California Code of Civil Procedure section 638-645.2. The Parties may, if the Court appoints the referee, obtain the disqualification of anyone appointed as referee on the same basis and under the same procedures of CCP section 170.6 regarding peremptory challenges. The Parties will share the referee's fees and any administrative costs associated with the reference, and no party may recover costs under CCP section 1032 or otherwise. California rules of evidence, civil procedure, and rules of court are applicable. However, the Parties may, but are not required to, mutually agree to place restrictions on discovery pursuant to Code of Civil Procedure section 2016.030.

**11.4 Joinder.** Subcontractor consents to joinder of Owner, Architect and other design professionals, other subcontractors and suppliers and any other party that Unger deems necessary to resolve claims filed by or against Unger that arise out of similar facts, issues or incidents and are related to the Project to prevent inconsistent dispute resolution awards or judgments. Subcontractor agrees to be bound by the decision of any court, arbitration panel, or other tribunal to the full extent to which Unger is bound.

**11.5 Continuation of Work.** Subcontractor must diligently continue to prosecute the Work, including all disputed Work regardless of the existence of a dispute or claim or the pendency of any dispute resolution procedure or pendency of any civil action.

**11.6 Mechanic's Lien and Stop Payment Notice Actions.** Subcontractor agrees to not commence any civil actions for recovery of claims until the dispute resolution process has been completed unless it is necessary to preserve Subcontractor's legal rights for payment for Work performed pursuant to California State mechanic's lien and stop payment notice laws, or to prevent Subcontractor's claim from being time barred by the statute of limitations.

**11.7 Attorney's Fees.** If the Parties become involved in litigation, arbitration, or judicial reference from claims arising out of this Subcontract, the Subcontract Documents or the Project, the prevailing Party will be entitled to recover reasonable costs, attorney's fees, and expert witness' and consultants' fees.

## **12. SUSPENSION AND TERMINATION.**

**12.1 Suspension.** If the Project is suspended by Unger, Subcontractor will be compensated for Work performed before receipt of notice of the suspension. The notice of suspension will set forth the reason for suspension and the effective date of suspension. If the Project is resumed, and provided that the suspension was not caused or due to any fault or neglect of the Subcontractor, then the Subcontract Price and Subcontract Time may be equitably adjusted through Subcontract Change Order.

**12.2 Unger's Termination for Convenience.** At any time before Completion of the Work and upon 7 days written notice to Subcontractor, Unger will have the right to terminate this Subcontract, in whole or in part, without the consent or fault of Subcontractor, and without liability. The notice will state the extent and effective date of termination. Upon receipt of written notice, Subcontractor will, unless the notice directs otherwise, immediately discontinue the Work and the placing of orders for materials, equipment and supplies in connection with the performance of this Subcontract, and if requested, make

commercially reasonable efforts to cancel existing orders or contracts upon terms satisfactory to Unger, or at the option of Unger, give Unger the right to take assignment of those obligations directly. Subcontractor will safe off and secure any openings, and preserve and protect the Work already in progress and the materials and equipment already at the Project site or in transit to the site. Subcontractor will be entitled to receive payment for all Work performed based on a percentage of Work properly completed through the effective date of termination and as may be required to secure and protect the Work. Subcontractor will not be entitled to payment of overhead and profit on unperformed Work or unabsorbed overhead. All disputes over termination will be resolved under Article 11.

**12.3 Unger's Termination for Cause.** Unger will have the right to terminate this Subcontract in whole or in part, upon written notice of default if Subcontractor: (i) refuses or neglects to supply a sufficient number of properly qualified management or skilled workers, or a sufficient quantity of materials and equipment of proper quality; (ii) fails to promptly pay any tier-subcontractor, supplier, materialmen, rental company or laborer; (iii) fails to accelerate the Work as required by Section 5.6; (iv) gives Unger a reasonable basis to doubt that the Work can be completed for the unpaid portion of the Subcontract Price or within the Subcontract Time; (v) fails or refuses to correct violation of safety regulations; (vi) fails to perform any of its responsibilities or obligations under the Subcontract Documents; or (vii) commits fraud, willful misconduct, or disregards applicable law. Upon receipt of notice of default, Subcontractor will have 48 hours to commence curing the default to the satisfaction of Unger. If Subcontractor fails to commence curing the default within the 48 hour period, the effective date of termination will be 7 business days from the date of the written notice of default.

12.3.1 Remedies. Upon termination, Unger may, without prejudice to any other rights or remedies (i) take possession of the Work and of all materials and equipment procured for the Work; (ii) take assignment of any tier-subcontracts, purchase orders, or rental agreements; (iii) finish the Work by whatever reasonable method Unger deems expedient; and (iv) pursue any available legal or equitable remedies as well as remedies available under the Subcontract Documents. Subcontractor will not receive further payment until after Unger's completion of the Work through others, and Unger will offset against any sums due or to become due Subcontractor all costs incurred in completion of the Work and in pursuing its legal and equitable remedies (including legal fees). Subcontractor is liable for the payment of any amount in excess of the unpaid balance of the Subcontract Price and will pay Unger the amount within 30 days of written demand. If a court of competent jurisdiction deems that termination of the Subcontractor was wrongful or otherwise improper, the termination will be deemed a termination for convenience under Section 12.2.

## **13. MISCELLANEOUS PROVISIONS.**

**13.1 Governing Law.** This Subcontract is governed by and construed under the laws of the State of California without regard to California conflict of law provisions. Unger and Subcontractor agree that any claim or enforcement of a judgment or alternative dispute award will be filed with the appropriate court of law and in accordance with the venue (if any) stated in the Prime Contract, or, in matters only involving Unger and Subcontractor, venue will be Sacramento.

**13.2 Notice.** Any notice required or permitted under this Subcontract, must be served personally, by overnight commercial carrier, or by email with return receipt requested. Notices should be directed to Unger's Signatory and Subcontractor's Representative identified in the Business Terms Sheet at the appropriate business address set forth in page 1 of this Subcontract. If personal delivery, notice will be effective upon personal delivery, or 3 business days after being sent either via registered or certified mail return receipt requested or 1 business day after being sent by overnight commercial courier providing next business day delivery.

**13.3 Severability.** The terms and conditions of this Subcontract will be interpreted in accordance with their plain meaning, and not strictly for or against either Party. Any rule of construction or interpretation to the contrary will be of no force or effect. If a court of competent jurisdiction finds any term or provision of this Subcontract to be void or unenforceable for any reason, that term or provision will be severed and the remainder of the Subcontract will remain in full force and effect to the maximum extent permitted by law.

**13.4 Waiver.** No action or failure to act by Unger waives any right or duty afforded it under the Subcontract and an action or failure to act will not constitute approval of or acquiescence in a breach of the Subcontract, unless specifically agreed to in writing by Unger.

**13.5 Time is of the Essence.** Time is of the essence with respect to performance of the Work and each term and condition of this Subcontract.

**13.6 Assignment.** Unger and Subcontractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other Party and to the partners, successors, assigns and legal representatives of the other Party with respect to all covenants of this Subcontract. The Subcontractor may not assign this Subcontract without the written consent of Unger. Unger may assign this Subcontract to the Owner. Also, Subcontractor will cooperate with Unger regarding any assignment to Owner's lender for the purpose of construction financing for the Project.

**13.7 Modifications.** All modifications to the terms and conditions set forth in this Subcontract must be through written Amendment or Subcontract Change Order and signed by a Signatory of each Party.

**13.8 Counterparts.** This Subcontract may be executed in counterparts, each of which will be deemed an original, and all of which when taken together will constitute one instrument. A copy of this Subcontract executed and delivered by facsimile, email in ".pdf" format, or any electronic signature complying with the California Uniform Electronic Transactions Act and the U.S. federal ESIGN Act of 2000 (e.g., [www.docusign.com](http://www.docusign.com)) will be deemed to have the same legal effect as delivery of an original executed copy.

**13.9 Section Headings.** The section headings contained in this Subcontract are for reference purposes only and will not in any way affect the meaning or interpretation of this Subcontract.

**13.10 Legal Citations.** Legal citations to statutory requirements are included in the Subcontract are for convenience and an omission of any legal or statutory requirement or incorrect citation will not relieve the Subcontractor from compliance with the law.

**13.11 Non-Discrimination/Equal Employment Opportunity.** Subcontractor will not discriminate in any manner against any individual because of race, color, religion, national origin, age, sex or sexual orientation, political affiliation, marital status, or disability. Subcontractor and its tier-subcontractors and suppliers will comply with all equal employment opportunity, affirmative action requirements, and local hire requirements promulgated by any state or federal governmental authority, such as the requirements of the Civil Rights Act of 1964, Presidential Executive Orders, the California Fair Employment Practices Act, the Americans with Disabilities Act of 1991, and the Family and Medical Leave Act of 1993, as may be amended. Subcontractor must comply with 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.

**13.12 Confidentiality.** Subcontractor, and its tier-subcontractors, will comply with any confidentiality provisions set forth in the Prime Contract and will comply with the Non-Disclosure

Agreement if included in this Subcontract as Exhibit 10. If the Owner is a health care provider, Subcontractor and its tier-subcontractors will comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") patient privacy rules.

**13.13 Ownership of Documents.** Subcontractor will not own or claim a copyright in the Construction Documents or other documents prepared by the Architect or other design professionals. The Construction Documents and other documents prepared by the Architect or other design professionals are furnished to the Subcontractor for use solely with respect to this Project and are not to be used by Subcontractor on other projects or for additions to this Project outside the scope of this Subcontract. To the extent that this Subcontract requires Subcontractor to perform design-build work or use BIM, the ownership rights of any documents and models will be determined in accordance with the terms and conditions of the Prime Contract.

**13.14 State Licensing.** Subcontractors 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 regarding a patent act or omission is filed within 4 years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 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, CA 95826.

**13.15 Advice of Counsel.** Subcontractor has sought, or had the opportunity to seek, the advice of legal counsel concerning this Subcontract, or has had the opportunity to have been fully advised of the meaning and effect of this Subcontract. Subcontractor has executed this Subcontract after independent investigation without fraud, duress, or undue influence and without reliance on any representation, warranty, promise, or inducement not specifically set forth in this Subcontract and the Subcontract Documents.

**13.16 Survival.** The following provisions will survive the termination or expiration of this Subcontract: Sections 3.1.1, 3.1.2, 3.1.3, 5.7, 7.8 and Articles 8 through 13.

**13.17 Entire Agreement.** This Subcontract (inclusive of Exhibits and the Subcontract Documents) constitutes the entire agreement between Unger and Subcontractor and supersedes any and all contemporaneous or prior oral and written negotiations, representations, or agreements by the Parties with respect to this Project.

**13.18 Execution.** This Subcontract is executed as of the Effective Date by the Signatory of each Party pursuant to the signatures on page 1 of the Subcontract.