

## MASTER SUBCONTRACT AGREEMENT CCI1159

THIS MASTER SUBCONTRACT AGREEMENT (the "Agreement") is executed as of the \_\_\_\_ day of \_\_\_\_\_ in the year 2022, between Casco Contractors, LLC, a Delaware Limited Liability Company, License 790706 (the "Contractor"), and XXXXXX, (the "Subcontractor"), with California License No(s). XXXXXX

### INTRODUCTION

Contractor and Subcontractor agree as follows:

- A. That Contractor may employ Subcontractor from time to time on various construction projects, as determined by Contractor in its sole discretion.
- B. That this Agreement (together with all documents attached and incorporated by reference herein including Exhibits "A" through "F") shall apply to all future Subcontract work provided by Subcontractor under any project Sub Project Agreement, except as may be modified by a subsequent specific written Sub Project Agreement signed by both parties varying the terms of this Agreement. Any such modification only applies to the particular Sub Project Agreement (and no others) for the project affected.
- C. That each individual project Sub Project Agreement forming a Subcontract shall constitute a separate, distinct, and independent Subcontract and contractual obligation of Subcontractor.
- D. That this Agreement shall be construed in its broadest terms, such that all provisions of this Agreement shall be given full effect to the fullest extent possible in light of the specific terms of any subsequent Sub Project Agreement(s) and Sub Project Agreement provisions.
- E. That the terms of this Agreement (together with all documents attached including Exhibits "A" through "F") shall be *incorporated-by-reference* into any Sub Project Agreement that Contractor enters into with Subcontractor with respect to any future construction project under which Contractor may employ Subcontractor and where Contractor has entered into, or will enter into a Prime Contract, and shall apply to all contracts entered between the parties unless expressly excluded.

### ARTICLE 1: DEFINITIONS AND THE SUBCONTRACT DOCUMENTS

- 1.1 Architect. The term "Architect" shall mean the designer of record (whether an architect, engineer or other design professional) for the Project that is the subject of a Sub Project Agreement.
- 1.2 Completion. "Completion" with respect to any Project, if defined in the Prime Contract, shall be as so defined in the Prime Contract. If Completion is not defined in the Prime Contract, Completion shall mean full and complete performance of all of the work described under the Prime Contract, not just Subcontractor's obligations with respect to any Sub Project Agreement, including any punch-list and delivery of deliverables (O&M, product information, lien releases), as set forth in the Subcontract

- Documents. "Substantial Completion" shall mean as defined in the Prime Contract, or if not defined therein, with respect to Subcontractor's Work, shall mean substantial performance of all of Work described in any Sub Project Agreement, and with respect to a Project, shall mean substantial performance of all work described in any Prime Contract so as to afford the Owner beneficial use or occupancy of the work of improvement.
- 1.3 Owner. The term "Owner" shall mean any entity or person(s) contracting with Contractor in the Prime Contract for any improvement described or referred to in a Sub Project Agreement.
  - 1.4 Owner's Representative. The term "Owner's Representative" shall mean the person or firm authorized to act on behalf of the Owner in the Prime Contract under which any Sub Project Agreement falls, and if no such person is so authorized, the Owner, as the context requires herein.
  - 1.5 Prime Contract. Prime Contract means the agreement between the Owner and Contractor and the other Contract Documents enumerated therein or as defined therein, including without limitation, conditions of the Prime Contract (whether general, supplementary and other conditions), drawings, specifications, bidding instruction, and addenda issued prior to execution of the Prime Contract agreement between the Owner and Contractor and modifications or change orders issued subsequent to the execution of any Prime Contract, whether before or after the execution of this Agreement, with respect to any work of improvement referenced in a Sub Project Agreement in connection with which the Subcontractor performs work.
  - 1.6 Project. The term "Project" shall mean the particular work of improvement as set forth in a Prime Contract which is referred to or otherwise described with reference to service or work covered in a Sub Project Agreement.
  - 1.7 Work. The term "Work" shall mean any and all of Subcontractor's obligations, work or services described or reasonably required to achieve the purposes therein, including incidental work and work or obligations reasonably inferable from the applicable Subcontract Documents, as described in any Sub Project Agreement or otherwise, including (without limitation) the furnishing of any labor, materials, services, design, or equipment in connection with any Project, whether done directly by Subcontractor or indirectly through others on Subcontractor's behalf.
  - 1.8 Written Notice. The term "written notice" includes any correspondence, emails and email attachments, whether or not signed.
  - 1.9 Subcontract Documents. As to any project in which Contractor employs Subcontractor, the "Subcontract Documents" (as may be referenced in this Agreement or in any other agreement or document) shall consist of (1) this Agreement (together with all documents attached and incorporated by reference herein including Exhibits "A" through "F"); (2) each Sub Project Agreement separately or in combination if in connection with one Project, including any documents signed between Contractor and Subcontractor in connection with a Sub Project Agreement, including any amendments, change orders or other written modifications; (3) modifications to each Sub Project Agreement issued after execution of this Agreement; and (4) the applicable Prime Contract. These documents form the Subcontract and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. As to each Project that Contractor employs Subcontractor, the Subcontract Documents shall be the entire and integrated agreement between the parties hereto and the same supersedes prior negotiations, representations, or agreements, either written or oral, including any representations contained in any bid or proposal.
  - 1.10 The Subcontract may be amended or modified only by a written modification or Subcontract Change Order ("Modification(s)"). The Subcontract Documents shall not be construed to create a contractual or third party beneficiary relationship of any kind (1) between the Architect and Subcontractor, (2) between the Owner and Subcontractor, or (3) between any persons or entities other than Contractor and Subcontractor.

- 1.11 The Subcontract Documents are available for examination by Subcontractor at all reasonable business work hours at the office of Contractor, but Contractor may redact all financial information set forth in the Prime Contract. Subcontractor shall be furnished copies of the Subcontract Documents upon request, but Contractor may charge Subcontractor for the reasonable cost of reproduction.
- 1.12 Subcontractor represents and agrees that it will carefully examine and understand all Subcontract Documents pertaining to any Project, requesting clarification as necessary, and that it will investigate the nature, locality, and site of the work on any Project in connection with a Sub Project Agreement, and the conditions and difficulties under which the work covered in any Sub Project Agreement is to be performed and that it enters into any Subcontract on the basis of its own examination, investigation, and evaluation of all such matters and not in reliance upon any opinions or representations of Contractor, or the Owner, or of any of their respective officers, agents or employees. Subcontractor understands that Contractor will be relying on Subcontractor's review of the Subcontract Documents and Subcontractor's performance of its obligations under the Subcontract Documents with respect to any error, omission, or conflict therein, and Subcontractor agrees to immediately bring to the attention of the Contractor any such error, omission or conflict therein.

**ARTICLE 2: MUTUAL RIGHTS AND RESPONSIBILITIES**

- 2.1 Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of the Prime Contract apply to the Work of Subcontractor, 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, including, but not limited to, all applicable terms and provisions thereof. Where a provision of such Prime Contract documents is inconsistent with a provision of this Agreement, this Agreement shall govern. The terms and provisions of this Agreement regarding the Work to be performed by Subcontractor and any Sub Project Agreement subsequently entered into between Contractor and Subcontractor shall be in addition to, and not in substitution for, any of the terms and provisions of the Prime Contract and the other Subcontract Documents.
- 2.2 Subcontractor agrees to include the terms of the Subcontract in its agreements with sub-subcontractors performing any portion of the Work of the Subcontract by which the sub-subcontractor is bound to Subcontractor, to the extent of the work to be performed by the sub-subcontractor, to the same extent Subcontractor is bound to Contractor, and by which the sub-subcontractor assumes all of the obligations and responsibilities that Subcontractor assumes under this Agreement and any Sub Project Agreement. On request of Contractor, Subcontractor shall provide to Contractor true, correct and complete copies of all sub-subcontracts, purchase orders, and other agreements between Subcontractor and sub-subcontractor or its vendors in connection with any Project. Subcontractor's obligation to furnish such documents and information shall be independently enforceable by court order, even when the disputes on any project are subject to arbitration.

**ARTICLE 3: CONTRACTOR**

**3.1 PROJECT SCHEDULE**

- 3.1.1 Time is of the essence for each Sub Project Agreement and on each Project. Subcontractor shall immediately, and in no event more than ten (10) days after receipt by Subcontractor of any Sub Project Agreement for a Project, provide to Contractor scheduling information, including (without limitation) its durations for all activities for its Work, planned crew sizes, planned procurement dates, planned submission dates of required shop drawings, submittals, project data and samples for Subcontractor's Work, (including all the activities of its subcontractors, fabricators, vendors, suppliers and others necessary for Subcontractor to fully perform its obligations under any Sub Project Agreement). Based upon this information and similar such data from the other Subcontractors on each project, Contractor shall prepare the Schedule of the Work establishing the sequence and time requirements of all work activities for timely Completion of a Project under any Prime Contract. Once the initial Schedule is prepared on any project, Subcontractor shall keep itself fully apprised of the progress of the work on the project, and track and maintain its Work so as to coordinate with other subcontractors and Contractor to ensure Completion of each Prime Contract in accordance with the respective project Schedule, including revisions thereto, and in compliance with the Prime Contract duration. Contractor, as may be necessary, may revise such Schedule from

time to time and with or without notice to Subcontractor. Whenever reasonable under the circumstances, Contractor may request the cooperation of Subcontractor in revising the Schedule as the Work progresses; however, Subcontractor shall be bound to perform its work in accordance with the Schedule for each project regardless of changes or revisions thereto, which Subcontractor acknowledges may occur on every Project. Subcontractor acknowledges that revisions may be made in such Schedule and agrees to make no claim against Contractor for acceleration or delay by reason of such revisions so long as such revisions are of the type normally experienced in Work of this scope and complexity. In the event Subcontractor is unable to maintain progress in accordance with the project Schedule for any Sub Project Agreement by reason of events for which extensions of time are permitted in the Subcontract Documents, Subcontractor's time for complete performance of its Work shall be extended for a reasonable, mutually agreed-upon time, provided that a time extension is given by the Owner to Contractor, and further, provided that notification of delay is given as provided herein, in sufficient time for Contractor to reasonably meet its notice obligations, if any, under the Prime Contract. This time extension shall be the sole remedy for such delays. As between Contractor and Subcontractor assumes the risks of delays in the Schedule, and Subcontractor shall not be entitled to recover damages from Contractor for any delays unless Contractor is fully compensated by the Owner or other subcontractors for such delay, unless agreed otherwise in writing signed by an authorized representative of Contractor and Subcontractor.

- 3.1.2 Subcontractor agrees to maintain an adequate force of experienced workers and the necessary materials, supplies, and equipment to meet the requirements of Contractor and other trades in order to maintain construction progress schedules (including the Schedule, and any look-ahead or interim schedules). Whenever it becomes apparent to Contractor that the completion date of any of Subcontractor's activities may not be met as set forth in the applicable Schedule (including as amended), Subcontractor shall immediately, upon notice from Contractor, take some or all of the following actions at no additional cost to Contractor:
- (1) Increase manpower in such quantities as will substantially eliminate the backlog of work and put Subcontractor's Work back on schedule for the project.
  - (2) Increase the number of working hours per shift, shifts per working day, working days per week, or the amount of equipment, or any combination of the foregoing that will substantially eliminate the backlog of work and put Subcontractor's Work back on schedule for the project.
  - (3) Reschedule activities to achieve maximum practical concurrency of accomplishment of activities and put Subcontractor's Work back on schedule.
- 3.1.3 If Subcontractor fails to take any of the above actions within twenty-four (24) hours after receiving notice from Contractor, Contractor may take action to attempt to put Subcontractor's Work back on schedule, including supplementing Subcontractor's work or contracting to others any portion or portions of Subcontractor's Work as may be necessary to maintain, mitigate or recover the Schedule, and Contractor may deduct the entire cost of such actions from the amounts due or to become due Subcontractor, and/or recover any damages therefor should the Subcontract balances be insufficient.
- 3.1.4 If Subcontractor contends any change in the Schedule is unreasonable and results in a material delay and cost increase in Subcontractor's performance of its Work, Subcontractor shall immediately provide Contractor with written notice of the fact and length of the delay and damages sufficient to apprise Contractor so that Contractor may notify other responsible parties, including (without limitation) the Owner and other subcontractors on the Project. Subcontractor's notice hereunder must be at least five (5) business days before any deadline applicable to Contractor in the Prime Contract with respect to claims against the Owner, and fully compliant with all requirements in the Subcontract Documents, including Owner mandated requirements in the Prime Contract applicable to Contractor.

### 3.2 SERVICES PROVIDED BY CONTRACTOR

- 3.2.1 To the extent such matters are within the reasonable control of Contractor and consistent with Contractor's obligations under an applicable Prime Contract, Contractor shall cooperate with

Subcontractor in scheduling and performing Contractor's Work to avoid conflicts, delays, disruption or interference in Subcontractor's Work and shall make reasonable efforts to expedite written responses to submittals made by Subcontractor where requested in writing.

3.1.2 Where reasonably practicable, as determined by Contractor on a project-by-project basis, Contractor may provide suitable areas for parking or storage of Subcontractor's materials and equipment during the course of the Work. Subcontractor shall submit locations for storage area(s) to Contractor for approval.

3.1.2.1 Should Subcontractor choose to have a storage area on the Project site, Subcontractor shall relocate the storage area as directed by Contractor without any additional costs to Contractor.

3.1.2.2 Contractor shall not be responsible for the security of tools, equipment, materials stored or other property stored, or any of Subcontractor's Work in Progress for which Subcontractor is responsible. Subcontractor shall be solely responsible for protecting all of its Work in progress until accepted in writing by Contractor.

3.1.2.3 Subcontractor shall inform Contractor's field superintendent a minimum of three (3) working days in advance of any deliveries to the site.

3.1.3 Except as permitted by Contractor in writing, Contractor's equipment will not be available to Subcontractor, and Subcontractor agrees to including pricing for furnishing all materials, tools, and equipment necessary or desirable to fully perform its obligations under any Sub Project Agreement. Subcontractor agrees to indemnify and hold Contractor harmless for any and all damages and claims arising out of the use of Contractor's equipment for Subcontractor's benefit, regardless of whether the equipment is operated by Contractor or Subcontractor, and regardless of whether the damage is caused in part by Contractor's negligence.

3.1.4 If Contractor accepts delivery on behalf of Subcontractor of any of Subcontractor's materials, supplies or equipment, whether or not Subcontractor is absent from the Project site, Contractor will not be liable for any deficiency or defect in quality, quantity or content of what was delivered.

## 3.2 COMMUNICATIONS

3.2.1 Contractor, not Subcontractor, shall have all direct communication with the Owner, Architect, or Owner's Representative (if any, as defined in the Prime Contract). In the event Subcontractor requests or requires clarification of any issue involving Owner, Architect, or Owner's Representative, Subcontractor shall clearly so indicate in its communications with Contractor and allow sufficient and reasonable time for Contractor to communicate with Owner, Architect, or Owner's Representative, which shall not in any event be less time than that required in the Subcontract Documents.

3.2.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the Project site by Subcontractor, or anyone directly or indirectly employed by them or under their scope of Work, Subcontractor shall give written notice of the chemical composition thereof to Contractor in sufficient detail and time to permit Subcontractor's compliance with all applicable laws, rules and regulations.

3.3 CONTRACTOR'S REMEDIES. If Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement, the Subcontract Documents and/or any Sub Project Agreement, and fails within twenty-four (24) hours after receipt of written notice from Contractor to cure or correct any such default or neglect with diligence and promptness, Contractor may, without prejudice to any other remedy Contractor may have, take possession of all or any part of Subcontractor's Work, tools and/or equipment to make good such deficiencies, and may deduct the reasonable cost (including a 10% fee

for Contractor's overhead and expenses) thereof from the payments then or thereafter due Subcontractor, as well as recover any damages incurred as a result of thereof.

**ARTICLE 4: SUBCONTRACTOR**

**4.1 EXECUTION AND PROGRESS OF THE WORK**

4.1.1 Subcontractor shall supervise and direct Subcontractor's Work, and shall cooperate with Contractor and others in scheduling and performing Subcontractor's Work to avoid conflict, delay in or interference with the Work of Contractor, other subcontractors, Owner's own forces, or others involved in the Project (including, without limitations, utility, inspection and permitting agencies). Subcontractor agrees to employ a competent Project Manager for the Project, as well as the administrative, supervisory, and field personnel necessary to accomplish the work, including layout, engineering, preparation and checking of shop drawings. Subcontractor shall substantiate employment of competent personnel to the Contractor's satisfaction before initiating any Work or at any time after Contractor's request. Contractor may exclude from any Project any personnel of Subcontractor that Contractor finds unsafe, incompetent, or disruptive. Subcontractor's personnel and all independent contractors of Subcontractor shall in all events comply with all applicable employment laws, and be fully and adequately covered by applicable insurance policies, and Subcontractor shall provide proof of same on Contractor's request.

4.1.1.1 The Project Manager shall represent Subcontractor and all communications given to the Project Manager shall be binding as if given to Subcontractor. The Project Manager shall attend all coordination, scheduling, and safety meetings where Subcontractor's work is involved or as directed by Contractor.

4.1.1.2 Subcontractor shall not change its Project Manager without Contractor's approval, unless they cease to be in Subcontractor's employ.

4.1.2 Subcontractor shall immediately submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents after receipt of Notice to Proceed, and in no event later than as required under the Schedule or the Project or as set forth in the Sub Project Agreement. Subcontractor shall furnish all As-Built Drawings, Operations Manuals and Warranties related to his trade within the time frame defined in the Prime Contract. Delivery of drawings, manuals and warranties shall be a condition precedent to final payment.

4.1.2.1 Subcontractor shall account for the submittal review durations afforded the Owner or Architect in the applicable Prime Contract and the failure of the Owner or Architect to expedite a submittal in no way relieves Subcontractor from its obligation to comply with the Project schedule.

4.1.2.2 Submittal review or approval by either Contractor, Architect, or Owner's Representative does not relieve Subcontractor from its obligation to perform the Work in accordance with the Subcontract Documents. Submittals, whether approved by the Owner, Contractor, Architect, or Owner's Representative, are not part of the Subcontract Documents and do not modify the Subcontract Documents or relieve Subcontractor from compliance with the Subcontract Documents.

4.1.3 If for reasons unrelated to Subcontractor's failure to timely perform in accordance with the Schedule Contractor requires and directs and agrees to pay Subcontractor to work overtime, including Saturdays, Sundays or Holidays, Subcontractor will be reimbursed the net premium rate only. The net premium rate is understood to mean the actual premium labor cost, including applicable taxes and wage additives required by trade Agreement or by law, but without additives for overhead, labor efficiency, or profit.

4.1.4 Unless otherwise agreed in writing in a Sub Project Agreement, Subcontractor shall provide all tools and equipment reasonably necessary to facilitate its Work, including (without limitation) any scaffolding and any hoisting required for the Work of Subcontractor. Costs for temporary

removal and replacement of field obstructions to accommodate rigging or hoisting is the responsibility of Subcontractor.

- 4.1.5 Subcontractor shall notify Contractor in writing of any deficiencies in any work at the site and in work described in the Prime Contract plans and specifications prior to the commencement of the Subcontract work. Any unreported deficiencies shall be deemed accepted by Subcontractor as of the commencement of Subcontractor's work in such areas and become the responsibility of Subcontractor.
- 4.1.6 Subcontractor is responsible for verifying the dimensions and elevations indicated in the Subcontract Documents at the site by field measurement prior to ordering materials or in any way commencing to perform each and any affected portion of the Work. Subcontractor shall be solely responsible for monitoring the progress of the Project and for coordinating and performing all field measurements in a timely manner sufficient to support the project schedule, including (without limitation) attendance at Project meetings held by Contractor or Owner.
- 4.1.7 Subcontractor is responsible for the accuracy of its layout and the placement of all inserts, embeds, grounds, block-outs, blocking, etc. needed to complete its scope of work. Subcontractor is responsible for correcting improperly laid out items, including any associated repair work.
- 4.1.8 Subcontractor shall furnish to Contractor periodic progress reports on the Work under each Sub Project Agreement as reasonably specified or requested by Contractor, including information on the status of materials and equipment which may be in the course of preparation, manufacture or transit. Such information includes copies of material orders, indicating the type of material, quantity ordered, vendor name and contact information, etc., or authentic stock lists if the material is normally a stock item. Subcontractor shall immediately notify Contractor upon learning of a change in status of any material, equipment, or supplies about which Contractor has requested information.
- 4.1.9 Subcontractor agrees that Contractor and the Owner, Architect or other Owner's Representative as designated in the Prime Contract applicable to the Sub Project Agreement will each have the authority to reject Work of Subcontractor which does not conform to the Prime Contract. The Owner's, Architect's, or other Owner's Representative's, decisions on matters relating to aesthetic effect shall be final and binding on Subcontractor if consistent with the intent expressed in the Prime Contract.
  - 4.1.9.1 Subcontractor must notify Contractor when portions of its work will be ready for inspection and ensure that sufficient, safe, and proper access is provided to inspectors from Contractor, Architect, Owner's Representative, or any relevant government building authority. Subcontractor's failure to comply with the notice requirements in the Subcontract Documents will not relieve Subcontractor from its obligation to comply with the Project schedule.
  - 4.1.9.2 Subcontractor shall pay for any testing required for the Work of Subcontractor that is not specifically provided by the Owner.
  - 4.1.9.3 Subcontractor shall, within forty-eight (48) hours of receiving written notice from Contractor, proceed to take down all portions of the work and remove from the Project site all materials, whether worked or unworked, which have been deemed as defective, unsound, improper, or otherwise noncompliant with the Subcontract Documents. Subcontractor is responsible for any and all work damaged or destroyed thereby.
- 4.1.10 Subcontractor shall take all necessary precautions to protect properly the Work of Contractor, of other Subcontractors, of separate contractors to the Owner or of the Owner's own forces from damages caused by operations under any Subcontract Sub Project Agreement.

4.1.10.1 Where the responsibility for minor repairs to newly finished surfaces (not covered by property insurance) cannot be determined, the cost of repairs shall be prorated to all subcontractors in proportion to the manpower employed on the Project when the damage occurred.

4.1.11 Subcontractor shall cooperate with Contractor, other subcontractors and the Owner's own forces whose Work might interfere with Subcontractor's Work. Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and advising Contractor of potential conflicts between the Work of Subcontractor and that of Contractor, other subcontractors or the Owner's own forces.

4.1.12 Water Intrusion and Mold. Subcontractor's obligation hereunder to sequence and coordinate the work with the work of others (including other subcontractors of Contractor) includes sequencing and coordinating its work to protect the work of others and the Project's interior from weather damage and water intrusion. Subcontractor agrees to protect its own Work and materials as well as the work and materials of others and the Project's interior from weather damages and water intrusion. In the event that water intrusion occurs from weather or any other cause due to Subcontractor's failure to carry out its obligations, Subcontractor shall be responsible for the cost to remedy all damages caused thereby, including (without limitation) testing, repairs and remediation of mold and toxic substances before and after remediation occurs.

#### 4.2 SUBCONTRACTOR DELAYS

4.2.1 Subcontractor shall be responsible for liquidated damages to the extent provided for in the Prime Contract, to the same extent Contractor may be liable to the Owner, for delays it causes in whole or in part to the Project, and for delays caused by or contributed to by Subcontractor or any person or entity for whose acts Subcontractor may be liable, including all or a portion of any liquidated damages assessed by the Owner against Contractor attributable in whole or in part to such Subcontractor-caused delays. In addition, Subcontractor shall be responsible for actual damages to Contractor caused by or contributed to by delay caused by Subcontractor or any person or entity for whom Subcontractor is responsible. In the event liquidated damages or actual damages, or both, are caused by Subcontractor and another entity, Contractor shall have the right to reasonably apportion said damages between the parties, and such apportionment shall be binding on Subcontractor.

4.2.2 Should Subcontractor sustain any loss through (1) any wrongful act or omission, including unreasonable disruptions and delays, of any of Contractor's other subcontractor(s), or (2) the failure of any of Contractor's other subcontractor(s) to perform their contractual undertaking with respect to a Project, Subcontractor shall have no cause or claim against Contractor but must proceed directly against the responsible subcontractor, and Contractor's sole obligation shall be to make reasonable assignments of rights to the extent necessary for Subcontractor to pursue such claims.

#### 4.3 LAWS, PERMITS, FEES AND NOTICES

4.3.1 Contractor shall provide the general building permit; Subcontractor shall secure and pay for all other permits, fees, licenses, and inspections necessary for proper execution and completion of Subcontractor's Work under each Sub Project Agreement, the furnishing of which is required of Contractor by the Prime Contract and comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the Work.

4.3.2 Subcontractor shall comply with and agrees to be bound by all applicable federal, state and local laws and regulations, including, but not limited to, all provisions of the Fair Labor Standards Act, the Americans With Disabilities Act, the federal Family and Medical Leave Act, the California Labor Code, the California Fair Employment and Housing Act, and the California



Family Rights Act. Subcontractor shall also manage and assure that its sub-subcontractors and vendors are in full compliance with all such applicable laws and regulations.

4.3.3 Subcontractor shall pay all royalties and license fees applicable to its Work. Subcontractor shall defend all suits or claims for infringement of any patent rights and shall save the Owner and Contractor harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified, but Subcontractor shall be responsible for such losses if Subcontractor has reason to believe that the design, process or product specified is an infringement of a patent and does not promptly notify Contractor.

4.3.4 Subcontractor shall pay all applicable taxes, including 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, and the city business tax for Subcontractor's business in any way connected to its Work.

4.3.5 Subcontractor, upon request, shall furnish evidence satisfactory to Contractor that any or all of the foregoing obligations of Subcontractor have been fulfilled.

#### 4.4 SAFETY PRECAUTIONS AND PROCEDURES

4.4.1 Subcontractor shall take reasonable safety precautions with respect to performance of each Sub Project Agreement, shall comply with safety measures initiated by Owner or Contractor, set forth in further detail in **Exhibit "D"**, and with applicable laws, codes, ordinances, rules, regulations and orders of public authorities for the safety of persons and property in accordance with the requirements of the Prime Contract.

4.4.2 Subcontractor agrees to immediately notify Contractor of all accidents on the Project site involving persons or property damage. In addition to immediately reporting any accident or injury, Subcontractor shall provide a written report, on a form approved by Contractor and signed by Subcontractor, shall be submitted within five (5) working days of the accident.

4.4.3 In the event Subcontractor, after a twenty-four (24) hour written notice from Contractor, fails to take corrective action to insure compliance with all safety regulations, Contractor may suspend the Work of Subcontractor and may undertake reasonable steps to ensure compliance with safety measures for the Project and charge the cost of same (including a 10% for Contractor overhead and expenses) from the payments then or thereafter due Subcontractor without further notice to Subcontractor.

4.4.4 Hazardous substances shall not be used at any construction site without prior written approval of Contractor and, if so required in the Prime Contract, approval of the Owner or Architect. If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by Subcontractor, Subcontractor's sub-subcontractors or anyone directly or indirectly employed by them or under their control, Subcontractor shall, prior to harmful exposure of any persons or employees on the site to such substance, give written notice of the chemical composition thereof to Contractor in sufficient detail and time to permit compliance with all applicable laws, rules and regulations by Contractor, other subcontractors and other employers on the site. Subcontractor shall defend, indemnify and hold harmless Contractor for all claims, demands, actions, expenses, costs and liability incurred by Contractor, the Owner, other subcontractors and other parties, resulting from Subcontractor's use, disposal of or other disposition of any hazardous material at the jobsite.

4.4.5 Subcontractor shall not use asbestos, lead or poly-chlorinated biphenyl, or materials containing those substances, in the performance of the Work under any Subcontract Sub Project Agreement except with written approval of Contractor, Owner, and Architect. If reasonable

precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos, lead or polychlorinated biphenyl (PCB), encountered on the site by Subcontractor, Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to Contractor in writing, comply with all applicable laws, and comply with all applicable provisions of the Prime Contract. When the material or substance has been rendered harmless, Subcontractor's Work in the affected area shall resume upon written agreement of Contractor and Subcontractor.

4.4.6 Subcontractor shall provide Contractor proof of compliance with SB 198 and Cal/OSHA requirements. A copy of Subcontractor's Injury and Illness Prevention Program shall be furnished to Contractor prior to beginning work.

#### 4.5 CLEANING UP

4.5.1 Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish, and shall at all times maintain its Work area in a cleanly manner. Subcontractor shall report to Contractor any of Contractor's other subcontractors, or others, who do not maintain a clean and orderly work area on any Project.

4.5.2 If, in the sole opinion of Contractor and after giving Subcontractor twenty-four (24) hour written notice, Subcontractor fails to keep the premises clean as provided in this Agreement, Contractor may clean and remove waste or rubbish from the premises and surrounding area and charge Subcontractor for the cost thereof without any further notice. In the event a dispute arises among Subcontractor and any others as to the responsibility for such clean up, Contractor may perform the cleanup and allocate the cost among the parties responsible for keeping the premises and surrounding area free from accumulation of waste materials or rubbish based on its good-faith determination of responsibility. The allocation shall be binding on Subcontractor.

#### 4.6 WARRANTY

4.6.1 In addition to any other express or implied warranties in the Subcontract Documents, Subcontractor warrants to the Owner, Architect and Contractor that materials and equipment furnished under each Sub Project Agreement shall be of good quality and new unless otherwise required or permitted by the Subcontract Documents; that the Work of each Sub Project Agreement will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Subcontract Documents on any Sub Project Agreement. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and remedied or removed and replaced at Contractor's discretion and Subcontractor's cost. This warranty provision applies regardless of the existence of any insurance policy in effect, including any Owner Controlled Insurance Program, Contractor Controlled Insurance Program or Wrap-Up Insurance Program.

4.6.2 Unless otherwise provided in the Subcontract Documents, Subcontractor's warranty period shall begin upon Completion of each Project, not at completion of Subcontractor's Work. Unless stated otherwise in the Subcontract Documents, the warranty period shall be one (1) year from such Project Completion.

#### 4.7 INDEMNIFICATION

4.7.1 With the exception that this Section shall not 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 the Subcontract. Subcontractor's duties under this Section shall include, but not be limited to Claims for any of the following:

- 4.7.1.1 Personal injury, including without limitation bodily injury, emotional injury, sickness or disease, or death to any person or persons, including (without limitation) any employees, sub-subcontractors, independent contractors, vendors 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 part by any act or omission of Subcontractor, its employees, agents, sub-subcontractors, vendors or others for whom Subcontractor is responsible in connection with the Project;
  - 4.7.1.2 Damages, fines, penalties, and liabilities imposed on account of violation of any law, order, citation, rule, regulation, standard, ordinance, permit or statute, caused in whole or part by an action or inaction of Subcontractor and/or others acting on its behalf in connection with the Subcontractor's obligations hereunder;
  - 4.7.1.3 Infringement of any patent right, trademark or other intellectual or media property right against Contractor arising out of the Work;
  - 4.7.1.4 Claims and liens for labor or services performed, materials allegedly provided, used, consumed or furnished in performance of the Work, including all incidental, consequential, penalties or other liabilities in connection therewith;
  - 4.7.1.5 Failure of Subcontractor to comply with any provisions regarding insurance under the Subcontract Documents;
  - 4.7.1.6 Claims related to violations, breach, or infraction of any laws, ordinance, permits, order, citation, rules, regulation, standard, ordinance or statute in any way related to Subcontractor's Work, including (without limitation) safety (OSHA or Cal-OSHA), safety or labor / wage and hour legal requirements; and
  - 4.7.1.7 Any Claims against Contractor for Subcontractor's failure or alleged failure to fully perform or comply with the terms and conditions of the Subcontract Documents.
- 4.7.2 With respect to claims against any person or entity indemnified herein asserted by an employee of Subcontractor, by an employee of one of Subcontractor's subcontractors, by anyone directly or indirectly employed by them (including vendors and independent contractors), or by an employee of anyone for whose acts they may be liable, the indemnity obligations shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor or Subcontractor's subcontractors under Worker's Compensation Acts, disability acts or other employee benefit acts.
- 4.7.3 The indemnification requirements of this section shall apply to Claims arising both before and after Completion of the Work under this Agreement or any individual Sub Project Agreement entered into with Subcontractor and to claims arising both before and after the termination of this Agreement or any individual Sub Project Agreement entered into. 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 Subcontractor's Work.
- 4.7.4 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 Article 6 of this Agreement.

4.7.4.1 Subcontractor shall, at Subcontractor's own cost, expense and risk, defend (with counsel designated by Contractor) all Claims 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).

4.7.4.2 Subcontractor shall reimburse Contractor or its agents or employees for any and all attorney fees and costs incurred by any of them in connection herewith, provided, however, that such legal expenses shall be limited in applicability to Indemnification only.

4.7.5 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 Prime Contract, of and from any and all Claims, to the same extent that Contractor is required to indemnify Owner and such other persons, but only with respect to Claims arising out of or in connection with Subcontractor's performance under the Subcontract, provided, however, that this indemnity 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.

4.7.6 Subcontractor shall ensure that its sub-subcontractors of every tier also fully indemnify and hold harmless Contractor to the same extent that Subcontractor is required to indemnify and hold harmless Contractor herein, as well as any other entity(ies) Contractor is required to indemnify in the Subcontract Documents.

4.7.7 Notwithstanding any of the provisions of this Section, or any other indemnity provision of this Agreement or any individual Sub Project Agreement, if it is finally determined by a court of competent jurisdiction or arbitrator that any of such provisions are void or unenforceable under governing law, then such provisions shall be deemed stricken from the Subcontract Documents and any lawful provisions shall remain in full force and effect and in addition the statutory maximum protection shall be incorporated herein by reference and shall be construed to provide for the maximum defense and indemnification obligation by Subcontractor to Contractor as permitted by law.

4.7.8 Subcontractor shall promptly pay and satisfy any judgment or decree that may be rendered against any party indemnified herein, arising out of any claim covered by its indemnity obligations to Contractor.

4.7.9 The indemnity obligations set forth in this Agreement or individual Sub Project Agreement shall not be construed to negate, abridge or reduce any other rights of indemnity accorded by law to the persons or entities indemnified.

4.7.10 Contractor shall be entitled to recovery of its attorney fees and costs associated with enforcing any indemnity contained hereinabove, which right shall be limited in applicability to indemnification only.

#### 4.8 LABOR RELATIONS

4.8.1 Subcontractor agrees to be bound and to comply with all the terms and conditions of the labor agreements listed in the Subcontract Documents to the same degree and extent as if Subcontractor were a party to those agreements, including payments into the employee benefit trust funds required by the labor agreements, and including Subcontractor's submission to, and Subcontractor's compliance with, the arbitration and other dispute resolution requirements of the labor agreements.

4.8.2 Subcontractor further promises and agrees that it will bind and require all of its subcontractors and their subcontractors performing any Work of the type covered by any of the labor agreements listed in the Subcontract Documents to agree to all of the foregoing promises and undertakings, to the same effect as herein provided.

**ARTICLE 5: CHANGES IN THE WORK**

- 5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract, and the Contractor may make Modifications to the Subcontract Documents pertaining to the Work. Upon receipt of such a Modification issued subsequent to the execution of each Sub Project Agreement, Contractor shall promptly notify Subcontractor of the Modification. Unless otherwise directed by Contractor, Subcontractor shall not thereafter order materials or perform Work which would be inconsistent with the changes made by the Modifications to the Prime Contract. Subcontractor shall review each modification issued by the Owner or Contractor and advise Contractor in writing immediately and in any event within five (5) working days of receipt of the Modification, unless requested sooner by Contractor or required by the Subcontract Documents, as to the impact, if any, on Subcontractor's Work, including any adjustment in Subcontract time or Subcontract cost or sum. If there is a shorter time specified in the Subcontract Documents, failure to advise Contractor within the specified time period as to any impact shall constitute a waiver of Subcontractor's right to assert a subsequent claim. At Contractor's option, the amount to be paid for a change shall be determined by one of the following methods:
- 5.1.1 by mutual acceptance of a lump sum price, properly itemized and submitted with enough substantiating data to allow the price to be evaluated by Contractor and the Owner's Representative, or
- 5.1.2 by unit prices stated in the Subcontract documents, or
- 5.1.3 by the actual net cost in money to Subcontractor of labor and materials (including insurance and applicable taxes), plus rental of plant equipment (not including small tools and equipment), plus the allowable markups for overhead and profit as limited in the Subcontract Documents or herein, with all costs supported by adequate documentation.
- 5.2 Unless otherwise noted in the Subcontract Documents, Subcontractor is limited hereby to a markup of 10% for overhead, profit, and fees for work completed by Subcontractor's forces. The allowable markup for work completed by Subcontractor's lower tier subcontractors is 5%. Where changes to the work include both additions and deletions, these markups shall be applied only to the net increase of the values for labor and materials.
- 5.3 Contractor's duly authorized representative shall have access, at all reasonable times, to all Subcontractor's personnel, books, records, correspondence, instructions, plans, drawings, receipts, vouchers and memoranda of every description pertaining to change for the purpose of auditing and verifying Subcontractor's net cost of change or for any other reasonable purpose. Contractor's representative shall have the right to reproduce any of the aforesaid documents. Subcontractor shall preserve, and shall cause its sub-subcontractors to preserve all the aforesaid documents for a period of two years after the Completion and acceptance or termination of work on any Project.
- 5.4 Subcontractor may be ordered in writing by Contractor, without invalidating this Agreement or any Sub Project Agreement issued hereunder, to make changes in the Work within the general scope of the Subcontract consisting of additions, deletions or other revisions, including those required by modifications to the Prime Contract issued subsequent to the execution of this Agreement and each Sub Project Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. Subcontractor, prior to the commencement of such changed or revised Work, shall immediately (and in no event later than the time affording Contractor the reasonable ability to review it before its deadline to submit the same to Owner) submit to Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with

requirements of the Subcontract Documents. Subcontractor shall proceed with the changed work as directed by Contractor while such claim for adjustment is being determined as provided in the subcontract documents. Subcontractor shall supply Contractor with all documentation necessary to substantiate the amount of the addition to or deduction from the Subcontract Sum or time. Once Subcontractor receives Contractor's written direction, Subcontractor is solely responsible for timely performance of the Work as changed by the written direction. No change, alteration, or modification to or deviation from the Subcontract Documents, Prime Contract, plans, or specifications, whether made in the manner provided in this Section or not, shall release or exonerate, in whole or in part, any bond or any surety on any bond given in connection with this Subcontract, and no notice is required to be given to such surety of any such change, alteration, modification, or deviation.

- 5.5 Subcontractor shall make all claims promptly to Contractor for additional cost, extensions of time, and damages for delays or other causes in accordance with the Subcontract Documents. Further, such claims shall be made within 5 (5) calendar days of such occurrence or they are deemed waived. A claim which will affect or become part of a claim which Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by Contractor not less than three (3) working days preceding the time by which Contractor's claim must be made. Failure of Subcontractor to make such a timely claim shall bind Subcontractor to the same consequences as those to which Contractor is bound.
- 5.6 If a dispute arises between Contractor and Subcontractor about whether particular work is a change in the Work, or if Contractor and Subcontractor are unable to agree on an appropriate adjustment for changed Work, Subcontractor shall timely perform the disputed Work upon receiving written direction from Contractor and track its actual costs. No increase or decrease in the Subcontract Sum shall be binding on the Contractor, unless agreed to in writing or determined by the Owner as provided in this Agreement. If the Subcontractor is given an oral directive by Contractor to perform work which the Subcontractor contends is a change and/or extra work that should result in an increase in the Subcontract Sum and/or result in a claim for delays, Subcontractor shall only be entitled to payment if Subcontractor delivers to Contractor written notice of its intent to submit a change order request within three (3) calendar days of such oral directive. Such notice is a condition precedent to thereafter making a claim under this Subcontract Agreement. The notice shall be followed by time and material tickets submitted on a weekly basis which include a complete breakdown of all costs associated with the extra work, a description of the work performed and a summary of the labor, services, materials and equipment comprising the extra work. Subcontractor shall further be required to provide copies of all invoices, delivery tickets and time cards evidencing the extra work. Failure to comply with this provision will result in Subcontractor's waiver of a claim for additional compensation relating to the oral directive.

#### **ARTICLE 6: MEDIATION AND ARBITRATION**

- 6.1 Subcontractor agrees to continue performance of the subcontract Work and shall proceed in accordance with the directives of Contractor, under protest, in the event of a dispute or controversy. Failure to do so shall constitute a material breach of the contract, regardless of the ultimate decision on the dispute, it being understood and agreed that any controversy between the parties shall not be deemed a basis to delay or suspend the work unless directed otherwise by Contractor.
- 6.2 In the event a dispute arises between Contractor and Subcontractor during the course of performance of work for a Project under any Sub Project Agreement, Subcontractor agrees to first meet informally with Contractor to resolve such dispute. In the event that no resolution is achieved, the parties, prior to the initiation of any action or proceeding under this Section, shall make a good faith effort to resolve the dispute by negotiation between representatives with decision-making power, who, to the extent possible, shall not have had substantive involvement in the matters of the dispute, unless the parties otherwise agree.
- 6.3 In case of any claims involving the Owner (whether pass-through or due to alleged defects in the plans, specifications, Subcontractor Documents, or site conditions) where the Prime Contract includes

dispute resolution clause(s), whether administrative, contractual, or otherwise (such as mediation, arbitration, or litigation), the provisions of the Prime Contract shall be followed. Subject to compliance with all applicable laws, including but not limited to those relating to false claims, dispute and claim certifications, and cost and pricing data requirements, Contractor's sole obligation is to present reasonable and timely-filed claims by Subcontractor to Owner under such procedure and, subject to the other provisions of this Agreement, to pay to Subcontractor the proportionate part of any sums paid by the Owner to which Subcontractor is entitled. If Subcontractor demand Contractor pursue such claims through applicable legal or administrative proceedings, Subcontractor must (i) make such demand in writing in sufficient time for Contractor to reasonably meet any applicable deadlines, and (ii) agree to pay (and on Contractor's option deposit with Contractor) all reasonable costs and expense. In the event Contractor pursues such claims, Subcontractor shall be responsible for its proportionate share of attorney fees, expert fees, and costs associated with the presentation and prosecution of claims hereunder.

6.3.1 Full exhaustion of the dispute resolution procedure in any applicable Prime Contract or Subcontract Documents shall be a condition precedent to the right of Subcontractor to commence or continue any legal action against Contractor.

6.3.2 Subcontractor hereby agrees to indemnify Contractor for any and all costs, including attorneys' fees, of defending a claim by the Owner or any other party in the dispute resolution procedure if such claim relates to or arises from the Subcontract or any individual Sub Project Agreement, from Subcontractor's Work, or from Subcontractor's failure to prosecute its Work.

6.4 In instances of all other claims, disputes and other matters in question between Subcontractor and Contractor, arising out of or related to the Subcontract and any individual Sub Project Agreement or any alleged breach thereof, and except for claims that have been waived by the making and acceptance of final payment, the same shall be mediated by the parties in accordance with the Construction Industry Mediation Rules of the American Arbitration Association then in effect and, if not resolved, decided by binding arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect.

6.5 Contractor may join or consolidate any Subcontractor mediation or arbitration with one or more involving the Owner, Architect, any other subcontractor, or any other party having an interest in the proceeding. Subcontractor hereby consents to such a joinder or consolidation, which may be ordered at the sole discretion and election of Contractor. This agreement to mediation or arbitration shall be specifically enforceable under applicable law in any court having jurisdiction thereof. Any award rendered by arbitration shall be final, and judgment may be entered upon it in accordance with the applicable laws in any court having jurisdiction thereof. For all other disputes, claims, or causes of action, they shall be commenced and decided in a court of law, in the State of California, County of Orange, under California law.

6.6 The parties agree to be bound to and responsible for the award of the arbitrators for interest, arbitration fees, and costs (but not attorney's fees) as determined by the arbitrators.

**ARTICLE 7: TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT**

7.1 Notwithstanding other provisions in this Agreement or in any Sub Project Agreement, and on any Project for which Subcontractor is employed, Contractor reserves the right to require Subcontractor to provide Contractor with additional assurances as to Subcontractor's performance under any Sub Project Agreement. Such additional assurance may include, without limitation, providing of additional guarantees by financially responsible parties, posting of additional performance bonds, providing updated financial information, posting collateral, distribution of funds through joint check, increased retention and providing proof of payment as to Subcontractor's employees, sub-subcontractors, material and equipment suppliers and other creditors. Failure of Subcontractor to comply promptly with Contractor's request for additional assurances shall constitute a material breach of this Agreement and each Sub Project Agreement issued hereunder.

## 7.2 TERMINATION BY CONTRACTOR

7.2.1 **TERMINATION FOR DEFAULT.** If Subcontractor persistently or repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Agreement or any Sub Project Agreement and fails within forty-eight (48) hours after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, Contractor may, without prejudice to any other remedy Contractor may have, terminate the Subcontract and finish Subcontractor's Work by whatever method Contractor may deem expedient. Contractor's remedies are cumulative, and the exercise of one remedy shall not restrict Contractor, at the same time or thereafter, from exercising any other remedy set forth herein or provided by applicable law. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing Subcontractor's Work and other damages incurred by Contractor and not expressly waived, such excess shall be paid to Subcontractor. If such expense and damages exceed such unpaid balance, Subcontractor shall pay the difference to Contractor. If Subcontractor is performing work under more than one Sub Project Agreement, Contractor shall also have the right to withhold payment from any other Sub Project Agreement because of backcharges assessed on any other project. In addition to the foregoing, Contractor may terminate the Subcontract and any individual Sub Project Agreement for the same reasons and circumstances, and in accordance with the same procedures, as the Owner may terminate the Prime Contract provided in the General Conditions of the Prime Contract.

7.2.1.1 If Subcontractor is terminated for default, Contractor may take possession of and use any materials, implements, equipment, appliances or tools furnished by or belonging to Subcontractor to complete the Work without any further compensation to Subcontractor for such use.

7.2.1.2 Upon receipt of such notice, Subcontractor shall, 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 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 Project site or in transit thereto.

7.2.1.3 In the event any termination of Subcontractor for default under the Subcontract is later determined to have been improper, the termination shall be automatically converted to a termination for convenience, and Subcontractor shall be limited to its recovery strictly to their compensation provided for in paragraph 7.2.2.

7.2.2 **TERMINATION FOR CONVENIENCE:** Contractor may at any time, without cause, and without notice to the Surety, terminate Subcontractor's services and Work which includes any individual Sub Project Agreement entered into with Subcontractor, for the convenience of Contractor without articulating any reason and without any default under the Subcontract documents. Cancellation under this provision shall be by service of written notice to Subcontractor's usual place of business.

7.2.2.1 Upon receipt of written notice of Termination for Convenience under Subparagraph 7.2.2 above, Subcontractor shall, unless notice directs otherwise immediately discontinue any and all work and the placing of orders for materials, facilities and supplies in connection with the performance of any Subcontract and/or project Sub Project Agreements, 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.

7.2.2.2 Upon such termination for convenience, Subcontractor shall be entitled to payment in accordance with the payment schedule for such project Sub Project Agreement only as follows: a) The actual cost of the work completed in conformity with the Subcontract Sub Project Agreement; plus, b) Such other costs actually incurred by Sub-contractor as are permitted by the Prime Contract and approved by the Owner; plus, c) Ten percent (10%) of the cost of the work referred to in item "a" 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 Subcontractor's services and work under a Subcontract Sub Project Agreement. In no event shall payment due hereunder exceed the amount due for approved units of work or percentage of completion. Subcontractor shall not be entitled to any claim or claim of lien of any kind against Contractor or Owner for any additional compensation or damages (including delay, labor inefficiencies, impacts or lost profits) alleged in the event of such termination for convenience and payment as provided under this section, hereby agreeing to such payment formula as reasonable and fair to determine full compensation for any and all services provided prior to such termination.

**7.3 SUSPENSION OF A SUBCONTRACT**

7.3.1 **SUSPENSION BY OWNER FOR CONVENIENCE.** Should Owner, for its convenience, suspend the entire Project or any part which includes the Work, and such suspension is not due to any act or omission of Contractor, or any other person or entity for whose acts or omissions Contractor may be liable, Contractor shall notify Subcontractor in writing and, upon receiving notification, Subcontractor shall immediately suspend the Work. Subcontractor, after receipt of Contractor's notice, shall notify Contractor in writing in sufficient time to permit Contractor to provide timely notice to Owner in accordance with the Prime Contract of the effect of such order upon the Work. To the extent provided in the Prime Contract and to the extent Contractor recovers such on Subcontractor's behalf, the Subcontract Price and the time for performance shall be equitably adjusted by Subcontract Change Order for the cost and delay resulting from any such suspension. Contractor agrees to cooperate with Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of an Owner suspension and to permit Subcontractor to prosecute the claim, in the name of Contractor, for the use and benefit of Subcontractor.

**7.4 ASSIGNMENT OF THE SUBCONTRACT**

7.4.1 In the event of termination of the Prime Contract by the Owner, Contractor may assign any Sub Project Agreement issued under this Subcontract to the Owner, with the Owner's agreement, subject to the provisions of the Prime Contract and to the prior rights of the surety, if any, obligated under bonds relating to the Prime Contract. In such event, the Owner shall assume Contractor's rights and obligations under the Subcontract Documents.

7.4.2 Subcontractor shall not assign the Work of any Sub Project Agreement issued hereunder without the written consent of Contractor, nor subcontract the whole of any Sub Project Agreement without the written consent of Contractor. In the event Subcontractor seeks to further subcontract portions of the work of any Sub Project Agreement, Subcontractor shall furnish written notification to Contractor and obtain Contractor's written approval in advance of such contracting.

**ARTICLE 8: THE WORK OF THE SUBCONTRACT**

8.1 With respect to each project, Subcontractor shall execute that portion of the Work described in the Subcontract Documents and each Sub Project Agreement, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents and each Sub Project Agreement to be the

responsibility of others and as specifically described in the Sub Project Agreement for each such project.

**ARTICLE 9: DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

- 9.1 Subcontractor's date of commencement is the date provided for in each Sub Project Agreement; it shall be the date as is fixed in the subject Sub Project Agreement, unless a different date is stated in a notice to proceed issued by Contractor.
- 9.2 The Work under each Sub Project Agreement shall be substantially completed not later than the date or dates indicated in the Sub Project Agreement of the specific Project, subject to adjustments of the Subcontract Time as may be provided in the Subcontract Documents. If Subcontractor fails to complete the Work or any portion thereof on schedule, Subcontractor shall be liable to Contractor for damages as specified in the Sub Project Agreement or Contract Documents for the subject project.
- 9.3 Schedules and milestones are subject to review and revision, and in such event, such revisions will be made available for Subcontractor's information at the Project site. It is the sole responsibility of Subcontractor to attend job meetings, keep itself informed of any revisions, and conform to any such revisions.
- 9.4 No extension of time will be valid without Contractor's written consent after claim made by Subcontractor in accordance with Article 5.
- 9.5 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 any Subcontract, or delays by other subcontractors or Owner, shall be recoverable from Contractor, and the above-mentioned extension of time for completion of Subcontractor's Work 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.
- 9.6 Time is of the essence of this Agreement and each Sub Project Agreement issued hereunder.

**ARTICLE 10: SUBCONTRACT SUM**

- 10.1 With respect to each project Sub Project Agreement Contractor enters into with Subcontractor, Contractor shall pay Subcontractor for strict performance of Subcontract by Subcontractor, the Subcontract Sum as specified in the Sub Project Agreement, subject to additions and deductions as provided in the Subcontract Documents.
- 10.2 Contractor agrees, that in consideration of the full and complete performance of the Work by Subcontractor in accordance with the terms and provision of each Subcontract, which consists of this Agreement (together with all documents attached and incorporated by reference herein including Exhibits "A" through "F") along with a project Sub Project Agreement, to pay or cause to be paid to Subcontractor the Subcontract sum. Subcontractor understands that all payments to Subcontractor will be made only from a special fund and a specific source, namely, from payments made by Owner from time to time to Contractor in respect of work performed by Subcontractor. Contractor shall make payments to Subcontractor within the times required under applicable law after receipt by Contractor of payment from Owner for the Work of Subcontractor for which payment has been made, provided Subcontractor is in compliance with all conditions for payment.
  - 10.2.1 In the event Contractor is not paid by Owner any sum claimed due by Subcontractor, then Contractor's obligation to make payment to Subcontractor with respect to the time for payment

to Subcontractor shall, in addition to any other condition set forth in the Subcontract or the Subcontract Documents or any individual Sub Project Agreement entered into, be subject to the following conditions precedent:

- 10.2.1.1 If Contractor does not pay Subcontractor sums claimed due under the Subcontract as a result of non-payment by the Owner and such non-payment is thereafter “finally adjudged” (as hereafter defined) to have been caused by a breach by Contractor of the Prime Contract, then Contractor shall pay to Subcontractor such sum as is due under the Subcontract and any individual Sub Project Agreement entered into, inclusive of and limited to simple interest thereon at the rate of 10% per annum accruing from the date such sum became due and owing to Subcontractor as set forth above. The term “finally adjudged” as used in this Subparagraph (10.2.1.1) shall mean the date final judgment is entered in any action by Contractor against Owner for recovery of sums due under the Prime Contract, which shall be extended for any appeals until the conclusion of any appellate actions.
- 10.2.1.2 If Contractor does not pay Subcontractor sums claimed due under the Subcontract for any individual Sub Project Agreement as a result of non-payment by the Owner and such non-payment is caused by the Owner’s insolvency, bankruptcy, or lack of sufficient assets, or for reasons other than a breach by Contractor of the Prime Contract as provided in Paragraph (10.2.1.1) above, then Subcontractor’s right to payment shall be conditioned upon the passage of such time as may be reasonable and necessary for Contractor to fully exercise and exhaust to final judgment its legal, extra judicial and appellate rights and remedies for collection of sums unpaid by Owner, together with the passage of such additional time as reasonably necessary for execution by Contractor of any final judgment entered in its favor, which reasonable time shall not be less than 60 days after Contractor exhausts or abandons all such legal efforts to collect.
- 10.2.1.3 Subcontractor agrees to preserve and maintain its mechanics’ lien and stop notice rights with respect to the Project and to exercise and exhaust those rights in the event Contractor does not pay Subcontractor sums due under the Subcontract as a result of payment default in the part of the Owner under the Prime Contract.
- 10.2.1.4 Nothing contained herein shall be interpreted as releasing or waiving any statutory Mechanics’ Lien, Bond or Stop Notice right reserved to Subcontractor under the law; provided however, that Subcontractor agrees in the event Subcontractor asserts a claim against any statutory or common law Payment or Performance Bond issued in connection with any individual Project, the Surety to such Bond and Contractor (if Contractor is a principal on the Bond) shall have the right to assert as a defense to such claim, the non-occurrence of any conditions to payments set forth in the Subcontract, including without limitation, the failure or delay of payment to Contractor.
- 10.2.1.5 If any portion of this Article 10 is determined to be void, voidable or illegal, such portion shall be deemed severed from the other portions of this Article 10 that are not void, voidable or illegal and such other portions shall be enforceable in accordance with their terms.

**ARTICLE 11: PROGRESS PAYMENTS**

11.1 Subcontractor shall submit to Contractor a schedule of values allocated to the various parts of the Work of each Sub Project Agreement, aggregating the Subcontract Sum, as set forth in the Sub Project Agreement, made out in such detail as Contractor and Subcontractor may agree upon or as required by the Owner, and supported by such evidence as Contractor may require. In applying for payment, as set forth in further detail in Exhibit “B”, Subcontractor shall submit statements based upon this schedule of values as provided in the Subcontract Documents.

- 11.2 Provided an application for payment is received by Contractor not later than the 25th day of a month, Contractor shall include Subcontractor's Work covered by that application in the next application for payment which Contractor is entitled to submit to the Architect or Owner.
- 11.3 Based upon applications for payment submitted to Contractor by Subcontractor, corresponding to applications for payment submitted by Contractor to the Owner, Architect, or Owner's Representative, and certificates for payment issued by same, Contractor shall make progress payments on account of the Subcontract Sum to Subcontractor as provided below and elsewhere in the Subcontract Documents and the Sub Project Agreement.
- 11.4 Subcontractor shall pay for all materials, equipment, services and labor used in connection with performance of any Subcontractor Sub Project Agreement entered into with Contractor. If payment for material stored offsite and not delivered to the site is requested and made, title to such material shall pass to Contractor, and through Contractor to the Owner as may be agreed between Contractor and the Owner, but Subcontractor shall remain fully liable for safeguarding, storing, securing, and otherwise protecting in trust all such material not delivered to the jobsite and shall be responsible for providing insurance for such stored material.
- 11.4.1 Subcontractor shall submit "Conditional Waivers and Releases on Progress Payments" for itself and all sub-subcontractors and material suppliers with each application for payment and provide "Unconditional Waivers and Releases on Progress Payments" from itself and all sub-subcontractors and material suppliers within one (1) week of receipt of progress payment from Contractor. Receipt of such statutory releases shall be a condition precedent to further payment by Contractor to Subcontractor.
- 11.4.2 If any sub-subcontractor, laborer, or material supplier of Subcontractor or any other person directly or indirectly acting for or through it files a Mechanics' Lien or claim against the project, the property, or any part thereof or any improvements thereon or against any monies due or to become due from the owner to Contractor or from Contractor to Subcontractor, for or on account of any work, labor, services, materials, equipment or other items furnished in connection with the work or any Change Order in connection with any project entered into, Subcontractor agrees to satisfy, remove or discharge such liens or claims at its own expense by bond, payment or otherwise, within five (5) working days of the date of the filing thereof. If Subcontractor shall fail to do so, Contractor shall have the right, in addition to all other rights and remedies provided by the Contract documents or by law, to satisfy, remove or discharge such liens or claims by whatever means Contractor chooses at the entire expense of Subcontractor, including legal fees.
- 11.4.3 All forms of releases shall comply with applicable law to be effective to release Contractor for the payment made and also describe clearly any exclusions in both amount and time (if applicable) to the release.
- 11.5 Except as specifically provided differently in any Sub Project Agreement or in the respective Prime Contract, or as directed by Contractor, the period covered by each application for payment shall be one calendar month ending on the last day of the month, provided that notwithstanding the foregoing, no progress payment or final payment shall be due or payable until Subcontractor furnishes Contractor with a Statutory Declaration showing (a) in the case of a progress payment, that all accounts incurred by Subcontractor in the performance of this Agreement and each Sub Project Agreement issued hereunder up to the end of the previous month have been paid, and (b) in the case of a progress payment, that all accounts incurred by Subcontractor in the performance of each Sub Project Agreement have been paid, or stating the particulars of any accounts still remaining unpaid. Subcontractor hereby authorizes Contractor to pay any such unpaid accounts out of moneys owing to Subcontractor. The amount of any account in dispute or of any account not disclosed by Subcontractor but of which Contractor has knowledge may be retained by Contractor pending determination of the matter. Performance by Subcontractor shall be a condition precedent to all

payments by Contractor. Retention will be 10% unless otherwise stated in any Sub Project Agreement or under California law.

- 11.6 Contractor may withhold all or part of any payments due to Subcontractor, or, on account of subsequently discovered evidence, may nullify all or part of any amounts previously paid, for any of the following reasons: defective Work not remedied; third party claims filed or reasonable evidence indicating probable filing of such claims; failure of Subcontractor to make payments properly for labor, materials or equipment to its subcontractors and/or suppliers performing Work or furnishing materials under the Subcontract; reasonable evidence that the Work cannot be completed for the unpaid balance of the Subcontract Sum; damage to the Owner, Contractor, or another contractor or subcontractor caused or alleged to be caused by Subcontractor; reasonable evidence that the Work may not be completed within the time required by the Subcontract; failure by Subcontractor to submit insurance certificates and endorsements as required by the this Agreement and/or the Subcontract Documents, or failure by Subcontractor to maintain all required insurance; failure by Subcontractor to submit required warranties, guarantees, as-built drawings and other documents required by this Agreement or the Subcontract Documents; repeated failure to carry out the Work in accordance with the Subcontract Documents, this Agreement or any Sub Project Agreement.

**ARTICLE 12: FINAL PAYMENT**

- 12.1 With respect to each Sub Project Agreement, the final payment, constituting the entire unpaid balance of the Subcontract Sum shall be made by Contractor to Subcontractor when Subcontractor's work is fully performed in strict accordance with the requirements of the Subcontract documents, the Architect has issued a Certificate for Payment covering Subcontractor's completed work and the Owner has accepted the Project as completed, Subcontractor has provided all documentation, warranties, manuals and other documents required by the Contract Documents and Contractor has received payment from the Owner.
- 12.2 Before issuance of the final payment, Subcontractor shall submit evidence satisfactory to Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with Subcontractor's Work have been satisfied. Subcontractor shall furnish a general release of all claims and final lien waiver forms acceptable to Contractor and Owner.
- 12.3 Acceptance of final payment by Subcontractor shall constitute a waiver of any and all claims by Subcontractor against Contractor, the Owner, or the Architect.

**ARTICLE 13: INSURANCE, BONDS, AND REQUIREMENTS**

- 13.1 SUBCONTRACTOR'S INSURANCE REQUIREMENTS. Subcontractor shall purchase and maintain insurance, which meet the requirements of the Prime Contract and/or Contract Documents, set forth in further detail in Exhibit "A", and at a minimum shall include the following types of coverage and limits of liability for any and all project Subcontracts or Sub Project Agreements:
- 13.1.1 Comprehensive/Commercial General Liability/Bodily Injury/Property Damage: covering All Operations of Subcontractor: \$1,000,000 each occurrence; \$2,000,000 general aggregate.
- 13.1.2 Automobile Liability: (to include owned, non-owned and hired automobiles): \$1,000,000 combined single limit. **Personal auto policies are NOT acceptable.**
- 13.1.3 Workers Compensation Statutory Employer's Liability: \$1,000,000 each occurrence.
- 13.2 Coverages shall be maintained without interruption from date of commencement of Subcontractor's Work until date of final payment and termination of any coverage required to be maintained after final payment to Subcontractor.
- 13.3 Any insurance policy obtained by Subcontractor to fulfill the insurance requirements of the Subcontract shall name Contractor as an additional insured and provide that such insurance shall be deemed primary insurance to any similar insurance Contractor may obtain for its own benefit, which shall be

in excess or secondary, but not contributing insurance. An Additional Insured Endorsement, properly completed and signed by an authorized insurance company representative shall be deemed to meet this requirement. Each such policy obtained by Subcontractor shall provide that the insurer shall defend any suit against Contractor, its officers, agents or employees, even if such suit is frivolous or fraudulent. Such insurance shall provide Contractor the right to engage its own attorney for the purpose of defending any legal action against Contractor, its officers, agents or employees, and that Subcontractor shall indemnify Contractor for costs and expenses, including attorneys' fees, arising out of or incurred in the defense of such action. The duty to provide such additional insured coverage is independent of the defense and indemnity obligations set forth in this Agreement. This Section 13.3 shall not be construed to require that additional insured insurance coverage be provided to a greater extent than permitted under the statutes or public policy of the State of California.

- 13.3.1 Certificate must be for All Operations between subcontractor and Casco Contractors, LLC. Additional Insured Certificate Holder should be listed as follows: Casco Contractors, LLC, 9850 Irvine Center Drive, Irvine, CA 92618. Subcontractor: Please contact your insurance company(ies) and have them send certificates and endorsements so that they will be on file before you commence work under any Subcontract or Sub Project Agreement.
- 13.3.2 If Contractor is required to name the Owner, or any other entity, as an additional insured under the Prime Contract, such entity(ies) shall be named as additional insureds under the Commercial General Liability Policy required by this Section 13.1.1, and such insurance afforded the additional insureds shall apply as primary insurance. Any other insurance maintained by Owner or other entity(ies) shall be excess insurance and shall not be called upon to contribute to Subcontractor's primary or excess insurance carrier's duty to defend or indemnify unless required by law. The excess insurance required above shall also afford additional insured protection to Owner and any other entity(ies) which Contractor is required to name as an additional insured under the Prime Contract. Such additional insurance coverage shall be provided by Subcontractor at no additional cost or expense to Contractor.
  - 13.3.2.1 Subcontractor shall name Owner and any other entity(ies) which Contractor is required to name as an additional insured under the Prime Contract as an additional insured to the same extent and using the same forms that Contractor is required to designate Owner and such other persons, but only with respect to Claims arising out of or in connection with Subcontractor's obligations under the Subcontract.
- 13.4 Subcontractor shall ensure that its sub-subcontractors of every tier also carry insurance with the limits of liability specified above. Contractor may require written proof that the requisite insurance is being carried. Such written proof shall be furnished to Contractor within ten (10) working days after such request has been made. Any such insurance coverage required of sub-subcontractors shall name Contractor as additional insured, in the same manner as required by Section 13.3, at no additional cost or expense to Contractor. If Contractor is required to name the Owner, or any other entity, as an additional insured under the Prime Contract, the sub-subcontractor's insurance policies shall also name such entities as an additional insured.
- 13.5 Certificates of insurance acceptable to Contractor shall be filed with Contractor prior to commencement of Subcontractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) calendar days prior written notice has been given to Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by Subcontractor with reasonable promptness according to Subcontractor's information and belief.
- 13.6 The issuance or maintaining of insurance of any type by Subcontractor or Contractor will not be deemed or construed to release, limit, waive or discharge Subcontractor from any and all of the

obligations and risks imposed by the Subcontract upon Subcontractor. Neither shall any forbearance nor omission by Contractor to require proof of insurance from Subcontractor before permitting Subcontractor to proceed or continue with the Work be deemed a waiver of Contractor's rights or Subcontractor's obligations regarding the provision of insurance under any Subcontract and/or Sub Project Agreement.

- 13.7 Contractor, if requested, shall furnish to Subcontractor satisfactory evidence of insurance required of Contractor under the Prime Contract.
- 13.8 Should bonds be required under this Subcontract, any indemnities or bonds provided in the Contract Documents are hereby assumed by the Subcontractor to the extent of its work and Subcontractor hereby agrees to furnish, concurrently with the execution hereof, a performance bond and/or payment bond each in an amount equal to full Subcontract Sum with a corporate Surety acceptable to Contractor. Bonds shall contain terms and be in a form satisfactory to Contractor and Owner conditioned upon faithful performance by him of each and all of the provisions hereof. If Subcontractor fails to provide the bonds specified herein within three (3) business days after demand by Contractor, Contractor shall have the right to terminate this Subcontract and Sub Project Agreement and Subcontractor shall have no right to payment for any work performed prior to such termination.
- 13.9 Contractor shall promptly, upon request of Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.
- 13.10 **WAIVERS OF SUBROGATION.** For damages caused by fire or other causes of loss to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary, Contractor and Subcontractor waive all rights against: (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees. Subcontractor shall require of Subcontractor's sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**ARTICLE 14: MISCELLANEOUS PROVISIONS**

- 14.1 Each of the parties acknowledges that it has been represented by independent counsel of its choice throughout all negotiations that have preceded the execution of this Agreement and that it has executed the same with consent and upon the advise of said independent counsel. Each party and its counsel cooperated in the drafting and preparations of this Agreement and the documents referred to herein, and any and all drafts relating thereto shall be deemed the work product of the parties and may not be construed against any party be reason of its preparation. Accordingly, any rule of law, including, but not limited to, California Civil Code Section 1654 or any legal decision that would require interpretation of any ambiguities in this Agreement against the party that drafted it, is of no application and is hereby expressly waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the intentions of the parties and this Agreement.
- 14.2 Contractor and Subcontractor each acknowledges to the other that it has the right and authority to enter into this Agreement, that the consent of no other party is necessary, and that it has no restrictions on entering into this Agreement. Furthermore, Contractor and Subcontractor each represents to the other that the person signing this Agreement on behalf of that party has the right and authority to enter into this Agreement on behalf of that party and that the execution of this Agreement by that party will not violate any other agreement or arrangement to which that party is obligated.

- 14.3 Each party hereto shall cooperate with the other party and shall take such further action and shall execute and deliver such further documents as may be necessary or desirable in order to carry out the provisions and purposes of this Agreement.
- 14.4 Except as expressly authorized in this Agreement, neither party to this Agreement has the right to represent or hold itself out to the public as acting as an agent for the other party. Neither party to this Agreement has the right to conduct any business or enter into any contracts on behalf of the other party or bind the credit of the other party or in any way operate its business under the trade names, trademarks, service marks or other business insignias of the other party without the prior written consent of that party. Contractor and Subcontractor shall each serve as an independent contractor as to one another and not as principal and agent as to one another.
- 14.5 Any waiver by any party of a breach of any provision of this Agreement (together with all documents attached and incorporated by reference herein including Exhibits "A" through "F") shall not operate as or be construed to be a waiver of any other breach of that provision or of any breach of any other provision of this Agreement. The failure of a party to insist upon strict adherence to any term of this Agreement (together with all documents attached and incorporated by reference herein including Exhibits "A" through "F") on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be in writing.
- 14.6 If any provision of this Agreement is invalid, illegal, or unenforceable, the balance of this Agreement shall remain in effect, and if any provision is inapplicable to any person or circumstance, it shall nevertheless remain applicable to all other persons and circumstances.
- 14.7 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 14.8 GOVERNING LAW AND VENUE. The Subcontract Agreement and any individual Sub Project Agreement entered into with Subcontractor shall be construed and enforced in accordance with the laws of the State of California and venue for any legal action shall be in California, County of Orange.

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14.9 **CONTRACTOR'S LICENSING NOTICE:** All contractors are required by law to be licensed and regulated by Contractors State License Board, which has jurisdiction to investigate complaints against contractors. Subcontractor must provide a copy of your State of California License, with a copy of the plastic "Pocket License Card" preferred as it shows the license expiration date. Subcontractor is under an ongoing and continuing obligation to promptly notify Contractor should any lapse in licensure occur before or during Subcontractors performance of work under any Subcontract and/or Sub Project Agreement. Pursuant to California Contractor's License Law Section 7030(a), "Contractors are required by law to be licensed and regulated by the Contractor's State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four 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, Contractor's State License Board, P.O. Box 26000, Sacramento, CA, 95826."

"Subcontractor"

"Contractor"



State License No.

Casco Contractors, LLC  
9850 Irvine Center Drive  
Irvine, CA 92618  
Phone (949) 679-6890

By:

State License No. 790706

By:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Date:

**EXHIBIT "A"**

**INSURANCE AND BONDS**

**CERTIFICATE OF INSURANCE REQUIREMENTS**

**Certificate Holder:**

**Casco Contractors, LLC  
9850 Irvine Center Drive  
Irvine, CA 92618**

In order to business with Casco Contractors, LLC our corporate insurance requirements must be met and maintained as agreed within our contract/agreement. Please forward a copy of these requirements to your insurance representative for compliance. YOU WILL NOT BE ALLOWED TO WORK FOR US, NOR WILL YOUR COMPANY BE PAID unless the appropriate Certificates of Insurance and Additional Insured endorsements are on file as follows:

• **Commercial General Liability**

Commercial General Liability COMBINED SINGLE LIMITS of not less than \$1,000,000 per occurrence, \$1,000,000 for Bodily Injury and \$2,000,000 General Aggregate, including PRODUCTS/COMPLETED OPERATIONS. **You must name: Casco Contractors, LLC** as an Additional Insured. WORDING ON THE CERTIFICATE OF INSURANCE IS NOT ACCEPTABLE. We must receive separate endorsement forms #CG20371001 & #CG20100704 showing us as an Additional Insured on your policy. **CLAIMS- MADE OR MODIFIED OCCURRENCE POLICIES ARE NOT ACCEPTABLE.** A waiver of subrogation endorsement is required on the General Liability, which shall indemnify and hold harmless Casco Contractors, LLC. from any and all claims.

Wording for the General Liability coverage shall include: **"Such coverage as is afforded by this policy for the benefit of the Additional Insured(s) is PRIMARY, and any other coverage maintained by the Additional Insured shall be non-contributing with the coverage provided under this policy."**

• **Commercial Umbrella Liability**

Commercial Umbrella Liability with limits not less than \$5,000,000 per occurrence and \$5,000,000 aggregate.

• **Commercial Auto Liability**

Auto Liability COMBINED SINGLE LIMITS of not less than \$1,000,000. Each accident for Bodily Injury & Property Damage Liability, including coverage for OWNED, NON-OWNED AND HIRED Auto Liability.

**You must name: Casco Contractors, LLC** as an Additional Insured. WORDING ON THE CERTIFICATE OF INSURANCE IS NOT ACCEPTABLE. We must receive separate endorsement forms #CG20371001 & #CG20100704 showing us as an Additional Insured on your policy. **CLAIMS-MADE OR MODIFIED OCCURRENCE POLICIES ARE NOT ACCEPTABLE.**

• **Workers' Compensation**

A Waiver of Subrogation endorsement is required on the Workers Compensation, which shall indemnify and hold harmless **Casco Contractors, LLC.** from any and all claims.

Coverage A. Statutory policy form.

Coverage B. Employer's Liability      REQUIRED LIMITS

Bodily Injury by accident:	\$1,000,000 Each Accident
Bodily Injury by disease:	\$1,000,000 Policy Limit
Bodily Injury by disease:	\$1,000,000 Each Employee

**ACORD<sub>25</sub> CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)  
XX/XX/XXXX

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Marsh & McLennan Agency LLC Marsh & McLennan Ins. Agency LLC 1 Polaris Way #300 Aliso Viejo, CA 92656	<b>CONTACT NAME:</b> CONTACT NAME <b>PHONE (A/C, No, Ext):</b> CONTACT PHONE <b>FAX (A/C, No):</b> <b>E-MAIL ADDRESS:</b> CONTACT EMAIL																				
	<table border="1"> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A : INSURANCE COMPANY NAME</td> <td></td> <td>XXXXXX</td> </tr> <tr> <td>INSURER B : INSURANCE COMPANY NAME</td> <td></td> <td>XXXXXX</td> </tr> <tr> <td>INSURER C : INSURANCE COMPANY NAME</td> <td></td> <td>XXXXXX</td> </tr> <tr> <td>INSURER D : INSURANCE COMPANY NAME</td> <td></td> <td>XXXXXX</td> </tr> <tr> <td>INSURER E :</td> <td></td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A : INSURANCE COMPANY NAME		XXXXXX	INSURER B : INSURANCE COMPANY NAME		XXXXXX	INSURER C : INSURANCE COMPANY NAME		XXXXXX	INSURER D : INSURANCE COMPANY NAME		XXXXXX	INSURER E :			INSURER F :	
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INSURER F :																					
<b>INSURED</b> COMPANY NAME 4321 Main Street Irvine, CA 92618																					

**COVERAGES**      **CERTIFICATE NUMBER:**      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  (GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	X	POLICY NUMBER	XX/XX/2019	XX/XX/2020	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMPROP AGG \$2,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/>	X		POLICY NUMBER	XX/XX/2019	XX/XX/2020	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$X,XXX			POLICY NUMBER	XX/XX/2019	XX/XX/2020	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	POLICY NUMBER	XX/XX/2019	XX/XX/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Casco Contractors, LLC is included as additional insured with respects to General Liability and Auto Liability per the attached endorsements. Primary and Non-contributory wording applies per the attached. Waiver of subrogation applies as respects to General Liability and Workers Compensation per the attached endorsements.

<b>CERTIFICATE HOLDER</b> Casco Contractors, LLC 9850 Irvine Center Drive Irvine, CA 92618	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE SIGNATURE
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© 1988-2015 ACORD CORPORATION. All rights reserved.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY  
CG 20 10 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY  
CG 20 37 10 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

<b>Name of Person or Organization:</b>
<b>Location And Description of Completed Operations:</b>
<b>Additional Premium:</b>

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**Section II – Who Is An Insured** is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" at the location designated and described in the schedule of this endorsement performed for that insured and included in the "products-completed operations hazard".

**EXHIBIT "B"****BILLING AND PAYMENT PROCEDURES**

1. **PROGRESS PAYMENTS** - Monthly progress payments will be made no later than seven days after receipt of payment by **Contractor** from **Owner**, **provided** that **Subcontractor** has complied with all requirements and prerequisites for payment. Enclosed are forms that must be correctly and completely filled out in order for **Contractor** to accept and execute **Subcontractor** payment request. *Subcontractor shall make copies of these forms for use on all projects.*
  - 1.1 Each "Payment Request" must be submitted no later than the 25th of the month, for work in place to the end of the month based on an estimated percentage of completion for each line item on **Subcontractor's** Schedule of Values. Such amount shall be subject to the approval (and revision, if necessary) by the **Contractor's** project manager. All Payment Requests shall be submitted to Casco Contractors via email to [accounting@cascocontractors.com](mailto:accounting@cascocontractors.com) (**please do not mail**). All Payment Requests must reference the subcontract number shown on the Sub Project Agreement **Notice to Proceed** agreement for each project (format 21XXXX-XXXX).
  - 1.2 **Contractor** may, in its discretion, require **Subcontractor** to reflect a ten percent (10%) retention on all Payment Requests; which amount shall be held by **Contractor** until the Final Payment described below.
  - 1.3 **Subcontractor** may not submit Payment Requests for change order and extra work until a written subcontract change order is executed and returned to **Contractor**.
  - 1.4 Following is a list of required forms that must be submitted for each Payment Request:
    - 1.4.1 **Application for Payment** in a form acceptable to **Contractor**.
    - 1.4.2 **Schedule of Values**. If required, **Subcontractor** must use the attached form which should break down each phase of work as required by **Contractor** so that **Contractor** and **Owner** can verify the value of the work in place on a monthly basis.
    - 1.4.3 **Certificate of Stored Materials and Bill-of-Sale**. These forms must be used to invoice for materials stored in an acceptable off- site location. All stored materials billings must be accompanied by an acceptable certificate of insurance evidencing coverage in case of loss/damage to the material. **Contractor** may require physical inspection of materials prior to approving payment. Such inspection shall not be considered acceptance of the materials.
    - 1.4.4 **Lien Releases**
      - 1.4.4.1 **Conditional Waiver and Release on Progress Payment** for the current month's Payment Request for **Subcontractor** and all of its Sub-subcontractors and material suppliers who have supplied labor or materials to the Project for which payment is sought in the current month (**Subcontractor** must use form that is in compliance with current California state regulations.)
      - 1.4.4.2 **Unconditional Waiver and Release on Progress Payment** for the prior month's Payment Request for **Subcontractor** and all of its Sub-subcontractors and material suppliers who have supplied labor or materials to the Project for which payment is sought (**Subcontractor** must use form that is in compliance with current California state regulations.)

- 1.4.4.3 All lien releases provided by the **Subcontractor** must exactly match the amount of money requested by **Subcontractor**. Use final lien releases for final payment requests.
- 1.4.4.4 Appropriate lien releases are required from **Subcontractor's** sub-subcontractors and material suppliers. Joint checks may be issued at the discretion of **Contractor**.
- 1.4.5 **Subcontractor** agrees to submit any additional documents or forms reasonably requested by **Contractor**, or by **Owner** or Owner's lender, in connection with **Subcontractor's** Payment Requests.
2. **PAYMENT WITHHELD**. **Contractor** shall be entitled to withhold payment to protect itself or **Owner** from loss on account of:
- 2.1 defective Work not remedied, missing materials not furnished, cleanup not performed; or
  - 2.2 claims filed or reasonable evidence indicating the probable filing of claims in connection with the Work to be performed hereunder; or
  - 2.3 failure of the **Subcontractor** to make prompt payments to materialmen and laborers, including fringe benefits; or
  - 2.4 any damage to another subcontractor or sub-subcontractor performing work on the Project; or
  - 2.5 any dispute or controversy between the **Subcontractor** and any other subcontractor or sub-subcontractor; or
  - 2.6 any dispute or controversy between the parties hereto concerning this Agreement; or
  - 2.7 failure to deliver written guarantees or warranties as required by this Agreement; or
  - 2.8 reasonable indication that the Work will not be completed on schedule, or within the contract time or for the unpaid balance of the Subcontract Price; or
  - 2.9 non-compliance with any insurance requirements; or
  - 2.10 non-compliance with safety requirements, Codes, laws, rules or regulations; or
  - 2.11 failure to obtain approvals by any Agencies or authority having jurisdiction over the Work to the extent **Subcontractor** is obligated to do so; or
  - 2.12 any failure to comply strictly with the terms of the Contract; or
  - 2.13 any lien or stop notice filed by **Subcontractor** or his Sub-subcontractors or materialmen not removed or rescinded in accordance with this Agreement; or
  - 2.14 in any other instance wherein the law authorizes the holding of payments; or
  - 2.15 a backcharge owing to **Contractor** under the Agreement; or
  - 2.16 failure by **Subcontractor** to timely submit to **Contractor** all Safety Inspection Reports and Safety Meeting Minutes; or
  - 2.17 failure by **Subcontractor** to submit to **Contractor** a current Injury and Illness Protection Plan.

In the event payment is withheld, no monies will be owed **Subcontractor** until final completion has been accomplished and money owing has been determined by the **Contractor**, or sooner if the matter causing the funds

to be withheld is resolved to the satisfaction of **Contractor**. No withholding hereunder shall entitle the **Subcontractor** to suspend or terminate Work under this Agreement. Any suspension or termination of work by **Subcontractor** may, at the **Contractor's** option, be a breach of contract.

3. **FINAL PAYMENT** - Final payment of the contract and retainages, if applicable, will be made no later than seven days after receipt of final payment to **Contractor** from **Owner**, provided that **Subcontractor** has met all requirements and prerequisites to final payment. **Subcontractor** shall submit a final Payment Request and a Final Retainage Request, if applicable, (in the same format as a progress billing) after completion of its work and execution of any final change orders.
  - 3.1. The Final Payment Request and/or Final Retainage Request shall be submitted to Casco Contractors via email to [accounting@cascocontractors.com](mailto:accounting@cascocontractors.com) (**please do not mail**). All Payment Requests must reference the subcontract number shown on the Sub Project Agreement **Notice to Proceed** agreement for each project (format 21XXXX-XXXX).
  - 3.2. Following is a list of required forms that must be submitted for the Final Payment Request:
    - 3.2.1. **Application for Payment** in a form acceptable to **Contractor**.
    - 3.2.2. **Lien Releases**
      - 3.2.2.1. **Conditional Waiver and Release on Final Payment** for the amount of the Final Payment Request. (**Subcontractor** must use form that is in compliance with current California state regulations.)
      - 3.2.2.2. **Unconditional Waiver and Release on Progress Payment** for any prior Payment Requests from **Subcontractor**.
      - 3.2.2.3. **Unconditional Waiver and Release on Final Payment** from all of **Subcontractor's** Sub-subcontractors and material suppliers who have supplied labor or materials to the Project for which payment is sought (**Subcontractor** must use form that is in compliance with current California state regulations.)
4. **WAIVE FORMALITY** - **Contractor** reserves the right to waive any formality of the billing process for its convenience.

--- End of Exhibit "B" ---



EXHIBIT "C"

WAIVER AND LIEN RELEASE FORMS

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT  
(CIVIL CODE § 8132)

**NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.**

**Identifying Information:**

Name of Claimant: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Job Location: \_\_\_\_\_

Owner: \_\_\_\_\_

\_\_\_\_\_

Through Date: \_\_\_\_\_

**Conditional Waiver and Release:** This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: \_\_\_\_\_

Amount of Check: \$ \_\_\_\_\_

Check Payable to: \_\_\_\_\_

**Exceptions:** This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:  
Date(s) of waiver and release: \_\_\_\_\_  
Amount(s) of unpaid progress payment(s): \$ \_\_\_\_\_
- (4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

**Claimant's Signature:**

Date of Signature: \_\_\_\_\_

\_\_\_\_\_ (Company Name)

By: \_\_\_\_\_

Title: \_\_\_\_\_

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT  
(CIVIL CODE § 8134)

**NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.**

**Identifying Information:**

Name of Claimant: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Job Location: \_\_\_\_\_

Owner: \_\_\_\_\_

Through Date: \_\_\_\_\_

**Unconditional Waiver and Release:** This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment:

\$ \_\_\_\_\_

**Exceptions:** This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) Contract rights, including:
  - (A) a right based on rescission, abandonment, or breach of contract, and
  - (B) the right to recover compensation for work not compensated by the payment.

**Claimant's Signature:**

Date of Signature: \_\_\_\_\_

\_\_\_\_\_  
(Company Name)

By: \_\_\_\_\_

Title: \_\_\_\_\_

**CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**  
(CIVIL CODE § 8136)

**NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT’S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.**

**Identifying Information:**

Name of Claimant: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Job Location: \_\_\_\_\_

Owner: \_\_\_\_\_

\_\_\_\_\_

**Conditional Waiver and Release:** This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: \_\_\_\_\_

Amount of Check: \$ \_\_\_\_\_

Check Payable to: \_\_\_\_\_

**Exceptions:** This document does not affect any of the following:

Disputed claims for extras in the amount of \$ \_\_\_\_\_.

**Claimant’s Signature:**

Date of Signature: \_\_\_\_\_

\_\_\_\_\_ (Company Name)

By: \_\_\_\_\_

Title: \_\_\_\_\_

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT  
(CIVIL CODE § 8138)

**NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.**

**Identifying Information:**

Name of Claimant: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Job Location: \_\_\_\_\_

Owner: \_\_\_\_\_

\_\_\_\_\_

**Unconditional Waiver and Release:** This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full.

**Exceptions:** This document does not affect any of the following:

Disputed claims for extras in the amount of \$ \_\_\_\_ 0 \_\_\_\_.

**Claimant's Signature:**

Date of Signature: \_\_\_\_\_

\_\_\_\_\_ (Company Name)

By: \_\_\_\_\_

Title: \_\_\_\_\_

--- End of Exhibit "C" ---

**EXHIBIT "D"****SAFETY****SUPPLEMENTAL SUBCONTRACT PROVISIONS**

**Contractor** and **Subcontractor** hereby agree to the following Supplemental Subcontract Provisions:

**SAFETY**

It is absolutely mandatory that all parties on the project maintain a safe working environment and attitude during all phases of the work and at all times. **Subcontractor** shall be responsible to provide a safe work place for its employees and to comply with all laws, regulations and orders issued by governing bodies, public officers, and **Contractor**. In addition to any and all actions required by **Subcontract Documents**, **Subcontractor** shall:

Provide a written report of all accidents and injuries to the **Contractor's** Superintendent. **Contractor's** Superintendent maintains report forms for this purpose.

Ensure that all equipment brought on site is in compliance with current safety and state motor vehicle requirements. Any equipment in violation of these requirements shall be immediately repaired or removed from the jobsite.

Perform its work and maintain its safety program so as to ensure full compliance with all aspects of Fed-OSHA and Cal-OSHA and any subsequent related regulations, and **Contractor's** own "Code Of Safe Practices".

Immediately correct any and all safety violations. **Contractor** will issue "Safety Notices" to **Subcontractor** and its individual employees when a safety infraction is observed. This notice will identify the observed violation and require immediate correction. A copy of the notice will be provided to the involved employee and the **Subcontractor's** supervisor or Safety Director. Repeat violations of safety rules is grounds for removal of an employee from the job.

Pass on all safety responsibilities and requirements required by law and by this **Agreement** to its sub-subcontractors and suppliers. **Subcontractor** shall at all times be responsible for the safe performance of its sub-subcontractors and suppliers.

Provide proper training to all its employees in all aspects of the work, including safety awareness and accident prevention.

If the Work of this **Subcontractor** involves any trenching, excavation, earth shoring, or scaffold erection, the Subcontractor shall ensure that it has a "Competent Person" (as defined in 29 CFR Part 1926, Subpart C – General Safety and Health Provisions, Section 1026.32(f) "Definitions"), who is properly trained to the satisfaction of the **Subcontractor**, to fully supervise and coordinate all aspects of such work.

If the Work of this **Subcontractor** involves any trenching or excavation of any kind, **Subcontractor** shall be solely responsible to ensure that it fully complies with all Federal, State and Local laws, rules and regulations regarding "markout" or "Digalert" as required for the underground work. Except for **Contractor's** sole negligence or willful conduct, **Subcontractor** shall defend and indemnify **Contractor** against any claims, fines, lawsuits, penalties, liability or other costs incurred by **Contractor** as arising out of **Subcontractor's** failure to follow all such rules and regulations.

If the **Project** contains, or once contained, asbestos materials (or other hazardous materials including lead paint, PCB's and silica) in its original construction, **Subcontractor** shall be responsible to provide only such employees who have been properly trained to work in and around such hazardous materials as defined by applicable safety regulations. All such training shall be at the sole cost of the **Subcontractor**.

If the work of this **Subcontractor** involves any entry into a "confined space" the **Subcontractor** shall observe all special safety requirements for confined spaces. Only qualified and trained personnel shall be allowed to enter a confined space. All applicable safety equipment including emergency rescue devices shall be readily available.

**“EXHIBIT "E"”****SUBCONTRACT RIDER 1****SUBCONTRACTOR QUALITY CONTROL EXPECTATIONS**

Casco Contractors expects that every subcontractor shall provide a thorough quality control program to ensure that its work is performed in such a way to create a completed project that performs as required and intended by the plans and specifications. This requirement recognizes that the subcontractor and its individual employees are the “experts” in its trade and Contractor, the Architect and the Project Owner are relying on the subcontractor’s expertise to create a final product that meets the letter and intent of the contract documents and all applicable codes. Subcontractor therefore agrees as a substantial term and condition of this Agreement that it shall utilize its own quality control program, which shall accomplish, at a minimum, the following items.

**Complete and Timely Contract Document Review.**

Subcontractor shall *immediately upon receipt*; carefully review the contract documents for completeness and conformance with appropriate industry standard design, codes and construction techniques. If any errors, ambiguity or concerns arise from the Subcontractor’s review of the Contract documents, the Subcontractor shall *immediately* provide to Contractor a written request for information (RFI) to clarify and answer the error, ambiguity or concern. Each separate issue shall be submitted in a separate RFI, and shall be submitted to Contractor well in advance of the construction of the affected area so that Contractor may obtain a proper response from the appropriate design professional before the issue can affect the progress of the job.

Subcontractor shall not knowingly proceed with erroneous, ambiguous or non-compliant work without such written direction, and if it does, it shall be liable for all costs associated with correcting the work, including any resulting damage caused therewith. The same duty to carefully review documents prior to construction shall apply to all subsequent distributions of design and contract documents after the initial contract documents.

**Submittal and Shop Drawing Process**

All required submittals shall be submitted by Subcontractor to Contractor immediately after award of the Subcontract. Subcontractor shall not proceed with the installation of any material or product until and unless it has received a formal approved submittal for the work.

**Use Only Approved Materials**

The subcontractor shall ensure that only approved materials are utilized on the project. The subcontractors internal procedures must ensure that the Subcontractor’s field representative is aware of the products approved for the project and that this person checks that only approved products are installed.

**Follow Manufacturer Recommendations**

Subcontractor shall ensure that all materials and products are installed and utilized in complete accordance with the manufacturer’s recommendations

**Quality Crafts-Persons**

The subcontractor shall assign quality crafts-persons experienced in the trade to the project who are capable of properly installing the materials as required by the contract documents. Apprentices and trainees shall always be carefully supervised by an experienced craftsperson.

**Quality Supervision**

The subcontractor shall provide onsite Quality Supervision of its work force every day. The onsite supervisor shall be fully conversant in the English language and fully capable of communicating with the Subcontractor’s field crews. The supervisor shall be fully qualified to understand the written plans and specifications and safety directives and given full authority to resolve field construction conflicts that may arise.

**Written Reporting to Contractor**

The subcontractor shall report to Contractor’s Superintendent in writing any problems immediately. Subcontractor shall not rely on verbal communication for resolving construction issues.

Correction of The Work

The Subcontractor shall make immediate corrections of the work if any errors in its work are found. Any failure by Subcontractor to properly follow these minimum guidelines in its own internal quality control procedures and efforts shall cause the Subcontractor to be responsible for all costs sustained by Contractor that would have been avoided but for the Subcontractor's failure. The requirements of this Rider are in addition to the requirements of the Subcontract Agreement and nothing in this Rider shall be construed to diminish any rights or responsibilities of the parties contained elsewhere in this Subcontract Agreement. Nothing in this rider shall be construed to require Subcontractor to perform extra work that is not otherwise required by the contract documents without appropriate compensation by a change order.

**--- End of Exhibit "E" Subcontract Quality Control Rider ---**

**“EXHIBIT "F"”**

**SAFETY**

**CASCO SAFETY DOCUMENT CHECKLIST**

**Prequalification**

Submit company safety statistics including;

Date

- Total recordable incident rate (TRIR)
- **Experience Modification Rates (EMR)**
- Days Away, Restricted or Transferred (**DART**)
- Fatality Rate – Document any worker fatalities

Submit Subcontractor company documents including;

Date

- Subcontractor Health and Safety Plan and /or Safety Policies and Procedures Manual or equivalent
- Subcontractor Injury and Illness Prevention Plan (IIPP)
- All (Material) Safety Data Sheets (SDS) for regularly used chemicals (Adhesives, paint, other)
- Hazard Communication Plan for physical and chemical hazards involving the contractors work
- Copies of any required Special Training for employees (e.g. Respirator Fit Test and Medical Clearance, Certifications)
- An Activity Hazard Analysis for each activity posing hazards to their personnel.

Identify the individual that will be the point of contact for safety matters at the company and provide their contact information.

Company Name: \_\_\_\_\_  
 Name: \_\_\_\_\_ Position: \_\_\_\_\_  
 E-mail: \_\_\_\_\_  
 Phone : \_\_\_\_\_

**Pre-job Kick-off Meeting**

Attend the mandatory project Kickoff Meeting via conference call or at the Onsite kickoff meeting as coordinated with the Casco Project Manager or his designee

Date of Kickoff Meeting: \_\_\_\_\_

**Jobsite**

The following paperwork is required for all subcontractors working at Casco jobsites

- Provide a Letter stating that all subcontractor employees are trained for their assigned duty (Job specific at the start of the job and as onsite personnel change)
- Provide a Letter stating that all tools to be used on Casco jobs have been inspected and that all unsafe tools have been removed from service (Monthly)
- Provide Copy of weekly Tailgate Safety Meeting (Weekly) that the jobsite employees attended



- Provide Copies of all Safety Data Sheets (SDS) for onsite chemicals
- Attend Subcontractor Initial Onsite Safety Briefing and EAP review (First time onsite for each employee).  
Sign acknowledgement sheet
- All site visitors Sign-in Daily

All required documents must be available onsite in electronic or hard copy form at all times.

**--- End of Exhibit "F" ---**



**ELECTRONIC FUNDS TRANSFER (EFT) PAYMENT ENROLLMENT FORM**

**Vendor Information:**

Vendor Name: \_\_\_\_\_  
 Remittance Address: \_\_\_\_\_  
 Remittance City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
 Contact Name: \_\_\_\_\_ Phone #: ( ) \_\_\_\_\_  
 E-Mail Address: \_\_\_\_\_

**Banking Information:**

Vendor's Bank Name: \_\_\_\_\_  
 Bank Address: \_\_\_\_\_  
 Bank's City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
 Bank Contact Name: \_\_\_\_\_ Phone #: ( ) \_\_\_\_\_  
 ABA Routing #: \_\_\_\_\_ Account #: \_\_\_\_\_  
 Account Type  
 (please check only one)    Checking     Savings

**Vendor's Authorization:**

We understand that this authorization will remain in full force and effect until we notify Casco Contractors, LLC. in writing that we wish to revoke this authorization. We understand that Casco Contractors, LLC. requires at least seven (7) days prior notice in order to cancel this authorization.

Authorized by: \_\_\_\_\_  
Name

\_\_\_\_\_  
Signature                      Title

( ) \_\_\_\_\_  
Phone Number                      Date

**\*Additional Verification: Previous Bank Account # (if applicable):** \_\_\_\_\_

Please submit the completed form and a copy of a voided check or a letter from your bank providing confirmation of your account information. Email the form to **Casco Accounting:** [accounting@cascocontractors.com](mailto:accounting@cascocontractors.com)