



O. C. Jones & Sons, Inc.
General Engineering Contractor

SUBCONTRACT AGREEMENT

O. C. JONES Project No. _____
Date: _____

This Subcontract Agreement ("Agreement"), is entered into by and between O. C. JONES & SONS, INC. ("CONTRACTOR") and _____ ("SUBCONTRACTOR"), whose business address is _____

Phone: _____ Fax: _____ CONTRACTOR has entered into a written contract with _____ ("OWNER") dated _____ ("the prime Contract"), to construct _____

(the "Project") in accordance with the Contract Documents, as hereinafter defined.

I. ENTIRE AGREEMENT

This Agreement supersedes all written or oral proposals or agreements, if any, between CONTRACTOR AND SUBCONTRACTOR, and constitutes the entire agreement between the parties. SUBCONTRACTOR certifies that it is familiar with the contract documents as hereinafter defined, the location of the job site, and the conditions under which the work is to be performed, and that it enters this Agreement based upon its investigation of all such matters and is not relying upon any opinions, representations or investigations of CONTRACTOR. The Contract Documents, including the General Conditions are fully incorporated in this Agreement by this reference, and SUBCONTRACTOR and its subcontractors will be bound by any and all of the Contract Documents insofar as they relate in any part or in any way, directly or indirectly to the work covered by this Agreement. SUBCONTRACTOR agrees to be bound to CONTRACTOR in the same manner and to the same extent as CONTRACTOR is bound to OWNER under the Contract Documents, including the General Conditions. As to all work provided for in this Agreement, and as to all SUBCONTRACTOR rights and obligations with respect to such work, wherever the Contract Documents (including the provisions of the plans, specifications, and General Conditions) refer to CONTRACTOR, such work, specifications, restrictions of rights, or imposition of obligations shall be interpreted to apply to SUBCONTRACTOR. In the event of any conflict between the requirements of the Contract Documents and this Agreement, SUBCONTRACTOR shall be governed by the provisions imposing the greater duty on SUBCONTRACTOR.

II. SCOPE OF WORK AND CONTRACT DOCUMENTS

A. SUBCONTRACTOR shall perform and furnish the following work in accordance with the highest standards: _____

Including all labor, services, material, taxes, installation, cartage, hoisting, supplies, insurance, equipment, scaffolding, tools and other facilities of every kind and description required for the prompt and efficient execution of the work. Division references and plan references are for the convenience of SUBCONTRACTOR and will not limit in any way the scope of work. In addition to specific references, SUBCONTRACTOR'S scope of work includes all work normally performed by SUBCONTRACTOR'S trade that is called for by the Contract Documents and all work that is incidental to complete the work of this Agreement.

B. "CONTRACT DOCUMENTS" means and includes this Agreement, the General Terms of the Subcontract attached hereto, the other exhibits and addenda attached hereto, the Prime Contract, together with its general, supplementary, and other conditions, addenda and modifications, and all of the plans and specifications identified as follows: _____

Subcontractor warrants that it has received and agrees to all contract documents.

III. CONTRACT PRICE

Subject to the limitations and other conditions contained in this Agreement and the Contract Documents, CONTRACTOR will compensate SUBCONTRACTOR as follows:

All applicable Federal, State and Local taxes are deemed to be included in the Contract price. Unit prices, if any, are based upon approximate quantities and are subject to change in accordance with the Contract Documents.

O. C. JONES & SONS, INC.

SUBCONTRACTOR

By: _____

Date: _____

Title: _____

License No.: _____

Classification: _____

Federal Tax I.D. No.: _____

___ Corp.; ___ Partnership; ___ Sole Propr.

By: _____

Date: _____

Title: _____

License No.: 759729

O.C. JONES & SONS, INC.

GENERAL ENGINEERING CONTRACTOR

LIC. NO. 759729

General Terms of the Subcontract

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1. PAYMENT SCHEDULE

A. CONTRACTOR agrees to pay to SUBCONTRACTOR progress payments for labor and materials, which have been placed in position and paid for by owner, with reductions for retained funds in accordance with the Contract Documents. Payment to SUBCONTRACTOR shall be made within ten days of payment by OWNER. Final payment to SUBCONTRACTOR will be due in accordance with the provisions of the prime contract. If the OWNER or other responsible party delays in making any payment to CONTRACTOR from which payment to SUBCONTRACTOR is to be made, then the time for payment shall be deferred for a reasonable amount of time. The parties agree that a "reasonable time" shall not be less than the time CONTRACTOR and SUBCONTRACTOR require to exhaust their legal remedies against Owner or other responsible party to obtain payment, including (but not limited to) mechanic's lien remedies.

B. CONTRACTOR and SUBCONTRACTOR each agree to assume the risk of OWNER's insolvency and the attendant risk of any delayed payment or failure of payment for CONTRACTOR'S or SUBCONTRACTOR'S work. Therefore, to the extent that mechanic's lien remedies as outlined in Title XV, Works of Improvement, of the California Civil Code, or other remedies against the OWNER are inadequate to secure payment due to OWNER's insolvency, further payments under this contract will be excused.

C. As a condition precedent to progress and/or final payment, SUBCONTRACTOR shall provide as required by CONTRACTOR, (i) payment affidavits, receipts, vouchers, copies of transmittals of union benefit payments, lien releases, conditional or unconditional, as appropriate, (ii) an affidavit signed under penalty of perjury that SUBCONTRACTOR has paid the specified general prevailing wages (if required) to employees on the project and any amount due pursuant to Labor Code Section 1813, and (iii) any other documentation required by the payment provisions of the Prime Contract. CONTRACTOR, at its option, may issue joint checks payable to SUBCONTRACTOR and any trust, sub-subcontractor or material supplier, without assuming any liability for money due to any joint payee.

D. CONTRACTOR may withhold, or nullify, all or part of any payment to such extent as may be necessary to protect CONTRACTOR from loss, damage and costs, including attorney's fees, on account of: (a) defective work not remedied; (b) claims filed or reasonable evidence indicating probable filing of claims for which, if established, CONTRACTOR or OWNER might become liable and which is chargeable to the SUBCONTRACTOR; (c) failure of SUBCONTRACTOR to make payments properly to its subcontractors for material, labor, or fringe benefits; (d) a reasonable doubt that this Agreement can be completed for the balance then unpaid; (e) damage to another Subcontractor or its work; (f) failure of SUBCONTRACTOR to comply with this Agreement or the Contract Documents; (g) unsatisfactory performance of the work by SUBCONTRACTOR; or (h) failure to provide the documents required as a condition precedent to SUBCONTRACTOR's right to payment. When the grounds for such withholding are removed, amounts then due and owing shall be paid or credited to SUBCONTRACTOR.

E. Should one or more contracts between the parties hereto now or hereafter exist in addition to this Agreement, concerning this or any other construction project, then a breach by SUBCONTRACTOR of any contract may, at the option of CONTRACTOR, be considered a breach of all contracts. In such event, CONTRACTOR may terminate any or all of the contracts, or may withhold monies due or to become due under any or all of the contracts and apply such withheld payments towards the payment of damages suffered on any contract.

F. No payment made to SUBCONTRACTOR shall be construed as acceptance or approval of any part of the work. It is agreed that acceptance of final payment hereunder shall release CONTRACTOR from any suits, claims, liability or damages arising out of this

Agreement and shall constitute a waiver of any and all of SUBCONTRACTOR'S rights except for claims expressly reserved in accordance with Civil Code Section 3262(d).

2. BONDS

At any time required by CONTRACTOR, SUBCONTRACTOR shall execute and deliver performance and payment bonds in an amount equal to 100% of the Contract Price. Said bonds shall be issued by an "admitted" corporate surety, as that term is defined by the California Department of Insurance, and shall be in a form acceptable to CONTRACTOR. CONTRACTOR shall pay the premium on such bonds, up to 1.5% of the Contract Price. Failure to deliver satisfactory bonds within 10 days after demand shall be a material breach, and SUBCONTRACTOR'S officers accept full personal liability should bonds not be furnished when requested.

3. TIME

Time is of the essence of this Agreement. SUBCONTRACTOR acknowledges CONTRACTOR'S right to complete control of the premises on which the work is to be performed and of the timing of various portions of the work. SUBCONTRACTOR shall provide production rates, dates and schedule information, as required, to assist CONTRACTOR in completing the baseline schedule and updates ("Schedule"). SUBCONTRACTOR will conform to CONTRACTOR'S progress schedule and all revisions or changes made thereto. SUBCONTRACTOR will commence work within two working days after receiving notice to proceed and will prosecute diligently and completely all work required hereunder in strict accordance with CONTRACTOR'S schedule requirements and without delaying or hindering CONTRACTOR'S work or the work of other contractors or subcontractors. In the event SUBCONTRACTOR fails to maintain its part of CONTRACTOR'S Schedule, it will accelerate the work as CONTRACTOR directs. SUBCONTRACTOR will complete its work in a timely manner, and under no circumstances will SUBCONTRACTOR'S time for completing its work be extended to a date that would prevent CONTRACTOR from completing the entire project within the time that the Owner allows CONTRACTOR for such completion.

4. CHANGES AND CLAIMS

A. Changes: CONTRACTOR may at any time order in writing deviations or omissions from, or additions to, the work required by this Agreement. If required, the Contract Price shall be adjusted by appropriate additions or deductions mutually agreed upon. In the event CONTRACTOR and SUBCONTRACTOR cannot agree on whether or not the SUBCONTRACTOR is entitled to an adjustment in compensation, or the amount of the addition or deletion, SUBCONTRACTOR shall, upon receipt of written notice by CONTRACTOR to proceed, nonetheless timely perform the work as changed by CONTRACTOR'S written direction, and shall accurately document all such work by presenting Verified Time and Materials Records in accordance with the requirements set forth in Paragraph "B", below. SUBCONTRACTOR will not make any changes in the work or in any way cause or allow its work to deviate from the Contract Documents without written direction from CONTRACTOR. If SUBCONTRACTOR makes any changes in the work without written direction, SUBCONTRACTOR thereby waives any right to be paid for that changed work. In addition, SUBCONTRACTOR shall be liable for any and all losses, costs, expenses, damages, and liability of any nature whatsoever associated with or arising out of any change it makes without written direction from CONTRACTOR. SUBCONTRACTOR shall notify CONTRACTOR within two working days, in writing, of any discrepancies in any of the Contract Documents or any perceived changed conditions or other event which may disrupt the work, thereby requiring written direction through change order.

B. Requests for Additional Compensation: SUBCONTRACTOR agrees that under no circumstances will it receive any compensation in excess of the Contract Price, except by written change order in accordance with the Contract Documents ("Change Order").

Initial: _____ / _____

SUBCONTRACTOR agrees that as a condition precedent to receiving a Change Order, SUBCONTRACTOR will notify CONTRACTOR in writing of any request for additional compensation arising from any work, event, condition, or occurrence for which extra compensation is claimed before proceeding with the work. In addition, SUBCONTRACTOR must submit its written claim for additional compensation for that work within ten days after such work is performed in sufficient detail to enable CONTRACTOR to evaluate the merits of the claim for a Change Order. SUBCONTRACTOR will not request any Change Order unless it has given the written notice before proceeding with the work and submitted the written claim within ten days after the disputed work has been performed, or the disputed event, condition, or occurrence is over. With respect to any Change Order that results from any work requested by the Owner, or any event, condition, or occurrence for which the Owner has ultimate responsibility, SUBCONTRACTOR will be bound by the ruling or decision of OWNER on all such matters to the same extent that CONTRACTOR is bound, and any adjustment in compensation or time as allowed by the Contract Documents shall be allowed only to the extent allowed by OWNER. SUBCONTRACTOR agrees to be bound to and limited by the claims provisions of the Contract Documents. SUBCONTRACTOR will maintain records of all costs and time associated with any request for additional compensation and shall submit such records daily to CONTRACTOR'S field representative for signature ("Verified Time and Materials Records"). The field representative's signature will verify the time spent and materials and equipment used but will not signify entitlement to the extra compensation claimed. Compliance with the written notice provisions of this Agreement and daily presentation of Verified Time and Materials Records is a condition precedent to SUBCONTRACTOR's right to recover extra compensation. SUBCONTRACTOR shall be responsible and liable for all costs, disbursements, and expenses, including attorney's fees, incurred by the CONTRACTOR as a result of the CONTRACTOR pursuing at SUBCONTRACTOR's request, any extra, change, addition, claim or dispute against any other party on SUBCONTRACTOR's behalf. If performance of any work by SUBCONTRACTOR is dependent upon or related to work of others, SUBCONTRACTOR represents by undertaking to perform its work, that such other work is satisfactory, and waives all claims against CONTRACTOR for additional compensation or damages from any defects therein that would be apparent through reasonable inspection. If SUBCONTRACTOR becomes aware of any defect it shall immediately notify CONTRACTOR before proceeding further.

5. DEFAULT BY SUBCONTRACTOR

A. Events of Default: SUBCONTRACTOR shall be deemed in default of this Agreement if SUBCONTRACTOR: (a) refuses or fails to supply enough properly skilled workers, equipment, or proper material to make adequate progress according to the CONTRACTOR's Schedule; (b) fails to cure defective or incomplete work; (c) fails to proceed under any written direction or change order from CONTRACTOR; (d) fails to make prompt payment to workers, sub-subcontractors or suppliers; (e) disregards or violates any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the work; (f) becomes insolvent, subject to any receivership proceedings, or makes an assignment for the benefit of creditors; or (g) otherwise commits any material breach of this Agreement.

B. Recourse by CONTRACTOR: If SUBCONTRACTOR fails to cure any default within the time allowed by CONTRACTOR, SUBCONTRACTOR shall be liable for any and all costs and damages, including consequential and liquidated damages, sustained by CONTRACTOR as a result thereof, and CONTRACTOR, at its option and in addition to any other rights afforded herein or by law, shall have the right:

1. To perform such portion of the work as may be necessary, and to furnish such material, equipment or other items required.

Contractor may take active charge of the work and of laborers, materials, tools and appliances of SUBCONTRACTOR for purposes of carrying out the terms of this Agreement and may adopt such other means as it deems necessary, in its sole discretion. The cost of such work, materials, equipment or other items, plus CONTRACTOR's profit and overhead of 15%, shall be deducted from the contract price. In the event that the cost of such work or materials or other items exceeds the balance due, the excess shall be immediately due and owing from SUBCONTRACTOR to CONTRACTOR.

2. To terminate SUBCONTRACTOR's right to proceed with the work, and CONTRACTOR shall have the further option of: (a) completing the work, or any portion thereof, itself; or (b) having the work in whole or in part completed by others. If SUBCONTRACTOR's right to proceed with the work is terminated, SUBCONTRACTOR shall not be entitled to receive any further payments under this Agreement until all work undertaken by CONTRACTOR pursuant to the Contract Documents is completely finished. If, at that time, the unpaid balance of the Contract price exceeds the cost, including CONTRACTOR's profit and overhead of 15%, incurred by CONTRACTOR in finishing SUBCONTRACTOR's work, the excess shall be paid as required by this Agreement. If the cost to complete exceeds the unpaid balance, then SUBCONTRACTOR shall promptly pay CONTRACTOR the difference. The costs referred to herein shall include expenses incurred by CONTRACTOR for furnishing materials, for labor, plus markup of 15% profit and overhead, and for any other damages sustained by CONTRACTOR by reason of SUBCONTRACTOR's default; and CONTRACTOR shall have a lien upon all of SUBCONTRACTOR's materials, tools and machinery and equipment taken possession of, to secure SUBCONTRACTOR's payment.

6. INSURANCE

SUBCONTRACTOR will maintain in full force and effect the insurance set forth in and required by Addendum A, attached hereto and made a part hereof. By signing this Agreement, SUBCONTRACTOR acknowledges that it has received, reviewed and approved Addendum "A".

7. INDEMNIFICATION

A. Definitions: The word "Claim" means all claims, actions, proceedings, demands, penalties, losses, harms, liabilities, fines, awards, judgments, and costs, including actual attorney and consultant fees incurred in good faith. The word "CONTRACTOR" includes O.C. Jones & Sons, Inc. as well as its employees, officers, directors, and agents.

B. All work covered by this Agreement done at the site of construction or in preparing or delivering materials or equipment to the site shall be at the risk of SUBCONTRACTOR exclusively. SUBCONTRACTOR assumes all responsibility and liability for any and all Claims, resulting from, arising out of, or occurring in connection with SUBCONTRACTOR's work.

C. SUBCONTRACTOR shall, with respect to all work covered by or incidental to this Agreement, indemnify and hold CONTRACTOR harmless from and against all Claims arising by reason of death or bodily injury to persons, injury to property, SUBCONTRACTOR's work, SUBCONTRACTOR's performance or non-performance of any or all the obligations in this Agreement, or arising by reason of any obligation or indemnity which CONTRACTOR has to OWNER, or that SUBCONTRACTOR has to any of its employees, agents, suppliers, or independent contractors, with respect to SUBCONTRACTOR'S work, even if resulting from CONTRACTOR'S alleged or actual negligent act or omission, regardless of whether

Initial: _____ / _____

act or omission is active or passive, unless caused by CONTRACTOR's sole negligence or willful misconduct. SUBCONTRACTOR shall not be obligated under this Agreement to indemnify CONTRACTOR with respect to the sole negligence or willful misconduct of CONTRACTOR, its agents, servants or independent contractors who are directly responsible to CONTRACTOR, or for defects in design furnished by such persons.

8. RESPONSIBILITY FOR DAMAGES FOR WORK IN PLACE

SUBCONTRACTOR assumes the risk of damage or loss of any of its materials or equipment, or to any Work in place, until final acceptance by the Owner. The SUBCONTRACTOR will be entirely responsible for any loss or damage done to its Work, materials, tools, equipment and other appliances in any manner even though the particular work damaged may be finished at the time.

9. CLEAN UP

At all times during the course of construction, SUBCONTRACTOR will perform its work so as to maintain the project site and surrounding area in a clean, safe, and orderly condition. Upon completion of its work, SUBCONTRACTOR will remove from the site all temporary structures, hazardous materials, debris and waste incident to its operation. If the SUBCONTRACTOR fails to commence immediate compliance with its clean-up duties after being directed to do so by the CONTRACTOR, then CONTRACTOR may remove debris, and other materials, or cause it to be removed at the expense of SUBCONTRACTOR, and deduct the cost thereof from any amounts due the SUBCONTRACTOR.

10. GUARANTEE

SUBCONTRACTOR warrants its work against all deficiencies and defects in materials and/or workmanship. All work not conforming to the requirements of the Contract Documents, including substitutions not properly approved and authorized, will be considered defective. SUBCONTRACTOR agrees to replace, or otherwise remedy, at its sole cost and expense and to the satisfaction of CONTRACTOR and Owner, any or all materials adjudged in good faith to be defective, or improperly installed. SUBCONTRACTOR guarantees that all of its work and materials will remain free of defect for one year after final acceptance of the Project by Owner, and SUBCONTRACTOR. This provision is in addition to any warranty, or guarantee required elsewhere in the Contract Documents. All guarantees will inure to the benefit of the CONTRACTOR, Owner, and their successors or assigns. SUBCONTRACTOR will promptly correct any subcontract work or materials rejected by CONTRACTOR or Owner for failing to comply with the Contract Documents whether observed prior to the commencement of the warranty period(s) or during the warranty period(s) established under this Article.

11. RISING COSTS

The contract price, whether based on lump sum, or unit costs, is intended to include all increases in cost, foreseen and unforeseen, including, without limiting the generality of the foregoing, taxes, labor, materials, and transportation costs, all of which are to be borne solely by the SUBCONTRACTOR unless otherwise specified.

12. LAWS, PERMITS AND TAXES

A. SUBCONTRACTOR, its employees, and independent contractors and their employees, shall comply with all applicable Federal, State, Municipal and local laws and other legally required building, safety, and health standards, employment laws, affirmative action programs, disadvantaged, or minority preference or hiring program, or any other legally required standards, orders, rules, regulations, codes, or laws (hereinafter collectively referred to as "laws") applicable to the work to be performed hereunder, including by way of illustration, those laws which govern the handling and disposal of hazardous materials. SUBCONTRACTOR agrees to comply with all applicable fair employment practices, provisions and regulations of federal, state or other governmental authority having jurisdiction, including without limitation, all provisions of the

Federal Fair Labor Standards Act, the American Disabilities Act, the Federal Family and Medical Leave Act, the California Labor Code and Wage Orders, the California Fair Employment and Housing Act, the California Family Rights Act, Executive Order No. 11246, Code of Federal Regulations, section 60-1.40, et seq., Title VII of the Civil Rights Act of 1964, including amendments or revisions thereof, relating to non-discrimination in employment, and any affirmative action program provisions contained in the Contract Documents. On all projects subject to State of local prevailing wage requirements, SUBCONTRACTOR will comply with any applicable California prevailing wage laws. The attached provisions of California Labor Code sections 1771, 1775, 1776, 1777.5, 1813 and 1815 are incorporated into this subcontract and SUBCONTRACTOR agrees to comply with these provisions insofar as they are applicable to SUBCONTRACTOR on this project. On projects subject to Federal and/or State prevailing wage, SUBCONTRACTOR shall submit certified payroll records in duplicate to CONTRACTOR, and cooperate with CONTRACTOR to confirm data thereon, as requested.

B. SUBCONTRACTOR shall apply for, obtain and pay for all necessary or required licenses and permits, and pay all manufacturer's taxes, sales taxes, use taxes, processing taxes, value added taxes, and all and every Federal, State or local tax, insurance and/or contribution relating to SUBCONTRACTOR's employees, whether levied now or in the future.

13. LABOR CONDITIONS AND EMPLOYMENT PRACTICES

Employment of labor by SUBCONTRACTOR shall be effected under conditions which are satisfactory to CONTRACTOR. SUBCONTRACTOR shall, if requested to do so by CONTRACTOR, replace any employee whom CONTRACTOR determines to be undesirable. SUBCONTRACTOR shall, to the extent permissible under federal law and any applicable state laws, comply with the provisions of CONTRACTOR's collective bargaining agreements which apply to SUBCONTRACTOR's work hereunder to be performed at the jobsite; including, without limitation, the provisions governing jurisdiction and scope of work and the procedures contained therein for the resolution of jurisdictional disputes. In the absence of any such procedure, or if such procedure fails to promptly resolve the jurisdictional dispute, SUBCONTRACTOR agrees, at its own cost and expense, upon request of CONTRACTOR, to take any and all lawful steps to secure a binding and final determination of the jurisdictional dispute by the National Labor Relations Board. Should there be picketing on the CONTRACTOR's jobsite, and CONTRACTOR or OWNER establishes a reserve gate, SUBCONTRACTOR shall maintain the neutrality of any such reserve gate and continue the proper performance of its work without interruption or delay. Should SUBCONTRACTOR's presence or activity cause a labor related problem at the work site, SUBCONTRACTOR shall bear the full cost thereof. SUBCONTRACTOR shall also promptly obtain, and pay the full cost of any court orders necessary to restrain acts and violations of law resulting from SUBCONTRACTOR's presence or activities. SUBCONTRACTOR shall be bound by all relevant local, state and federal laws governing employment and labor relations, and shall fully indemnify and hold CONTRACTOR harmless from and against claims, liability, loss, damage, cost, expenses, awards, fines or judgments arising by reason of any violation of such laws, or failure to fulfill the covenants set forth in this paragraph. SUBCONTRACTOR shall pay when due, or reimburse CONTRACTOR, for all contributions, allowances, or other payments, however termed, made or to be made by CONTRACTOR applicable to any employees of SUBCONTRACTOR, its subcontractors or suppliers, and required by a labor agreement now or hereinafter in force by which SUBCONTRACTOR may be bound.

14. SAFETY

SUBCONTRACTOR will perform its work in a safe and reasonable manner. SUBCONTRACTOR will, at its own expense, protect its own employees, employees of CONTRACTOR and all other persons from risk of death, injury, or bodily harm arising out of or in any way connected with the work to be performed hereunder. SUBCONTRACTOR will strictly comply with all safety laws, orders, rules, regulations, requirements, standards, or statutes of all federal, state and local governmental agencies affecting or relating to this Agreement or its performance, including, but not limited to the federal and Cal OSHA Regulations, the handling and storage of hazardous materials, accident prevention, safety equipment and practices, and any accident prevention and safety program policies and rules of CONTRACTOR or Owner. SUBCONTRACTOR will conduct inspections to determine that safe working conditions exist, and will establish its own safety program implementing the appropriate safety measures, policies and standards.

15. DISPUTES

In the event of any dispute between CONTRACTOR and SUBCONTRACTOR, SUBCONTRACTOR shall proceed with the work as directed by CONTRACTOR. Under no circumstances shall SUBCONTRACTOR cease or delay performance once it has received CONTRACTOR's notice to proceed and SUBCONTRACTOR's only remedy shall be hereafter set forth. If the Contract Documents call for arbitration, or owner and CONTRACTOR agree to arbitration, and an arbitration concerning or related to SUBCONTRACTOR's work is commenced between owner and CONTRACTOR, SUBCONTRACTOR will, on demand of CONTRACTOR, become a party to the arbitration proceeding, and shall submit to, and be bound by, any award rendered therein. In the event SUBCONTRACTOR and CONTRACTOR have a dispute solely arising out of or pertaining to this Agreement or its breach and not, in CONTRACTOR's opinion, involving owner, then demand for arbitration may be made by either party and arbitration had in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association in effect at the time of arbitration is initiated and (1) if the amount in dispute is in excess of fifty thousand dollars (\$50,000), then the parties shall have full rights of discovery as if the matter were before a California Superior Court and (2) if the amount in dispute exceeds one hundred thousand dollars (\$100,000), the arbitrators shall issue findings of facts and conclusions of law and any subsequent judgment will be subject to appeal as if a decision had been rendered by a judge of the California Superior Court. If, in CONTRACTOR'S sole opinion, the issue in dispute involves the OWNER, or any other party not bound to a Unified Arbitration process, then SUBCONTRACTOR cannot demand arbitration unless all the interested parties identified by CONTRACTOR agree to participate in a Unified Arbitration.

16. TERMINATION OF PRIME CONTRACT

In the event that the prime contract is terminated prior to its completion, SUBCONTRACTOR will be entitled to payment from CONTRACTOR only for the work actually completed by it at the pro ration of the price herein set forth. SUBCONTRACTOR agrees that upon termination of the prime contract, this Agreement will be automatically assigned to the Owner, and to CONTRACTOR'S surety. SUBCONTRACTOR agrees to complete the full scope of its Work under this Agreement for CONTRACTOR'S surety or for the Owner directly. The assignment of this Agreement is provisional and will be effective only upon notification in writing by Owner or by CONTRACTOR'S surety.

17. ASSIGNMENT BY SUBCONTRACTOR

SUBCONTRACTOR will not, without the prior written consent of CONTRACTOR which consent may be withheld in CONTRACTOR'S discretion, assign, transfer, or sublet any portion or part of SUBCONTRACTOR'S Work, nor assign any payments to others.

18. INSPECTION AND AUDIT

SUBCONTRACTOR will make its work and all materials accessible at all reasonable times for inspection and audit by CONTRACTOR. SUBCONTRACTOR agrees to afford CONTRACTOR access to all the SUBCONTRACTOR'S records, books, correspondence, reports, instructions, drawings, receipts, vouchers, memoranda and similar data relating to the Work to be performed under this Agreement. SUBCONTRACTOR will preserve all such records for three years after final payment, or such longer period as may be required by law. SUBCONTRACTOR agrees that CONTRACTOR and its agents or representatives, will have the right at any reasonable hour to inspect, copy, or audit all such books and records of SUBCONTRACTOR.

19. CONTRACT INTERPRETATION

A. Inconsistencies and Omissions: Should inconsistencies or omissions appear in the Contract Documents, it shall be the duty of SUBCONTRACTOR to so notify CONTRACTOR in writing within two days of SUBCONTRACTOR's discovery thereof. Upon receipt of said notice, CONTRACTOR may consult OWNER if necessary and will instruct SUBCONTRACTOR as to the measures to be taken and SUBCONTRACTOR shall comply with CONTRACTOR's instructions.

B. Applicable Law: Disputes arising under this Agreement shall be governed by the laws of the State of California. SUBCONTRACTOR agrees that this Agreement is to be executed in Alameda County, California, and the venue for any action brought to enforce any of the terms and provisions of this Agreement shall be brought in Alameda County, California.

C. Severability: CONTRACTOR and SUBCONTRACTOR agree that if any word, phrase or provision of this Agreement is deemed to be in conflict with any applicable law, only those words which create the conflict shall be stricken and the remainder of the words, phrases or provisions of this Agreement shall remain in full force and effect.

20. ATTORNEY'S FEES

In any litigation or arbitration arising out of, or related to, the performance or non-performance of this Agreement, the prevailing party shall be entitled to recover its actual, reasonable attorney's fees, costs, charges, expenses, and costs of experts, expended or incurred therein. In determining the prevailing party, an unconditional written offer to settle shall have the same force and effect as if it were an offer made pursuant to California Code of Civil Procedures section 998.

21. NOTICES

Any notices required or permitted under this Agreement shall be in writing and mailed or delivered to the address contained in this Agreement. Any notice to CONTRACTOR shall be delivered to O.C. JONES & SONS, INC., 1520 Fourth Street, Berkeley, CA 94710 and a duplicate notice must be delivered to any field office maintained by CONTRACTOR.

22. LICENSING

Contractors are required by law to be licensed and regulated by the Contractor's State Licensing 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. Any questions concerning a contractor may be referred to the Registrar, Contractor's State Licensing Board, Post Office Box 26000, Sacramento, California 95826.

End

O.C. JONES & SONS, INC.
GENERAL ENGINEERING CONTRACTORS
1520 Fourth Street, Berkeley, CA 94710-1774 (510) 526-3424 Fax (510) 526-0990
AN EQUAL OPPORTUNITY EMPLOYER

Initial: _____ / _____