

Subcontract No.: 51817901

Job No.: 5181-79

Vendor No.: xxxxx

Cost Code: xxxxx

Subcontract Amount: \$xxxxxx.xx

[SUBCONTRACTOR NAME]

[SUBCONTRACTOR ADDRESS]

[SUBCONTRACTOR CITY/STATE]

[SUBCONTRACTOR TELEPHONE]

[SUBCONTRACTOR FAX]

THIS SUBCONTRACT, made at San Francisco , California, this XXth day of [Month], 2010, by and between HATHAWAY DINWIDDIE CONSTRUCTION COMPANY (hereinafter referred to as “Contractor”), and [SUBCONTRACTOR NAME] (hereinafter referred to as “Subcontractor”),

to perform Work on the following Project:

Project:Project

Location:Location

Owner:Owner

Property Owner:Property Owner

Architect:Architect

Construction Lender:

Date of Prime Contract:

Article 1

Scope of Work

1.1 The Subcontractor agrees to furnish all labor (regardless of trade jurisdiction), services, materials, installations, cartage, hoisting, supplies, insurance, equipment, scaffolding, tools, and other facilities of every kind and description required for the complete, prompt and efficient performance of all the Work hereinafter specified as provided for in the Contract Documents. The Work to be performed by the Subcontractor generally is as follows:

All [TRADE SCOPE] scope of work in accordance with Hathaway Dinwidge Construction Drawings and Specification as noted in the attached Exhibit "C" dated MM/DD/YY prepared by Gensler, Rivera Consulting Group, Inc., and Glumac; Notice to Bidders #x,x, x dated MM/DD/YY. Gensler is herein after referred to as “Architect”.

1.2 The Prime Contract, together with the general conditions, supplemental conditions, special conditions, plans, drawings, project manual, specifications, addenda, change orders, modifications made hereafter and all other contract documents between Contractor and Owner will be hereinafter referred to as the "Contract Documents". Subcontractor certifies that it is fully familiar with all of the terms of the Contract Documents, the location of the job site, and the conditions under which the Work is to be performed and that it enters into this Subcontract based upon its investigation of all such matters and is not relying on any opinions or representations of Contractor. The Contract Documents are incorporated in this Subcontract by reference, and insofar as the provisions of the Contract Documents do not conflict with specific provisions contained in this Subcontract, Contractor shall have all rights, remedies, powers, and privileges as to or against Subcontractor which Owner has against Contractor under any of the Contract Documents. 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, except that as to all time limits, the Subcontractor will submit any and all claims, pay requests, documents or other materials to Contractor in sufficient time to permit the Contractor to reasonably process such documents and transmit them to the Owner or Architect within the time constraints of the Contract Document. If anything in this Subcontract is inconsistent with the Contract Documents, this Subcontract will govern, except where the Contract Documents impose a stricter standard or duty on Subcontractor, in which case Subcontractor shall be obliged to comply with the more stringent standard or duty. Where, in the Contract Documents, reference is made to Contractor, and the work or specifications therein pertain to Subcontractor's trade, craft or type of work, such work or specifications shall be interpreted to apply to Subcontractor instead of to Contractor. Subcontractor will perform all of the Work that falls within the general area of this Subcontract, regardless of the fact that the Work to be performed may be scattered throughout the plans and specifications and Contract Documents, as well as all incidental work reasonably necessary to complete this Subcontract, unless otherwise expressly assigned to other subcontractors. The Work to be performed by the Subcontractor will be in strict conformance with the Contract Documents and performance of the Work and materials shall be satisfactory to the Contractor, the Owner, and its Architect and Engineers.

Article 2 Payment

2.1 The Contractor agrees to pay the Subcontractor as described herein below and subject to the conditions herein, for the satisfactory completion of Subcontractor's Work, the sum of:

SUBCONTRACT SUM AND 00/100 DOLLARS (\$XXX,XXX.00)

Progress payments will be monthly payments of ninety percent (90%) of the value of the Work performed in any preceding month, in accordance with estimates prepared by the Subcontractor and approved by the Contractor and the Owner or its agent. Payments, if any, made on account of materials not incorporated into the Project but delivered and suitably stored at the site, or at some other location agreed upon in writing, shall be in accordance with the terms and conditions of the Contract Documents. Subcontractor, lower-tier subcontractors and suppliers will provide monthly completed lien releases, in a form satisfactory to the Owner and Contractor. Progress payments to the Subcontractor shall be made only with the funds received by the Contractor from the Owner for the Work performed by the Subcontractor as reflected in the Subcontractor's monthly estimate. Funds received by Subcontractor will be held in trust for lower-tier subcontractors and suppliers. Approval of the Subcontractor's monthly estimate by Contractor, Owner, and any other person or entity whose approval is required, in whole or in part, shall be a condition precedent which must occur before the Contractor will be obligated to pay the Subcontractor. Approval and payment of Subcontractor's monthly estimate is specifically agreed not to constitute or imply acceptance by the Contractor or Owner of any portion of the Subcontractor's Work.

2.2 In the event the Subcontractor does not submit to the Contractor such monthly estimates by the twenty-fifth (25th) of the month, unless the Contract Documents provide otherwise, then the Contractor may, at its option, include in its monthly estimate to the Owner for Work performed during the preceding month such amount as Contractor may deem proper for the Work of the Subcontractor for the preceding month and the Subcontractor agrees to accept such approved portion thereof in lieu of monthly payment based upon the Subcontractor's estimate.

2.3 If it appears to the Contractor that the labor, material or other bills incurred in the performance of Subcontractor's Work are not being currently paid, or reasonable grounds for insecurity exist, or the Contractor has been notified by the Owner or its agent that the Owner intends to assert a backcharge or set-off with respect to Subcontractor's Work, then the Contractor may take such steps as it deems necessary to ensure that the money paid with any progress payment will be utilized to pay such bills. Such steps may include without limitation, demanding that the Subcontractor provide Contractor with a written assurance of Subcontractor's due performance of its obligations under this Subcontract, contacting Subcontractor's lower-tier subcontractors and/or suppliers to determine the status of payment and/or the use of joint checks or direct payments to lower-tier subcontractors and suppliers.

2.4 Final payment, less retention, shall be paid to the Subcontractor upon approval by the Owner, Architect and the Contractor of the Subcontractor's Work and, upon payment, less retention, having been received by the Contractor from the Owner for all of Subcontractor's Work and satisfactory evidence having been received by the Contractor that all labor, including customary fringe benefits and payments due under collective bargaining agreements, and all lower-tier subcontractors and material suppliers have been paid to date and are waiving their lien rights upon the final payment of a specific balance due. The retention due Subcontractor shall be paid thirty-five (35) days after the final completion and acceptance by the Owner but in no event earlier than ten (10) days after Contractor's receipt from Owner of retention funds relating to Subcontractor's Work. Such payment shall be made only with funds received by the Contractor from the Owner. As a condition to receipt of retention, Subcontractor shall sign and submit the Subcontractor's Application for Full and Final Payment attached hereto as Exhibit "C" and incorporated herein by this reference. In the event that Contractor has posted collateral in lieu of retention whether under Public Contract Code §6106.5 or pursuant to agreement, the Contractor will not be deemed to have "received" retention funds from the Owner until the funds in escrow have been released, or until the Subcontractor has, with Contractor's agreement, posted analogous collateral in lieu of retention.

2.5 The Contractor may deduct from any amounts due or to become due to the Subcontractor any sum or sums owing by the Subcontractor to the Contractor; and in the event of any breach by the Subcontractor of any provision or obligation of this Subcontract, or in the event of the assertion by other parties of any claim or lien against the Owner, the Contractor, Contractor's Surety, or the premises upon which the Work was performed, which claim or lien arises out of the Subcontractor's performance of the Work, the Contractor shall have the right, but is not required, to retain out of any payments due or to become due to the Subcontractor an amount sufficient to completely protect the Contractor from any and all loss, damage, or expense therefrom, until the claim or lien has been resolved by the Subcontractor to the satisfaction of the Contractor. This paragraph shall be applicable even though the Subcontractor has posted a full payment and/or performance bonds.

2.6 The following language shall apply to all payments otherwise due from Contractor to Subcontractor under this Subcontract, including, without limitation, payments under paragraphs 2.1, 2.2, 2.4, 2.6, 4.1, 4.5 and 4.6

(a) In any event, where Owner has withheld any payment(s), a portion of which arose from or was based on compensation for Subcontractor's Work ("Subcontractor's Portion of Payment"), Contractor's obligation to make payment for Subcontractor's Portion of Payment shall be temporarily suspended while Contractor undertakes reasonable efforts to collect such payment(s) ("Collection Efforts"). Such Collection Efforts shall include negotiation, mediation, arbitration and/or litigation, and no funds relating to Subcontractor's Portion of Payment shall be due or payable until such Collection Efforts have been exhausted.

(b) Notwithstanding the language of subparagraph (a), above, in the event the actions or inactions of Subcontractor contributed in whole or in part to the Owner's nonpayment of any sum hereunder, Subcontractor shall hold Contractor harmless and indemnify Contractor from loss resulting therefrom; and the costs of Collection Efforts and any consequential loss or damages resulting from Subcontractor's actions or inactions shall be the responsibility and obligation of Subcontractor and may, without limitation, be used as an offset against any sum owed to Subcontractor.

Article 3 Prosecution of the Work

3.1 Time is of the essence in Subcontractor's performance of the Work under this Subcontract. Subcontractor agrees to prosecute the performance of its Work and the work of its lower-tier subcontractors and suppliers so that the entire Project is completed in strict accordance with the Contract Time set forth in the Contract Documents. Subcontractor shall provide Contractor with scheduling information and a proposed schedule for performance of its Work in a form acceptable to Contractor. If the Subcontractor fails to provide the scheduling information, as requested, the Contractor may estimate such scheduling information as it may deem proper for the Work of Subcontractor, and the Subcontractor agrees to accept such estimate Contractor prepares for the Work of the Subcontractor. The Contractor shall not be bound to use Subcontractor's scheduling information, but may rely upon the same. The Contractor will then prepare the schedule of work (hereinafter referred to as the "Schedule of Work") and, as may be necessary at Contractor's sole discretion, revise the Schedule of Work as the work progresses. Subcontractor shall conform to the Contractor's Schedule of Work and all revisions or changes made thereto. Subcontractor acknowledges that revisions may be made to the Schedule of Work and agrees to make no claim for acceleration, inefficiency, or delay by reason of such revisions as long as Contractor has not acted in an arbitrary or capricious manner in making the revisions, provided, however, that nothing stated herein shall constitute a bar from Subcontractor prosecuting any claim for additional compensation arising out of any Owner-caused delay, inefficiency, or acceleration, subject to the provisions and requirements of the Contract Documents and Article 4.

3.2. In the event Subcontractor fails to maintain its part of the Contractor's Schedule of Work, it shall, without additional compensation, accelerate the Work as Contractor may direct until Subcontractor's Work is in accordance with such schedule. Contractor shall have complete control of the premises on which the Work is to be performed and shall have the right to decide the time and order in which the various portions of the Work shall be installed and the relative priority of the Work of Subcontractor and the other subcontractors, and, in general, all other matters pertaining to the timely and orderly conduct of the Work of the Subcontractor on the premises. Should Subcontractor be delayed or disrupted in the prosecution or completion of the Work by the act, neglect or default of Contractor, then the time for the completion of Subcontractor's Work shall be extended the number of days that Subcontractor has been delayed, but no allowance or extension shall be made unless a claim therefore is presented in writing to Contractor within seventy-two (72) hours of the time of the commencement of such delay or disruption. Should Subcontractor be delayed or disrupted in the prosecution or completion of the Work by the act, neglect or default of Owner, Architect, or their agents, or should Subcontractor be delayed waiting for materials, if required by this Subcontract to be furnished by Owner or Contractor, or by damage caused by fire or other casualty for which Subcontractor is not responsible, or by the combined action of the workmen, in no way caused by or resulting from fault or collusion on the part of Subcontractor, or in the event of a lockout by Contractor, then the time for the completion of Subcontractor's Work shall be extended the number of days that Subcontractor has been delayed but only to the extent that such act, neglect, default, damage or combined action entitles Contractor to an extension of the Contractor's time of performance under the Contract Documents; provided that no allowance or extension shall be made unless a claim therefore is presented in writing to Contractor within the lesser of seventy-two (72) hours from the time of the commencement of such delay or one full working day less than such shorter time as is provided in the Contract Documents, and under no circumstances will the time of completion be extended to a date which will prevent Contractor from completing the entire Project within the time allowed Contractor by Owner for such completion.

3.3 The Subcontractor shall be responsible for, and will prepare for, performance of Subcontractor's Work, including, without limitation, all necessary or appropriate preplanning of Subcontractor's Work, coordination with other trades, submission of shop drawings, samples, tests, field dimensions, determination of labor requirements, and ordering of materials as required to meet the Schedule of Work if such activities are specifically identified on the Schedule of Work, and if they are not specifically identified, sufficiently in advance of the activities shown on the Schedule of Work to permit reasonable review and coordination as well as the orderly and efficiency ordering, fabrication, and installation of the Work in conformance with the Contractor's Schedule of Work. Subcontractor shall coordinate its shop drawings with all other subcontractors and contractors engaged upon the Project. Before proceeding with its Work, Subcontractor shall check all necessary measurements and the correctness of contiguous work installed, or to be installed, by other trades in order that Subcontractor's Work may fit and operate with all other branches or aspects of the Project; Subcontractor shall be liable for all costs and damages arising from its failure to detect or report discrepancies and such failure will relieve Contractor of any and all claims by Subcontractor to recover cost, expense or damage resulting therefrom unless additional compensation is obtained from Owner. Review of shop drawings, samples, tests, field dimensions, determination of labor requirements and ordering of materials by Contractor or Architect will not relieve Subcontractor of its obligation to perform the Work in strict accordance with the drawings and specifications. Subcontractor shall notify Contractor when portions of its Work are ready for inspection.

3.4 The Subcontractor will furnish progress reports of the Subcontractor's Work, including labor hours, the progress of materials or equipment to be provided under this Subcontract that may be necessary in the course of preparation

or manufacturing. Progress reports will be provided by Subcontractor no less than monthly or more frequently upon request of Contractor, or sufficiently in advance of scheduling or progress reports required by the Contract Documents, to permit Contractor to review such information. The progress report(s) shall be in a form acceptable to Contractor.

3.5 The Subcontractor shall cooperate with the Contractor and subcontractors whose work may interfere with the Subcontractor's Work and coordinate with other subcontractors to facilitate the efficient completion of the Project, which shall include the preparation of coordinated drawings and schedules in areas of congestion, specifically noting and advising the Contractor of any interference by other contractors, subcontractors, design professionals or inspectors. If work of others is damaged by Subcontractor, the Subcontractor will cause such damage to be corrected to the satisfaction of, and without cost to, the Contractor and Owner.

3.6 The Subcontractor shall keep the premises free from accumulation of waste material or rubbish caused by its employees, agents, or workers, and shall maintain the premises, on a daily basis, in a clean and orderly condition, and in accordance with the requirement of the Contract Documents. Upon termination or completion of the Work, Subcontractor shall remove all unused materials and all equipment, utilities, and facilities furnished by Subcontractor, shall clean up all refuse and debris, and shall leave the premises clean, orderly, in good condition, and in accordance with the requirement of the Contract Documents. If Subcontractor is in default of any of the above obligations, Contractor may, notwithstanding any other provisions of this Subcontract, remove the rubbish, waste material, debris, unused materials, equipment, utilities, and facilities, and put the site in orderly condition or in accordance with the requirement of the Contract Documents, all at Subcontractor's expense.

3.7 The Subcontractor shall give adequate notices pertaining to the Work of the Subcontractor to proper authorities, and secure and pay for all necessary licenses and permits to carry on Subcontractor's Work, the furnishing of which is required by the Contract Documents.

3.8 Subcontractor shall comply fully with all laws, orders, citations, rules, regulations, manufacturer's recommendations, industry standards and statutes with respect to occupational health and safety, the handling, transport and storage of hazardous materials, accident prevention, safety equipment, and practices including the accident prevention and safety program of Owner and Contractor. Subcontractor shall provide a current copy of its Illness and Injury Prevention Program to Contractor prior to the commencement of its Work. As required by Contractor, Subcontractor shall develop and provide site specific safety plans for the prosecution of its Work. Without limitation, Subcontractor shall comply with all provisions of Proposition 65 including, but not limited to, posting any required notices and informing Contractor of such postings. Prior to commencement of the Work, Subcontractor shall provide material safety data sheets and a log of substances Subcontractor will use in the performance of its Work. In addition, Subcontractor will promptly notify Contractor of any violation of any provision of Proposition 65.

3.9 Subcontractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with its Work and shall conduct daily inspections to determine that safe working conditions and equipment exist. Subcontractor accepts sole responsibility for providing a safe workplace for its employees and for employees of its subcontractors, suppliers of materials or equipment. Subcontractor accepts sole responsibility for the adequacy of and required use of all safety equipment, and for full compliance with the aforesaid laws, orders, citations, rules, regulations, manufacturer's recommendations, Subcontractor's Injury and Illness Prevention Program, industry standards and statutes (such laws, orders, etc. are collectively referred to as "Safety Authority(ies)").

3.10 Subcontractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including necessary signage and other warnings against hazards for its personnel, others on the Project and the general public.

3.11 Subcontractor shall designate a responsible member of its organization at the site of construction who is a Site Safety Officer. This person shall be the Subcontractor's site foreman unless otherwise designated by the Subcontractor in writing to the Contractor. Depending on the types and levels of hazards and Subcontractor's prior experience, Contractor may require Subcontractor to staff the project with safety and health personnel. These personnel may be part or full time depending upon the specific nature of Subcontractor's Work and hazards. The qualifications of Subcontractor's safety and health personnel are subject to the review and approval of Contractor. Subcontractor is to assure the presence of designated "competent" and "qualified" personnel for work such as excavation, scaffolding, and other hazardous activities requiring such personnel. In the event of an accident, Subcontractor shall submit an accident report to Contractor within twenty-four (24) hours of the accident.

3.12 All Work covered by this Subcontract done at the site of construction, or in preparing or delivering materials or equipment, or any or all of them to the site, shall be the risk of the Subcontractor, exclusively.

3.13 Temporary offices, trailers, sheds, or protective covers or walls within or adjacent to the buildings shall be constructed of fire resistant materials, or protected with fire resistant sheeting or paint.

3.14 The Subcontractor will not assign, subcontract, or sublet the whole or any part of the Work to be performed hereunder without prior written consent of the Contractor, with the exception of those subcontractors listed by the Subcontractor and furnished to the Contractor at the time Subcontractor submits its bid to Contractor; nor shall Subcontractor hypothecate, pledge or assign any payments hereunder, nor change his responsible managing officer/employee without the written consent of Contractor, which Contractor may give or withhold at its sole discretion. The Contractor reserves the right to reject any lower-tier subcontractors or supplier for whom the Contractor has a reasonable objection. This Subcontract shall be binding upon the heirs, administrators, executors, successors, and assigns of each party.

3.15 To the extent required by the Contract Documents, or any construction loan issued in conjunction with the Project, Subcontractor agrees to the conditional assignment of this Subcontract.

3.16 Labor Relations. Employment of labor by Subcontractor shall be effected under conditions which are satisfactory to Contractor. Subcontractor shall keep a representative at the job site during all times when Subcontractor's Work is in progress, and such representatives shall be authorized to represent and bind Subcontractor as to all phases of the Work. Prior to commencement of the Work, Subcontractor shall notify Contractor who Subcontractor's representative is to be, and in the event of any change of representative, Subcontractor shall notify Contractor who the new representative is to be prior to such change becoming effective.

Subcontractor acknowledges that Contractor has entered into labor agreements covering work at its construction job sites with the following labor unions:

- United Brotherhood of Carpenters & Joiners of America
- Laborers International Union of North America
- Operative Plasterers and Cement Masons International Association of the United States and Canada (Cement Masons only)
- International Union of Operating Engineers, AFL-CIO
- International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (for projects in the following 46 Northern California Counties only: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Sonoma, Solano, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo and Yuba.)

Subcontractor hereby expressly agrees that all of the provisions of the applicable labor agreements are incorporated into this Agreement as if they were set forth in their entirety.

Subcontractor agrees to comply with all of the terms and conditions of those labor agreements set forth above, as if it were a party to said agreements including signatory status if required. Subcontractor further agrees to pay the wage rates, making the required trust fund payments into the respective labor trust funds, and observe the hours and other terms and conditions set forth in the respective labor agreements listed above. Subcontractor agrees to comply with the terms and provisions of said agreements setting forth the grievance and arbitration provisions. Furthermore, Subcontractor agrees to comply with the terms and provisions of said agreements setting forth the jurisdiction and scope of work therein for resolution of jurisdictional disputes. In the absence of any such procedure, or if such procedure fails to promptly resolve any 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 said jurisdictional dispute by the National Labor Relations Board.

Subcontractor acknowledges that terms and conditions of the labor agreements with the unions set forth above may require that Subcontractor comply with additional labor agreements with unions affiliated with the AFL-CIO, the United Brotherhood of Carpenters and Joiners of America and/or the Laborers' International Union of North America, but not listed herein. When the terms and conditions of the labor agreements referenced herein so require, Subcontractor shall perform its jobsite Work pursuant to all terms and conditions of an appropriate labor agreement with a union affiliated with the AFL-CIO, the United Brotherhood of Carpenters and Joiners of America and/or the Laborers' International Union of North America.

Should there be a labor dispute on Contractor's jobsite, and should a reserved gate or neutral access be established, it shall be the obligation of Subcontractor to continue the proper performance of its Work without interruption or delay.

Subcontractor further promises and agrees that it will bind and require all of its lower-tier subcontractors and suppliers and unions performing work of the type covered by any of the labor agreements specified above to agree to all of the foregoing promises and undertakings, to the same effect as herein provided with respect to Subcontractor.

Subcontractor shall comply with all equal employment opportunity and affirmative action requirements promulgated by any governmental authority, including, without limitation, the requirements of Title 7 of the Civil Rights Act of 1964, as amended, the California Fair Employment and Housing Act as amended, the Americans with Disabilities Act of 1990 as amended and the Family and Medical Leave Act of 1993. Subcontractor shall comply with and agrees to be bound by all applicable Federal, State and local laws and regulations, including, but not limited to, all Fair Labor Standards Act provisions, and California Labor Code provisions covering the Work.

Upon written request: 1) Subcontractor agrees to submit certified payroll reports to Contractor no later than three (3) working days after labor has been paid; 2) Subcontractor agrees to submit project foreman and/or superintendent field reports to Contractor no later than three (3) working days after Contractor's request.

Article 4 Changes in the Work

4.1 Subcontractor shall adhere strictly to the Contract Documents unless a change therefrom is authorized in writing. Subcontractor hereby agrees to make any and all changes, furnish the materials, and perform the Work that Contractor may require, without nullifying this Subcontract, at a reasonable addition to, or reduction from, the Contract Price stated herein. Under no conditions shall Subcontractor make any changes, either as additions or deductions, without the written order of the Contractor. In the event any change directed in writing by Contractor is also a change under the Contract Documents, the reasonable addition or reduction from the Contract Price shall be determined as provided in the Contract Documents, exclusive of any mark-up for profit and overhead to the Contractor provided for therein. Approval of such changes shall be conditional on approval of a corresponding change order by Owner or Architect (as provided in Contract Documents). Subcontractor shall furnish all documentation as may be required by the Contract Documents to substantiate the amount of the addition to or deduction from the price or time. Payment for such changes shall be made only with funds received by the Contractor from the Owner and in accordance with the terms and conditions set forth in Article 2. Contractor shall

not pay any extra charges made by the Subcontractor that have not been agreed upon in writing by Contractor; and, Subcontractor shall submit immediately to the Contractor written copies of its cost or credit proposal for changes in the Work. Disputed work shall be performed as ordered in writing by the Contractor and the proper cost or credit breakdown therefore shall be submitted without delay by Subcontractor to Contractor.

4.2 Subcontractor shall give notice of claim relating to any work for which extra compensation is asserted prior to the performance of such work but in no event later than five (5) working days after being directed to perform such work or such shorter time if required by the Contract Documents or Subcontractor shall be deemed to have abandoned any claim therefore. Subcontractor will make all claims for extra compensation and for extension of time to the Contractor promptly in accordance with this Article and in sufficient time to allow the Contractor a reasonable amount of time but in no event less than two (2) full working days less than such shorter time as is provided in the Contract Documents so as to enable Contractor to meet any and all conditions in the Contract Documents to submit claims to the Owner or Architect.

4.3 If extra work was ordered by the Contractor and Subcontractor performed the same but did not receive a written order therefore, the Subcontractor shall be deemed to have waived any claim for extra compensation therefore, regardless of any written or verbal protests or claims by the Subcontractor. The Subcontractor shall be responsible for any costs incurred by the Contractor for changes of any kind made by the Subcontractor that increase the cost of the Work for either the Contractor or other subcontractors when Subcontractor proceeds with such changes without a written order therefore.

4.4 No change, alteration or modification in or deviations from this Subcontract, the Contract Documents, or the plans or specifications, whether made in the manner herein provided or not, shall release or exonerate, in whole or in part any surety on any bond given in connection with this Subcontract and neither Owner nor Contractor shall be under any obligation to notify the sureties of any such change, alteration, modification or deviation.

4.5 No claims for additional compensation or damages for delays, disruptions or other impacts, 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 Subcontract, or delays by other subcontractors or Owner, shall be recoverable from Contractor, and the extension of time for completion described in subparagraph 3.2 shall be the sole remedy of Subcontractor; provided, however, that if Subcontractor has properly submitted such claim, and if Contractor receives payment for Subcontractor's claim from Owner, Subcontractor shall be entitled to such payment, less the costs identified below.

4.6 In the event Contractor prosecutes a claim against Owner for additional compensation for extra work, delay or any other kind of claim relating to Subcontractor's Work, Subcontractor shall cooperate fully with Contractor in the prosecution thereof, and shall pay costs and expenses incurred in connection therewith, including actual attorneys' fees and experts' fees, to the extent that said claim is submitted by Contractor to Owner. In the event Subcontractor resists or declines to accept any claim, offset, or demand for credit asserted by Owner against Contractor which relates to Subcontractor's Work, Subcontractor shall cooperate fully with Contractor in the defense thereof, and shall pay costs and expenses incurred in connection therewith, including actual attorneys' fees, expert fees and all other incidental costs, to the extent that said defense is made by Contractor at the request of Subcontractor. Contractor shall have the right to offset or deduct from any amount owing to Subcontractor, the cost Contractor has incurred, or reasonably anticipates it may incur, in prosecuting a claim against Owner on behalf of Subcontractor, or in defending a claim asserted by Owner against Contractor which relates to Subcontractor's Work. Neither this paragraph nor paragraph 4.5 shall impose any obligation on Contractor to prosecute a claim against Owner on behalf of Subcontractor or defend against a claim asserted by Owner against Contractor relating to Subcontractor's Scope of Work. Contractor and Subcontractor acknowledge that the cost and expense to prosecute or defend against the type of claims and liabilities referred to above can be significant. Moreover, the vagaries and uncertainty of outcome or result can make proceeding to trial or arbitration in prosecution and/or defense of claims and/or liabilities referred to above pose an unreasonable risk for Contractor. Therefore, Subcontractor expressly acknowledges and agrees that Contractor shall have the right, at its sole discretion, to settle with Owner any claim, demand, or liability arising out of, or in any way connected with this Subcontract and Subcontractor shall be bound by the terms and conditions of any such settlement to the same degree as Contractor. As more fully set forth in Article 6, Subcontractor shall indemnify Contractor for the full amount of any settlement with Owner, including attorneys' fees, expert fees and expenses incurred in connection with the defense or settlement of any such claims.

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

(a) That Subcontractor presented documentation to Contractor concerning a claim for work performed on the Project;

(b) To the best of Contractor's knowledge at the time its Superintendent signed Subcontractor's documentation, the hours and/or materials represented therein appeared to have been worked and/or used on the Project;

(c) By signing Subcontractor's documentation, Contractor does not waive or release any right to dispute or object to the Subcontractor's claim that it is entitled to additional compensation, an extension of time, or that the hours worked and/or materials used were reasonable for the work performed therein; and **Subcontractor acknowledges and agrees that Contractor's Superintendent does not have authority to waive any of the terms, conditions or requirements set forth in Article 4.**

Article 5 Insurance

5.1 Subcontractor shall at all times and in all operations performed under this Subcontract carry the insurance required under this Article and the Hathaway Dinwiddie Construction Company Conditions of Insurance attached hereto as Exhibit "B" and incorporated herein by this reference as though fully set forth herein. Before Subcontractor starts any work at the Project site, Subcontractor shall furnish Contractor with certificates that such insurance is in force and will not be canceled without at least thirty (30) days written notice to Contractor except for non-payment of premium where ten (10) days written notice shall be provided to Contractor. As more specifically set forth in Exhibit "B", Contractor shall be named as an additional insured under all policies provided by Subcontractor hereunder except for Workers' Compensation and Professional Liability policies. All insurance policies shall, by appropriate language, waive subrogation against Contractor or Owner. Subcontractor hereby waives any right or claim to be subrogated on payment of loss or otherwise to any claim against Contractor and/or Owner and further waives any right against Contractor and/or Owner for damages caused by fire or other perils to the extent covered by property insurance maintained by Owner or Contractor pursuant to the Contract Documents, except such right as Subcontractor may have to the proceeds of such insurance held by Owner, or Contractor, as Trustee. The furnishing of insurance by Subcontractor shall not be construed to affect or impair the obligations of Subcontractor under this Subcontract. Limits of liability and additional insurance requirements are set forth in Exhibit "B", attached hereto.

Article 6 Indemnity

6.1 With the exception that this Article shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the laws of the State of California, Subcontractor shall indemnify and save harmless Contractor and Owner including their officers, directors, agents, employees, affiliates, parents and subsidiaries, and any other individuals or entities required to be indemnified by Contractor under the Contract Documents, and each of them (collectively referred to as "Indemnitees" and individually referred to as "Indemnitee"), of and from any and all claims, allegations, demands, causes of action in law or in equity, damages, penalties, costs, expenses, actual attorneys' fees, experts' fees, consultants' fees, judgments, losses or liabilities, of every kind and nature whatsoever, arising out of or in any way connected with or incidental to, the performance of the Work under this Subcontract or any of the obligations contained in this Subcontract (hereinafter collectively referred to as "Claims"). Without limitation, "damages" include personal injury, including, but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to, any employees or agents of Subcontractor, Contractor, Owner, or any other subcontractor, or any person; or other damages of any kind to anyone including, without limitation, economic loss, taxes, penalties, property damage, and loss of use.

6.2 The Subcontractor agrees, at its own cost, expense and risk to defend the Indemnitees against any Claims as defined in this Article that may be brought or instituted by third persons, including, but not limited to, government agencies or employees of Subcontractor. In the event Subcontractor fails to do so, the Contractor, in addition to any other legal right it may have, may defend the same and all costs and expenses incidental to the defense thereof, including, but not limited to, actual attorneys' fees and expert costs or settlement of any such claim or liability, or payment of any judgment, costs, attorneys' fees, expert fees, and expenses incidental thereto, or said amount as Contractor in its discretion deems necessary to defend and resolve such claims or liability, such costs shall be deducted from the amount due Subcontractor hereunder and withheld by Contractor. If Contractor is not withholding sufficient monies to compensate it for the above, then Subcontractor agrees to pay such excess to Contractor within fourteen (14) days from demand therefore. Contractor expressly reserves the right to select the attorney to be retained by Subcontractor to defend against Claims as defined in this Article.

6.3 It is expressly acknowledged and agreed that each of the foregoing indemnities is independent, that each shall be given effect, and that each shall apply despite any acts or omissions, misconduct or negligent conduct, whether active or passive, on the part of Contractor, Owner or other Indemnitee; except that the duty to indemnify or hold harmless a particular Indemnitee shall not be applicable to damages for death or bodily injury to persons, injury to property, or any other loss, damage, or expense arising from the sole negligence or willful misconduct of such particular Indemnitee, its agents, servants, or independent contractors who are directly responsible to such particular Indemnitee, or for defects in design furnished by such persons, excluding Subcontractor herein. It is expressly acknowledged and agreed that Subcontractor and any other responsible party shall be jointly and severally liable to Contractor with respect to Claims described herein above. At its sole discretion, Contractor may determine which indemnitor or indemnitors Contractor will look to for indemnification hereunder.

6.4 In any and all Claims against any Indemnitee or any of its agents or employees by any employee of the Subcontractor, anyone directly or indirectly employed by it or anyone for whose acts it may be liable, the indemnification obligation under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under Workers Compensation acts, disability benefit acts or other employee benefit acts.

6.5 The insurance requirements set forth in Article 5 and the Conditions of Insurance are separate and distinct from other obligations contained in the Subcontract, including, without limitation, the obligations contained in Article 6; and Subcontractor's indemnification obligations under this Subcontract shall not be limited in any way by any limitation on the amount or type of insurance which may be available to Subcontractor.

Article 7 Performance Bond and Labor and Material Payment Bond

7.1 If required by Contractor, Subcontractor shall, concurrently with the execution of this Subcontract, obtain and deliver to Contractor a Performance Bond and a Labor and Material Payment Bond, each in the amount of one hundred percent (100%) of the Contract Price, including, without limitation, increases thereto as a result of Change Orders. Said bonds shall be executed by a corporate surety acceptable to Contractor and shall be in a form acceptable to Contractor. A copy of the form currently acceptable to Contractor is available for review in the offices of Contractor. Subcontractor shall pay the premium on said bonds unless otherwise provided herein or in the Contract Documents.

Article 8 Design Build and Design Assist Obligations

8.1 To the extent Subcontractor's scope of Work includes any design/build work or any design/assist work, the following provisions shall be a part of the Subcontract:

Subcontractor acknowledges that it is performing Work described in the Subcontract on a design/build basis or design/assist basis. Subcontractor further warrants that its design shall meet each of the following criteria.

- (a) All technical and performance criteria described in the Contract Documents;
- (b) The design is consistent with, and has been coordinated with Contract Documents including, without limitation, the drawings, the plans, and the specifications as well as the work of all other trades affected by the work and/or performing work in the contiguous area. Subcontractor specifically agrees to coordinate its design with the Architect/Engineer and its subconsultants, and with the work, including the shop drawings, of all subcontractors working in contiguous areas. Subcontractor acknowledges that the design which is being contributed to by other entities is still evolving and being completed, and that Subcontractor's design is interdependent and needs to evolve and be compatible with the final designs of such other entities;
- (c) Subcontractor's design and construction work will meet the standard of care for the design of such system which is customary in the industry in the location of the project for subcontractors holding themselves out as being experts in design/build or design/assist construction for their trade(s) for the specific type of improvement(s) involved in Subcontractor's scope of Work. Nothing in this subparagraph is intended to limit Subcontractor's obligations under other provisions of the Subcontract including subparagraphs a and b, above;
- (d) Subcontractor assumes all design/build or design/assist obligations assumed by Contractor under the Contract Documents with respect to the Subcontractor's Work; and,
- (e) Subcontractor agrees that working drawings, plans, calculations and specifications will be in full compliance with all laws, codes, ordinances, rules or regulations applicable to the Project and such design services shall be performed by licensed practitioners who shall affix their seals on the appropriate documents prepared by them.

Article 9 Warranty

9.1 Subcontractor warrants to Owner, Contractor, their successors and assigns, and all other parties to whom the warranty runs under the Contract Documents that all materials and equipment furnished shall be new unless otherwise specified and that all Work under this Subcontract shall be of good quality, free from faults and defects and in conformance with industry standards, manufacturer's recommendations and the Contract Documents. All Work not conforming to any of the above requirements, including substitutions not properly approved and authorized, may be considered defective. Subcontractor agrees to promptly make good without cost to Owner or Contractor any and all defects due to faulty workmanship and/or materials which may appear within the guarantee or warranty period so established in the Contract Documents, and if no such period be stipulated in the Contract Documents, then such guarantee or warranty shall be for a period of one year from the date of completion and acceptance of the Project by Owner. The warranty provided in this Article shall be in addition to, and not in limitation of, any other warranty or remedy required by law or by the Contract Documents. Nothing herein shall shorten or limit any applicable periods of limitations, including, without limitation, those set forth in California Code of Civil Procedure, Part 2, Title 2, Chapter 3.

Article 10 Termination

10.1 Failure of Performance.

10.1.1 Notice to Cure. If Subcontractor at any time refuses or neglects to (1) supply enough properly skilled workers and proper materials, or (2) fails to properly and diligently prosecute the Work covered by this Subcontract, or (3) fails to make prompt payment to its workers, union trust funds, subcontractors or suppliers, or (4) becomes delinquent with respect to contributions or payments required to be made to any health and welfare, pension, vacation, apprenticeship, or other employee benefit program or trust, or (5) is otherwise guilty of a material breach of a provision of this Subcontract, and fails within forty-eight (48) hours after receipt of written notice, to commence and continue satisfactory correction of such default with diligence and promptness, or if Subcontractor fails to comply with a safety notice relating to any of the obligations or requirements under paragraphs 3.8 or 3.9 above, then Contractor, without prejudice to any rights or remedies, shall have the right to any or all of the following remedies:

(a) Supply such number of workers and quantity of materials, equipment, and other facilities as Contractor deems necessary for the completion of Subcontractor's Work, or any part thereof chosen by Contractor, and charge the cost thereof to Subcontractor, who shall be liable for the payment of same, including reasonable overhead, profit, and actual attorneys' fees and experts' fees incurred as a result of Subcontractor's breach;

(b) Contract with one or more additional contractors to perform such part of Subcontractor's Work as Contractor shall determine will provide the most expeditious completion of the total work and charge the cost thereof to Subcontractor who shall be liable for the payment of the same, including reasonable overhead, profit, and actual attorneys' fees and experts' fees incurred as a result of Subcontractor's breach; and

(c) Withhold payment of any monies due Subcontractor pending corrective action to the extent required by and to the satisfaction of Contractor.

10.1.2 Termination for Default. If Subcontractor fails to commence and satisfactorily continue correction of a default within forty-eight (48) hours after receipt by Subcontractor of the notice issued under subparagraph 10.1.1, then Contractor may terminate the Subcontractor's right to perform under this Subcontract and use any materials, implements, equipment, appliance or tools furnished by or belonging to Subcontractor to complete Subcontractor's Work without any further compensation to Subcontractor for such use. Contractor also may furnish those materials and equipment, and/or employ such workers or subcontractors as Contractor deems necessary to maintain the orderly and timely progress of the Work.

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

In the event Contractor terminates Subcontractor pursuant to subparagraph 10.1.2, and it is subsequently determined in a civil action or arbitration that it was a wrongful termination or termination for default was improper, Contractor's liability to Subcontractor shall be no greater than it would be if Contractor would have terminated Subcontractor for convenience pursuant to subparagraph 10.1.4. Moreover, in this event, the damages, if any, Subcontractor shall be entitled to shall be limited to the compensation, if any, Subcontractor would be entitled to in the event of a termination for convenience in accordance with subparagraph 10.1.4.

10.1.3 Termination for Convenience By Owner Under the Contract Documents. In the event the Owner elects to terminate Contractor for convenience under the Contract Documents, compensation to Subcontractor shall be determined as provided in the Contract Documents exclusive of any mark-up for profit and overhead to the Contractor provided for therein.

10.1.4 Termination for Convenience By Contractor. Contractor may, at any time and for any reason, terminate Subcontractor's Work at Contractor's convenience. Cancellation shall be by service of written notice to Subcontractor's place of business.

Upon such termination, Subcontractor shall be entitled to payment in accordance with Article 2 only as follows: (1) the actual cost of the Work completed in conformity with this Subcontract; plus (2) such other costs actually incurred by Subcontractor as are permitted by the Prime Contract and approved by Owner; plus (3) a mark-up of up to fifteen percent (15%) of the cost of the Work referred to in subpart (1) above for overhead and profit; provided, however, that in no event will the percentage of Subcontractor's mark-up be greater than Subcontractor would have received if the contract had not been terminated. In no event shall payment due hereunder exceed the amount due for the approved units of work or percentage of completion. As used in this Paragraph, "cost" shall be defined as those reimbursable costs under the 1997 edition of AIA Document A111. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Subcontractor prior to the date of the termination of this Subcontract. Subcontractor shall not be entitled to any claim or claim of lien against Contractor or Owner for any additional compensation or damages including, but not limited to, lost profits in the event of such termination and payment.

10.1.5 Grounds for Withholding Payment. Contractor may withhold or on account of subsequently discovered evidence, nullify the whole or part of any payment to the extent necessary to protect Contractor from loss, including costs and attorneys' fees, on account of (1) defective work not remedied; (2) claims filed or reasonable evidence indicating probable filing of claim; (3) failure of Subcontractor to make payments properly to its subcontractors or for material, labor or fringe benefits; (4) a reasonable doubt that this Subcontract can be completed for the balance then unpaid; (5) damage to another subcontractor; (6) penalties assessed against Contractor or Subcontractor for failure of Subcontractor to comply with State, Federal, or local laws and regulations; (7) failure of Subcontractor to satisfy or conform to the Schedule of Work; or (8) any other ground for withholding payment allowed by State or Federal law, or as otherwise provided in this Subcontract. It is recognized and acknowledged that Contractor may engage (or may have engaged) Subcontractor with respect to various other construction projects by means of separate construction agreement(s). Accordingly, it is hereby agreed that any breach or default by Subcontractor under this Subcontract, or any other agreement(s) between Contractor and Subcontractor shall also be deemed a breach and default under any and all agreements between the parties. It is further agreed that to the extent such default or breach entitles Contractor to exercise any particular right or remedy with respect to one agreement, Contractor shall also be entitled to exercise such right or remedy with respect to any other agreements and Contractor shall be entitled to offset any such breach on one agreement against any

sums due or owing Subcontractor upon this Subcontract or any other agreement. Subcontractor's rights hereunder are subject to the right of Contractor to offset any and all claims Contractor has against Subcontractor, whether or not arising from this Subcontract. When the above matters are rectified, such amounts as then due and owing shall be paid or credited to Subcontractor.

10.2 Bankruptcy.

10.2.1 Termination Absent Cure. Upon the appointment of a receiver for Subcontractor or upon Subcontractor making an assignment for the benefit of creditors, or if Subcontractor commits any other act of insolvency, Contractor may terminate this Subcontract upon giving forty-eight (48) hours written notice, by certified mail, to Subcontractor and its surety, if any. If an order for relief from the automatic stay is entered under the Bankruptcy Code with respect to Subcontractor, Contractor may terminate this Subcontract by giving forty-eight (48) hours written notice, by certified mail, to Subcontractor, its trustee, and its surety, if any, unless Subcontractor, the surety, or the trustee:

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

10.2.2 Assumption or Rejection of Contract in Bankruptcy; Waiver of Notice Period. The parties agree that time is of the essence in performance of this Subcontract. In the event Subcontractor files a Chapter 7, 11 or 13 Bankruptcy, the parties agree that any delay attendant to the assumption or rejection of this Subcontract by a trustee or a debtor-in-possession will be prejudicial to Contractor. Consequently, Subcontractor hereby stipulates, in order to minimize delay to the Project and to avoid potential damages or other prejudice to Contractor, to a notice period of ten (10) calendar days for Contractor's motion to require Subcontractor to elect to assume or reject this Subcontract.

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

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

Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Contract Price and shall pay Contractor within thirty (30) days of written demand therefore.

Article 11 Claims Resolution Procedure

11.1 Disputes With Owner. Any dispute resolution procedure in the Contract Documents shall be deemed incorporated in this Subcontract, and shall apply to any disputes arising hereunder, except disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the Contract Documents, and those which have been waived by the making or acceptance of final payment. 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 any timely-filed claims by Subcontractor to Owner under such procedure and, subject to the other provisions of this Subcontract, to pay to Subcontractor the proportionate part of any sums paid by the Owner to which Subcontractor is entitled. Contractor may, at its sole discretion, either direct Subcontractor to prepare and present the Contractor's case to the extent the proceedings are related to this Subcontract, or, use Contractor's own counsel to prepare and present matters relating to this Subcontract, in which event Subcontractor shall promptly reimburse Contractor for any and all attorney fees, expert fees and costs incurred in connection with any proceedings which are related to this Subcontract.

11.2 Settlement Negotiations. Subject to the Contract Documents dispute resolution procedures under Article 11.1 and as for disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the Contract Documents, promptly upon notification by the Subcontractor of a dispute, the Contractor and Subcontractor shall meet to informally resolve such dispute. In the event that no resolution is achieved, the parties, prior to the initiation of any action or proceeding under this Article, shall make a good faith effort to resolve the dispute by negotiation between representatives with decision-making power, who, to the extent possible, shall not have had substantive involvement in the matters of the dispute, unless the parties otherwise agree. To facilitate the negotiation, the parties agree either to fashion a procedure themselves or seek the assistance of a person or organization experienced in alternative dispute resolution procedures, such as mediation or other similar procedures.

11.3 Work Continuation and Payment. Unless otherwise agreed in writing, Subcontractor shall carry on the work and maintain the Schedule of Work pending resolution of the dispute pursuant to Article 11, and if so, Contractor shall continue to make payments in accordance with this Subcontract.

Article 12
Miscellaneous Provisions

12.1 In addition to Exhibits "A" described in Article 1.1 (if applicable), "C" described in Article 2.4 and "B" described in Article 5.1, the following documents are attached hereto and incorporated herein by this reference:

Exhibit "C" Drawings & Specifications

12.2 This Subcontract shall be governed by the laws in effect in the State of California.

12.3 If any term, provision, covenant, or condition of this Subcontract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

12.4 This Subcontract contains the entire agreement between the parties, and all prior or contemporaneous written or oral communications, negotiations, acts, work performed, or payments made prior to the execution of this Subcontract shall be deemed merged in, integrated and superseded by this Subcontract.

12.5 The Contractor has the right, at its sole discretion, to require Subcontractor to remove and replace any superintendent, foreman or employee of Subcontractor or any of its subcontractors from the Project. In the event Contractor exercises this right, Subcontractor shall remove and replace the superintendent, foreman and/or employee designated by Contractor within twenty-four (24) hours, subject to Contractor's approval of the replacement.

12.6 The parties hereto agree that this Subcontract will be interpreted neutrally, and that it should not be construed for or against any party deemed to be the drafter thereof.

12.7 Contractors are required by law to be licensed and regulated by the Contractors State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors State License Board, P.O. Box 26000, Sacramento, California 95826.

12.8 Subcontractor's Certificate of Insurance: Subcontractor's Certificate of Insurance must include Hathaway Dinwiddie's Subcontract Number 518179XX. Your subcontract will be executed but no work shall be done and no payments will be made until a proper certificate of insurance is in place.

12.9 Contract Price Determination:

Base Bid	\$XXX,XXX
Additional scope item	\$x,xxx
Additional scope item	\$x,xxx
Total	\$XXX,XXX

12.10 The following is included in this subcontract, but not limited to:

- 1. {SPECIFIC SCOPE INCLUSIONS}

HATHAWAY DINWIDDIE CONSTRUCTION COMPANY

[SUBCONTRACTOR NAME]

By: _____

Name: _____
(Printed Name)

Title: Senior Vice President

License No.: 729664

Date: _____

By: _____

Name: _____
(Printed Name)

Title: _____

License No.: _____

Date: _____
(Rev. 01/15/08)

12.11 The following is specifically excluded from this subcontract:

1. **[EXCLUSIONS]**

12.12 Labor rates (inclusive of markups of dues, taxes, benefits, insurance, overhead and profit):

<u>Category</u>	<u>Regular Time</u>	<u>Time & One Half</u>	<u>Double Time</u>
Apprentice	\$ XXX.00	\$ XXX.00	\$ XXX.00
Journeyman	\$ XXX.00	\$ XXX.00	\$ XXX.00
Foreman	\$ XXX.00	\$ XXX.00	\$ XXX.00
General Foreman	\$ XXX.00	\$ XXX.00	\$ XXX.00
Markups:			
Material & Equipment	Actual costs plus fifteen percent (15%) for overhead and profit		
Second Tier Subcontractors	Actual costs plus ten percent (10%) for overhead and profit		