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THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS USE OR MODIFICATION. SOME CONSTRUCTION PRIME CONTRACTS MAY REQUIRE THE USE OF SPECIALIZED PROVISIONS NOT INCLUDED IN THIS FORM

SECTION 1. ENTIRE CONTRACT

1.1 The phrase "Contract Documents" is defined to mean this Agreement and includes those documents listed on the Subcontract Work Authorization which is attached hereto and made a part hereof.

1.2 Subcontractor certifies that Subcontractor 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 Subcontractor enters into this Agreement based upon Subcontractor's investigation of all such matters and is not relying on any opinions or representations of Contractor. The Contract Documents represent the entire agreement. Subcontractor and his/her subcontractors will be and are bound by the Contract Documents insofar as they relate in any way, directly or indirectly, to the work covered by this Agreement. Subcontractor is to be bound by any badging or infection control policies required by the job site or Owner.

1.3 Subcontractor agrees to be bound to Contractor in the same manner and to the same extent as Contractor is bound to Owner under the Prime Contract, to the extent of the work provided for in this Agreement, and that where, in the Contract Documents reference is made to Contractor, and the work or specifications therein pertains to Subcontractor's trade, craft, or type of work, then such work or specification shall be interpreted to apply to Subcontractor instead of Contractor. Subcontractor and all field personnel must comply with Owner's and Contractor's policies and procedures and directions.

SECTION 2. SCOPE

2.1 Subcontractor agrees to furnish all labor, materials, equipment and all other necessary items required or reasonably inferable from the Contract Documents to properly and timely perform and complete the Subcontractor's Work in accordance with all applicable state and federal codes and authorities, including all applicable fees.

2.2 Subcontractor shall field measure and confirm all dimensions prior to starting work.

2.3 Subcontractor shall coordinate Subcontractor's work with BSD Superintendent and all other parties on the work site.

2.4 Subcontractor shall coordinate with BSD superintendent prior to installation to confirm that substrates are within tolerances required to achieve the finished surface. Subcontractor agrees that once installation commences Subcontractor has accepted the substrate conditions.

2.5 Subcontractor's job site foreman shall complete Daily Subcontractor Reports and submit them to Contractor.

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

2.7 Any building systems shutdowns required for the execution of this Agreement must be scheduled in accordance with the following:

- Procedures outlining the work to occur during the shutdown shall be submitted.
- All shut-downs are to be coordinated with BSD personnel at least two weeks in advance of the event to allow proper notification of all occupants.

SECTION 3. CONTRACT PRICE

3.1 Contractor agrees to pay Subcontractor for the strict performance of his work, the sum set forth in the Work Authorization, or as set out in Section 4 below, subject to additions and deductions for changes in the work as may be directed in writing by use of Subcontract Change Order, and to make payment in accordance with the Payment Schedule as outlined in Section 4.

SECTION 4. PAYMENT SCHEDULE

4.1 Subject to the provisions of the Contract Documents, Contractor agrees to pay to Subcontractor in monthly progress payments of **Ninety** percent (**90%**) of labor and materials which have been placed in position, with funds received by Contractor from Owner for work performed by Subcontractor as reflected in Contractor's applications for payment. Such monthly progress payments shall be made ten (10) days after receipt of payment from the Owner by Contractor. Final payment to Subcontractor shall be made ten (10) days after the entire work required by the Prime Contract has been fully completed in conformity with the Contract Documents and has been delivered to and accepted by Owner, Architect, and Contractor, with funds received by Contractor from Owner in final payment for work under the Prime Contract. Subcontractor agrees to furnish, if and when required by Contractor, payroll affidavits, receipts, vouchers, releases of claims for material, and from his/her subcontractors and vendors performing work or furnishing materials under this Agreement, all in form satisfactory to Contractor, and it is agreed that no payment hereunder shall be made, except at Contractor's option, until and unless such documents have been furnished. Contractor, at his option, may make any payment due hereunder by check made payable jointly to Subcontractor and any of his subcontractors, suppliers and materialmen who have performed work or furnished materials under this Agreement. Any payment

made hereunder prior to completion and acceptance of the work, as referred to above, shall not be construed as evidence of acceptance or acknowledgment of completion of any part of any Subcontractor's work.

4.2 Provided Subcontractor's application for payment is received by the Contractor not later than the 20th of the month, the Contractor shall include the Subcontractor's Work covered by the application in the next application for payment which the Contractor submits to the Owner and/or Architect. If the Subcontractor's application for payment is received after such date, the Subcontractor's Work covered by it shall be included by the Contractor in the following month's application for payment that the Contractor submits to the Owner and/or Architect.

4.3 Before Subcontractor starts Work on-site and receives payment, the following items must be received by the Contractor; Signed Subcontract Agreement, complete and correct insurance certificates, performance and payment bonds, if required, detailed Schedule of Values breakdown acceptable to the Contractor, Federal Tax Identification number, Contractor's State license number and any business license or registration required by the governing municipality.

4.4 Billings must be submitted using BSD's subcontractor pay application in Attachment B and accompanied by properly executed releases, including current Conditional Lien Release, Unconditional Lien Release for prior month's payment and release from any suppliers of tier contractors who have issued California Preliminary Lien Notice. BSD must submit these forms and if these documents are not provided, the subcontractor payment application will be withdrawn until proper documents are provided.

4.5 Subcontractor agrees to waive all claims, disputes and matters in question arising out of, or relating to this Agreement or the breach thereof, upon final payment of Subcontractor's Contract Price.

SECTION 5. TIME

5.1 Time is of the essence for performance under this Agreement. Subcontractor shall provide Contractor with scheduling information and a proposed schedule for performance of Subcontractor's work in a form acceptable to Contractor. Subcontractor shall conform to Contractor's progress schedule and all revisions or changes made thereto. Subcontractor shall coordinate the work covered by this Agreement with that of all other contractors, subcontractors, and of the Contractor, in a manner that will facilitate the efficient completion of the entire work. In the event Subcontractor fails to maintain Subcontractor's part of the Contractor's schedule, Subcontractor shall, without additional compensation, accelerate the work as Contractor may direct until Subcontractor's work is in accordance with such schedule. Contractor shall have complete control of the premises on which the work is to be performed and shall have the right to decide the time and order in which various portions of the work shall be installed and the relative priority of the work of Subcontractor and other subcontractors, and, in general, all other matters pertaining to the timely and orderly conduct of the work of Subcontractor on the premises. Should Subcontractor be delayed in the prosecution or completion of the work by the act, neglect or default of Owner, Architect or Contractor, or should Subcontractor be delayed waiting for materials, if required by this Contract to be furnished by Owner or Contractor, or by damage caused by fire or other casualty for which Subcontractor is not responsible, or by the combined action of the workmen, in no way caused by or resulting from fault or collusion on the part of Subcontractor, or in the event of a lock-out by Contractor, then the time herein fixed for the completion of the work shall be extended the number of days that Subcontractor has thus been delayed, but no allowance or extension shall be made unless a claim therefore is presented in writing to Contractor within 48 hours of the commencement of such delay, and under no circumstances shall the time of completion be extended to a date which will prevent Contractor from completing the entire project within the time allowed Contractor by Owner for such completion.

5.2 No claims for additional compensation or damages for delays, whether caused in whole or in part by any conduct on the part of Contractor, including, but not limited to, conduct amounting to a breach of this Agreement, or delays by other subcontractors or Owner, shall be recoverable from Contractor, and the above-mentioned extension of time for completion shall be the sole remedy of Subcontractor; provided, however, that in the event Contractor obtains additional compensation from Owner on account of such delays, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor from Owner as is equitable under all of the circumstances. In the event that Contractor prosecutes a claim against Owner for additional compensation for any delay, Subcontractor shall cooperate fully with Contractor in the prosecution thereof and shall pay costs and expenses incurred in connection therewith, including actual attorneys' fees, to the extent that said claim is made by Contractor at the request of Subcontractor.

SECTION 6. CHANGES IN THE WORK

6.1 Subcontractor shall make any and all changes in the work described in the Contract Documents and this Agreement as directed by Subcontract Change Order. Such change or written direction shall not invalidate this Agreement.

6.2 If necessary, the contract price stated in the Work Authorization and the time for Subcontractor's performance shall be adjusted by appropriate additions or deductions mutually agreed upon before Subcontractor performs the changed work. Subcontractor shall supply Contractor with all documentation necessary to substantiate the amount of the addition to or deduction from the price or time. If Contractor and Subcontractor cannot agree on the amount of the addition or deletion, Subcontractor shall nonetheless timely perform the work as changed by Contractor's written direction. Once Subcontractor receives Contractor's written direction, Subcontractor is solely responsible for timely performance of the work as changed by the written direction.

6.3 Payment for changed work shall be made in accordance with Section 4.

6.4 Subcontractor shall not make any changes in the work described in the Subcontract Work Authorization or in any way cause or allow that work to deviate from the Contract Documents without Subcontract Change Order.

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

6.6 BSD Builders, Inc. may direct Subcontractor to perform extra work on a Time & Material (T&M) basis. All T&M work must be approved in writing by BSD Builders, Inc. prior to commencement of work and must be tracked by detailed, daily, signed T&M tickets. The only authorized persons to sign/approve Subcontractor T&M Daily Timesheets, Reports or Extras are the BSD Builders, Inc. Project Superintendent or Project Manager. The Subcontractor shall have fourteen (14) days from the completion of T&M work to provide full and complete back up for all associated costs. BSD Builders, Inc. shall have no obligation to pay for or approve costs of T&M work that does not comply with this fourteen-day (14) cycle.

SECTION 7. DAMAGES CAUSED BY DELAYS

7.1 If Subcontractor should default in performance of the work described in the Work Authorization or should otherwise commit any act which causes delay to the Prime Contract work, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages and liquidated damages, sustained by Contractor, or for which Contractor may be liable to Owner or any other party because of Subcontractor's default.

SECTION 8. BONDING OF SUBCONTRACTOR

8.1 Concurrently with the execution of this Agreement, Subcontractor shall, if required by Contractor, execute a labor and material bond and performance bond, in an amount equal to one hundred percent (100%) of the Contract Price. Said bonds shall be executed by a corporate surety acceptable to Contractor and shall be in a form satisfactory to Contractor. Contractor shall pay the premium on said bonds unless otherwise provided herein or in the Contract Documents.

SECTION 9. LIENS

9.1 Subcontractor agrees within ten (10) days after written demand to cause the effect of any lawsuit or lien to be removed from the premises, and in the event Subcontractor shall fail to do so, Contractor is authorized to use whatever means in its discretion it may deem appropriate to cause said lien or suit to be removed or dismissed and the cost thereof, together with actual attorneys' fees, shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may litigate any such lien or suit provided he causes the effect thereof to be removed, promptly in advance, from the premises, and shall further do such things as may be necessary to cause Owner not to withhold any monies due to Contractor from Owner by reason of such liens or suits.

9.2 It is understood and agreed that the full and faithful performance of this Agreement on the part of Subcontractor (including the payment of any obligations due from Subcontractor to Contractor, and any amounts due to labor or materialmen furnishing labor or material for said work) is a condition precedent to Subcontractor's right to receive payment for the work performed, and any monies paid by Contractor to Subcontractor under the terms of this Agreement shall be impressed with a trust in favor of labor and materialmen furnishing labor and material to Subcontractor on the work herein subcontracted.

SECTION 10. PROVISIONS FOR INSPECTION

10.1 Subcontractor shall at all times furnish to Contractor and his representatives safe and ample facilities for inspecting materials at the site of construction, shops, factories or any place of business of Subcontractor and his subcontractors and materialmen where materials under this Agreement may be in course of preparation, process, manufacture or treatment. Subcontractor shall furnish to Contractor as often as required by Contractor, full reports of the progress of the work at any place where materials under this Agreement may be in the course of preparation or manufacture. Such reports shall show the progress of such preparation and manufacture in such details as may be required by Contractor, including, but not limited to, any plans, drawings or diagrams in the course of preparation.

SECTION 11. MATERIALS AND WORK FURNISHED BY OTHERS

11.1 In the event the scope of work includes installation of materials or equipment furnished by others or work to be performed in areas to be constructed or prepared by others, it shall be the responsibility of Subcontractor to examine and accept, at the time of delivery or first access, the items so provided and thereupon handle (including offloading, hoisting and rigging), store and install the items with such skill and care as to ensure a satisfactory completion of the work. Use of such items or commencement of work by Subcontractor in such areas shall be deemed to constitute acceptance thereof by Subcontractor. Subcontractor shall follow BSD's instructions regarding materials stocking times and locations and equipment delivery times and locations.

SECTION 12. PROTECTION OF WORK

12.1 Subcontractor shall effectually secure and protect the work done hereunder and assume full responsibility for the condition thereof until final acceptance by Architect, Owner and Contractor. Subcontractor further agrees to provide such protection as is necessary to protect the work and the workmen of Contractor, Owner and other subcontractors from his operations.

12.2 Subcontractor shall be liable for any loss or damage to any work in place or to any equipment and materials on the job site caused by him or his agents, employees or guests.

SECTION 13. LABOR RELATIONS

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

13.2 Subcontractor's Project Managers, General Superintendents, Superintendents and Foreman are subject to BSD's approval and will not be removed without prior written approval of BSD.

13.3 Subcontractor shall comply with and agrees to be bound by all applicable Federal, State and local laws and regulations covering the work.

SECTION 14. RECOURSE BY CONTRACTOR

14.1 Failure of Performance

14.1.1 Notice to Cure. If Subcontractor at any time refuses or neglects to supply enough properly skilled workers and proper materials, or fails to properly and diligently prosecute the work covered by this Agreement, or fails to make prompt payment to his workers, sub-subcontractors or suppliers, or becomes delinquent with respect to contributions or payments required to be made to any health and welfare, pension, vacation, apprenticeship or other employee benefit program or trust, or is otherwise guilty of a material breach of a provision of this Agreement, and fails within forty-eight (48) hours after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then Contractor, without prejudice to any rights or remedies, shall have the right to any or all of the following remedies:

(a) supply such number of workers and quantity of materials, equipment and other facilities as Contractor deems necessary for the completion of Subcontractor's work, or any part thereof which Subcontractor has failed to complete or perform, and charge the cost thereof to Subcontractor, who shall be liable for the payment of same including reasonable overhead, profit, and actual attorneys' fees incurred as a result of Subcontractor's failure of performance;

(b) contract with one or more additional contractors to perform such part of Subcontractor's work as Contractor shall determine will provide the most expeditious completion of the total work and charge the cost thereof to Subcontractor; and

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

(d) In the event of an emergency affecting the safety of persons or property, Contractor may proceed as above without notice.

14.1.2 Termination for Default. If Subcontractor fails to commence and satisfactorily continue correction of a default within forty-eight (48) hours after receipt by Subcontractor of the notice issued under Section 14.1.1, then Contractor may terminate Subcontractor's right to perform under this Agreement and use any materials, implements, equipment, appliances or tools furnished by or belonging to Subcontractor to complete Subcontractor's work without any further compensation to Subcontractor for such use. Contractor also may furnish those materials and equipment, and/or employ such workers or subcontractors as Contractor deems necessary to maintain the orderly progress of the work.

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

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

14.1.3.1 Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Contractor, or at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived therefrom. Subcontractor shall thereafter do only such work as may be necessary to preserve and protect the work already in progress and to protect material and equipment on the job site or in transit thereto.

14.1.3.2 Upon such termination, Subcontractor shall be entitled to payment in accordance with Section 4 only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Subcontractor as are permitted by the Prime Contract and approved by Owner; plus (3) fifteen percent (15%) of the cost of the work referred to in subparagraph 14.1.3.1 above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Subcontractor prior to the date of the termination of this Agreement. Subcontractor shall not be entitled to any claim or claim of lien against Contractor or Owner for any additional compensation or damages in the event of such termination and equipment on the job site or in transit thereto.

14.1.4 Grounds for Withholding Payment. Contractor may withhold, or on account of subsequently discovered evidence, nullify the whole or part of any payment to the extent necessary to protect Contractor from loss, including costs and attorneys' fees, on account of (1) defective work not remedied; (2) claims filed or reasonable evidence indicating probable filing of claim; (3) failure of Subcontractor to make payments properly to his subcontractors or for material, labor or fringe benefits; (4) a reasonable doubt that this Agreement can be completed for the balance then unpaid; (5) damage to another subcontractor; (6) penalties assessed against Contractor or Subcontractor for failure of Subcontractor to comply with State, Federal or local laws and regulations; or (7) any other ground for withholding payment allowed by State or Federal law, or as otherwise provided in this Agreement. When the above matters are rectified, such amounts as then due and owing shall be paid or credited to Subcontractor.

14.2 Bankruptcy. Subcontractor agrees that the filing of a petition under the U.S. Bankruptcy Code in relation to Subcontractor, or if it dissolves, dies or otherwise ceases to exist, or if it becomes insolvent or unable to pay its debts as they become due, such events shall constitute a failure of performance under this Agreement. Upon such occurrence BSD may terminate Subcontractor's continuing performance. Such termination of performance shall be deemed to be for cause, and Section 14.1.2 shall apply thereto.

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

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

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

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

14.6 Subcontractor shall be liable for the payment of any amount by which such expense may exceed the unpaid balance of the Contract Price.

SECTION 15. INDEMNIFICATION

15.1 Subcontractor's Performance. To the extent permitted by applicable law, Subcontractor shall indemnify and save harmless Owner and Contractor, including their officers, agents, employees, affiliates, parents and subsidiaries, and each of them, of and from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liability, in law or in equity, of every kind and nature whatsoever ("Claims") arising out of or in connection with Subcontractor's operations to be performed under this Agreement for, but not limited to:

- (a) Personal injury, including, but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to, any employees or agents of Subcontractor, Owner, Contractor, or any other subcontractor and/or damage to property of anyone (including loss of use thereof), caused or alleged to be caused in whole or in part by any negligent act or omission of Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable regardless of whether such personal injury or damage is caused by a party indemnified hereunder.
- (b) Penalties imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance or statute, caused by the action or inaction of Subcontractor.
- (c) Infringement of any patent rights which may be brought against the Contractor or Owner arising out of Subcontractor's work.
- (d) Claims and liens (see Section 9) for labor performed or materials used or furnished to be used on the job, including all incidental or consequential damages resulting to Contractor or Owner from such claims or liens.

15.2 The indemnification provisions of (a) through (d) above shall extend to Claims occurring after this Agreement is terminated as well as while it is in force. Such indemnity provisions apply regardless of any active and/or passive negligent act or omission of Owner or Contractor or their agents or employees. Subcontractor, however, shall not be obligated under this Agreement to indemnify Owner or Contractor for Claims arising from the sole negligence or willful misconduct of Owner or Contractor or their agents, employees or independent contractors who are directly responsible to Owner or Contractor, or for defects in design furnished by such persons.

15.3 Subcontractor shall:

- (a) At Subcontractor's own cost, expense and risk, defend all Claims as defined in Section 15.1 that may be brought or instituted by third persons, including, but not limited to, governmental agencies or employees of Subcontractor, against Contractor or Owner or their agents or employees or any of them;
- (b) Pay and satisfy any judgment or decree that may be rendered against Contractor or Owner or their agents or employees, or any of them, arising out of any such Claim; and/or
- (c) Reimburse Contractor or Owner or their agents or employees for any and all legal expense incurred by any of them in connection herewith or in enforcing the indemnity granted in this Section 15.

15.4 Risk of Loss. All work covered by this Agreement done at the site or in preparing or delivering materials or equipment, or any or all of them, to the site shall be at the risk of Subcontractor exclusively until the completed work is accepted by Contractor.

15.5 No Limitation of Liability. The indemnities set forth in this Section 15 shall not be limited by the insurance requirements set forth in Section 16.

SECTION 16. INSURANCE

16.1 See Attachment A for project specific insurance requirements.

16.2 Property Insurance

16.2.1 Contractor and Subcontractor waive all rights against each other and against all other subcontractors and Owner for loss or damage to the extent reimbursed by Builder's Risk or any other property or equipment insurance applicable to the work, except such rights as they may have to the proceeds of such insurance. If the policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

16.2.2 Upon written request of Subcontractor, Contractor shall provide Subcontractor with a copy of the Builder's Risk policy of insurance or any other property or equipment insurance in force for the project and procured by Contractor. Subcontractor shall satisfy himself as to the existence and extent of such insurance prior to commencement of Subcontractor's work.

16.2.3 If Builder's Risk insurance purchased by Owner or Contractor provides coverage for Subcontractor for loss or damage to Subcontractor's work, Subcontractor shall be responsible for the insurance policy deductible amount applicable to damage to Subcontractor's work and/or damage to other work caused by Subcontractor.

16.2.4 If not covered under the Builder's Risk policy of insurance or any other property or equipment insurance required by the Contract Documents, Subcontractor shall procure and maintain at his own expense property and equipment insurance for portions of Subcontractor's work stored off the site or in transit.

16.2.5 If Owner or Contractor has not purchased Builder's Risk or equivalent insurance including the full insurable value of Subcontractor's work, then Subcontractor may procure such insurance at his own expense as will protect the interests of Subcontractor, and his subcontractors in the work. Such insurance shall also apply to any of Owner's or Contractor's property in the care, custody or control of Subcontractor.

16.3 Failure of Contractor to enforce in a timely manner any of the provisions of this Section 16 shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of this Agreement. Any exceptions to the provisions of this Section 16 must be delineated in the Contract Documents.

SECTION 17. CLAIMS RESOLUTION PROCEDURE

17.1 Claims Resolution by Agreement. The Subcontractor agrees to be conclusively bound by the Contractor's decisions on all claims, disputes and matters in question arising out of, or relating to this Agreement or the breach thereof, unless the Subcontractor disputes such decision in writing within seven (7) calendar days following receipt of Contractor's decision. In the event of any dispute, controversy or claim ("Claim") between the Contractor and Subcontractor arising out of or related to the Subcontract Documents or the breach thereof, each party shall promptly notify the other upon discovery of any Claim, and shall in good faith meet to resolve the Claim by mutual agreement. The parties will endeavor to meet within five (5) working days following receipt of written notice from the party requesting such a Claims meeting. Such notice shall provide full notice of all Claims to be discussed at the meeting, together with substantiating documentation. The Subcontractor agrees to continue performing all of Subcontractor's Work notwithstanding the existence of any Claims of the pending resolution thereof.

17.2 Agreement to Arbitrate. Any claim not resolved under item 17.1 shall, at the option of the Contractor, be determined by Arbitration. All claims, disputes and matters in question arising out of, or relating to this Agreement or the breach thereof, except for claims which have been waived by the making or acceptance of final payment, shall be decided by the claims procedure, including any arbitration clause specified in the Prime Contract between Contractor and Owner. In the absence of an agreement to arbitrate in the Prime Contract, no claims or disputes shall be arbitrated unless provided for in this Agreement or mutually agreed upon by Contractor and Subcontractor in writing.

17.3 Arbitration Procedures (if applicable). In the event the Prime Contract contains an arbitration provision or if arbitration is provided for in this Agreement, the following shall apply:

17.3.1 Notice of Demand. Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and shall conform to the requirements of the arbitration provision set forth in the Prime Contract. The demand for arbitration shall be made within a reasonable time after written notice of the claim, dispute or other matter in question has been given, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim dispute or other matter in question would be barred by the applicable statute of limitations.

17.3.2 Award. The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

17.3.3 Work Continuation and Payment. Unless otherwise agreed in writing, Subcontractor shall carry on the work and maintain the schedule of work pending arbitration, and, if so, Contractor shall continue to make payments in accordance with this Agreement.

17.3.4 Consolidated Arbitration Proceedings. To the extent not prohibited by their contracts with others, the claims and disputes of Owner, Contractor, Subcontractor and other subcontractors involving a common question of fact or law shall be heard by the same arbitrator(s) in a single proceeding. In this event, it shall be the responsibility of Subcontractor to prepare and present Contractor's case, to the extent the proceedings are related to this Agreement. Should Contractor enter into arbitration with the Owner or others regarding matters relating to this Agreement, Subcontractor shall be bound by the result of the arbitration to the same degree as the Contractor.

17.3.5 No Limitation of Rights or Remedies. This Section shall not be deemed a limitation of any rights or remedies which Subcontractor may have under any Federal or State mechanics' lien laws or under any applicable labor and material payment bonds unless such rights or remedies are expressly waived by him.

17.4 Pass-Through Claims. A Claim which will affect or become part of a claim which Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made by the Subcontractor in sufficient time and in such manner as to permit the Contractor to satisfy the requirements of the Prime Contract. Such Claims shall be received by the Contractor not less than five (5) working days preceding the time by which the Contractor's claim under the Prime Contract must be made. Failure of the Subcontractor to make such a timely Claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound. Notwithstanding anything in the Subcontract Documents to the contrary, to the extent a Claim is ultimately a claim against the Owner or the Architect, the Subcontractor agrees that the Contractor shall be liable to the Subcontractor only to the extent that the Contractor actually recovers damages or receives time extensions or additional costs from the Owner pertaining to such Subcontractor's Claim.

SECTION 18. SAFETY

18.1 Subcontractor and its employees must, at a minimum, comply fully with all laws, orders, citations, rules, regulations, standards and statutes with respect to occupational health and safety, the handling and storage of hazardous materials, accident prevention, safety equipment and practices including the accident prevention and safety program of Owner and Contractor. Subcontractor shall conduct inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for providing a safe place to work for its employees and for employees of its subcontractors and suppliers of material and equipment, for adequacy of and required use of all safety equipment and for full compliance with the aforesaid laws, orders, citations, rules, regulations, standards and statutes.

18.2 The Subcontractor agrees and acknowledges that it has assumed full responsibility and liability for safety precautions in connection with the construction means, methods, techniques, sequences, supervision and procedures pertaining to Subcontractor's Work. Subcontractor shall provide a Safety Coordinator from their own crews who will be responsible for the safety of Subcontractor's personnel.

18.3 When so ordered, the Subcontractor shall stop any part of the work which BSD Builders, Inc. deems unsafe until corrective measures satisfactory to BSD Builders, Inc. have been taken and the Subcontractor agrees that it shall not have nor make any claim for damages growing out of such stoppages.

18.3.1 Should the Subcontractor neglect to take such corrective measures, BSD Builders, Inc. may do so at the cost and expense of the Subcontractor and may deduct the cost thereof from any payments due or to become due to the Subcontractor. Failure on the part of BSD Builders, Inc. to stop unsafe practices shall in no way relieve the Subcontractor of its responsibility therefore.

18.4 Subcontractor shall provide their companies Injury, Illness and Prevention Plan for record and review within seven (7) days after execution of this Agreement.

18.5 BSD Builders, Inc. may require a mandatory orientation meeting for all subcontractors and their employees which discusses safety and other pertinent project information to be held prior to any Subcontractor work commencing on site. A representative from BSD Builders, Inc. will conduct the orientation meeting which can last approximately thirty (30) minutes.

18.6 Pre-task Planning. Subcontractor shall provide written plans for all major phases of work and for all crane lifts, forklift operations, excavations, scaffold erection, etc. Pre-task plans shall be submitted to BSD Superintendent no later than five (5) working days prior to start of work. Pre-Task Plans shall include the following:

- Analyze the task to be performed.
- List the tools, equipment and/or materials that are required to complete the task.
- Determine if the task will affect personnel/public in the surrounding area.
- Analyze the work area for potential hazards.
- Determine protective measures required preventing incident/injury for each task phase.
- Determine what personal protective equipment (PPE) is required for the task.
- Conduct Safety meeting (huddle) to communicate potential hazards to the workers.

SECTION 19. GUARANTEE & WARRANTY

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

19.2 Subcontractor shall execute a project Guarantee/Warranty Letter in the form attached hereto as Attachment C.

SECTION 20. USE OF CONTRACTOR'S EQUIPMENT

20.1 In the event Subcontractor shall use Contractor's equipment, materials, labor, supplies or facilities, Subcontractor shall reimburse Contractor at a predetermined rate, except as provided in Section 14.1.2 or as otherwise stated herein. Further, Subcontractor assumes all responsibility for physical damage to such equipment, materials, labor, supplies, or facilities used by Subcontractor or his agents, employees, or permittees. In the event that Contractor's employees are used by Subcontractor, Subcontractor shall have full responsibility for all acts or omissions of Contractor's employees with regard to Subcontractor's use or employment of them. Subcontractor accepts any and all of Contractor's equipment, materials, labor, supplies or facilities as furnished.

SECTION 21. ASSIGNMENT OF CONTRACT

21.1 Subcontractor shall not, without written consent of Contractor, assign, transfer, or sublet any portion or part of the work required by this Agreement, nor assign any payment hereunder to others.

SECTION 22. INDEPENDENT CONTRACTOR

22.1 Subcontractor is an independent contractor and shall, at his sole cost and expense, and without increase in the Contract Price, comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the work; obtain all necessary permits and licenses therefor, pay all manufacturers' taxes, sales taxes, use taxes, processing taxes, and all federal and state taxes, insurance and contributions for social security and unemployment which are measured by wages, salaries, or other remunerations paid to Subcontractor's employees, whether levied under existing or subsequently enacted laws, rules or regulations. Subcontractor, upon request, shall furnish evidence satisfactory to Contractor that any or all of the foregoing obligations have been fulfilled.

SECTION 23. CLEAN-UP

23.1 At all times during the course of construction, Subcontractor shall perform his work so as to maintain the site in a clean, safe and orderly condition. Upon completion of the work under this Agreement, Subcontractor shall remove from the site all hazardous materials, temporary structures, debris and waste incident to his operation and clean all surfaces, fixtures, equipment, etc., relative to the performance of this Agreement.

SECTION 24. ATTORNEYS' FEES

24.1 In the event the parties become involved in litigation or arbitration with each other arising out of this Agreement or other performance thereof in which the services of an attorney or other expert are reasonably required, the prevailing party shall be fully compensated for the cost of its participation in such proceedings, including the cost incurred for attorneys' fees and experts' fees. Unless judgment goes by default, the attorneys' fee award shall not be computed in accordance with any court schedule, but shall be such as to fully reimburse all attorneys' fees actually incurred in good faith, regardless of the size of a judgment, it being the intention of the parties to fully compensate for all attorneys' fees and experts' fees paid or incurred in good faith.

SECTION 25. LABOR AGREEMENTS

25.1 (List labor agreements to which Contractor is signatory or enter NONE if Contractor has no labor agreements.):NONE

SECTION 26. SPECIAL PROVISIONS

- 26.1 **As-Builts:** Subcontractor is responsible for maintaining and submitting a specific description of the "as-built" conditions of their scope of work. The "as-builts" shall be accurately defined and submitted as a reproducible document per project specifications. Subcontractor shall complete all project closeout requirements in a timely manner so as to avoid delays or additional costs to expedite materials or payments. All printing costs shall be the responsibility of the Subcontractor.
- 26.2 **Materials to be as Specified and Approved:** All materials to be as specified and formally submitted and approved by Owner/Architect prior to installation.
- 26.3 **Punch List:** All punch list items shall be corrected to the satisfaction of BSD Builders, Inc. and Owner within 10 days of formal notification.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR OF THE BOARD, WHOSE ADDRESS IS: Contractors State License Board, Post Office Box 26000 Sacramento, California 95826