



Standard Subcontract Agreement

(Fixed Price-California)

This Subcontract Agreement, hereinafter called **Agreement** is entered into in San Diego, California, effective as of TYPE EFFECTIVE DATE HERE between ROEL® Construction Co., Inc., 3366 Kurtz Street, San Diego, CA 92110 (619) 297-4156 hereinafter called **ROEL** and:

Subcontractor Name:

Sub Name Here
Address Line 1 Here
Address Line 2 Here
City/State Zip Here

Tel: 999-999-9999
Fax: 999-999-9999
Contact: xxx

hereinafter called **Subcontractor** for the performance of the work as more fully described herein in exchange for payment as more fully described herein.

From the table below, the titles in the left column shall be used in this **Agreement** to refer to the information in the right column.

Project Number	X	
Project Name & Address	X	Address, City, Zip Code
Work Description	X	
Prime Contract Date	X	
Owner	X	Address, City, Zip Code
Project Architect	X	Address, City, Zip Codes
Subcontractor's Scope of Work	X	
Specification Sections	X	ROEL Cost Code: XXXXX – XXXXXXX
Subcontract Amount	\$____.00	XXXXXXXXXXXXXXXXX AND 00/100 DOLLARS
Retention Percentage	Ten Percent (10%)	
Allowances	See Section 4.2	
Unit Prices	See Section 4.3	
Alternates	See Section 4.4	
Attachments to this Agreement	Exhibit "A" - Prime Contract Documents Exhibit "B" - Subcontractor Specific Scope Of Work Exhibit "C" - Supplemental Subcontract Provisions Exhibit "D" - Temporary Facilities and General Conditions Exhibit "E" - Billing and Payment Procedures Exhibit "F" - Project Schedule Exhibit "G" - Special Subcontract Provisions <i>(Delete this Exhibit if not needed)</i> Subcontractor Rider #1 – Subcontractor Quality Control Expectations	

ARTICLE 1 - RECITALS

On **Prime Contract Date**, ROEL entered into a written contract, hereinafter called **Prime Contract** with **Owner** to perform the work generally described in the **Work Description**, and specifically defined in the **Prime Contract**. The entire scope of work to be performed by ROEL and its subcontractors under the **Prime Contract** shall be referred to in this Agreement as **The Project**.

The plans, specifications and other documents defining **The Work** (more fully described in Exhibit "A" attached hereto) were prepared by **Project Architect**, together with any other firms or persons that may have collaborated in the design, hereinafter collectively referred to as **Architect**.

The Work is anticipated to be complete in accordance with **ROEL's** progress schedule as may be changed from time-to-time as provided for in the **Prime Contract**.

ARTICLE 2 - SCOPE OF WORK OF THIS AGREEMENT

- 2.1 Scope of Work** – Subcontractor shall provide and pay for all labor, materials, employee taxes and benefits, equipment, licenses, permits (except building permit), fees, taxes, transportation, storage, hoisting, insurance and supervision as required to complete the portion of the project generally known as the **Subcontractor's Scope of Work**, as more particularly described in Exhibit "B." **Subcontractor** shall perform its scope of work, in accordance with the **Subcontract Documents** defined in Section 2.2 (Enumeration of the Subcontract Documents). Throughout this **Agreement**, the work to be performed by **Subcontractor** may be referred to as **Subcontractor's Scope of Work**.
- 2.2 Enumeration of The Subcontract Documents** – The **Subcontract Documents** consist of the following:
- The **Prime Contract** and all of its component parts including but not limited to the plans, specifications, general conditions, special conditions, supplementary conditions, reference standards and all related contract documents as described therein. (Exhibit "A" identifies the **Prime Contract** documents)
 - This **Agreement**.
 - All **Attachments to This Agreement**.
 - The project progress schedule as prepared and revised from time to time by **ROEL**.
- 2.3 Prime Contract Part of This Subcontract** – With respect to **Subcontractor's Scope of Work**, **Subcontractor** agrees to be bound to **ROEL** to the same extent as **ROEL** is bound to **Owner** under the terms of the **Prime Contract**. Prior to execution of this **Agreement**, **Subcontractor** has had the opportunity to review the **Subcontract Documents** and enters into this **Agreement** with full knowledge of the requirements set forth therein. **Subcontractor** agrees that all of the terms, conditions and provisions of the **Prime Contract** are hereby incorporated by reference in their entirety in this **Agreement**.
- 2.4 Order of Precedence if Conflict in Documents** – If a conflict in the **Subcontract Documents** is discovered then the most strict interpretation or the most costly interpretation shall prevail unless waived by **Owner** and **ROEL**. If this rule does not resolve the conflict, then unless specifically set forth elsewhere in this **Agreement**, the order of precedence from highest to lowest is: 1) The Attachments; 2) This Agreement; 3) The Prime Contract.
- 2.5 Warranty & Guarantee** – **Subcontractor** shall warrant and guarantee its work for a period of at least one year from the date of acceptance of the project by **Owner**, unless the **Subcontract Documents** provide for a longer period, to be free from defects in materials and workmanship. If during the period covered by the warranty any such defect is alleged by **Owner** or his agent, **Subcontractor** shall cure said defect at no cost to **ROEL** or **Owner**. Such warranty and guarantee shall not extend to ordinary wear and tear, damage caused by improper use or Acts of God. In the event **Subcontractor** fails to commence repairs required hereunder within 10 days, and diligently prosecute them to completion, any such repairs may be performed by others and it shall be **Subcontractor's** responsibility to reimburse **Owner** and/or **ROEL** for the costs of such repairs.

Subcontractor shall execute a written "Warranty" as provided in the **Subcontract Documents** prior to receiving final payment.

ARTICLE 3 – SCHEDULE FOR PERFORMANCE

- 3.1 Time** – Time is of the essence of this **Agreement**. Timely performance of the duties of **Subcontractor** is critical to the success of the project. All notice periods and times for performance shall be strictly observed. Where the **Subcontract Documents** reference a period measured in "days" it shall be deemed to mean calendar days, unless otherwise defined.
- 3.2 Progress Schedule** – **ROEL** shall create and maintain a project progress schedule (also known as "schedule") for the performance of the work required under the **Prime Contract**. **Subcontractor** shall cooperate fully with **ROEL's** requests in the preparation of the schedule and shall make adjustments as necessary to comply with changes necessarily made by **ROEL** to the progress schedule.
- ROEL** shall decide the sequence of the work and may require **Subcontractor** to perform part of the work in one area while delaying work in another area to suit the needs of the **Project**. **ROEL** shall endeavor to provide areas of unrestricted work for **Subcontractor** to maximize efficiency.
- 3.3 Commencement Date** – **Subcontractor** shall commence preparatory and planning work immediately upon execution of this **Agreement** but shall not mobilize to the project site until so notified by **ROEL**. Upon **ROEL's** notification, **Subcontractor** shall mobilize to the project site and begin its on-site work within 48 hours of such notice.
- 3.4 Prosecution of the Work** – **Subcontractor** shall diligently staff the project and carry on work promptly and efficiently so as to not delay the progress of **ROEL's** work, or the work of any other subcontractor. If, in the opinion of **ROEL**, **Subcontractor** falls behind in the progress of the work through no fault of **ROEL**, **Owner**, or another subcontractor, then **ROEL** may direct **Subcontractor** to take such steps as **ROEL** deems necessary to improve the progress of the work to **ROEL's** satisfaction, including, without limitation, requiring **Subcontractor** to increase the number of employees, work multiple shifts, work overtime operations, increase equipment usage, work weekends, and any other remedies that may resolve the problem, all without additional cost to **ROEL**.

- 3.5 **Staggered Shifts and Delivery Schedules** – ROEL may determine days and hours reserved for the delivery of materials, equipment and personnel to suit the needs of the **Project**. **Subcontractor** shall cooperate fully with such determinations.
- 3.6 **Work Week** – **Subcontractor** specifically agrees to work a minimum work week of 40 hours, based on 5 work days with Saturday as a make-up day if a day of work is lost during the week due to weather or other reason.
- 3.7 **Overtime Operations** – **Subcontractor** hereby agrees that overtime operations may be required of **Subcontractor**. If overtime operations are required as a result of delays caused by **Subcontractor**, then **Subcontractor** will perform overtime operations as a part of this **Agreement** and for no additional compensation. If, however, overtime operations are required by **ROEL** for any reason that is not the fault of **Subcontractor**, then **ROEL** will reimburse **Subcontractor** its actual premium time costs only. Overtime operations may include Saturday and Sunday work, two or three-shift work, or overtime on a one shift basis.
- 3.8 **Delays** – In the event **Subcontractor’s** performance is delayed or interfered with by acts or omissions of **Owner**, **ROEL**, other subcontractors, by an act of God, or any other reason then:
 - a. **No Damages** – **Subcontractor** shall not be entitled to any increase in the **Subcontract Amount** or to damages or additional compensation as a consequence of such delays or interference except to the extent that the **Prime Contract** or **ROEL’s** subcontracts with other subcontractors entitles **ROEL** to compensation therefor and then only to the extent of any amounts that **ROEL** actually recovers from **Owner** or other subcontractors, on **Subcontractor’s** behalf, for such delays or interference.
 - b. **Extension of Time** – Except as described above, **Subcontractor’s** sole remedy for such delays described above shall be an extension of time for the performance of **Subcontractor’s Scope of Work**.
- 3.9 **Damages due to Subcontractor’s Delay** – If **ROEL** suffers any costs, including those under the **Prime Contract** for liquidated damages, or other damages for delays, then **ROEL** may recover such costs and damages from **Subcontractor** in proportion to **Subcontractor’s** responsibility for such delay and damages. In no case shall the amount assessed against **Subcontractor** exceed the costs actually incurred by and/or assessed against **ROEL**.

ARTICLE 4 – COMPENSATION OF SUBCONTRACTOR

- 4.1 **Lump Sum Subcontract Amount** – **ROEL** shall pay **Subcontractor** for the proper performance of its obligations under this **Agreement** the **Subcontract Amount** listed on page 1 of this **Agreement**, by monthly progress payments according to the terms and conditions included in the **Subcontract Documents**.
- 4.2 **Allowances** – The following allowances are included in the **Subcontract Amount** above.

Allowance Item(s)	Allowance Amount(s)
None	N/A

The **Subcontract Amount** shall be adjusted by change order to incorporate the actual cost of the item(s) as documented by **Subcontractor’s** actual cost records.

- 4.3 **Unit Prices** – The following unit prices, which include all markups, shall be applied to actual quantities of production as measured and agreed between **ROEL** and **Subcontractor** for changes to the **Subcontractor’s Scope of Work**:

Unit Price Item(s)	Unit Price Amount(s)
None	N/A

- 4.4 **Alternates** – The following alternates, which include all markups, are not included in the **Subcontract Amount** but may be added by change order to the **Subcontractor’s Scope of Work** for the amounts shown below if **ROEL** so chooses and exercises its option in writing (by the dates listed below, if any):

Alternate Item(s)	Alternate Amount(s)
None	N/A

ARTICLE 5 – PAYMENT TERMS

- 5.1 **Payment Process** – **ROEL** shall make monthly progress payments to **Subcontractor** for work completed according to the process defined in this Article and also Exhibit “E” attached hereto.
- 5.2 **Retention** – As security for the proper completion of the work, **ROEL** shall retain a percentage of each progress payment as identified on page 1 of this **Agreement**, (“**Retention Percentage**”) until final completion of the project and acceptance of **Subcontractor’s Scope of Work** by **Architect**, **Owner**, and **ROEL**. **Subcontractor’s** completion of all administrative requirements included in the **Subcontract Documents** shall be required prior to release of retained amounts.

ROEL may make early releases of retention in whole or in part at its sole discretion and with **Owner’s** permission.

- 5.3 Conditions Prior To Payment – Subcontractor** must have performed all of its obligations under the **Subcontract Documents**, including, without limitation, all administrative terms and conditions of the **Subcontract Documents** before **ROEL** shall be obligated to make payment to **Subcontractor**. If **Subcontractor** is in default of any term or provision of the **Subcontract Documents**, **ROEL** shall not be obligated to make payment to **Subcontractor** until such default is cured.
- 5.4 Payment Timing – Subcontractor’s** payment requests must be submitted in accordance with the provisions of Exhibit "E". These billings must be based on the percentage completion approved by **Owner**, **Architect** and **ROEL** for each line item on **Subcontractor’s** Schedule of Values. Failure of **Subcontractor** to comply with the date or manner of submission of its payment requests may result in delay in submission of **Subcontractor’s** billing until the following month or until such time as a timely and proper invoice is submitted. Any such delay(s) shall be deemed to be caused solely by **Subcontractor**. If payment from **Owner** to **ROEL** for **Subcontractor’s** work is not received by **ROEL**, through no fault of **Subcontractor**, **ROEL** will make payment to **Subcontractor** within a reasonable amount of time for **Subcontractor’s** undisputed and properly performed work. Such "reasonable" amount of time shall allow **ROEL** ample opportunity to fully exercise its lien rights, stop notice rights, and other remedies that may be available to obtain payment from **Owner**.
- 5.5 Payment is Not Acceptance –** Payment by **ROEL** to **Subcontractor** shall not be deemed to be acceptance by **ROEL**, **Architect** or **Owner** of **Subcontractor’s** work.
- 5.6 Disputed or Incomplete Work –** If **Subcontractor** has not completed its work, or if some of **Subcontractor’s** work has been rejected by **Owner**, **ROEL** may withhold 150% of the estimated value to complete and correct such work until such completion or correction is made by **Subcontractor**. This paragraph shall in no way limit **ROEL’s** rights described elsewhere in the **Subcontract Documents**.
- 5.7 Right to Withhold –** **ROEL** may withhold from current and future payments due to **Subcontractor** amounts necessary to protect **ROEL** from loss if in the good faith opinion of **ROEL**, the following events have occurred or are likely to occur:
- Claims filed by any lower tier sub-subcontractor or supplier of **Subcontractor**.
 - Claims filed by an employee or trust fund of **Subcontractor** or Sub-subcontractors.
 - Damage by **Subcontractor** to the work of another subcontractor or a third party.
 - Reasonable doubt that **Subcontractor** can complete the remaining work for the then unpaid contract balance.
 - Subcontractor** is in default of any term or provision of the **Subcontract Documents**.
- ROEL**, at its option, may pay such claims or costs and credit such amounts as if paid to **Subcontractor**.
- 5.8 Liens and Stop Notices –** At all times, **Subcontractor** shall indemnify and hold harmless **Owner**, Lender and **ROEL** from and against all liens, stop payment notices, and payment bond claims, resulting from **Subcontractor’s** performance of its work hereunder. Any such liens, stop payment notices, or payment bond claims shall be immediately removed and resolved to **Owner’s**, Lender’s and **ROEL’s** satisfaction. Any and all costs sustained by **ROEL** due to **Subcontractor’s** failure hereunder, including the cost of paying the claim, shall be back-charged against amounts earned by **Subcontractor**. This paragraph shall not be held to prevent **Subcontractor** itself (but not its laborers, and material and equipment suppliers, and sub-subcontractors) from filing a lien, stop payment notice, or bond claim in the event of **ROEL’s** default of its payment obligations hereunder.
- 5.9 List Of Sub-Subs and Suppliers –** Prior to commencing work, **Subcontractor** shall submit a list of its sub-subcontractors and suppliers intended to be used on the project. This list shall include the sub/supplier's phone number and nature of its participation in the project.
- 5.10 ROEL's Bonds –** **Subcontractor** may inquire at any time if **ROEL** has provided a Materials and Labor Payment Bond to **Owner**, and shall be entitled to a copy of the bond, if any, upon written request.
- 5.11 Assignment of Receivables –** At no time shall **Subcontractor** assign, pledge, hypothecate or "factor" its receivables from **ROEL** under this **Agreement**. **ROEL** will make all payments to **Subcontractor** and/or, at **ROEL’s** sole option, by joint checks to **Subcontractor** and it’s various sub-subcontractors and suppliers on the **Project**.
- 5.12 Final Payment –** **ROEL** will make final payment to **Subcontractor** after all work, both physical and administrative, is fully complete and accepted by **Architect**, **Owner** and **ROEL** and after final payment is made by **Owner** to **ROEL**. If payment from **Owner** to **ROEL** for **Subcontractor’s** work is not received by **ROEL**, through no fault of **Subcontractor**, **ROEL** will make payment to **Subcontractor** within a reasonable amount of time for **Subcontractor’s** undisputed and properly performed work. Such "reasonable" amount of time shall allow **ROEL** ample opportunity to fully exercise its lien rights, stop notice rights, and other remedies that may be available to obtain payment from **Owner**.
- 5.13 Interest –** If **ROEL** fails to make payments as provided herein, then **Subcontractor** shall be entitled to interest on amounts not paid when due at a rate of 8 percent per annum.

ARTICLE 6 – CHANGES IN THE WORK

6.1 Owner's and ROEL's Right to Make Changes – Owner and ROEL shall have the absolute right to make changes in **Subcontractor's Scope of Work**, hereinafter called **Changes**. Such **Changes** include the addition, deletion and modification of work. All such **Changes** must be made by written direction from **ROEL** to **Subcontractor** as provided herein. **Subcontractor** shall not rely on oral statements when performing changed work.

It is further agreed that no one other than authorized personnel of **ROEL** shall have the authority to direct **Subcontractor** to make **Changes**. If **Owner**, **Architect** or any other person, firm or entity directs **Subcontractor** to make changes in the work, **Subcontractor** shall notify **ROEL** immediately for direction. **ROEL** shall not be obligated to pay **Subcontractor** for **Changes** that are not authorized in writing by **ROEL**.

6.2 Subcontractor's Duty to Perform – **Subcontractor** shall have the duty to perform **Changes** according to the terms of this Article and shall not have the right to refuse to perform **Changes**. Any dispute regarding compensation for a "**Change**" shall be resolved as provided herein but **Subcontractor** shall perform **Changes** so ordered without delaying the progress of the work.

6.3 Adjustments to Subcontract Amount for Changes – When a **Change** is made, an equitable adjustment shall be made to the **Subcontract Amount** as documented by written change order to this **Agreement**. The change order shall specify the exact nature of the **Change**, the adjustment to be made to the **Subcontract Amount**, and the effect of the **Subcontractor's** time for completion of **Subcontractor's Scope of Work**, if any. No change order shall exist until it is executed by **ROEL**. **Subcontractor's** acceptance shall be signified by its signature on the change order or its lack of objection to the change order before ten days have elapsed after receiving the written change order from **ROEL**.

6.4 Pricing of Change Orders – The value of a change order shall be determined by one of the following methods

6.4.1 Lump Sum Amount – If both parties agree to a lump sum amount before, during or after the changed work is started this amount shall become the value of the change order.

6.4.2 Time and Materials – If the parties agree to a "time and materials" valuation to keep track of the actual costs of changed work as the work progresses then the value of the change order shall include all such costs plus allowed markups as specified herein. The parties may agree on a "cap" not to be exceeded in any instance. If changes are valued on a "time and materials" basis, the following procedures shall apply:

6.4.2.1 Daily Work Records – With respect to changed work performed on a time and materials basis, **Subcontractor** shall prepare a Daily Worksheet each day that work is performed. Said worksheet shall identify all labor hours expended on the changed work categorized by each employee. The Daily Worksheet shall also identify any materials purchased and consumed for the changed work as well as any equipment used to perform the changed work. **Subcontractor** shall obtain **ROEL's** Superintendent's signature on the Daily Worksheet indicating agreement only with the hours worked, materials consumed and equipment used for the changed work, but not the cost.

6.4.2.2 Actual Costs – **Subcontractor** shall apply each employee's actual hourly wages against the labor hours documented on the Daily Worksheet. **Subcontractor** may charge its actual costs for employer taxes, fringes and insurance based on the labor as well as the **Subcontractor's** actual out-of-pocket costs for materials consumed. Equipment costs shall be billed as a rate per hour for the equipment. Such rate shall not be higher than the cost of rental of such equipment at commercially available sources.

Subcontractor may not charge a "standard burdened billing rate" for T&M work unless agreed by **ROEL**. However, unit prices previously identified in Article 4 may be used in lieu of actual costs and markups described herein.

6.4.2.3 Subcontractor T&M Change Order Request – **Subcontractor** shall submit upon completion of the changed work (or more frequently if agreed by **ROEL**) a complete T&M change order recap which shall detail the labor, materials and equipment charges as well as all agreed markups. Attached to such recap shall be copies of all Daily Worksheets signed by **ROEL's** Superintendent as well as supporting documentation of materials and equipment costs. **ROEL** shall have the right to request additional documentation, if necessary to verify quantities and costs.

6.4.2.4 Audit of Cost Records – **Subcontractor** shall provide detailed supporting documentation to **ROEL's** satisfaction if requested by **ROEL** (or **Owner**) to evaluate **Subcontractor's** calculation for a change order. Refusal to provide proper documentation by **Subcontractor** shall cause a dispute to be decided against **Subcontractor**.

6.4.3 Dispute of Pricing Method – In the event **ROEL** and **Subcontractor** do not agree on the pricing method for a change order, the T&M method shall be applied to resolve the dispute. If the work cannot be accurately quantified, then both parties shall submit the valuation of the change order to the Dispute Resolution Process.

6.5 **Markups – Subcontractor** shall use markup rates no greater than the following when pricing all change order work:

Markup for Overhead 10 % on costs
Markup for Profit 5 % on costs

The above markups shall be applied to actual direct costs of the work involved in the change including labor, materials, equipment and subcontracted work.

The overhead markup shall include all of **Subcontractor's** costs for overhead including small tools, administration, home office support, management support, and all other such costs.

There shall be no other markups for indirect costs or fees charged by **Subcontractor**, unless described in Exhibit "B".

6.6 **Billing For Change Orders – Subcontractor** may not include amounts in its monthly billing for change orders until **ROEL** executes such change order, unless allowed earlier by **ROEL**.

6.7 **Adjustments for Time and Contract Language –** Any changes to the time for completion of **Subcontractor's Scope of Work** or other changes not necessarily affecting the compensation and scope of work shall also be documented by a formal change order to this **Agreement**.

6.8 **Proposed Change Pricing –** Occasionally from time to time, **ROEL** may request pricing from **Subcontractor** with respect to changes that may be under review and/or contemplated by **Owner** or **ROEL**. **Subcontractor** shall provide such pricing information as soon as possible thereafter as requested so as to allow **Owner** or **ROEL** to make a timely decision on whether to proceed with the proposed change. Pricing provided by **Subcontractor** according to this process shall be binding upon **Subcontractor**. **Subcontractor** shall receive no additional compensation for any costs associated with preparing, calculating or providing any pricing described herein whether or not the change(s) is/are implemented.

ARTICLE 7 – CLAIMS BY SUBCONTRACTOR

7.1 **Definition –** A claim is a demand by **Subcontractor** for adjustment to this **Agreement** for additional compensation or other favorable adjustment that was not requested by **ROEL**. A mutually acceptable conclusion to a claim shall be documented by a change order as provided herein.

7.2 **Written Notice – Subcontractor** may make certain claims to **ROEL** as provided herein but in all cases such claims shall be made in writing.

7.3 **Timeliness of Claim –** No claim shall be valid unless such written claim and any notice required by the prime contract is submitted to **ROEL** within the period of time set forth in the prime contract or five days of the occurrence of the event (or when such facts are discovered by **Subcontractor**), giving rise to the claim, whichever is less. Failure to adhere to this time period shall bar **Subcontractor's** claim in its entirety.

7.4 **Resolution of claims – ROEL** shall respond in writing to such claims as soon as possible after receiving written notice from **Subcontractor**. If applicable, **ROEL** shall submit **Subcontractor's** claim to **Owner** for consideration as a change order to the **Prime Contract**. **ROEL** shall advise **Subcontractor** of the **Owner's** response and such decision shall be final unless **Subcontractor** notifies **ROEL** in writing of its desire to proceed further in sufficient time for **ROEL** to comply with any notification or submission requirements to **Owner**.

(a) Upon receipt of **Subcontractor's** notice to proceed further, at **ROEL's** option, **Subcontractor's** claim may be further pursued with **Owner**. In such event, **ROEL** may allow **Subcontractor** to act in its own behalf and with its own consultants/attorneys at **Subcontractor's** cost to continue the required process and any subsequent administrative proceeding or litigation. If **ROEL** does not allow **Subcontractor** to act in its own behalf or it is procedurally impermissible for **Subcontractor** to proceed in its own behalf, and **ROEL** elects to allow the continued pursuit of **Subcontractor's** claim, then at the written request of **Subcontractor**, **ROEL** will proceed with the dispute on condition that **Subcontractor** pay to **ROEL** all of its actual costs arising out of such process, including but not limited to attorneys' fees, court costs and the costs of **ROEL's** personnel employed in pursuing the case against **Owner**.

(b) If **ROEL** elects to not allow further pursuit of **Subcontractor's** claim against **Owner**, and **Subcontractor** disputes such decision, **Subcontractor** may pursue its claim pursuant to Article 8, Disputes Resolution.

(c) Nothing shall prevent **ROEL** from accepting a contract modification from **Owner** which preserves the rights of **Subcontractor**.

(d) If **ROEL** and **Subcontractor** agree to a resolution of a claim it shall be documented by a change order as provided herein.

(e) If **ROEL** and **Subcontractor** fail to resolve a claim, **Subcontractor** may submit its claim to the Dispute Resolution Process defined in Article 8.

7.5 **Right To Stop Work – Subcontractor** shall not have the right to stop work at any time except pursuant to paragraph 11.3 or if **ROEL** orders **Subcontractor** to stop work.

ARTICLE 8 – DISPUTE RESOLUTION

- 8.1 Definition** – The definition of a dispute is when a claim by either party remains unresolved after completion of the change order and/or claims process discussed above.
- 8.2 Intent** –The parties shall resolve all disputes as quickly and efficiently as possible to avoid undue expenses to both parties. All disputes shall be resolved by the following process:
- 8.3 Step 1 – Written Request for Settlement Discussions** – To initiate the dispute resolution process, either party may send a written notice to the authorized representative of the other party requesting that two dispute settlement meetings be scheduled. The first one within 14 to 21 days, and the second shall be within 10 days of the first meeting. The parties shall cooperate in scheduling both meetings.
- 8.4 Step 2 – First Meeting – Project Team Resolution Meeting** – The first formal dispute resolution meeting shall be held at ROEL’s local office and attended by the all applicable personnel for both parties as well as project management personnel for both parties to discuss and attempt to resolve the dispute.
- 8.5 Step 3 – Second Meeting – Principals** – If the first meeting does not produce a settlement or a course of action to resolve the dispute, then a second meeting shall be held with the principals or executive in charge of each party in attendance. Both parties shall attempt to reach an acceptable solution to the dispute.
- 8.6 Step 4 – Binding Alternative Dispute Resolution** – If the parties cannot agree after these meetings on a resolution or a course of action to resolve the dispute, then the parties may agree to any form of alternative dispute resolution (ADR) to attempt to resolve the issue. Neither party shall be bound to submit to ADR but if both parties agree to submit the dispute to ADR, then both parties shall be bound to the outcome and decision made by the ADR process. Such ADR shall be conducted in the place where the project is located and judgement upon the award rendered in ADR may be entered in any court having proper jurisdiction thereof, with venue in the place where the **Project** is located.
- 8.7 Step 5 – Litigation** – If the parties cannot agree on a resolution and if either party does not agree to submit the dispute to Binding ADR, then the dispute may be submitted to the Civil Courts for litigation in any court having proper jurisdiction thereof, with venue in the place where the **Project** is located.
- 8.8 Effect of Prime Contract** – If the **Prime Contract** requires arbitration, alternative dispute resolution or other mechanics of dispute resolution in conflict with this Article, the **Prime Contract** language shall prevail.

ARTICLE 9 – SUBCONTRACTOR DEFAULTS

- 9.1 Definition of Default** – Default shall be considered any breach by **Subcontractor** of any duty under the **Subcontract Documents**, including but not limited to the following:
- a. Failure to commence work when required.
 - b. Failure to properly man the project.
 - c. Failure to diligently and properly prosecute the work, or maintain the schedule.
 - d. Failure to provide quality workmanship.
 - e. Failure to perform change order work as directed by **ROEL**
 - f. Failure to pay sub-subcontractors and vendors in a timely manner.
 - g. Failure to pay its employees or fringe benefit funds in a timely manner.
 - h. Failure to make proper submittals and shop drawings as required by the **Subcontract Documents**.
 - i. Failure to provide and maintain insurance and bonds as required by the **Subcontract Documents**.
 - j. Failure to provide product warranties and guarantees as required by the **Subcontract Documents**.
- 9.2 Notice Of Default** – In the event of default by **Subcontractor**, **ROEL** may give a written notice via hand delivery or fax to **Subcontractor** that specifically identifies the default and demands that it be cured to **ROEL’s** satisfaction within 48 hours. This notice shall be called the “48-Hour Notice” and, if there is sufficient time to provide such notice, is a prerequisite to **ROEL’s** exercise of its rights under this Article and Article 11.
- 9.3 Lack of Notice Does not Bar Future Notice** – If **ROEL** chooses not to immediately give a “48-hour notice” when a default occurs **ROEL** shall not be precluded from later giving a 48-hour notice to **Subcontractor** for the same default.
- 9.4 Right of ROEL To Cure Default** – If **Subcontractor** fails to cure the default after the 48-hour cure period, **ROEL** may, at its option, take whatever steps it deems appropriate to cure and/or mitigate the default, including but not limited to:
- a. Suspend **Subcontractor’s** right to continue working and enter the **Project**.
 - b. Take possession of **Subcontractor’s** supplies, materials and equipment on the project in order to prosecute **Subcontractor’s Scope of Work**.
 - c. Complete all or part of **Subcontractor’s Scope of Work** with **ROEL’s** own forces and equipment.
 - d. Hire another subcontractor to repair, correct, and/or complete **Subcontractor’s Scope of Work**.

- e. Pay whatever costs are necessary to cure **Subcontractor's** default, including but not limited to, insurance premiums, **Subcontractor's** employee's wages, **Subcontractor's** material providers and equipment rental vendors, bond premiums to bond around **Subcontractor** liens and or liens of **Subcontractor's** sub-subcontractors and suppliers, taxes, permits, etc.
- f. Terminate this "**Agreement**" per Article 11.

9.5 Payment to Subcontractor Affected – If **ROEL** exercises its rights under paragraph 9.4 above, it shall be entitled to:

- a. Withhold all future payments to **Subcontractor**, at its discretion, until the complete effects and costs resulting from **Subcontractor's** default can be ascertained by **ROEL**.
- b. Deduct from all future payments all actual costs incurred by **ROEL**, including administrative costs and an allowance of 15% for overhead and 10% for profit due to **ROEL**. If such amount exceeds the total unpaid balance of the **Subcontract Amount**, then **Subcontractor** shall promptly make payment to **ROEL** the amount of such excess upon invoicing by **ROEL**.

ARTICLE 10 – OWNER'S RIGHT TO SUSPEND WORK

10.1 Owner's Right to Suspend Work – **Owner** shall have an absolute right to suspend work on the project, or a portion of the project. In such an event, **ROEL** shall give written notice to **Subcontractor** to immediately suspend all work. **Subcontractor** shall have the following rights and obligations upon receipt of such notice:

- 10.1.1 Cease all Work** – **Subcontractor** shall cease all work on the project as of the date of suspension. **Subcontractor** shall not be paid for any work performed after such suspension date.
- 10.1.2 Notify ROEL of Material Orders and Deliveries** – **Subcontractor** shall notify **ROEL** in writing immediately of all outstanding orders and deliveries that have been previously scheduled but not yet completed. **ROEL** shall notify **Subcontractor** whether such orders and deliveries shall be cancelled or continued. Any costs sustained by **Subcontractor** as a result of deliveries and orders made prior to the date of suspension shall be paid to **Subcontractor** under the terms of the **Subcontract Documents**.
- 10.1.3 Obtain Extensions on Price Quotations** – **Subcontractor** shall endeavor to obtain price freezes from its suppliers on materials yet to be delivered to the project. Any price increases suffered by **Subcontractor** when the project resumes shall be completely documented.
- 10.1.4 Prepare a Progress Payment Application** – **Subcontractor** shall prepare a progress payment application for all work completed through the date of the suspension and including all costs actually sustained by the effects of paragraph 10.1.2. Said payment application shall cover the actual value of all work completed and shall eliminate any prior "over-billings" by **Subcontractor**.
- 10.1.5 Prepare to remobilize to the Project** – **Subcontractor** shall attempt to keep its crews and equipment available and be prepared to remobilize to the **Project** within 48 hours notice from **ROEL**.

10.2 Payments to Subcontractor – Payments shall be due for all work completed by **Subcontractor**, less retention, up to the suspension date, as provided under the Payment procedures in the **Subcontract Documents**. Any unauthorized work performed by **Subcontractor** after the date of suspension will not be paid unless and until work resumes and such work is paid for by **Owner**.

10.3 Change Order to Subcontractor – If and when work resumes, **Subcontractor** shall within 7 days completely document all extra costs sustained, if any, as a result of the suspension (such as remobilization costs, material price increases, restocking charges, etc.) and shall make a formal request for a change order to recover such costs. Upon approval by **Owner**, **ROEL** shall execute a change order for such costs.

10.4 Termination of Agreement - If **Owner** does not continue with the **Project** then **ROEL** may terminate this Agreement according to the terms in Article 11.

ARTICLE 11 – TERMINATION OF THE AGREEMENT

11.1 Termination for Cause – **ROEL** may after giving such 48-hour notice as required by Article 9, terminate this **Agreement** for cause. In this event, the following procedures shall apply:

- 11.1.1 ROEL Gives Written Notice of Termination** – To exercise its right to terminate this **Agreement**, **ROEL** must give written notice called a "Notice of Termination for Cause" to **Subcontractor**.
- 11.1.2 Subcontractor is Not Allowed to Reenter Project** – Upon receipt of a Notice of Termination for Cause, **Subcontractor** shall be prohibited from entry to the project and may not claim any equipment, tools, materials, or other property unless and until allowed by **ROEL**.
- 11.1.3 ROEL Seizes Work, Equipment and Materials and Payments** – Immediately upon serving the Notice of Termination For Cause, **ROEL** shall have a lien upon all property, including shop drawings, plans, materials, equipment and tools, of **Subcontractor** that remains on the **Project** site or which are stored offsite but earmarked for

the **Project**. Such materials, equipment, tools, and other property shall remain in the possession of **ROEL** until all of the **Subcontractor's Scope of Work** is complete and all amounts due to **ROEL** have been satisfied in full. Any amounts billed by **Subcontractor** that have not been paid as of the date of termination shall be held by **ROEL** until completion of the **Project** upon which a final accounting shall be completed describing the final amount due to **Subcontractor**, if any.

- 11.1.4 ROEL Completes Subcontractor's Work** – **ROEL** shall take over **Subcontractor's Scope of Work** and shall prosecute same in whatever manner it deems is in the best interest of the **Project** keeping a full accounting of the costs associated therewith.
- 11.1.5 Final Accounting of Costs** – Upon completion of **Subcontractor's Scope of Work**, **ROEL** shall provide **Subcontractor** with a complete accounting of the costs incurred by **ROEL** for the completion of **Subcontractor's Scope of Work**. **ROEL** shall be entitled to include in such costs any supervision and administrative costs incurred due to **Subcontractor's** failure to perform, as well as a markup of 15% of costs for overhead.
- 11.1.6 ROEL Shall Pay Unused Contract Balance To Subcontractor** – Within ten days after the Final Accounting of Costs, **ROEL** shall pay to **Subcontractor** the **Subcontract Amount** less the amounts already paid to **Subcontractor** under this **Agreement** and less all amounts paid by **ROEL** to complete **Subcontractor's Scope of Work**, including markups as identified in paragraph 11.1.5. In the event such difference is a negative number, then **Subcontractor** shall reimburse **ROEL** for the amount of such difference within 10 days.
- 11.1.7 Warranty Obligations of Subcontractor** – Termination as provided in this section shall not relieve **Subcontractor** of any obligations and duties that would ordinarily survive completion, including but not limited to warranty obligations and duties to indemnify and insure risks.

11.2 Termination Without Cause – **ROEL** shall retain the right to terminate this **Agreement** for any reason, including its, or **Owner's** convenience. In this event, the following procedures shall apply:

- 11.2.1 Written Notice to Subcontractor** – If **ROEL** wishes to exercise its right to terminate this **Agreement**, it must give written notice to **Subcontractor** of such termination, called a "Notice Of Termination". Such notice shall give the date of termination.
- 11.2.2 Obligations of Subcontractor** – Immediately upon receipt of the above notice, **Subcontractor** shall:
- a) **Cease all Work** – **Subcontractor** shall cease all work on the **Project** as of the date of termination. **Subcontractor** shall not be paid for any work performed after such date, except for costs associated with demobilization and canceling orders which have been made as of the date of termination.
 - b) **Assignment of Orders** – **ROEL** may request that material orders made but not yet delivered to the **Project** be assigned to **ROEL**. **Subcontractor** shall cooperate with such assignments.
 - c) **Notify ROEL Of Final Costs** – **Subcontractor** shall within fifteen days of termination assemble a final billing to **ROEL** for that portion of **Subcontractor's Scope of Work** which has been completed by **Subcontractor**, net of all payments received. **Subcontractor** shall have the right to bill only for work completed plus a total of 15 percent for overhead and profit on completed work. Anticipated profit on uncompleted work will not be due or paid in the event of termination without cause. In the event **ROEL** and **Subcontractor** do not agree on the value of **Subcontractor's Scope of Work** which is completed, **ROEL** shall have the right to audit the records of **Subcontractor** to determine the actual value of the work put in place.
 - d) **Subcontractor Shall Make All Payments** – **Subcontractor** shall make all payments to its employees, trust funds, material and equipment suppliers, and sub-subcontractors and provide final lien waivers and releases prior to receiving final payment.
 - e) **Warranty Obligations of Subcontractor** – Termination as provided in this section shall not relieve **Subcontractor** of any obligations and duties that would ordinarily survive completion, including but not limited to warranty obligations and duties to indemnify and insure risks.
- 11.2.3 Obligations of ROEL** - Upon receipt of **Subcontractor's** final billing, **ROEL** shall review and approve the billing, or perform an audit of **Subcontractor's** records in an expeditious manner. Upon agreement between **ROEL** and **Subcontractor** of the final billing amount, **ROEL** shall prepare to make final payment to **Subcontractor**. Final payment shall actually be made when all of the following have been received and accepted by **ROEL**:
- a) Final Lien Waiver and Release (conditional form) from **Subcontractor**.
 - b) Final Lien Waivers and Releases from **Subcontractor's** suppliers and sub-subcontractors.
 - c) Warranty letter for work performed by **Subcontractor**, if any.
 - d) Assignment of any material orders requested per Section 11.2.2 (b)
 - e) Any close-out documents that may apply to the work actually performed by **Subcontractor**.

11.3 Stop Work by Subcontractor – **Subcontractor** shall not have any right to stop work or terminate this **Agreement** except as provided in this Paragraph.

- 11.3.1 Conditions Giving Rise to Subcontractor's Right to Stop Work** – Before **Subcontractor** may have a right to stop work under this **Agreement** one of the following "triggers" must be met:

- a) **ROEL** must be in default of this **Agreement** by failing to pay **Subcontractor** within 10 days after **ROEL** has received payment from **Owner** for work that was properly performed and billed by **Subcontractor**, and for which **Subcontractor** has completed all requirements that entitle it to receive such payment.
- b) **Subcontractor** remains unpaid for any undisputed contract amounts more than 120 days after the end of the billing period (excluding unexecuted change orders).
- 11.3.2 **Subcontractor** shall not have the right to stop work for payments not yet made because of change orders that have not yet been executed or any amounts in dispute. All such issues shall be resolved as provided elsewhere in this **Agreement**.
- 11.3.3 **Notice Required** – If **Subcontractor** wishes to exercise its right to stop work it shall give 7 days written notice to **ROEL** citing the condition giving rise to the stop work right and allowing **ROEL** the ability to cure such conditions.
- 11.3.4 **Stop Work Effective Date** – If **ROEL** has not cured the noticed condition within the 7-day period, or given a valid written reason why **Subcontractor's** claim is invalid, then **Subcontractor** shall have the right to stop work until such noticed conditions are cured. In the case where **ROEL** orders **Subcontractor** to stop work the effective date shall be as stated in the order.
- 11.3.5 **Restarting Work** – As soon as **ROEL** makes payment to **Subcontractor**, **Subcontractor** shall immediately recommence work. Any delays to **Subcontractor's Scope of Work** as a result of its exercising its rights under this section shall be governed by paragraph 3.8.
- 11.3.6 **Extra Costs** – Extra costs, if any, associated with stopping work may be submitted to **ROEL** as a claim for change order within 10 days of restarting and handled as provided in Article 7.

ARTICLE 12 – RISK ALLOCATION AND PROTECTION

- 12.1 **General Indemnity Agreement** – **Subcontractor** shall indemnify, defend and hold harmless **ROEL**, **Owner**, and any others required by the **Contract Documents** and their agents, heirs, assignees, invitees and employees, from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, for personal injury, death, property damage or otherwise arising out of or resulting from **Subcontractor's** performance of **Subcontractor's Scope of Work**. This duty to indemnify shall include indemnification for the active or passive negligence of **ROEL**, **Owner** or others required in the **Subcontract Documents**. However, **Subcontractor** shall not be required to indemnify any party for their sole negligence or willful misconduct.
- In all such cases where this indemnity agreement applies, **Subcontractor**, and/or its insurer shall, upon demand by **ROEL**, provide a competent defense of all claims covered by this indemnity and shall remain responsible for all of the costs of defense of the claim, and any damages awarded to the claimant by settlement, mediation, arbitration, litigation or otherwise.
- 12.2 **Subcontractor's Insurance** – **Subcontractor** shall provide insurance coverages and extend such coverages to protect **ROEL** as described in Exhibit "C". Such coverages shall apply to entire period that this **Agreement** is in effect, from inception to after the **Project** is complete (i.e. completed operations coverage).
- 12.3 **Failure to Provide Required Insurance** – **Subcontractor's** failure to provide all insurance in the forms described in Exhibit "C", shall not relieve **Subcontractor**, or its insurers of their responsibility to indemnify **ROEL**, **Owner** and others as described in paragraph 12.1 and 12.2.

ARTICLE 13 – SAFETY AND ACCIDENT PROTECTION

- 13.1 **Safety and Accident Prevention** – Vigilant attention to the personal safety of all persons and property is of paramount importance. **Subcontractor** and **ROEL** shall observe safe work methods and accident prevention procedures at all times including, but not limited to, all procedures defined in Exhibit "C" attached hereto.

ARTICLE 14 – TEMPORARY SERVICES FACILITIES

- 14.1 **Temporary Services and Facilities** – **ROEL** shall provide certain temporary services and facilities described in Exhibit "D" attached hereto for the benefit of **ROEL** and all its "**Subcontractors**". No warranty is made as to the sufficiency of such temporary services and facilities for **Subcontractor's** specific needs. **Subcontractor** is responsible to ensure that it has made proper provisions for all temporary services and facilities it may need, including but not necessarily limited to, those provided by **ROEL**.

ARTICLE 15 – GENERAL SUBCONTRACT PROVISIONS

- 15.1 **Entire Agreement** – This **Agreement** and all **Subcontract Documents** referenced herein comprise the entire agreement between **ROEL** and **Subcontractor**. Any and all amendments to this **Agreement** must be in writing and executed by both parties to be considered enforceable.
- a) **Site Inspection** – **Subcontractor** represents that it has visited the **Project** site and is familiar with the nature of construction in the general area where the site is located, including site conditions, weather patterns, labor conditions, and regulatory authorities. **Subcontractor** shall make no claims for differing site conditions unless such conditions were

unknown to **Subcontractor** and were not ascertainable upon site inspection or by a general familiarity with construction operations in the locale of the site. **ROEL** shall have no obligation to compensate **Subcontractor** for any claim for a differing site condition unless and until **Owner** compensates **ROEL** for such condition. **ROEL's** obligation to **Subcontractor** for differing site conditions shall be limited to **Owner's** liability to **ROEL** for any costs or time allegedly incurred by **Subcontractor**.

- b) **Subcontractor's Review** – By execution of this **Agreement**, **Subcontractor** represents that it has reviewed this document and all related **Subcontract Documents** in their entirety and is responsible for performing its scope of work no matter where set forth in the **Subcontract Documents**
- c) **No Oral Agreements** – **Subcontractor** and **ROEL** have not, and shall not, rely on any oral statements by anyone in relation to this **Agreement**. Any and all oral agreements shall have no force and effect unless and until such agreement has been made in writing and executed by both parties.
- d) **Integration** – This **Agreement** and its component parts represents the entire integrated **Agreement** between **ROEL** and **Subcontractor**. No communications, written or oral, prior to or concurrent with the execution of this **Agreement**, shall be allowed to modify or vary the terms of this **Agreement**.

15.2 Submittals and Shop Drawings – **Subcontractor** shall immediately upon execution of this **Agreement** prepare for **ROEL's** submittal to **Architect** (and any other entities as required by the **Subcontract Documents**) any and all shop drawings, calculations, samples, cut sheets, and other submittals as required by the **Subcontract Documents**.

- a) **Deviations and Substitutions** – Any submittal containing any deviation or substitution from the requirements of the **Subcontract Documents** shall be strictly prohibited. If **Subcontractor** desires to request a deviation or a substitution from the **Subcontract Documents**, such request should be made as a separate "alternate" submittal (in addition to the regular submittal) which shall clearly identify the deviations and substitutions requested and reasons for such request. If such alternate submittal is approved, then **Subcontractor** may proceed with construction containing such substitutions or deviations in accordance with the approval, but shall be responsible to pay for any extra costs incurred by others as a result of such substitution.
- b) **Approval of Submittals and Shop Drawings** – **Owner's**, "**Architect's**", Engineer's and/or **ROEL's** approval of a submittal or shop drawing shall not relieve **Subcontractor** of its responsibility for full compliance with all terms and conditions of the **Subcontract Documents**. No such submittal or shop drawing approval shall constitute a waiver of, or agreement to, any change or deviation to the **Subcontract Documents**. Any later discovered change or deviation shall be remedied at **Subcontractor's** sole cost and expense, regardless of any shop drawing or submittal approval.
- c) **Effects on Schedule** – Failure by **Subcontractor** to make timely submittals of required data may delay the progress of the work and also may delay **ROEL's** issuance of progress payments. **Subcontractor** shall be fully responsible for any delays caused by its failure to make timely submittals as set forth in paragraph 3.9.
- d) **Close-Out Submittals** – Upon completion of its work, **Subcontractor** shall submit all as-builts, owner's manuals, operating manuals, labor and materials warranties, and any other such close out documents required by the **Subcontract Documents**. Failure by **Subcontractor** to make timely close-out submittals may delay any remaining payments including final payment.

15.3 Workmanship and Quality Control – All work performed by **Subcontractor** shall be in strict accordance with the **Subcontract Documents** and as follows:

- a) **Quality** – All work shall be performed and installed at a level of quality as described in the **Subcontract Documents**, per industry standards for the area in which the project is located, or per the manufacturer's recommendations, whichever is more strict. The **Architect** shall be the final judge of whether materials and workmanship are of sound quality in conformance with the **Subcontract Documents**.
- b) **New Materials** – Unless otherwise permitted in writing, all materials installed in the **Project** by **Subcontractor** shall be new as originally manufactured.
- c) **Acceptance of Prior Work** – **Subcontractor** shall inspect the work upon which its work is to be installed and shall immediately notify **ROEL** if such work is incomplete or is not in conformance with the requirements of **Subcontractor's** prerequisites to apply its work. Failure to make such notification shall bar **Subcontractor** from making any claim related to the prior work.
- d) **Cutting and Patching** – Unless specifically identified elsewhere in the **Subcontract Documents**, **Subcontractor** shall perform all cutting and patching associated with the installation its work.
- e) **Protection of its own Work** – **Subcontractor** shall take all necessary precautions to protect its work from damage while on the project and shall leave its work reasonably protected from subsequent damage once its work is complete.
- f) **Protection of The Work of Others** – **Subcontractor** is responsible for the protection of completed or partially completed work of other trades during installation of its own work. Should damage occur as a result of **Subcontractor's** activities, **Subcontractor** shall repair and/or replace at its own cost, or **ROEL** shall repair at **Subcontractor's** expense. All damaged work shall be repaired in a timely fashion so as not to delay the progress of the job.
- g) **Tests and Inspections** – **Subcontractor** shall cooperate with all tests and inspections performed to ensure that the work is in accordance with the **Subcontract Documents** and applicable codes and regulations. **Subcontractor** shall not cover or conceal any work upon which an inspection is required or scheduled.
- h) **Uncovering of the Work** – **Subcontractor** shall uncover its work upon request of **ROEL** to provide for inspection to ensure that the work is in accordance with the **Subcontract Documents** and applicable codes and regulations. If **Subcontractor** violated paragraph "f" above, or if the work was found to be defective, then **Subcontractor** shall pay for the costs of inspection and to repair the work damaged to perform the inspection.
- i) **Correction of The Work** – **Subcontractor** shall immediately perform and pay for the correction of any of its work found to be defective or otherwise not in conformance with the **Subcontract Documents**.
- j) **Compliance With Codes** – **Subcontractor** shall perform all its work in full compliance with all applicable codes, regulations and laws affecting the work and the safety of its workers.

- 15.4 **Jobsite Duties – Subcontractor** shall ensure the following items are observed at all times:
- a) **Notification of Safety Officer** – Prior to or immediately upon mobilization to the project, **Subcontractor** shall notify **ROEL** in writing of the name and phone number of its safety officer.
 - b) **Daily Report** – **Subcontractor's** superintendent, foreman, or other designated individuals, shall submit a report to **ROEL's** field office every day whenever **Subcontractor** has workers working on the project. The report shall state the number of workers **Subcontractor** has on the project that day and shall subdivide the same into categories (foremen, tradesmen, laborers, apprentices, etc.) along with the work activities that they performed that day and what area of the project they worked. Prior to completing the first daily report, **Subcontractor** shall review the form and format with **ROEL's** Project Superintendent. (**ROEL** may provide forms for **Subcontractor's** use.)
 - c) **Jobsite Meetings** – Periodic progress and coordination meetings may be held at the jobsite. **Subcontractor** must have a qualified representative, capable of authorizing actions and making decisions regarding **Subcontractor's Scope of Work**, attend each meeting while **Subcontractor** has work in progress, and as requested by the Project Superintendent.
 - d) **Safety Meetings** – Periodic safety meetings may be held at the jobsite. **Subcontractor** must have a qualified representative and each of its employees, if required, attend each meeting while **Subcontractor** has work in progress, and as requested by the project Superintendent.
 - e) **Cleanup** – At the end of every workday, **Subcontractor** shall be responsible to leave its work area clean and free of debris. Within 24 hours of notice by **ROEL** of an area that requires cleanup (for which **Subcontractor** is responsible in **ROEL's** reasonable opinion), **Subcontractor** shall cause the area to be cleaned. If **Subcontractor** fails to perform such cleanup then **ROEL** may cause the area to be cleaned and back-charge **Subcontractor** for any costs associated therewith.
 - f) **Drugs and Alcohol** – There shall be no use of drugs or alcohol at or near the jobsite at any time. Anyone violating this rule shall be removed from the jobsite immediately and permanently.
 - g) **Radios** – Radios, "Walkmans", and any other nuisance or safety hazard will not be allowed on the jobsite.
 - h) **Animals** – Animals will not be allowed on the jobsite.
 - i) **Offensive Behavior** – **Subcontractor** recognizes that jobsite is located within a community whose rights must be respected. Profane, lewd, obscene, and any other offensive language, behavior and/or clothing will not be tolerated. **Subcontractor** shall be responsible for the actions of its employees. Anyone violating this rule shall be warned once and thereafter removed from the jobsite.
 - j) **Proper Attire** – All personnel and visitors on the jobsite shall wear proper attire for the conditions of the jobsite. Hardhats and protective shoes are required at all times. Jewelry and loose clothing shall be avoided.
 - k) **Jobsite Visitors** – All visitors to **Subcontractor** on the jobsite must check in at **ROEL's** trailer and sign an indemnification form. All visitors shall wear proper attire and observe safety warnings.
- 15.5 **Miscellaneous Subcontractor Indemnities** – In addition to the general indemnity provided in Article 12 and any other indemnities provided herein, **Subcontractor** shall provide the following protections:
- a) **Independent Contractor** – **Subcontractor** certifies that it is an independent contractor in every respect of the law. **Subcontractor** shall, at its sole cost and expense, comply with all laws, regulations, ordinances, and rules relating to operating an independent contracting business and as an employer. **Subcontractor** shall hold **ROEL** harmless from and against all levies, charges, fines, assessments, liabilities, taxes, and contributions and all costs to defend such charges (including attorney fees) that may be charged as a result of **Subcontractor's** operations and performance of **Subcontractor's Scope of Work**.
 - b) **Taxes, Licenses & Permits** – **Subcontractor** shall obtain all proper licenses and permits to perform **Subcontractor's Scope of Work** and pay all associated taxes when due. **Subcontractor** shall indemnify and hold **ROEL** harmless from all costs, levies, charges, fines, assessments, liabilities, taxes, and contributions and all costs to defend such charges (including attorney fees) that may be charged as a result of **Subcontractor's** operations and performance of **Subcontractor's Scope of Work**.
 - c) **Royalties, Patents, Trademarks, Copyrights and Intellectual Property** – **Subcontractor** shall indemnify and hold **ROEL** harmless from and against all claims, suits, actions, costs and expenses (including costs to defend against such claims, including attorney fees), for any alleged violation or infringement of royalties, patents, trademarks, copyrights or intellectual property rights that may result from **Subcontractor's** performance of **Subcontractor's Scope of Work**.
 - d) **Use of ROEL's Equipment** – **Subcontractor** may utilize from time to time (if permission is granted by **ROEL**) equipment provided by **ROEL** in the execution of its work. In all such cases, **Subcontractor** accepts the full risk and responsibility to operate the equipment safely and accepts the equipment in an "as-is" condition. **Subcontractor** shall be responsible to inspect the equipment for fitness, properly train the users of the equipment, and employ proper safety techniques in using the equipment. **Subcontractor** shall fully indemnify and hold **ROEL** harmless from and against all liability, claims, actions, lawsuits, costs and expenses (including costs and expenses to defend such charges, including attorney fees) for personal injury, death, property damage or other relating to **Subcontractor's** use of such equipment. This duty to indemnify shall include the active or passive negligence of **ROEL**, but **Subcontractor** shall not be obligated to indemnify **ROEL** for its sole negligence or willful misconduct.
- 15.6 **Labor Relations** – **Subcontractor** shall be fully responsible for the acts and performance of its employees and shall maintain peaceful relations among its employees to avoid labor conflicts.
- a) **Picketing Against Subcontractor** – Should picketing or other labor activity occur on the jobsite by employees or unions with issues against **Subcontractor**, then **Subcontractor** shall mitigate any resulting conditions that impede the progress of the work for **ROEL** and others. Additionally, **Subcontractor** shall continue the proper performance of its work without interruption or delay. Any costs incurred by **ROEL** due to such actions shall be reimbursed by **Subcontractor**.

- b) **Other Picketing or Strike** – If jobsite picketing of any kind unrelated to **Subcontractor** occurs at the jobsite, **Subcontractor** shall continue the proper performance of its work without interruption or delay.
- c) **Reserved Gate System** – If **ROEL** establishes a reserved gate system, **Subcontractor** shall ensure that all of its employees, suppliers, visitors, and managers obey the reserved gate rules.
- d) **Indemnify from Trust funds** – **Subcontractor** shall indemnify and hold **ROEL** harmless from and against any and all claims from trust funds established for the benefit of **Subcontractor's** employees.
- 15.7 **Signage & Publicity** – This **Agreement** shall be confidential and not disclosed to any party other than what is necessary to carry out the obligations herein. **Subcontractor** shall post no signage at the **Project** site nor produce any media publicity of the project without first obtaining the written permission of **ROEL** and, if required, of **Owner**. All signage shall be subject to this paragraph including signs/logos painted on or affixed to the sides of trailers and other equipment.
- 15.8 **Third Tier Subcontractors** – **Subcontractor** may sublet portions of **Subcontractor's Scope of Work** (but not all) under this **Agreement** to properly licensed and qualified sub-subcontractors. In such cases, **Subcontractor** shall bind sub-subcontractors to all of the **Subcontract Documents**, including the insurance and indemnity provisions. **Subcontractor** shall notify **ROEL** in writing of all sub-subcontractors.
- 15.9 **Authorized Representative** – **Subcontractor** shall provide and maintain at least one (1) full-time, responsible and responsive job superintendent/foreman to the project along with adequate key people and manpower to support a continuous operation in accordance with **ROEL's** schedule. Prior to commencing work, **Subcontractor** shall identify in writing its full time superintendent/foreman and his/her emergency night time phone number. **ROEL** shall have the right to require the immediate removal of any person from the project if it has reasonable objections to that individual.
- 15.10 **Sub's Duty to Notify ROEL of errors and omissions** – If at any time prior to or after execution of this **Agreement**, **Subcontractor** becomes aware of errors and omissions in the **Subcontract Documents**, or deviations from applicable codes and regulations, then **Subcontractor** shall have the duty to immediately notify **ROEL** in writing of such error, omission, or deviation. If **Subcontractor** knowingly performs work that contains such errors, omissions, or deviations, without such notification to **ROEL** then **Subcontractor** shall be fully responsible to repair or replace the work at its cost.
- 15.11 **Jobsite Trips** – **Subcontractor** represents that it has included the necessary number of trips/move-ins to the jobsite to maintain **ROEL's** progress schedule at no additional cost to **ROEL**.
- 15.12 **Materials Furnished by Others** – If **Subcontractor's Scope of Work** includes the installation of materials furnished by others, **Subcontractor** shall be responsible to receive, inspect, handle, store, protect, and insure such materials once delivered to the **Project**. If any such materials are damaged or otherwise unsuitable for their purpose, at the time of delivery, **Subcontractor** shall notify **ROEL** in writing within 5 workdays. **Subcontractor** shall not be responsible for such damage or unsuitableness if such notification is provided. However, after the 5-day period has elapsed and **Subcontractor** has not notified **ROEL** of any such deficiencies, then **Subcontractor** shall be fully responsible for replacing all such materials.
- 15.13 **Cooperation and Coordination - Work by others** – **Subcontractor** acknowledges that other subcontractors to **ROEL** and other contractors and subcontractors to **Owner** may perform work on the **Project**. **Subcontractor** covenants that it shall cooperate with all such parties to achieve the proper and most efficient completion of the **Project** as directed by **ROEL**.
- 15.14 **Attorney's Fees** – If either party files any legal action, including arbitration, to enforce any provision of this **Agreement**, all reasonable attorney's fees and costs of litigation, shall become part of a judgment in favor of the prevailing party, as determined by the trier of fact.
- 15.15 **Audit by Owner** – If required by **Owner** and allowed under the **Subcontract Documents**, **Subcontractor** shall make available all of its books of account and records regarding this project to **Owner**, or its auditor, for review.
- 15.16 **Audit by ROEL** – Except as provided elsewhere in these **Subcontract Documents**, **ROEL** shall not have the right to audit the books and records of **Subcontractor**.
- 15.17 **Assignment of Agreement** – **Subcontractor** may not assign, sublet, or transfer this **Agreement**, or any portion thereof, at any time to anyone without **ROEL's** written permission. **ROEL** may not assign this **Agreement**, or any portion thereof, at any time to anyone without **Subcontractor's** written permission. However, **ROEL** may assign this **Agreement**, and **Subcontractor** hereby accepts such assignment, to **Owner** and/or a construction Lender without **Subcontractor's** written permission, if required by **Owner** or Lender. **Subcontractor** shall be given written notice of such assignment.
- 15.18 **No Third Party Beneficiaries** – This **Agreement** is made for the benefit of **ROEL** and **Subcontractor** and not for the benefit of any third parties. Unless specifically stated in the **Subcontract Documents**, no third party shall have any rights or obligations hereunder.
- 15.19 **Severability** – If any court or legal authority finds that any portion of this **Agreement** is unenforceable then only that portion shall be stricken from this **Agreement** and the balance of the **Agreement** shall remain intact.
- 15.20 **Construction of This Agreement and Review by Counsel** – **Subcontractor** represents that it has reviewed this **Agreement** in its entirety and additionally has had the opportunity to review it with its legal counsel. By its signature below, **Subcontractor**

represents that it has satisfied itself of all the terms and conditions herein and has negotiated with ROEL to resolve any differences and that a mutual accord had been achieved.

15.21 Authority To Bind – By any performance hereunder, Subcontractor verifies that the individual signing this Agreement is duly authorized by the corporate bylaws, partnership agreement, or other legal process to bind Subcontractor to the obligations contemplated under this Agreement and Subcontractor shall be so bound.

15.22 Subcontractor’s Financial Records – Upon written request, Subcontractor shall provide reasonable financial data to ROEL to allow ROEL to make a determination whether to require a Performance and Payment Bond. Such information may include last audited and current interim financial statements, list of past large projects and a list of current and backlogged projects and a bonding company reference. All data received by ROEL shall be held in strict confidence and not released or shared with anyone except ROEL’s responsible personnel. If Subcontractor refuses to provide such reasonable information then Subcontractor shall pay for, without reimbursement, the costs of a Performance and Payment Bond, if required by ROEL.

15.23 Performance & Payment Bond – Upon written request by ROEL at any time after execution of this Agreement, Subcontractor shall provide a Faithful Performance Bond and a Labor and Materials Payment Bond each with a penal sum equal to 100% of this Subcontract Amount. The bonding company must be listed on the U.S. Department of Treasury Circular #570 and must have a Treasury limit in excess of the bond amount. In addition, the bonding company must be admitted to transact business by the Department of Insurance in the state where the job is located and must have a rating of "A" or better in the current A.M. Best Rating Guide of Insurance Companies. Upon receipt and acceptance of the bonds, ROEL shall promptly reimburse Subcontractor for the actual premium cost of the bonds (including premium costs due to change orders), except as provided elsewhere in this Agreement.

AGREEMENT AND EXECUTION

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 years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors’ State License Board, P. O. Box 26000, Sacramento, California 95826.

IN WITNESS WHEREOF: By their authorized signatures below, the parties hereto execute this Agreement for themselves, their heirs, executors, successors, administrators, and assigns as of the effective date of this Agreement. Subcontractor performance of any work after receiving this Agreement shall be construed to be acceptance of all the terms and conditions of this Agreement, unless written objection is made to any objectionable terms and conditions within 10 days after receipt. Any handwritten modifications made to this typewritten agreement shall be initialed by both parties to be valid. Such modifications shall have of no force and effect without such initials.

SUBCONTRACTOR:

CONTRACTOR:

Type Sub Name Here

ROEL Construction Co., Inc.,
A California Corporation

_____ Date

By: Type Signer’s Name and Title Here _____ Date

By: _____
Name Title

Contractor’s State License No. 184531-B1

Check One:
 Corporation LLC Partnership Sole Proprietorship Individual

Contractor’s State License No. #####

Federal Tax ID # _____

EXHIBIT "A"
PRIME CONTRACT DOCUMENTS

The **Prime Contract** referred to in Article 2 and elsewhere in this **Agreement** includes but is not limited to the following:

1. Plans prepared by _____ as follows:

<u>Sheet No.</u>	<u>Description</u>	<u>Original Date</u>	<u>Revision Date</u>	<u>Revision No.</u>
XX-XXX	XXXXXXXXXXXXXXXXXXXXXXXXXX	xx/xx/xx	xx/xx/xx	xx
XX-XXX	XXXXXXXXXXXXXXXXXXXXXXXXXX	xx/xx/xx	xx/xx/xx	xx
XX-XXX	XXXXXXXXXXXXXXXXXXXXXXXXXX	xx/xx/xx	xx/xx/xx	xx
XX-XXX	XXXXXXXXXXXXXXXXXXXXXXXXXX	xx/xx/xx	xx/xx/xx	xx

2. Complete Project Manual/Specifications prepared by _____ dated _____.

3. Geotechnical/Soils Report prepared by _____ dated _____.

4. Addenda #____ prepared by _____ dated _____.

5. Instructions To Bidders as prepared by _____ dated _____.

6. List any other applicable documents here:

--- End of Exhibit "A" ---

EXHIBIT "B"
SUBCONTRACTOR SPECIFIC SCOPE OF WORK

In no way limiting the requirements of the “**Subcontract Documents**”, “**Subcontractor**” shall prosecute and complete the following:

Provide all necessary and required labor, materials, equipment, hoisting, tools, temporary provisions, supervision, applicable taxes, insurance, licenses and permits (but not building permit), and cleanup required to furnish, install and complete the “**Subcontractor’s Scope of Work**” as specified in and in strict accordance with the “**Subcontract Documents**”, including the Contractor’s Project Progress Schedule. This “**Agreement**” specifically includes, but is not limited to, the following items:

1. “**Subcontractor**” shall perform and install all work in compliance with the applicable codes as required by the “**Subcontract Documents**”, federal, state and local governments, and all utility services and other agencies having jurisdiction on the project.
2. “**Subcontractor**” is responsible for coordinating and obtaining the required tests and inspections for its own work. “**Owner**” shall provide and pay for an independent testing laboratory. If “Subcontractor’s” Work fails a test or inspection, then “**Subcontractor**” shall be responsible for the cost of the re-inspection of the corrected Work until it passes.
3. “**Subcontractor**” shall submit all shop drawings, samples, catalog data, certificates and other submittal data as required by the **Subcontract Documents** no later than **three (3) days** after receipt of this **Agreement**. Quantity of submittals required are:
 - a) Sepia or Reproducible **One (1)**
 - b) Bluelines (in addition to sepia) **Seven (7)**
 - c) Catalog Data/Product Data **Seven (7)**
 - d) Samples **Seven (7)**

When shop drawings are returned, Subcontractor shall make any required modifications, stamp sepia “Final” or “Issued for Construction” and return the quantity of blueline sets **ROEL**® requests within **three (3) days** for distribution.

4. Subcontractor shall furnish Contractor prior to Substantial Completion of the Project all “Close Out Documents.” Close-out Documents include warranties, guarantee, attic stock of materials, manuals, instructions, maintenance recommendations (in writing) and as-built record drawings. Subcontractor shall furnish three (3) original copies of all the above. Subcontractor is aware of the importance of submitting complete and accurate “Close Out Documents” that meet or exceed all of the requirements of SB800.
5. Time is of the essence, Subcontractor agrees to commence the Work on the Project not later than twenty-four (24) hours after notification by Contractor. Subcontractor shall upon commencement of Work supply sufficient manpower, equipment and materials to accomplish and maintain the Work in all areas consistent with the Project Schedule and in such a manner as to not delay any other item of Work or the project completion date.

Contractor has prepared a Project Schedule (Exhibit “F”), Subcontractor agrees to prosecute the Work at such a rate that the schedule is the maximum time allowed and every effort will be made to achieve early completion. The Project Schedule will be modified or revised from time to time showing job progress and to coordinate and sequence the remaining Work; however, the duration of time established for Subcontractor’s Work is firm and must be maintained. Subcontractor shall pay his own overtime if necessary to meet the schedule if Subcontractor is responsible for the delay.

6. “**Subcontractor**” shall provide all (ENTER TRADE DESCRIPTION HERE) work, per plans and specifications and any other **Subcontract Documents**. Also **INCLUDED** in the “**Subcontractor’s Scope Of Work**” are the following:
 - a) **Removal of spoils and debris resulting from its own work, including trenching, excavation and demolition.**
 - b) **For subcontractors installing impervious flooring products over concrete, moisture testing per manufacturer recommendations to ensure slab is dry enough to receive flooring.**
 - c)
 - d)
7. “The following **QUALIFICATIONS** or **CLARIFICATIONS** shall apply to the “**Subcontractor’s Scope Of Work**”:

 - a)
 - b)
 - c)
 - d)

8. The following is specifically **EXCLUDED** from “**Subcontractor’s Scope Of Work**”:

 - a)
 - b)
 - c)
 - d)

9. The following ALLOWANCES (if any) shall apply to this Subcontract Agreement.

- a)
- b)
- c)
- d)

10. The following represents hourly wage rates to be used for change order and extra work under this Agreement:

	<u>1st Trade</u>	<u>2nd Trade</u>	<u>3rd Trade</u>	<u>4th Trade</u>
a. Regular hours	\$ _____	\$ _____	\$ _____	\$ _____
b. Time and a half	\$ _____	\$ _____	\$ _____	\$ _____
c. Double time	\$ _____	\$ _____	\$ _____	\$ _____

The above rates shall include all markups, for insurance, taxes and fringes, small tools, overhead and profit, etc.

End of Exhibit "B"

EXHIBIT "C"
SUPPLEMENTAL SUBCONTRACT PROVISIONS

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

1. **SAFETY**

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

- a) At all times when working on the project, **Subcontractor** shall maintain at the Project site the following Safety documentation in a format and at a level of detail sufficient to prevent to the maximum possible extent injury and accidents at the project:
- A written Safety Program or Illness and Injury Prevention Program for its company.
 - A Code of Safe Practices for its company (may be included in the IIPP, above).
 - A detailed Job Hazard Analysis or "JHA" tailored specifically to identify how **Subcontractor** will address specific safety concerns for its work on this project. A sample JHA form can be found on Roel's website at www.roel.com, or from **Roel's** Safety Director.
 - A Material Safety Data Sheet, or "MSDS" for all products which it will have on the project site which are listed by O.S.H.A. as a hazardous material.

If requested by **ROEL**, **Subcontractor** shall submit any or all of the above documents to Roel upon request. **Subcontractor** may contact the Roel Safety Director at 619-297-4156 if it has any questions about preparing and maintaining these documents.

- b) Identify in writing to the Superintendent the name of its safety director for this project prior to commencing work.
- c) Ensure that it has at least one employee trained in CPR and First Aid on site at all times.
- e) Provide a written report of all accidents and injuries to the ROEL Superintendent. ROEL's Superintendent maintains report forms for this purpose.
- f) Ensure that all equipment brought on site is in compliance with current safety and state motor vehicle requirements. Any equipment in violation of these requirements shall be immediately repaired or removed from the jobsite.
- g) Hold weekly safety meetings with its employees on the jobsite. Minutes of each meeting, including an attendance record, shall be provided each week to the ROEL Project Superintendent.
- h) Have **Subcontractor's** safety director attend all project Safety Meetings held by **Roel**.
- i) Perform its work and maintain its safety program so as to ensure full compliance with all aspects of Fed-OSHA and any other state or local safety regulations (Such as Cal-OSHA for projects in the state of California), and any subsequent related regulations, and **ROEL 's** own "Code Of Safe Practices".
- j) Immediately correct any and all safety violations. **ROEL** will issue "Safety Notices" to **Subcontractor** and its individual employees when a safety infraction is observed. This notice will identify the observed violation and require immediate correction. A copy of the notice will be provided to the involved employee and the **Subcontractor's** supervisor or Safety Director. Repeat violations of safety rules is grounds for removal of an employee from the job.
- k) Pass on all safety responsibilities and requirements required by law and by this **Agreement** to its sub-subcontractors and suppliers. **Subcontractor** shall at all times be responsible for the safe performance of its sub-subcontractors and suppliers.
- l) Provide proper training to all its employees in all aspects of the work, including safety awareness and accident prevention.
- m) If the Work of this **Subcontractor** involves any trenching, excavation, earth shoring, or scaffold erection, the Subcontractor shall ensure that it has a "Competent Person" (as defined in 29 CFR Part 1926, Subpart C – General Safety and Health Provisions, Section 1026.32(f) "Definitions"), who is properly trained to the satisfaction of the **Subcontractor**, to fully supervise and coordinate all aspects of such work.
- n) If the Work of this **Subcontractor** involves any trenching or excavation of any kind, **Subcontractor** shall be solely responsible to ensure that it fully complies with all Federal, State and Local laws, rules and regulations regarding "markout" or "Digalert" as required for the underground work. Except for **Roel's** sole negligence or willful conduct,

Subcontractor shall defend and indemnify Roel against any claims, fines, lawsuits, penalties, liability or other costs incurred by Roel as arising out of **Subcontractor's** failure to follow all such rules and regulations.

- o) If the **Project** contains, or once contained, asbestos materials (or other hazardous materials including lead paint, PCB's and silica) in its original construction, **Subcontractor** shall be responsible to provide only such employees who have been properly trained to work in and around such hazardous materials as defined by applicable safety regulations. All such training shall be at the sole cost of the **Subcontractor**.
- p) If the work of this **Subcontractor** involves any entry into a "confined space" the **Subcontractor** shall observe all special safety requirements for confined spaces. **Subcontractor** shall notify **ROEL** of its confined space safety plan using a "JHA", as described in "a)" above prior to the start of such work. Only qualified and trained personnel shall be allowed to enter a confined space. All applicable safety equipment including emergency rescue devices shall be readily available.

2. **SUBCONTRACTOR'S INSURANCE**

Subcontractor shall maintain at all times beginning with inception of this **Agreement**, during the work of this **Agreement**, and thereafter if required to return to the **Project** for any reason, policies of insurance, written by an insurance company with an A.M. Best's rating of A-VII or higher, with the following minimum limits and including the following specified coverage requirements:

- a) Worker's Compensation including Occupational Disease insurance meeting all statutory requirements of the State in which the work is to be performed together with a Broad Form All States Endorsement and containing Employers' Liability insurance in an amount of at least \$1,000,000. If required by **ROEL**, **Subcontractor** shall provide a waiver of subrogation at **ROEL's** expense. **Subcontractor** is responsible to carry "Marine Coverages" if required by federal and/or state laws.
- b) Comprehensive Auto Liability on an occurrence basis covering all Owned, Non-Owned, and Hired Vehicles for limits of liability of at least \$1,000,000. If **Subcontractor** at any time transports hazardous materials, subcontractor shall carry appropriate auto pollution coverage.
- c) Comprehensive General Liability insurance on an occurrence basis, providing coverage for a combined single limit for Bodily Injury, Personal Injury, including its employees, and Property Damage, of at least \$2,000,000 for each occurrence and \$3,000,000 General Aggregate. Umbrella/Excess Insurance may be used to satisfy these limits. This policy must provide Premises-Operations, Elevators, Independent Contractors, Broad Form Property Damage, Hostile Fire Pollution, Contractual Liability, and Products & Completed Operations coverages (which shall be maintained for a period of not less than two years after substantial completion of the project or for such longer period as may be required by the **Subcontract Documents**). Explosion, Collapse, and Underground Exclusions must be deleted when applicable to operations performed by **Subcontractor**.

Subcontractor shall cause this policy to be endorsed, *effective as of the date of this Agreement*, by the insurance company providing coverage to include the following items:

- 1. **Contractor, Owner**, and any others required in the contract documents shall be named as ADDITIONAL INSUREDS under the policy per ISO form CG2010-1185 or acceptable equivalent.

In the event of a loss or claim of an additional insured where the absence of the requested form would serve to deny coverage, it is understood and agreed that the contractual liability coverage requirements of this Exhibit shall be triggered and shall require immediate defense and indemnity as set forth in Article 12.1
- 2. This insurance shall be considered PRIMARY insurance and any other insurance carried by the ADDITIONAL INSUREDS will be excess and shall not contribute to any losses arising out of **Subcontractor's** work.
- 3. A 30-day advance notice of cancellation to all additional insureds.
- 4. If **Subcontractor's** liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.
- d) Umbrella/Excess Insurance may be used to satisfy the required limits of insurance. Coverage shall apply to all the same risks as the underlying insurance policies listed above. All requirements listed in paragraph 2(c) shall apply to this insurance.
- e) **ROEL** reserves the right to require higher limits for specific exposures.
- f) Subcontractors performing Grading, Earthwork and/or Underground Utility activities shall **NOT** have risks relating to SUBSIDENCE excluded from coverage under their general liability and umbrella/excess policies.
- g) The insurance coverages and limits required above shall not limit the extent of **Subcontractor's** responsibilities and liabilities specified within the **Subcontract Documents** or by law. **ROEL** makes no representation that coverage and limits required in this Exhibit "C" will necessarily be adequate to protect **Subcontractor**, and such coverage and limits

- shall not be deemed as a limitation on **Subcontractor's** liability under the indemnities granted to **ROEL** in the **Agreement**.
- h) If **Subcontractor** employs sub-subcontractors in the performance of its work, **Subcontractor** agrees to obtain equivalent insurance provisions from its sub-subcontractors as required under this **Agreement** and provide a copy of their certificate of insurance to **ROEL**.
- i) All subcontractors performing DESIGN, ENGINEERING, SURVEYING, TESTING, or other PROFESSIONAL services shall carry PROFESSIONAL LIABILITY (Errors and Omissions) insurance. **This policy shall provide at least \$1,000,000 coverage.** **Subcontractor** shall provide a certificate of insurance confirming such coverage to **ROEL** prior to its start of work.
- j) CERTIFICATES OF INSURANCE evidencing complete compliance with all of the provisions of this Section (Subcontractor's Insurance), **effective as of the date of this "Agreement"**, shall be submitted by **Subcontractor** to "**ROEL**" prior to commencing any work on the project. Receipt and acceptance of all proper CERTIFICATE(S) OF INSURANCE is a prerequisite to all payments to Subcontractor.
- k) The words "endeavor to" and "but failure to mail such notice" on a certificate of insurance shall impose no obligation or liability of any kind upon **ROEL**, its agents or representatives and shall be deleted from the certificate form's cancellation provision. Failure of **ROEL** to demand such certificate or other evidence of full compliance with these insurance requirements or failure of **ROEL** to identify a deficiency in the form that is provided shall not be construed as a waiver of **Subcontractor's** obligation to maintain such insurance.
- l) **OPTIONAL - ALL OPERATIONS CERTIFICATES** – As a courtesy to **Subcontractor**, If **Subcontractor** has previously submitted, or hereafter submits, proper certificates of insurance for ALL OPERATIONS performed by Subcontractor on behalf of ROEL and all others required by the Subcontract Documents, such certificate shall be acceptable to **ROEL** as having met the above requirements as long as all appropriate coverages and endorsements are included therewith. If the **Subcontract Documents** require special certificates, or endorsements on behalf of the **Owner**, or any others, then separate certificates shall be issued by **Subcontractor**.
- m) **Subcontractor's** failure to maintain the insurance coverage required pursuant to this **Agreement** shall be deemed a **Subcontractor** default pursuant to Article 9 of the **Agreement**. In such event, **ROEL** may terminate this **Agreement** and obtain damages from **Subcontractor** resulting from said default. Alternatively, **ROEL** may purchase such required insurance coverage and without further notice to **Subcontractor**, **ROEL** may deduct from sums due to **Subcontractor** any premium costs advanced by **ROEL** for such insurance.
- n) **Subcontractor** shall provide certified copies of all insurance policies required above within 10 days of **ROEL's** written request for same.

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

EXHIBIT "D"
TEMPORARY FACILITIES AND GENERAL CONDITIONS

Unless otherwise noted below, all temporary facilities and general conditions items shall be the responsibility of the Subcontractor.

- a) **Office Trailer** –ROEL's office trailer (and copy machine, fax machine, etc.) will be for its own, the **Owner's**, and **Architect's** use only.
- b) **Telephone** - **Subcontractor** shall be responsible for its own telephone communications.
- c) **Drinking Water** - **Subcontractor** shall be responsible to supply adequate drinking water for its personnel.
- d) **Jobsite Security** - There will be no security guard service for this project. **ROEL** shall not be responsible for theft, vandalism, burglary, damage, and other losses to **Subcontractor's** (and its employees') property and equipment at the jobsite at any time. **Subcontractor** shall plan for any additional security needs it may require.
- e) **Parking** - Onsite parking will not be provided by the **ROEL** for **Subcontractor's** use. **ROEL** assumes no responsibility or liability for construction personnel vehicles wherever they park.
- f) **Portable Toilets** - Portable sanitary facilities will be provided by **ROEL** for the use of all subcontractors. Facilities in **ROEL's** office trailer, if any, are not available for **Subcontractor's** use.
- g) **Trash Receptacle/Dumpster** - **Subcontractor** shall employ its own means of moving trash from the jobsite on a daily basis.
- h) **Temporary Power** - Temporary power will be provided to the jobsite by **ROEL**. Distribution will also be provided by **ROEL**. **Subcontractor** shall be responsible for distribution of power from that point.
- i) **Temporary Lighting** – **ROEL** will provide temporary lighting in accordance with OSHA requirements. All task lighting and lighting required by **Subcontractor** in excess of OSHA standards shall be **Subcontractor's** responsibility.
- j) **Water Service** - Temporary water service will be provided by **ROEL**. All distribution from the points of connection shall be **Subcontractor's** responsibility.
- k) **Scaffolding** - Scaffolding will not be provided by **ROEL**. **Subcontractor** shall plan accordingly.
- l) **Hoisting** - Hoisting will not be provided by **ROEL**. **Subcontractor** shall plan accordingly.
- m) **Deliveries and Traffic Control** - **Subcontractor** shall coordinate all deliveries and traffic control (including street markers and barricades) with **ROEL**. **ROEL** will assist wherever possible but any extra expenses and personnel are the responsibility of **Subcontractor**.
- n) **On-site Storage** - Due to the constricted and dynamic nature of any jobsite, all on-site storage of equipment and materials must be authorized and coordinated with **ROEL's** Superintendent. If the equipment/material should require relocation at any time, **Subcontractor** shall be responsible to immediately relocate it at no additional costs to **ROEL**.
- o) **Layout** – **ROEL** shall provide layout of building corners, and at least one North-South and one East-West gridline at each floor of the building. **Subcontractor** shall provide all layout for its own work, if applicable.
- p) **Maintenance of Safety Protection** – **ROEL** will provide safety rails at the perimeter column lines and railings or floor opening covers for the protection of all jobsite personnel. **Subcontractor** shall be responsible for the replacement and/or repair of any and all safety rails, floor opening protection, or other safety protection which **Subcontractor** has removed, altered or damaged. If **Subcontractor** removes, damages or alters any safety device it shall automatically assume any and all liability for any damage to property and/or injuries (including death) to persons that arise from or relate to such safety device.
- q) **Cleanup** - At the end of every workday, every Subcontractor shall be responsible to leave their work area clean and free of debris. Within 24 hours of a written notice by Contractor of an area that requires cleanup (for which the Subcontractor is responsible in the Contractor's reasonable opinion), Subcontractor shall cause the area to be cleaned. If Subcontractor fails to respond to such notice then Contractor may cause the area to be cleaned and back-charge the Subcontractor for any costs associated therewith.

--- End of Exhibit "D" ---

EXHIBIT "E"
BILLING AND PAYMENT PROCEDURES

1. **PROGRESS PAYMENTS** - Monthly progress payments will be made no later than seven days after receipt of payment by **ROEL** from **Owner**, provided that **Subcontractor** has complied with all requirements and prerequisites for payment. Enclosed are forms that must be correctly and completely filled out in order for **ROEL** to accept and execute **Subcontractor** payment request. *Subcontractor shall make copies of these forms for his use on this project.*

Each payment request must be submitted no later than the 20th of the month, for work in place to the end of the month based on an estimated percentage of completion for each line item on **Subcontractor's** Schedule of Values. Such amount shall be subject to the approval (and revision, if necessary) of the Owner and Contractor's project manager. All billings shall be submitted to [ROEL Construction Co., Inc., P. O. Box 80216, San Diego, CA 92138-0216](#)

Subcontractor may not invoice for change order and extra work until a written contract change order is executed and returned to **ROEL**.

Following is a list of required forms that must be submitted (originals - no copies or faxes) for each payment application:

- a) Application for Payment (must use the attached form and must be signed by **Subcontractor**.)
- b) AIA Document G703 - Schedule of Values. If required, **Subcontractor** must use the attached form which should break down each phase of work as required by **ROEL** so that **ROEL**, Owner and Lender can verify the value of the work in place on a monthly basis.
- c) Certificate of Stored Materials and Bill-of-Sale. These forms must be used to invoice for materials stored in an acceptable off-site location. All stored materials billings must be accompanied by an acceptable certificate of insurance evidencing coverage in case of loss/damage to the material. **ROEL** may require physical inspection of materials prior to approving payment. Such inspection shall not be considered acceptance of the materials.
- d) Conditional Waiver & Release upon Progress Payment for the current month's request (**Subcontractor** may use its own form if acceptable.)
- e) Unconditional Waiver & Release upon Progress Payment for the prior month's request (**Subcontractor** may use its own form if acceptable.)

All lien releases provided must exactly match the amount of money requested. Use final lien releases for final payment issues. **ROEL** may require, at its option, appropriate lien releases to be submitted as a condition of payment from **Subcontractor's** sub-subcontractors, laborers, and suppliers. Joint checks may be issued at the discretion of **ROEL**.

2. **FINAL PAYMENT** - Final payment of the contract retainages will be made no later than seven days after receipt of final payment to **ROEL** from **Owner**, provided that **Subcontractor** has met all prerequisites to final payment. **Subcontractor** shall submit a final payment application for retainage (in the same format as a progress billing) after completion of its work and execution of any final change orders.
3. **CAREFUL!** - Incorrect, incomplete or overbilled payment applications will be rejected and returned for resubmission - this could result in a missed or late payment.
4. **WAIVE FORMALITY** - **ROEL** reserves the right to waive any formality of the billing process for its convenience.

--- End of Exhibit "E" ---

EXHIBIT "F"
PROJECT SCHEDULE

Attached is the Contractor's Current Progress Schedule per Article 3 of the Subcontract Agreement.

EXHIBIT "G"
SPECIAL PROVISIONS

NOTE:

The Project Manager and any other affected managers should review the requirements of the **Subcontract Documents**, any regulatory agencies (HUD, Federal Government, State, CDC, etc.), and the lender agreement, if any, to make sure that any Special requirements are adequately communicated and "passed on" to the subcontractors.

Examples of issues to be addressed are:

- EEO/AFFIRMATIVE ACTION PLANS
- PREVAILING WAGE DECISIONS
- CERTIFIED PAYROLL REQUIREMENTS
- UNION LABOR REQUIREMENTS
- SPECIAL CLOSE-OUT REQUIREMENTS THAT ARE NOT SPECIFIED ELSEWHERE.

Warranty/Guarantee Information Use attached if form not provided in specifications.

- EXISTING BUILDING RULES AND REGULATIONS, IF ANY.
- WRAP-UP INSURANCE REQUIREMENTS
- LENDER REQUIREMENTS
- OWNER REQUIREMENTS

--- End of Exhibit "G" ---

SUBCONTRACT RIDER 1 SUBCONTRACTOR QUALITY CONTROL EXPECTATIONS

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

1. Complete and Timely Contract Document Review.

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

Subcontractor shall not knowingly proceed with erroneous, ambiguous or non-compliant work without such written direction, and if it does, it shall be liable for all costs associated with correcting the work, including any resulting damage caused therewith.

The same duty to carefully review documents prior to construction shall apply to all subsequent distributions of design and contract documents after the initial contract documents.

2. Submittal and Shop Drawing Process

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

3. Use Only Approved Materials

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

4. Follow Manufacturer Recommendations

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

5. Quality Crafts-persons

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

6. Quality Supervision
The subcontractor shall provide onsite Quality Supervision of its work force every day. The onsite supervisor shall be fully conversant in the English language and fully capable of communicating with the Subcontractor's field crews. The supervisor shall be fully qualified to understand the written plans and specifications and safety directives and given full authority to resolve field construction conflicts that may arise.
7. Written Reporting to ROEL
The subcontractor shall report to Roel Superintendent in writing any problems immediately. Subcontractor shall not rely on verbal communication for resolving construction issues.
8. Daily Reporting Requirement
The subcontractor shall provide a Subcontractor Daily Report to the Roel Superintendent every day using the Roel Daily Report Form, or a Subcontractor form approved by Roel.
9. Correction of the Work
The Subcontractor shall make immediate corrections of the work if any errors in its work are found.

Any failure by Subcontractor to properly follow these minimum guidelines in its own internal quality control procedures and efforts shall cause the Subcontractor to be responsible for all costs sustained by Roel that would have been avoided but for the Subcontractor's failure.

The requirements of this rider and in addition to the requirements of the Subcontract Agreement and nothing in this rider shall be construed to diminish any rights or responsibilities of the parties contained elsewhere in this Subcontract Agreement.

Nothing in this rider shall be construed to require Subcontractor to perform extra work that is not otherwise required by the contract documents without appropriate compensation by a change order.

--- End of Subcontract Quality Control Rider ---

ONE YEAR CONSTRUCTION WARRANTY

PROJECT: _____

CONTRACTOR: ROEL CONSTRUCTION CO., INC.
3366 KURTZ STREET
SAN DIEGO, CA 92110

SUBCONTRACTOR: _____ PHONE: _____

_____ EMERGENCY #: _____

SUBCONTRACT #: _____ SUBCONTRACT DATE: _____

WORK COVERED: _____

WE HEREBY WARRANTY AND GUARANTEE ALL LABOR AND MATERIALS FURNISHED BY OUR FIRM FOR THE ABOVE REFERENCED PROJECT FOR WORK AS SET FORTH IN OUR SUBCONTRACT AGREEMENT HAS BEEN PERFORMED IN ACCORDANCE WITH THE DRAWINGS AND SPECIFICATIONS AND SUBCONTRACT DOCUMENTS. SUCH WORK IS NOW, AND SHALL REMAIN FOR AT LEAST ONE YEAR, OR LONGER PERIOD IF REQUIRED BY THE CONTRACT DOCUMENTS, FREE FROM DEFECTS OF MATERIAL AND WORKMANSHIP.

WE AGREE TO REPAIR OR REPLACE ANY WORK THAT MAY PROVE DEFECTIVE IN ITS MATERIALS OR WORKMANSHIP WITHIN A PERIOD OF ONE (1) YEAR FROM THE DATE OF ACCEPTANCE OF THE PROJECT BY OWNER, ORDINARY WEAR AND TEAR, IMPROPER USE AND ACTS OF GOD EXCEPTED.

IN THE EVENT OF OUR FAILURE TO COMPLY WITH THE ABOVE CONDITIONS WITHIN (10) DAYS AFTER BEING NOTIFIED, WE COLLECTIVELY AND SEPARATELY DO HEREBY AUTHORIZE **ROEL** AND/OR **OWNER** TO PROCEED TO HAVE SUCH DEFECTS REPAIRED AND MADE GOOD AT OUR EXPENSE, AND WILL HONOR OR PAY THE COSTS AND CHARGES THEREFOR UPON DEMAND.

SIGNED: _____
Type Company Name Here

Signature Title

DATE: _____

LICENSE: _____
State Contractor's License Number