



SUBCONTRACT AGREEMENT

Subcontractor
Contact Person
Address
Project
Project Location
Owner
Construction Lender
Date of this Agreement

Telephone
Fax No.
Subcontract No.
Cost Code:

Subcontractor and Contractor, for the consideration hereinafter named, agree that this Agreement shall be effective on the date specified above, or the date the prime contract between Overaa and its customer is executed, whichever occurs first.

Section 1 - Entire Contract. Subcontractor certifies that it has had adequate opportunity to inspect the Project site, that it assumes the risk of everything that a diligent inspection would disclose, and that it enters into this Agreement based upon its own investigation and is in no way relying upon any representations of Contractor.

Section 2 - Scope of the Work and Description. Subcontractor shall well and sufficiently perform and furnish in accordance with the highest standards, all work normally performed by Subcontractor's trade or incidental to complete:

including all labor, services, material, taxes, layout, installation, cartage, hoisting, supplies, insurance, equipment, scaffolding, tools and other facilities of every kind and description required for the prompt and efficient execution of the work.

Section 3 - Contract Documents. The "Contract Documents" include this Agreement, exhibits and addenda hereto, the prime contract together with its general, supplementary and other conditions, addenda and modifications, the plans and specifications and:

The Contract Documents are fully incorporated in this Agreement. Subcontractor agrees to be bound to Contractor in the same manner and to the same extent as Contractor is bound to Owner under the Contract Documents.

Section 4 - Compensation. Contractor agrees to pay Subcontractor the sum of:

for the satisfaction, performance and completion of the work and all duties, obligations, and responsibilities of the Subcontractor under this Agreement.

Section 5 - Special Provisions.

C. OVERAA & CO.

SUBCONTRACTOR

CONTRACTOR

By: [signature]

By: [signature]

Contractor's License No. _____

Contractor's License No. 106793

Subcontractor's Federal Taxpayer I. D. No. _____

PLEASE SIGN AND RETURN BOTH COPIES OF THIS CONTRACT.

Rev.2/09

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SUBCONTRACT GENERAL CONDITIONS

1. COMPENSATION. Invoices for work completed during the preceding month shall be delivered to the Contractor by the twentieth (20th) day of each month for submission to the Owner. Progress payments will be made to Subcontractor with funds received from the owner on account of work performed by Subcontractor, as such funds are received from Owner. Progress payments will not exceed 90% of the value of Subcontractor's work in place as of the date of each invoice. Final payment will be due upon completion of the work and acceptance thereof by Owner. Final payment will be due in accordance with the final payment provisions of the prime contract, which are incorporated by reference herein. If the Owner, or other responsible party delays in making any payment to Contractor from which payment to Subcontractor is to be made, then the time for final payment will be deferred for a reasonable amount of time. The parties agree that a "reasonable amount of time" shall include the time Contractor, its sureties, and Subcontractor require to pursue to conclusion their mechanic's liens and other legal remedies against Owner or any other responsible party. To the greatest extent permitted by law, Subcontractor assumes the risk of Owner insolvency.

Subcontractor agrees to furnish, if and when required by the Contractor, insurance certificates, as-built drawings, all required warranties and manufacturer literature, certified payroll, evidence that Subcontractor is current with union trust fund payments receipts, vouchers, and releases of claims for itself and all lower tier subcontractors and vendors, all in a form satisfactory to Contractor, and it is agreed that no payment shall be made, except at Contractor's option, until and unless such documents have been furnished. The Subcontractor, prior to receiving final payment for work performed on this project shall sign an affidavit under penalty of perjury that Subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the project and any amounts due pursuant to California Labor Code Section 1813 when payment of such prevailing wages is required by contract.

Contractor utilizes the Textura Construction Invoicing and Payment system to streamline and expedite the subcontractor invoicing and payment process. Unless otherwise directed or authorized, in writing, by Contractor, all Applications for Payment and all supporting documents (including but not limited to lien waivers, sworn statements, certified payroll, other contractually mandated documents and the like) for Subcontractor, shall be in electronic format and shall be submitted to Contractor using the Textura payment management system proscribed by Contractor. Service fees charged by Textura for processing of electronic payments to Subcontractor shall be the responsibility of Subcontractor.

No payments shall be considered as evidence of Contractor's acceptance of Subcontractor's performance of this Subcontract, either wholly or in part, and no payment shall be considered to be an acceptance of defective work or improper material. All payments to Subcontractor are subject to all other relevant provisions of this Agreement.

Subcontractor agrees that its acceptance of final payment hereunder shall release Contractor from any suits, claims, liability or damages arising out of this Subcontract and shall constitute a waiver of any and all of Subcontractor's rights notwithstanding Section 1542 of the Civil Code of California, which states: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

2. SCHEDULE. Subcontractor shall commence work within forty-eight (48) hours after notification and shall proceed in strict accordance with Contractor's schedule, as such schedule is from time to time revised. Subcontractor acknowledges Contractor's right to control the timing of the various portions of the work, including Contractor's right to suspend or delay construction. Time is of the essence of this Subcontract. All shop drawings, product data, samples and similar submittals required by the contract documents shall be delivered to Contractor not later than 30 calendar days after the effective date of this agreement or sooner if required to meet Contractor's schedule. If Subcontractor fails to maintain its part of the Contractor's schedule, it shall, without additional compensation, accelerate the work as Contractor directs.

3. DELAYS. If Subcontractor is delayed for any cause absolutely beyond its control, it shall be granted an extension of time therefore, provided: a) written notice is given Contractor within forty-eight (48) hours from the start of the delay; b) the exclusive causes of the delay are ones for which a time extension is allowed under the terms of the Contract Documents; and c) Contractor has been successful in obtaining an equivalent time extension from the Owner for the same delay. No claim for additional compensation will be allowed on account of delays, but if Contractor obtains additional compensation from Owner because of delays, Subcontractor shall be entitled to an equitable portion of the additional compensation received by Contractor. It shall be Contractor's sole discretion whether to pursue a claim against Owner for delays; Subcontractor agrees that Contractor's failure to prosecute a claim for delay shall not entitle Subcontractor to any claim for damages against Contractor.

4. CHANGE ORDERS, ADDITIONS AND DEDUCTIONS. The Contractor reserves the right to make changes, additions and/or omissions in the Work upon written order to Subcontractor regardless of whether the work or any portion of it has been completed. Subcontractor agrees to adhere to any changes in the work, including additions, deletions, or other revisions, without nullifying this Agreement, on receipt of a properly executed written directive from Contractor. A DIRECTIVE SHALL BE DEEMED PROPERLY EXECUTED IF, AND ONLY IF, IT IS IN WRITING AND IT HAS BEEN EXECUTED BY CONTRACTOR'S PROJECT MANAGER, PROJECT ENGINEER OR PROJECT SUPERINTENDENT. Contractor shall not pay any extra charges made by Subcontractor that have not been agreed upon in writing by Contractor. If Subcontractor makes any changes in the work without a properly executed written directive from Contractor, Subcontractor thereby agrees it will not be paid for that changed work, even if it acted upon verbal direction from Contractor, or any form of direction, written or otherwise, from Owner or any other person or entity. In addition, Subcontractor shall be liable for all damage or liability of any nature whatsoever associated with or in any way arising out of any such change it makes without a properly executed written directive from Contractor. If necessary, the contract price and the time of Subcontractor's performance will be adjusted by appropriate additions or deductions mutually agreed upon before Subcontractor performs the changed work. If a dispute arises between Contractor and Subcontractor about whether particular work is a change in the work described in Section 2, Subcontractor shall nevertheless timely perform the disputed work upon receipt of a written order.

If Subcontractor believes it is entitled to an increase in the contract compensation or time for any reason whatsoever, then, as a condition precedent to its right to present a claim, Subcontractor must deliver written notice of the claim to Contractor before the affected work is performed and in sufficient time to permit the Contractor to provide notice to the Owner in accordance with the contract documents. If Subcontractor makes a valid claim resulting from any act, omission or modification made by Owner, then Contractor's duty to Subcontractor is limited to passing on claims to the Owner and Subcontractor will be bound by owner's determination and any adjustment in contract price or contract time shall be made only to the extent allowed by Owner, less Contractor's mark-up. Subcontractor will bear its pro-rata share of all costs required to process claims to the Owner. Subcontractor will identify and document daily, in the manner required by the Contract Documents, any disputed, delayed or disrupted work, as well as any work requested to be performed on a time and materials basis. On a daily basis, Subcontractor will be responsible for obtaining the approving signature of the Owner or Owner's Representative on the cost record document for any work so performed. After it obtains an approving signature from the Owner or Owner's Representative, Subcontractor will submit cost records for such work to Contractor's project manager, project engineer, or project superintendent on a daily basis. The Contractor's signature on such records constitutes acknowledgement that the Work was done, but does not by itself constitute agreement that Subcontractor is entitled to an adjustment in the contract sum or time. Under no circumstances will Contractor's signature on any cost records presented by Subcontractor alter or supersede any of the terms or conditions of this Agreement. Any conflicting terms or conditions on Subcontractor's forms presented for signature at the project site are of no force or effect. Subcontractor's failure either to give written notice of a claim before proceeding with the work, or to submit daily cost records as required by this agreement and the Contract Documents, constitutes an agreement by Subcontractor that there will be no adjustment to the contract price or contract time on account of the disputed, delayed or disrupted work. There will be no adjustment to the contract price unless the procedure outlined herein is strictly followed.

The Contractor reserves the right to perform changes in the Work with its own forces and to award contracts to others to complete changes in the Work.

5. LAWS, PERMITS & TAXES. Subcontractor shall observe and comply with all laws, rules, ordinances, codes and regulations of all governing bodies having jurisdiction over the work, including any affirmative action or local hire requirements, and shall satisfy all requirements of any inspectors. Subcontractor shall apply for, obtain and pay for all necessary or required permits, and pay all manufacturer's taxes, sales taxes, use taxes, processing taxes, value added taxes, and all and every federal, state or local tax, insurance and/or contribution relating to Subcontractor's employees, whether levied now or in the future. The attached provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 are incorporated into this subcontract when payment of prevailing wages is required by contract, and subcontractor agrees to comply with these provisions and all interpretations thereof by the Director of the Department of Industrial Relations insofar as they are applicable to subcontractor on this project. When required; 1) Subcontractor agrees to submit certified payroll reports to contractor on a weekly basis no later than three (3) working days after labor has been paid; 2) Subcontractor agrees to submit project foreman and/or superintendent field reports to Contractor no later than three (3) working days after Contractor's request.

6. INSURANCE. Subcontractor, at its own expense, shall maintain insurance in companies approved by Contractor, as set forth in Addendum A to this Agreement, which is incorporated herein as though fully set forth.

SUBCONTRACT AGREEMENT

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SUBCONTRACT GENERAL CONDITIONS (CONTINUED)

7. CLEANING UP. The Subcontractor, on a daily basis, shall (1) keep the work site free from waste materials, packaging materials, and other rubbish generated from its work, and (2) shall clean and remove any mortar, plaster, paint, concrete, dirt or other excesses left by the execution of its work and make good all defects resulting therefrom. At the completion of its work in each area, Subcontractor shall perform such cleaning as may be required to leave the area "broom clean". At the entire completion of its work, Subcontractor shall remove all of its tools, equipment, scaffolds, shanties and surplus materials. Should Subcontractor fail to perform any of the foregoing to the Contractor's satisfaction, the Contractor shall have the right to perform and complete such work itself or through others and charge the cost thereof to the Subcontractor. Contractor shall apportion subcontractor's share of any clean-up costs and any such apportionment shall be final and binding unless manifestly unreasonable.

8. RESPONSIBILITY FOR WORK. If any of Subcontractor's work is dependent on or related to work of others, Subcontractor shall inspect such other work to determine if it is satisfactory for the performance of the work of this Agreement. If in Subcontractor's opinion such other work is unsatisfactory, Subcontractor shall immediately notify Contractor of the deficiencies discovered, in writing. Subcontractor warrants, by undertaking to perform its work that such other work is satisfactory, and waives all claims against Contractor for additional compensation or damages from any defects therein. Notwithstanding the dimensions given in the Contract Documents, Subcontractor is obligated to take such measurements as will insure the proper matching and fitting of the work covered by this Subcontract with contiguous work. Subcontractor shall lay out and shall be strictly responsible for the accuracy of its work. Actual final conditions and details shall result in proper alignment of finished surfaces. Review or approval of shop drawings or submittals by the Contractor and/or Owner's representative shall not relieve Subcontractor of its obligation to perform the Work in strict accordance with the Contract Documents, nor of its responsibility to properly match and fit its work with contiguous work. Subcontractor shall be responsible for any loss or damage to other contractors engaged in work on the site caused by Subcontractor's failure to set out or perform its work correctly. Subcontractor shall protect and bear all risk of loss or damage to its work, materials and equipment delivered to or incorporated in the site until final acceptance of all work and waives all rights against Contractor for loss or damage to Subcontractor's work, property or materials, unless such loss or damage results from Contractor's sole negligence or willful misconduct. Subcontractor shall promptly replace or repair any damaged work, property or materials. Subcontractor further agrees to protect the work of others and all workers on the Project site from its operations. Subcontractor shall, upon request, provide complete documentation and copies of purchase orders for all major supplies. Contractor shall have discretion to apportion Subcontractor's share of any damage to the work of others and any such apportionment shall be final and binding unless manifestly unreasonable. If the services of a security service is required to protect the Work or equipment of Subcontractor and others, Contractor may hire a security service and apportion the cost thereof amongst all who are benefited thereby.

9. LIABILITY FOR CLAIMS, DAMAGE AND PERSONAL INJURY. Subcontractor assumes all risk and liability for damage to property, and injury or death to persons, arising from the work of Subcontractor, its employees, agents, and independent contractors. Subcontractor will defend, indemnify and save harmless Contractor, its employees, directors, and officers from all claims, damage, injury, and liability arising or alleged to arise out of the operations to be performed under this Agreement ("Claims"), regardless of any active or passive negligent act or omission of Contractor, Subcontractor, their officers, directors, employees or independent contractors. This indemnity will extend to Claims occurring or alleged after this Agreement is terminated as well as while it is in force, and includes, without limitation, claims for or relating to (a) personal injury, bodily injury, emotional injury, sickness, disease, or death of any person, (b) damage to property or loss of use thereof, (c) defective workmanship or design furnished by Subcontractor, its agents or independent contractors, (d) fines or penalties, (e) violation or infraction of any law, order, citation, rule, standard or ordinance including those relating to the occupational safety or health of persons, (f) Subcontractor's use of Contractor's or others' equipment, hoists, elevators, or scaffolds, (g) Contractor's training of Subcontractor's employees, (h) an infringement of patent rights, and (i) labor performed or materials furnished to Subcontractor. Subcontractor will not be obligated to indemnify Contractor for Claims arising from the sole negligence or willful misconduct of Contractor or the Contractor's agents, servants or independent contractors who are directly responsible to Contractor or for defects in design furnished by such persons. Subcontractor's indemnity obligations are in addition to the indemnity provisions of the prime contract; Subcontractor agrees to indemnify Contractor for any claims arising from Subcontractor's scope of work which are subject to the indemnification provisions of the prime contract to the same extent Contractor is obligated to the Owner.

10. GUARANTEE. Subcontractor guarantees all materials and workmanship and agrees to replace defective materials or workmanship at its sole cost and expense for a period of one year from the date of acceptance of the work or such longer period as is specified in the Contract Documents. Subcontractor shall guarantee the materials and workmanship of all repair or replacement work done under this provision for a period of twelve months after the repair work is accepted.

11. BONDS. The Contractor, as a condition of entering into this Subcontract or at any time after entering into this Subcontract, may require Subcontractor, within 10 days, to furnish a faithful performance and labor and material bond from a surety acceptable to Contractor in an amount to be designated by Contractor, but not exceeding 100% of the Subcontract price. Contractor shall pay the premium on any such bond directly to the bonding company after receipt of its invoice, up to 2% of the Subcontract price. Subcontractor shall pay any premium in excess of 2%. Subcontractor's failure to post a faithful performance or labor and material bond when requested shall constitute a material breach of this Subcontract and cause for termination of this Subcontract.

12. ASSIGNMENT. Neither this Subcontract nor any monies due or to become due hereunder shall be assignable by Subcontractor without the prior written consent of Contractor. Any assignment without Contractor's prior written consent shall be of no effect and shall vest no right in the assignee against Contractor. If Subcontractor is given written consent, that consent shall not be valid unless Subcontractor shall bind its assignees, subcontractors or delegates to all of the terms and conditions of this Subcontract. Contractor's consent to any subcontracting shall not create any contractual relationship between Contractor and any sub-subcontractor to whom the Work or any portion thereof is subcontracted. Subcontractor agrees that Contractor may assign this Subcontract to Owner, Contractor's surety, or Owner's replacement contractor.

13. DEFAULTS BY SUBCONTRACTOR. Subcontractor shall be deemed to be in default of this Subcontract if Subcontractor (1) fails to commence work when required; (2) fails to prosecute the work diligently or to make the progress required; (3) fails to furnish a sufficient number of properly skilled workmen or a sufficient quantity of suitable materials or adequate equipment; (4) fails to perform the work in the order and sequence directed; (5) fails to correct or replace any damaged or defective work or materials; (6) becomes insolvent or subject to any receivership proceedings; (7) becomes subject to a valid tax lien or levy, (8) makes an assignment for the benefit of creditors; (9) fails to complete the work or any stage thereof within the time specified; (10) becomes involved in any labor difficulty; or (11) commits a material breach of this Subcontract. If Subcontractor is deemed to be in default, Contractor, at its option, shall have the right: a) to provide all labor and materials necessary to correct the problem, or to contract with one or more additional contractors to perform such part of Subcontractor's work as Contractor shall determine will provide the most expeditious completion of the total work, and to deduct the cost thereof, including, without limitation, Contractor's profit and overhead, from any money then due or thereafter to become due to the Subcontractor under this Agreement; or b) to terminate Subcontractor's right to proceed with the work and, in that event, Contractor shall have the right to enter upon the premises of the Project and take possession of all of Subcontractor's materials, tools, machinery and equipment, and may employ others to finish the work and provide materials. Upon such termination, Contractor shall have the right to assume, at Contractor's sole option, all of Subcontractor's lower tier subcontracts and vendor agreements and to derive the benefits therefrom. Contractor may deduct the cost thereof from any money then due or thereafter to become due to the Subcontractor under this Agreement, including, a mark-up for Contractor's profit and overhead in the amount of fifteen percent (15%). If the unpaid balance under this Subcontract exceeds the expenses Contractor incurs in finishing Subcontractor's work, the excess shall be paid to Subcontractor; if the expenses incurred by Contractor exceed the unpaid balance, then Subcontractor shall promptly pay to Contractor the amount by which the expenses have exceeded the unpaid balance. In order to secure Subcontractor's payment, Contractor shall have a lien upon all of Subcontractor's materials, tools, machinery and equipment at the project site on the date of default. These rights are in addition to and without prejudice to any other rights afforded herein or by law. Contractor shall only exercise the rights listed under (a) and (b) above after giving Subcontractor two (2) working days written notice of its intent to exercise those rights. No further notice to Subcontractor shall be required if Subcontractor has failed to cure the problem during such notice period. Notice shall be sufficient and complete when mailed, faxed or e-mailed to Subcontractor at the address shown in this Subcontract. If an emergency affecting the safety of persons or property occurs, no notice shall be required.

14. TERMINATION. Contractor reserves the right to terminate this Agreement with or without cause. In the event of termination without cause, Subcontractor shall be entitled to payment only for the direct costs for the work actually completed in conformity with this Subcontract or work that was unavoidable for performance to the date of termination, plus fifteen percent (15%) overhead and profit, less payments made prior to termination. Upon such termination, Contractor shall have the right to assume, at Contractor's sole option, all of Subcontractor's lower tier subcontracts and vendor agreements and to derive the benefits therefrom.

SUBCONTRACT AGREEMENT

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SUBCONTRACT GENERAL CONDITIONS (CONTINUED)

15. PAYMENT WITHHELD. Contractor may withhold all or part of any payment to such extent as may be necessary to protect Contractor from loss, damage and costs caused by: a) defective work not remedied; b) claims filed or reasonable evidence indicating probable filing of claims against Subcontractor; c) Subcontractor's failure to make payments properly to its subcontractors for material, labor, or fringe benefits; d) a reasonable doubt that this Subcontract can be completed for the balance then unpaid; e) damage to another subcontractor; f) Subcontractor's failure to complete the Subcontract in accordance with the Contract Documents; or g) unsatisfactory performance of the work by Subcontractor. When the grounds are removed, such amounts as are then due and owing shall be paid or credited to Subcontractor.

16. OTHER CONTRACTS. If one or more agreements exist now or later between the parties to this Subcontract concerning this or any construction project, then a breach by the Subcontractor of any agreement may, at the option of the Contractor, be considered a breach of all agreements. In such event, Contractor may terminate any or all of the agreements so breached or may withhold monies due or to become due on such agreements and apply the same toward payment of any damages suffered on that or any other agreement.

17. DISPUTES. If any controversy shall arise between Contractor and Subcontractor, then the written orders of Contractor to Subcontractor shall be followed. If Contractor and Owner arbitrate a controversy that, in Contractor's opinion, involves Subcontractor's work, then Contractor may in its sole discretion require Subcontractor's participation as a party to the arbitration. Subcontractor shall fully cooperate with Contractor in presenting and defending claims raised by the arbitration, and Subcontractor agrees to be bound by the terms and conditions of the Contractor/Owner arbitration, to be bound by the arbitration award, and to accept as full compensation for its claim its pro-rata share of the arbitration award, or its pro-rata share of any liability.

18. LIENS. Subcontractor shall indemnify, defend and save Contractor and Owner harmless against all claims, liens, or stop notices for labor or materials furnished to Subcontractor on the job, including costs and expenses and all incidental or consequential damages resulting to Contractor or Owner from such claims or liens. Subcontractor agrees, within ten (10) days after written demand, to cause the effect of any legal proceeding, lien or stop notice to be removed, and if Subcontractor fails to do so, Contractor may use whatever means in its discretion it deems appropriate to remove or dismiss the lien or legal proceeding and the costs thereof shall be immediately due and payable to Contractor by Subcontractor.

19. INSPECTION. Subcontractor shall permit Contractor at all times to inspect materials at the site of construction, or any place where materials under this Subcontract may be stored or in course of preparation, and to furnish such evidence of the progress of such work as Contractor requires. No inspection or failure to make any inspection shall impair Contractor's right to later reject non-conforming material, or to avail itself of any other remedy that Contractor may be entitled to, notwithstanding Contractor's knowledge of the nonconformity, its substantiality, or the ease of its discovery. Subcontractor shall be liable for all inspection, reshipment and return costs on non-conforming materials.

20. USE OF CONTRACTOR'S EQUIPMENT. Subcontractor (including any of its agents, employees, suppliers, or sub-subcontractors) shall not use any machinery, equipment, tools, scaffolding, hoists, lifts or similar items owned, leased or under Contractor's control without the express written permission of the Contractor's designated representative. Subcontractor shall be deemed to have inspected any such equipment and accepts the use of such equipment "as is." Subcontractor shall act as an independent contractor and shall be primarily liable for any loss or damage (including personal injury or death) that may arise from such use, and Subcontractor shall fully indemnify, defend and hold Contractor harmless from any loss, claim, liability, or damage arising by reason of such use.

21. LABOR CONDITIONS AND EMPLOYMENT PRACTICES. Subcontractor shall replace any employee whom Contractor determines to be undesirable. Contractor has entered into labor agreements covering work at its jobsites with the following unions: Carpenters – 46 Northern California Counties and Laborers – Northern California District Council of Laborers. Subcontractor shall, to the extent permissible under applicable laws, comply with all of the provisions of Contractor's collective bargaining agreements as if it were a party to said agreements, including signatory status, if required. Subcontractor agrees that all of the provisions of the applicable labor agreements are incorporated into this Agreement as if they were set forth in their entirety. Subcontractor agrees to pay the wage rates, make the required trust fund payments into the respective labor trust funds, and observe the hours and all other terms and conditions set forth in the applicable labor agreements. Subcontractor agrees to comply with the terms and provisions of said agreements setting forth the grievance and arbitration procedure and jurisdiction and scope of work therein for resolution of jurisdictional disputes. If necessary, Subcontractor agrees, at its own cost, to secure a final and binding determination of any jurisdictional dispute by the National Labor Relations Board. Subcontractor further promises and agrees that it will bind and require all of its subcontractors and their subcontractors performing jobsite work of the type covered by the Carpenters and Laborers agreement to agree to all of the promises and undertakings contained in this Section 21, to the same effect as herein provided with respect to Subcontractor. Subcontractor shall pay when due all contributions, allowances, and other payments, required by the labor agreements now or hereinafter in force. Subcontractor shall comply with any additional union agreements as may be required by the Carpenters and Laborers agreements. Should there be a labor dispute, Subcontractor shall continue the proper performance of its work without interruption or delay if Contractor establishes a reserve gate or neutral access for Subcontractor's purpose. If the project is subject to a Project Labor Agreement or similar program, subcontractor shall comply with all requirements of such programs, including becoming bound to the Project Labor Agreement. Subcontractor shall comply with all equal employment opportunity, affirmative action requirements, and local hire requirements promulgated by any governmental authority, including, without limitation, the requirements of Title 7 of the Civil Rights Act of 1964 as amended, Presidential Executive Orders, the California Fair Employment and Housing Act as amended, the Americans with Disabilities Act of 1991 as amended, and the Family and Medical Leave act of 1993. Subcontractor shall comply with all applicable Federal, State and local laws and regulations, including, but not limited to, all Fair Labor Standards Act provisions and California Labor Code provisions covering the work.

22. SAFETY AND SECURITY. Subcontractor shall comply with all laws and regulations regarding occupational safety and health, accident prevention, safety equipment, documentation and practices, including Labor Code § 6400 et seq., Title 8 of the California Code of Regulations §336.10 et seq., applicable Cal OSHA safety orders and the accident prevention and safety programs of Owner and Contractor. Subcontractor shall conduct inspections as necessary and required to determine that safe working conditions exist and shall accept sole responsibility to provide a safe work place for its employees, subcontractors, suppliers and others potentially exposed to its work. Further, subcontractor shall be responsible for furnishing all safety materials and supplies required for its work including, but not limited to, all safety equipment, safety supplies, first aid supplies and drinking water. Subcontractor will report to Contractor all lost time, accidents, or injuries, to its employees and the employees of its sub-subcontractors within 24 hours of occurrence. Should Subcontractor fail to comply with these requirements, Contractor shall have the right to take all corrective measures necessary to assure Subcontractor's compliance. Subcontractor shall be responsible for all costs, fines, and enhanced penalties incurred by Contractor as a direct result of Subcontractor's failure to comply with these requirements. Failure on the part of Contractor to discover or correct such deficiencies shall in no way relieve Subcontractor of its responsibilities hereunder. Failure of Subcontractor to comply with these requirements shall constitute a material breach of this agreement. Subcontractor shall comply with all programs mandated by contract, by the Owner or by governmental agencies including, but not limited to, site security access requirements, citizenship requirements, site specific training and other special training, drug testing, background checks, badging, and all similar requirements.

23. CONFLICT WITH GOVERNING LAWS - VENUE. Contractor and Subcontractor agree that if any word, phrase or provision of this Subcontract is deemed to be in conflict with any applicable law, only those words, phrases or provisions that create the conflict shall be stricken and the remainder of the words, phrases or provisions of this Subcontract shall remain in full force and effect. Subcontractor agrees that venue for any action brought to enforce any of the terms and provisions of this agreement shall be brought in Contra Costa County, California.

24. DESIGN BUILD. If Subcontractor's scope of work under this Agreement requires Subcontractor to design any portion of the work, then Subcontractor will have all necessary professional architectural and engineering design services performed by properly licensed and qualified architects or engineers. Subcontractor will coordinate its work under this Agreement with the design and construction performed by others. Subcontractor will prepare sufficient plans and specifications for coordination, construction and permit purposes and will comply with all requirements of the contract documents applicable to subcontractor's work. Subcontractor will give all notices and comply with all applicable laws, building codes, ordinances, regulations and orders of any public authority. Subcontractor will submit for the Contractor's and Owner's approval in accordance with the Project Schedule, all design development documents, working drawings, specified shop drawings, samples, data and specifications of materials proposed to be incorporated in the Work. The Subcontractor will provide copies of approved drawings in the form and quantity specified by the Contractor. Subcontractor will advise Contractor and other affected trades of all design development changes in a timely manner so as to preclude additional costs and conflicts with the work of others on the Project.

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

ADDENDUM A
C. OVERAA & CO.
SUBCONTRACT INSURANCE REQUIREMENTS

Part I

Subcontractor shall, at its expense and at no additional cost, procure and maintain insurance on all of its operations in companies with an A.M. Best's Insurance Rating of A-VIII or better or otherwise acceptable to Contractor. An exception maybe available for the State Compensation Insurance Fund. The required evidence of insurance coverage must be furnished within 30 days of the date of the subcontract or prior to starting work whichever is sooner. Subcontractor will not be allowed to begin work until acceptable evidence of insurance has been received. Coverage provided shall be in effect for the life of the subcontract and shall comply with the Insurance provisions of the General Contract and with the following requirements. Should the Contract Documents require insurance coverages, limits, terms and conditions beyond the Insurance Requirements herein, Subcontractor shall procure and maintain insurance to satisfy said requirements. Furthermore, if the Contract Documents require participation in an Owner Controlled Insurance Program (OCIP) or Contractor Controlled Insurance Program (CCIP), Subcontractor shall fully participate and cooperate with Contractor and Insurance Program Administrator in compliance of the program requirements.

1.1 Workers' Compensation and Employer's Liability Insurance

Workers' Compensation Insurance shall be provided as required by any applicable law or regulation.

Employer's Liability Insurance shall be in an amount no less than \$1,000,000.00 each accident for bodily injury, \$1,000,000.00 policy limit for bodily injury by disease, and \$1,000,000.00 each employee for bodily injury by disease.

"Waiver of Subrogation Endorsement in favor of Contractor and the Project Owner".

If there is an exposure of injury to Subcontractor's employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or under law, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

1.2 General Liability Insurance. Subcontractor shall carry Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of the subcontractor providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

- 1 Premises and Operations
- 2 Products and Completed Operations
- 3 Contractual Liability insuring the obligations assumed by Subcontractor in this Agreement
- 4 Broad Form Property Damage (including Completed Operations)
- 5 Explosion, Collapse, and Underground Hazards
- 6 Personal Injury Liability and Advertising Liability
- 7 Subsidence or earth movement
- 8 Policy shall not contain any provision or definition which would exclude coverage for claims brought by employees of any subcontractor or lower tier subcontractors.
- 9 Mold, Mildew or Fungus. In the event such exclusion is contained in the policy, subcontractor must assure Contractor that this exposure is covered within other policies of insurance and provide evidence of that policy

A. Limits of Liability

(1) If Subcontractor carries a Comprehensive or Commercial General Liability Insurance, the limits of liability shall not be less than:

- | | |
|-------------|---|
| \$1,000,000 | each occurrence (combined single limit for bodily injury and property damage) |
| \$1,000,000 | for Personal Injury Liability |
| \$1,000,000 | Aggregate for Products-Completed Operations |
| \$2,000,000 | General Aggregate |

(2) The General Aggregate limit of liability must apply separately to this project. If the general aggregate limits of liability do not apply separately to this project then the minimum General Aggregate shall be increased to \$5,000,000.

B. Additional Insureds (Comprehensive General Liability or the Commercial General Liability policy):

(a) The Contractor, its officers, directors, and employees, the Owner and any other parties required by Owner, shall be named as Additional Insureds and such Additional Insured status shall be provided through all statutory periods applicable to products-completed operations..

(b) The policy shall stipulate that the insurance afforded Contractor, its officers, directors and employees, and Owner as Additional Insureds shall apply as primary insurance and that any other insurance maintained by Contractor or Owner shall be excess only and shall not be called upon to contribute with this insurance.

(c.) Coverage for the Contractor, its officers, directors and employees, the Owner and any other parties required by Owner . as additional insureds shall be provided by a policy provision or by an endorsement providing coverage at least as broad as Additional insured endorsement form CG2010-11-85 (Form B) as published by the Insurance Service Office (ISO). The products-completed operations coverage shall be maintained through any statutory period inclusive of additional insured provisions in all future renewals of the coverage.

(d) The additional insured coverage shall be provided by an endorsement providing coverage at least as broad as:

- (1) Additional Insured (Form B) endorsement form **CG 2010 1185** (1985 version) as published by the Insurance Services Office (ISO) (or equivalent);
- (2) A combination of Additional Insured endorsement form **G 2010** and Additional Insured endorsement form **CG 2037** as published by the Insurance Services Office (ISO) (or equivalent);

(e) Should subcontractors policy contain a "cross-suits" exclusion, such exclusion must not apply to any additional insureds.

C. If any Umbrella or Excess Liability policies are used to meet the limits of liability required by this agreement or are carried by subcontractor in addition to the requirements of this agreement, said policies shall be "following form" of the underlying primary policy and shall meet the additional insured and primary insurance requirements identified above.

1.3 Special Claims-Made Policy Form Provisions:

Subcontractor shall not provide a Commercial General Liability (Claims Made) policy without the express written consent of Contractor.

1.4 Automobile Liability (Bodily Injury and Property Damage) including coverage for all owned, hired and non-owned automobiles. The limits of liability shall be not less than \$1,000,000 Combined Single Limit each accident for Bodily Injury and Property Damage combined.

1.5 Professional Liability A \$1,000,000 Professional Liability Insurance Policy shall be carried by Subcontract or his Sub-subcontractor if work under this subcontract includes professional or design-build services. Evidence of coverage in the form of a Certificate of Insurance shall be provided prior to the start of the project. Coverage must allow for the reporting of claims for 2 years following completion of the work.

1.6 Riggers Liability: Should Subcontractors work involve the moving, lifting, lowering, rigging or hoisting of property or equipment, Subcontractor shall carry riggers liability insurance to insure against physical loss or damage to the property or equipment.

1.7 Aircraft/ Helicopter Insurance: If the Subcontractor or his Subcontractors use any owned, leased, chartered or hired aircraft of any type in the performance of this contract, they shall maintain aircraft liability insurance in an amount of not less than \$10,000,000 per occurrence including Passenger Liability and Contractor and Owner shall be named as additional insureds. Evidence of coverage in the form of a certificate of insurance and additional insured endorsement shall be provided prior to the start of the project.

1.8 Certificates of Insurance, as evidence of the insurance required by this Agreement shall be furnished by Subcontractor to Contractor before any work hereunder is commenced by Subcontractor. The certificates of insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) days prior written notice to Contractor.

- a) The Certificate of Insurance furnished as evidence of Comprehensive General Liability or Commercial General Liability insurance carried by the Subcontractor shall include a copy of the policy provision or the additional insured endorsement adding the Contractor and Owner as additional insured and shall provide that insurance for such additional insureds applies as primary insurance and that other insurance maintained by the Contractor or Owner shall not be called upon for contribution.
- b) A certificate of insurance with the additional insured endorsements shall be provided for a minimum of two years following project completion and subsequently will be provided upon written request of Contractor..

1.9 In the event Subcontractor fails to maintain insurance coverage required under this Agreement, Contractor may maintain such coverage and charge the expense to Subcontractor, or terminate this Agreement.

2.0 The required insurance shall be subject to the approval of Contractor, but any acceptance of insurance certificates by Contractor shall in no way limit or relieve Subcontractor of the duties and responsibilities by him in this Agreement.

If higher limits or other forms of insurance are required in the Contract Documents, Subcontractor will comply with such requirements.

2.1 By requiring insurance herein, Contractor does not represent that coverage and limits 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 Contractor in this contract. To the extent Subcontractor maintains insurance greater than these minimum requirements, Subcontractor agrees that such insurance shall be applicable to any of Subcontractor's liability obligations hereunder.

In addition, Subcontractor's failure to secure any or all of the required insurance coverage shall not limit or eliminate Subcontractor's liability to Contractor, pursuant to this agreement, at law, or in equity.

Subcontractor shall ensure that all tiers of his Subcontractors shall maintain insurance in like form and amounts, including the Additional Insured requirements set forth in Paragraph "1.2B." Copies of Certificates of Insurance shall be provided by each Sub-subcontractor prior to the start of their work on this project.

2.2 Protection of Work/Materials and Builders Risk Insurance:

Subcontractor shall insure, through an installation floater form of policy, secure and protect his work and material from damage or loss until final acceptance by Owner. All deductibles shall be the responsibility of Subcontractor.

3.0 Neither the forbearance nor omission by Contractor to require proof of all provisions of this insurance from Subcontractor before permitting Subcontractor to proceed or continue with the Work will be deemed as a waiver of Contractor's rights or Subcontractor's obligations regarding the provisions of insurance under the Subcontract. Any exceptions to the provision of this section must be delineated in the Contract Documents.

Subcontractor shall assure that all of its Subcontractor and Sub-subcontractors meet the same insurance requirements as set forth in this Addendum and that the Contractor and Owner are named as additional insureds as required by this Addendum.

Part II

In addition to the insurance required by Part I of this Subcontract, Subcontractor shall also maintain the following insurance in companies with an A.M. Best's Insurance Rating of A-VII or better or otherwise acceptable to the Contractor when:

- (1) The Subcontractor's operations under the Subcontract require testing for, abatement, clean-up or treatment of pollutants (other than asbestos)
- (2) The Subcontractor will be bringing a significant amount of pollutants to the jobsite
- (3) There is a known exposure for disturbance of pollutants or hazardous materials at the jobsite which can be handled best by subcontracting with a Specialty Environmental contractor to perform work involving such pollutants or hazardous materials.

1.2.1 Contractor's Pollution Liability Insurance

Subcontractor shall carry Contractor's Pollution Liability Insurance covering all operations by or on behalf of Subcontractor providing insurance for bodily injury and property damage liability due to pollution.

Coverage must include pollution liability for all materials brought onto the project site and for remediation or disturbance of pollutants and hazardous materials found on the project site. Coverage shall be provided on an "occurrence" basis without a sunset clause. Claims Made coverage is not acceptable.

The limit of liability shall be not less than \$1,000,000 each occurrence or claim and \$1,000,000 in the aggregate.

Additional Insureds

The Contractor, its officers, directors and employees and owner shall be named as Additional Insureds. The policy shall be endorsed to stipulate that the insurance afforded the additional insureds shall apply as primary insurance and that any other insurance or self-insurance maintained by Contractor or Owner shall be excess only and shall not be called upon to contribute with this insurance.

1.4.1 Automobile Liability Insurance (Transportation of Pollutants or Hazardous Materials)

If autos owned or hired by Subcontractor will be used to transport Pollutants or Hazardous Materials, then paragraph 1.4 of Addendum A is amended by addition of the following:

"Coverage shall be included for liability arising out of the transportation of pollutants and hazardous materials. The policy shall be endorsed with an MCS 90 Endorsement (Federal Motor Carrier Act) and with Endorsement form CA9948 (Pollution Liability - Broadened Coverage) as published by the Insurance Services Office (ISO)."

PART III

In addition to the insurance required by Addendum A, Part I or Part II of this Subcontract, Subcontractor shall also maintain the following insurance in companies with an A.M.

Best's Insurance Rating of A-VIII or better or otherwise acceptable to the Contractor when the scope of the subcontract includes asbestos abatement work:

1.2.2 Asbestos Liability Insurance

The General Liability Insurance required by Paragraph 1.2 of Addendum A shall include or be endorsed to include, or a separate Asbestos Liability Insurance policy shall be maintained by Subcontractor to cover bodily injury and property damage arising out of asbestos abatement or removal operations by or on behalf of Subcontractor as required by this Subcontract.

Coverage for such asbestos abatement or removal operations whether provided by the General Liability required by paragraph 1.2 of Addendum A or by a separate Asbestos Liability Insurance Policy maintained by Subcontractor is subject to the following requirements:

- (1) Coverage shall be provided on an "occurrence" basis without a sunset clause. Claims Made coverage is not acceptable.
- (2) Coverage for the asbestos abatement operations shall not be subject to pollution exclusion.
- (3) If there is an exclusion for claims by any insured against any other insured, such exclusion shall be deleted.
- (4) Coverage shall not be excluded for asbestos bodily injury to employees of the Owner, Contractor and Subcontractor if their designated job duties do not require them to be in the regulated asbestos abatement area.
- (5) Coverage for Contractual Liability arising out of Asbestos operations shall be provided on the same basis as afforded by the Comprehensive or Commercial General Liability Policy.
- (6) Coverage to be included for Products/Completed Operations for 2 years after completion of the asbestos abatement or removal work.
- (7) The policy shall include a Cross Liability, Severability of Interest or a Separation of Insureds provision.
- (8) The policy shall not contain any provision or definition which would serve to eliminate coverage for third-party action over claims.
- (9) If the policy or any endorsement contains a provision which limits or eliminates bodily injury or property damage coverage based on final air fiber clearance levels, the policy shall be modified so that it is consistent with the clearance level (F/CC) and the appropriate analytical testing protocol contained in the project specifications.
- (10) Limits of Liability. The limit of liability shall not be less than combined single limits for bodily injury and property damage of \$1,000,000 each occurrence- \$1,000,000 aggregate for products-completed operations, \$1,000,000 general aggregate. The general aggregate limit shall apply separately to Contractors Asbestos Abatement operations under this contract.
- (11) Additional Insureds

Owner and Contractor, their officers, directors and employees shall be named as additional insureds. The policy shall be endorsed to stipulate that the insurance afforded the additional insureds shall apply as primary insurance and that any other insurance or self-insurance maintained by Owner or Contractor shall be excess only and shall not be called upon to contribute with this insurance.

1.4.2 Auto Liability Insurance (Transportation of Hazardous Materials or Asbestos-Containing Materials)

If autos owned or hired by Subcontractor will be used to transport hazardous materials or asbestos-containing materials, then paragraph 1.4 of Addendum A is amended by addition of the following:

"Coverage shall be included for liability arising out of the transportation of hazardous materials and asbestos-containing materials. The policy shall be endorsed with an MCS 90 Endorsement (Federal Motor Carrier Act) and with Endorsement form CA9948 (Pollution Liability - Broadened Coverage) as published by the Insurance Services Office (ISO)."