

BOBO CA SUBCONTRACT AGREEMENT



This AGREEMENT made and entered into this (Day) of (Month), (Year), between **BOBO CONSTRUCTION, INC.**, hereinafter called Contractor, with principal office at 9722 Kent Street, Elk Grove, CA 95624, and **(SUBCONTRACTOR)**, hereinafter called Subcontractor, with principal office at (subcontractors address).

Project
Project Name
Project Address

Owner
Owner Name
Owner Address

Architect
Architect Name
Architect Address

SUBCONTRACT DOCUMENTS

Contractor and Subcontractor agree the "Subcontract Documents", except for modifications, change orders and written Contractor directives issued after execution of the Agreement consist of the following documents:

1. This Subcontract Agreement, including the below-referenced Attachments, all of which are incorporated at this point as if fully set forth:
 - Attachment A: Public Works Compliance Packet
 - Attachment B: Subcontractor Code of Safety Practices
 - Attachment C: Subcontractor Billing Procedures
 - Attachment D: Federal Form W-9
2. The Prime Contract, with (Owner) dated (Prime Contract Date), the Conditions of the Prime Contract (General, Supplementary, Special, and other Conditions), Drawings, Specifications and all Addenda issued prior to the Agreement between Owner and Contractor, the latest adopted edition of the Uniform Building Code, Fire Code, and Mechanical Code, the Uniform Standard Specifications for Public Works Construction (if a public works project), and all applicable laws, rules, ordinances, and regulations, including but not limited to the California Labor Code, the California Business and Professions Code, the California Public Contract Code, and the Federal Acquisition Regulations. The Subcontract Documents are complementary and what is required by one shall be as binding as if required by all. In the event of a conflict between any Subcontract Document, the Subcontract Agreement, any subcontract to which Contractor may be bound, and the Prime Contract, the stricter of those documents shall prevail. Subcontractor shall bind lower tier subcontractors and suppliers to full compliance with all Subcontract Documents, including all performance obligations and responsibilities that Subcontractor assumes toward Contractor.

SCOPE OF WORK

Subcontractor shall provide all labor, services, materials, tools, equipment, supplies, supervision, safety requirements, submittals, all O&M's and warranty information, shop drawings, offloading, layout, coordination, mobilization, demobilization and other facilities required for the prompt and efficient performance of the Work required as per the Subcontract Documents, and generally described as follows:

1. "The Work" consisting of (description of scope of Work)
2. All clean-up of trash and debris generated by the Subcontractor
3. All submittals as specified and as required
4. Provide all O&M data and warranties as required
5. In the event that material, labor or equipment furnished and/or installed by the Subcontractor for this Project is not governed by specific warranty requirement as outlined in the related Project Specifications; Subcontractor agrees to provide Contractor at minimum a one (1) year warranty for said labor, material and equipment for its Work, from Substantial Completion of the Project.
6. Execution of this Subcontract Agreement is a representation that Subcontractor has carefully examined and understands the Subcontract Documents, has investigated the nature, locality and site of the work and the conditions and difficulties under which it is to be performed, including surface and/or subsurface materials to be encountered relevant to the Work, the site of the Work and the Project and their surroundings, and that it enters

into this Subcontract Agreement on the basis of its own examination, investigation, and evaluation of such matters, and not in reliance upon any opinions or representations of any other person or entity, including without limitation Contractor, any other subcontractor, or Owner, or any of their respective officers, agents, servants, or employees.

7. By such date as directed by Contractor, Subcontractor shall prepare and submit to Contractor all shop drawings, samples, specimens, or other data necessary to completely describe Subcontractor's Work and as required by the Subcontract Documents. Approval of such shop drawings, samples, specimens, or other data by Contractor, Owner, or the Architect shall not relieve Subcontractor of its responsibility to perform Subcontractor's Work in strict accordance with the Subcontract Documents or of its responsibility for the proper matching and fitting of Subcontractor's Work with contiguous work. Subcontractor shall also furnish all information required for the coordination of Subcontractor's Work with the work of other trades. Subcontractor shall be responsible for preparing all as-built drawings pertaining to Subcontractor's Work and as required by the Subcontract Documents.
8. Contractor shall establish principal axis lines for the structure(s) and site, which Subcontractor shall use to layout its work. Subcontractor shall be strictly responsible for the accuracy of Subcontractor's Work and for any loss or damage to Contractor or others by reason of Subcontractor's failure to correctly layout or perform its work. Subcontractor shall perform its work to ensure that actual final conditions and details result in perfect alignment of finish surfaces.
9. Subcontractor shall bring any uncertainty or inconsistency in or between the plans, specifications, or other Contract Documents to the attention of Contractor in writing and within three (3) working days of Subcontractor's discovery thereof. Subcontractor shall not proceed with any work affected by the uncertainty or inconsistency until directed to do so by Contractor. Contractor shall resolve the uncertainty or inconsistency and Subcontractor shall perform the work as directed by Contractor.
10. Before proceeding with its Work, Subcontractor shall inspect the correctness of contiguous or adjacent work installed by others. The failure to detect or report discrepancies will preclude recovery by Subcontractor of any resulting cost, expense, or damage.

SUBCONTRACT PRICE

Contractor agrees to pay Subcontractor for the full performance of its Work the firm fixed price of **(amount in words), \$(amount in numbers)** including taxes and duties of any kind, subject to additions and deductions and retention as provided in the Subcontract Documents. The Price shall constitute payment in full for all amounts owed to Subcontractor, including but not limited to the costs incurred for: all labor (including fringe benefit payments), materials, supplies, apparatuses, appliances, equipment, fixtures, tools, implements, facilities, supervision, transportation, utilities, storage, and all other services as and when required for or in connection with the performance of Subcontractor's Work, business licenses, Social Security, employment, sales, use, state, federal and all other taxes, continuous clean-up, final clean-up, and all insurance required by the Subcontract Agreement and Subcontract Documents.

TERMS AND CONDITIONS

ARTICLE 1 – Entire Agreement This Agreement represents the entire agreement between Contractor and the Subcontractor and supersedes any prior written or oral representations. Subcontractor, its subcontractors, suppliers and/or materialmen are bound to Contractor by the prime contract and any contract documents incorporated therein to the same extent as Contractor is bound to Owner insofar as they relate in any way, directly or indirectly, to the Work covered by this Agreement.

ARTICLE 2 – Subcontractor Payment

- A. Within seven (7) days of the execution of this Agreement, the Subcontractor agrees to prepare and submit to Contractor a Schedule of Values. Each activity contained in the Schedule of Values shall be assigned a monetary price such that the total of all such items shall equal the Subcontract Price. The Schedule of Values shall be prepared in such detail as may be required by Owner and/or Contractor.
- B. The period covered by each payment application shall be one (1) calendar month. Payment applications must be submitted by the 20th of each month to the Contractor for review. The Owner has final approval of all billing percentages of Work completed. Contractor will pay Subcontractor only the percentage amount approved by the Owner. If Owner delays making or refuses to make any payment to Contractor from which payment to Subcontractor is to be made, Contractor and its sureties (where applicable) shall have a reasonable time to make payment to Subcontractor of any amount actually due and owing to Subcontractor. "Reasonable time" shall be determined according to all relevant circumstances but in no event shall be less than the time required by Contractor, Contractor's sureties, and/or Subcontractor to pursue to conclusion their legal remedies, including but not limited to arbitration or suit against Owner or other responsible party(ies).

- C. Subcontractor, as requested by Contractor, shall furnish certified copies of all payrolls in the manner prescribed by Contractor. Contractor reserves the right to require mechanics' lien, stop notice, construction lien, materialmen and bond claim release (including releases from lower tier subcontractors) and payment affidavits with each application for progress payment and on final payment. Contractor also reserves the right to require Subcontractor to execute an Unconditional Waiver and Release form as to previously paid progress payments if required by the Contract Documents or the Owner.
- D. Subcontractor understands that all payments to Subcontractor will be made only from a special fund and a specific source, namely, from payments made by Owner from time to time to Contractor in respect of Work performed by Subcontractor. Contractor shall make payments to Subcontractor within seven (7) days after receipt by Contractor of payment from Owner for the Work of Subcontractor for which payment has been made.
- E. Contractor shall retain from progress or other payments hereunder five percent (5%) of the amount due until final completion and acceptance of the Project and shall release such retention to Subcontractor within ten (10) days after Contractor's receipt of final acceptance of the Project and the payment of such retention from the Owner. With respect to Public Works projects only as defined under applicable California law, Contractor's retention pursuant to the prior sentence shall be five percent (5%), unless applicable law permits Contractor to withhold a greater percentage, in which event the retention shall be such greater permitted percentage.
- F. Payments may be withheld on account of: (1) Subcontractor's failure to fully execute the Agreement; (2) Subcontractor's failure to timely provide the insurance documents; (3) Subcontractor's failure to timely provide Certified Payroll Reports, as defined in Attachment A, and Basic Payroll Records as defined in Attachment A, as required or upon Contractor's request; (4) failure of Subcontractor or any sub-subcontractor to pay prevailing wages or to make any required fringe benefit or trust fund payments; (5) Subcontractor's failure to comply with the apprenticeship requirements under the Labor Code; (6) defective Work of Subcontractor, its sub-subcontractors or suppliers; (7) failure of the Subcontractor to make payments properly to its sub-subcontractors or suppliers for labor, materials, equipment or services; (8) damage to the Contractor, Owner, another subcontractor, other trades or third parties caused in whole or in part by Subcontractor; (9) Subcontractor's failure to carry out the Work promptly and diligently in accordance with the Contract Documents and the current Approved Project Schedule or Short Interval Schedule; (10) a claim or reasonable evidence indicating a likely claim arising out of Subcontractor's acts or omissions; (11) any reasonable doubt that the Work can be completed for the remaining balance of the unpaid Subcontract Price; (12) penalties, fines, taxes or assessments against Contractor, the Owner, or their agents, resulting from Subcontractor's failure to comply with any state, federal or local law, ordinance, or regulations; (13) failure by Subcontractor to comply with any term, condition or obligation of this Agreement; (14) any ground for withholding of payment allowed by state or federal law, or as otherwise provided in this Agreement. Contractor shall have the right to withhold from Subcontractor for the violation of any of the foregoing by Subcontractor's sub-subcontractors or suppliers. When the cause of the above-referenced withholding has been rectified to the satisfaction of Contractor, the amounts withheld will be paid or credited to Subcontractor as otherwise provided for in this Agreement. Amounts withheld for the foregoing reasons shall not accrue interest during the withholding period.

ARTICLE 3 – Changes Contractor may at any time by written directive, and without notice to Subcontractor's surety(ies), make changes to the Work. If such changes cause an increase or decrease in the cost of the Work, or in the time of performance, an adjustment shall be made in accordance with the provisions for pricing changes to the Work set forth in the Prime Contract and as outlined below:

- A. Subcontractor shall make no changes in the Work nor shall it be entitled to any additional compensation without a written change order or written directive issued by an authorized representative of the Contractor.
- B. No increase in compensation of the Subcontractor or extension of time for performance of the Work shall be allowed for change order Work unless the Subcontractor makes application therefore, in writing, to Contractor within seven (7) days from the date on which Subcontractor receives a notification of change in Work, or within the three (3) days prior to the time within which Contractor must submit a change order request to Owner pursuant to the terms of the Prime Contract, whichever is earlier. Subcontractor's application must include a detailed breakdown of all costs regardless of whether the notification instructs Subcontractor to proceed or not to proceed with the changed Work. If Subcontractor fails to submit an application with pricing within the time specified above, Contractor will be entitled to conclusively presume that the change in the Work results in no change to the compensation of the Subcontractor or the time required for performance of the Work; alternatively, Contractor, at its option may quote the change order Work to the Owner on behalf of the Subcontractor, and Subcontractor will be responsible to perform the changes defined in the change order for the price and additional time (if any) approved by the Owner and as issued by Contractor to Subcontractor.

- C. If the Subcontractor and the Contractor cannot agree on the cost or the time for the performance of any change, the Subcontractor shall nevertheless perform the Work as directed in writing by the Contractor. The Subcontractor shall provide back-up documentation to the Contractor on a daily basis to substantiate the cost of the disputed Work, including, but not limited to, verification of hours Worked signed by Contractor's superintendent. The signature of Contractor's superintendent on any time and material ticket shall only serve to verify the reported hours Worked, and material supplied, and shall not represent Contractor's agreement that the provision of such Work and/or material constitutes extra Work or entitles Subcontractor to any increase in compensation or an extension of time on the Project. The Subcontractor may, in Contractor's sole discretion, be denied reimbursement for the disputed Work if the Subcontractor fails to provide the daily documentation with forty-eight (48) hours of completion of each day's Work. At no time shall Subcontractor delay or refuse to perform any Work if a dispute arises over whether such Work is an extra or change to the Work under this Agreement. The Subcontractor must promptly proceed with the disputed Work as and when directed by the Contractor in all cases, and Subcontractor shall pursue any such dispute under Article 12 below. If the Subcontractor refuses to proceed with the disputed Work as directed, Subcontractor will be responsible for all time and cost impacts, including but not limited to liquidated, actual and consequential damages, associated with the refusal to proceed with the disputed Work, and such refusal shall constitute grounds for termination under Article 11.A. – Termination for Default.
- D. Approved changes shall be considered as subject to, and a part of the original Work. The Subcontractor waives any claim that any change in the Work will affect the Subcontractor's warranties or guarantees unless the Subcontractor has notified the Contractor in writing prior to proceeding with the change.
- E. No increase in compensation to the Subcontractor, nor extension of time, shall be allowed for any changes in market conditions, including but not limited to any increase in labor rates, freight costs, storage fees, tax rates, the cost of materials, equipment or any other costs, or shortages or unavailability of labor, materials or services. Subcontractor accepts the sole risk that such costs are subject to change and are not predictable and that the availability of the necessary labor, materials and services may change.

ARTICLE 4 – Time

- A. Time is of the essence of this Agreement. Except as may otherwise be directed by Contractor in writing, Subcontractor shall, within ten (10) calendar days after its execution of this Agreement prepare and submit to Contractor in writing, for Contractor's review and approval, a proposed schedule showing in detail:
 - 1. The total number of days required by Subcontractor to complete the Work.
 - 2. The order in which Subcontractor proposes to carry out all activities of the Work.
 - 3. The dates on which the activities representing the complete performance of the Work (including, but not limited to, the procurement, submittal review, fabrication, delivery, and installation activities for all components of the Work) may be started and finished.
- B. Subcontractor shall conform to Contractor's reasonable progress schedule and all reasonable revisions or changes made thereto, which Subcontractor recognizes shall be made for the benefit of the Progress of the Project and not necessarily the Subcontractor or its Work, however, Contractor shall make all reasonable efforts to incorporate Subcontractor's reasonable requests into any Project schedules.
- C. Contractor's representative shall contact Subcontractor, verbally or in writing as determined by Contractor, forty-eight (48) hours prior to the required presence of Subcontractor, and Subcontractor shall promptly mobilize its forces to the Project site within said time frame and immediately begin performing its Work.
- D. In the event Subcontractor fails to maintain its part of the Contractor's schedule, it shall, without additional compensation, accelerate the Work as Contractor may direct until the Work is in accordance with such schedule. Contractor shall have complete control of the premises on which the Work is to be performed and shall have the right to decide the time and order in which various portions of Work shall be installed, the relative priority of the Work of Subcontractor and other subcontractors, and, in general, all other matters pertaining to the timely and orderly conduct of the Work.
- E. Extra charges will not be allowed for additional move-ins, shift Work, weekend Work, or over-time Work due to the phasing of Work or sequencing of Work required by the Contract Documents or as required by the Contractor. Contractor will coordinate with Subcontractor to attempt to minimize the number of move-ins, shift Work, weekend Work, or over-time Work to the jobsite for the Subcontractor to complete its Work. However, Subcontractor shall anticipate that multiple move-ins, shift Work, weekend Work, or over-time Work may be required.
- F. If Subcontractor commits an act or omission which causes delay to the overall Work of the Project, or the Work of any other party, Subcontractor shall be liable for all losses, costs, expenses, liabilities, and damages, including actual, consequential and liquidated damages, sustained by Contractor, or for which Contractor may be liable to Owner or any other party as a result thereof. The Contractor will determine the proportion of fault for any delay among all subcontractors, and the damages for delay will be distributed between subcontractors accordingly. The Contractor's allocation of fault with respect to such delays shall be final and binding on Subcontractor, so long as the allocation is made in good faith.

ARTICLE 5 – Delays and Impacts

- A. Should Subcontractor be delayed in the prosecution or completion of the Work by the act, neglect or default of the Owner, Contractor or other third party for whom they are legally responsible, or should Subcontractor be delayed waiting for materials or information required to be furnished by Owner or Contractor, or by damage caused by fire or other casualty for which the Subcontractor is in no way responsible, or by the combined action of the Workforce, in no way caused by, or resulting from default or collusion on the part of the Subcontractor, then the time herein fixed for the completion of the Work shall be extended by the number of days that Subcontractor has been delayed, but no allowance or extension shall be made unless a claim therefore is presented in writing to the Contractor within forty-eight (48) hours of the commencement of such delay, and in no circumstances shall the time of completion be extended to a date which will prevent the Contractor from completing the entire Project within the time that Owner allows Contractor for such completion.
- B. It is understood and agreed by the Subcontractor that its obligation under this Agreement is and shall be to well and fully perform and complete the Work herein specified in compliance with all laws, ordinances and regulations of all governmental authorities in any manner relating to said Work, and that the Subcontract Price herein agreed to be paid by Contractor to Subcontractor shall be in compensation for the full performance and completion of the Work, and not as per diem compensation for the number of days which the Parties may estimate as necessary for the prosecution of the Work. It is further agreed that the time or times herein specified shall not be construed to limit or restrict the obligation of Subcontractor to such period, but it shall proceed with the Work during such times as shall be necessary to perform and complete the said Work, at no other and further expense to Contractor than the Subcontract Price as hereinabove stated.
- C. Subcontractor acknowledges that a certain amount of delay is inherent in every construction project. To the extent applicable and enforceable, no claims for additional compensation or damages for delays, whether in the furnishing of material by Contractor, or delays by other subcontractors, Owner, or other third party for whom any of them are legally responsible, will be allowed by the Contractor, and said extension of time for the completion of its Work shall be the sole remedy of Subcontractor. However, in the event, and in such event only, that Contractor actually receives additional compensation from Owner on account of such delays, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor from Owner, minus a pro-rata share of Contractor's attorneys' fees, experts' fees, and other costs in securing such additional compensation, as is equitable under all of the circumstances. Such determination shall be made solely by Contractor and shall be final and binding on Subcontractor. Subcontractor shall have the burden of proving the impact of any delay it claims justifies a time extension and, if permitted under this Agreement, any compensation requested. If the performance of the Work by Subcontractor is unaffected by a delay incurred by Contractor (or another subcontractor) and for which relief is granted to Contractor (or such other subcontractor), Subcontractor shall not be entitled to claim an extension of time for such delay as a justification for delay in the timely performance of its Work. Nothing contained herein shall require Contractor to make any claim against Owner for any actual or alleged delays, and it is specifically agreed that the failure of Contractor to prosecute any such claim against Owner shall not entitle Subcontractor to any claim for damages against Contractor.
- D. Subcontractor acknowledges that a certain amount of impacts of the type set forth herein are inherent in every construction project. No claims for additional compensation or damages for impacts, including but not limited to loss of productivity, disruptions, re-sequencing of Work, re-phasing, remobilizations, cumulative impacts as a result of multiple changes, excessive Requests for Information (RFI's) or trade stacking will be allowed by the Contractor. However, in the event, and only in such event, that Contractor obtains additional compensation from Owner on account of such above described impacts, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor from Owner, minus a pro-rata share of Contractor's attorneys' fees, experts' fees, and other costs in securing such additional compensation, as is equitable under all of the circumstances. Such determination shall be made solely by Contractor and shall be final and binding on Subcontractor. Nothing herein contained shall require Contractor to make any claim against Owner for such impacts, and it is specifically agreed that the failure of Contractor to prosecute any such claim against Owner shall not entitle Subcontractor to any claim for such damages against Contractor.
- E. In no event shall Subcontractor be entitled to any compensation for impacts to its Work unless it has fully complied with the notification requirements set forth in the Prime Contract and in this Agreement. In the event that the Prime Contract does not contain specific notification and/or documentation requirements, the Subcontractor shall notify Contractor in writing within twenty-four (24) hours of the commencement of any alleged impact(s). Such notification shall include, for each alleged impact: (1) a written, detailed narrative outlining the specific alleged impact and its alleged cause(s); (2) the quantity and identity of the Workers allegedly impacted; (3) the specific location of the alleged impact; and (4) the duration of the alleged impact.

Subcontractor agrees that its failure to strictly comply with the notification and documentation requirements of this Article will result in the waiver of any such claim by Subcontractor.

- F. Subcontractor acknowledges that in the event that any of the foregoing prohibitions and limitations are held unenforceable, and Subcontractor is permitted to pursue a claim of inefficiency, loss of productivity or other similar or related request for additional compensation, Subcontractor expressly agrees that it may rely only on evidence indicating the actual inefficiency, loss of productivity or other similar consequence as it occurred on the Project. Subcontractor further expressly agrees that no reports, analyses, data, industry or academic studies or any other evidence that does not exclusively rely on, and pertain to, the Work performed at the Project shall be used or in any way considered, in whole or in part, in connection with such claims.

ARTICLE 6 – Contractor’s Right to Perform Subcontractor’s Work Contractor, at its sole discretion, may demand written assurances from Subcontractor of its ability to fully perform any and all requirements of this Agreement. The Subcontractor’s failure to provide adequate assurances to the Contractor’s reasonable satisfaction within three (3) days shall constitute a default of this Agreement as outlined in Article 11 – Termination for Default. In addition to Contractor’s other remedies, if Subcontractor fails to supply sufficient manpower, equipment or materials to advance the Work according to the then current Approved Project Schedule and Short Interval Schedule, then Contractor may, at its option, use its own or other forces, equipment or materials to perform such portions of the Work, and/or take any other actions permitted by this Agreement, as it deems necessary to increase the rate of progress. Contractor shall deduct the expenses thereof plus all associated direct and indirect costs, along with Contractor’s overhead and profit, from the Subcontract Price.

ARTICLE 7 – Protection of Work

- A. Subcontractor shall secure and reasonably protect the Work done hereunder and assume responsibility for the condition thereof until final acceptance by Architect, Owner and Contractor. Subcontractor further agrees to provide such reasonable protection as is necessary to protect the Work and the Workers of Contractor, Owner, and other subcontractors from its operations.
- B. Subcontractor shall be liable for any loss or damage to its Work in place or its materials on the job site. Subcontractor shall also be liable for loss or damage to Work in place or damage to equipment and/or materials on the job site caused by Subcontractor or its agents, employees, or guests.

ARTICLE 8 – Bonds Contractor, as a condition of entering into this Agreement or at any time after entering into this Agreement, may require Subcontractor, within ten (10) days from Contractor’s request, to furnish a faithful performance and/or labor and material bond from a surety acceptable to Contractor in an amount to be designated by Contractor, but not exceeding one hundred percent (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 one percent (1%) of the contract price. Subcontractor shall pay any premium in excess of one percent (1%). Subcontractor’s failure to furnish a faithful performance or labor and material bond when requested shall constitute a material breach of this Agreement and cause for termination of this Agreement. No change, alteration, addition, deletion or modification of or to any of the terms or provisions of the Contract Documents, or any of Subcontractor’s obligations, and no change order, extension of time or directive given or agreed to by Contractor, shall in any manner release, discharge or exonerate, in whole or in part, the surety on any bond furnished by Subcontractor pursuant to or in connection with this Agreement, and no notice is required to be given to any such surety of any such change, alteration, addition, deletion, modification, change order, extension of time or directive.

ARTICLE 9 – Insurance

- A. Without limiting Contractor’s rights to indemnification under this Agreement or at law, Subcontractors shall procure and maintain for the duration required by this Agreement or the Prime Contract, whichever is greater, insurance against claims for injuries to persons and damage to property which may arise from, or in connection with, the performance of the Work hereunder by the Subcontractor, its sub-subcontractors, suppliers or any party for whom it is responsible. The cost of such insurance shall be included in the Subcontractor’s bid, unless expressly required to be excluded by the Contract Documents. Subcontractor shall not commence any work until it obtains all insurance required to be obtained by Subcontractor as set forth hereunder. In the event that any Subcontract Document requires more stringent insurance coverage(s) than as specified in this Subcontract Agreement, the more stringent coverage requirement(s) shall prevail. Such insurance will be maintained by Subcontractor at its sole expense with insurance carriers admitted to do business in California, that have a Financial Strength Rating of not less than "A-" and a Financial Size Category of not less than "VIII" in the most current A.M. Best’s Rating Guide for property and casualty insurers. In no event will such insurance be modified without Contractor’s express written consent and, except as otherwise expressly authorized herein, in no event will such insurance be terminated or allowed to lapse prior to termination of all obligations arising under this Subcontract

Agreement. Subcontractor shall ensure that its subcontractors and suppliers of any tier shall procure and maintain insurance in like form and amounts, including the Additional Insured and Waiver of Subrogation requirements.

- B. Subcontractor shall maintain limits no less than those required by the Prime Contract, or those set forth below whichever are greater:
1. **Workers' Compensation and Employer's Liability Insurance** shall be provided in amounts not less than: \$1,000,000 for each accident for bodily injury by accident, \$1,000,000 policy limits for bodily injury by disease. \$1,000,000 each employee for bodily injury by disease.
 2. **Commercial General Liability Insurance** covering all operation by or on behalf of Subcontractor providing insurance for bodily injury and property damage liability including but not limited to coverage for:
 - a. Premises and operations
 - b. Products and completed operations
 - c. Contractual liability insuring tort obligations assumed by Subcontractor in this Contract
 - d. Broad form property damage (including completed operations)
 - e. Explosion, collapse, and underground hazards (including subsidence)
 - f. Personal injury liability
 - g. The limits of liability shall but not less than the amounts required of Subcontractor under Contract Documents, but in no event less than: \$1,000,000 each occurrence, \$1,000,000 personal injury liability, \$2,000,000 aggregate for products-completed operations, \$2,000,000 general aggregate. The general aggregate limit shall apply separately to subcontractor's Work under this Contract and shall be provided subject to those limits identified above or those limits specified in prime contract, whatever is greater. Contractor, its officers, directors and employees, and Owner shall be named as Additional Insures under the Commercial General Liability policy provided by Subcontractor using CG2010 or an equivalent form.
 3. **Automobile Insurance**, including coverage for all owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage.
- C. **Waiver of Subrogation:** Contractor and Subcontractor waive all such rights against each other and against all other subcontractors and Owner for loss or damage to the extent reimbursed by any insurance applicable to the Work except such rights as they may have the proceeds of such insurance.
- D. **Builders Risk:** If Builders Risk insurance purchased by the Owner or Contractor provides coverage for Subcontractor for loss or damage to Subcontractor's Work, Subcontractor shall be responsible for the insurance policy deductible amount applicable to damage to Subcontractor's Work and/or damage to other Work caused by Subcontractor. If not covered under the Builders Risk policy, or any other insurance required by the Contract Documents, Subcontractor shall procure and maintain at its own expense insurance for portions of Subcontractor's Work stored off site or in transit.

ARTICLE 10 – Indemnification To the fullest extent allowed under applicable law, Subcontractor shall indemnify, defend and hold harmless Contractor and Owner, including their subsidiaries or affiliated companies, employees, other subcontractors, sureties, stockholders, officers and directors, and their respective heirs, executors, administrators, successors and assigns, the Owner, the Project surety and the Project lender (hereinafter collectively referred to as the "Indemnified Parties"), from and against all claims, damages, suits, proceedings, actions, liability, losses and expenses, including loss of profits or prospective advantage, and including attorney and consultant fees (hereinafter "claims") arising out of or resulting from Subcontractor's: (i) presence at the Project site; (ii) performance under this Agreement and/or the Contract Documents; or (iii) failure of performance under this Agreement and/or of the Contract Documents, including failure to comply with the requirements of this indemnity provision Subcontractor, however, shall not be obligated under this Subcontract Agreement to indemnify, including the cost to defend, the Indemnified Parties for Claims arising out of, pertaining to, or relating to the active negligence or willful misconduct of the Indemnified Parties, or for defects in design furnished by such persons, or to the extent the Claims do not arise out of the scope of work of the Subcontractor pursuant to this Subcontract Agreement. Further, Subcontractor hereby expressly waives any rights of implied or equitable indemnity it might have against the Indemnified Parties.

ARTICLE 11 – Termination

A. Termination for Default

1. In addition to any other rights the Contractor may have under law or the Contract Documents, the Contractor may issue a Cure Notice in the event the Subcontractor refuses or neglects to meet any obligation under this Agreement, including, but not limited to a failure to:
 - a. Supply a sufficient number of skilled workers,
 - b. Supply a sufficient quantity of materials of proper quality,

- c. Prosecute the Work covered by this Agreement with promptness and diligence, including, but not limited to, performance in accordance with the then current Approved Project Schedule and Short Interval Schedule,
 - d. Install the Work in accordance with the requirements of the Contract Documents,
 - e. Correct a safety deficiency as directed by the Contractor,
 - f. Timely and properly pay for the labor, services, equipment, or materials furnished to Subcontractor for use on the Project, or
 - g. Accelerate the Work when directed to do so by Contractor.
2. If Subcontractor fails to cure such deficiencies within two (2) calendar days of receipt of the Cure Notice, or within such shorter period of time specified in the Cure Notice due to an emergency or other exigent circumstance as determined by Contractor, the Contractor, at its option, may enforce any combination of the following:
 - a. Require the Subcontractor to provide a payment and performance bond written in an amount equal to one hundred percent (100%) of the Subcontract Price at Subcontractor's sole cost and expense (except to the extent, if any, prohibited by applicable law),
 - b. Withhold future payments until the Cure Notice has been satisfied,
 - c. Require the Subcontractor to provide a specific Work recovery plan and schedule satisfactory to Contractor, and/or
 - d. Take any of the actions set forth in paragraph A.3 stated below:
 3. If the Subcontractor fails to satisfy the Cure Notice in whole or in part, within the time required, the Subcontractor will be in default of the Agreement and the Contractor may take whatever steps it deems necessary and appropriate to correct said default, including, but not limited to, providing labor, materials, equipment and services and deducting the costs thereof, from any money then due or thereafter to become due to the Subcontractor under this Agreement, or any other agreement between the Parties. The Contractor may also, at its option, declare the Subcontractor to be in breach, terminate the Subcontractor's right to perform further Work, and shall have the right to enter upon the premises and take possession, for the purpose of completing the Work included under this Agreement, of all of the materials, tools, and equipment thereon, and may employ any other person or persons to finish the Work. In case of such default by Subcontractor, said Subcontractor shall not be entitled to receive any further payment under this Agreement. At Contractor's option, Subcontractor will assign and transfer to Contractor, in whole or in part (if and as directed by Contractor), Subcontractor's subcontracts, orders, and commitments relating to the Work. The Subcontractor shall execute and deliver all documents and take all action required to transfer Subcontractor's rights in subcontracts, orders, and commitments relating to the Work to the Contractor, should Contractor so request. Further, in the event of default, Subcontractor is required, if directed by Contractor, to cancel all or part of the Subcontractor's subcontracts, orders, and commitments relating to this Agreement. Any claims or damages resulting from such cancellations shall be the sole and exclusive responsibility of Subcontractor. The expense incurred by the Contractor as herein provided, either for furnishing materials or for finishing the Work, and any damages including, but not limited to liquidated, actual and consequential damages incurred by Contractor as a result of such default, shall be chargeable to, and paid by, said Subcontractor. The Contractor shall have a lien upon all material, tools and equipment taken possession of, as aforesaid, to secure payment thereof.
 4. Contractor's remedies are cumulative, and the exercise of one remedy shall not restrict Contractor, at the same time or thereafter, from exercising any other remedy set forth herein or provided by applicable law.
 5. In the event a termination under this Agreement is found not to have been warranted under this or any other provision of this Agreement, the total compensation and damages that Subcontractor is entitled to recover on account of such termination shall be limited to the compensation that would have been payable to Subcontractor under the provisions of this Agreement as if the Agreement has been terminated for Contractor's convenience pursuant to Article 11.B below.

B. Termination for Convenience

1. Contractor may at any time, and for any reason or no reason, terminate Subcontractor's services hereunder for Contractor's convenience by written notice to Subcontractor. Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the Work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Contractor, or at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived therefrom. Subcontractor shall thereafter do only such Work as may be necessary to preserve and protect the Work already in progress and to protect material and equipment on the Project site or in transit thereto.

2. Upon such termination, Subcontractor shall be entitled to recover only its reasonable direct costs incurred prior to the termination and mark-up for overhead and profit (not to exceed fifteen percent (15%) combined) on Work actually performed. In no event, however, shall the mark-up for profit on completed Work exceed the actual profit Subcontractor would have earned for that Work absent the decision to terminate the Subcontract. If it appears that the Subcontractor would have sustained a loss on the Work had it been completed, no amounts for profit shall be paid by Contractor, and the amounts paid for the termination shall be reduced by the indicated rate of loss. Subcontractor must make its complete records available at reasonable times and places for Contractor's audit. In no event shall Subcontractor be entitled to any payment which would cause the Subcontract Price (as adjusted by any fully executed change orders) less previous payments to be exceeded.
3. Subcontractor expressly agrees that it shall not be entitled to any other compensation or damages in the event of termination for convenience, including without limitation, compensation for lost profits, lost opportunity costs, unabsorbed or under absorbed home office overhead, delay or disruption damages, consequential damages, or other similar remuneration.

C. Termination of Prime Contract

1. Should the Owner terminate the Prime Contract or any part which includes the Subcontractor's Work, the Contractor shall so notify the Subcontractor in writing and upon written notification this Agreement shall be terminated (except for Subcontractor's obligations which, by their nature, survive the termination of this Agreement) and the Subcontractor shall immediately stop Work, follow all of Contractor's instructions and mitigate all costs. In the event of such Owner termination, the Contractor's liability to the Subcontractor is limited to the extent of the Contractor's recovery, if any, on behalf of the Subcontractor under the Prime Contract. Nothing contained herein shall require the Contractor to make any claim against the Owner for such additional compensation or damages in the event of termination before completion, and it is specifically agreed that the failure of the Contractor to prosecute any such claim against the Owner shall not entitle the Subcontractor to any claim for additional compensation or damages against the Contractor Contractor's recovery, if any, on behalf of the Subcontractor, shall be subject to deduction for a pro-rata share of Contractor's attorneys' fees, experts' fees, and other costs, in securing such additional compensation associated with the termination of the Prime Contract. Unless Contractor receives a greater net recovery from Owner as a result of Owner's termination of the Prime Contract, in no event shall Subcontractor be entitled to a greater recovery from Contractor than under a termination pursuant to Article 11.B above.

ARTICLE 12 – Labor Relations

- A. Subcontractor shall take reasonable steps to prevent the occurrence of any strike, slowdown, or other labor difficulty or dispute arising out of the presence of Subcontractor at the Project site or from any other activities of Subcontractor.
- B. Subcontractor acknowledges the provisions of the California Labor Code, including but not limited to Labor Code section 1720, et. seq., regarding the payment of prevailing wages to workers employed on public works projects. In compliance with the requirements of Labor Code section 1775(b)(1), Subcontractor acknowledges the existence and content of Part 7, Chapter 1 of the California Labor Code, including without limitation Labor Code sections 1771, 1775, 1777.5, 1813, and 1815, as incorporated herein by reference, and has read and understands the provisions of these code sections, which are attached as Attachment A to this Subcontract Agreement. This provision is applicable only to public works projects covered by the California Labor Code.
- C. Contractor and Subcontractor understand that Labor Code Section 218.7 provides that in certain circumstances, Contractor can be liable for lack of wage or fringe benefits payments to, or on behalf of, any individual employed by any subcontractor on the Project. In order to ensure employees of the Subcontractor are being properly compensated, Subcontractor agrees to promptly provide to Contractor, upon Contractor's request, Subcontractor's payroll records for its workers on the Project which show, at a minimum, the items required for paystubs by Labor Code Section 226 and sufficient information to apprise Contractor of the Subcontractor's payment status in making fringe or other benefit payments or contributions to a third party on behalf of employees. Prior to production, the Subcontractor shall mark or obliterate from these documents the first five numbers from the workers' social security number. Subcontractor shall also complete and submit affidavit(s), in a form acceptable to Contractor, signed under penalty of perjury, certifying that it has complied with all applicable apprenticeship requirements and paid for all labor (including fringe benefits), materials and equipment for which Contractor has made payment to Subcontractor. Furthermore, upon request of Contractor, the Subcontractor shall provide award information that includes the Project name, name and address of the Subcontractor, anticipated start date, duration,

applicable wage rates for all workers, and estimated journeymen and apprentice hours, and contact information for its sub-subcontractors on the Project.

- D. To the extent applicable and not subject to any exemptions, Subcontractor shall comply, and shall cause any of its subcontractors and independent contractors (regardless of tier) to comply, with all statutes, regulations, orders, court decisions, and other laws relating to classification of individuals as employees or independent contractors, including without limitation and as applicable, Labor Code Section 2750.3 (AB 5) and *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal. 5th 903 (2018). If Subcontractor, or its subcontractors and independent contractors (regardless of tier), utilize services, as defined by Labor Code Section 2750.3, from natural persons who are not compensated and otherwise treated as employees, Subcontractor shall ensure that any such person providing the services qualifies as an independent contractor and (i) is hired pursuant to a written contract; (ii) is a business entity formed as a sole proprietorship, partnership, limited liability company, limited liability partnership, or corporation; (iii) has registered with the Department of Industrial Relations as a public works contractor; (iv) negotiates and contracts with, and is compensated directly by, a licensed contractor; (v) has a business license and has registered for business taxes, if the person is domiciled in a jurisdiction that requires such a license and/or registration; (vi) maintains a business location that is separate from the company that has hired him or her; (vii) has authority to hire and fire other persons who provide and/or assist in providing the services in question; (viii) has financial responsibility for errors and omissions in connection with the labor or services provided, as evidenced by insurance, indemnity obligations, bonds, and/or warranties; and (ix) is customarily engaged in an independently established business of the same nature as that involved with the work performed by any such person.
- E. Subcontractor agrees that should it retain any sub-subcontractor for its work on the Project, it will have that sub-subcontractor, and any lower tiered subcontractor, contractually guarantee that it will provide the documentation addressed in this section to the Contractor, upon request.
- F. Any refusal or failure by Subcontractor to comply with this section shall be grounds to justify withholding of any and all payments from Contractor to Subcontractor.

ARTICLE 13 – Disputes

- A. Subcontractor agrees that in the event any dispute arises between Subcontractor and Contractor, Subcontractor will continue to perform its Work regardless of the nature of the dispute. If the Prime Contract provides for the arbitration of disputes between Contractor and Owner, then any and all disputes between Contractor and Subcontractor arising out of or in connection with, or relating to, this Agreement or Subcontractor's Work on the Project, shall be arbitrated in accordance with the arbitration provisions and procedures set forth in the Prime Contract if, and only if, any of those disputes involve unresolved disputes between Contractor and Owner. Otherwise, disputes between Subcontractor and Contractor will not be arbitrated unless the parties agree otherwise or as required by law. If the Prime Contract provides for the mediation of disputes between Contractor and Owner, then any and all disputes between Contractor and Subcontractor arising out of or in connection with, or relating to, this Agreement or Subcontractor's Work on the Project, shall be mediated in accordance with the mediation provisions and procedures set forth in the Prime Contract if, and only if, any of those disputes involve unresolved disputes between Contractor and Owner. Otherwise, disputes between Subcontractor and Contractor will not be mediated unless the parties agree otherwise or as required by law.
- B. If Subcontractor strictly and timely complies with the notice, protest and claims provisions of the Contract Documents, and makes a valid claim resulting from any act of, omission of, or change made by Owner, or anything else for which Owner may be liable or responsible to Contractor pursuant to the Prime Contract, Contractor's duty to Subcontractor is limited to passing on the claim to Owner and Subcontractor will be bound by Owner's determination and any adjustment in Subcontractor's contract price shall be made only to the extent allowed by Owner or a final court judgment or arbitration award against Owner (not including Contractor's mark-up). In the event that Contractor files, pursues or prosecutes a claim, lawsuit or arbitration proceeding against Owner which includes a claim for additional compensation requested by Subcontractor, Subcontractor shall cooperate fully with Contractor in the filing, pursuit and prosecution thereof and shall pay to Contractor, Subcontractor's pro-rata share of the costs, fees and expenses incurred by Contractor in connection therewith, including actual attorneys' fees, costs and expenses, and Contractor will not be liable or responsible to Subcontractor for any damages or additional compensation resulting from any act of, omission of, or change made by Owner, or for which Owner may be legally responsible to Contractor, unless Contractor recovers such amounts from Owner, and then, only to the extent that Contractor recovers such amounts from Owner. In no event shall Contractor be liable or responsible to Subcontractor for additional costs or damages incurred or allegedly incurred by Subcontractor as a result of any act of, omission of or change by Owner, or for which Owner may be legally responsible to Contractor, except to the extent that Contractor recovers such costs or damages from Owner.
- C. If Contractor or Subcontractor shall bring any legal action or proceeding against the other that does not involve the Owner and/or Architect, it is hereby agreed that such action shall only be brought in a State or

Federal Court located within the County of Sacramento, state of California, the location of Contractor's principal office, which Contractor and Subcontractor hereby agrees is the place at which this Subcontract was entered into and which shall be the only proper Venue for any such action.

ARTICLE 14 – Warranty and Correction Period Subcontractor warrants to Contractor that all materials and equipment furnished shall be new, free from defects and of good quality. Subcontractor guarantees all materials and Workmanship, and agrees to replace, at its sole cost and expense and to the satisfaction of Contractor, any and all materials adjudged by Contractor to be defective or improperly installed as well as guarantee the Owner and Contractor against liability, loss or damage arising from said installation during a period of one (1) year from final completion and acceptance of the entire Project covered by the Prime Contract, or, if the period of guarantee required is in excess of one (1) year by the Contract Documents, Subcontractor shall be bound during such longer period. Under no circumstances shall the warranty period be deemed to start before final acceptance of the entire Project unless expressly provided in the Prime Contract. If the Subcontractor refuses to correct any warranty Work as directed by the Contractor, and the Subcontractor has received final payment, the Subcontractor will, within ten (10) days of demand, reimburse Contractor any funds expended, including not limited to the direct costs of the Work, and an additional twenty percent (20%) for Contractor's overhead and profit.

ARTICLE 15 – Assignment It is specifically agreed that the Subcontractor shall not subcontract, assign, or transfer this Agreement, any part thereof, any right to payment thereunder or any claim pursuant thereto without the written consent of the Contractor. Any such attempted subcontracting, assignment or transfer not consented to in writing by Contractor shall be voidable, at Contractor's election. Any assignment or transfer hereunder shall be subject to all rights and remedies available to Contractor under law or under this Agreement, including, but not limited to, Contractor's rights of set-off, offset, to retain funds, to amend or modify this Agreement, and to assert all other claims and defenses whether or not arising under this Agreement. The making of any subcontract, assignment or transfer by Subcontractor, or any consent thereto by Contractor, shall in no event relieve Subcontractor or its sureties of any of their obligations, duties, responsibilities, or liabilities under this Agreement.

ARTICLE 16 – Miscellaneous Provisions

A. Severability

1. In the event any clause or provision of this Agreement should be held to be invalid, then the remaining clauses and provisions shall nevertheless be and remain in full force and effect.

B. Waiver

1. Waiver by Contractor of any particular default by Subcontractor shall not affect or impair Contractor's rights in respect to any subsequent default of the same or of a different nature.

C. Contractor's License

1. Subcontractor is required by law to be licensed and regulated by the Contractors State License Board. Subcontractor now possesses and shall at all times possess for the entire life of this Agreement all licenses required to lawfully perform the Subcontract Work. Any questions concerning a contractor may be referred to the Registrar, Contractors State License Board, 9821 Business Park Drive, Sacramento, California 95827. Mailing Address: P.O. Box 26000, Sacramento, California 95826.

D. Counterparts and Electronic Signatures

1. If any Subcontract Document or any document identified in the Subcontract Documents must be signed by either Party, the signature of that party sent by facsimile will be considered binding and may be relied upon by both Parties.
2. Contractor may establish a procedure by which any one or more of the Subcontract Documents or any document issued under, pursuant to or in connection with the Subcontract Documents may be signed by one or both Parties using an electronic signature methodology designated by Contractor in its sole discretion. In such event, upon written notice to Subcontractor, Contractor may require that such documents be executed using such electronic signature methodology and Subcontractor's and Contractor's use of such electronic signature methodology will be considered as binding as an ink or facsimile signature by Subcontractor or Contractor and may be relied upon by both Parties.

E. Audit

1. Contractor shall have the right to inspect, audit and copy at any time, upon reasonable notice, during normal business hours, Subcontractor's books, documents and accounting records, including but not limited to bid worksheets, bids, subcontractor bids, and proposals, estimates, cost accounting data, accounting records, payroll records, time sheets, cancelled checks, profit and loss statements, balance sheets, Project correspondence, including but not limited to all

correspondence between Subcontractor and Subcontractor's sureties and subcontractors/vendors, Project files, scheduling information, and other records of the Subcontractor and all subcontractors directly or indirectly pertinent to the Work, original as well as change and claimed extra work, to verify and evaluate the accuracy of cost and pricing data submitted with any change order, prospective or completed, or any claim for which additional compensation has been requested or notice of potential claim has been tendered. Subcontractor shall keep complete and accurate records concerning Subcontractor's Work and the Project at its principal office for at least four (4) years after the work is completed and accepted by Contractor. This provision shall be included in all of Subcontractor's subcontracts and purchase orders, and all of Subcontractor's subcontractors and suppliers, of any tier, shall be bound by this provision.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for themselves, their heirs, executors, successors, administrators, and assigns as indicated immediately below.

Contractor,
Bobo Construction, Inc.

Subcontractor,
(Name of Subcontractor)

By: _____
(Name)
(Title)
(Date)

Contractor License No: 183537

By: _____
(Name)
(Title)
(Date)

Subcontractor License No: **(Sub License #)**