

XXXXXXXXXX XX, XXXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXX, XX XXXXX

Ref: XXXXXXXXXXXXXXXXXXXX

Gentlemen:

We have enclosed two (2) copies of our standard subcontract agreement for the above referenced project. Please sign and return both copies to our office. A fully executed copy will then be returned to you for your files. If you have any questions, please contact our office or list your proposed changes on a separate attachment. Do not alter or mark this subcontract agreement in any way.

We have also included our insurance requirements for the above referenced as well as an IRS Form W-9. When submitting your public liability and property insurance certificates, please ensure that **(GENERAL CONTRACTOR), (OWNER), (ARCHITECT – IF REQ'D) and their respective requirements** and Dolan Concrete Construction, its directors, officers, shareholders, agents and employees are listed on separate page endorsement as additional insureds. No payments will be processed until we have a proper certificate of insurance and an executed W-9 on file.

In addition, California Code of Regulation Article 3, Section 1509, paragraphs (4) and (6), and Article 110, Section 5194 requires that every employer participating on this project must have on file the following: (1) Code of Safe Practices; (2) Safety Program; (3) Material Safety Data Sheets. Please provide us with copies of the above-mentioned items along with a current copy of your contractor's license for the prime contractor's records.

Thank you in advance for your prompt response.

Sincerely,

Ramon Velez, Jr.
Contract Administrator

Enclosures

LONG FORM STANDARD SUBCONTRACT

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

LONG FORM STANDARD SUBCONTRACT

Subcontract No. xxxx-xxx

This Agreement is made at 481 Auzerais Avenue, San Jose, CA 95126-3611
this day of xxxx day of xxxxxxxxxxxx 20xx, between:

CONTRACTOR

Name Dolan Concrete Construction

Address 481 Auzerais Avenue, San Jose, California 95126-3611

and

SUBCONTRACTOR

Name xxxxxxxxxxxxxxxxxxxxxx

Address _____

On or about the xxxx day of xxxxxxxxxx, 20xx, Contractor entered into a
prime contract with:

GENERAL CONTRACTOR

Name xxxxxxxxxxxxxxxxxxxxxx

Address _____

to perform the following work:

xxxxxxxxxxxxxxxxxxxxxx

in accordance with all plans, specifications and other contract documents
attached to or incorporated into the prime contract. Said work is to be
performed in accordance with the prime contract and the plans and
specifications. Said plans and specifications have been prepared by or on
behalf of:

ARCHITECT

Name xxxxxxxxxxxxxxxxxxxxxx

Address _____

SECTION 1. ENTIRE CONTRACT

The phrase "Contract Documents" is defined to mean the plans, specifications and other contract documents attached to or incorporated into the prime contract, and also includes:

For the project known as XXXXXXXXXXXXXXXXXX

And located at XXXXXXXXXXXXXXXXXX

Subcontractor certifies that it is fully familiar with all of the terms of the Contract Documents, the location of the job site, and the conditions under which the work is to be performed and that it enters into this Agreement based upon its investigation of all such matters and is not relying on any opinions or representations of Contractor. This Agreement represents the entire agreement between Contractor and Subcontractor, and supercedes any prior oral or written agreements or representations. The Contract Documents are incorporated in this Agreement by reference, and insofar as they relate in any way, directly or indirectly, to the work covered by this Agreement. Subcontractor agrees to be bound to Contractor in the same manner and to the same extent as Contractor is bound to General Contractor under the Contract Documents, including, but not limited to, all applicable terms and provisions thereof. Where, in the Contract Documents, reference is made to Contractor, and the work or specifications therein pertain to Subcontractor's trade, craft or type of work, such work or specification shall be interpreted to apply to Subcontractor instead of Contractor.

SECTION 2. SCOPE

Subcontractor agrees to furnish all labor, materials, equipment, and other facilities required to complete the following work:

for the project in accordance with the Contract Documents and as more particularly specified in:

In the event of any dispute between Contractor and Subcontractor over the scope of Subcontractor's work under the Contract Documents, Subcontractor will not stop work, but will prosecute the work diligently to completion, the dispute to be submitted for resolution in accordance with Section 18 below.

SECTION 3. CONTRACT PRICE

Contractor agrees to pay Subcontractor for the strict performance of its work in the sum of:

\$ _____ (\$ _____)

or as set out in Section 26 below, subject to additions and deductions for changes in the work as may be directed in writing by Contractor, and to make payment in accordance with the Payment Schedule, Section 4.

SECTION 4. PAYMENT SCHEDULE

Contractor agrees to pay Subcontractor in monthly progress payments of ninety percent (**90%**) of labor and materials which have been placed in position, with funds received by Contractor from General Contractor for work performed by Subcontractor as reflected in Contractor's applications for payment. Such monthly progress payments shall be made ten (10) days after receipt of payment from the General Contractor by Contractor. Final payment to Subcontractor shall be made seven (7) days after the entire work required by the prime contract has been fully completed in conformity with the Contract Documents and has been delivered to and accepted by Owner, Architect, and General Contractor, with funds received by Contractor from General Contractor in final payment for work under the prime contract. Subcontractor agrees to furnish, if and when required by Contractor, payroll affidavits, receipts, vouchers, releases of claims for labor and material, and agrees to furnish same from its subcontractors, suppliers and/or materialmen performing work or furnishing materials under this Agreement, all in form satisfactory to Contractor, and it is agreed that no payment hereunder shall be made, except at Contractor's option, until and unless such documents have been furnished. Contractor, at its option, may make any payment due hereunder by check made payable jointly to Subcontractor and of its subcontractors, suppliers and/or materialmen who have performed work or furnished materials under this Agreement. Any payment made hereunder prior to completion and acceptance of the work, as referred to above, shall not be construed as evidence of acceptance or acknowledgement of completion of any part of Subcontractor's work.

If Owner or other responsible party delays making payment to Contractor from which payment to Subcontractor is to be made, Contractor and its sureties shall have a reasonable time to make payment to Subcontractor. "Reasonable time" shall be determined according to the relevant circumstances, but in no events shall be less than the time Contractor, Contractors sureties, and Subcontractor require to pursue to conclusion their legal remedies against Owner or other responsible party to obtain payment including (but not limited to) mechanics' lien remedies.

If the Subcontractor asserts a claim which involves, in whole or in part, acts or omissions which are the responsibility of the Owner or another party, including but not limited to claims for failure to pay, an extension of time, delay damages, or extra work, Contractor will present the Subcontractor's claim to the Owner or other responsible party. The Subcontractor shall cooperate fully with the Contractor in all steps taken in connection with prosecuting such a claim and shall hold harmless and reimburse the Contractor for all expense, including legal expense, incurred by Contractor which arise out of Contractor's submission of Subcontractor's claim to Owner or other responsible party. Subcontractor shall be bound by any adjudication or award in any action or proceeding resolving such a claim.

SECTION 5. TIME

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

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

SECTION 6. CHANGES IN THE WORK

Subcontractor shall make any and all changes in the work described in the Contractor Documents and this Agreement as directed by Contractor in writing. Such change or written direction shall not invalidate this Agreement.

If necessary, the contract price stated in Section 3 and the time for Subcontractor's performance shall be adjusted by appropriate additions or deductions mutually agreed upon before Subcontractor performs the changed work. Subcontractor shall supply Contractor with all documentation necessary to substantiate the amount of the addition to or deduction from the price or time. If Contractor and Subcontractor cannot agree on the amount of the addition or deletion, Subcontractor shall nonetheless timely perform the work as changed by Contractor's written direction. Once Subcontractor receives Contractor's written direction, Subcontractor is solely responsible for timely performance of the work as changed by the written direction.

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

If a dispute arises between Contractor and Subcontractor about whether particular work is a change in the work described in Section 2, Subcontractor shall timely perform the disputed work. If Subcontractor intends to submit a claim for the disputed work, it shall give prompt written notice to Contractor before proceeding with the work. In addition, Subcontractor shall submit its written claim for additional compensation for that work within ten (10) days after such work is performed in sufficient detail for Contractor to make an evaluation of the merits of the claim. Subcontractor's failure either to give the written notice before proceeding with the work or to submit the written claim within the ten (10) days constitutes an agreement by it that it will not be paid for the disputed work.

No change, alteration, or modification to or deviation from this Agreement, the Contract Documents, prime contract, plans, or specifications, whether made in the manner provided in this section or not, shall release or exonerate, in whole or in part, any bond or any surety on any bond given in connection with this Agreement, and no notice is required to be given to such surety of any such change, alteration, modification, or deviation.

SECTION 7. DAMAGES CAUSED BY DELAYS

If Subcontractor should default in performance of the work described in Section 2 or should otherwise commit any act which causes delay to the prime contract work, Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages, sustained by Contractor, or for which Contractor may be liable to Owner or any other party because of Subcontractor's default.

SECTION 8. BONDING OF SUBCONTRACTOR

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

SECTION 9. LIENS

In case suit is brought on any claim or lien for labor performed or materials used on or furnished to the project, Subcontractor shall pay and satisfy any such lien or judgment as may be established by the decision of the court in said suit. Subcontractor agrees within ten (10) days after written demand to cause the effect of any such suitor lien to be removed from the premises, and in the event Subcontractor shall fail so to do, Contractor is authorized to use whatever means in its discretion it may deem appropriate to cause said lien or suit to be removed or dismissed and the cost thereof, together with actual attorneys' fees, shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may litigate any such lien or suit provided it causes the effect thereof to be removed, promptly in advance, from the premises, and still further do such things as may be necessary to cause Owner not to withhold any monies due to Contractor from Owner by reason of such liens or suits.

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

SECTION 10. PROVISIONS FOR INSPECTION

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

SECTION 11. MATERIALS AND WORK FURNISHED BY OTHERS

In the event the scope of work includes installation of materials or equipment furnished by others or work to be performed in areas to be constructed or prepared by others, it shall be the responsibility of Subcontractor to examine and accept, at the time of delivery or first access, the items so provided and thereupon handle, store and install the items with such skill and care as to insure a satisfactory completion of the work. Use of such items or commencement of work by Subcontractor in such areas shall be deemed to constitute acceptance thereof by Subcontractor. Loss or damage due to acts of Subcontractor shall be charged to the account of Subcontractor and deducted from monies otherwise due under this Agreement.

SECTION 12. PROTECTION OF WORK

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

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

SECTION 13. LABOR RELATIONS

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

Subcontractor agrees to be bound and to comply with all the terms and conditions of the labor agreements listed in Section 25 below to the same degree and extent as if Subcontractor were a party to those agreements, including payments into the employee benefit trust funds required by the labor agreements listed in Section 25 below, and including Subcontractor's submission to, and Subcontractor's compliance with, the arbitration and other dispute resolution requirements of the labor agreements listed in Section 25 below. Subcontractor agrees to comply with the terms and provisions contained in such agreements for resolution of jurisdictional disputes. In the absence of any such procedure, or if such procedure fails to promptly resolve any jurisdictional dispute, Subcontractor agrees, at its own cost and expense, upon request of Contractor to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board.

Subcontractor acknowledges that terms and conditions of the labor agreements with the unions listed herein below may require that Subcontractor comply with additional labor agreements with unions affiliated with AFL-CIO but not listed. When the terms and conditions of the below-referenced labor agreements so require, Subcontractor shall perform its job site work pursuant to all terms and conditions of an appropriate labor agreement with a union affiliated with the AFL-CIO.

Should there be picketing on Contractor's job site, and Contractor establishes a reserved gate for Subcontractor's purpose, it shall be the obligation of Subcontractor to continue the proper performance of its work without interruption or delay.

Subcontractor further promises and agrees that it will bind and require all of its subcontractors and their subcontractors performing job site work of the type covered by any of the labor agreements specified below to agree to all of the foregoing promises and undertakings, to the same effect as herein provided with respect to it.

13.2 Subcontractor hereby acknowledges that it is thoroughly familiar with all DBE/MBE/WBE/DVBE requirements pertaining to the project. If the Subcontractor claims status as a DBE/MBE/WBE/DVBE, the Subcontractor shall take all steps necessary and shall make all necessary records available to the Contractor and the Owner to assure that Subcontractor is in compliance with such requirements. In the event that any sub-subcontractor or supplier of the Subcontractor is designated as or is required to be a DBE/MBE/WBE/DVBE, Subcontractor agrees to be responsible for insuring that said sub-subcontractor or supplier meets all applicable requirements. Subcontractor acknowledges that Contractor is relying upon Subcontractor's representations regarding the validity of Subcontractor's status, if any, as a DBE/MBE/WBE/DVBE and that misrepresentation of the status of Subcontractor or any of its sub-subcontractors or material suppliers is a material breach of this Agreement and grounds for immediate termination. In the event of termination as the result of material misrepresentation of the status of the Subcontractor as a DBE/MBE/WBE/DVBE, Subcontractor shall not be entitled to any compensation not already paid.

13.3 Subcontractor shall comply with and agrees to be bound by all applicable federal, state and local laws and regulations, including, but not limited to, all provisions of the Fair Labor Standards Act, the Americans With Disabilities Act, the federal Family and Medical Leave Act, the California Labor Code, the California Fair Employment and Housing Act, and the California Family Rights Act. Upon request, Subcontractor shall submit certified payroll records to Contractor no later than three (3) working days after labor has been paid.

SECTION 14. RECOURSE BY CONTRACTOR

14.1 Failure of Performance.

14.1.1 Right to Adequate Assurance. When reasonable grounds for insecurity arise with respect to Subcontractor's performance, Contractor may in writing demand adequate assurance of due performance. Subcontractor's failure to provide within fifteen (15) days of the demand such assurance of due performance as is adequate under the circumstances of the particular case is a default under Section 14.1.2 of this Agreement.

14.1.2 Notice to Cure. If Subcontractor at any time refuses or neglects to supply enough properly skilled workers and proper materials, or fails to properly and diligently prosecute the work covered by this Agreement, or fails to make prompt payment to its workers, sub-subcontractors or suppliers, or becomes delinquent with respect to contributions or payments required to be made to any health and welfare, pension, vacation, apprenticeship or other employee benefit program or trust, or fails to provide adequate assurance pursuant to Section 14.1.1, or is otherwise guilty of a material breach of a provision of this Agreement, and fails within forty-eight (48) hours after

receipt of written notice to commence and continue satisfactory correction of such Default with diligence and promptness, then Contractor, without prejudice to any rights or remedies, shall have the right to any or all of the following remedies:

- (a) supply such number of workers and quantity of material, equipment and other facilities as Contractor deems necessary for completion of Subcontractor's work or any part thereof which Subcontractor has failed to complete or perform, and charge the cost thereof to Subcontractor, who shall be liable for the payment of same including reasonable profit, and actual attorney's fees incurred as a result of Subcontractor's failure of performance;
- (b) contract with one or more additional contractors to perform such part of Subcontractor's work as Contractor shall determine will provide the most expeditious completion of the total work and charge the cost thereof to Subcontractor; and
- (c) withhold payment of any monies due Subcontractor pending corrective action to the extent required by and to the satisfaction of Contractor.

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

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

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

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

Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise,

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

Upon such termination, Subcontractor shall be entitled to payment in accordance with Section 4 only as follows: (1) the actual cost of the work completed in conformity with this Agreement, plus (2) such other costs actually incurred by Subcontractor as are permitted by the prime contract and approved by Owner, plus (3) fifteen percent (15%) of the cost of the work referred to in item (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Subcontractor prior to the date of the termination of this Agreement. In no event shall payment due hereunder exceed the amount due for approved units of work or percentage of completion. Subcontractor shall not be entitled to any claim or claim of lien against Contractor or Owner for any additional compensation or damages in the event of such termination or payment.

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

14.2 Bankruptcy.

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

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

14.2.2 Interim Remedies. If Subcontractor is not performing in accordance with the schedule of work at the time of entering an order for relief, or at any subsequent time, Contractor, while awaiting the decision of Subcontractor or its trustee to reject or to accept this Agreement and provide adequate assurance of its ability to perform hereunder, may avail itself of such remedies under this Section as are reasonably necessary to maintain the schedule of work. Contractor may offset against any sums due or to become due Subcontractor all costs incurred in pursuing any of the remedies provided hereunder, including, but not limited to, reasonable overhead, profit and actual attorneys' fees incurred as a result of Subcontractor's non-performance.

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

SECTION 15. INDEMNIFICATION

15.1.1 Subcontractor's Performance. With the exception that this Section 15 shall in no event be construed to require indemnification by Subcontractor to a greater extent than permitted under the public policy of the State of California, Subcontractor shall indemnify and save harmless Owner, General Contractor and Contractor, including their officers, agents, employees, affiliates, parents and subsidiaries, and each of them, of and from any and all claims, demands causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity, of every kind and nature whatsoever ("Claims") arising out of or in connection with Subcontractor's operations to be performed under this Agreement for, but not limited to:

- (a) Personal injury, including, but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to, any employees or agents of Subcontractor, Owner, Contractor, or any other subcontractor and/or damage to property of anyone (including loss of use thereof), caused or alleged to be caused in whole or in part by any act of omission of Subcontractor or anyone directly or indirectly employed by Subcontractor or anyone for whose acts Subcontractor may be liable regardless of whether such personal injury or damages is caused by a party indemnified hereunder.

- (b) Penalties imposed on account of the violation of any law, order, citation, rule, regulation, standard, ordinance or statute, caused by the action or inaction of Subcontractor.
- (c) Infringement of any patent rights which may be brought against the Contractor or Owner arising out Subcontractor's work.
- (d) Claims and liens (see Section 9) for labor performed or material used or furnished to be used on the job, including all incidental or consequential damages resulting to Contractor, General Contractor or Owner from such claims or liens.
- (e) Subcontractor's failure to fulfill the covenants set forth in each subpart of Section 13, Labor Relations.
- (f) Failure of Subcontractor to comply with the provisions of Section 16.1, Casualty Insurance.
- (g) Any violation or infraction by Subcontractor of any law, order, citation, rule, regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees, including, but not limited to, the use of Contractor's or others' equipment, hoists, elevators, or scaffolds (see Sections 16 and 20).
- (h) Economic loss or damage, including, but not limited to, consequential damages, delay damages and/or liquidated damages.

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

15.1.2 Subcontractor shall:

- (a) At Subcontractor's own cost, expense and risk, defend all Claims as defined in Section 15.1.1 that may be brought or instituted by third persons, including, but not limited to, governmental agencies or employees of Subcontractor, against Contractor, General Contractor, Owner or their agents or employees or any of them;
- (b) Pay and satisfy any judgment or decree that may be rendered against

Contractor, General Contractor or Owner or their agents or employees, or any of them, arising out of any such Claim; and/or

- (c) Reimburse Contractor, General Contractor or Owner or their agents or employees for any and all legal expense incurred by any of them in connection herewith or in enforcing the indemnity granted in this Section 15.

15.2 Risk of Loss.

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

SECTION 16. INSURANCE

16.1 Casualty Insurance.

Subcontractor shall, at its expense, procure and maintain insurance on all of its operations, with companies acceptable to Contractor, as follows:

16.1.1 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 provided in amounts not less than:

- \$1,000,000 each accident for bodily injury by accident
- \$1,000,000 policy limit for bodily injury by disease
- \$1,000,000 each employee for bodily injury by disease

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

16.1.2 General Liability Insurance.

Subcontractor shall carry primary Commercial General Liability insurance (Insurance Services Office, Form CG 00 01 or equivalent) covering all operations by or on behalf of Subcontractor providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including but not limited to coverage for:

- (1) premises and operations
- (2) products and completed operations
- (3) contractual liability
- (4) broad form property damage (including completed operations)

(5) explosion, collapse and underground hazards (including subsidence and any other earth movement)

(6) personal injury liability

(7) independent contractors

The limits of liability shall be not less than the amounts required of Subcontractor under the Contract Documents, but in no event 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

The general aggregate limit shall apply separately to Subcontractor's work under this Contract. For subcontracts in excess of \$250,000 an additional \$5,000,000 Excess Liability Insurance policy shall be maintained over the General Liability coverage. Such Excess coverage shall, at a minimum, include the items set forth in 1-7 above. Higher limits of liability may be required for hazardous work. Any such requirement is set forth in Section 26, Special Provisions.

In addition Subcontractor shall maintain primary and excess products liability and completed operations coverage through the expiration of the patent deficiency in construction statute of repose set forth in Section 337.1 of the California Code of Civil Procedure.

Contractor, its officers, directors and employees, General Contractor, Owner, and any other interested parties as designated by Contractor shall be named as additional insureds under the Commercial General Liability Policy and such insurance afforded the additional insureds shall apply as primary insurance. Any other insurance maintained by Contractor, General Contractor or Owner shall be excess insurance and not be called upon to contribute with this insurance.

Coverage for the Contractor, its officers, directors and employees, the General Contractor and the Owner as additional insureds shall be provided by an endorsement providing coverage at least as broad as Insurance Services Office, Additional Insured Endorsement Form CG 20 10 or similar form as approved in writing by Contractor. The duty to provide such additional insured coverage is independent of the defense and indemnity obligations set forth in Section 15, Indemnification.

Subcontractor shall ensure that their sub-subcontractors of every tier also carry insurance with the limits of liability specified above. Contractor may require written proof that the requisite insurance is being carried. Such written proof shall be furnished to Contractor within ten (10) days after such request has been made. Contractor may also require that the sub-subcontractor name Contractor, General Contractor and Owner as additional insureds. Such naming shall be provided at no additional cost or

expense to Contractor, General Contractor or Owner.

16.1.3 Claims Made/Self Insurance Provisions.

Subcontractor shall not provide general liability insurance under any Claims Made General Liability form without the express written consent of Contractor. Any self-insurance program providing coverage in excess of \$25,000 per occurrence requires the express written consent of Contractor.

16.1.4 Automobile Liability Insurance.

Subcontractor shall carry automobile liability insurance, 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.

16.1.5 Certificates of insurance, as evidence of the insurance required by this Contract and including the required "additional insured" endorsement(s) shall be furnished by Subcontractor to Contractor. Certificates shall set forth deductible amounts in excess of \$5,000 applicable to each policy and all exclusions or limitations not set forth in ISO Commercial General Liability Form CG 00 01. Standard ISO Form CG 00 01 exclusions will also be allowed. Allowance of any additional exclusions or coverage limiting endorsements is at the discretion of the Contractor.

Regardless of the consent to exclusions, coverage limitations or deductibles by the Contractor, the Subcontractor shall be responsible for any deductible amount or any loss arising out of coverage denials by his insurance carrier(s).

Subcontractor's certificates of insurance shall provide that there will be no cancellation or reduction of coverage without an unqualified, thirty (30) day, prior written notice to Contractor.

16.1.6 Contractor may take whatever actions are necessary to assure Subcontractor's compliance with its obligations under this section of the Agreement. Should any insurance policy lapse or be canceled during the period of this Agreement, the Subcontractor shall, prior to the effective expiration or cancellation date, furnish the Contractor with evidence of renewal or replacement of the policy. Failure to continuously satisfy the insurance requirements herein is a material breach of this Agreement. In the event Subcontractor fails to maintain any part of the insurance coverage required, Contractor may, but is not required to, maintain such coverage and charge the expense to Subcontractor or may pursue its remedies under Section 14, Recourse by Contractor.

16.1.7 Any acceptance of insurance certificates by Contractor shall in no way limit or relieve Subcontractor of its duties and responsibilities under this Contract including the duty to indemnify and hold harmless Contractor as set forth in Section 15, Indemnification.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Subcontractor for liability in excess of such coverage nor shall it preclude the Contractor from taking such other actions as is available to it under any other provision of this Agreement or by law. If higher limits or other forms of insurance are required in the Contract Documents, Subcontractor will comply with such requirements.

16.2 Property Insurance

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

16.2.2 Builder's Risk. If such insurance is provided, it shall also apply to any of Owner's, General Contractor's or Contractor's property in the care, custody or control of Subcontractor. In such event, Subcontractor shall be responsible for the first \$5,000 of insurance policy deductible amount applicable to damage to Subcontractor's work and/or damage to other work caused by Subcontractor. In the event Owner is not required to purchase such Builder's Risk coverage, the extent of Builders Risk or other property insurance available to Subcontractor (if any) will be specified in Section 26, Special Provisions.

16.2.3 All-Risk Insurance. In addition, Subcontractor shall maintain in full force and effect "All Risk Insurance" for all equipment, and property obtained by or for Subcontractor which is to become a part of the Work while such equipment and property is stored at the jobsite, at temporary locations, or while in transit to the project from such temporary locations. Subcontractor shall also be responsible for insuring Subcontractor's owned, rented or borrowed equipment.

16.3 Non-Waiver. Receipt by Contractor of any certificate of insurance or additional insured endorsement which does not comply with any provisions of this Section 16 shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of this Contract.

SECTION 17. DISPUTE RESOLUTION PROCEDURE:

17.1 Preliminary Dispute Resolution Procedure and Agreement to Arbitrate

17.1.1 Disputes Under Prime Contract. Any dispute resolution procedure in the prime contract shall be deemed incorporated in this Agreement, and shall apply to any disputes arising hereunder, except disputes not involving the acts, omissions or

otherwise the responsibility of the Owner under the prime contract, and those which have been waived by the making or acceptance of final payment. Subject to compliance with all applicable laws, including, but not limited to those relating to false claims, dispute and claim certifications, and cost and pricing data requirements, Contractor's sole obligation is to present any timely-filed claims by Subcontractor to Owner or other responsible party under such procedure and, subject to the other provisions of this Agreement, to pay to Subcontractor the proportionate part of any sums paid by the Owner to which Subcontractor is entitled.

17.1.2 Settlement Negotiations. Subject to prime contract dispute resolution procedures under Section 17.1.1, and as for disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the prime contract, promptly upon notification by the Subcontractor of a dispute, the Contractor and Subcontractor shall meet to informally resolve such dispute. In the event that no resolution is achieved, the parties, prior to the initiation of any action or proceeding under this section, shall make a good faith effort to resolve the dispute by negotiating between representatives with decision-making power, who, to the extent possible, shall not have had substantive involvement in the matters of the dispute, unless the parties otherwise agree. To facilitate the negotiation, the parties agree either to fashion a procedure themselves or seek the assistance of a person or organization experienced in alternative dispute resolution procedures, such as mediation or other similar procedures.

17.2 Arbitration Procedures. In the event the prime contract contains an arbitration provisions or for disputes not involving the acts, omissions or otherwise the responsibility of the Owner under the prime contract, the following shall apply:

17.2.1 Notice of Demand. For arbitration under the prime contract, notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and shall conform to the requirements of the arbitration provision set forth in the prime contract. For claims not involving the acts or omissions or otherwise the responsibility of the Owner under the prime contract, the parties hereto shall submit any and all disputes arising under or relating to the terms and conditions of the Subcontract to arbitration in accordance with the Construction Industry Rules of the American Arbitration Association. In either case, the demand for arbitration shall be made within a reasonable time after written notice of the claim, dispute or other matter in question has been give, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim dispute or matter in question would be barred by the applicable statue of limitations.

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

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

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

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

SECTION 18. COMPLIANCE WITH ALL LAWS AND SAFETY PRACTICES

Subcontractor shall comply fully with all laws, orders, citations, rules, regulations, standards and statutes affecting or relating to this Agreement or its performance, including, but not limited to, those with respect to occupational health and safety, the handling and storage of hazardous material, accident prevention, safety equipment and practices including the accident prevention and safety program or Owner and Contractor.

Subcontractor shall conduct inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for providing a safe place to work for its employees and for employees of its subcontractors and suppliers of material and equipment, for adequacy of and required use of all safety equipment and for full compliance with the aforesaid laws, orders, citations, rules, regulations, standards and statutes.

It is the responsibility of Subcontractor to provide documentation to Contractor of safety program, compliance with subcontractor safety program and submission of MSDS forms. Subcontractor agrees to comply with the current California Occupational Health & Safety Act. Subcontractor additionally agrees to comply with Proposition 65 regarding warnings and use of chemicals at the job site and to not discharge or cause to be discharged any chemical on the premises during the course of Trade Subcontractor's work or cleaning of Subcontractor's equipment at the job site.

Subcontractor shall provide their injury and illness prevention program (IIPP) to Contractor at the start of the job and have weekly toolbox safety meetings with their workers and turn in copies of these reports to the Contractor on a timely basis.

Subcontractor will provide all necessary personal safety equipment, including hard hats for Subcontractor's workers. Lost time due to Subcontractor's workers being sent off the job site because of lack of safety equipment will not be a reason for not meeting the Contractor's schedule. Subcontractor's workers causing unsafe conditions or engaging in unsafe work practices will not be

tolerated, and said workers may be sent off the job site at the discretion of the Contractor. Subcontractor will report to Contractor all accidents to or by Subcontractor's personnel or equipment that occur at the job site. Copies of accident reports will be given to Contractor within 24 hours of the occurrence.

SECTION 19. WARRANTY

Subcontractor warrants to Owner, General Contractor and Contractor that all materials and equipment furnished shall be new unless otherwise specified and that all work under this Agreement shall be performed in a good and workmanlike manner, shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The warranty provided in this Section 19 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

SECTION 20. USE OF CONTRACTOR'S EQUIPMENT

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

Notwithstanding any provision of the construction contract or any bid document to the contrary, if at the request of Subcontractor, Contractor permits Subcontractor's personnel to use Contractor's equipment, such as hoisting equipment, safety planks, ladders and scaffolds, Subcontractor will indemnify Contractor and hold Contractor harmless from any and all liability, claims, actions, demands, damages and expenses, including without limitation reasonable attorney's fees arising out of injury to persons or property in any way connected with such use of Contractor's services, facilities or equipment.

SECTION 21. ASSIGNMENT OF CONTRACT

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

SECTION 22. INDEPENDENT CONTRACTOR

Subcontractor is an independent contractor and shall, at its sole cost and expense, and without increase in the Contract Price, comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the work; obtain all necessary permits and licenses therefore, pay all manufactures' taxes, sales taxes, use taxes, processing taxes, and all federal and state taxes,

insurance and contributions for social security and unemployment which are measured by wages, salaries, or other remunerations paid to Subcontractor's employees, whether levied under existing or subsequently enacted laws, rules or regulations. Subcontractor, upon request, shall furnish evidence satisfactory to Contractor that any or all of the foregoing obligations have been fulfilled.

SECTION 23. CLEAN-UP

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

SECTION 24. ATTORNEYS' FEES

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

SECTION 25. LABOR AGREEMENTS:

The Contractor is signatory to the following labor agreements covering work on this project:

Northern California Cement Masons, Northern California Laborers, Northern California Carpenters, California Field Ironworkers, Operating Engineers

SECTION 26. SPECIAL PROVISIONS:

The following Exhibits are attached hereto and made part hereof:

- EXHIBIT "A" SCOPE OF WORK
- EXHIBIT "B" INSURANCE REQUIREMENTS
- EXHIBIT "C" BILLING & PAYMENT REQUIREMENTS
- EXHIBIT "D" BONDS
- EXHIBIT "E" LABOR POLICY
- EXHIBIT "F" EEO POLICY
- EXHIBIT "G" SAFETY POLICY
- EXHIBIT "H" PROJECT LABOR AGREEMENT

Contractors are required by law to be licensed and regulated by the Contractors State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the violation. Any questions concerning a contractor may be referred to:

Registrar, Contractors State License Board
3132 Bradshaw Road
Post Office Box 26000
Sacramento, California 95826

Date:

Date:

CONTRACTOR
Dolan Concrete Construction

CONTRACTOR

(Signature)

(Signature)

Benjamin C. Newsom, Secretary-Treasurer
(Name and Title)

(Name and Title)

481 Auzerais Avenue
(Address)

(Address)

San Jose, CA 95126-3611

160131
(Contractor's License No.)

(Contractor's License No.)

Please provide the information requested and return with the completed Form W-9 as soon as possible. We cannot process payments to you without this information.

Company Name: _____

Address: _____

Phone Number: _____

Fax Number: _____

Contact: _____

Type of Company

_____ Individual

_____ Sole Proprietor

_____ Partnership

_____ Corporation

_____ Other,

describe _____

State Contractor's License No: _____

Expiration Date: _____

EXHIBIT "A"

SCOPE OF WORK

Provide all labor, material and equipment in complete accordance with the Plans and Specifications to complete the following Work:

EXHIBIT "B"

DOLAN CONCRETE CONSTRUCTION SUBCONTRACT AGREEMENT – CONDITIONS OF INSURANCE

THESE CONDITIONS OF INSURANCE shall modify, by addition at the end of Section 16, INSURANCE, as follows:

(GENERAL CONTRACTOR), (OWNER), (ARCHITECT – IF REQ'D) and their respective requirements: and Dolan Concrete Construction (as Certificate Holder) and each of their Directors, Officers, Agents, Consultants, Servants and Employees, and all other interest as may be reasonably required by Dolan Concrete Construction, **shall be named as additional insured** under Subcontractor's General and Excess / Umbrella policy(ies) by use of Insurance Services Office **Form CG 20 10 11 85** or its equivalent and such policy(ies) shall be endorsed to provide that they **shall be primary** and neither the Owner's nor Contractor's policies will be called upon to contribute with the Subcontractor's policy(ies). **All insurance policies, including Workers' Compensation, shall include a Waiver of Subrogation Endorsement for each policy from each of the insurers affording coverage, waiving the rights of subrogation against Contractor and Owner.**

Subcontractor shall provide insurance to the following minimum limits of liability, or such higher limits of liability as required by the Contract Documents:

<u>Workers' Compensation:</u>	Statutory	
<u>Employer's Liability:</u>	\$1,000,000	each accident for bodily injury
	\$1,000,000	each employee for bodily injury by disease
	\$1,000,000	policy limit for bodily injury by disease
<u>General Liability:</u>	\$1,000,000	combined single limits for bodily injury and property damage, each occurrence
	\$1,000,000	products and completed operations aggregate
	\$1,000,000	personal injury
	\$2,000,000	general injury aggregate (if Commercial Liability form)

General Liability form to be on an occurrence basis and to include premises and operations; products and completed operations; contractual liability for obligations assumed under this Agreement; broad form property damage including completed operations; explosion, collapse and underground hazards; and personal injury liability. If either defense costs are included in the General Aggregate limit or if the General Aggregate limit does not apply separately to this project, then the required General Aggregate limit is to be \$5,000,000. If higher limits or other forms of insurance are required by either the Owner or Contractor, or are required due to the nature of the work being performed, the Subcontractor will comply with such limits.

Automobile Liability: Including coverage for all owned, non-owned, and hired automobiles with combined single limits of:

\$1,000,000 each accident for bodily injury and property damage

Umbrella / Excess Liability: Where Umbrella and/or Excess policies are used to satisfy increasing limits of liability, such policies must not reduce nor restrict coverage otherwise required for General or Automobile liability coverage.

\$5,000,000 per occurrence

Property Insurance: Contractor and/or Subcontractor waive all rights against each other and against all other subcontractors and Owner for loss or damage to the extent reimbursed by Builder's Risk or any other property or equipment insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance.

Where Builder's Risk insurance purchased by Owner or Contractor contains deductibles, Subcontractor shall be responsible for such deductible applicable to damage to Subcontractor's Work and/or damager to other work caused by Subcontractor.

Where Builder's Risk insurance is not purchased by Owner or Contractor, Subcontractor shall be fully responsible for all loss or damage to its Work.

In the even of a loss insured under Builder's Risk insurance provided by Contractor or Owner and such insurance provides coverage for loss or damage to Subcontractor's Work, Subcontractor shall be bound by any adjustment which shall be made between Contractor or Owner and the insurance company or companies. Loss, if any, shall be made payable to Contractor and/or Owner, as their interest may appear, for the account of whom it may concern.

Contractor shall not be responsible for any loss or damage to Subcontractor's Work, however caused, until after final acceptance by Contractor and Owner. Contractor shall not be responsible for loss of or damage to materials, tools, equipment or other personal property owned, rented or used by Subcontractor or anyone employed by Subcontractor in the performance of the Work, however caused. Insurance for any loss or damage to Subcontractor's machinery, tools, equipment or other personal property owned by Subcontractor or anyone employed by it in the performance of the Work shall be the responsibility of Subcontractor.

Professional Liability for Architects and Engineers; Aviation Liability; and Pollution Liability:

When applicable to the Work, the Subcontractor shall provide or shall require its engineer/consultant to provide the following limits of liability for the exposures associated with Design-Build; Aircraft; and/or Pollution exposures:

Professional Liability for Architects and Engineers:	\$1,000,000	per claim and in the annual aggregate claims made policy form (Subcontractor shall be relieved of naming any entity as an additional insured under Professional Liability for Architects and Engineers policy)
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Pollution Liability (including asbestos and lead paint):	\$1,000,000	per claim and in the annual aggregate claims made and occurrence policy forms are both acceptable (Where claims made for is used, Completed Operation and Extended Reporting period shall be maintained for a minimum of 10 years from date of completion of work)
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Note: Where Work involves remediation of asbestos, lead or other pollutants the limits shall be increased to \$5,000,000 per claim and in the annual aggregate

Aviation Liability:	\$5,000,000	per claim and in the annual aggregate
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All Policies:

Evidence of insurance coverage is required to be furnished upon execution of Subcontract Agreement and prior to starting any work on the Project and must evidence all of the provisions of Section 16 and this Exhibit "B", CONDITIONS OF INSURANCE. Such evidence of insurance may not limit the insurer's liability for failure to notify certificate holder of cancellation within the thirty (30) day time frame required. 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. Any deductible(s) or self-insured retention(s) shall be borne by Subcontractor and not for the account of Contractor or Owner.

Insurance coverage shall be written with a minimum of an "A VII" Best rated insurance company, unless otherwise approved by Contractor.

EXHIBIT "C"

BILLING PROCEDURES

This billing packet includes the following forms:

- Payment Application
- Schedule of Values
- Subcontractor Affidavit
- Conditional Waiver and Release Upon Progress Payment
- Unconditional Waiver and Release Upon Progress Payment
- Conditional Waiver and Release Upon Final Payment
- Unconditional Waiver and Release Upon Final Payment

Applications for payment must be received in our office no later than the 20th of the month. Application received after the 20th will be returned to you. Faxed copies are acceptable if followed immediately by the originals.

Please do not bill for change orders that have not been approved. This will delay the processing of your billing.

We require Conditional and Unconditional Lien Releases from those suppliers of subcontractors who file 20-Day Preliminary Notices.

Dolan Concrete Construction's policy is to release any first time payments, but hold any subsequent payments or payment of retention until we receive an original Unconditional Lien Release from the supplier through the date of the previous invoice.

If the supplier sends a release that is not stated to be final, then we will continue to require Lien Releases on all subsequent payments through the date of the previous invoice.

Subcontractors are required to provide Unconditional Lien Release(s) to Contractor from any Union Trust Funds for which the Subcontractor is obligated to make contributions for craft hours of work performed under this Subcontract. A written statement from the appropriate Trust(s) in lieu of the Lien Release(s) will be acceptable if such statements indicate that the Subcontractor is current with its contributions to the Trust(s) for periods covered by Payment Requests received by Dolan Concrete Construction.

AFFIDAVIT OF SUBCONTRACTOR

STATE OF CALIFORNIA

County of _____

I am _____ of _____
(name and position) (name of company)

a _____, hereinafter referred to as
"Subcontractor",
(partnership, corporation, individual)

and am authorized to execute this Affidavit on behalf of Subcontractor, know the contents hereof, certify that the same is true of my own knowledge; and:

1. That Subcontractor is a subcontractor to DOLAN CONCRETE CONSTRUCTION herein referred to as "Contractor", the general contractor on DCC # _____

(name and address of job)

2. That as an inducement to Contractor to advance monies to Subcontractor, and with knowledge that Contractor will rely upon the representations made herein, the undersigned certifies the following listed firms and individuals are the only parties from whom Subcontractor has purchased materials, rented equipment, or subcontracted portions of Subcontractor's work on said (or has commitments or intends to purchase, rent or subcontract) in an amount of \$2,000.00 or from the commencement of said job to the hereof:

List the Names of Your Suppliers and/or Sub-subs	Address	Lien Release Attached	Final Release Already Sent	Lien Release Forth coming	Supt/Sub Not Used This Month
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NOTE: Use back of sheet if necessary to complete listing.

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20 03, at _____, California
(date) (place)

(signature)



Dolan Concrete

CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Upon receipt by the undersigned of a check from Dolan Concrete Construction in the sum of \$ _____ payable to _____ and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice or bond right the undersigned has on the job of _____ located at _____

to the following extent. This release covers a progress payment for labor, services, equipment or material furnished to Dolan Concrete Construction through _____ only and does not cover any retentions retained before or after the release date for which payment has not been received; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon rescission, abandonment or breach of contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment or material covered by this release if that furnished labor, services, equipment or material was not compensated by the progress payment. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

Date: _____

(Company Name)

(Signature)

(Title)



Dolan Concrete

UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

The undersigned has been paid and has received a progress payment in the sum of \$ _____ for labor, services, equipment or material furnished to Dolan Concrete Construction on the job of _____ located at _____ and does hereby release any mechanic's lien, stop notice or bond right that the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment or materials furnished to Dolan Concrete Construction through _____ only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon rescission, abandonment or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment or material covered by this release if that furnished labor, services, equipment or material was not compensated by the progress payment.

Date: _____

(Company Name)

(Signature)

(Title)

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

An equal opportunity employer

481 auzerais avenue ♦ san jose, california 95126-3611 ♦ (408) 869-3250 ♦ fax (408) 869-3252 ♦ state lic. no. 160131



Dolan Concrete

CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

Upon receipt by the undersigned of a check from Dolan Concrete Construction in the sum of \$ _____ payable to _____ and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice or bond right the undersigned has on the job of _____ located at _____.

This release covers the final payment to the undersigned for all labor, services, equipment or material furnished on the job, except for disputed claims for additional work in the amount of \$0.00 _____. Before any recipient of this document relies on it, the party should verify evidence of payment to the undersigned.

Date: _____

(Company Name)

(Signature)

(Title)



Dolan Concrete

UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

The undersigned has been paid in full for all labor, services, equipment or material furnished to Dolan Concrete Construction on the job of _____ located at _____ and does hereby waive and release any right to mechanic's lien, stop notice or any right against a labor and material bond on the job, except for disputed claims for extra work in the amount of \$0.00 (None).

Date: _____

(Company Name)

(Signature)

(Title)

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

EXHIBIT "D"

PERFORMANCE AND PAYMENT BONDS

EXHIBIT "E"

ADDENDUM FOR PUBLIC WORKS PROJECTS

1. The attached California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 are incorporated into this Subcontract Agreement. The Subcontractor agrees to comply with all of the above-referenced Labor Code Sections applicable to the performance of its work on this project. The Subcontractor further agrees to comply with all the above-referenced Labor Code Sections for offsite fabrication of items produced specially for the public works project and not for sale on the general market pursuant to the March 4, 2003, DIR Director's coverage determination letter. In order to read the full text of the Director's determination that provides coverage for offsite fabrication and pre-fabrication work for public works projects, log on to www.dir.ca.gov.

Specifically, the Subcontractor agrees to:

- A. Pay all workers not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed.
 - B. Pay all workers not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter.
 - C. Adhere to the compliance measures outlined in LC 1775(b) for any second tier subcontractor that the Subcontractor chooses to use on this project.
 - D. Submit certified payroll records to the Contractor and/or Owner on a weekly basis. Records shall be provided no later than five (5) days following the last day of each workweek.
 - E. Submit to the Contractor and/or Owner within five (5) days of a written request all payroll records as defined by the California Labor Code of Regulations Section 16000, "Payroll Records".
 - F. Comply with applicable requirements and joint apprenticeship standards as required by LC 1777.5.
2. The Subcontractor prior to receiving final payment for work performed on this project shall sign an affidavit under penalty of perjury that the Subcontractor has paid the proper craft needed to fulfill the obligations of the Subcontract. (The attached Affidavit is incorporated into this Subcontract.)
 3. The Subcontractor agrees to indemnify and hold harmless Contractor for any violations of the above-referenced Labor Code provisions, which were caused by the Subcontractor's failure to comply with said provisions.
 4. Attached are "sample" forms to the Addendum.
 - A. Certified Payroll – certified payroll report must contain the following:
 - a. Worker's name, address and social security number
 - b. Work classification
 - c. Straight time and overtime hours worked each day and week
 - d. Actual per diem wages paid to each journeyman, apprentice, worker or other employee in connection with the project.
 - e. Basic hourly rate, fringe hourly rate and total hourly rate must be individually identified.
 - f. Each payroll record shall contain a written declaration that is made under penalty of perjury
 - Declaration must state that information is true and correct
 - The employee must state that he/she complied with the requirements of Sections 1771, 1811 and 1815 for any work on the project.
 - B. Statement of Compliance
 - C. Statement of Non-Performance
 - D. Certification of Understanding and Authorization
 - E. Subcontractor Affidavit Form
 - F. Public Works Fringe Benefit Statement Form
 - G. Training Fund Contribution Form
 - H. Public Works Contract Award Form
 - I. Daily Report Form.

5. Subcontractors must use the attached forms and provide the information indicated.
6. Timely receipt of the required forms is a condition precedent to Subcontractor's right to receive its monthly progress payment from Contractor.
7. Subcontractors are required to provide the Contractor with a list of all lower-tier subcontractors and vendors no later than the date that Subcontractor executes a Subcontract Agreement.
8. Subcontractors are to require all its lower-tier subcontractors and vendors to submit this same required information to Contractor on a timely basis.

EXHIBIT "F"

**DOLAN CONCRETE CONSTRUCTION
EEO POLICY**

EXHIBIT "G"

**DOLAN CONCRETE CONSTRUCTION
SAFETY POLICY**