

**CALIFORNIA**  
**STANDARD SUBCONTRACT AGREEMENT**

**THIS STANDARD SUBCONTRACT AGREEMENT** is made and entered into at San Mateo, California on \_\_\_\_\_, 20\_\_ by and between J.W. McCLENAHAN CO., (“McCLENAHAN”) a California corporation, with its principal office at 2301 Palm Avenue, San Mateo, California and Sub-Subcontractor

(“SUBCONTRACTOR”), with its principal office located at \_\_\_\_\_.

A. **PRIME CONTRACT**: on \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_ as Prime Contractor (“Prime Contractor”), located at \_\_\_\_\_

\_\_\_\_\_ entered into a contract with \_\_\_\_\_ as Owner, to construct \_\_\_\_\_

\_\_\_\_\_ (“Project”) in accordance with the Prime Contract Documents that include, but are not limited to the Plans and Specifications, Addenda, General and Special Conditions, which are set forth in Exhibit 1, all of which form the contract between the Prime Contractor and Owner, and the contract between McCLENAHAN and the Prime Contractor and shall and do herewith expressly become a part of this Agreement between McCLENAHAN and SUBCONTRACTOR, as though specifically set forth herein.

B. **McCLENAHAN CONTRACT**: On \_\_\_\_\_, 20\_\_\_\_ McCLENAHAN as subcontractor, entered into a contract with Prime Contractor to furnish all necessary labor, materials, tools, machinery, apparatus and equipment and other items necessary or incidental to do and fully complete the following portion of the work on said Project:

**SECTION 1 - ENTIRE CONTRACT**

SUBCONTRACTOR certifies and agrees that it is fully familiar with all of the terms, conditions, and obligations of the Contract Documents, the location of the Project site, and the conditions under which the work is to be performed. SUBCONTRACTOR further certifies and agrees that it enters into this Agreement based upon its investigation of all of such matters and in no way relied upon any opinions or representations of McCLENAHAN. SUBCONTRACTOR further certifies and agrees that this Agreement, as defined herein, represents the only agreement between SUBCONTRACTOR and McCLENAHAN for the Project. It is further agreed that the Contract Documents are incorporated in this Agreement by this reference, with the same force and effect as if the same were set forth herein, and that SUBCONTRACTOR and its subcontractors will be and are bound by any and all of said Contract Documents insofar as they relate in any part or in any way directly or indirectly to the work covered by this Agreement. SUBCONTRACTOR agrees to be bound to McCLENAHAN in the same manner and to the same extent as McCLENAHAN is bound to the Prime Contractor and Owner under the Contract Documents, to the extent of the work provided for in this Agreement. SUBCONTRACTOR further specifies and agrees that when the Contract Documents refer to McCLENAHAN in relation to work or specification that pertains to SUBCONTRACTOR’S trade, craft or type of work under this Agreement, then such work or specification shall be interpreted to apply to SUBCONTRACTOR rather than McCLENAHAN.

**SECTION 2 - SCOPE OF WORK**

SUBCONTRACTOR agrees to furnish all labor, services, materials, installation, cartage, hoisting, supplies, insurance, equipment, scaffolding, tools, utilities, storage and other facilities of every kind and description required for the prompt and efficient execution of the work described herein and to perform the work necessary or incidental to complete

\_\_\_\_\_ for the Project in strict accordance with the Contract Documents and as more particularly, though not exclusively, specified in:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### **SECTION 3 - SUBCONTRACT PRICE**

McCLENAHAN agrees to pay SUBCONTRACTOR for the strict performance of its work under this Agreement, the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

(“Subcontract Price”), subject to additions and deductions for changes in the work as the parties may agree upon.

EXHIBIT 3 – Billing Package is incorporated into this Agreement by this reference, with the same force and effect as if the same were set forth herein, is, for all purposes, considered an integral part of this Agreement.

### **SECTION 4 - PAYMENT SCHEDULE**

McCLENAHAN agrees, in consideration of the SUBCONTRACTOR’S full and complete performance of its work in accordance with the terms and provisions of this Agreement, to pay or cause to be paid to the SUBCONTRACTOR the Subcontract Price as set forth herein. SUBCONTRACTOR understands and agrees that McCLENAHAN will make all payments to SUBCONTRACTOR only from payments made by Prime Contractor to McCLENAHAN from time to time, for work performed by SUBCONTRACTOR. McCLENAHAN shall make payment to SUBCONTRACTOR within ten (10) days after McCLENAHAN’S receipt of payment from the Prime Contractor for the work of SUBCONTRACTOR unless a shorter period is required by applicable law.

**4.A.** If the Prime Contractor does not pay McCLENAHAN any sum claimed by SUBCONTRACTOR, then McCLENAHAN’S obligation to pay the SUBCONTRACTOR, with respect to the time for the payments, shall be governed by the conditions contained in this Agreement (including, but not limited to those in paragraph 4.E.) and/or the Contract Documents, subject to the following express conditions precedent that must be satisfied before McCLENAHAN is obligated to make any such payment to the SUBCONTRACTOR:

**4.A.1** Should McCLENAHAN not pay SUBCONTRACTOR any sums the SUBCONTRACTOR claims are due under this Agreement, due to nonpayment of McCLENAHAN by the Prime Contractor, and a court of competent jurisdiction rules that the Prime Contractor’s failure to pay McCLENAHAN constitutes a breach the contract between the Prime Contractor and McCLENAHAN, then upon entry of the final court judgment, McCLENAHAN shall pay to the SUBCONTRACTOR, such sum as is due under the terms of this Agreement.

**4.A.2** Should McCLENAHAN not pay SUBCONTRACTOR any sums the SUBCONTRACTORS claims are due under this Agreement, due to nonpayment by the Prime Contractor, for reasons other than breach of contract, such reasons including, but not limited to the Owner’s and/or Prime Contractor’s insolvency, bankruptcy, lack of sufficient assets, or similar reasons, then SUBCONTRACTOR’S right to payment from McCLENAHAN shall be conditioned upon the passage of a period of time that is reasonable and necessary under the specific circumstances to allow McCLENAHAN to fully exercise its legal and extra judicial rights against Prime Contractor and/or the Owner to final judgment and appeal if necessary in order to collect unpaid sums from the Prime Contractor and/or the Owner, if such collection is possible under applicable law, with an additional reasonable period of time necessary for McCLENAHAN to execute on its judgment against the Prime Contractor.

**4.A.3** SUBCONTRACTOR agrees to perfect and maintain its mechanic’s lien, bond, and stop notice rights with respect to the Project and to exercise and exhaust those rights in the event that McCLENAHAN, as the result of the Prime Contractor’s default in payment of monies owed to McCLENAHAN, does not pay SUBCONTRACTOR.

**4.A.4** Nothing contained herein shall be interpreted as releasing or waiving the SUBCONTRACTOR’S statutory mechanic’s lien, bond or stop notice rights; provided however, that SUBCONTRACTOR agrees that, in the event the SUBCONTRACTOR asserts a claim against McCLENAHAN’S payment or performance bond issued in connection with the PROJECT, the surety of such bond and McCLENAHAN shall have the right to assert as a defense to such claims, the nonoccurrence of any condition precedent to McCLENAHAN’S payment of the SUBCONTRACTOR as set forth herein, including, but not limited, to the Prime Contractor’s failure or delay in making payment to McCLENAHAN.

**4.A.5** No progress payment will be made to SUBCONTRACTOR until McCLENAHAN has been provided with all the certificates of insurance required by the Contract Documents.

**4.B.** McCLENAHAN shall retain from progress or other payments to SUBCONTRACTOR hereunder ten percent (10%) of the amount due until after final acceptance of the work by the Architect and the Owner and until ten (10) days after McCLENAHAN’S receipt of final retention payment from the Prime Contractor; provided, however if California Public Contract Code 7201 is applicable, then and only, then shall McCLENAHAN withhold no more than five (5%) percent. All billings for work performed during a calendar month shall be made on McCLENAHAN’S standard form “Progress Payment Request” and “Conditional Waiver and Release upon Progress Payment” and must include a schedule of values itemizing in detail the SUBCONTRACTOR’S work completed and materials and equipment put in place during such month. No other form of payment request will be accepted. Payment requests must be promptly delivered to McCLENAHAN in order not to delay McCLENAHAN’S timely submission of its progress payment requests to the Prime Contractor.

**4.C.** SUBCONTRACTOR, as requested by McCLENAHAN, shall furnish certified copies of all payrolls in the form and manner prescribed by McCLENAHAN. McCLENAHAN reserves the right to require mechanics’ lien, stop notice, materialmen and bond claim releases (including releases from lower tier subcontractors) and payment affidavits in duplicate with each application for progress payment submitted by the SUBCONTRACTOR, and with the application for final payment. McCLENAHAN 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 Prime Contractor. No payment will be

made until McCLENAHAN has received and approved all required releases and affidavits.

**4.D** Unless otherwise provided in the Contract Documents, if approved by the Owner and/or Prime Contractor payments will be made on account of materials or equipment not yet incorporated in the SUBCONTRACTOR'S work, but delivered and suitably stored at Project site and, if permitted by the Contract Documents and pre-approved in writing by McCLENAHAN, payments may also be made for materials or equipment suitably stored at some other location. Payments to SUBCONTRACTOR for materials or equipment stored on or off the Project site are conditioned upon the SUBCONTRACTOR'S submission of bills of sale or such other documents or procedures, satisfactory to McCLENAHAN, that establish Owner's title to such materials or equipment, or otherwise protect Owner's interest, including applicable insurance and transportation for those materials and equipment stored off the Project site.

**4.E.** McCLENAHAN may withhold or, on account of subsequently discovered evidence, may nullify, all or a part of a payment to SUBCONTRACTOR to protect McCLENAHAN from any loss on account of (1) defective SUBCONTRACTOR work not remedied; (2) third party claims filed, or reasonable evidence indicating the probable filing of such claims; (3) SUBCONTRACTOR'S failure to make payments to its subcontractors, and/or for materials, equipment, labor or fringe benefits; (4) reasonable doubt that SUBCONTRACTOR'S work under this Agreement can be completed for the outstanding balance of the Subcontract Price; (5) damage to McCLENAHAN, the Prime Contractor, the Owner, or a separate contractor or another subcontractor; (6) reasonable doubt that the SUBCONTRACTOR'S work under this Agreement can be completed within the time required herein and that the balance of the Subcontract Price then unpaid would be not be sufficient to cover the actual or liquidated damages caused by the anticipated delay; (7) penalties assessed against McCLENAHAN, the Prime Contractor, or the SUBCONTRACTOR on account of SUBCONTRACTOR'S failure to comply with state, federal or local laws and/or regulations; (8) persistent failure by the SUBCONTRACTOR to carry out its work under this Agreement in accordance with the Contract Documents; (9) the refusal of the Owner and/or Prime Contractor to formally approve any extra work that McCLENAHAN, in good faith, ordered the SUBCONTRACTOR to perform, or (10) any other ground for withholding payment allowed by state or federal law, or as otherwise provided in this Agreement. When and if the reason(s) for withholding payment is/are rectified, such amounts that are then due and owing shall be paid or credited to SUBCONTRACTOR. In the event that Prime Contractor and/or Owner refuse to pay McCLENAHAN for extra work that McCLENAHAN, in good faith, ordered SUBCONTRACTOR to perform or due to any material action or inaction by the SUBCONTRACTOR, McCLENAHAN may, at its sole option, undertake reasonable efforts to collect such sums but the cost of such efforts, including attorney's fees and related costs shall be offset against the amount owed SUBCONTRACTOR.

**4.F.** McCLENAHAN reserves the right to make payment by joint check or by direct check to SUBCONTRACTOR'S materialmen or subcontractors, or to any other person or entity who has performed work or furnished materials under this Agreement and may have a claim or a right of action against McCLENAHAN, an applicable Surety, or the Project under any law; provided, however, that McCLENAHAN shall not be obligated to exercise the rights reserved herein for the benefit of any person or entity other than itself. SUBCONTRACTOR agrees that McCLENAHAN shall have the right to determine the manner in which payment to the SUBCONTRACTOR shall be made.

**4.G.** Any payment made to SUBCONTRACTOR in accordance with this Agreement prior to completion and acceptance of the work shall not be construed as evidence or acknowledgment of proper completion of any part of SUBCONTRACTOR'S work.

#### **SECTION 5 - INSURANCE**

SUBCONTRACTOR, at its own expense, shall procure at the minimum the insurance coverage and limits of insurance set forth in Exhibit 2 – Insurance Requirements that is attached to this Agreement. Exhibit 2 – Insurance Requirements are incorporated into this Agreement by this reference, with the same force and effect as if the same were set forth herein, is, for all purposes, considered an integral part of this Agreement. All insurers, policies, and deductibles used by the SUBCONTRACTOR must be satisfactory to McCLENAHAN, to the Prime Contractor and to the Owner. If SUBCONTRACTOR seeks to use existing coverage to comply with insurance requirements set forth herein, but current coverage does not meet those minimum requirements, SUBCONTRACTOR, at no additional cost to McCLENAHAN, agrees to amend, supplement or endorse its existing coverage to the extent necessary to comply with the provisions of this Agreement and Exhibit 2 – Insurance Requirements.

#### **SECTION 6 - GENERAL INDEMNITY**

SUBCONTRACTOR agrees as follows:

To the greatest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless McCLENAHAN, Owner, and Owner's architect and engineer, and any of their respective directors, officers, agents, employees, parents, affiliates, subsidiaries, partners, and representatives, and any other persons or entities designated by any of them (collectively, the "Indemnitees") from and against all causes of action, penalties, assessments, fines, actions by governmental authorities, demands, liabilities, claims, damages, costs, losses and expenses, including but not limited to attorney's fees and costs ("Claims"), which arise out of or are in any way related to: (i) this Agreement; (ii) actual or alleged actions or omissions by Subcontractor or any of its subcontractors, suppliers, vendors, employees, or persons for whom it is responsible; or,

(iii) Subcontractor's presence at the Project site and/or its Work. Notwithstanding the foregoing, if any of the Contract Documents impose more stringent defense, indemnity, contribution or hold harmless obligations than are set forth herein, then to the extent permitted by law, the more stringent provisions shall apply, and Subcontractor shall owe the same defense, indemnity, contribution, and hold harmless obligations to McCLENAHAN as McCLENAHAN owes to Owner. Subcontractor's duty to defend Indemnitees shall apply, and Subcontractor shall be required to furnish a defense, notwithstanding that there has not yet been a determination, adjudication or finding of liability or fault on the part of Subcontractor or any party or person to be indemnified.

To the greatest extent permitted by law, the obligations of this Section J shall apply regardless of whether the Claims were caused in part or contributed to by Indemnitees; however, obligations specified above shall not extend: (a) to Claims that arise out of, pertain to, or relate to the active negligence or willful misconduct of McCLENAHAN, of a subcontractor to McCLENAHAN, a construction manager who is an Indemnitee, or any of their other agents, other servants, or other independent contractors who are responsible to them, (b) to defects in design furnished by the Indemnitee, or (c) to the extent Claims do not arise out of the scope of work of Subcontractor. Items (a) through (c) in the preceding sentence shall be referred to in this provision as "Indemnity Limitations". Upon written tender by any Indemnitee, including McCLENAHAN, of a Claim, Subcontractor shall:

(A) Defend the Claim with counsel of its choice, who is reasonably qualified and experienced in such matters and does not have a conflict of interest in representing the tendering party, and the Subcontractor shall maintain control of the defense for any Claim or portion of a Claim to which the defense obligation applies. If Subcontractor elects to defend under this subparagraph (A), Subcontractor shall provide written notice of the election to the tendering party a reasonable time period following receipt of the written tender, and in no event later than 30 days following that receipt. Subject only to the limitations set forth above, the defense provided by Subcontractor shall be a complete defense of tendering party of all Claims or portions thereof to the extent alleged to be caused by Subcontractor, including any vicarious liability Claims the tendering party may have, resulting from Subcontractor's scope of work, but not including Claims resulting from the scope of work, actions, or omissions of the tendering party, or any other party. Any vicarious liability imposed upon the tendering party for Claims caused by Subcontractor electing to defend under this paragraph shall be directly enforceable against Subcontractor. Subcontractor shall promptly provide the tendering party with all information, documentation, or evidence, if any, relating to any assertion by Subcontractor that another party is responsible for the tendered Claim.

(B) Pay, within 30 days of receipt of an invoice from the tendering party, no more than a reasonable allocated share of the tendering party's defense fees and costs, on an ongoing basis during the pendency of the Claim, subject to reallocation consistent with the limitations set forth above, and including any amounts reallocated upon final resolution of Claim, either by settlement or judgment. The tendering party shall allocate a share to itself to the extent a Claim is alleged to be caused by its Work, actions, or omissions, and a share to each subcontractor to the extent that the Claim is alleged to be caused by Subcontractor's Work, actions, or omissions, regardless of whether the party seeking a defense from the Subcontractor actually tenders the Claim to any particular subcontractor, and regardless of whether that subcontractor is participating in the defense. Any amounts not collected from any particular subcontractor may not be collected from any other subcontractor.

Notwithstanding any other provision of law, if Subcontractor fails timely and adequately to perform its obligations under subparagraph (A), the party tendering the Claim shall have the right to recover from Subcontractor for any resulting compensatory damages, consequential damages, and reasonable attorney's fees. If Subcontractor fails to timely perform its obligations under subparagraph (B), the party tendering the Claim shall have the right to recover from Subcontractor for any resulting compensatory damages, interest on defense and indemnity costs, from the date incurred, at the rate set forth in subdivision (g) of former Civil Code Section 3260 (now recodified at Civil Code Section 8818), consequential damages, and reasonable attorney's fees incurred to recover these amounts. The party tendering the Claim shall bear the burden of proof to establish both Subcontractor's failure to perform under either subparagraphs (A) or (B), and any resulting damages. In addition to the foregoing remedies, and without limitation or derogation of them, Subcontractor agrees to pay liquidated damages of \$100 per each day that Subcontractor fails to perform its obligations under either subparagraphs (A) or (B), which are intended to compensate the tendering party for loss of reputation, administrative costs, and other losses that are difficult to quantify and that are not adequately compensated under this provision and Section 2782.05 of the Civil Code. Subcontractor agrees that the sum of \$100 per day constitutes a reasonable estimate of such damages or losses.

The obligations under this Section J are in no way limited or relieved by Subcontractor having obtained insurance, by the Insurance or other provisions of this Agreement, and/or to the extent permitted by law, by the provisions of any workers compensation law, regulation or arrangement. In addition, the obligations of this Section J shall survive the expiration or termination of this Agreement, as well as Subcontractor's completion of its other obligations.

Notwithstanding the foregoing or any other provision of this Agreement, if the "Claim" for which indemnity or defense is sought is in connection with a residential building project subject to the provisions of Section 2782(d) of the Civil Code and constitutes a "claim of construction defect" as defined by Section 2782(d) of the Civil Code, then the provisions of Exhibit C hereto shall apply. Indemnity and defense obligations not affected or restricted by Civil Code Section 2782(d) or (e), such as for property damage not caused by construction defects or other matters not involving defect claims, shall not be limited, impaired, or modified by the foregoing sentence, and such indemnity and defense obligations shall remain in full force and effect.

#### **SECTION 7 - BONDING**

SUBCONTRACTOR, if required by McCLENAHAN shall, concurrent with the execution of this Agreement, or at any time during the performance of its work, execute a Payment Bond and/or a Faithful Performance Bond, in an amount equal to 100% of the Subcontract Price as set forth herein. Said bond(s) shall be executed by a corporate surety acceptable to McCLENAHAN. McCLENAHAN shall pay the premium on said bond(s) unless otherwise provided herein or in the Contract Documents.

#### **SECTION 8 - PERFORMANCE OF THE WORK**

**8.A.** SUBCONTRACTOR agrees (1) that materials and equipment furnished by SUBCONTRACTOR shall conform strictly to the Contract Documents, (2) to furnish all materials within the time specified herein, with all necessary certificates and permits for installation and erection of same; (3) to layout, install and erect same and complete said work within the time specified, according to the Contract Documents and to the satisfaction of Owner, Architect, the Prime Contractor and McCLENAHAN, (4) to furnish all scaffold and equipment (including equipment for hoisting) that may be necessary to do its work expeditiously; (5) to provide traffic and safety controls at all times while using such equipment on the Project site; (6) to remove and replace any defective materials or work forthwith upon notice from architect or McCLENAHAN; (7) to bear the expense of making good all work of others, including that of McCLENAHAN, that is destroyed or damaged by such removal and replacement, of defective materials and/or its work by SUBCONTRACTOR; (8) to perform the work entirely at SUBCONTRACTOR'S risk, (9) to provide all proper and sufficient and necessary safeguards against all injuries and damage whatsoever, and to comply with all safety requirements imposed by law, (10) to secure and pay for those permits required by the Contract Documents to be secured for the work applicable to this Agreement, (11) to provide on the Project site a full-time competent superintendent acceptable to McCLENAHAN who shall have authority to act on behalf of SUBCONTRACTOR and who shall attend all meetings as requested by McCLENAHAN or the Prime Contractor and who shall supervise the work hereunder. SUBCONTRACTOR shall keep a representative at the job site during all times when SUBCONTRACTOR'S work is in progress, and such representative shall be authorized to represent SUBCONTRACTOR as to all phases of the work. Prior to commencement of the work, SUBCONTRACTOR shall notify McCLENAHAN in writing who SUBCONTRACTOR'S representative is to be, and in the event of any change of representation SUBCONTRACTOR shall notify McCLENAHAN who the new representative is to be prior to such change becoming effective.

**8.B.** SUBCONTRACTOR shall prepare, and obtain approval as required by the Contract Documents, for all shop drawings, details, samples, and do all other things necessary and incidental to the prosecution of its work all in conformance with McCLENAHAN'S progress schedule. Approval of shop drawings, submittals, details, and samples by McCLENAHAN shall not relieve SUBCONTRACTOR of its obligation to perform its work according to the terms and consistent with the intent of the Contract Documents.

**8.C.** The installation of the SUBCONTRACTOR'S work will be considered evidence of its acceptance of the conditions as being correct and approval thereof. The entire responsibility for proper configurations and dimensions for prefabrications of any part of the work shall rest with SUBCONTRACTOR.

#### **SECTION 9 - TIME IS OF THE ESSENCE**

Time is of the essence in this Agreement. SUBCONTRACTOR shall provide McCLENAHAN with scheduling information and a proposed schedule for performance of its work in a form and by a date acceptable to McCLENAHAN. SUBCONTRACTOR shall conform to McCLENAHAN'S progress schedule and all revisions or changes made thereto. SUBCONTRACTOR shall prosecute its work under this Agreement and the work of its subcontractors and suppliers, SUBCONTRACTOR shall coordinate its work with that of all other contractors, subcontractors, and of McCLENAHAN, in a manner that will facilitate the efficient and timely completion of the Project. In the event SUBCONTRACTOR fails to maintain its part of McCLENAHAN'S schedule, SUBCONTRACTOR shall, without additional compensation, accelerate its work, giving priority to subcontractors and suppliers necessary for the timely and orderly acceleration and completion of SUBCONTRACTOR'S work. SUBCONTRACTOR agrees to notify McCLENAHAN, in writing within forty-eight (48) hours, of any delays or anticipated delays in the performance of its work and to state the cause of said delays. If McCLENAHAN is so notified, McCLENAHAN shall apply for an extension of time, if the cause of the delay is a condition that an extension can be obtained under the Contract Documents.

**9.A.** No claims for additional compensation or damages for delays, including, but not limited to delays by separate contractors, other subcontractors, Owner, and/or the Prime Contractor, shall be recoverable from McCLENAHAN, and the above-mentioned extension of time for completion shall be the sole remedy of SUBCONTRACTOR; provided, however, that in the event McCLENAHAN obtains additional compensation from Owner, or the Prime Contractor on account of such delays, SUBCONTRACTOR shall be entitled to such portion of the additional compensation so received by McCLENAHAN as is equitable under all the circumstances. In the event that McCLENAHAN prosecutes a claim against the Prime Contractor or the Owner for additional compensation for any delay, SUBCONTRACTOR shall cooperate fully with McCLENAHAN in the prosecution thereof and shall pay costs and expenses incurred in connection therewith, including actual attorney's fees, to the extent that said claim is made by McCLENAHAN at the request of or for the benefit of SUBCONTRACTOR.

**9.B.** If requested in writing by McCLENAHAN, SUBCONTRACTOR agrees to submit on a weekly basis, and at the time of submissions of progress payment requests, a report, in a form satisfactory to McCLENAHAN, itemizing on a weekly basis actual quantities of work performed and, on a daily basis, manpower, and equipment employed by SUBCONTRACTOR on the Project.

#### **SECTION 10 - CHANGES IN THE WORK**

SUBCONTRACTOR hereby agrees to make any and all changes, furnish the materials, and perform its work under this Agreement as McCLENAHAN may require, without nullifying this Agreement, at a reasonable addition to, or reduction from, the Subcontract Price stated herein.

**10.A.** SUBCONTRACTOR shall adhere strictly to the Contract Documents unless McCLENAHAN provides written authorization to the SUBCONTRACTOR to deviate therefrom, or written notice of change(s) in said plans and specifications. Under no circumstances shall SUBCONTRACTOR make any changes, either additions, deletions or deductions, without the prior written order of McCLENAHAN, and McCLENAHAN shall not pay any extra charges incurred by the SUBCONTRACTOR that have not been specifically agreed upon in writing by McCLENAHAN; and, in no event shall McCLENAHAN make payment for any such charges unless and until McCLENAHAN itself receives payment from Prime Contractor and/or the Owner as set forth herein.

**10.B.** SUBCONTRACTOR shall submit immediately to McCLENAHAN written copies of its firm cost or credit proposal for changes in its work. Disputed work shall be performed as ordered in writing by McCLENAHAN, and SUBCONTRACTOR shall submit to McCLENAHAN the proper cost or credit breakdowns for that work

**10.C.** SUBCONTRACTOR shall give McCLENAHAN notice of a claim relating to any work for which SUBCONTRACTOR asserts a right to extra compensation prior to such work being performed. Failure to give notice of any claim pursuant to these provisions will be deemed to constitute abandonment of any claim for compensation of such claim.

**10.D.** Should SUBCONTRACTOR initiate a substitution, deviation or change in its work under this Agreement that affects the scope of the work, or the expenses of other trades to perform their own work, SUBCONTRACTOR shall be liable for those expenses.

**10.E.** No change, alteration or modification in or deviation from this Agreement or the plans or specifications, whether or not made in compliance with the provisions of this Agreement, shall release or exonerate, in whole or in part any surety on any bond given in connection with this Agreement, and the Owner, the Prime Contractor, and/or McCLENAHAN shall not be under any obligation to notify the surety or sureties of any such change(s).

#### **SECTION 11 - DELAY DAMAGES**

Should SUBCONTRACTOR default in the proper performance of its work, thereby causing delay to the, completion of the project SUBCONTRACTOR shall be liable for any and all loss and damages, including liquidated damages sustained by McCLENAHAN as a result thereof.

**11.A.** SUBCONTRACTOR may not be held liable under this Section 11, if such default is caused by, acts of God or other reasons beyond the control of SUBCONTRACTOR, and the SUBCONTRACTOR immediately gives notice in writing to McCLENAHAN of the default and the reason(s) for said default.

**11.B.** SUBCONTRACTOR shall not make any claim against Owner, the Prime Contractor, or McCLENAHAN for any delay caused by act or order of OWNER, the Prime Contractor and/or McCLENAHAN and SUBCONTRACTOR expressly waives any and all claims for damages for any such delays.

#### **SECTION 12 - LIENS**

SUBCONTRACTOR shall at all times indemnify defend and hold McCLENAHAN, Prime Contractor and Owner harmless against all liability for claims and liens for labor performed, or materials used or furnished to be used in SUBCONTRACTOR'S work under this Agreement, including, any costs and expenses for attorney's fees and all incidental or consequential damages resulting to McCLENAHAN or Owner from such claims or liens.

**12.A.** Should a lawsuit be brought on such a claim, SUBCONTRACTOR shall defend, indemnify and hold harmless McCLENAHAN, Prime Contractor and/or Owner from said lawsuit at its own cost and expense, and shall pay and satisfy any such lien or judgment entered by a court of competent jurisdiction on said lawsuit. SUBCONTRACTOR agrees that within ten

(10) days after written demand, to take action necessary to release any lien from the Project, and/or to have any lawsuit based on said lien dismissed. Should SUBCONTRACTOR fail to do so, McCLENAHAN is authorized to use whatever means it deems appropriate, in its sole discretion, to release said lien from the Project and/or to have any related lawsuit dismissed. SUBCONTRACTOR shall be liable for immediate payment to McCLENAHAN of the costs of removing the lien and/or dismissing the lawsuit based on the lien, including reasonable attorney's fees and court costs.

**12.B.** SUBCONTRACTOR may litigate any such claim that is being asserted in the lien, provided that the lien is immediately released from the Project and the Owner is dismissed for any lawsuit based on the lien, and SUBCONTRACTOR takes all other actions necessary to eliminate any grounds for the Owner or Prime Contractor to withhold any moneys due to McCLENAHAN by reason of such liens or suits.

**12.C.** It is understood and agreed that the SUBCONTRACTOR'S full and faithful performance of this Agreement (including the payment of any obligations due from SUBCONTRACTOR to McCLENAHAN, and any amounts due to laborers or materialmen furnishing labor or material for said work) is a condition precedent to SUBCONTRACTOR'S right to receive payment for the work performed. Any moneys paid by McCLENAHAN to SUBCONTRACTOR under the terms of this Agreement shall be impressed with a trust in favor of laborers and materialmen furnishing labor and material to SUBCONTRACTOR on the work herein subcontracted.

### **SECTION 13 - DEFAULT and REMEDIES**

SUBCONTRACTOR shall be in default if at any time, SUBCONTRACTOR, or any of the SUBCONTRACTOR'S subcontractors, suppliers, materialmen or laborers shall at any time:

- (1) Refuse or neglect to supply a sufficient number of properly qualified workers or a sufficient quantity of materials of proper quality;
- (2) Abandon SUBCONTRACTOR'S work or fail in any respect to promptly and diligently prosecute said work for SUBCONTRACTOR'S work;
- (3) Fail to promptly pay subcontractors, suppliers, materialmen, rental companies or laborers;
- (4) Fail to accelerate SUBCONTRACTOR'S work as requested;
- (5) Give McCLENAHAN a reasonable basis to doubt that SUBCONTRACTOR'S work can be completed for the unpaid portion of the Subcontract Price or within the required time;
- (6) Declare bankruptcy or make a general assignment for the benefit of creditors, file for bankruptcy, assign assets for the benefit of creditors, become insolvent, or be unable to pay its obligations as they mature;
- (7) Otherwise fail to perform any of the terms and conditions set forth in this Agreement and/or the Contract Documents; or
- (8) Default in the performance of any contract or agreement with McCLENAHAN, whether related to the Project or otherwise.

**13.A.** In the event of such a default or defaults, McCLENAHAN may pursue any remedies available by common law or statute, including but not limited to one or more of the following:

- (1) Withhold any sums due, or thereafter to become due, to SUBCONTRACTOR under the Agreement and any other contract, whether related to the Project or otherwise said withheld sums shall not accrue interest;
- (2) Provide and/or supplement any labor and/or materials as McCLENAHAN, in its sole discretion, determines are necessary to cure such default, and deduct the cost thereof from any money then due, or thereafter to become due, to SUBCONTRACTOR under the Agreement or any other contract, agreement, or otherwise;
- (3) Terminate the Agreement, in which case, all contracts whether written or oral between SUBCONTRACTOR and persons or entities providing labor, materials, or equipment pertaining to SUBCONTRACTOR'S work shall be deemed assigned to McCLENAHAN, and SUBCONTRACTOR hereby appoints McCLENAHAN as its attorney-in-fact to enforce the provisions of such contracts, provided that nothing herein shall obligate McCLENAHAN to honor such contracts, and;
- (4) Take possession of all the materials, tools, equipment and appliances belonging to SUBCONTRACTOR at the Project site without any further compensation to SUBCONTRACTOR, and either complete SUBCONTRACTOR'S work, or contract with a third party or parties to complete SUBCONTRACTOR'S work and/or provide the material thereto; in which case if the unpaid portion of Subcontract Price exceeds the charges, expenses including attorney's fees and damages sustained by McCLENAHAN in completing of the SUBCONTRACTOR'S work after the SUBCONTRACTOR'S default, if such charges, expenses, and damages exceed said the unpaid portion of the Subcontract Price, SUBCONTRACTOR shall pay the difference to McCLENAHAN immediately upon demand; or McCLENAHAN may, at its sole discretion, choose to offset and apply any amounts due to McCLENAHAN as a result of the SUBCONTRACTOR'S default against any earned but unpaid amounts owing to SUBCONTRACTOR by McCLENAHAN under the agreement, including without limitation, any retention held by McCLENAHAN, any amounts owed to SUBCONTRACTOR under any other contract, whether related to the Project or otherwise.

**13.B.** Prior to exercising its remedies contained in this Section 13, McCLENAHAN shall provide SUBCONTRACTOR written notice of default and not less than forty-eight (48) hours to cure such default. SUBCONTRACTOR shall have the opportunity within the forty-eight (48) hour notice period to remedy, to McCLENAHAN'S satisfaction, the default, deficiency, or failures that are the basis of McCLENAHAN'S termination notice.

**13.C.** McCLENAHAN'S remedies set forth herein are cumulative, and the exercise of one remedy shall not restrict McCLENAHAN, at the same time or thereafter, from exercising any other remedy set forth herein or provided by applicable law.

**13.D.** In the event a termination of 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 McCLENAHAN'S convenience. For the purposes of this clause, if there is a termination for convenience, SUBCONTRACTOR shall be entitled to payment of the following amounts, which shall constitute full satisfaction of all claims by SUBCONTRACTOR for payment on account of work performed under this Agreement: (1) the actual cost of the work completed in conformity with this Subcontract through the date of termination; plus (2) such other costs actually incurred by SUBCONTRACTOR as are payable to McCLENAHAN under its contract with the Prime Contractor and approved by Owner; plus (3) fifteen (15%) percent of the costs referred in paragraph (1) above, for overhead and profit, less the amount of any payments made to SUBCONTRACTOR prior to the date of termination. SUBCONTRACTOR shall not be entitled to any claim or claim of lien against McCLENAHAN, Prime Contractor or the Owner for any additional compensation or damages.

**13.E.** In the event a receiver is appointed 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, McCLENAHAN may terminate this Agreement upon giving forty-eight (48) hours written notice, by certified mail, to SUBCONTRACTOR at the address provided herein, and its surety, if any. If an order for relief is entered under the Bankruptcy Code with respect to SUBCONTRACTOR, McCLENAHAN may terminate this subcontract by giving forty-eight (48) hours written notice, by certified mail, to SUBCONTRACTOR at the address contained herein, its trustee, and its surety, if any, unless SUBCONTRACTOR, the surety, or the trustee:

- (1) promptly cures all defaults;
- (2) provides adequate assurance of future performance;
- (3) compensates McCLENAHAN for actual pecuniary loss resulting from such defaults; and
- (4) assumes the obligations of SUBCONTRACTOR within the statutory time limits.

#### **SECTION 14 - TERMINATION OF AGREEMENT**

In the event the Prime Contract, or McCLENAHAN'S contract with the Prime Contractor, is terminated prior to its completion, SUBCONTRACTOR shall be entitled only to payment for its work actually completed pro rata based on the Contract Price set forth unless McCLENAHAN itself receives additional compensation or damages on account of such termination, in which event, SUBCONTRACTOR shall be entitled to such proportion of said additional compensation or damages actually received as is equitable under all of the facts and circumstances.

**14.A.** Nothing contained herein shall require McCLENAHAN to make any claim against the Prime Contractor or the Owner for additional compensation or damages in the event of termination before completion, and it is specifically agreed that the failure of McCLENAHAN to prosecute any such claim against Prime Contractor or the Owner shall not entitle SUBCONTRACTOR to any claim for additional compensation or damages against McCLENAHAN.

**14.B.** Notwithstanding the preceding paragraph, McCLENAHAN reserves the absolute right to terminate this Agreement for its convenience.

**14.C.** In the event of termination for convenience SUBCONTRACTOR shall stop all its work except that which McCLENAHAN directs SUBCONTRACTOR to complete. SUBCONTRACTOR shall be entitled to payment only as follows:

- (1) Cost of the work actually completed in conformity with this Agreement; plus
- (2) Other costs actually incurred by SUBCONTRACTOR; plus
- (3) 15% of costs referred to in Paragraph (1) above, for overhead and profit.
- (4) There shall be deducted from these three amounts of any payments made to SUBCONTRACTOR prior to the

date of termination of this Agreement. SUBCONTRACTOR shall not be entitled to any claim, or claim of lien, against McCLENAHAN, the Owner, and/or the Prime Contractor for any additional compensation or damages in the event of such termination and payment.

**14.D.** In the event this Agreement is terminated for cause, SUBCONTRACTOR shall not be entitled to receive any further payment until the work undertaken by McCLENAHAN pursuant to its contract with the Prime Contractor is completely finished.

- (1) At that time, if the amount earned, but not paid to SUBCONTRACTOR before said termination, exceeds the expenses incurred by McCLENAHAN in finishing SUBCONTRACTOR'S work, any excess shall be paid by



McCLENANAHAN to SUBCONTRACTOR.

- (2) At that time, if the expenses incurred by McCLENANAHAN, in finishing the SUBCONTRACTOR'S work, exceed the amount earned, but not paid to SUBCONTRACTOR ("Excess Amount"), SUBCONTRACTOR shall promptly pay the Excess Amount to McCLENANAHAN.

**14.E.** For purposes of Section 14.D., the expenses incurred by McCLENANAHAN, shall include McCLENANAHAN'S (1) expense for furnishing materials, (1) expense for finishing SUBCONTRACTOR'S work, (3) attorney's fees and (4) any damages incurred by McCLENANAHAN by reason of SUBCONTRACTOR'S default. Prior to paying the SUBCONTRACTOR, McCLENANAHAN will deduct any amount due to the Administrative Office of the various Employee Fringe Benefit Trusts, including but not limited to, Health and Welfare, Pension, Vacation, or Apprenticeship Trusts, then being delinquent in payment or payments to any such trust, regardless of the project in connection with which the delinquency or delinquencies occurred.

#### **SECTION 15 - LABOR RELATIONS**

**15.A.** SUBCONTRACTOR acknowledges that McCLENANAHAN has entered into labor agreements covering work at its construction job sites with the following labor unions:

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**15.B.** SUBCONTRACTOR agrees that, as a condition of performing its jobsite work, it will be bound by and comply with all of the terms and conditions of those labor agreement(s) identified in Paragraph 15A of this Agreement including, but not limited to, any obligation that SUBCONTRACTOR be signatory to any such identified labor agreement(s) and any obligation to make trust fund payments into the respective trust funds set forth in such identified labor agreement(s). SUBCONTRACTOR further agrees to comply with the terms and conditions of such identified agreement(s) setting forth the jurisdiction and the scope of work claimed by each of such crafts and the procedure contained therein for the resolution of jurisdictional disputes. In the absence of any such procedure, or if such procedure fails to promptly resolve the jurisdictional dispute, SUBCONTRACTOR agrees, at its own cost and expense, upon request of McCLENANAHAN, to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board.

**15.C.** Should there be picketing, hand billing or other concerted activity on McCLENANAHAN'S project site and McCLENANAHAN establishes a reserved gate for SUBCONTRACTOR'S purposes, it shall be the obligation of SUBCONTRACTOR to continue the proper performance of its work without interruption or delay. SUBCONTRACTOR'S obligation to perform its work shall not be excused regardless of the location and number of pickets and/or the establishment of a reserved gate system.

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

**15.E.** SUBCONTRACTOR shall comply with all laws concerning the payment of wages to its employees and the employment of apprentices including, where applicable, the payment of prevailing wages and employment of apprentices on public works in accordance with applicable law. Nothing contained herein is intended to create a private right of action by SUBCONTRACTOR'S employees against McCLENANAHAN.

**15.F.** SUBCONTRACTOR will indemnify and hold harmless McCLENANAHAN from and against any liability, loss, damage, cost, claims, awards, judgments, fines, expenses, including litigation expenses, reasonable attorney's fees and any other costs which may be incurred by McCLENANAHAN resulting from SUBCONTRACTOR'S failure to fulfill the covenant set forth in this Section 15.

#### **SECTION 16 - LAYOUT**

McCLENANAHAN shall establish the principal axis lines and levels whereupon SUBCONTRACTOR shall lay out. The SUBCONTRACTOR shall be strictly responsible for the accuracy of its work, for the coordination of its work with others, and for any loss or damage to other contractors engaged in work on the Project site by reason of failure of SUBCONTRACTOR to set out or perform its work correctly, or to coordinate its work with the work of others. SUBCONTRACTOR shall exercise prudence in laying out and performing its work under the Agreement, so that the actual final conditions and details shall result in perfect alignment of finished surfaces.

#### **SECTION 17 - WORKMANSHIP**

SUBCONTRACTOR shall execute every part of its work under this Agreement in strict accordance with the Contract Documents and in the most sound, workmanlike and substantial manner. All workmanship shall be of the highest quality, and all materials used in the SUBCONTRACTOR'S work shall be furnished in ample quantities to facilitate the proper and

expeditious execution of that work, and shall be new and the best of their respective kinds, unless the Contract Documents expressly provide otherwise as to particular materials.

#### **SECTION 18 - INSPECTION**

SUBCONTRACTOR shall at all times furnish to McCLENAHAN, Prime Contractor and/or Owner or their representatives, safe and ample facilities for inspecting materials and auditing records at the Project site, 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 McCLENAHAN as often as required by McCLENAHAN 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 detail as may be required by McCLENAHAN, including but not limited to any plans, drawings or diagrams in the course of preparation.

#### **SECTION 19 - OFF-SITE MATERIALS AND WORK**

In the event the SUBCONTRACTOR'S 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 or areas so provided and thereupon handle, store and install the items or so protect such areas 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 moneys otherwise due under this Agreement.

#### **SECTION 20 - PROTECTION OF WORK**

SUBCONTRACTOR shall effectively secure and protect its work performed and assumes full responsibility for the condition of such completed work until final acceptance by Architect, the Owner, Prime Contractor and McCLENAHAN. SUBCONTRACTOR further agrees to provide such protection as is necessary to protect its work and the work of McCLENAHAN, the Owner, the Prime Contractor, and other contractors from its operations. Loss or damage to the work in place of the Owner, the Prime Contractor, McCLENAHAN, or other subcontractors, or to any equipment or materials on the Project site shall be charged to the account of SUBCONTRACTOR and deducted from moneys otherwise due under this Agreement if such loss or damage was caused by the negligence or intentional acts of the SUBCONTRACTOR.

#### **SECTION 21 - USE OF McCLENAHAN'S EQUIPMENT**

In the event SUBCONTRACTOR shall use McCLENAHAN'S equipment, materials, labor, supplies, or facilities in the prosecution of its work under this Agreement, SUBCONTRACTOR shall reimburse McCLENAHAN at a predetermined rate, unless otherwise stated herein. SUBCONTRACTOR assumes all responsibility for, and shall defend, indemnify and hold McCLENAHAN harmless from any claims, actions, demands, damages, liabilities or expenses, including attorney's fees resulting from SUBCONTRACTOR'S use of such equipment, materials, labor, supplies or facilities. In the event that McCLENAHAN'S employees are used by SUBCONTRACTOR, SUBCONTRACTOR shall have full responsibility for all acts or omissions of McCLENAHAN'S employees with regard to the SUBCONTRACTOR'S operations. SUBCONTRACTOR accepts, without reservation, any and all of McCLENAHAN'S equipment, materials, labor, supplies, or facilities as furnished.

#### **SECTION 22 - CLEAN-UP**

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

**22.B.** McCLENAHAN may demand SUBCONTRACTOR clean up its work areas at any time that McCLENAHAN deems such action necessary. If SUBCONTRACTOR fails to undertake or complete the clean up to the satisfaction of McCLENAHAN within two (2) calendar days of SUBCONTRACTOR'S receipt of the demand, then McCLENAHAN may proceed to clean-up the SUBCONTRACTOR'S work areas as McCLENAHAN judges necessary and in any manner that it deems expedient, and the cost thereof shall be charged to SUBCONTRACTOR and deducted from moneys due to SUBCONTRACTOR under this Agreement.

**22.C.** In the event McCLENAHAN classifies debris resulting from SUBCONTRACTOR'S performance of its Work as a safety hazard, upon receipt of a demand from McCLENAHAN, SUBCONTRACTOR shall immediately remove said debris. If SUBCONTRACTOR fails to remove said debris within four (4) hours after receipt of notice to remove, then McCLENAHAN may proceed to remove said debris as McCLENAHAN judges necessary and in any manner that it deems expedient, and the

cost thereof shall be charged to SUBCONTRACTOR and deducted from moneys due to SUBCONTRACTOR under this Agreement.

### **SECTION 23 - GUARANTEE**

SUBCONTRACTOR guarantees all materials and workmanship and agrees to replace at its sole cost and expense, and to the satisfaction of McCLENAHAN, any and all materials adjudged defective or improperly installed. SUBCONTRACTOR guarantees that it will defend, indemnify and hold harmless McCLENAHAN, the Owner, and/or the Prime Contractor against all liability, loss or damage arising from defective materials provided or used, or improper installation by installation by the SUBCONTRACTOR, for a period of one (1) year from completion of the Project and/or acceptance of the Project by the Owner, which ever is later. If, however, should the Contract Documents provide for a guarantee period in excess of one (1) year, SUBCONTRACTOR shall be bound by said provision.

### **SECTION 24 - INDEMNIFICATION-PATENT RIGHTS**

SUBCONTRACTOR shall defend, indemnify and hold harmless McCLENAHAN, the Prime Contractor and/or the Owner, against any claim, suit or action, or any alleged violation or infringement of patent, copyright or trademark rights, that may be made against McCLENAHAN, the Prime Contractor, and/or the Owner by reason of the use, in connection with, or as a part of the performance of its work, or by furnishing of the materials hereunder of anything that is now, or may hereafter be, covered by a patent, copyright or trademark. In connection with such claims or action, SUBCONTRACTOR duty to defend, indemnify and hold harmless, includes, but is not limited to payment of all expenses, attorneys' fees, expert costs, and amounts paid in settlement or judgment of the claim.

### **SECTION 25 - ASSIGNMENT**

SUBCONTRACTOR shall not, without the express written consent of McCLENAHAN, assign, transfer, sell, or subcontract to any third party any portion or part of SUBCONTRACTOR'S work under this Agreement. SUBCONTRACTOR shall not, without the express written consent of McCLENAHAN, assign, transfer or sell under common or statutory law, including but not limited to the California Commercial Code, the right payment, for said Work under this Agreement, including, but not limited to invoices, progress payment applications, accounts receivable, stop notices, bond claims, and mechanics' liens. SUBCONTRACTOR further agrees, that McCLENAHAN may assign or transfer the whole or part of this Agreement and its rights hereunder to any corporation, individual, or partnership at any time.

### **SECTION 26 - INDEPENDENT CONTRACTOR**

SUBCONTRACTOR is an independent contractor and shall, at its sole cost and expense, and without increase in the Subcontract Price, comply with all laws, rules, ordinances and regulations of all governing bodies having jurisdiction over the work and/or Project site whenever enacted; obtain all necessary permits and licenses for its work, pay all manufacturers' taxes, sales taxes, use taxes, processing taxes, and all federal and state taxes, insurance and contributions for Social Security and Unemployment which are measured by wages, salaries, trust fund contributions 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 McCLENAHAN that any or all of the foregoing obligations have been fulfilled as a condition of receiving payment.

### **SECTION 27 - EXCUSE**

Any act or omission of McCLENAHAN that SUBCONTRACTOR might claim as an excuse for SUBCONTRACTOR'S own failure to perform it work under this Agreement, shall be deemed waived by SUBCONTRACTOR unless it notifies McCLENAHAN of its intention to assert such excuse within seventy-two (72) hours after the occurrence of said act(s) or omission(s) by McCLENAHAN.

### **SECTION 28 - CLAIMS AND DISPUTES**

All claims by SUBCONTRACTOR relating to SUBCONTRACTOR'S work, including without limitation, any claimed adjustment to the Subcontract Price and any claimed delay in prosecution of SUBCONTRACTOR'S work (collectively a "Claim"), shall be submitted to McCLENAHAN within seventy-two (72) hours after the occurrence of the event giving rise to the Claim (or prior to the time within which McCLENAHAN must submit a claim to the Prime Contractor and/ or Owner pursuant to the terms of the Contract Documents, whichever is earlier). Claims must be in writing in sufficient detail, dated, and signed by an officer or authorized representative of SUBCONTRACTOR. A SUBCONTRACTOR'S Claim will be allowed by McCLENAHAN if and to the extent the Claim is allowed by the Prime Contractor and/or Owner. Any claim not timely submitted shall be deemed waived by the SUBCONTRACTOR. Unless otherwise agreed in writing, SUBCONTRACTOR shall continue to prosecute SUBCONTRACTOR'S work and maintain the Project Schedule pending resolution of any Claim. Any failure of SUBCONTRACTOR to continue to diligently and timely prosecute of its Work under

this Agreement shall be deemed a material breach of the Agreement, entitling McCLENAHAN to all remedies provided hereunder, as well as any other remedies that may exist as a matter of law.

## **SECTION 29 - DISPUTE RESOLUTION PROCEDURE**

### **29.A. - Mediation**

SUBCONTRACTOR agrees, upon McCLENAHAN'S request, to submit any or all disputes to mediation and to negotiate in good faith to reach an agreement with respect to the dispute(s). Neither party shall proceed with arbitration or litigation until the completion of mediation proceedings. The costs of the mediator shall be shared equally by the parties.

### **29.B. - Arbitration.**

McCLENAHAN and SUBCONTRACTOR shall not be obligated to resolve disputes arising under this Subcontract by arbitration, unless (i) the Prime Contract has an arbitration provision and McCLENAHAN is obligated to arbitrate under its contract with Prime Contractor, and (ii) a particular dispute between McCLENAHAN and SUBCONTRACTOR involves issues of fact or law which McCLENAHAN is required to arbitrate under the terms of the Prime Contract or McCLENAHAN'S Contract with the Prime Contractor. In the event that arbitration is required under the terms of the Contract Documents, the same arbitrator(s) utilized to resolve the dispute between the Owner, Prime Contractor and McCLENAHAN shall be utilized to resolve the dispute under this provision. In the event that McCLENAHAN and the Prime Contractor or Owner or others arbitrate matters relating to this Agreement, the SUBCONTRACTOR shall be required, at the request of McCLENAHAN, to prepare and present McCLENAHAN'S case, at SUBCONTRACTOR'S expense, to the extent that proceedings relate to this Agreement. Should McCLENAHAN enter into arbitration with the Prime Contractor or Owner or both, or others, with regard to issues relating to this Agreement, the SUBCONTRACTOR shall be bound by the result of the arbitration to the same degree as McCLENAHAN. At McCLENAHAN'S sole option, if it becomes necessary to join SUBCONTRACTOR as a necessary party in an arbitration proceeding with the Owner or Prime Contractor, SUBCONTRACTOR agrees that it can be joined as a party to such arbitration proceeding.

## **SECTION 30 - ATTORNEY'S FEES**

In the event either McCLENAHAN or SUBCONTRACTOR institutes suit in court against the other party, or against the surety of such party, in connection with any dispute or matter arising under this Agreement, the prevailing party in that action shall be entitled to recover from the other party reasonable attorney's fees as determined by the court and included as costs in the judgment in said action.

## **SECTION 31 - SAFETY AND EQUAL EMPLOYMENT VIOLATIONS - SUBCONTRACTOR'S INDEMNITY**

**31.A.** SUBCONTRACTOR shall, at its expense, conform to the safety policies and programs of McCLENAHAN, and comply with all specific safety requirements promulgated by any governmental authority, including, without limitation, Safety Act of 1969: General Industry Safety Order 3203 including amendments by Senate Bill 198 (CA); the California Labor Code, including Sections 6300 through 6604, and 7100 through 7332 (CA), inclusive, and all successors and amendments thereto; Occupational Safety and Health Standards for General Industry 29 CFR Part 1910 and 29 CFR Part 1926 for Construction (NV); and all standards and regulations which have been or shall be promulgated by the parties or agencies which administer said Acts.

**31.B.** SUBCONTRACTOR shall, at its own expense, comply to the equal employment opportunity policies of McCLENAHAN, and, in addition, shall comply with all equal opportunity requirements promulgated by any government authority, including, without limitation, the requirements of the Civil Rights Act of 1964, 42 United States Code, Section 1983, Executive Orders 11246, 11375 and 11478, the California Fair Employment Practices Act, the California Plan, any other applicable statute or ordinances, plans or programs, inclusive, and all successors and amendments thereto, and all plans, programs, standards and regulations which have been or shall be promulgated or approved by the parties or agencies which administer said Acts or Orders (hereinafter collectively referred to as EEO laws). The text of the Equal Employment Opportunity Clauses set forth at 41 CFR 60-1.4 and 41 CFR 60-4.3 are incorporated herein by reference and the obligations contained therein apply to SUBCONTRACTOR as though fully set forth herein. SUBCONTRACTOR shall take appropriate steps to maintain a harassment-free work environment in accordance with applicable law.

**31.C.** SUBCONTRACTOR shall have and exercise full responsibility for compliance hereunder by itself, its agents, employees, materialmen and subcontractors with respect to its portion of the work on the Project; and shall directly receive, respond to, defend and be responsible for any citation, assessment, fine or penalty by reason of SUBCONTRACTOR'S failure or failure of SUBCONTRACTOR'S agents, employees, materialmen and subcontractors to so comply. SUBCONTRACTOR shall indemnify and hold harmless McCLENAHAN, the Prime Contractor and/or the Owner from and against any liability, loss, damage, cost, claims, awards, judgments, fines, expenses, including litigation expenses, reasonable attorney's fees, claims or liability for harm to persons or property, expenses, incurred pursuant to or attendant to any hearing or meeting and any other applicable cost which may be incurred by McCLENAHAN, the Prime Contractor and/or the Owner resulting from SUBCONTRACTOR'S failure to fulfill the covenants set forth in this section.

**31.D.** In the event SUBCONTRACTOR fails to comply: (1) with any citation issued by the Secretary of Labor, any order issued by the Occupational Safety and Health Review Commission or any order issued by the Division of Industrial Safety of the State of California, Division of Industrial Relations of the State of California, or of any other body responsible for the administration and/or enforcement of any statute, regulation or ordinance relating to occupational health and safety within the period specified in any such citation or order; (2) with any of the aforementioned EEO laws, or any judgment, order or award issued by the Office of Federal Contract Compliance, United States Department of Labor, or any other federal, state or local agency or any court of law, or any other body responsible for the administration and/or enforcement of any EEO laws, within the period specified in any such laws, judgment, order or award, McCLENAHAN may in its discretion, exercise the rights and remedies provided it under the terms of this Agreement.

**SECTION 32 - TAXES**

The compensation payable to SUBCONTRACTOR provided in this Agreement includes all sales, gross receipts, excise and other taxes and is not subject to any addition on account of taxes that are now, or may hereafter, be levied. It is hereby agreed that SUBCONTRACTOR is an independent contractor within the purview of the Internal Revenue Code, the Federal Social Security Act, and any and all unemployment insurance laws, both State and Federal, and is solely responsible to the Federal and State Government for all payroll taxes, and contributions under such laws.

**SECTION 33 - MISCELLANEOUS PROVISIONS**

**33.A. ENTIRE AGREEMENT**

The Contract Documents represent the entire agreement between the parties and supersede any prior representation, statement, or agreement, oral or written, with regard to the subject matter herein. No modification hereto shall be valid unless it is in writing and signed by both parties.

**33.B. WAIVER**

Waiver by McCLENAHAN of any particular default by SUBCONTRACTOR shall not affect or impair McCLENAHAN'S rights in respect to any subsequent default by SUBCONTRACTOR of the same, or of a different nature.

**33.C. SEVERABILITY**

If any term or provision of this Agreement, or the application thereof to any person or circumstances, shall to any extent be held to be invalid or unenforceable under California law, then the remainder of the Agreement, or the application of such term or provision to persons or circumstances, other than those as to which it has been held to be invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**33.D. CONSTRUCTION**

SUBCONTRACTOR waives any right it might have to assert the provisions of California Civil Code §1654 against McCLENAHAN.

**33.E. GOVERNING LAW AND VENUE**

This Agreement shall be construed and enforced in accordance with the laws of the State of California. Venue for any legal action shall be in the San Mateo County Superior Court for the State of California, the site where McCLENAHAN'S officers and all the original contract documents are located.

**33.F. NOTICES**

All notices pursuant to the terms of this Agreement, unless specifically stated otherwise, required to be given between McCLENAHAN and SUBCONTRACTOR shall be in writing and sent by facsimile and first class mail at the addresses and facsimile numbers stated below. Any change of address and/or facsimile number must be promptly provided in writing to the other party. Notices sent to old addresses or facsimile numbers shall be deemed properly and timely delivered should the addressee have failed to give proper, timely notice under this section. Notice shall be deemed effective upon receipt.

J.W. McClenahan Co.  
2301 Palm Avenue  
San Mateo, California 94403  
Telephone: 650-345-1691  
Fax Number: 650-345-5681

Subcontractor: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax Number: \_\_\_\_\_

**33.G. AUTHORIZATION**

Each party hereto expressly warrants and represents that it is authorized to execute this Agreement; and corporate parties warrant that they are valid corporations organized and existing under the laws of the State of California. Each party represents and warrants to the other party that it has full power and lawful authority to enter into and carry out the terms and provisions of this Agreement and to execute and deliver all documents to be signed by it; and that it has taken all actions necessary to confer such power and authority upon the persons executing this Agreement, and all documents that are contemplated by this Agreement have been executed.

**SECTION 34 - CONTRACTORS LICENSE**

CALIFORNIA LAW REQUIRES CONTRACTORS TO BE LICENSED AND REGULATED BY THE CONTRACTORS STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS STATE LICENSE BOARD, 9581 BUSINESS PARK DRIVE, SACRAMENTO, CALIFORNIA 95827. MAILING ADDRESS: P.O. BOX 26000, SACRAMENTO, CALIFORNIA 95826.

**SECTION 35 - SPECIAL PROVISIONS**

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\_\_\_\_\_  
\_\_\_\_\_

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date and year first written above.

J.W. McCLENAHAN CO., a California corporation

SUBCONTRACTOR:

\_\_\_\_\_

By: \_\_\_\_\_  
Name: T.J. McClenahan  
Title: President  
Date:  
License No.: 308818

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
License No.: \_\_\_\_\_

**EXHIBIT 1**

**PRIME CONTRACT DOCUMENTS listed below:**

**J.W. McCLENAHAN CO.**  
**EXHIBIT 2**  
**INSURANCE REQUIREMENTS**

**PROJECT NAME:** \_\_\_\_\_ **JOB NO.:** \_\_\_\_\_

**GENERAL CONTRACTOR:** \_\_\_\_\_

**OWNER:** \_\_\_\_\_

**ADDITIONAL INSURED TO READ:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

This Attachment is attached and incorporated into the above referenced Subcontract Agreement between J.W. McClenahan Co. ("McCLENAHAN") and \_\_\_\_\_ ("Subcontractor"), as the parties desire to amend said document. In the event of any conflict, inconsistency or ambiguity between the terms and provisions of this Attachment and those of the above referenced Subcontract Agreement between the parties, this Attachment shall govern.

Immediately send a copy of this information to your insurance broker for compliance.

- 1.0 Subcontractor shall, at its own expense, maintain in effect at all times during the performance of the work under the contract, during the period of time for which the Subcontractor may be held legally liable for the work, and during any warranty period for the Subcontractor's work not less than the following coverages and limits of insurance which shall be maintained under forms of policies and from companies satisfactory to McCLENAHAN, Prime Contractor and the Owner.
- 1.1 Said limits and coverage requirements may change in order to meet the limits and coverage requirements of the Prime Contract Agreement.
- 1.2 The insurance company must have a financial rating of at least A-VII as defined by A.M. Best Company. Copies of policies shall be provided when requested. McCLENAHAN shall be informed promptly if the financial ratings differ than required.
- 1.3 No payment shall be considered due and payable hereunder until the required Certificate(s) of Insurance have been provided to the contractor, J.W. McClenahan Co. and found to be satisfactory and approved by said contractor (J.W. McClenahan Co.) Payments will be held until required certificates have been approved.
- 2.0 Workers' Compensation and Employer's Liability Insurance. Worker's Compensation insurance shall be provided as required by any applicable law or regulation. A waiver of subrogation endorsement is required. 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 each 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. Longshoremen's 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.

- 3.0 General Liability Insurance. Subcontractor shall carry Comprehensive General Liability or Commercial General Liability insurance covering 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 coverage for:



- (1) premises and operations;
- (2) products and completed operations;
- (3) broad form contractual liability;
- (4) broad form property damage (including completed operations);
- (5) explosion, collapse and underground hazards; and
- (6) personal injury liability / advertising injury
- (7) habitational, permanent residential liability operations

One of the following coverage forms is required:

- Comprehensive General Liability
- Commercial General Liability (Occurrence)

- 3.1 Comprehensive General Liability Form
  - \$1,000,000 each occurrence Bodily Injury and Property Damage
  - \$2,000,000 aggregate
- 3.2 Commercial General Liability Form
  - \$1,000,000 each occurrence Bodily Injury and Property Damage
  - \$1,000,000 Personal Injury
  - \$1,000,000 aggregate for Products – Completed operations
  - \$2,000,000 general aggregate
- 3.3 A “claims made” policy form is not acceptable without prior approval.
- 3.4 A “modified occurrence” policy is not acceptable.
- 3.5 Additional Insured Endorsement and Primary Insurance Clause. The Bodily Injury and Property Damage Liability policies shall include a provision or endorsement, at least as broad as (Form B) Additional Insured Endorsement – Owners, Lessees or Contractors, CG 20 10 11 85 or a combination of Additional Insured Endorsement – Owners, Lessees or Contractors CG 20 10 07 04 – AND Additional Insured Endorsement – Owners, Lessees or Contractors - Completed Operations, CG 20 37 07 04 and as published by Insurance Services Offices (ISO), naming as additional insured any person or organization for whom Subcontractor is required by written contract, agreement or permit to name. The endorsement must be attached to the certificate, a statement alone adding the Additional Insured Endorsement is not acceptable. Samples of Acceptable and Non-Acceptable Additional Insured Endorsements are attached.
  - 3.5.1 Commercial General Liability coverage without Completed Operations coverage is NOT acceptable.
  - 3.5.2 Additional Insured Endorsements must provide “your work” wording and/or coverage. “Ongoing Operations” wording and/or coverage is NOT acceptable.
  - 3.5.3 The endorsement shall also provide that such insurance is primary insurance with respect to the interest of McCLENAHAN and the Prime Contractor and the Owner and that any other insurance maintained by McCLENAHAN and the Prime Contractor and the Owner is excess and not contributing insurance with the insurance requirement hereunder.
 

Sample Additional Insured Endorsements and a Primary/Non-Contributing Endorsement are attached hereto.
  - 3.5.4 Residential Exclusion endorsements are NOT acceptable unless the project is to be covered by a Wrap-up policy.
- 4.0 Installation Floater or Personal Property of Others (if needed). An Installation Floater or Personal Property of Others Insurance shall be provided if you are storing project materials at your company site, in a bonded warehouse or on the jobsite. The coverage must be in the amounts to cover the value of the goods to be stored and/or in-transit. If required, coverage shall be for the value of the material being stored at the jobsite.

- 5.0 Automobile Liability Insurance. Subcontractor shall carry automobile liability insurance, including coverage for:
- (1) all owned automobiles;
  - (2) 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
- 6.0 Certificates of Insurance. Certificates of Insurance, as evidence of the insurance required by this Agreement shall be furnished by Subcontractor to Contractor before any work hereunder is commenced by Subcontractor.
- 6.1 The Certificates of Insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) days prior written notice to Contractor. A 10 (ten) day notice of cancellation for non-payment is acceptable.
- 6.2 Certificates including additional insured endorsement shall be furnished for three (3) years following completion of the project.
- 6.3 Contractor's acceptance of an insurance certificate or endorsement shall in no way relieve the subcontractor of its responsibilities and duties under the Agreement.
- 7.0 Insurance Requirement for Sub-subcontractors. The Subcontractor shall ensure that all tiers of their Subcontractors shall procure and maintain insurance in like form and amounts including the Additional Insured requirements, all as set forth in Paragraph 3.0. Copies of the certificate must be provided prior to the sub-subcontractors entering the site.
- 8.0 Aircraft Insurance. If the Subcontractor or their Subcontractors use any owned, leased, chartered or hired aircraft of any type (including helicopters) in the performance of this contract, they shall maintain aircraft liability insurance in an amount of not less than \$10,000,000 per occurrence. Evidence of coverage in the form of a Certificate of Insurance shall be provided prior to the start of work.
- 9.0 Professional Liability Exposure. A \$1,000,000 Professional Liability insurance policy shall be carried if Subcontractor or their subcontractor is to provide any professional services, including but not limited to, design or design/build services to the project. Evidence of coverage in the form of a Certificate of Insurance shall be provided as requested by McCLENAHAN prior to the start of work.
- 10.0 Builders Risk Insurance. Subcontractor shall be responsible for payment of a percentage of the deductibles for Builder's Risk Insurance regardless of whether such coverage is procured by the Owner, the Prime Contractor, or McCLENAHAN. The percentage of the deductible to be paid by the Subcontractor shall be in proportion to its percentage of the entire loss covered by the Policy as calculated prior to the application of the policy deductible. McCLENAHAN and Subcontractor waive all rights against each other and against all other subcontractors and the Prime Contractor and the Owner for loss or damage to the extent reimbursed by Builder's Risk or any other property or equipment insurance applicable to the work, except such rights as they may have to the proceeds of such insurance. If the policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

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

If Builder's Risk insurance purchased by Owner or Prime 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 or other work caused by Subcontractor.

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

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

- 11.0 Riggers Liability. Should Subcontractor's work involve the rigging of property, Subcontractor shall carry "Riggers Liability Insurance" to insure against physical loss or damage to the property being lifted. Evidence of coverage shall be provided in the form of a Certificate of Insurance.
- 12.0 Acceptance by McCLENAHAN. The required insurance shall be subject to the approval of McCLENAHAN, but any acceptance of insurance certificates by McCLENAHAN shall in no way limit or relieve Subcontractor of the duties and responsibilities by said Subcontractor in this Agreement. If higher limits or other forms of insurance are required in the Contract Documents, Subcontractor will comply with such requirements.
- 13.0 Additional Requirements – Hazardous Materials/Pollution Liability. If Subcontractors or their Subcontractors are required to perform remedial hazardous material operations such as asbestos containing materials, contaminated soil etc. they must, in addition to the above requirements, carry a "Contractor's Pollution Liability" policy with limits not less than \$5,000,000 per occurrence and not less than \$5,000,000 aggregate for Bodily Injury, Personal Injury and Property Damage, naming Contractor as additional Insured.
- 13.1.1 Automobile Pollution Liability. If Subcontractor or their subcontractors haul hazardous waste they must carry Automobile Liability Insurance with a \$5,000,000 combined single limit per occurrence for Bodily Injury and Property Damage applicable to all hazardous waste hauling vehicles and include MCS 90 coverage.

# SAMPLE CERTIFICATE



## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
00/00/00

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Insurance Broker License No. Address City, State, Zip Code	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS:	Agent's/Customer Representative's Name 000-000-0000 A.M. Best/ INSURER(S) AFFORDING COVERAGE NAIC # INSURER A : Insurance Company INSURER B : Insurance Company INSURER C : Insurance Company INSURER D : Insurance Company INSURER E : Insurance Company INSURER F : Insurance Company
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**COVERAGES** **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL/SUBR		POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
		INSR	WVD					
X	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> BI/PD Deductible GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	X	X	POLICY NUMBER	00/00/00	00/00/00	EACH OCCURRENCE	\$ 1,000,000.
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 50,000.
							MED EXP (Any one person)	\$ 5,000.
							PERSONAL & ADV INJURY	\$ 1,000,000.
							GENERAL AGGREGATE	\$ 2,000,000.
							PRODUCTS - COMP/OP AGG	\$ 2,000,000.
X	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS	X	X	POLICY NUMBER	00/00/00	00/00/00	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000.
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
X	<b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> DED RETENTION \$ 00,000.			POLICY NUMBER	00/00/00	00/00/00	EACH OCCURRENCE	\$ 1,000,000.
							AGGREGATE	\$ 1,000,000.
								\$
X	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N <input checked="" type="checkbox"/> N/A		X	POLICY NUMBER	00/00/00	00/00/00	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	OTHER
							E.L. EACH ACCIDENT	\$ 1,000,000.
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000.
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000.
X	Professional Liability (If Design Work)	X		POLICY NUMBER	00/00/00	00/00/00	\$2,000,000. minimum/3 years	
X	Pollution Liability (If Required)	X		POLICY NUMBER	00/00/00	00/00/00	\$2,000,000. minimum/3 years	

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
 RE: PROJECT DESCRIPTION, J.W. McCLENAHAN CO. JOB NO. \_\_\_\_ - \_\_\_\_  
 GENERAL CONTRACTOR, PROJECT OWNER(S) AND OTHER REQUIRED ENTITY (IES) ARE TO BE NAMED AS ADDITIONAL INSURED PER ATTACHED ADDITIONAL INSURED ENDORSEMENT(S) CG 2010 11/85 OR COMBINATION OF CG 2010 07/04, ETC. AND CG 2037 07/04, ETC., AND PRIMARY AND NON-CONTRIBUTING WORDING ENDORSEMENTS. GENERAL LIABILITY AND/OR WORKERS' COMPENSATION WAIVERS OF SUBROGATION AS REQUIRED.

<b>CERTIFICATE HOLDER</b> J.W. McCLENAHAN CO. 2301 PALM AVENUE P.O. BOX 1149 SAN MATEO, CA 94403	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE AGENCY SIGNATURE
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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY

INSURED:

This endorsement changes the policy. Please read it carefully.

**ADDITIONAL INSURED - OWNERS, LESSEES  
OR CONTRACTORS (FORM B)**

This endorsement modifies insurance provided under the following:

Commercial General Liability Coverage Part.

SCHEDULE

**Name of Person or Organization:**

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

**RE:**

**ALWAYS ACCEPTABLE**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
As required by written agreement entered into prior to a loss.	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

**Only Acceptable If Accompanied with  
CG 20 37 07/04 or later**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

<b>Name Of Additional Insured Person(s) Or Organization(s):</b>	<b>Location And Description Of Completed Operations</b>
ANY PERSON OR ORGANIZATION FOR WHOM YOU ARE PERFORMING "COMMERCIAL CONSTRUCTION" DURING THE PERIOD OF THIS POLICY AND HAVE AGREED IN A WRITTEN CONTRACT TO ADD AS AN ADDITIONAL INSURED FOR PRODUCTS-COMPLETED OPERATIONS. "COMMERCIAL CONSTRUCTION" DOES NOT INCLUDE ANY HABITATIONAL OR RESIDENTIAL CONSTRUCTION OTHER THAN APARTMENTS OR HOTELS.	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

**Only Acceptable If Accompanied with  
CG 20 10 07/04 or later**