

SUBCONTRACT AGREEMENT

THIS SUBCONTRACT AGREEMENT ("Subcontract") is entered into this _____ between Broward Builders, Inc., a California corporation ("Contractor"), with its principal office at 1200 E. Kentucky Avenue, Woodland, California 95776, and ("Subcontractor") with its principal office at the place set forth below. (Collectively, "the Parties")

RECITALS

A. Contractor, a general building contractor, has agreed to construct, to the complete satisfaction of

("Owner") a work of improvement (the "Project") on certain real property (the "Property") located in the

City of: _____

County of: _____

State of California commonly known as: _____

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

The work of the Project shall be performed in strict accordance with this Subcontract, and its addendums, attachments, modifications and all other documents incorporated herein, the Prime Contract agreement between Contractor and Owner, including all other documents which form a part of the Prime Contract, including the general conditions, special conditions, Owner's bid documents, plans, specifications, addenda, lists of materials, sections, details, profiles, grading plans, deed restrictions, utility layouts and various other provisions set forth in various interrelated documents. All of these documents are on file and available during business hours for inspection and reference at Contractor's principal office. Such documents are herein designated as "Contract Documents" and are incorporated herein by this reference. The Contract Documents are intended to supplement each other, and work exhibited in one document but not in another shall nonetheless be performed as if such were exhibited in all documents. Subcontractor shall promptly report to Contractor in writing any discrepancies or errors which come to its attention in the Contract Documents.

1. CONTRACT DOCUMENTS. In addition to those categories of documents identified above, the Contract Documents include a description of the work to be performed by Subcontractor under this Subcontract. Subcontractor acknowledges that it has carefully examined and studied the Contract Documents in their entirety and 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 Subcontractor enters into this Agreement based upon its investigation of all such matters and is not relying on any opinions or representations of Contractor. Subcontractor further acknowledges that the work of the various subcontractors for the Project is interrelated, and Subcontractor fully understands the character of the work to be performed by it under the Contract Documents. The Contract Documents are incorporated herein by reference, and as it pertains to the Prime Contract, the Subcontractor and its subcontractors shall be bound to Contractor in the same manner and to the same extent as Contractor is bound to the Owner under the Contract Documents. Where, in the Prime Contract or Contract Documents, reference is made to Contractor, and the work or specifications therein pertain to Subcontractor's trade, craft, or type of work or specifications, such reference shall be interpreted to apply to Subcontractor instead of Contractor. All notice provisions in the Prime Contract or Contract Documents requiring notice by Contractor to Owner shall equally apply as to Subcontractor's requirement to provide the same timely notice to Contractor. Failure to give such notice shall result in Subcontractor's waiver of its rights.

2. WORK COVERED. Subcontractor agrees to perform in good and workmanlike manner, and to furnish to the Project all labor, materials (all materials shall be new unless otherwise specified by Contractor), supplies, equipment, scaffolding, services, machinery, tools and other facilities of every description required for the prompt and efficient execution of the work (the "Work") as outlined in ADDENDUM "A" attached hereto and incorporated herein by this reference, unless specifically excluded in this Subcontract. Subcontractor shall be obligated to perform the Work in strict compliance with the Contract Documents and all regulations (including O.S.H.A. & all other safety laws). Subcontractor acknowledges that the Contract Documents permit Owner to perform construction or operations related to the Project and that, as a result, Owner may perform portions of the Work, as modified or changed pursuant to the terms hereof.

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3. CONTRACT PRICE. For the strict performance of all its obligations hereunder, Contractor shall pay to Subcontractor the amounts set forth in ADDENDUM "B" attached hereto and incorporated herein by this reference (the "Contract Price").

4. PAYMENT. (a) All billings for work performed during a calendar month shall be made to Contractor by a standard form payment application showing the current contract amount, all approved change orders, percentage completed to date, previous billing amount, gross billing amount, the amount of retention to be withheld and current net invoice amount. Each of Subcontractor's payment applications shall be submitted to Contractor no later than five calendar days prior to the date by which Contractor must submit its payment application to Owner in order for each of Subcontractor's payment applications to be timely processed, and the payment applications shall be for the value of the work estimated to be performed through the end of each month. Payment applications received after the deadline will be processed the following month.

(b) Subcontractor understands that all payments to the Subcontractor shall be made only from a special fund and a specific source, namely, from payments made by Owner from time to time to Contractor in respect of work performed by Subcontractor. Contractor shall make payments to Subcontractor within seven (7) days of receipt of each payment from Owner. Should there be any delay in payment between Owner and Contractor due to litigation, mediation or arbitration proceedings or because of sums otherwise withheld due to disputed legal issues, Subcontractor agrees that it shall be required to wait until those proceedings have concluded and payment of any sums due to Contractor for the Work performed by Subcontractor, if any, have been made to Contractor, plus seven (7) days or within seven (7) days after Contractor has been informed by a final determination of a court or arbitrator, including all applicable appeals and/or expiration of the time for applicable appeals, that Contractor shall not be paid on its claim. The delay in payment by Contractor to Subcontractor because Contractor is awaiting payment from Owner or a final decision from a court or arbitrator that no payment shall be made to Contractor in relation to the Work performed by Subcontractor shall not constitute a breach of this Agreement. Subcontractor understands and agrees that awaiting payment until after Contractor has been paid or a final court or arbitrator's decision has been issued in relation to Subcontractor's Work that Contractor shall not be paid on its claim, plus seven (7) days, is an agreed provision of this Agreement.

(c) In the event Contractor is not paid by Owner any sum claimed due by Subcontractor, then Contractor's obligation to make payment to Subcontractor with respect to the time for payment to Subcontractor shall, in addition to any other conditions set forth in this Subcontract or the Contract Documents, be subject to the following conditions precedent:

(i) If Contractor does not pay Subcontractor sums claimed due under the Subcontract as a result of nonpayment by the Owner and such nonpayment is thereafter "finally adjudged" (as hereinafter defined) to have been caused by a breach by Contractor of the Contract, then Contractor shall pay to Subcontractor such sum as is due under this Subcontract, inclusive of and limited to simple interest thereon at the rate of 10% per year accruing from the date such sum was first due and owing to Subcontractor as set forth above. The term "finally adjudged" as used in this Paragraph (i) shall mean the date final judgment is entered in any action by Contractor against Owner for recovery of sums due under the Contract. Under no circumstances where nonpayment is due to no fault of Subcontractor, shall nonpayment extend beyond one year after the date such sum was first due and owing to Subcontractor. If, after one year, Contractor has still not received payment from Owner, Contractor and Subcontractor shall negotiate a payment plan if Contractor is not financially able to pay the full payment amount at that time.

(ii) If Contractor does not pay Subcontractor sums claimed due under the Subcontract as a result of nonpayment by the Owner and such nonpayment is caused by Owner's insolvency, bankruptcy, or lack of sufficient assets, or for reasons other than a breach by Contractor of the Contract as provided in Paragraph (i) above, then Subcontractor's right to payment shall be conditioned upon the passage of such time as may be reasonable and necessary for Contractor to fully exercise and exhaust to final judgment its legal, extra judicial and appellate rights and remedies for collection of sums unpaid by Owner, including during bankruptcy proceedings, together with the passage of such additional time as reasonably necessary for execution by Contractor of any final judgment entered in its favor. Simple interest only on such sums as are due to Subcontractor under this Paragraph (ii) shall accrue and be payable to Subcontractor at the rate of 10% per year commencing from the expiration of the reasonable time reserved to Contractor in this Paragraph (ii) for recovery and collection from Owner. Under no circumstances where nonpayment is due to no fault of Subcontractor, shall nonpayment extend beyond one year after the date Owner declares to be insolvent, file a bankruptcy petition, or otherwise refuse to pay as a result of financial conditions. If, after such one-year period, Contractor has still not received payment from Owner, Contractor and Subcontractor shall negotiate a payment plan if Contractor is not financially able to pay the full payment amount at that time.

(iii) Nothing contained herein shall be interpreted as releasing or waiving any bond or stop notice right reserved to Subcontractor under the law; provided however, that Subcontractor agrees in the event Subcontractor asserts a claim against any statutory or common law payment or performance bond issued in connection with the Project, the surety to such bond and the Contractor (if Contractor is a principal on the bond) shall have the right to assert as a defense to such claim the nonoccurrence of any conditions precedent to payments set forth in this Subcontract, including without limitation the failure or delay of payment to Contractor.

(iv) Nothing herein shall prevent Subcontractor from filing a lawsuit or pursuing other available remedies which require compliance with a statutory limitations period. In the event such a lawsuit must be filed, Subcontractor agrees to stay the action pending the time periods described in (i) and (ii) above, or pending completion of Arbitration, if applicable.

(d) Contractor shall retain from progress or other payments hereunder a percentage, equivalent to the amount withheld from Contractor by Owner, of the amount due until final acceptance of the work by the Owner or Architect and until ten (10) days after Contractor's receipt of final retention payment from the Owner. The retainage percentage may be identified on Addendum B to this Subcontract.

(e) Each payment application for work performed during a calendar month shall be accompanied by a "Conditional Waiver and Release Upon Progress Payment" from Subcontractor and each of Subcontractor's subcontractors and materialmen, and, other than for the initial payment application, an "Unconditional Waiver and Release Upon Progress Payment" from Subcontractor and each of Subcontractor's subcontractors, materialmen and laborers for all amounts paid through the last date of the prior month. Submission of Subcontractor's final payment application for any retention due Subcontractor shall be accompanied by a "Conditional Waiver and Release Upon Final Payment" from Subcontractor and each of Subcontractor's subcontractors, materialmen and laborers, and upon receipt of its retention, Subcontractor shall furnish to Contractor an "Unconditional Waiver and Release Upon Final Payment" from Subcontractor and each of Subcontractor's subcontractors, materialmen and laborers. Failure to provide any of the above referenced documents along with a payment application may result in that payment application not being timely processed and ultimately withholding of funds to Subcontractor if the documents are not furnished to Contractor.

(f) Subcontractor, as requested by Contractor, shall furnish certified copies of all payroll records in the manner prescribed by Contractor for all work performed where certified payrolls are required. Contractor reserves the right to require lien, stop notice and bond claim releases (including releases from lower tier subcontractors, materialmen and laborers) and payment affidavits in duplicate with each application for progress payments and on final payment. Contractor also reserves the right to require Subcontractor to execute an Unconditional Waiver and Release form as to previously paid progress payments if required by the Contract Documents or the Owner. No payment will be made until required releases and affidavits have been received and approved by Contractor.

(g) Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, if allowed in the Contract Documents and approved in advance by the Contractor, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by Subcontractor of bills of sale or such other procedures satisfactory to Contractor to establish Owner's title to such materials or equipment or otherwise protect Owner's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site.

(h) Contractor may withhold or, on account of subsequently discovered evidence, may nullify, the whole or part of any payment to protect Contractor from loss on account of (i) defective work not remedied; (ii) third party claims filed or reasonable evidence indicating probable filing of such claims; (iii) failure of Subcontractor to make payments properly to its subcontractors or for materials, equipment, labor or fringe benefits; (iv) reasonable doubt that the work under this Subcontract can be completed for the balance of the Subcontract Price then unpaid; (v) damage to Contractor, a separate contractor or another subcontractor, caused by Subcontractor; (vi) reasonable doubt that the work under this Subcontract can be completed within the time required herein and that the balance of the subcontract price then unpaid would be sufficient to cover the actual or liquidated damages resulting from the anticipated delay; (vii) penalties assessed against Contractor or Subcontractor on account of Subcontractor's failure to comply with state, federal or local laws and regulations; (viii) persistent failure to carry out the work under this Subcontract in accordance with the Contract Documents; or (ix) any other ground for withholding payment allowed by state or federal law, or as otherwise provided in this Subcontract. When the reason(s) for withholding payment is/are rectified, such amounts as are then due and owing shall be paid or credited to Subcontractor.

(i) Contractor reserves the right to make payment by joint check or by direct check to Subcontractor's lower tier subcontractors, materialmen, laborers or to any other person or entity who has performed work or furnished materials under this Subcontract and may have a claim or a right of action against Contractor, Contractor's Surety, Owner, or the project under any law; provided, however, that Contractor shall not be obligated to exercise the right reserved herein for the benefit of any person or entity other than itself. Subcontractor agrees that Contractor shall have the right to determine the manner in which payment shall be made.

(j) Contractor reserves the right to withhold payment from Subcontractor until Subcontractor has produced properly executed Insurance certificates and Payment and Performance bonds (if applicable). Subcontractor shall maintain the specified insurance and bonds in good standing for the duration of the project. Contractor reserves the right to withhold payment from Subcontractor if at any time its insurance or bonding expires or ceases to be in good standing.

(k) Any payment made hereunder prior to completion and acceptance of the work shall not be construed as evidence or acknowledgement of proper completion of any part of Subcontractor's work.

5. RETENTIONS. Contractor shall be entitled to retain and withhold from the amount due to Subcontractor without interest that portion of the Contract Price designated as "Retention" in ADDENDUM "B" for a period ("Retention Period") to be released within seven (7) days from the date retention is received from Owner. Upon the termination of the Retention Period, Contractor shall pay the Retention to Subcontractor, conditioned upon the satisfaction of the terms specified in Paragraph 4.

6. PERFORMANCE OF THE WORK. (a) Subcontractor agrees (i) that materials and equipment furnished by Subcontractor shall conform strictly to the Contract Documents, (ii) to furnish all materials within the time specified herein, with all the necessary certificates and permits for installation and erection of same, and to layout, install and erect same and complete said work within the time specified, according to the Contract Documents and to the satisfaction of the Owner, Architect, and Contractor, (iii) to remove and replace any

defective materials or work forthwith on notice from Architect, Owner or Contractor and to bear the expense of making good all work of others, including the Contractor, which is destroyed or damaged by such removal and replacement, (iv) to perform the work entirely at the Subcontractor's risk, (v) 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, (vi) to secure and pay for those permits required by the Contract Documents and to be secured for the work applicable to this Subcontract, and (vii) to provide a full-time competent superintendent acceptable to Contractor who shall have authority to act on behalf of Subcontractor and who shall attend all meetings as requested by Contractor and who shall supervise the work hereunder.

(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 Contractor's progress schedule. Subcontractor shall submit a schedule of values for approval at the commencement of the work. Approval of shop drawings, submittals, details and samples by Contractor shall not relieve Subcontractor of its obligation to perform its work according to the terms and consistent with the intent of the Contract Documents.

(c) By commencement of the Work hereunder, Subcontractor acknowledges that all related, adjacent or dependent work, services, utilities or materials are acceptable to it. The entire responsibility for proper configurations and dimensions for prefabrications of any part of the Work shall rest with Subcontractor. Unless prior damage is reported in writing by Subcontractor to Contractor, Subcontractor hereby waives any and all claims for damages or extras with respect to defects in or failure of such work, services, utilities or materials.

(d) Subcontractor agrees to perform all work exclusively at the direction of Contractor. Any work performed or action taken as a result of direction by or contact with Owner, Architect or anyone other than Contractor, shall be deemed a material breach of contract, and shall have been performed at Subcontractor's own risk, and without obligation by Contractor to pay for such work. Any work performed as a result of direction by or contact with anyone other than Contractor shall be considered work performed outside of the scope of this Agreement.

(e) Subcontractor agrees to attend all meetings, upon twenty-four (24) hours' notice, written or oral, called by Contractor concerning the Project. Should Subcontractor fail to attend such meetings, Contractor, in its sole discretion, may terminate this Subcontract, and Contractor shall have all the rights or remedies provided at law or in equity, including those specified in Paragraph 19.

(f) Subcontractor assumes full responsibility for the proper interpretation and interpolation of all lines, levels and measurements and their relation to benchmarks, property lines, reference lines and the work of Contractor or other subcontractors. In all cases where dimensions are governed by conditions already established, the responsibility for correct knowledge of the conditions shall rest entirely on Subcontractor. No variations from specified lines or grades or dimensions shall be made except on written authority of Contractor. All portions of the Work shall be made to conform to actual, final conditions as they develop in the course of construction.

(g) Subcontractor shall keep and maintain Daily Job Reports which show, at a minimum, the date, names of Subcontractor employees working on the Project, the number of hours worked by each employee, the location of work, a description of the particular scope of work being performed, and any delays or obstructions affecting the ability of Subcontractor to timely perform. Subcontractor shall produce these Daily Job Reports to Contractor upon request. Subcontractor's compliance with this provision of the Subcontract and Contractor's review of any Daily Job Reports do not in any way substitute for any requirement Subcontractor has under the Subcontract to submit written claims for additional time, additional compensation, or any other provision for which notice is required. Simply stated, a Daily Job Report is not a claim nor notice of a claim and shall not be treated as such.

7. ADDITIONS, CHANGES AND MODIFICATIONS TO SUBCONTRACT. The terms and conditions of this Subcontract are not subject to addition, modification or change, unless such addition, modifications or change is made in writing by a duly authorized representative of Contractor and memorialized in a written, fully executed Change Order. Any addition, change or modification made by any other person or persons, or in any other manner than what is identified herein, shall not be binding upon Contractor, nor shall Contractor have any responsibility or liability for unauthorized additions, changes or modifications to this Subcontract. If Subcontractor makes any changes in the work described in ADDENDUM "A" without written direction from Contractor, such change constitutes an agreement by Subcontractor that it will not be paid for that changed work, even if it received verbal direction from Contractor or any form of direction, written or otherwise, from Owner or any person or entity. In addition, Subcontractor shall be liable for any and all losses, costs, expenses, damages, and liability of any nature whatsoever associated with or in any way arising out of any such change it makes without written direction from Contractor. No changes in the work covered by this Agreement shall exonerate any surety or any bond given in connection with this Subcontract. No addition, change or modification made as herein provided shall void this Subcontract.

In the event changes in the work are authorized, Subcontractor's combined overhead and profit mark-up on direct costs for that changed work shall not exceed the amount allowed in the contract specifications. In the event that Subcontractor believes that it is being directed to perform work outside of the scope of work set forth in this Subcontract or has received a directive to perform work that is different than originally contemplated by the Contract Documents, Subcontractor shall, within 2 business days, provide written notice of such change to Contractor along with a proposed Change Order setting forth the specific scope of work to be performed, the cost to perform the work, and any impact the additional work will have on Subcontractor's ability to perform pursuant to the construction schedule. Along with the proposed Change Order, Subcontractor shall submit a written explanation supported by documentation from the Contract Documents which justify the work as being outside of Subcontractor's scope of work. Contractor shall review the proposed Change

Order and take whatever action it deems to be appropriate under the circumstances in its sole discretion. Subcontractor's failure to timely submit such notice and accompanying documentation shall result in the waiver of any claim that Subcontractor may have for additional compensation or extensions of time.

8. ADHERENCE TO PLANS AND SPECIFICATIONS. Subcontractor shall make no changes in nor deviate from the Contract Documents, and it shall be responsible and liable for any and all damage that may result from such changes or deviations. In addition, Subcontractor will be required at its own cost and expense to cause any of its work to conform strictly to the Contract Documents, unless a written authorization of Contractor executed in accordance with Paragraph 6, addressed to Subcontractor, shall be given, setting forth in detail what specific changes may be made. Should there be any discrepancy between the plans or the specifications, or both, and any governmental laws or regulations, then those which are more stringent and/or maximum shall govern. Contractor assumes no responsibility for failure of the plans or specifications of the Contract Documents to meet with governmental laws or regulations, and it is conclusively presumed that Subcontractor is familiar with said governmental laws or regulations, regardless of the provisions of the Contract Documents. Subcontractor agrees that should any change be required by any governmental authority, such change shall be made by Subcontractor without increase in the Contract Price, Contractor agreeing only that it will use its best efforts to have the Contract Documents meet with the requirement of governmental authority. If any of the Contract Documents provide for any performance contrary to any such laws and regulations, Subcontractor shall be required to notify Contractor, in writing, prior to the correction of such Contract Documents to comply with the applicable law or regulation and Subcontractor shall not perform any such work until the corrected Contract Documents have been approved in writing by Contractor.

9. TAXES. The Contract Price includes the payment by Subcontractor of any tax under California Sales or Use Tax Law, or any amendments thereto, or any law now existing, or which may hereafter be adopted by Federal, State, local or other governmental authority, taxing the materials, services required or labor furnished, or any other tax by reason of the performance of Work.

10. COMMENCEMENT AND COMPLETION OF THE WORK. Time is of the essence of this Subcontract. Subcontractor shall prosecute the Work in a prompt and diligent manner whenever such Work, or any part of it, becomes available or at such other time or times as Contractor may direct, and so as to promote the general progress of the construction of the Project. Subcontractor agrees to perform the Work in a prompt and diligent manner, commencing the several parts thereof at such times and proceeding therewith in such order as directed by Contractor's Superintendent, and agrees to finish the several parts and the whole of the Work, so that, in conjunction with other trades engaged thereon, it will assure the uninterrupted progress of the Project.

Subcontractor shall provide Contractor with scheduling information in a form acceptable to Contractor and shall conform to Contractor's progress schedules, including any changes made by Contractor in the scheduling of work. Subcontractor shall coordinate its work with that of all other contractors, subcontractors, suppliers and/or materialmen so as not to delay or damage their performance.

Initial project schedules are preliminary and are intended to show the project duration and general sequences of activities. Project schedules may be revised prior to the start of construction to refine and add activities as needed, and may be revised during construction based on various events affecting the schedule. Subcontractor is to conform to all schedules issued by Owner and/or Contractor. Any issue that may prevent Subcontractor from completing the project schedule as scheduled shall be raised in writing immediately upon discovery of said issues. Subcontractor shall be responsible for each of its subcontractors' and materialmen's compliance with the project schedule.

If requested, Subcontractor shall submit and update as required a schedule for their portion of the work. Any work that is required to be in place before Subcontractor's work can start is to be noted on their schedule. If requested by Contractor, Subcontractor shall submit with each progress billing a current schedule status report indicating if Subcontractor's work is ahead of, or behind schedule. If behind schedule, Subcontractor shall identify the reasons, and propose a plan to get back on schedule.

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 complete control of the premises on which the work is to be performed, unless where controlled by Owner, and 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 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 in the form of a proposed Change Order is presented in writing to Contractor within 2 business days of the commencement of such delay or the discovery of the changed circumstance that will lead to delay, whichever is earlier, and under no circumstances shall the time of completion be extended to a date which will prevent Contractor from completing its scope of work within the time allowed Contractor by Owner for such completion.

Subcontractor expressly waives any and all rights to make claim or be entitled to receive any compensation or damages for failure of Contractor or other subcontractors to have related portions of the Work completed in time for the work of the Subcontractor to proceed. No claims for additional compensation or damages for delays, whether caused in whole or in part by any conduct on the part of

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 the Owner as is equitable under all of the circumstances. In the event Subcontractor believes it has suffered damages arising out of a project delay caused by the Owner or Architect, Subcontractor shall submit a claim to Contractor within ten (10) days of the discovery of such event giving rise to such delay or pursuant to any claim provisions found within the Contract Documents, whichever provisions are more stringent. Contractor, in its sole discretion, may pass the claim on to the Owner for consideration. Failure of Subcontractor to submit a timely claim shall waive any right to damages Subcontractor may have arising from the Owner caused delay. The Owner's decision regarding the claim shall be final. 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 attorney's fees, to the extent that said claim is made by Contractor at the request of Subcontractor.

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 in conformance with Contractor's progress schedule. If Subcontractor shall deviate from the plans and specifications for the purpose of providing "or equal" materials, Subcontractor does so at its own risk, and no additional time shall be provided for added approval or permitting for those materials.

11. DAMAGES TO CONTRACTOR FOR DELAY. Inasmuch as Subcontractor is only one of many subcontractors performing services and providing materials to the Project, and since the timely performance of Subcontractor's work hereunder is essential to the coordination with and completion of the various other subcontractor's work, it is mutually recognized that Contractor will suffer substantial damage if Subcontractor fails to perform its work in a timely manner. Subcontractor agrees to reimburse Contractor for any and all liquidated damages that may be assessed against and collected from Contractor by Owner, which are attributable to or caused by Subcontractor's failure to furnish the materials and perform the work required by this Subcontract within the time fixed in the manner provided for herein, and in addition thereto, agrees to pay Contractor such other or additional damages as Contractor may sustain by reason of such delay by Subcontractor. The damages provided above may, at the option of Contractor, be applied against any amount due Subcontractor hereunder. The remedy herein provided for is to compensate Contractor for breach or default hereunder by Subcontractor which results in something other than a delay in performance, and that Contractor has the right in addition hereto, to pursue any and all legal and/or equitable remedies as might be available to it in the event Subcontractor fails in the performance of any of the terms of this Subcontract.

12. INTERRUPTION OF WORK. If, as a result of fire, earthquake, act of God, war, strikes, picketing, boycott, lockouts or other causes or conditions beyond the control of Contractor, Subcontractor discontinues the Work prior to its completion, then Subcontractor shall resume performance as soon as conditions permit. Subcontractor shall not be entitled to any damages or compensation on account of cessation of the Work as a result of any of the causes mentioned above.

13. INSPECTIONS AND APPROVALS. The Work or any portion of the Work shall be subject to inspection and approval by all applicable governmental authorities, Owner, Contractor and Contractor's representatives. Subcontractor shall be required to furnish for the approval of all governmental authorities, Owner, Contractor and Contractor's representatives such samples, shop drawings and patterns as may be required for the Work, and all portions of the Work hereunder shall be in accordance therewith. Subcontractor shall provide sufficient, safe and proper facilities during the progress of the Work for all such inspections in the field, at shops or at any place where materials required hereunder are in the course of preparation, manufacture, treatment or storage. It is agreed that any change or correction required as a result of any such inspections shall be made by Subcontractor without additional charge, unless otherwise specifically agreed upon by Contractor in writing.

14. SURETY. At the option of Contractor, Subcontractor shall file with Contractor, form and substance satisfactory to Contractor, a performance bond in the standard form in an amount equal to one hundred percent (100%) of the Contract Price, and a labor and materials bond in the standard form in an amount equal to one hundred percent (100%) of the cost of labor and materials to be incurred by Subcontractor hereunder, each bond to be executed by a corporate surety company licensed to do business in the State of California and approved by the federal government as evidenced by its inclusion in the list of approved sureties for federal projects in the Federal Register. If Subcontractor fails, for any reason, to so file, Contractor may, at its option, terminate this Subcontract. In the event Contractor requires Subcontractor to post either of said bonds as provided above, Subcontractor shall pay the cost thereof and the amount of said premium shall be included within Subcontractor's bid. It is agreed that no change, alteration or modification in or deviation from the Subcontract or the Contract Documents, whether made in the manner herein provided for or not, shall release or exonerate in whole or in part, any surety on any bond given in connection with this Subcontract, and each and every surety bond required hereunder shall so provide.

15. CORRECTION AND REMOVAL OF DEFECTS IN MATERIAL OR WORK. All defects in material used or work performed under this Subcontract as designated by City or County inspectors, Owner or Contractor, and which are brought to the attention of Subcontractor, shall immediately be corrected by Subcontractor to the satisfaction of Contractor and the designation person. If any workmanship or materials are declared in writing by Contractor, Owner or any applicable governmental authority to be unsound or improper, then Subcontractor shall, within twenty-four (24) hours after service upon it of written notice from Contractor, Owner, or the appropriate governmental authority to that effect, proceed with due diligence to remove from the site all such materials, whether worked or unworked, and shall take down all such portions of the unsound or improper work and shall make good all work in other trades

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damaged by such a removal. In the event that all or any portion of such work shall be of such a nature, or the time available to complete the whole work shall be so limited, that in the judgment of Contractor it would not be expedient to order the same replaced or corrected, Contractor, at its option, may deduct from the payments due or to become due to Subcontractor an amount that shall represent the difference between the fair and reasonable value of such work and its value had it been executed in conformity with the Contract Documents.

16. FAILURE TO ADEQUATELY PERFORM. Upon written or oral notification from Contractor that Subcontractor's performance is in any respect unsatisfactory, needs correction or that Subcontractor has failed to comply fully with the terms of this Subcontract or the Contract Documents, or that the Work has been damaged, Subcontractor shall, within twenty-four (24) hours of such notification, take all action (including the furnishing of sufficient materials, equipment and men to perform) which is necessary to correct or repair the Work in accordance with this Subcontract or the requirements of Contractor. Should Subcontractor fail to complete such repair within twenty-four (24) hours after written notification, Contractor may terminate this Subcontract and Contractor shall have all the rights and remedies provided at law or in equity, including those specified in Paragraph 19. If, in Contractor's sole judgment, Subcontractor displays a pattern of failure to comply with the terms of this Subcontract or the Contract Documents (as evidenced by more than one notice of Subcontractor's failure to so comply, given pursuant to this Paragraph) then Contractor may terminate this Subcontract and Contractor shall have all the rights and remedies provided at law or in equity, including those specified in Paragraph 19.

17. RELATED WORK. Subcontractor agrees to protect the work of others from damage as a result of its operations. Should Subcontractor damage the work or installations of Contractor or any other subcontractor, Subcontractor shall promptly pay to Contractor or such subcontractor, as the case may be, all costs incurred in repairing the damage. Subcontractor and its suppliers shall not be permitted to drive any vehicle over any curb or sidewalk on the Project at any time by any means. Subcontractor shall take all action necessary to ensure that its suppliers comply fully with the requirements of this Paragraph and shall be fully responsible for all damage to curbs and sidewalks caused by its vehicles or those of its suppliers. All damage to the Work prior to full completion and final acceptance of the Project as a whole, regardless of who caused such damage or how it occurred, shall be promptly repaired or replaced by Subcontractor at its own cost and expense. If Subcontractor refuses to repair or pay for the repair of any damage, Contractor shall perform the repairs with its own forces or hire a contractor to make such repairs and will back-charge Subcontractor for all costs of the work plus an administrative and overhead charge of 15%.

Subcontractor shall, as a part of the Contract Price, do all cutting, fitting and patching of its work that may be required to make its several parts come together properly, and to fit it to receive or be received by the work of other subcontractors, shown upon or reasonably implied by the Contract Documents.

Should Subcontractor cause damage to the work of any other subcontractor, then Subcontractor agrees to compensate promptly such subcontractor to the extent of its damage as provided in this Paragraph. Should the proper workmanlike and accurate performance of the Work under this Subcontract depend wholly or partially upon the proper workmanlike or accurate performance of any work or materials furnished by Contractor or other subcontractors on the Project, Subcontractor agrees to use all means necessary to discover any such defects and report same in writing to Contractor before proceeding with its work which is so dependent; and shall allow Contractor a reasonable time in which to remedy such defects. In the event Subcontractor does not so report to Contractor in writing, then it shall be assumed that Subcontractor has fully accepted the work of others as being satisfactory and Subcontractor shall be fully responsible thereafter for the satisfactory performance of the Work, regardless of the defective work of others.

18. GUARANTEE. Subcontractor guarantees to Contractor, Owner and all future owners of the Project, (a) that all materials and equipment furnished shall be new unless otherwise specified, (b) that all work will be performed in a good and workmanlike manner and shall be of good quality, free from faults and defects, and (c) that all work will be in conformance with the Contract Documents. Subcontractor agrees to execute any special guarantees as provided by the terms of the Contract Documents prior to final payment. Upon written notification of defects from Contractor or any such owner, Subcontractor shall proceed within twenty-four (24) hours of such notice with due diligence, at its own expense, to replace any defective materials or perform any labor necessary to correct any defect in the Work, and upon failure of Subcontractor to do so, Contractor or the affected owner may furnish or secure, at Subcontractor's expense, such materials or labor as are necessary to bring the Work up to the required standard, all costs thus incurred thereupon becoming a debt immediately due and payable by Subcontractor, which debt Subcontractor shall pay to Contractor within fifteen (15) days after written demand from Contractor or the affected owner.

19. CONTRACTOR'S REMEDIES. (a) If Subcontractor or any of Subcontractor's subcontractors, suppliers, materialmen or laborers, shall at any time:

- (i) refuse or neglect to supply a sufficient number of properly qualified workers or a sufficient quantity of materials of proper quality;
- (ii) abandon Subcontractor's work or fail in any respect to promptly and diligently prosecute Subcontractor's work;
- (iii) fail to promptly pay subcontractors, suppliers, materialmen, rental companies or laborers;
- (iv) fail to accelerate Subcontractor's work as required by Paragraph 10 hereof;

- (v) give Contractor a reasonable basis to doubt that Subcontractor's work can be completed for the unpaid portion of the Subcontract Sum or within the required time;
- (vi) declare bankruptcy or make a general assignment for the benefit of creditors or files for bankruptcy, assigns assets for the benefit of creditors, becomes insolvent or be unable to pay its obligations as they mature;
- (vii) otherwise fail to perform any of the agreements and obligations set forth in the Subcontract, these Terms and Conditions or the Contract Documents; or
- (viii) default in the performance of any contract or agreement with Contractor, whether related to the Project or otherwise, then Subcontractor shall be in default herein.

(b) In any such event, Contractor may pursue any remedies available by common law or statute, including but not limited to one or more of the following:

- (i) withhold any sums due or thereafter to become due to Subcontractor under the Subcontract and any other contract, whether related to the Project or otherwise and during such period ANY withheld amounts shall not accrue interest;
- (ii) provide and/or supplement any labor and materials as Contractor shall determine to cure such default and deduct the cost thereof from any money then due or thereafter to become due to Subcontractor under the Subcontract or any other contract, agreement, or otherwise;
- (iii) terminate the Subcontract, in which case all contracts whether written or oral between Subcontractor and persons or entities providing labor, material or equipment pertaining to Subcontractor's work shall be deemed assigned to Contractor, and Subcontractor hereby appoints Contractor as its attorney-in-fact to enforce the provisions of such contracts, provided that nothing herein shall obligate Contractor to honor such contracts, and;
- (iv) 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 any other person or persons to complete Subcontractor work and provide the material therefore; in which case if the unpaid portion of the amount to be paid under the Subcontract exceeds the charges, expenses and damages sustained by Contractor in completing the work or as a result of such defaults, such excess shall be paid by Contractor to Subcontractor, but if such charges, expenses, and damages exceed said unpaid portion, Subcontractor shall pay the difference to Contractor immediately upon demand; or
- (v) offset and apply any amounts due Contractor as a result of such default against any earned but unpaid amounts owing to Subcontractor by Contractor under the Subcontract, including without limitation, any retainage held by Contractor, any amounts owed to Subcontractor under any other contract, whether related to the Project or otherwise.

Prior to exercising the remedies in this Section, Contractor shall provide Subcontractor written notice of default and not less than forty-eight (48) hours to cure such default. Subcontractor shall have the opportunity to remedy, or commence to remedy, to Contractor's satisfaction, the default, deficiency or failures which are the basis of Contractor's termination notice within the forty-eight (48) hour notice period. Contractor's remedies are cumulative, and the exercise of one remedy shall not restrict Contractor, at the same time or thereafter, from exercising any other remedy set forth herein or provided by applicable law.

In the event a termination of this Subcontract is found not to have been warranted under this or any other provision of this Subcontract, 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 Subcontract as if the Subcontract has been terminated for Contractor's convenience pursuant to subparagraph (c) of this Paragraph at that point.

(c) Contractor may at any time and for any reason terminate Subcontractor's services and work for Contractor's convenience. Such termination shall be by written notice to Subcontractor at Subcontractor's place of business.

Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the work and the placing of orders for materials, equipment and supplies in connection with the performance of this Subcontract, 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 materials and equipment on the Project site or in transit thereto.

Upon such termination, Subcontractor shall be entitled to payment of the following amounts, which shall constitute full satisfaction of all claims by Subcontractor for payment on account for work performed under this Subcontract; (1) the actual cost of the work completed in the conformity with this Subcontract, and not yet paid, through the date of termination; plus (2) such other costs actually incurred by Subcontractor as are payable to Contractor under the Prime Contract and approved by Owner; plus (3) the sum of 15% of the actual cost

of the work completed for overhead and profit. Subcontractor shall not be entitled to any claim or claim of lien, stop notice, or bond claim against Contractor or Owner for any additional compensation or damages in the event of such termination and payment.

(d) 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 any other act of insolvency, Contractor may terminate this Agreement giving forty-eight (48) hours written notice, by certified mail, to Subcontractor and its surety, if any. If an order for relief is entered under the Bankruptcy Code with respect to Subcontractor, Contractor may terminate this subcontract by giving forty-eight hours written notice, by certified mail, to Subcontractor, its trustee, and its surety, if any, unless Subcontractor, the surety, or the trustee;

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

Subcontractor hereby authorizes all financial institutions, materialmen and individuals to disclose to Contractor Subcontractor's financial status, credit and manner of meeting obligations.

20. INSURANCE. Subcontractor shall, at its expense, procure and maintain insurance on all of its operations, with carriers acceptable to Contractor, and in amounts acceptable to Contractor and Owner and as required by the Contract Documents and ADDENDUM "C". Subcontractor shall also name Contractor and Owner as Additional Insured on all insurance policies applicable to this Project, including but not limited to its general commercial liability policy and excess liability policy, and shall provide a certificate of such insurance to Contractor and Owner prior to commencing any work on the Project. The Additional Insured coverage shall also provide for coverage to all officers and representatives of Contractor and Owner.

Subcontractor shall also provide for an excess liability insurance policy (or "umbrella") of at least \$2,000,000 to be maintained over its General Commercial Liability and Automobile Liability policies. Subcontractor's General Commercial Liability and Excess Liability policies shall be treated as primary insurance, and no policy owned by Owner or Contractor shall be affected until after Subcontractor's General Commercial Liability and Excess Liability policies have been exhausted. Insurance maintained by Owner or Contractor shall not be called upon to contribute to Subcontractor's primary or excess insurance carrier's duty to defend or indemnify unless required by law.

Subcontractor shall maintain primary and excess insurance with completed operations coverage for at least four years following completion of the Project defined by the California Civil Code. Subcontractor shall provide updated certificates of insurance to Contractor on an annual basis.

21. WAIVER OF SUBROGATION. Subcontractor waives all rights against Contractor and against all other subcontractors and Owner for loss or damage to the extent reimbursed by any property or equipment insurance applicable to the work, workers' compensation insurance, or automobile liability insurance, except such rights as they may have to the proceeds of such insurance. If any applicable policies of insurance referred to herein 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. Subcontractor shall require its subcontractors' similar waivers in favor of the parties identified herein.

22. INDEMNIFICATION.

To the fullest extent permitted by law, Subcontractor shall defend, indemnify, and hold harmless (at Subcontractor's sole expense) Contractor and Owner and all of their agents, employees, owners, partners, joint venturers, representatives, affiliated companies, members, designees, officers, directors, shareholders, successors, and assignees from claims, demands, causes of actions and liabilities of every kind and nature whatsoever arising out of or in connection with Subcontractor's operations performed under this Subcontract, including but not limited to contract claims, tort claims, claims for bodily injury, death or damage to property, demands, damage actions, causes of actions, suits, losses, judgments, liabilities, delay claims, claims for construction defects, claims for infringement of patents, claims for failed compliance with prevailing wage requirements or the prevailing wage requirements of any subcontractor or supplier of Subcontractor, and claims for false claims on public works, as well as any and all attorneys' fees and costs and consultants' fees and costs associated with such claims. This indemnification shall extend to claims occurring after this Subcontract is terminated as well as while it is in force. Subcontractor shall not be responsible to indemnify an indemnitee to the extent that the claim arises from the active negligence, sole negligence, or willful misconduct of an indemnitee or its agents or employees. The indemnity set forth in this Section shall not be limited by insurance requirements or by any other provision of this Subcontract. The indemnity obligation set forth in this section shall continue until it is finally adjudicated that any and all actions against the indemnified parties for such matters which are indemnified hereunder are fully and finally barred by applicable laws. The defense and indemnity obligations herein are separate obligations, and the defense obligation is immediate upon Contractor's receipt or discovery of any claim arising out of or in connection with Subcontractor's operations performed under this Subcontract. Contractor shall have the right to withhold from any payments due or to become due to the Subcontractor an amount sufficient in its judgment to protect and indemnify Contractor and Owner from and against any and all claims as described in this Paragraph.

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23. DEFENSE OF PATENTS. The Subcontractor shall defend all suits or claims for infringement by it of any patent rights that may be brought against Contractor, Owner and/or the Project architect arising out of the Work, and shall hold Contractor, Owner and the Project architect harmless from loss on account thereof, except that subcontractor shall not be responsible for such loss when a particular process or product of a particular manufacturer or manufacturers is specified.

24. CLAIMS. If any dispute shall arise between Contractor and Subcontractor regarding performance of the Work, or any alleged change in the scope of work, Subcontractor shall timely perform the disputed work upon written direction from Contractor and shall give written notice of a claim for additional compensation for the work prior to commencement of the disputed work, detailing the grounds for additional compensation and the pricing for the work. Subcontractor's failure to give written notice prior to commencement constitutes an agreement by Subcontractor that it will receive no extra compensation for the disputed work.

25. DISPUTE RESOLUTION. Any dispute resolution procedure in the Prime Contract shall be deemed incorporated in this Subcontract, and shall apply to any disputes arising hereunder, except disputes not involving the acts, omissions or if otherwise the responsibility of the Owner under the Prime Contract, those which have been waived by the making or acceptance of final payment, and questions regarding the licensure of the subcontractor. 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 the Owner under such procedure and, subject to the other provisions of this Subcontract, to pay to Subcontractor the proportionate part of any sums paid by the Owner to which Subcontractor is entitled as determined in such dispute resolution process.

For disputes not involving the acts, 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 mediation, prior to initiating any legal proceeding. In any dispute resolution between the parties, the prevailing party shall be entitled, in addition to any other relief granted, to recover its costs of participation, including attorneys' and experts' fees.

Nothing herein shall prohibit a party from initially filing an action in California Superior Court or any other forum to preserve its legal rights, but the Parties agree that such action shall be stayed pending completion of mediation.

26. TRADE UNIONS/LABOR RELATIONS. (a) Subcontractor has been notified that Contractor has a valid and subsisting agreement with one or more AFL-CIO construction trade unions for the area in which the Work is to be performed, and that the Work may be subject to said agreement and any related master agreement. It is also understood that Subcontractor may have a valid and subsisting agreement with the AFL-CIO Joint Trades Council for the area in which the Work is to be performed. It is further agreed that Contractor may, at its option, terminate this Subcontract, or the contracts of Subcontractor's subcontractors (and Subcontractor shall so provide in contracts with its subcontractors), in the event that the Subcontractor, or its subcontractors, or any of them, are listed by the administrative office of an appropriate health and welfare, pension, vacation or apprenticeship fund as being delinquent in any payment to any such funds, regardless of the job in connection with which the delinquency occurred. Subcontractor will comply with all terms and conditions of any master labor agreement covering the Work under this Subcontract and will use its best efforts to prevent any strike, slowdown or other labor difficulties or disputes arising out of the presence of Subcontractor on the Project or the activities of Subcontractor. In the event Subcontractor, or its subcontractors, or any of them, breach any of the provisions of this Paragraph, it is agreed that Contractor shall immediately have the option to terminate this Subcontract. The foregoing right to terminate shall not be construed to deny Contractor any other right or remedy when it may have under this Subcontract at law or in equity. All of the provisions of this Paragraph shall apply to Subcontractor, or its subcontractors, or any of them, performing work on the Project under any change of name, or association, or joint venture (including any person who may have been a principal financially associated with Subcontractor, or its subcontractors, or any of them, who is delinquent in fringe benefit payments to the aforesaid named funds).

(b) Without limiting paragraph (a) above, the parties acknowledge that Contractor may contract or subcontract out work on the Project to union or non-union contractors or subcontractors. Subcontractor agrees to compensate and indemnify Contractor for any loss which it may suffer (i) as a result of any job action, work stoppage, work slowdown, strike or picketing of any kind on, near or in relation to the Project that results from Subcontractor's use of union or non-union labor on the Project, or (ii) from any job action, work stoppage, work slowdown, strike or picketing of any kind on, near or in relation to the Project, that is initiated, engaged in, honored, complied with, sanctioned, or lent support to by Subcontractor or Subcontractor's employees. In addition to any other rights or remedies which Contractor may have, Contractor may also immediately terminate this Subcontract with Subcontractor upon the occurrence of any event described in clause (i) or (ii) above. Contractor's exercise of its right to terminate this Subcontract with Subcontractor under this paragraph (b) shall not give rise to any liability on the part of Contractor in contract or tort to Subcontractor. Contractor's sole obligation to Subcontractor in the event Contractor exercises its right to terminate this Subcontract under this paragraph is payment to Subcontractor for work actually completed by Subcontractor on the date of Contractor's termination of this Subcontract. Any costs or losses incurred by Contractor as a result of the actions described in this paragraph (b) may be charged against any monies due or to become due to Subcontractor under this Subcontract.

27. PREVAILING WAGES AND PAYROLL RECORDS. (a) In the absence of a controlling collective bargaining agreement, Subcontractor understands and agrees that the wages to be paid by Subcontractor to laborers and mechanics employed by Subcontractor in the construction of the Project, or any part thereof, shall be a wage not less than the wages prevailing for corresponding classes of laborers and mechanics employed on construction of a similar character in the locality of the work to be performed hereunder, said prevailing wages to be payable in the manner and in accordance with all applicable Federal, State, County, City and local wage laws. As

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a condition precedent to any payment hereunder, Subcontractor shall submit to Contractor with each and every report of portions of the Work completed as required, a certificate in a form acceptable to Contractor certifying that it has complied with the provisions of all applicable Federal, State and Local laws related to the payment of prevailing wages. Subcontractor hereby authorizes Contractor to inspect and make copies of Subcontractor's books, payrolls and accounts with respect to this Subcontract from time to time, for the purpose of verifying that prevailing wages are being paid by Subcontractor to its laborers and mechanics. Subcontractor shall maintain payroll records during the entire course of the Work and Subcontractor shall preserve said payroll records for a period of not less than three (3) years from the date of completion of the Work. Subcontractor's payroll records shall contain the name and address of each employee who works for Subcontractor on the Project, its correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. Subcontractor agrees that upon failure to fully comply with the provisions of this Paragraph, Contractor may withhold from Subcontractor any payment or advances payable to Subcontractor hereunder. Subcontractor further agrees that any failure to comply with the terms of this Paragraph shall be deemed a material breach of this Subcontract and, as such, Contractor may, at its option, elect to terminate this Subcontract upon twenty-four (24) hours' written notice to Subcontractor and shall have all the rights and remedies provided at law or in equity, including those specified in this Subcontract.

Contractor reserves the right to audit Subcontractor's Payroll Records (as that term is defined in CA Code of Regulations §16000) for all of Subcontractor's employees who contribute work to the Project. Such Contractor's right to audit shall remain in effect for three years following substantial completion of the Project or termination of this Subcontractor, whichever occurs later.

(b) Subcontractor agrees to all of the terms, conditions and provisions contained in ADDENDUM "D" attached hereto and incorporated herein by reference, including, without limitation, the text and requirements of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813 and 1815, the text of each of which is attached to ADDENDUM "D" and incorporated herein by reference.

28. SB 727/CA LABOR CODE § 218.8 COMPLIANCE. For those projects that fall subject to SB 727 as codified in California Labor Code section 218.8, attached hereto and incorporated into this Agreement is ADDENDUM "[Insert Addendum #]", including its Attachments A – B. Where applicable, Subcontractor is bound by the provisions of ADDENDUM "[Insert Addendum #]", shall comply with its requirements, and ensure that Subcontractor's subcontractors are bound by and comply with its requirements.

29. INDEPENDENT CONTRACTOR RELATIONSHIP. 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 therefor, 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, 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.

30. FLOW-DOWN OF PRIME CONTRACT. It is the intent of Subcontractor and Contractor that Subcontractor shall be bound to Contractor by the terms and conditions of this Subcontract and shall also assume toward Contractor all obligations, liabilities, and responsibilities that Contractor, by the Prime Contract, has assumed toward Owner. Contractor shall further have the benefit of all rights, remedies, and redress and limitations, in respect to Subcontractor and all things done and used by Subcontractor in performance of the Work which Owner has against Contractor under the Prime Contract or by law. By way of example, this includes, without limitation, all payment provisions, delay provisions, claim provisions, ADR requirements, insurance requirements, prevailing wage or labor agreement requirements, warranties, guarantees, indemnity and defense obligations, and liquidated damages.

Contractor and Subcontractor agree to a "pass through" of all of the terms and conditions of the Prime Contract. While this "pass through" is all inclusive, Contractor deems it necessary to highlight some of those terms and conditions in the Sections of this Agreement, as well as to include what contractor deems to be standard contract terms. This Subcontract has been fully negotiated between Contractor and Subcontractor, and it shall not be construed in either party's favor.

31. CLEAN-UP AND STORAGE. Subcontractor shall maintain, to the satisfaction of Contractor, all work sites in a clean, neat and safe condition and shall comply promptly with any instructions from Contractor with respect thereto. As the Work is completed Subcontractor shall remove from the site thereof, to the satisfaction of Contractor, all of Subcontractor's rubbish, debris, materials, tools and equipment and, if Subcontractor fails to do so promptly, Contractor may remove the same to any place of storage or any dumping ground at Subcontractor's risk and expense and without incurring any responsibility to Subcontractor for loss, damage or theft. All storage and removal costs thus incurred by Contractor shall be deductible from any payment or balance due Subcontractor hereunder. Subcontractor shall at all times follow the requirements of the "Subcontractor Hazardous Materials/Waste Management Protocol".

32. INTEREST RATE ON CHARGEBACKS. Whenever any monies are expended or costs or expenses are incurred by Contractor on behalf of or on account of Subcontractor, for which Subcontractor should have paid or for which Subcontractor is required to reimburse Contractor, or if Contractor continues or completes the Work after default by Subcontractor, Subcontractor shall pay to Contractor interest at the rate of ten percent (10%) per annum. The said interest charges shall accumulate from the time said monies are expended or said costs or expenses are incurred until the same are paid to Contractor by Subcontractor. Nothing herein contained shall be construed as requiring Contractor to make any such expenditure, advance any such monies, or incur any such expenses.

33. USE OF CONTRACTOR'S EQUIPMENT. The use of any of Contractor's equipment, rigging, blocking, hoist, or scaffolding by Subcontractor given, loaned or rented to Subcontractor by Contractor shall be upon the distinct understanding that Subcontractor use the equipment, rigging, blocking or scaffolding at its own risk and takes the same "as is," and Subcontractor assumes all responsibility for and agrees to hold Contractor harmless from all claims or damages whatsoever resulting from the use thereof, whether such damage results to Subcontractor or its own employees or property or to other persons or the employees or properties of other persons. Nothing herein contained shall be deemed to permit any such use by Subcontractor without the prior written consent by Contractor.

In the event Subcontractor uses Contractor's equipment, materials, labor, supplies or facilities, Subcontractor shall reimburse Contractor at a pre-determined rate. Subcontractor also assumes all responsibility for physical damage to such equipment, materials, supplies or facilities used by Subcontractor or its agents, employees, or subcontractors.

34. PERMITS AND LAWS. Subcontractor shall promptly obtain, at its expense, and before commencing any portion of the Work, all permits and licenses required for the Work, unless otherwise expressly provided by the Owner or Contractor. Subcontractor shall comply with all laws, ordinances, rules, regulations, orders and requirements of the applicable city and county government, the State and Federal government, and of any board or commission or any other duly qualified body having jurisdiction, which shall or might affect or apply to the Work. Subcontractor shall exhibit each such required permit or license to Contractor upon its request.

35. ASSIGNMENT. Subcontractor shall neither assign nor subcontract the whole or any portion of this Subcontract or the payments hereunder without first obtaining in each and every instance permission in writing from Contractor, and then only subject to, and upon the same terms and conditions as the provisions of this Subcontract. Any permission granted by contractor shall not be deemed permission to any subsequent assignment or subcontract. Any assignment or subcontract by Subcontractor made without the consent of Contractor as herein provided shall be null and void and shall at the option of Contractor be grounds for termination of this Subcontract. Any such assignment or subcontract shall contain all of the provisions of this Subcontract and shall require the Assignee or subcontractor thereunder to be directly liable to Contractor in all respects as herein required of Subcontractor. Any assignment of this Subcontract or assignments of payments permitted by Contractor shall be submitted to Contractor for its prior written approval and shall not be binding upon Contractor until so approved. No assignment shall relieve Subcontractor from its duties, obligations and liabilities hereunder, unless specifically relieved in writing by Contractor.

36. LIENS. Subcontractor shall pay when due all claims for labor or material incurred by it in the performance of this Subcontract. If any lien, stop notice or payment bond claim of any potential claimants identified in Civil Code Sections 8400 or 9100, or attachments, garnishments or suits affecting title to real property are filed against the Property, or any portion thereof, Subcontractor shall, within ten (10) days after written demand by Contractor, cause the effect of such lien, attachment or suit to be removed from the Property, or any portion thereof, and in the event Subcontractor shall fail to do so, this Subcontract may be terminated, at Contractor's option, upon twenty-four (24) hours' notice to Subcontractor, and Contractor shall have all the rights and remedies provided at law or in equity, including those specified this Subcontract. Contractor is hereby authorized to use whatever means it may deem best to cause the lien, stop notice, bond claim, attachment, or suit, together with its effect upon the title, to be removed, discharged, satisfied, compromised or dismissed, and the cost thereof, including reasonable attorneys' fees incurred by Contractor, shall become immediately due from Subcontractor to Contractor. Subcontractor may contest any such lien, stop notice, bond claim, attachment, or suit, provided that first it shall cause Owner not to withhold, by reason of such liens, attachments or suits, monies due to Contractor from Owner.

It is understood and agreed that the full and faithful performance of this Paragraph on the part of Subcontractor 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 Subcontract shall be impressed with a trust in favor of subcontractors, materialmen and laborers furnishing labor and material to Subcontractor on the work herein subcontracted.

37. DEATH OF SUBCONTRACTOR. If Subcontractor is a sole proprietor, his death shall automatically terminate this Subcontract.

38. JOB SITE SUPERINTENDENT. During the performance of the Work, Subcontractor shall furnish to each job site sufficient skilled labor, adequate and suitable materials, tools and equipment to proceed with the Work. A qualified superintendent or foreman, fluent in spoken and written English, shall be designated for each jobsite to act as the representative of Subcontractor on the Project, with the right and power to obligate Subcontractor. Subcontractor shall continuously employ such superintendent or foreman on each jobsite wherein Subcontractor is conducting any portion of the Work under the Contract Documents. Such superintendent or foreman shall at all times be satisfactory to Contractor and shall not be changed without the written consent of Contractor. Upon oral or written notice from Contractor that such superintendent or foreman is unsatisfactory to Contractor, Subcontractor shall replace such person with a person satisfactory to Contractor within twenty-four (24) hours.

39. LIST OF SUBCONTRACTORS & SUPPLIERS. Subcontractor shall within ten (10) days of execution of this Subcontract provide in writing a list of names and addresses of all subcontractors and suppliers who will furnish labor and/or materials to Subcontractor for the Work. The written list of subcontractors and suppliers shall, upon receipt by Contractor, be attached to this Subcontract and shall be made a part hereof. Subcontractor shall have no right to change the subcontractors or suppliers without first obtaining written permission of Contractor. Subcontractor warrants that the list of subcontractors and suppliers who will supply Subcontractor shall be the only subcontractors and suppliers for Subcontractor for the Work.

40. TIME OF ESSENCE AND WAIVER. All time limits stated in this Subcontract and the Contract Documents are of the essence to this Subcontract. A Waiver by Contractor of any breach of anyone of the terms or condition herein contained or consent by Contractor to the delay in performance of Subcontractor of any obligations to be performed shall not be construed as a waiver of any subsequent breach. Delay in the enforcement of any remedy by Contractor in the event of a breach of any term or condition hereof, or the exercise by Contractor of any right hereunder, shall not be construed as a waiver.

41. UTILITIES. Subcontractor shall furnish at its own expense all utilities, including, but not limited to, all electrical power, lighting and water needed to properly perform the Work.

42. DATA FURNISHED BY SUBCONTRACTOR. Subcontractor at its own expense shall furnish promptly, when requested by Contractor, any number of prints of its shop drawings, schedules, reports, or any other data that may be necessary in the opinion of Contractor for distribution among other subcontractors and to Contractor for the performance or clarification of work.

43. SUBCONTRACTOR'S WARRANTIES AND REPRESENTATIONS. As a material inducement to Contractor to enter into this Subcontract, Subcontractor warrants and represents as follows:

- a) Subcontractor is familiar with all requirements of the Subcontract and Contract Documents.
- b) Subcontractor has investigated the project and has satisfied itself regarding the character of the Work and local conditions that may affect Subcontractor or its performance.
- c) Subcontractor is satisfied that the Work can be performed and completed in conformance with this Subcontract.
- d) Subcontractor accepts all risk directly or indirectly connected with the performance of this Subcontract.
- e) Subcontractor warrants that in entering into this Subcontract it has not been influenced by a statement or promise of Contractor or its representatives, but only by the Contract Documents.
- f) Subcontractor is financially solvent.
- g) Subcontractor is experienced and competent to perform this Subcontract.
- h) Subcontractor is qualified, licensed in good standing and authorized to do business as a contractor in the State of California.
- i) Subcontractor is familiar with all general and special laws, ordinances and regulations that may affect the Work, its performance or those persons employed with respect thereto.
- j) Subcontractor is familiar with the tax and labor regulations and with rates of pay that will affect its performance hereunder.

44. NO PRICE ESCALATION. Subcontractor shall not be entitled to any material or labor price increases during the performance of its scope of Work on the Project. Subcontractor has included all conceivable material and labor price increases in determining the Contract Price and has committed to that price despite the possibility of later increases in its own costs for materials and labor.

45. PUBLICITY. Subcontractor shall not disclose or make public to any news media or any persons associated with the news media or by advertisement or by public release of any kind or nature the fact that Subcontractor has entered into this Subcontract with Contractor unless such public release is first approved in writing by Contractor.

46. CONFLICT OF LAW. The laws of the State of California shall govern the interpretation, validity and construction of the terms and conditions of this Subcontract.

47. SEVERABILITY. Should any of the provisions of this Subcontract prove to be invalid or otherwise ineffective, all other provisions of this Subcontract shall remain in full force and effect. There shall be substituted for any such invalid or ineffective provision a provision which, as far as legally possible, most nearly reflects the intention of the parties hereto.

48. HEIRS AND ASSIGNS. This Subcontract shall insure to the benefit of and be binding on the heirs, executors, administrators and successors of the respective parties hereto, and the assigns of Contractor.

49. NOTICE. Any notices or statements required to be given under this Subcontract unless otherwise provided herein, shall be served by certified mail, facsimile or email (with an automated read receipt feature). Notices required to be given within a short time period should not be sent by certified mail, but may be carbon copied by certified mail along with a facsimile or email transmission.

50. PLACE OF PERFORMANCE. Execution of this Subcontract shall be Contractor's principal place of business in the City of Woodland, County of Yolo, State of California, and the Property shall be deemed the place of performance of this Subcontract for all legal purposes.

51. SAFETY. (a) Subcontractor shall comply fully with all applicable laws, orders, citations, rules, regulations, standards and statutes with respect to occupational health and safety, the handling and storage of hazardous materials, accident prevention, safety equipment and practices including the accident prevention and safety program of GC/Owner and Contractor. Subcontractor shall regularly 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, standards and statutes.

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(b) Subcontractor shall promptly furnish Contractor with copies of all accident reports, promptly reporting any accident or injury to any of the employees, agents or servants of Subcontractor used or utilized on the Project.

(c) Subcontractor shall furnish Contractor with current Material Safety Data Sheets for hazardous materials prior to delivery of any hazardous materials to the job site. The Subcontractor shall inform the Contractor of any precautionary measures to be taken to protect employees.

(d) Subcontractor agrees that it is Subcontractor's sole responsibility to employ labor in accordance with all applicable safety codes, including but not limited to State and Federal Safety Codes, and under conditions satisfactory to Contractor.

52. SKILLED AND TRAINED WORKFORCE REQUIREMENTS. For those projects subject to the Skilled and Trained Workforce requirements imposed by California Public Contracts Code Sections 2600 et seq., in relation to certain public works projects, attached hereto and incorporated into this Subcontract is ADDENDUM E, including its Attachments A – C. Subcontractor is bound by the provisions of "ADDENDUM E" and shall comply with its requirements and properly fill out, date, sign and timely submit the reporting forms included as Attachments.

53. SUBCONTRACTOR HAZARDOUS MATERIALS/WASTE MANAGEMENT PROTOCOL. Subcontractors are required to provide material specific information to Broward Builders as part of the construction submittals for each potentially used hazardous product. Each Subcontractor is required to submit the following items to Broward Builders, Inc.:

- a) A description of construction activities requiring the use of hazardous waste generating products.
- b) An inventory of the products (quantities and types of containers) with a Safety Data Sheet for each product.
- c) A written protocol for managing each type of waste generated (recycling and/or disposing of waste fluorescent tubes, aerosol cans, paints, caulks, sealants, etc.).
- d) Identify all types of waste containers to be used on site, such as waste bins, lockable storage units, and drums.
- e) Identify the names of outside companies being used to contain, collect, manage, transport, recycle, treat, and dispose of any hazardous material and waste.
- f) Identify a specific person, or people, responsible for ensuring proper on-site waste management activities.
- g) Provide documentation that Subcontractor has received hazardous materials/waste management training. Training should be, labelling, management, spill response, and spill cleanup. Notification of changes in protocol, or incidents, shall be given to Broward Builders immediately.
- h) Conduct weekly meetings with Subcontractor work crews to educate them on the proper handling of hazardous materials, and on waste management requirements and practices. Meetings shall be documented showing attendance and topics discussed.
- i) Each Subcontractor shall submit a bi-weekly written summary. Summaries shall consist of any use, generation, management, recycling, and disposal of hazardous material and waste.
- j) Each Subcontractor shall identify a responsible official for on-site hazardous material and waste management. In addition, a corporate official must be designated to receive on-site reports. Any changes made to these designated officials must be communicated immediately by e-mail and/or letter to the Broward Builders Project Manager/Superintendent.

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

55. SECTION TITLES. Section Titles in the Subcontract Agreement are for convenience only and shall not be construed to modify, expand or limit the provisions of the section to which they refer.

56. ENTIRE AGREEMENT. This Subcontract contains all covenants, stipulations and provisions agreed upon by the Parties hereto and supersedes any prior written or oral representations, including but not limited to any prior offers, counteroffers, negotiations, bids, proposals, estimates, schedules, or attachments to any of them. No oral representations or other agreements have been made by Contractor except as stated in this Subcontract. No agent or representative of either party has authority to make and the parties shall not be liable for, any statement, representation, promise or agreement not set forth herein. This agreement may not be changed in any way except as provided herein, and no term or provision hereof may be waived by the Contractor except in writing duly signed by its duly authorized officer or agent. Subcontractor, its subcontractors, suppliers and/or materialmen are bound by the Prime Contract, this Subcontract, and the Contract Documents expressly incorporated therein insofar as they relate in any way, directly or indirectly, to the work covered by this Subcontract.

57. Equal Opportunity Employment. The Subcontractor agrees to be bound by and comply with all applicable Fair Employment Practices Provisions and Regulations of Federal, State or other Governmental authority having jurisdiction, including the Equal Opportunity Clause as set forth in Section 303 of Executive order 10925 of March 6, 1961, as amended by Executive Orders 11114 of June 22, 1963 and 11246 of September 24, 1965 (by this reference made a part hereof) also including revisions or amendments thereto subsequent to the publications of said Executive Orders. Subcontractor acknowledges that it has read said Provisions and Regulations and is familiar with the terms thereof. Subcontractor agrees to provide Contractor with such reports as Contractor deems necessary to comply with equal opportunity provisions. Subcontractor acknowledges that Contractor is an Equal Opportunity Employer.

In Witness Whereof, the parties have executed and delivered this Subcontract on the date first set forth above.

CONTRACTOR:
Broward Builders, Inc.

SUBCONTRACTOR:

By: _____
Randy Cantrell

By: _____
Printed Name:

Its: Vice President

Its: _____

The above represents and warrants that he/she has been duly Authorized to execute and deliver this Subcontract for the Entity referenced above.

MAILING ADDRESS

MAILING ADDRESS:

Broward Builders, Inc.
1200 E. Kentucky Avenue
Woodland, CA 95776
(530) 666-5635

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ADDENDUM "A"

DESCRIPTION AND SCOPE OF WORK

The work to be performed by Subcontractor as outlined under the terms of this agreement consists of the following:
Furnish and install all labor, materials, tools and equipment ... _____, all items complete as per plans and specifications, [Drawing List or reference] **Sections** _____ **Addenda** _____, and...

SECTION 14. SURETY: **Surety bonds** _____ **not required.**

SECTION 26. TRADE UNIONS: **Broward Builders Inc. is signatory to the Carpenter's, Cement Masons, Tapers and Operating Engineer's Unions.**

When Subcontractor does not install all material under this Subcontract such material as is not installed is to be delivered F.O.B.

in strict accordance with the plans and specifications as prepared by _____

Architect and/or Engineer, for the construction of _____

For _____

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ADDENDUM "B"**CONTRACT PRICE**

Contractor agrees to pay to Subcontractor for the satisfactory completion of the herein described Work the sum of

[lump sum, unit price, cost-plus]

in monthly payments of _____ () % of the work performed in any preceding month, in accordance with estimates by Subcontractor and as approved by Contractor and Architect and Owner such payments to be made as payments are received by contractor from Owner covering the monthly estimates of Contractor, including the approved portion of Subcontractor's monthly estimate.

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