	<b>ROEM Builders Incorporated</b>
	<b>AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR</b> <i>(For-Rent Residential Product)</i>
Project:  Project Address:	Contract No.: xxxxxxxx  Project No.: xxx  Cost Code:  Amount: \$
Contractor: <b>ROEM BUILDERS INCORPORATED</b>  Address: 1650 Lafayette Street Santa Clara, CA 95050	Subcontractor:  Address:
Phone: 408-984-5600  Fax: 408-984-3111	Phone:  Fax:

THIS SUBCONTRACT AGREEMENT (“**Agreement**”) is made and entered into between **ROEM BUILDERS, INCORPORATED**, a California corporation (“**Contractor**”) and the Subcontractor named above (“**Subcontractor**”). The effective date of this agreement is [redacted], 20[redacted]. All capitalized terms not otherwise defined herein shall have the meanings assigned to them in the **GENERAL SUBCONTRACT PROVISIONS (“General Provisions”)** attached hereto and incorporated herein. Any references to “**Owner**” shall refer to [redacted], **LLC**. In the event Contractor’s involvement in the Project terminates for any reason, Subcontractor, upon Owner’s written request, will recognize Owner or any person or entity designated by Owner as the successor-in-interest to Contractor under this Agreement, but in no event shall Owner or such other entity be responsible for any default of Contractor or any liabilities under this Agreement arising prior to the date of Owner’s notice to Subcontractor electing to continue Subcontractor’s Work under this Agreement.

1. **STATEMENT OF WORK.** Subcontractor will furnish and pay for all labor, equipment, tools, machinery, scaffolding, utilities, consumable supplies, permits, supervision, materials and all taxes necessary to construct and complete upon the Project, in a first class, workmanlike and substantial manner, the work described in **Exhibit A (SCOPE OF WORK)**, attached hereto and (the “**Work**”). Subcontractor shall perform the Work in strict compliance with the Contract Documents (as defined below) and all “**Applicable Laws**”, as defined in the General Provisions. If from time to time the Work is modified by written field authorizations, purchase orders or amendments mutually agreed upon, the terms and conditions of this Agreement shall apply to all such modifications. Subcontractor agrees to perform all such modifications as are reasonably within the scope of the Work or reasonably necessary to complete the Work. The fact that any part of the Work necessary to meet the requirements of Owner, Contractor and all governmental and private agencies having jurisdiction (“**Agencies**”), and the Contract Documents, is not specifically mentioned in this Agreement will not excuse Subcontractor from performance thereof if said Work to be performed is usual and normal in the craft or trade performed by Subcontractor or reasonably inferable from the Contract Documents. The Work includes in addition, but is not limited to, the immediate repair or replacement of defective or damaged workmanship and/or materials installed by Subcontractor upon being notified to make such repairs or replacements. Subcontractor shall be solely responsible for determining the applicability and local effect and interpretation of all Applicable Laws affecting the Work. Subcontractor specifically understands that the violation of Applicable Laws may result in the imposition of monetary fines or other penalties by regulatory agencies. Subcontractor’s acceptance of this Agreement indicates Subcontractor’s acknowledgement that in the event of any violation of any such Applicable Laws, Subcontractor will be held solely responsible for any fines and penalties.

**A. Employment Verification and Eligibility**

(i) Subcontractor represents that it is and warrants that it will remain in compliance with any and all federal, state and local employment codes, including but not limited to the Immigration Reform and Control Act of 1986, as amended, prohibiting hiring and continuing to employ unauthorized aliens, requiring verification and recordkeeping with respect to identity and eligibility for employment, and prohibiting discrimination on the basis of national origin, citizenship, or intending citizen status.

(ii) Pursuant to Paragraph D of the General Subcontract provisions, Subcontractor will indemnify, defend, and hold the Indemnitees harmless against any and all claims and liabilities, including any fines, penalties, settlements, and reasonable attorneys’ fees, resulting from any violation or noncompliance with such codes, pursuant to this Paragraph 1.A. Moreover, Subcontractor will promptly notify Contractor if any government official issues or proposes an order or directive, conducts an audit, or otherwise expresses concern about any worker’s supplied by Subcontractor to work under this Agreement.

(iii) If the Work is subject to statutory or contractual prevailing wage requirements, Subcontractor shall comply with all Federal, State Local and contractual prevailing wage requirements as the case may be. The prevailing wage requirements for the Work are referenced in the Contract Documents as defined herein. Subcontractor shall comply with any amendments or modifications of the applicable prevailing wage requirements. Subcontractor will indemnify, defend, and hold the Indemnitees (as defined in paragraph D) harmless against any and all claims and liabilities, including any fines, penalties, settlements, and reasonable attorneys’ fees, resulting from any violation or noncompliance with the prevailing wage requirements applicable to the Work.

B. California Labor Code §2810. Subcontractor further agrees to ascertain the applicability of and comply with the provisions of California Labor Code § 2810 (as it may from time to time be amended), including, without limitation, providing to

Contractor at the time of the execution of this Agreement and thereafter as needed to assure that the information furnished is accurate, the following:

- (i) Subcontractor's employer identification number.
- (ii) Subcontractor's worker's compensation insurance policy number.
- (iii) The name, address and telephone number of Subcontractor's worker's compensation insurance carrier.
- (iv) The vehicle identification number of any vehicle owned by the Subcontractor and used for transportation in connection with the Agreement.
- (v) The policy number for the vehicle liability insurance covering Subcontractor's vehicles used in connection with the Agreement.
- (vi) The name, address, and telephone number of the Subcontractor's vehicle insurer for vehicles used in connection with the Agreement.
- (vii) The address of any real property used to house workers in connection with the Agreement.
- (viii) The total number of workers to be employed under the Agreement and that all such workers are legally entitled to work in the United States.
- (ix) The date or dates when wages are to be paid in connection with the Agreement.
- (x) The total amount of all wages to be paid in connection with the Agreement.
- (xi) The total number of persons who will be utilized under the Agreement as independent contractors.
- (xii) The local, state and federal contractor identification numbers for all licenses that the independent contractors are required to have.
- (xiii) The amount of "commission or other payment" made to Owner or Contractor under the Agreement.

Subcontractor represents that the payments to which it is entitled pursuant to this Agreement are adequate to permit Subcontractor to comply with all applicable state, federal and local Codes governing the Work, labor and services to be provided by it.

2. **CONTRACT DOCUMENTS.** The "Contract Documents" consist of the following, which, together with written modifications made in the manner provided therein and issued subsequent to the execution of the Agreement, form the entire agreement between the parties and shall be collectively referred to herein sometimes as the Contract:

A. This Agreement including, but not limited to, the General Provisions and all Exhibits and Riders attached hereto or thereto and which are by this reference incorporated herein;

B. Any supplemental General Provisions, special conditions, details, profiles, deed restrictions, plans, specifications, addenda, amendments including, but not limited to, Contractor's written authorizations for extra work, if any, and all other instruments issued by or on behalf of Contractor and/or prepared by the architect for the Project, and all Applicable Laws applicable to the Work.

C. The plans and specifications and other documents described in **Exhibit A** attached hereto;

D. The General Contract or Prime Contract ("Prime Contract") between Contractor and Owner including all exhibits, attachments and modifications therewith. A copy of the Prime Contract may be provided to Subcontractor in electronic format with contract amounts redacted, and

All of the above-referenced documents are incorporated into this Agreement by this reference with the same force and effect as if the same were set forth at length herein. Contractor may elect to provide the documents in items B, C, and D in this paragraph in electronic format. Subcontractor shall notify Contractor within 5 days of receiving electronic copies of such documents if Subcontractor cannot access or otherwise open such documents. Failure to so notify Contractor shall constitute conclusive evidence that Subcontractor can access the electronic documents and shall not constitute an excuse for not knowing the contents of the electronic documents. If Subcontractor cannot open the electronic documents and gives notice to Contractor as specified, Contractor shall provide a paper copy of the documents to Subcontractor at Subcontractor's expense. Subcontractor agrees that Subcontractor and its vendors, suppliers, materialmen and Sub-subcontractors of every tier (collectively, "**Sub-subcontractors**") will be and are bound by any and all of the Contract Documents insofar as they relate in any part or in any way, directly or indirectly, to the Work. If there is any conflict between the terms of the Contract Documents including, without limitation, the descriptions of the Work contained therein, or any conflict between the Contract Documents and Applicable Laws, Subcontractor must immediately bring the conflict to the attention of Contractor and the conflict shall be resolved in accordance with the terms of the General Provisions.

3. **PERFORMANCE.** Subcontractor agrees to commence Work hereunder within **three (3)** days after notice to proceed by Contractor. Subcontractor further agrees to proceed diligently and in strict accordance with Contractor's time schedule ("**Schedule**") and directions, and to employ at Subcontractor's expense whatever means Contractor deems necessary to meet this Schedule. Subcontractor shall not commence the Work, order any materials, employ any Sub-subcontractors or enter into any commitments affecting the Project or the property prior to Contractor's notice to proceed (which can be given only or in writing) without Contractor's prior written consent. Subcontractor acknowledges that it is not entitled to payment for any Work performed unless it has received a written notice to proceed from Contractor.

4. **CONTRACT PRICE AND PAYMENTS.** For the full and strict performance of all of Subcontractor's obligations hereunder, and so long as Subcontractor is not in default under this Agreement, Contractor shall pay Subcontractor the "**Subcontract Price**" described in and in accordance with the terms of **Exhibit B (SUBCONTRACT PRICE AND PAYMENTS)**. The Subcontract Price is intended to include all increases in costs, foreseen or unforeseen, including, without limitation, taxes, labor, materials, and transportation costs, all of which are to borne by Subcontractor. All loss or damage arising from any Work performed under this Agreement through unforeseen or unusual obstructions, difficulties or delays which may be encountered in the prosecution of same, or through the action of the elements, shall be borne by Subcontractor. The intent of this Agreement is to completely cover the scope of the Work and is to be a "**No Extra**" contract.

5. **PRIOR AND RELATED WORK.** The Subcontractor, as a part of the Subcontract Price, shall do all cutting, fitting and patching of the 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 Sub-subcontractors, shown in or reasonably implied by the Contract Documents. Subcontractor agrees to protect the work of others from damage as a result of its operations. Should Subcontractor, or its Sub-subcontractors cause damage to any other subcontractors' work, Subcontractor agrees, upon demand, to compensate Contractor to the extent of such damage.

6. **PRIOR NEGOTIATIONS AND/OR REPRESENTATION.** This Agreement supersedes all prior negotiations, proposals and understandings, verbal, written or otherwise, if any, of the parties hereto, and constitutes the entire and integrated agreement of the parties with reference to the Work to be performed on the Project.

7. **CONTRACTOR'S REPRESENTATIVES.** The terms and conditions of this Agreement are not subject to addition, change or modification unless such change, addition or modification is made in writing by a duly authorized representative of Contractor as herein stated. No addition, change or modification made as herein provided shall void the Agreement. The duly authorized representative of Contractor ("**Contractor's Representative**") authorized to execute a binding Agreement to add, change or modify this Agreement is (are) as follows:

Name: Jonathan Emami Name: Robert Emami

8. **LICENSE NOTICE. 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 (4) YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN TEN (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, CALIFORNIA, 95826.**

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

<b>"CONTRACTOR"</b>	<b>"SUBCONTRACTOR"</b>
<b>ROEM BUILDERS, INC., a California corporation</b>	
By: _____	By: _____
Name: <u>Jonathan Emami</u>	Name: _____
Its: <u>Vice President ,ROEM Builders, Inc.</u>	Its: _____
Date: _____	Date: _____
By: _____	By: _____
Name: _____	Name: _____
Its: _____	Its: _____
Date: _____	Date: _____
LICENSE NUMBER: <u>774765</u>	LICENSE NUMBER: _____

**Owner's Construction Lender's Address:**

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

**GENERAL SUBCONTRACT PROVISIONS ATTACHED**

EXHIBITS ATTACHED [check if applicable]

- A SCOPE OF WORK
- B. SUBCONTRACT PRICE AND PAYMENTS
- C. OCIP INSURANCE PROVISIONS
- D. LIQUIDATED DAMAGE FOR BREACH OF PREVAILING WAGE PROVISION
- E. SECTION 3 SUMMARY OF FORMS & INFORMATION
- F. SECTION 3 CONTRACT CLAUSES
- G. CHANGE ORDER BACKUP FORM

## GENERAL SUBCONTRACT PROVISIONS (For-Rent Product)

**A. PERFORMANCE** – Subcontractor acknowledges and agrees that it has the sole and exclusive responsibility for the performance of the Work, including supervising and inspecting the Work to assure compliance with the Contract Documents, construction industry standards and codes, and that Contractor's right to approve and inspect Subcontractor's Work imposes no duty on Contractor to discover or identify items not in compliance. Any inspection or approval by Contractor of the Work shall not be considered or construed as an inspection or approval of conditions not in compliance with the Contract Documents, construction industry standards, or Codes. Subcontractor shall cause its own fully-qualified quality control personnel to inspect and approve all Work performed by or on behalf of Subcontractor at all appropriate stages of construction, and shall promptly report in writing to Contractor any and all items relating to the Work, not in compliance with the Contract Documents, construction industry standards and/or Codes. If the Contract Documents require construction that is not in compliance with applicable industry standards and Codes, Subcontractor shall promptly notify Contractor of such non compliance. Subcontractor shall not perform any work that is not in compliance with applicable industry standards, even if the plans are not in compliance with such standards and Codes. Subcontractor shall conform its scope of the work to the applicable industry standards and Codes where necessary. Subcontractor shall promptly take all corrective action necessary to bring the Work into compliance with industry standards and Codes at its own expense, without an adjustment to the Subcontract Price. Subcontractor shall obtain a written acknowledgment signed by Contractor's authorized representative identifying any reported items which Contractor approves without correction, and shall keep and maintain a copy of the items so documented and acknowledged for ten (10) years from the date of completion of the Unit upon which Subcontractor's Work was performed. The failure of Subcontractor to maintain full documentation in conformance with this section of any item not in compliance shall be deemed an express representation by Subcontractor that the Work and all related work has been performed in compliance with the Contract Documents, construction industry standards, and Codes. As used herein, "compliance" shall mean, in cases where there is a discrepancy between or among Contract Documents, construction industry standards, and/or Codes, conformance with the most stringent or maximum of the foregoing.

**B. LABOR AND MATERIAL** – All labor and material needed for the proper, safe and efficient performance of the Work shall be provided by Subcontractor at its sole cost and expense, including, but not limited to, any and all equipment, tools, ladders, scaffolding, implements, molds, bracing, models, hoisting and cartage and safety equipment. All materials furnished by the Subcontractor shall conform to specifications and be new and of good quality and without fault or defect; all equipment used shall be without fault or defect and shall be maintained in first class condition. All Work shall be done and performed in a good and workmanlike manner. Contractor shall not be required to furnish any labor or materials of any sort except such as may be specifically set forth in writing elsewhere in the Agreement. Subcontractor agrees that it will not subcontract any of the Work herein defined in this Agreement without prior written approval of Contractor. It is understood and agreed that Contractor is an intended third-party beneficiary of all subcontracts, sub-subcontracts, purchase orders and all other agreements pertaining to the Work and Contractor shall have the right, but not the obligation, to bring an action for Defective Work against any Sub-subcontractor, manufacturer or material supplier responsible therefore.

**C. INSURANCE** -- [Attach Exhibit C (OCIP INSURANCE PROVISIONS) if applicable.]. Subcontractor shall, at its expense, procure and maintain insurance on all of its operations, in companies acceptably rated no lower than A-VII or better, based on the Best Rating Guide, as follows:

1. **Workers' Compensation and Employer's Liability Insurance** -- Subcontractor shall maintain insurance (or furnish proof of qualifications as a self-insurer) to afford protection for all claims under the California Workers' Compensation Act and other employee benefit acts, and in addition shall maintain employer's liability insurance for a minimum limit of \$1,000,000. The Workers' Compensation Policy shall include the following: Workers' compensation insurance (statutory limits complying with the laws of the state of California) and employer's liability insurance with limits not less than \$1,000,000 bodily injury by accident (each accident), \$1,000,000 bodily injury by disease (policy limit), and \$1,000,000 bodily injury by disease (each employee). Such policies shall also contain a waiver of subrogation in favor of Owner, Contractor, and each and every architect, engineer, surveyor, subcontractor and sub-subcontractor, consultant and supplier performing work or providing materials or services in connection with the Project. Subcontractor shall require each of its Sub-subcontractors and suppliers to purchase and maintain insurance coverage as provided in this subparagraph, with the same waiver of subrogation in favor of Owner, Contractor and the other parties referenced above. If there is an exposure of injury to Subcontractor's employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations, or statutes applicable to Maritime employees, coverage shall be included for such injuries and claims.

2. **Commercial General Liability Insurance** -- Commercial general liability ("CGL") insurance, written on an occurrence policy form at least as broad as ISO form CG 00 01 10 01 ("modified occurrence" and "claims-made" policy forms are not acceptable), providing coverage for bodily injury, property damage, personal injury and advertising injury, Owner's and Contractor's Protective Liability, loss resulting from the hazards of explosion, collapse or underground operation, including premises-operations for three (3) years minimum (including, without limitation, explosion, collapse and underground coverage) and products-completed operations coverage, with limits of not less than \$1,000,000 bodily injury and property damage per occurrence limit, \$2,000,000 general aggregate limit (with a per project or per location endorsement specifying the Project), \$1,000,000 personal injury and advertising injury limit, and \$2,000,000 products-completed operations aggregate limit, or limits carried, whichever are greater. Except with respect to bodily injury and property damage included within the products and completed operations hazards, the general aggregate limit, where applicable, shall apply separately on a per project basis to Subcontractor's work under this Agreement. Such policies shall also contain a waiver of subrogation in favor of Contractor, and each and every architect, engineer, surveyor, subcontractor and sub-subcontractor, consultant and supplier performing work or providing materials or services in connection with the Project. All liability policies shall provide, without limitation, full separation of insureds (no insured vs. insured exclusion or limitation), contractual liability coverage and broad form property damage coverage (including completed operations). Subcontractor agrees to maintain continuous coverage for the insurance required in this subparagraph in effect during the term of this Agreement and until all claims and suits arising out of the Work are barred by the applicable statutes of limitations and repose. Subcontractor shall require each Sub-subcontractor and supplier to purchase and maintain insurance coverage as provided in this subparagraph. If defense costs are included in the limits referenced in this subparagraph C(2), then the required limits on each of the limits of liability set forth in this subparagraph C(2) shall be increased by \$1,000,000.

3. **Automobile Liability Insurance** -- Commercial or business automobile liability insurance, including, without limitation, liability arising out of "any auto" or all owned, non-owned, leased, and hired automobiles, trucks and trailers, or semi-trailers, including any machinery or apparatus attached thereto, with limits of not less than \$1,000,000 each accident, or limits carried, whichever are greater, with deductibles or self-insured retentions acceptable to Owner. The commercial automobile liability insurance shall be written on the most recent edition of ISO form CA 00 01 or equivalent acceptable to Owner and shall include, without limitation, contractual liability coverage and insured status for Owner. If Subcontractor transports any hazardous materials, the automobile liability policy shall include ISO endorsement form MCS-90 or equivalent endorsement providing coverage for environmental and pollution claims. Subcontractor waives all rights against Owner for recovery of loss, injury and/or damages to the extent such loss, injury and/or damages are covered by the commercial automobile liability insurance maintained by Subcontractor. Subcontractor shall require each Subcontractor and each Sub-subcontractor of every tier and supplier to purchase and maintain insurance coverage and provide the same waiver of rights, as provided in this subparagraph. Contractor, its officers, directors and employees, Owner, and any entities required to be named as additional insured under the Contract Documents shall be named as additional insureds under the policies. Such policies shall contain a waiver of subrogation in favor of Owner, Contractor, and each and every architect, engineer, surveyor, subcontractor and sub-subcontractor, consultant and supplier performing work or providing materials or services in connection with the Project.

## GENERAL SUBCONTRACT PROVISIONS (For-Rent Product)

4. **Umbrella or Follow Form Excess Liability Insurance** -- Umbrella or follow form excess liability insurance, written on an occurrence policy form ("modified occurrence" and "claims made" forms are not acceptable), at least as broad as the primary CGL insurance, with limits of liability of not less than \$1,000,000 per occurrence/annual aggregate for all subcontractors, and with limits of liability of not less than \$5,000,000 for those trades performing rough carpentry, mechanical, roofing, plumbing, electrical, waterproofing, drywall and concrete work. This coverage should be in excess of commercial general liability, automobile liability and workers' compensation coverages.

5. **Professional Liability Insurance**

**When checked, Subcontractor is required to purchase and maintain professional liability insurance.**

Where professional liability insurance is required by this Agreement, such insurance shall include full prior acts coverage (or a retroactive date no later than the date of commencement of the Work) and shall have limits of not less than \$1,000,000 per claim and \$1,000,000 annual aggregate, or limits carried, whichever are greater, with deductibles or self-insured retentions acceptable to Contractor. Evidence of coverage in the form of a certificate of insurance shall be provided to the Contractor prior to the earlier to occur of (i) the start date of Subcontractor's work or (ii) within ten (10) days of the date of this Agreement being executed. Such insurance shall include, without limitation, (a) contractual liability coverage, and (b) a waiver of subrogation in favor of Owner, Contractor and the other parties referenced in subparagraph C(1) above. This insurance shall be maintained by Subcontractor continuously in effect during the term of this Agreement and until all claims and suits arising out of the Work are barred by the applicable statutes of limitations and repose. Any material change in limits or coverages, or impairment or potential impairment of aggregate limits due to outstanding claims or the establishment of reserves, must be reported to Contractor within thirty (30) days of any such events. Subcontractor shall require any Sub-subcontractor performing design/build work in connection with the Project to maintain professional liability insurance on the same terms and conditions as set forth in this subparagraph C(5), except that the required limits of liability shall be not less than [\$ N/A ] per claim and [\$ N/A ] annual aggregate, or limits carried, whichever are greater.

6. **Pollution Liability Insurance** – If Subcontractor or any of its subcontractors are required to perform remedial hazardous materials operations or perform any work using or involving hazardous material, Subcontractor shall, at their own expense, procure and maintain in companies acceptable to Contractor, a contractor's Pollution Liability policy with limits of liability of not less than \$3,000,000 per occurrence and not less than \$5,000,000 aggregate for bodily injury, personal injury and property damage. Contractor and Owner shall be named as additional insureds under the Subcontractor's Pollution Liability policy. Evidence of the Subcontractor's Pollution Liability policy shall be provided by Subcontractor to Contractor.

7. **Further Insurance Requirements**

a. Owner, Owner's lender(s), Contractor, and such other persons and entities as may from time to time be designated by Contractor in writing, shall be named as additional insureds under the CGL and umbrella/follow form excess insurance required above by issuance of both ISO form CG 20 10 10 01 and CG 20 37 10 01 additional insured endorsements, or equivalents acceptable to Contractor. The additional insured endorsements must provide coverage arising out of both ongoing and completed operations. The endorsements must specify Subcontractor as the named insured and must include the policy number and expiration date. The additional insured endorsements shall contain a primary insurance clause stating: "It is further agreed that such insurance as is afforded by this policy for the benefit of the additional insureds shall be primary insurance, and any insurance maintained by or available to the additional insureds shall be excess and non-contributory with the insurance provided hereunder." The coverage provided to the additional insureds must be at least as broad as that provided to Subcontractor and may not contain any additional exclusionary language or limitations applicable to the additional insureds. Subcontractor shall maintain such additional insured status for the referenced parties on the CGL and umbrella/follow form excess liability policies continuously during the term of this Agreement and until all claims and suits arising out to the Work are barred by the applicable statutes of limitations and repose. Subcontractor shall require each Sub-subcontractor to provide additional insured status to the parties referenced above in this subparagraph (a), on the same terms and conditions as set forth in this subparagraph (a).

b. All general liability, workers' compensation/employer's liability and automobile liability policies maintained by Subcontractor and Sub-subcontractors of every tier and suppliers shall be primary coverage, and any coverage maintained by or available to Owner or Contractor shall be excess and non-contributory.

c. Prior to commencing the Work, Subcontractor shall deliver to Contractor the endorsements and waivers of subrogation referred to in these General Subcontract Provisions as well as certificates of insurance (form Acord 25-S (7/97 or later)) evidencing the coverages referred to in this Paragraph C. Each insurer's NAIC number must be listed on the certificate. Subcontractor shall deliver to Contractor upon request a true and correct copy of all of the insurance policies and other insurance documents required by this Paragraph C. All policies, endorsements and certificates are subject to Contractor's review and approval. In the case of policies expiring while Work is in progress, a renewal certificate with all applicable endorsements must be received at the business office of Contractor prior to the expiration of the existing policy or policies. Permitting Subcontractor to start Work, continue Work, or releasing any progress payment prior to or without compliance with any of these requirements shall not constitute a waiver of, or estoppel to assert, any such requirement. If at any time Subcontractor's insurance fails to meet the requirements stated herein, all payments may be held until the non-compliance has been corrected to Contractor's satisfaction. Each certificate and endorsement must be executed by an authorized agent of the respective insurers. All certificates of insurance must provide (and the policies shall be endorsed to provide) Contractor with thirty (30) days advance written notice of cancellation (ten (10) days in the event of cancellation for non-payment of premium).

d. All insurance referred to in this Paragraph C to be carried by Subcontractor, Sub-subcontractors and suppliers shall be maintained by such parties at their sole expense, with insurance carriers qualified to do business in the state of California and maintaining a rating of not less than A:X from A.M. Best & Co., unless Contractor, in writing, in its sole discretion, accepts a lower Best's rating.

e. Subcontractor shall immediately notify Contractor in writing upon receipt by Subcontractor, or its insurance broker or agent, of any notice of cancellation, non-renewal or rescission of any policy required to be maintained by Subcontractor pursuant to this Paragraph C.

f. In the event Subcontractor fails to secure or maintain any policy of insurance required hereby, Contractor at its sole discretion and election, may (i) secure such policy of insurance in the name of and for the account of Subcontractor and in such event, Subcontractor shall reimburse Contractor upon demand for the cost thereof; or (ii) terminate this Agreement, and Contractor shall retain all remedies hereunder for breach of this Agreement. Contractor shall have the right to offset the costs of any such insurance, including but not limited to premiums, against any sums payable to Subcontractor under this Agreement or otherwise.

g. The insurance policies obtained by Subcontractor pursuant to this Agreement may not contain any exclusion or limitation applicable to multi-unit, multi-family and/or attached projects, residential development or construction, or similar exclusions or limitations, or any exclusion or limitation applicable to Work of the type contemplated by the Agreement.

## GENERAL SUBCONTRACT PROVISIONS (For-Rent Product)

h. None of the requirements contained herein as to types, limits and acceptability of insurance coverage to be maintained by Subcontractor are intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Subcontractor under this Agreement or at law, including, without limitation, Subcontractor's indemnification obligations and liability in excess of the limits of the coverages required herein. Neither receipt of certificates, endorsements or policies showing less or different coverage than requested, nor any other forbearance or omission by Owner or Contractor, shall be deemed a waiver of, or estoppel to assert, any right or obligation regarding the insurance requirements herein. Subcontractor shall be solely responsible to pay any amount that lies within the deductible(s) or self-insured retention(s) of Subcontractor's policies, regardless of the amount of the deductible(s) or self-insured retention(s) and regardless of the cause of the loss or damage.

i. None of the requirements contained herein shall relieve Subcontractor or its Sub-subcontractors or any supplier of their respective obligations to exercise due care in the performance of their duties in connection with the Work or to complete the Work in strict compliance with the Agreement.

j. Subcontractor further agrees and acknowledges that Subcontractor, Sub-subcontractors and suppliers shall have the risk of loss as to all materials, supplies, equipment and/or fixtures until such time as such materials, supplies, equipment and/or fixtures have been installed or otherwise affixed permanently to the Project and accepted by Contractor. Owner and Contractor shall not be liable for loss or damage to, or theft of, any materials, supplies, equipment and/or fixtures prior to such time, whether such materials, supplies, equipment and/or fixtures are off the site, in transit, on the site, under the control of Owner or Contractor, or otherwise.

k. Any type of insurance or any increase of its limits of liability not described above which Subcontractor requires for its protection, or on account of any Applicable Law, shall be its sole responsibility and at its sole expense.

l. With respect to any insurance Subcontractor is required to maintain pursuant to this Agreement, or does maintain, for this Project, including, without limitation, that set forth herein, Subcontractor warrants that Subcontractor has the right to waive any and all rights of subrogation which Subcontractor's insurance carriers might have or claim against Owner, Contractor, and the other parties referenced in Paragraph C arising out of the Work and/or the Project. Subcontractor hereby waives all such present and future rights of subrogation and agrees, to the fullest extent permitted by law, to defend and indemnify Owner and Contractor from all such subrogation claims. Subcontractor shall require such waivers of its Sub-subcontractors and suppliers. Subcontractor's and its Sub-subcontractors' and suppliers' policies shall provide such waivers by endorsements acceptable to Contractor.

m. The required insurance shall be subjected to the approval of the Contractor, but acceptance of insurance certificates by the Contractor shall in no way limit or relieve Subcontractor of the duties and responsibilities imposed under this Agreement. If higher limits or other forms of insurance are required by the Contract Documents, Subcontractor will comply with such requirements. Contractor shall have the right to request and Subcontractor shall provide certified copies of all insurance policies required under this Agreement at any time.

n. Failure of the Contractor to enforce in a timely manner any of the provisions of Paragraph C (Insurance) shall not act as a waiver to enforce any of these provisions at a later date in the performance of this Agreement. Any exceptions to the provisions of Paragraph C (Insurance) must be delineated in the Contract Documents.

### D. INDEMNITY

1. **Indemnity Against Claims** The Work performed by Subcontractor shall be at the risk of Subcontractor and its employees, agents, Sub-subcontractors and suppliers exclusively. To the fullest extent permitted by law, and with the understanding that in no event shall this Paragraph D.1 be construed to require indemnification by Subcontractor to a greater extent than that permitted under California law, Subcontractor shall protect, defend (at Subcontractor's sole expense and with counsel acceptable to Contractor and Owner), indemnify and hold Contractor, Owner, and their parent, subsidiary and affiliated persons and entities of every tier, and all such parties' partners, shareholders, members, managers, officers, directors, agents, representatives and employees and Owner's lender(s) (collectively, "Indemnitees") harmless from and against any and all losses, damages, liabilities, demands, expenses, costs, debts, causes of action, suits, penalties, fines, settlements, claims and liens (including mechanics' liens and stop notices), including, without limitation, attorneys' fees, consulting costs, court costs and disbursements, including, without limitation, any and all such fees and costs arising out of appellate proceedings (collectively, "Claims"), including, without limitation, Claims for bodily injury and/or personal injury to or death of persons (including, without limitation, any employee of Subcontractor, any Sub-subcontractor, any professional or consultant, any other subcontractor, any supplier or an Indemnitee), loss of, loss of use of, or damage to property, arising out of, or relating in any way, directly or indirectly, to (i) the Work, or (ii) Subcontractor's breach or default of its obligations hereunder, including, without limitation, violation of or failure to comply with any Applicable Law, or (iii) Subcontractor's presence, or activities conducted, in, at or about the Project, or (iv) any other act or omission by Subcontractor, its Sub-subcontractors, its suppliers, anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable, and out of which any Claim arises. Subcontractor's obligations under this Paragraph D.1 shall apply regardless of the nature of Subcontractor's conduct, acts or omissions. Actual or alleged negligence or fault on the part of Subcontractor is not a prerequisite to indemnification of the Indemnitees hereunder. Subcontractor's obligations under this Paragraph D.1 shall apply regardless of the passive or active negligence of Indemnitees and regardless of whether liability without fault is imposed or sought to be imposed on Indemnitees, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement. Subcontractor shall not be obligated to indemnify an Indemnitee to the extent it is determined by a court of competent jurisdiction that the Claim arises from the active negligence or willful misconduct of the Indemnitee sought to be indemnified or its agents, servants or independent contractors who are directly responsible to it, other than Subcontractor, or for defects in design furnished by such persons. Indemnitees' right to indemnification by Subcontractor under the foregoing shall be independent of Indemnitees' rights under the insurance to be provided under Paragraph C. Subcontractor's defense obligations hereunder shall not limit the defense and/or additional insured obligations of Subcontractor's insurers. The Indemnitees shall be entitled to recover their attorneys' fees and costs incurred in enforcing this indemnification provision, and in defending against, or negotiating settlement of, any Claim. The provisions of this Paragraph D.1 shall survive completion of the Work, the termination or expiration of this Agreement and the termination or expiration of the agreement between Owner and Contractor (the "Prime Contract").

2. To the fullest extent permitted by law, Subcontractor shall be liable to the Indemnitees for any loss of or damage to the property of the Indemnitees arising out of Subcontractor's performance of this Agreement, regardless of the active or passive negligence of the Indemnitees, except to the extent that such liability is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement.

3. Subcontractor shall include in all agreements with Sub-subcontractors and suppliers clauses substantially similar to Paragraphs D.1, D.2 and D.4 through D.9, inclusive, wherein the Sub-subcontractors and suppliers agree to defend and to indemnify Subcontractor and Indemnitees and wherein the Sub-subcontractors and suppliers agree to be liable to Indemnitees for loss of or damage to the Indemnitees' property.

4. Subcontractor's duty to defend Indemnitees is entirely separate from, independent of and free-standing of Subcontractor's duty to indemnify Indemnitees, including without limitation, the defense of Indemnitees against claims for which

**GENERAL SUBCONTRACT PROVISIONS  
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Indemnitees (or any of them) may be strictly liable and applies whether the issue of Subcontractor's negligence, breach of contract or other fault or obligation has been determined and whether Indemnitees (or any of them) have paid any sums, or incurred any detriment, arising out of or resulting directly or indirectly from Subcontractor's performance of the Work. It is the parties' intention that Indemnitees (or any of them) shall be entitled to obtain summary adjudication of Subcontractor's duty to defend Indemnitees at any stage of any Claim within the scope of Paragraph D.1.

5. Payment to Subcontractor by any Indemnitee shall not be a condition precedent to enforcing such parties' right to a defense and indemnity.

6. All fees, costs and expenses to be paid by Subcontractor as indemnitor hereunder shall be made on a "paid as incurred" basis within thirty (30) days of the indemnitor's receipt of a statement or invoice therefore. Should Subcontractor object to any such fees, costs or expenses, Subcontractor shall nevertheless pay such fees, costs and expenses within such thirty (30) days which payment, if expressly stated in writing at the time of such payment to be "under protest", shall not prejudice the Subcontractor's right to subsequently object to such fee, cost or expense paid under protest.

7. The foregoing indemnity shall include, without limitation, costs, expenses (including, without limitation, investigative, expert and consultant expenses) and attorneys' fees incurred by the Indemnitees, or any of them, in investigating, defending against and/or settling or otherwise resolving any Claim. The Indemnitees shall be entitled to recover their attorneys' fees, costs and investigative, expert and consultant expenses in pursuing and/or enforcing the Indemnitees' right to defense and indemnification under this Agreement.

8. To the fullest extent permitted by law, the contractual right of indemnification provided to the Indemnitees under this Paragraph D shall be cumulative to all rights of equitable indemnity to which the Indemnitees may otherwise be entitled; provided, however, that reservation of the right of equitable indemnity shall not apply to reduce or decrease any rights of indemnity provided to the Indemnitees pursuant to the terms of this Agreement and this Paragraph D.

9. The obligations of Subcontractor pursuant to this Paragraph D are not to be construed to negate or reduce any other right or obligation or indemnification which would otherwise exist as to any party described in this Paragraph D. The indemnity set forth in this Paragraph D shall not be limited by the insurance requirements of Paragraph C, nor shall the provisions of Paragraph D be construed to limit Subcontractor's obligation to comply with the insurance obligations contained in Paragraph C. The obligations of Subcontractor pursuant to this Paragraph D in connection with any Claims against any of the Indemnitees by any employee of Subcontractor, any Sub-subcontractor, any professional or consultant, any other subcontractor or sub-subcontractor, any supplier, anyone directly or indirectly employed by Subcontractor, or anyone for whose acts Subcontractor may be liable, shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits, including, without limitation, under workers' compensation acts, disability benefit acts or other employee benefit acts, payable by or for Subcontractor, any Sub-subcontractor, any professional or consultant, any other subcontractor or sub-subcontractor, any supplier, anyone directly or indirectly employed by Subcontractor, or anyone for whose acts Subcontractor may be liable.

**E. BONDING OF SUBCONTRACTOR** – Concurrently with the execution of this Agreement, or at any time during its performance, Subcontractor shall, if required by Contractor, furnish to Contractor a Labor and Material Bond and Faithful Performance Bond, in an amount equal to 100% of the contract price in Article 4 of the Agreement (the "**Contract Price**"). Said bonds shall be executed by a corporate surety acceptable to Contractor and shall be in a form satisfactory to Contractor. Contractor or Subcontractor shall pay the premium on said bonds as provided herein or in the Contract Documents.

**F. TIME** – Time is of the essence of this Agreement. It shall be Subcontractor's obligation to conform to Contractor's progress schedule, subject to Contractor's modification, which is incorporated herein by this reference and made a part hereof. Subcontractor shall prepare and obtain approval as required by the Contract Departments for all shop drawings, details, samples and do all other things necessary and incidental to the prosecution of its work in conformance with the progress schedule. Subcontractor shall coordinate the work covered by this Agreement with that of all other contractors, subcontractors and the Contractor in a manner that will facilitate the efficient completion of the entire work. Contractor shall have complete control of the premises on which the work is to be performed and shall have the right to decide the time or order in which the various portions of the work shall be installed or the priority of the work of other subcontractors, and in general, all matters concerning the timely and orderly conduct of the work of on the premises. Subcontractor is responsible to perform all elements of the Work in the proper sequence and in the proper sequence with work of other contractors.

Subcontractor agrees to adhere strictly to the exact time schedule of the Contractor, as set forth in the Contract Documents or as otherwise conveyed to Subcontractor. Subcontractor must complete the Work in a prompt and diligent manner and achieve completion of the Work in accordance with the time designated in the progress schedule. If, in the sole opinion of the Contractor, Subcontractor does not maintain such schedule adherence, including but not limited to the stoppage of work for more than 48 consecutive hours by Subcontractor without written approval of Contractor, Contractor may, at its option, and without notice to Subcontractor, take possession of all material, equipment, tools and appliances on the jobsite and declare a termination of this Agreement, and complete the work described in this Agreement, under such contractual arrangements with others as Contractor shall determine. In the event Contractor shall declare the termination and completion of the work, Subcontractor agrees to pay Contractor within five (5) days after presentation of written claims, all damages suffered by Contractor by reason of Subcontractor's failure to adhere to the construction schedule, including without limitation all damages incurred under the Prime Contract.

**[ALTERNATIVE TO ACTUAL DAMAGES. APPLICABLE ONLY IF INITIALED BELOW.]** It is agreed that the timely commencement and completion by Subcontractor of the work is of primary importance to Contractor, and that any delay caused by Subcontractor will result in disruption of the work of other subcontractors and a delay in the entire project. It is agreed that the damage caused to Contractor by reason of such delay would be impossible to ascertain, and Subcontractor agrees to pay Contractor as liquidated damages the sum of \$ 1,000 per day for each day Subcontractor fails to complete each phase of work, as set forth in the construction schedule. Contractor and Subcontractor agree that the liquidated damages set forth above is a reasonable estimate of the amount of damages which would be sustained by Contractor by reason of Subcontractor's delay.

SUBCONTRACTOR'S INITIALS \_\_\_\_\_

CONTRACTOR'S INITIALS \_\_\_\_\_

Should Subcontractor be delayed in the prosecution of completion of work by the act, neglect or default of Owner, Architect, or Contractor, or should Subcontractor be delayed waiting for materials, if required by the Contract Documents to be furnished by Owner for Contractor, or by damage caused by fire or other casualty for which Subcontractor is not responsible, or by the combined action of the workmen, in no way caused by, or resulting from default or collusion on the part of the Subcontractor, or in the event of a lockout 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 therefor is presented in writing to the Contractor within 48 hours of the commencement of such delay, and under no circumstances shall the time of completion be extended to a date which will prevent Contractor from completing the entire project within the time required by the Contract Documents. Contractor's failure to timely deliver a claim constitutes conclusive and non-rebuttable evidence that no time extension is due.

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Subcontractor is not entitled to recover from Contractor any additional compensation or damages for delays, whether caused in whole or in part by Contractor or others. Subcontractor's sole remedy for such delay will be an extension of time as provided for in the preceding paragraph.

**G. WORK AND CHANGES IN THE WORK** – “Work” or “Scope of Work” means the work described in Exhibit A, as modified by change orders. Subcontractor agrees to make any and all changes, furnish the materials and perform the Work that Contractor may require, without nullifying this Agreement, at an addition to, or reduction from, the Contract Price based on the actual cost of the change to the Subcontract plus 10% for profit and overhead, and pro-rated to the same. Subcontractor shall adhere strictly to the plans and specifications unless a change is authorized in writing by Contractor. Under no conditions shall Subcontractor make any changes, additions or deductions, without a written change order (“Change Order”) or written direction to proceed signed by Contractor. Subcontractor shall submit immediately to Contractor written copies of its cost or credit proposal for changes in the Work. Disputed work shall be performed as ordered in writing by the Contractor and the proper cost or credit breakdowns based on the actual cost of the change therefor shall be submitted without delay by Subcontractor to Contractor.

If the parties cannot agree as to whether any particular work is a change to the Work, or should result in adjustment to the Contract Price, or the amount of the adjustment, within five (5) business days after Contractor delivers the proposed Change Order, Subcontractor must nonetheless timely perform the alleged extra work, if directed to do so by Contractor. In such event, Subcontractor may submit a written notice of intent to file claim for additional compensation within five (5) business days after receipt of written direction to proceed with the work. Subcontractor's notice must reasonably describe the basis for the requested adjustment to the Contract Price. Subcontractor's failure to timely deliver a written notice of intent to file a claim for additional compensation or to maintain and deliver an accurate cost breakdown and supporting documentation constitutes conclusive and nonrebuttable evidence that no extra work was performed and that no payment for the alleged extra work is due; provided that, Contractor shall not be prevented from claiming that the proposed change in work results in a decrease in the Contract Price.

No change, alteration or modification in or deviations from this Agreement or the plans or specifications, whether made in the manner herein provided or not, shall release or exonerate, in whole or in part any surety on any bond given in connection with this Agreement and neither Owner nor Contractor shall be under any obligation to notify the sureties of any such change.

For purposes of determining actual cost for labor included in a change order, Subcontractor shall submit to Contractor upon execution of the Subcontract a schedule of labor costs based on labor classifications associated with the Work. The actual cost of labor under this provision shall include wages and benefits including insurance and taxes. Actual cost of labor does not include administrative support or indirect costs such as payroll servicing, office expense, etc.

In the case of a deductive change order, Subcontractor agrees that deductive change orders shall be determined in the same manner as increase change orders. Deductive change orders shall be no less than the actual cost of the deductive change plus 10% for profit and overhead.

**H. LIENS** – Subcontractor shall at all times indemnify and save Contractor and Owner harmless from and against all liability for claims and liens for labor performed or materials used or furnished to be used on the job, including damages resulting to Contractor or Owner from such claims or liens. Further, in case suit on such claim is brought, Subcontractor shall defend said suit at its own cost and expense and will pay and satisfy any such lien or judgment as may be established by the decision of the court in said suit. Subcontractor agrees within ten (10) days after written demand by Contractor to cause the effect of any suit or lien to be removed from the premises and in the event Subcontractor shall fail to do so, Contractor is authorized to use whatever means in its discretion it may deem appropriate to cause said lien or suit to be removed or dismissed and the cost thereof, together with reasonable attorney's fees, shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may litigate any such lien or suit provided it causes the effect thereof to be removed, promptly in advance from the premises, and shall further do such things as may be necessary to cause Owner not to withhold any monies due to Contractor from Owner by reason of such liens or suits.

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

Subcontractor shall pay all bills when due for all charges in connection with the Work. Subcontractor agrees to furnish Contractor, upon request, with proof of payment of payrolls, material bills and other indebtedness connected with the Work. Subcontractor agrees to furnish Contractor with such partial or complete releases and waivers of lien from Subcontractor's material men and creditors as the Contractor may request from time to time labor and/or material and upon completion of the Work shall furnish final releases and waivers of lien at the time of final payment. Contractor may, at its option, require Subcontractor to pay for and furnish a bond satisfactory to Contractor to indemnify Contractor against any claim by lien or otherwise as stated herein. Contractor may, in its sole election and option, make any checks payable jointly to the Subcontractor and any one or more of Contractor's suppliers, subcontractors or laborers. If Subcontractor fails to make any payment, Contractor has the right, but not the obligation, to make payment directly to any of Subcontractor's laborers, subcontractors or suppliers or for the account of Subcontractor and to deduct the amount of the payment from any amounts due and owing to Subcontractor. If the funds payable to Subcontractor are not sufficient to cover this amount, Subcontractor must promptly pay the difference to Contractor on demand.

Subcontractor agrees that monies received for the performance of this Contract shall be used solely for labor and material entering into this work and said monies shall not be diverted to satisfy obligations of Subcontractor on other contracts. Subcontractor shall furnish, if requested by Contractor, accurate and true information in affidavit form which will correctly reflect the amounts due or to become due, amounts paid, and other information necessary to clearly indicate that the financial condition of Subcontractor is adequate to complete the Work and pay for all legitimate claims and charges and other obligations of Subcontractor for labor, materials etc., furnished or to be furnish by Subcontractor under this Agreement.

### I. TERMINATION FOR CAUSE

**1. Right of Contractor to Terminate Upon Default**– Contractor may terminate Subcontractor's right to further perform under this Agreement and complete the Work if Subcontractor breaches a material provision of the Contract Documents or this Agreement, and such failure or default, if curable, is not corrected within forty-eight (48) hours after written demand by Contractor (an “Event of Default”). A material breach includes, without limitation: (1) Subcontractor at any time refuses, neglects or fails to supply a sufficient number of properly skilled workmen or a sufficient quantity of materials of proper quality, (2) Subcontractor is adjudicated a bankrupt or files an arrangement proceeding, or commits any act of insolvency, or makes an assignment for benefit of creditors, (3) Subcontractor fails to make prompt payment to its employees, materialmen laborers or subcontractors, (4) Subcontractor fails to repair any portion of the Work that does not conform to the standards set forth in this Agreement or the Contract Documents, or fails to commence to repair any such work within 48 hours of Contractor's written notification and diligently prosecute such repair if such repair cannot reasonably be completed within 48 hours of Contractor's written notice, or (5) Subcontractor fails in any respect to properly and diligently prosecute the Work or (6) Subcontractor fails to perform the Work in accordance with Applicable Laws or the Contract Documents, or (7) Subcontractor fails to perform fully any and all of the



## GENERAL SUBCONTRACT PROVISIONS (For-Rent Product)

agreements contained in this Agreement. Upon termination due to an Event of Default, Contractor shall have the right to enter upon the premises of the Project and take possession, for the purpose of completing the Work all materials, tools and appliances of Subcontractor and may employ any other person or persons to finish the Work and provide the materials thereof. In the case of termination due to an Event of Default, Subcontractor shall not be entitled to receive any further payment under this Agreement until the work undertaken by the Contractor pursuant to the Contract Documents is completely finished and expiration of the period in which any lien may be filed. At that time if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by Contractor in finishing Subcontractor's Work and any other amounts due Contractor, such excess shall be paid by Contractor to Subcontractor. If such expense shall exceed the unpaid balance, then Subcontractor shall promptly pay the difference to Contractor. The expense incurred by Contractor in finishing Subcontractor's Work shall include expenses incurred by Contractor for furnishing materials, for finishing the work, for attorney's fees and for any other damages sustained by Contractor by reason of Subcontractor's default. Contractor shall have a lien upon all materials, tools and appliances taken possession of, as aforesaid, to secure the payment thereof. The notice referred to in this paragraph will be sufficient and complete when mailed to Subcontractor at its address shown in this Agreement.

**2. Right to Withhold Payments** – Contractor may provide any such labor and materials as may be necessary or otherwise cure any Event of Default by Subcontractor and deduct the cost thereof from any money then due or thereafter to become due to Subcontractor under this Agreement, Contractor may withhold any payments due pursuant to this Agreement to such extent as may be necessary to protect Contractor from loss including costs and attorney's fees on account of (i) unremedied defects in the Work, (ii) claims or liens filed related to the Work or reasonable evidence indicating the probable filing of such a claim or lien, including claims covered by insurance until the claims are accepted without a reservation of rights by the insurer, (iii) failure of Subcontractor to make payments properly to its subcontractors or for material, labor or for fringe benefits, (iv) the reasonable impracticability of Subcontractor completing the Work for the balance then unpaid to the Subcontractor, (v) unsatisfactory progress by Subcontractor (vi) failure of Subcontractor to diligently perform punch-list, clean-up or warranty work; and (vii) damage caused by Subcontractor, its employees, agents, subcontractors or suppliers to the Work or property of Contractor or other contractors. If Contractor exercises this right in good faith, Subcontractor is not entitled to any interest whatsoever on the money so withheld regardless of the resolution of the dispute. When the cause for any withholding has been remedied by Subcontractor to Contractor's reasonable satisfaction, the amount of the withholding will be paid.

**3. Other Contracts Between Contractor and Subcontractor; Cross-Default** – Subcontractor and Contractor acknowledge and agree that Contractor's continued confidence in the ability of any subcontractor to properly and expeditiously perform its work is a substantial and material concern to Contractor. Consequently, in the event Contractor and Subcontractor enter into or have entered into any other agreements, and Subcontractor commits an Event of Default under this Agreement or under any such other agreement, Contractor may, at Contractor's election, treat an Event of Default under this Agreement as a default under any such other agreement, and Contractor may, at its election, treat a default under any other agreement as an Event of Default under this Agreement. In either such event, Contractor may exercise its remedies under subparagraphs 1 and 2 of this Section 1 as well as whatever remedies exist for default under any of the other such agreements, including but limited to the right to terminate this Agreement or the other agreement and/or to withhold payments due to the extent necessary to protect Contractor from losses incurred by reason of an Event of Default under either of the agreements.

**J. TERMINATION FOR CONVENIENCE** – At any time and for any or no reason, Contractor may terminate this Agreement by written notice to Subcontractor. Unless the notice directs otherwise, upon receipt of such notice, Subcontractor shall immediately discontinue the Work and the placing of orders for materials in connection with the Work, and if requested, make every reasonable effort to procure cancellation of all existing orders or subcontracts upon terms satisfactory to Contractor, or at Contractor's option give Contractor or Contractor's assignee the right to assume and receive all benefits from those obligations. Upon termination under this Section J, Subcontractor shall be entitled, as its sole compensation, to the lesser of (1) the actual, verifiable direct costs of the Work completed, plus a markup of fifteen percent (15%) aggregate, for overhead and profit, or (2) the percentage of Work completed multiplied by the Contract Price, minus (in both clauses (1) and (2) the amount of any payments made to Subcontractor prior to the date of termination and any amounts owed by Contractor to Subcontractor. Subcontractor will not be entitled to any claim against Contractor for unearned compensation, lost profits, lost opportunities or other damages.

**K. LABOR RELATIONS** - Employment of labor by Subcontractor shall be effected under conditions which are satisfactory to Contractor. Subcontractor shall keep a representative at the job site during all times when Subcontractor's work is in progress and such representative shall be authorized to represent Subcontractor as to all phases of the work. Prior to commencement of the work, Subcontractor shall notify Contractor who Subcontractor's representative is to be and Subcontractor shall give prior written notice to Contractor to any change in the representative.

Should there be picketing on the Contractor's job site and the Contractor establishes a reserved gate for the Subcontractor's purposes it shall be the obligation of the Subcontractor to continue the proper performance of work. Subcontractor will not be relieved of its obligations to supply sufficient, properly skilled workers to perform the Work without delay or interruption as a result of any labor dispute between Subcontractor or any of its subcontractors or suppliers, and their respective employees.

Subcontractor will indemnify and hold harmless Contractor from and against any liability, loss, damage, cost, claims, awards, judgments, fines, expenses, including litigation expenses, reasonable attorney's fees and any other costs which may be incurred by Contractor resulting from Subcontractor's failure to fulfill the covenants set forth in this paragraph. However, Subcontractor may seek an extension of time as a result of a strike affecting a trade or product generally, as agreement upon by Subcontractor and Contractor.

**L. LAYOUT RESPONSIBILITY** - Contractor shall establish principal axis lines and levels whereupon Subcontractor shall lay out and Subcontractor shall be strictly responsible for the accuracy of its work and for any loss or damage to other contractors engaged in work on the site by reason of failure of Subcontractor to set out or perform its work correctly. Subcontractor shall exercise prudence so that actual final conditions and details shall result in perfect alignment of finish surfaces.

**M. WORKMANSHIP** – Subcontractor shall assign a responsible foreman to supervise the work described in this Agreement. Subcontractor agrees to provide an organizational list of all names, job titles and phone numbers of persons responsible for the performance of this Agreement within two (2) days after commencing any work on the job site. Subcontractor shall not make any substitution or addition to the list without first notifying Contractor in writing. Subcontractor is solely responsible to Contractor for the performance of its subcontractors and suppliers and their compliance with

Every part of the Work herein described shall be executed in strict accordance with the Contract Documents in the most sound, workmanlike and substantial manner. All workmanship shall be of the best of its several kinds and all materials used in the Work herein described shall be furnished in ample quantities to facilitate the proper and expeditious execution of the Work and shall be new and the best of their respective kinds, except such material as may be expressly provided in the Contract Documents to be otherwise.

All work, labor and materials provided by Subcontractor shall be in strict conformance with all laws, ordinances, rules, regulations, standard specifications of governmental bodies and requirements of building inspectors (collectively, "**Applicable Laws**") and in strict compliance with the Contract Documents, plans and specifications.

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**N. PROVISIONS FOR INSPECTION** – The Work is subject to inspection and approval by both the Contractor and governmental authorities and utilities. Subcontractor shall perform frequent and on-going inspections of the Work to ensure that the Work is in compliance with the Contract Documents and Applicable Laws. Subcontractor shall coordinate all required inspections of the Work by governmental authorities and utilities, and shall give Contractor timely notice of governmental and utility inspections so that Contractor may observe the inspections. Subcontractor shall bear all costs and any associated delay for reinspection and correction to the satisfaction of Contractor and the relevant governmental authority or utility if the Work or any portion of it fails to pass inspection. Subcontractor shall commence corrective work within twenty-four (24) hours after a failed inspection and diligently pursue the corrective work to satisfactory completion.

Subcontractor shall furnish to Contractor and its representatives ample facilities at all times for inspecting materials at the site of construction, and at the shops or any place where materials under this Agreement may be in course of preparation, process, manufacture or treatment. Subcontractor shall further furnish to Contractor as often as required, full reports of the progress of the work at any place where materials under this Agreement may be in the course of preparation or manufacture, said reports to show the progress of such preparation and manufacture in such details as may be required by Contractor, including any plans, drawings or diagrams in course of preparations.

**O. MATERIALS** – Subcontractor shall order all materials, equipment, and other items, which shall be required for the performance of the Work hereunder. If requested by Contractor, Subcontractor agrees to furnish within 72 hours (i) the name, address and telephone number of each and every subcontractor (second tier subcontractors) with whom Subcontractor has contracted, or with whom it proposes to contract and (ii) a complete list of suppliers for the performance of any work hereunder, from whom Subcontractor has purchased or proposes to purchase the materials, equipment and other items which have been used or are to be used, in the performance of this Agreement. No payment shall be made to Subcontractor until such information is furnished.

In the event the Scope of Work includes installation of materials or equipment furnished by others, it shall be the responsibility of Subcontractor to examine the items so provided and thereupon handle, store and install the items with such skill and care as to insure a satisfactory installation. Loss or damage due to acts of Subcontractor shall be charged to the account of Subcontractor and deducted from monies due under this Agreement. Subcontractor shall, prior to commencement of the Work, provide to Contractor copies of all manufacturers' installation/use instructions or recommendations, warranties and preventative maintenance recommendations for all materials or equipment to be installed in the Work. Subcontractor shall strictly comply with such documentation. Subcontractor shall assure that all manufacturer and/or other warranties of material or equipment do not expire prior to the expiration of any liability accruing to Subcontractor pursuant to this Agreement.

**P. PROTECTION OF WORK** – Subcontractor shall effectually secure and protect the work done hereunder and assume full responsibility for the condition thereof until final acceptance by Architect, Owner and Contractor. Subcontractor shall perform the Work in such a manner that it will not injure, delay or damage any other work performed by Contractor or any other contractor, and shall take all precautions necessary to protect all work installed by others and any public improvements. Subcontractor shall be liable for any loss or damage to any work in place or to any equipment and materials on the job site caused by it or its agents, employees, subcontractors, or invitees. Subcontractor shall follow all requirements of Contractor with regard to access to the site and parking.

**Q. USE OF CONTRACTORS EQUIPMENT** – In the event Subcontractor shall use Contractor's equipment or facilities, it shall reimburse Contractor at a predetermined rate, unless otherwise stated herein. Further, that in so doing Subcontractor assumes all responsibility for and shall hold Contractor harmless from any claims, actions, demands, damages, liabilities or expenses, including attorney's fees, resulting from the use of such equipment or facilities by Subcontractor or its agents, employees or permittees.

**R. CLEAN-UP** – Subcontractor shall at all times keep the construction area including storage areas used by Subcontractor in a neat and safe condition, and shall ensure that neither it nor its subcontractors or others for whom Subcontractor is responsible; create any hazardous or unsafe conditions. Subcontractor shall keep the site free from waste, excess materials, equipment and rubbish and agrees to promptly clean up such rubbish or waste resulting from the Work within 24 hours after completion of the Work. Upon completion of the Work under this Agreement, Subcontractor shall remove from the site all temporary structures, debris and waste and clean all surfaces, fixtures, equipment, etc., relating to the Work. If Subcontractor refuses or fails to perform a clean-up function within one day after notification from Contractor to do so, Contractor shall have the right to perform said cleaning and Subcontractor agrees to repay Contractor the actual cost of said cleaning plus 10% to cover supervision, insurance and overhead, to be charged to Subcontractor and deducted from monies due under this Agreement. Sheds, materials, equipment and tools left at the site or elsewhere shall be the sole responsibility of Subcontractor.

**S. GUARANTEE** – Subcontractor shall warrant and guarantee all materials and workmanship furnished or performed hereunder to be free from defects for a period of one (1) year from completion and acceptance of the work covered by the Prime Contract or such longer warranty period as may be provided in the Contract Documents, or the Limited Warranty described below. In addition, Subcontractor acknowledges that Subcontractor has reviewed and is familiar with the Fit and Finish warranty obligations set forth in the Limited Warranty adopted by Owner (the "**Limited Warranty**").

The warranties made and given herein by Subcontractor are in addition to any other warranties that may be available to Contractor, its nominees or assignees from manufactures and in addition to all other rights and remedies contained herein or in statute or law.

**T. INTENTIONALLY OMITTED.**

**U. ASSIGNMENT OF CONTRACT** – Subcontractor shall not, without written consent of Contractor, assign, transfer, nor sublet any portion of the Work required by this Agreement nor assign any payments hereunder to others. Contractor may assign or transfer the whole or part of this Agreement, and its rights hereunder, to any corporation, individual, or partnership.

Contractor shall have the right to terminate this Contract if Subcontractor's interest herein, or any part thereof, be assigned or transferred in any manner, either voluntarily or involuntarily or by operation of law, or if a petition under any of the Chapters of the Bankruptcy Act or a petition for the appointment of a Receiver if filed by or against Subcontractor, or if Subcontractor dies or becomes insolvent.

**V. INDEPENDENT CONTRACTOR** – Subcontractor is an independent contractor and shall, at its sole cost and expense, and without increase in the Contract Price, comply with all Applicable Laws, obtain all necessary permits and licenses therefore, pay all manufacturers' taxes, insurance and contributions for Social Security and Unemployment which are measured by wages, salaries, or other remunerations paid to its employees, whether levied under existing or subsequently enacted laws, rules, or regulations. Subcontractor must employ, and must cause its subcontractors to employ, on American citizens or non-citizens with legal United States work authorizations and at all times must obey all Applicable Laws concerning the employment of persons at the site. Subcontractor, upon request, shall furnish evidence satisfactory to Contractor that the foregoing obligations have been fulfilled.

## GENERAL SUBCONTRACT PROVISIONS (For-Rent Product)

**W. WAIVER** - Any act or omission of Contractor which Subcontractor might claim as an excuse for its own failure to perform shall be deemed waived by Subcontractor unless it shall notify Contractor of its intention to assert such excuse within ten (10) days after the occurrence of any such act or omission Subcontractor waives any right it might have to assert the provisions of California Civil Code Section 1654 against Contractor.

**X. ATTORNEY'S FEES** – The prevailing party in any litigation or arbitration in any way related to this Agreement shall be entitled to recover its reasonable costs and attorneys' fees incurred in connection with such litigation or arbitration. For purposes of any award of attorneys' fees and costs, the "prevailing party" shall be (i) in the event of litigation, determined based upon an assessment of which party's major arguments or positions taken in the action or proceeding could fairly be said to have prevailed (whether by compromise, settlement, abandonment by the other party of its claim of defense, final decision, after any appeals, or otherwise) over the other party's major arguments or positions on major disputed issues, or (ii) in the event of arbitration, that party whose claim amount is adopted by the arbitrator(s) in the final award. Any fees and costs incurred in enforcing a judgment shall be recoverable separately from any other amount included in the judgment and shall survive and not be merged in the judgment.

**Y. ARBITRATION** – In the event the Prime Contract contains a provision for arbitration of disputes arising between Contractor and Owner, the following clauses shall be in effect as a part of this Agreement, but not otherwise.

If, at any time any controversy shall arise between Contractor and Subcontractor regarding anything pertaining to this Agreement and which the parties hereto do not promptly adjust and determine, or which Owner's representative or Architect cannot decide to the satisfaction of both parties, then the written orders of Contractor to Subcontractor shall be followed. The controversy shall be submitted by arbitration in the city first above named under the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, and the parties hereto agree to be bound by the Award in such arbitration.

In addition, Subcontractor shall be bound to Contractor to the same extent Contractor is bound by any provisions of the Contract Documents to arbitrate.

Both Contractor and Subcontractor agree that in the event either of them become involved in arbitration proceedings with third parties concerning work to be performed under this Agreement, then both Contractor and Subcontractor agree to participate in said arbitration when requested and to be bound by the same.

**Z. SAFETY OBLIGATIONS AND INDEMNITY** – Subcontractor shall, at its own expense, conform to all safety policies and standards of Contractor, and comply with all specific safety requirements promulgated by any governmental authority, including without limitation, the requirements of the Occupational Safety Health Act of 1970, the Construction Safety Act of 1969, the California Labor Code, Sections 6300 through 6604 and 7100 through 7332, inclusive, and all amendments thereto. Subcontractor accepts sole responsibility for providing a safe work place for its and its subcontractors' employees, suppliers and others for whom Subcontractor is responsible, including without limitation safety training and the adequacy and required use of all safety equipment. Subcontractor shall have and exercise full responsibility for compliance hereunder by itself, its agents, employees, material men, and subcontractors with respect to the Work, and shall directly receive, respond to, defend and be responsible for any citation, assessment, fine or penalty by reason of Subcontractor's agents, employees, material men and subcontractors to so comply. Subcontractor shall indemnify and hold harmless Contractor from and against any liability, loss, damage, cost, claims, awards, judgments, fines, expenses, including litigation expenses, reasonable attorney's fees, claims or liability for harm to persons or property, expenses incurred pursuant to or attendance to any hearing or meeting any other applicable cost which may be incurred by Contractor resulting from Subcontractor's failure to fulfill the covenants set forth in this paragraph.

Subcontractor agrees to immediately report to Contractor any and all accidents that occur on the construction site during the course of Subcontractor's Work.

In the event Subcontractor fails to comply with any citation issued by the Secretary of Labor, or of any other body responsible for the administration occupational health and safety within the period specified in any such citation or order, Contractor may, in its discretion, exercise the right and remedies provided it under the terms of this Subcontract.

**AA. INDEMNITY CLAUSE FOR EQUAL EMPLOYMENT OPPORTUNITIES VIOLATIONS** – Subcontractor shall, at its own expense, conform to the Equal Employment Opportunities policies of the Contractor, and, in addition, shall comply with all Equal Employment Opportunity requirements promulgated by any governmental authority, including, without limitation, the requirements of the Civil Rights Act of 1964, 42 United States Code, Section 1983, Executive Orders 11246, 11375 and 11478, any other applicable statute or ordinances, plans or programs standards and regulations which have been or shall be promulgated or approved by the parties or agencies which administer said Acts or Orders (hereinafter collectively referred to as EEO laws). Subcontractor shall exercise full responsibility for compliance hereunder by itself, its agents, employees, material men and subcontractors with respect to its portion of the Work on this Project. Subcontractor shall directly receive and respond to, defend and be responsible for, any citation, order, claim, charge, or criminal or civil actions, arising by reason of the failure of Subcontractor or its agents, employees, material men and subcontractors to so comply, regardless of whether such non-compliance results from active or passive acts or omissions or whether such non-compliance is the sole or contributory cause of any of those matters against which Subcontractor is obligated hereunder to indemnify and hold harmless Contractor. Subcontractor shall indemnify and hold harmless Contractor from and against any liability loss (including any loss of profits or prospective advantage occasioned by the suspension, cancellation or termination of any contract, or Contractor's eligibility therefore), damage, costs, claims awards, judgments, fines, expenses, including litigation expenses, reasonable attorney's fees, claims or liability for harm to persons or property, expenses incurred pursuant to or attendant to any hearing of meeting or any other applicable costs which may be incurred by Contractor resulting from Subcontractor's failure to fulfill the covenants set forth in this paragraph.

In the event Subcontractor fails to comply with any of the aforementioned EEO laws, or any judgment, order or award issued by the Office of Federal Contract Compliance, United States Department of Labor, or any other federal, state or local agency or any court of law, or any other body responsible for the administration and/or enforcement of any EEO laws, within the period specified in any such laws, judgment, order or award, Contractor may, in its discretion, exercise the rights and remedies provided Contractor under the terms of this Agreement, including, but not limited to, the rights and remedies provided in paragraph I.

**BB. PLANS AND SPECIFICATIONS** – Subcontractor represents that it has carefully read and analyzed the plans and specifications for the Work, including without limitation, any master grading, siting or development plans and any drainage or soil reports or plans, and that there are no errors or omissions in said plans or specifications with respect to the labor, materials, or equipment covered by the terms of this Agreement, or if there are such errors or omissions, Subcontractor will correct any errors or omissions at no extra cost to Contractor by a written change order executed by contractor and Subcontractor. All drawings, specifications and copies thereof furnished to Subcontractor by Contractor are Contractor's property and shall not be duplicated by Subcontractor without Contractor's prior written consent. The drawings and specifications are not to be used on other work and are to be returned to Contractor at the completion of the Work.

**CC. HAZARDOUS SUBSTANCES-- "Hazardous Substance"** means petroleum products, including unrefined or any fraction of crude oil and any item defined as a Hazardous Substance in California Health and Safety Code Section 25316 or in The Hazardous Substances Information and Training Act (California Labor Code Section 6360 *et seq.*) and all implementing regulations

## **GENERAL SUBCONTRACT PROVISIONS (For-Rent Product)**

(Title 8 California Administrative Code, including Sections 339, 3204 and 5194). Subcontractor acknowledges that the definition of Hazardous Substances is quite broad and may include ordinary construction materials.

Subcontractor must use and store on the site only the minimum quantities of any Hazardous Substance required for the Work. Subcontractor shall fully comply with all Applicable Laws regarding the use, storage and disposal of any Hazardous Substance, and must notify Contractor and other contractors on the site if Subcontractor intends to use any Hazardous Substances. Subcontractor must promptly cleanup and remove, by approved methods, any Hazardous Substance spilled or otherwise released onto the site, the ground water under the site or the air above the site, by Subcontractor or any of its employees, agents, contractors, suppliers or subcontractors. Upon request, Subcontractor shall promptly provide Contractor and any other affected parties with a Materials Safety Data Sheet ("MSDS") and any other requested information pertaining to any Hazardous Substance Subcontractor uses or intends to use on the site.

**DD. COMPLETION** -- Contractor shall have the right to determine, in its sole discretion, the percentage of the Work which has been completed at any time during the term of this Agreement and to determine whether or not the Work has been completed.

**EE. DRUG FREE** -- Non-prescription drugs (other than over-the-counter medications) and alcohol are strictly prohibited on the site at all times Subcontractor shall instruct its employees, subcontractors and others for whom it is responsible that the possession of non-prescription drugs or alcohol while on the site or working on the site under the influence of non-prescription drugs or alcohol, will result in immediate removal of the employee from all of Contractor's projects. Subcontractor shall strictly enforce this policy. Subcontractor's failure to enforce this policy is a material breach of this Agreement and a basis for termination for cause.

**FF. SUBCONTRACTOR'S REPRESENTATIONS AND WARRANTIES** -- Subcontractor acknowledges that Contractor relies upon Subcontractor's experience, expertise, recommendations and supervision in the performance and scheduling of the Work. Subcontractor represents and warrants that it is (1) an expert in its field and trade and able to further the facilities, tool, materials, supplies, equipment and qualified personnel required to perform the Work, and has sufficient expertise and competence to do so; (2) financially solvent, able to pay its debts when due and possessed of sufficient working capital to perform the Work and meet its obligations under this Agreement; (3) properly qualified, certified and licensed to perform the Work by all governmental and quasi-governmental authorities having jurisdiction over Subcontractor or the Work and will remain so at all times during performance of the Work; (5) a duly formed and existing legal entity; and (6) duly authorized to execute this Agreement.

**GG. AUTHORITY OF CONTRACTOR'S REPRESENTATIVES AND EMPLOYEES** -- Contractor's representatives and employees are not authorized to modify alter, amend or otherwise change this Subcontract except as specifically set forth herein. Contractors' representatives and employees are not permitted to accept directly or indirectly any gift, gratuity, favors or other forms of compensation from Subcontractor without the express written permission of the Contractor. Subcontractor shall not enter into any side agreements or do any work for any of Contractor's employees or representatives directly or indirectly without the express written permission of the Contractor. Violation of this provision shall constitute grounds for termination of this contract for cause.

**HH. CONTRACTOR'S RIGHT TO SUPPLEMENT SUBCONTRACTOR'S WORK** -- In lieu of termination for cause, Contractor may elect to provide additional labor and/or materials in order to ensure timely and workmanlike completion of the Work. In the event Contractor elects to provide additional labor and/or materials to complete the Work without termination of the Subcontract, Contractor shall first provide Subcontractor with a 48 Hour Notice similar to that set forth in paragraph I herein. Contractor will back charge Subcontractor for all such additional labor and/or materials provided within the scope of Subcontractor's work.

**EXHIBIT A**

**SCOPE OF WORK**

Project Name: \_\_\_\_\_  
 Contract #: \_\_\_\_\_  
 Tract #: \_\_\_\_\_  
 Subcontractor Name: \_\_\_\_\_  
 Cost Code: \_\_\_\_\_

**PART I: CONTRACT DOCUMENTS**

Civil Engineering: \_\_\_\_\_  
 Architecture: \_\_\_\_\_  
 Soils: \_\_\_\_\_  
 Structural: \_\_\_\_\_  
 Utility Consultant: \_\_\_\_\_  
 Landscaping: \_\_\_\_\_  
 Other: \_\_\_\_\_

**Sheet Schedule**

SHEET	SHEET TITLE	REVISION	
ARCHITECTURE			

**PART II: SPECIFIC INCLUSIONS.**

The Work specifically includes the following items, all of which are included in the Subcontract Price set forth on Exhibit "B". All of the following, unless otherwise noted, include labor, material, equipment installation, supervision and all applicable taxes:

The schedule of Work to be performed shall include, but is not limited to, the following:

General Scope:

Work shall be done according to Contract Documents and to the satisfaction of the Owner. This contract includes all necessary supervision, labor, material, equipment and coordination services required for supply and installation of the \_\_\_\_\_ per the plans and Project Manual listed, including the following:

1. Subcontractor shall furnish in writing to the superintendent all defects in workmanship discovered that will affect their work. If the Subcontractor knowingly covers up bad work, the Subcontractor will be held accountable for correcting the work at no cost to Contractor.
2. Subcontractor must supply updated Material Safety Data Sheets to the Contractor's Purchasing Department prior to commencing work. The Subcontractor is responsible for all materials they bring onto the project. The Subcontractor is responsible for updating the Material Safety Data Sheets to the Contractor's Purchasing Department when changes occur or when new products or materials are used on the jobsite.
3. In the event Subcontractor needs to work overtime in order to maintain the mutually agreed upon production schedule, it is agreed the Contractor will not pay extra for this overtime. This is when Subcontractor has failed to meet their regular production schedule, weather permitting. In the event Contractor requests overtime work to increase the production schedule. Contractor will pay for the additional overtime cost at overtime rates listed in exhibit B said rates include benefits per each individual time card.
4. Subcontractor shall be responsible to meet all applicable codes as listed on plans and project manual and / or local codes as well as any other codes governing this trade's work. Any re-inspection fees due to this Subcontractor's failure to install the appropriate material or failure to meet these codes shall be charged to this Subcontractor.
5. Customer Service – Supply a qualified employee, independent of production crew, to handle all customer service and / or warranty claims through duration of project. \$200.00 will be assessed against Subcontractor, per occurrence, for missed appointments and failure to perform customer service work in a timely professional manner. Subcontractor must designate one person to do Customer Service work. The Subcontractor's Customer Service Representative must wear clean work clothes, speak English, and leave the area in a clean and tidy manner.
6. Subcontractor shall use only areas designated by the superintendent for use during break periods. Subcontractor shall clean up all debris from the areas after break periods. Failure to clean up all debris shall result in Contractor cleaning the area and back charging all Subcontractors a minimum of \$50 per occurrence.
7. Subcontractor shall not at any time drive or park any vehicles or equipment on driveways, walkways or sidewalks. If a violation of these is observed, Subcontractor shall be back charged \$200 per violation.
8. Subcontractor shall be responsible for any damages caused to other trades work or materials. This Subcontractor will be back charged all cost associated with repairs and / or replacement of damaged material.

9. Subcontractor shall be responsible for any damages caused by faulty workmanship and / or materials used. This Subcontractor will be back charged all costs associated with repairs and/ or replacement of damaged material this is required by other trades. This Subcontractor shall repair and / or replace the faulty work and / or materials caused by him at no additional cost to Contractor.
10. It is absolutely imperative that Subcontractor keep the same crews, supervisors, lead men, and pickup men throughout the job to ensure consistency. Subcontractor shall provide the above information to Contractor's Superintendent at time of start of work in writing so that personnel changes and problems associated with this can be monitored and addressed. Contractor reserves the right to remove any individual from project, including but not limited to Subcontractor foreman and lead men.
11. Subcontractor shall be responsible for meeting or exceeding all of the Federal OSHA as well as Cal OSHA's requirements for safety, Subcontractor shall use OSHA approved ladders only and shall tie while on roofs as required by OSHA and all applicable codes and requirements.
12. Subcontractor shall perform work according to the site rules.
13. Subcontractor shall clean up on a daily basis, including maintaining tub covers / protectors on tub / shower units. Any debris created by his operation will be placed in debris box and separated per any local requirements or as directed by Superintendent. Subcontractor shall store and maintain all useable materials in an organized manner. Subcontractor shall maintain jobsite container and storage area in an orderly manner and dispose of any debris created in these areas. Failure to clean up after working in or around the work site may result in a \$100.00 charge per occurrence. All debris shall be hauled off by others.
14. Subcontractor and Subcontractor's employees shall ONLY utilize the portable restroom facilities. Failure to comply will / may result in immediate termination of the offending personnel from all Contractor projects, and will result in a \$200.00 back charge plus the cost of sanitizing the premises.
15. All debris to be policed on a daily basis into dumpsters provided by the Contractor.
16. Subcontractor's Foreman must attend a Foreman's Meeting per ROEM schedule. Absence may incur \$100 fine.
17. Subcontractor must provide copies of the minutes from their weekly safety meeting to the Superintendent.
18. Subcontractor shall keep mud and dirt off the public streets and will notify Superintendent of any incidents as soon as is practicable.
19. Subcontractor shall submit all change order requests on form provided by Contractor, and shall provide any backup documents requested by Contractor.

**Specific Scope:**

Furnish and / or pay for all labor, material, tools, equipment, transportation and services usually required to complete the installation of \_\_\_\_\_ as required by the Contract Drawings and specifications and the best practice of the industry, including, but not necessarily limited to the following.

This specific scope is to conform to the requirements of the contract. Unless specifically noted herein, Subcontractor warrants that the Specific Scope below sets forth all the work necessary to complete Subcontractor's portion of the Work. Contractor may not authorize any change order based on Subcontractor's failure to conform the Specific Scope to the Contract Documents.

1. \_\_\_\_\_ (list specific scope here)

**PART III: EXCLUSIONS, QUALIFICATIONS AND ASSUMPTIONS:**

The following exclusions, qualifications and assumptions apply to the Work:

EXHIBIT B

SUBCONTRACT PRICE AND PAYMENT PROCEDURES

1. SUBCONTRACT PRICE. The Subcontract Price will be as follows: (Check one)
In any case, subcontractor total mark-up on change orders shall not exceed 10%

[X] Flat Fee: The Contractor agrees to pay the Subcontractor for the performance of this Agreement, as specified herein, the sum of DOLLARS 00/100 (\$.00), which sum includes all applicable sales and/or use taxes. Such sum is subject to additions and deductions for changes agreed upon or determined, as hereinafter provided. Additional breakdown (if necessary) of the Subcontract Price is as follows [INSERT DETAILS OF PAYMENT BREAKDOWN]:

Blank lines for payment breakdown details.

[ ] Other: The contractor agrees to pay Subcontractor for the services on the following basis:

Blank lines for other payment basis details.

2. BILLING PROCEDURES. On or before the 25th day of each month, Subcontractor shall deliver to the Contractor an itemized "Payment Request" in accordance with the procedures set forth below, for the prior month. Such Payment Request shall be submitted together with such supporting documentation substantiating the Subcontractor's right to payment, as may be required by this Exhibit "B".

- A. Subcontractor shall bill for Work completed each month, based on [CHECK ONE]:
[X] the prorata portion of the Subcontract Price and the percentage of completion of the Work; [OR]
[ ] the payment schedule attached as Schedule 1 to this Exhibit B.

B. Subcontractor understands that any variance from the procedures and requirements of this Exhibit "B" or the Agreement, including, but not limited to, errors in reported completed Work, incomplete payment requests or nonconformance with required releases or insurance requirements will cause payments to be delayed until all such matters are satisfied and/or corrected to Contractor's satisfaction.

C. All Payment Requests must be accompanied by appropriate conditional and unconditional lien releases from Subcontractor and its subcontractors and suppliers.

D. Contractor may, at its discretion, make any payment (progress or final) due Subcontractor by check payable jointly to Subcontractor and to any materialmen, Sub-subcontractor, laborer or supplier entitled to payment for any portion of the Work.

E. It is mutually agreed between the Subcontractor and the Contractor that no payment made under this Agreement, shall be evidence of the performance of this Agreement, either wholly or in part, nor shall it be construed to be an acceptance of defective Work or improper material, or an approval of any of the items in any requisition made or bill rendered.

F. Contractor shall make payment on complete Payment Requests, not later than 7 days of receipt by Contractor of each progress payment from Owner or Owner's lender(s) related to said Payment Request, less a retention of 10%. Invoices with outstanding issues where payment may be withheld, shall be processed and paid within 7 days of when outstanding issues are resolved and the progress payment for said Payment Request is received by Contractor.

G. Contractor shall have the option to make payment by major credit card. Subcontractor may not charge a fee for such payment in excess of Subcontractor's actual cost of accepting payment by credit card.

3. PAYMENT WITHHELD. In the event of a good faith dispute over the amount of a progress payment due to Subcontractor, Contractor shall be entitled to withhold payment in an amount of up to 150% of the disputed amount to protect itself or Owner from loss on account of:

- A. defective Work not remedied, missing materials not furnished, cleanup not performed; or
B. claims filed or reasonable evidence indicating the probable filing of claims in connection with the Work to be performed hereunder; or
C. failure of the Subcontractor to make prompt payments to materialmen and laborers, including fringe benefits; or
D. any damage to another subcontractor or Sub-subcontractor performing work on the Project; or
E. any dispute or controversy between the Subcontractor and any other subcontractor or Sub-subcontractor; or
F. any dispute or controversy between the parties hereto concerning this Agreement; or
G. failure to deliver written guarantees or warranties as required by this Agreement; or
H. reasonable indication that the Work will not be completed on schedule, or within the contract time or for the unpaid balance of the Subcontract Price; or
I. non-compliance with any insurance requirements; or
J. non-compliance with safety requirements, codes, laws, rules or regulations; or
K. failure to obtain approvals by any Agencies or authority having jurisdiction over the Work to the extent Subcontractor is obligated to do so; or
L. any failure to comply strictly with the terms of the Contract; or
M. any lien or stop notice filed by Subcontractor or his Sub-subcontractors or materialmen not removed or rescinded in accordance with this Agreement; or
N. in any other instance wherein the law authorizes the holding of payments; or
O. a backcharge owing to Contractor under the Agreement.
P. notice of non compliance or violation of prevailing wage requirements.

In the event payment is withheld, no monies withheld will be paid to Subcontractor until the matter causing the funds to be withheld is resolved to the satisfaction of Contractor. No withholding hereunder shall entitle the Subcontractor to suspend or terminate Work under this Agreement. Any suspension or termination of work by Subcontractor may, at the Contractor's option, be a breach of contract.

4. PAYMENT OF FINAL DRAW AND RETENTION.

A. Final Draw Payment. Final payment constituting the unpaid balance of the Subcontract Price other than the Subcontractor's retention shall be due and payable upon Contractor's final approval of the Work, provided that, as a condition to such payment, the Subcontractor has first delivered to the Contractor evidence of the Subcontractor's full payment of all Sub-subcontractors and the absence of any liens with respect to the Work as Contractor may require. Specifically, as a condition to final payment (and before the retention billing is submitted to Contractor), Subcontractor shall deliver fully-executed unconditional Sub-subcontractor lien releases for all Work completed prior to the current Payment Request Period and conditional Sub-subcontractor lien releases for final payment (conditioned only upon final payment) from all Sub-subcontractors and material suppliers who have supplied labor or materials to the Project or who have otherwise been involved in Subcontractor's Work, using the California statutory release forms. In the event Subcontractor uses any union labor, final payment by Contractor to Subcontractor may, at Contractor's option, be further conditioned upon Contractor's receipt of a statement from any trust fund (as set forth in California Civil Code Section 3111.5) and shall not be made unless in Contractor's opinion all payroll affidavits and union dues receipts have been furnished by Subcontractor.

B. Retention Payment. Payment of Subcontractor's retention constituting the unpaid balance of the Subcontract Price shall be due and payable when all of the following have been satisfied: (i) Contractor's final approval of the Work including, but not limited to, final approval of all repair and "punch-list" work, (ii) Subcontractor has fully complied with all the terms and conditions of this Exhibit "B" and the terms of the Contract, (iii) Subcontractor delivers a fully executed conditional or unconditional lien release for final payment using the California statutory release form, and (iv) Contractor has approved Subcontractor's retention billing and all other matters in connection with the Work. Notwithstanding the foregoing to the contrary, Contractor shall release retention proceeds to Subcontractor within ten (10) days after receipt of retention proceeds from Owner, less one hundred fifty percent (150%) of (a) the amount of any items in dispute and (b) the cost of completing or correcting incomplete Work.



SCHEDULE OF VALUES to EXHIBIT B

PAYMENT SCHEDULE

Cost Code	Description – Schedule of Values	Contract Amount

10% RETENTION TO BE HELD FROM ALL INVOICES.

## EXHIBIT C

### OCIP INSURANCE PROVISIONS

#### A. OWNER CONTROLLED INSURANCE PROGRAM

##### 1. General.

a. (a) Owner has arranged for the project (the "Project") to be insured under an owner controlled insurance program (the "OCIP" or "Wrap-Up"). [OCIP coverages and procedures are summarized in the OCIP insurance program manual (the "Insurance Manual") provided separately to Subcontractor. Subcontractor acknowledges receipt of a copy of the Insurance Manual.]

The OCIP administrator shall be \_\_\_\_\_ the "OCIP Administrator").

Parties performing Work at the Project site are eligible to enroll in the OCIP unless they are an Excluded Party (as defined below). The OCIP shall provide to Enrolled Parties (as defined below) commercial general liability insurance and excess liability insurance, as summarized below, in connection with the performance of the Work at the Project site.

b. Subcontractor's enrollment into the OCIP shall be effective when both of the following have occurred: (i) Contractor and Subcontractor have executed this Exhibit and (ii) OCIP Administrator has issued to Subcontractor a certificate of insurance evidencing Subcontractor's enrollment into the OCIP.

c. From and after the Effective Date of Subcontractor's enrollment into the OCIP, this Exhibit C supersedes **Section C of the General Subcontract Provisions**, for so long as the OCIP remains in effect and Subcontractor is a participant in the OCIP but only with respect to the required general liability insurance coverage for Subcontractor's Work at the Project site. Notwithstanding the OCIP, Subcontractor still is required to obtain, maintain and provide evidence of, the other insurance coverages specified in, and to the extent required under, **Section C of the General Subcontract Provisions**. In particular, and without limitation, Subcontractor still is obligated to obtain, maintain and provide evidence of (i) primary general liability insurance coverage for Subcontractor's operations away from the Project site and (ii) workers' compensation and employers' liability insurance and business auto liability insurance for all of Subcontractor's operations, both at the Project site and away from the Project site.

d. Unless specifically stated otherwise in this Exhibit C, all of the terms and conditions of the Agreement shall remain in full force and effect. All capitalized terms that are not otherwise defined in this Exhibit C shall have the definition set forth in the Agreement.

2. **Disclosures Pursuant To California Civil Code §2782.96.** Contractor and Owner make the following disclosures, pursuant to California Civil Code section 2782.96.

(a) Subcontractor's Insurance Credits. The method of calculation of Subcontractor's Insurance Credits is described in Sections A.5.b and 6 of this Exhibit C.

(b) Other Disclosures.

i) The OCIP policy limits are described in Sections B.1.a and 1.b of this Exhibit C.

ii) The known exclusions in the primary and excess OCIP policies are summarily described below. [List exclusions.]

iii) The length of time the primary and excess OCIP policies are intended to remain in effect is described in Sections B.1.a and 1.b of this Exhibit C.

iv) Contractor will provide Subcontractor and its Enrolled Sub-subcontractors with a copy of the OCIP policies upon written request to Contractor.

##### 3. Coverage Under the OCIP.

a. Coverages and limits of liability under the OCIP shall apply to all Work designated for inclusion in the OCIP, and shall cover Owner, Contractor, Subcontractor, OCIP Administrator and eligible Sub-subcontractors (each, a "Sub-subcontractor") who have successfully enrolled in the OCIP (each, an "Enrolled Subcontractor" or "Enrolled Sub-subcontractor," as the case may be), and such other persons or entities as Owner in its sole discretion may designate (each such party who is insured under the OCIP, an "Insured Party"). Coverage under the OCIP shall not apply to or be available for hazardous materials remediation, removal and/or transport companies and consultants; pest control/exterminators, janitorial, temporary power suppliers, vendors, suppliers, fabricators, material dealers, truckers, haulers, drivers and others who merely transport, pickup, deliver, or carry materials, personnel, parts or equipment or any other items or persons to or from the Project site; Subcontractors and each of their respective Sub-subcontractors who do not perform any actual labor at the Project site; and any persons or entities not specifically identified in this Exhibit or excluded by Owner in its sole discretion, even if otherwise eligible for inclusion in the OCIP (collectively, the persons and/or entities described above, the "Excluded Parties").

b. Owner reserves the right, in its sole discretion, to include or exclude any Subcontractor or Sub-subcontractor from the OCIP, notwithstanding such party's apparent eligibility or ineligibility for same.

c. Excluded parties and parties no longer enrolled in or covered by the OCIP shall obtain and maintain, and shall require each of their subcontractors and Sub-subcontractors to obtain and maintain, the insurance coverages specified in their respective contracts with Contractor or Subcontractor, as the case may be. The OCIP coverages shall not apply to any ineligible party, even if erroneously enrolled in the OCIP.

d. Coverage under the OCIP shall apply only to those operations of each Insured Party performed at the Project site in connection with the Work.

e. Subcontractor and each Sub-subcontractor shall be solely responsible for any loss or damage to its or their personal property, including, without limitation, its or their tools and equipment, mobile construction equipment, scaffolding, temporary structures, and uninstalled materials, whether owned, used, leased or rented by Subcontractor or any of its Sub-subcontractors (collectively, "Personal Property"). Owner and Contractor shall have no liability for such personal property, whether on site, in transit, under the control of Owner, Contractor, Subcontractor or otherwise. Subcontractor and any of its Sub-subcontractors and suppliers may, at its or their option, purchase, maintain and pay for insurance or self-insure such equipment and

property, and any deductible or self-insured retention in relation thereto shall be its or their sole responsibility. Any such insurance, including self-insurance, shall be Subcontractor's and any of its Sub-subcontractors' and suppliers' sole source of recovery in the event of a loss with respect to the foregoing property. Any such insurance purchased and maintained by Subcontractor and any Sub-subcontractor and supplier shall include a waiver of subrogation as to Owner, Contractor, and each and every consultant, sub-consultant, subcontractor, Sub-subcontractor and supplier performing Work or providing services or materials in connection with the Project. Subcontractor waives all rights of recovery, whether under subrogation or otherwise, against all such parties for loss, damage or theft covered by Subcontractor's or any Sub-subcontractors' or suppliers' property insurance. Subcontractor shall obtain the same waiver from all Sub-subcontractors and suppliers and from the insurers issuing such property insurance. The waivers of subrogation referred to in this section shall be effective as to any individual or entity even if such individual or entity (i) would otherwise have a duty of indemnification, contractual or otherwise, (ii) did not pay the insurance premium, directly or indirectly, and (iii) whether or not such individual or entity has an insurable interest in the property which is the subject of the loss, damage or theft.

#### 4. Insured Party Responsibilities

a. Enrollment of Subcontractor's eligible Sub-subcontractors is mandatory. Subcontractor shall notify Contractor and the OCIP Administrator in writing of the identity of each eligible Sub-subcontractor prior to such parties' commencement of their portion of the Work and prior to their entry onto the Project site. Subcontractor shall be solely responsible for any and all losses, damages, claims, liabilities, and suits arising out of its failure to enroll, or delay in enrolling, any of its eligible Sub-subcontractors.

b. Each Insured Party's responsibilities under the OCIP are more fully set forth in the OCIP insurance policies and are summarized in the Insurance Manual. It is the obligation of the eligible Subcontractor and each of its eligible Sub-subcontractors to enroll in the OCIP and comply with all of the administrative, safety, loss control, quality control, insurance and other requirements outlined in this Exhibit C, in the OCIP insurance policies, in the Insurance Manual, and elsewhere in the Contract Documents. The failure of (a) Contractor to include the Insurance Manual in the bid documents or (b) Subcontractor to provide each eligible Sub-subcontractor with a copy of the Insurance Manual shall not relieve Subcontractor or any eligible Sub-subcontractor from or of any of the obligations contained therein. Subcontractor shall be responsible for providing each Sub-subcontractor, among other things, with a copy of the Insurance Manual and a copy of a substantially identical exhibit to the sub-subcontract, for obtaining an executed copy of the sub-subcontract version of this Exhibit and providing such executed copy to Contractor, and for requiring in writing that each Subcontractor and Sub-subcontractor comply with, among other things, the provisions of the OCIP insurance policies, the Insurance Manual, this Exhibit, and the Contract Documents.

#### 5. Payment of OCIP Premiums; Insurance Credits; OCIP Policy Self-Insured Retentions.

a. The costs of premiums for the coverage provided by the OCIP shall be paid by Owner. Owner will receive or pay, as the case may be, all adjustments in such costs, whether by way of dividends, retrospective rating adjustments, return premiums, audits or otherwise. Subcontractor and each Sub-subcontractor hereby assigns to Owner all rights to receive such adjustments and agrees to execute any further instruments of assignment as may be necessary to permit Owner to receive such adjustments.

b. Contractor, as agent for Owner, shall take a deduction from the compensation due Contractor under the Agreement (the "Contract Price") by one or more Insurance Credits (as defined below) in the manner set forth in this Exhibit C. Contractor, as agent for Owner, shall be entitled to and may collect, from time to time, additional Insurance Credits resulting from (i) any changes in the scope of, or compensation for, the Work, (ii) inaccurate or incomplete assumptions or information in connection with the initial Credit, or (iii) information discovered during any review or audits which justify the taking of additional Insurance Credits. Subcontractor shall, promptly upon request, pay to Contractor, as agent for Owner, the amount(s) of any such additional Insurance Credits. In the event Subcontractor fails to do so, Contractor, as agent for Owner, may backcharge Subcontractor, may withhold from monies otherwise owing to Subcontractor, or may collect by any other lawful means, the amounts owed by Subcontractor in connection with such additional Insurance Credits.

c. Owner shall be responsible for payment of the deductibles or self-insured retentions set forth in the OCIP insurance policies, subject to Subcontractor's and the Sub-subcontractors' SIR Contributions (as defined below) as set forth in Section 1.4(d), below.

d. In the event of an occurrence which requires Owner to satisfy any portion of the deductibles or self-insured retentions set forth in the OCIP general liability and/or excess liability policies (the "SIR") and which arises out of or is in any way connected with the Work, Subcontractor shall, regardless of fault, pay to Contractor, as agent for Owner, a contribution toward such SIR in an amount equal to the deductible or self-insured retention under Subcontractor's conventional commercial liability insurance policy in effect as of the Effective Date or [\$\_\_\_\_\_] per occurrence, whichever is greater (the "SIR Contribution"). This allocation of the SIR is not an indemnity obligation on the part of Subcontractor or any Sub-subcontractor; it is a contractual allocation of the Insured Parties' mutual obligations under the OCIP. The SIR Contribution shall include, without limitation, attorneys' fees, court costs and other defense expenses. Subcontractor shall, promptly upon request, pay to Contractor, as agent for Owner, the amount of such SIR Contribution. Contractor, as agent for Owner, may backcharge Subcontractor, may withhold from monies otherwise owing to Subcontractor, or may collect by any other lawful means, the amount(s) owed by Subcontractor as its SIR Contribution. The SIR Contribution shall remain uninsured by Subcontractor and the Sub-subcontractors and will not be covered by the OCIP insurance policies. During any warranty or guaranty period on the part of Subcontractor, pursuant to this Agreement, Subcontractor is wholly and solely responsible for repair, replacement and correction of the Work and any and all damages arising out of the Work and the warranty work. Subcontractor acknowledges that its obligations to perform and/or pay for all such warranty work and damage arising out of the Work and the warranty work is not limited to or by the amount of the SIR Contribution.

#### 6. Calculation of Insurance Credits.

a. Subcontractor shall submit its bid inclusive of its costs for commercial general liability and umbrella/follow form excess liability coverages. Subcontractor shall provide Contractor, among other things, with an estimate of Subcontractor's costs of insurance for their respective coverages to be provided by the OCIP by the completion of the [OCIP Insurance Cost Calculation and Enrollment Form (Form A)] by Subcontractor. Such estimated costs shall be used to calculate the initial amount (the "Initial Insurance Credit") to be deducted from the Contract Price as the cost to Subcontractor of the insurance to be provided under the OCIP (the Initial Insurance Credit, or any subsequent insurance credit taken by Contractor against the Contract Price pursuant to the terms of this Exhibit, the Insurance Manual, or any other Contract Document, shall be hereinafter referred to as an "Insurance Credit").

b. Subcontractor is solely responsible for the recovery from its Sub-subcontractors of any Insurance Credit costs attributable to such Sub-subcontractors' participation in the OCIP.

c. If unit pricing is the basis for the Contract Price, Contractor, as agent for Owner, may, at its option, apply a per unit Insurance Credit where appropriate.

d. Subcontractor hereby represents and warrants that all data and information, including, without limitation, insurance cost information, submitted to Contractor or the OCIP Administrator to calculate any Insurance Credit is or shall be

accurate and complete. This representation and warranty is deemed to be continuing and shall survive the expiration or earlier termination of this Agreement.

e. In order to verify the Initial Insurance Credit (or any subsequent Insurance Credit(s)), Subcontractor and each Sub-subcontractor shall submit all documentation reasonably requested by Contractor or OCIP Administrator in connection therewith, including, without limitation, copies of insurance policy declarations pages, rate schedule pages and deductible/self-insured retention pages and, if applicable, current and prior loss histories, information on self-insured retention programs and documentation of the total cost of risk in any self-insured program. Contractor has the right to determine additional insurance costs, and to collect such costs by causing Contractor to deduct the commensurate Insurance Credit from the Contract Price. If Subcontractor or any Sub-subcontractors do not provide information sufficient to allow verification of the applicable Insurance Credit, then Contractor or OCIP Administrator may independently calculate an appropriate Insurance Credit based on undiscounted or "manual" rates.

## **7. Owner's and Contractor's Insurance Obligations; Subcontractor's Obligations; Representations, Warranties and Disclaimers; Release.**

a. Owner and Contractor assume no obligation to provide insurance other than that summarized in this Exhibit, in the Insurance Manual and in the OCIP insurance policies. Subcontractor and each Enrolled Sub-subcontractor shall review the OCIP coverages, limits of liability and insurance policies to satisfy themselves that the coverage offered thereby meet their respective needs. Nothing contained herein shall be deemed to place any responsibility on Owner or Contractor, and Owner and Contractor disclaim any responsibility, for ensuring that the insurance provided by the OCIP is sufficient for the conduct of Subcontractor's or the Sub-subcontractors' business or performance of the Work, including, without limitation, the adequacy of the limits of liability provided by, and as to all other terms, conditions and exclusions of, the OCIP insurance policies. The furnishing of insurance by Owner through the OCIP shall in no way relieve or limit or be construed to relieve or limit Subcontractor or any Sub-subcontractor of any responsibility, liability or obligation imposed by the Contract Documents, the OCIP insurance policies or by law, including, without limitation, any indemnification obligations on the part of Subcontractor or any Sub-subcontractor.

b. By enrolling in the OCIP, Subcontractor and all Sub-subcontractors acknowledge that (i) the limits of liability of the OCIP insurance policies are shared by all Insured Parties under the OCIP, both for the Project and for other projects being developed and to be developed by Owner, Contractor and/or their affiliates; (ii) Owner and Contractor are not insurers or in the business of insurance and are not agents, brokers, partners or guarantors of Subcontractor or any Sub-subcontractor or of any of the insurance companies providing coverage under the OCIP (each such insurer, an "OCIP Insurer"); and (iii) Owner and Contractor are not responsible for (a) the availability, adequacy or exhaustion of the limits of the OCIP, (b) the present or future solvency of any of the OCIP Insurers or (c) any claims or disputes by, between or among Owner, Contractor, Subcontractor, Sub-subcontractors, and any OCIP Insurer(s), including, without limitation, claims or disputes arising out of any OCIP Insurer(s)' payment or nonpayment of claims or losses, or such insurers' contractual or extra-contractual duties, including, without limitation, defense and/or indemnity obligations. Any type of insurance coverage or limits of liability not provided by the OCIP which Subcontractor or any Sub-subcontractors desire for its or their own protection, or which is required by applicable laws or regulations, shall be its or their sole responsibility and expense and shall not be included in their compensation for the Work. If Subcontractor and any Sub-subcontractors believe that additional limits of liability beyond those provided by the OCIP would be prudent for the protection of Subcontractor and the Sub-subcontractors, they agree to investigate and procure such additional limits of liability for itself or themselves at its or their sole cost.

c. By enrolling in the OCIP, Subcontractor and each Sub-subcontractor represent and warrant that they have had the opportunity to read and analyze (and to obtain professional assistance to read and analyze) a specimen copy of the OCIP insurance policies and understand the contents thereof. Any reference in this Exhibit, in the Insurance Manual or elsewhere in any Contract Document as to amount, nature, type or extent of coverage provided under the OCIP and/or potential applicability to any potential claim or loss is for reference only and Subcontractor and the Sub-subcontractors represent and warrant that they have not relied upon any such reference or any other oral or written statement by or on behalf of Owner, Contractor, the OCIP Administrator or their agents, employees or representatives, but solely upon their own independent review and analysis of the specimen OCIP insurance policies in formulating any understanding and/or belief as to amount, nature, type or extent of any coverage, conditions, extensions, or limits of liability provided by and as to all other terms of the OCIP insurance policies and/or their potential applicability to any potential claim or loss or their sufficiency for the conduct of Subcontractor's or any Sub-subcontractors' business or performance under the Contract Documents. To the extent that Subcontractor or any Sub-subcontractor deems it prudent to secure and maintain additional, supplemental, excess, or wholly independent insurance or liability associated with its or their Work on the Project or otherwise, Subcontractor and each Sub-subcontractor shall be responsible to do so at its or their sole expense.

d. Subcontractor and its Enrolled Sub-subcontractors hereby release Contractor, Owner, the OCIP Administrator and their respective representatives, agents, directors, officers, employees, partners, shareholders, members, affiliates of every tier, successors, and assigns from any and all claims and liabilities arising out of or relating to acts, errors, omissions or negligence (a) in the design, selection, placement, adequacy, amount, limits, scope and nature of insurance coverage afforded by the OCIP, (b) in the selection, performance and present and future solvency of the OCIP insurers, and (c) in the implementation and administration of the OCIP. Subcontractor and all other enrolled parties shall make their own determinations regarding such matters and expressly waive any and all rights and benefits conferred upon it or them by the provisions of California Civil Code Section 1542, which provides:

"A general release does not extend to claims which the creditor did not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Subcontractor and its Enrolled Sub-subcontractors expressly acknowledge that the foregoing waiver of the provisions of Section 1542 was separately bargained for, and expressly agree that the release provision shall be given full force and effect, including, without limitation, as to unknown or unsuspected claims, demands, liabilities and causes of action, if any may exist or arise. This release provision shall survive the completion of the Work and the expiration or other termination of the Agreement.

## **8. Defense of Suits Against More Than One Insured.**

a. In the event that a claim, demand, suit or other proceeding ("Claim") is brought against more than one insured under the OCIP, Owner, Contractor, Subcontractor and all Sub-subcontractors recognize the common interest of all OCIP insureds in jointly defending that Claim. To the fullest extent permitted by law, and absent a material, current, actual, unwaivable conflict of interest mandating the appointment of separate counsel under applicable law, Owner, Contractor, Subcontractor and all Sub-subcontractors insured under the OCIP (i) shall be defended by the same counsel and by the same consultants and experts selected by Owner and/or the OCIP Insurer(s) at its or their sole discretion, regardless of whether the defense under the OCIP is provided subject to a reservation of rights issued by one or more of the OCIP Insurers and (ii) waive its or their right to independent counsel as to any and all such Claims. This waiver is deemed to be continuing. Subcontractor and all Sub-subcontractors agree to execute such other documents as are required to effectuate this waiver and fulfill the purpose of this Section 8. Nothing in this Section 8 shall preclude Subcontractor or any Sub-subcontractor from engaging its own counsel, at its or their sole expense, to associate in the defense of any Claim.

b. In defense of Claims arising under the OCIP, information shared with counsel engaged to defend the insureds ("Defense Counsel") will be protected from disclosure and shall remain privileged even after the termination of the OCIP and/or the completion of the Agreement. Subcontractor and all Sub-subcontractors agree not to disclose to any person or entity, other than to Owner, to Contractor and to Defense Counsel, any confidential information obtained in the defense or pursuit of Claims covered, or potentially covered, under the OCIP. Any such confidential information shall only be used in matters that arise directly pursuant to such OCIP Claims. However, disclosures of such confidential information may be made (i) upon written approval from Defense Counsel or (ii) where required by court order or by applicable law.

9. **Modification or Discontinuation of OCIP Coverage** -- If, prior to the expiration date of the OCIP insurance policies, the OCIP is canceled, terminated or non-renewed, or Owner, for any reason, is unable to furnish or continue to furnish the coverage, or any of it, elects to discontinue the OCIP, modifies the limits of liability or coverages provided by the OCIP, or requests that Subcontractor or any of the Sub-subcontractors withdraw from the OCIP, then, upon thirty (30) days written notice from Contractor, as agent for Owner, Subcontractor and/or one or more of its Sub-subcontractors, as specified in such notice, shall obtain and thereafter maintain during the performance of the Work the insurance reasonably required by Contractor, and Owner shall thereafter no longer be obligated to furnish such insurance through the OCIP. In that event, any unearned insurance credit(s) taken by Contractor, as agent for Owner, in connection with the OCIP shall be refunded to Subcontractor. The form, content and limits of liability of such replacement insurance and the insurer(s) issuing such insurance secured by Subcontractor and its Sub-subcontractors pursuant to the provisions of this Section 9 shall be subject to Owner's approval. In the event Subcontractor or a Sub-subcontractor is unable to obtain and maintain the referenced insurance, Contractor may terminate the Agreement, pursuant to its terms, without any liability on the part of Owner or Contractor, in addition to any other remedies available to Contractor.

10. **OCIP Policies Establish OCIP Coverage** -- The insurance coverages, terms, conditions and exclusions contemplated in this Exhibit and in the other Contract Documents are set forth in full in their respective insurance policy forms. The summary descriptions of such policies in this Exhibit, in the Insurance Manual, or any other Contract Document are not intended to be complete or to alter or amend any provision of the actual OCIP insurance policies. To the extent, if any, such summaries herein or therein conflict with such insurance policies, the provisions of the actual insurance policies shall govern. To the extent there are any other conflicts between or among the provisions of such insurance policies or the Contract Documents, then in descending order, the insurance policies shall govern, followed by this Exhibit, the Agreement, then the other Contract Documents, and then the Insurance Manual. Subcontractor and each of the Sub-subcontractors acknowledge that they have reviewed the policies as provided in Section 7 above and that they are relying solely on the provisions set forth in the actual insurance policies, and not upon any oral or written statement or reference in this Exhibit, the Insurance Manual or any other Contract Document, or otherwise.

11. **Replacement of OCIP Coverage** -- In the event the OCIP insurance policy is canceled, terminated or non-renewed, or the OCIP is otherwise discontinued, Owner has the right, but not the obligation, to replace the OCIP with another wrap-up insurance program. Owner shall endeavor to obtain replacement wrap-up insurance which afford coverage substantially similar to that provided by the OCIP insurance policies, to the extent such coverage is commercially reasonably available. Notwithstanding any other provision of the Agreement to the contrary, Subcontractor and its Sub-subcontractors agree that Contractor may suspend the Work for a reasonable period of time while Owner endeavors to obtain replacement wrap-up insurance, pursuant to the terms of this Section 11. If Owner elects to so replace the OCIP, the insurance credit(s) taken by Contractor in connection with the OCIP shall be applied towards the replacement wrap-up insurance program. Subcontractor and its Sub-subcontractors agree to enter into an exhibit substantially similar to this Exhibit as Contractor, as agent for Owner, deems reasonably necessary for the implementation and administration of the replacement wrap-up insurance program and as a condition to Subcontractor's and the Sub-subcontractors' eligibility for such program. Notwithstanding any of the provisions of the Agreement to the contrary, neither Owner nor Contractor shall have any liability whatsoever to Subcontractor or any of its Sub-subcontractors (a) in connection with such suspension of the Work, or (b) in the event that Owner cannot obtain, or elects not to obtain, replacement wrap-up insurance, pursuant to the terms of this Section 11.

**B. THE OCIP INSURANCE.**

1. **Summary of OCIP Coverages** -- Unless otherwise modified by Contractor, the OCIP shall provide only the following insurance to eligible and Enrolled Insured Parties.

a. **Commercial general liability insurance (excluding automobile liability)**, including "bodily injury", "property damage", "personal injury" and "advertising injury" coverages, all subject to the definitions, exclusions, terms and conditions more specifically set forth in the OCIP policy. The OCIP policy does not provide professional liability (errors and omissions) coverage for any professional or any other party. The policy term is \_\_\_ to \_\_\_, with extended products-completed operations coverage for a period of \_\_\_\_\_. The commercial general liability insurance policy has total limits of liability for all insureds under the OCIP, for the Project and for other projects being developed and to be developed by Owner, Contractor and/or affiliates of Owner or Contractor, as follows:

**Limits of Liability  
Shared By All Insureds  
For All Projects**

Bodily injury and property damage –	
Each occurrence limit	\$ _____
Products-completed operations aggregate limit	\$ _____
Personal and advertising injury limit	\$ _____
General aggregate limit	\$ _____

b. **Excess liability insurance over the commercial general liability insurance.** The policy term is \_\_\_ to \_\_\_, with extended products-completed operations coverage for a period of \_\_\_\_\_. The total combined excess liability limit for all insureds under the OCIP, for the Project and for other projects being developed and to be developed by Owner, Contractor and/or affiliates of Owner or Contractor shall be:

**Limits of Liability  
Shared By All Insureds  
For All Projects**

Each occurrence limit	\$ _____
Aggregate limit	\$ _____

c. **Coverages Not Provided.** The OCIP provides only commercial general liability insurance and excess liability insurance. The OCIP does not provide workers' compensation insurance, employer's liability insurance, automobile liability insurance, pollution liability insurance, professional liability insurance or property insurance coverage.

d. **Property Coverages and Claims.**

(1) **No Property Coverages.** The OCIP does not provide property insurance of any kind, such as builder's risk or installation floater. The OCIP does not cover Subcontractor or its Subcontractors for property insurance claims, suits, losses, deductibles or self-insured retentions.

(2) **Builder's Risk Subrogation Claims and Waiver.** In the event of loss or damage to the Project, or any part thereof, which arises out of or relates to the Work and which is covered and paid by Owner's or Contractor's builder's risk insurer, Owner, Contractor, Subcontractor and all Sub-subcontractors and all suppliers waive any and all subrogation rights of such builder's risk insurer against one another, to the extent of such payment. Notwithstanding the foregoing, Subcontractor and all Sub-subcontractors and suppliers agree not to tender to the OCIP, or otherwise seek a defense or indemnification from the OCIP as to, any claims or suits by Owner's or Contractor's builder's risk insurer or any other property insurer, arising out of or relating to the Work, whether such claims or suits are based upon subrogation or any other theory of recovery.

### C. 3. GENERAL PROVISIONS.

1. **Cooperation; Compliance; Audits** -- Subcontractor and each Subcontractor shall (a) cooperate fully with Owner, Contractor, the OCIP Administrator and the OCIP Insurers, as applicable, in its or their administration of the OCIP, and (b) comply with the terms, conditions and warranties of the insurance policies provided pursuant to the OCIP. Subcontractor and each Sub-subcontractor shall provide, within five (5) business days of Owner's, Contractor's or the OCIP Administrator's request, all requested documentation, including, without limitation, certified copies of insurance policies, declarations pages of policies, underwriting information, payroll information, certificates of insurance, safety records and history, OSHA citations, rating and prior loss history information, and such other data or information as Owner, Contractor, or the OCIP Administrator or the OCIP Insurers may request in connection with administration of the OCIP, or as required by the Insurance Manual. Subcontractor and each Sub-subcontractor represent and warrant that all data and information provided to OCIP Administrator or the OCIP Insurers is or shall be accurate and complete. Contractor reserves the right to withhold progress payments for failure to cooperate. By enrolling in the OCIP, Subcontractor and its Sub-subcontractors agree that Contractor, the OCIP Administrator and/or any OCIP Insurer may conduct an audit or audits of Subcontractor's and any Sub-subcontractors' books and records, insurance coverages and policies, insurance cost information, or other data and information provided by Subcontractor or any Sub-subcontractors, without limitation, to confirm its or their accuracy.

#### 2. Waiver of Rights of Recovery, Including Subrogation

a. **Waiver by Subcontractors and by Sub-subcontractors.** To the fullest extent permitted by law, Subcontractor hereby waives, and shall require in writing that each Sub-subcontractor also waive, all rights of recovery, whether under subrogation or otherwise, including, without limitation, because of deductible or self-insured retention clauses, inadequacy or exhaustion of limits of any insurance policy, insolvency of any insurer, limitations or terms, conditions or exclusions of coverage, against Owner, Contractor, OCIP Administrator, its or their respective agents, employees, representatives, directors, officers, partners, shareholders, managers, members, affiliates of every tier, successors and assigns, and any other contractor, subcontractor, Sub-subcontractor, supplier and other person or entity performing work or providing materials or services on behalf of Owner or Contractor in connection with the planning, development and construction of the Project. However, this waiver shall not apply to claims by Subcontractor or any Sub-subcontractor for (i) payment under the applicable agreement or (ii) indemnity or contribution against another contractor, subcontractor, Sub-subcontractor or supplier or against Project design professionals or consultants, in the event that Subcontractor and/or one or more Sub-subcontractors pays more than its or their appropriate share of a loss not covered by the OCIP insurance.

b. **Insurance Policy Provisions.** Subcontractor shall require that all insurance policies related to the Work secured by Subcontractor and its Sub-subcontractors and suppliers include clauses providing that each such insurer shall also waive all of its rights of recovery by subrogation, or otherwise, against Owner and Contractor, together with the same parties referenced immediately above in this Section 2. To the fullest extent permitted by law, Subcontractor shall require similar written express waivers and insurance clauses from each Sub-subcontractor and supplier. This provision shall apply to each contractor, subcontractor, Sub-subcontractor and supplier performing work or providing materials or services on behalf of Owner or Contractor in connection with the planning and development of the Project, irrespective of whether or not it is enrolled in the OCIP. A waiver of subrogation shall be effective as to any person or entity even if such person or entity (i) would otherwise have a duty of indemnification, contractual or otherwise, (ii) did not pay the insurance premium, directly or indirectly, and (iii) whether or not such individual or entity has an insurable interest in the property damaged.

c. **Waiver by Owner and Contractor of Worker's Compensation Subrogation Claims.** In the event of a claim or suit involving damages or other sums arising out of or relating to the Work, which are covered and paid by Owner's or Contractor's worker's compensation insurer, Owner and Contractor waive any and all subrogation rights of such worker's compensation insurers against Subcontractor and its Sub-subcontractors and suppliers, to the extent of such payment and to the extent permitted by the worker's compensation policies. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (i) would otherwise have a duty of indemnification, contractual or otherwise, or (ii) did not pay the insurance premium, directly or indirectly.

3. **Records Disclosure, Maintenance and Access** -- Subcontractor shall, and shall cause each Sub-subcontractor to, keep and maintain accurate records and information in accordance with the requirements of the OCIP Insurer(s), the OCIP Administrator or any other Contract Document. Subcontractor and the Sub-subcontractors shall permit their books and records to be examined and audited periodically by the OCIP Insurer(s), Contractor, OCIP Administrator and/or their respective representatives, where reasonably necessary for the implementation and administration of the OCIP.

4. **Proof of Coverage** -- With respect to non-OCIP insurance coverage required to be provided pursuant to the Contract Documents, Subcontractor and each Sub-subcontractor, as applicable, shall deliver to Contractor, prior to the commencement of the Work, the required certificates and endorsements (including, without limitation, additional insured endorsements and waiver of subrogation endorsements) and satisfactory evidence of such insurance coverage for Subcontractor and all Sub-subcontractors as required by this Exhibit and by the Contract Documents. Subcontractor's or any Sub-subcontractors' actual commencement of the Work without compliance with this or any other requirement of this Exhibit shall not constitute a release or waiver of any right of Owner or Contractor under this Exhibit nor a release or waiver of any other right of Owner or Contractor, nor a release or waiver of any duty or obligation owed by Subcontractor or any Sub-subcontractors. Contractor reserves the right to increase or decrease the required limits of liability or require additional coverage of any Subcontractor or Sub-subcontractor based on the type and scope of Work performed. Receipt by Contractor or its representatives of incomplete or non-complying certificates of insurance or other insurance information or documentation provided by a Subcontractor or Sub-subcontractor does not relieve the Subcontractor or any Sub-subcontractor of responsibility for providing the required insurance coverages.

5. **Duty of Care** -- Nothing contained in the OCIP insurance policies, this Exhibit, the Insurance Manual or any other Contract Document shall relieve Subcontractor or any Sub-subcontractor of its and their respective obligations to exercise due care in the performance of their duties in connection with the Work and to complete the Work in strict compliance with the Contract Documents.

6. **Safety; Quality Control** -- To the fullest extent permitted by law, Subcontractor shall be solely responsible for safety in connection with the Work. Subcontractor acknowledges and agrees to comply fully and promptly with any and all safety and health, hazardous and toxic materials and hazard communications standards requirements, including, without limitation, as set forth in the Contract Documents. Subcontractor further acknowledges and agrees to comply fully and promptly with any and all safety, loss control and quality control rules, recommendations, directives and guidelines as may from time to time be promulgated

by Owner, Contractor, OCIP Administrator and/or the OCIP insurer(s) or any of its or their consultants, representatives or agents, including, without limitation, the closure (to Owner's and Contractor's satisfaction) of any and all open items on any and all quality control checklists and/or inventories applicable to the Project. Nothing in this Exhibit or any other Contract Document shall be deemed to render Owner or Contractor an employer of Subcontractor or any of its Sub-subcontractors, or any of its or their personnel or employees.

7. **Non-Waiver** -- No forbearance, act or omission by or on behalf of Owner or Contractor, including, without limitation, permitting Subcontractor or any Sub-subcontractor to commence Work or to continue Work, or releasing any payment, or receiving any certificates, endorsements, policies or other insurance documents or information, without compliance with any provision of this Exhibit or any other Contract Document shall constitute a release of, waiver of or estoppel to assert any right of Owner or Contractor under any of the Contract Documents or otherwise, nor a release of, waiver of or estoppel to assert any duty or obligation owed by Subcontractor or any Sub-subcontractors or otherwise, under the Contract Documents or otherwise.

CONTRACTOR:

SUBCONTRACTOR:

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT D**

**LIQUIDATED DAMAGE FOR BREACH OF PREVAILING WAGE PROVISION**

\_\_\_\_\_ (“Subcontractor”) agrees its breach of the Prevailing Wage Provision would cause the City damage by undermining the Goals and the City’s damage would not be remedied by Subcontractor’s payment of restitution to the workers who were paid a substandard wage. Subcontractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid.

The City and Contractor mutually agree that making a precise determination of the amount of City’s damages as a result of Subcontractor’s breach of the Prevailing Wage Provision would be impracticable and/or extremely difficult. Therefore, in the event of such a breach, Subcontractor shall pay to the City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the amount of wages that should have been paid. In the event the Subcontractor has not paid liquidated damage to the City within 14 days of notice by the City, Contractor may directly pay the City the liquidated damage and reduce the contract by a like amount.

I have read and acknowledge the above Liquidated Damage for Breach of Prevailing Wage Provision:

\_\_\_\_\_  
Signature of Subcontractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of ROEM Representative

\_\_\_\_\_  
Date



EXHIBIT E

SECTION 3 SUMMARY OF FORMS & INFORMATION:

Section 3 is a means by which the US Department of Housing and Urban Development (HUD) fosters local economic development, neighborhood economic improvement, and individual self-sufficiency.

Housing and community development projects with Federal financial assistance should, if possible, hire Section 3 Residents and contract to Section 3 Businesses.

Section 3 residents are:

- Public housing residents.
- Low and very-low income persons who live in the metropolitan area or Non-metropolitan County where a HUD-assisted project for housing or community development is located.
- Low income, Very Low Income, and Extremely Low Income are single residents or a family who has an income per household as defined by HUD in 2009 with these income as income limits:

Extremely Low Income:

1 PER	2 PER	3 PER	4 PER	5 PER	6 PER	7 PER	8 PER
\$18,400	\$21,200	\$23,650	\$26,250	\$28,350	\$30,450	\$32,550	\$34,650

Very Low Income:

1 PER	2 PER	3 PER	4 PER	5 PER	6 PER	7 PER	8 PER
\$30,650	\$35,000	\$39,400	\$43,750	\$47,250	\$50,750	\$54,250	\$57,750

Low Income:

1 PER	2 PER	3 PER	4 PER	5 PER	6 PER	7 PER	8 PER
\$49,000	\$56,000	\$63,000	\$70,000	\$75,600	\$81,200	\$86,800	\$92,400

Section 3 businesses include those:

- That are at least 51 percent or more owned by Section 3 residents,
- Whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within three years of the date of first employment with the business concern were Section 3 residents, or
- That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to a Section 3 business concern.

As a contractor, Subcontractor or supplier on this project please fill out the following forms:

1. Please complete **Section 3 Contract Clauses (ONE TIME)** prior to commencing construction, as part of your Compliance Package. Section 3 clauses must be inserted in all your contracts.
2. Please complete **Section 3 Resident Certification (ONE TIME)** for all local residents working on the project and those that apply to work on the project.
3. Please complete **Section 3 Business Certification (ONE TIME)** for all businesses contracted to do work on this project or suppliers who qualify as a Section 3 Business as outlined above.

Please complete **Section 3 Summary Report** at the end of the project, or at the end of the contract scope of work, and **submit this form with your FINAL Payroll Report.**

**EXHIBIT F**

**SECTION 3 CONTRACT CLAUSES**

These clauses are to be inserted in all HUD contracts.

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act (HUD) of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 Clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include the Section 3 Clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the Subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any Subcontractor where the contractor has notice or knowledge that the Subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

The Contractor/Subcontractor/Service Provider by this signature affixed hereto declares under penalty of perjury that he/she has read and accepts all its clauses contained therein for all of his/her operations within the **City of San Buenaventura, and /or County of Ventura.**

\_\_\_\_\_  
AUTHORIZED SIGNATORY SIGNATURE

\_\_\_\_\_  
SUBCONTRACTOR COMPANY NAME

\_\_\_\_\_  
NAME AND TITLE

\_\_\_\_\_  
DATE

**EXHIBIT G**  
**SCHEDULE OF LABOR COSTS**


(Under paragraph G, page 8 of 12) including wages, benefits, etc.

The attached ROEM Change Order Worksheet is required for all change order requests.

TRADE / CLASSIFICATION	HOURLY RATE

**ROEM CHANGE  
ORDER BACK UP**

1650 Lafayette Street - Santa Clara, CA. 95050 -  
(408) 984-5600

	<b>Project</b>		<b>PROJECT NAME</b>		
	Company Submitting CO				
	Address				
	City				
	State - Zip				
	Phone				
Date					
<b>LABOR</b>					
	Trade	Employee	Hours	Rate	Extension
1					\$0.00
2					\$0.00
3					\$0.00
4					\$0.00
5					\$0.00
6					\$0.00
7					\$0.00
		<b>Total</b>			<b>\$0.00</b>
<b>MATERIAL</b>					
	Description	Supplier	Qty	Unit Price	Extension
1					\$0.00
2					\$0.00
3					\$0.00
4					\$0.00
5					\$0.00
		<b>Total</b>			<b>\$0.00</b>
<b>EQUIPMENT</b>					
	Description	Supplier	Qty	Rate	Extension
1					\$ -
2					\$ -
3					\$ -
4					\$ -
		<b>Total</b>			<b>\$ -</b>
<b>SUBCONTRACT</b>					
	Description	Sub-Contractor	Qty	Unit Price	Extension
1					
2					
3					
<b>SUMMARY</b>					
Labor Total					\$ -
Material Total					\$ -
Equipment Total					\$ -
Sub-Contractor Total					\$ -
Sales tax on Material					\$ -
MARK UP PER CONTRACT TERMS INCLUDES OHP				10%	\$ -
<b>Total</b>					<b>\$ -</b>
<b>TO BE COMPLETED BY ROEM STAFF - BACK UP</b>					
Reason For Change Order:					
Responsible Party:					
Back Charge:					
Estimated Amount:					

Change orders can only be approved by authorized ROEM personnel identified in contract documents.