

# MASTER AGREEMENT - KNR BUILDERS

## TERMS AND CONDITIONS – EXHIBIT “A”

### 1. INDEPENDENT INVESTIGATION BY SUBCONTRACTOR

Subcontractor represents that he has thoroughly examined all portions of the plans and specifications, that he has examined the site of the work, and that he has ascertained for himself all job conditions and all provisions of the plans and specifications that relate to the performance of the work required by this agreement in reliance upon his own information and investigation and that he has not relied upon statements, opinions or representations, if any, of Contractor. Subcontractor acknowledges that Contractor may have received bids from others for the work, or some portion of the work, to be performed by Subcontractor and that such bids may be higher in amount than the price herein provided or allowed for such work. Subcontractor waives and releases all claims, if any, based on Contractor's failure or refusal to disclose to Subcontractor other bids received by Contractor prior to execution of this agreement.

**2. THE SUBCONTRACT DOCUMENTS.** Insofar as applicable to the work to be performed by Subcontractor, all documents constituting the contract documents for the prime contract are incorporated into this agreement as though set forth in full. Subcontractor and Subcontractor's sub-tiers shall be bound to Contractor in same manner and to the same extent as Contractor is bound to Owner with respect to all work to be performed under this agreement.

**3. SCOPE OF WORK.** Description of the work to be performed under this agreement by reference to certain sections of the specifications and certain sheets of the plans shall extend to and include all work falling within the general description of the identified sections and sheets that may be described in any other section of the specifications or any other sheet of the plans, and such description in any other section of the specification or any other sheet of the plans, and such description shall not be deemed to limit the obligation of Subcontractor to furnish only labor and materials described in the identified sections or sheets. Subcontractor acknowledges that he has examined all of the plans and specifications for the project to determine the full scope of the work to be performed under this agreement inasmuch as the work may not be described or fully described in the identified sections and sheets.

**4. CONTRACT PRICE AND ADJUSTMENTS.** Contractor shall pay to Subcontractor the sum indicated on the Subcontract Agreement for all labor, materials, equipment and other items, which Subcontractor is obligated to perform and furnish under this agreement. The said sum shall be subject to adjustment for any changes in the work. The obligation of Contractor to increase the amount to be paid to Subcontractor for changes in the work shall be limited to such amount as the Contractor receives from the Owner for such changes less amounts allowed for Contractor's overhead, profit, bond premium, and work performed by Contractor or others in connection therewith. Deductions in the contract price for changes shall be limited to the reduction made by Owner. Contractor may omit any work that is not necessary for completion of the work as a whole, and there shall be an equitable deduction therefore without regard to any adjustment in the prime contract price. If the prime contract does not provide for a separate allowance to Contractor for overhead and profit upon extra work in addition to that chargeable by Subcontractor for such work, the amount allowable under the prime contract for overhead and profit shall be divided equally between Contractor and Subcontractor.

**5. TAXES.** Subcontractor shall pay all taxes, licenses, and fees of every nature which may be imposed or assessed upon labor, material, or other things used in the performance of the work or upon the transaction between Contractor and Subcontractor. If Subcontractor fails to pay any such tax, license or fee, Contractor may pay the same and Subcontractor shall forthwith reimburse such payment.

**6. PAYMENTS.** Payments to Subcontractor for work which conforms to prime contract requirements are to be made in monthly installments on or about the 15<sup>th</sup> day of the month for work performed to the last day of the preceding month in an amount equal to the percentage indicated on the Subcontract Agreement of the value of the work performed by Subcontractor

during the preceding calendar month. If the prime contract provides a cut-off date for making progress payments, which are earlier than the last day of the month, such earlier date shall be deemed substituted hereinabove for the last day of the preceding month. Contractor may, if he elects, pay for work performed prior to the time payment is due under this agreement. The value of work performed by Subcontractor is to be determined by reference to the contract price herein, but shall not exceed the lesser of Subcontractor's cost actually paid or, on a percentage basis, the Owner's allowance therefore for which payment has been received by Contractor. Subcontractor shall furnish to Contractor upon request, complete information to all costs actually paid by Subcontractor and the costs that will be incurred by Subcontractor in completing the work. The estimate of Owner, or the estimate of Contractor if Owner makes no separate estimate of such work, as to the amount of work done by Subcontractor shall be binding upon Subcontractor. The retention provisions shall apply to sums earned by Subcontractor for extra work. The retainage indicated on the Subcontract Agreement less any deductions permitted by this agreement shall be paid 35 days after completion and acceptance by Owner of all of the work under the prime contract or within 10 days after such final payment is received by Contractor from Owner, whichever date is later.

In no event shall any progress payment or other payment be payable prior to the 10<sup>th</sup> working day following receipt of such payment by Contractor from Owner, such receipt by Contractor being a condition precedent to Contractor's obligation to make payment or the final payment on the project by reason of any dispute arising out of the construction of the project, whether or not the dispute involves Subcontractor's work, the obligation of Contractor to make payment to Subcontractor shall be deferred until the said dispute is resolved and payment is received by Contractor. Contractor's obligation to make payment to Subcontractor is limited to payments actually received by Contractor from Owner with respect to Subcontractors work. Failure of Owner, whether by reason of insolvency or other reason, to make payment to Contractor with respect to Subcontractor's work shall relieve Contractor of the obligation to pay Subcontractor for any work for which Contractor has not received payment from Owner.

Contractor is authorized to represent to Owner, prior to the making of final payment hereunder, in such form as may be required by Owner, that all bills for labor, materials or other items furnished by Subcontractor have been paid where this is necessary to obtain final payment under the prime contract.

Subcontractor shall pay all obligations incurred in the performance of this agreement. Before receiving any payment, and as a condition thereof, Subcontractor shall furnish evidence satisfactory to Contractor that all costs, union fringe benefits, and tax obligations incurred by Subcontractor in the performance of this agreement for which any person has the right to file a mechanic's lien, stop notice, or an action upon any bond executed by Contractor as principal, have been paid. Subcontractor shall furnish to contractor releases of lien, stop notice and bond rights from all persons who have such rights, and no payments shall become due to Subcontractor unless, and until, such releases are furnished.

Contractor may deduct from any amounts due or to become due to Subcontractor all sums owing by Subcontractor to Contractor whether or not then due to Contractor. If Subcontractor is in default under this agreement, Contractor may reserve from amounts due or to become due to Subcontractor such amounts, as Contractor deems necessary to protect Contractor from loss, damage, or expense by reason thereof.

**7. TRUST OBLIGATION.** All sums received by Subcontractor from or on behalf of Contractor shall be held by Subcontractor in trust for the express use and purpose of paying costs, union fringe benefits and tax obligations incurred in the performance of this agreement for which any person has the right to file a mechanic's lien, stop notice, or an action upon any bond executed by Contractor as principal, and Subcontractor shall have no tide to such sums, or any part thereof, until such obligations have been paid.

**8. SCHEDULE OF WORK; JOB DELAYS.** Subcontractor will at all times keep himself fully informed as to the progress of the work on the project and the progress schedule for the project as a whole, and as soon as the project requires the performance of the work under this agreement for its continued progress, Subcontractor will promptly commence work. Subcontractor's failure to commence work when directed by Contractor is a breach of this agreement, and Contractor shall have the right, without notice, to terminate this agreement and hold Subcontractor liable for all damages caused by such breach. Time is the essence of this agreement. Subcontractor will prosecute the work diligently to completion and conform to Contractor's progress schedule and any modifications thereof. Work shall be performed at such points and in the sequence directed by Contractor. Subcontractor will coordinate his work with Contractor and other Subcontractors so that there will be no delay or interference with other work on the project or in the completion of the project as a whole. Damages and increased costs suffered by Contractor attributable to delay caused by more than one Subcontractor shall be allocated by Contractor between the various Subcontractors responsible therefore, and Contractor's allocation shall be binding on all parties.

Should the performance of Subcontractor be delayed by reason of strike or other caused beyond the control of Subcontractor, Contractor may terminate this agreement by notice in writing. Contractor shall pay Subcontractor the reasonable value of all work performed, but such payment shall not exceed the contract allowance for such work. Subcontractor shall be relieved from further performance, but all other provisions of this agreement shall remain effective.

Should Subcontractor be delayed in the prosecution or completion of the work by the act, neglect or default of Owner, Owner's Representative, or of Contractor, or should Subcontractor be delayed waiting for materials, if required by this contract be furnished by Owner or Contractor, or by damage caused by fire or other casualty for which 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 the Subcontractor has thus been delayed, but no allowance or extension shall be made unless a claim therefore is presented in writing to Contractor within 2 working days after commencement of such delay. The said request for time extension shall describe the acts causing the delay or interference and the manner in which Subcontractor's performance has been affected thereby. If Contractor and Subcontractor are unable to agree upon the extension of time to which Subcontractor may be entitled, the Owner or his representative shall determine and certify the additional time to be allowed for performance; provided, however, that if Owner or his representative should, for any reason fail or refuse to issue such certificate, the time extension shall be determined by arbitration.

No claims for additional compensation or damages for delays caused by the act, neglect, or default of Owner, Owner's representative, or of Contractor, or delays caused by other Subcontractors, or other cause hereinabove set forth, will be allowed by the Contractor, and the said extension of time for completion of Subcontractor's work shall be the sole and exclusive remedy of Subcontractor; provided however, that in the event and in such event only, that Contractor obtains additional compensation from Owner on account of such delays, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor from Owner as is equitable under all of the circumstances. Nothing contained herein shall require Contractor to make any claims against Owner, Owners representative or other person for such delays, and it is specifically agreed that the failure of Contractor to prosecute any such claim shall not entitle Subcontractor to any claim for damages against Contractor.

**9. PROCUREMENT OF MATERIALS.** Subcontractor shall forthwith order all materials, equipment, and other items, which shall be required for the performance of the work hereunder. Contractor may request that Subcontractor submits a list of suppliers from whom Subcontractor proposes to purchase the materials, equipment and other items that will be required by Subcontractor in the performance of this agreement together with documentary evidence satisfactory to Contractor indicating that all such materials, equipment and other items will be available in sufficient time to avoid delay in the prosecution of the project as a whole. Subcontractor's failure to furnish any or all of the information required to be furnished under this paragraph within 3

working days after request thereafter by Contractor shall constitute a breach of this agreement.

**10. MEASUREMENTS AND RELATED WORK.** Subcontractor shall have the sole responsibility to determine all lines, grades, measurements and job conditions applicable to work performed under this agreement. Subcontractor shall measure and inspect work and materials already in place that affect Subcontractor's work.

**11. EXTRA WORK CHANGES.** Subcontractor shall make no changes in the work to be performed under this agreement, whether by way of deduction, addition, or substitution, nor shall the terms of this agreement be changed in any other respect, unless, prior to any such change, the parties shall have executed a written agreement therefore. Subcontractor shall perform no extra work without the prior written order of Contractor. The foregoing requirement for a written order authorizing changes or extra work is a condition. Precedent to the maintenance of a claim of any nature by for any other claim based on a change in the terms of this agreement. Strict observance of the said condition shall not be deemed to have been excused by claim of waiver, estoppels, executed oral agreement abandonment, abrogation, course of conduct, unjust enrichment, or other acts, conduct, or legal theory of any nature. It is the express intent of this provision that Contractor shall in no event be subjected to a claim of any nature for changes or extra work in the absence of a prior written agreement therefore signed by an authorized representative of Contractor. Subcontractor waives all claims based on the provisions of Civic Code section 1698 and Uniform Commercial Code section 2209 to the extent that these code sections permit modification of a written contract by acts or conduct other than written agreement signed by an authorized representative of Contractor.

**12. CLAIMS.** All provisions of the prime contract relating to claims or disputes between Contractor and Owner are incorporated into this agreement. Subcontractor shall assume toward Contractor all of the obligations and responsibilities that the Contractor, under the prime contract, assumes towards the Owner with respect to all claims and disputes. Subcontractor shall be bound to Contractor to the same extent as Contractor is bound to Owner by all decisions, rulings and interpretations of the Owner or his authorized representative affecting the work to be performed under this determination of claims and disputes shall be binding upon Subcontractor, and the final determination of such disputes in accordance with the procedures established by the prime contract shall be binding and conclusive upon Subcontractor. Subcontractor shall not prosecute or maintain an action against Contractor or against the surety upon any bond, which Contractor is principal or request arbitration with respect to any such claim, or dispute until the procedures for determination of disputes under the prime contract have been concluded.

If Subcontractor claims that he is entitled to additional compensation, other than for changes and extra work for which written authorization has been given prior to the performance thereof, or if Subcontractor disputes any determination made by Owner or Owner's representative, or if Subcontractor claims damages by reason of any act of Owner or his authorized representative, he shall prepare his claims in accordance with all requirements of the prime contract. Subcontractor, at his own cost and expense shall designate a person who shall work with Contractor in presenting the claims of Subcontractor in accordance with the procedures established by the prime contract. Subcontractor shall conduct all such proceedings with the cooperation of Contractor and at the sole cost and expense of Subcontractor. Subcontractor shall hold harmless and indemnify Contractor against all costs of arbitration, suit, attorney's fee, and other items of expense connected with such proceedings, and Contractor shall have the right to demand that Subcontractor deposit with Contractor, as security against any loss, damage or expense of Contractor in connection therewith, an amount which Contractor deems sufficient for such purpose. Failure of Subcontractor to deposit such security shall give Contractor right to terminate any proceedings then pending upon such terms as Contractor deems proper, and Subcontractor does hereby waive any claims against Contractor by any reason of such termination of proceedings.

Subcontractor shall have no right to receive payment from Contractor upon any such claims in any sum greater than that received by Contractor from Owner. Contractor shall have the right to retain 15% of any amount allowed by services performed by Contractor in presenting Subcontractors claims.

If Subcontractor disputes any determination by Owner, Owners representative or Contractor that any item of work is included in the contract

price established by this agreement, or if Subcontractor does not agree to the allowance proposed to be made for disputed work or work ordered as extra work, Subcontractor shall, nevertheless, upon written instruction of Contractor, immediately proceed to perform such work. The written instruction of Contractor shall not obligate Contractor to pay for such disputed or extra work. The obligation to pay for disputed or extra work shall be determined in accordance with the provisions herein set forth or, if the above provisions are for any reason inapplicable, by arbitration as provided by paragraph 24 or by litigation if the claim is not to be arbitrated.

All claims of Subcontractor for loss, damage, extra or disputed work shall be made by notice in writing to Contractor within 2 working days from the date Subcontractor first sustains any portion of such loss or damage or receives written instructions to proceed with such extra or disputed work. Subcontractor shall submit on Monday of each week an itemized statement of the details, basis of computation, the amounts of such claims, broken down on a daily basis, of costs and expenses incurred during the preceding week. Subcontractor shall show the total cost incurred in performing such work and the allocation of such costs between work for which Subcontractor claims additional compensation and work compensated by the contract price. The said written notice shall state in full detail all grounds upon which Subcontractor's claim is based. Subcontractor shall, as a condition of his right to enforce any such claims, give the said written notice to furnish the said weekly-itemized statements and Subcontractor does hereby release any and all claims as to which such conditions have not been satisfied and waives any right against Owner, Contractor and Contractor's sureties with respect to the same.

**13. INSURANCE.** Subcontractor shall maintain in full force and effect at all times a policy of insurance under the workmen's compensation laws of the state of California together with a comprehensive liability policy covering bodily injury and property damage in such limits as may be required by the prime contract. The insurance carriers shall be subject to Contractor's approval. If the prime contract does not specify limits of coverage under the comprehensive liability policy, Subcontractor shall procure a policy in limits satisfactory to Contractor. The comprehensive liability policy shall provide coverage for all operations of Subcontractor including, but not limited to, product liability, completed operations, and contractual liability. Contractor, his sureties and Owner shall be named as additional insured parties upon Subcontractor's comprehensive liability policy. Subcontractor shall furnish certificates of insurance in triplicate to Contractor upon execution of this agreement as evidence of the above insurance coverage, but neither the failure of Contractor to demand nor the failure of Subcontractor to furnish, such certificates shall relieve the Subcontractor of the obligation to procure and maintain insurance coverage as required by this agreement. The certificates shall provide for 30-day written notice to Contractor before cancellation of any policy.

**14. DEFAULT OF SUBCONTRACTOR.** Should Subcontractor default in the performance of any obligation imposed on him by this agreement Contractor shall give notice of such default to Subcontractor. Failure of Subcontractor to cure such default within 2 working days shall give Contractor the option of:

- (1) Without terminating this agreement or the obligation of Subcontractor hereunder, Contractor may, at Subcontractor's expense, perform such portion of the work required hereunder, or furnish any material, equipment, or other item required hereunder, as Contractor, in his sole discretion, may deem necessary to avoid delay of the project. Contractor may perform such work, or any portion thereof, or have the same performed by others; or
- (2) Terminating this contract and further option of (a) completing the work, or any portion thereof, himself, or (b) having the work, in whole or in part completed by others.

The options given to Contractor herein shall not be deemed limitation upon the rights and remedies of Contractor. Contractor shall be entitled to exercise the rights and remedies hereinabove specified and all other rights and remedies, which may be permitted by law either cumulatively or consecutively, and in such order as Contractor, in his sole discretion, shall determine.

Subcontractor shall be liable for all costs incurred, including attorney's fees, and damages of every nature suffered by Contractor by reason of Subcontractor's default, and exercise of the option by Contractor to terminate this

agreement shall not relieve Subcontractor of such liability. Subcontractor shall have no right to receive payment after he is in default until such time as Subcontractor's work has been completed and the Contractor's damages ascertained. Under any of the options, remedies, and rights given to Contractor by this agreement in the event of the default of Subcontractor, Contractor may, but still not be obligated so to do, use any materials or equipment on the job site belonging to Subcontractor to complete the work whether the work is completed by Contractor or others. Any work completed for Subcontractor shall be based on a mark-up of 15% general overhead and 10% profit above all cost incurred by Contractor.

**15. INDEMNIFICATION.** Subcontractor shall indemnify and save harmless the Owner, Contractor and his sureties from and against all actions, demands, and claims of every nature, howsoever caused, arising out of, or related to the performance of this agreement, including but not limited to, claims for personal injury, death, property damage, patent infringement, liens, stop notices, and claims asserted against any bond furnished for the project. The indemnification obligation of Subcontractor above stated shall extend to claims arising from the activities of, and obligations incurred by, Subcontractor, his agents, employees, suppliers, and sub-Subcontractors. The harmless shall include, but shall not be limited to, claims alleged to have been caused by the negligence of Contractor, his sureties or Owner, provided, however, that Subcontractor's obligation shall not extend to claims excluded by California Civil Code section 2782.

Subcontractor shall ascertain all job site conditions, administrative regulations and safety orders affecting the safety of his employees and those of his sub-Subcontractors and suppliers. Subcontractor shall conform to all such regulations and order and shall take all necessary precautions to assure the safety of such employees and others on the site. Subcontractor's obligation to hold harmless and indemnify Contractor shall extend to claims of such employees and persons with whom Subcontractor is in privity and their agents based on alleged failure to conform to such regulations and orders or to provide a safe place to work.

If Subcontractor by rental, loan or otherwise, makes use of any of Contractor's equipment, scaffolding, or other appliances on the job site, such use shall be at the sole risk of Subcontractor and after Subcontractor has satisfied himself as to the condition thereof. Subcontractor shall hold harmless and indemnify Contractor against claims of every nature arising from the use thereof including, but not limited to, injury to Subcontractor's employees or property and the employees or property of others.

If Subcontractor fails to procure the release of any lien or stop notice based upon a claim against which Owner, Contractor and his sureties are entitled to indemnification within 3 working days after notice by Contractor to procure such release, Contractor may take all actions deemed necessary to cause such lien or stop notice to be released, and all expenses incurred by Contractor in connection therewith, including attorney's fees and the premiums upon any bonds executed for such purpose, shall be paid by Subcontractor to Contractor upon demand.

**16. ASSIGNMENTS AND SUB-SUBCONTRACTS.** Subcontractor shall not assign nor transfer this contract nor any money due or which may become due hereunder without the prior written consent of Contractor. All sub-subcontracts and purchase orders for materials issued by Subcontractor shall refer to and incorporate the provisions of this agreement and shall provide that the sub-Subcontractor or materials supplier shall be liable directly to Contractor for any default or breach of the sub-subcontract or purchase order agreements if such default or breach is also a breach of this agreement.

**17. PROTECTION OF WORK.** Subcontractor shall protect his until final acceptance of the entire project by Owner. Subcontractor shall protect adjacent property from injury arising out of his work. Any damage caused by Subcontractor to work of Contractor or other Subcontractors shall be forthwith repaired by Subcontractor at his sole expense. Any default by Subcontractor under this paragraph may be remedied by Contractor, and the cost thereof shall be payable by Subcontractor on demand.

**18. GUARANTEE OF WORK.** Subcontractor guarantees Owner

Contractor and his sureties against all loss and damage arising from any defect in materials or workmanship furnished under this Subcontractor. Subcontractor's obligation to Contractor with respect to such guarantee shall be coextensive with, and for the same period of time, as Contractor is bound to Owner with respect to the work of Subcontractor. Upon Contractor's notification Subcontractor shall forthwith, at his own expense, replace any defective material and perform any labor necessary to correct any defect in the work. Subcontractor shall pay for work of every nature, which may be necessary in connection with the correction of defects under the guarantee. If Subcontractor should fail to make such necessary repairs and replacements promptly, the Owner or Contractor may, at Subcontractor's expense, furnish such materials or labor as are necessary for this purpose, and the cost thereof shall be payable by Subcontractor upon demand.

**19. ACCEPTANCE OF WORK.** No payment made under this contract shall operate as an acceptance of any portion of the Subcontractor's work or as an admission on the part of Contractor that this contract, or any part thereof, has been complied with in case the fact shall be otherwise. Owner shall make acceptance of all work in accordance with the provisions of the prime contract.

**20. SUBCONTRACTOR'S REPRESENTATIVE.** Subcontractor shall at all times have a competent superintendent or foreman on the job site who shall be authorized to receive instructions from Contractor and to make such decisions as may be necessary for the prompt and efficient performance of this agreement.

**21. SUBCONTRACTOR'S EMPLOYEES.** Subcontractor shall not employ on the work any person not skilled in the work assigned to him. Any employee of Subcontractor who is adjudged by Contractor to be incompetent, disorderly, unreliable, or otherwise unsatisfactory shall be immediately removed from the work.

**22. SUBCONTRACTOR'S MATERIALS.** Subcontractor shall arrange for the receipt, unloading and storage of all materials delivered to the job site, which must be furnished or used by Subcontractor in the performance of this agreement. If Subcontractor fails to provide the necessary personnel and equipment to receive, unload, and store materials delivered to the jobsite the Contractor, in his sole discretion, finds it necessary or desirable that Contractor's forces perform, or assist in the performance of, such work, Subcontractor shall reimburse Contractor upon demand for the cost of labor and equipment supplied by Contractor for this purpose plus 15% thereof for Contractor's overhead. Materials delivered to the job site shall be received, unloaded and stored in areas, which will not interfere with the work as a whole, and it shall be the duty of Subcontractor to ascertain, before delivery, the location of such areas on the job site.

Subcontractor shall bear all risk of loss or damage to materials delivered to the job site by or on behalf of Subcontractor even though Subcontractor may have been paid therefor. If Contractor permits storage of materials in any yard or enclosure maintained by Contractor, such storage facilities are furnished to Subcontractor as a gratuitous accommodation, and Subcontractor shall remain liable for all loss or damage to such materials while in such yard or enclosure even though loss or damage may occur by reason of the negligence of Contractor in maintaining such storage facilities.

**23. BOND.** Subcontractor shall furnish upon request a corporate surety bond in an amount equal to the full subcontract price to guarantee the faithful performance of this subcontract and the payment of all obligations incurred in the performance thereof. Contractor shall pay the normal premium for such bond unless Subcontractor was notified at the time of submission of Subcontractor's bid that a bond would be required and, in such event, Subcontractor shall pay the bond premium. Contractor shall have the right to demand such surety bond at any time prior to final payment under this subcontract. If Subcontractor fails to furnish such surety bond within 5 days after demand, Contractor shall have the right to terminate this subcontract agreement on the ground of default by Subcontractor. The corporate surety and the form of the bond shall be subject to Contractor's approval. Only those surety companies on the current revision of the list published by the United States Department of the Treasury in Circular 570 of surety companies acceptable on federal bonds shall be submitted for Contractor's approval, and the amount of the bond shall not exceed the underwriting limitation established by such list.

Contractor shall have the right to bring an action against the sureties upon any bond furnished by Subcontractor during such period as is coextensive with the time within which Owner or any other person may bring an action against Contractor or Contractor's sureties. Any provision in a bond furnished by Subcontractor establishing a lesser period of limitations or that is inconsistent with the rights of Contractor under this agreement, whether or not Contractor requests modification thereof, shall be deemed modified so as to give Contractor the same rights with respect to the surety on such bond as Contractor has with respect to Subcontractor under this agreement. The surety on any bond furnished by Subcontractor shall not be exonerated or released from the obligation of the bond by reason of payment to Subcontractor for work performed prior to the time payment is due under this agreement. The surety on any bond furnished by Subcontractor shall not be exonerated or released from the obligation of the bond by reason of payment to Subcontractor for work performed prior to the time payment is due under this agreement. Failure of Contractor to serve any notice or to serve timely notice on surety shall not exonerate or release surety unless surety can establish that it was in fact materially prejudiced by such failure on the part of Contractor and, in such event, the surety shall be exonerated or released only to the extent that it can establish such prejudice.

If surety fails to cure any default of Subcontractor within 2 working days after notice given and Contractor, in his sole discretion, determines that it is necessary to perform the work of Subcontractor, or any portion thereof, through the use of Contractor's own forces or by others for the continued progress of the work as a whole to mitigate damages resulting from Subcontractor's default, Contractor may perform such work without releasing or exonerating the surety. Contractor shall be entitled to payment from surety for such work as work completed for Subcontractor in accordance with the provisions of paragraph 14 of this agreement.

If Subcontractor is a corporation, the president and secretary of the corporation shall sign this agreement. If Subcontractor does not furnish a corporate surety bond to Contractor to guarantee the faithful performance of this agreement by Subcontractor and payment of all obligations incurred by Subcontractor in performing this agreement, the said officers, and any other officer, agent or employee of Subcontractor signing this agreement on behalf of Subcontractor do, jointly and severally, guarantee the faithful performance of this agreement by Subcontractor and the payment of all obligations incurred in such performance. Failure of Contractor to request a payment and a performance bond from Subcontractor shall not affect the personal obligation assumed by the said persons signing this agreement on behalf of Subcontractor.

**24. ARBITRATION.** Each controversy or claim arising out of or relating to this contract or the breach thereof which is not resolved pursuant to the provisions of paragraph 12 shall, in the sole discretion of Contractor, be settled by arbitration in accordance with the rules of the American Arbitration Association, provided, however that the adoption herein of the said rules shall not be deemed to require arbitration through the American Arbitration Association. Before any action may be filed against Contractor or Contractor's sureties, and as a condition thereof, Subcontractor shall notify Contractor of each such controversy or claim in writing and of Subcontractor's intention to file an action unless the dispute is to be resolved by arbitration. Within 30 days after receipt of such written notice or 30 days after completion and acceptance of the project, whichever is later, Contractor shall notify Subcontractor whether the claim or controversy is to be settled by arbitration. Contractor's election to arbitrate the dispute shall be binding on Subcontractor. Arbitration of claims shall be deferred until such time as the project has been completed and accepted by Owner, and all claims to be resolved by arbitration shall be resolved in a single proceeding.

If Contractor initiates, or is made a party to, an arbitration proceeding and the proceeding and the proceeding involves any issue related to Subcontractor's performance of this agreement, Contractor shall have the option to join Subcontractor as a party to such arbitration proceedings.

If the parties are unable to agree upon a single neutral arbitrator, either party may petition the Superior Court of the State of California for the County of Los Angeles for the appointment of a neutral arbitrator. The arbitration proceedings shall be conducted in Los Angeles, California, unless the parties execute a writing providing for arbitration elsewhere.

All expenses incident to the arbitration shall be borne equally by the parties. The fees of counsel engaged by either party, and the respective party engaging such counsel or calling or engaging such witnesses shall pay the fees of expert witnesses and other witnesses. If either party petitions for the appointment of a neutral arbitrator, the reasonable attorney's fees and other costs incurred by such party in procuring appointment of a neutral arbitrator shall be determined by the arbitrator and shared equally by the parties.

**25. ATTORNEY'S FEES.** If an action is filed by either party to enforce rights under this agreement, the prevailing party shall be entitled to recover a reasonable attorney's fee in addition to any other relief granted by the court. Nothing contained herein shall be deemed to limit the right of Contractor to require the arbitration of disputes as provided in this agreement.

**26. CLEANING UP.** Subcontractor shall at all times keep the job site free from accumulations of waste material or rubbish caused by his operations. Upon completion of Subcontractors work he shall promptly remove all rubbish, surplus materials, tools, and equipment from the job site. Work of the Contractor and other Subcontractors soiled or marred by Subcontractor shall be cleaned and restored by Subcontractor to the condition required by the prime contract for acceptance of such work. If Subcontractor fails to perform clean up work as provided herein within 2 working days after requested, Contractor may perform such work at Subcontractors expense as work completed for Subcontractor pursuant to paragraph 14 of this agreement. If clean up work is attributable to two or more Subcontractors, Contractor may perform such work and charge the same as work completed for Subcontractor to the various Subcontractors in such ratio as Contractor, in his sole discretion, shall determine to be proper, and such allocation shall be binding on Subcontractor.

**27. WAIVER OF CONDITIONS.** No waiver of any breach by Contractor of any provision of this agreement shall be deemed a waiver of any preceding or succeeding breach of the same or any other provision. Contractor shall not be deemed to have waived any right in the absence of writing executed by Contractor specifically waiving such right.

**28. LABOR AGREEMENTS.** Contractor is a party to labor agreements, which are effective in the area within which the project is to be constructed. Subcontractor shall employ only such union labor as is authorized by said labor agreements to perform the work covered by this subcontract and shall comply with all provisions of labor agreements binding upon Contractor or Subcontractor. Subcontractor represents that he is not in default in making payments to union fringe benefit funds.

**29. NOTICES.** In those instances in which written notice is required pursuant to the provisions of this agreement or by any provision of law, such notice may be delivered to the superintendent, foreman, or other person in charge of work for either party at the job site, or may be served by mail or telegram sent to the address of the parties as set forth herein. Notices not required to be in writing may be given to the person in charge of the work at the job site or by telephone to the home office of either party.

**30. APPLICABLE LAWS.** Subcontractor shall comply with all laws, regulation, and administrative orders applicable to the performance of this agreement including, but not limited to, those relating to non-discrimination in employment and payment of wages, as though set forth herein in full.

**31. SUCCESSORS IN INTEREST.** This contract shall insure to the benefit of, and be binding upon, the heirs, executors, administrators, successors and assigns of the parties.

**32. DEFINITIONS.** Whenever reference is made in this agreement to the prime contract or contract documents, such reference shall be construed to include the prime contract, plans, specifications, change orders, and all other documents forming a part of the prime contract. Wherever required by the context of this agreement, the masculine shall include feminine and neuter, the neuter shall include the masculine and feminine, the singular shall include the plural, and the plural shall include the singular.

**33. CAPTIONS.** The captions heading the various paragraphs of this agreement are for the convenience and identification only, and such captions shall not be deemed a part of this agreement nor shall they have any effect upon the construction or interpretation of any part of this agreement.

**34. ENTIRE AGREEMENT.** This subcontract contains the entire agreement between Contractor and Subcontractor pertaining to the work to be performed hereunder, and it supersedes all prior agreements, if any, between the parties whether written or oral.

**35. SAFETY PRECAUTIONS AND PROCEDURES.** The Subcontractor shall take reasonable safety precautions with respect to performance of this Agreement and shall comply with safety measures, rules, regulations and orders of public authorities for the safety of persons or property in accordance with the requirements of the Agreement. The Subcontractors shall report to the Contractor within three (3) days any injury to an employee or agent of the Subcontractor, which occurred at the site.

If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and in time to permit compliance with such laws by the contractor, other subcontractors and other employees on the site.

In the event the subcontractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB), which has not been rendered harmless, the Subcontractor shall immediately stop work in the affected area and report the condition to the Contractor in writing. The work shall resume, in the absence of asbestos or PCB or when it has been rendered harmless, by written agreement of the Contractor and Subcontractor, or in accordance of with final determination by the Architect on which arbitration has not been demanded or by arbitration as provided in this Agreement. The subcontractor shall not be required to perform without consent any work relating to asbestos or PCB.

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the Subcontractor, the Subcontractor's subcontractors and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the work in the affected area if in fact the material is asbestos or PCB and has not been rendered harmless, provided such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including loss of use resulting there from, but only to the extent caused in whole or in part by negligent acts or omissions of the contractor, Architect, owner, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a part or person described in this paragraph.

**36. WARRANTY** The Subcontractor warrants to the Owner, Architect and Contractor that materials and equipment furnished under this agreement will be of good quality and new unless otherwise required or permitted by the Subcontract Documents, that the work will be free from defects not inherent in the quality required or permitted, and that the work will conform with the requirements of the Subcontract Documents. Work not conforming to these requirements, included substitutions not properly approved and authorized, may be considered defective. The subcontractors warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Subcontract Documents.

**37. FINAL WALK –THRU-DEFECTIVE ITEMS.** Upon completion of the Work, Subcontractor shall provide to Contractor:

- (1) Final Inspection cards from final inspections by all of the appropriate governmental entities;

- (2) An Architect's or Contractor's certification that the Work has been built in substantial conformance with the Plans and Specifications thereof;
- (3) A bill-of-sale and assignment of warranties covering any and all personal property contained in or about the Work.
- (4) An assignment of warranties and all Subcontractor's rights against any and all contractors, subcontractors, material men and suppliers involved in the construction of the Work in a form reasonably accepted to contractor: and
- (5) Such other items as Contractor may reasonably require.

Subcontractor shall also take such other action as may be required by the title company to ensure deletion of the mechanic's lien exception.

After notification by subcontractor that the Work is substantially completed, Contractor and Subcontractor or their authorized representatives shall conduct a joint walk-through inspection of the substantially completed Work. Within three (3) business days after the completion of the job walk-through inspection Contractor shall prepare and submit to Subcontractor a written punch list ("Punch List") of all items which Contractor contends are incomplete, defective or do not comply with the final plans and specifications.

If Subcontractor does not agree with one or more of the items on the Punch List, Subcontractor shall within three (3) business days after receipt of the Punch List furnish to Contractor a written statement indicating which items on the Punch List Subcontractor disputes and setting forth his reasons for disputing them. As to any items disputed, the parties shall promptly meet and attempt to resolve such dispute. As to the items not in dispute, Subcontractor shall, at his sole cost and expense, undertake to expeditiously and diligently correct or complete any items on the Punch List that are not disputed, and shall deliver a letter to Contractor to that effect. If Contractor contends that incomplete, defective or non-complying items set forth in the Punch List have not been corrected or completed, and Subcontractor does not deliver a letter to Contractor agreeing to correct or complete such items, Contractor may withhold from amounts payable to Subcontractor the amount which Contractor estimates is the cost to repair or complete such incomplete, defective or non-complying items. If the parties cannot agree upon Subcontractor's obligation as to those items that are in dispute, the total amount in dispute, or whether Subcontractor has timely and satisfactorily corrected those items, which it agreed to correct, the matter shall be promptly submitted to binding arbitration in accordance with this Agreement.

### 38. REPRESENTATIONS, WARRANTIES AND COVENANTS.

As of the effective date of this Agreement and as of the Project completion date, Subcontractor represents and warrants to Contractor and covenants with contractor, and acknowledges that Contractor is relying upon such representations, warranties and covenants in constructing the Project, that:

- (1) To the best of Subcontractor's knowledge but without independent verification, there is no violation of any applicable federal, state and local environmental and other governmental laws and regulations concerning the Project or construction thereon.
- (2) As of the date the Project is completed, all utilities are in place and serving all units in the Project
- (3) There is no default under any agreement, contract, lease or other commitment, nor is there any claim, demand litigation, proceedings or governmental investigation pending or threatened against Subcontractor or related to the business or assets of Subcontractor, which would materially and adversely affect Subcontractor or its ability to construct the Project.
- (4) Subcontractor, and each of parties executing this Agreement on behalf of Subcontractor, has the authority

to execute this Agreement and perform the obligations of Subcontractor created by this Agreement without the consent or approval of any other person.

- (5) Subcontractor shall not do, commit and allow to be done or fail to do anything that would have a material adverse effect on the project.
- (6) All of the information and documents delivered by Subcontractor to Contractor pursuant to this agreement are, to Subcontractor's knowledge, true and correct and do not omit to state a material fact.
- (7) Subcontractor will substantially complete all work shown on the plans and Specifications in a good and workmanlike manner and in conformity with all applicable governmental requirements: and if there are any minor variations based on prudent building practices, all such variations are equal to or better than the work shown on such Plans and Specifications. Subcontractors further represents and warrants to Owner that all work performed and material and equipment used in the construction of the project have been or will be of good quality, free from material faults and defects and substantially in conformance with the Plans and Specifications. Where faults and defects are discovered or where work is not in conformance with the Plans and Specifications, whether or not material or substantial, Subcontractor shall nevertheless remedy the same. Subcontractor hereby warrants such work to be free from defects in material and workmanship for a period of one (1) year after the delivery of the items required above, and shall assign all manufactures warranties to Contractor.
- (8) Each and every representation and warranty made by Subcontractor is true and correct and does not omit to state a material fact as of the date made and as of the Project completion date, and each representation and warranty shall survive the project completion date and the performance of the parties' obligation under this Agreement.

**39. DEFECTIVE WORK.** If any Work is found to be defective within one (1) year of the date that the Architect has certified that the project is completed and that there are no further requirements to be met in order to occupy the same, Subcontractor shall correct it promptly after receipt of a written notice from Contractor to do so. If Subcontractor does not repair or replace such defective Work within a reasonable time after Subcontractor's receipt of such notice, Contractor may, but shall not be obligated to, repair or replace such defective Work. If Contractor does repair or replace such defective Work, Subcontractor shall be liable for all costs incurred thereby.

**40. CONSTRUCTION LOAN REQUIREMENTS.** The Subcontractor agrees to sign such additional documents and take such further actions as the Owner's construction lender may require as a condition to funding the loan; provided, however, that no such change may reduce the Subcontractor's Fee or other amounts to be paid to Subcontractor without Subcontractors prior written consent .

**41. GENERAL PROVISIONS.** If there is any discrepancy, inconsistency or ambiguity in the quality or quantity of work or materials required under the contract documents:

- (1) The Subcontractor shall immediately bring discrepancy, inconsistency or ambiguity to the attention of the Architect.
- (2) The Subcontractor shall provide the better quality or greater quantity of work or materials without an increase

in the contract amount, unless otherwise ordered in writing by the Architect or Contractor. Computed dimensions shall take precedence over scale dimensions and large-scale drawings shall take precedence over small-scale drawings to the extent that the Contract Documents do not set forth the basis and analysis of design, and the Subcontractor shall obtain such information as may be necessary to satisfactorily perform and complete the work.

THIS SIGNATURE REPRESENTS ACCEPTANCE OF THE ABOVE TERMS AND CONDITIONS.

\_\_\_\_\_  
Subcontractor

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractors License No.

\_\_\_\_\_  
Expiration Date