

Professional Services Agreement

Project No. _____

THIS AGREEMENT, made and entered into at _____ San Mateo _____, California, this _____ day of _____, 20____, by and between _____ S.J. Amoroso Construction Co., LLC _____, ("CONTRACTOR"), with its principal office at 1875 S. Grant St., Suite 200, San Mateo, CA 94402 California, and _____, ("PROVIDER").

RECITAL

On or about the _____ day of _____, 20____, CONTRACTOR entered into a written agreement ("Prime Contract") with _____ ("OWNER"), whose address is _____ to perform the construction work, ("PROJECT"), whose location and description is as follows:

Project Description: _____

Project Location: _____

Project Lender and Address: _____

SECTION 1 - ENTIRE CONTRACT:

PROVIDER certifies that it is fully familiar with all of the terms, conditions, and obligations of the Contract Documents, as hereinafter defined, the location of the job site, and the conditions under which the work is to be performed, and that it enters into this Agreement based upon its investigation of all of such matters and is in no way relying upon any opinions or representations of CONTRACTOR. This Agreement represents the entire agreement. The phrase "Contract Documents" is defined to mean and include this Agreement, the general provisions, together with any exhibits, or addenda thereto including but not limited to, Exhibit "A" (Subcontract Insurance Requirements); Exhibit "B" (Procedure Memoranda); Exhibit "D" (Project Specific Requirements); the Prime Contract; together with its general, supplementary and other conditions, addenda and modifications, plans and specifications; and all documents or instruments referred to in any of the proceeding documents. The Contract Documents are incorporated in this Agreement by this reference, with the same force and effect as if they were set forth in their entirety herein. PROVIDER agrees that it is 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, items and obligations covered by this Agreement. PROVIDER agrees to be bound to CONTRACTOR in the same manner and to the same extent as CONTRACTOR is bound to OWNER under the Contract Documents, to the extent of the work provided for in this Agreement, and that where, in the Contract Documents reference is made to CONTRACTOR and the work or specification therein pertains to PROVIDER'S trade, craft, or type of work then, such work or specification shall be interpreted to apply to PROVIDER instead of CONTRACTOR. In the event of any conflict between the requirements of the Prime Contract and this Agreement, the PROVIDER shall be governed by the provisions imposing the greater duty on the PROVIDER.

THIS AGREEMENT IS SUBJECT TO ALL OF THE TERMS AND REQUIREMENTS ON THE REVERSE, THE ATTACHMENTS, AND THE OTHER PAGES HEREOF. BY SIGNING THIS AGREEMENT, THE PARTIES AGREE TO BE BOUND BY ALL SUCH TERMS AND REQUIREMENTS.

Professional Services Agreement

This document represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, proposals, stipulations, or agreements, either written or oral, including, without limitation, PROVIDER's bid form or proposal. All prior or contemporaneous agreements to be included in this Agreement are expressly identified herein. No agent or representative of either party has authority to make, and the parties shall not be bound by or liable for, any statement, representation, promise or Agreement not set forth herein. No changes, amendments or modifications to the terms of this Agreement shall be valid unless reduced to writing and signed by CONTRACTOR. Any such written changes, amendments or modifications must specifically identify the signed document as an amendment to this Agreement.

SECTION 2 - SCOPE

PROVIDER agrees to perform and furnish, in accordance with the highest standards, all labor, services, materials, documents, design, engineering, deliverables, testing, information, installation, traffic control, task lighting, safety monitoring, cartage, hoisting, supplies, employee parking, insurance, equipment, scaffolding, tools, drinking water, and other facilities of every kind and description required for the prompt and efficient execution of the work described herein and to perform the work necessary or normally performed by PROVIDER'S trade or incidental to complete ;

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

PROVIDER acknowledges that its work may be described in locations within the Contract Documents other than those specifically identified above, and PROVIDER certifies that it has carefully reviewed all of the Contract Documents to determine the extent of its work regardless of where located within the Contract Documents, and to determine the manner and place in which PROVIDER'S work interfaces with the work of other trades.

Professional Services Agreement

SECTION 3 - SPECIAL PROVISIONS:

Professional Services Agreement

SECTION 4 - CONTRACT PRICE:

CONTRACTOR agrees to pay PROVIDER for the strict performance of its work, the sum of: _____ (\$ _____), subject to additions and deductions for changes in the work, made in accordance with Paragraph D of the General Provisions, as may be agreed upon, and to make payment in accordance with the Payment Schedule, Section 5.

SECTION 5 - PAYMENT SCHEDULE:

CONTRACTOR agrees to pay to PROVIDER progress payments of ninety percent of labor and materials which have been placed in position and paid for by OWNER. Payment to PROVIDER shall be made within seven (7) days of payment by OWNER and in accordance with the payment procedures set forth in Paragraph P. The payment provisions of the Prime Contract and Contract Documents are incorporated herein by this reference. Final payment to PROVIDER will be due in accordance with the provisions of the Prime Contract and the provisions of this Agreement. If the OWNER or other responsible party delays in making any payment to CONTRACTOR, from which payment to PROVIDER is to be made, CONTRACTOR shall have reasonable amount of time to make payments to PROVIDER. The parties agree that "reasonable time" shall not be less than the time CONTRACTOR and PROVIDER require to pursue, to conclusion, their legal remedies against OWNER, or other responsible party, to obtain payment, including (but not limited to) mechanic's lien remedies.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CA 95826.

IN WITNESS WHEREOF: The parties hereto have executed this Agreement for themselves, their heirs, executors, successors, administrators, and assignees on the day and year written below.

PROVIDER

By _____
(Print)
By _____
(Signature)

(Title)

Professional License No. _____

Federal ID No. _____

☐ Corporation ☐ Partnership ☐ Proprietorship ☐ L.L.C.

Date: _____

CONTRACTOR

S.J. Amoroso Construction Co., LLC
By _____
Bob Erskine
(Print)
By _____
(Signature)

President
(Title)

Contractor's State License No. 331024

Federal ID No. 94-1461459

☒ L.L.C. ☐ Partnership

Date: _____

Note: Failure to execute and return this contract within thirty days shall be considered your agreement to perform the work on the terms stated herein.

GENERAL PROVISIONS

A. INSURANCE - PROVIDER shall at all times carry on all operations hereunder, insurance as set forth in Exhibit A (Exhibit A-1 for Owner Controlled Insurance Programs) to this Agreement, which is fully incorporated herein by this reference.

B. INDEMNITY AND DEFENSE – To the greatest extent permitted by law, PROVIDER shall defend, indemnify and hold harmless CONTRACTOR, Owner, and Owner's architect and engineer, and any of their respective directors, officers, agents, employees, parents, affiliates, subsidiaries, sureties, partners, and representatives, and any other persons or entities designated by any of them (collectively, the "Indemnitees") from and against all causes of action, penalties, assessments, fines, actions by governmental authorities, demands, liabilities, claims, damages, costs, losses and expenses, including but not limited to attorney's fees and costs ("Claims"), which arise out of or are in any way related to: (i) this Agreement; (ii) actual or alleged actions or omissions by PROVIDER or any of its suppliers, vendors, employees, or persons for whom it is responsible; or (iii) PROVIDER's presence at the Project site and/or its Work. Notwithstanding the foregoing, if any of the Contract Documents impose more stringent defense, indemnity, contribution or hold harmless obligations than are set forth herein, then to the extent permitted by law, the more stringent provisions shall apply, and PROVIDER shall owe the same defense, indemnity, contribution, and hold harmless obligations to CONTRACTOR as CONTRACTOR owes to Owner. PROVIDER's duty to defend Indemnitees shall apply, and PROVIDER shall be required to furnish a defense, notwithstanding that there has not yet been a determination, adjudication or finding of liability or fault on the part of PROVIDER or any party or person to be indemnified. To the greatest extent permitted by law, the obligations of this Paragraph B shall apply regardless of whether the Claims were caused in part or contributed to by Indemnitees and/or their active or passive fault; however, obligations specified above shall not extend: (a) to Claims that arise out of, pertain to, or relate to the active negligence or willful misconduct of CONTRACTOR, of a Provider to CONTRACTOR, a construction manager who is an Indemnitee, or any of their other agents, other servants, or other independent contractors who are responsible to them; (b) to defects in design furnished by CONTRACTOR, of a Provider to CONTRACTOR, a construction manager who is an Indemnitee, or any of their other agents, other servants, or other independent contractors who are responsible to them; or (c) to the extent Claims do not arise out of the scope of work of PROVIDER. Upon written tender of a Claim by any Indemnitee, PROVIDER shall:

- (1) Defend the Claim with counsel who are qualified and experienced in such matters and do not have a conflict of interest. If PROVIDER elects to defend under this subparagraph (1), PROVIDER shall provide written notice of the election to the tendering party within a reasonable time period, and in no event later than 30 days following receipt of the tender of the Claim. Subject only to the limitations set forth above, the defense provided by PROVIDER shall be a complete defense of tendering party as to all Claims or portions thereof to the extent alleged to be caused by PROVIDER, including any vicarious liability Claims the tendering party may have, resulting from PROVIDER's scope of work, but not including Claims resulting from the scope of work, actions, or omissions of the tendering party, or any other party. Any vicarious liability imposed upon the tendering party for Claims caused by PROVIDER electing to defend under this subparagraph (1) shall be directly enforceable against PROVIDER. PROVIDER shall promptly provide the tendering party with all information, documentation, or evidence, if any, relating to any assertion by PROVIDER that another party is responsible for the tendered Claim.
- (2) Pay, within 30 days of receipt of an invoice from the tendering party, no more than a reasonable allocated share of the tendering party's defense fees and costs, on an ongoing basis during the pendency of the Claim, subject to reallocation consistent with the limitations set forth above upon final resolution of the Claim.

Notwithstanding the foregoing, however, to the extent that PROVIDER is furnishing design professional services as an architect, landscape architect, professional engineer, or professional land surveyor, then (i) PROVIDER shall only be required indemnify, defend and save an Indemnitee against a Claim that arises out of, pertains to, or relates to the negligence, recklessness, or willful misconduct of PROVIDER, its employees, and/or subconsultants; and (ii) the cost to defend charged to PROVIDER shall not exceed PROVIDER's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, PROVIDER shall meet and confer regarding unpaid defense costs.

The obligations under this Paragraph B are in no way limited or relieved by PROVIDER having obtained insurance, by the Insurance or other provisions of this Agreement, and/or to the extent permitted by law, by the provisions of any workers compensation law, regulation or arrangement. In addition, the obligations of this Paragraph B shall survive the expiration or termination of this Agreement, as well as PROVIDER's completion of its other obligations. Notwithstanding the foregoing or any other provision of this Agreement, if the Claim for which indemnity or defense is sought is in connection with a residential building project subject to the provisions of Section 2782(d) of the Civil Code and constitutes a "claim of construction defect" as defined by Section 2782(d) of the Civil Code, then the provisions of Exhibit C hereto shall apply. Indemnity and defense obligations not affected or restricted by Civil Code Section 2782(d) or (e), such as for property damage not caused by construction defects or other matters not involving defect claims, shall not be limited, impaired, or modified by the foregoing sentence, and such indemnity and defense obligations shall remain in full force and effect.

C. TIME AND SCHEDULING OF WORK - Time is of the essence of this Agreement. 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 Providers, and in general, all matters representing the timely and orderly conduct of the work of PROVIDER on the premises. It shall be PROVIDER's obligation to conform to the Project Schedule, subject to modifications which CONTRACTOR from time to time may make at its sole discretion. CONTRACTOR shall have the right at any time and at its sole discretion to change the sequencing of PROVIDER's work, to direct PROVIDER to accelerate its work by furnishing additional labor and to expedite deliveries of material or to work overtime to such extent as will be sufficient to speed up and complete the work in compliance with the CONTRACTOR's direction. PROVIDER acknowledges that it will have to perform work in areas occupied by other forces, under difficult circumstances that will require it to interrupt its work or will interfere with its productivity, and that it will have to perform its work in a sequence or manner to accommodate and facilitate the progress of the work as a whole, rather than in the manner most efficient or desirable for PROVIDER. PROVIDER's price is based upon PROVIDER having planned to perform its work under such circumstances and upon CONTRACTOR exercising the rights indicated in this Paragraph D. Milestone or completion dates of segments of PROVIDER's work within the overall schedule shall be met. If PROVIDER believes that such directions entitle PROVIDER to extra compensation or additional time for the performance of any of its work, PROVIDER shall fully comply with the provisions governing applications for Changes as set forth in Paragraph F of this Agreement and, if applicable, Paragraph G, Claims and Dispute Resolution. PROVIDER shall prepare and obtain approval as required by the Contract Documents for all shop drawings, details, samples, and do all other things necessary and incidental to the prosecution of its work in conformance with the Project Schedule. PROVIDER shall coordinate the work covered by this Agreement with that of all other contractors, Providers, and of the CONTRACTOR in a manner which will facilitate the efficient completion of the entire work.

D. CHANGES – PROVIDER shall proceed with any Change to the Work upon receipt of written authorization from CONTRACTOR in the form of a Change Order, Field Directive, or Direction to Proceed and, absent such written authorization, PROVIDER shall adhere strictly to the requirements of the Contract Documents. In addition, PROVIDER shall notify CONTRACTOR in writing the earlier of (a) within five (5) business days of its having reason to be aware of an event which PROVIDER believes entitles it to an increase in the Contract Price or Time (hereinafter referred to as a "Changed Condition") or (b) three (3) business days before notice is required in the Prime Contract. However, if the Changed Condition is critical to work to be performed or planned during the five (5) business days notice period, then PROVIDER shall take all steps necessary to immediately notify the CONTRACTOR in writing of the onset of the Changed Condition. If PROVIDER proceeds with extra work or work impacted by a Changed Condition without prior written authorization from CONTRACTOR, such work shall be deemed "Unauthorized Work" even if it was directed orally by CONTRACTOR or was directed in any form, written or otherwise, by OWNER or any other person or entity. PROVIDER agrees that it shall not be paid or receive an extension of time for Unauthorized Work and PROVIDER agrees that it shall be solely responsible for all costs resulting from its having proceeded with the Unauthorized Work or from its failing to notify CONTRACTOR timely of a Changed Condition, including the costs incurred in restoring, correcting, or repairing the Work or in regaining the Project Schedule.

If all of the following conditions have been met, a Change Order shall be issued to PROVIDER, adjusting the Contract Price and/or Contract Time: (1) a Change or a Changed Condition has occurred outside of PROVIDER's control which affects its costs or time of performance, (2) all work involved was authorized in accordance with the requirements of the preceding paragraph, (3) the Change or Changed Condition is one for which the CONTRACTOR is entitled to an adjustment to its Contract Price or Contract Time, and (4) the Owner has issued a Change Order to CONTRACTOR for the same Change or Changed Condition. The amount of the adjustment shall be determined by agreement between the CONTRACTOR and PROVIDER or failing agreement, CONTRACTOR may at its election issue a Direction to Proceed, in which case (1) PROVIDER shall perform the Work in accordance with CONTRACTOR's written directions, (2) PROVIDER's exclusive remedy shall be as set forth in the Claim and Dispute provisions of Paragraph G below, (3) PROVIDER shall maintain records of all costs and time associated with the claimed Change or Changed Condition and submit such records daily to CONTRACTOR's field representative for signature ("Verified Time and Material Records") and (4) the maximum amount of any adjustment to the Contract Price or Contract Time due to the Direction to Proceed shall be the lesser of (a) the increase to the Contract Price or Time that is granted to CONTRACTOR by the OWNER for PROVIDER's portion of the Work after deduction of CONTRACTOR's costs, including overhead and profit or (b) the costs and time established through PROVIDER's Verified Time and Material Records. In no event shall PROVIDER cease performance due to any dispute regarding a Change or a Changed Condition.

No change, alteration or modification in or deviation from this Agreement or the Plans and 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 surety or sureties of any such change.

E. CLAIMS AND DISPUTE RESOLUTION - Any disagreement over this Agreement shall be resolved only through the following claim and dispute resolution procedure. PROVIDER shall serve upon CONTRACTOR a written Notice of Claim within five (5) calendar days of the event giving rise to the disagreement including PROVIDER's receipt of a Direction to Proceed, a Change Order, backcharge, or unilateral Change Order rejection with which PROVIDER disagrees. If the dispute cannot be resolved through good faith negotiations within a reasonable time after delivery of the written notice of dispute, the following dispute resolution provision shall apply:

1. Limitation On ADR Procedures: Disputes Involving the Owner - The Dispute Resolution Provisions of the Prime Contract shall take precedence over the provisions of this Paragraph. If requested to do so by CONTRACTOR, PROVIDER shall join in and be bound by any Dispute Resolution Proceeding between the CONTRACTOR and the OWNER, whether binding or non-binding including binding or non-binding arbitration. If CONTRACTOR is prohibited by the terms of the CONTRACTOR/OWNER Dispute Resolution Proceeding from joining PROVIDER or if CONTRACTOR elects not to join PROVIDER to such proceeding, then PROVIDER shall fully cooperate with CONTRACTOR in presenting and defending issues that relate to PROVIDER's work. Whether or not PROVIDER participates in the OWNER/CONTRACTOR proceeding, (a) PROVIDER shall fulfill its indemnity obligations under Paragraph B above, including its responsibility to Indemnify CONTRACTOR for costs and expenses, including attorney and consultant fees, incurred by CONTRACTOR in the prosecution or defense of claims relating to or arising out of PROVIDER's work or contract responsibilities, and (b) PROVIDER shall be bound by the result of that proceeding as to all issues that are in dispute between CONTRACTOR and PROVIDER to the same extent CONTRACTOR is bound to OWNER.

Disputes Subject to ADR Procedures - The following ADR procedures shall apply to disputes ("Qualified Disputes") between CONTRACTOR and PROVIDER which (a) are not preempted by a CONTRACTOR/OWNER Dispute Resolution Proceeding, and (b) do not arise out of or relate to CONTRACTOR's termination of PROVIDER for default. The question of whether a dispute is a Qualified Dispute is within the absolute discretion of the CONTRACTOR and shall not be subject to review through these Dispute Resolution Procedures.

CONTRACTOR's right to control the work - Nothing in these Dispute Resolution Procedures shall limit the CONTRACTOR's right to manage and control the scheduling of the work or to direct work to proceed as set forth in the contract documents.

2. ADR Procedures: Initiation of ADR Process - Either party may initiate ADR Procedures for Qualified Disputes by delivery of written notice to the other party, ("Notice of Dispute") but only after full compliance with the Claim provisions of this Paragraph and after reasonable efforts to resolve the dispute through good faith negotiations.

Selection of Non-binding ADR Procedures - Upon receipt or delivery of a Notice of Dispute, and after consultation with PROVIDER, the CONTRACTOR shall determine what form(s) of non-binding ADR services are most appropriate to the dispute(s) in question. CONTRACTOR may select any non-binding ADR procedure agreed to by PROVIDER or failing agreement, CONTRACTOR may select from one or more of the ADR procedures available through such services as JAMS, including Mediation, Third Party Neutral(s), Special Master(s) and Independent Expert(s), and CONTRACTOR may require any of these as a condition precedent to litigation or arbitration.

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Special Procedures Regarding Independent Experts - The Independent Expert ("IE") shall have specialized knowledge in the issue in dispute. The engagement of the IE may be limited to specific questions and may be conditioned upon the cost of the IE's investigation and report not exceeding a specified sum.

The IE shall undertake an investigation of the designated issues in dispute, as the IE deems appropriate. Information submitted to the IE by any one of the parties shall be simultaneously submitted to the other parties. Upon completing its investigation, the IE shall deliver to the parties its preliminary written conclusions. The parties shall have five (5) days from receipt of the Preliminary Report to submit additional material for the IE's final consideration. The IE shall promptly issue a Final Written Report which sets forth conclusions, the basis for the conclusions and the basis for any changes from the Preliminary Report.

The Final Report shall be admissible in any subsequent adversary proceeding between the parties, but only as between the parties to this Agreement, and the IE may be called to testify in any such proceeding. The IE's written opinion shall be conclusive between the parties on factual questions addressed in the report absent clear and convincing evidence that the conclusions were incorrectly reached.

Appointment of the ADR Provider - If the parties cannot agree on who should be appointed to provide the designated ADR services, the appointment shall be made by the office of JAMS closest to the Project location.

Initiating Binding ADR Proceedings - Arbitration - If a Qualified Dispute is not resolved through non-binding ADR procedures within a reasonable period of time, CONTRACTOR, in its sole discretion, may require that the Dispute be submitted to binding arbitration through the office of JAMS closest to the project location, utilizing JAMS rules, provided that the total amount in dispute between the parties does not exceed \$100,000. A reasonable period of time shall be no less than 60 days so long as the parties are cooperating in good faith in the scheduling of the non-binding ADR proceedings. Any Qualified Dispute that is not resolved through non-binding ADR procedures within a reasonable period of time, at CONTRACTOR's option and in its sole discretion may be resolved through a special reference pursuant to Section 638 of the Code of Civil Procedure, without a jury, with the referee authorized to hear and determine any or all of the issues, whether of fact or of law, and to report a statement of decision to the Superior Court, with judgment thereafter to be entered in accordance with applicable law. In the event that the Superior Court refuses to allow the reference or to enforce this provision authorizing a reference in CONTRACTOR's discretion, the matter shall then be decided pursuant to binding arbitration in accordance with JAMS rules then in effect.

Consolidated Proceedings - If requested to do so by CONTRACTOR, PROVIDER shall consent to the consolidation of any ADR proceedings initiated under this Paragraph with any other court, arbitration, or ADR proceeding to which the CONTRACTOR is a party.

Attorney And Consultant Fees - The parties shall bear the cost of Dispute Resolution services equally as they are incurred, except in multiple party disputes CONTRACTOR may adjust each party's share to equitably reflect their proportionate interest in the issues in dispute. The cost of engaging the services of an Independent Expert shall be awarded to the party that prevailed on the issues addressed by that Independent Expert. Notwithstanding any other provision of this Agreement or applicable law, or any provisions of the Contract Documents that may be incorporated, neither PROVIDER nor CONTRACTOR shall be permitted to recover attorney's fees or costs of suit in any dispute or litigation. PROVIDER expressly waives the right to recover attorney's and consultant fees, costs and other legal expenses, from OWNER, CONTRACTOR and from CONTRACTOR's sureties. This waiver of the right to fees and costs, to the greatest extent permitted by law, shall be effective as to statutory rights such as those afforded by Civil Code Sections 8558 or 9550 through 9566, but the waiver shall not extend to statutory fees required to be paid pursuant to Civil Code Section 2782.05. The foregoing waiver shall not limit, impair or waive CONTRACTOR's rights to be defended by, to be indemnified by, to be held harmless by, to receive contribution from PROVIDER, and to receive the benefits of insurance furnished by PROVIDER or any other persons, with respect to attorney's and consultant fees, costs and other legal expenses. No arbitrator or referee shall have jurisdiction to award fees, costs or expenses waived by this provision, but if for any reason this waiver of fees and costs is found to be invalid or unenforceable, then CONTRACTOR and its sureties shall be afforded the same rights as PROVIDER with regard to attorney's and consultant fees, costs and other legal expenses.

Continued Performance - To the greatest extent permitted by law and notwithstanding any dispute, including without limitation, a dispute concerning work scope or the performance of changed work, or regarding payment, PROVIDER agrees to continue with its performance, including with respect to directed changes, and to maintain the schedule of work, pending resolution of any and all disputes. The foregoing sentence constitutes an election of remedies and an advance waiver by PROVIDER of any actual or alleged right to stop work, rescind, or abandon the Project.

F. LIENS - PROVIDER shall at all times indemnify and save CONTRACTOR and OWNER harmless against all liability for claims, stop payment notices and liens for labor performed or materials furnished to the project, including any costs and expenses for actual attorney and consultant fees incurred in good faith and all incidental or consequential damages resulting to CONTRACTOR or OWNER from such claims, stop payment notices or liens. PROVIDER agrees within ten (10) days after written demand by CONTRACTOR that it shall cause the effect of any claim, stop payment notice, legal proceeding or lien to be extinguished, removed or dismissed at its own expense, and in the event PROVIDER fails to do so, CONTRACTOR is authorized to use whatever means in its discretion it deems appropriate to accomplish such end and the costs, together with actual attorney and consultant fees incurred in good faith, shall be immediately due and payable to CONTRACTOR by PROVIDER. PROVIDER may litigate any such claim, lien, stop payment notice or legal proceeding 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 by reason of such liens, claims, stop payment notices or legal proceedings.

It is understood and agreed that the full and faithful performance of this Agreement on the part of PROVIDER (including the payment of any obligations due from PROVIDER to CONTRACTOR, and any amounts due to labor or material suppliers furnishing labor or material for the work) is a condition precedent to PROVIDER's right to receive payment for the work performed, and any monies paid by CONTRACTOR to PROVIDER under the terms of this Agreement shall be held in trust in favor of persons or entities furnishing labor, equipment, materials and services to PROVIDER, or its suppliers, and vendors for work covered by this Agreement, including apprenticeship programs or benefit trust funds.

G. RECOURSE BY CONTRACTOR - In the event that PROVIDER at any time refuses or neglects to provide timely, accurate and complete services, supply a sufficient number of properly skilled and competent workers or deliverables of proper quality, or be adjudicated a bankrupt, or files an arrangement proceeding, or commits any act of insolvency, or makes an assignment for benefit of creditors without CONTRACTOR's consent, or fails to make prompt payment to its contractors, material suppliers and laborers, or fails in any respect to properly and diligently prosecute the work covered by this Agreement, or becomes delinquent with respect to contributions or payments required to be made to any Health and Welfare, Pension, Vacation, Apprenticeship or other employee benefit program or trust, or fails to fulfill any provision of the Agreement is a material breach of this Agreement. CONTRACTOR may, at its option: (1) provide any such labor and materials as may be necessary and deduct the costs thereof, including, without limitation, CONTRACTOR's profit and overhead, administrative costs, and attorney and consultant fees actually incurred in good faith, from any money then due or thereafter to become due to the PROVIDER under this Agreement, or (2) terminate PROVIDER's right to proceed with the work and, in that event, the termination shall be deemed to be for cause and CONTRACTOR shall have the right to enter upon the premises of the Project and take possession, for the purposes of completing the work included under this Agreement, of all materials, tools, machinery and equipment of PROVIDER, and may employ any other person(s) or entity(s) and provide any material to finish the work. In case of such termination for cause, PROVIDER shall not be entitled to receive any further payment under this Agreement until all the work undertaken by CONTRACTOR in its prime contract is completely finished. At that time, if the unpaid balance of the amount to be paid exceeds the unpaid balance, then PROVIDER shall promptly pay to CONTRACTOR the amount by which the expenses exceed the unpaid balance. These expenses shall include materials, actual attorney and consultant fees incurred and any damages sustained by CONTRACTOR by reason of PROVIDER's default, plus a markup of fifteen percent (15%) General Overhead and ten percent (10%) Profit on any and all such expense. CONTRACTOR in its sole discretion may give prior written notice to PROVIDER, but is not required to do so in order to utilize the remedies of this Paragraph I. In the event that written notice is for any reason deemed to be required: (a) notice of forty-eight (48) hours is hereby agreed by the parties and their sureties to be reasonable, adequate, and sufficient and (b) if circumstances that warrant a shorter period of notice in order to avoid delay, disruption, or actual or potential danger to persons or property, or for any other reason, then a reasonable shorter period of notice shall be deemed to be adequate and sufficient. The notice referred to in this paragraph will be sufficient and complete when mailed to PROVIDER at the address shown in this Agreement. CONTRACTOR shall have a lien on all materials, tools, machinery and equipment taken possession of to secure PROVIDER's payment thereof.

With respect to any and all payments to be made by CONTRACTOR to PROVIDER under this Agreement, CONTRACTOR at its option may issue joint checks payable to PROVIDER and any trust referred to herein, or material supplier, to the extent necessary to assure that payments required to be made under this Agreement are paid.

CONTRACTOR may withhold, or on account of subsequently discovered evidence, nullify the whole or a part of any payment, to such extent as may be necessary to protect CONTRACTOR from loss, including costs and actual attorney and consulting fees, on account of (1) defective work not remedied; (2) claims filed or reasonable evidence indicating probable filing of claim; (3) failure of PROVIDER to make payments properly to its Providers, material suppliers, labor, or fringe benefits; (4) a reasonable doubt that this Agreement can be completed for the balance then unpaid; (5) damage to another Provider; (6) failure of PROVIDER to complete the contract in accordance with the Contract Documents; and (7) unsatisfactory performance of the work by the PROVIDER. When the above grounds are removed, such amounts due and owing shall be paid or credited to PROVIDER. As a cumulative remedy, CONTRACTOR shall be entitled to withhold and to set off against any amounts owed to PROVIDER any liabilities or amounts owed to CONTRACTOR by PROVIDER, including those that relate to or arise from other projects. Should one or more contracts now or hereafter exist between the parties hereto or with any affiliated corporation or CONTRACTOR OR PROVIDER, concerning this or any construction projects, then a breach by the PROVIDER of any contract may, at the option of the CONTRACTOR, be considered a breach of all contracts. In such event CONTRACTOR may terminate any or all of the contracts so breached or may withhold monies due or to become due on such contracts and apply the same toward payment of any damages suffered on that or any other contract.

If CONTRACTOR determines that PROVIDER's financial condition has become unstable or unsatisfactory, or believes that there is reason to doubt that PROVIDER shall timely and fully perform all of its obligations, then CONTRACTOR may upon three business days written notice demand that PROVIDER provide adequate assurances, which assurances in CONTRACTOR's sole discretion may include PROVIDER providing detailed information demonstrating adequate financing and resources and the furnishing by PROVIDER of additional security satisfactory to CONTRACTOR.

H. TERMINATION OF AGREEMENT – This Agreement may be terminated only in one of three ways: **First**, termination by CONTRACTOR for cause: In the event of termination for cause, the rights and responsibilities of the Parties shall be as set forth in Section I of this Agreement. **Second**, termination of the Prime Contract: If the Prime Contract has been terminated for any reason, then this Agreement shall also terminate. In the event the prime contract is terminated prior to its completion, PROVIDER shall be entitled only to payment for the work actually completed by it at the proration of the price herein set forth unless CONTRACTOR itself received additional compensation or damages on account of such termination, in which event, PROVIDER shall be entitled to the amount of such payment designated for work performed by PROVIDER less CONTRACTOR's costs including fifteen percent (15%) General Overhead and ten percent (10%) Profit on any such costs for PROVIDER's work, and failing such designation, such proportion of the additional compensation or damages actually received as is equitable under all of the circumstances. Nothing contained herein shall require CONTRACTOR to make any claim against OWNER for additional compensation or damages in the event of termination before completion, and it is specifically agreed that the failure of CONTRACTOR to prosecute any such claim against OWNER shall not entitle PROVIDER to any claim for additional compensation or damages against CONTRACTOR. **Third**, termination by CONTRACTOR for convenience: CONTRACTOR reserves the absolute right to terminate this Agreement without cause ("Termination for Convenience"). In the event of a Termination of Convenience, PROVIDER shall be entitled to payment only as follows: 1. Direct Cost incurred by PROVIDER in the performance of the WORK which could not have been avoided through judicious efforts by PROVIDER to promptly mitigate costs upon receipt of the Notice of Termination; 2. Plus 15% of the Direct Cost qualified under above to cover all associated indirect costs, including, without limitation, overhead and profit; 3. In no event shall the amount paid to PROVIDER exceed the total of subparagraphs (1) and (2) above or the amounts paid by OWNER to CONTRACTOR for work performed by PROVIDER, whichever is less. Direct Cost includes only (1) the cost of job site labor, equipment and material incurred in performing work on the project site, (2) general condition expenses for activities taking place on the project site including supervising and clerical personnel assigned full time to the project site, (3) the actual cost for labor incurred performing site engineering and off site fabrication if such activities were previously identified by PROVIDER and approved by CONTRACTOR in PROVIDER's Schedule of Values. All other costs are indirect costs recovered through the 15% payment allowed above.

There shall be deducted from such sums as provided in this Paragraph J the amount of any payments made to PROVIDER prior to the date of termination of this Agreement. PROVIDER shall not be entitled to any claim, or claim of lien, against CONTRACTOR or against OWNER for any additional compensation or damages in the event of such termination and payment. In the event this Agreement is terminated for cause then CONTRACTOR shall have all of those rights provided by law as well as those rights in Paragraph I above. Upon any termination, CONTRACTOR shall have the right to take immediate

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possession of, utilize for any purpose, inspect, and copy any and all of PROVIDER's documents or information related to the Project, and the obligations of PROVIDER and rights and remedies of CONTRACTOR that would continue after substantial completion in the absence of a termination, including without limitation, PROVIDER's duties with regard to indemnity, payment of creditors, compliance with laws, insurance, warranty, and defective work, shall remain in full force and effect. If it is ever determined in a subsequent legal proceeding that PROVIDER's termination for cause was improper, then the termination shall be deemed to have been for convenience and PROVIDER's sole remedy shall be as set forth in this Paragraph J.

I. LABOR RELATIONS – Employment of labor by PROVIDER shall be effected under conditions which are satisfactory to CONTRACTOR. PROVIDER shall keep a representative at all times on the jobsite when PROVIDER's work is in progress and Provider is on-site, and such representative shall be authorized to represent PROVIDER for each phase of the work. Prior to commencement of the work, PROVIDER shall notify CONTRACTOR who PROVIDER's representative is to be, and in the event of any change of representative, PROVIDER shall notify CONTRACTOR who the new representative is to be prior to such change becoming effective.

Should there be picketing on the CONTRACTOR's job site, and the CONTRACTOR establishes a reserved gate for the PROVIDER's use, it shall be the obligation of the PROVIDER to continue the proper performance of its work without interruption or delay. Should PROVIDER's presence or activity cause a labor related problem at the construction site, the PROVIDER shall bear the full costs thereof. PROVIDER shall also promptly obtain, and pay the full costs of any court orders necessary to restrain acts in violation of the law resulting from PROVIDER's presence or activities. PROVIDER shall be bound by all relevant local, state and federal laws governing labor relations, and shall fully indemnify and hold CONTRACTOR harmless from and against claims, liability, loss, damage, expenses, including attorneys fees actually incurred in good faith, awards, fines or judgments arising by reason of violation of such laws, or failure to fulfill the covenants set forth in this paragraph.

J. PROFESSIONALISM - PROVIDER shall exercise all due diligence to complete its work in a manner consistent with the highest standard of care and skill exercised by members of its profession currently practicing in the same locale of the project under similar conditions; provided, however, that if the Prime Contract imposes more stringent or greater standards of care or responsibility, then PROVIDER shall be obligated to comply with and perform its services in accordance with such standards.

K. USE OF CONTRACTOR'S EQUIPMENT - The PROVIDER, its agents, employees, consultants or suppliers shall not use the CONTRACTOR's equipment without the express written permission of the CONTRACTOR's designated representative. PROVIDER shall be fully responsible for and shall be deemed to have inspected any such equipment and accepts the use of such equipment as is.

If the PROVIDER (or any of its agents, employees, suppliers or sub-Providers) utilizes any machinery, equipment, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of CONTRACTOR, PROVIDER shall act as an independent contractor and shall be primarily liable for any loss or damage (including personal injury or death) which may arise from such use regardless of who is operating any of CONTRACTOR's equipment under PROVIDER's control, and shall fully indemnify and hold CONTRACTOR harmless, pursuant to the provisions of Paragraph B of this Agreement, from any loss, claim, liability, damage, costs, expenses, including actual attorneys fees incurred in good faith, awards, fines or judgments arising by reason of such use.

L. CLEAN-UP - During the course of construction, PROVIDER shall remove waste materials from the site as often as is necessary to maintain the premises in a clean and orderly condition. If PROVIDER fails to perform a clean-up function within eight (8) hours after notification from CONTRACTOR to do so, CONTRACTOR may proceed with that function as it judges necessary in the manner it may deem expedient and the cost thereof shall be charged to PROVIDER and deducted from monies due under this agreement. These charges include, but not limited to, labor at a rate of \$75.00 per hour, fees, equipment, and material costs.

M. ASSIGNMENT OF CONTRACT - PROVIDER shall not, assign, transfer or sublet any portion or part of the work required by this Agreement or assign any payments hereunder to others without express written consent of CONTRACTOR. If PROVIDER is given written consent to assign, transfer or sublet any portion or part of the work, PROVIDER shall bind its assignees, or subletors to all of the terms and provisions of this Agreement. No assignment, subcontract, or sublet shall be valid unless PROVIDER has fully complied with the provisions of this paragraph.

N. INDEPENDENT CONTRACTOR - PROVIDER is an independent contractor and shall, at its sole cost and expense, and without increase in the Contract Price, comply with all applicable laws, rules, ordinances, codes and regulations, including those of all governing bodies having jurisdiction over the work, obtain and maintain in good standing all necessary permits and licenses for its work, pay all manufacturers' taxes, sales taxes, use taxes, processing, taxes, and all federal and state taxes, insurance and contributions for Social Security and Unemployment which are measured by wages, salaries, or other remuneration's paid to PROVIDER's employees, whether levied under existing or subsequently enacted laws, rules, or regulations. PROVIDER, upon request, shall furnish evidence satisfactory to CONTRACTOR that any or all of the foregoing obligations have been fulfilled.

O. WAIVER - Any act or omission of CONTRACTOR which PROVIDER might claim as an excuse for its own failure to perform shall be deemed waived by PROVIDER unless it shall notify CONTRACTOR in writing of its intention to assert such excuse within five (5) days after occurrence of any such act or omission. No delay or omission on the part of CONTRACTOR in exercising any of its right hereunder, nor the acquiescence in or waiver by CONTRACTOR of a breach of any term or condition of this Agreement shall be deemed or construed to operate as a waiver of such rights or acquiescence thereto except in the specific instance for which given. PROVIDER waives any right it might have to assert the provisions of CALIFORNIA CIVIL CODE § 1654 against CONTRACTOR.

P. PAYMENT PROCEDURES – CONTRACTOR shall pay PROVIDER within seven (7) days of its receiving payment for work performed by PROVIDER provided PROVIDER meets the following condition precedents: 1. CONTRACTOR's accounting procedures are set up to process Progress Payments once a month. Progress Payment Applications must be delivered to CONTRACTOR on or before the 20th of the month to be included in CONTRACTOR's processing of that month's Payment Applications. Payment Applications that are not received by the 20th of the month will not be processed until CONTRACTOR processes the Payment Applications for the following month. 2. PROVIDER shall not be eligible to receive any payment for work performed on this Project unless the following have been delivered to CONTRACTOR (a) this Agreement properly executed by PROVIDER without modifications unless such modifications have been approved by CONTRACTOR in writing, (b) Certificates of Insurance required in Exhibit A of the Subcontract Agreement, (c) an Affidavit of Suppliers in the form supplied by CONTRACTOR, and (d) a taxpayer's identification number and certificate. 3. Each Payment Application must be accompanied by waivers and releases executed by PROVIDER and its suppliers including each of those (a) listed upon PROVIDER's Affidavit of Suppliers, (b) who have filed a Preliminary Notice or (c) who are otherwise known to have provided labor, equipment or services to the Project as part of PROVIDER's work (hereinafter collectively referred to as "Releasor(s)"), as follows: **For Progress Payment Applications:** (1) Conditional Waivers and Releases Upon Progress Payments for the period covered by the Payment Application for each Releasor excepting only those (a) who have provided Unconditional Waivers and Releases Upon Progress Payments through the period covered by the payment application or (b) who have provided Unconditional Waivers and Releases Upon Final Payment for the Project, (2) Unconditional Waivers and Releases upon Progress Payments from each Releasor on whose behalf a previous progress payment was made, through the period covered by the previous payment excepting only those who have provided Unconditional Waivers and Releases Upon Final Payment for the Project, **For Applications for Final Payment:** (1) Conditional Waivers and Releases Upon Final Payment for each Releasor, except those who have or who are providing, or who have previously provided Unconditional Waivers and Releases Upon Final Payment. 4. To the greatest extent permitted by law, PROVIDER assumes the risk of OWNER'S insolvency and the attendant risk of any delayed payment to CONTRACTOR for subcontract work. Accordingly, if mechanic's lien remedies as outlined in the California Civil Code, or other remedies against the OWNER are inadequate to secure payment due to OWNER'S insolvency, further payments under this contract will be excused to the greatest extent permitted by law. 5. CONTRACTOR may deduct from any payment an amount equal to 150% of the amount determined by CONTRACTOR as necessary to protect CONTRACTOR against any unresolved claim, dispute arising out of PROVIDER's performance, or cost to prepare any close-out item. These amounts may be withheld by CONTRACTOR without penalty, interest, or attorney and consulting fees to the greatest extent permitted by law. These Payment Procedures are for the benefit of the CONTRACTOR and PROVIDER only, and nothing in these Procedures shall operate to create a right in any person not a party to this Agreement.

Q. LAWS, PERMITS, SAFETY AND TAXES – PROVIDER and its employees, shall comply with all applicable Federal, State, local and other legally required building, safety, and health standards, employment laws, including the Equal Opportunity Employment Policy of the CONTRACTOR, affirmative action programs, patent, copyright and trademark laws, or any other legally required standards, orders, rule, regulations, codes, or laws (hereinafter collectively referred to as "laws") applicable to the work to be performed hereunder, including, by way of illustration, those laws which govern the handling and disposal of hazardous waste; the requirements of the Equal Opportunity Clause promulgated by the Secretary of Labor pursuant to Executive Order 11246 found in Title 41 CFR 60-1.4; the requirements of the Veterans and Handicapped clauses found in Title 41 CFR-250.4 and 60.741.4 and the requirements of the Americans with Disabilities Act of 1990. PROVIDER shall, at its own expense, comply with CONTRACTOR's project safety program and all specific safety requirements, laws, regulations, rules or ordinances, promulgated by any government authority, whether State, Federal, or local, now existing or subsequently enacted. PROVIDER shall be fully responsible for compliance with the provisions of this Paragraph X by itself, its agents, employees, material suppliers, and sub-Providers with respect to its portion of its work, and shall pay, respond to, or defend any citation, assessment, fine or penalty relating to the failure of any person or entity listed hereunder to so comply.

R. CONFLICT WITH GOVERNING LAWS – CONTRACTOR and PROVIDER agree that if any word, phrase or provision of this Agreement is deemed to be in conflict with any applicable law, only those words which create the conflict shall be stricken and the remainder of the words, phrases or provisions of this Agreement shall remain in full force and effect.

S. WAIVER OF CONSEQUENTIAL AND OTHER DAMAGES – To the greatest extent permitted by law, PROVIDER hereby waives any and all consequential or special damages, including without limitation, damages, claims, causes of action, liabilities, such as the following: for loss of use, income, profit, financing, business and reputation; for loss of Provider, supplier, management or employee productivity; for loss of services of such persons; for principal or satellite office expenses, general conditions or overhead, including compensation of personnel stationed at offices; for loss of financing or return on capital; for loss of business and reputation; for financing and/or interest costs; and for loss of profits whether or not related to any project to which this Agreement relates.

T. VENUE: PROVIDER agrees that this Agreement is executed in San Mateo County, California and that venue for any action brought to enforce any of the terms and provisions of this Agreement shall therefore be proper in San Mateo County, California.

U. RIGHTS IN DOCUMENTS – PROVIDER agrees that all documents or data produced or obtained pursuant to this Agreement shall constitute a work for hire on behalf of CONTRACTOR, and PROVIDER therefore assigns to CONTRACTOR all rights in the nature of copyright, trademark, patent, and right to ideas, in and to all versions of the documents now or later prepared by PROVIDER in connection with the performance of this Agreement. PROVIDER will not use, or permit another to use the documents in connection with this or any project without first obtaining the written permission of CONTRACTOR. Reuse on another project of materials prepared for a particular project shall be at CONTRACTOR's sole risk, unless CONTRACTOR has obtained PROVIDER's prior written consent. For the purposes of this paragraph, the term "documents" shall mean and include, but without limitation, all reports, plans and specifications, studies, tape or other electronic recordings, data, work product, electronic files, drawings, sketches, estimates, letters, data sheets, maps and work sheets produced, acquired or prepared by or for PROVIDER in connection with the performance of this Agreement. CONTRACTOR may request copies of documents at any time during and after the expiration of this Agreement.

V. REPORTS AND PLANS – All reports, studies and documents to be submitted by PROVIDER to CONTRACTOR as set forth in this Agreement or any exhibit hereto shall be submitted in the number agreed by the parties. For example, and without limitation, PROVIDER shall furnish CONTRACTOR the agreed upon number of prints of plans, recordings, drawings, sketches and maps. Unless otherwise directed in writing, all reports shall be delivered to CONTRACTOR's designated representative.

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W. BOOKS AND RECORDS – PROVIDER shall keep accurate books of account and records with respect to all costs incurred by PROVIDER in the performance of this Agreement insofar as such costs relate to reimbursable expenses or in any other manner to the basis of compensation herein provided. Such books of account shall be kept in accordance with generally accepted accounting principles consistently applied. Such books of account and records shall be open for CONTRACTOR's inspection and/or copying upon reasonable notice during business hours.

X. NON-DISCRIMINATION – It is CONTRACTOR'S policy that it will not discriminate against its employees, applicants for employment, employees of the City of San Francisco, or members of the public on the basis of race, sex, color, creed, sexual orientation, gender identity (transgender status), or HIV status, national origin, ancestry, age, or disability.