



LICENSE NO. 986915

Master Subcontract Agreement 101

This Master Subcontract Agreement (the “Agreement”) is executed this **nn** day of **month year**, between Good & Roberts, LLC (the “Contractor”) and Good & Roberts, LLC , (the “Subcontractor”).

INTRODUCTION

Contractor and Subcontractor agree as follows:

- A.** That Contractor and Subcontractor wish to enter into this Master Subcontract Agreement to facilitate future projects in which Contractor may choose to retain Subcontractor to provide materials and perform services. The scope of work and other project specific terms and conditions (collectively, the “Subcontract Work”) shall be set forth in a work order (“Work Order”) for each specific project.
- B.** That Contractor may employ Subcontractor from time to time on various constructions projects, as determined by Contractor in its sole discretion pursuant to Work Orders to be executed in connection with each such project.
- C.** That this Agreement shall apply to all future subcontract work to be provided by Subcontractor on any project pursuant to such Work Orders, provided that the terms of this Agreement may be modified by a subsequent written Work Order signed by both parties varying the terms of this Agreement and only as to the particular Work Order.
- D.** That this Agreement shall be construed in its broadest terms, such that all provisions of this Agreement shall be given full effect to the extent possible in light of the specific terms of any subsequent Work Order(s) and work order revisions.
- E.** That the terms of this Agreement shall be deemed incorporated by reference with respect to any future construction project pursuant to which Contractor may employ Subcontractor under a Work Order, and for which Contractor has entered into, or will enter into, a Prime Contract as defined in Paragraph 1.1.

ARTICLE I: THE SUBCONTRACT DOCUMENTS

- I.1** As to any future project in which Contractor employs Subcontractor, the Subcontract Documents (as may be referenced in this Agreement or in any other Agreement or document) shall consist of (1) this Agreement; (2) the “Prime Contract”, consisting of the Prime Contract documents as defined therein which may include, by way of example, a form of agreement between the Owner and Contractor and the other Contract Documents enumerated therein, including, as applicable, the conditions of the contract (general, special, supplementary and other conditions), drawings/plans, specifications and addenda effective as of the execution of the Prime Contract, together with addenda or modifications issued subsequent to the execution of the Prime Contract, whether in existence before or after the execution of this Agreement; and (3) the Work Order and any documents incorporated therein, These documents form the Subcontract and are fully a part of the Subcontract as if attached to this Agreement or repeated herein. As to each project that Contractor employs Subcontractor, the Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representation or agreements, either written or oral. In the event of any conflict, inconsistency, or ambiguity between or among this Agreement, any Work Order, or any amendment or modification to such Work Order, the terms of the most recently issued of the documents shall take precedence.
- I.2** Subcontractor shall be furnished copies of the Subcontract and all incorporated documents upon request, but Contractor may charge Subcontractor for the cost of reproduction and shipping thereof.

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ARTICLE 2: MUTUAL RIGHTS AND RESPONSIBILITIES

- 2.1** Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and the Prime Contract to the extent that provisions of the Prime Contract apply to the Subcontract Work.. Contractor shall have benefits of all rights, remedies and redress against Subcontractor that the Owner, under Prime Contract, has against Contractor. Where provisions of the Prime Contract are inconsistent with provisions of this Agreement, the more stringent of the two shall govern.
- 2.2** Contractor may require Subcontractor to include provisions in its agreements with subcontractors or suppliers of any tier performing portions of the Subcontract Work under each Work Order by which Subcontractor and its subcontractor are mutually bound, to the extent of the Work to be performed by sub-subcontractors or supplier, assuming toward each other all obligations and responsibilities that Contractor and Subcontractor assume toward each other and having the benefits of all rights, remedies and redress each against the other that Contractor and Subcontractor have by virtue of the provisions of this Agreement. No second tier subcontracts shall be assigned by Contractor to Subcontractor without Subcontractor's knowledge and consent to the assignment. Subcontractor's acceptance of such assignment shall not be unreasonably withheld.

ARTICLE 3: CONTRACTOR**3.1 Services Provided by Contractor**

- 3.1.1** To the extent such matters are within the reasonable control of Contractor, Contractor shall cooperate with Subcontractor in scheduling and performing Contractor's Work to avoid conflict with or interference in the Subcontract Work and shall provide written responses to submittals made by Subcontractor within a reasonable time. As soon as practicable after execution of a Work Order, Contractor shall provide Subcontractor with copies of Contractor's construction schedule of submittals, together with such additional scheduling details as will enable Subcontractor to plan and perform the Subcontract Work properly. Subcontractor shall be notified of subsequent changes in the construction and submittal schedules, and additional scheduling details.
- 3.1.2** Where reasonably practicable, as determined by Contractor on a project-by-project basis, Contractor shall provide suitable areas for storage of Subcontractor's material and equipment during the course of its performance of the Subcontract Work, but Contractor shall not be responsible for the security of tools, equipment, materials stored and other property stored, or any of Subcontractor's work in progress, all of which the Subcontractor is responsible for.
- 3.1.3** Subcontractor shall be solely responsible to protect Subcontractor's tools, equipment and materials and all of the Subcontract Work in progress. Subcontractor shall remain responsible for all Subcontract Work in progress until the Subcontract Work (or relevant portions thereof) are accepted in writing by Contractor.
- 3.1.4** Except as permitted by Contractor in writing, Contractor's equipment will not be available to Subcontractor.
- 3.1.5** If the Contractor accepts delivery on behalf of the Subcontractor of any of the Subcontractor's materials, supplies or equipment, whether or not the Subcontractor is absent from the site, the Contractor will not be liable for any deficiency or defect in quality, quantity or content of what was delivered.

3.2 Communications

- 3.2.1** Contractor shall make available to Subcontractor information that materially affects each Work Order, including information that becomes available to Contractor subsequent to execution of each Work Order under this Agreement.

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- 3.2.2** Contractor shall not give instructions or orders directly to employees or workmen of Subcontractor, except to persons designated as authorized representatives of Subcontractors.
- 3.2.3** Contractor, not the Subcontractor, shall have all direct communication with the Owner, Design Architect, Executive Architect, or any other design consultant, including but not limited to civil, structural, mechanical, electrical and plumbing engineering consultant.

3.3 Claims

- 3.3.1** Liquidated damages for delay, if provided for in the Work Order, shall be assessed against Subcontractor to the extent caused by, or contributed to by Subcontractor, Subcontractor's employees and agents, sub-subcontractors, suppliers or any person or entity for whose act Subcontractor may be liable.
- 3.3.2** Actual damages for delay shall be assessed against Subcontractor only to the extent caused or contributed to by Subcontractor, Subcontractor's employees and agents, sub-subcontractors, suppliers or any person or entity for whose act Subcontractor may be liable.
- 3.3.3** No claims for additional compensation or damages for delays, whether caused in whole or in part by any conduct on the part of Contractor, including, but not limited to, conduct amounting to a breach of this Agreement, or delays by other subcontractors or Owner, shall be recoverable from Contractor, and the extension of time for completion as provided in Section 3.3.4 shall be the sole remedy available to Subcontractor; provided, however, that in the event Contractor obtains additional compensation from Owner on account of delays for which Subcontractor has made a claim pursuant to this Section 3.3.3, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor from Owner as is equitable under the circumstances. In the event that Contractor prosecutes a claim against Owner for additional compensation for any delay which includes a pass-through delay claim by Subcontractor, Subcontractor shall cooperate fully with Contractor in the prosecution thereof and shall pay costs and expenses incurred in connection therewith.
- 3.3.4** Should Subcontractor be delayed in the prosecution or completion of critical path Subcontract Work by the act, neglect or default of Owner, Architect or Contractor, or should Subcontractor be delayed waiting for materials, if required by this Contract to be furnished by Owner or Contractor, or by damage caused by fire or other casualty for which Subcontractor is not responsible, or by the combined action of the workmen, in no way caused by, contributed to, or resulting from fault or collusion on the part of Subcontractor, or in the event of a lock-out by Contractor, then the time herein fixed for the completion of the Subcontract Work shall be extended the number of days that Subcontractor has thus been delayed, but no allowance or extension shall be made unless a claim therefore is presented in writing to Contractor within 48 hours of the commencement of such delay, and under no circumstances shall the time of completion be extended to a date which will prevent Contractor from completing the entire project within the time allowed Contractor by Owner for such completion.

3.4 Contractor's Remedies

If Subcontractor defaults or neglects to carry out the Subcontract Work in accordance with this Agreement and/or any Work Order and fails within 48 hours after receipt of written notice from Contractor to commence and continue correction of such default or neglect with diligence and promptness, Contractor may, without prejudice to any other remedy Contractor may have, retain others to carry out the Subcontract Work or to make good such deficiencies, as the case may be. Subcontractor shall be liable for all losses, costs, expenses, liabilities and damages, including consequential damages and liquidated damages, and any other damages, liabilities or expenses recoverable under applicable law, sustained by Contractor, or for which Contractor may be liable to Owner or any other party because of Subcontractor's default. Contractor may deduct all associated costs thereof from the payments then and thereafter due Subcontractor.

ARTICLE 4: SUBCONTRACTOR

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4.1 Execution and Progress of the Work

- 4.1.1** Subcontractor shall cooperate with Contractor in scheduling and performing the Subcontract Work so as to avoid conflict, delay in or interference with the remaining Prime Contract work of Contractor, other subcontractors, or the work of the Owner's own forces or Owner's separate contractors. Under each Work Order, Subcontractor shall, (1) provide Contractor with scheduling information and a proposed schedule for performance of the Subcontract Work in a form acceptable to Contractor, (2) conform to Contractor's progress schedules and all revisions or changes made thereto, (3) prosecute the Subcontract Work in a prompt and diligent manner in accordance with Contractor's progress schedules without delaying or hindering Contractor's work or the work of other contractors or subcontractors, (4) coordinate the Subcontract Work with that of all other contractors, subcontractors, suppliers and/or materialmen of the Contractor, in a manner that will facilitate the efficient completion of the entire work and (5) in the event Subcontractor fails to maintain its part of the Contractor's schedule, it shall, without additional compensation, accelerate the work as Contractor may direct until the Subcontractor's Work is compliant with such schedule.
- 4.1.2** Contractor shall have complete control of the premises on which the work for each Work Order is to be performed and shall have the right to decide the time and order in which various portions of the work shall be installed and the relative priority of the Subcontract Work with the work of other subcontractors, and, in general, all other matters pertaining to the timely and orderly conduct of the work of all subcontractors on the project job site.
- 4.1.3** Subcontractor shall pay for, prepare and promptly submit all shop drawings, product data, samples and similar submittals required by the Subcontract after receipt of notice to proceed under the Work Order. Subcontractor shall furnish all as-built drawings, operations manuals and warranties related to his trade within the time frame defined in the Prime Contract. Delivery of such as-built drawings, operations manuals and warranties shall be a condition precedent to final payment.
- 4.1.4** Subcontractor shall submit to Contractor in no more than seven (7) days after receipt of Work Order, a schedule of values (the Schedule of Values") allocated to the various parts of the Subcontract Work, aggregating the Subcontract Sum, as set forth in the Work Order, made out in such detail as Contractor or the Owner may reasonably require, and supported by such evidence as Contractor may direct. In applying for payment, Subcontractor shall submit statements based upon the Schedule of Values approved by Contractor.
- 4.1.5** Subcontractor shall furnish to Contractor periodic progress reports on the Subcontract Work as reasonably specified by Contractor, including information on the status of material and equipment that may be in the course of preparation or manufacture.
- 4.1.6** Subcontractor agrees that the Contractor, Owner, Architect, and other Design Consultants, will have the authority to reject work that does not conform to the Prime Contract documents or the Subcontract documents. The Architects' or other Design Consultants' decision on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.
- 4.1.7** Subcontractor shall pay for materials, equipment and labor used in connection with the performance of the Subcontract Work through the period covered by each progress payment received from Contractor, and shall furnish satisfactory evidence to verify compliance with the above requirements.
- 4.1.8** Subcontractor shall take necessary precautions to protect properly the work of other subcontractors from damage caused by operations under each Work Order. Failure to provide such protection will obligate the Subcontractor to pay the cost of any damage to work by others.
- 4.1.9** Subcontractor shall cooperate with Contractor, other subcontractors and the Owners' own forces whose work might interfere with the Subcontract Work. Subcontractor shall participate in the preparation of coordinated drawing in areas of congestion, specifically noting and advising Contractor of potential conflicts between the Subcontract Work and the work of Contractor, other subcontractors or the Owner's own forces.

4.1.10 Whenever the Subcontractor is performing work on the site, the Subcontractor shall submit daily reports to the Contractor, no later than 9:00 a.m., indicating the number of personnel working on the site that day, along with a description of activities, locations and equipment used in the conduct of the work.

4.1.11 The Subcontractor shall employ labor satisfactory to the Contractor. Subcontractor shall remove or cause to have removed from the project any employee or employees considered unsatisfactory by the Contractor.

4.2 Laws, Permits, Fees and Notices

4.2.1 Subcontractor shall give notices and comply with laws, ordinances, rules, regulations and orders of public authorities bearing on performance of the Subcontract Work. Subcontractor shall secure and pay for permits and governmental fees, licenses and inspections necessary for proper execution and completion of Subcontractor's Work under each Work Order, the furnishing of which is required of Contractor by the Prime Contract.

4.2.2 Subcontractors shall comply with federal, state and local tax laws, labor laws, social security acts, unemployment compensation acts and workers compensation acts insofar as applicable to the performance of each Work Order.

4.3 Safety Precautions and Procedures

4.3.1 Subcontractor shall take reasonable safety precautions with respect to performance of each Work Order, shall comply with safety measures initiated by Contractor and with applicable laws, ordinances, rules, regulations and order of public authorities for the safety of persons or property in accordance with the requirements of the Prime Contract. Subcontractor shall report to Contractor immediately any injury to an employee or agent of Subcontractor that occurred at the jobsite.

4.3.2 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 Subcontractor or its subcontractors of any tier, or by anyone directly or indirectly employed by them, Subcontractor shall, prior to exposure of any employees on the site to such a substance, give written notice of the chemical composition thereof to Contractor in sufficient detail and time to permit compliance with such laws by Contractor, other subcontractors and other employees on site. Subcontractor shall defend, indemnify and hold harmless Contractor for all expenses, costs and liability incurred by Contractor, the Owner, other subcontractor and other parties, resulting from Subcontractor's use, disposal of, or other disposition of any hazardous material at the jobsite.

4.3.3 If Subcontractor encounters material on the site reasonably believed to be asbestos, lead, polychlorinated biphenyl (PCB) or other hazardous material or wastes that have not been rendered harmless, Subcontractor shall immediately stop work in the area affected and report the condition to Contractor in writing. The work in the affected area shall resume only after abatement and removal of the asbestos, lead, polychlorinated biphenyl (PCB) or other hazardous material or wastes, or when it has been rendered harmless, and a licensed industrial hygienist has furnished written certification that the area is safe.

4.3.4 Subcontractor shall comply with all safety and security rules and regulations established by the Owner and/or Contractor.

4.3.5 Subcontractor and/or the employees of the Subcontractor specified by Contractor shall attend all safety meetings designed by Contractor, which typically will be convened on a weekly basis.

4.3.6 Subcontractors shall provide the Contractor proof of compliance with CA Safety Law SB-198 I and OSHA requirements. A copy of the Subcontractor's Injury and Illness Prevention Program shall be furnished to the Contractor prior to beginning work.

4.4 Cleaning Up

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- 4.4.1** Subcontractor shall clean up the work site daily and shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Agreement and each Work Order issued hereunder. Subcontractor shall not be held responsible for unclean conditions caused by other Contractors or Subcontractors.

4.5 Warranty

- 4.5.1** Subcontractor warrants to the Owner and Contractor that materials and equipment furnished under each Work Order will be of good quality and new, unless otherwise required or permitted by the Subcontract documents, that the Subcontract Work will be free from defects not inherent in the quality required or permitted and free from hazardous materials or components and that the Work will conform with the requirements of the Subcontract. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Subcontractor shall provide warranties and maintenance stock in accordance with Subcontractor's specific trade sections; Division I or Work Order requirements. The more stringent requirement shall take precedence.
- 4.5.2** The warranty period shall begin upon Owner's final acceptance of the Prime Contract work, or receipt of "Certificate of Occupancy", whichever is later, not at completion of the Subcontract Work. Unless stated otherwise the warranty period shall be one (1) year.
- 4.5.3** Subcontractor is also responsible for the costs of repairs/replacement of all other adjacent and/or related work that is damaged directly or indirectly by defective work done in conjunction with all Work Orders. These requirements shall survive the final payment of all Work Orders and any contrary language on the Subcontractor's warranty form shall be deemed null and void.

4.6 Indemnification

- 4.6.1** To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless the Owner, Contractor, Architect, or Design Consultant, or any of their respective consultants, agents, officers, directors and employees of any of them from and against claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of, relating to or resulting from performance of the Subcontract Work by Subcontractor, Subcontractor's sub-contractors of any tier, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Paragraph 4.6.1 Notwithstanding the foregoing, if the Prime Contract contains a broader, or more stringent, indemnity obligation than that contained in this section, 4.6.1, then the more broad or stringent indemnification shall apply to the subcontract.
- 4.6.2** The obligations of Subcontractors under this Paragraph shall not extend to the liability of the Architect, or other Design Consultant, or their respective consultants, agents and employees of any of them arising out of: (1) their preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or (2) the giving of or the failure to give directions or instructions by the Architect, or other Design Consultant, or their respective consultants and agents and employees of any of them, provided such giving or failure is the primary cause of the injury or damage.
- 4.6.3** To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless the Owner, Contractor, Architect, or other Design Consultant, or any of their respective consultants, agents and employees of any of them from and against claims, damages, losses and expense, including, but not limited to, attorney's fees, arising out of or resulting from mechanic's liens or stop notices filed by Subcontractor, Subcontractor's sub-contractors (of any tier), anyone directly or indirectly employed by them or suppliers, which arise due to Subcontractor's failure to make payments due to such claimant.

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ARTICLE 5: CHANGES IN THE WORK

- 5.1** The Owner may make changes in the Work by issuing modifications to the Prime Contract. Upon receipt of such a modification issued subsequent to the execution of each Work Order, Contractor shall promptly notify Subcontractor of the modification to the extent it affects the Subcontract Work. Unless otherwise directed by Contractor, Subcontractor shall not thereafter order materials or perform Work that would be inconsistent with the changes made by such modifications.
- 5.2** With respect to each project, Subcontractor may be ordered in writing by Contractor, without invalidating this Agreement or any Work Order issued hereunder, to make changes in the Subcontract Work within the general scope of each Work Order consisting of additions, deletions or other revisions, including those required by modifications to the Prime Contract issued subsequent to the execution of this Agreement and each Work Order. Subcontractor, prior to the commencement of such changed or revised Work, shall, if affected thereby, submit promptly to Contractor a written request for adjustment to the Subcontract Sum and Subcontract Time for such a revised work in a manner consistent with requirements of the Subcontract Documents.
- 5.3** In the event Contractor and Subcontractor cannot agree on the value of or time extension due as a result of a change to the Subcontract Work, Subcontractor shall proceed with and timely prosecute the change as directed in writing by Contractor. Once Subcontractor receives Contractor's written direction, Subcontractor is solely responsible for timely performance of the Subcontract Work as modified by the written direction, the dispute to be submitted for resolution in accordance with Article 6.

ARTICLE 6: ARBITRATION

- 6.1** Any controversy or claim between Contractor and Subcontractor arising out of or related to this Agreement, or to any Work Order or the breach thereof, shall be resolved by arbitration which shall be conducted in the same manner and under the same procedure as provided in the Prime Contract with respect to claims between the Owner and Contractor, except that a decision by the Architect, or other Design Consultant (if applicable), shall not be a condition precedent to arbitration. If the Prime Contract does not provide for arbitration or fails to specify the manner and procedure for arbitration, disputes under this Subcontract shall be resolved in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise. The arbitration proceedings shall be in the county where the project is located, unless the parties mutually agree otherwise.
- 6.2** Except by written consent of the person or entity sought to be joined, no arbitration arising out of or relating to this Agreement or any Work Order shall include, by consolidation or joinder or in any other manner, any person or entity not a party to this Agreement under which such arbitration arises, unless it is shown at the time the demand for arbitration is filed that (1) such person or entity is substantially involved in a common question of fact or law; (2) the presence of such a person or entity is required if complete relief is to be accorded in the arbitration, (3) the interest or responsibility of such person or entity in the matter is not insubstantial. This Agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof.
- 6.3** Contractor shall give Subcontractor prompt written notice of any demand received or made by Contractor for arbitration if the dispute involves or relates to the Subcontract Work. Contractor shall consent to inclusion of Subcontractor in an arbitration proceeding whether by joinder, consolidation or otherwise, if Subcontractor requests in writing to be included within ten (10) days after receipt of Contractor's notice.
- 6.4** The award rendered by the arbitrator or arbitrators shall be final, and judgments may be entered upon it in accordance with applicable law or in any court having jurisdiction thereof.

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- 6.5** This Article 6 shall not be deemed a limitation of rights or remedies that Contractor or Subcontractor may have under federal law, under states mechanics' lien laws or under applicable labor or material payment bonds unless such rights or remedies are waived by the Subcontractor.

ARTICLE 7: TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

7.1 Termination by Contractor; Other Assurances

- 7.1.1** If Subcontractor fails or neglects to carry out the Subcontract Work in accordance with the Subcontract documents or otherwise to perform in accordance with this Agreement or any Work Order issued hereunder and fails within forty-eight (48) hours after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may without prejudice to any other remedy Contractor may have, terminate the Subcontract and finish Subcontractor's Work by whatever method Contractor may deem expedient. If the unpaid balance of the balance of the Subcontract Sum for the Subcontract Work actually completed by Subcontractor exceeds all direct and associated expenses incurred by Contractor in finishing Subcontractor's Work, such excess shall be paid to Subcontractor, but if such expenses exceed such unpaid balance, Subcontractor shall promptly pay the difference to Contractor.
- 7.1.2** Notwithstanding other provisions in this Agreement or in any Work Order, Contractor reserves the right to require that on any project for which Subcontractor is employed, Contractor may require Subcontractor to provide Contractor with additional assurances as to Subcontractor's performance under any Work Order. Such additional assurances may include, without limitation, providing of additional guarantees by financially responsible parties, posting of additional performance bonds, providing updated financial information, posting collateral, distribution of funds through joint check, increased retention and providing proof of payment as to Subcontractor's employees, sub-subcontractors, material and equipment suppliers, and other creditors. Failure of Subcontractor to comply promptly with Contractor's request for additional assurances shall constitute a material breach of this Agreement and each Work Order issued hereunder.
- 7.1.3** Contractor may at any time and for any reason terminate Subcontractor's services and work at Contractor's convenience. Cancellation shall be by service of written notice to Subcontractor's place of business.
- 7.1.3.1** Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, (1) immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of the Subcontract Work, (2) make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Contractor or, at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived there from. Subcontractor shall thereafter do only such work as may be necessary to preserve and protect the work already in progress and to protect material and equipment on the job site or in transit thereto.
- 7.1.3.2** Upon such termination, Subcontractor shall be entitled to payment in accordance with Article 11 only as follows: (1) the actual cost of the Subcontract Work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Subcontractor as are permitted by the prime contract and approved by Owner; plus (3) fifteen percent (15%) of the cost of the work referred to in item (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Subcontractor prior to the date of the termination of this Agreement. In no event shall payment due hereunder exceed the amount due for approved units of work or percentage of completion. Subcontractor shall not be entitled to any claim or claim of lien against Contractor or Owner for any additional compensation or damages in the event of such termination and payment.

7.2 Assignment of the Subcontract

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7.2.1 In the event of termination of the Prime Contract by the Owner, Contractor may assign the Work Order issued under this Agreement to the Owner, with the Owner’s Agreement, subject to the provisions of the Prime Contract.

7.2.2 Subcontractor shall not assign the Work of this Agreement or any Work Order issued hereunder without the written consent of Contractor, nor subcontract the whole of the Subcontract Work without written consent of Contractor, which consent may be granted in Contractor’s sole and absolute discretion.

ARTICLE 8: THE WORK OF THIS SUBCONTRACT

8.1 With respect to each project, Subcontractor shall execute the Subcontract Work described in the Subcontract documents and each Work Order, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents and each Work Order to be the responsibility of others.

8.2 In the event of any dispute between Contractor and Subcontractor over the scope of Subcontractor's work under the Contract Documents, Subcontractor will not stop work but will prosecute the work diligently to completion, and the dispute may be submitted for resolution in accordance with Article 6.

ARTICLE 9: DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

9.1 Subcontractor’s date of commencement is the date from which the contract time defined in the Work Order is measured. The date of commencement shall be identified in each Work Order; if no date is stated in the Work Order then the date of commencement shall be the date of this Agreement, as first written above.

9.2 The Work under each Work Order shall be substantially completed not later than the date or dates indicated in the Work Order of the specific project, subject to adjustments of the Subcontract Time as provided in the Subcontract documents. If the Subcontractor fails to complete the Work or any portion thereof on schedule, Subcontractor shall be liable to Contractor for resulting damages, expenses and costs.

9.3 Time is of the essence of this Agreement and each Work Order issued hereunder.

9.4 No extension of time will be valid without contractor’s written consent after claim made by Subcontractor in accordance with Paragraphs 3.3.3, 3.3.4 and 5.2.

ARTICLE 10: SUBCONTRACT SUM

10.1 With respect to each project, Contractor shall pay Subcontractor for performance of Subcontractor the Subcontract Sum as specified in the Work Order, subject to additions and deductions as provided in the Subcontract Documents.

ARTICLE 11: PROGRESS PAYMENTS

11.1 Based upon application for payment submitted to Contractor by Subcontractor on GOOD & ROBERTS, LLC Invoice form, corresponding to the Applications for Payment submitted by Contractor to the Owner, Architect or other Design Consultant, and Certificates for Payment issued by the Owner, Architect, or other Design Consultant, Contractor shall make progress payments on account of the Subcontract Sum to Subcontractor as provided below and elsewhere in the Subcontract documents and the Work Order.

11.2 Except as specifically provided differently in the Work Order or in the respective Prime Contract, the period covered by each application for payment shall be one calendar month ending on the last day of the month, or as follows: (1) Payments

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will be made monthly on progress estimates as approved by Contractor covering ninety percent (90%) of the value of the Subcontract Work completed by Subcontractor to the end of the previous month, such payment shall be made seven (7) working days after Contractor receives payment for such Work from the Owner; (2) Payment of the balance of ten percent (10%) owing under each Work Order shall be made within ten (10) working days after payment has been received by Contractor; (3) Provided that notwithstanding the foregoing, no progress payment or final payment shall be due or payable until Subcontractor furnishes Contractor with Statutory Lien Releases showing (a) in the case of a progress payment, that all accounts incurred by Subcontractor in the performance of this Agreement and each Work Order issued hereunder up to the end of the previous months have been paid, and (b) in the case of a final payment that all accounts incurred by Subcontractor in the performance of each Work Order have been paid, or stating the particulars of any accounts still remain unpaid; (4) Subcontractor hereby authorizes Contractor to pay any unpaid accounts out of monies otherwise owed to Subcontractor; the amount of any account in dispute or any account not disclosed by Subcontractor but of which Contractor has knowledge may be retained by Contractor pending determination of the matter; and (5) Performance by Subcontractor in accordance with the requirements of the Subcontract Documents shall be a condition precedent to the Contractor's obligation to make any payments to Subcontractor. Subcontractor shall submit all "Conditional Releases" as a condition precedent to progress payment and provide "Unconditional Waivers and Releases Upon Progress Payment" within one (1) week of progress payment from Contractor. These releases are to be on GOOD & ROBERTS, LLC forms. Subcontractor shall also submit as precedent to progress payment evidence that contributions to all relevant Union Trust Funds are not delinquent.

11.3 Substantial Completion

11.3.1 When Subcontract Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Work Order and the Prime Contract, Contractor shall, upon application by Subcontractor, make prompt application for payment for such Work (subject in every case to the right of Contractor to retain such additional amounts to pay for claims under any mechanic's liens or other claims). Within ten (10) days following receipt of payment covering such substantially completed Work, Contractor shall, to the full extent allowed in the Prime Contract, make payment to Subcontractor, deducting any portion of the funds for Subcontractor's Work withheld in accordance with the Certificate for Payment issued by the Owner, Architect or other Design Consultant to cover costs of items to be completed or corrected by Subcontractor. Such payments to Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retention is allowed under the Prime Contract for the Subcontract Work prior to completion of the entire project. If the Prime Contract does not allow for a full release of retention, then such payments shall be an amount that, when added to the previous payment to Subcontractor, will reduce the retention on Subcontractor's substantially completed Work to the same percentage as that on Contractor's Work covered by the Certificate for Payment.

ARTICLE 12: FINAL PAYMENT

- 12.1** With respect to each Work Order, final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by Contractor to Subcontractor when Subcontractor's Work is fully performed in accordance with the requirements of the Contract Documents and the Architect, or other Design Consultant, has issued a certificate of completion covering the whole of the Prime Contract work, unless the Owner consents to making final payment to Subcontractor at an earlier date upon completion of the Subcontract Work.
- 12.2** Before issuance of the final payment, Subcontractor, if required and in addition to the requirements of Section 11.2, shall submit evidence satisfactory to Contractor that all payrolls, bills for materials and equipment and all known indebtedness connected with Subcontractor's Work has been satisfied.

ARTICLE 13: INSURANCE AND BONDS

- 13.1** Subcontractor shall purchase and maintain insurance in accordance with the Prime Contract and Subcontract Documents, but in all instances should be at a minimum the following types of coverage and limits of liability:
- 13.1.1** Prior to beginning work on Work Order, Subcontractor must provide a current Certificate of Insurance for Commercial General Liability insurance naming Contractor and Owner and such other parties as may be

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identified in the Prime Contract as additional insureds, verifying a minimum of One Million Dollars (\$1,000,000) per occurrence / Two Million Dollars (\$2,000,000) per project aggregate from an AM Best A- VII rated company, such policy to include a waiver of subrogation endorsement and primary non-contributory clause; Automobile Liability insurance for hired, owned and non-owned vehicles in the minimum amount of One Million Dollars (\$1,000,000) per occurrence and in the aggregate, and employer's liability/workers' compensation with statutory limits of coverage and including a waiver of subrogation. All such insurance policies shall be for higher limits of coverage if specified in the Work Order. No Subcontract Work may commence on any project unless and until acceptable insurance policies have been received. No "modified occurrence" general liability policies are acceptable.

- 13.1.2** On projects where Contractor or the Owner has provided builder's risk or similar insurance, such insurance may be subject to an amount deductible from the sums otherwise payable there under, and the burden of such deduction shall be borne by the party responsible for the loss; or if no responsible party can be determined, by the party receiving the direct benefit of such insurance.
- 13.1.3** Where Subcontractor has provided a surety bond in connection with the Work, Subcontractor shall obtain the written consent of the Surety for all amendments to and increase in the amount under any Work Order as required by the Surety, and at a minimum where the aggregate increase in the value of the amount under any Work Order is greater than ten percent (10%), and shall ensure continued bonding of Subcontractor's obligations under the Subcontract Documents. When a surety bond has been provided, it is the Subcontractor's responsibility to include the additional bond premium on all appropriate change requests.
- 13.2** Coverage shall be maintained without interruption from the commencement of Subcontractor's Work until expiration of warranty period or any other specific contractual requirement (the later of the two shall govern).
- 13.3** Certificates of insurance acceptable to Contractor shall be filed with Contractor prior to commencement of Subcontractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverage afforded under the policies will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to Contractor. If any of the foregoing insurance coverage is required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by Subcontractor with reasonable promptness according to Subcontractor's information and belief.
- 13.4** Contractor, if requested, shall furnish to Subcontractor satisfactory evidence of insurance required of Contractor under Prime Contract.
- 13.5** Contractor and Subcontractor waive all rights against (1) each other and any of their Subcontractors, sub-subcontractors, agents and employees, each of the other and (2) the Owner, the Architect, or other Design Consultant, other consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other perils to the extent covered by property insurance provided under Prime Contract or other property insurance applicable to the work, except such rights as they may have to proceeds of such insurance held by the owner as fiduciary, Subcontractor shall require of Subcontractor's sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation for General Liability and Workers Compensation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.
- 13.6** Contractor shall promptly, upon request of Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.
- 13.7** Subcontractor shall provide performance bonds and/or payment bonds in amounts as specifically set forth in each Work Order.

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ARTICLE 14: ADDITIONAL PROVISIONS

- 14.1** All Work Orders will include, but are not necessarily limited to, the following conditions:
- 14.1.1** Subcontractor shall pay all applicable taxes, including the city business tax for Subcontractor's business.
 - 14.1.2** Contractor shall provide the general building permit; Subcontractor shall be responsible for any supplemental permits required for their trade, calling for inspection of Subcontractor's Work notifying the Contractor of all scheduled inspections, and being present for such inspections.
 - 14.1.3** Subcontractor shall provide all scaffolding and hoisting required for the performance of the Subcontract Work. Costs for temporary removal and replacement of field obstructions to accommodate scaffolding, rigging or hoisting is the responsibility of the Subcontractor.
 - 14.1.4** Subcontractor shall pay for all testing and inspections required for the Subcontract Work that is not specifically provided by the Owner.
 - 14.1.5** Subcontractor shall inform the field superintendent a minimum of (3) days in advance of any deliveries to the site.
 - 14.1.6** Subcontractor is responsible for and shall obtain OSHA permits and comply with all OSHA codes and regulations related to Subcontractors work.

ARTICLE 15: MISCELLANEOUS PROVISIONS

- 15.1** Where reference is made in this Agreement to a provision of the Work Order or another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract documents.
- 15.2** Each of the parties acknowledge that it has been represented by independent counsel of its choice throughout all negotiations that have preceded the execution of this Agreement and that has executed the same with consent and upon the advice of said independent counsel. Each party and its counsel cooperated in the drafting and preparation of this Agreement and the documents referred to herein. Accordingly, any rule of law, including, but not limited to California Civil Code Section 1654 or any legal decision that would require interpretation of any ambiguities in this Agreement against the party that drafted it, is not applicable and is hereby expressly waived.
- 15.3** Each party hereto shall cooperate with the other party and shall take such further action and shall execute and deliver such further documents as may be necessary or desirable in order to carry out the provisions and purposes of this Agreement.
- 15.4** Except as expressly authorized in this Agreement, neither party to this Agreement has the right to represent or hold itself out to the public as acting as an agent for the other party. Neither party to this Agreement has the right to conduct any business or enter into contracts on behalf of the other party or bind the credit of the other party or in any way operate its business under trade names, trademarks, service marks or other business insignias of the party without the prior written consent of that party. Contractor and Subcontractor shall each serve as independent contractor as to one another and not as principal and agent as to one another.
- 15.5** Contractor and Subcontractor each acknowledges to the other that it has the right and authority to enter into this Agreement, that the consent of no other party is necessary and it has no restrictions on entering into this Agreement. Furthermore, Contractor and Subcontractor each represent to the other that the person signing this Agreement on behalf of that party has the right and authority to enter into this Agreement on behalf of that party and that the execution of this Agreement by that party will not violate any other agreement or arrangement to which that party is obligated.
- 15.6** This Agreement, together with the other Subcontract Documents referenced herein, sets forth the entire understanding of the parties with respect to the subject matter hereof, supersedes all existing oral or written agreements between them concerning such subject matter, and may be modified only by a written instrument duly executed by the party to be charged, except as otherwise specifically provided for in this Agreement.

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- 15.7** Any waiver by any party of a breach of any provision of this Agreement shall not operate as or be construed to be a waiver of any other breach of that provision or of any breach of any other provision of this Agreement. The failure of a party to insist upon strict adherence to any term of this Agreement on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be in writing.
- 15.8** If any provision of this Agreement is invalid, illegal or unenforceable, the balance of this Agreement shall remain in effect, and if any provision is inapplicable to any person or circumstance, it shall nevertheless remain applicable to all other persons and circumstances.
- 15.9** The headings in this Agreement are solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.
- 15.10** Any masculine personal pronoun shall be considered to mean the corresponding feminine or Neuter personal pronoun, and all singular nouns shall be considered to mean the plural form, and vice versa, as the context requires.
- 15.11** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 15.12** This Agreement shall be governed by and construed in accordance with the laws of the State in which the work is performed.
- 15.13** The parties shall bear their own respective attorney's fees incurred in any arbitration proceedings brought under the Subcontract Work, regardless of the identity of the prevailing party in such proceedings.

TO CONTRACTOR:

**GOOD & ROBERTS, LLC
2455 IMPALA DRIVE
CARLSBAD, CA 92010**

TO SUBCONTRACTOR:

**GOOD & ROBERTS, LLC
2455 IMPALA DRIVE**

Any notice or other communication given by certified mail or other receipted delivery services shall be deemed given at the time of certification thereof, except for a notice changing a party's address which shall be deemed given at the time of receipt thereof. This Agreement is entered into as of the day and year first written above.

CONTRACTOR

GOOD & ROBERTS, LLC

SUBCONTRACTOR

GOOD & ROBERTS, LLC

By: _____

JOE GROSSHART

President

Date: _____

License Number: 986915

By: _____

Print Name: _____

Title: _____

Date: _____

License Number: _____

License Classification: _____

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Subcontractor Initials _____