



## STANDARD SUBCONTRACT (2020 VERSION)

This Subcontract is entered into as the Effective Date by and between Unger Construction Company ("Unger") and Subcontractor for performance of a portion of the Project. The Project is being constructed by Unger through separate agreement with the Owner ("Prime Contract").

By execution of this Subcontract, the Subcontractor is bound and obligated to Unger to the same extent that Unger is bound to the Owner under the Prime Contract and therefore assumes all of the same obligations, liabilities, and responsibilities that Unger has assumed toward Owner with respect to the Subcontractor's scope of work ("Work").

The Project, parties, and key business terms are set forth in the Business Terms Sheet on page 2 of this Subcontract. All defined terms are capitalized throughout this Subcontract and are defined in Exhibit 1.

The following Exhibits are incorporated into this Subcontract.

<input type="checkbox"/> Exhibit 1	Definitions
<input type="checkbox"/> Exhibit 2	Scope of Work
<input type="checkbox"/> Exhibit 3	Construction Document List
<input type="checkbox"/> Exhibit 4	Insurance Requirements
<input type="checkbox"/> Exhibit 5	Project Schedule
<input type="checkbox"/> Exhibit 6	Site Logistics Plan
<input type="checkbox"/> Exhibit 7	Design Build Work
<input type="checkbox"/> Exhibit 8	BIM Protocol
<input type="checkbox"/> Exhibit 9	Lean Guidelines
<input type="checkbox"/> Exhibit 10	Non-Disclosure Agreement
<input type="checkbox"/> Exhibit 11	Prime Contract

By executing this Subcontract, each Signatory represents that he or she has authority to bind the Party on whose behalf his or her execution is made.

<b>Unger Construction Co.</b> 910 X St Sacramento, California 95818 (916) 325-5500  By: _____	<b>[insert Subcontractor entity name]</b> [insert address] [insert city, zip]  By: _____
Name: _____ Title: _____  License No. 301690	Name: _____ Title: _____  License No. _____

**FOR GOOD AND VALUABLE CONSIDERATION, CONTRACTOR AND SUBCONTRACTOR AGREE TO THE TERMS AND CONDITIONS OF THIS SUBCONTRACT.**

**BUSINESS TERMS SHEET**

Effective Date of Subcontract	[insert date]	
Prime Contract	Executed on [insert date]	
Project:	[insert entity name] [street address] [city, state, zip]	
Prevailing Wage Project	<input type="checkbox"/> No	<input type="checkbox"/> Yes (PM, TAB 1C)
Job Number	[insert no.]	
Commitment No.	[insert no.]	
Owner	[insert entity name] [street address] [city, state, zip]	
Architect	[insert entity name] [street address] [city, state, zip]	
Unger's Representative	[name] [phone] [email]	
Unger's Superintendent	[name] [phone] [email]	
Subcontractor's Representative	[name] [phone] [email]	
Work: [insert trade/scope]	<input type="checkbox"/> Design Build Subcontractor <input type="checkbox"/> Non-Union Trade <input type="checkbox"/> Union Trade	
Subcontract Price	\$ _____	
Subcontract Change Order Mark Up	__% overhead and profit	__% bond
Work performed by tiers	5% Additional Profit to Subcontractor	
Tier- Subcontractor allowed mark-up	10% Overhead and 5% Profit	
Payment Terms	(See, Art. 7 and PM, <b>TAB 1</b> )	
Progress (Payment 10 days after payment to Unger)	Monthly, with submission by:	
Retention		

<b>Insurance Requirements</b>	
<input type="checkbox"/> Traditional Insurance Coverage <input type="checkbox"/> Non-Traditional Insurance Coverage	Subcontractor to carry all insurance as required below and in accordance with Exhibit 4
Commercial General Liability Offsite Commercial General Liability <i>(req'd regardless of OCIP or traditional coverage)</i>	\$1,000,000 per occurrence \$2,000,000 in aggregate \$1,000,000 personal/advertising injury \$2,000,000 products/completed operations coverage
<input type="checkbox"/> Riggers Liability	\$1,000,000 per occurrence \$2,000,000 in aggregate
<input type="checkbox"/> Railroad Liability	\$1,000,000 per occurrence \$2,000,000 in aggregate
Automobile <i>(req'd regardless of OCIP or traditional coverage)</i>	\$1,000,000 each accident
Workers Compensation/Employers' Liability <i>(req'd regardless of OCIP or traditional coverage)</i>	California Statutory Limits Employers' Liability \$1,000,000 each accident
Umbrella / Excess Liability Insurance <i>(req'd regardless of OCIP or traditional coverage)</i>	\$2,000,000
Tools and Equipment <i>(req'd regardless of OCIP or traditional coverage)</i>	Fair Market Value
<input type="checkbox"/> Professional Liability <i>(if design-build trade include professional liability )</i>	\$1,000,000 per claim \$2,000,000 in aggregate
<input type="checkbox"/> Pollution Liability <i>(pollution liability coverage is dependent on trade)</i>	\$1,000,000 per claim \$2,000,000 in aggregate
<input type="checkbox"/> Hauling of Hazardous Materials	\$1,000,000 per occurrence \$2,000,000 in aggregate
Builder's Risk Coverage	<input type="checkbox"/> Provided by Owner
	<input type="checkbox"/> Provided by Unger
	<input type="checkbox"/> Not Provided
<input type="checkbox"/> Owner Controlled Insurance Program ("OCIP") <input type="checkbox"/> On-site CGL <input type="checkbox"/> Builder's Risk <input type="checkbox"/> Pollution Coverage	<input type="checkbox"/> Subcontractor is Enrolled. Subcontractor to carry offsite CGL, workers compensation, and automobile liability per OCIP Manual.  <input type="checkbox"/> Subcontractor is an "Excluded Party" <i>(traditional coverage as set forth above and in Exh. 4 required)</i>

<b>Additional Insureds</b>	Owner
	Unger Construction Co.
<b>Schedule:</b>	
Substantial Completion Date	[insert date]
Final Completion of Project	[insert date]
<input type="checkbox"/> No Liquidated Damages <input type="checkbox"/> Liquidated Damages	[amount per day]
<b>Lender for Project (if any)</b>	[insert name and address of lender]

**PROJECT MANUAL**

The following forms and information are included in the Project Manual ("PM") at the Project site office and also posted to Unger's website at <https://www.ungerconstruction.com/subcontractors>. By execution of this Subcontract, Subcontractor acknowledges that it has recently reviewed and become familiar with all forms and policies included in the Project Manual and will adhere to Unger's protocol while performing its Work. The most current Project Manual is incorporated into this Subcontract by reference.

<b>TAB 1</b>	<b>Billing Procedures</b>
1A	California Lien Waiver and Release Forms
1B	W-9 Form
1C	Prevailing Wage Information
<b>TAB 2</b>	<b>Safety, Health, and Environmental Subcontractor Required Safety Information</b>
2A	Pre-Mobilization Checklist
<b>TAB 3</b>	<b>Procore Use</b>
<b>TAB 4</b>	<b>Unger's Collective Bargaining Agreement</b>

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
1. SUBCONTRACT DOCUMENTS .....	7
1.1 Defined.....	7
1.2 Precedence .....	7
1.3 Acknowledgement.....	7
2. RELATIONSHIPS AND RESPONSIBILITIES .....	7
2.1 Relationship of the Parties.....	7
2.2 Responsibility.....	7
2.3 No Third Party Beneficiary.....	7
3. SUBCONTRACTOR RESPONSIBILITIES .....	7
3.1 Work.....	7
3.2 Legal Compliance .....	8
3.3 Site Investigation and Logistics.....	8
3.4 Site Representative and Key Personnel.....	8
3.5 Communications.....	9
3.6 Subcontracts and Purchase Orders .....	9
3.7 Submittal Requirements.....	10
3.8 Coordination of the Work .....	10
3.9 Labor .....	12
3.10 Materials and Equipment .....	12
3.11 Testing and Inspection.....	13
3.12 Protection of the Work and Other Property.....	13
3.13 Safety Requirements .....	13
3.14 Hazardous Substance or Material .....	13
3.15 Unforeseen and Differing Site Conditions .....	14
3.16 Punch-List.....	14
3.17 Clean Up.....	14
3.18 Commissioning and Training.....	14
3.19 Project Close-Out.....	15
4. COMPENSATION .....	15
4.1 Lump Sum .....	15
5. TIME.....	15
5.1 Subcontract Time.....	15
5.2 Commencement and Prosecution of the Work.....	15
5.3 Project Scheduling .....	15
5.4 Delays .....	16
5.5 Recovery Plan .....	16
5.6 Acceleration of Schedule .....	16
5.7 Liquidated Damages.....	17
5.8 Subcontract Time Impacts and Extended Costs .....	17
6. CHANGES.....	17
6.1 Subcontract Change Orders.....	17
6.2 Submission of Change .....	17
6.3 Pricing .....	18
6.4 Continued Performance .....	18
6.5 Omitted Work.....	18
6.6 Surety.....	19
7. PAYMENT .....	19

7.1	Progress Payments.....	19
7.2	Payment to Tier-Subcontractors.....	19
7.3	Unger's Right To Withhold Payments.....	19
7.4	Stop Payment Notices and Mechanic's Liens.....	20
7.5	Final Payment.....	20
7.6	Payment Not Acceptance of the Work.....	20
7.7	Risk of Late Payment or Non-Payment By Owner.....	20
7.8	Audit Rights.....	21
8.	DEFENSE AND INDEMNIFICATION.....	21
8.1	Subcontractor's Defense and Indemnification.....	21
8.2	Duty to Defend.....	22
9.	INSURANCE AND BONDING.....	22
9.1	Insurance Requirements.....	22
9.2	Bonding Requirements.....	23
10.	WARRANTY.....	23
10.1	Warranty on Workmanship.....	23
11.	DISPUTE RESOLUTION.....	23
11.1	Claims.....	23
11.2	Involving Owner and Other Parties.....	24
11.3	Between Unger and Subcontractor.....	24
11.4	Joinder.....	25
11.5	Continuation of Work.....	25
11.6	Mechanic's Lien and Stop Payment Notice Actions.....	25
11.7	Attorney's Fees.....	25
12.	SUSPENSION AND TERMINATION.....	25
12.1	Suspension.....	25
12.2	Unger's Termination for Convenience.....	25
12.3	Unger's Termination for Cause.....	26
13.	MISCELLANEOUS PROVISIONS.....	26
13.1	Governing Law.....	26
13.2	Notice.....	26
13.3	Severability.....	27
13.4	Waiver.....	27
13.5	Time is of the Essence.....	27
13.6	Assignment.....	27
13.7	Modifications.....	27
13.8	Counterparts.....	27
13.9	Section Headings.....	27
13.10	Legal Citations.....	27
13.11	Non-Discrimination/Equal Employment Opportunity.....	27
13.12	Confidentiality.....	27
13.13	Ownership of Documents.....	28
13.14	State Licensing.....	28
13.15	Advice of Counsel.....	28
13.16	Survival.....	28
13.17	Entire Agreement.....	28
13.18	Execution.....	28

## 1. SUBCONTRACT DOCUMENTS.

**1.1 Defined.** The Subcontract Documents consist of the Prime Contract (inclusive of Exhibits), this Subcontract (inclusive of all Exhibits), the Project Manual available at the Project site and posted to Unger's website, the Construction Documents, and all subsequent and executed Amendments and Subcontract Change Orders.

**1.2 Precedence.** The Subcontract Documents are intended to be inclusive and complementary. Subcontractor will review the Construction Documents (Exhibit 3) with respect to its Work for constructability and promptly notify Unger in writing of any known conflicts, errors or omissions in the Construction Documents, as well as any other conflicts among the various Subcontract Documents. If there is a conflict between various Subcontract Documents, the most stringent requirement, the highest standard, or the provision imposing a greater duty or obligation on Subcontractor will govern unless the Architect's or engineer of record's response to a request for information or clarification dictates otherwise. Figures dimensions take precedence over scaled measurements, and construction details take precedence over general layout. If there is a conflict between the terms and conditions of the Prime Contract and this Subcontract (other than the business terms described in the Business Terms Sheet), the terms and conditions of the Prime Contract will govern.

**1.3 Acknowledgement.** Subcontractor acknowledges it has carefully examined and understands the Subcontract Documents and that it has reported any errors, ambiguities, and inconsistencies to Unger in writing, or will promptly do so upon discovery. Subcontractor represents that it enters into this Subcontract on the basis of its own examination, investigation, and evaluation and not in reliance upon any opinions or representations of the Owner, Unger, Architect, an engineer of record, or any of their respective officers, agents, servants, or employees.

## 2. RELATIONSHIPS AND RESPONSIBILITIES.

**2.1 Relationship of the Parties.** Subcontractor's relationship with Unger is that of an independent contractor whose involvement in the Project is to act in the capacity of a California state licensed specialty contractor and not as an agent, fiduciary, partner, member of, subsidiary of, or otherwise affiliated with Unger.

**2.2 Responsibility.** Subcontractor is responsible for any acts, errors, or omissions of its principals, employees, agents, and/or any other parties either directly or indirectly in privity of contract with Subcontractor including, but not limited to, tier-subcontractors and suppliers and their respective agents and employees, and other persons performing any portion of the Work on behalf of the Subcontractor.

**2.3 No Third Party Beneficiary.** Unger and Subcontractor have entered into this Subcontract solely for their respective benefit, and no third party will be entitled to any benefit or remedy including, without limitation, tier-subcontractors, suppliers or anyone working directly or indirectly for either of them, as well as any individual employee or agent of either Unger or Subcontractor.

## 3. SUBCONTRACTOR RESPONSIBILITIES.

**3.1 Work.** Subcontractor will provide all labor, services, materials, tools, equipment, hoisting, and other appurtenances necessary for proper Completion of the Work. All Work will be performed in a timely, efficient, and workmanlike manner in accordance with the Scope of Work set forth in Exhibit 2 and the Subcontract Documents described in Section 1.1. Subcontractor has reviewed the Project Schedule and all plans, specifications, surveys, environmental reports, soils, reports etc. listed as Construction



Documents in Exhibit 3 in preparation of the Subcontract Price and acknowledges that the Construction Documents do not indicate or describe all details, code requirements, connections, means, methods, or other work required for the proper performance and Completion of the Work. Subcontractor represents that it has included all costs necessary for the proper performance of its Work in its Subcontract Price.

3.1.1 License. Subcontractor warrants that it is authorized to do business in the State of California and is properly licensed by all necessary governmental, public and other authorities having jurisdiction over the Project for performance of the Work.

3.1.2 Standard of Care. Subcontractor will supervise and direct the Work using Subcontractor's best skill and attention and all Work will be performed in a timely workman-like manner consistent with the degree of care and skill customarily exercised by California state licensed specialty contractors experienced in performing Work of similar size, scope and complexity.

3.1.3 Means and Methods. Subcontractor is solely responsible for all construction means, methods, techniques, sequences, and procedures and for safety precautions and programs in connection with the Work. Subcontractor expressly acknowledges that Unger is not responsible for proper performance of Subcontractor's Work.

3.1.4 Design Build. If Subcontractor is identified as a design-build subcontractor in the Business Terms Sheet, Subcontractor must comply with the terms and conditions set forth in Exhibit 7.

3.1.5 Permits, Fees, and Taxes. Subcontractor will secure and pay for all necessary permits, fees, and licenses necessary for execution of the Work, and will pay all manufacturers' taxes, sales taxes, use taxes, processing taxes, and all federal and state taxes, insurance and contributions for social security and unemployment which are measured by wages, salaries, or other remunerations paid to Subcontractor's employees, whether levied under existing or subsequently enacted laws, rules or regulations. Upon request, Subcontractor will furnish evidence satisfactory to Unger that the foregoing obligations have been fulfilled.

**3.2 Legal Compliance.** Subcontractor comply with all applicable local, state, and federal laws, rules, ordinances, building codes, and regulations applicable to conducting business and governing performance of the Work in the State of California without increase in the Subcontract Price or an extension of Subcontract Time.

**3.3 Site Investigation and Logistics.** Subcontractor represents that it has visited the Project site, has reviewed and analyzed the Subcontract Documents and is familiar with the local conditions under which the Work is to be performed and has included all cost necessary for proper Completion of the Work within its Subcontract Price. During construction, Subcontractor will schedule and coordinate delivery and storage of equipment and materials and the sequencing of its Work in accordance with the current Project Schedule and pursuant to the Site Logistics Plan (Exhibit 6). All delivery and storage of equipment must be coordinated through Unger's superintendent.

**3.4 Site Representative and Key Personnel.** Subcontractor will provide an adequate number of competent management and field personnel during performance of the Work. Subcontractor's qualified superintendent or foreman must be fluent in English and authorized to receive orders and make decisions regarding the Work including scheduling and directing its Work and workforce, coordination with Unger and other trades, procurement and deliveries of all necessary materials and equipment, oversight of safety, housekeeping, attendance of jobsite meetings, scheduling testing and inspections, etc. Subcontractor will submit qualifications of the site representative and other key personnel of Subcontractor to Unger for review and approval before assignment to the Project. The site representative must have all necessary equipment and technology as required by Unger to effectively communicate.



Subject to Unger's right to demand removal of any personnel under Section 3.9.1, the superintendent or foreman may not be changed without Unger's approval except in cases of departure from employment, sickness, disability, or death. If a replacement occurs, the proposed personnel will have substantially equivalent or better qualifications than the former employee, and all candidates are subject to final approval by Unger.

**3.5 Communications.** Subcontractor may communicate directly with other Project Team Members for coordination purposes only. However, Unger must be copied on all written communications regarding coordination efforts and all resolutions to field conditions and coordination issues must be documented in writing and approved by Architect or the engineer of record and Unger prior to installation. All other communications regarding the Project must flow through Unger.

**3.6 Subcontracts and Purchase Orders.** Those portions of the Work that Subcontractor does not customarily perform with its own personnel will be performed by a tier-subcontractor under written subcontract. All written subcontracts must include the Subcontract Documents and bind the tier-subcontractor to the Subcontractor to the same extent that the Subcontractor is bound to Unger under this Subcontract. Each subcontract agreement will preserve and protect the rights of the Owner and Unger under the Subcontract Documents with respect to the portion of the Work performed by the tier-subcontractor so that subcontracting a portion of the Work does not prejudice Unger. Any tier-subcontractors employed by Subcontractor must possess the appropriate California state licenses and certifications required for performance of their respective portion of the Work and carry out their respective portion of the Work using the same degree of skill and care established in Section 3.1.2. The tier-subcontractor and its employees are obligated to carry out their portion of the Work in strict accordance with the Subcontract Documents. Purchase orders must also be in writing. At a minimum, tier-subcontracts must pass-through the provisions set forth in Sections 3.6.1 through 3.6.6.

**3.6.1 Conflicting Terms.** Each tier-subcontract must include a precedence provision indicating that conflicts will be resolved in accordance with the terms and conditions set forth in Section 1.2.

**3.6.2 Compliance with Labor Requirements.** Each tier-subcontract must include the language set forth in Section 3.9.2 regarding Unger's collective bargaining agreements. If a tier-subcontractor is subject to union trade agreement, the tier-subcontract must also require tier-subcontractor to comply with the certified payroll requirements set forth in TAB 1C of the Project Manual.

**3.6.3 Assignment.** Each tier-subcontract must include an assignment provision. The assignment provision will allow assignment of tier-subcontracts to Unger upon termination of Subcontractor provided Unger accepts assignment by written notification to tier-subcontractor.

**3.6.4 Defense and Indemnification.** Each tier-subcontract must include similar defense and indemnification provisions to those set forth in Article 8 and requiring tier-subcontractors to defend and indemnify Indemnitees and Subcontractor from all claims, damages, and liability arising from performance of tier-subcontractor's respective portion of the Work.

**3.6.5 Insurance.** Each tier-subcontract must require tier-subcontractor to carry similar types of insurance coverage as required of Subcontractor at appropriate limits based on their portion of the Work and in accordance with the terms and conditions set forth in Exhibit 4.

**3.6.6 Dispute Resolution.** Each tier-subcontract must require tier-subcontractor to be bound to the dispute resolution procedures set forth in Article 11.

3.6.7 Confidentiality. Each tier-subcontract must require tier-subcontractors to be bound to the confidentiality requirements set forth in Section 13.12.

**3.7 Submittal Requirements.** Subcontractor will timely submit all Submittals to Unger as required by the Subcontract Documents to avoid delays in the Work. Subcontractor will not submit any Shop Drawing that is merely a tracing or copy of the Construction Documents. Each Submittal will be prepared by Subcontractor, or its tier-subcontractor, or supplier, and will be submitted according to the processes and procedures set forth in the Subcontract Documents. Any Submittals that are not required by the Subcontract Documents may be returned by the Architect, engineer of record, or Unger without action.

3.7.1 Electronic Submission. Submittals will be delivered to Unger in an electronic format capable of being read and transmitted to Architect or engineer of record for review. To the extent BIM is being utilized, the electronic format must be capable of being integrated into the Model.

3.7.2 Review of Submittals. By reviewing and transmitting a Submittal to Unger, Subcontractor represents that it has coordinated the information contained within the Submittal with the existing field conditions, the Subcontract Documents, and requirements of the Work and other contiguous work, and that all original engineering, if required, has been performed by a qualified California State licensed professional engineer. Subcontractor is responsible for all dimensions, correct fabrication, accurate fit, and for making its Work conform to the requirements of the Subcontract Documents. Submittals that are not marked as reviewed for compliance with the Subcontract Documents and approved by the Subcontractor may be returned by Unger, Architect, or engineer of record without action. When determining deadlines for submission of Submittals, Subcontractor should take into account deadlines for its Work included in the current Project Schedule and that Unger requires a minimum of 10 business days to review Submittals before transmitting to the Architect and engineer of record (if applicable) for approval. Review of Submittals by Unger, Architect, or engineer of record does not constitute an undertaking by Unger, Architect, or engineer of record to identify deficiencies in the Submittal and does not relieve the Subcontractor of its responsibility under this Section 3.7 or elsewhere in the Subcontract Documents.

3.7.3 Submittal Approval. Upon return of any Submittal, Subcontractor will make any correction required by Architect, engineer of record, or Unger in accordance with the Subcontract Documents and, within 5 business days or less, furnish corrected resubmissions to Unger for further review and transmission to the Architect and engineer of record (if applicable) for approval. Subcontractor will not perform any Work for which the Subcontract Documents require a Submittal until the respective Submittal has been approved. Upon receipt of approval, Unger will keep a final corrected copy, return one final corrected copy, and furnish other copies as may be needed for distribution to the field. If Subcontractor fails to timely submit or resubmit Submittals required to maintain the current Project Schedule, Subcontractor will be liable for all costs, expenses, and damages resulting from the delay under Section 5.4. Subcontractor will maintain "as-built" drawings and other Submittals as required by the Subcontract Documents. As-built drawings must be updated at least monthly.

**3.8 Coordination of the Work.** All Work must be coordinated through Unger well in advance of when the Work is scheduled to be performed. Before starting each portion of the Work, Subcontractor will: (i) review and compare the various Subcontract Documents relative to that portion of the Work, as well as the information furnished by Unger and other subcontractors' Submittals that may affect proper installation of the Work; (ii) field measure existing conditions related to that portion of the Work; and (iii) observe any conditions at the site directly affecting that portion of the Work, reporting any improper conditions and defects to Unger. Errors, inconsistencies, or omissions in the Construction Documents discovered by Subcontractor will be timely reported to Unger as a request for information or clarification to avoid delay in the Subcontract Time. Unger will have a reasonable amount of time to review any

errors, inconsistencies, omissions or improper conditions and defects and have any improperly installed work remedied by the appropriate subcontractor and Subcontractor will not be entitled to a claim for a delay unless the claim fits within one of the conditions set forth in Section 5.4 and only if all of the requirements under Section 5.4 have been met.

3.8.1 **Field Measurements.** It is the responsibility of the Subcontractor to take field measurements to ensure the proper matching and fitting of its Work with existing conditions and the work of other trades and to point out any dimensioning errors on the Construction Documents before that relevant portion of the Work is commenced. Installation of the Work by Subcontractor constitutes Subcontractor's acceptance of the prior work or condition.

3.8.2 **Constructability and Efficiency.** Throughout the construction process, Subcontractor will analyze the Construction Documents and Project field conditions and make recommendations to Unger whenever opportunities exist to improve the 3-week work plan or current Project Schedule, labor efficiency or Project cost and will alert Unger if the design details adversely affect constructability, Project cost or schedule. Subcontractor will continually collaborate with the other Project Team Members to deliver best value by improving Project costs and schedule through maximizing performance, minimizing the number of Subcontract Change Orders, and incorporating Owner and Architect approved value engineering ideas.

3.8.3 **Coordination With Others Work.** Subcontractor will coordinate its Work with any existing conditions and the work of Unger, other subcontractors, suppliers and Owner's separate contractors. If proper installation of Subcontractor's Work is dependent on the proper installation of others' work, the Subcontractor will carefully examine the other work to determine whether it is properly installed before proceeding with its Work. Subcontractor will promptly report to Unger, in writing, any improper conditions and/or defects that were either known, should have been known, or were reasonably discoverable, and allow Unger a reasonable amount of time to have the improper work remedied. Upon installation of subsequent Work, Subcontractor will be deemed to have accepted all existing conditions unless it provided written notice to Unger as detailed above and Unger directed the Work to be completed.

3.8.4 **Layout and Protections.** Subcontractor is responsible for its own layout. Unger will establish an elevation benchmark, building corners, and a major grid-line in each direction. Subcontractor will preserve and protect all established line and grade benchmarks and will not cause damage to Unger's or other subcontractors' benchmarks or lay-out points. Any additional surveying or layout caused as a result of Subcontractor's failure to take the necessary precautions to protect the data will be performed at Subcontractor's own cost and expense. Subcontractor will notify Unger's superintendent in writing, immediately upon discovery of any dimensional discrepancies during field measurement and layout.

3.8.5 **Cutting and Patching.** Subcontractor will be responsible for all cutting and patching required in the prosecution of the Work. Subcontractor will not damage or endanger a portion of the Work or partially or completed construction of other work by excavating, cutting, patching or otherwise altering the construction. Subcontractor will promptly notify Unger before cutting, patching or modifying any construction work.

3.8.6 **BIM.** If Building Information Modeling is required by the Subcontract Documents and Subcontractor's Scope of Work (Exhibit 2), Subcontractor will comply with the BIM Protocol set forth in Exhibit 8.

3.8.7 **Lean.** If Lean processes and procedures are required under the Prime Contract, Subcontractor will comply with the LEAN Guidelines set forth in Exhibit 9.

### 3.9 Labor.

3.9.1 Skilled Workers. Subcontractor, and its tier-subcontractors, will provide qualified, well-disciplined, skilled workers to perform the Work. Subcontractor's employees will not interfere with another person's work performance, or engage in sexual harassment or other conduct that creates an intimidating, hostile, or offensive working environment. Unger has the sole discretion to immediately remove and replace any unskilled, unqualified, disruptive, or disrespectful labor or personnel, including Subcontractor's superintendent or foreman, and Subcontractor will promptly provide a qualified replacement. Nothing in this contract shall be construed to limit the Subcontractor's authority to hire and fire its own employees.

3.9.2 Unger's Labor Agreements. Unger is signatory with the Cement Masons, Carpenters, and Laborers unions. Subcontractor will be bound by Unger's collective bargaining agreements to the extent applicable to Subcontractor's Work. Information on Unger's collective bargaining agreements may be found in **TAB 4** of the Project Manual. If applicable to Subcontractor's Work, Subcontractor will utilize labor, tier-subcontractors, and suppliers in compliance with Unger's union agreements and, if necessary, will secure a final determination of any jurisdictional dispute by the National Labor Relations Board at its own cost and expense. If applicable to Subcontractor's Work, Subcontractor will pay when due all contributions, allowances, and other payments, required by Unger's collective bargaining agreements and will comply with any additional AFL-CIO affiliated union agreements as may be required by the Cement Masons, Carpenters, and Laborers agreements. If there is picketing at the site, Subcontractor will continue to perform its Work without interruption or delay provided Unger establishes a reserved gate for Subcontractor's use.

(a) Prevailing Wage. If Project is subject to prevailing wage per the Business Terms Sheet, Subcontractor will comply with California State prevailing wage laws pursuant to California Labor Code Sections 1771, et. seq. and as further defined in TAB 1C of the Project Manual.

(b) Compliance with Labor Code Sections 218.7 (f) (1) and (2). If Subcontractor is subject to a trade union agreement, Subcontractor will comply with Labor Code Sections 218.7 (f) (1) and (2). Unger will have the right to request that Subcontractor submit certified payroll records in accordance with Labor Code section 218.7 (f) (1) and 226 (a) as part of its payment request. Subcontractor will certify under penalty of perjury that records maintained and submitted by Subcontractor and its tier-subcontractors are true and accurate. If Subcontractor is delinquent in the payment or payments to the appropriate health and welfare, pension, vacation and apprenticeship fund or funds, regardless of the job in connection with which the delinquency occurred, Unger will have the right to first deduct the full amount of the delinquency from payments to be made to Subcontractor under this Subcontract. Unger will also have the right to pay the amounts so deducted directly over to the appropriate fund or funds. (PM, TAB 1C)

**3.10 Materials and Equipment.** All materials and equipment required under the Subcontract Documents will be new and of good quality. No substitutions will be accepted on this Project unless Unger and Architect or engineer of record have evaluated the substitution with the Owner and the substitution has been approved in writing. Materials will be furnished in ample quantities and procured in time to ensure uninterrupted progress of the Work. Subcontractor will inspect all material and equipment delivered to the site to be used or incorporated in the Work upon delivery and will promptly notify Unger of any defects. Subcontractor assumes full responsibility to protect completed Work until final acceptance by the Architect or engineer of record (if applicable), Owner, and Unger. All materials and equipment will be properly stored and protected as required by the Subcontract Documents and the risk of loss will be borne by Subcontractor until completed Work is accepted by Unger and Owner.



3.10.1 Storage. Storage of equipment and materials will be coordinated through Unger and in accordance with the Site Logistics Plan (Exhibit 6). Subcontractor will maintain and keep its storage area clean, safe and secure.

**3.11 Testing and Inspection.** Tests, inspections and approvals of portions of the Work required by the Subcontract, the Subcontract Documents, or by laws, ordinances, rules, regulations or orders of any public authorities having jurisdiction over the Project will be coordinated by the Subcontractor through Unger. When portions of the Work are ready for inspection, the Subcontractor will notify Unger by submitting an inspection request. Unger will make arrangements for tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority with jurisdiction over the Project. Subcontractor must provide access to all Work requiring inspection.

3.11.1 Covered Work Before Inspection. If a portion of the Work is covered contrary to Unger's request or prior to inspection, it will be uncovered for inspection and examination by Unger or other proper authorities and be replaced at the Subcontractor's sole expense, including any costs for delays to other subcontractors' work, without change in the Subcontract Time.

3.11.2 Correction of Non-Conforming Work. Within 24 hours of receiving notice, the Subcontractor will commence correction of Work that is rejected by Unger, an inspector, Architect, or an engineer of record for failing to conform to the requirements of the Subcontract Documents. Correction of the Work will include replacement of any work that is destroyed or damaged (whether completed or partially completed) as a result of Subcontractor's correction or removal of the non-conforming Work whether discovered before or after Completion of the Work and whether or not fabricated, installed or completed. Subcontractor will bear all costs associated with correction of non-conforming Work, including damages and costs for delays to other subcontractors' work, without change in the Subcontract Time.

**3.12 Protection of the Work and Other Property.** Subcontractor will protect its materials, equipment and Work, as well as the work of other subcontractors, from all damage caused by Subcontractor's operations including, but not limited to, damage from weather, theft, vandalism, etc. Subcontractor will either repair the damages or be financially responsible for any loss, repair by a third party, or damages incurred to the Project as a result of Subcontractor's operations. Subcontractor will construct and maintain proper barricades, caution signage, and protection as needed to safeguard against hazards, injury, or damage associated with the Work.

**3.13 Safety Requirements.** Subcontractor will comply fully with all California State and Federal laws, orders, citations, rules, regulations, standards and statutes with respect to occupational health and safety, the handling and storage of a Hazardous Substance or Material, accident prevention, safety equipment and practices and will comply with Unger's Safety, Health, and Environmental Subcontractor Required Safety Information ("SHEI") (See, PM, **TAB 2**). Subcontractor will conduct safety inspections to determine that safe working conditions and equipment exist and accepts sole responsibility for providing a safe place to work for its employees, and for employees of its tier-subcontractors and suppliers. Subcontractor will ensure the adequacy of all safety equipment related to its Work, and its required use and safe operation. Subcontractor acknowledges that it has reviewed and familiarized itself with the SHEI set forth in **TAB 2** of the Project Manual and will comply with the SHEI at all times during the performance of its Work. Unger's management and coordination of the SHEI does not extend to direct control over or charge of the acts or omissions of the Subcontractor, its tier-subcontractors, agents or employees or any other person performing portions of the Work and Subcontractor remains the "Controlling Employer" as defined under Cal-OSHA with respect to performance of its Work.

**3.14 Hazardous Substance or Material.** Subcontractor will not bring onto the site or use any Hazardous Substance or Material unless specified in the Construction Documents, and only provided that

Subcontractor complies with all safety regulations and procedures under applicable law for the handling and disposal of such Hazardous Substance or Material. If Subcontractor encounters a material reasonably believed to be a Hazardous Substance or Material on site, Subcontractor will immediately stop Work in the affected area and verbally report the condition to Unger followed by written communication, and undertake any precautionary measures directed by Unger. Work will not resume in the affected area until the Hazardous Substance or Material is rendered harmless or removed, as determined by a licensed laboratory. Subcontractor agrees that it will not have or make a claim for damages due to Work stoppages arising from unsafe conditions. Failure on the part of Unger to stop unsafe practices does not relieve or diminish the Subcontractor's safety responsibilities for its Work. Nothing contained above limits Subcontractor's liability or indemnification under Article 8 for damages arising out of or resulting from Subcontractor's, or its employees' or tier-subcontractors' use of, or negligent mishandling of, a Hazardous Substance or Material or exacerbation of an existing condition during the performance of its Work.

**3.15 Unforeseen and Differing Site Conditions.** Subcontractor will provide prompt written notice to Unger upon discovering Unforeseen and Differing Site Conditions. Notice must be provided before conditions are disturbed and in no event later than 2 business days after first observing the condition(s). If Unger, Architect, engineer of record, or Owner determines that the conditions at the site are not materially different from those indicated in the Subcontract Documents and that no change in the terms of the Subcontract Documents is justified, Unger will notify Subcontractor in writing, stating the reasons. Claims by Subcontractor in opposition to the determination must be made within 5 business days after the date of the notice of decision. If Owner agrees that the conditions encountered are materially different, the Subcontract Price and/or Subcontract Time (if applicable) will be adjusted through Subcontract Change Order to the extent that Unger is able to recover for Subcontractor's claim under the Prime Contract.

**3.16 Punch-List.** Subcontractor will notify Unger when it considers its Work or a portion of the Work substantially complete and Unger will issue a Punch List setting forth incomplete or unsatisfactory items and a schedule for their completion. The Punch List will be promptly corrected by Subcontractor. Unger will schedule a walk through with the Owner, Architect, and engineer of record (if applicable) upon Subcontractor's completion of the Work included on the Punch List to determine if the Work is in conformance with the Subcontract Documents. Unger will schedule and monitor the progress of all punch list Work and conduct inspections to determine whether Subcontractor has achieved Completion of the Work. Correction of all non-conforming Work will be in accordance with Section 3.11.2.

**3.17 Clean Up.** Subcontractor will maintain the area where Work is being performed in a clean, safe and orderly condition, and will sweep all areas where Work is performed on a daily basis. Subcontractor will protect material, equipment, filters, ducts, plenums or other systems (as may be applicable to its Work) to avoid contamination with dust, moisture, solvents or construction debris. Splatter from wet materials such as drywall mud, fireproofing, paint, etc., will be removed with a floor scraper, mop, or other means, as often as necessary to prevent jobsite slip and fall hazards, and to keep the jobsite neat and orderly. Subcontractor is responsible for removal and proper disposal (including dumpsters and recycle bins) of all debris, waste, and recyclables generated while performing the Work. If Subcontractor fails to maintain the its Work area in a clean and safe manner, Unger may perform the necessary clean up and Subcontractor will be back-charged for Unger's expense. Upon Completion of the Work, or when Subcontractor's tools, equipment, and materials are no longer required on site, Subcontractor will remove from the site all Hazardous Substance or Material, temporary structures, debris and waste incident to Subcontractor's operation and will clean all surfaces, fixtures, equipment, etc.

**3.18 Commissioning and Training.** To the extent applicable to Subcontractor's Work, Unger will schedule and oversee the Subcontractor's final testing and start-up of utilities, operational systems

and equipment and assist the Owner with the building commissioning. Subcontractor will provide adequately trained staff and cause its tier-subcontractors, equipment manufacturers and/or vendors to provide adequately trained staff during the duration requested to complete all necessary commissioning related to the Work. During commissioning and before Final Completion, Unger will oversee Subcontractor's operation, adjustment and balancing of all equipment, and training of Owner's employees in the correct operation and maintenance of equipment.

**3.19 Project Close-Out.** Before Completion of the Work, Subcontractor will transmit to Unger all required close out documentation such as record drawings, as-built drawings, operation and maintenance manuals, references, and warranties, as well as attic stock, keying schedule, special tools, etc. as required by the Subcontract Documents. Unless otherwise required by the Construction Documents, the close out documentation will be submitted in electronic form with clear identifiable file names for each component of the close-out documentation before Completion of the Work.

#### **4. COMPENSATION.**

**4.1 Lump Sum.** Unger will pay Subcontractor the lump sum Subcontract Price set forth in the Business Terms Sheet for performance of the Work. The Subcontract Price includes all costs associated with the Work including overhead and profit and is only subject to increases and decreases for approved Subcontract Change Orders per Article 6. To the extent that the Subcontract Price includes Allowances, unit prices, or alternates, those items must be identified in the Scope of Work (Exhibit 2). Allowance prices are all inclusive, including but not limited to labor, materials, equipment, delivery and unloading, storage, hoisting, and tools. Overhead and profit will be determined at the time of reconciliation of the Allowance amount through executed Subcontract Change Order per Section 6.3.4.

#### **5. TIME.**

**5.1 Subcontract Time.** Subcontractor acknowledges that timely performance of the Work is critical to the success of the Project. The Subcontract Time is the time allotted in the Project Schedule (Exhibit 5) as amended, for Subcontractor to achieve Completion of the Work. The Subcontract Time may only be extended through executed Subcontract Change Order for a delay per Section 5.4 and Article 6. All notice periods and times for performance will be strictly observed and enforced.

**5.2 Commencement and Prosecution of the Work.** Subcontractor will commence the Work when notified to do so by Unger and will diligently prosecute and complete its Work within the Subcontract Time pursuant to the current Project Schedule without additional cost to Unger unless Subcontractor is entitled to a Subcontract Change Order for delay per Section 5.4 and Article 6.

**5.3 Project Scheduling.** The Project Schedule is set forth in Exhibit 5. The Project Schedule is a master schedule that includes a critical path and the Substantial Completion Date and date for Final Completion of the Project. Unger will update and maintain the Project Schedule as necessary. All Work will be performed in accordance with the 3-week work plans.

**5.3.1** Subcontractor will attend and participate in scheduling meetings with Unger and its other subcontractors to establish 3-week work plans to review upcoming construction performance requirements and document all work performed during the prior 3-week period. Subcontractor is expected to participate collaboratively with Unger and other trades to find ways to eliminate waste and add value to the overall Project. Subcontractor's representative(s) must be qualified and capable of making reliable commitments with respect to their manpower, procurement, scheduling and performance of the Work, as well as making reasonable requests of others to improve productivity, increase efficiency, enhance safety, and assure the value and quality of the Work. Subcontractor will continuously monitor the current Project Schedule and 3-week work plans and understand the timing, phasing, and sequencing of



operations of its Work and the work of other subcontractors and separate contractors, and will make reliable commitments with respect to performance of its Work. Unger will decide the sequence of the Work and may require Subcontractor to perform part of its Work in one area while delaying a portion of its Work in another area to suit the needs of the overall current Project Schedule.

**5.4 Delays.** If Subcontractor is delayed in the commencement, prosecution or Completion of the Work by: (i) changes in the Work that were not specified, illustrated, or reasonably inferable from the Subcontract Documents; (ii) Unforeseen and Differing Site Conditions; (iii) Unger's suspension of the Work or Project; (iv) acts or omissions of Owner, its consultants or separate contractors, or (v) other causes beyond the Subcontractor's commercially reasonable control, which could not have been anticipated and provided that Unger is able to recover for the condition under the Prime Contract, then the Subcontract Time may be extended for such reasonable time as Subcontractor can demonstrate, and for which Unger can recover from Owner, after taking into account any concurrent delays caused by Subcontractor. Notwithstanding the above, Subcontractor will not be entitled to an extension of time unless (i) the critical path of the current Project Schedule is also impacted extending the Substantial Completion Date of the Project; and (ii) Subcontractor notifies Unger in writing of the cause or causes of the delay within 2 business days of commencement of the delay, and demonstrates that it could not have anticipated or avoided the delay and has used all commercially available means to minimize the consequences of the delay. Failure to provide timely notice constitutes waiver of delay claim. To the extent a claim is made by Unger at the request of Subcontractor for delay, Subcontractor will cooperate fully with Unger per Section 11.2.

**5.4.1 Subcontractor Caused Delays.** If the progress of the Work or the Project is delayed, disrupted, hindered, obstructed, or interfered with by any fault or neglect, or act or failure to act by the Subcontractor or any of its employees, tier-subcontractors or suppliers and the delay causes additional cost, expense, liability or damage to Unger then Subcontractor and its surety (if applicable) will be financially responsible. Subcontractor's financial responsibility will include all costs for necessary acceleration and recovery as well as damages assessed against Unger under the Prime Contract, or any damages or additional costs or expenses for which Unger may or will become liable (including additional compensation paid by Unger to other Project Team Members), legal fees, and disbursements whether incurred in defending claims arising from the delay or in seeking reimbursement and indemnity from Subcontractor and its surety (if applicable)).

**5.4.2 Other Subcontractor Caused Delays.** If Subcontractor is delayed, interfered with, or disrupted by the acts or omissions of another subcontractor and the Subcontract Time is impacted, the Subcontractor will provide written notice to Unger within 2 business days of the delay inclusive of a description of the cause of the delay, the impact, and the subcontractors involved. If Unger believes that the claim is valid, it will seek compensation on Subcontractor's behalf from the subcontractors involved in the delay. Subcontractor will only be entitled to the amount that Unger determines, in its sole discretion, is reasonable and only to the extent that Unger is able to recover such costs from those subcontractors less any costs incurred by Unger in obtaining the recovery. The 2 business days' notice and receipt of recovery by Unger from other allegedly responsible subcontractors is an express condition precedent to any right Subcontractor may claim for additional time or compensation.

**5.5 Recovery Plan.** Subcontractor will notify Unger within 2 business days of any slippage in the 3-week work plan as a result of its Work and must submit a detailed recovery plan for evaluation and approval by Unger. All costs associated with the recovery will be the responsibility of Subcontractor unless Subcontractor is entitled to an extension of its Subcontract Time under Section 5.4.

**5.6 Acceleration of Schedule.** If Subcontractor fails to perform its Work in accordance with the current Project Schedule, Unger may direct Subcontractor, at its own cost and expense, to perform overtime Work, use extra labor, machinery and equipment, transfer its labor, machinery and equipment to

other portions of the Work, expedite deliveries or use any other means or methods necessary to recover the current Project Schedule. Unger may also direct Subcontractor to perform overtime Work because it is in the best interest of the Project and Unger will pay, without overhead or profit, the cost of the premium time portion of wages only (including any additional amount Subcontractor is required to pay into a fringe benefit fund for the premium time).

**5.7 Liquidated Damages.** If liquidated damages are included in the Business Terms Sheet, Subcontractor will be responsible for its proportionate share of liquidated damages set forth in the Prime Contract based on Subcontractor's and its tier-subcontractors' and suppliers' fault, act, or omission and to the extent liquidated damages are assessed against Unger. Subcontractor's payment of its proportionate share of assessed liquidated damages represents a reasonable estimate of fair compensation for the losses that reasonably may be anticipated. Nothing contained in this Section precludes Unger from recovery for actual damages caused by reasons other than the Subcontractor's failure to perform its Work within the Subcontract Time including, but not limited to, claims for actual losses incurred due to breach of contract, negligence, defective Work, injury to persons or property, or third party claims. Subcontractor will indemnify and hold Unger and Owner harmless from all alleged or actual claims, liabilities, and damages arising out of or resulting from any delay, interference or disruption to the critical path of the current Project Schedule that is caused by Subcontractor's or its tier-subcontractors' or suppliers' negligent acts or omissions in accordance with Article 8.

**5.8 Subcontract Time Impacts and Extended Costs.** Subcontractor will not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is allowable under Article 5 and claimed in a proposed change order. No claims will be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. Nothing contained in this Section will be construed as restricting the rights and remedies of Subcontractor in violation of California State law. If this provision is determined to conflict with California State law, the provision will be amended to provide the greatest protection to Unger allowed under the law.

## **6. CHANGES.**

**6.1 Subcontract Change Orders.** Owner, Architect or engineer of record (as applicable), and Unger have the right to make changes in the Work including additions, deletions, or modifications to the Construction Documents, as well as adjustments to the time for Completion of the Work. All changes in the Work will only be authorized by an executed Subcontract Change Order and performed under the applicable conditions of the Subcontract Documents. Subcontractor will be subject to any limitations on change orders included in the Prime Contract. A Subcontract Change Order signed by Subcontractor indicates final agreement to changes in the Subcontract Price, Subcontract Time, or both, and will fully and completely resolve any claim by Subcontractor (inclusive of tier-subcontractors and suppliers) regarding compensation or time arising from or related to the subject of the Subcontract Change Order. Subcontractor cannot rely on oral statements when performing changes to its Work. It is further agreed that no one other than Unger's Representative will have the authority to direct Subcontractor to make changes. If Owner, Architect or engineer of record, or other individual or entity directs Subcontractor to make a change, Subcontractor will promptly notify Unger. All disputes arising from Subcontract Change Orders will be subject to the dispute resolution process set forth in Article 11.

**6.2 Submission of Change.** Subcontractor must provide notice and a rough order of magnitude of a Subcontractor change to Unger within 2 business days of receipt of information from Unger that Subcontractor believes constitutes a change in the Work or Subcontractor's knowledge of a changed condition that impacts the Work. Subcontractor will provide a complete cost proposal, including any change in Subcontract Time, within 5 business days unless a longer period of time is requested and agreed to by Unger.

**6.3 Pricing.** Subcontract Change Order value will be determined by one of the following pricing methods. The amount for additive or deductive Subcontract Change Order will be the net increase or decrease (as applicable) in the Subcontract Price. When both additions and credits related to a change are involved, the Subcontract Change Order, (including the addition and credits of overhead and profit), will be determined on the sum of the net increase or decrease (as applicable). Regardless of the pricing method used, Subcontractor must use the labor rates and unit prices established in its Scope of Work (Exhibit 2). If Subcontractor is bonded, the potential Subcontract Change Order must include payment and performance bond costs pursuant to the percentage set forth in the Business Terms Sheet.

6.3.1 Lump Sum Amount. If Unger agrees to a lump sum adjustment, the lump sum amount must be properly itemized and supported by sufficient substantiating data to permit evaluation of labor, materials, equipment, bonding (if required), and overhead and profit. Once mutually agreed upon, the lump sum amount will be the value of the Subcontract Change Order.

6.3.2 Time and Materials. If Unger directs the Work to proceed on a time and materials basis, Subcontractor will track the actual costs of the Work as the Work progresses. The adjustment may also be on a time and material with a cap that cannot be exceeded. Subcontractor will keep and present an itemized accounting for the Work performed based on daily time tickets executed by Unger's superintendent, material and equipment invoices, and other supporting data substantiating the amount of the Subcontract Change Order. All time and material costs will be broken down by labor, materials, equipment, bonding (if required), and overhead and profit.

6.3.3 Overhead and Profit. Subcontractor's percentage for overhead and profit for Work on additive and deductive Subcontract Change Orders is set forth in the Business Terms Sheet. Subcontractor's overhead includes costs for general and administrative expenses including: (i) salaries and other compensation of Subcontractor's personnel stationed at the home office and not specifically assigned to the Project and management support; (ii) expenses of Subcontractor's home office such as rent, utilities, etc.; (iii) costs related to blueprinting, computers, software, applications, systems, data processing, and support, devices, servers, printers, copiers, plotters, cell phones, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site, digital cameras etc.; (iv) cost for small tools valued at less than \$500 (v) additional drafting and detailing time unless change requires re-submission of Shop Drawings; (vi) cost of insurance required under the Subcontract, and (vii) any bonuses paid to Subcontractor's employees, tier-subcontractors, and suppliers. Subcontractor's overhead and profit percentage will be multiplied by the subtotal of labor, materials, equipment, and bonding (if required).

6.3.4 Allowances. Subcontractor will make charges against the Allowance items only when specifically approved by Unger. Allowance items will be reconciled through Subcontract Change Order after completion of the design. The reconciled amount must be properly itemized and supported by sufficient substantiating data to permit evaluation the additive or deductive Subcontract Change Order. All unused Allowance amounts will accrue 100% to Owner through Unger.

**6.4 Continued Performance.** No Work will be allowed to lag pending the adjustment through Subcontract Change Order but will be promptly executed as directed, even if a dispute arises

**6.5 Omitted Work.** If Subcontractor omits Work that is included in the Subcontract Documents, Unger will have the right to withhold from payments due or to become due in an amount which, in Unger's opinion, is equal to 150% of the value of Work that was omitted until the Work is performed.

**6.6 Surety.** All changes, additions or omissions in the Work ordered in writing by Unger are part of the Work and will be performed and furnished in strict accordance with all of the terms and provisions of this Subcontract and the other Subcontract Documents. Subcontractor will keep its surety informed of all modifications to this Subcontract. The obligations of Subcontractor's surety are not to be reduced, waived or adversely affected by the issuance of Subcontract Change Orders even if Subcontractor fails to inform the surety of the Subcontract Change Order(s) and Unger will not be required to obtain consent of surety for any Subcontract Change Orders or Amendments.

## **7. PAYMENT.**

**7.1 Progress Payments.** Subcontractor will electronically submit monthly payment requests no later than the date of the month set forth in the Business Terms Sheet and per the Billing Procedures and Forms set forth in TAB 1 of the Project Manual. Retention will be per the terms and conditions set forth in the Business Terms Sheet and the Progress Billing Procedures set forth in **TAB 1** of the Project Manual. Invoices must be signed by a corporate officer of Subcontractor attesting to its accuracy and Unger will be allowed to rely upon the Subcontractor's statement of accuracy, as well as Subcontractor's certification that it has paid all tier-subcontractors and suppliers prior amounts due and owing from amounts previously received from Unger. Upon submission of a monthly invoice, Subcontractor warrants that all Work included in the invoice has been performed in accordance with the Subcontract Documents and certifies that title to all Work covered by the invoice will pass to the Owner no later than the time of payment free and clear of all stop payment notices, claims, security interests, mechanics' liens or other encumbrances. Provided that Subcontractor's invoices were properly and timely submitted, Unger will make monthly progress payments on all undisputed Work within 10 business days' receipt of payment from Owner, subject to Section 7.7 below.

**7.1.1 Union Trades.** Subcontractor must submit certified payroll records pursuant to California Labor Code section 218.7(f)(1) if requested by Unger. Subcontractor and its tier-subcontractors that are subject to a collective bargaining agreement must certify under penalty of perjury that records maintained and submitted are true and accurate. The payroll records will be certified and submitted to Unger per the Progress Billing Procedures set forth in **TAB 1** of the Project Manual.

**7.1.2 Change Orders.** Subcontractor may bill for Work incorporated by Subcontract Change Order after the Subcontract Change Order is executed and the Work is performed.

**7.2 Payment to Tier-Subcontractors.** Subcontractor is responsible for paying its tier-subcontractors and suppliers within 7 days' receipt of payment from Unger. Unger, in its sole discretion, may decide to make payment by joint check or by direct payment to tier-subcontractors and suppliers.

**7.3 Unger's Right To Withhold Payments.** Unger may withhold or, on account of subsequently discovered evidence, may nullify, the whole or part of any payment to protect Unger from loss on account of: (i) defective Work not remedied; (ii) any third party claims filed or reasonable evidence indicating probable filing of third party claims; (iii) failure of Subcontractor to make proper payments to its tier-subcontractors or suppliers; (iv) claims filed by an agent, employee, or any other persons performing any portion of the Work on behalf of Subcontractor, or trust fund of Subcontractor, tier-subcontractors, or suppliers; (v) failure to timely provide information required per California Labor Code section 218.7; (vi) disputed invoiced amounts, insufficient documentation, erroneous estimates of the value of the Work performed, or discrepancies discovered through audit or otherwise in the certified payroll (to the extent applicable) and fringe benefit information; (vii) reasonable doubt that the Work can be completed for the balance of the Subcontract Price or within the Subcontract Time; (viii) damage to Unger's work, or a separate contractor's or another subcontractor's work; (ix) failure of the Subcontractor to comply with 3-week work plans and scheduling requirements set forth in Article 5; (x) penalties assessed against Unger or Subcontractor on account of Subcontractor's failure to comply with state,



federal or local laws and regulations; (xi) failure to carry out the Work in accordance with the Subcontract Documents; (xii) failure of Subcontractor to comply with jobsite procedures, safety, storage, or clean-up requirements; or (xiii) Subcontractor's breach of any term or provision of the Subcontract. Unger will have the right to withhold up to 150% of any amount that Unger disputes in good faith. When the reason for withholding payment is rectified, Unger will release amounts then due and owing after taking into account any off-set amounts or damages paid by or sustained by Unger.

**7.4 Stop Payment Notices and Mechanic's Liens.** Subcontractor will procure a release bond pursuant to the applicable California Civil Code requirements commencing with 8172, et. seq., provided that Subcontractor was paid by Unger for the portion of the Work at issue under any of the following circumstances: (i) if any stop payment notice is served upon the Owner or made against the Project funds or a mechanics' lien is recorded against the Project by any person or union trust claiming that the Subcontractor or any of its tier-subcontractors or suppliers has failed to comply with their respective collective bargaining agreement or failed to make payment for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work; or (ii) if at any time there is evidence of nonpayment of any mechanics' lien or stop payment notice for which, if established, Unger might become liable and that is chargeable to the Subcontractor. If Subcontractor fails to post a bond as required, Unger will have the right to retain from any payment then due or thereafter to become due an amount that it deems sufficient to: (i) satisfy, discharge and/or defend against any mechanics' lien or stop payment notice action that may be brought or judgment that may be recovered; (ii) make good any nonpayment, damage, failure or default; or (iii) compensate Unger for procuring and posting the release bond and dealing with the claim. If the amount retained is insufficient to cover the amount of the claim, Subcontractor will be liable for the difference and will make payment to Unger immediately upon written notice.

**7.5 Final Payment.** Final Payment, including payment of the retention, if unencumbered, will be paid to Subcontractor after Final Completion of the Project. Final Payment is without prejudice to Unger's rights and remedies for Subcontractor's or its tier-subcontractors' failure to comply with Labor Code section 218.7 (to the extent applicable) and other applicable law governing the payment of wages (inclusive of fringe benefits) to workers and employees performing portions of the Work.

**7.5.1 Conditions Precedent to Final Payment.** In addition to any other requirements of this Subcontract and the Subcontract Documents, Final Payment will not be due and owing until the following conditions precedent have been satisfied: (i) final approval and acceptance of the Work by Unger, Owner, Architect, and engineer of record (if applicable); (ii) delivery of record documents and other close-out documentation required by this Subcontract and the Subcontract Documents; (iii) receipt of final conditional waivers and receipts per California Civil Code section 8136 and satisfactory evidence that all labor (including taxes, fees, fringe benefits, or insurance, each as applicable) and material and equipment accounts incurred by Subcontractor in connection with the Work have been paid in full; (iv) evidence that completed operations insurance will remain in force after Final Payment and will not be canceled or allowed to expire for 10 years without prior written notice to Unger; and (v) surety, if any, has consented to Final Payment.

**7.6 Payment Not Acceptance of the Work.** Any payment made hereunder before completion and acceptance of the Work will not be construed as evidence or acknowledgement of proper completion of any part of Subcontractor's Work.

**7.7 Risk of Late Payment or Non-Payment By Owner.** Subcontractor, and its tier-subcontractors, acknowledges that there is a risk that the Owner may make late payments or may, under certain circumstances such as insolvency, not make the required payments to Unger pursuant to the Prime Contract. Subcontractor agrees to share in the risk of late payments or non-payment with Unger by: (i) timely recording a mechanics lien against the property or pursuing its stop payment notice rights

against the Project funds and timely foreclosing on its lien and/or stop payment notice rights by filing a civil action directly against Owner and lender (if applicable); and (ii) granting Unger a reasonable time to pursue legal action and payment from Owner before prosecuting an action solely against Unger. Subcontractor will cooperate with Unger in pursuing payment from Owner. For purposes of this Section 7.7, a reasonable time is the time required for Unger to legally pursue a judgment through civil action, judicial reference, or arbitration against Owner or lending institution. Subcontractor agrees that if Unger is not able to recover against Owner, Subcontractor will negotiate an equitable settlement with Unger in good faith and without mark-up for overhead and profit or interest.

**7.8 Audit Rights.** Subcontractor's Project records may be subject to audit at any time throughout the duration of a Project pursuant to the terms and conditions of the Prime Contract. The audit will take place during normal business hours and will be coordinated with Subcontractor. The audit may require inspection and copying of any and all information, materials and data of every kind and character, including without limitation, payroll records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent or foreman reports, drawings, receipts, vouchers and memoranda, and all other agreements, sources of information and matters that may, in Unger's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under the Subcontract Documents.

7.8.1 If Subcontractor or its tier-subcontractors are subject to a collective bargaining agreement, Unger also has the right, but not an obligation, to audit Subcontractor's and its tier-subcontractors' payroll records throughout the duration of the Project and for a period of 1 year after recordation of a notice of completion, recordation of a cessation of labor; or actual completion of the Project to corroborate that both the certified payroll and fringe benefit certifications furnished by Subcontractor or its union tier-subcontractors as part of the payment application are complete and accurate. Subcontractor agrees to fully cooperate with the audit and will cause its union tier-subcontractors through written agreement to also cooperate and comply. Subcontractor agrees that Unger's rights and remedies under this Section and applicable law are not prejudiced if Unger elects not to perform payroll audits.

## **8. DEFENSE AND INDEMNIFICATION.**

**8.1 Subcontractor's Defense and Indemnification.** To the fullest extent permitted by law, Subcontractor will defend (with counsel acceptable to Unger), indemnify and hold the Owner, Unger, Architect, lender (if applicable), and their respective officers, board members, directors, partners, members, employees, affiliates, parents and subsidiaries ("Indemnitees") harmless from and against any and all claims, demands, causes of action, damages, costs, expenses, attorneys' and expert witnesses' fees, losses or liabilities, in law or equity, arising out of or in any way relating to actual or alleged acts or omissions in the performance of the Work by Subcontractor, its employees, tier-subcontractors, and suppliers or anyone for whom Subcontractor and its tier-subcontractors are responsible regardless of whether the actual or alleged claim was caused, in part, by an Indemnitees' negligence. Notwithstanding the above, Subcontractor will not be required to defend, indemnify and hold harmless the Indemnitees to the extent of their respective active negligence or willful misconduct. The defense and indemnification obligations set forth in this Section will not be limited in any way by the amount or type of damages, compensation or benefits payable by or for Subcontractor under the Workers' Compensation Acts, disability benefit acts or other employee benefit acts. Subject to this Section 8.1, Subcontractor's indemnification and defense obligations include, but are not limited to, the following types of claims:

8.1.1 **Personal Injury and Property Damage.** Personal injury, including bodily injury, sickness or disease, or death to any persons, employees or agents of Indemnitees or any third parties and/or damage to tangible property (including loss of use).

8.1.2 Breach of Subcontract. Breach of any material terms or conditions of the Subcontract that causes damage, cost or expense to an Indemnitee.

8.1.3 Subcontractor Caused Delays. Delays, work stoppage, labor disputes, interference, or disruption to the critical path of the current Project Schedule or to any other subcontractors' or Owner's separate contractors' time.

8.1.4 Violation of the Law. Penalties, fees and costs imposed on account of the violation of any law, order, citation, rule, regulation, code, standard, ordinance or statute, including but not limited to, building code violations, rules and regulations imposed by Cal-OSHA or other safety violations or standards, as well as any union subcontractor's or tier-subcontractors' failure to comply with Labor Code section 218.7 and other applicable law governing the payment of wages (inclusive of fringe benefits) to workers and employees performing portions of the Work.

8.1.5 Insurance and Bonding. Failure of Subcontractor to comply with the insurance and bonding provisions set forth in Article 9. Insurance requirements and limits included in this Subcontract do not limit Subcontractor's indemnification and defense obligations or other Subcontractor liability.

8.1.6 Liens and Stop Payment Notices. Mechanics' lien or stop payment notice claims for labor performed or materials and equipment furnished for the Project, including incidental or consequential damages suffered by an Indemnitee as a result of the claim provided that Subcontractor has been paid for the portion of the Work at issue.

8.1.7 Infringement of Intellectual Property. Infringement of any intellectual property right including patents, copyrights or license, which may be brought against Indemnitees as a result of the Work.

8.1.8 Hazardous Substance or Material. Claims or liability for damages arising out of or resulting from Subcontractor's, or its employees' or tier-subcontractors' use of, or negligent mishandling of, a Hazardous Substance or Material or exacerbation of a pre-existing condition during the performance of its Work.

8.1.9 False Claims. Subcontractor's false claims with respect to Subcontract Price adjustments or any false or fraudulent statement regarding performance of the Work, application for payment, or otherwise contrary to legal standards governing false claims.

**8.2 Duty to Defend.** Subcontractor will defend all claims defined in Section 8.1 at its own cost and expense and satisfy any judgment or decree that may be rendered against any Indemnitee arising out of a claim, or reimburse Indemnitee(s) for any and all legal or expert witness expenses incurred by any of them in connection with the claim or in enforcing the indemnity granted in this Article 8. The duty to defend is immediate and will apply, and Subcontractor will be required to furnish a defense, regardless of whether the matter has been adjudicated.

## **9. INSURANCE AND BONDING.**

**9.1 Insurance Requirements.** Subcontractor will procure insurance coverage in the amounts set forth in the Business Terms Sheet and pursuant to Exhibit 4. If the Business Terms Sheet indicates that there is an owner controlled insurance program ("OCIP"), Subcontractor will enroll in the OCIP coverage and procure other insurance as required by the Business Terms Sheet and as further described in the OCIP manual (as applicable), and Exhibit 4. Before commencing Work, Subcontractor will provide proof of insurance or evidence of enrollment in the OCIP (as applicable). Proof of insurance includes certificates of insurance as well as endorsements evidencing proper insurance coverage and additional



insured status on all liability policies except for worker's compensation and professional liability (if required).

**9.2 Bonding Requirements.** If required by the Business Terms Sheet or otherwise required by Unger through subsequent Subcontract Change Order, Subcontractor will provide payment and performance bonds on forms and with a surety acceptable to Unger for the full amount of this Subcontract before mobilizing for construction at the site. If bonds are required by the Business Terms Sheet, all costs associated with bond premiums are included in the Subcontract Price. Without limiting the responsibilities of Subcontractor and its surety under the terms of this Subcontract, Subcontractor and its surety agree to promptly pay all lawful claims of subcontractors, material men, laborers, persons, firms or corporations for labor or services performed or materials, suppliers, machinery equipment, rentals, fuels, oils, tools, appliances, insurance and other items furnished, used or consumed in connection with the prosecution of the Work including Subcontract Change Orders.

## **10. WARRANTY.**

**10.1 Warranty on Workmanship.** Subcontractor warrants that all Work will be new unless otherwise specified in the Subcontract Documents, and of good quality, free from defects, and in conformance with the Subcontract Documents and applicable law. All Work not conforming to these requirements, including substitutions not properly approved and authorized, will be considered defective. For a period of 1 year commencing from the Substantial Completion Date of the Project or the date of repair, whichever is later, and for longer periods specified in the Construction Documents (Exhibit 3) for certain equipment manufacturers and suppliers, Subcontractor will promptly cure the defective and non-conforming Work by repair or replacement and will provide any other required services related to the repair or replacement at its sole cost and expense. Subcontractor's warranty on workmanship does not extend to improper or insufficient maintenance, ordinary wear and tear, or damage caused by improper use. If Subcontractor fails to commence repairs or replacement required within 10 days, or diligently prosecute repair to completion, any such repairs or replacement may be performed by others, and Subcontractor will be responsible for reimbursing Unger or Owner (as applicable) for the cost of the repairs or replacement. Subcontractor will execute a written "warranty" as provided in the Subcontract Documents, if any, before receiving Final Payment and will procure all tier-subcontractor and manufacturer express warranties required under the applicable Construction Documents and transmit the warranties to Unger before Completion of the Work. Establishment of the 1 year express warranty period for correction of the Work relates only to the Subcontractor's specific obligation to correct defective or non-conforming Work, and has no relationship to statute of limitations periods for claims arising from the Subcontract Documents. The warranty provided in this Section is in addition to and not in limitation of any other warranty or remedy required by law or by the Subcontract Documents.

## **11. DISPUTE RESOLUTION.**

**11.1 Claims.** All claims between Subcontractor and Unger arising from the Subcontract Documents that are not resolved through the Subcontract Change Order process in Article 6 will be resolved per this Article 11. Claims submitted by Subcontractor must certify that the claim is being made in good faith, that the supporting data is accurate and complete to the best of Subcontractor's knowledge and belief, and that the amount requested accurately reflects the adjustment Subcontractor believes should be authorized. Subcontractor acknowledges that the Project is being constructed in accordance with the Prime Contract and the Subcontract Documents. To the extent that there is a conflict between the provisions set forth in this Article 11 and the dispute resolution procedures set forth in the Prime Contract, the dispute resolution procedures in the Prime Contract will govern. Sections 11.4 and 11.5 apply to all claims.

**11.2 Involving Owner and Other Parties.** Any claim arising from the Project involving the acts or omissions of the Owner, Architect, engineer of record, or other parties, will be advanced by Unger at its sole discretion in accordance with the dispute resolution procedure set forth in the Prime Contract. Subcontractor will bear all costs of prosecuting or defending its claim and will indemnify Unger against any counterclaim arising in whole or in part out of the Subcontractor's performance of the Work pursuant to Section 8.1 and, at Unger's request, will undertake defense of the claim utilizing counsel acceptable to Unger per Section 8.2. If Unger decides in good faith not to proceed with Subcontractor's claim, Subcontractor is entitled to proceed with its claim directly against the Owner or its agents.

11.2.1 If Unger elects to advance Subcontractor's claim, Subcontractor's right of recovery on the claim will be limited solely to the dollar amount and other relief recovered by Unger on behalf of Subcontractor minus the Subcontractor's portion of the costs and expenses incurred by Unger in resolving the claim (including attorney's fees, consulting charges, and Unger's personnel costs). Unger is not liable to the Subcontractor for any monies or other relief except those granted to Unger by Owner for the benefit of Subcontractor. It is a condition precedent that Subcontractor comply with all timing requirements related to delay or changes in the Work in order to perfect Subcontractor's claim and Subcontractor must submit all requested back-up and documentation necessary to present its portion of the claim upon Unger's request and in advance of any time period stated in the Prime Contract. Failure to comply with all timing and the certification requirements constitutes a waiver of claim. A senior executive with the authority to bind Subcontractor must be readily available to discuss any compromise or settlement that Unger may be able to reach with Owner on Subcontractor's behalf, or the right to object to the compromise or settlement is waived and Unger's decision regarding compromise, settlement, or discontinuation of any claim or dispute resolution will be final and binding upon Subcontractor.

**11.3 Between Unger and Subcontractor.** If the dispute is just between Unger and Subcontractor and does not involve any other party related to the Project, Subcontractor may initiate the dispute resolution procedures with Unger by providing 10 business days written notice of a potential claim. The notice must certify that the claim is being made in good faith and that the amount requested is accurately reflected, provide reasonable detail of the nature of the claim and back-up substantiating the amount requested, a statement about the remedy sought, and request informal resolution through business negotiations. If the Parties are unable to resolve the dispute through information business negotiations or by mediation, then the parties may proceed with the claim through judicial reference in accordance with California Code of Civil Procedure section 638 through 645.2.

11.3.1 Business Negotiations. Upon receipt of written notice, Unger and Subcontractor will notify their respective senior executives who have not been personally involved in the Project and who have no direct responsibility for the administration of the Subcontract. Each designated senior executive will have the authority to settle or compromise the claim conclusively. The senior executives will meet at a mutually agreeable time and place to exchange relevant information and attempt to amicably resolve the claim. If the dispute is not resolved through informal business negotiations, either Party may demand mediation per Section 11.3.2.

11.3.2 Mediation. Mediation is not mandatory. Before agreeing to mediation, each party to the mediation will execute a disclosure confirming that the party understands the confidential nature of the mediation proceedings and materials pursuant to California Evidence Code section 1129. Request for mediation will be filed in writing with the other Party and with the American Arbitration Association or another mutually agreed independent mediator. If the mediation is before the American Arbitration Association, it will be conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. The Parties will select a mediator within 15 days and will share the mediator's fee and any filing fees equally. Agreements reached in mediation will be enforceable as settlement agreements in any court having jurisdiction over the matter. If the Parties are

unable to resolve the dispute by mediation, then the Parties may proceed with the claim through judicial reference per Section 11.3.3.

**11.3.3 Judicial Reference.** A demand for judicial reference must be made within the time frame for filing a civil action and under no circumstance after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations. The referee must be a retired judge of the State of California with significant experience in construction disputes, who will hear, determine and try all claims arising from this Subcontract in accordance with California Code of Civil Procedure section 638-645.2. The Parties may, if the Court appoints the referee, obtain the disqualification of anyone appointed as referee on the same basis and under the same procedures of CCP section 170.6 regarding peremptory challenges. The Parties will share the referee's fees and any administrative costs associated with the reference, and no party may recover costs under CCP section 1032 or otherwise. California rules of evidence, civil procedure, and rules of court are applicable. However, the Parties may, but are not required to, mutually agree to place restrictions on discovery pursuant to Code of Civil Procedure section 2016.030.

**11.4 Joinder.** Subcontractor consents to joinder of Owner, Architect and other design professionals, other subcontractors and suppliers and any other party that Unger deems necessary to resolve claims filed by or against Unger that arise out of similar facts, issues or incidents and are related to the Project to prevent inconsistent dispute resolution awards or judgments. Subcontractor agrees to be bound by the decision of any court, arbitration panel, or other tribunal to the full extent to which Unger is bound.

**11.5 Continuation of Work.** Subcontractor must diligently continue to prosecute the Work, including all disputed Work regardless of the existence of a dispute or claim or the pendency of any dispute resolution procedure or pendency of any civil action.

**11.6 Mechanic's Lien and Stop Payment Notice Actions.** Subcontractor agrees to not commence any civil actions for recovery of claims until the dispute resolution process has been completed unless it is necessary to preserve Subcontractor's legal rights for payment for Work performed pursuant to California State mechanic's lien and stop payment notice laws, or to prevent Subcontractor's claim from being time barred by the statute of limitations.

**11.7 Attorney's Fees.** If the Parties become involved in litigation, arbitration, or judicial reference from claims arising out of this Subcontract, the Subcontract Documents or the Project, the prevailing Party will be entitled to recover reasonable costs, attorney's fees, and expert witness' and consultants' fees.

## **12. SUSPENSION AND TERMINATION.**

**12.1 Suspension.** If the Project is suspended by Unger, Subcontractor will be compensated for Work performed before receipt of notice of the suspension. The notice of suspension will set forth the reason for suspension and the effective date of suspension. If the Project is resumed, and provided that the suspension was not caused or due to any fault or neglect of the Subcontractor, then the Subcontract Price and Subcontract Time may be equitably adjusted through Subcontract Change Order.

**12.2 Unger's Termination for Convenience.** At any time before Completion of the Work and upon 7 days written notice to Subcontractor, Unger will have the right to terminate this Subcontract, in whole or in part, without the consent or fault of Subcontractor, and without liability. The notice will state the extent and effective date of termination. Upon receipt of written notice, Subcontractor will, unless the notice directs otherwise, immediately discontinue the Work and the placing of orders for materials, equipment and supplies in connection with the performance of this Subcontract, and if requested, make

commercially reasonable efforts to cancel existing orders or contracts upon terms satisfactory to Unger, or at the option of Unger, give Unger the right to take assignment of those obligations directly. Subcontractor will safe off and secure any openings, and preserve and protect the Work already in progress and the materials and equipment already at the Project site or in transit to the site. Subcontractor will be entitled to receive payment for all Work performed based on a percentage of Work properly completed through the effective date of termination and as may be required to secure and protect the Work. Subcontractor will not be entitled to payment of overhead and profit on unperformed Work or unabsorbed overhead. All disputes over termination will be resolved under Article 11.

**12.3 Unger's Termination for Cause.** Unger will have the right to terminate this Subcontract in whole or in part, upon written notice of default if Subcontractor: (i) refuses or neglects to supply a sufficient number of properly qualified management or skilled workers, or a sufficient quantity of materials and equipment of proper quality; (ii) fails to promptly pay any tier-subcontractor, supplier, materialmen, rental company or laborer; (iii) fails to accelerate the Work as required by Section 5.6; (iv) gives Unger a reasonable basis to doubt that the Work can be completed for the unpaid portion of the Subcontract Price or within the Subcontract Time; (v) fails or refuses to correct violation of safety regulations; (vi) fails to perform any of its responsibilities or obligations under the Subcontract Documents; or (vii) commits fraud, willful misconduct, or disregards applicable law. Upon receipt of notice of default, Subcontractor will have 48 hours to commence curing the default to the satisfaction of Unger. If Subcontractor fails to commence curing the default within the 48 hour period, the effective date of termination will be 7 business days from the date of the written notice of default.

12.3.1 Remedies. Upon termination, Unger may, without prejudice to any other rights or remedies (i) take possession of the Work and of all materials and equipment procured for the Work; (ii) take assignment of any tier-subcontracts, purchase orders, or rental agreements; (iii) finish the Work by whatever reasonable method Unger deems expedient; and (iv) pursue any available legal or equitable remedies as well as remedies available under the Subcontract Documents. Subcontractor will not receive further payment until after Unger's completion of the Work through others, and Unger will offset against any sums due or to become due Subcontractor all costs incurred in completion of the Work and in pursuing its legal and equitable remedies (including legal fees). Subcontractor is liable for the payment of any amount in excess of the unpaid balance of the Subcontract Price and will pay Unger the amount within 30 days of written demand. If a court of competent jurisdiction deems that termination of the Subcontractor was wrongful or otherwise improper, the termination will be deemed a termination for convenience under Section 12.2.

## **13. MISCELLANEOUS PROVISIONS.**

**13.1 Governing Law.** This Subcontract is governed by and construed under the laws of the State of California without regard to California conflict of law provisions. Unger and Subcontractor agree that any claim or enforcement of a judgment or alternative dispute award will be filed with the appropriate court of law and in accordance with the venue (if any) stated in the Prime Contract, or, in matters only involving Unger and Subcontractor, venue will be Sacramento.

**13.2 Notice.** Any notice required or permitted under this Subcontract, must be served personally, by overnight commercial carrier, or by email with return receipt requested. Notices should be directed to Unger's Signatory and Subcontractor's Representative identified in the Business Terms Sheet at the appropriate business address set forth in page 1 of this Subcontract. If personal delivery, notice will be effective upon personal delivery, or 3 business days after being sent either via registered or certified mail return receipt requested or 1 business day after being sent by overnight commercial courier providing next business day delivery.



**13.3 Severability.** The terms and conditions of this Subcontract will be interpreted in accordance with their plain meaning, and not strictly for or against either Party. Any rule of construction or interpretation to the contrary will be of no force or effect. If a court of competent jurisdiction finds any term or provision of this Subcontract to be void or unenforceable for any reason, that term or provision will be severed and the remainder of the Subcontract will remain in full force and effect to the maximum extent permitted by law.

**13.4 Waiver.** No action or failure to act by Unger waives any right or duty afforded it under the Subcontract and an action or failure to act will not constitute approval of or acquiescence in a breach of the Subcontract, unless specifically agreed to in writing by Unger.

**13.5 Time is of the Essence.** Time is of the essence with respect to performance of the Work and each term and condition of this Subcontract.

**13.6 Assignment.** Unger and Subcontractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other Party and to the partners, successors, assigns and legal representatives of the other Party with respect to all covenants of this Subcontract. The Subcontractor may not assign this Subcontract without the written consent of Unger. Unger may assign this Subcontract to the Owner. Also, Subcontractor will cooperate with Unger regarding any assignment to Owner's lender for the purpose of construction financing for the Project.

**13.7 Modifications.** All modifications to the terms and conditions set forth in this Subcontract must be through written Amendment or Subcontract Change Order and signed by a Signatory of each Party.

**13.8 Counterparts.** This Subcontract may be executed in counterparts, each of which will be deemed an original, and all of which when taken together will constitute one instrument. A copy of this Subcontract executed and delivered by facsimile, email in ".pdf" format, or any electronic signature complying with the California Uniform Electronic Transactions Act and the U.S. federal ESIGN Act of 2000 (e.g., www.docuSign.com) will be deemed to have the same legal effect as delivery of an original executed copy.

**13.9 Section Headings.** The section headings contained in this Subcontract are for reference purposes only and will not in any way affect the meaning or interpretation of this Subcontract.

**13.10 Legal Citations.** Legal citations to statutory requirements are included in the Subcontract are for convenience and an omission of any legal or statutory requirement or incorrect citation will not relieve the Subcontractor from compliance with the law.

**13.11 Non-Discrimination/Equal Employment Opportunity.** Subcontractor will not discriminate in any manner against any individual because of race, color, religion, national origin, age, sex or sexual orientation, political affiliation, marital status, or disability. Subcontractor and its tier-subcontractors and suppliers will comply with all equal employment opportunity, affirmative action requirements, and local hire requirements promulgated by any state or federal governmental authority, such as the requirements of the Civil Rights Act of 1964, Presidential Executive Orders, the California Fair Employment Practices Act, the Americans with Disabilities Act of 1991, and the Family and Medical Leave Act of 1993, as may be amended. Subcontractor must comply with all applicable Federal, State and local laws and regulations, including, but not limited to, all Fair Labor Standards Act provisions and California Labor Code provisions covering the Work.

**13.12 Confidentiality.** Subcontractor, and its tier-subcontractors, will comply with any confidentiality provisions set forth in the Prime Contract and will comply with the Non-Disclosure

Agreement if included in this Subcontract as Exhibit 10. If the Owner is a health care provider, Subcontractor and its tier-subcontractors will comply with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") patient privacy rules.

**13.13 Ownership of Documents.** Subcontractor will not own or claim a copyright in the Construction Documents or other documents prepared by the Architect or other design professionals. The Construction Documents and other documents prepared by the Architect or other design professionals are furnished to the Subcontractor for use solely with respect to this Project and are not to be used by Subcontractor on other projects or for additions to this Project outside the scope of this Subcontract. To the extent that this Subcontract requires Subcontractor to perform design-build work or use BIM, the ownership rights of any documents and models will be determined in accordance with the terms and conditions of the Prime Contract.

**13.14 State Licensing.** Subcontractors 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 4 years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 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.

**13.15 Advice of Counsel.** Subcontractor has sought, or had the opportunity to seek, the advice of legal counsel concerning this Subcontract, or has had the opportunity to have been fully advised of the meaning and effect of this Subcontract. Subcontractor has executed this Subcontract after independent investigation without fraud, duress, or undue influence and without reliance on any representation, warranty, promise, or inducement not specifically set forth in this Subcontract and the Subcontract Documents.

**13.16 Survival.** The following provisions will survive the termination or expiration of this Subcontract: Sections 3.1.1, 3.1.2, 3.1.3, 5.7, 7.8 and Articles 8 through 13.

**13.17 Entire Agreement.** This Subcontract (inclusive of Exhibits and the Subcontract Documents) constitutes the entire agreement between Unger and Subcontractor and supersedes any and all contemporaneous or prior oral and written negotiations, representations, or agreements by the Parties with respect to this Project.

**13.18 Execution.** This Subcontract is executed as of the Effective Date by the Signatory of each Party pursuant to the signatures on page 1 of the Subcontract.

## EXHIBIT 1 – DEFINITIONS

1. **"Allowance"** is a good faith estimate of all costs attributable to an item, component or system that is anticipated to be included in Subcontractor's Work but not fully defined in the Construction Documents. Allowances must include all labor, materials, equipment, delivery, unloading, storage, hoisting, and tools. Allowances do not include overhead and profit.
2. **"Amendment"** is a document executed by a Signatory from Unger and Subcontractor amending the terms and/or conditions of the Subcontract.
3. **"Architect"** is the design firm indicated in the Business Terms Sheet of the Subcontract, or any successor architect engaged by Owner.
4. **"BIM Protocol"**, if applicable, is a separate document among the Project Team Members addressing certain legal and technical issues regarding the use of BIM on the Project. The BIM Protocol will be incorporated into the Subcontract as (Exhibit 8), if BIM is being utilized on the Project.
5. **"Building Information Model" ("BIM") or "Model"**, if applicable, is a parametric, computable representation of the Project design developed by the Architect or any engineer of record, their respective consultants, and any design-build subcontractors, and will include construction details developed by the Project Team Members. As used in this Subcontract, references to Building Information Model, BIM, or the Model include the primary design model or models and all linked, related, affiliated or subsidiary models developed for the design, estimating, detailing, fabrication, or construction of the Project, or any portion or element of the Project. The portions of the BIM prepared by the Architect, an engineer of record, or their respective consultants and any design-build subcontractors, and those portions prepared by Unger or design-assist subcontractors under the responsible control of a licensed design professional, are Construction Documents. The portions of the BIM prepared by Unger or design-assist subcontractors to illustrate means and methods for constructing, fabricating or installing portions of the Work are Submittals, which are not Subcontract Documents.
6. **"Business Terms Sheet"** is a summary of the business terms included in the Subcontract.
7. **"Completion of the Work"** means final completion of Subcontractor's Work in accordance with the Subcontract Documents.
8. **"Construction Documents"** means, to the extent applicable to Subcontractor's Scope of Work (Exhibit 2), the permitted plans and specifications prepared by the Architect or an engineer of record and their respective design consultants or any design-build subcontractors, those portions of the BIM that are Construction Documents, all other design documents issued by the Architect or an engineer of record, their respective consultants, and design-build subcontractors for construction of this Project, and any subsequent modifications. The Construction Documents List is described in Exhibit 3. These documents are complementary and what is required by one is required by all.
9. **"Effective Date"** means the agreed date on which this Subcontract became effective, which is set forth on page 1 of the Subcontract.



**EXHIBIT 1 – DEFINITIONS**

10. **"Final Completion"** occurs on the date that the Owner has accepted the Project as finally complete pursuant to the terms and conditions of the Prime Contract. Depending on the schedule for Subcontractor's Work, Final Completion of the Project may occur some duration after Subcontractor's Completion of the Work.
11. **"Final Payment"** is Unger's payment of all amounts due and owing to Subcontractor after satisfaction of the conditions in Section 7.5.1 of the Subcontract.
12. **"Hazardous Substance or Material"** means any substance, product, waste, or other material of any nature that is or becomes listed, regulated or addressed under one or more of the following environmental laws or regulations: (1) CERCLA, (2) Hazardous Materials Transportation Act, (3) RCRA, (4) the Clean Water Act, (5) the Toxic Substance Control Act, (6) HSWA, (7) the California Porter-Cologne Water Quality Control Act, (8) the California Hazardous Waste Management Act, (9) the California Safe Drinking Water Act, (10) the California Waste Management Act, and (11) any other Federal or State law or local ordinance concerning hazardous, toxic or dangerous substances, wastes, or materials.
13. **"Indemnitees"** include Owner, Unger, Architect, lender (if applicable), and their respective officers, board members, directors, partners, members, employees, affiliates, parents, and subsidiaries.
14. **"Owner"** is the person or entity identified as such in the Business Terms Sheet of the Subcontract.
15. **"Party"** refers to either Unger or Subcontractor, and the term **"Parties"** refers to Unger and Subcontractor collectively.
16. **"Prime Contract"** means the written contract between Owner and Unger.
17. **"Product Data"** includes illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Subcontractor or its tier-subcontractors or suppliers illustrating materials or equipment for some portion of the Work.
18. **"Project"** is the project identified in the Business Terms Sheet of the Subcontract and more particularly described in the Construction Documents. Subcontractor's Work is a portion of the Project.
19. **"Project Manual"** is Unger's manual of forms and policies governing certain aspects of performance of the Subcontract, which is kept at the Project site office and also posted to Unger's website.
20. **"Project Schedule"** means Unger's schedule for construction of the entire Project which is set forth Exhibit 5 to the Subcontract, and which may be amended by Unger.
21. **"Project Team Members"** include Owner, Architect, engineer of record, Owner's other consultants or separate contractors, Unger and its other subcontractors, Subcontractor, and any tier-subcontractors or subconsultants of any of the foregoing, which are engaged to perform a portion of the design services or construction work for this Project.

**EXHIBIT 1 – DEFINITIONS**

22. **"Punch List"** is a list of incomplete or unsatisfactory items of Subcontractor's Work per Section 3.16 of the Subcontract.
23. **"Safety and Data Sheets" ("SDS")** are a compilation of information required by OSHA or CalOSHA on the identity of hazardous chemicals, health, and physical hazards, exposure limits and precautions.
24. **"Safety, Health, Environmental Subcontractor Required Safety Information" or "SHEI"** is Unger's set of procedures and requirements for health and safety at the Project site. The SHEI is set forth in Tab 2 of the Project Manual.
25. **"Samples"** are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
26. **"Shop Drawings"** are drawings, diagrams, schedules and other data specially prepared for the Work by the Subcontractor or its tier-subcontractors, manufacturers, suppliers or distributors to illustrate some portion of the Work.
27. **"Signatory"** is the authorized representative of each Party who has the authority to legally bind the entity for which is it signing.
28. **"Subcontract"** means the contract between Unger and Subcontractor for performance of the Work on this Project.
29. **"Subcontract Change Order"** is a mutually agreed written order adjusting either the Subcontract Price, Subcontract Time, or both. Subcontract Change Orders must be signed by a Signatory for each Party.
30. **"Subcontract Documents"** include the Prime Contract (inclusive of all its exhibits), this Subcontract (inclusive of all its Exhibits), the Project Manual posted to Unger's website, the Construction Documents, and any subsequent Amendments or Subcontract Change Orders.
31. **"Subcontractor"** is the entity identified as such on page 1 of the Subcontract.
32. **"Subcontract Price"** is the lump sum amount that Subcontractor will earn for proper performance of the Work.
33. **"Subcontractor's Representative"** is Subcontractor's authorized representative for the Project that is designated in the Business Terms Sheets.
34. **"Subcontract Time"** is the amount of time allotted under the Project Schedule for the Subcontractor to achieve Completion of the Work.
35. **"Submittals"** include Shop Drawings, Product Data and Samples, but are not Subcontract Documents unless they are produced and stamped by a design-build subcontractor. To the extent required by the Subcontract Documents, all Submittals that are not produced by a design-build subcontractor only demonstrate how the Subcontractor and its tier-subcontractors propose to execute the Work shown in the Subcontract Documents.

**EXHIBIT 1 – DEFINITIONS**

36. **"Substantial Completion Date"** is the date that the Owner accepts the Project as substantially complete pursuant to the terms and conditions of the Prime Contract. Depending on the schedule for Subcontractor's Work, the Substantial Completion Date may occur some duration after Subcontractor's Completion of the Work.

37. **"Unforeseen and Differing Site Conditions"** are defined pursuant to the terms and conditions of the Prime Contract. If the Prime Contract does not specifically define Unforeseen and Differing Site Conditions, the term will mean any site conditions described in Public Contract Code section 7104 (a) (1) through (3).

38. **"Unger's Representative"** is Unger's authorized representative for the Project that is designated in the Business Terms Sheets or any duly appointed replacement.

39. **"Work"** includes all labor, services, materials, tools, equipment, hoisting, and other appurtenances necessary for proper completion of Subcontractor's scope of work described in the Subcontract Documents and incorporated Exhibits (as modified by Subcontract Change Order).

SAMPLE

**EXHIBIT 2 – SCOPE OF WORK**  
[insert scope description]

**1. SUBCONTRACT PRICE BREAKDOWN.**

Cost Code:	Base Bid Line Items:	Amount
		\$
		\$
		\$
		\$
		\$
		\$
		\$
	[insert Allowances]	\$
	[insert Allowances]	\$

**Subtotal Direct Costs** \$

Payment and Performance Bond (if applicable) \$

**Subcontract Price** \$

Note: Allowances (if any) include all Work described in Section 4.1 of the Subcontract.

**1.1 Alternates and Unit Pricing.** The following alternate prices and/or unit prices may be applied at Unger’s option for changes in the Work pursuant to Article 6 of the Subcontract. However, the prices indicated herein are unit prices which include all materials, labor, taxes, insurance, shipping, overhead, profit, and any other charges of the Subcontractor and its suppliers in connection with the Work and therefore are not subject to any further mark-up. Work covered by these alternate prices and /or unit prices will be performed in strict accordance with the applicable provisions of the Subcontract.

[insert item]	add \$_____ (L.S. or each)
[insert item]	add \$_____ (L.S. or each)
[insert item]	deduct (\$_____) (L.S. or each)

**2. WORK.**

**2.1 Construction Documents.** The Construction Documents listed in Exhibit 3 generally describe the scope of Work. Subcontractor acknowledges and understands that all Work must comply with applicable building codes. If there is a conflict between the applicable building codes and the Construction Documents, the applicable building code will govern.

**EXHIBIT 2 – SCOPE OF WORK**  
[insert scope description]

**2.2 Definition.** With respect to specific scope items, the word “Provide” means furnish and install completely, including all costs for labor, material, equipment, delivery, storage, hoisting, tools, and any other facilities and appurtenances necessary to properly complete the Work.

**2.3 Specific Scope.** The Work includes but is not necessarily limited to the following: [List specific scope items only]

- 2.3.1 Provide
- 2.3.2 Provide
- 2.3.3 Provide
- 2.3.4 Provide
- 2.3.5 Provide
- 2.3.6 Provide
- 2.3.7 Provide

**3. SCHEDULE.**

**3.1 Schedule.** In addition to the requirements set forth in Article 5 of the Subcontract, the Subcontract Price includes the following key dates:

- 3.1.1 [insert NTP date]
- 3.1.2 [insert dates for key submittals]
- 3.1.3 [insert dates for ordering long lead items]
- 3.1.4 [insert any phasing requirements]
- 3.1.5 [insert fabrication and shipping schedule]
- 3.1.6 [other]

**4. LABOR.**

**4.1 General.** Field labor costs limited to hours of labor performed by workers directly employed by Subcontractor whether performing Work on-site or at off-site locations. Performance of Work at off-site locations is subject to Unger's approval. Labor rates must be inclusive of basic hourly wages, payroll taxes, and employer benefit payments for health and

**EXHIBIT 2 – SCOPE OF WORK**  
[insert scope description]

welfare, pensions, vacations/holidays, supplemental dues, and training, plus any other benefits or payments required by law or applicable collective bargaining agreements. Labor costs associated with foremen and lead-men are included in field labor and all self-performed Work will be compensated as field labor.

**4.2 Labor Rates (excluding OH & P).**

Classification	Standard Time	Time and a Half	Double Time
Detailing			
Shop Labor			
Foreman			
Journeyman			
5 <sup>th</sup> Period Apprentice			

**4.3 Prevailing Wage.** If this Project is subject to prevailing wage per the Business Terms Sheet, see Tab 1C of the Project Manual for prevailing wage information.

**4.4 Compliance with Labor Code Sections 218.7 (f) (1) and (2).** If Subcontractor is a union trade and the box in the Business Terms Sheet requiring certified payroll is checked, Subcontractor must comply with certified payroll requirements per Tab 1C of the Project Manual.

**4.5 Unger's Labor Agreement.** See, section 3.9.2 of the Subcontract and Tab 4 of the Project Manual regarding Unger's labor agreements.

**5. SAFETY.**

**5.1 General.** Unger's Safety, Health, and Environmental Subcontractor Required Safety Information is set forth in Tab 2 of the Project Manual. See, also Section 3.13 of the Subcontract regarding safety.

**5.2 Premobilization Meeting.** Subcontractor is required to have a pre-mobilization meeting 2 weeks before mobilization to the Project site as noted in greater detail in Tab 2 of the Project Manual.

**5.3 Safety Supervision.** Subcontractor will provide safety supervision at all times when Work is being performed at the site. Subcontractor will conduct jobsite safety meetings, and comply with all safety standards as noted in Section 3.13 of the Subcontract and addressed in greater detail in Tab 2 of the Project Manual.

**EXHIBIT 2 – SCOPE OF WORK**  
[insert scope description]

**6. SPECIAL PROVISIONS**

**6.1**  **Sustainability.** This Project is subject to the following sustainability requirements:

6.1.1 [insert sustainability requirements]

**6.2**  **DBE/WBE Participation.** DBE/WBE participation is required for this Project. Subcontractor must participate at \_\_\_\_\_ percent.

**6.3 Signage.** [often there are restrictions. Insert requirements or restrictions here]

**6.4 Work Hours.**

6.4.1 Standard jobsite work hours will generally be between 7:00 a.m. and 3:30 p.m., Monday through Friday. Any Work that must be performed on-site during non-standard hours must be coordinated with Unger's superintendent at least 72 hours before beginning the non-standard work hours shift.

6.4.2 No Work may be performed on-site without Unger field supervision personnel present at the jobsite.

6.4.3 Subcontractor will be responsible for additional Unger supervision costs incurred during non-standard work hours which are resultant from Subcontractor error or failure to perform its Work per the Project Schedule and 3-week work plan.

**6.5 Materials and Equipment.** All delivery, material, and equipment storage must be coordinated with Unger's superintendent and in accordance with the Site Logistics Plan set forth in Exhibit 6.

6.5.1 Subcontractor will coordinate onsite material and equipment storage in advance of deliveries with Unger's superintendent. As much as is practicable, Subcontractor will adopt a "just in time delivery" method for delivering materials and equipment to the jobsite in lieu of stockpiling large quantities of material and equipment onsite.

(a) Subcontractor will securely store all its jobsite materials to prevent the occurrence of any condition that could contribute to a hazardous condition, material contamination, fire, explosion, or other calamity. Subcontractor will advise Unger, in writing, of any material storage conditions onsite which could contribute to the above conditions.

(b) Subcontractor will protect materials from adverse weather.

6.5.2 Subcontract Price includes all unloading, rigging, distribution and protection, including all material handling equipment required. Subcontractor's foreman is to be present for all deliveries. A copy of all FOB documentation will be given to Unger's superintendent on the same day of delivery.



**EXHIBIT 2 – SCOPE OF WORK**  
[insert scope description]

6.5.3 The Project site is not secured, so consideration should be given to risks associated with stockpiling materials on the jobsite. Subcontractor is responsible for protection, damage, or loss of any stockpiled material.

6.5.4 Material and Labor Escalation . Material and labor escalation is included in the Subcontract Price. No further labor and material escalation will be allowed under this Subcontract including from any tier-subcontractors or suppliers.

**6.6 Temporary Facilities.**

6.6.1 Site Logistics. Unger will designate specific areas for jobsite office trailers, jobsite materials storage, and staging areas for deliveries. Location of Subcontractor's site facilities are to be coordinated with the Site Logistics Plan set forth in Exhibit 6 and Unger's superintendent before mobilization.

(a) Subcontractor will continuously maintain site facilities and staging yards in a neat, orderly, and safe manner.

(b) While every effort will be made to minimize disruption to the temporary facilities areas throughout the various construction phases, it may become necessary for trailers and materials to be relocated as the various areas of the site are developed. Such relocations will be planned in advance with the foremen/superintendent representing Subcontractor. Subcontractor is responsible for relocation of their trailers and materials, and removal of any debris as directed by Unger's superintendent.

(c) Upon completion of the Work, and as directed by Unger's superintendent, Subcontractor will remove its trailer, all equipment, materials and debris from the Project site, and return the areas to a neat and orderly condition.

6.6.2 Temporary Communications. Subcontractor will provide and maintain all applicable communications and data service connections for field offices. Subcontractor will provide its own jobsite telephone and data services.

6.6.3 Temporary Water. Subcontractor will provide and maintain all required potable water required for its construction field personnel, as well as water required for, and in connection with, its construction operations such as dust control related to the Work. Unnecessary waste of water will not be permitted.

6.6.4 Temporary Power and Lighting. Unger will provide temporary power at the jobsite for small tools and temporary lighting. Unger will place temporary power distribution boxes throughout the building interiors after concrete slabs and deck slabs have been placed. Subcontractors requiring power for high electrical demand tools and equipment are to provide their own power to serve these tools and equipment.

(a) Unger will provide temporary lighting at paths of travel and as needed for jobsite safety. Disciplines requiring additional lighting in other areas may utilize their

**EXHIBIT 2 – SCOPE OF WORK**  
[insert scope description]

own moveable lighting systems. Power and lighting devices are to comply with CAL OSHA requirements and be of appropriate design and construction for use on a commercial construction jobsite.

(b) Electrical service to a distribution panel will be provided at the jobsite trailers compound. Subcontractors are responsible for providing connectivity from the distribution panel to their trailer(s).

6.6.5 Temporary Fences. Unger will provide necessary temporary fencing and gates required for the Project site. Unger will maintain the Project site fence through Final Completion of the Project. Gates will remain closed and locked during off-hours.

6.6.6 Temporary Sanitary Facilities. Unger will provide and maintain all required temporary toilets and hand washing facilities for use of construction personnel and field labor through Final Completion of the Project. Workers are prohibited from using any Owner restroom facilities.

**6.7 Fuel Storage.** All on-site fuel storage must be in double containment storage or include a spill containment system. Bulk fuel storage is not allowed on the jobsite. Subcontractors are to make arrangements for refueling services to minimize any on-site fuel storage.

**6.8 Scaffolding, Hoisting.** Subcontractor will provide all bracing, hoisting, cranes, rigging, forklifts, ladders, scaffolding and other equipment necessary for the performance of the Work. This will include appropriate traffic control, flagmen, and all necessary safety precautions. Subcontractor shall notify Unger's project superintendent in writing before site mobilization of hoisting or lifting operations. Subcontractor will also coordinate with other disciplines whose work may be affected by the lifting or hoisting operations.

6.8.1 If Subcontractor is providing a crane, Subcontractor will prepare, for review only, engineered hoisting plans showing hoist locations, pad specifications matching existing S.O.G., out-rigger loads, pick points, boom swing, setting points and crane limits. Any changes from the hoisting plan are to be brought to Unger's attention in writing prior to performing any Work. Subcontractor will coordinate the hoisted loads so as not to overload the structure. Pre-sort deck and split truck deliveries as needed to accommodate structural steel erector's hoisting schedule.

**6.9 Housekeeping.**

6.9.1 Subcontractor will maintain the area where Work is being performed in accordance with Section 3.17 of the Subcontract.

6.9.2 Dust generated by this Work will be kept to a minimum.

6.9.3 Subcontractor will clean truck tires just before leaving the construction site.

**EXHIBIT 2 – SCOPE OF WORK**  
[insert scope description]

6.9.4 Subcontractor will remove all scrap, un-used, or improper materials from the jobsite.

6.9.5 Remove trash, including hazardous waste, from the site. Comply with specified construction waste management program, recycling and LEED requirements (to the extent applicable) and provide all paperwork verifying compliance.

6.9.6 Subcontractor will provide and utilize appropriate washout and disposal facilities and procedures for their tool and equipment cleanup. Under no circumstance will the sewer or storm water system be utilized for disposal of the waste water from such cleanup activities.

**6.10 Field Operations.**

6.10.1 Testing and Inspection will be in accordance with Section 3.11 of the Subcontract.

(a) All inspection or testing requests are to be submitted to Unger's superintendent in writing **no later than 2:00 p.m.** the day before the requested inspection. Early morning inspections must be submitted **before Noon** on the day before the requested inspection. Special testing and inspection procedures may require additional advance notice.

(b) Inspection requests must be written in a format acceptable to Unger's superintendent and the IOR (if applicable), including sufficient information to clearly indicate the type of inspection required, the exact areas involved in the inspection, the date and timeframe requested for the inspections to be conducted, and the contact information of the person(s) representing the Subcontractor.

(c) Work delays or additional costs caused by late inspection requests, or by Work not being ready for inspection when the inspection is made as requested, will be at the sole cost and expense of Subcontractor.

6.10.2 Subcontractor will closely coordinate with Unger and other subcontractors to maintain traffic in all areas of construction and to maintain Owner's access to adjoining areas at all times. Subcontractor will provide radios for staging of trucks and communication with Unger's superintendent.

6.10.3 Subcontractor will provide the required maintenance of any on-site equipment after regular working hours.

6.10.4 Subcontractor will protect surrounding areas from damage while performing its Work and will repair damage to existing structures or utilities at no cost to Unger or Owner.

6.10.5 Subcontractor's daily reports, documenting their crew and activities performed, will be turned in daily to Unger's Superintendent.

**EXHIBIT 2 – SCOPE OF WORK**  
[insert scope description]

6.10.6 [insert parking availability. For example, Off-site parking is available]

6.10.7 [insert any site specific security, badging, or drug-testing requirements. For example, All personnel must attend the site security training course and be drug –tested prior to commencement of the Work. Obtain security badges for personnel working in certain areas. The cost of owner-required security escorts will be shared with this Subcontractor in direct proportion to its crew size]

**6.11 Quality Assurance.** Subcontractor is required to participate in Unger’s quality assurance program.

6.11.1 Subcontractor will attend meetings with Unger and other Project Team Members (including the IOR, if applicable) to determine the criteria defining an acceptable quality standard expected of the Work, and then implementing effective controls to achieve the desired outcome.

6.11.2 Subcontractor will provide mockups of systems or components as specified in the Construction Documents, or when deemed necessary to establish the acceptable standard of fit and finish.

6.11.3 The Construction Documents represent the minimum standard required for the Work. The intent of the QA program is to deliver the greatest value to the client in an efficient manner. The QA program operates as an ongoing process as the Work progresses to minimize or eliminate Punch List corrections at Completion of the Work.

6.11.4 Work or processes not meeting the acceptable level of quality will be corrected at the Subcontractor’s sole expense. Subcontractor will be responsible for any additional costs associated with rescheduling the work of others resulting from correction of unacceptable Work.

**6.12 Record Documents.**

6.12.1 Subcontractor will continuously maintain record drawings of all changes made during the performance of the Work. Record drawings include accurate “as-built” dimensional information for buried or concealed portions of the Work. Subcontractor will update the record drawings maintained in Unger's jobsite office on a monthly basis, as a precondition of approval of monthly progress billings. Subcontractor will deliver a reproducible set of record drawings to Unger upon Completion of the Work, and as a condition to Final Payment per Section 7.5 of the Subcontract.

6.12.2 Subcontractor is responsible for monitoring elevations and alignment of as-built conditions with instrument readings on every floor, and presenting results to Unger immediately. Costs for remedial work required to correct out of tolerance conditions are the responsibility of Subcontractor.

**EXHIBIT 2 – SCOPE OF WORK**  
[insert scope description]

**7. EXCLUSIONS.**

**7.1 General.** The following is specifically excluded from the Work:

7.1.1 [insert exclusions]

7.1.2 [insert exclusions]

SAMPLE



**EXHIBIT 3 – CONSTRUCTION DOCUMENT LIST**

**Drawings:**

Sheet No.	Title	Date

**Specifications:**

Spec. Section	Title	Date

**Other Relevant Documents:**

1. [geotechnical report]
2. [survey]

## EXHIBIT 4 – INSURANCE REQUIREMENTS

### 1. TRADITIONAL INSURANCE COVERAGE

**1.1 General.** If the traditional insurance coverage box is checked in the Business Terms Sheet, Subcontractor will carry workers compensation, commercial general liability, automobile liability, excess/umbrella liability, tools and equipment insurance per the limits set forth in the Business Terms Sheet. Depending on location of the Project and Subcontractor's scope of Work, Subcontractor may also be required to carry riggers liability, railroad liability, contractor's pollution liability, and/or professional liability insurance as indicated in the Business Terms Sheet by checked box. All coverage must be not less than the amounts specified in the Business Terms Sheet. All insurance coverage will be pursuant to the Business Terms Sheet and in accordance with this Exhibit 4.

### 2. MINIMUM COVERAGE APPLICABLE TO ALL REQUIRED INSURANCE

**2.1 Coverage.** All commercial general liability (including off-site CGL if there is an OCIP), commercial automobile liability and any umbrella/excess policies must be written on an occurrence basis and comply with the following provisions.

**2.1.1 Workers Compensation/Employer's Liability.** Coverage will include insurance as required by California state law and employer's liability coverage per the Business Terms Sheet.

**2.1.2 Commercial General Liability (CGL).** Primary CGL coverage must be issued on policies at least as broad as ISO form CG 001 12 07 with limits and excess coverage in the amounts listed in the Business Terms Sheet. Minimum limit requirements set forth in the Business Terms Sheet may be met by a combination of primary limits and excess coverage. The insurance will cover all operations of the Subcontractors, its tier-subcontractors, suppliers, and equipment vendors and include coverage for: (i) premises, operations and mobile equipment liability; (ii) completed operations and products liability; (iii) contractual liability for liability assumed under this Subcontract; (iv) broad form property damage liability; (v) medical and personal injury liability including coverage for sickness and death; (vi) explosion, collapse, and underground hazards; (vii) personal and advertising injury; (viii) severability of interests; and (ix) cross-liability. Per Project Aggregate Endorsement Required. Additionally, Subcontractor's CGL policy must not have a wrap/wrap-up/OCIP/CCIP/CIP exclusion that applies to the Work or Project that is the subject of this Subcontract, or a subsidence and/or earth-movement exclusion if Subcontractor or its tier-subcontractors are performing civil site work, foundation, or infrastructure as part of their Work.

(a) **Rigger's Liability Endorsement.** If Subcontractor is providing a crane or performing Work that requires hoisting or lifting equipment, Subcontractor will procure an endorsement to its CGL policy for rigger's liability coverage. The rigger's liability endorsement must cover property damage to personal property of others in Subcontractor's care, custody, or control. The coverage must apply to property damage caused by an accident while lifting, lowering, or moving personal property of others.

## EXHIBIT 4 – INSURANCE REQUIREMENTS

2.1.3 Automobile Liability. Commercial Automobile Liability Insurance will be issued on policies at least as broad as ISO Form CA 00 01, CA 00 05, CA 00 12 or CA 00 20 and must cover accidents occurring on-site and off-site with each accident and excess limits not less than those stated in the Business Terms Sheet. This insurance will apply to all owned, leased, non-owned or hired vehicles to be used by the insured in connection with the performance of its obligations under this Subcontract. The insurance will include uninsured and underinsured coverage and any statutorily required “No Fault” benefits. The insurance must also include an MCS 90 endorsement for clean-up of hazardous material spills.

2.1.4 Excess Policies. Umbrella/excess policies must be following form or written on policies with coverage at least as broad as each and every one of the underlying policies, including completed operations and contractual liability, with limits not less than those stated in the Business Terms Sheet.

2.1.5 Tools and Equipment. With respect to Subcontractor's operations, it will purchase, maintain and pay for all-risk contractor's equipment floater on all machinery, tools, equipment and other similar property in an amount at least equal to their fair market value.

2.1.6 Railroad Protective Liability. Subcontractor will purchase and maintain a railroad protective liability policy if its Work is on or within 50 feet of a railroad or affects any railroad property including but not limited to tracks, bridges, tunnels, and switches.

2.1.7 Contractor's Pollution Liability Coverage. If the Contractor's pollution liability box is check in the Business Terms Sheet, Subcontractor will provide contractor's pollution liability coverage that includes coverage for third-party liability with limits not less than those set forth in Business Terms Sheet. Subcontractor will cause tier-subcontractors to carry pollution liability coverage if appropriate for their portion of the Work. If pollution coverage is issued on a claims-made basis, the retroactive date will be prior to the commencement of the Work performed under the Subcontract and maintained for 10 years after Final Completion. The policy will provide the following: (a) inclusion of contractual liability coverage; (b) inclusion of hazardous transporters pollution liability coverage; (c) no limitation or exclusion for claims by one insured party against another insured; (d) severability of interests; (e) natural resource damages coverage; and (f) mold coverage.

2.1.8 Professional Liability Coverage. If Subcontractor is performing design build portions of the Work per Exhibit 7, Subcontractor will provide professional liability insurance, or cause its tier-consultant to provide professional liability insurance, covering damages caused by Subcontractor's or its tier-consultants negligent acts, errors, or omissions arising out of the performance of professional services or the Work for which Subcontractor or its tier-consultant is legally liable.

**2.2 Term of Insurance Policies.** Commercial general liability will be obtained before commencement of construction and will be maintained in force for 10 years following Final Completion. Workers compensation insurance, automobile liability, rigger's liability and railroad protective liability will be in force from the inception of this Subcontract through Final

## EXHIBIT 4 – INSURANCE REQUIREMENTS

Completion. Professional liability policies must be in place before commencement of design and remain in place for 10 years after Final Completion.

**2.3 Qualifications and Rating.** All insurance will be placed with insurers that are admitted or licensed to issue insurance in the State of California. All insurers will have an A.M. Best rating of A- or better and a financial classification of VII or better.

**2.4 Standard Forms.** To the extent applicable, the amounts and types of insurance will conform to the minimum terms, conditions, and coverages of the Insurance Service Office (ISO) policies, forms, and endorsements in effect when this Subcontract is executed.

**2.5 Insurance Certificates and Copies of Policies.** Before commencing any Work under this Subcontract, Subcontractor will provide Unger with insurance certificates and endorsements reflecting the insurance required by this Subcontract and specifically naming Unger, Owner, and other additional insureds set forth in the Business Terms Sheet on all liability policies except for professional liability and workers compensation insurance. Primary Non-Contributory Endorsement required by this Subcontract for Auto Liability and General Liability Policies.

**2.6 Tier-Subcontractors' and Tier-Consultants' Insurance.** Subcontractor will cause its tier-subcontractors and tier-consultants (if any) to carry worker's compensation, commercial general liability and commercial automobile liability insurance with similar coverage at appropriate limits for their respective portion of the Work. Depending on location of the Project and tier-subcontractor's portion of the Work, Subcontractor may require its tier-subcontractor to carry railroad liability, rigger's liability, pollution liability, or professional liability as appropriate. Subcontractor will require its tier-subcontractors and tier-consultants (if any) to name Subcontractor, Unger, Owner, and other parties set forth in the Business Terms Sheet as additional insureds on their commercial general liability and automobile liability policies. Subcontractor will cause all tiers and their respective insurance companies to waive their rights of subrogation per Section 3.8 against Subcontractor, Unger and the additional insureds set forth in the Business Terms Sheet.

**2.7 Primary Insurance.** All liability policies required by this Subcontract are primary and non-contributory to any similar insurance maintained by Unger or Owner for their respective benefit.

**2.8 Waivers of Subrogation.** Subcontractor and its tier-subcontractors and tier-consultants waive all rights against Unger and Owner, as well as any additional insureds identified in the Business Terms Sheet for loss or damage to the extent reimbursed by any insurance applicable to the Work, except such rights as Unger, Subcontractor and its tier-subcontractors, or Owner may have to the proceeds of the insurance or to the extent prohibited by any applicable policy. A waiver of subrogation is effective as to a person or entity even though that person or entity would otherwise have a duty of defense and 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 loss. General Liability, Auto Liability,

## EXHIBIT 4 – INSURANCE REQUIREMENTS

Pollution Liability and Workers' Compensation require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of those policies will cause them to either provide a "blanket waiver" endorsement or a subrogation endorsement that includes the name of the Project and the location of the Project site.

**2.9 No Limitation.** Nothing in this Exhibit 4 limits, in any way, the extent to which Subcontractor or any of its tier-subcontractors or tier-consultants may be held responsible for payment of damages resulting from their professional services, operations, or Work. Subcontractor's obligation to procure insurance is separate and independent of, and does not limit Subcontractor's or its tier-subcontractors' or tier-consultants' contractual indemnity and defense obligations under the Subcontract or applicable law.

**2.10 Evidence Prior to Final Payment.** Prior to receipt of final payment under the Contract Documents, Subcontractor will provide evidence that its insurance coverage is effective, as required by this Exhibit 4.

**2.11 Modifications Only in Writing.** The coverage and limits of insurance required by this Exhibit may not be altered, modified, or changed except as expressly agreed to in writing. No course of dealing or acceptance of certificates or policies will constitute a waiver of any of these insurance requirements.

### 3. OCIP COVERAGE (IF APPLICABLE).

**3.1 General.** If the Owner Controlled Insurance Program box is checked in the Business Terms Sheet, the Owner is providing a wrap policy for certain liability insurance for this Project. The OCIP will provide insurance coverage to all "Enrolled Subcontractors" as further defined in the OCIP Manual attached to this Exhibit 4 as Attachment A. It is anticipated that the OCIP will cover on-site commercial general liability and excess liability coverage and that Subcontractor and its tier-subcontractors and tier-consultants (if any) will carry the following additional coverage per Article 2: worker's compensation, off-site commercial general liability, automobile liability, tools and equipment insurance per the limits set forth in the Business Terms Sheet; and may have to carry railroad protective liability, rigger's liability, contractor's pollution liability, and professional liability insurance depending on location of the Project and Subcontractor's scope of Work and if indicated in the Business Terms Sheet. By execution of the Subcontract, Subcontractor acknowledges that it has reviewed the OCIP Manual and understands that the OCIP does not provide all coverage required for Subcontractor's Work, and therefore Subcontractor agrees to provide the additional insurance coverage at the required minimum limits in accordance with the Business Terms Sheet, the OCIP Manual, and as further described in Article 2 of this Exhibit 4, subject to the provisions in Section 3.4 below. The OCIP coverage will be maintained by Owner throughout construction of the Project and for longer periods as described in the OCIP Manual. To the extent that there is a conflict between the coverage requirements set forth in the Business Terms Sheet and the attached OCIP Manual, the coverage requirements with the higher required limits and greater coverage will govern.



## EXHIBIT 4 – INSURANCE REQUIREMENTS

**3.2 OCIP is Primary Coverage.** The OCIP coverage will be triggered first with respect to the Work and is primary and non-contributory to other insurance coverage carried by Owner or Unger. All limits and coverages required of the Subcontractor in this Exhibit 4 for claims not covered by the OCIP are primary and non-contributory over any other insurance or self-insurance program carried by Owner or Unger.

**3.3 Completed Operations.** In addition to the 10 year OCIP coverage for completed operations, Subcontractors will carry the limits required in the attached OCIP Manual for re-work required during the warranty period.

**3.4 Excluded Parties.** All "Excluded Parties" as defined under the OCIP, will be required to obtain and maintain insurance per their respective written agreements, which at a minimum must include workers compensation, commercial general liability, excess/umbrella liability, automobile liability, tools and equipment insurance per the limits set forth in the Business Terms Sheet, and may also include contractor's pollution liability and professional liability insurance depending on Subcontractor's scope of Work if indicated in the Business Terms Sheet. All required insurance will be in accordance with Article 2 and must be obtained before performing any portions of the Work, and maintained throughout performance of the Work. Excluded Parties will deliver certificates of insurance and required endorsements to the Unger and Owner before commencing any portion of the Work in connection with this Project. Subcontractor, through written agreement, will pass-through to all tier-subcontractors and tier-consultants: (i) insurance requirements per Article 2 and will include Subcontractor, Owner, Unger as well as those parties set forth in the Business Terms Sheet as additional insureds on all liability policies other than workers' compensation and professional liability; and (ii) the waiver of subrogation provisions set forth in Section 2.8. Subcontractor will ensure that the certificates of insurance and endorsements indicate that Subcontractor and its tier-subcontractors, and tier-consultants are in compliance with the insurance limits indicated in their respective agreements.

**3.5 Subrogation.** There is no waiver of subrogation or recovery by the Unger against Subcontractor and its tier-subcontractors and tier-consultants for claims not covered by the OCIP. However, Subcontractor and its tier-subcontractors and tier-consultants waive all rights of subrogation and recovery against the Unger, Owner, and other parties insured under the OCIP, and other additional insureds set forth in the Business Terms Sheet for claims that are not covered under the OCIP by appropriate agreement, written where legally required for validity. The policies must provide such waivers of subrogation by their respective insurance companies by endorsement or otherwise. A waiver of subrogation and recovery is effective as to the person or entity even though that person or entity would otherwise have a duty of defense and indemnification, contractual or otherwise, and did not pay the insurance premium directly or indirectly. If any applicable policies of insurance require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of those policies will cause them to either provide a "blanket waiver" endorsement or a subrogation endorsement that includes the name of the Project and the location of the Project site.

**EXHIBIT 5 – PROJECT MILESTONE SCHEDULE**

See attached Project Schedule, [INSERT FILE NAME], with a print date of ##/##/####, and a data date of ##/##/####.

SAMPLE

**EXHIBIT 6 – SITE LOGISTICS PLAN**

**(SEE ATTACHED)**

SAMPLE

## EXHIBIT 7 – DESIGN BUILD WORK

### 1. DEFINITIONS

1.1. The definition of “**Construction Documents**” in **Exhibit 1** is modified to include the plans and specifications prepared by or on behalf of Subcontractor after the Effective Date at a level of detail sufficient for construction.

1.2. “**Design Criteria**” are the criteria, performance requirements and preliminary drawings establishing the basic requirements for Subcontractor’s design for its Work.

1.3. “**Design Materials**” are the Project documents and design materials (including all BIM files) created by or on behalf of Subcontractor for its Work.

1.4. The definition of “**Work**” in **Exhibit 1** is modified to include design and construction of the Subcontractor’s portion of the Project.

### 2. DESIGN/BUILD WORK

2.1. Subcontractor is responsible for design and construction of its Work as part of the Subcontract Price. Subcontractor represents that it is an experienced design-build trade contractor having the requisite qualifications and California State licenses required for design and construction of its Work.

2.2. All required design services must be performed by either a California state licensed professional engineer or architect. All design services must conform to all applicable laws and regulations of the State of California and be consistent with the standards of practice employed by other competent and prudent licensed design professionals skilled in [\[insert design work/discipline\]](#) for projects of similar size, scope and complexity in California. The systems as designed and constructed must meet or exceed the Design Criteria.

2.3. Any designers engaged by Subcontractor are considered a tier-subcontractor under the Subcontract Documents, even if engaged as a consultant. To the extent that Subcontractor contracts with a separate entity for design services in connection with the Work, Unger (and, if required by the Prime Contract, the Owner) will be an express third party beneficiary and entitled to enforce all obligations and obtain all benefits under the tier-subcontract, including any ownership rights. Nothing in this Subcontract requires Subcontractor to perform any Work outside its license or contrary to the laws, codes or regulations of the governmental authorities.

### 3. DESIGN CRITERIA

3.1. The Design Criteria is included in **Exhibit 3**, notwithstanding that **Exhibit 3** is labeled as Construction Document List. In supplement to Section 1.1 of the Subcontract, the Design Criteria is included as part of the Subcontract Documents. By executing this Subcontract, Subcontractor represents that it has reviewed and analyzed the Design Criteria as well as the other Subcontract Documents and is qualified to perform the Work.

## EXHIBIT 7 – DESIGN BUILD WORK

### 4. DESIGN OF CONSTRUCTION DOCUMENTS

4.1. Subcontractor will act in the Project's best interest and will collaborate and coordinate with Architect, engineer of record, Unger and other Project Team Members in designing its portion of the Project to avoid inconsistencies and conflicts. Subcontractor's design process will be transparent.

4.2. Subcontractor will timely prepare all drawings, reports, specifications and calculations required for Construction Documents for Submittal to Architect, engineer of record (if applicable) and governing authorities to obtain necessary permits and approvals based upon and consistent with the Design Criteria (**Exhibit 3**) for its Work (**Exhibit 2**). The Construction Documents prepared by or for Subcontractor must be completely coordinated with the other Construction Documents for the Project and must be prepared by, or under the immediate supervision of, a professional engineer or an architect licensed or registered in California who will sign and seal all Submittals indicating that the design professional is the engineer or architect of record. Subcontractor will remain liable and responsible for all design-build Submittals. The Architect and engineer of record, and their respective design consultants (if any) will only review design-build Submittals to confirm that the Submittals are in general conformance with the Design Criteria and design intent indicated in the Construction Documents for the Project and to coordinate the design-build Submittals with the Design Materials prepared by Architect and its consultants and/or engineer of record (if applicable).

4.3. If BIM is required by the Subcontract Documents and Subcontractor's Work (**Exhibit 2**), then Subcontractor will prepare its Construction Documents using BIM pursuant to the BIM Protocol.

### 5. SUBCONTRACT CHANGE ORDER LIMITATION

5.1. Notwithstanding Section 6.1 of the Subcontract, Subcontractor will not be entitled to a Subcontract Change Order for additional Work required due to (i) failure to coordinate its Work with the work of other Project Team Members; (ii) errors or omissions by Subcontractor or its tier-subcontractors in preparing the Construction Documents related to its portion of the Project; or (iii) omission of construction work in the Construction Documents that was required by, or reasonably inferable from, the Design Criteria.

### 6. INSURANCE

6.1. Subcontractor and any tier-subcontractors performing design services will each be required to carry and maintain professional liability insurance in accordance with the terms and conditions of **Exhibit 4** and the Business Terms Sheet.

### 7. WARRANTY

7.1. In supplement to its warranty in Section 10.1 of the Subcontract, Subcontractor warrants that the design included in its Work will meet or exceed any performance requirements set forth in the Design Criteria.



**EXHIBIT 7 – DESIGN BUILD WORK**

**8. OWNERSHIP OF DESIGN**

**8.1. General.** Ownership of Design Materials will be determined in accordance with the Prime Contract.

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**EXHIBIT 8 – BIM PROTOCOL  
(SEE ATTACHED)**

SAMPLE

**EXHIBIT 9 – LEAN GUIDELINES  
(SEE ATTACHED)**

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**EXHIBIT 10 – NON-DISCLOSURE AGREEMENT  
(SEE ATTACHED)**

SAMPLE

**EXHIBIT 11 – PRIME CONTRACT  
(SEE ATTACHED)**

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