

Subcontract Agreement

Subcontract No. **TBD**

THIS AGREEMENT, made and entered into at Napa, California, this TBD day of TBD, 0000 by and between BHM CONSTRUCTION, INC., hereinafter called CONTRACTOR, with its principal office at 221 Gateway Road West, Suite 405, Napa, California, 94558 and **Subcontractor** hereinafter called SUBCONTRACTOR.

RECITALS

On or about **Date**, Contractor entered into a prime contract with **District** hereinafter called OWNER, whose address is, **District Address** to perform the following construction work:

BHM Job #
Project Name
Project Address

Said work is to be performed in accordance with the prime contract and the plans and specifications. Said plans and specifications have been prepared by or on behalf of OWNER.

SECTION A – ENTIRE CONTRACT

SUBCONTRACTOR is providing its services to CONTRACTOR so CONTRACTOR can meet its obligations under its contract (the prime contract) with the Owner. Accordingly, the prime contract, together with its general, supplementary and other conditions, addenda and modifications, plans and specifications, are, along with this Agreement, together with any exhibits or addenda thereto, including but not limited to the General Subcontract Provisions and other addenda set forth below:

- APPENDIX A (INSURANCE REQUIREMENTS) IS HEREBY INCORPORATED INTO THIS AGREEMENT.**
- APPENDIX B (LABOR CODE REQUIREMENTS) IS HEREBY INCORPORATED INTO THIS AGREEMENT. PLEASE INITIAL AND RETURN ALL PAGES**
- APPENDIX C (VENDOR CERTIFICATION) IS HEREBY INCORPORATED INTO THIS AGREEMENT.**
- PROJECT STABILIZATION AGREEMENT – IF APPLICABLE (PSA) IS HEREBY INCORPORATED INTO THIS AGREEMENT.**
- ADDENDUM 0-0**

are collectively referred to as the Contract Documents, and are all part of this Agreement. The Contract Documents are incorporated into this Agreement by this reference, with the same force and effect as if they were set forth at length herein, and that SUBCONTRACTOR and its subcontractors and suppliers will be and are bound by any and all of the Contract Documents insofar as they relate in any part, in any way, directly or indirectly, to the work covered by this Agreement, the Contract duration, or the procedures for changes thereto. To the extent of the work provided by SUBCONTRACTOR in this Agreement, SUBCONTRACTOR agrees to be bound to CONTRACTOR in the same manner and to the same extent as CONTRACTOR is bound to OWNER under the Contract Documents. In the Contract Documents reference is made to CONTRACTOR and the work or specification therein pertains to SUBCONTRACTOR’S trade, craft, or type of work then such work or specification shall be interpreted to apply to SUBCONTRACTOR instead of CONTRACTOR. In the event of any conflict between the requirements of the prime contract and this Agreement, the SUBCONTRACTOR shall be governed by the provisions imposing the greater duty on the SUBCONTRACTOR. SUBCONTRACTOR certifies that is familiar with requirements of the Contract Documents, the location of the job site, and the conditions under which the work is to be performed. SUBCONTRACTOR is not relying upon any opinions or representations of CONTRACTOR, but instead only on the OWNER’s requirements for the work covered by this Agreement because this Agreement represents the final expression of their agreement and is the complete and exclusive statement of the terms of the parties’ agreement.

SECTION B – SCOPE

SUBCONTRACTOR agrees to furnish all labor, services, material, installation, cartage, hoisting, supplies, insurance, equipment, scaffolding, tools and other facilities of every kind and description required for the prompt and efficient execution of the work described herein and to perform the work necessary or normally performed by SUBCONTRACTOR’S trade or incidental to complete

SCOPE

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

Spec Section

SECTION C – CONTRACT PRICE

CONTRACTOR agrees to pay SUBCONTRACTOR for the strict performance of its work, the sum of **TBD Amount and *****00/100 Dollars (\$0.00)** subject to additions and deductions for changes in the work as may be agreed upon, and to make payment in accordance with the Payment Schedule, Section D.

SECTION D – PAYMENT SCHEDULE

1. **Progress Payments.** CONTRACTOR will pay SUBCONTRACTOR in monthly payments of 90% of labor and materials which have been placed in final position and for which the right to payment has been properly documented and approved and paid pursuant to the terms of the Contract Documents. No payments made prior to completion and acceptance of the work shall be construed as evidence of acceptance of any part of SUBCONTRACTOR'S work. Payments due by CONTRACTOR to SUBCONTRACTOR shall be the net amount earned to date less sums paid to date. SUBCONTRACTOR agrees as an express condition precedent to payment, that payment is not due until SUBCONTRACTOR has furnished all administrative documentation required by the Contract Documents, including but not limited to, a union status letter, certified payrolls, evidence of insurance, and the applicable releases pursuant to California Civil Code §8132.

2. **Final Payment.** SUBCONTRACTOR agrees as an express condition precedent to final payment, that final payment is not due until after SUBCONTRACTOR has furnished to CONTRACTOR all administrative documentation required by the Contract Documents and this subcontract, including, but not limited to, as built drawings, certified payrolls, union status letters, and applicable conditional releases upon final payment by owner pursuant to California Civil Code §8134. Upon satisfaction of these conditions precedent to payment, CONTRACTOR will release retention to SUBCONTRACTOR within seven days of Owner releasing retention to CONTRACTOR.

3. **Owner Delays.** If Project Funds become unavailable due to Owner insolvency and/or refusal SUBCONTRACTOR agrees to give CONTRACTOR a reasonable time to make payment to SUBCONTRACTOR. "Reasonable time" shall be determined according to the relevant circumstances, but shall in no event be longer than the time in which SUBCONTRACTOR can exercise its remedies under the mechanic's lien laws, including, its right to assert a mechanic's lien (if applicable), its right to assert a stop notice, and its right to make a claim on any applicable payment bond. Nothing contained herein shall be interpreted as releasing or waiving any statutory mechanic's lien, bond or stop notice right reserved to Subcontractor under the law. SUBCONTRACTOR agrees to preserve and maintain its mechanics' lien and stop notice rights with respect to the project and to exercise and exhaust those rights in the event that CONTRACTOR does not pay SUBCONTRACTOR sums due under the Subcontract as a result of payment default on the part of the Owner under the Prime Contract. CONTRACTOR and SUBCONTRACTOR mutually agree, to the maximum extent allowed by law, that each of them shall assume the risk of Owner insolvency and/or refusal to pay to the extent of their respective interest in Project Funds, and that if CONTRACTOR'S or SUBCONTRACTOR'S remedies for a mechanics lien or stop notice should prove insufficient to secure payment of outstanding amounts, any further payment obligation under this Agreement, beyond what may be available under such lien remedies, shall be excused.

SECTION E – GENERAL SUBCONTRACT PROVISIONS

1. **INSURANCE** – SUBCONTRACTOR shall at all times carry on all operations hereunder, such insurance as is set forth in Appendix A to this agreement, made a part hereof and fully incorporated herein by this reference or required by the Contract documents, whichever is greater. The requirements for carrying the insurance as set forth in Appendix A shall not derogate from any provisions for defense or indemnification of CONTRACTOR by SUBCONTRACTOR pursuant to the terms of this Agreement.

2. **RISK FOR WORK PERFORMED.** The work performed by Subcontractor shall be at the risk of the Subcontractor and its employees and agents exclusively. All work covered by this Agreement done at the site or in preparing or delivering materials or equipment to the site shall be at the sole risk of Subcontractor until the completed work is accepted by Contractor.

3. **INDEMNITY.** SUBCONTRACTOR is not responsible to defend or indemnify CONTRACTOR (and its officers, directors, shareholders, employees, agents and assigns - collectively referred to as "The Indemnified Party") for claims which arise solely from the sole negligence or willful misconduct of Indemnified Party. SUBCONTRACTOR is only responsible to defend and indemnify Indemnified Party from and against liability for any and all Claims which arise out of Subcontractor's acts and omissions in its performance of this Agreement. (The term "Claim" is defined as actions, assessments, actions by governmental authorities, proceedings before administrative agencies, fines, penalties, demands, liabilities, claims, damages, costs, losses and expenses, including but not limited to attorney's fees and costs.) To the extent a Claim involves both the acts or omissions of the SUBCONTRACTOR and acts or omissions of others, including but not limited to Indemnified Party, SUBCONTRACTOR's duty to indemnify is limited solely to the Claims, or portions of Claims, to which SUBCONTRACTOR's acts or omissions caused or contributed, and the parties to this agreement agree to follow the procedures set forth in law as set forth in California Civil Code § 2782.05, so the SUBCONTRACTOR will pay only those parts of defense costs and indemnity for which its acts or omissions, in whole or in part, caused or contributed. SUBCONTRACTOR's duty to defend will not arise until Indemnified Party provides written notice of a Claim to the SUBCONTRACTOR and how that Claim implicates SUBCONTRACTOR's scope of work. Indemnified Party also will provide a written statement regarding how it determined SUBCONTRACTOR's reasonable allocated share of defense costs. The Indemnified Party shall in their sole and complete discretion select attorneys at law to defend the Indemnified Party against the Claim ("Counsel") at commercially reasonable rates and shall solely control the litigation. The Indemnified Party may change Counsel at any time, but agree, at all times, to retain counsel experienced in construction litigation. The Indemnified Party and SUBCONTRACTOR hereby waive any conflict that may arise from this representation. Upon a final decision determining the Claim in favor of the Claimant, SUBCONTRACTOR'S proportionate share of such fees and costs will be reallocated to be consistent with SUBCONTRACTOR'S proportionate liability for the Claim as determined by the trier of fact (arbitrator, judge, or jury) of the Claim. In lieu of paying these costs and fees, and on 30 days' notice thereof, SUBCONTRACTOR may elect to defend the Claim with counsel of its choice and at its own expense pursuant to § 2782.5(e)(1). Nothing in this paragraph limits the defense and/or additional insured obligations of any applicable insurer, including, but not limited to, SUBCONTRACTOR'S insurer.

4. **BONDING OF SUBCONTRACTORS** – Concurrently with the execution of this Agreement, or at any time during its performance, SUBCONTRACTOR shall, if required by CONTRACTOR, execute a Labor and Material Bond and a Faithful

Performance Bond in an amount equal to one hundred percent (100%) of the Contract Price in Section C. The bonds shall be executed by a corporate surety acceptable to CONTRACTOR, shall be in a form satisfactory to CONTRACTOR, and shall be provided within ten (10) days. Failure to provide or properly maintain bonds shall be a material breach of contract. CONTRACTOR shall pay the bond premium in an amount not to exceed the National Board or Surety standard bond rate, unless otherwise provided herein or in the Contract Documents. No alteration of this Subcontract including any change in the Subcontract; schedule or time for performance of this Subcontract or the work herewith will exonerate the surety or any bond furnished by the SUBCONTRACTOR.

5. TIME – Time is of the essence of this Agreement. SUBCONTRACTOR agrees to perform its work so that the entire contract may be timely performed by CONTRACTOR. While CONTRACTOR will make good faith efforts to schedule each subcontractor's work in a manner convenient for each subcontractor, CONTRACTOR has the duty to complete the prime contract in a timely manner and so has the sole right under this Agreement to schedule SUBCONTRACTOR's work with that of all other subcontractors in a manner which, in CONTRACTOR's opinion will facilitate the timely completion of the entire work and not for the benefit of SUBCONTRACTOR or any other subcontractor. CONTRACTOR shall have complete control of the premises on which the work is performed and shall have the right to decide the time or order in which the various portions of the work shall be installed or the priority of the work of SUBCONTRACTOR and other subcontractors, and in general, all matters representing the timely and orderly conduct of the work. Accordingly, the price for this Agreement includes SUBCONTRACTOR performance at any and all times during the prime contract's duration. It shall be SUBCONTRACTOR'S obligation to conform to CONTRACTOR'S schedule, subject to CONTRACTOR'S modifications, which are incorporated herein by this reference and made a part hereof. Failure to comply with the CONTRACTOR'S schedule as required by the Contract documents shall be a material breach of contract.

6. SHOP DRAWINGS. SUBCONTRACTOR shall prepare and obtain approval as required by the Contract Documents for all shop drawings, details, samples, and do all other things necessary and incidental to the prosecution of its work in conformance with the progress schedule. Submission of as-built drawings for work performed during the previous progress or final payment period is an express condition precedent to CONTRACTOR'S duty to make any payment for that payment period.

7. DELAY, DISRUPTION OR INEFFICIENCIES. CONTRACTOR is not responsible to SUBCONTRACTOR for delays, disruptions or inefficiencies caused by Owner, its agents, other subcontractors, or any other party. If the Owner delays or disrupts SUBCONTRACTOR's work or causes SUBCONTRACTOR inefficiencies, at the request of SUBCONTRACTOR, and on condition that CONTRACTOR has sufficient information to ensure that SUBCONTRACTOR's claim has merit and is not a false claim, will pass through SUBCONTRACTOR's claim to the Owner. CONTRACTOR is not liable to compensate SUBCONTRACTOR for such claim except, in the event CONTRACTOR obtains additional compensation from OWNER on account of such extended durations. In such a case, SUBCONTRACTOR shall be entitled to such portion of the additional compensation so received by CONTRACTOR from OWNER as is equitable under all of the circumstances. It is specifically agreed that the failure of CONTRACTOR to present or prosecute any SUBCONTRACTOR claim against Owner for delay, disruption or inefficiencies shall not entitle SUBCONTRACTOR to any claim for damages against CONTRACTOR. In the event CONTRACTOR presents and prosecutes such a claim against OWNER, SUBCONTRACTOR agrees to pay its prorated share of all costs and expenses incurred in the prosecution of the claim, including, but not limited to actual attorneys' fees incurred in good faith, and SUBCONTRACTOR shall fully cooperate with CONTRACTOR in the prosecution of the claim. Contractor is not responsible for any SUBCONTRACTOR claim of delay, disruption or inefficiencies caused in whole or in part by CONTRACTOR's good faith efforts to timely complete the entire project.

8. NO CHANGES IN SUBCONTRACTOR'S WORK WITHOUT CONTRACTOR'S WRITTEN DIRECTION: SUBCONTRACTOR shall adhere strictly to the plans and specifications unless a change is authorized in writing by CONTRACTOR. If SUBCONTRACTOR makes any changes in the work or claims without written direction from CONTRACTOR to the SUBCONTRACTOR to perform that work, SUBCONTRACTOR agrees it will not be paid for that changed work, even if it received verbal direction from CONTRACTOR or any form of direction, written or otherwise, from OWNER or any other person or entity and SUBCONTRACTOR will be solely liable for any claims arising therefrom.

9. CHANGES IN WORK: SUBCONTRACTOR hereby agrees to make any and all changes, and furnish the materials and perform the work to accomplish those changes that CONTRACTOR may require by its written direction, without nullifying this Agreement. No change, alteration or modification in or deviation from this Agreement or the plans and specifications, whether made in the manner herein provided or not, shall release or exonerate, in whole or in part, any surety or any bond given in connection with this Agreement, and neither OWNER nor CONTRACTOR shall be under any obligation to notify the surety or sureties of any such change. If, in performing shop drawings or in performing work in the field, SUBCONTRACTOR discovers any conflict or potential conflict in the plans, specifications and/or field conditions which would cause SUBCONTRACTOR to change its work or to provide any additional work, SUBCONTRACTOR will provide a Request for Information to CONTRACTOR in advance of performing that work and will perform that work pursuant to CONTRACTOR's written direction. SUBCONTRACTOR shall make no changes without CONTRACTOR's written direction. If SUBCONTRACTOR makes any changes in the work or claims without CONTRACTOR's written direction, SUBCONTRACTOR agrees it will be performing contract work and not extra work, even if it received verbal direction from CONTRACTOR or any form of direction, written or otherwise, from OWNER or any other person or entity. SUBCONTRACTOR shall be liable for any and all losses, costs, expenses, damages, fees and liability of any nature whatsoever associated with or in any way arising out of any change it makes without written direction from CONTRACTOR. If the SUBCONTRACTOR initiates a substitution, deviation, or change in the work which affects the scope of the work or the expense of other trades, SUBCONTRACTOR shall be liable for the resulting expense.

10. CHANGES IN WORK BY OWNER: If SUBCONTRACTOR's claim for payment for extra work arises from an act, omission or direction of the OWNER or its agents, including but not limited to Owners' architect or engineer (Owner caused changes), the CONTRACTOR is not liable to SUBCONTRACTOR for costs for this extra work, and CONTRACTOR'S sole duty to the SUBCONTRACTOR is to pass on claims in full compliance with the Contract Documents. The notice provisions in paragraph 11 do not apply to Owner caused changes for which Contractor is not responsible to pay, but the SUBCONTRACTOR must submit its claims for extra work for Owner caused changes sufficiently in advance of the prime contract's notice and claims requirements to allow CONTRACTOR to timely submit those claims to the Owner. SUBCONTRACTOR shall bear its' prorated share of any administrative costs, including attorney's and consultants' fees, required to process the claim pursuant to the Contract Documents. SUBCONTRACTOR agrees that Contractor, in its sole discretion, may settle or otherwise compromise SUBCONTRACTOR's claim that is passed on by CONTRACTOR to the OWNER and SUBCONTRACTOR agrees to accept as full compensation for its claim the sums, if any, paid or SUBCONTRACTOR'S claim as a pro-rata share of the whole of the

CONTRACTOR/OWNER settlement, less chargeable costs and fees. CONTRACTOR has no duty to pass through any SUBCONTRACTOR claim which CONTRACTOR subjectively believes, in good faith, is an invalid or false claim, in whole or in part.

11. NOTICE OF CLAIMS FOR CHANGES IN WORK BY CONTRACTOR. SUBCONTRACTOR agrees its timely written notice as required by this Agreement and by the prime contract are necessary to control costs and administer this contract and are conditions precedent to payment of any amount over and above the contract price from CONTRACTOR unless otherwise stated herein. Within ten (10) days after SUBCONTRACTOR's receipt of (1) a response to its request for information; or (2) a CONTRACTOR written direction; (3) receipt of a proposed change by Owner or CONTRACTOR, or (4) encountering a differing site condition, if SUBCONTRACTOR believes extra-contractual work is required, SUBCONTRACTOR shall notify CONTRACTOR that extra-contractual work is required. Said notice also will include a short explanation of why SUBCONTRACTOR believes the work is extra contractual, and an estimated cost for the extra work. Until CONTRACTOR and SUBCONTRACTOR agree the work is extra-contractual and agree to a price for that extra contractual work, SUBCONTRACTOR will perform the work and submit Daily Work Reports showing the labor and equipment used to perform the work. CONTRACTOR's foreman will verify the Daily Work Orders or note any discrepancies observed so that disputes over quantum may be minimized. Field orders signed by our field personnel constitute written direction to perform the work in accordance with the contract price and do not constitute an acceptance or an agreement that the work directed is extra contractual work. Extra work orders signed by our field personnel serve only as verification of time performed on a specific activity. The above writings and notices are conditions precedent to CONTRACTOR's obligation to pay SUBCONTRACTOR any amounts above the price in this Agreement for claimed extra contractual work. SUBCONTRACTOR's failure to provide any of the written notices described herein is a knowing waiver by SUBCONTRACTOR of any compensation for this claimed extra contractual work from CONTRACTOR other than the Contract Price, even if CONTRACTOR received oral notice and even if CONTRACTOR was not prejudiced by lack of written notice.

12. DAMAGES CAUSED BY SUBCONTRACTOR DELAYS – Should SUBCONTRACTOR default in the proper performance of its work, or otherwise cause delay to the prime contract work, SUBCONTRACTOR shall be liable for any and all loss and damages, including consequential damages and liquidated damages, sustained by CONTRACTOR as a result thereof.

13. LIENS – SUBCONTRACTOR shall at all times indemnify and save CONTRACTOR and OWNER harmless against all liability for claims and liens for labor performed or materials used or furnished to be used on the job, including any costs and expenses for actual attorneys' and consultants' fees incurred in good faith and all incidental or consequential damages resulting to CONTRACTOR or OWNER from such claims or liens. Further, in case legal proceedings on such claim are brought, SUBCONTRACTOR shall defend the suit at its own cost and expense, and will pay and satisfy any such lien or judgment as may be established. SUBCONTRACTOR agrees within ten (10) days after written demand to cause the effect of any legal proceedings or lien to be removed from the premises, and in the event SUBCONTRACTOR shall fail to do so, CONTRACTOR is authorized to use whatever means which in its discretion it may deem appropriate, to cause the lien or legal proceeding to be removed or dismissed, and the costs, together with actual attorneys' and consultants' fees incurred in good faith, shall be immediately due and payable to CONTRACTOR by SUBCONTRACTOR. SUBCONTRACTOR may litigate any such lien or legal proceedings provided it causes the effect thereof to be removed promptly, in advance, from the premises, and shall further do such things as may be necessary to cause OWNER not to withhold any monies due to CONTRACTOR from OWNER by reason of such liens or legal proceedings. It is understood and agreed that the full and faithful performance of this Agreement on the part of SUBCONTRACTOR, including the payment of any obligations due from SUBCONTRACTOR to CONTRACTOR, and any amounts due to labor or material suppliers furnishing labor or material for the work is a condition precedent to SUBCONTRACTOR'S right to receive payment for the work performed, and any monies paid by CONTRACTOR to SUBCONTRACTOR under the terms of this Agreement shall be impressed with the trust in favor of labor and material suppliers furnishing labor and material to SUBCONTRACTOR on the work covered by this agreement.

14. JOINT CHECK/SETOFF CONTRACTOR at its option may issue joint checks payable to SUBCONTRACTOR and any trust referred to herein, sub-subcontractor or material supplier to the extent necessary to assure the payments required to be made under this Agreement are paid.

15. CONTRACTOR'S RIGHT TO CURE – 48 HOUR NOTICE – In the event that SUBCONTRACTOR at any time refuses or neglects to supply a sufficient number of properly skilled workers or a sufficient quantity of materials of proper quality, is adjudicated a bankrupt, or files an arrangement proceeding, commits any act of insolvency, makes an assignment for benefit of creditors without CONTRACTOR'S consent, or fails to make prompt payment to any subcontractors, material suppliers or laborers, fails in any respect to properly and diligently prosecute the work covered by this Agreement, becomes delinquent with respect to contributions or payments required to be made to any Health and Welfare, Pension, Vacation, Apprenticeship or other employee benefit program or trust, fails to pay prevailing wage, fails to provide complete and accurate payroll reports, fails to fulfill any of the provisions of Paragraph 15 of these General Subcontract Provisions, otherwise fails to perform fully any and all the agreements herein contained, or fails to fulfill any other obligation imposed by contract or law, CONTRACTOR will give forty-eight (48) hours written notice to SUBCONTRACTOR to cure. If SUBCONTRACTOR does not cure, CONTRACTOR, at its option, may perform that SUBCONTRACTOR obligation or have that obligation performed by others, and back charge SUBCONTRACTOR for CONTRACTOR's costs, including, without limitation, CONTRACTOR'S 15% for profit and overhead, and attorneys' and consultants' fees actually incurred in good faith, from any money then due or thereafter to become due to the SUBCONTRACTOR under this Agreement. In the event of an emergency affecting the safety of persons or property, no notice referred to in this paragraph shall be required. The rights and remedies afforded to CONTRACTOR by this Agreement are in addition to any right or remedy available to CONTRACTOR by law.

16. MATERIAL BREACH: WITHHOLDING OF PAYMENT: CONTRACTOR may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any payment under SECTION D, to such extent as may be necessary to protect CONTRACTOR from loss, including costs and actual attorneys' fees incurred in good faith on account of any material breach by SUBCONTRACTOR. Without limiting the definition of what a material breach, a material breach includes (1) defective work not remedied; (2) SUBCONTRACTOR's failure to adhere to the CONTRACTOR's schedule; (3) SUBCONTRACTOR's failure to supply sufficient manpower, equipment or supplies; (5) failure of SUBCONTRACTOR to make payments properly to its subcontractors, or for the material, labor, or fringe benefits; (6) a reasonable doubt that this Agreement can be completed for the balance then unpaid; (7) damage to another subcontractor; (8) failure to make any payment to the various Employee Fringe Benefit Trusts, including, but not limited to, Health and welfare, Pension, Vacation, or apprenticeship Trust ; (9) failure of SUBCONTRACTOR to complete the contract in accordance with the Contract Documents. When the above material breaches are cured, or upon completion of the work if this Agreement is terminated, such amounts as are then due

and owing shall be paid or credited to SUBCONTRACTOR. The rights and remedies afforded to CONTRACTOR by this Agreement are in addition to any right or remedy available to CONTRACTOR by law.

17. MATERIAL BREACH: TERMINATION FOR CAUSE: After providing a 48 hour notice to cure and SUBCONTRACTOR failing to cure a material breach as defined in this Agreement, CONTRACTOR may, at its option, terminate SUBCONTRACTOR'S right to proceed with the work and, in that event, CONTRACTOR shall have the right to enter upon the premises of the project and take possession, for the purposes of completing the work included under this Agreement, of all materials, tools, machinery and equipment of SUBCONTRACTOR, and may employ any other person(s) or entity(s) to finish the work and provide the materials therefore. In case of such termination of SUBCONTRACTOR'S right to proceed with the work, SUBCONTRACTOR shall not be entitled to receive any further payment under this Agreement until all the work undertaken by CONTRACTOR in its prime contract is completely finished. At that time, all unused materials and equipment will be returned to the SUBCONTRACTOR and, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by CONTRACTOR for furnishing materials, for finishing the work, for actual attorneys' and consultants' fees incurred in good faith, and for any damages sustained by CONTRACTOR by reason of SUBCONTRACTOR'S default, plus a markup of fifteen percent (15%) General Overhead and Profit on any and all such expenses, any such balance will be paid to SUBCONTRACTOR. But if the aforementioned expenses shall exceed the amount earned and unpaid by SUBCONTRACTOR at the time of termination, SUBCONTRACTOR shall promptly pay to CONTRACTOR the amount by which the expenses exceed the unpaid balance; and CONTRACTOR shall have a lien upon all materials, tools and machinery and equipment taken possession of aforesaid, to secure SUBCONTRACTOR'S payment thereof. The notice referred to in this paragraph will be sufficient and complete when mailed or emailed to SUBCONTRACTOR at the address shown in this Agreement. Should one or more contracts now or hereafter exist between the parties hereto concerning this or any other construction projects, then a breach by the SUBCONTRACTOR of any contract may, at the option of the CONTRACTOR, be considered a breach of all contracts. In such event CONTRACTOR may terminate any or all of the contracts so breached, or may withhold monies due, or to become due, on such contracts, and/or apply the same to offset any payment due on that or any other contract between the parties, or may apply those amounts due toward payment of any damages suffered on that or any other contract between the parties. The rights and remedies afforded to CONTRACTOR by this agreement are in addition to any right or remedy available to CONTRACTOR by law.

18. TERMINATION OF AGREEMENT BY OWNER – In the event the prime contract is terminated prior to its completion, SUBCONTRACTOR shall be entitled only to payment for the work actually completed by it at the prorated contract price for the percentage of work actually completed. Nothing herein contained shall require CONTRACTOR to make any claim against OWNER for additional compensation or damages in the event of termination before completion, and it is specifically agreed that the failure of CONTRACTOR to prosecute any such claim against OWNER shall not entitle SUBCONTRACTOR to any claim for additional compensation or damages against CONTRACTOR.

19. TERMINATION FOR CONTRACTOR'S CONVENIENCE. Notwithstanding the preceding paragraph, CONTRACTOR reserves the absolute right to terminate this Agreement without cause. In the event of termination without cause, SUBCONTRACTOR shall be entitled to payment only as follows: **a.** Cost of the work actually completed in conformity with the agreement. **b.** Plus other costs actually incurred by SUBCONTRACTOR as a direct result of performance of the work, demobilization or preservation of completed work; **c.** Fifteen percent (15%) of costs referred to in Paragraph 1 above, for overhead and profit. There shall be deducted from such sums any payments made to SUBCONTRACTOR prior to the date of termination of this Agreement, and any amounts due from SUBCONTRACTOR to CONTRACTOR on any other contract or obligation then extant. SUBCONTRACTOR shall not be entitled to any claim of lien, against CONTRACTOR or against OWNER for any additional compensation or damages in the event of termination and payment.

20. LABOR RELATIONS -- Employment of labor by SUBCONTRACTOR shall be effected under conditions which are satisfactory to CONTRACTOR. SUBCONTRACTOR shall keep a representative at the jobsite during all times when SUBCONTRACTOR'S work is in progress, and such representative shall be authorized to represent SUBCONTRACTOR as to all phases of the work. Prior to commencement of the work, SUBCONTRACTOR shall notify CONTRACTOR who SUBCONTRACTOR'S representative is to be, and in the event of any change of representative, SUBCONTRACTOR shall notify CONTRACTOR who the new representative is to be prior to such change becoming effective. **SUBCONTRACTOR acknowledges that CONTRACTOR has entered into labor agreements covering work at its construction jobsites with the following labor unions: Carpenters, Laborers, and Operating Engineers. Any work performed by these trades must be performed by union workers.** In addition CONTRACTOR is party to the following labor agreements:.....

SUBCONTRACTOR agrees to comply with all of the terms and conditions of these labor agreements set forth above insofar as SUBCONTRACTOR may lawfully do so, and in particular, agrees to comply with the terms and provisions of the Agreements setting forth the jurisdiction and the scope of work claimed by each of the crafts and the procedure contained therein for resolution of jurisdictional disputes. In the absence of any such procedure, or if such procedure fails to promptly resolve the jurisdictional dispute, SUBCONTRACTOR agrees, at its own cost and expense, upon request of CONTRACTOR, to take any and all lawful steps to secure a binding and final determination of the jurisdictional dispute by the National Labor Relations Board. Should there be picketing on the CONTRACTOR'S jobsite, and the CONTRACTOR establishes a reserved gate for the SUBCONTRACTOR'S purposes, it shall be the obligation of the SUBCONTRACTOR to continue the proper performance of its' work without interruption or delay. Should SUBCONTRACTOR'S presence of activity cause a labor-related problem at the construction site, the SUBCONTRACTOR shall bear the full costs thereof. SUBCONTRACTOR shall also promptly obtain, and pay the full costs of, any court orders necessary to restrain acts in violation of the law resulting from SUBCONTRACTOR'S presence or activities. SUBCONTRACTOR shall be bound by all relevant local, state and federal laws governing labor relations, and shall fully indemnify and hold CONTRACTOR harmless from and against claims, liability, loss, damage, costs, expenses, including attorneys' fees actually incurred in good faith, awards, fines or judgments arising by reason of any violation of such laws, or failure to fulfill the covenants set forth in this paragraph. SUBCONTRACTOR further promises and agrees that it will bind and require all of its subcontractors and their subcontractors performing jobsite work of the type covered by this Agreement, to agree to all of the foregoing promises and undertakings, to the same effect as herein provided with respect to SUBCONTRACTOR.

21. WORKMANSHIP – Every part of the work herein described shall be executed in strict accordance with the Contract Documents in the most sound, workmanlike and substantial manner. All workmanship shall be the best of its several kinds, and all materials used in the work herein described shall be furnished in ample quantities to facilitate the proper and expeditious execution of the work, and shall be new and the best of their respective kinds, except such materials as may be expressly provided in the Contract Documents to be otherwise. CONTRACTOR shall establish principal axis lines and levels whereupon

SUBCONTRACTOR shall lay out and shall be strictly responsible for the accuracy of its work and for any loss or damage to other contractors engaged in work on the site by reason of failure of SUBCONTRACTOR to set out or perform its work correctly. SUBCONTRACTOR shall exercise prudence so that actual final conditions and details shall result in perfect alignment of finished surfaces.

22. PROVISION FOR INSPECTION – SUBCONTRACTOR shall furnish to CONTRACTOR and its representatives ample facilities at all times for inspecting materials at the site of construction, at the shops, or any place where materials under this Agreement may be in course of preparation, process, manufacture or treatment. SUBCONTRACTOR shall further furnish to CONTRACTOR as often as required, full reports of the progress of the work at any place where materials under this Agreement may be in the course of preparation or manufacture; the reports shall show the progress of such preparation and manufacture in such details as may be required by CONTRACTOR, including any plans, drawings or diagrams made in course of preparation. The making or failure to make any inspection of or payment for or acceptance of the materials shall not impair CONTRACTOR'S right to later reject non-conforming materials, or to avail itself of any other remedy which CONTRACTOR may be entitled, notwithstanding CONTRACTOR'S knowledge of the nonconformity, its substantiality, or the ease of its discovery. SUBCONTRACTOR shall be liable for all inspection, reshipment and return costs on non-conforming materials. SUBCONTRACTOR shall not replace returned materials unless so directed by CONTRACTOR in writing. CONTRACTOR shall retain all rights granted herein notwithstanding the provisions of Paragraph N of this Agreement.

23. MATERIALS AND EQUIPMENT – In the event the scope of work includes installation of materials or equipment furnished by others, it shall be the responsibility of SUBCONTRACTOR to examine the items provided, and handle, store and install the same with such skill and care as to ensure a satisfactory installation. Loss or damage due to acts of SUBCONTRACTOR shall be charged to the account of SUBCONTRACTOR and deducted from monies due under this Agreement. Title to any goods or materials intended to be incorporated into the Project shall pass to CONTRACTOR once the goods or materials are capable of being identified as intended for the Project, but SUBCONTRACTOR shall be required to maintain insurance on and bear the risk of loss of or harm to any such goods and materials, as elsewhere set forth in this agreement, for any and all applicable time periods, but in any event, until completion of the Project, as defined in the Contract Documents. The provisions of this paragraph shall not nullify or modify any other provisions of this Agreement which shall remain in full force and effect.

24. PROTECTION OF WORK – SUBCONTRACTOR shall effectively secure and protect the work done pursuant to this Agreement and assume full responsibility for the condition of its work until final acceptance by ARCHITECT, OWNER, and CONTRACTOR. SUBCONTRACTOR further agrees to provide such protection as necessary to protect the work and the workers of the CONTRACTOR and other subcontractors from its operations. SUBCONTRACTOR shall be liable for any loss or damage to any of its work in place or to any of its equipment or materials on the jobsite, and shall be liable for any work of others which SUBCONTRACTOR damages. SUBCONTRACTOR shall promptly repair or replace any damaged work, property or materials.

25. USE OF CONTRACTOR'S EQUIPMENT – The SUBCONTRACTOR, its agents, employees, subcontractors or suppliers shall not use the CONTRACTOR'S equipment without the express written permission of the CONTRACTOR'S designated representative. SUBCONTRACTOR shall be fully responsible for and shall be deemed to have inspected any such equipment and accepts the use of such equipment as is. If the SUBCONTRACTOR, or any of its agents, employees, suppliers, or subcontractors utilize any machinery, equipment, tools, scaffolding, hoists, or similar items owned, leased or under the control of CONTRACTOR, SUBCONTRACTOR shall act as an independent contractor solely responsible for the safety thereof, and shall be primarily liable for any loss or damage (including personal injury or death) which may arise from such use regardless of who is operating any of CONTRACTOR'S equipment under SUBCONTRACTOR'S control, and shall fully indemnify and hold CONTRACTOR harmless, pursuant to the provisions.

26. CLEAN-UP - During the course of construction, SUBCONTRACTOR shall remove waste materials from the site as often as is necessary to maintain the premises in a clean and orderly condition. Upon completion of the work under this Agreement, SUBCONTRACTOR shall remove from the site all temporary structures, debris and waste incident to his operation and clean all surfaces, fixtures, equipment, etc., relative to the performance of this Agreement. If SUBCONTRACTOR fails to perform a clean-up function within two (2) days after notification from CONTRACTOR to do so, CONTRACTOR may proceed with that function as it judges necessary in the manner it may deem expedient, and the cost thereof shall be charged to SUBCONTRACTOR and deducted from the monies due under this Agreement.

27. GUARANTEE – SUBCONTRACTOR guarantees all materials and workmanship and agrees to replace at its sole cost and expense, and to the satisfaction of CONTRACTOR, any and all materials adjudged defective or improperly installed, during a period of ten (10) years from completion and acceptance of the work covered by the prime contract, in the case of construction of single family homes governed by SB 800; otherwise one (1) year. If, however, the period of guarantee in the Contract Documents exceeds one (1) year, SUBCONTRACTOR shall be bound during the longer period stipulated. SUBCONTRACTOR shall further guarantee to Contractor the materials and workmanship of all repair work done pursuant to this provision for a period of time in which the statute of limitation or repose is extended by these repairs, or an additional eighteen (18) months, whichever is later. SUBCONTRACTOR acknowledges and agrees that CONTRACTOR'S damages for breach of this guarantee will include, but not limited to, costs to defend any claim of defective construction. If builder has instituted an agreement pursuant to SB 800 or an enhanced protection agreement pursuant to SB 800, SUBCONTRACTOR agrees to be bound to its term.

28. INDEMNIFICATION FROM PATENT RIGHTS – SUBCONTRACTOR shall defend, indemnify and hold CONTRACTOR harmless against any claim, suit or action, or any alleged violation or infringement of patent rights which may be made against CONTRACTOR by reason of the use in connection with or as part of the performance of the work or the furnishing of the material hereunder, of anything which is now or may hereafter be covered by patent, copyright or trademark, and also against all expenses, including actual attorneys' fees incurred in good faith, which CONTRACTOR may incur in defending or adjusting any claim, suit or action.

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

paragraph. CONTRACTOR may assign or transfer the whole or part of this Agreement, and its rights hereunder, to any corporation, individual or partnership.

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

31. WAIVER - Any act or omission of CONTRACTOR which SUBCONTRACTOR might claim as an excuse for its own failure to perform shall be deemed waived by SUBCONTRACTOR unless it shall notify CONTRACTOR in writing of its intention to assert such excuse within ten (10) days after the occurrence of any such act or omission. No delay or omission on the part of CONTRACTOR in exercising any of its rights hereunder, nor the acquiescence in or waiver by CONTRACTOR of a breach of any term or condition of this agreement shall be deemed or construed to operate as a waiver of such rights or acquiescence thereto except in the specific instance for which given. CONTRACTOR's payment of one or more SUBCONTRACTOR claim for which SUBCONTRACTOR failed to provide notice is not a waiver of SUBCONTRACTOR's obligation to provide notices as required herein as to any other SUBCONTRACTOR claim. SUBCONTRACTOR waives any right it might have to assert the provisions of CALIFORNIA CIVIL CODE Sec. 1654 against CONTRACTOR.

32. ATTORNEYS' FEES – In the event either CONTRACTOR or SUBCONTRACTOR institutes legal proceedings, whether by court action, arbitration, or otherwise, against the other party, or against the surety of the other party, in connection with any dispute or matter arising under this Agreement, the non-prevailing party shall bear attorneys' fees and costs incurred.

33. DISPUTES –In the event that the CONTRACTOR and OWNER arbitrate a controversy that, in CONTRACTOR'S opinion, involves SUBCONTRACTOR'S performance, Subcontract requirements and/or claims arising thereunder, then CONTRACTOR may join SUBCONTRACTOR as a party to the arbitration. SUBCONTRACTOR agrees and consents to such joinder. In the event SUBCONTRACTOR is so joined, SUBCONTRACTOR shall be bound and abide by the terms, administration, conditions and rules of arbitration, and the award of the arbitrators shall be final and binding with respect to all claims and issues presented or which were capable of presentation in the proceedings. If the SUBCONTRACTOR does not participate as a party in the CONTRACTOR and OWNER arbitration, SUBCONTRACTOR agrees to fulfill its duties and obligations under Paragraph 10 above and cooperate with CONTRACTOR in presenting and defending claims in arbitration. SUBCONTRACTOR hereby agrees to be bound by the arbitration award, and to accept, as its full compensation for any claim, its pro-rata share of the arbitration award. If at any time any controversy shall arise between CONTRACTOR and SUBCONTRACTOR regarding anything pertaining to this Agreement which the parties hereto do not promptly adjust and determine, or which the OWNER's representative or ARCHITECT cannot decide to the satisfaction of both parties, then the written orders of CONTRACTOR to SUBCONTRACTOR shall be followed until the work under this Agreement is completed, at which time, the parties will mediate any and all disputes. CONTRACTOR will have the right to audit SUBCONTRACTOR's books and records which relate to any SUBCONTRACTOR claim for extra contractual payment. If mediation fails, the parties will resolve their disputes as provided by law.

34. SAFETY – SUBCONTRACTOR is solely responsible for the safety of its employees, the employees of its subcontractors and of all persons it invites or allows on the project site, or invited or allowed on the project site by any of its subcontractors. SUBCONTRACTOR shall at its own expense, comply with CONTRACTOR'S project safety program and all specific safety requirements, laws regulations, rules or ordinances, promulgated by any government authority, whether state, federal or local, now existing or subsequently enacted. SUBCONTRACTOR shall be fully responsible for compliance with the provisions of this paragraph by itself, its agents, employees, material suppliers, and sub-subcontractors with respect to its portion of its work, and shall pay, respond to, or defend any citation, assessment, fine or penalty relating to the failure of any person or entity listed hereunder to so comply. SUBCONTRACTOR shall conform to the Equal Employment Opportunity policies of the CONTRACTOR and all state, federal and local laws, rules, regulations, plans, programs, standards and regulations now existing or subsequently enacted. SUBCONTRACTOR shall be fully responsible for compliance hereunder by itself, its agents, employees, material suppliers and sub-subcontractors with respect to its portion of the work, and shall pay, respond to, or defend any citation, assessment, fine, penalty, order, claim, charge or criminal or civil action, arising by reason of the failure of any party named hereunder to so comply. SUBCONTRACTOR shall defend, indemnify and hold harmless CONTRACTOR from and against any liability, loss, including any loss of profits or prospective advantage, occasioned by the suspension, cancellation or termination of any contract, or CONTRACTOR'S eligibility therefore, damage, costs, claims, awards, judgments, fines, expenses, including attorney's fees actually incurred in good faith, claims or liability for harm to persons or property; expenses incurred pursuant to or attendant to any hearing or meeting or other applicable costs which may be incurred by CONTRACTOR resulting from SUBCONTRACTOR'S failure to fulfill the covenants set forth in this paragraph.

SUBCONTRACTOR'S responsibility to receive, respond to, and defend any citation, order, claim, charge or action arising from failure to comply with the provisions of this paragraph, regardless of whether such non-compliance results from its active or passive acts or omissions or whether such non-compliance is the sole or contributing cause of any of those matters against which SUBCONTRACTOR is obligated hereunder to indemnify and hold harmless CONTRACTOR.

CONTRACTOR may, in its discretion, exercise the rights and remedies provided under the terms of this Agreement, including, but not limited to, the rights and remedies provided in Paragraph 13 of this Agreement, for failure to comply with any citation, rule, law, regulation, standard, ordinance, program, or plan.

35. USE OF CONTRACTOR'S EQUIPMENT- Any and all use of CONTRACTOR'S equipment by SUBCONTRACTOR must be authorized in writing by CONTRACTOR or an authorized representative of CONTRACTOR. Such authorization shall be in writing, and if the circumstances of said use of CONTRACTOR'S equipment are such that it is not commercially reasonable to obtain written authorization prior to use, then SUBCONTRACTOR shall obtain retroactive written authorization within twelve (12) hours of said use. SUBCONTRACTOR shall be responsible for payment to CONTRACTOR of the standard rental rates for the time of use of CONTRACTOR'S equipment, which SUBCONTRACTOR agrees and acknowledges may be deducted from any payment due to SUBCONTRACTOR for the payment period immediately proceeding said use.

SUBCONTRACTOR expressly agrees to indemnify and hold CONTRACTOR, and any Indemnified Party (as defined herein), harmless from and against any and all Claims arising out of or related to SUBCONTRACTOR'S use, whether authorized or unauthorized, of CONTRACTOR'S equipment. This indemnity obligation is only limited by California law and will only be inapplicable in the event a Claim is determined by final adjudication to be caused by the sole negligence or willful misconduct of CONTRACTOR or an Indemnified Party.

In the event of SUBCONTRACTOR'S unauthorized use (which shall mean any use not authorized in writing as required herein) of CONTRACTOR'S equipment, SUBCONTRACTOR hereby expressly waives and releases any and all Claims, causes of actions, or rights it may have against CONTRACTOR related to any Claim arising out of or related to such unauthorized use.

SUBCONTRACTOR expressly agrees to defend CONTRACTOR, with counsel of CONTRACTOR'S choosing, in the event of any Claim made arising out of or related to SUBCONTRACTOR'S use, whether authorized or unauthorized, of CONTRACTOR'S equipment. Said defense obligation shall be immediate upon written tender of same to SUBCONTRACTOR, and shall include CONTRACTOR'S attorneys' fees, administrative fees and costs, litigation or dispute resolution costs, consultant and/or expert costs, and any other costs or fees reasonably necessitated by a Claim arising out of or related to SUBCONTRACTOR'S use of CONTRACTOR'S equipment.

SUBCONTRACTOR agrees and acknowledges that this section thirty-five (35) of this AGREEMENT is material, and will be included in any lower-tier subcontract between SUBCONTRACTOR and any and all of its sub-subcontractors, with SUBCONTRACTOR'S lower-tier sub-subcontractors expressly agreeing to perform the obligations of SUBCONTRACTOR under this section, and be bound to CONTRACTOR by the same terms set forth in this section. SUBCONTRACTOR shall provide written verification to CONTRACTOR that it has fulfilled this requirement within twenty-four hours of a demand by CONTRACTOR for said verification.

SECTION F – SPECIAL PROVISIONS

INCLUSIONS/EXCLUSIONS PER QUOTE DATED

APPENDIX D – (CERTIFIED PAYROLL SUBMISSION REQUIREMENTS) IS HEREBY INCORPORATED INTO THIS AGREEMENT.

Copies of DIR generated Certified Payroll, with employee information shown, must be sent to the General Contractor along with associated DIR upload confirmations (DIR#282878).

eCPR website: <https://efiling.dir.ca.gov/eCPR/pages/home.jsp>

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS THE JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT IS FILED WITHIN THREE 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 2600, SACRAMENTO, CA 95825

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

SUBCONTRACTOR

CONTRACTOR

BHM CONSTRUCTION, INC.

By _____

By _____

(Name)

JEFFERY MAZET
(Name)

(Title)

PRESIDENT
(Title)

Fed ID # _____

Contractor's State License No. _____

CONTRACTOR'S STATE LICENSE NO. 900404

Contractor's Registration No. _____

Corporation Partnership Proprietorship

Corporation Partnership Proprietorship

Date: _____

Date: _____

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