

RESOLUTION NO. 75009

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CONSENTING TO THE SUBCONTRACTOR SUBSTITUTION REQUEST OF WEST BAY BUILDERS, INC. PROVIDED THAT THE SUBCONTRACTOR GREEN GROWTH INDUSTRIES, INC. IS FIRST GIVEN A REASONABLE OPPORTUNITY TO EXECUTE A SUBCONTRACT WITHOUT CERTAIN BOND REQUIREMENTS

WHEREAS, on June 23, 2009, the City Council of the City of San José ("City") commenced a hearing in accordance with Section 2-1.15B of the City of San José Department of Public Works Standard Specifications (July 1992) on whether to consent to the request of West Bay Builders, Inc. ("WBB") to substitute Jensen Corporation for Green Growth Industries, Inc. ("GGI"); and

WHEREAS, as part of the hearing the City Council received and considered the following: (1) numerous documents from WBB and GGI, all of which are part of the public record, submitted in support of their respective positions, and (2) the reports and recommendation of the Director of Public Works; and

WHEREAS, the City Council allowed the representatives of WBB and GGI to be heard and to present additional arguments and evidence at the hearing;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

1. After considering the evidence presented to the City Council at the hearing, the City Council finds that the following are the relevant facts with regard to resolving the matter:

- A. On or about November 20, 2007, the City awarded a contract to WBB to construct the Happy Hollow Park & Zoo – Zoo and Attractions Project (“Project”).
- B. In its bid proposal to the City for the Project, WBB listed GGI as the subcontractor that would perform certain landscape, irrigation and green roof work.
- C. On or about July 20, 2007, WBB sent an “Invitation To Bid” to GGI. The Invitation To Bid contained no reference to any requirement for GGI to provide bonds.
- D. GGI’s subcontractor bid proposal to WBB, dated August 9, 2007, expressly excluded “Permits/Bonds.”
- E. On or about December 7, 2007, WBB sent GGI its standard subcontract (“Subcontract”) with a cover letter requesting that GGI not make any change to it without first discussing the change with WBB.
- F. The Subcontract contained a requirement that GGI obtain bonds.
- G. On May 20, 2008, WBB issued a “Change Order No. 2” to GGI specifically incorporating into the Subcontract the City’s insurance excess liability limits of \$5,000,000.00.
- H. WBB submitted copies of a series of e-mails between Clayton Fraser of WBB and GGI dated between March 12, 2008 and September 11, 2009 in which WBB requested GGI to provide bonds. In none of the e-mails did GGI agree to provide bonds.
- I. WBB made a number of requests for GGI to sign and return the Subcontract.
- J. During April, 2009, GGI returned to WBB an executed copy of the Subcontract with a number of changes, including striking out the bonding requirement, modifying the compensation provision and altering the insurance requirement. A copy of the Subcontract, with GGI’s modifications, is attached to this Resolution as Attachment 1.

- K. The Subcontract returned by GGI to WBB made no mention of Change Order No. 2.
- L. WBB did not respond to GGI regarding GGI's changes to the Subcontract.
- M. WBB sent a letter to the City on May 5, 2009 requesting the substitution of GGI with Jensen Corporation based on GGI's refusal to procure bonds at WBB's expense. The letter cited to Public Contract Code Section 4107(a)(1)(3)(4) and Section 4108(a) and (b).
- N. In a letter dated May 5, 2009 to WBB, GGI stated:

When you requested a bond from us on this project I informed you that we were reluctant to tie up our bonding capacity on subcontract work, knowing that we need this capacity for prime projects we are pursuing. I also did not agree with this request considering our proven history with West Bay and the fact that there was no communication of bonding being a requirement at bid time. . . . [¶] . . . West Bay Builders as the prime contractor is required to specify bond requirements prior to bid time pursuant to section 4108 of the public contract code. If we had been notified of this requirement for bonding as a subcontractor this would have given us the opportunity to weigh out our options of whether or not to bid on this project at that time.
- O. By letter dated May 8, 2009 to the City, GGI objected to WBB's request for substitution.
- P. In two letters in support of its request for substitution dated May 26, 2009 and May 14, 2009 respectively, WBB asserts – without reference to any supporting record(s) - that it requested GGI to provide bonds and GGI promised to do so.
- Q. In the letters dated May 26, 2009 and May 14, 2009 respectively in support of its request for substitution, WBB expanded the basis of its substitution request to include GGI's modifications to the compensation provision and the insurance requirement of the Subcontract.

2. The City Council concludes and finds, based on the analysis of the above facts in regard to WBB's request for substitution:
 - A. Pursuant to Section 2-1.15B.1(a) of the City's Standard Specifications, which is similar in material respects to California Public Contract Code Section 4107(a)(1), the City Council may consent to WBB's request for substitution if it determines:
 1. That WBB presented GGI with a written contract based upon the general terms, conditions, plans and specifications for the Project and the terms of GGI's written bid; and
 2. That GGI failed and/or refused to execute the written agreement after being given a reasonable opportunity to do so.
 - B. Pursuant to Section 2-1.15B.1.(d), which is similar in material respects to California Public Contract Code Section 4107(a)(4), WBB was required to inform GGI of the bonding requirement before the City opened bids for the Project.
 - C. WBB could not require GGI to provide bonds because GGI's written bid proposal expressly excluded "Permits/Bonds" and because WBB did not inform GGI of any bonding requirement before the City opened bids on the Project.
 - D. Nothing in the documents submitted by WBB or GGI demonstrates that, after the City awarded the construction contract for the Project to WBB, GGI agreed to provide WBB with the bonds specified in the Subcontract.
 - E. The Subcontract WBB sent to GGI gave GGI an option with regard to providing insurance, and GGI's modifications to the insurance provisions reflected its election of one insurance option over the other.
 - F. GGI neither expressly agreed nor disagreed with the insurance requirements contained in Change Order No. 2.
 - G. GGI's changes to the compensation provision constitute material changes to the method of compensation.

3. Based on the above-stated findings, the City Council concludes as follows:
 - A. The failure of GGI to provide bonds and the striking by GGI of the bond requirement from the subcontract do not provide an appropriate basis for the City to consent to WBB's request for substitution.
 - B. WBB and GGI failed to reach agreement on the insurance and compensation requirements contained in the Subcontract.
 - C. GGI was not given a reasonable opportunity to execute a subcontract meeting the requirements of Section 2-1.15B.1(a) because WBB never provided GGI with a subcontract that did not contain the bonding requirement.

4. For all of the above reasons, the City Council hereby determines as follows:
 - A. The City Council consents to the substitution provided that WBB first gives GGI an opportunity to execute the Subcontract without the bonding requirement.
 1. If GGI refuses or fails to execute the Subcontract without the bonding requirement, then the City Council's consent to the substitution shall become effective.
 2. If GGI executes the Subcontract without the bonding requirement, and with the compensation and insurance provisions contained in the Subcontract originally provided to GGI, as otherwise modified by Change Order No. 2, then the City Council's consent to the substitution shall be withdrawn.
 - B. The City Council delegates full authority to City staff to conduct an administrative hearing by 5:00 p.m. on Friday June 26, 2009 to determine if 4.A.1 or 4.A.2 has occurred.

ADOPTED this 23rd day of June, 2009, by the following vote:

AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA,
LICCARDO, NGUYEN, OLIVERIO, PYLE, REED.

NOES: NONE.

ABSENT: CHIRCO.

DISQUALIFIED: NONE.

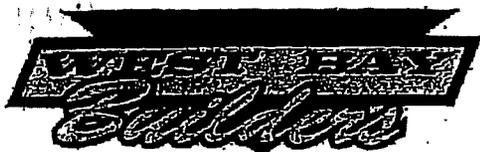
ATTEST:



LEE PRICE, MMC
City Clerk



CHUCK REED
Mayor



25009
250 Bel Marin Keys Blvd.
Building A
Novato, CA 94949
Phone: (415) 456-8972
Fax: (415) 459-0665
General Contractor
License Number 626859

Subcontract Agreement

Subcontract No.283 C028105

THIS AGREEMENT, made and entered into at Novato, CA, this 7th day of December 2007, by and between West Bay Builders, Inc., hereinafter called CONTRACTOR, with its principal office at 250 Bel Marin Keys Boulevard, Novato, CA, and Green Growth Industries, Inc., 57 California Avenue, Suite J, Pleasanton, CA 94566 hereinafter called SUBCONTRACTOR.

RECITALS

On or about the 20th day of November, 2007 West Bay Builders, Inc., CONTRACTOR entered into a prime contract with City of San Jose Department of Public Works, hereinafter called OWNER, whose address is 200 East Santa Clara Street, 6th Floor, San Jose, 95113, to perform the following construction work, hereinafter called PROJECT:

**Happy Hollow Zoo and Park
Zoo and Attractions Package
1300 Senter Road
San Jose, CA 95113
WBB #283**

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 The Portico Group, ARCHITECT, whose address is 15400 4th Avenue, 3rd Floor, Seattle, WA 98101.

SECTION 1 - ENTIRE CONTRACT

SUBCONTRACTOR certifies that it is fully familiar with all of the terms, conditions and obligations of the Contract Documents, as hereinafter defined, the location of the job site, and the conditions under which the work is to be performed, and that it enters into this Agreement based upon its reasonable investigation of all of such matters and is in no way relying upon any opinions or representations of CONTRACTOR. This Agreement represents the entire agreement. The Contract Documents are incorporated into this Agreement by reference, with the same force and effect as if they were set forth at length herein, and SUBCONTRACTOR and its subcontractors will and are bound by any and all of the Contract Documents insofar as they relate in any part or in any way, directly or indirectly to the work covered by this Agreement. SUBCONTRACTOR agrees to be bound to CONTRACTOR in the same manner and extent as CONTRACTOR is bound to OWNER under the Contract Documents, to the extent the work provided for in this Agreement, and that where, in the Contract Documents reference is made to CONTRACTOR and the work or specification therein pertains to 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 Subcontract, the SUBCONTRACTOR shall be governed by the provisions imposing the greater duty on the SUBCONTRACTOR. The phrase "Contract Documents" is defined to mean and include this Agreement, together with any exhibits or addenda thereto, the prime contract, together with its general, supplementary and other conditions, addenda and modifications, plans and specifications.

SECTION 2 - SCOPE

SUBCONTRACTOR agrees to furnish all labor, services, materials, 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 landscape, irrigation, palm tree re-location, crushed stone surfacing and miscellaneous site furnishings and greenroof planting and irrigation for the project in strict accordance with the Contract Documents and as more particularly, though not exclusively, specified in Section(s): 02481 - Tree and Palm Relocation, 02505 - Crushed Surfacing, 02810 - Irrigation, 02870 - Site Furnishings, 02920 - Soil Preparation, 02930 - Trees, Palms, Shrubs, and Ground Covers, 02950 - Sodding, 07110 - Fire Applied Waterproofing.

ACCEPTANCE

RECEIVED

APR 13 2009

Subcontractor *[Signature]*

WEST BAY BUILDERS, INC.

Not Approved

SECTION 3 - CONTRACT PRICE

CONTRACTOR agrees to pay SUBCONTRACTOR for the strict performance of its work, the sum of one million, five hundred seventy-one thousand, six hundred thirty-seven and No/100 dollars (\$1,571,637), 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 4.

OK

SECTION 4 - PAYMENT SCHEDULE *Progress payments to be every 30 days not to exceed 45 days and Final Retention due ONCE G.I. FINAL INSPECTION PASSES* *NO*

OK

CONTRACTOR agrees to pay SUBCONTRACTOR in monthly payments of 90% of labor and materials, which have been placed in position and for which the right to payment has been properly documented pursuant to the terms of this agreement. No payment made prior to completion and acceptance of the work shall be construed as evidence of acceptance of any part of SUBCONTRACTOR'S work. Payment is contingent upon SUBCONTRACTOR providing the Standard West Bay Builders, Inc. conditional and unconditional lien releases (copies attached), Insurance certificates, Union status letters, and its certified payrolls for any and all of its vendors and subcontractors by the 20th day of the month being billed for, as applicable. Further, unconditional lien releases signed by SUBCONTRACTOR shall serve as proof of payment through the effective time period in the body of the release. CONTRACTOR shall be entitled to use said releases as proof of payment in full for the effective time period, effectively barring late submitted certified payroll, change orders and any claims for additional compensation, unless detailed specifically in writing on the face of the release and in accordance with the subcontract provisions, including submissions deadlines. At the conclusion of the Project SUBCONTRACTOR is required to endorse the standard CONTRACTOR form entitled "Application for Full and Final Payment" as a condition precedent to final payment.

SECTION 5 - WAGE RATE DECISIONS / PREVAILING WAGE / CERTIFIED PAYROLL REPORTS

SUBCONTRACTOR is responsible for following the guidelines of the California Labor Codes, including overtime hours, apprentice requirements, etc... (Attached is an excerpt of the Labor Codes for SUBCONTRACTOR to review and initial). The General Wage Decision applicable to this contract is: California Director of Industrial Relations County of Santa Clara for 2007-1 until superseded by a new determination issued by the Director of Industrial Relations. SUBCONTRACTOR agrees to submit certified payroll reports to CONTRACTOR no later than three (3) working days after labor has been paid.

SECTION 6 - GENERAL SUBCONTRACT PROVISIONS

The General Subcontract Provisions are an integral part of this Agreement.

SECTION 6.1 - EXCLUSIONS

- Hot or cold taps
- Water meters / *SLAPPY OF WATER* (S) *OK*
- Import topsoil
- Off haul of debris or spoils
- Demo work
- Electrical work
- Permits/bonds
- Watering and/or maintenance of existing landscape during construction
- Pre-cast seat wall
- Backflow
- Concrete work
- Select rock
- Tree protection
- Tree trimming
- Tree removal / transplant (except palm trees)
- Coring, boring, drilling, cutting, patching, digging through or hauling of AC, concrete or rock
- Traffic control
- Erosion control
- Signage *OF ANY TYPE* (M) *OK*
- Trench plating
- Drainage *OF ANY TYPE*
- Clearing and grubbing
- Riparian woodland planting and irrigation
- Gate valve P.O.C.

Subcontractor *[Signature]*

- Rough grading (grade is to be received by SUBCONTRACTOR at ~~7~~- 1/10 of 1'-0" of finish grade and sloped to drain)
- Surveying, bench marks, radius points
- Fencing of All Types Temporary or otherwise (16) or
- Copper pipe installation and/or repair
- Repair of landscape and irrigation damaged by others
- Water feature
- Drinking fountains

SECTION 6.2 – CLARIFICATIONS

- Price of \$22,411 accepted for F & I of Section 02505
- Pricing of \$104,112 accepted for F & I of items A, B, C, G, H, I and J in Section 02870
- Pricing of \$187,737 accepted for F & I of Greenroof Planting, lightweight soil and irrigation per Section 07140

SECTION 7 – SPECIAL PROVISIONS

This notice required by Business and Professions Code 7030 is an integral part of this Agreement: Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against Contractors if a complaint 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 95826. Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any questions concerning a contractor may be referred to the registrar of the board whose address is: Contractors' State License Board – 1020 "N" Street, Sacramento, CA 95814

SECTION 8 – INSURANCE

SUBCONTRACTOR shall, at his expense, procure and maintain insurance on all of his operations, in companies acceptable to CONTRACTOR, as follows: Workers' Compensation and Employer's Liability Insurance. Workers' Compensation insurance shall be provided to the full extent required by state law, and shall include a Worker's Compensation Waiver of Subrogation Endorsement (this endorsement must be attached to the Worker's Compensation Certificate). If there is an exposure of injury to SUBCONTRACTOR'S employees under the U.S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims. Employer's liability insurance shall be in an amount no less than \$1,000,000. each employee for bodily injury and disease.

General Liability Insurance. SUBCONTRACTOR shall carry Comprehensive General Liability or Commercial General Liability Insurance covering all operations by or on behalf of the SUBCONTRACTOR providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

1. Premises and Operations
2. Products and Completed Operations
3. Contractual Liability insuring the obligations assumed by SUBCONTRACTOR in this Agreement
4. Broad Form Property Damage (Including Completed Operations)
5. Explosion, Collapse and Underground Hazards
6. Personal Injury Liability

A. Limits of Liability – All Policy Forms

1. If SUBCONTRACTOR carries Comprehensive General Liability Insurance, the limits of liability shall not be less than
~~\$2,000,000~~ each occurrence N/A (16) NOT RELEVANT
~~\$8,000,000~~ aggregate N/A

By If SUBCONTRACTOR carries Commercial General Liability insurance, the limits of liability shall not be less than: *G&I Will Furnish THE Following Insurance.* (16) NOT RELEVANT
 \$1,000,000 each occurrence combined single limit for bodily injury and property damage
 \$1,000,000 for Personal Injury Liability
 \$2,000,000 Aggregate for Products-Completed Operations
 \$2,000,000 General Aggregate

The "general aggregate" limit shall apply separately to SUBCONTRACTOR'S work under this contract.

Subcontractor *[Signature]*

B. Special "Claims Made" and "Modified Occurrence" Policy Form Provisions. SUBCONTRACTOR shall not provide General Liability Insurance under a "Claims Made" and "Modified Occurrence" Commercial General Liability form.

C. Additional Insured. With respect to whichever General Liability policy form is furnished as required above:

1. CONTRACTOR, its officers, directors and employees and OWNER and its employees and other parties as required by contract and the Architect shall be named as additional insured. The Products-Completed Operations coverage shall be maintained through all required statutory periods applicable to the Products-Completed Operations coverage inclusive of additional insured provisions in all future renewals of the coverage.
2. The policy shall be endorsed to stipulate that the insurance afforded the additional insured shall apply as primary insurance and that any other insurance maintained by CONTRACTOR or OWNER shall be excess only and shall not be called upon to contribute with SUBCONTRACTOR'S insurance.
3. Coverage for the CONTRACTOR, its officers, directors and employees and OWNER and its employees and other parties as required by contract as additional insured shall be provided by a policy provision or by an endorsement providing coverage at least as broad as Additional Insured (Form B) Endorsement Form CG2010 (11/85) or its equivalent as published by the Insurance Services Office (ISO)

Automobile Liability Insurance SUBCONTRACTOR shall carry automobile liability insurance, including coverage for all owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000. Combined Single Limit each accident for Bodily Injury and Property Damage combined.

Aircraft Insurance If the SUBCONTRACTOR or their lower tier subcontractors use any owned, leased, chartered or hired aircraft of any type (including helicopters) in the performance of this contract, they shall maintain aircraft liability insurance in an amount of not less than \$5,000,000. per occurrence including Passenger Liability. Evidence of coverage in the form of a Certificate of Insurance including additional insured status, as required by the general liability coverage, shall be provided prior to the start of work to CONTRACTOR.

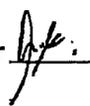
Pollution Liability If SUBCONTRACTORS are required to perform remedial hazardous material operations such as asbestos containing materials, contaminated soil etc., they must, in addition to the above requirements, carry a "Contractor's Pollution Liability" policy with limits not less than \$2,000,000 per occurrence and not less than \$2,000,000. aggregate for Bodily Injury, Personal Injury and Property Damage naming CONTRACTOR and OWNER as an additional insured including contractual liability coverage. If SUBCONTRACTOR or their lower tier subcontractors haul hazardous waste they must carry Automobile Liability Insurance with a \$2,000,000 combined single limit per occurrence for Bodily Injury and Property Damage applicable to all hazardous waste hauling vehicles and include MCS 90.

Professional Liability A \$1,000,000. Professional Liability insurance policy shall be carried if SUBCONTRACTOR or their lower tier subcontractor is to provide design or design/build services to the project. Such insurance shall include coverage for contractual liability. Evidence of coverage in the form of a Certificate of insurance shall be provided prior to the start of work to CONTRACTOR and such coverage shall be maintained for two (2) years following completion of the project.

Certificates of Insurance A Certificate of Insurance including endorsements as required above, as evidence of the insurance required by this Agreement, shall be furnished by SUBCONTRACTOR to CONTRACTOR before any work hereunder is commenced by SUBCONTRACTOR. CONTRACTOR reserves the right to request and SUBCONTRACTOR shall provide upon demand a certified copy of all policies of insurance required by this Agreement. The Certificates of Insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) day's prior written notice to OWNER.

In the event the SUBCONTRACTOR fails to maintain any insurance coverage required under this Agreement, CONTRACTOR may maintain such coverage and charge expense to SUBCONTRACTOR, or terminate this Agreement, or hold the SUBCONTRACTOR accountable for all costs incurred by CONTRACTOR as a result of SUBCONTRACTORS failure to maintain the proper insurance. Upon written request from CONTRACTOR, SUBCONTRACTOR shall provide complete policy or policies to CONTRACTOR within ten (10) days.

The required insurance shall be subject to the approval of CONTRACTOR and OWNER, but any acceptance of insurance certificates by CONTRACTOR or OWNER shall in no way limit or relieve SUBCONTRACTOR of the duties and responsibilities by SUBCONTRACTOR in this Agreement. If higher limits or other forms of insurance are required in the Contract Documents, SUBCONTRACTOR will comply with such requirements.

Subcontractor 

If SUBCONTRACTOR fails to comply with any of the provisions of his Section, SUBCONTRACTOR shall, at its own cost, defend, indemnify and hold harmless CONTRACTOR and OWNER, (including their officers, agents, employees, affiliates, parents and subsidiaries) from and against any and all liability damages, losses, claims, demands, actions, causes of action, costs, including attorney's fees and expenses, or any of them resulting from the death or injury of any person or damage to any property to the extent that CONTRACTOR and OWNER would have been protected had SUBCONTRACTOR complied with all of the provisions of this Section.

Property Insurance Considerations. CONTRACTOR, OWNER and SUBCONTRACTOR waive all rights against each other and against all other trade contractors, subcontractors and sub-subcontractors for loss or damage to the extent covered by Builder's Risk or any other property or equipment insurance applicable to the work, except such rights as they may have to the proceeds of such insurance.

In the event SUBCONTRACTOR makes a claim against CONTRACTOR's Builder's Risk or similar policy, SUBCONTRACTOR shall be solely responsible for any and all deductible amounts.

Failure of CONTRACTOR or OWNER to enforce in a timely manner any of the provision of the Article shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of the Agreement. Any exception to the provisions of this section must be delineated in the Contract documents.

SECTION 9- PERSONNEL

SUBCONTRACTOR must provide experienced and competent personnel for supervision. CONTRACTOR, at its sole discretion, may request to have field and/or management immediately removed and replaced with an individual acceptable to CONTRACTOR. Failure by SUBCONTRACTOR to comply within 48 hours of written notification constitutes a material breach of this subcontract agreement. If requested by CONTRACTOR, your company is required to complete a Subcontractor Daily Report Form (form may be provided) and turn it in on a daily basis. Payments will be held if the SUBCONTRACTOR does not comply with the request.

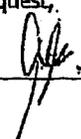
Force account work (time and materials) to be performed at direct costs plus allowable mark-ups per the contract documents. If no mark-ups are specified, then the applicable percentage will be limited to the following: 1) Total allowable labor mark-up = 15%: for all overhead, supervision, and administration; 2) Total allowable for material and/or 2nd tier subcontractors mark-up = 5%: for all overhead, supervision, and administration. West Bay Builders, Inc. will only pay for labor costs incurred at the jobsite. Travel time, delivery costs, parking, etc. are non-compensable and included in the allowable mark-ups. SUBCONTRACTOR must receive written direction from West Bay Builders, Inc. notifying said SUBCONTRACTOR to proceed on a time and materials basis. All delivery tags for materials, equipment, and field labor must be verified by a West Bay Builders, Inc. field superintendent. Unsigned work orders for materials and/or labor will not be paid, nor will work orders for materials and/or labor although signed, but by non-West Bay Builders, Inc. personnel, be paid.

Stop Payment Notice - excessive, improper or erroneous stop payment notices filed by the SUBCONTRACTOR or 2nd tier subcontractors, SUBCONTRACTOR's material suppliers, or SUBCONTRACTOR's employees will result in a 15% fee charged to your account of the excessive, improper or erroneous amount. This amount will be assessed to the SUBCONTRACTORS' account in addition to any related costs for removing such notice.

SECTION 10- PAYMENT

If the OWNER or other responsible party delays in making any payment to CONTRACTOR from which payment to SUBCONTRACTOR is to be made, CONTRACTOR shall have a reasonable time to make payment to SUBCONTRACTOR. "Reasonable time" shall be determined according to the relevant circumstances, but in no event shall be less than the longest period of time required by either the CONTRACTOR or the SUBCONTRACTOR to pursue to conclusion their legal remedies against the OWNER or other responsible party to obtain payment, including (but not limited to) stop notice remedies or other related and similar remedies.

If SUBCONTRACTOR asserts a claim which involves, in whole or in part, acts or omissions which are the responsibility of the OWNER or another party, including but not limited to claims for failure to pay, an extension of time, delay damages, or extra work, CONTRACTOR will present the SUBCONTRACTOR'S claim to the OWNER or other responsible party. The SUBCONTRACTOR shall cooperate fully with the CONTRACTOR in all steps taken in connection with prosecuting such claim and shall hold harmless and reimburse the CONTRACTOR for all expenses, including legal expense incurred by CONTRACTOR, which arises out of CONTRACTOR'S submission of SUBCONTRACTOR'S claim to OWNER or other responsible party. Any adjudication or award shall bind SUBCONTRACTOR in any action or proceeding resolving such a claim. For any claim asserted by SUBCONTRACTOR to CONTRACTOR, at CONTRACTOR'S request,

Subcontractor 

SUBCONTRACTOR shall provide a certification of claim under penalty of perjury in conformance with the California False Claims Act (Government Code Section 12650 et. Seq.)

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
Green Growth Industries, Inc.

By [Signature]
(Name)
PRESIDENT (Title)

FED ID # 94-3348239 (Title)

Contractor's State License No. 662718

Corporation Partnership Proprietorship
Date: April 9, 2009

CONTRACTOR
~~West Bay Builders, Inc.~~

By [Signature]
(Name)
~~Paul Thompson, President~~

Contractor's State License No. 626859

Corporation Partnership Proprietorship
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.

RECEIVED

APR 13 2009

WEST BAY BUILDERS, INC.

Subcontractor [Signature]

Attachment 1

75009

General Subcontract Provisions

A. INSURANCE - SUBCONTRACTOR shall at all times carry on all operations hereunder, such insurance as is set forth in section 8 to this agreement, made a part hereof and fully incorporated herein by this reference. The requirements for carrying the insurance as set forth in section 8 shall not derogate from any provisions for indemnification of CONTRACTOR by SUBCONTRACTOR pursuant to the terms of this Agreement.

Handwritten initials and scribbles on the left margin.

B. INDEMNITY PROVISION - To the fullest extent permitted by law, SUBCONTRACTOR shall indemnify and hold harmless CONTRACTOR, OWNER and their agents, officers directors and employees from claims, losses, damages, (including attorney fees), demands, causes of actions and liabilities of every kind and nature whatsoever arising or allegedly arising out of or in any way connected with SUBCONTRACTOR'S performance under this Agreement. This indemnification shall extend to claims occurring after this Agreement is terminated as well as while it is in force. The indemnity shall apply regardless of any active and/or passive negligent act or omission of the SUBCONTRACTOR or their agents or employees, but SUBCONTRACTOR shall not be obligated to indemnify any party for claims arising from the sole negligence or willful misconduct of the CONTRACTOR, OWNER or their agents or employees, or officers. The indemnity set forth in this Section shall not be limited by insurance requirements or by any other provision of this Agreement. 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 acceptable by CONTRACTOR and OWNER.

C. 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 Faith Performance Bond in an amount equal to one hundred percent (100%) of the Contract Price in Section 3. The bonds shall be executed by a corporate surety acceptable to CONTRACTOR, shall be executed on CONTRACTOR'S form, 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 2% of the penal bond, unless otherwise provided herein or in the Contract Documents.

D.1 TIME - Time is of the essence of this Agreement. It shall be SUBCONTRACTOR'S obligation to conform to CONTRACTOR'S progress schedule, subject to CONTRACTOR'S modifications, which are incorporated herein by this reference and made a part hereof. If the SUBCONTRACTOR takes issue with the progress schedule, the SUBCONTRACTOR has five (5) business days to respond in writing after receipt of the CONTRACTOR'S schedule and its monthly modifications thereafter. Failure to respond in writing constitutes acceptance of the CONTRACTOR'S schedule with all of its scheduled durations. If, in CONTRACTOR'S opinion, SUBCONTRACTOR is not supplying a sufficiency of workers or delivering material with such promptness as to prevent any delay in the progress of the work, or is falling in any respect diligently to commence and prosecute the work, or if the work is not commenced, prosecuted, finished, delivered, or installed on time, CONTRACTOR shall have the right to direct SUBCONTRACTOR to furnish additional labor and, at SUBCONTRACTOR'S cost and expense, to expedite deliveries of material, or if additional labor shall not be available, SUBCONTRACTOR shall work overtime to such extent as will be sufficient to speed up and complete the work in compliance with the Contract Documents, without any additional charge to CONTRACTOR. SUBCONTRACTOR shall cooperate in any way required by CONTRACTOR to remedy the delay. Failure to comply with the CONTRACTOR'S schedule as required by the Contract Documents shall be a material breach of contract. 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 previous progress or final payment period is an express condition precedent to CONTRACTOR'S duty to make any payment for that payment period. SUBCONTRACTOR shall coordinate the work covered by this Agreement with that of all other contractors, subcontractors, and of the CONTRACTOR in a manner which will facilitate the sufficient completion of the entire work. 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 other subcontractors, and in general, all matters representing the timely and orderly conduct of the work of SUBCONTRACTOR on the premises. *TE.C.I requires as agreed upon milestone schedule.*

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D.2 Should SUBCONTRACTOR be delayed in the prosecution or completion of the work by act, neglect, or default of OWNER, or ARCHITECT, or of CONTRACTOR, or should SUBCONTRACTOR be delayed by waiting for materials required by this contract to be furnished by OWNER or CONTRACTOR, or by damage caused by fire or other casualty for which SUBCONTRACTOR is not responsible, or by the combined action of the workers, in no way caused by, or resulting from default or collusion on the part of SUBCONTRACTOR, or in the event of a lockout by CONTRACTOR, then the time fixed herein for the completion of the work shall be extended the number of days that SUBCONTRACTOR has thus been delayed, but no allowance or extension shall be made unless a claim therefore is presented in writing to the CONTRACTOR within forty-eight (48) hours of the commencement of such delay, and under no circumstances shall the time of completion be extended to a date which will prevent CONTRACTOR from completing the entire project within the time that OWNER allows CONTRACTOR for such completion. Within fifteen (15) calendar days of above notification SUBCONTRACTOR shall submit a detailed time impact analysis substantiating the delay. Failure to submit this impact analysis constitutes waiver of SUBCONTRACTOR'S rights for the delay.

D.3 No claims for additional compensation or damages for delays, whether in the furnishing of material by CONTRACTOR, or delays by other SUBCONTRACTORS or OWNER, will be allowed by the SUBCONTRACTOR; provided, however, that in the event, and in such event only, that CONTRACTOR obtains additional compensation from OWNER on account of such delays and for which subcontractor has provided notice of said delay, 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. Notwithstanding the foregoing, CONTRACTOR shall have the right to suspend work for a reasonable time without payment of additional compensation. Nothing herein contained shall require CONTRACTOR to make any claim against OWNER for such delays, 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 damages against CONTRACTOR. In the event CONTRACTOR prosecutes such a claim against OWNER, SUBCONTRACTOR agrees to pay its prorata 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.

E.1 CHANGES IN THE WORK - SUBCONTRACTOR hereby agrees to make any and all changes, furnish the materials and perform the work that CONTRACTOR may require, without nullifying this agreement, at a reasonable addition to or reduction from the Contract Price stated herein, and to prorate the Contract Price. SUBCONTRACTOR shall adhere strictly to the plans and specifications unless a change is authorized in writing. SUBCONTRACTOR shall

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notify CONTRACTOR within five (5) days, in writing, of any discrepancies in any of the Contract Documents, after SUBCONTRACTOR has discovered the discrepancy(ies). SUBCONTRACTOR shall be deemed to have waived all right to compensation for extra costs incurred unless proper notification of the discrepancy is made pursuant to this paragraph. Under no conditions shall SUBCONTRACTOR make any changes, either as additions or deductions, without the written order of CONTRACTOR, and CONTRACTOR shall not pay any extra charges made by SUBCONTRACTOR that have not been agreed upon in writing by CONTRACTOR. Field orders signed by our field personnel do not in any way constitute an acceptance or an agreement for the extra work. Extra work orders signed by our field personnel serve only as a verification of time performed on a specific activity. If SUBCONTRACTOR makes any changes in the work without written direction from CONTRACTOR, SUBCONTRACTOR thereby 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. In addition, 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 such change it makes without written direction from CONTRACTOR. Payment to the CONTRACTOR for authorized extras is an express condition precedent to CONTRACTOR'S duty to pay SUBCONTRACTOR for authorized extras. SUBCONTRACTOR shall immediately submit to the CONTRACTOR written copies of its detailed costs or credit proposal for changes in the work within seven (7) calendar days from the date of the written notice of claim or as defined by the general conditions of the prime contract, or whatever is more stringent. Disputed work shall be performed as ordered in writing by CONTRACTOR and the proper cost or credit breakdowns therefore shall be submitted daily to CONTRACTOR for approval by SUBCONTRACTOR to CONTRACTOR.

E.2 SUBCONTRACTOR shall give written notice of claim, relating to any work for which extra compensation is asserted, within twenty (20) days, or as defined by the general conditions of the prime contract, or whichever is more stringent, whether or not such work has been performed or SUBCONTRACTOR shall be deemed to have abandoned its claim. If SUBCONTRACTOR makes a valid claim, the CONTRACTOR'S duty to the SUBCONTRACTOR is limited to passing on claims in full compliance with the Contract Documents. For any claim submitted by SUBCONTRACTOR to CONTRACTOR, at CONTRACTOR'S request, SUBCONTRACTOR shall provide a certification of claim under penalty of perjury in conformance with the California False Claims Act (Government Code Section 12650, et. Seq.) prior to the passing of said claim to the OWNER. The SUBCONTRACTOR shall bear its pro-rata share of any administrative costs, including attorneys' and consultants' fees, required to process the claim pursuant to the Contract Documents.

E.3 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. It shall not be incumbent upon CONTRACTOR to discover any mistakes, errors, or deviations from the requirements of the Prime Contract, drawings, and specifications as referenced above in the SUBCONTRACTOR'S shop drawings or submittals, and the OWNER'S final approval of SUBCONTRACTOR'S shop drawings or submittals shall not relieve SUBCONTRACTOR from responsibilities of any unauthorized changes, deviations, or omissions, or other errors of any sort from the requirements of the Prime Contract, drawings, and specifications.

E.4 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.

E.5 For any disputed changes between the OWNER and prime CONTRACTOR or between the prime CONTRACTOR and the SUBCONTRACTOR, the SUBCONTRACTOR shall proceed with the work per the written direction of the CONTRACTOR. SUBCONTRACTOR shall seek reimbursement through remedies available per the Subcontract Agreement.

F. DAMAGES CAUSED BY DELAY - Should SUBCONTRACTOR default in the proper performance of its work, thereby causing delay to the prime contract work, SUBCONTRACTOR shall be liable for any and all loss and damages, including consequential damages, liquidated damages, and general conditions, sustained by CONTRACTOR as a result thereof. SUBCONTRACTOR shall not be liable under this paragraph if such default is caused by strikes, lockouts, or acts of God, so long as notice of occurrence of non-liability shall be given in writing immediately by SUBCONTRACTOR to CONTRACTOR.

G. LIENS - SUBCONTRACTOR shall at all times indemnify and hold 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 by any second-tier supplier and material-men, 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. 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.

H.1 RECURSE BY CONTRACTOR - 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 bankrupt, files an arrangement proceeding, commits any act insolvency, makes an assignment for benefit of creditors without CONTRACTOR'S consent, fails to make prompt payment to its material suppliers and 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 fulfill any of the provisions of paragraph J of these General Subcontract Provisions, or otherwise fails to perform fully any and all the agreements herein contained, CONTRACTOR may, at its option, after giving forty-eight (48) hours written notice to SUBCONTRACTOR, provide any such labor and materials as may be necessary, and deduct the cost thereof, including, without limitation, CONTRACTOR'S profit and overhead, administrative costs 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, or 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 the case of 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, 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' fees 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 ten percent (10%) Profit on any and all such expenses; and CONTRACTOR shall have a lien upon all materials, tools, and machinery and equipment taken possession of as aforesaid, to secure SUBCONTRACTOR'S payment thereof. This notice referred to in this

paragraph will be sufficient and complete when mailed to SUBCONTRACTOR at the address shown in 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.

H.2 CONTRACTOR may also terminate this Agreement in the event of any other material breach of this Agreement by SUBCONTRACTOR. In addition to any other material breach, 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 shall also be a material breach. With respect to any and all payments to be made by CONTRACTOR to SUBCONTRACTOR under this Agreement, CONTRACTOR at its option may issue joint checks payable to SUBCONTRACTOR and any trust referred to herein, or to a second tier subcontractor or material supplier to the extent necessary to assure the payments required to be made under this Agreement are paid.

H.3 CONTRACTOR may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any payment under SECTION 4, to such extent as may be necessary to protect CONTRACTOR from loss, including costs and actual attorneys' fees incurred if good faith on account of (1) defective work not remedied; (2) claims filed or reasonable evidence indicating probable filing of claim; (3) failure of SUBCONTRACTOR to make payments properly to its subcontractors, or for material, labor, or fringe benefits; (4) a reasonable doubt that this Agreement can be completed for the balance then unpaid; (5) damage to another subcontractor; (6) failure of SUBCONTRACTOR to complete the contract in accordance with the Contract Documents; (7) unsatisfactory performance of the work by the SUBCONTRACTOR, liens, claims or stop notices filed by SUBCONTRACTOR, or SUBCONTRACTOR's subcontractors or material suppliers, unions or similar claimants.

H.4 Should one or more contracts now or hereafter exist between the parties hereto or with an affiliated corporation or company of CONTRACTOR, 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 apply the same toward payment of any damages suffered on that or any other contract.

I.1 TERMINATION OF AGREEMENT - 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 prorate of the price herein set forth unless CONTRACTOR itself receives additional compensation or damages on account of such termination, in which event SUBCONTRACTOR shall be entitled to such proportion of the additional compensation or damages actually received as is equitable under all of the circumstances. 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.

I.2 Notwithstanding the preceding paragraph, CONTRACTOR reserves the absolute right to terminate this Agreement. In the event of termination without cause, SUBCONTRACTOR shall be entitled to payment only as follows:

- 1) Cost of the work actually completed in conformity with the Agreement;
- 2) Plus other costs actually incurred by SUBCONTRACTOR;
- 3) Plus fifteen percent (15%) of costs referred to in Paragraph 1 above, for overhead and profit.

There shall be deducted from such sums as provided in this paragraph the amount of any payments made to SUBCONTRACTOR prior to the date of termination of this Agreement. SUBCONTRACTOR shall not be entitled to any claim, or claim of lien, against CONTRACTOR or against OWNER for any additional compensation or damages in the event of such termination and payment. In the event this Agreement is terminated for cause, SUBCONTRACTOR shall not be entitled to receive any further payment until the work undertaken by CONTRACTOR in its prime contract is completely finished. At that time, if the amounts earned but not paid SUBCONTRACTOR before the termination exceed the expenses incurred by CONTRACTOR in finishing SUBCONTRACTOR'S work, any excess shall be paid by CONTRACTOR to SUBCONTRACTOR; but if the 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. The expenses incurred by CONTRACTOR shall include costs 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 ten percent (10%) profit on any and all such expenses.

J. 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 immediately 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 job sites with the following labor unions: Carpenters and Laborers.

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 by the National Labor Relations Board. SUBCONTRACTOR further promises and agrees to provide CONTRACTOR, on a monthly basis, a status letter from their union and their sub-subcontractors' union as a condition prior to payment from CONTRACTOR to SUBCONTRACTOR.

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 or 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, cost, 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.

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.

K. LAYOUT RESPONSIBILITY – 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.

L. 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 kind, 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.

M. 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 in course of preparation. The making or failure to make any inspection or payment for or acceptance of the materials shall not impair CONTRACTOR'S right to later reject nonconforming 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 nonconforming 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.

N. 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 material 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.

O. 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 work in place or to any equipment and materials on the job site caused by it or its agents, employees or guests. SUBCONTRACTOR shall promptly repair or replace any damaged work, property or materials.

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

Q.1 SPECIFIC 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, written or oral, 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 monies due under this Agreement.

Q.2 GENERAL CLEAN-UP – During the course of construction the CONTRACTOR will be performing "general" clean up on a daily basis. These clean-up costs will be distributed back to the SUBCONTRACTORS based on your pro-rata share of manpower on the site in relation to the total.

R. 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 as well as guarantee the OWNER and CONTRACTOR against liability, loss or damage arising from the installation of the work during a period one (1) year from completion and acceptance of the work covered by the prime contract. If however, the period of guarantee in the Contract Documents exceeds over one (1) year, SUBCONTRACTOR shall be bound during the longer period stipulated. SUBCONTRACTOR shall further guarantee the materials and workmanship of all repair work done pursuant to this provision for a period of eighteen (18) months after the repairs are performed.

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S. 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 part of this Agreement, and its rights hereunder, to any corporation, individual or partnership.

T. 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. SUBCONTRACTOR waives any right it might have to assert the provisions of CALIFORNIA CIVIL CODE Sec. 1654 against CONTRACTOR.

U. ATTORNEYS' FEES - In any dispute arising out of or resulting from this Agreement or performance of the work, both the CONTRACTOR and SUBCONTRACTOR shall bear their own attorney's fees and costs. In addition, SUBCONTRACTOR agrees to waive any claim for attorney's fees and costs against any surety with respect to a payment bond claim including but not limited to any claim for attorney fees pursuant to California Civil Code section 3250.

V.1 DISPUTES - (a.) If at any time any controversy shall arise between CONTRACTOR and SUBCONTRACTOR regarding anything pertaining to performance of this Agreement, which the parties hereto do not promptly resolve, then the written orders of CONTRACTOR to SUBCONTRACTOR shall be followed.

V.2 If at any time, any dispute shall arise between CONTRACTOR and SUBCONTRACTOR, it is agreed that CONTRACTOR and SUBCONTRACTOR shall as a condition precedent, meet and confer to discuss and resolve the dispute. In the event that the meet and confer is unsuccessful, SUBCONTRACTOR and CONTRACTOR agree to submit the dispute to a Dispute Review Board ("DRB") hearing. Each party shall select one competent board member, and those two board members shall select the third member. All board members shall submit disclosure statements pursuant to California Code of Civil Procedure §1281.5 through 1281.95 within ten (10) working days from the date of selection. In the event a panel has already utilized on the Project, that same panel shall remain in place for all disputes, absent a conflict. The board members shall jointly determine the procedures of the hearing, including the date, time and location as described in the Dispute Review Board Foundation's Manual. The award must be agreed to by at least two board members. Both parties agree to be bound by the DRB hearing award, and to accept, as its full compensation for any claim or dispute. The award issued by the DRB can be entered as a judgment in any court of competent jurisdiction. Each party shall equally bear the costs of the DRB hearing, as a condition precedent to any further dispute resolution proceedings. In the event the DRB hearing, including attorney's fees and costs.

V.3 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.

V.4 If the SUBCONTRACTOR does not participate as a party to the CONTRACTOR and OWNER arbitration, SUBCONTRACTOR agrees to fulfill its duties and obligations under Paragraph B 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, the award specifically directed to the SUBCONTRACTOR as rendered by the arbitrator.

W.1 INDEMNITY CLAUSE RE: SAFETY AND EMPLOYMENT - 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 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.

W.2 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 agent, employees, material suppliers and 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.

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WEST BAY BUILDERS, INC.

Subcontractor *[Signature]* 11